

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR OSCEOLA COUNTY, FLORIDA

CASE NO.: 2023-AP-000005

JAMES EGAN,
Appellant,

v.

OSCEOLA COUNTY, FLORIDA,
Appellee.

Appeal from the Final Order of Osceola County,
Deputy County Attorney Donna L. Renberg.

Marcy I. LaHart, Esq., for Appellant.

Natasha B. Billyer, Esq., Assistant County Attorney,
Osceola County, for Appellee.

Before CARSTEN, BEAMER and YOUNG, J.J.

PER CURIAM.

Appellant, James Egan, appeals a final order of Osceola County classifying his dog, Bruno, as a dangerous dog pursuant to § 767.12, Florida Statutes, and in accordance with the County procedures outlined in § 4-36, Osceola County, Code of Ordinances. The Court has jurisdiction based on § 767.12(4), Fla. Stat. (2023).¹

¹ The Court acknowledges the timeliness issue raised by Appellee with respect to the filing date of this appeal. However, due to the fact that Appellant clearly attempted to file the appeal on October 6, 2022, which was within the thirty-day jurisdictional deadline, the Court will treat the appeal as timely filed and render an opinion on the merits. The Court also notes the myriad of procedural issues apparent from the record of this case regarding its filing and processing by the Clerk's Office. It appears that even after the appeal was properly filed and received by the Clerk it was initially processed as a new civil case, rather than being processed as an appeal and assigned to an appellate panel. Accordingly, initial requests for extensions regarding the timeliness for the filing of briefs as required by the Florida Rules of Appellate procedure went unaddressed. None of these subsequent deadlines amount to a jurisdictional issue, beyond the thirty-day deadline for filing the notice of appeal addressed above.

RELEVANT FACTS

On or about August 9, 2022, an incident occurred involving Appellant's dog, Bruno, and an individual named Mr. Toth and his dog, Linky. In a letter dated August 19, 2022, Osceola County Animal Services Director, Kim Staton, made an initial determination regarding the classification of Bruno as dangerous after investigating the incident. The determination letter explained that Bruno, while unleashed, attacked Linky and inflicted serious injuries. In addition, Mr. Toth suffered "a severe injury as he tried to protect his dog" that required the amputation of "the tip of his thumb." The initial determination also referenced four (4) prior complaints regarding Bruno being unleashed, which involved an Animal Services Officer responding each time and explaining that Bruno must be "kept under control and confined to your property or on a leash when being walked." The initial determination advised regarding the requirements for keeping a dangerous dog and advised regarding Appellant's right to request "an Administrative Hearing" to "refute this determination." In a letter dated August 24, 2022, Appellant requested an "Appeal to Initial determination of dangerous dog" and an administrative hearing.

On September 6, 2022, Deputy County Manager Donna Renberg presided over an administrative hearing attended by an Assistant County Attorney, Appellant James Egan and his wife Daniella Egan, and Animal Control Officers Kim Staton, Billie Crocker, and Carmen Torres. The assistant county attorney described the process for dangerous dog classifications as laid out in the Florida Statutes, as well as in the County Code. This included reference to the fact that the County had already conducted an investigation and made an initial determination that there was sufficient cause to deem Bruno dangerous, that the purpose of the hearing was for Appellant to present his case, and that the burden was on Appellant "to demonstrate material error." At the outset, Deputy County Manager Renberg informed Appellant that she had reviewed the investigation and initial determination as well as Appellant's prior written

statement. Appellant testified as to his version of the events that day, including his belief that it was not Bruno but Linky who had bitten Mr. Toth's hand or finger in the midst of the scuffle. In addition, Appellant testified about his belief that the situation had been provoked by a lawn worker who approached the men and their dogs with a weedwhacker. He testified that Bruno did attack and injure Linky and was unleashed at the time. Appellant testified that previous encounters with Animal Services were not as they seemed because complaints had been made over less than threatening behavior such as mere barking and that in some instances Bruno had never even left Appellant's property. Appellant's wife also testified regarding Bruno not being a bad dog, though she testified that she was not present and did not witness the incident in question. Both Appellant and Deputy County Manager Renberg acknowledged the conflicting details regarding what occurred. Deputy County Manager Renberg explained that she would consider Appellant's testimony and weigh it with the investigation before reaching a final determination.

In a letter dated September 8, 2022, Deputy County Manager Donna Renberg entered a Final Order classifying Appellant's dog Bruno as dangerous. In the order Renberg stated that she had considered the related animal services reports and recommendation from Animal Services Officer Billie Crocker, the initial determination made by Animal Services Director Kim Staton, photos of the injury to the victim, and testimony offered at the hearing, as well as sworn written statements in the case file and statements and documentation provided at the hearing. The final order referenced Appellant's right to appeal the dangerous dog classification to this Court within thirty (30) days pursuant to Florida Statutes and the Florida Rules of Appellate Procedure.

DISCUSSION

Standard of Review

This Court reviews appeals of County dangerous dog classifications based on section 767.12(4), Florida Statutes, which states that an owner “may appeal the classification, penalty, or both, to the circuit court in accordance with the Florida Rules of Appellate Procedure after receipt of the final order.” This review involves a three-prong analysis considering whether (1) due process was afforded, (2) the essential requirements of the law were observed, and (3) the administrative findings and judgment were supported by competent, substantial evidence. *City of Deefield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982); *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995); *see also Bencivenga v. Osceola County*, 2009-AP-000002 (Fla. 9th Cir. Ct. Aug. 8, 2013).

State Law Regarding Classification of Dangerous Dogs

Chapter 767, section 12 of the Florida Statutes governs the classification of dogs as dangerous. The law requires animal control authorities to investigate reported incidents “involving any dog that may be dangerous.” The Statute provides that after the investigation, the animal control authority “shall make an initial determination as to whether there is sufficient cause to classify the dog as dangerous.” After such a determination is made, the animal control authority must “afford the owner an opportunity for a hearing prior to making a final determination regarding the classification or penalty.” Section 767.12(3) provides little guidance regarding the nature of this hearing beyond establishing relevant timelines and the general direction that “each applicable local governing authority shall establish hearing procedures that conform to this subsection.”

County Code Regarding Dangerous Dog Destruction Hearings

In accordance with the statute, Osceola County has adopted its own process for classification and for hearings regarding dangerous dogs in Article II, Chapter 4 of its Code of Ordinances. Section 4-36 involves the County's process for investigating reported incidents, the making of an initial determination, provision of the initial determination in writing to the owner, and the owner's right to request a hearing. Section 4-36(c) details the procedures that govern any requested hearing, including: the timeline, that the hearing shall be before the county manager, identifying the burden as being on the dog owner, and that the dog owner shall be permitted to present testimony or evidence and to cross-examine any and all witnesses who present testimony.

Due Process

In the context of a quasi-judicial proceeding such as the one Appellant was afforded in this case, the First District Court of Appeals has explained that "strict rules of evidence and procedure" do not apply and that due process is satisfied where "the parties are provided notice of the hearing and an opportunity to be heard." *Bush v. City of Mexico Beach*, 71 So. 3d 147 (Fla 1st DCA 2011). Appellant does not contest that he was provided notice of the hearing. Instead, Appellant argues that he was denied due process where the Deputy County Manager, "acting in an appellate capacity," merely upheld an initial determination based "solely upon unauthenticated hearsay documents." Appellant argues that the County's practice of treating the administrative hearing like an appeal at which Appellant had the burden of overcoming an initial determination "cloaked with [a] presumption of correctness" deprived him of due process. Appellant further contends that he was entitled to a *de novo* evidentiary hearing where the burden was on the County to prove that Bruno qualified for the dangerous classification.

Another panel of this Court has previously addressed the use of the term "appeal" in the context of hearings conducted under § 767.12(3) in *Newmons v. Orange County*, 2018-CA-

004578-O (Fla. 9th Cir. Ct. July 18, 2019). In that case, involving a different County procedure and Code, a panel of this Court noted that reference to the term “appeal” by the County with respect to a hearing on an initial determination did not necessarily mean that the Appellant had been deprived a meaningful opportunity to be heard. However, it is not hard to see why the County would refer to the hearing in this way. The hearing, as described by Florida Statutes, comes after an investigation and initial determination has been made by the County, and in the event that no hearing is requested the initial determination itself becomes final.

Far short of requiring a “*de novo* evidentiary hearing” as suggested by Appellant, the Statute contemplates a hearing as an opportunity to be heard after an initial determination and before a final determination has been made. There is no indication in the statute that the County must put on a full case at the hearing. In fact, in the absence of a request for a hearing the initial determination is deemed sufficient in itself to become final. Accordingly, the County’s practice of providing notice for an administrative hearing at which Appellant was permitted to present his testimony and ask questions satisfies the hearing requirement of the statute.

The fact that the County Code provides additional detail regarding the hearing, such as that the burden was on Appellant, comports with the description of the hearing as following an initial determination and does not diminish the required due process. Appellant cites to *Fla. Dep’t of Transp. v. J.W.C. Co.*, 396 So. 2d 778 (Fla 1st DCA 1981) for the proposition that Appellant was entitled to a *de novo* hearing at which the burden was on the County. However, the First DCA in that case explicitly cautioned against using the case as “a blueprint governing either the exact procedure to be followed or the form or manner in which evidence shall be presented in administrative hearings.” *Id.* at 788-89. Instead, the court explained that its ruling was based on the specific regulatory and statutory framework which underlaid the hearing in question. Following this rationale it is entirely reasonable for the County in the instant case to

describe the burden as being on Appellant given the Statute's description of hearing following an investigation and initial determination which takes effect as final in the absence of a request for the hearing. Appellant further cites to a number of out of state cases that do not address statutory or regulatory frameworks which are an exact match for our own. Appellant has cited to no competent Florida authority requiring a full *de novo* evidentiary hearing in the case of dangerous dog classification.

Essential Requirements of the Law

Appellant reargues that the County's placement of the burden on Appellant to disprove the County's initial determination was alternatively a violation of the essential requirements of the law. The Court rejects that argument because the County's decision to with regard to placement of the burden of proof is implicitly supported by section 767.12(3), Florida Statutes, which contemplates that in many cases the County's initial determination will become final without a hearing. Consequently, the County's decision does not violate the essential requirements of the law.

Competent, Substantial Evidence


Appellant contends that because the "person bitten" did not appear at the Administrative Hearing to testify, reliance merely on his hearsay statement is improper. Further, Appellant contends that the reports relied on by Animal Services Officers and the Director in making their initial determinations were hearsay, and their reports and initial determinations contained hearsay within hearsay, and the only competent, substantial evidence was the testimony provided by Appellant at the hearing. However, as described above, in the context of a quasi-judicial hearing "strict rules of evidence and procedure" do not apply. *Bush* at 147.

The reports taken by animal services from the victim, witnesses, the dog-owner, and others are essential to the investigation which is required to precede any initial or final

determination regarding a dangerous dog classification. There is no requirement that any or all of the individuals from which reports are taken during the investigation provide testimony at the administrative hearing. The administrative hearing, as described by both statute and County Code, is particularly for the dog owner to present his or her case on behalf of their dog, including by the presentation of additional evidence. This is precisely what occurred in the instant case. The reports taken by Animal Services which were included in the initial and final determinations assigning a dangerous dog classification to Bruno were competent, substantial evidence to support the determination.

Based on the above findings, the final order classifying Bruno as a Dangerous dog is hereby AFFIRMED.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 3 day of April, 2025.

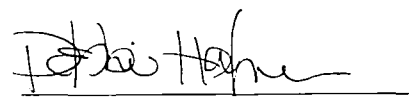


KEITH A. CARSTEN
Presiding Circuit Judge

BEAMER and YOUNG, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: **Marcy I. LaHart, Esq.**, Marcy I. LaHart, P.A., 249 SE Tuscahill Road, Micanopy, FL 32667 at marcy@floridaanimallawyer.com; and **Natasha Billyer.**, Assistant County Attorney, Osceola County Attorney's Office, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741 at Natasha.Billyer@osceola.org on this 3 day of April, 2025.



Judicial Assistant