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IN THE COURT OF APPEALS OF INDIANA

THOMAS A. HENDRICKSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0910-CV-992
	)	
CITY OF INDIANAPOLIS,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Michael Keele, Judge
The Honorable Melissa Kramer, Master Commissioner
Cause No. 49F12-0903-OV-12635

January 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Thomas Hendrickson was cited by the City of Indianapolis for two ordinance violations after his dog bit his neighbor. Hendrickson appeals the trial court's finding that he was guilty of the ordinance violations, raising several issues that we consolidate and restate as one: whether the trial court's judgment finding Hendrickson in violation of the City's animal control ordinances is clearly erroneous. Concluding the trial court's interpretation of the ordinances is not clearly erroneous and the evidence supports the trial court's findings, we affirm.

Facts and Procedural History[1]

Hendrickson and his wife, Sandra, have lived in the same home on the northeast side of Indianapolis for over forty years. Terry Anderson has lived next door for approximately sixteen years. The Hendricksons have a "small to medium" sized dog named Barney. Transcript at 7. Anderson also has a dog, Casey. Prior to April 24, 2008, the Hendricksons' yard was not completely fenced in and Barney was able to leave their yard, although the Hendricksons testified they "usually" accompanied Barney when he was outside. Id. at 55. Barney normally slept in the house under Mrs. Hendrickson's bed. Anderson testified that she was "constantly" calling Animal Control because the Hendricksons' animals were in her yard. Id. at 9. Relations between Anderson and the Hendricksons are strained.

[1] When Hendrickson filed his appellant's brief, the appendix was included as part of the brief. The Clerk's Office issued a notice of defect. Hendrickson subsequently filed a corrected brief without the appendix materials included, but did not also file a separately bound appendix. The lack of relevant record material has impeded our review of this case, and we advise counsel to follow the Appellate Rules in future filings with this

In the early morning hours of April 24, 2008, Casey woke Anderson wanting to go outside. When Anderson let Casey out, Barney was in her driveway. The two dogs began playing and Casey was barking. Because she "knew about the bark clause," id. at 8, Anderson tried to get Casey away from Barney by pulling on Casey's collar. Anderson "might have lunged at [Barney] to get him away," id. at 31, and may have tried to pick him up but she was not trying to hurt him. Anderson testified that Barney "lunged at me and bit my hand." Id. Anderson suffered several puncture wounds and had to get eight stitches in her left hand.

Hendrickson testified that when he went to bed on April 23, 2008, Barney was in the house "[a]s far as I know." Id. at 52. Hendrickson did not let Barney out of the house that night. Mrs. Hendrickson testified that on that night, she put Barney out and then fell asleep before she let him back in. The Hendricksons woke up at 4:00 a.m. when Anderson pounded on the door, yelling that Barney had bitten her. Anderson drove herself to the hospital and then contacted Animal Control. Initially, Mrs. Hendrickson was issued citations under City of Indianapolis ordinances declaring animals at large prohibited and imposing owner responsibility for animal attacks.[2] Those citations were apparently lost. After Anderson contacted Animal Control in early 2009 to follow up, new citations were issued to Hendrickson alleging violations of the same two ordinances. After a hearing held on June 5, 2009, Hendrickson was found to be in violation of the two ordinances, fined a total of $550,

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court.

[2] These citations were originally issued on April 24, 2008. Although admitted at trial as Exhibits K and L, the citations do not appear in the exhibits volume.

and permanently enjoined from having animals at large in the City. Hendrickson now appeals.

Discussion and Decision

I. Standard of Review

In announcing its judgment, the trial court explained its decision in a manner we consider to constitute findings of fact. When a trial court enters findings of fact and conclusions thereon without being required to do so by rule or request, specific findings control only as to issues they cover, and a general judgment standard applies to any issues upon which the trial court has not made findings. Perdue v. Murphy, 915 N.E.2d 498, 504 (Ind. Ct. App. 2009). When reviewing findings, we determine whether the evidence supports the findings and then whether the findings support the judgment. Id. We reverse a judgment only when it is shown to be clearly erroneous; that is, when it is unsupported by the findings of fact and conclusions thereon, id., or when the trial court applies the wrong legal standard, Fraley v. Minger, 829 N.E.2d 476, 482 (Ind. 2005). We defer substantially to the trial court's findings of fact, but we evaluate conclusions of law *de novo*. Id.

II. Ordinance Violations

The relevant City ordinances provide:

> Sec. 531-101. Definitions.
>
> As used in this chapter, the following terms shall have the meanings ascribed to them in this section.
>
> * * *
>
> *At large* means not confined without means of escape in a pen, corral, yard, cage, house, vehicle or other secure enclosure, unless on a leash and under the control of a competent human being.
>
> * * *

> *Own* means to keep, harbor or have custody, charge or control of an animal, and owner means and includes any person who owns an animal . . . .
> * * *
> *Provoke* means the infliction of bodily harm on the animal or another person, or conduct that constitutes a substantial step toward the infliction of bodily harm on the animal or another person.
> * * *
> Sec. 531-102. Animals at large prohibited; penalties.
> (a) It shall be unlawful for the owner or keeper of an animal to cause, suffer, or allow that animal which is owned or kept by such person to be at large in the City.[3]
> * * *
> Sec. 531-109. Owner responsibility for animal attacks.
> (a) It shall be unlawful for an owner or keeper of an animal to allow that animal to attack and injure a person who did not provoke the animal prior to the attack.[4]

Revised Code of the Consolidated City of Indianapolis and Marion County, Title III, Chapter 531, Article I (2006).

The trial court made the following observations in announcing its judgment:

> [It] is clearly undisputed that this animal was at large on that day . . . . [T]his is why I believe that the City can go forward on a citation against either [Hendrickson] because I think both of you are responsible for knowing where your animal is. And if you both went to bed that night and didn't know that the animal was outside or you didn't know that the animal wasn't under [the] bed you should have gone to the door to find out where the animal was. . . . [T]here is no evidence before me that Ms. Anderson provoked this animal in any way . . . . So, I am not going to find that even if she did pick up the animal that that was provocation. There was no testimony that she hit the animal, that she threw anything at the animal, that she called the animal any names. Yes she was angry but I'm not going to find that her contact with the dog was in any [sic] provocation. So for those reasons I will find that the City has met their burden with respect to the [ordinances].

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[3] This is the version of the ordinance applicable at the time of this incident. Since the incident, the ordinance has been amended to read, "An owner or keeper of an animal commits a violation of the code if that animal is at large in the city." (As amended November 2008.)

[4] Again, this is the version of the ordinance applicable to this incident. Following amendment in November 2008, the ordinance now reads, "An owner or keeper of an animal commits a violation of the code if that animal attacks and injures a person who did not provoke the animal prior to the attack."

Tr. at 85-88.

A. Trial Court's Interpretation of Ordinances

Hendrickson contends the trial court's interpretation of the ordinances was clearly erroneous. Rules relating to statutory construction are applicable to construing ordinances as well. City of Indianapolis v. Campbell, 792 N.E.2d 620, 624 (Ind. Ct. App. 2003). Every word in a statute must be given effect and meaning, and no part is to be held meaningless if it can be reconciled with the rest of the statute. Plesha v. Edmonds ex rel. Edmonds, 717 N.E.2d 981, 986 (Ind. Ct. App. 1999), trans. denied. We endeavor to give words in a statute their plain and ordinary meaning absent a clearly manifested purpose to do otherwise. Id. Hendrickson claims the trial court improperly interpreted the ordinance in finding under the circumstances that he "allowed" his animal to be at large in the City and to attack Anderson.

Hendrickson concedes he is Barney's owner. See Appellant's Reply Brief at 7. He contends, however, that because the evidence showed Barney was in the house as far as Hendrickson knew when he went to bed and Mrs. Hendrickson was the person who let Barney out thereafter and failed to bring him back in, the trial court erred in finding him to be in violation of the ordinances because he did not personally "allow" Barney to be at large or to attack Anderson. He points to the subsequent amendment of the ordinances to delete the "allow" language as demonstrating that scienter was required prior to the amendment and argues it was not proven in this case.

The evidence does support the conclusion that Hendrickson did not let Barney out of the house on the night in question; however, the evidence is also undisputed that

Hendrickson did not at any time prior to that night take steps to ensure Barney was confined to his own yard. "Allow" is defined as "permit" or "to forbear or neglect to restrain or prevent." Merriam-Webster's Online Dictionary, http://www.merriam-webster.com/dictionary/allow (last visited January 5, 2010). By not erecting a complete fence or other secure enclosure on his property, Hendrickson permitted Barney to be unconfined and therefore did "cause, suffer, or allow" Barney to be at large and did "allow" Barney to be in a position to bite Anderson. The trial court's interpretation of the ordinances is not clearly erroneous.

B. Evidence Supporting Findings[5]

The trial court found Anderson's actions did not constitute provocation. Provocation is defined by the ordinance as inflicting bodily harm on the animal or engaging in conduct that constitutes a substantial step toward the infliction of bodily harm on the animal. Hendrickson argues Anderson's testimony that she was "a little peeved," tr. at 30, she might have tried to pick up Barney, and she "might have lunged at" Barney when trying to separate the dogs, id. at 31, is evidence from which it can be inferred Barney perceived Anderson's actions as threatening harm, and therefore, the evidence does not support the trial court's findings that Anderson did not provoke Barney.

Hendrickson cites Goodwin v. E.B. Nelson Grocery Co., 239 Mass. 232, 132 N.E. 51 (1921) in support of his argument. In Goodwin, the plaintiff brought her dog into a grocery

[5] In his reply brief, Hendrickson also argues the evidence does not support a finding that Barney "attacked" Anderson. See Appellant's Reply Brief at 6 ("Calling this an 'attack' is akin to a Lewis Carroll parody of language."). No new issues may be raised in a reply brief and this argument is therefore waived. See Ind. Appellate Rule 46(C); Weldon v. Asset Acceptance, LLC, 896 N.E.2d 1181, 1186 (Ind. Ct. App.

store where it engaged in a fight with a cat owned by the storekeeper. After the animals were separated, the plaintiff reached down and took hold of the cat's paw to keep it from attacking her dog again, causing the cat to bite and scratch her. The plaintiff was not allowed to recover for her injuries because the fight between the animals was over and rather than looking after her own animal to prevent a recurrence, the plaintiff meddled with an animal whose nature was unknown to her. In those circumstances, the plaintiff's conduct was negligent because she "submitted herself to danger and unnecessarily exposed herself." 239 Mass. at 234, 132 N.E. at 52. We note first that Goodwin is not binding precedent for this court. We also note the circumstances described in Goodwin are distinguishable from those presented here. In Goodwin, the fight between the animals was over and the plaintiff thereafter interfered with an animal owned by another. Here, the animals were actively engaged with each other, and in trying to get her own dog away and into her house, Anderson may have come in contact with Barney.

Anderson stated she "might have lunged at" Barney, which does imply a sudden movement that may have startled Barney. It does not necessarily imply conduct constituting a substantial step toward the infliction of bodily harm, however. Anderson did state she was "a little peeved," but testified she was angry with the Hendricksons, not with Barney. She further testified she was not showing any anger to Barney and was not trying to harm him while trying to separate the dogs. Under these circumstances, we hold the evidence supports the trial court's finding that Anderson did not provoke Barney.[6]

2008), trans. denied.

Conclusion

The trial court's judgment is not clearly erroneous and is, therefore, affirmed.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.

[6] Hendrickson's references in his brief to testimony regarding Anderson's reputation for truthfulness go to Anderson's credibility, and that is a matter for the trier of fact. See Humphries v. Ables, 789 N.E.2d 1025, 1030 (Ind. Ct. App. 2003) (in reviewing whether the evidence supports the findings, "[w]e do not reweigh the evidence or assess the credibility of the witnesses.").