Reading *Eureka Township vs Petter et. al.* (and other Minnesota cases)

Hon. Gordon Shumaker (Ret.)*

Preface

The following is intended as a brief primer for non-lawyers for reading cases that typically involve issues of animal rights and welfare. Although each case has its own unique facts, there are similarities in the general themes and principles that recur. I have tried to highlight a few of those. I have also briefly discussed the recent *Eureka Township case*, which dealt with the possession and exhibition of exotic animals.

Legal System Context

Two Court Levels

Our focus is on two levels of the Minnesota court system, namely the **district court** and the **court of appeals (COA).** All trials and related evidentiary proceedings (in which witnesses testify and things such as photographs are presented) are held in the district court. A party aggrieved by the outcome of a district court proceeding has a **right to appeal** to the COA. There are two exceptions:

- In a criminal case, if the defendant is acquitted (found not guilty), the prosecution cannot appeal. The case is over.
- First degree murder convictions, election contests, and certain worker compensation cases are appealed directly to the Minnesota Supreme Court.

Nature of Appeal

The COA reviews the district court matter to determine whether a **legal error** that likely **affected the outcome** occurred. This can be an error in the receipt or exclusion of evidence or the misapplication of the law. If the COA concludes that there was no such significant error, it **affirms** that outcome. If there was such an error, it **reverses** the outcome. In some instances, there can be a partial affirmance (as to certain issues) and a partial reversal (as to other issues). Sometimes the COA finds it necessary to **remand** the case, that is, to send it back to the district court for some corrective action.

Written Decision

The COA's decision will always be in a writing called an **opinion.** There are two categories of opinion. **Published opinions** become *precedent*, that is, they establish or clarify a rule of law that must be followed in later cases. **Unpublished opinions** have no authority as precedent and do not affect the law generally but rather apply established law to the particular cases about which the opinions are written. The terms *published* and *unpublished* have nothing to do with the opinions being made public; all opinions are public.

End of the Line

For all practical purposes, every case ends with the COA decision. There is **no right of appeal** to the supreme court (except as to those very few types of cases noted above). The reason is that the supreme court is a **court of discretionary review.** This means that it has the discretion, the choice, to review, or not, a case that has already been decided by the COA. The technical term for requesting the supreme court's review is **petition for further review**, rather than appeal. The supreme court grants very few petitions for further review.

No Further Evidence

Neither the COA nor the supreme court is an "evidentiary" court. In other words, no testimony is taken and no other types of evidence are presented in those courts. Rather, lawyers prepare written briefs and give oral arguments solely on the basis of what happened in the district court. The evidence and judge's rulings in the district court are the only things the appellate courts can consider on appeal. Nothing new can be submitted. This highlights the importance of **making a record** in the district court, that is, bringing all relevant and proper evidence into the case at that level.

Interpreting Statutory Law

Nearly all law is made by legislative bodies, namely, the state legislature (statutes) or local municipal bodies such as city councils or township boards (ordinances). As such, the district court and the COA are often called upon to interpret those laws. This is frequently true in cases involving the possession and use of animals. And it was true in the *Eureka Township* case.

Frequently, a municipal body has applied, failed to apply, misinterpreted or misapplied a law, and an aggrieved person then challenges that action, or

inaction, in a district court lawsuit or related proceeding. That is how matters involving animals often come to the district court's attention. That is how the issues in *Eureka Township* came to the district court.

When courts interpret statutes, they are required to follow certain guidelines. Here are the guidelines the COA identified in *Eureka Township*:

- The COA reviews the interpretation of statutes and ordinances ***de novo.*** This means that the COA need not give any defference to the district court's interpretation but rather looks at the law anew.
- Statutes and ordinances are **presumed to be valid**. This is a **rebuttable presumption**. In other words, it can be overcome by a *clear* showing of the law's invalidity.
- An ordinance is invalid if it ***directly and irreconcilably*** conflicts with a state statute. Recognizing the presumption of validity that applies to both statutes and ordinances, the COA will try to read the laws as compatible if it can reasonably do so.
- The goal of statutory (including ordinances) interpretation is to determine the **intent of the legislative body** in enacting the law. This is not the intent of individual legislators, as perhaps was expressed during hearings or in legislative committees, but rather the **apparent collective intent** that the legislative body made manifest. Ideally, the legislative body would state its intent--and that has happened in some instances--but it usually does not do so. **If legislative intent is clear**, courts must follow and apply it, whether they agree with it or not.
- Among the guidelines for discovering intent when considering property issues are (1) the plain language of the law; (2) the underlying policy and purpose of the law; and (3) an interpretation that favors the property owner.
- If the law contains a **technical definition**, that definition controls. If there is no technical definition, the ordinary **dictionary definition** controls. ***NOTE***: It is not proper to take a definition from one set of laws and apply it to a different set of laws. For example, the tax code might define "property" in a particular way, but that definition cannot be properly used in a set of zoning laws.
- Any statutory interpretation must lead to the **reasonable application** of the law because it is an absolute presumption that the legislative body did not intend an absurd result. ***NOTE***: All laws are merely abstractions until they come into

actual application. In a sense, they are meaningless until applied. So, courts will always look at how the law actually works in real life. There may appear to be contradictions in language that disappear when the law is put into practical application. Courts often use the term **"operative language,"** that is the language that makes the law operate.

- Occasionally, the state legislature has decided to preempt a field of issues from enactment of laws by a local body. In other words, the legislature fully controls those issues through state statutes and leaves no room for local regulation. If there has been **field preemption**, any local ordinance that attempts to regulate something within that field is void.

These are not all of the guidelines available for statutory interpretation but are several of the important and recurring principles, and are those referred to in *Eureka Township.*

The Eureka Township Case

The General Issue

Broadly this case involves the question of a person's ability to possess exotic animals on her agricultural property under the Township's zoning laws.

The Parties

The zoning authority is the Eureka Township. Teresa Lynn Petter owns agricultural property within the township. She lives on the property with Daniel Storlie, who is a wildlife specialist with the USDA. Petter operates two corporate businesses on the property, namely, Wolves, Woods & Wildlife and Fur-Ever Wild Ltd. In conjunction with those businesses, Petter acquires and exhibits to the public various species of exotic animals.

Attention of the Township Board and the District Court

Petter applied for various building permits to construct shelters for her exotic animals. In connection with one application, the board requested an inventory of her animals, expressing concern about whether she was in compliance with the zoning laws. As early as 2008, citizens complained to the board about Petter's possession of exotic animals. In 2013, the board held a hearing and ruled that

Petter was in compliance with the exotic animals ordinance. A lawsuit arose out of that ruling but was resolved.

In 2015, the Township sued Petter, Storlie and the two corporations, seeking to enjoin them from (1) possessing exotic animals, (2) operating an animal exhibition, and (3) operating an exotic animal pelting business. ***NOTE***: The usual legal route to get someone to stop doing something is to seek an **injunction** that prohibits the act. That's what the Township did here.

After a trial, the district court (1) ruled that the Township's exotic animals ordinance was invalid because it was in conflict with state law; (2) determined that it was not permissible under the zoning law to exhibit exotic animals, and therefore enjoined that activity; and (3) enjoined retail sales of horticultural products except those produced on Petter's land.

The Appeal

The Township appealed, challenging the district court's ruling that its exotic animal ordinance was invalid. Petter and the others appealed, challenging the other rulings that were adverse to them. So, the COA had to determine whether the ordinance was valid and whether Petter's possession and use of exotic animals complied with the law.

The Exotic Animal Ordinance and State Law

The ordinance in question made it illegal for any person to possess an exotic animal in the Township. The ordinance then defined "exotic animal," which included a long list of what ordinarily are considered wild animals, including wolves and foxes. The COA said that the *plain language* of the ordinance showed the Township's intent to prohibit the possession of exotic animals within the Township. The express purpose of the ordinance was twofold: (1) to protect the public against health and safety risks posed by exotic animals, and (2) to protect the welfare of the animals. So, the question of what the ordinance means and does is resolved by its language. The next question is whether the ordinance is in conflict with state law.

Petter claimed two state statutes dealing with the right to possess fur-bearing animals were in conflict with the ordinance. The COA held that the state laws and the ordinance dealt with different subjects. The state laws provide for registration with the DNR to conduct fur farming, and those laws do not relate to

public safety and animal welfare. Furthermore, the ordinance does not prohibit the fur farming activity that is permissible under state law. Therefore, there is no conflict between the ordinance and those two statutes.

Petter next claimed that the ordinance is in conflict with the state's game and fish laws. Those laws allow, under certain conditions, breeding of fur-bearing and game animals, and provide for a licensing system. Those laws relate to fur-bearing animals, such as foxes and wolves, and Petter argues that the ordinance specifically forbids the possession of foxes and wolves. Thus, she claims, the ordinance is in conflict with the statutes. But the COA noted that merely because apparently conflicting definitions are used in the respective laws, that does not necessarily mean that the laws are in conflict. Rather, we must look to the *operative language and corresponding DNR agency rules.* Once again, the state laws are licensing laws and do not cover the same subjects (public safety and animal welfare) as the ordinance. Thus, there is no conflict.

The COA also noted an important feature of zoning authority. The legislature has granted broad authority to municipalities to regulate land use through zoning laws. As a result, municipalities have broad discretion in deciding what and how to regulate through zoning. Although the DNR can grant certain licenses for the possession and breeding of various types of animals, it "does not have either the express or implied statutory authority to ignore, impede, or circumvent the township's zoning ordinance." The COA said that there is no evidence that the legislature, in enacting the DNR statutes, *intended* that such statutes could override local zoning laws. ***NOTE****:* The COA is saying something very important here: It is not sufficient just to make a claim (e.g. this is what the legislature intended), but rather the claim must be supported by evidence of some sort. Without evidentiary support, the claimant loses the argument.

The COA also noted that Petter's interpretation of the law would lead to an absurd result. If the township's broad authority to enact zoning laws to protect the safety and health of its citizens could be circumvented simply by obtaining a DNR license, that authority would be nullified. The COA held that the legislature did not intend such an absurd result.

Petter next argued that the ordinance is invalid because state law has preempted the field of the regulation of exotic animals. The COA discussed the rule of *field preemption*, noted that the district court ruled that there was no such

preemption, and agreed with the district court's ruling. The COA once again indicated that there is no evidence that the legislature intended that state laws would be the exclusive way to regulate the possession and use of exotic animals.

The COA also disagreed with the district court's conclusion that the provisions of the ordinance were internally inconsistent, and disagreed with Petter's argument that the ordinance was overly broad. ***NOTE:*** A statute or ordinance can be declared invalid when it is so broad that it sweeps lawful as well as unlawful acts within its provisions. That is not the case here.

Exhibition of Exotic Animals and Retail Sales

The district court enjoined Petter from exhibiting exotic animals and conducting retail sales. The COA noted that the exhibition of animals is not a permitted use under the ordinance. But Petter claims that it nevertheless is a "legal, nonconforming use." This raises the issue of **"grandfathering."** If a particular use of property exists when an ordinance is enacted which prohibits that use, that specific use may continue as a legal, nonconforming use. The Township enacted a law that provided that any use existing as of September 7, 2004 could continue (a grandfathered use). As of that date, Petter was possessing and exhibiting exotic animals.

Specifically, the grandfather provision of the exotic animal ordinance states that any person who qualifies for the grandfather exception "shall be permitted to hold, keep, harbor or maintain the number of exotic animals that person was legally permitted to hold, keep, harbor or maintain as of the date of the adoption of this [law] but shall not be permitted to increase the number of exotic animals held, kept, harbored or maintained within the Township."

The district court ruled that the evidence showed that Petter possessed one wolf before the enactment of the ordinance and, therefore, only one wolf qualifies for the exception. The COA agreed. But the district enjoined the exhibition of all animals, and the COA **reversed** that injunction and **remanded to the district court** to modify the injunction so as to permit the exhibition of one wolf.

NOTE: Two questions could arise. First, is "one wolf" limited to the same wolf that Petter possessed when the ordinance was enacted, and what if the wolf has pups, can they be kept? My opinion is that "one wolf" is not limited to any particular wolf. The key is the number and not a specifically identified animal. So,

in my view, if the original wolf dies, it could be replaced. But some might argue that, if the original wolf dies, the former, nonconforming use has ceased and there is no reason for a grandfather exception. As to pups, the language is clear: One means one; even a single pup would increase the wolves to two. Any increase in number is prohibited.

Animal Control Officer Exception

There is an exception in the ordinance that allows an animal control officer to possess exotic animals. Petter claims that Storlie qualifies under this exception and, therefore, he may possess and exhibit the various exotic animals on the property.

The ordinance does not define "animal control officer" and so the COA must look to the language of the law, and the law's policy goals, in a light favorable to the property owner. The district court concluded that Storlie is not an animal control officer, citing the provisions of the animal cruelty statutes (Minn. Stat. secs. 343.20 --.36). The COA noted that, in his capacity as a USDA wildlife specialist, Storlie "performs animal control duties," and, therefore, under "the plain and ordinary meaning of the term, in a light most favorable to [Petter and Storlie] . . . Storlie is an animal control officer under the ordinance."

But the COA goes a bit further than this conclusion and considers the result of allowing even animal control officers to possess an unlimited number of exotic animals not related to their official duties. This would be an absurd result. So, the COA held that, even though Storlie is an animal control officer under the ordinance, "he may possess these animals only to the extent that such possession is associated with his duties as an animal control officer." The evidence shows that "part of his duties include removing animals from a Metropolitan Airport Commission (MAC) airport located in the township." The COA also notes that this exception "applies to temporary possession of exotic animals in conjunction with one's work as an animal control officer." ***NOTE:*** In my opinion, Storlie cannot possess any exotic animals for purposes of exhibition or pelting, and whatever possession is permissible (1) must be related to his job and (2) must be temporary.

The Estoppel Issue

Petter argues that the Township is *estopped* from prohibiting her possession and exhibition of exotic animals. There is an **equitable doctrine** in the law known

as **estoppel.** Under it "the district court may exercise its discretion to prevent a party from taking advantage of its own wrongs by asserting its legal rights against another party." What this boils down to is that, if the Township engaged in wrongful conduct on which Petter reasonably relied in incurring *unique* expenses, the court may estop (that is, stop) the Township from penalizing Petter. Petter claims that the Township repeatedly told her that her use of her property was permissible under the exotic animal ordinance (even if that was incorrect) and that she relied on those representations. Therefore, she contends, she should not now be denied the right to use her property in the way the Township said she could.

The COA said that there was evidentiary support in the record for the district court's determination that the Township repeatedly told Petter that her use was permissible, and that she reasonably relied on those representations. But, as the district court held, there was no evidence that Petter made any *unique* expenditures, which is a requirement for estoppel to apply. The COA noted that it was Petter's burden to prove the elements of estoppel, that the burden is a heavy one, and that the doctrine should be used sparingly against governmental entities. The COA concluded that the district court did not abuse its discretion in ruling that Petter failed to prove entitlement to estoppel.

NOTE: The district court enjoys broad discretion in many areas of the law and procedure. This means that, where there is more than one proper course of action, the court may choose any, and that choice will be upheld on appeal. The principle of **judicial discretion** applies nearly entirely to evidentiary rulings and such rulings will not be overturned on appeal absent a showing of **clear abuse of discretion.** Additionally, we saw that the COA did not have to defer to the district court's discretion in interpreting the laws in this case, but the COA did defer to the district court's discretion as to the application of estoppel.

Retail Sales of Horticultural Products

Finally, the COA upheld the district court's amendment of the inunction limiting retail sales of horticultural products to only those produced on Petter's land.

What Now?

As indicated above, a party aggrieved by a COA decision may petition for further review by the supreme court. If the supreme court grants the petition, there will

be arguments made to that court and its decision will be final. If the supreme court denies the petition, the COA decision is final and fully enforceable. If Petter fails to comply, the route is to return to the district court to compel compliance and the district court will use its **contempt powers** to achieve that result.

Postscript

This case illustrates the typical procedural route for the enforcement of animal welfare laws:

- A citizen complaint is made either to law enforcement or to a local governing body, agency or commission.
- There is an investigation and maybe a hearing, followed by a decision.
- Whatever that decision might be, it is possible that a party will want a different outcome, and will then seek relief from the district court.
- The district court acts. The matter might end there, or there might be an appeal.
- The appeal will be made to the court of appeals. Ordinarily the case will end with the COA decision, unless the supreme court accepts the matter for further review (infrequent).

Ideally, issues of animal welfare will be resolved with voluntary compliance with the law. Or there might be a compromise acceptable to all involved parties, recognizing that virtually every compromise accommodates some interests but not all interests of the respective parties. Often that is the most realistic outcome to be hoped for.

The *Eureka Township* case illustrates the value of well-defined laws. The ordinance was nicely drafted on the whole. It would have been even better had the ordinance included a definition of "animal control officer." But for those committed to protecting animals, this case produced a very favorable result.

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