

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Michael and Kim Blatt

235 W. Va. 489 (2015) · No. No. 14-0757 · Decided June 16, 2015

SUMMARY

The Supreme Court of Appeals of West Virginia reversed an order requiring the euthanization of Tinkerbell, a pit bull terrier owned by Michael and Kim Blatt, after the dog bit a child. The court held that a court may order destruction of a dog under West Virginia Code § 19-20-20 without first convicting the owner, but must find satisfactory proof that the dog is dangerous, vicious, or habitually bites or attacks. The court further held that a court may not rely solely on a judicially noticed, breed-specific presumption that pit bull dogs are inherently vicious.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Benjamin; Chief Justice Workman; Justice Loughry
JURISDICTION	West Virginia
DECIDED	June 16, 2015
DOCKET	No. 14-0757
DISPOSITION	reversed
PROCEDURAL POSTURE	The Blatts appealed the Wayne County Circuit Court's order directing that their dog, Tinkerbell, be euthanized under West Virginia Code section 19-20-20, after the court had acquitted them of the related criminal charge.
STANDARD OF REVIEW	The final order and ultimate disposition were reviewed for abuse of discretion; factual findings were reviewed for clear error; and legal conclusions were reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Michael Blatt, Kim Blatt v. State of West Virginia

TOPICS

- statutory interpretation
- criminal procedure
- evidence
- judicial notice
- double jeopardy

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a circuit court may conduct a dog-destruction hearing under West Virginia Code section 19-20-20 after acquitting the dog's owners of the related criminal charge.
2. Whether the destruction hearing violated the state or federal constitutional prohibitions against double jeopardy.
3. Whether a court may take judicial notice of, or judicially create, a breed-specific presumption that pit bull dogs are vicious or dangerous under section 19-20-20.
4. Whether the evidence established satisfactory proof that Tinkerbelle was vicious, dangerous, or in the habit of biting or attacking persons or animals so as to justify her destruction.

HOLDINGS

1. A conviction for violating section 19-20-20 is not a prerequisite to a separate destruction proceeding. A court may order destruction if it finds satisfactory proof that the dog is dangerous, vicious, or in the habit of biting or attacking persons or other animals, even without finding beyond a reasonable doubt that the owner committed the crime.
2. The separate destruction hearing did not violate the Double Jeopardy Clause of the West Virginia or United States Constitutions because it did not place the Blatts in jeopardy of life or liberty for the same criminal offense after their acquittal.
3. A court may not take judicial notice of, or create, a breed-specific presumption that pit bull breeds are vicious, dangerous, aggressive, a public health hazard, or unpredictable under section 19-20-20. The evidence, absent that presumption, did not provide satisfactory proof that Tinkerbelle was vicious, dangerous, or in the habit of biting or attacking persons or animals.

KEY QUOTATIONS

“Because extensive debate exists over whether scientific evidence and social concerns justify breed-specific presumptions, we conclude that courts may not, upon judicial notice, rely solely upon a breed-specific presumption in ordering the destruction of a dog pursuant to W. Va. Code § 19-20-20.” (235 W. Va. at 489)

“However, the magistrate or circuit court need not determine that a crime has been committed pursuant to W. Va. Code § 19-20-20 (1981) to proceed, at its discretion, to order the destruction of a dog pursuant to that statute.” (235 W. Va. at 497)

“By adding language to a statute omitted by the Legislature, the judiciary acts as a “superlegislature,” which is prohibited by the Constitution of West Virginia.” (235 W. Va. at 500)

“Thus, a circuit court or magistrate is limited to considering a dog’s past behavior in determining whether that dog poses a risk of future harm to the public such that the risk warrants exercising the State’s police power to destroy the dog.” (235 W. Va. at 503)

“The facts do not establish satisfactory proof that Tinkerbelle exhibited behavior outside that which might be expected of a dog during play.” (235 W. Va. at 506)

FACTUAL BACKGROUND

Tinkerbelle, a two-year-old pit bull terrier or pit bull mix owned by the Blatts, bit an eight-year-old child once while the dog and child were apparently attempting to retrieve the same ball during play. The child received fourteen stitches, but testimony showed that Tinkerbelle had previously exhibited a mild, playful demeanor, had not previously shown aggression, and retreated immediately after the bite. The circuit court acquitted the Blatts of knowingly harboring a vicious dog but ordered Tinkerbelle destroyed after judicially presuming that pit bull breeds are inherently vicious and dangerous.

PROCEDURAL HISTORY

The State charged Michael and Kim Blatt with knowingly owning, keeping, or harboring a vicious or dangerous dog. After a June 17, 2014 bench trial, the circuit court found the Blatts not guilty because the State had not proved beyond a reasonable doubt that they knew the dog was vicious. The court nevertheless conducted a separate destruction hearing and ordered Tinkerbelle euthanized on July 7, 2014, based largely on a breed-specific presumption and the dog's single bite of a child. The Blatts appealed, and the Supreme Court of Appeals reversed the destruction order.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The circuit court's July 7, 2014 destruction order was reversed. The Clerk was directed to issue the mandate forthwith; no further remand instructions were stated.

CASES CITED

- Burgess v. Porterfield, 196 W. Va. 178, 469 S.E.2d 114 (1996)
- Durham v. Jenkins, 229 W. Va. 669, 735 S.E.2d 266 (2012)
- Conner v. Griffith, 160 W. Va. 680, 238 S.E.2d 529 (1977)
- Hardwick v. Town of Ceredo, No. 11-1048, 2013 WL 149628 (W. Va. 2013)
- Burless v. West Virginia University Hospitals, Inc., 215 W. Va. 765, 601 S.E.2d 85 (2004)
- Edlis, Inc. v. Miller, 132 W. Va. 147, 51 S.E.2d 132 (1948)
- Matthews v. Amberwood Associates Ltd. Partnership, Inc., 351 Md. 544, 719 A.2d 119 (1998)
- Ward v. Hartley, 168 Md. App. 209, 895 A.2d 1111 (2006)
- McDonald v. Burgess, 254 Md. 452, 255 A.2d 299 (1969)
- Hearn v. City of Overland Park, 244 Kan. 638, 772 P.2d 758 (1989)
- Humphries v. Rice, 600 So. 2d 975 (Ala. 1992)

- Gentle v. Pine Valley Apartments, 631 So. 2d 928 (Ala. 1994)
- State v. Peters, 534 So. 2d 760 (Fla. Dist. Ct. App. 1988)
- Olave v. Howard, 547 So. 2d 349 (Fla. Dist. Ct. App. 1989)
- Bessent By & Through Bessent v. Matthews, 543 So. 2d 438 (Fla. Dist. Ct. App. 1989)
- Williamson v. Greene, 200 W. Va. 421, 490 S.E.2d 23 (1997)
- Banker v. Banker, 196 W. Va. 535, 474 S.E.2d 465 (1996)
- State ex rel. County Court of Marion County v. Demus, 148 W. Va. 398, 135 S.E.2d 352 (1964)
- Huffman v. Goals Coal Co., 223 W. Va. 724, 679 S.E.2d 323 (2009)
- State ex rel. City of Charleston v. Sims, 132 W. Va. 826, 54 S.E.2d 729 (1949)
- Brown v. Bottom Creek Coal & Coke Co., 94 W. Va. 287, 118 S.E. 284 (1923)
- Boggs v. Settle, 150 W. Va. 330, 145 S.E.2d 446 (1965)
- Peyroux v. Howard, 32 U.S. 324 (1833)
- Rivers v. New York City Housing Authority, 264 A.D.2d 342, 694 N.Y.S.2d 57 (1999)
- Carter v. Metro North Associates, 255 A.D.2d 251, 680 N.Y.S.2d 239 (1998)
- Tracey v. Solesky, 427 Md. 627, 50 A.3d 1075 (2012)
- Johnston v. Mack Manufacturing Co., 65 W. Va. 544, 64 S.E. 841 (1909)
- Quesenberry v. Estep, 142 W. Va. 426, 95 S.E.2d 832 (1956)
- Woods v. Cottrell, 55 W. Va. 476, 47 S.E. 275 (1904)
- Peoples Program for Endangered Species v. Sexton, 323 S.C. 526, 476 S.E.2d 477 (1996)
- Sentell v. New Orleans & Carrollton Railroad Co., 166 U.S. 698 (1897)
- State ex rel. Austin v. Thomas, 96 W. Va. 628, 123 S.E. 590 (1924)
- State v. Goodwill, 33 W. Va. 179, 10 S.E. 285 (1889)
- White v. Raleigh Wyoming Mining Co., 113 W. Va. 522, 168 S.E. 798 (1933)
- State v. George K., 233 W. Va. 698, 760 S.E.2d 512 (2014)
- Jividen v. Law, 194 W. Va. 705, 461 S.E.2d 451 (1995)
- Butts v. Houston, 76 W. Va. 604, 86 S.E. 473 (1915)
- Farrior v. Payton, 562 P.2d 779 (Haw. 1977)
- Alex v. Armstrong, 385 S.W.2d 110 (Tenn. 1964)
- Bitonti v. McGeever, 2 N.Y.S.3d 882 (N.Y. Sup. Ct. 2015)
- Clark v. Brings, 169 N.W.2d 407 (Minn. 1969)
- Carbasho v. Musulin, 217 W. Va. 359, 618 S.E.2d 368 (2005)
- Robinson v. City of Bluefield, 234 W. Va. 209, 764 S.E.2d 740 (2014) (Benjamin, J., concurring)