

FILED FOR RECORD
AT _____ o'clock _____ M

DEC - 1 1993

Cause No. 142,048-C

WICHITA COUNTY DISTRICT COURT
Wichita County

Thomas Bagnetto

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In the 892 District Court

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Vs.

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of

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The City of Wichita Falls

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Wichita County, Texas

PLAINTIFF'S ORIGINAL PETITION FOR INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes Now, Thomas Bagnetto, plaintiff, complaining of The City of Wichita Falls, and for cause of action would show the court as follows:

I.

Plaintiff, Thomas Bagnetto, is an adult individual who resides within the corporate city limits of the City of Wichita Falls, located in Wichita County, Texas. Defendant, City of Wichita Falls, is a home rule city, located in Wichita County, Texas. Defendant can be served with all writs and process issued herein by serving its Mayor, Michael Lam, at 1300 7th Street, Wichita Falls, Wichita County, Texas.

II.

Plaintiff is the owner and possessor of a registered pedigree male Wolf Hybrid dog, formally named Aero Lobo, but affectionately referred to as Bo. Bo is plaintiff's pet and a member of plaintiff's household. Bo has been a member of Plaintiff's household in excess of four years. Bo is a loyal, obedient, playful, and much-loved dog, that has never displayed a vicious character or propensity. Plaintiff is most desirous of maintaining the current existing nature of his overall relationship with his dog, as well as seeing this relationship continue to grow and prosper.

III.

On or about November 20, 1993, Plaintiff was advised by the Defendant, through the act of its employee, Animal Control Officer Greg Muccolo, said employee at all times material acting in the course and scope of his employment with Defendant, that Plaintiff was in violation of the Code of Ordinances promulgated by the Defendant. Specifically, it was alleged by said employee that Plaintiff violated said ordinances by

allowing Bo to reside on his premises located within the city limits of Defendant. The sole stated basis for this allegation was the uninformed and misguided determination that Bo was a "wild animal" as that phrase is defined by city ordinance. Plaintiff was advised that as a result of this determination, he could either remove the dog from within the Defendant's city limits, or the dog would be picked up by Defendant's Animal Control officers and destroyed. Initially, Plaintiff was given until November 23, 1993, to remove his dog from Defendant's city limits. Plaintiff attempted to advise Defendant that Bo was a dog, not a wild animal, but such protestations proved unavailing. Therefore, Plaintiff requested, and was given, two extensions on this deadline, which is now December 3, 1993, at 5:00 p.m. Plaintiff does not wish to remove his dog from his home and premises, nor does the Plaintiff wish to see his beloved pet destroyed. Plaintiff merely wishes that he and Bo be allowed to continue to reside in their mutual premises in the same peaceful and normal manner that they did prior to November 20, 1993.

IV.

The proposed action of the Defendant as it regards the threatened removal of Bo from Plaintiff's home and Bo's subsequent destruction under the circumstances alleged above, violates the real and substantial rights of Plaintiff in each of the following respects:

- 1) It constitutes an unlawful taking of Plaintiff's property interests secured to him the Constitutions of both the United States of America and the State of Texas;
- 2) It constitutes an unlawful invasion upon Plaintiff's liberty interests secured to him by the Constitutions of both the United States of America and the State of Texas;
- 3) It fails to provide for the protection of Plaintiff's rights to procedural and substantive due process under the Constitutions of both the United States of America and the State of Texas;
- 4) It is based upon a determination neither founded in fact nor reason; and,
- 5) It is based upon an incorrect application of existing law, and as such is arbitrary, capricious, and oppressive.

V.

As a result of the Defendant's threatened action, Plaintiff is faced with the prospect of immediate irreparable injury, to wit: the loss and destruction of a member of his household. But for the intervention of this Court, Plaintiff has no other adequate remedy at law.

WHEREFORE, Plaintiff requests that:

- 1) A temporary restraining order be issued without notice to Defendant, restraining Defendant, its agents, servants, and employees, from directly or indirectly removing Bo from the Plaintiff's care, custody and control;
- 2) Defendant be cited to appear and show cause and that on such hearing, a temporary injunction be issued, enjoining Defendant, its agents, servants, and employees from directly or indirectly removing Bo from the Plaintiff's care, custody and control;

3) A permanent injunction be ordered on final trial of this cause, enjoining Defendant, it agents, servants, and employees, from directly or indirectly removing Bo from the Plaintiffs care, custody and control.

Respectfully Submitted,

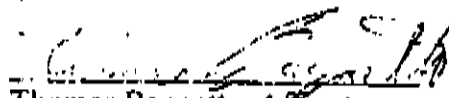


S. Price Smith, Jr.
Law Offices of S. Price Smith, Jr.
2504 9th Street
Wichita Falls, TX 76301
(817) 766-1700
TSB# 18753500

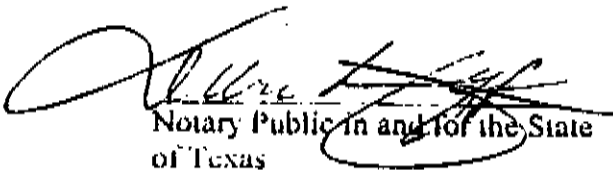
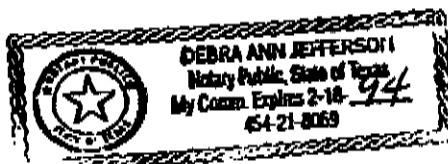
VERIFICATION

STATE OF TEXAS)
COUNTY OF WICHITA)

BEFORE ME, the undersigned Notary Public, on this day personally appeared Thomas Bagnetto, who, being by me duly sworn on oath deposed and said that he is the plaintiff in the above-entitled and numbered case; that he has read the above and foregoing Original Petition for Injunction; and that every statement contained therein is within his personal knowledge and is true and correct.


Thomas Bagnetto, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on the 1 day of December, 1993, to certify which witness my hand and seal.


Notary Public in and for the State of Texas

142,0482

DEC 01 1993

STATE OF TEXAS)
COUNTY OF WICHITA)


DORSEY R. TRAPP, Clerk, Dist.
Court & County Court at Law
Wichita County, Texas
Deputy

Whereas, in Cause No. _____, pending in the 37th District Court of Wichita County, Texas, styled Thomas Bagnetto vs. The City of Wichita Falls, the Honorable Juanita Pavlick, Judge, did on the 1st day of December, 1993, sign an order granting a temporary restraining order against the City of Wichita Falls, and requiring Thomas Bagnetto, Plaintiff, to make, execute and file a bond in the sum of \$100.00, payable to the adverse party before issuance of the writ of temporary restraining order; therefore:

Know all men by these presents, that we, the undersigned Thomas Bagnetto, as principal, and S. Price Smith, Jr. and Stephen R. Bjordammen, as sureties, acknowledge ourselves bound to pay to the City of Wichita Falls the sum of \$100.00, conditioned that Thomas Bagnetto will abide by the decision that may be made in the aforesaid cause, and that he will pay all sums of money and costs that may be adjudged against him if the temporary restraining order issued on December 1, 1993, in the aforesaid cause, restraining the City of Wichita Falls shall be dissolved in whole or in part.

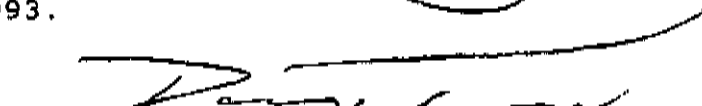
WITNESS our hands December 1, 1993.


Thomas Bagnetto


S. Price Smith, Jr.


Stephen R. Bjordammen

Approved: 12-1, 1993.


Wichita County District Clerk

FILED FOR RECORD
AT _____ o'clock _____ M

CAUSE NO. 142,048-C

THOMAS BAGNETTO

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IN THE

DEC 2 8 1993
DISTRICT COURT
County Clerk
Wichita County Texas
Deputy

VS.

OF

CITY OF WICHITA FALLS

WICHITA COUNTY, TEXAS

ORIGINAL ANSWER OF DEFENDANT
CITY OF WICHITA FALLS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the City of Wichita Falls, a Home Rule corporation in the State of Texas, and files this its Original Answer, and in support thereof would show the Court as follows:

I.

Defendant, City of Wichita Falls, denies each and every allegation contained in the Plaintiff's Original Petition for Injunction, and demands strict proof thereof.

II.

The Defendant City of Wichita Falls, as a home rule municipal corporation, is entitled to governmental immunity, except to the extent that such immunity is waived by the Texas Torts Claims Act, Sec. 101.001, et seq. (Texas Civil Practice and Remedies Code), or by the Constitutions of the State of Texas or the United States of America.

III.

The dog owned by the Plaintiff, referred to in Plaintiff's Original Petition for Injunction as Bo, is a male wolf hybrid. That said animal owned by Plaintiff is prohibited by City

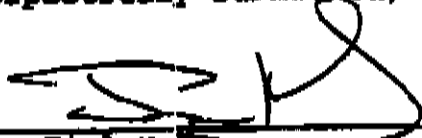
Ordinance 5-49, Code of Ordinances City of Wichita Falls, which provides that "no person shall keep or permit to be kept on his premises any wild animal." That said animal owned by Plaintiff fits the definition as provided in Section 5.1, Code of Ordinances City of Wichita Falls, for wild animals and/or wildlife. Said section provides in part that "Any non-domesticated creature (mammal, amphibian, reptile or fowl) which is of a species which is wild by nature and which can normally be found in a wild state and which is not naturally tame and gentle, but is of a wild nature or which is not naturally tame or gentle, but is of a wild nature or disposition; or which, because of its size, vicious nature or other characteristics, would constitute a danger to human rights or property, if not kept or maintained in a safe and secure manner...."

IV.

That said animal owned by the Plaintiff is not naturally tame or gentle, but is of a wild nature or disposition which would be a danger to the other citizens of the City of Wichita Falls. That the wolf hybrid cannot be domesticated and the wild instinct inherent in their genetics cannot be removed by the breeding of the animal to domesticated dogs.

WHEREFORE, PREMISES CONSIDERED, the Defendant City of Wichita Falls prays that the Court enter a judgment herein that Plaintiff be denied his petition for injunction, and that Defendant be awarded its costs expended herein.

Respectfully submitted,



Jim Finley
Assistant City Attorney
SBN 07023120
P. O. Box 1431
Wichita Falls, TX 76307
Telephone (817) 761-7625
Telecopier (817) 761-8877

ATTORNEY FOR DEFENDANT
CITY OF WICHITA FALLS

IN THE 89TH DISTRICT COURT FOR RECORD
OF WICHITA COUNTY, TEXAS AT _____ o'clock _____ M

THOMAS BAGNETTO

VS.

CITY OF WICHITA FALLS

MAR 15 1994

NO. 117-846
By _____
DORSEY R. THOMPSON, Clerk of Court
Wichita County, Texas Deputy

ORDER GRANTING PERMANENT INJUNCTION

APPEARANCES

On this the 15th day of March, 1994, came on for hearing the Application For Permanent Injunction filed by Thomas Bagnetto.

Came Thomas Bagnetto, hereinafter called Plaintiff, in person and by attorney of record, S. Price Smith, Jr., and announced ready for trial.

Came the City of Wichita Falls, hereinafter called Defendant, in person and by assistant city attorney, Jim Finley, and announced ready for trial.

FINDINGS

All matters of fact and law were submitted to Court. The Court after considering the pleadings and stipulations of the Plaintiff and the City of Wichita Falls, makes the following findings:

1. Plaintiff is the owner of a dog named "Aero Lobo" also referred to as "Bo".
2. Aero Lobo is a male wolf hybrid.
3. Aero Lobo also referred to as Bo, is an animal that is not prohibited by City Ordinance 5-49, Code of Ordinances City of Wichita Falls, which provides that "No person shall keep or permit to be kept on his premises any wild animal."
4. That Aero Lobo also referred to as Bo, is an animal that does not fit the definition as provided in Section 5.1, Code of Ordinances City of Wichita Falls, for wild animal and/or wildlife.
5. That Ordinance 5-49, Code of Ordinances of City Wichita Falls, Texas, is not unconstitutional.

IT IS THEREFORE ORDERED that the City of Wichita Falls is permanently enjoined from removing the Plaintiff's animal Aero Lobo, also referred to as Bo, from Thomas Bagnetto's care, custody and control under the provisions of the City Ordinances


5-49, Code of Ordinances City of Wichita Falls.

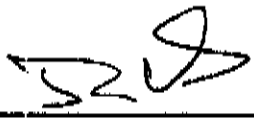
IT IS FURTHER ORDERED that Thomas Bagnetto and his sureties are released from the bond, heretofore posted by Thomas Bagnetto and his sureties, and all costs are taxed against the party incurring the same.

SIGNED this 15 day of March, 1994.


JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:


S. Price Smith, Jr.
TSB# 18753500
Attorney for Thomas Bagnetto


Jim Finley
TSB# 07023120
Attorney for City of Wichita Falls

1. Oregon, California and Virginia halted the ban on wolf-hybrids when it was brought to their attention that a program was in place for the testing of the rabies vaccine on wolves + wolf-hybrids. The only thing lacking was now

II.

Request for Admissions

1. Section 5-49(a) of the Wichita Falls City Code is entitled, "Keeping for Show as Pets Prohibited."
2. Section 5-49(a) refers to and prohibits the keep of wild animals for show.
3. Plaintiff ~~has~~^{is} not now, nor has he ever been in possession of a wild animal.
4. Plaintiff ~~has~~^{is} not now, nor has he ever been in possession of a wild animal for show as defined in Section 5-49(a) of the Wichita Falls City Code.
5. Black's Law Dictionary, 5th Edition defines wild animals as, "animals of an untamable disposition in a state of nature."
6. The Random House College Dictionary, Revised Ed. 1 defines the following:
 - a) dog, n. 1. a domesticated carnivore, canis familiaris, bred in a great many varieties. 2. animal belonging to the same family, canidae, including wolves, jackals and foxes. 4. any of

Various animals resembling a dog. pg. 391.

b) domesticated: v.t. 1. to convert to domestic & tame. pg. 393.

c) tame: adj. 1. changed from the wild & savage state; domesticated. 2. tractable, docile or submissive. pg. 1342.

d) wild: adj. 1. living in a state of nature not tame or domesticated. pg. 1505.

7. Plaintiff's dog, Bo, is not "of an untamable" nature but instead is quite tame; is very well trained obedient; and is gentle.

8. Plaintiff's dog, Bo, is not living in "a state of nature."

9. Plaintiff's dog, Bo, is domesticated.

10. Plaintiff's dog, Bo, is tame.

11. Plaintiff's dog, Bo, is not wild.

12. Plaintiff's ~~dog's~~ Bo, dog's, Bo's, parents were were are not wild.

13. Plaintiff's dog's, Bo's, ancestry for the past generations were are not wild.

14. Plaintiff's dog is registered with the nationally recognized U.K.C.

15. City & County Health Official Roy Russell owns cattle.

City & County Health official Ray Russell operates cattle ranch.

17. The City of Wichita Falls, is not entitled to governmental immunity under Title 18, United Code, Section 241 and 242 and Title 42, United States Code, Section 1983, 1985 and 1986 due to conduct in depriving and/or conspiring to deprive Plaintiff of rights.

18. City & County Health official Ray Russell, is not entitled to governmental immunity under Title 18, United Code, Section 241 and 242 and Title 42, United Code, Section 1983, 1985 and 1986 due to his conduct in depriving and/or conspiring to deprive Plaintiff of rights; ~~and~~ ^{AND} Ray Russell has a clear conflict of interest, ~~has acted outside of the scope used~~ ^{has acted outside of the scope used} power of his office to further his private personal interests.

19. As a City & County Health official
20. All dogs descended from the wolf.

III

Interrogatories

1. Please state the name, address, telephone number and title, if any, of each and every person who helped to in preparing the answers to these interrogatories.
2. How does Plaintiff's dog, Bo, constitute a danger to human rights because of his size?
3. Does a St. Bernard constitute a danger to human rights because of its size? If the answer is no.

These are all same but, statistics higher than a wolf-hybrid.

Why is Plaintiff's dog, Bo, singled out for administrative action? If the answer is no, does Plaintiff's dog, Bo, differ from a Do. Bee

4. Same as #3 but substitute Pit Bull.
5. Same as #3 but substitute Rotweiler.
6. Same as #3 but substitute Doberman Pinscher.
7. Same as #3 but substitute Malamute.
8. Same as #3 but substitute Huskies.
9. Same as #3 but substitute Great Dane.
10. Same as #3 but substitute German Sheppard.

11-19:

use 2-10 > Same format but substitute vicious not
20-28

use 2-10 > Same format but substitute other characters
and name said characteristics.

29-37

use 2-10 > Same format but substitute danger
property.

38. Explain how Plaintiff's dog, Bo, is not kept
in a safe and secure manner; including provide
the following:

- a) who determines the criteria for safe keeping
of a dog and their qualifications;
- b) who determines the secure manner for keeping
of a dog; and their qualifications;
- c) How is the environment unsafe;

and

d) How is the environment insecure.

39. Please provide the name, address, telephone number, profession and qualifications of the person(s) who determined that Plaintiff's dog Bo, is not naturally tame. Include ~~the~~ in your answer the process and procedures in ~~determining~~ reaching said determination.

40. Same as #39 but substitute "not naturally safe."

41. Same as #39 but substitute "danger to other citizens."

{ You can add how does Bo differ from the dogs previously listed as not being dangerous or safe. }

42. Please provide the name, address, telephone number, profession and qualifications of the person(s) who determined wolf-hybrids cannot be domesticated. Include in your answer the process and procedures in reaching said determination.

43. Provide the name, address, ~~and~~ telephone number and occupation of all persons who expertise or information you relied upon in reaching any determinations listed in any of these interrogatories.

44. What is the basis for your claim that the wild instinct in the wolf-hybrid's genetics cannot be removed by the breeding of the animal to domestic dogs?

Same as #42 but substitute "wild animals
to domestic dogs" language.

46. What is the ^{function} ~~job description~~ of the Animal Control Dept.?

47. What is the function of the City \ County Health Dept.?

48. What ~~is~~ the ^{duties} ~~duty~~ of City \ County Health Officer Roy Russell?

49. From ~~where~~ ^{what statute(s), city, county and/or state derive} does the Animal Control Dept. ~~derive~~ their authority?

Use language from 49 → 50. From ^{city, county and/or state} what statute(s) designate the authority given to the City \ County Health Dept.?

51. From what statute(s), city, county and/or state does City \ County Health Officer Roy Russell derive his powers?

52. Will you treat these interrogatories as continuous in nature?

IV

Requests for Production

Go through each Interrogatory and ask for each and every document, fact, thing, etc. that supports

Ex: Please provide each and every document recording, fact or thing that supports your criteria

Plaintiff's dog, Bo, is wild.

2. Please provide that Plaintiff's dog, ~~it~~ falls within the definition and scope of Section 5.1, Code of Ordinances, City of Wash. Falls for wildlife and/or wild animals.

If you need me to do this for all the Interrogatories I can - just let me know, it will take a while.

V.

Tort of outrage.

- > Malicious Mischief is crime.
- > Intentional Infliction of Mental Distress
- > Negligent Infliction of Mental Distress +

VI

As soon as I receive a copy of Wolf-x Times I will post the article on the Fox Africa guide dog school.