MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

May Robinson,
Appellant-Respondent,

v.

City of Mount Vernon,
Appellee-Petitioner.

September 29, 2021

Court of Appeals Case No. 21A-OV-631

Appeal from the Posey Superior Court

The Honorable Robert Aylsworth, Senior Judge

Trial Court Cause No. 65D01-2102-OV-274

Bailey, Judge.

Case Summary

[1] The City of Mount Vernon (the "City") alleged that May Robinson ("Robinson") violated Section 91.03 of the Mt. Vernon Code of Ordinances ("M.V.C.") by keeping a dog that attacked a person. The trial court determined that Robinson had violated the ordinance. The court also granted the City's petition to euthanize the dog, Jager (the "Dog"), pursuant to M.V.C. Section 91.32. Robinson appeals. She raises three issues, which we consolidate and restate as whether there is sufficient evidence supporting (1) the determination that Robinson violated the ordinance and (2) the order to euthanize the Dog.

[2] We affirm.

Facts and Procedural History

[3] In February 2021, the City filed a two-count Ordinance Violation against Robinson, alleging in Count 1 that Robinson violated M.V.C. Section 91.03 by "[k]eeping a dog that commits an attack on a human, to wit, mauled a child causing bodily injury[.]" Appellee's App. Vol. 2 at 2.[1] The City also filed an Emergency Petition for Destruction of Animal, seeking an order to euthanize the Dog. The trial court held a fact-finding hearing on March 23, 2021.

[1] Count 2 is not at issue on appeal.

[4] At the hearing, the City presented evidence that, on January 30, 2021, law enforcement and a paramedic responded to Robinson's residence upon the report of a dog bite. Robinson was there with her four-year-old grandchild (the "Child"), who had deep wounds on her face. There was conflicting evidence as to the cause of the wounds. According to the responding officer, Robinson said that the Child stepped on the Dog's paw; when the Child ran into another room, the Dog pursued the Child and bit her. Moreover, according to the responding paramedic, Robinson said that the Dog "had [the Child's] face in his mouth . . . until [Robinson] was able to get the dog off" of the Child. Tr. Vol. 2 at 37. The Child also told the paramedic that she had been bitten. In contrast, Robinson testified that the Dog "yelped and growled" after the Child accidentally stepped on the Dog's paw. *Id.* at 65. She testified that the Dog jumped on the Child and knocked her down, scratching her face. Robinson testified that she told the Child to run. Robinson denied reporting a dog bite.

[5] The Child was transported to the hospital, where she underwent surgery; the Child's medical records did not consistently refer to a dog bite, with one physician noting that the wounds were likely caused by the paw of the Dog. Meanwhile, Animal Control responded and removed the Dog—which was seen with blood on his snout and jowls—for a ten-day quarantine. The Animal Control Officer testified that he spoke with Robinson, who reported that the Dog had previously bitten her ex-boyfriend. Robinson testified that the Dog had only snapped at her ex-boyfriend, who had attempted to put clothing on the Dog. As of the hearing, the Dog remained in the care of Animal Control.

[6] The trial court entered a written order determining that "the City proved the allegations in Count 1 by a preponderance of the evidence as the evidence shows [Robinson] was aware [that the Dog] would bite if someone irritated or provoked [the Dog]." Appellant's App. Vol. 2 at 219. The trial court noted that Robinson had "yelled for [the Child] . . . to run to try and get away," but the Dog "got to her and inflicted horrific injury to the little girl's face." *Id.* The trial court separately found that the City "proved the violation of Ordinance section 91.03 that [Robinson] did in fact knowingly keep a dangerous animal." *Id.* The trial court ordered that the Dog be humanely euthanized after allowing Robinson the time to file a Motion to Correct Error or Notice of Appeal. *Id.*

[7] Robinson now appeals.

Discussion and Decision

Standard of Review

[8] Because neither party made a timely written request for special findings, we regard the findings as *sua sponte* findings that control the issues they cover, with a general-judgment standard controlling "other issues . . . not covered by such findings." Ind. Trial Rule 52(D). Our role is to examine whether the evidence supports the findings and the findings support the judgment. *Masters v. Masters*, 43 N.E.3d 570, 575 (Ind. 2015). In conducting our review, we "shall not set aside the findings or judgment unless clearly erroneous" and shall give "due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses." T.R. 52(A). In other words, this Court does not reweigh the

evidence and we will reverse the judgment of the trial court only upon a showing of clear error, which is "that which leaves us with a definite and firm conviction that a mistake has been made." *Masters*, 43 N.E.3d at 575 (quoting *Egly v. Blackford Cnty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)).

[9] A finding is clearly erroneous if "the record contains no facts supporting [it] either directly or inferentially." *Town of Brownsburg v. Fight Against Brownsburg Annexation*, 124 N.E.3d 597, 601 (Ind. 2019). Moreover, the judgment—which must follow from the findings—"is clearly erroneous if the court applied the 'wrong legal standard to properly found facts.'" *Id.* (quoting *Town of Fortville v. Certain Fortville Annexation Territory Landowners*, 51 N.E.3d 1195, 1198 (Ind. 2016)). When a general-judgment standard applies, we will affirm the judgment "if sustainable upon any theory consistent with the evidence." *Perdue Farms, Inc. v. Pryor*, 683 N.E.2d 239, 240 (Ind. 1997). Furthermore, to the extent that an appeal involves questions of law, we review those questions of law *de novo*. *Univ. of S. Ind. Found. v. Baker*, 843 N.E.2d 528, 531 (Ind. 2006).

Sufficiency of the Evidence

[10] Pursuant to Indiana Code Section 34-28-5-1(d), the City was obligated to "prove the commission of an . . . ordinance violation by a preponderance of the evidence." A preponderance of the evidence means the "greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force." *Galloway v. State*, 938 N.E.2d 699, 708 n.7 (Ind. 2010) (quoting Black's Law

Dictionary 1301 (9th ed.)). Put differently, to identify an ordinance violation, the fact-finder must be convinced that the allegations are more probably true than not true. *See, e.g.*, *Gambill v. State*, 675 N.E.2d 668, 676 (Ind. 1996).

[11] The meaning of an ordinance is a question of law that we review *de novo*. *Siwinski v. Town of Ogden Dunes*, 949 N.E.2d 825, 828 (Ind. 2011). We use the same principles to interpret both ordinances and statutes. *600 Land, Inc. v. Metro. Bd. of Zoning Appeals of Marion Cnty.*, 889 N.E.2d 305, 309 (Ind. 2008). Ultimately, "our primary goal is to determine the legislature's intent." *D.P. v. State*, 151 N.E.3d 1210, 1216 (Ind. 2020). To ascertain that intent, we look to the language used, giving effect to the plain and ordinary meaning of words. *Id.*

Ordinance Violation

[12] In Count 1, the City alleged that Robinson violated M.V.C. Section 91.03 by "[k]eeping a dog that commits an attack on a human, to wit, mauled a child causing bodily injury[.]" Appellee's App. Vol. 2 at 2. M.V.C. Section 91.03 contains multiple subsections, including the following pertinent subsections:

> (A) No person shall keep or maintain any animal in the city in such a manner so as to become a public nuisance or to disturb the peace, comfort, or health of any person residing within the city. The keeping of all animals within the city shall be subject to all pertinent health regulations.
>
> . . . .
>
> (D) No person shall keep or maintain any poisonous reptile or dangerous animal.

[13] In its written order, the trial court identified a violation of subsection (D), noting that the City had "proved . . . that [Robinson] did in fact knowingly keep a dangerous animal." Appellant's App. Vol. 2 at 219. On appeal, Robinson focuses on subsection (D), alleging that there is insufficient evidence that the Dog met the pertinent definition of "dangerous animal" set forth in M.V.C. Section 91.01: "Any animal which, unprovoked, commits an attack upon, harms or kills a person or another domestic animal." Robinson focuses on whether there is sufficient evidence that the Dog attacked when unprovoked.

[14] Although Robinson focuses on subsection (D), that subsection is not the only basis for the judgment regarding M.V.C. Section 91.03. Indeed, separate from finding that Robinson kept a dangerous animal, the court more generally found that "the City proved the allegations in Count 1 by a preponderance of the evidence as the evidence shows [Robinson] was aware [that the Dog] would bite if someone irritated or provoked the dog." Appellant's App. Vol. 2 at 219. In Count 1, the City did not exclusively focus on subsection (D). Rather, the City broadly alleged a violation of Section 91.03, encompassing all subsections.

[15] Subsection (A) prohibits a person from "keep[ing] or maintain[ing] any animal in the city in such a manner so as to become a public nuisance or to disturb the peace, comfort, or health of any person residing within the city." Here, there is ample evidence that the Dog disturbed the health of the Child by biting her face and causing deep wounds. Further, it is not as though this was the first time that the Dog bit a person. Indeed, there is evidence that the Dog had bitten Robinson's ex-boyfriend. Moreover, as the trial court noted, Robinson told the

Child to run after the Child irritated the Dog, indicating that Robinson "was aware [that the Dog] would bite if someone irritated or provoked [him]." *Id.*

[16] To the extent Robinson suggests that subsection (A) requires that the animal be a "dangerous animal" as defined elsewhere in the M.V.C., we disagree. The phrase "dangerous animal" was not used in subsection (A). Applying the plain language of subsection (A)—as we must—we conclude that there is sufficient evidence that Robinson violated M.V.C. Section 91.03(A). Thus, the trial court did not clearly err in determining that Robinson had violated the ordinance.

Order to Euthanize

[17] The City also petitioned for an order to euthanize the Dog pursuant to M.V.C. Section 91.32, which provides as follows: "All dogs which have bitten any person or persons shall be deemed to be vicious and dangerous and are subject to destruction after a ten-day impoundment." The court granted the petition, issuing an order to euthanize. Robinson argues that deficient evidence supports that order. In so arguing, Robinson suggests that Section 91.32 requires that a bite be "unprovoked." Yet, unlike subsection (D) of the other ordinance, Section 91.32 does not require as much. Robinson also directs us to favorable evidence indicating that the Dog had not bitten the Child but had instead scratched her. We must decline Robinson's invitation to reweigh the evidence. Here, the City presented evidence that the Dog bit the Child, holding her face in his mouth. This evidence is sufficient to support an order to euthanize under Section 91.32. Thus, the court did not clearly err in issuing the order to euthanize the Dog.

[18] All in all, we conclude that sufficient evidence supports the judgment.

[19] Affirmed.

Crone, J., and Pyle, J., concur.