

Supreme Court, U.S.  
FILED

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No. 19-1030

In the  
Supreme Court of the United States

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KAREN BISHOP,

*Petitioner,*

v.

PALM BEACH COUNTY,

*Respondent.*

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On Petition for a Writ of Certiorari to the  
Florida Fourth District Court of Appeals

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

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How can a definition or determination of fitness be assessed when the Florida Statute 828.073(4)(a) provides a vague description of fitness, puts the definition and determination into a judges hands, and in spite of the evidence provided by the owner at bench trial and partially suppressed by the court that the animals will be adequately provided for by the owner, gives away the petitioners animals and property.

## LIST OF PROCEEDINGS

District Court of Appeal of the State of Florida,  
Fourth District,

4D19-3152

*Karen Bishop v. Palm Beach County*

Date of Final Order: November 20, 2019

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In the Circuit Court of the Fifteenth Judicial Circuit in  
and for Palm Beach County, Florida

50-2018-AP-000062-CAXX-MB

*Karen Bishop v. Palm Beach County*

Date of Final Opinion: September 17, 2019

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner, Karen Bishop, respectfully asks that a writ of certiorari issue to review the judgment and opinion of the Florida Court of Appeal, [DCA#] Appellate District, filed on November 20, 2019.



## **OPINIONS BELOW**

The order of the Florida Fourth District Court of Appeals, dated November 20, 2019, denying a Petition for Writ of Certiorari is included below at App.1a. The Opinion of the Fifteenth Judicial Circuit Civil Court, dated September 17, 2019 is included below at App.8a.



## **JURISDICTION**

The Fourth Circuit District Court of Appeal denied a Petition for Writ of Certiorari on November 20, 2019. This petition is filed within 90 days of the Fourth District Court of Appeals denial of discretionary review, under rules 13.1 and 29.2 of this Court. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).



## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### U.S. CONSTITUTION

#### U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

#### U.S. Const. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without

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due process of law; nor shall private property be taken for public use, without just compensation.

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**U.S. Const. amend. VII**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

**U.S. Const. amend. VIII**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**U.S. Const. amend. IX**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**U.S. Const. amend. XIV, § 1**

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## FLORIDA STATUTES

The following provisions are reproduced in the Appendix:

- Florida Rules of Judicial Administration, 2.516(b)(1)
- Florida Statute Section 828.073(2)
- Florida Statute Section 828.073(3)
- Florida Statute Section 828.073(2)(b)
- Florida Statute Section 828.073(4)(a)(1)
- Florida Statutes, Title VII, Evidence Chap 90, Evidence Code, 90.065(1)
- Florida Statute Section 934.03(1)(c)(d)
- Florida Rules of Appellate Procedure Rule 9.110(a)
- Florida Rules of Appellate Procedure Rule 9.200(b)(4)
- Florida Rules of Appellate Procedure 9.420(d)



## STATEMENT OF THE CASE

On May 18, 2018, the lower civil tribunal court of Palm Beach County awarded custody of petitioners animals, finch aviary, and driftwood perches with linen cover that had previously belonged to Petitioners great grandmother, Mrs. Winters-Riley to Palm Beach County, in addition to abridging petitioners rights to pet ownership except by evidentiary Hearing in Palm Beach County or be arrested, and a demand for a \$10,404.28 judgment.

On April 19, 2018 the County of Palm Beach filed a "Petition For Emergency Hearing" Pursuant to Florida Statute Section 828.073. According to Florida Statute Section 828.073(3), written notice is to be served under Florida Statute 828.073(2) within three days of the animal custody hearing to the owner and by service of process. Petitioner received a letter in the United States mail to attend the hearing. A hearing date was requested for a determination of custody for 13 animals (cats, dogs, and birds) allegedly in the possession of petitioner. The County of Palm Beach claimed that it had received numerous complaints regarding petitioners animals and that petitioner had refused to allow officers access to petitioners home. The County of Palm Beach failed to indicate the reason for the access refusal, as petitioner asserted this was a violation of petitioner's Constitutional rights, and petitioner would bring the pets outside, whereby the outside inspection was declined. The county reported it had issued citations to the petitioner in May and June of 2017. In an effort to demonstrate adherence to the County Ordinance, Petitioner agreed to bring the pets outside. On the scheduled meeting date and 1 day later, petitioner produced only 2 dogs and 1 cat due to inability to obtain the necessary vaccinations at the time. Petitioner feared more monetary fines for the other pets, which would have posed an additional financial burden due to the fact that petitioner had just vaccinated 2 of her dogs, and purchased the required tags. The County reported that it received a complaint on April 11, 2018 regarding over 30 cats living in the home and then carried out a search warrant on April 14, 2018. On subsequent veterinarian examination the county claimed that the animals were in poor health conditions, including one dog in heart

failure and other dogs with wounds that were not treated, in addition to broken teeth, ear mites and fleas.

Petitioner filed a Motion to Visit Pets on April 23, 2018. A Motion to Prohibit was also filed to prohibit the sale, transfer or killing of her pets until they were returned back to Petitioner. On April 27, 2018, Petitioner filed a response to the [Petition For] Emergency Hearing. Petitioner recounted her version of events from 2007 when her animals were seized, in addition to the events of April 2018. Petitioner elucidated that much of what the Animal Care and Control Agency had alleged was untrue. Petitioner recounted how she took an emergency trip to Washington, D.C. on March 23, 2019. Petitioner hired a pet sitter after several interviews with the pet sitter to care for the pets in their home and in petitioners absence, until March 25, 2019. Petitioner reported that the pet sitter had made an anonymous report to Animal Care and Control of Palm Beach County after petitioner left a negative report regarding the pet sitter to the pet sitter agency. Petitioner reported she had unrepaired hurricane damage in her home. Petitioner asserted that she took basic care of her pets and demanded her pets back.

On April 27, 2018 Petitioner filed another Motion to Visit Pets. On May 4, 2018 Petitioner filed a Motion to Reschedule Hearing, requesting the hearing to be scheduled for one week later. The Motion was denied the very same day by the trial court, with the reasoning that Petitioner had failed to demonstrate good cause as to why the hearing should be rescheduled in one week. On May 9, 2018 the County filed a Request to Take Judicial Notice. The county requested the trial court to take notice of the Order on Citations, which

were entered in four separate county court cases; these were county court case files in which the County had proceedings against Petitioner. The particular August 16, 2017 Order On Citations ordered that Petitioner produce all of her animals on August 17, 2017, for an inspection by Palm Beach County Animal Care and Control. On May 14, 2018 Petitioner filed a Motion to Remove Label of Animal Cruelty And Response to Expert Specialty Visit, arguing that the seizure of petitioners pets was malicious and violated the Constitution. The trial court entered an order allowing the specialist to appear telephonically at the upcoming Hearing. The trial took place May 18, 2018. A Final Judgment was entered on May 21, 2018, Book #29868, Page 1967-1970, and the case was disposed by the judge. On May 21, 2018, Petitioner filed a Notice of Appeal and an application for determination of civil indigent status. On September 16, 2019 the Circuit Court of the Fifteenth Judicial Circuit filed an Opinion, Per Curium Affirmed. On September 25, 2019, Petitioner filed a Motion For Opinion which was Denied/ clerk to close the case on September 27, 2019. On October 10, 2019 Petitioner filed a Notice of Appeal to the Fourth District Court of Appeals and received the Order on October 14, 2019 that the Appeal would be treated as this Writ of Certiorari.



#### **REASONS FOR GRANTING THE PETITION**

This case presents important issues as to whether trial by jury be held when Petitioners seized animals and property are decided to be given away by a court, in addition to abridgment of pet ownership in Palm

Beach County and a demand for a \$10404.28 judgment. “[T]he judges function is to not himself weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial”. *Anderson v. Liberty Lobby*, 477 U.S. 242, 249 (1986). “[T]here is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party”. 477 U.S. at 249; 106 S.Ct. at 2510 (Citing *First Natl Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 288-89, 88 S. Ct. 1575, 1592 (1968). According to the Seventh Amendment of the *United States Constitution*, in suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, then according to the rules of the common law. In this case the controversy's exceed \$20.00 but the right of trial by jury was not preserved. The judges weight of the evidence was tilted heavily towards the County, affecting the outcome of the hearing as evidenced by giving away pets and property to the County of Palm Beach, in addition to abridgment of pet ownership rights and inflicting a \$10,404.28 judgment even in the face of evidence that Petitioner had been suffering severe financial distress. On April 14, 2018 Palm Beach County Animal Control Officers entered into Petitioners family home and seized Beatrice, in addition to the other pets that Petitioner owned, claiming they had a search warrant; however, the Fourth Amendment of the United States Constitution asserts that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause,

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supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. The significant words in the Fourth Amendment of the United States Constitution are probable cause and Oath, which were absent from the search warrant due to the fact that Adam Moulton provided false testimony to a criminal court in order to gain a search warrant. The search warrant stated that there were 30 cats, 4 dogs, and 4 birds. The search warrant stated that 6 months earlier there were more than 50 cats in Petitioner's residence, which precisely contradicts what Adam Moulton wrote in his animal care and control reports, and these facts were greatly exaggerated by the malicious intent of the animal control officer and his attorney. At the time of seizure Beatrice was sleeping comfortably as Beatrice had finished eating her largest meal of the day which was breakfast. Petitioner was pulled outside and then held at gunpoint outside of her home, while the pets were seized and taken from the family home.

According to the Florida Statute 828.073(2)(a) animals found in distress, the statute calls for removal while Beatrice was sleeping peacefully the morning of April 14, 2018 and no other animal was in distress. Petitioner was then informed outside of her house her animals probably wouldn't be taken, but a call would be placed to the county attorney. After the phone call, Animal Care and Control began taking Petitioner's animals and things, breaking furniture in the process, which is a violation of the Fifth Amendment of the United States Constitution.

Beatrice suffered from a chronic condition most likely cardiac in nature, as evidenced by our last trip to Peggy Adams approximately eighteen months prior.

It was recommended to take Beatrice either to cardiac or pulmonary specialty as Peggy Adams animal clinic provides primary care only at reasonable cost. This was important as Petitioner had recently lost her main source of income the same month she took Beatrice to Peggy Adams. Euthanizing Beatrice was out of the question as was an expensive specialty visit, and Petitioner opted for comfort care at home, to include a holistic heartworm formula from Wolf Creek Ranch ([http://wolfcreek ranch.net/heartworm\\_free.html](http://wolfcreek ranch.net/heartworm_free.html)) and a holistic bronchodilator called LungGold (<https://www.petwellbeing.com/products/lung-gold>). The right to choose this medical treatment is a constitutional right guaranteed by the Ninth Amendment of the United States Constitution.

These holistic medications had worked well for Beatrice comfort and easy breathing. Petitioner case was similar to the case of Petitioner Mr. Davis, who was found guilty of animal cruelty against his horse with a broken leg. Mr. Davis felt this was unjust and filed his timely appeal to the Supreme Court of Mississippi. *Davis v. State*, No-2000-KM-00630-SCT (Miss. 2001). Mr. Davis had a young colt who slipped and fell, sustaining an injury/break very close to the joint supporting the colts hoof. The colt received care at home that included an injection and compresses. A veterinarian was called who examined the colt and provided to Mr. Davis options for further treatment of the colt. One of the options was a surgical correction, or care at home that included weight off the foot, isolation, medication for pain, and allowing the fracture to calcify which would leave a permanent limp. Due to the difference in cost, Mr. Davis chose the second

option. For Mr. Davis to euthanize his colt was out of the question.

About eleven months later, two animal care and control officers from the SPCA received a complaint regarding a colt that limped. The two officers obtained a search warrant and proceeded to inspect the colt, determining that it was suffering and in pain. A veterinarian connected with animal care and control was consulted and the veterinarian concluded that the colt was in chronic pain as opposed to acute pain. Subsequently and because of this, the veterinarian euthanized the colt that belonged to Mr. Davis. Mr. Davis was not notified of this event, and he found out about it by reading the incident in the local town newspaper.

Ultimately Mr. Davis case was reversed and rendered by the Mississippi Supreme Court as he had no way of knowing from the face of the Mississippi statute that he was in violation of the law, and the Supreme Court of Mississippi discharged Mr. Davis. The Supreme Court found the Mississippi statute unconstitutional under the due process Clause of the Fourteenth Amendment to the United States Constitution and found further that the language of the statute was too vague for the proper determination of the *mens rea*.

In this instance it is not a state right to dictate to Petitioner whether comfort care may be provided or not, as that that is a violation of Petitioners constitutional rights, as in the Due process clause of the Fourteenth Amendment of the United States Constitution. The Florida Statute 828.073 makes no reference as to provision of comfort care for the animal by the owner so Petitioner has no way of knowing if pro-

viding comfort care and holistic medications at home is a definition of unfitness or a violation of the statute. *Davis v. State*, 806 So.2d 1098 (Miss. 2001). Other courts have reviewed modern state cases that involve the interpretation of animal cruelty statutes, and one of the key issues is the intent with which the accused has acted. See Sonja A. Soehnel, *What Constitutes Statutory Offense of Cruelty to Animals, Modern Cases*, Annotation, 6 A.L.R., 5th 733, 755 (1992), *See Davis v. State*, 806 So.2d 1098 (Miss. 2001). At the time of the bench trial Petitioner did not have and could not locate the Peggy Adams receipt as it was in a password protected laptop. Additionally and at initiation of the lower court trial opposing council informed Petitioner the county was seeking custody of all of Petitioner's animals except for one, Beatrice who was deceased. This came as a great shock to Petitioner as Beatrice was not expected to die and no one had informed Petitioner of the death of Beatrice. Opposing council further stated the county was seeking a judgment of an excess of \$10,404.28 and that the county was pursuing criminal charges against Petitioner.

Prior to the trial the court denied a one week extension requested by the Petitioner, which precluded the location of important documentation. Opposing council then went on to inform the lower court how petitioner did not provide water to her animals as the water had been shut off by the City of Boynton Beach for non-payment, without acknowledging that the City of Boynton Beach had charged Petitioner over \$600.00 for water that Petitioner had difficulty paying, and had overcome this obstacle by using non-traditional sources of water.

The county alleged that Beatrice had a severe hookworm infestation but did not provide at trial evidence of a complete blood count which proved anemia. *Brown v. State*, 166 So.3d. 817, 819 (Fla. Dist. Ct. App. 2015). The county alleged Beatrice had ear mites and provided no picture of a mite. The county alleged Beatrice was flea infested but provided no pictures of a flea or fleas, and no laboratory evidence of anemia, indicative of a severe flea infestation due to loss of blood from flea bites. The county further alleged that Chewey had a blind eye and a rotten tooth, while refusing to acknowledge that Chewey was adopted with preexisting conditions.

Chewey had a habit of biting one of his paws, and Petitioner would treat the area with Sulfodene, an over the counter remedy to treat hot spots in canines to cause a healing. The county did provide darkly tinted black and white photographs negatively portraying Beatrice and Chewey in a troubling state. The county did not acknowledge the fact that Petitioner provided holistic medications to Beatrice which were effective and affordable in providing cardiac comfort and bronchodilation. Some of these items, including the artificial tears, Sulfodene astringent (<https://www.amazon.com/Sulfodene-Medicated-Spot-Relief-Spray/dp/B00X12NL-SM>), Diatomaceous earth, Richards Shampoo, handyman invoice and note, construction supplies receipt and check off list which Petitioner kept were omitted in the evidence list, although Petitioner brought them to the trial. On the above mentioned primary care visit for Beatrice and approximately 12 months earlier with receipt not locatable at time of trial, it was recommended to visit either cardiac or pulmonary specialty for further consultation, and that heart surgery in canines

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was not and is not yet perfected and (Borgarelli, M., Lanz, O., Pavlisko, N., Abbott, J. A., Menciotti, G., Aherne, M., . . . Gammie, J. S. 2017). Since euthanasia was out of the question and the specialty visit was cost prohibitive at the time, Petitioner opted for comfort care at home and which is called palliative care in human terms. The trial court was asked to look to the Washington statute RCW 16. 52.207, section 4, if established by the defendant by a preponderance of the evidence, that the defendant's failure was due to economic distress beyond the defendant's control, then that defense is an affirmative defense in any prosecution of animal cruelty. Petitioner ordinarily would purchase higher quality products for the pets as was customary in the past before Petitioner suffered economic distress, and was also qualifying for the Florida Hardest Hit Fund ([www.treasury.gov](http://www.treasury.gov)). The court repudiated the Washington statute or the economic distress. Petitioner provided evidence of newer income that was initiated two months prior, and a signed contract with a start date entered into the contract and dollar figure amount of a salary in black and white, where Petitioner and the animals would be relocating to a new state in 3 months, along with home repair receipts. The court repudiated the evidence of present income which was a social security pension transitioning into a weekly salary as evidenced by future income and the handyman's letter to the court providing evidence of the cosmetic repairs. noting that the structural joists of the roof were intact. The court stated that the handyman must be physically present to provide testimony. Regarding the repairs, the court stated, it was glad that petitioner porch had been repaired. The court stated that Petitioner had proven financial distress towards the conclusion

of the trial, and before issuing the Summary Judgment. In looking over the evidence, Petitioner did not see the Handyman note or materials receipt from Home Depot entered into evidence. Providing this evidence demonstrated fitness according to Florida Statute Section 828.073(4)(a)(1), which states that if the owner is adjudged by the court to be adequately able to provide for and have custody of the animal(s) in which case the animal shall be returned to the owner upon payment by the owner for the care and provision for the animal(s) while in the agent(s) custody. Petitioner met the above burden by demonstrating adequacy through the evidence brought to trial. The judgment charge of \$10,404.28 is a violation of Eighth Amendment of the United States Constitution in that it was an excessive fine and a cruel and unusual punishment.

Petitioners' decision to provide care at home for Beatrice was not unlike the decision plaintiff Willie Jackson was faced with in *Daskalea v. Washington Humane Society*, 480 F.Supp.2d 16, 19 (D.D.C. 2007). Mr. Jackson alleged that on October 11, 2003, members of the Humane Society entered his family's home and illegally seized the family dog which had previously developed terminal cancer. The Jacksons were providing comfort care to their family dog at the time, and despite numerous demands to the Humane Society to free the family dog, the Humane Society refused to return the animal until Mr. Jackson would approve and pay for major cancer surgery. In an attempt to satisfy the Humane Society, Mr. Jackson provided veterinary records from four years prior demonstrating exemplary medical treatment. This did not satisfy the Humane Society and a demand was

made to Mr. Jackson that his animal was to receive "radical treatment". Mr. Jackson was then compelled to agree to the cancer surgery. The treatment was a failure and the family dog died. Mr. Jackson did not receive the opportunity to contest the reasonableness of the radical cancer surgery treatment. Prior to the seizure of Beatrice, she was comfortable at home, had a good appetite and drinking plenty of water. After Beatrice was seized from her home on April 14, 2018 she was taken to a veterinary cardiology specialty visit by Palm Beach County Animal Care and Control Officer Adam Moulton on May 4, 2018. Petitioner has knowledge of this fact because Petitioner contacted the veterinary specialty office regarding the treatment and handling of Beatrice. Beatrice was subjected to a long and very hot truck ride. On entering the specialty visit, Beatrice was placed supine which she could not tolerate, and most probably sedated for the testing, which the county denied. No one consulted Petitioner for permission to perform the radical testing although Beatrice was the property of Petitioner. According to the veterinarian who testified on behalf of the county or Palm Beach County Animal Care and Control, Beatrice was prescribed two cardiac medications at the time of the cardiac specialty visit. On May 7th and just two days after initiation of the "new treatment" Beatrice died. The temperature of the kennels in the Palm Beach County Animal Care and Control environment were sweltering to over a recorded 122 degrees, which Adam Moulton and his attorney concealed at trial. Beatrice was returned from the specialty visit back into filthy and inhuman conditions where she ultimately succumbed to the environment. In this event Petitioner feels that Beatrice was euthanized without her owners knowledge

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or permission. Petitioners position was similar to Mr. Jackson in that both parties were providing to their pet the care they felt was best at the time without government interference. The management and treatment of both Mr. Jackson's and Petitioners family dog by the government agency ultimately ended in the demise of the beloved pets. In this event Respondents conduct violates Petitioners rights under the Fourth, Fifth, and Fourteenth Amendment by illegally detaining Beatrice, by extorting unjustified fees for Beatrice and the other seized pets, and by compelling Beatrice to medical treatment that killed her. Respondents Adam Moulton of Palm Beach County Animal Care and Control cloaked as Palm Beach County and his attorney then moved on by filing criminal charges holding Petitioner accountable for the death of Beatrice, and alleging that the finches and other animals, including Beatrice were unlawfully contained and abandoned, which is not true.

Respondents alleged that the other animals were in poor condition, however and seven days prior to the seizure of Petitioners animals, Officer Jarrett of Palm Beach County Animal Care and Control made a visit to Petitioners home based on the pet sitters complaint. Jarrett repeatedly asked if she could "come inside and look around" and "are you going to let me look inside?".

Jarret's request was declined as prescribed by the Fourth Amendment of the United States Constitution. Jarrett reported that Abby, Chewey and Hailey were in good condition according to her rating scale and physical inspection. The other pets, including Beatrice and the birds were not brought out as Beatrice could not tolerate the heat, and the other pets were not

updated with vaccines. Jarrett made note that the backyard was “strewn with garbage” and that the home had been abandoned or was an abandoned home, which was false. Jarrett made note of a strong “odor of ammonia” but made no reference of how she measured this odor.

At trial, Petitioner later learned that Respondents Adam Moulton and his attorney tape recorded portions of Petitioners testimony without her consent or knowledge that the testimony was being audio recorded. Simultaneously, and while holding eye contact with the opposing council and Moulton, the trial judge was asking incriminating and leading questions of the Petitioner so that this information could be preserved on tape. Petitioner had a very strong negative intuitive feeling at this juncture in the trial but was unable to locate the source. The source eventually revealed itself by way of the recorded tape which was provided to the Petitioner. The tape recording of Petitioner without her consent or knowledge is an invasion of privacy and a violation of the Florida’s Security of Communications Act, Florida Statute 934.03(1)(c)(d), *Horning-Keating v. Employers Insurance of Wausau*, 969 So.2d 412 (Fla. Dist. Ct. App. 2007) and a Violation of the Fifth Amendment of the Constitution of the United States. In the *Horning-Keating* case, the judge of compensation claims found this conduct to be reprehensible and shameful.

While Respondents collected an audiotape for themselves at the trial, Petitioner was not informed to make arrangements for trial transcription. According to Rule 9.200(b)(4) of the Florida Rules of Appellate Procedure a method is provided where a party can attempt to overcome the lack of a transcript or record

evidence in order to obtain appellate review of a decision that is erroneous. On an occasion such as this where there is no court transcript an appellant may prepare a statement of the proceedings or the evidence, using the best means available, and this may include the appellants recollection. If a Writ of Certiorari is granted Rule 9.200(b)(4) will provide the prescription as Petitioner prepared a written record of events immediate post bench trial on advice from council.

At trial, Petitioner was placed under oath by the trial judge before providing testimony. The telephonic testimony of the cardiac veterinary specialist was excluded, as the court concluded it could not place this individual under oath. This seemed exceptionally odd to Petitioner, as no one else who provided testimony at the trial was placed under Oath. According to the 2017 Florida Statutes, Title VII, Evidence, under Chapter 90, Evidence Code, 90.065(1), the statute prescribes that before testifying, each witness shall declare that he or she will testify truthfully, by taking an oath or affirmation, and this in substantiality is to be in the following form: "Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?" The witnesses' answer shall be noted in the record.

Petitioner urges this Court to take review in order to determine the question of fitness and how the petitioner met the burden of proof which was either suppressed or repudiated by the bench trial, whether abridgment of Petitioners rights is Constitutional in scope, and whether a Summary Judgment of over \$10,000.00 is appropriate in the face of the

evidence the petitioner brought to the bench trial as justice has not been attained in this matter.



### CONCLUSION

For the foregoing reasons, Petitioner requests that this Court grant the Writ of Certiorari.

Respectfully submitted,

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