

June 20, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V19009247**

KIMBERLY MIMS

Animal Services Enforcement Appeal

Activity no.: A19000884

Appellant: **Kimberly Mims**

[REDACTED]
Covington, WA 98042

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by Chelsea Eykel
Regional Animal Services of King County
21615 64th Avenue S
Kent, WA 98032
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. Kimberly Mims appeals Animal Services’ order that Ms. Mims remove her dog, Jax, from the County. After hearing the witnesses’ testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties’ arguments and the relevant law, we grant her appeal.

Legal Standard

2. Unless directed to by law—and no special directive applies to today’s case—the examiner does *not* grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Ours is a true *de novo* hearing. For those matters or issues raised in an appeal statement, Animal Services bears “the burden of proving by a preponderance of the evidence both the violation and the appropriateness of the remedy it has imposed.” KCC 20.22.080.G; .210.
3. Two code provisions frame our removal analysis. First, “An animal, declared... vicious, may be harbored, kept or maintained in King County only upon compliance with those requirements prescribed [in the NVOC].” KCC 11.04.290A.1. And the “[f]ailure to comply with any requirement prescribed [in the NVOC] constitutes a misdemeanor” and requires the animal be removed from the County. KCC 11.04.290.A.3.
4. In addition, we are the most exacting on Animal Services when it comes to removal orders, there being the most at stake. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (nature of private interest impacted is factor in determining how much process is due); Exam. R. XII.B.4 (in proceeding involving divestiture of legally cognizable rights, examiner may require adherence to court rules to “assure that due process of law is afforded”); *Repin v. State*, 198 Wn. App. 243, 284, 392 P.3d 1174 (2017) (Fearing, C.J., concurring) (recognizing “the bond between animal and human and the intrinsic and an estimable value a companion animal”).

Analysis

5. Animal Services did not submit into evidence the actual 2018 Notice of Violation and Order to Comply (NVOC) Ms. Mims allegedly failed to comply with. The procedural posture of this case is thus identical to *Dodd–V16005995*. There, the Dodds did not successfully appeal a 2013 NVOC declaring their dog vicious. In a later appeal hearing involving a removal action alleging the Dodds had violated the 2013 NVOC’s requirements for keeping their dog in the County, Animal Services did not submit the NVOC into the hearing record. We analyzed the issue thusly:

We have read many NVOCs...; the NVOCs have all been substantively consistent. It is a reasonable assumption that the 2013 NVOC would have [included] something like, “Secure your animals in a fenced area suitable for the size of the animal when your animals unattended outside your home. Lock all passages with a padlock to prevent accidental release.”

Animal Services asserts as much, the Dodds do not have a different recollection of the 2013 NVOC, and the Dodds did not construct a fence.

However, the 2013 NVOC was not offered as an exhibit. We have a pretty strong hunch about what that 2013 language detailed, but that is not the same thing as hard evidence in the record. By rule, an examiner may take official notice of certain items outside the record. See Exam. R. XI(B)(5). But the 2013 order does not fit neatly into any of those allowed categories.

Viewed another way, a superior court judge will not (unlike the undersigned) have read dozens of animal enforcement NVOCs with mostly boilerplate compliance terms. Reviewing an appeal of an examiner decision upholding a removal order—when that removal order was based on the terms contained in an earlier, written NVOC, and that NVOC document is nowhere to be found in the examiner’s record—the court might very well take a skeptical view on whether the record was sufficient to support an examiner’s decision and/or whether Animal Services met its burden of proof. We do not aim to find out. We grant Ms. Dodd’s appeal as to removal.

We thus granted the Dodds’ appeal of the removable order.¹

6. The identical issue arose again in *Hawes–V16006259*. Animal Services sought to remove a dog based on a failure to comply with the requirements contained in an NVOC, but did not introduce the NVOC into the hearing record. We granted the Hawes’ appeal on identical grounds as in *Dodds*.² Animal Services’ later moved for reconsideration, seeking to supplement the record with the NVOC. Per rule, evidence submitted after a hearing closes is not considered or included in the hearing record, unless the examiner chooses to reopen the record. Exam. R. XI.C.2. We did not reopen the record, and kept in place our reversal of the removal order.³
7. Those cases involved a different Animal Services officer, but our standard is the same. We review removal orders with a very exacting eye. Because Animal Services did not submit for the record the 2018 NVOC Ms. Mims’ allegedly failed to comply with, we grant her appeal.

¹ https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2016/september%202016/V16005995_Dodd.ashx?la=en.

² https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2017/february%202017/V16006259_Hawes.ashx?la=en.

³ https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2017/2017%20march/V16006259_Hawes_OrderOnMotionForReconsideration.ashx?la=en.

Additional Thoughts


8. We recognize that resolving the appeal because of a missing piece of paper is anti-climactic, leaves the parties hanging, and offers little guidance for the future. So we wade in further.
9. Ms. Mims devoted a fair amount of effort to disputing whether Jax’s August 2018 viciousness designation was correct. That comes approximately nine months too late. While the August 2018 NVOC is not in the record, we would be extremely surprised if its second page did not contain language—in a combination of ALLCAPS and **bold**—advising her that she could appeal within 24 days, how to appeal, and that failing to timely appeal waived her rights and rendered the NVOC final. By about mid-September, Jax’s viciousness designation was set in stone. Her only options after that point were—and will continue to be—removing Jax from the County or complying with the requirements on the August 2018 NVOC’s first page.
10. Second, Ms. Mims did a fair amount of victim blaming of Ms. Kurtz and her dogs. She minimized the fear Jax was continuing to cause the Kurtz family since that horrific August attack. Beyond being tone deaf, it seemed indicative of a high level of denial about Jax and his impact. Some level of denial is commonplace for dog owners, who often struggle to grasp the seeming incongruity of dogs so loving around them behaving so aggressively outside the owners’ calming presence. Yet her denial was toward the more extreme end of the spectrum. There was nothing in Ms. Mims’ presentation that would have convinced us to overturn the removal order, had Animal Services included the 2018 NVOC.
11. Conversely, Ms. Sixkiller was an extremely persuasive witness. She acknowledged they had not timely followed through on Animal Services’ initial instructions. She walked through her and Dustin Kohorn’s steps sealing off the doggie door, replacing the front door latch, now ensuring that someone is always actively watching Jax (either from the doorway or actually being outside) when Jax is outside, and fixing the fence. She did not minimize the Kurtz’s trauma. She recognized that Jax may act differently outside their presence. She agreed to install some sort kennel. And she explained that she and Mr. Kohorn have taken over Jax’s care. Her testimony increases our confidence that we are not simply kicking the can down by overturning the removal order on procedural grounds.
12. Mr. Kohorn explained (and documented) his containment improvements—basically, jerry-rigging repairs to support the pre-existing border fence, and adding a wire-mesh fence a few feet inside the border fence. Even if neither fence would, standing alone, be sufficient, as long as they are actively watching Jax, having the two-fence solution should provide ample response time, in the event that Jax busts through the first layer of defense. And for times they cannot actively supervise Jax but do not want him cooped up inside, a steel dog enclosure of around 100 square feet appears to cost in the vicinity of \$500 (plus a little more for supplies to keep day dog from digging under).

13. Ms. Sixkiller and Mr. Kohorn will need to periodically monitor the fencing and kennel to ensure, for example, that Jax is not digging under. Yet the extra layer of containment increases the odds they will be able to keep Jax, in the sense both of containing him and in not receiving a future removal order. That will not solve the risk of accidentally leaving the front door open, which requires ongoing vigilance. But so long as they continue to take precautionary measures, they should be able to keep Jax.

DECISION

For the reasons explained above, we GRANT Ms. Mims' appeal of Animal Services' March 2019 removal order.

ORDERED June 20, 2019.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County’s final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *July 22, 2019*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

MINUTES OF THE JUNE 5, 2019, HEARING IN THE APPEAL OF KIMBERLY MIMS, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19009247

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Nicole Kurtz, Kimberly Mims, Dustin Kohorn, and Michelle Sixkiller. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

The following exhibits were offered and entered into the record:

- | | |
|----------------|--|
| Exhibit no. 1 | Regional Animal Services of King County staff report to the Hearing Examiner |
| Exhibit no. 2 | Online Complaint form of February 22, 2019 Jax incident by Nicole Kurtz, dated February 22, 2019 |
| Exhibit no. 3 | Photos of Jax running loose in neighborhood on February 22, 2019 |
| Exhibit no. 4 | Email from February 24, 2019 stating Jax was loose again |
| Exhibit no. 5 | RASKC investigation report no. A1900088401 |
| Exhibit no. 6 | Notice of violation no. V19009122, issued A19000884 |
| Exhibit no. 7 | USPS Tracking |
| Exhibit no. 8 | RASKC investigation report no. A1900106301 |
| Exhibit no. 9 | Online Complaint form of March 7, 2019 aggressive dog incident by Taylor Van Cise, dated March 9, 2019 |
| Exhibit no. 10 | RASKC investigation report no. A1900110501 |
| Exhibit no. 11 | Notice of violation no. V19009245, issued A19001105 |
| Exhibit no. 12 | USPS Tracking |
| Exhibit no. 13 | Notice and order for removal no. V19009247, issued A19000884 |
| Exhibit no. 14 | Proof of Service, posted April 4, 2019 |
| Exhibit no. 15 | Map of subject area |
| Exhibit no. 16 | Notice and order for removal no. V19009247, issued A19000884, received April 23, 2019 |
| Exhibit no. 17 | Photographs of Jax Mims and fence repairs |

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June 20, 2019

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V19009247**

KIMBERLY MIMS

Animal Services Enforcement Appeal

I, Vonetta Mangaoang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED June 20, 2019.

Vonetta Mangaoang

Vonetta Mangaoang
Senior Administrator

Eykel, Chelsea

Regional Animal Services of King County

Kurtz, Nicole Victoria

Hardcopy

Michelle Sixkiller, Dustin Kohorn

Mims, Kimberly

Hardcopy