

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

MARIA & RAFAEL RAMIREZ

Appellant,

vs.

STATE OF TEXAS,

Appellee.

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No. 05-MCA-3028

OPINION

Appellants appeal the trial court's dismissal of their attempted appeal to that court after being informed by an animal control authority that their dog was a dangerous dog under the provisions of Section 822.421, Tex. Health & Safety Code.

Under the above section, an owner, not later than the the 15th day after the date the owner is notified that his dog is a dangerous dog, has a right to appeal the determination of the animal control authority to a justice or municipal court of competent jurisdiction. It then further provides that the owner may appeal the decision of the justice of the municipal court in the same manner as appeal for other civil cases. At a hearing before the trial court, the trial court dismissed the attempted appeal by the owners for lack of jurisdiction, and this appeal was duly perfected from that decision.

The statute provides the right of appeal but fails to provide any mechanism for perfecting that appeal. In that respect it clearly fails to provide due process of law to a person seeking to exercise their right of appeal. It gives you a right of appeal but fails to tell you how to appeal, and that is its fatal deficiency. This court is not aware of any other statute that recognizes a right of appeal but fails to prescribe the criteria for effecting a valid appeal, that is, whether notice of appeal needs to be given, or whether a motion for new trial or filing an appeal bond is necessary.

The record in this case, as a result of capable counsel's perfection of a bill of exception contained in the Statement of Facts filed in this case, clearly reflects that Appellant was attempting to appeal the

decision and in a timely manner, that is, within fifteen (15) days of receiving the notice from the animal control officer. It is not surprising to this court, that when he sought the assistance of Municipal Court Clerks, they were unfamiliar with the procedure and were unable to assist him in perfecting his appeal. Neither those clerks nor this court probably could have assisted him because the legislature itself failed to provide any guidance on how to appeal such a decision. Nonetheless, it is this court's opinion that his efforts to perfect an appeal were sufficient to put those on notice of his intention to appeal the court's decision even though no mechanism was made available to him in order to do so.

The City's contention that the Municipal Court clerks are not required by law to see to it that a person perfects their appeal under the requirements of the law is probably correct, even though that assistance is customarily given in other situations in order to accommodate people and be helpful as possible in the handling of their cases because so many people appear in Municipal Court on a Pro Se basis. Although correct in that contention, it is not the failure of the clerks for not providing guidance to perfect an appeal but the legislature's failure to enumerate the procedure for perfecting the valuable right of appeal which they give in the statute.

This court's opinion in this case may well have been different if the record failed to reflect that Appellant made any effort to appeal his case within the fifteen (15) day period provided by the statute.

Therefore, what can be learned from this case, is that if a person attempts, in a timely manner, to effect an appeal from this decision under Section 822.0421(b), whether in writing or oral, the court should exercise jurisdiction over his case and afford him a hearing on the issue whether his animal should be classified as a dangerous dog. Further, the judges or the clerks that may be confronted with this situation in the future, should encourage anyone attempting to appeal, to provide some written notice of such fact clearly expressing their intention to appeal that decision so that a written record of that desire can be preserved. However, that is not to say, that written notice of appeal is required, because again, the statute fails to address that requirement.

This court recognizes that this case presents a matter of first impression for this court as well as of the jurisprudence of Texas as far as this court can ascertain, but hopefully the contents of this opinion will provide some guidance to those who may navigate its waters.

Therefore, this court reverses and remands this case to the trial court and directs it to exercise jurisdiction over this matter and to hold a hearing to determine the contested issue presented.

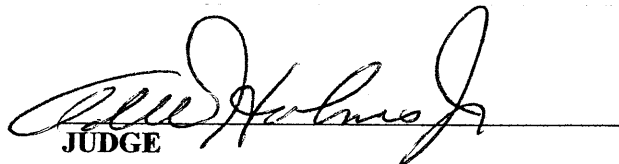
SIGNED this 28 day of Sept, 2005.


JUDGE

J U D G M E N T

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 be reversed and remanded to the Trial Court for re-trial.

SIGNED this 28 day of Sept, 2005.


JUDGE