

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 25, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP952

Cir. Ct. No. 2013CV746

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE FORFEITURE OF TWELVE DOGS, FOUR CATS, AND TWO MACAWS:

EAU CLAIRE COUNTY,

PLAINTIFF-RESPONDENT,

v.

TERESA A. HESTEKIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Eau Claire County: WILLIAM M. GABLER, SR., Judge. *Judgment reversed in part; order reversed.*

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 STARK, J. On February 6, 2014, a judgment was entered authorizing Eau Claire County to sell, euthanize, or otherwise dispose of eighteen

animals seized from Teresa Hestekin's property on April 4, 2013. The judgment also required Hestekin to pay the County \$74,388.10 for costs incurred in the care, custody, and treatment of the animals.

¶2 Hestekin appeals that portion of the judgment requiring her to pay the County \$74,388.10, and she also appeals an order denying her motion for reconsideration. She argues the circuit court lacked authority under WIS. STAT. § 173.23(3)¹ to enter a money judgment against her for costs incurred in the animals' care, custody, and treatment. She also argues WIS. STAT. § 173.24 did not authorize entry of a money judgment against her. We agree on both counts. Section 173.23(3) gave the circuit court authority to enter an order providing for payment for the custody, care, or treatment of the animals, but nothing in that statute permitted the court to enter a money judgment against Hestekin. Section 173.24 did not authorize entry of the money judgment because Hestekin had not yet been convicted of a crime under WIS. STAT. ch. 951. We therefore reverse that portion of the judgment requiring Hestekin to pay the County \$74,388.10 and the entire order denying reconsideration.

BACKGROUND

¶3 On April 4, 2013, Eau Claire County officials executed a search warrant at Hestekin's home in the Town of Union. During the search, thirteen dogs, five cats, and two macaws were taken into custody, based on the County's determination there were reasonable grounds to believe the animals had been mistreated in violation of WIS. STAT. ch. 951. *See* WIS. STAT. § 173.13(1)(a)8.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Thereafter, one dog and one cat were humanely euthanized due to their antisocial behavior and fear aggression, leaving eighteen animals in the County's custody.

¶4 No further action was taken against Hestekin until November 19, 2013, when a criminal complaint was filed charging her with four counts of mistreating animals, contrary to WIS. STAT. § 951.02, and four counts of failing to provide proper shelter for animals (sanitation), contrary to WIS. STAT. § 951.14(4). One month later, the County initiated a separate civil action by filing a petition under WIS. STAT. § 173.23(3)(a), which provides:

A political subdivision may petition the circuit court for an order doing any of the following with respect to an animal taken into custody by a law enforcement officer or a humane officer or withheld under s. 173.21(1):

1. Providing for payment for the custody, care or treatment of the animal.
2. Requiring the owner of the animal to post bond for the costs of custody, care or treatment of the animal pending the outcome of any other proceeding.
3. Authorizing the sale, destruction or other disposal of the animal.

In accordance with § 173.23(3), the County sought court orders: (1) authorizing the sale, adoption, or humane disposal of the eighteen living animals seized from Hestekin; (2) requiring Hestekin to pay costs incurred for the care, custody, and treatment of the animals—which totaled \$68,291.24 as of December 9; and (3) requiring Hestekin to post bond for costs incurred in the animals' care, custody, and treatment.

¶5 A hearing on the County's petition was scheduled for January 3, 2014. Hestekin was personally served with the petition on December 20, 2013. On December 31, Hestekin requested a continuance of at least thirty days to allow

her to retain an attorney and prepare for the hearing. The circuit court denied Hestekin's request on January 2.

¶6 Hestekin, pro se, then filed an answer to the County's petition, along with a petition for return of the animals under WIS. STAT. § 173.22(1). In her answer, Hestekin denied any wrongdoing and asserted she was not the owner of the animals. She also contested the validity of the search warrant. In addition, she cited WIS. STAT. § 173.24 for the proposition that she could not be required to pay for the care, custody, and treatment of the animals unless she was ultimately convicted of the criminal charges. Section 173.24(1) provides:

A court shall assess the expenses under this section in any case in which there has been a search authorized under s. 173.10 or in which an animal has been seized because it is alleged that the animal has been used in or constitutes evidence of any crime under ch. 951.

The statute defines "expenses" to include "[e]xpenses of keeping or disposing of any animal taken into custody." Sec. 173.24(2). The statute further states, "If the person alleged to have violated ch. 951 is found guilty of the violation, the person shall be assessed the expenses under subs. (1) and (2)." Sec. 173.24(3). However, "[i]f the person is not found guilty, the county treasurer shall pay the expenses from the general fund of the county." *Id.*

¶7 The hearing on the County's petition proceeded as scheduled on January 3. Before evidence was taken, the circuit court informed the parties it would not consider any challenges to the search warrant because Hestekin had failed to file a motion to suppress, and, in any event, a motion to suppress would be "more properly brought in the criminal action[.]" The court then heard testimony from several witnesses.

¶8 The court rendered an oral decision on January 31. It found that Hestekin was the owner of the animals taken from her property, and there were reasonable grounds to believe Hestekin mistreated the animals in violation of WIS. STAT. ch. 951. Based on these findings, the court authorized the County to dispose of the animals. The court further found that the County had reasonably expended \$74,388.10 to care for the animals. The court determined those expenses should be assessed against Hestekin, pursuant to WIS. STAT. §§ 173.23(3) and 173.24.

¶9 The court entered its written Findings of Fact, Conclusions of Law and Judgment on February 6. Hestekin, who had by then retained an attorney, subsequently moved for reconsideration, arguing neither WIS. STAT. § 173.23(3) nor WIS. STAT. § 173.24 permitted entry of a money judgment against her. The circuit court denied Hestekin's reconsideration motion, following a hearing. However, with the County's consent, the court stayed execution of the money judgment pending the outcome of Hestekin's criminal case. Hestekin now appeals.

DISCUSSION

¶10 On appeal, Hestekin renews her argument that the circuit court lacked authority under WIS. STAT. §§ 173.23(3) and 173.24 to enter a money judgment against her.² Statutory interpretation presents a question of law that we

² Hestekin also argues on appeal that the circuit court erred by denying her request for a continuance and by refusing to consider her challenge to the validity of the search warrant. Because we conclude the circuit court lacked statutory authority to enter a money judgment against Hestekin, we need not address these additional arguments. *See State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (“[C]ases should be decided on the narrowest possible ground.”).

review independently. *Hocking v. City of Dodgeville*, 2010 WI 59, ¶17, 326 Wis. 2d 155, 785 N.W.2d 398. When interpreting a statute, our objective “is to determine what the statute means so that it may be given its full, proper, and intended effect.” *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110. Our analysis begins with the plain language of the statute. *Id.*, ¶45. We interpret statutory language in the context in which it is used and in relation to the language of surrounding or closely related statutes. *Id.*, ¶46. “If the language of a statute is clear on its face, we need not look any further than the statutory text to determine the statute’s meaning.” *State v. Peters*, 2003 WI 88, ¶14, 263 Wis. 2d 475, 665 N.W.2d 171.

¶11 The County filed its petition under WIS. STAT. § 173.23(3). As discussed above, that statute gives the court authority to enter an “order” “[p]roviding for payment for the custody, care or treatment” of an animal taken into custody by a law enforcement or humane officer. Sec. 173.23(3)(a)1. The plain language of § 173.23(3) merely allows the court to enter an order providing for payment. It does not explicitly grant the court authority to enter a money judgment against the party required to pay.

¶12 The County concedes WIS. STAT. § 173.23(3) does not use the word “judgment” or explicitly grant the court authority to enter a money judgment. However, the County argues the circuit court properly concluded such authority was implicit in the statute because, without the authority to enter a money judgment, an order providing for payment for the care of an animal would have no “teeth.” The county misconstrues the purpose of § 173.23(3) in making this argument.

¶13 WISCONSIN STAT. § 173.23(6) specifically delineates the consequence of an owner’s failure to pay the costs of caring for an animal when a court orders such payment: “If an owner is ordered under sub. (3) to pay, or post bond for the payment of, costs of custody, care or treatment of an animal, and refuses to do so upon demand, the animal shall be treated as an unclaimed animal subject to sub. (1m).” If an animal is unclaimed, the political subdivision is free to euthanize the animal or release it for adoption. Sec. 173.23(1m). Thus, § 172.23(3) allows a political subdivision to secure an order providing for payment for a seized animal’s continued care, custody, and treatment, but if payment is not made upon demand, the consequence is not entry of a judgment against the owner. The consequence is that the political subdivision may dispose of the animal under § 173.23(1m). Section 173.23 therefore allows the political subdivision to end its ongoing financial responsibility to care for a seized animal either by securing payment from the animal’s owner or by disposing of the animal.

¶14 The circuit court also relied on WIS. STAT. § 173.24 to support its entry of a money judgment against Hestekin. That reliance was similarly misplaced. Section 173.24 allows a court to assess the expenses of keeping or disposing of an animal in any case in which there has been a search authorized under WIS. STAT. § 173.10 or it is alleged the animal has been used in or constitutes evidence of a crime under WIS. STAT. ch. 951. However, that assessment can only occur if the person alleged to have violated ch. 951 is found guilty. *See* § 173.24(1)-(3); *see also* WIS. STAT. § 951.18(4)(a) (stating a sentencing court “shall require” a person who has violated ch. 951 to pay as restitution “[e]xpenses in keeping any animal that is involved in the crime”). If the alleged violator is found not guilty, “the county treasurer shall pay the expenses from the general fund of the county.” Sec. 173.24(3). The criminal

charges against Hestekin were still pending when the circuit court entered its judgment requiring her to pay for the animals' care; in fact, the charges remain pending as of the date of this opinion. Under these circumstances, § 173.24 did not permit the circuit court to assess the cost of caring for the animals against Hestekin.

¶15 During the reconsideration hearing, the circuit court recognized that Hestekin had not yet been convicted of a crime under WIS. STAT. ch. 951. The court also conceded it was “obvious from [WIS. STAT. § 173.24] that if a person is not found guilty of any Chapter 951 offense, perhaps the person ought not pay for [an animal's care].” However, the court determined it could nevertheless enter a money judgment against Hestekin under § 173.24, as long as it stayed execution of the judgment pending the outcome of her criminal case. The court reasoned that, if Hestekin is ultimately acquitted of the criminal charges, she may petition for relief from the money judgment, pursuant to WIS. STAT. § 806.07(1)(g) or (h).

¶16 The County argues the circuit court appropriately “harmonized” WIS. STAT. §§ 173.23(3) and 173.24 by entering a money judgment against Hestekin but staying its execution. We disagree. Even though the court stayed execution of the judgment, the judgment remains public information. In addition to causing general embarrassment in the community, the judgment could mar Hestekin's credit record, preventing her from obtaining financing. Consequently, even if Hestekin is acquitted of the criminal charges and the money judgment is ultimately vacated, she will have needlessly suffered damage that may be difficult, costly, and time consuming to repair.

¶17 Reading WIS. STAT. §§ 173.23 and 173.24 in context supports our conclusion that the circuit court was not permitted to enter a money judgment

against Hestekin. Based on its plain language, § 173.23 is intended to provide a political subdivision with the ability to petition a court for relief from the ongoing costs of maintaining, caring for, and treating animals for which it is responsible under a variety of circumstances. The owner of the animals is given the opportunity to bear those ongoing costs, to post a bond to cover them, or to permit disposition of the animals, thus alleviating the political subdivision of the ongoing expense.

¶18 Criminal charges may also be brought against the owner or any other person responsible for alleged mistreatment of the animals. Pursuant to WIS. STAT. § 173.24, it is not until those charges are resolved that the court can properly determine the party responsible for the costs incurred by the political subdivision—whether a guilty defendant, or the county if the defendant is acquitted—and enter judgment.

¶19 For the foregoing reasons, we conclude the circuit court did not have authority to enter a money judgment against Hestekin under either WIS. STAT. §§ 173.23(3) or 173.24. We therefore reverse that portion of the judgment requiring her to pay the County \$74,388.10 and the entirety of the order denying reconsideration.³

³ Although we disagree with the circuit court’s ultimate conclusion, we note the court provided a thoughtful and thorough explanation for its decision. During the hearing on Hestekin’s motion for reconsideration, the court expressed justifiable frustration that the statutes in question are “poorly written” and contain “a lot of latent or subtle ambiguities.” We agree with the circuit court that WIS. STAT. §§ 173.23(3) and 173.24 are poorly drafted and difficult to interpret, especially in unison, and we suggest to the legislature that a reexamination of these statutes may be in order.

By the Court.—Judgment reversed in part; order reversed.

Not recommended for publication in the official reports.

