

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

April D. Warrington,
Petitioner;

v.

CASE NO: 24-TC-006

Floyd Silas, Jr.,
Respondent.

ORDER

This case came before the Oneida Trial Court, the Honorable John E. Powless III presiding.

Appearing in-person: April D. Warrington, Petitioner, and George Cannon, Petitioner's advocate; Floyd Silas, Jr., Respondent.

Background

Petitioner filed a small claims complaint with the Trial Court on May 9, 2024. Petitioner seeks to recover veterinary expenses in the amount of \$816.36 plus court costs from Respondent.

Petitioner alleges her dog was bitten by Respondent's dog on December 8, 2023. At a pre-trial hearing on June 18, 2024, the parties agreed to complete discovery by July 2, 2024. The parties consented to exchange discovery by electronic communication. A trial was scheduled on July 9, 2024. At Trial, Petitioner bears the burden to prove by a preponderance of the evidence that her dog was bitten by Respondent's dog, making Respondent, as the dog's owner, liable for damages caused by his dog.

Principles of Law

8 O.C. Judiciary – Rules of Civil Procedure – Chapter 803

803.28. Judgement, Costs

803.28-2. Types of Relief.

- (a) Every final decision of the Court shall grant relief based in law and equity to the party in whose favor the decision is rendered. Relief granted need not be identical to the relief demanded in the pleadings or at a hearing.

803.28-3. *Form of Decision.* The Court may issue decisions in the form of fines, orders, penalties, or other the Court deems appropriate, which may include, but not limited to:

- (a) Awarding monetary damages, including punitive damages, to be paid by the party found to be in violation of any Tribal law, to the injured party;
- (b) Directing the surrender of certain property to the injured party which the injured party is found to be legally entitled;
- (c) Directing the performance of some act or the ceasing and desisting from performance of some act for the benefit of the injured party;
- (d) Directing a party in violation of Tribal laws to cease and desist from further violations and cure said violations within a specified period of time;
- (e) Directing the payment of specified monetary fines for violations of Tribal laws, Court orders or agreements made during mediation or peacemaking;
- (f) Directing mandated community service and/or denial of specific Tribal benefits;

803.28-4. *Costs.*

- (a) The Court may, in its discretion, require the non-prevailing party to pay some or all of the reasonable costs of the prevailing party.

803.31. Entering Judgment; Enforcement

803.31-1. *Entering Judgment.*

(d) Satisfaction of Decision. The clerk shall file all satisfactions of decisions and note whether whole or partial and the amount thereof in any existing case log or index of cases and decisions.

A decision may be satisfied, in whole or part, as to any or all of the non-prevailing parties, when:

- (1) The party awarded the decision files an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction; or
- (2) The Trial Court may order the entry of satisfaction upon the proof of payment by the debtor and failure of the decision creditor to file a satisfaction;

(e) Effect of Satisfaction. A decision satisfied in whole shall be entered in the index of decisions as such.

- (1) A partially satisfied decision or unsatisfied decision shall continue in effect for four
- (4) years or until satisfied, whichever occurs sooner.

(2) An action to renew the decision remaining unsatisfied may be maintained any time prior to the expiration of four (4) years and shall extend the period of an additional four (4) years and may be thereafter further extended by the same procedure.

Analysis

In accordance with 8 O.C. 803.4-8, the burden of proof is on the Petitioner to substantiate its claim that Respondent's dog, Punky, bit Petitioner's dog, Temperance, on December 8, 2023, by a preponderance of the evidence. On December 8, 2023, Petitioner alleged Respondent's dog, Punky, entered her yard and bit Temperance, resulting in Temperance receiving medical services for laceration repair and wound drainage, totaling \$816.36. Petitioner is seeking Respondent to pay \$816.36 for incurred veterinary expenses and \$25.00 in court costs, totaling \$841.36. Petitioner alleges her father, George Cannon and son, Braylon Warrington and herself were eyewitnesses to the alleged attack. As a result, Petitioner further contends Braylon intervened and separated Punky from Temperance and returned Punky to Respondent's garage. Through testimony, Braylon indicated that while separating the dogs, he grabbed what he believed to be a broken chain attached to Punky to separate the dogs. Upon returning Punky, he took Punky inside Respondent's garage. While inside the garage, he testified that he did not see another dog. Braylon also testified that in the past, he has fed and provided water to Punky for the Respondent.

The Respondent asserted that on December 8, 2023, he was home, and at no time was Punky loose, therefore, did not bite Temperance. Respondent further states that multiple dogs run loose in Cornelius Circle, some of which include German Shepherds. Respondent concluded, Punky has a very friendly demeanor and has never attacked another dog. Last, Respondent does not contend that Temperance wasn't attacked on December 8, 2023, but that Punky did not bite or attack Temperance on that date and was probably another loose dog.

In this case, the burden of proof is on Petitioner to prove by a preponderance of the evidence that Respondent's dog, Punky, bit Petitioner's dog, Temperance on December 8, 2023, at Petitioner's residence. What the Court found most convincing is the testimony provided by witness, Braylon Warrington. Braylon testified that he has a relationship with Punky, in the past, he helped care

for Punky, played and provided food and water for Punky. Braylon also testified that after he separated the two dogs, he walked Punky back to Respondent's garage. The garage door was propped open, he entered the garage and returned Punky, while doing so, he did not see another dog inside the garage or in the vicinity. Braylon stated through his relationship with Punky, he identified the dog who attacked Temperance to be Punky. As a result of Braylon's testimony, this Court finds the Petitioner proved by a preponderance of the evidence that Punky bit Temperance and therefore, Petitioner may be entitled to all or some of the veterinary costs the Court deems reasonable. In accordance with 803.28-2 and 803.28-4, the Court may grant the non-prevailing party to pay some or all the reasonable costs to the prevailing party. Here, for reasons the Court is not aware of, this incident occurred on Friday, December 8, 2023, and Petitioner did not take Temperance in for veterinary services until Wednesday, December 13, 2023, five (5) days later. Not knowing the reasoning, this Court recognized that by taking Temperance in sooner, may have resulted in fewer medical services. Thus, this Court finds it reasonable that Respondent is responsible for a portion of the veterinary bill.

Finding of Facts

1. The Court has subject matter and personal jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. Petitioner alleges her dog was bitten by Respondent's dog on December 8, 2023.
4. On December 13, 2023, Petitioner took her dog, Temperance in for medical services at Countryside Veterinary Health, because of an alleged bite from Respondent's dog, Punky.
 - a. The total costs for veterinary services are \$816.36.
5. On May 9, 2024, Petitioner filed a small claims complaint to recover \$816.36 veterinary expenses plus \$25.00 court costs from Respondent.
6. On July 9, 2024, a trial was held.
 - a. Petitioner appeared with her father, George Cannon, Petitioner's advocate.
 - b. Respondent appeared without legal representation.
7. Petitioner's dog is a mixed breed weighing about 20 pounds and named, Temperance.
8. Respondent's dog is a German Shepherd named, Punky.
9. Due to the party's challenges in exchanging discovery, the Court accepted all discovery and/or witness lists by the parties.

10. The Petitioner proved by a preponderance of the evidence that Punky bit Temperance and therefore, Petitioner is entitled to all or some of the veterinary costs the Court deems reasonable.
11. The Court finds it reasonable that Respondent is responsible to pay \$600.00 of the veterinary bill and \$25.00 in court costs within one-hundred and twenty (120) days from the date of this order.
 - a. Respondent may request additional time to pay by contacting the Trial Court Clerk.
 - b. At the conclusion of one-hundred twenty (120) days from this court order, Petitioner will submit proof to the Court that Respondent paid all or some of the total amount owed to Petitioner within the court ordered timeframe.
 - c. In the event Respondent does not comply with this court order, the Court may order a status hearing or apply tribal remedies to satisfy damages to Petitioner.

Order

1. The Court orders Respondent to pay the following to Petitioner:
 - a. \$600.00 toward veterinary expenses the Petitioner incurred,
 - b. \$25.00 in court costs,
 - c. The total amount owed to Petitioner is \$625.00 on or before one-hundred and twenty (120) days from the date of this court order.
2. At the conclusion of one-hundred twenty (120) days from this court order, Petitioner shall submit proof to the Court that Respondent paid all or some of the total amount owed to Petitioner within the court ordered timeframe.
3. If Respondent does not comply with this court order, the Court shall order a status hearing or apply tribal remedies to satisfy damages to Petitioner.

IT IS SO ORDERED.

By the authority vested in the Oneida Trial Court pursuant to Resolution 01-07-13-B of the General Tribal Council, an order was signed on July 10, 2024.


John E. Powless III, Trial Court Judge