

## **Oral Argument Tenth District Court of Appeals**

**Case No: 15 AP 000699**

Feb 24, 2016

Judge Lisa A. Sadler,

Judge Susan Brown

Judge Betsy Luper-Schuster

Attorney for Appellant

John Bell [JB]

Attorney for Appellee

Nina Najjar [NN]

Other Voices heard:

Penny Sanderbeck [PS]

COURT CLERK:

*The Final CASE on the Docket is 15-000699*

COURT

*GOOD MORNING, Mr. Bell?*

JB

*Good morning, Your Honor, may it please the Court, my name is John Bell.*

*I'm here this morning on behalf of the defendants in the Court... the Municipal Court below and the Appellees here COSR, Inc and Penny Sanderbeck who is seated at the table... um... would be to my right. Um... I would like to reserve four minutes of my time for rebuttal if I may, please. Um, your honor, this case the assignments of error that we have briefed I'm not gonna .. I didn't come here to the court to read my brief to the court... um... and the court can see that they're in many ways inter-related and it's almost impossible to get them disentangled to look at one or the other of those assignments individually.*

*There are two important issues here which are among those assignments of error in... in various respects. Um, one issue has to do with the procedure in the trial court below and the more important issue and the issue that really brings us here this morning is a very substantive one and that is the legal ownership of a dog. And, specifically, we have a case here which because of the, shall we say, emotionally charged proceedings that were happening in the Trial Court we could not present it to the Court on a Motion for Summary Judgment as I think probably would have been a... a... an available... uh... uh... procedure had the case proceeded a little more normal through discovery.*

COURT:

*May I ask you a question about ownership, I think you're right,*

JB

*... Yeah*

COURT

*That is really the legal question (unintelligible)*

JB

*Yes, ma'am*

COURT

*I guess my question is "What is your client's legal version, was there, does the Franklin County Shelter provide some sort of document when they give the dog is that something that is in the record I... I'm really interested in this legal ownership which I think is the focus of your argument below.*

JB

*Um, I... I... I'm not 100% sure of what documentation goes with an animal that is released from the Shelter to a private party, and while my client is a... an organized rescue corporation, they are essentially the same a private adopting party who would walk into the Shelter on any given day and adopt an animal that's available for adoption.*

COURT

*So there is nothing in the record that you know of that sort of has that transfer from the shelter to your client.*

JB

*There's not a deed, there's not a certificate of title, there's not a bill of sale..*

COURT

*No, an adoption certificate.*

JB

*Thank you, that's what I ... they are required of course when the dog is released from the shelter to license and register the dog.*

COURT

*To what you consider the owner, not the shelter itself.*

JB

*Absolutely, and it is that act and that moment that creates the new ownership and it's because, as I said, my client stands in the same position as a private adopting party that this is so important because you have an item of property essentially but you have a specific procedure that is set out in the Ohio Revised Code for how this property is handled if it's found lost and that is essentially what we had here. This dog is picked up, it's not registered, it's not licensed, it's microchip is not registered, there's nothing on the dog that indicates its ownership.*

COURT

*The microchip, didn't the microchip ultimately, after the dog was given to the rescue, didn't the Shelter ultimately get the information regarding the microchip from the vet?*

JB

*Yes, Ma'am, yes they did, they absolutely did.*

PS

*No, they didn't, no.... sorry.*

JB

*(Sigh...) The... the microchip was registered after the fact, it was... had ... no matter what contact had been made with that veterinarian prior to releasing the dog would not have changed anything because that chip had not been registered to anyone but that veterinarian and that was some years before the dog was picked up as an unlicensed stray...*

COURT

*So if the veterinarian had called back at 9:00 Monday morning and said "ah, this is the person we gave the - this is the person who came in to get it microchipped, here's the information, the contact information, I assume the shelter would have contacted them*

JB

*Absolutely, that's what is supposed to happen, but as I said, we have had the foresight, our legislatures had the foresight to set forth a very nice black and white bright line procedure for what happens to dogs that are impounded and there .. the Court, I am sure is aware, there's a very elaborate procedure if a dog is taken in a case of suspected abuse or neglect and there's another procedure when it's taken in as an unregistered or unlicensed stray.*

COURT

*OK, so all of those questions are probably the more relevant to this case, mine may not be, but mine is "WHY? WHY do they want to be the owner of the dog?"*

JB

*(Inhale) It's not a question of wanting to be the owner of this particular dog, it's a question of not wanting to ... expose people who adopt from the shelter ...*

COURT

*But the dog was not adopted out...*

JB

*I...(overtalks Judge) respectfully beg to differ...*

COURT

*The dog was there, they kept the dog for a week, um, the owner shows up (exhale) I'm having trouble with the purpose of this agency.*

JB:

*The rescue?*

COURT

*Yes*

JB:

*The purpose of the rescue is is to rehome animals that...that*

COURT

*I understand... I understand, it was sort of a rhetorical question (laughter)*

JB

*But it it the uh ... It was adopted out - it was adopted out to the rescue and had the rescue not answered their phone, a private person may have come in that day in the same position and*

COURT

*Hypothetically...*

JB

*Hypothetically, absolutely, hypothetically, but the point is there's is no moment after that, there's no point in time after that, where suddenly it becomes less adopted.*

*It is adopted out when the shelter releases it to the private party that takes it whether it is a rescue group or an individual, that's the owner, and, as indicated in the brief, we're not, we didn't ever really dispute that Ms Covatch, at one time, had owned this dog. We wanted to present evidence of the four other hands that it had passed through prior to ending up in the shelter, of course, we couldn't do that...*

COURT

*But you did.. I mean, I*

JB

*Well we tried...*

COURT

*When I read the transcript there were certainly questions asked about this last ... Austin and the other related dogs and I think some of that was in the record but whether it went through other hands doesn't necessarily mean that your client owns it and I think that was something that*

JB

*Oh no, that's correct... absolutely*

COURT

*I think that was why the Trial Court was trying to focus and I guess the question here is what relief is your client requesting, they want the dog back?*

JB

*At this point, your honor, um and, I was I was a little disappointed that we were not offered the opportunity um... as I have been in previous appellate cases to attempt to mediate this .. um .. we had proposed mediation in the trial court, it was declined by the plaintiff's counsel. Um, our client is not at this point seeking the physical return of this dog. They're willing to accept that this dog is going to be with the plaintiff and her people, um, but it is vitally important that the issue of that moment of ownership be clarified because this isn't the first time it's happened, it's not the last time it's happened. It's going to happen again and if we say that these folks never became the owner because there is some person from, in this instance, years prior who claims some right of ownership, if these aren't the owners, then no adopted animal is ever really adopted or ever really becomes the property of the adopting family.*

COURT

*I hear what you're saying that you would like for us to settle this so that there is a procedure, and I understand that, but at this point, if it is that they are not looking for ownership, wouldn't we be giving an advisory opinion if we were to go ahead then and decide the issue.*

JB

*This is why I ...I... I was so hoping that there would be an opportunity to mediate because uh our position in that would have been "keep the dog but let's have a consent entry that it was COSR's dog and they are giving it back to you." because it's not really about this*

*particular dog - yes, it's about this dog - but it's not, it's about the other dogs and eh eh this became a very emotional thing for both of the Judges in the Trial Court and I think the Court can see from the record that we had some issues that arose from that very emotional place. And I don't ... I don't fault that at all, I do many many animal cases and these tend to be very emotional proceedings but the point is I think it might be a more sympathetic case if COSR was not a group but an individual that had adopted this dog.*

COURT

*I think it's true because, in part, their role is to rehome it and when someone who has owned the dog comes forward and says "it's my dog", it seems as though, unlike a private adoptee, and MAYBE even a private adoptee, that the shelter would say "oh, i'm grateful that the owner has come forward and wants their dog back". That's what I think... (unintelligible)*

JB

*Absolutely, absolutely and this is one of the aspects that has not been fully addressed and because we didn't get a chance to present our piece of the case, it ... it never really got fleshed out as to.. um ... the... um ... what ... excuse me ... brain fade ... ha ... we didn't get an opportunity to present the evidence of the number of different claimants that contacted our client and put our client in a position of King Solomon with the two mothers claiming the baby.*

COURT

*I'm a little confused as you weren't able to present that because from the transcript, it appeared that the only additional witness you proffer, you were going to call, was a volunteer with the shelter, is that who was going to put on at evidence, because I think that there was - at least from what I read, that witness was going to talk about how the dog got to the shelter and*

*that's when the dog said "we don't need that testimony" but you're saying that witness was going to testify as to the other claimants?*

JB

*No, I'm saying there was other evidence and other witnesses. Ms Sanderbeck would have testified and others because she is the one that received the calls from the other claimants.*

COURT

*I didn't see in the record that you had said that in addition to this volunteer, our other witness is Ms Sanderbeck, would testify, I just didn't see that.*

JB

*OK, that's what I say, we didn't, we didn't get that aspect of the record fleshed out*

COURT

*(unintelligible) I think what we're asking is your client says there is other evidence we could have presented, is there a proffer in the record where we can say, yes, we see your point on this end?*

JB

*No, it ... Judge Luper-Schuster is correct and our proffer was limited and I can only say...*

COURT

*Did you attempt to make a proffer and you were prevented or ...?*

JB

*(Sigh...) Your Honor, I don't know of a pretty way to put this and I have been in this business for several decades and I have not got the Bum's Rush the way we did in that Courtroom on July 23rd! At any point in almost 35 years as a lawyer, I have never been even present in a Courtroom where there was such a clear, clear antipathy towards one side and shutting down one side's efforts to try and present anything of significance - we were severely limited in our examination of the plaintiffs' witnesses and that is evident in the record. We did proffer the one volunteer, as I said, we .. we were absolutely ... we were actually - we were told almost beforehand that the decision was pretty much a done deal and, of course, that's outside the record, but the point is if we had one person come forward and contact cosr and say this is my dog and they responded "ok, show us how this is your dog and you can have it back" but it wasn't one person, it was six and before the rescue could even receive information from those claimants about who was the actual owner, this incredible blitz of horrific bullying began.*

COURT

*Mr Bell, I think we get your point and if you want to reserve time, you have about a minute and a half for rebuttal so if you would like to stop now..*

JB

*Ok, in that case, I do want to reserve, so, thank you.*

COURT

*Good Morning*

NN

*Good Morning, Your Honors. If it please the Court, Nina Najjar on behalf of Plaintiffs/ Appellees.*

*In listening to Mr. Bell talk today, I wonder if we were in the same case below. This Judge Brandt was more than fair at this hearing, this was not an outrageous hearing, he made an evidentiary decision saying that... uh, indicating that the testimony that Mr. Bell wanted to put on was not relevant. Um, he in, even as a demonstration that there was no unfairness and no predisposition, Judge Brandt, he even let Deborah Finelli after she had already sat in the Courtroom the entire time and there was a separation of witnesses. The Judge still said go ahead and we'll let her testify. So, if he was so predisposed as to find against the COSR and Ms Sanderbeck, he certainly wouldn't have allowed that.*

COURT

*Counsel, let me ask you about this question of ownership.*

NN

*Yes, Your Honor,*

COURT

*Wasn't Counsel likened it to a private adopting and said the ownership transfers when the shelter gives the dog to a person. Why isn't that pertinent?*

NN

*The testimony from Ms Finelli establishes that ownership transfers after there is an examination by the vet at Franklin County Dog Shelter and then the revised Code says ownership transfers when a certificate of ownership is given to the new owner.*

COURT

*Do you have a code section for this?*

NN

*It's in the brief, Your Honor. I can look it up - it's in our brief. There was no examination by the Shelter, by the shelter vet and Ms Finelli testified that the Shelter opened Monday at 11:00 and this dog was given to COSR at 11:08. So, there was no "wait til Monday" or try to get a phone call back from the vet ...*

COURT

*So other than process and process is important, other than the legislative process, were they required to wait until Monday?*

NN

*They're required to wait til Tuesday, Your Honor, because...*

COURT

*11:08, you're just ...they closed immediately, it's not that an 11:00 deadline happened and they acted quickly...*

NN

*Oh, I'm sorry, Your Honor, it was 11:00 AM when they opened and eight minutes later they transferred the dog.*

COURT

*Ok, I misunderstood.*

NN

*Yes. But, the Revised Code at Section 1.14 states specifically that anything that is a right conferred by Statute which is how Appellants are claiming this dog, they're saying you waited the three days so we must... so it's their dog, and that was basically the testimony that he wanted to put on. There was no dispute that the dog was picked up on Thursday evening, got to the Shelter according to (I'm sorry) Appellants' Counsel, Appellants' testimony, it got to the shelter after 5:00 on Thursday and it was released at 11:08. This is undisputed testimony by the witness that they were permitted to put on.*

*So, pursuant to Revised Code 1.14, Thursday doesn't count. So the three days are Friday, Saturday and Sunday, and Sunday, regardless somehow it's a big deal that we're referring to it as Easter Sunday, it wasn't a holiday, to me it's a holiday, but it's not a legal holiday, we understand that, but it's a Sunday and so Sunday doesn't count and our clients would have had until the end of the day on Monday to redeem their dog. The dog was given to the shelter on Monday morning as soon as the shelter opened.*

COURT

*Does it matter that the Statute says three business days and there was testimony that the shelter was in fact open on Saturday and Sunday?*

NN

*No, Your Honor, the Statute that I'm referring to doesn't speak to business days, it says if it's a Saturday or a Sunday, then the end of the next business day is the day that counts. And not even, in addition to the Statute, when there is a microchip, the Franklin County Shelter, again, according to Ms Finelli, is supposed to search for the owner to send a letter to the registered owner, so even if they're claiming that the microchip was implanted several years before, that's the whole purpose is to have the chip in case your dog gets loose or gets away at some future time. And then, they're supposed to by their procedures send a letter to the microchip owner so if they had sent a letter to vet, maybe the vet was the owner. They didn't wait for that procedure, they just went ahead and gave the dog the shelter, to the rescue, I'm sorry. And Judge Brown - your question is the same as our question throughout these proceedings, why did they want to keep this dog.*

*And Mr. Bell says today that they didn't want to keep the dog, they just wanted to set a precedent, but throughout, and this is not part of the record, at every point, at every turn, they didn't even want our clients to see the dog. They wanted to keep the dog. That was throughout the entire proceedings. They posted a \$10,000 bond to not give the dog back when it was first ordered back by Judge Tyack. And then, uh uh when Judge... drawing a blank ... Judge O'-Grady said he was going to give the dog back, they filed an Affidavit of Disqualification on him. And then, Judge Brandt wants to give the dog back and they're still going to ask for a Stay.*

*If your whole issue is what the procedure the proper procedure is, give the dog back and fight about procedure. But this has been some kind of a personal - I don't know what - a per-*

*sonal issue of them wanting to keep the dog. And the Plaintiffs did not reject settlement offers below (slight laughter)any of the pretrials... I know the pretrials are not of record, but we offered "well, give us the dog back - it wouldn't come back unless this bullying they're referred to unless we guaranteed that the bullying on the internet is going to stop.*

*What they wanted was the 5,900 people who had said that they liked the page that our clients had on the internet, they wanted them to stop posting.*

*Now I don't know how anybody can stop somebody from posting anything on the internet, I have never figured that out, I can't even take down things that people put up.*

*So that was the whole... mediation wouldn't have done anything. This has been, this has been a personal issue this whole time. And I would like to state and ask you, to respectfully ask you to read our brief. Our brief is factually accurate. Appellants' brief is just so... so... off the actual facts of the case, I only have a short time so I couldn't go through every thing but even the idea of the ID Trace in the Reply Brief at Page 4, Appellants indicate that there was no ID Trace and the shelter doesn't have anything to do with it. Deborah Finelli testified that to the ID Trace, testified to the ID Trace, testified as to how it works at the shelter, it's on Page 80, 90 and 92 of the transcript, it's there - the stipulations of Mr Bell claims he didn't make are right there in the record.*

COURT

*Counsel, can you talk about the Motion of the Final Appealable Order Issue?*

NN

*Well, Your Honor, we don't believe this is a Final Appealable Order, even though Counsel asked and the Judge certified it as an Order because there were so many issues that were not resolved. Even the issue of the Discovery Issue, Judge Brandt said he would Journalize*

*that at a later date and he did Journalize it in August.*

*The issue, all of the other claims in the case were not decided. The only issue, and in fact, I was looking last night and the notice of the hearing for that July 23 hearing was ONLY the Replevin issue. The Judge put that right in that entry. So if there's only the issue of Replevin and didn't even go as far as to the damages in that entry, the only issue that was decided was who gets the dog.*

COURT

*So what's ... what's ... two questions on that: I guess you're saying it doesn't effect a substantial right under the Final Appealable Order?*

NN

*No, Your Honor, it doesn't. I don't believe there is a substantial right to own a dog.*

COURT

*And what's left?*

NN

*There is a Fraud claim, well, at the time that this entry was Journalized, there was...*

COURT

*Well, tell me about now...*

NN

*Right now? There's the Fraud claim, there's a uh uh (sorry)*

COURT

*I think the Judge said at the time of the hearing that he was going to dismiss or strike counterclaims but you're saying that wasn't finalized.*

NN

*No, Your Honor, and the counter claims were the counter claims filed by the Appellants but in the complaint there were claims for conversion, there were claims for fraud, conspiracy, violation of due process...*

COURT

*Those are damages claims.*

NN

*Yes, Your Honor, yes, Your Honor and none of those and the Franklin County, the judge indicated at the hearing that he was going to dismiss the Franklin County defendants but he hadn't journalized that either.*

*And so those entries did come out on the Franklin County Issue and the Motion for Discovery Sanctions and one other issue that was raised at the hearing. Those did come out in August but Appellants didn't amend their Notice of Appeal to try and include those.*

*So at the time that this Order was issued, it wasn't final.*

COURT

*And there's still damages, you're saying*

NN

*There are still damages. The issue of damages was never resolved or brought up to the Court because that hearing was only on the Replevin.*

COURT

*So, if we affirm, you're still back in the Muni Court on these.*

NN

*Yes, Your Honor. And on the other issues in the case.*

COURT

*Now whether or not that's true, Mr. Bell was asking for a mediation opportunity, are your clients interested in that?*

NN

*Your Honor, we're always willing to talk about mediation but if you ask Mr. Bell when he comes back up what he wants is a guarantee from our clients that the internet bullying is going to stop. We can't give that guarantee, we're not part of that - our clients from the minute we came on the case, our clients were not on the internet.*

*So for the year we were on the case, the eight months we were on the case, there was nothing that our clients put up but we still were demanded that that "bullying" stop. we have no way to control that so I don't believe mediation would be effective but we certainly, if the Court wanted to send us to mediation, we would have no problem.*

COURT

*I'm hearing from your clients' perspective is that you can't do an impossible thing?*

NN

*Right, that's right, Your Honor, and that's what we've always said and when we thought this case was resolved and the two prior attorneys on our side thought it was resolved, this internet bullying issue harassment claiming that they, that's in their counterclaim, claiming that our clients burglarized their house even though the police investigated and wouldn't file any charges because there was no evidence, so we can't, they wanted us at one of the pretrials to admit that they burglarized - well these are things that are not going to ... these are impossible things! And that's why normally we thought, too, of requesting a mediation but when you think about it, it would just really be a waste of everyone's time because of the demands that they would make.*

*Are there any other questions here?*

NN

*I would urge the Court to Affirm the Judgement set by the Court below - two prior Judges - it was three Judges three separate times said the dog belonged to our clients and now we're hearing that they're not really contesting it?*

*So at this point, the issue is not... it might be moot if they're not trying to get the dog back and there are more proceedings below that need to be addressed.*

*Thank you very much.*

COURT

*Mr. Bell*

JB

*Uh, Thank you, Your Honor. Um, I wish I had shut up sooner. (nervous laughter)*  
*Um, first of all, there's no such thing as a Certificate of Ownership, I don't know WHERE that came from. This is the first time I've ever heard of it and this is not my first rodeo in dog cases. Um, and I think the Court properly pointed out that since the Shelter is open normal hours on Sunday, Sunday counts for them, it's a business day.*

*I do want to address because, in part, it sort of misrepresenting something I've done, my clients have never asked the plaintiffs to control anyone's behavior but their own. Ms Covatch is an admin on one of the pages that exists still today on the internet. And all we've asked is that they individually not participate in that. We don't expect them to corral and and bring into check ha thu say 5900 people or whatever, no one.. i'm i'm i'm obviously not a kid and I know better than that and we've never asked for that.*

*We've asked for those individuals who were represented by Counsel to stop doing that and that was the only thing that is being now presented as though we are asking them to control the entire internet.*

COURT

*That would be your request during mediation if you were...*

JB

*Our request would be ... i'm sorry...*

COURT

*If you were to mediate.*

JB

*If we were to mediate, the only thing we would want at this point is a clear consent judgement that our clients were the owners of that dog when it was released from the Franklin County Animal Shelter for the benefit not of my clients that don't have this dog, yeah, they probably would like to have this dog back because they're not thrilled about how it was handled before it got loose, but the reality is we're not just here for that - we're here for the other people who are adopting animals from shelters, not just in Franklin County, which is very diligent, very very compliant with the laws, but who are adopting from shelters throughout the state.*

*And that WOULD be our request*

COURT

*You're getting close to your time, in fact, you have used your time so if you could make your points quickly.*

JB

*Uh, I just ... the the I... I think the most important thing to remember here is that the shelter followed the law in releasing the dog. Our clients simply ask for an orderly manner of determining the proper ownership and they were attacked and wuh.. to the extent that individual plaintiffs may or may not have participated in that doesn't mean it didn't happen and I think that they were not unreasonable, they were never unreasonable. I don't know where the third Judge came from, I know we had two but I don't know where we got a third Judge in this case. Their posting of the bond wasn't to hang onto the dog because they wanted the dog, the posting of the bond was so that they could hopefully engage in an orderly process in determining who the rightful owner of the dog was.*

COURT

*Ok, thank you, Mr. Bell, your case has been submitted and you'll be notified of our decision and this concludes the 9:00 docket.*

***ALL RISE. HEAR YE! HEAR YE! HEAR YE! This Honorable Court is now in recess.***

END OF TAPE