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STATE OF MICHIGAN

COURT OF APPEALS

In re CHANCE.

BRIAN ROSKEY,

Petitioner-Appellee,

v

PAMELA WICKINGS,

Respondent-Appellant.

FOR PUBLICATION
August 13, 2026
9:08 AM

No. 373223
St. Clair Circuit Court
LC No. 2024-001096-AV

Before: GADOLA, C.J., and RIORDAN and LETICA, JJ.

RIORDAN, J.

In this case involving a dangerous animal complaint under MCL 287.322, respondent appeals by leave granted[1] the circuit court's order affirming the district court's order to euthanize respondent's dog, Chance.[2] We reverse the circuit court's order of affirmance, vacate the district court's order, and remand the case to the district court for further proceedings.

I. BACKGROUND

This case arises out of the injuries that a guest at the Port Huron home of respondent Pamela Wickings suffered on April 6, 2024, when Chance—an American Bulldog that weighs about 80 pounds—bit her on the nose. Respondent lived in the home with her boyfriend, Richard

[1] See *In re Chance*, unpublished order of the Court of Appeals, entered June 9, 2025 (Docket No. 373223).

[2] The district court stayed the euthanasia pending appeal, subject to the conditions that Chance remain at a certain kennel at respondent's expense and not be removed from that kennel until further order of the court.

Macumber; her granddaughter, DR; and Chance. At the time of the incident, Chance was three years old and had lived with respondent for the entirety of the dog's life. Most of the key facts are undisputed, except with respect to whether the guest was waving a shoe when Chance bit her. The guest noticed that Chance had her shoe by him. She then got down on the floor, put her face within less than six inches of Chance's face, and sternly scolded him in a loud voice. Chance then bit off a portion of her nose.

At the district court hearing, the guest denied that she was holding the shoe while scolding Chance. However, Macumber and DR testified that the guest was waving the shoe while scolding Chance. When asked if it appeared the guest was going to hit Chance with the shoe, DR responded: "She wouldn't have because I know [her]; I know she wouldn't. But it looked—it would trigger, you know what I'm saying? Like, it could look like it."

Petitioner, the animal control officer for the Port Huron Police Department, agreed that his report indicated that the guest "admitted that she got into Chance's face, had a shoe in her hand, and basically yelled at him . . . ." The guest admitted to petitioner multiple times that she provoked the incident. When asked whether a person should put her his or her face in the face of a dog that does not belong to the person, petitioner testified, "I say I would personally not recommend it."

At the conclusion of the hearing, the district court ruled that Chance was subject to an order of euthanasia as a "dangerous animal" under MCL 287.322. The district court found that the guest did not provoke Chance and that she suffered a permanent and serious disfigurement. The circuit court affirmed the district court's order. The circuit court also denied a motion for relief from judgment filed by respondent regarding alleged new photographs of the guest showing that she was no longer disfigured. The appeal to this Court followed.

II. DISCUSSION

A. PROVOCATION

Respondent argues that the district court erred when rendering its findings and decision regarding provocation, including by failing to properly utilize an objective reasonable-person standard.[3] We agree.

This Court reviews de novo a circuit court's decision to affirm or reverse a district court's order. *Noll v Ritzer*, 317 Mich App 506, 510; 895 NW2d 192 (2016). Questions of statutory

[3] Petitioner contends that respondent's application for leave to appeal did not argue that the district court failed to properly utilize the reasonable-person standard in evaluating provocation and that this aspect of the issue is thus not properly before this Court, given that the order granting the application was limited to the issues raised in the application. See *In re Chance*, unpublished order of the Court of Appeals, entered June 9, 2025 (Docket No. 373223) (limiting the appeal to the issues raised in the application and supporting brief). We disagree with petitioner's contention. Respondent's application argued that the reasonable-person standard applied and that the evidence established provocation under this standard. Therefore, respondent's brief on appeal does not go beyond the issues raised in the application.

interpretation also are reviewed de novo. *Dextrom v Wexford Co*, 287 Mich App 406, 416; 789 NW2d 211 (2010). The district court's factual findings are reviewed for clear error. *Burkhardt v Bailey*, 260 Mich App 636, 647; 680 NW2d 453 (2004). Clear error exists "when, although there is evidence to support [a finding], the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). "In the application of this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C).

MCL 287.322 provides, in pertinent part:

> (1) Upon a sworn complaint that an animal is a dangerous animal and has caused serious injury or death to an individual or has caused serious injury or death to a dog, a district court magistrate, district court, or municipal court shall issue a summons to the owner ordering him or her to appear to show cause why the animal should not be destroyed.
>
> * * *
>
> (3) After a hearing, if the animal is found to be a *dangerous animal* that caused serious injury or death to an individual or a dog, the district court magistrate, district court, or municipal court shall order the destruction of the animal, at the owner's expense. . . . [Emphasis added.]

MCL 287.321(a) defines "dangerous animal," in relevant part, as follows:

> "Dangerous animal" means a dog or other animal that bites or attacks a person . . . . However, a dangerous animal does not include any of the following:
>
> * * *
>
> (*ii*) An animal that bites or attacks a person who *provokes* or torments the animal. [Emphasis added.]

The term "provoke" also is statutorily defined: " 'Provoke' means to perform a willful act or omission that an *ordinary and reasonable person* would conclude is likely to precipitate the bite or attack *by an ordinary dog or animal*." MCL 287.321(d) (emphasis added).

Until today, there is no published authority interpreting or applying the definition of "provoke" set forth in MCL 287.321(d).[4] Application of principles of statutory interpretation leads to the conclusion that the district court failed to properly construe or utilize this statutory definition.

[4] In *Brans v Extrom*, 266 Mich App 216, 219; 701 NW2d 163 (2005), this Court cited MCL 287.321(d), including the requirement of a willful act or omission, as a way to note the lack of such a requirement in a different dog-bite statute. However, *Brans* is not useful here.

Clear and unambiguous statutory language must be enforced as written. *In re Bradley Estate*, 494 Mich 367, 377; 835 NW2d 545 (2013). "While terms must be construed according to their plain and ordinary meaning, words and phrases 'as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.' " *Id*., quoting MCL 8.3a. "The Legislature is presumed to know of the existence of the common law when it acts." *Wold Architects & Engineers v Strat*, 474 Mich 223, 234; 713 NW2d 750 (2006). Therefore, "when the Legislature chooses to employ a common-law term without indicating an intent to alter the common law, the term will be interpreted consistent with its common-law meaning." *In re Bradley Estate*, 494 Mich at 377; see also *Sam v Balardo*, 411 Mich 405, 425; 308 NW2d 142 (1981) (observing that "words employed by the Legislature derive their meaning from the common-law usage at the time of the passage of the act").

The question before us is whether Chance was provoked. If so, Chance would not constitute a "dangerous animal." MCL 287.321(a)(*ii*). Again, " '[p]rovoke' means to perform a willful act or omission that an *ordinary and reasonable person* would conclude is likely to precipitate the bite or attack *by an ordinary dog or animal*." MCL 287.321(d) (emphasis added). The term "ordinary and reasonable person" is a legal term of art that denotes an objective standard. See, e.g., *Jendrusina v Mishra*, 316 Mich App 621, 631; 892 NW2d 423 (2016) ("An objective standard . . . turns on what a reasonable, ordinary person would know . . . ."). The legal meaning of such terminology was materially the same in the 1980s, when MCL 287.321 was enacted by 1988 PA 426, effective March 30, 1989. See *Guider v Smith*, 431 Mich 559, 569-570; 431 NW2d 810 (1988) (rejecting the use of a "subjective" focus and explaining that the proper inquiry was "whether a *reasonable* man in the defendant's position could have believed his actions were consistent with the law[]") (emphasis added); *Lowe v Estate Motors Ltd*, 428 Mich 439, 455-456; 410 NW2d 706 (1987) (opinion by RILEY, C.J.) (describing as "objective" the "reasonable person" standard used for common-law negligence); *Antcliff v State Employees Credit Union*, 414 Mich 624, 631-632; 327 NW2d 814 (1982) (explaining that the standard of care in common-law negligence cases "is always the care which a person of reasonable prudence would exercise under the circumstances as they existed"). The reference to an "ordinary dog" in MCL 287.321(d) also indicates that an objective standard applies.

Therefore, the district court should have applied a wholly objective standard in determining whether the guest's actions constituted provocation. That is, the district court should have considered whether getting down on the ground and putting one's face less than six inches from the face of a large dog that had a chewable object, such as a shoe, that had been next to the dog, while simultaneously scolding the dog in a loud voice while possibly waving a shoe above the dog's head,[5] constituted "a willful act or omission that an *ordinary and reasonable person* would conclude is likely to precipitate the bite or attack by an *ordinary* dog or animal." MCL 287.321(d) (emphasis added). The district court's analysis of provocation was instead based at least in part on subjective considerations. The district court reasoned, in relevant part:

[5] Given the conflicting evidence on this relevant point, the district court erred in failing to make credibility determinations and state findings regarding whether the guest was waving the shoe. On remand, the district court shall make credibility determinations and state findings on this point.

> Now it's been mentioned by counsel, kind of that common wisdom is, is that, you know, you should—if it's not your dog, you shouldn't get down and put your face next to another dog's face; and that's kind of, I guess, you know, common wisdom among dog owners. It's not—*it's something that a lot of people kind of shy away from*. However, in this case, [*the guest*] *obviously felt that having known the dog for years and being over* [*to*] *the house, she thought that it was—she felt familiar enough with the dog to feel comfortable doing that*. In any event, just because somebody doesn't follow this *common, kind of wisdom*, and puts their dog [sic: face] next to another dog's face, that doesn't mean that it's automatically provocation or somehow that it's tormenting the dog. [Emphasis added.]

The district court thus relied in part on the guest's subjective thoughts or feelings in concluding that her actions did not constitute provocation. By failing to apply a purely objective standard, the district court misconstrued or misapplied the statutory definition of "provoke" in MCL 287.321(d). We therefore reverse the circuit court's order of affirmance, vacate the district court's order, and remand the case to the district court to make the appropriate findings and decision under the objective standard required by MCL 287.321(d).

B. CLEAR-AND-CONVINCING-EVIDENCE STANDARD

Respondent next argues that the district court should have applied the clear-and-convincing-evidence standard when evaluating whether petitioner proved a lack of provocation. "Generally, for an issue to be preserved for appellate review, it must be raised in or decided by the trial court." *Ayotte v Dep't of Health & Human Servs*, 337 Mich App 29, 39; 972 NW2d 282 (2021). As respondent concedes on appeal, this issue is unpreserved because it was not raised in or decided by the district court.

As such, respondent waived review of this issue by failing to raise it in the district court. *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 289-290; 14 NW3d 472 (2023). Respondent asserts that this issue should be reviewed for plain error. But plain-error review of unpreserved issues is generally unavailable in civil cases. *Id*. at 294. Plain-error review is available for unpreserved issues in "certain discrete civil matters," particularly when the welfare of a child is involved, such as in child-protective and child-custody proceedings. *Quint v Quint*, 351 Mich App 162, 175; ___ NW3d ___ (2024). But plain-error review has not been extended to dangerous-animal cases, nor does respondent develop any argument for such an extension beyond merely asserting that the plain-error standard applies.[6] "A party may not simply announce a position and leave it to this Court to make the party's arguments and search for authority to support the party's position. Failure to adequately brief an issue constitutes

[6] Respondent cites *Rivette v Rose-Molina*, 278 Mich App 327, 328; 750 NW2d 603 (2008), for the proposition that "[r]eview of an unpreserved error is limited to determining whether a plain error occurred that affected substantial rights." *Rivette* was a child-custody case, however, and does not apply here.

abandonment." *Seifeddine v Jaber*, 327 Mich App 514, 519-520; 934 NW2d 64 (2019) (internal citation omitted).

"[T]his Court may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented." *Tolas Oil*, 347 Mich App at 289-290 (quotation marks and citations omitted). Respondent fails to specify any grounds for overlooking preservation requirements. In any event, as previously explained, respondent is receiving appellate relief in that the district court's opinion is vacated and the case is remanded for further analysis. Therefore, respondent has not established that this Court's review of the present issue is necessary to prevent manifest injustice at this time.

C. MOTION FOR RELIEF FROM JUDGMENT

Respondent finally argues that the circuit court erred in denying her motion for relief from judgment. This issue is moot in light of our decision to vacate the district court's order and remand the case to the district court.

"Whether an issue is moot is a question of law that this Court reviews de novo." *In re Tchakarova*, 328 Mich App 172, 178; 936 NW2d 863 (2019).

Mootness is a threshold issue that this Court must address before reaching a substantive issue. *Gleason v Kincaid*, 323 Mich App 308, 314; 917 NW2d 685 (2018). "An issue is moot when a subsequent event makes it impossible for this Court to grant relief." *Id*.

As explained, we are vacating the district court's order and remanding the case to the district court for further analysis. Hence, there is no longer any existing judgment or order of the district court from which respondent may seek relief. We therefore could not grant respondent relief regarding the present issue. Moreover, the issue is not publicly significant and likely to recur but evade review. See *id*. at 315. We therefore decline to review this moot issue.

III. CONCLUSION

We reverse the circuit court's order of affirmance, vacate the district court's order, and remand the case to the district court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Michael F. Gadola
/s/ Anica Letica