

STATE OF MICHIGAN
COURT OF APPEALS

In re TATO.

ALLEGAN COUNTY SHERIFF DEPARTMENT
ANIMAL CONTROL,

Petitioner-Appellee,

v

KATIE LOPEZ,

Respondent-Appellant.

FOR PUBLICATION
December 28, 2021
9:00 a.m.

No. 353884
Allegan Circuit Court
LC No. 19-061851-AV

Before: GADOLA, P.J., and SWARTZLE and CAMERON, JJ.

SWARTZLE, J.

Ava Caswell and Kimberly Nienhuis were walking their dogs in a residential neighborhood when one of their dogs, Piper, was attacked by Tato, a pit bull. The two dogs were eventually separated, with Piper suffering a minor injury to his ear. Petitioner sought to euthanize Tato, alleging that the dog was a “dangerous animal” under the law. The district court agreed and ordered that Tato be euthanized, and the circuit court affirmed on appeal. We conclude, however, that at this point, Tato does not meet the statutory definition of a “dangerous animal.” As explained below, we reverse.

I. BACKGROUND

On April 8, 2019, Caswell and Nienhuis were walking on a residential sidewalk with four other people and three small dogs. One of the dogs was a 19-pound dog named Piper, who was on a leash being held by Nienhuis. As the group was walking past the home of Katie and Ray

Lopez¹—Tato’s owners—Tato, who was inside the house, pushed out a window screen, jumped out the window, and ran toward Piper. Tato bit down on Piper’s ear and shook the smaller dog back and forth. The people in the group hit and kicked Tato in an attempt to get Tato to release Piper.

At some point during the melee, Caswell was on the ground holding onto Piper. Caswell was able to put her hand in Tato’s mouth and pull Piper’s ear out of Tato’s mouth. While Caswell was on her knees, Tato pushed off Caswell’s legs using his back paws in an attempt to get to Piper. Both Caswell and Nienhuis described the incident as a dog-on-dog attack and said that Tato did not attack any people.

The Lopezes first noticed the situation when they looked outside and saw a group of people beating Tato. When Katie and Ray went outside, the group of people screamed and cursed at them. Ray eventually removed Tato from the area.

As a result of the attack, Piper suffered an injury to one ear. The injury was described by several witnesses as a “nick” of Piper’s ear, which created a “crooked ear” and left the edge of that ear jagged. Piper was taken to an emergency veterinarian, but he did not receive any stitches. After a couple of weeks and a trip to the groomer to even out Piper’s hair, Piper’s injured ear looked even with her uninjured ear. Caswell suffered minor scrapes on her knees, hip, and hand as a result of the incident. No other animals or people were injured during the incident.

Several months later, a sheriff’s deputy took Tato from the Lopezes’ home and placed him in a shelter. Petitioner filed a complaint the next day seeking to destroy Tato because he was a “dangerous animal.” The magistrate held a show-cause hearing and concluded that Tato was a dangerous animal and ordered that the dog be euthanized. The Lopezes appealed to the district court, which held a bench trial on the issue. At the bench trial, Katie testified that Tato had never exhibited any aggressive behavior toward people or other dogs, despite the fact that Tato was frequently around children and small dogs. Ray also testified that he had never seen Tato exhibit any aggressive behavior. The sheriff’s deputy who picked up Tato said that Tato was very friendly to him, but noted that Tato became aggressive toward other dogs when Tato arrived at the animal shelter. Ray testified that he did not consider Tato’s behavior in the incident with Piper to be aggressive, but he said that he would take any protective measures necessary to save Tato.

Following the bench trial, the district court found that Tato was a “dangerous animal” under MCL 287.321(a) because Tato had attacked Piper and the people around Piper. The district court reasoned that Tato attacked Nienhuis because she was connected to Piper via leash at the time of the attack, Tato attacked Caswell because Caswell was injured in the incident, and Tato attacked the group of people as a whole because it was foreseeable that they would get involved to try to save Piper. The district court concluded that Tato posed a danger to others and considered whether there were any remedial measures that it could order to safeguard the public. On the basis of the “disturbing” testimony from Ray and Katie—that they did not consider Tato’s behavior to be

¹ Because Katie and Ray share the same last name, we will refer to them by their first names for clarity.

aggressive—and the “callous[ness]” demonstrated by them regarding the incident, the district court found that there were no remedial measures that it could order that would safeguard the public from Tato. The district court ordered that Tato be euthanized.

The Lopezes appealed to the circuit court. The circuit court found that Piper did not suffer serious injury in the attack, and on that basis the district court erred. The circuit court concluded, however, that Tato did attack Caswell:

Tato worked against Ms. Caswell when he dragged her across the cement, resulting in her knees being scraped. He acted in a detrimental way that caused harm to Ms. Caswell and the other individuals by scratching them during the incident. The district court was proper in finding that Tato is a Dangerous Animal because he attacked Ms. Caswell.

The circuit court affirmed the district court’s finding that Tato was a dangerous animal as defined by MCL 287.321(a). The circuit court also affirmed the district court’s conclusion that Tato should be euthanized, finding that the “callousness” demonstrated by Ray and Katie “and their belief that Tato did nothing wrong” were sufficient evidence to support the finding that Tato was likely to cause serious injury or death to a person in the future. Katie now appeals by leave granted.²

II. ANALYSIS

Katie’s first claim of error is that the circuit court erred when it affirmed the district court’s conclusion that Tato was a “dangerous animal” under MCL 287.321(a). “Issues of statutory interpretation are reviewed de novo.” *City of Riverview v Sibley Limestone*, 270 Mich App 627, 630; 716 NW2d 615 (2006). “Statutory provisions must be read in the context of the entire act, giving every word its plain and ordinary meaning. When the language is clear and unambiguous, we will apply the statute as written and judicial construction is not permitted.” *Driver v Naini*, 490 Mich 239, 246-247; 802 NW2d 311 (2011). Absent an outcome-determinative genuine factual dispute, the issue of threshold injury is a question of law, which is reviewed de novo. *Kern v Blethen-Coluni*, 240 Mich App 333, 341-342; 612 NW2d 838 (2000). The application of the facts to the law is reviewed de novo. *Van Buren Charter Twp v Garter Belt, Inc*, 258 Mich App 594, 598; 673 NW2d 111 (2003). Finally, “[t]his Court reviews a trial court’s findings of fact for clear error.” *Kuhlgert v Mich State Univ*, 328 Mich App 357, 368; 937 NW2d 716 (2019).

The purpose of the dangerous animals act, MCL 287.321 *et seq.*, is “to prevent dangerous animals from running at large or injuring persons.” *People v Janes*, 302 Mich App 34, 53; 836 NW2d 883 (2013). MCL 287.321(a) defines a “dangerous animal” as “a dog or other animal that bites or attacks a person, or a dog that bites or attacks and causes serious injury or death to another dog while the other dog is on the property or under the control of its owner.” MCL 287.321 does not define “attack,” but this Court has previously defined “attack” for the purposes of MCL 287.321 as “to set upon or work against forcefully,” “to begin to affect or to act on injuriously,” “[t]o set upon with violent force,” and “[t]o act on in a detrimental way, cause harm to.” *People v*

² *In re Tato*, unpublished order of the Court of Appeals, entered November 13, 2020 (Docket No. 353884).

Ridge, 319 Mich App 393, 407; 901 NW2d 406 (2017). Taken together, these definitions require targeted conduct by the attacker against the attackee. Thus, an attacker “attacks” its target, not individuals or animals who are simply in the area or incidentally hurt as a result of the attack. See *id.* at 408.

The circuit court concluded that Tato was a dangerous animal because the dog attacked Caswell.³ The circuit court concluded that Tato attacked Caswell because he “worked against” her when he pulled Piper and, as a result, Caswell was dragged on the cement. As discussed, however, an “attack” requires a finding that the attacker targeted the attackee. It is undisputed that Tato’s focus during the incident was on Piper, not Caswell or any other person. While Tato did scratch Caswell’s hand and cause her to scrape her hip and knees, these minor injuries were a result of Tato attacking Piper, not from Tato attacking Caswell. Thus, Tato did not attack Caswell within the meaning of the statute. Nor has there been any evidence or argument that Tato bit Caswell or another person. Given this, the trial court erred by concluding that Tato was a dangerous animal under the statute.

Our inquiry does not stop there, however, because petitioner argues that Tato is a dangerous animal because Piper suffered a serious injury. Although petitioner did not file a cross-appeal, we consider this issue because it presents an alternative ground for affirmance. See *Ass’n of Businesses Advocating Tariff Equity v Pub Serv Comm*, 192 Mich App 19, 24; 480 NW2d 585 (1991). MCL 287.321(e) defines “serious injury” as a “permanent, serious disfigurement, serious impairment of health, or serious impairment of a bodily function of a person.” The record confirms that Piper suffered a cut to one ear and that a part of that ear was lost. The record further confirms that, a couple of weeks after the attack, Piper’s injury was barely noticeable. Importantly, there is no evidence that the injury affected Piper’s hearing or otherwise impaired her health. These injuries do not amount to a disfigurement or impairment that could be deemed to rise to the level of a “serious injury” under the statute. Thus, the circuit court correctly concluded that Piper did not suffer a serious injury. Accordingly, Tato is not a “dangerous animal” under the statute because he did not bite or attack a person and he did not seriously injure an animal.

The remaining issues presented on appeal all require a finding that Tato was a dangerous animal, and, therefore, those issues are now moot. We note, however, that even though Tato is not a dangerous animal as defined by statute, it is concerning that Tato attacked another dog in this manner and the Lopezes were apparently indifferent to their dog’s aggressive behavior. Ray made clear to the district court that he would take whatever precautions were necessary to counteract Tato’s aggression and protect people and animals in the future, and we expect that both he and Katie will follow through with these representations made to the district court.

³ Based on our reading of the circuit court’s order, it did not find that Tato attacked the other individuals present during the incident. Any such finding would have been clearly erroneous because no evidence was presented establishing that Tato scratched or bit any person other than Caswell. See *Home-Owners Ins Co v Perkins*, 328 Mich App 570, 579; 939 NW2d 705 (2019).

III. CONCLUSION

Tato does not meet the Legislature's definition of a "dangerous animal" under MCL 287.321(a). We reverse the circuit court's order to euthanize Tato and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brock A. Swartzle
/s/ Michael F. Gadola
/s/ Thomas C. Cameron