

From: Girard Muni. Court

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04/08/2016 08:43

#534 P.001/003

*Emailed to Ed
04/08/16*

FILED
APR 07 2016
Girard Municipal Court

**IN THE GIRARD MUNICIPAL COURT
TRUMBULL COUNTY, OHIO**

State of Ohio)	Case No. 2015 CRB 1081
)	
Plaintiff)	
v.)	HON. JEFFREY D. ADLER
)	
David W. Murphy)	JUDGMENT ENTRY
)	
Defendant)	

This matter came before the Court on the 1st day of April 2016 for a hearing on damages pursuant to Ohio Revised Code Section 959.04. The Defendant was originally charged with one count of Injuring Animals pursuant to O.R.C. 959.02 on October 24, 2015. This was the result of the Defendant shooting and killing a young black Labrador retriever known by the name of Tucker. Apparently, Tucker had left the confines of his home and entered upon the land of the Defendant. The Defendant claimed that Tucker was harassing his poultry and he fired four shots at Tucker to allegedly scare him off. Unfortunately, the Defendant hit the dog with three out of four of the shots which resulted in Tucker's death.

On November 18, 2015 the Prosecuting Attorney nolleed the charge referencing O.R.C. 955.28. The Defendant stipulated to probable cause for the filing of the charge and this hearing was set to assess damages. Ohio Revised Code Section 959.04 states:

Sections 959.02 and 959.03 of the Revised Code do not extend to a person killing or injuring an animal or attempting to do so while endeavoring to prevent it from trespassing upon his enclosure, or while it is so trespassing, or while driving it away from his premises; provided within fifteen days thereafter, payment is made for damages done to such animal by such killing or injuring, less the actual amount of damage done by such animal while so trespassing, or a sufficient sum of money is deposited with the nearest judge of a county court or judge of a municipal court having jurisdiction within such time to cover such damages. Such deposit shall remain in the custody of such judge until there is a determination of the damages resulting from

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such killing or injury and from such trespass. Such judge and his bondsmen shall be responsible for the safekeeping of such money and for the payment thereof as for money collected upon a judgment.

On November 3, 2015 the Defendant submitted to the Court a deposit of five hundred dollars (\$500.00) with the court pursuant to the statute. The owner of Tucker, Kim Ellis was called to the stand to testify as to the damages sustained as a result of Tucker's untimely demise at the hands of the Defendant. Ms. Ellis testified that she paid the sum of \$350.00 to purchase Tucker as a puppy. She incurred \$392.00 in veterinary bills in an attempt to save Tucker's life. She also testified that she incurred \$50.00 in transportation costs when transporting Tucker to a veterinary in Akron, Ohio. Ms. Ellis also testified to wages lost as a result of missed employment and previous veterinary bills for the care of Tucker. The Defendant, who appeared by and through his counsel, agreed to pay an additional \$300.00 for a total payment of \$800.00 for the damages incurred in the shooting of Tucker.

Unfortunately the Court's hands are tied by the language of O.R.C. 959.04. The killing of poor Tucker seems like such a senseless act. It is hard for one to fathom that in an attempt to simply scare the young pup the Defendant accurately hit him with three out of four shots. However, the Ohio Legislature has deemed it appropriate for persons to freely kill dogs that trespass upon their land as long as they submit a payment of damages to the local court of jurisdiction within fifteen days of the killing. The Defendant has abided by the statute.

Although the Court would consider additional damages, it is simply not allowed to pursuant to the statute. Based on the testimony of Ms. Ellis, the Court finds that the "damages done to such animal by such killing" are \$792.50. The Defendant has agreed to pay the Defendant \$800.0.

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It is therefore the Order of the Court that the Defendant pays the total sum of \$800.00 to the owner of Tucker, Kim Ellis, within ten (10) days of the date of this entry. Payment to be made through the Clerk of Court's office.

IT IS SO ORDERED

Date

4/2/16

Hon. Jeffrey D. Adler