

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

| | | |
|--|---|-------------------------|
| MICHAEL PACHER | § | |
| KOREEN PACHER | § | |
| Plaintiff Below, | § | |
| Appellant | § | |
| | § | C.A. No. JP17-19-004722 |
| VS | § | |
| | § | |
| | § | |
| SANDHILL ACRES MHC LC AKA SANDHILL ACRES | § | |
| MHC LLC | | |
| Defendant Below, | | |
| Appellee | | |

TRIAL DE NOVO

Submitted: March 30, 2021

Decided: June 8, 2021

APPEARANCES:

Plaintiff represented by Curtis Crowther, Esq.

Defendant represented by Nicole Faries, Esq.

William P. Wood, Justice of the Peace

Richard Comly, Justice of the Peace

Alan G Davis, Chief Magistrate

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

CIVIL ACTION NO: JP17-19-004722

PACHER VS SANDHILL ACRES MHC AKA SANDHILL ACRES MHC

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Procedural Posture

Plaintiff, Michael and Koreen Pacher (hereinafter "Pachers"), brought this action against their landlord, Sandhill Acres MHC LLC (hereinafter "Sandhill") seeking a declaratory judgment that a new park rule promulgated by Sandhill regarding the feeding of free-roaming cats was unenforceable and void as a matter of public policy and law. Trial before a single judge had been heard at the same time legal argument was made on the issue of whether the Court had jurisdiction over a declaratory judgment in this matter. When that judge ruled that this Court did not have jurisdiction, Plaintiffs brought a timely appeal. A three judge panel decided that issue on appeal and referred the case back to the single judge for a determination on the merits. The judge issued an opinion on the merits and Plaintiffs appealed that decision.

The Court held a three judge panel trial on the merits on March 30, 2021. This is the Court's decision after trial. For the reasons stated below, the Court finds that the portion of the rule assigning responsibility of stray animals is contrary to public policy and law and is therefore declared null and void. The Court has further determined that the portion of the rule regarding the feeding of animals outdoors is valid on its face, but unenforceable as written with regard to the facts presented in this case.

Facts

The Pachers are the owners of their manufactured home. It sits on a lot in Sandhill Acres, owned by the defendant. Sandhill Acres is a manufactured home community, with many residents. The plaintiffs have a lot lease for the placement of their home and therefore are subject to the provisions of that lease. The lease permits the landlord to promulgate certain rules pertaining to the health, safety and welfare of all tenants. In this instance the landlord issued rules directed toward curtailing the impact of a colony of free-roaming cats that have become something of a fixture in the park. The rule states, in pertinent part: "FEEDING ANIMALS – Feeding stray or wild animals is prohibited. If you feed a stray or wild animal, you will be considered responsible for that animal and any and all costs associated with it, including the cost of having the animal(s) removed from the property." Landlord has instituted these rules due to the negative impact of the feral cat colony, such as digging

VIEW YOUR CASE ONLINE: <https://courtconnect.courts.delaware.gov>

in yards and landscaping, getting into garbage, walking on and around other tenant's property and vehicles, and depositing feces in the community.

At the same time, Plaintiffs – with the assistance of other tenants - have engaged in a program to limit the impact of the feral cat colony. These programs, as testified to by Becky Robinson of Alley Cat Allies, are generally referred to as TNR or TNVRM programs (“TNR” herein). These programs follow a course of Trap, Neuter (Sterilize), Vaccinate, Return, Manage. Cats are humanely trapped in live traps, given medical treatment, spayed or neutered, “tagged” with a clipped ear, put back in their normal haunts and then managed through feeding and observation. If new cats enter the colony, they are identified by the lack of a clipped ear during feeding periods and targeted for future trapping.

The goal of TNR programs is to reduce the feral cat population through limited human intervention. As the cats are sterilized, they are unable to reproduce and the population diminishes through attrition. According to Robinson, the programs have been refined over time to provide for the most humane treatment and achieve the goal of the program – eventual elimination of the colony – in the most efficient way possible. She testified that all the components of the program are necessary and that the final step of feeding and observation is critical to the program success. Without a careful observation and remedial action when new cats enter the colony, the program is initially effective but fails long term. She further testified that stopping the feeding is actually counterproductive, as the cats don't just go away, and engage more obtrusively in the behaviors that some people find troublesome – particularly getting into trash in search of food.

The plaintiffs have worked to trap cats on the property, give them medical care, sterilize them and return them into the community. Their effort has resulted in over 125 cats being trapped. About 25% have been adopted out rather than returned. According to Robert Ray, the HOA President and a participant in the TNR program, there has been a diminishment of both the number of cats in the neighborhood and the nuisance behavior of the cats. Gary Creppon, Manager of Sandhill Acres, agreed that there has been a reduction in the number of cats and a reduction in the overall number of complaints about the cats since the program was started, but also indicated that he believes the feeding is attracting other forms of wildlife. There is limited evidence before the Court that the landlord was aware of and condoned the trapping effort, or at least did not object to it. It is only after the plaintiffs began the final stage of the program – feeding and observation for the management of the colony – that the landlord put in place the rules against feeding.

Creppon further testified that he tries to be as even-handed as possible in enforcing the rules. At the same time, they work on a complaint-based system, and in May 2019, the office received several tenant complaints about the cats and the feeding. It is only after these complaints that the community took action and sent notice to the plaintiffs. Upon further observation, Creppon testified that he saw feeding stations beside the shed on the plaintiffs' lot.

Discussion

The Court is presented with significant evidence, both generally and in the present instance, that TNR programs work. Further, the General Assembly has weighed in on this issue, making Spay/Neuter Fund monies available to persons engaged in these programs. That body has also clearly indicated that those who undertake these programs are not to be considered the “owner” of these cats.¹ The community’s rule regarding “responsibility” of those who feed feral or wild animals is in direct opposition to this public policy. For this reason, that portion of the rule is declared null and void.

The rule regarding the actual feeding of the cats is not so clear a call for this Court. While it is apparent from the evidence before the Court that a properly followed TNR program has the intended effect, the Court can see how feeding would be considered by some as an invitation to additional cats to join the colony. Further complicating matters is the fact that this case is taking place in the context of a manufactured home community. Not only are there close proximity neighbors to consider, homeowners lease the property; that lease does not include unfettered use of the property for any purpose. The land owner may properly promulgate rules for the benefit of the health, safety, and welfare of all residents so long as it does not impinge on the quiet enjoyment of the lease.

In a perfect scenario, residents would engage the community owner before embarking on a TNR program, hopefully aligning everyone’s interests. Such a step would also bring understanding of all of the necessary steps to fully implement such a program, including what is necessary under the “management” step. We are not in a perfect scenario here. The Plaintiffs and other residents undertook this TNR program with something less than actual buy in from the community owner. The landlord seems willing to accept – and enjoy the benefits of - the TNR program all the way to the penultimate step, drawing the line at the feeding requirement. However, without the feeding and observation that feeding affords, the program may well only achieve short term success.

Plaintiffs contend that it is incumbent upon the landlord to show that the regulation is reasonable. The Court believes that, on its face, a regulation prohibiting feeding wild or feral animals is reasonable. The further question is whether this rule is reasonable under the current circumstances. The Court concludes that it is not. Plaintiffs began a TNR process that partially inured to the benefit of the community owner. The program was a success in the metrics of a reduced cat population and a reduced number of calls from residents complaining of the cats; clearly the community owner received benefit from the TNR program. The Court finds it unreasonable for the community owner to want and benefit from all the immediate positives of the program, but eliminate the possibility of long term success of it by its rule against feeding.

For that reason, we find that the rule itself is reasonable and generally enforceable, but not enforceable in this instance. So long as the Plaintiffs can show that they are feeding at discrete intervals and conducting

¹ 16 Del C 3013F (j) defines “Free-roaming cat caretaker” as a “person who provides shelter, medical care, or food to 1 or more feral or free-roaming cats lacking discernible owner identification, and works to reduce colony numbers by working to spay and neuter the animals within their specific colony or colonies. Free-roaming cat caretakers are not owners.”

necessary observation of the cat population to continue to manage the colony with the ultimate goal of its elimination through attrition, the rule would remain unenforceable. However, should the residents not continue to abide by the best practices of the TNR program, the landlord could seek to enforce this rule. Whether they are actively following best practices is not currently before this Court.

Judgment

For the reasons stated above, the Court finds by a preponderance of the evidence that the portion of the rule pertaining to assigned responsibility for stray animals is against public policy and is therefore declared void. Further, the Court finds the portion of the rule relating to the feeding of stray or wild animals is valid and enforceable, but not under the primary circumstances presented in this trial. Unless the landlord can show that the plaintiffs or others are not following the best practices for the feeding and observation of the cat colony in accordance with the TNR program, the rule may not be enforced. This order is not to be construed to say that promulgated rules against feeding feral cats can be disregarded in every case where tenants undertake a TNR program in an effort to reduce a feral cat population properly. Nor is it to be construed to say that a community owner cannot promulgate a rule that takes into account such programs and limits program related feeding schedules to appropriate times and intervals and necessitates the level of program directed observation.

IT IS SO ORDERED 08th day of June, 2021

/s/Alan G Davis
Chief Magistrate
For the Court



Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).