

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 1, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2015AP863-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2013CM314

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BARBARA J. THIRY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waupaca County:
RAYMOND S. HUBER, Judge. *Reversed and cause remanded with directions.*

¶1 BLANCHARD, J.¹ Five horses owned by Barbara Thiry were seized by law enforcement officers and held as part of an investigation of alleged

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

mistreatment. Thiry was then charged with fifteen misdemeanor counts of crimes involving animals. However, the State dismissed seven counts at trial, and the jury acquitted her on seven additional counts. This left a finding of guilt and a conviction on a single misdemeanor offense: intentionally failing to provide food for one of the five horses, contrary to WIS. STAT. § 951.13(1), as penalized under WIS. STAT. § 951.18(1).

¶2 Thiry appeals one aspect of the judgment of conviction. She challenges a circuit court order assessing expenses to her, specifically requiring her to reimburse Waupaca County for expenses arising from the investigation that were generated for the county related to all five of the seized horses, pursuant to WIS. STAT. § 173.24, not just the expenses related to the one horse that Thiry was convicted of mistreating. Based on a plain language interpretation of § 173.24(3), I reverse the order of the circuit court and remand with directions.

BACKGROUND

¶3 As part of an investigation of alleged animal mistreatment, sheriff's department employees seized five horses that Thiry kept at a farm. The horses were thereafter kept and cared for elsewhere, at least for a time at the expense of Waupaca County. In a civil action separate from this criminal case, the circuit court ordered the disposal of three of the horses, and those horses were sent to rescue in another county, thus generating no further costs for Waupaca County. One of these three horses, named "Lady," is discussed below. The remaining two horses were held by Waupaca County. In the civil case, Thiry was ordered to pay \$350 per month to cover some of the expenses incurred for the two horses held by Waupaca County to prevent those two horses from being disposed of.

¶4 After the seizure of the five horses, Thiry was charged in this case in a criminal complaint alleging fifteen counts of animal mistreatment or neglect, three counts for alleged mistreatment of each of the five horses.

¶5 At the close of the State's case at the jury trial, the circuit court dismissed seven of the charges. The jury found Thiry guilty on one of the remaining charges, for intentionally failing to provide food to Lady. The jury acquitted Thiry on the other seven counts that remained after the State dismissed charges. Following the verdict, the circuit court entered a judgment of guilt against Thiry on the single misdemeanor count.

¶6 At a hearing following sentencing, the court considered the State's request that Thiry be ordered to reimburse the county for the expenses related to investigation and seizure of all five horses, pursuant to WIS. STAT. § 173.24.² At the hearing, the State offered evidence, not contested by Thiry, that the total

² WISCONSIN STAT. § 173.24 provides, in pertinent part:

Reimbursement for expenses. (1) A court shall assess the expenses under this section in any case in which there has been a search authorized under s. 173.10 or in which an animal has been seized because it is alleged that the animal has been used in or constitutes evidence of any crime under ch. 951.

(2) Expenses covered under this section include:

....

(3) If the person alleged to have violated ch. 951 is found guilty of the violation, the person shall be assessed the expenses under subs. (1) and (2). If the person is not found guilty, the county treasurer shall pay the expenses from the general fund of the county.

There is no dispute in this appeal about whether the county has properly categorized its expenses as the types of expenses specified in subsection (2), and therefore I do not address the categories of expenses that qualify for assessment or the accuracy of the county's claims of expenses.

expenses incurred by the county related to the five horses equaled \$9,020.51. The State took the position that Thiry is obligated to reimburse the county that entire amount. However, because it was not contested that Thiry had already paid \$3,850.00 to the county in monthly installments, pursuant to the order in the separate civil proceeding, the State asked for a reimbursement order for what the State submitted was an outstanding balance of \$5,170.51.³

¶7 In contrast, Thiry took the position that she is required in this case to reimburse the county only for expenses related to Lady in particular. The circuit court heard evidence that the total expenses related to Lady amounted to \$905.47, a figure that is not disputed. It is also not disputed that Thiry has not yet paid the expenses related to Lady.

¶8 At the close of the hearing, the circuit court assessed Thiry the larger amount of expenses, \$5,170.51. The court based its decision on the observation that WIS. STAT. § 173.24 does not explicitly indicate that expenses should not be assessed related to any animal for which “abuse wasn’t found.” The circuit court concluded that, because Thiry “was found guilty of the criminal violation” relating to at least one horse, she was responsible for the county’s expenses related to the investigation of alleged mistreatment and seizure of all five horses. Thiry appeals.

DISCUSSION

¶9 On appeal, Thiry argues that the circuit court incorrectly applied WIS. STAT. § 173.24 when it ordered reimbursement for expenses of the county

³ Apparently neither party appealed from the order in the separate civil proceeding, and in any case I am not asked in this appeal by either party to address any aspect of the civil proceeding.

related to all five horses because Thiry was convicted of a single charge related to one horse. Thiry argues that she should be assessed only those expenses related to Lady because the statute directs that courts “shall assess the expenses” at issue only if the person “alleged to have violated ch. 951” is found guilty of the charged violation, and that otherwise the county is to pay these expenses. *See* WIS. STAT. § 173.24(3). That is, Thiry argues that the language in § 173.24(3) demonstrates clear legislative intent that the State is obligated to obtain a conviction associated with a particular animal in order for the county to be allowed to recoup the expenses related to seizure of that animal.

¶10 The State asserts that Thiry’s argument is “far too simplistic,” in that “[i]t assumes that there is automatically one count for each animal in a particular prosecution,” and “there can be situations where you have a large number of small animals such as gerbils, hamsters and the like ... where the State would have the ability to charge one count collectively for all of the various animals.”

¶11 This court reviews de novo the circuit court’s interpretation of WIS. STAT. § 173.24. *State v. Leitner*, 2002 WI 77, ¶16, 253 Wis. 2d 449, 646 N.W.2d 341. “[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect.” *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110. Statutory interpretation begins with the plain language of the statute, which is given its common, ordinary, and accepted meaning. *Id.*, ¶45. Courts interpret statutory language “in the context in which it is used” and “in relation to the language of surrounding or closely-related statutes.” *Id.*, ¶46.

¶12 I conclude that under a plain language interpretation of WIS. STAT. § 173.24 Thiry is obligated to reimburse the county for the expenses related to

Lady only, because Thiry was convicted of a count involving mistreatment of Lady only. The statute explicitly provides that the county, and not the accused person, is responsible for the expenses if a person alleged to have violated chapter 951 is found not guilty of violations, as occurred in this case. *See* § 173.24(3).⁴

¶13 The State’s argument focuses narrowly on WIS. STAT. § 173.24(1), which describes when a court shall assess expenses, as support for its position that Thiry was required to pay for the care of all animals that “constitute evidence of any crime under Chapter 951.” However, this ignores subsection (3), which unmistakably governs subsection (1). As reflected in the full text quoted above, subsection (3) states that the person shall be assessed the expenses described in subsections (1) and (2) only “if the person” “is found guilty of the [ch. 951] violation,” otherwise the expenses shall be paid by the county. § 173.24(3).

¶14 There are at least two problems with the State’s argument based on the hypothetical case in which a single violation involves multiple animals. First, in this case the State elected to limit each charge against Thiry to a single animal, and there is no ambiguity about how WIS. STAT. § 173.24(3) applies in this circumstance. Second, I do not understand what the State is contending would be the difficulty in applying § 173.24 in the hypothetical case in which the State obtains a conviction on a count involving mistreatment of multiple animals. It

⁴ Thiry invites me to consider the terms of WIS. STAT. § 973.20, the statute addressing restitution in the chapter of the Wisconsin Statutes addressing sentencing, and the State directs me to WIS. STAT. § 951.18(4)(a)2., which is among the penalties provisions of the chapter addressing crimes against animals. However, neither party persuades me that either of these separate statutes sheds light on the issues presented in this appeal. The circuit court here explicitly based its order on WIS. STAT. § 173.24, and I explain in the text my conclusion that the language of that statute, in particular subsection (3) of that statute, is unambiguous in addressing the pertinent issue. This is not a case involving restitution, but instead is a case involving reimbursement of expenses related to an investigation of alleged animal mistreatment.

would seem that in that case, “the violation” would be the count of conviction involving multiple animals, and the defendant should be assessed all expenses arising from that violation. If there is a flaw in this reasoning, the State fails to explain what it might be.

¶15 Before concluding, I observe that there is no dispute in this case about the appropriate expenses that are related to each horse, in particular the appropriate expenses related to Lady. That is, the expenses were apparently documented sufficiently precisely to easily allocate expenses to particular horses. In contrast, it is not hard to imagine a case involving alleged mistreatment of multiple animals in which there is significant confusion or dispute about whether particular expenses can be attributed to one animal as opposed to another animal or a group of animals, making it difficult for a court to make reliable findings of fact to support an appropriate assessment. However, the circuit court did not make a finding that this sort of complexity was presented here, and the State does not argue that this sort of complexity was presented.

CONCLUSION

¶16 For the foregoing reasons, I conclude that the mandatory assessment can include only those expenses related to the violation for which Thiry was convicted. Accordingly, I reverse and remand to the circuit court for the court to amend the amended Judgment of Conviction dated October 31, 2014, to delete reference to “restitution due Waupaca County of \$5,170.51,” and to insert reference to reimbursement due Waupaca County of \$905.47.

By the Court.—Judgment reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

