

IN THE IOWA DISTRICT COURT FOR WINNESHIEK COUNTY

DECORAH CITY OF

Petitioner,

VS

RALPH HARLEY VAN FOSSEN

Respondent.

01961DECICV026479

ORDER

This matter came before the court for trial on November 18, 2019.

DESCRIPTION OF CASE:

The case of "Who wants to live next to a rooster?"

The City Plaintiff has filed this action alleging that defendant's rooster(s) are in violation of City Code Chapter 6.12.010 - Bothersome Animals, and 9.28.010 - Disturbing the Peace. The plaintiff appeared by City Attorney John Anderson and the defendant appeared by Attorney Karl Knudson.

FINDINGS OF FACT:

Defendant has a chicken coop in his backyard in which also resides a rooster. The plaintiff is acting solely on the complaint of one of defendant's neighbors, the Edmondsons. The other neighbors who testified in person have no complaints with the rooster or chickens. The pertinent part of the City Codes defendant is charged with violating read as:

6.12.010 - It is a misdemeanor to keep within the city such bothersome animals as barking dogs, cattle, horses, swine and sheep which tend to disrupt the peace and good order of the community.

9.28.010 - It is a misdemeanor to make or excite any disturbance of the public peace in public or private building or any neighborhood, private person or family, within the city, by loud or unusual noise, by any device or means whatever.

ARGUMENTS OF THE PARTIES:

Plaintiff's argument is pretty simple. The rooster crows at all hours of the day and night and it is causing a disturbance to the Edmondsons. Therefore it is a bothersome animal and it disturbs the

peace in violation of the City Codes. The Edmondsons are a private person or family and live within the city.

The defendant makes numerous arguments, including that the rooster is not a bothersome animal, rooster crowing is part of keeping chickens, the only people it seems to bother is a neighbor that has feuded with defendant, disturbing the peace should be held to a community standard, and the area is zoned R1 which allows keeping farm type animals so long as it is not a commercial outfit. The defendant also argued that Mr. Van Fossen is not making the noises, it's his rooster, who is simply protecting his flock, and therefore he should not be held to have violated either ordinance.

CONCLUSIONS OF LAW:

The burden of proof is on the city plaintiff.

As to the charge that the rooster is a bothersome animal, the Court declines to agree with plaintiff's argument that a rooster fits into this ordinance. The Ordinance states "such bothersome animals as barking dogs, cattle, horses, swine and sheep". It does not state "bothersome animals such as a". The placement of the "such as" leads the Court to construe this as an ordinance that expressly prohibits barking dogs, cattle, horses, swine and sheep. It therefore declines to find defendant violated this ordinance, declines to award a penalty for a violation of said ordinance, nor does it grant plaintiff's prayer for an injunction restricting defendant's ability to keep a rooster at his property.

The Court does however find that defendant violated City Ordinance 9.28.010. The City Code is pretty clear that a loud noise that bothers a neighbor is to be considered a violation of that ordinance. The Court fails to see how the crowing of a rooster at 3:40 A.M. differs from someone personally causing loud noises in the middle of this night. Surely if a dog bites someone its owner would be held liable even though the owner did not cause the bite; and simply because the zoning allows for specific types of animals does not mean that those animals can not disturb the peace.

The City has only asked for one fine and therefore the Court ORDERS:

The defendant is fined in the amount of \$500.00 plus court costs (not attorney fees) and any applicable surcharges.

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State of Iowa Courts

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Type:

Case Title
CITY OF DECORAH VS RALPH VAN FOSSEN
OTHER ORDER

So Ordered

Nathaniel Moonen, Magistrate,
First Judicial District of Iowa

Electronically signed on 2019-12-16 14:08:02