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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2810-15T3

BETTINA ROED, NANCY
BENNETT, KIMBERLY WHITE,
TATIANA CHAN, PATRICK CHAN,
GRETCHEN FAHRENBRUCH, MARY
ANN CANCIO, TARI PANTALEO,
DOUG MILLER, JOHN T. JONES,
RUTH H. JONES, and DEBORAH
HEPLER,

Plaintiffs-Respondents,

v.

TOWNSHIP OF WEST WINDSOR,
MAYOR OF THE TOWNSHIP OF
WEST WINDSOR, COUNCIL OF THE
TOWNSHIP OF WEST WINDSOR, and
TOWNSHIP OF EAST WINDSOR,

Defendants-Appellants.

Argued October 12, 2017 – Decided January 9, 2018

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, Docket No. L-
1106-11.

Michael W. Herbert argued the cause for
appellants (Parker McCay, attorneys; Michael
W. Herbert, on the briefs).

Walter R. Bliss, Jr., argued the cause for respondents.

PER CURIAM

In this appeal, we are asked to determine whether the Law Division properly invalidated an inter-local services agreement to share the services provided by a municipal animal control officer (ACO) as defined by N.J.S.A. 4:19-15.16b.¹ Judge Mary C. Jacobson conducted an evidentiary hearing and entered a declaratory judgment on January 26, 2016, invalidating the agreement after concluding that it did "not provide an adequate level of animal control services . . . to meet the requirements of the state's animal control statutes." Defendants, the impacted municipalities, appeal from that judgment and argue that Judge Jacobson erred because they were in "compliance" with all applicable state laws and regulations. Plaintiffs, the former West Windsor Township ACO and residents of West Windsor and Plainsboro,² aver that the judge's decision was legally correct and "supported by substantial credible evidence."

¹ The statute states, in pertinent part, "[t]he governing body of a municipality shall . . . appoint a certified animal control officer who shall be responsible for animal control within the jurisdiction of the municipality" N.J.S.A. 4:19-15.16b (emphasis added).

² At the time East Windsor entered into the agreement with West Windsor, its ACO also served Robbinsville.

We have carefully reviewed the record and applicable legal principles. We affirm substantially for the reasons expressed by Judge Jacobson in her comprehensive January 22, 2016 oral decision.

We summarize the facts leading to this dispute as found by Judge Jacobson. Plaintiff, Bettina Roed had been employed as West Windsor's ACO from 1993 to 2011. Roed also acted as ACO for Plainsboro under an inter-local services agreement until the end of 2010, when the agreement terminated. At that time, West Windsor determined it could no longer afford its own ACO and in April 2011, it terminated Roed and eliminated the position of ACO.

In order to continue to provide ACO services for its residents, West Windsor entered into an inter-local services agreement with East Windsor that allowed it to rely on East Windsor's ACO for animal control services. The agreement provided for West Windsor to pay East Windsor on an hourly basis for the ACO's services as needed.

The agreement set forth a procedure for West Windsor to follow when it needed the ACO's services. It stated that "[a]s the immediate need arises on a day-to-day basis, West Windsor shall make a specific request of East Windsor for animal control services. Such request shall be communicated by the West Windsor Police Department through the East Windsor Police Department for relay to the [ACO]."

After the municipalities entered into the agreement, West Windsor's chief of police issued "Memorandum 2011-12," which became the principal document defining the animal control policies of the department when handling animal control issues under the agreement. The memorandum contained six guidelines.

The first two guidelines directed police officers to discard dead animals found in the roadway and to remove dead deer from the "travel portion of the roadway." The third guideline directed police to "not handle wildlife issues on private property unless a threat or safety hazard exists," and instructed officers to advise "[r]esidents . . . to call an exterminator." The fourth guideline concerned dogs running loose after regular business hours and directed officers to "[s]imply pick up the dog[s] and drop [them] off at [the k]ennel if possible, or leave [them] in the kennel behind the municipal center. . . . Any injured animals should be taken to [the] Animal Hospital." The fifth guideline stated "if the resident requests a police officer respond to the residence, a patrol officer should be dispatched to the scene to assess the situation him/herself to determine the correct course of action." The last guideline advised police officers that "[w]hen in doubt, please have your supervisor contact the East Windsor [ACO]."

Plaintiffs filed their initial complaint in lieu of prerogative writs, R. 4:69, challenging the agreement and its implementation's reliance upon police rather than a certified ACO. They argued that the arrangement failed to meet the requirements of the animal control statute and regulations.

The matter came before Judge Jacobson for a two-day trial at which five witnesses testified. The witnesses were a resident who explained his experience with calls for an ACO, the former ACO Roed, plaintiff's expert who was an ACO trainer, plaintiff's analyst who determined the number of animal-related calls to the police that were referred to East Windsor's ACO, and defendants' expert who was a retired ACO from another municipality.

After considering all of the evidence, Judge Jacobson placed her comprehensive and thoughtful oral decision on the record. The judge initially defined the parties' dispute by observing that there was no impediment in the law to municipalities entering into "shared services agreements" for ACO services. She explained plaintiffs' challenge was not to the agreement itself, but to its implementation. The judge stated:

What plaintiffs maintain is simply that the current arrangement with one [ACO] for three municipalities very large in area with significant population is inconsistent with the statute and actually violates legislative directives because it[has] been the police now in West Windsor responding to the vast

majority of calls, untrained police officers rather than animal control officers.

Relying on her review of the animal control statute, its legislative history and the limited case law relating to ACOs, Judge Jacobson found that the "public has a clear interest in the implementation of animal control laws to assure that animals are being handled in accordance with legislative directives and that [ACOs] carry on their duties properly." She concluded that the Legislature's 1983 amendment to the animal control statutes sought to "professionalize the provision of animal control services in New Jersey." She found that those amendments were made in response to a concern that ACOs were not adequately and uniformly trained, and that the purpose of the pertinent legislative amendments was to require that "every municipality . . . carry out the task of animal control uniformly[, by virtue of a] certification process now mandated by statute that ensures the uniformity of training[.]" According to the judge, "[t]he aim of the Legislature was to have trained [ACOs] making a lot of these [animal control] decisions and carrying out the services." The judge observed that there was "clear legislative direction that a whole host of services connected [with] animals and stray dogs, cats and rabies vector animals . . . need[ed] to be made by certified and trained officers."

The judge criticized West Windsor for having police officers initially assess animal control calls to find out whether the East Windsor ACO should be brought to the scene. She found that in "the first partial year of operations under the shared services agreement . . . the East Windsor [ACO] responded to 46 out of [the] 624 West Windsor animal related calls." Judge Jacobson concluded that West Windsor police officers were mainly handling animal control matters, and the East Windsor ACO was only called as a "last resort which [was] contradictory to the way the statute is set up." The judge concluded that the decrease in the number of calls for the ACO's services in West Windsor was inconsistent with the Legislature's intent.

Judge Jacobson held that West Windsor's assignment of the screening of ACO calls to police violated the statute. She did not believe that the West Windsor police officers were properly trained to assess animal control situations. The judge expressed her concern that police officers "may not understand certain animal behaviors and [were] not . . . able to know the danger of the animals, to themselves or others."

The judge concluded that the inter-local services agreement did not provide an adequate level of animal control services to meet the requirements of the animal control statutes. According to the judge, the inter-local services agreement did not specify

a minimum level of service, it did not set any performance standards, and it did not provide "any assurance that [it] would meet New Jersey's statutory requirements for animal control."

The judge entered a judgment in favor of plaintiffs on January 26, 2016. This appeal followed.

On appeal, defendants argue the trial court erred in finding that New Jersey state laws and regulations require responses to all animal control calls by a certified ACO. Defendants contend that nowhere in N.J.S.A. 4:19-15.16 does it state the requirement for the level of service that the trial court found. They also argue there is nothing in the statute that prohibits having the police department screen these calls. According to defendants, even though there have been less animal control incidents where the ACO's services were needed in West Windsor, that does not warrant the conclusion made by the trial court that the inter-local services agreement did not comply with New Jersey law. Defendants also assert that the judge's finding "will place a tremendous burden upon [West Windsor's] limited economic resources."

Our review of a trial court's fact finding in a non-jury case is limited. D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013) (citing Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011)). "The general rule is that findings by the trial court

are binding on appeal when supported by adequate, substantial, credible evidence. Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility." Seidman, 205 N.J. at 182 (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). We "should not disturb the factual findings and legal conclusions of the trial judge unless [we are] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Ibid. (quoting Cesare, 154 N.J. at 412).

However, we owe no deference to a trial court's interpretation of the law, and review issues of law de novo. Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). We also review mixed questions of law and fact de novo. In re Malone, 381 N.J. Super. 344, 349 (App. Div. 2005). Whether a municipality's actions violate a statute is a legal question subject to our de novo review. Newfield Fire Co. No. 1 v. Borough of Newfield, 439 N.J. Super. 202, 209 (App. Div. 2015).

We begin our review by acknowledging that acts of a municipal governing body are presumptively valid. Bryant v. City of Atl. City, 309 N.J. Super. 596, 610 (App. Div. 1998). Absent a showing to the contrary, it is presumed that the actions of a municipality are rationally taken based upon knowledge and experience. Ibid.

Overcoming the presumption of validity is a heavy burden that the challenger of municipal action must meet in order to prevail. Ibid. This presumption can be overcome only by proofs that the action taken by the governing body is "arbitrary, capricious or unreasonable." See Cells of N.J. v. Zoning Bd. of Adjustment, 172 N.J. 75, 81 (2002) (quoting Medici v. BPR Co., 107 N.J. 1, 15 (1987)).

Despite the deference afforded to a municipal governing body's acts, "it is fundamental in [New Jersey] law that there is no inherent right of local self-government beyond the control of the State[.]" Wagner v. Mayor & Mun. Council of Newark, 24 N.J. 467, 474 (1957). "[M]unicipalities are but creations of the State, limited in their powers and capable of exercising only those powers of government granted to them by the Legislature." Ibid. (citations omitted). A municipality "cannot act contrary to the State." Redd v. Bowman, 223 N.J. 87, 108 (2015) (quoting Overlook Terrace Mgmt. Corp. v. Rent Control Bd. of Twp. of W.N.Y., 71 N.J. 451, 461 (1976)).

The State has established laws and regulations regarding animal control services. A plain reading of the controlling statutes and regulations establish that a police officer would be unqualified to assess animal control situations and that a certified ACO is required to respond to calls involving animal

control issues.³ N.J.S.A. 4:19-15.16b requires animal control issues within a municipality to be handled by a certified ACO. N.J.S.A. 4:19-15.1 limits "certified animal control officer" to those persons who have "satisfactorily completed [a specific] course of study" or one who had specific prior experience in the field. Regulations adopted by the Commissioner of Health define the course of study and training required in order to obtain certification. N.J.S.A. 4:19-15.1; see also N.J.A.C. 8:23A-2.2.⁴

³ Notably, earlier versions of the animal control law vested responsibility for animal control issues with the local chiefs of police. See N.J.S.A. 4:19-15.16 (1941). By amendment in 1973, the Legislature specifically relieved the police of that responsibility, N.J.S.A. 4:19-15.16 (1973); see also S. Cty. & Mun. Gov't Comm. Statement to A. 71 (1973), and its 1983 amendment specifically required that certified ACOs be responsible for animal control issues. N.J.S.A. 4:19-15.16 (1983); see also S. Nat. Res. & Agric. Comm. Statement to A. 3205 (L. 1983, c. 525).


⁴ The regulation states:

An [ACO] course of study shall provide a minimum of [forty-five] hours or the equivalent to three credit hours offered by an accredited New Jersey college or university which includes, at a minimum, the following subject areas: (1) New Jersey Statutes and Rules governing rabies and the control of domestic animals, wildlife control, wildlife protection, and enforcement; (2) Animal disease recognition and prevention; (3) First aid for injured animals; (4) Principles and procedures for the capture and handling of stray domestic animals and wildlife; (5) Cruelty documentation, evidence and courtroom procedures; (6) Shelter operations, adoption,

Applying these guiding principles, we agree with Judge Jacobson's careful analysis of the inter-local services agreement as we also conclude that its implementation was inconsistent with the governing statute and could not be sustained. Suffice it to say, it is for a certified municipal ACO to make decisions about matters involving animals, not the police. We therefore affirm the judge's decision substantially for the reasons expressed in her thorough oral decision.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


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and humane euthanasia procedures; and (7) A minimum of [twenty] hours of infield training under the direction of two Certified [ACOs] currently working in that capacity.

[N.J.A.C. 8:23A-2.2.]