

IN THE AUGLAIZE COUNTY MUNICIPAL COURT

201 WILLIPIE STREET, P.O. BOX 11

WAPAKONETA, OHIO 45895

419 -739-6780

AUGLAIZE COUNTY  
MUNICIPAL COURT  
FILED

2017 JUL -7 AM 10: 22

I. JEAN HECKSTROTH  
CLERK OF COURTS

SHAWN MULLINS ET AL

Plaintiff,

vs.

CITY OF ST. MARYS

Defendant

Case No.: 2017 CVH 00424

JOURNAL ENTRY

This case came on for hearing on the petitioners' appeal of the designation by the City of St. Marys that their dog Titan is a dangerous dog and thus subject to the requirements of the ordinance. The petitioners challenged the ordinance claiming that

1. The issue of control of vicious and dangerous dogs had been preempted by the State and is not subject to stricter control by a city and
2. The ordinance is overboard and exceeds the police power of the city.

The evidence shows that if the City ordinance is valid, then Titan is a dangerous dog and thus subject to the provisions of the St. Marys City Code.

First the Court of Appeals in the 3<sup>rd</sup> Appellate District in the case of City of Lima v Stepleton, 213 Ohio 5655, 5 N.E. 2d 721, 2013 Ohio App. LEXIS 5926 held that the Lima Ordinance, being broader in scope than section 955.22, was invalid.

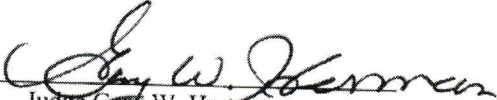
The City claims the ordinance is valid under the home rule provisions of the Ohio Constitution. The 3<sup>rd</sup> District has correctly held that these animal control statutes are general laws. An examination of the ordinance finds it to be stricter in application as to the determination of what is a dangerous dog than what qualifies under the state statute. Thus the ordinance is in conflict with the state statute and must fail. The evidence presented shows that the county dog warden indicated that he could not give a dangerous dog notification unless Titan had killed the other dog. Since the dog was not killed the issue was then brought under the City's ordinances.

Further the petitioners raise the issue that the ordinance is overboard and would exceed the police powers of the City. The ordinance by its plain language declares a dog a dangerous dog if it has caused serious injury to any person or animal. It excludes provocation as a defense and would include injuries to persons when that injury was in legitimate defense of a person and would further include killing animals or seriously injuring them while engaging in legitimate activities such as hunting.

The Court finds that the ordinance thus fails on both aspects due to the conflict with the state statutes and due to its overreach.

The appeal of the petitioners is therefore granted with costs to the city and the court orders the ordinance to be invalid as being unconstitutional.

This is a final appealable order. A copy shall be sent to counsel for both parties.

  
Judge Gary W. Herman

CC: Z Ferrell  
Wm Huber