

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Dec 22, 2015, 1:07 pm
BY RONALD R. CARPENTER
CLERK

Supreme Court No. 92555-1

E CRF
RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

CLORRISSA ESTRELLA

Petitioner,

v.

KING COUNTY,

Respondent.

ANSWER TO PETITION FOR REVIEW

DANIEL T. SATTERBERG
King County Prosecuting Attorney

NANCY A. BALIN
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W400 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 477-1120

 ORIGINAL

FILED AS
ATTACHMENT TO EMAIL

TABLE OF CONTENTS

Table of Authorities ii

I. STATEMENT OF THE CASE1

II. ARGUMENT2

 A. Review criteria2

 B. No Conflict with Any Appellate Decision.....3

 1. No Conflict Regarding Sufficiency of Evidence.....4

 C. No Substantial Public Interest Justifies Review.....6

III. CONCLUSION7

TABLE OF AUTHORITIES

Washington State Cases

Morawek v. City of Bonney Lake,
184 Wn. App. 487, 337 P.3d 1097 (2014).....5

State v. Ankney,
53 Wn. App. 393, 400, 766 P.2d 1131 (1989).....4

King County Code Sections

KCC 11.04.2303

KCC 11.04.230(H)3,4

Statutes and Court Rules

RAP 13.42

RAP 13.4(b)5

I. STATEMENT OF THE CASE

Petitioner filed this writ action in the King County Superior Court seeking judicial review of a King County Board of Appeals' (Board) decision. The Board's decision affirmed issuance of an administrative order requiring petitioner to confine her dog under the King County Code's vicious animal requirements. More specifically, the administrative order alleged that two of petitioner's dogs were responsible for killing a neighboring property owner's goose and goats. Facts associated with the disputed order are set forth at pages 2 and 3 of the Court of Appeals' decision.

While the Superior Court remanded matters to the Board in order to allow additional time for petitioner to present her case, she sought appellate review of that decision, asserting that the Superior Court should have accepted her facial due process challenge to the Board's hearing rules, and that the Board's legal and evidentiary decisions were not sufficiently supported.

On October 26, 2015, the Court of Appeals issued an unreported decision affirming the Superior Court. The twenty-three page decision held that:

Because Estrella cannot show that she has been aggrieved by the superior court's due process decision, we decline to review it. We conclude that the Board correctly applied the

King County Code (KCC) and its rules of evidence. And while the Board's record includes sufficient evidence to support its decision, on remand the Board may receive different or additional evidence that changes the decision.

Opinion at p. 2.

Petitioner now seeks further review in the Washington State Supreme Court. See Petition for Review at pp. 1-2.

II. ARGUMENT

A. Review Criteria

RAP 13.4 specifies that:

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

(emphasis added).

Petitioner's assertion that this matter warrants review under RAP 13.4 subsections (1), (2) and (4) is simply not supported by the circumstances of this case. For the reasons discussed below, review in this matter is not warranted under any of the relevant review criteria.

B. No Conflict with Any Appellate Decision

The Court's well-reasoned, plain language construction of the County ordinance at issue does not conflict with any Washington State Supreme Court or Court of Appeals decision.

The Court applied well-established criteria in support of its decision that King County Code 11.04.230(H) was correctly interpreted as requiring only one incident for a finding of nuisance. Opinion at pp. 8-9. More specifically, the Court applied the first rule of statutory construction: Start with the plain meaning. Opinion at p. 7. The Court stated:

Under a straightforward reading, the second clause of KCC 11.04.230(H), "and constitutes a danger," does not refer to a subsequent vicious act. Rather, it describes an animal that has become a public nuisance because it has performed or shown the propensity to perform any vicious act.

Opinion at p. 8.

Finding that the ordinance was not ambiguous, the Court rejected Petitioner's argument that it had to apply the rule of lenity to the provision. Opinion at 9. The Court further pointed out the negative public policy ramifications of adopting Petitioner's argument, disapproving the resulting "one free bite rule." Id.

The Court also properly rejected Petitioner's assertions that in applying King County Code 11.04.230, (a) the death of one of

petitioner's dogs precluded King County from asserting its viciousness, and (b) King County had to prove that she had a culpable mental state. Opinion at pp. 9-13. Estrella does not cite to any case that conflicts with the Court's determination of this issue. Indeed, to the contrary, in *State v. Ankney*, 53 Wn. App. 393, 400, 766 P.2d 1131 (1989), the Court found this exact section of the County's ordinance to be "sufficiently definitive" and approved of its dual criminal and civil repercussions. The Court of Appeals decision in this case does not conflict with *Ankney*.

While Petitioner disagrees with the Court's holding regarding the plain language of King County Code 11.04.230(H), the analysis applied is wholly consistent with established case law.

1. No Conflict Regarding Sufficiency of Evidence.

Petitioner's case-specific allegations regarding the sufficiency of evidence do not support her request for review, particularly given the fact that additional evidence is contemplated as part of the King County Board of Appeals' remand hearing.

In any event, petitioner does not point to any case that conflicts with the Court's determination that there was sufficient

evidence to identify her two dogs inside the goat enclosure, with the dead goats.

Petitioner's assertion of alleged conflict with *Morawek v. City of Bonney Lake* is misplaced. *Morawek*, concerned a factual issue regarding provocation, because the dog in a fight with the (missing) cat came home with a scratch. 184 Wn. App. 487, 337 P.3d 1097 (2014). By contrast, petitioner's case does not involve any issues regarding provocation. Additionally, the *Morawek* court found, as did the Court of Appeals in this case, that circumstantial evidence has no less value than direct evidence, and that there was sufficient evidence in this case for the citations.

All of the Washington cases cited by petitioner were criminal cases with issues of government identification procedures. They do not conflict with the Court's opinion here, which involves dogs, not people; civil citations, not criminal charges; and identification by a citizen using pictures posted online by Petitioner, not a "government-directed" identification procedure. See Opinion at p. 18.

Moreover, as found by the Court of Appeals, the foreign cases cited by Petitioner neither support her argument, Opinion at p. 17, nor meet the showing required under RAP 13.4(b). Finally, the facts are not "at bar" – they have been found by the Board of Appeals.

CP 5-7. The Court of Appeals declined Petitioner's invitation to speculate about other possible culprits of the carnage or reweigh the evidence regarding the Westons' identification of petitioner's dog. Opinion at pp. 16-17.

While Petitioner disagrees with the Court's holding regarding the sufficiency of the evidence, the analysis that was applied is wholly consistent with established Washington case law. See Brief of Respondent at pp. 14 – 20.

There is no case law conflict that arises from the Court's holding that there was sufficient evidence for King County's citations.

C. No Substantial Public Interest Justifies Review

This case likewise does not involve any issue of substantial public interest that would justify further review. The Court of Appeal's decision is unreported and cannot therefore be cited as precedent. The Court's rulings with respect to sufficiency of evidence and statutory construction are case-specific, well-supported under accepted legal standards and do not raise any issue of substantial public interest that justifies review by this Court.


III. CONCLUSION

For the reasons set forth above, King County respectfully requests that Petitioner's request for review be denied.

DATED this 21st day of December, 2015.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG
Prosecuting Attorney

By: 

NANCY A. BALIN, WSBA #21912
Senior Deputy Prosecuting Attorney
Attorneys for King County

NO. 92555-1

RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

CLORRISSA ESTRELLA,

Petitioner,

v.

KING COUNTY,

Respondent.

CERTIFICATE OF SERVICE

I, Natalie Duran, hereby certify and declare under penalty of perjury under the laws of the state of Washington as follows:

1. I am a legal secretary employed by King County Prosecuting Attorney's Office, am over the age of 18, am not a party to this action and am competent to testify herein.
2. On December 22, 2015, I did cause to be delivered by electronic mail a true copy of *Answer to Petition for Review* and this

Certificate of Service to:

Adam Phillip Karp
Animal Law Offices of Adam P. Karp
114 West Magnolia Street Suite 425
Bellingham, WA 98225-4354
adam@animal-lawyer.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 22nd day of December 2015 at Seattle, Washington.

A handwritten signature in cursive script, appearing to read "Natalie Duran", written over a horizontal line.

NATALIE DURAN, Legal Secretary to
NANCY BALIN, WSBA #21912
Senior Deputy Prosecuting Attorney
Attorney for Respondent

OFFICE RECEPTIONIST, CLERK

To: Duran, Natalie
Cc: Balin, Nancy
Subject: RE: Clorrissa Estrella v. King County No. 92555-1

Received 12-22-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Duran, Natalie [mailto:Natalie.Duran@kingcounty.gov]
Sent: Tuesday, December 22, 2015 1:07 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Balin, Nancy <Nancy.Balin@kingcounty.gov>
Subject: Clorrissa Estrella v. King County No. 92555-1

Good Afternoon,

Attached please find the Answer to Petition and Certificate of Service for filing.

1. Case name: Clorrissa Estrella v. King County
2. Case number: 92555-1
3. Filed by:
Nancy Balin, WSBA#21912
206-477-1120
King County Prosecutors office
516 3rd Ave Rm W400
Seattle, WA 98104
Nancy.balin@kingcounty.gov

If you have any questions please let me know.

Thank you,

Natalie Duran
Legal Assistant- County Service
King County Prosecuting Attorney's Office
Phone: (206)477-1120
♻️ Consider the environment before printing this e-mail.