**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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| Stacie Stankiewicz and Kenneth Steeves, Sr., | : | |
| Appellants | : | |
| | : | No. 466 C.D. 2007 |
| v. | : | Submitted: December 11, 2007 |
| | : | |
| The City of Reading | : | |

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION**
**BY JUDGE SIMPSON**[1] **FILED: February 26, 2008**

In this appeal, we consider the validity of various provisions of a local ordinance relating to "aggressive" or "dangerous" dogs in light of Section 507-A(c) of the Pennsylvania Dog Law Act (State Dog Law),[2] which abrogates those provisions of local ordinances relating to "dangerous dogs." Based on the clear language of Section 507-A(c), we conclude the local ordinance here is a nullity.

In October 1998, the City of Reading (City) adopted Bill No. 30-98, "An Ordinance Amending Article 705 of the [City's] Codified Ordinances —

[1] Currently, there is a vacancy among the commissioned judges of this Court. While the panel of judges that heard the case voted 2 to 1 to reverse, pursuant to our opinion circulation rules all commissioned judges voted on the opinion and a tie vote resulted. Therefore, this opinion is filed pursuant to Section 256(b) of the Internal Operating Procedures of the Commonwealth Court, 210 Pa. Code §67.29(b)).

[2] Act of December 7, 1982, P.L. 784, as amended, added by the Act of May 31, 1990, P.L. 213, 3 P.S. §459-507-A(c).

Animal Control Ordinance" (Ordinance). Certified Record, Item #8 at Ex. A. The City later amended the Ordinance in 1999.

Of particular relevance here, the Ordinance identifies certain breeds of dogs deemed to be "aggressive." Section 705.2(j) of the Ordinance defines an "aggressive dog" as:

> [A]ny dog that is a member of any canine breed in whole or in part that accounts for forty percent (40%) or more of the dog bite incidents whether on humans or animals reported to the City of Reading Police Department and/or the Humane Society, as determined on [an] annual basis each January based upon statistics for the preceding year provided that the total number of dog bite incidents reported of all breeds exceeds thirty (30).

(Emphasis added). Thus, the Ordinance defines an "aggressive dog" as a member of a breed with a propensity to bite humans or animals. In addition, the Ordinance utilizes the term "dangerous dog." Section 705.2(i) of the Ordinance defines "dangerous dog" as any dog as defined in Section 502(A) of the State Dog Law. See 3 P.S. §459-502-A.

Section 705.10 of the Ordinance, as amended, states that an owner of a dangerous or aggressive dog shall confine the pet to the residence and when off premises the dog shall be securely muzzled and restrained with a chain having a minimum tensile strength of 300 lbs. and not more than three feet in length. Section 705.8 of the Ordinance makes it unlawful for the owner of any dangerous or aggressive dog to fail to keep such dog under restraint or to permit such dog to run at large upon the City streets. Section 705.14 of the Ordinance, as amended,

requires dangerous or aggressive dog owners to obtain a permit and pay an annual permit fee of $50 if the animal is spayed or neutered, or $500 if it is not spayed or neutered.[3] Thus, Sections 705.10, 705.8 and 705.14 of the Ordinance apply to owners of both "dangerous dogs" and "aggressive dogs."

In June 2000, Stacie Stankiewicz and Kenneth Steeves, Sr. (Appellants), City residents who own a Staffordshire Terrier (a breed of dogs commonly referred to as "pit bulls"), filed a declaratory judgment action in the Court of Common Pleas of Berks County (trial court) challenging the validity of the Ordinance. Among other things, they asserted the Ordinance was preempted by Section 507-A(c) of the State Dog Law. Approximately four years later,[4] Appellants filed a motion for summary judgment. In their supportive brief, Appellants again asserted the Ordinance was preempted by the Section 507-A(c).

[3] Of further note, Section 705.99(c) of the Ordinance (relating to violations and penalties) states (with emphasis added) "[n]otwithstanding any other penalties imposed by this section of th[e] [O]rdinance, any person who violates any provision of this Ordinance and said violation involves a dangerous dog or aggressive dog (as defined in Section 705.2i or 705.2j herein), shall be subject to a minimum fine of Five Hundred Dollars ($500.00) to a maximum fine of One Thousand Dollars ($1,000.00) per violation, or subject to thirty (30) days' imprisonment upon failure to pay any fine imposed. …" Also, Section 705.17(d) states any dangerous dog or aggressive dog that is impounded shall not be redeemed by the owner or adopted by any person until all applicable permit fees imposed by the Ordinance are paid.

[4] The City initially filed preliminary objections, which the trial court sustained. Appellants filed an amended complaint, and the City again filed preliminary objections, which the trial court overruled. The City then filed its answer. The case had little or no activity for nearly two years when the prothonotary's office sent a notice of proposed termination, indicating the trial court's intention to terminate the case. Shortly thereafter, Appellants filed a statement of intention to proceed.

In its response to Appellant's motion for summary judgment, the City asked the trial court to declare the Ordinance valid.

After oral argument, the trial court issued an order granting summary judgment in favor of the City, denying all other outstanding motions and dismissing Appellants' case with prejudice.[5] The trial court rejected Appellants' claim that the Ordinance violated Section 507-A(c) of the State Dog Law, explaining:

> [T]he Ordinance does not violate the [State] Dog Law cited by [Appellants]. As explained, the Ordinance does not attempt in any way, expressly or impliedly, to limit or prohibit any breed of dog. The Ordinance simply places a sufficiently reasonable set of guidelines on owners of dogs that are considered aggressive for one year. If the aggressive breeds are not responsible for forty (40) percent of all bites, they will be subsequently removed from the aggressive list. This in no way prohibits the ownership of any dog breed, nor does it limit the ownership of any dog breed. The Ordinance does not so much as tangentially interfere with the [State] Dog Law, and there is scant overlap between the two laws, if any.
>
> In reality, where the laws do reference similar issues, the Ordinance does not conflict with the [State] Dog Law. The most significant discrepancy is that the [State] Dog Law primarily affects specific owners for specific incidents involving their dogs, whereas the Ordinance is a public safety measure designed to reduce the potential for incidents that would ultimately fall under the auspices of the [State] Dog Law. The two laws are virtually inapposite to each other in all respects except that both laws relate to the control of untoward

[5] The trial court acknowledged the City did not technically move for summary judgment, but it did request relief in the nature of summary judgment in its response to Appellants' action.

> dogs. The Ordinance, however, does not conflict with or attempt to trump the [State] Dog Law.

Tr. Ct., Slip Op., 5/10/07 at 6-7 (footnotes and citations omitted). This appeal followed.

On appeal,[6] Appellants argue the Ordinance is invalid in light of Section 507-A(c) of the State Dog Law, which states: "[t]hose provisions of local ordinances relating to dangerous dogs are hereby abrogated. …" Appellants assert based on the plain language of this provision, the Ordinance is null and void.

In a very brief response, the City counters Section 507-A(c) of the State Dog Law is inapplicable here for two reasons. First, Section 507-A(c), which was enacted in 1990, provides that local ordinances relating to dangerous dogs are "hereby abrogated." The City argues, because the Ordinance here was adopted several years after enactment of Section 507-A(c), that statutory provision does not abrogate the Ordinance. Second, the City maintains Section 507-A(c) is inapplicable because that provision mentions "dangerous dogs" while the Ordinance here relates to "aggressive dogs."

[6] Motions for summary judgment are appropriate under the Declaratory Judgments Act, 42 Pa. C.S. §§7531-7541. See Borough of Pitcairn v. Westwood, 848 A.2d 158 (Pa. Cmwlth. 2004). Our review of a trial court order granting summary judgment is limited to determining whether the court committed an error of law or abused its discretion. Id. Summary judgment is appropriate when, after review of the record in the light most favorable to the non-moving party, it is determined no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Id.

Recently, in Nutter v. Dougherty, ___ Pa. ___, ___, 938 A.2d 401, 404 (2007), our Supreme Court explained the doctrine of preemption as follows:

> Before relating the background of this case, it is necessary to establish, in broad strokes, the principle of state preemption of local lawmaking authority and its several forms. In Department of Licenses and Inspections, Board of License and Inspection Review v. Weber, 147 A.2d 326 (Pa. 1959), this Court explained two of the three closely related forms of preemption as follows:
>
> > Of course, it is obvious that where a statute specifically declares it has planted the flag of preemption in a field, all ordinances on the subject die away as if they did not exist. It is also apparent that, even if the statute is silent on supersession, but proclaims a course of regulation and control which brooks no municipal intervention, all ordinances touching the topic of exclusive control fade away into the limbo of 'innocuous desuetude.'
>
> Id. at 327. In addition to those two forms of preemption, respectively "express" and "field preemption," there is also a third, "conflict preemption," which acts to preempt any local law that contradicts or contravenes state law. See Mars Emergency Medical Servs. v. Township of Adams, 740 A.2d 193, 195 (Pa. 1999) (citing, *inter alia*, W. Penna. Rest. Ass'n v. Pittsburgh, 77 A.2d 616, 619-620 (Pa.1951)) ….

The object of all statutory interpretation is to ascertain and effectuate the intention of the General Assembly and, if possible, give effect to all of a statute's provisions so none are rendered mere surplusage. 1 Pa. C.S. §1921(a). In construing the language of a statute, we must construe words and phrases according to rules of grammar and according to their common and approved usage. 1 Pa. C.S. §1903(a). When the words of a statute are clear and free from

ambiguity, its letter is not to be disregarded under the pretext of pursuing its spirit. 1 Pa. C.S. §1921(b); Soberick v. Salisbury Twp. Civil Serv. Comm'n, 874 A.2d 155 (Pa. Cmwlth. 2005).

> Section 507-A(c) of the State Dog Law provides:
>
> **(c) Local ordinances.--**Those provisions of local ordinances relating to dangerous dogs are hereby abrogated. A local ordinance otherwise dealing with dogs may not prohibit or otherwise limit a specific breed of dog.

3 P.S. §459-507-A(c) (emphasis added). Section 102 of the State Dog Law defines a "dangerous dog" as "[a] dog determined to be a dangerous dog under section 502-A." 3 P.S. §459-102. In turn, Section 502-A of the State Dog Law, 3 P.S. §459-502-A, provides for a summary proceeding before a magisterial district judge for the offense of harboring a dangerous dog. Under Section 502-A, the owner or keeper of a dangerous dog is guilty of the summary offense of harboring a dangerous dog, if:

> (1) The dog has done one or more of the following:
>
> (i) Inflicted severe injury on a human being without provocation on public or private property.
>
> (ii) Killed or inflicted severe injury on a domestic animal without provocation while off the owner's property.
>
> (iii) Attacked a human being without provocation.
>
> (iv) Been used in the commission of a crime.
>
> (2) The dog has either or both of the following:

> (i) A history of attacking human beings and/or domestic animals without provocation.
>
> (ii) A propensity to attack human beings and/or domestic animals without provocation. A propensity to attack may be proven by a single incident of the conduct described in paragraph (1)(i), (ii), (iii) or (iv).
>
> * * * *
>
> **(a.1) Effect of conviction.--**A finding by a district justice that a person is guilty under subsection (a) of harboring a dangerous dog shall constitute a determination that the dog is a dangerous dog for purposes of this act.

3 P.S. §459-502-A (emphasis added). As can be seen, a "dangerous dog" includes a dog with a propensity to attack human beings or domestic animals.

Here, in 1998, the City adopted an Ordinance, which, in part, relates to "dangerous" or "aggressive" dogs. Based on the plain language of Section 507-A(c) of the State Dog Law, the Ordinance is clearly abrogated to the extent it relates to "dangerous" or "aggressive" dogs. Indeed, of the three classes of statutes outlined by our Supreme Court in Nutter, Section 507-A(c) of the State Dog Law "expressly" preempts local ordinances relating to dangerous dogs. Therefore, we agree with Appellants the Ordinance is invalid in so far as it relates to "dangerous" or "aggressive" dogs.[7]

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[7] Because this case deals with express preemption, the dissenting opinion's discussion of field preemption, while interesting, is of no moment. See Nutter (field preemption involves a statute that is silent on suppression). To the extent the Ordinance addresses "dangerous dogs" at all, it is unquestionably abrogated by the express provisions of Section 507-A(c) of the State Dog Law. For this reason alone the trial court decision must be reversed

Further, the dissenting opinion fails to discuss that the provisions of the Ordinance at issue here apply equally to owners of "dangerous dogs" and "aggressive dogs." The Ordinance
**(Footnote continued on next page…)**

Additional support for this conclusion is found in our decision in Lerro ex rel. Lerro v. Upper Darby Township, 798 A.2d 817 (Pa. Cmwlth. 2002) (Leavitt, J.). There, we considered whether the State Dog Law or a local ordinance relating to "vicious dogs" created a private right of action for the victims of a dog bite against the township. We held the local ordinance did not establish a duty in the township that could be enforced in a private right of action. Of particular import here, we further stated:

> [Plaintiffs'] argument is also unavailing for an even more important reason: Section 21 of the Dog and Rabies Ordinance[8] has been abrogated. Section 507-A(c) of the State Dog Law … provides that "those provisions of local ordinances relating to dangerous dogs are hereby abrogated." 3 P.S. § 459-507-A(c). Clearly, Section 21, which relates to "vicious dogs," is such an abrogated provision.

Id. at 821 (emphasis added). Like the local ordinance in Lerro, which related to "vicious dogs," and which we held was abrogated by Section 507-A(c) of the State

**(continued…)**

thus treats both types of dogs as functional equivalents and regulates them exactly the same. This is not surprising, since Ordinance definitions of "dangerous dogs" and "aggressive dogs" address the same type of canine, that is, dogs that have the propensity to attack people or other animals. Compare Section 502-A(a)(2)(ii) of the State Dog Law (defining "dangerous dog," which definition is incorporated into Section 705.2(i) of the Ordinance) with Ordinance Section 705.2(j) (defining "aggressive dog"). The Ordinance provides an alternate way to prove this propensity. Thus, the Ordinance regulation of "aggressive dogs" is an improper, indirect attempt to regulate "dangerous dogs" by using a functional equivalent.

[8] Section 21 of Upper Darby Township's Dog and Rabies Ordinance of 1977, stated "[a]ny dog which has bitten one or more persons a cumulative total of three bites within a calendar year, without good cause, shall be deemed to be vicious. No person may own a vicious dog within the [township]. Any such dog may be destroyed at the owner's expense." Id. at 820.

Dog Law, the Ordinance here, which relates to "dangerous" or "aggressive" dogs, is abrogated by Section 507-A(c).[9]

Further, we disagree with the trial court's analysis of this issue. The trial court determined Section 507-A(c) of the State Dog Law did not invalidate the Ordinance. However, the trial court's interpretation of Section 507-A(c) focuses entirely on the second sentence of that statutory provision. Consequently, the trial court's analysis does not give effect to the first sentence of Section 507-A(c) as required by our rules of statutory construction. See 1 Pa. C.S. §1921(a). In short, the second sentence of Section 507-A(c) in no way detracts from the plain language of the first sentence, which clearly abrogates local ordinances that relate to dangerous dogs, such as the Ordinance at issue here.

Finally, we reject the City's arguments that Section 507-A(c) of the State Dog Law is inapplicable here. First, acceptance of the City's argument that Section 507-A(c) is inapplicable because the Ordinance was adopted after the enactment of that Section would lead to an absurd result. Indeed, under that interpretation local ordinances relating to dangerous dogs that are adopted after the enactment of Section 507-A(c) would be valid, while local ordinances adopted before the enactment of that Section would be invalid. We do not believe this is a proper interpretation of Section 507-A(c).

[9] We decline to adopt the view of the dissenting opinion as to applicability of Lerro, because it is based on a meaningless distinction. The current significance of Lerro is not that it discusses "vicious dogs" or "aggressive dogs;" rather, the significance of Lerro is that it disapproves of attempts to indirectly regulate "dangerous dogs" by using a functional equivalent. The same issue is present in this case.

Likewise, we reject the City's argument that Section 507-A(c) is inapplicable because it mentions "dangerous dogs" while the Ordinance relates to "aggressive dogs." Contrary to the City's assertions, the relevant provisions of the Ordinance expressly apply to "dangerous" dogs as well as to "aggressive" dogs. In fact, all of the provisions of the Ordinance that apply to "dangerous" dogs apply equally to "aggressive" dogs. Moreover, as noted above, in Lerro we determined a local ordinance relating to "vicious dogs" was abrogated by Section 507-A(c). We believe the same result is warranted here to the extent the Ordinance relates to "dangerous" or "aggressive" dogs.

Based on the foregoing, we reverse, thus granting summary judgment to Appellants.[10]

ROBERT SIMPSON, Judge

[10] Based on our disposition of this matter, we need not address Appellants' remaining arguments.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

| | | |
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| Stacie Stankiewicz and Kenneth Steeves, Sr., | : | |
| Appellants | : | |
| | : | No. 466 C.D. 2007 |
| v. | : | |
| | : | |
| The City of Reading | : | |

**O R D E R**

AND NOW, this 26th day of February, 2008, the order of the Court of Common Pleas of Berks County is **REVERSED**, thus granting summary judgment in favor of Appellants Stacie Stankiewicz and Kenneth Steeves, Sr.

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | | |
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| Stacie Stankiewicz and Kenneth Steeves, Sr., Appellants | : | |
| v. | : | No. 466 C.D. 2007 |
| | : | Submitted: December 11, 2007 |
| The City of Reading | : | |

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

*OPINION NOT REPORTED*

DISSENTING OPINION
BY JUDGE SMITH-RIBNER FILED: February 26, 2008

I would affirm the February 20, 2007 order entered by the Common Pleas Court of Berks County granting summary judgment to the City of Reading in Appellants' declaratory judgment action that challenged the validity of the City's "Aggressive Dog Ordinance" No. 705. Because the trial court properly determined that the Ordinance was valid, I dissent from the majority's decision to nullify the Ordinance as it relates to "aggressive" dogs.

Appellants reside in Reading and own a Pit Bull dog (Staffordshire Terrier). They contend that they are subject to a fee required by the Ordinance that is higher than the fees paid by other dog owners and that they are subject to certain restrictions regarding walking and otherwise controlling their Pit Bull. Appellants filed a declaratory judgment action against the City in June 2000[1] and alleged that

[1]The City's preliminary objections were sustained in August 2000; Appellants filed an amended complaint in September 2000; the City filed preliminary objections to the amended
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the Ordinance is contrary to the Dog Law, Act of December 7, 1982, P.L. 784, *as amended*, 3 P.S. §§459-101 - 459-1205. In particular, Appellants argue that the Ordinance contravenes Section 507-A(c) of the Dog Law, added by Section 2 of the Act of May 31, 1990, P.L. 213, 3 P.S. §459-507-A(c), which states as follows: "**Local ordinances.**--Those provisions of local ordinances relating to dangerous dogs are hereby abrogated. A local ordinance otherwise dealing with dogs may not prohibit or otherwise limit a specific breed of dog."

The purpose of the City's Ordinance was to promote the public health, safety and general welfare of its citizens and to ensure the humane treatment of animals by regulating the care and control of animals in the City. At issue is Section 705.2(j) of the Ordinance, which defines an "aggressive dog" as:

> [A]ny dog that is a member of any canine breed in whole or in any part that accounts for forty percent (40%) or more of the dog bite incidents whether on humans or animals reported to the City of Reading Police Department and/or the Humane Society, as determined on an annual basis each January based upon statistics for the preceding year provided that the total number of dog bite incidents reported of all breeds exceeds thirty (30).

Section 705.2(i) states that a "dangerous dog" is any dog as defined in Section 502-A(1) of the Dog Law, 3 P.S. §459-502-A(1) ("Definitions"). That section provides in pertinent part: "The determination of a dog as a dangerous dog shall be made by

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complaint, which objections were overruled in November 2000; the case was reassigned in January 2002 to the trial judge who issued the opinion and order now under review; no action occurred for almost two years prompting a December 2003 notice from the Prothonotary's Office that the case would be terminated in January 2004 due to inactivity; Appellants thereafter filed a notice of intent to proceed and in July 2004 filed their motion for summary judgment, to which the City responded; and in March 2006 the parties filed their certificate of readiness to proceed to trial. *See* Trial Court slip op. at 2 - 3.

the district justice upon evidence of a dog's history or propensity to attack without provocation based upon an incident in which the dog has done one or more of the following: (1) Inflicted severe injury on a human being without provocation on public or private property." *See* Section 502-A(a)(1).

The definition in the Dog Law for a dangerous dog and the definition in the Ordinance for an aggressive dog clearly are not synonymous. Consequently, they may not be used as one and the same or referred to interchangeably as does the majority to support its nullification of the Ordinance. Because the Ordinance represents an effort to protect the City's citizens and to regulate care and control of aggressive dogs, it is not preempted by Section 507-A(c) of the Dog Law, and also the Ordinance is not invalid based on the decision in *Lerro ex rel. Lerro v. Upper Darby Township*, 798 A.2d 817 (Pa. Cmwlth. 2002), as the majority suggests, where the Court held that the local ordinance there concerning "vicious" dogs was abrogated by Section 507-A(c). In this regard, the majority again uses categories interchangeably when in fact a vicious dog is not defined the same under the ordinance in *Lerro* as an aggressive dog is defined under the Ordinance here.[2]

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[2]In *Lerro* the Court affirmed the trial court's grant of summary judgment to Upper Darby Township in an action to recover damages arising out of a claim asserted under the Dog and Rabies Ordinance of 1977 and the Dog Law after the plaintiffs sustained injuries from a Pit Bull attack. The trial court held that there was no private right of action under the local ordinance or under the Dog Law and that the plaintiffs could not establish an exception to the township's immunity under what is commonly called the Political Subdivision Tort Claims Act, 42 Pa. C.S. §§8541 – 8542. This Court concluded that the ordinance did not establish a duty in the township to the plaintiffs that was enforceable through a private cause of action and noted that in any event Section 21 of the ordinance, relating to "vicious" dogs, was abrogated by Section 507-A(c) of the Dog Law. Section 21 of the ordinance provided that any dog that bit one or more persons a cumulative total of three times within a calendar year without good cause shall be deemed to be "vicious." No person may own a vicious dog within the township, and any such dog may be destroyed at the owner's expense. The Dog Law requires, *inter alia*, that known incidents of dog attacks shall be reported to the state dog warden who shall investigate and notify the Department
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In upholding the validity of the Ordinance, the trial court reasoned:

> Under the Ordinance, any and all dogs are subject to the definition of "aggressive dog". § 705.2(j). Nowhere in the Ordinance are Pit Bulls singled out for "aggressive dog" status. According to the Ordinance, if there were one hundred (100) dog bites in Reading in 2006, and forty (40) of the bites were by Chihuahuas, forty (40) bites were by Poodles and twenty (20) bites were by Pit Bulls, the Chihuahua and the Poodle would be classified as aggressive dog breeds, and the Pit Bull would not be so classified despite being responsible for twenty (20) percent of all dog bites in Reading. See generally, Id. In fact, even if there were one thousand (1,000) Pit Bull bites in 2006, but that number fell short of forty (40) percent of all dog bites in Reading, the Pit Bull would not be classified as an aggressive dog. Id. Finally, if there were twenty nine (29) dog bites in all of Reading in 2006, and *all* the bites were by Pit Bulls, the Pit Bull would still not be classified as an aggressive dog breed because there must be at least thirty (30) bites in a year for there to be an "aggressive dog" classification the following year. Id. This Ordinance does not, in any way, single out Pit Bull owners for unfair treatment.

Slip Opinion at p.5.

As for state preemption, the trial court concluded that the Ordinance does not attempt to limit or prohibit any breed of dog but rather merely places for one year a sufficiently reasonable set of guidelines on owners of dogs considered to be aggressive. The Ordinance is a public safety measure. *See Muehlieb v. City of Philadelphia*, 574 A.2d 1208 (Pa. Cmwlth. 1990) (holding that focus of the Dog Law is on protection of dogs whereas emphasis of the ordinance (Animal Control

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**(continued…)**

of Agriculture, the enforcement arm, if a dog is determined to be dangerous. The ordinances in *Lerro* and in the present case are distinct; nonetheless, the primary issue in *Lerro* was whether a private damages claim could be maintained against the township under the facts presented.

Law) was protection of health, safety and welfare of citizens, and thus the interests sought to be protected by the ordinance were not the same). Moreover, there is nothing in Section 507-A(c) of the Dog Law that indicates a legislative intent to preempt the entire field of regulating dogs in the City. That section abrogates local ordinances that relate to "dangerous" dogs, but by its very terms the statute does not preclude all local ordinances dealing with dogs. Such ordinances "may not prohibit or otherwise limit a specific breed of dog." *Id*. The trial court properly held that the Ordinance does not prohibit or otherwise limit a specific breed of dog.

In *Council of Middletown Township v. Benham*, 514 Pa. 176, 181, 523 A.2d 311, 313 (1987), the Pennsylvania Supreme Court stated the following: "If the General Assembly has preempted a field, the state has retained all regulatory and legislative power for itself and no local legislation is permitted." It is evident from the language of Section 507-A(c) of the Dog Law that the legislature has not retained all regulatory and legislative power for itself, expressly or impliedly, with regard to the care and control of dogs defined by the Ordinance as "aggressive" as opposed to "dangerous." Therefore, I disagree that the Ordinance is invalid as it relates to aggressive dogs because, in this regard, it has not been preempted by state law.[3] The trial court was right in granting summary judgment to the City.

DORIS A. SMITH-RIBNER, Judge

[3] *See Muehlieb* (holding that Dog Law did not prohibit local limits on the number of dogs kept by an owner in her home where the ordinance represented a valid exercise of municipal police power and complemented Dog Law and where the state law indicated no legislative intent to preclude local regulation of dogs running at large and even encouraged such local regulation). *See also Nutter v. Dougherty*, 921 A.2d 44 (Pa. Cmwlth.), *aff'd*, ___ Pa. ___, 938 A.2d 401 (2007) (discussing the preemption doctrine and the Supreme Court's reaffirmation of relevant principles related to preemption that have evolved over time).