

**IN THE MUNICIPAL COURT OF APPEALS  
OF THE CITY OF EL PASO, TEXAS**

**PATRICIA HERNANDEZ**

**Appellant,**

**v.**

**STATE OF TEXAS**

**Appellee.**

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**No. 15-MCA-3830  
Ticket No. 33456879.1**

**OPINION**

Appellant appeals her conviction in Municipal Court for owning an animal that did not have a current rabies vaccination. A fine of \$50.00 was assessed.

In companion cases, which are also before this Court, Appellant was also cited as the owner or the person who owned, kept or harbored an animal that was not properly registered or microchipped. These cases are decided this same day and the reasoning and holding of this case are equally applicable to them.

The regulations relating to animals are found in Title 7 of the City Code of El Paso. Those regulations are applicable to any person who is defined as an “owner” as found in Chapter 7.04, Section 7.04.010(v). As therein defined, an “owner” means a custodian, caretaker or person who feeds or harbors the subject animal for more than 72 hours without the presence of that subject animal being recorded in the records of the program as a stray animal.

Although there is no Reporter’s Record before this Court, the file and entries therein indicate that the issue before the Trial Court was whether Appellant met the definition of an owner and therefore was required to have the animal vaccinated, registered and microchipped or whether the animal was a stray animal or what is known as a feral cat, in which case those regulations would not apply. That issue presented a fact determination for the Trial Court to make based on evidence that was introduced before it.

Unfortunately, this Court does not have a Reporter's Record that shows what evidence was actually introduced in support of or in opposition to those conflicts in the evidence.

On the one hand, there are some notes that are in the file that suggest that there was some evidence introduced that Appellant had been feeding or otherwise caring for this animal and therefore could have been considered an owner. Appellant's contention is that she was participating in and abiding by the Trap-Neuter-Return Program (TNR) which is sanctioned by the City of El Paso Environmental Services Department. That program allows people to trap a feral animal and take it to a veterinarian so that it can be vaccinated and neutered to prevent the proliferation and uncontrolled reproduction of feral animals. Appellant indicated that she proved that the cat was ear-tipped indicating that it had been neutered and was a feral cat. She further claims she provided evidence that the animal was vaccinated. She denied that she owned the animal and supposedly testified that the animal lives in the neighborhood but has no true residence, and that she neither feeds, waters nor provides shelter to the animal.

Appellant does provide a document from a veterinarian (See attached) indicating that she was participating in a feral cat program, and the veterinarian was submitting a reimbursement medical form, presumably for payment for his services as a participant in that program. That form identifies the cat by name which is the subject of the citation she received and indicates that the animal had been vaccinated, its ear clipped and it was neutered.

Appellant contends further that the judge who heard her case was not familiar with the Trap-Neuter-Return Program established by the City of El Paso and supposedly refused to allow her to testify with reference to that program, but rather, demanded that Appellant provide proof that the animal had been microchipped, vaccinated and registered as required by Title 7.12.020 for an owned animal. That section, although providing regulation for an owned animal, does not have similar requirements for feral animals.

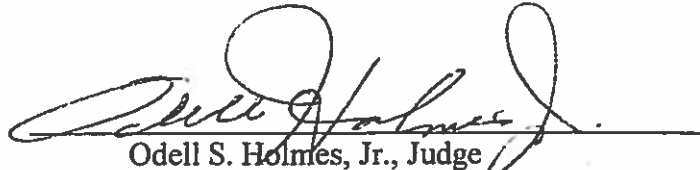
Appellant has also provided a circular distributed by an organization known as Sun City Cats that encourages participation in the TNR Program and evidently has the support and backing of the City of El Paso encouraging people to participate. That circular states that virtually all trapped feral animals are killed once they are in the shelter, but that actually catching and killing the animal is wasted because once an animal is removed from the area, a new feral animal moves in and takes over the territory. Further, under the Trap-Neuter-Return Program the animals are humanely trapped, spayed/neutered/, vaccinated for rabies, ear-tipped for identification, microchipped and returned to their outdoor homes.

The evidence that Appellant has provided to this Court and the record before it strongly suggests that she was in fact participating in the Trap-Neuter-Return Program, and has documentary proof that this particular animal was seen by a veterinarian and certified as having been handled under the guidelines of the Pets Alive/EPBMA Feral Cat Program.

The Trap-Neuter-Return Program (TNR) that was sanctioned by the City of El Paso is not codified in the City Code or in any other regulations which this Court has been able to review. In passing, this Court would probably recommend that the Department of Animal Services or Environmental Services, whichever may have jurisdiction, should propose enactment of regulations in the Code that address the requirements of that program, recognize its existence, and either provide that a person participating in that program is exempt from other applicable provisions of Title 7 or that participation in that program would be a defense to a charge brought under that Title.

The holding of the Trial Court, either because the Court was unfamiliar with that program or did not permit Appellant to introduce evidence in support of her defense, requires that this case be reversed and remanded to that court for further consideration.

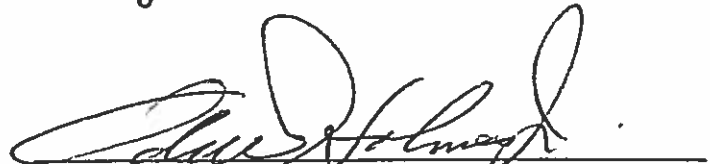
SIGNED this 24<sup>th</sup> day of February, 2016.

  
Odell S. Holmes, Jr., Judge  
El Paso Municipal Court of Appeals

**JUDGEMENT**

This case came on to be heard on the Transcript of the Record of the Court below, the same being considered, it is ORDERED, ADJUDGED and DECREED by the Court that the case is reversed and remanded.

SIGNED this 24<sup>th</sup> day of February, 2016.

  
Odell S. Holmes, Jr., Judge  
El Paso Municipal Court of Appeals

Veterinary Reimbursement Medical Form

Feral Cat Program  
Feral

This original form must be submitted within 15 days to Pets Alive for every cat altered through the Feral Cat Program. All testing and vaccinations (other than Rabies vaccines) are optional and paid for by the Trapper. Veterinarians will only be reimbursed for the OHE/Castration surgeries, Rabies Vaccines, and Euthanasia. We view this as an opportunity to gather information on the Feral Cat population in El Paso metro area. We appreciate your time on this matter. Summaries of the information provided/obtained will be supplied to EPVMA. Please make a copy of this form for your records.

Type of Trap: Pets Barn  Private  Clinic Trap

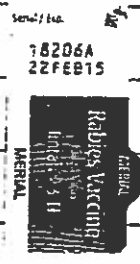
DVM Name: GUY JOHANSEN DVM

Trapper Name: P. Hernandez

Clinic Name: JOHANSEN AV. Hosp

Donation Amount: \$ \_\_\_\_\_

Date of Surgery: 5-1-14

Cat Description Color/Weight	M	F	Estimated Age	?Pregnant? # of Fetuses	Rabies Vaccination Label #	Right Ear Clip	Neuter	Notes
1. <u>CAULO</u>		<u>X</u>	<u>1 yr.</u>	<u>—</u>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2.								
3.								
4.								

Optional Test: FeLV  FIV

Optional Vaccinations: FeLV  RCP  FIP

Please indicate which cat(s) had spay scar(s) of previous surgery or neuter. Right ear tipped while under anesthesia and Rabies Vaccine was given.

If any cat(s) died, please indicate which cat(s) and check reason: Surgical Death  Euthanized

Reason: \_\_\_\_\_

Medical Notations:

.3 Royn(SA) + .3 fentanyl IM

.4 POLY SA, .4 PRED SA, .07cc BUPRENEX IM @ 9:

Please sign. I certify that the above OHE/Castration surgery has been performed under the guidelines of the Pets Alive/EPVMA Feral Cat Program.

Veterinarian Signature

Printed Name

Date

[Signature]

GUY JOHANSEN DVM

5-1-14