

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>DIANNA HELMERS, Plaintiff, v. CITY OF DES MOINES, Defendant.</p>	<p>CASE NO. CVCV053097 ORDER RE: MOTIONS FOR SUPERSEDEAS BONDS AND FOR STAY</p>
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The court has before it the defendant, City of Des Moines' ("City") motion for supersedeas bond and plaintiff, Dianna Helmers' ("Helmers") motion for stay of judgment and supersedeas bond. A hearing was held on July 13, 2017. Appearing on behalf of the City was assistant city attorney, John Haraldson. Appearing personally was Helmers along with her counsel, Jamie Hunter. The court having reviewed the motions and heard counsels' arguments finds and orders as follows:

The court entered an order on April 17, 2017 which affirmed in part and denied in part a November 17, 2016 decision issued by an administrative hearing officer regarding the City's dangerous dog declaration of "Pinky." The court affirmed the administrative hearing officer's decision that Pinky was properly declared a dangerous dog under the City's municipal code. The court rejected the administrative hearing officer's determination that Helmers did not have standing to appeal the City's determination.¹

The City seeks an order requiring Helmers to post a supersedeas bond during the pendency of the appeal pursuant to Iowa Rule of Appellate Procedure 6.601. The City seeks an order that would require Helmers to post a bond in the amount of \$4,200.00 and posting of

¹ The court entered an order on May 20, 2017 granting in part Helmers' motion to enlarge and amend but that order does not affect the court's decision here.

additional bonds every 90 days in the amount of \$990.00. The court's order of April 17, 2017 did not grant any money judgment but the City continues to incur an expense of \$10.00 per day for boarding Pinky at the Animal Rescue League ("ARL").² Since the court's order determined that Helmers had standing to pursue the writ of certiorari the City argues that she should post a bond for the ongoing boarding costs pending resolution of the appeal. Helmers seeks a stay of the judgment by releasing Pinky from the City's custody and placement with her at her animal rescue facility in Reinbeck, Iowa. If the court grants her stay she requested that a supersedeas bond in the amount of \$1,000.00 would be sufficient.

The court entered a stay requested by Helmers when this action was originally filed. The stay required that the City not destroy Pinky pending the resolution of the case including the time for appeal. The City, according to counsel at the hearing agreed that Pinky would not be destroyed pending the outcome of the case. The City did not challenge the motion for stay because the City believed they were the owner of Pinky based upon her owner's relinquishment of his ownership rights.

The court does not have the authority to grant the City's motion for issuance of a supersedeas bond. "[A] supersedeas bond is a method to be used solely at appellant's discretion."³ "[I]t is improper for an appellee to apply to the court to require an appellant to obtain a supersedeas bond, and it is improper for the court to require an appellant to obtain such a bond."⁴ Accordingly, the court cannot grant the City's request.

Helmerts' sought a stay of the judgment by ordering the release of Pinky to her. She also requested that she be allowed to post a supersedeas bond in the amount of \$1,000.00 to protect

² As of the filing of the motion Pinky has been housed at the ARL for 420 days.

³ *Espey v. Iowa Dist. Court for Polk County*, 772 N.W.2d 269, 2009 WL 2185737, *4 (Iowa Ct. App. 2009)

⁴ *Id.*

the City. The court likewise denies Helmers' motion. A stay was entered in this case at its inception. That stay covered the time for appeal. No bond was requested at that time and none was required. The issuance of a supersedeas bond in the amount of \$1,000.00 with the condition that the City release Pinky from its custody pending appeal is contrary to the court's decision that the City's dangerous dog declaration and continued custody of Pinky was lawful. The present stay issued at the inception of the case maintains the status quo pending the appeal of this matter.

IT IS THEREFORE ORDERED that the City's motion for the issuance of a supersedeas bond is **DENIED**.

IT IS FURTHER ORDERED that Helmers' motion for stay and issuance of supersedeas bond is **DENIED**.

IT IS FURTHER ORDERED that the stay issued on November 30, 2016 remains in effect.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
CVCV053097 DIANNA HELMERS VS CITY OF DES MOINES

So Ordered

A handwritten signature in black ink, appearing to read "L. P. McLellan". The signature is written in a cursive style and is positioned above a horizontal line.

Lawrence P. McLellan, District Court Judge,
Fifth Judicial District of Iowa