CITATION: R. v. Huggins, 2010 ONCA 746
DATE: 20101104
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COURT OF APPEAL FOR ONTARIO

O'Connor A.C.J.O., Simmons and Blair JJ.A.

BETWEEN:

Her Majesty the Queen

Appellant

and

Phillip Huggins

Respondent

Kirsten Peacock, for the appellant

Michael T. Doi, for the intervener Attorney General of Ontario

Clayton C. Ruby and Breese Davies, for the respondent

Heard: October 26, 2010

On appeal from the order of Justice Mary L. Hogan of the Ontario Court of Justice dated April 6, 2009 setting aside the order of Justice of the Peace K.V. Madigan, dated July 11, 2007, ordering the destruction of the respondent's dog pursuant to s. 4 of the *Dog Owners' Liability Act*.

R.A. Blair J.A.:

Introduction

[1] Ginger (the pit bull) and Buddy (a shepherd/collie mix) became embroiled in a dog fight in a local park in Toronto on November 29, 2005. Although it is not clear from the record which dog initiated this canine fracas, the uncontested findings below are that Ginger bit Buddy repeatedly, inflicting serious wounds, and also that she bit Buddy's owner, Jody MacDonald, more than once (although the extent of those injuries is not clear). This conduct had serious consequences for Ginger.

[2] Two central factors underlie this appeal. First, Ginger is a pit bull. Secondly, the legislature had amended the *Dog Owners' Liability Act*, R.S.O. 1990, c. D-16 earlier in 2005, before the fight, to introduce specific provisions dealing with pit bulls. One such provision calls for the destruction of a pit bull found to have bitten another animal or a person. Ginger is the target of that provision.

[3] Mr. Huggins is Ginger's owner, although at the time it was his mother who had taken the dog for a walk. He was charged under the *Dog Owners' Liability Act* with having failed to exercise reasonable precautions to prevent Ginger from biting or attacking another animal or a person or from behaving in a fashion posing a menace to the public safety. At the same time, the Crown applied under s. 4 of that Act for an order that Ginger be destroyed.

[4] Mr. Huggins was acquitted, but the Justice of the Peace ordered Ginger destroyed on the basis that the dog was a pit bull and that she had bitten another dog and a person.

The latter order was appealed to Hogan J. of the Ontario Court of Justice, who set it aside. On June 17, 2009, Juriansz J.A. granted leave to appeal from the order of Hogan J. on the following question of law:

> Whether the appeal judge erred in law in interpreting s. 4(8) of the *Dog Owners' Liability Act*, R.S.O. 1990, c. D.16.

Analysis

[5] The *Dog Owners' Liability Act* applies to the owners of all breeds of dogs in Ontario. It deals generally with matters of responsible dog ownership and, amongst other things, imposes civil liability on owners of dogs that bite or attack. In addition, it provides that in certain circumstances a court may order that a dog be destroyed or impose other security measures with respect to the dog. These provisions apply to all breeds of dogs.

[6] In 2005, however, the landscape changed for pit bulls. Responding to a series of brutal attacks by pit bulls on children and others, the Ontario legislature introduced amendments to the *Dog Owners' Liability Act* directed specifically at that breed of dog.

The Relevant Statutory Provisions

[7] The relevant provisions of the *Dog Owners' Liability Act* are the following:

> Proceedings against owner of dog
>
> **4.** (1) A proceeding may be commenced in the Ontario Court of Justice against an owner of a dog if it is alleged that,

(a) the dog has bitten or attacked a person or domestic animal;

(b) the dog has behaved in a manner that poses a menace to the safety of persons or domestic animals; or

(c) the owner did not exercise reasonable precautions to prevent the dog from,

(i) biting or attacking a person or domestic animal, or

(ii) behaving in a manner that poses a menace to the safety of persons or domestic animals. 2005, c. 2, s. 1 (6).

...

Final order

(3) If, in a proceeding under subsection (1), the court finds that the dog has bitten or attacked a person or domestic animal or that the dog's behaviour is such that the dog is a menace to the safety of persons or domestic animals, and the court is satisfied that an order is necessary for the protection of the public, the court may order,

(a) that the dog be destroyed in the manner specified in the order; or

(b) that the owner of the dog take the measures specified in the order for the more effective control of the dog or for purposes of public safety. 2000, c. 26, Sched. A, s. 6; 2005, c. 2, s. 1 (8, 9).

Examples, measures for more effective control

(4) Some examples of measures that may be ordered under subsection (2) or clause (3) (b) are:

1. Confining the dog to its owner's property.

2. Restraining the dog by means of a leash.

3. Restraining the dog by means of a muzzle.

4. Posting warning signs. 2000, c. 26, Sched. A, s. 6; 2005, c. 2, s. 1 (10).

...

Considerations

(6) Except as provided by subsections (8) and (9), in exercising its powers to make an order under subsection (3), the court may take into consideration the following circumstances:

1. The dog's past and present temperament and behaviour.

2. The seriousness of the injuries caused by the biting or attack.

3. Unusual contributing circumstances tending to justify the dog's action.

4. The improbability that a similar attack will be repeated.

5. The dog's physical potential for inflicting harm.

6. Precautions taken by the owner to preclude similar attacks in the future.

7. Any other circumstances that the court considers to be relevant. 2000, c. 26, Sched. A, s. 6; 2005, c. 2, s. 1 (12).

...

Mandatory order under cl. (3) (a)

(8) When, in a proceeding under this section, the court finds that the dog is a pit bull and has bitten or attacked a person or domestic animal, or has behaved in a manner that poses a menace to the safety of persons or domestic animals, the court shall make an order under clause (3) (a). 2005, c. 2, s. 1 (13).

Same

(9) When, in a proceeding under this section, the court finds that the owner of a pit bull contravened a provision of this Act or the regulations relating to pit bulls or contravened a court order relating to one or more pit bulls, the court shall make an order under clause 3 (a). 2005, c. 2, s. 1 (13).

> Onus of proof, pit bulls
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> (10) If it is alleged in any proceeding under this section that a dog is a pit bull, the onus of proving that the dog is not a pit bull lies on the owner of the dog. 2005, c. 2, s. 1 (13).

The Summary Conviction Appeal Judge's Decision

[8] The summary conviction appeal judge concluded that the language of subsection 4(8) is ambiguous, having regard to the words "the court shall make an order under clause (3)(a)" read in the context of section 4 as a whole and in light of the purposes and objects of the Act. She said that the phrase "under clause (3)(a)" is subject to two interpretations, namely:

> a) that the court has no discretion but to make an order pursuant to s. 4(3)(a), but in doing so, the court must have regard to whether the order is "necessary for the protection of the public" because that is one of the prerequisites for the usual s. 4(3)(a) order and, because of the words "under clause (3)(a)", the legislature must have intended to incorporate all of those prerequisites into the analysis; or,
>
> b) that if the dog has been found to be a pit bull and to have bitten or attacked another domestic animal or a person, or has behaved in a manner that poses a menace to the safety of persons or other animals, a destruction order must be made without there being a requirement that the court be satisfied such an order is necessary for the protection of the public.

[9] The summary conviction appeal judge opted for the first of these interpretations. She concluded that it best fulfilled the objects of the legislation and that, if the legislature had intended the second interpretation, it could easily have said, simply, that the court

"shall make an order that the dog be destroyed in the manner specified in the order," rather than referring to an "order under clause (3)(a)," which it did not do. She also concluded that the second interpretation could lead to an absurd result, for example, if an individual were breaking into a home where a pit bull resided and that pit bull in the course of protecting his owner and his owner's home bit the burglar, that pit bull would have to be destroyed.

Discussion

[10] Respectfully, the summary conviction appeal judge's interpretation of s. 4(8) is not tenable, in my view.

[11] The underlying purpose of Bill 132, which introduced the amendments to the *Dog Owners' Liability Act* targeting pit bulls, was to create a legislative scheme that, over time, would eliminate pit bulls from the Province of Ontario. The breeding, sale and ownership of pit bulls were prohibited, subject to a grandfathering clause that permitted owners to keep "restricted pit bulls" (i.e., those born before Bill 132 came into force or up to 90 days thereafter) subject to compliance with certain safety measures. For example, restricted pit bulls had to be sterilized and were required to be leashed and muzzled when in public. As noted above, the impetus for the amendments was a series of then recent pit bull attacks causing serious injury, and the rationale underlying the legislation was based upon evidence that pit bulls are uniquely aggressive and unpredictable, often attacking without warning or provocation, and that they pose an

inherent danger to the public. See *Cochrane v. Ontario (A.G.)* (2008), 92 O.R. (3d) 321 (C.A.), leave to appeal to the Supreme Court of Canada refused, [2009] S.C.C.A. No. 105.

[12] We are not concerned here with the policy debate over the wisdom, or lack of wisdom, underlying the enactment of the 2005 amendments. The legislation has been found to be constitutional – see *Cochrane* – and the legislature is entitled to make choices within its constitutional mandate. We are concerned with the proper statutory interpretation of subsection 4(8).

[13] The words of an Act are to be read in their entire context, in their grammatical and ordinary sense, and harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature: *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, at paras. 26 and 27, citing Elmer A. Driedger, *The Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) at p. 87. Within that framework, the ordinary meaning of legislation is "the natural meaning which appears when the provision is simply read through": *York Condominium Corp. No. 382 v. Jay-M Holdings Ltd.* (2007), 84 O.R. (3d) 414 (C.A.), at paras. 11-13.

[14] Applying those principles here, I have no hesitation in concluding that the ordinary and natural meaning of the language in s. 4(8) of the *Dog Owners' Liability Act* is clear and unambiguous: once a dog is found to be a pit bull, and to have bitten or attacked another domestic animal or a person, or to have behaved in a manner that poses

a menace to the safety of persons or domestic animals, the court is mandated to order that the pit bull be destroyed in the manner specified in the order. Any other interpretation flouts the purpose and object of the amendment, viewed in the context of section 4 in its entirety – including the pit bull amendments – and the plain wording of the Act.

[15] Simply put, to interpret the language of s. 4(8) – because of its reference to making "an order under clause (3)(a)" – as reading back into the equation a requirement that the destruction order be "necessary for the protection of the public", is to eviscerate the s. 4(8) amendment and render it superfluous: there would be no need for the amendment because the end result would be that pit bulls would be treated the same way as all breeds of dogs have traditionally been treated under s. 4(3). That is clearly inconsistent with the legislature's intent in introducing specific measures regarding pit bulls.

[16] The summary conviction appeal judge was concerned that a dog might be ordered destroyed "in circumstances where the dog had no culpability whatsoever." She gave as an example the scenario cited above, namely that of a pit bull defending its owner and its owner's property in the event of a break-in, and biting the intruder in the process. That the pit bull would have to be put down in those circumstances – assuming the burglar pursued the issue – she considered to be an absurdity.

[17] Leaving aside the question whether canine "culpability" – or *mens rea* – is a factor to be considered in the s. 4(8) analysis, the legislature is entitled to make choices. Given

the overall purpose of the pit bull amendments referred to above – which in effect leave pit bulls in existence in Ontario virtually on sufferance – I am not persuaded that such a result would amount to an absurdity. But, in any event, the clear wording of a statute must be given effect even if it may lead to an absurdity. In *Beattie v. National Frontier Insurance Co.* (2003), 68 O.R. (3d) 60 (C.A.), at para. 15, Borins J.A. observed:

> As Professor Sullivan points out, at p. 129, legislation is presumed to be accurate and well-drafted consequent to the presumption that the legislature does not make mistakes. Thus, if the words of an Act are clear, they must be followed even though they lead to a manifest absurdity. As a majority of the Supreme Court of Canada commented in R v. McIntosh, [1995] 1 S.C.R. 686 ... at p. 704:
>
> > [W]here, by use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be .... The fact that a provision gives rise to absurd results is not, in my opinion, sufficient to declare it ambiguous and then embark upon a broad-ranging interpretive analysis.

[18] To be fair, the summary conviction appeal judge did not use the "absurdity" notion to determine that the language was ambiguous. Having found that it was ambiguous and capable of two interpretations, she used the absurdity concept as a basis for choosing one over the other. That may have been an appropriate technique in another context. But here, as I have said, the language of s. 4(8) is clear. There was no ambiguity.

[19] Another anomaly arising from the summary conviction appeal judge's interpretation of s. 4(8) is the incompatibility of that interpretation with s. 4(6) cited above. If the court is to address a destruction order under s. 4(8) through the prism of the "necessity for the protection of the public" requirement of s. 4(3), it would have to consider the various factors enumerated in s. 4(6), which for convenience I restate:

> Considerations
>
> (6) Except as provided by subsections (8) and (9), in exercising its powers to make an order under subsection (3), the court may take into consideration the following circumstances:
>
> 1. The dog's past and present temperament and behaviour.
>
> 2. The seriousness of the injuries caused by the biting or attack.
>
> 3. Unusual contributing circumstances tending to justify the dog's action.
>
> 4. The improbability that a similar attack will be repeated.
>
> 5. The dog's physical potential for inflicting harm.
>
> 6. Precautions taken by the owner to preclude similar attacks in the future.
>
> 7. Any other circumstances that the court considers to be relevant. 2000, c. 26, Sched. A, s. 6; 2005, c. 2, s. 1 (12).

[20] What other underlying considerations could be in play when deciding whether to make a destruction order? Yet s. 4(6) explicitly eliminates those factors when an order is being made under s. 4(8). Since the language of s. 4(8) must be interpreted in light of the

provisions of s. 4 as a whole, the explicit elimination of the s. 4(6) considerations when ss. 4(8) and (9) are engaged reinforces the interpretation I have placed on the language of s. 4(8).

[21] Apart from his ambiguity argument, Mr. Ruby made two further submissions on behalf of the respondent. First, he contended that the *Dog Owners' Liability Act* must be interpreted in such a way as to ensure harmony and coherence with other legislation dealing with the treatment of animals. Section 445.1 of the *Criminal Code* provides that it is an offence (a) to wilfully cause unnecessary pain, suffering or injury to an animal or (b) to wilfully, without reasonable excuse, administer a poisonous or an injurious drug or substance to a domestic animal. An interpretation of s. 4(8) that would mandate the destruction of an animal without any consideration of whether that destruction is "necessary" in the public interest, Mr. Ruby says, would be tantamount to animal cruelty and inconsistent with this provision in the *Code.*

[22] I see no merit in this argument. Even if the principle of harmonization applies in a contest between validly enacted federal legislation and validly enacted provincial legislation – about which we make no comment – s. 445.1 of the *Code* and s. 4(8) of the *Dog Owners' Liability Act* are directed at entirely different circumstances. Section 445.1 is aimed at preventing acts of cruelty towards animals by people. Subsection 4(8) is directed towards enforcing a constitutionally valid state purpose having to do with the protection of society.

[23] Nor do I see any merit in the argument that the *noscitur a sociis* rule of statutory interpretation should apply to support the summary conviction appeal judge's interpretation. While Mr. Ruby acknowledges that the Supreme Court of Canada has taken a cautious approach to the application of this rule so as not to defeat the true intention of the legislature, he submits it is nonetheless a helpful tool. Essentially, the rule means that where words that are susceptible of analogous meaning are used together, their meaning is influenced by and take their colour from the words with which they are associated: P. Côté, *The Interpretation of Legislation in Canada*, 3rd ed. (Toronto: Carswell, 2000), at p. 263; P. St. J. Langan, *Maxwell on the Interpretation of Statutes*, 12th ed. (London: Sweet & Maxwell, 1969), at p. 289.

[24] Here, the argument is that the legislature could not have intended the word "bitten" in ss. 4(3) and 4(8) of the *Dog Owners' Liability Act*, to include all bites, however minor – such as a puppy bite, which happens in the case of almost all puppies. It must be an "aggressive" bite, because the word is associated with the words "attacked" and "menace", which suggest offensive aggression, as opposed to something minor or a defensive response.

[25] As Mr. Ruby concedes, however, the rule is not to be used to defeat the clear intention of the legislature. In my view, as expressed above, the intention of the legislature is clear: when it comes to pit bulls, one bite or attack, or one menacing act as contemplated by s. 4(8) mandates the court to issue a destruction order. The legislature did not contemplate a debate over whether the dog's conduct was an act of aggression, or

whether it occurred in circumstances of play or provocation or self-protection or the protection of humans or their property.

Disposition and Remedy

[26] For the foregoing reasons, I conclude that the summary conviction appeal judge erred in her interpretation of s. 4(8) of the *Dog Owners' Liability Act*. Her order is set aside and the order of the Justice of the Peace reinstated.

[27] Ms. Davies argued on behalf of the respondent that if we concluded the summary conviction appeal judge had erred in her interpretation of s. 4(8), we should send the matter back for a new trial as a remedy. This submission was based on the argument that the Justice of the Peace had erred in his treatment of the expert evidence before him – he failed to prefer the evidence of the respondent's expert (who, it was submitted, was far better qualified and reliable), concluding instead that he could not choose between them – and that the summary conviction appeal judge had erred in failing to set aside the decision at first instance on that basis.

[28] I reject this submission. Even if the issue is properly before us, I see no merit in it. Two courts below have come to the same conclusion. There is no basis for interfering with those decisions.

[29] Accordingly, the appeal is allowed and the order of the Justice of the Peace directing the destruction of Ginger under s. 4(8) as mandated by the Act is reinstated.

[30] I recognize this decision will be difficult for Mr. Huggins, and the result perhaps incomprehensible to him. Like pet owners generally, he is undoubtedly very fond of Ginger and sees her as the friendly dog and docile pet his mother portrayed at trial. The legislature has decided, however – as it is entitled to do – that pit bulls are inherently dangerous animals that pose a risk to public safety by their very presence in public places. The language of s. 4(8) is clear and unambiguous about what is to happen when a pit bull contravenes its provisions, and must be given effect.

"R.A. Blair J.A."
"I agree D. O'Connor A.C.J.O."
"I agree Janet Simmons J.A."

RELEASED: November 4, 2010