

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
CASE NO. 2006 CR 052098

THE STATE OF NORTH CAROLINA
Plaintiff

v.

TRISTON ALAN HINSON
Defendant

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MOTION IN THE CAUSE

NOW COMES Petitioner, Johnston County Animal Shelter, through the undersigned counsel, and moves this Court, consider the following new information and amend its previous orders regarding the disposition of certain dogs currently being housed at the Defendant's residence:

1. On February 24, 2006, Johnston County Animal Control lawfully removed a total of 47 pit bulldogs, adults and puppies, from the subject property known as 11157 NC Highway 42 East, Middlesex, North Carolina, on the night of February 24, 2006 and placed them in the Johnston County Animal Shelter.
 2. The Johnston County Animal Shelter, through its counsel, filed a petition for bond pursuant to NC Gen. Stat. c 19A-70 on March 6th, 2006 to recover the costs of caring for the seized dogs.
 3. After a hearing on April 6, 2006, the Court entered an Order on the Petition for a bond which included the following:
 1. That the Johnston County Animal Shelter shall retain in its possession nine (9) of the pit bulldogs in question, those being the dogs with Identification Numbers 11253, 11255, 11382, 11291, 11346, 11349, 11355, 11358 and 11379, as stated in paragraph 3 of Dr. Ferris's Affidavit;
 2. That the Defendant is ordered to deposit funds with the Clerk of Superior Court in the amount of \$ 2,500.00, every 30 days, for the reasonable expenses, including medical care, of the dogs remaining in the animal shelter;
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4. That the remaining 37 pit bull dogs will be returned to the Defendant to provide necessary food, water, shelter, and care, including any necessary medical care, for any dogs that are the basis of remaining charges against the Defendant and until the charges against the defendant are adjudicated. An

animal control officer or other law enforcement officer shall make regular visits to the location to ensure that the dogs are receiving necessary food, water, shelter, and care, including any necessary medical care, and shall impound the animals if they are not receiving those necessities pursuant to subsection (f) of N.C. Gen. Stat. c 19A-70.

4. On June 8, 2006, a hearing was held upon Defendant's Motion in the Cause seeking a modification of the above Order. An Order was entered on June 19, 2006, granting said Motion and including the following:

"The remaining dogs in the possession of the Defendant can be sold by the Defendant upon receipt of a proper bill of sale between the seller and buyer which would include the buyer's name and address."

5. Subsequently, Defendant sold 12 of the dogs to a Ms. Christy Lewis according to the Bill of Sale; however, the address on the Bill of Sale was inaccurate.
6. Petitioner did locate Ms. Lewis and determined that she had exercised ownership over the dogs. In response to discussions with Ms. Lewis and complaints from neighbors, an inspection of the premises where the dogs were being housed was conducted by authorized staff of the Johnston County Animal Shelter. The inspection revealed numerous deficiencies and conditions inconsistent with Johnston County Animal Control Ordinance. Petitioner made concerted efforts to work with Ms. Lewis to create a safe, secure and humane environment for the dogs, their new owner and her neighbors.
7. On or about September 4, 2006, Ms. Lewis surrendered the subject dogs to the custody of the Johnston County Animal Shelter, based, in part, upon her concerns over her ability to keep herself and the dogs safe and healthy.
8. It is the position of the Johnston County Animal Shelter after extensive monitoring and interaction with the animals that many, if not all, of the dogs are animal aggressive and pose a risk of danger to themselves and other dogs they may be exposed to, and may well pose a danger to persons who have to deal with them in aggressive situations. To date, four of the dogs have been killed, at least three in altercations with other pit bull dogs.
9. Pursuant to the original Order granting Petitioner's petition for bond the dogs originally placed at Defendant's residence are placed there pursuant to N. C. Gen. Stat. § 19A-70(f). Thus, according to the statute and the Order, the dogs are the responsibility of Johnston County, although they are to be housed at the Defendant's residence and Johnston County may be deemed as the custodian of the dogs until such time as the underlying charges are adjudicated.
10. In light of the above, it appears that the best interests of the Johnston County Animal Shelter, as custodian; Defendant, as the responsible party under the Order and the general public that the Order allowing the sale of the dogs be amended and the sale of any more dogs be prohibited.

NOW, THEREFORE, Petitioner, Johnston County Animal Shelter, through the undersigned counsel, respectfully moves the Court to issue an Order pursuant to Rule 7 of the North Carolina Rules of Civil Procedure and NC Gen. Stat c 19A-70 with the following orders:

5. That this Motion be granted and the prior Order allowing the sale of the dogs be amended and the sale of any more dogs is hereby prohibited until the adjudication of the underlying charges.
6. That the dogs still remaining on Defendant 's premises remain there pursuant to the Order of April 6, 2006 entered in this matter; or, in the alternative, be surrendered to the Johnston County Animal Shelter; should the dogs be surrendered to the Johnston County Animal Shelter, Defendant shall have no further obligations to the Johnston County Animal Shelter under the bond and N. C. Gen. Stat. § 19A-70.
7. Such other and further relief as the Court deems just.

Respectfully submitted this the 6th day of October, 2006.

JOHNSTON COUNTY

J. Mark Payne
Johnston County Attorney
N.C. State Bar No. 11046
207 East Johnston Street
Post Office Box 1049
Smithfield, NC 27577
Telephone: (919) 989-5100
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing and attached Motion was served this day by personal service or depositing same in an official depository under the exclusive care and custody of the United States Postal Service in an envelope with postage prepaid and addressed as follows:

State of North Carolina
c/o District Attorney's Office
125 South Second Street
Smithfield, North Carolina 27577

James R. Lawrence, Jr.
Attorney for Defendant
Daughtry, Woodard, Lawrence & Starling, LLP
Post Office Drawer 1960
Smithfield, North Carolina 27577

This 6th day of October, 2006.

JOHNSTON COUNTY

By: _____

J. Mark Payne
Johnston County Attorney
N.C. State Bar No. 11046
Post Office Box 1049
Smithfield, North Carolina 27577
Telephone: 919-989-5100
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AFFIDAVIT

NOW COMES Affiant, being duly sworn, and says:

8. My name is Ernie Wilkinson and I am the Johnston County Animal Shelter Director and, in that capacity, my staff and I have monitored and inspected the condition and living conditions of the remaining pit bull dogs, which are the subject of this matter, that were seized from the Defendant's possession on the evening of February 24, 2006.
9. I have read the foregoing Motion in the Cause and the same is true of my own knowledge, save and except for those matters set forth therein based upon the information and belief, and as to them, I believe them to be true.

Respectfully Submitted, this the 11th day of September, 2006.

Ernie Wilkinson, Johnston County Animal Shelter Director

NORTH CAROLINA
JOHNSTON COUNTY

I, _____, a Notary Public of said State and County, certify that Ernie Wilkinson personally appeared before me and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal, this the 11th day of September, 2006.

My Commission Expires:

Notary Public
