

November 5, 2019

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file nos. **V19009470 and V19009471**

ELIZABETH CLEMENT

Animal Services Enforcement Appeals

Activity no.: A19002610

Appellant: Elizabeth Clement
represented by **David Britton**
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King County: Regional Animal Services of King County
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FINDINGS AND CONCLUSIONS:

1. Animal Services served a violation notice and a removal order on Elizabeth Clement's two dogs, Thor and Juno. Ms. Clement timely appealed. 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 deny the appeal and

uphold both the violation notice and the removal order. However, we provide some additional time for Ms. Clement to re-house her dogs outside of King County.

2. On September 6, 2018, Ms. Clement’s two dogs, Thor and Juno, fatally mauled Cannon Jones’ two, 300-plus pound goats. Animal Services declared both dogs vicious, a designation Ms. Clement appealed. Ex. 2. We went to hearing October 31, 2018. As we described it in our November 14, 2018, decision,

Ms. Clement’s dogs were caught in the act of mauling the goats. They remained on the Jones property, still trying to get back at the goats even as the Joneses attempted to scare them off the premises. Animal Services provided pictures of her dogs just outside the Joneses’ interior fence, and Animal Services collared the dogs while still on the Jones property. Ms. Clement personally redeemed her dogs from Animal Services’ control. Yet even after seeing all the exhibits and hearing all the testimony, at points in the hearing she was still claiming it was not her dogs, she was not accepting responsibility, and she was even questioning, for example, whether [one of the goats] had died. It was a perplexing presentation.

It was also ineffective. We are somewhat hardened by seeing dog bite after dog bite photo, but the photos here are perhaps the most horrific we have seen in dozens of vicious dog appeals—blood splattered and flesh torn out. Juno and Thor attacked two domesticated animals without provocation and constitute a significant danger. This is among the clearest cut viciousness cases we have gone to hearing on. Animal Services easily meets its burden of proof. KCC 20.22.120.B.

...the nature of the attack—mauling 300-pound goats seriously enough that one died a few days later, and one weeks later—shows this is no ordinary viciousness case. And the prolonged nature of the attack—waiting around, despite the Joneses’ presence and attempts to shoo them away, and repeatedly trying to get back at the goats, shows a level of predatory drive well outside the norm even in viciousness determinations we have upheld.

Ex. 3 at 004 (internal citations omitted).

3. We upheld the viciousness designation, and found no basis to reduce the monetary penalty, reasoning that “Ms. Clement agreed her dogs had gotten loose at least a dozen times before the incident and acknowledged they are escape artists. Yet six weeks after the incident she had yet to install the electric fence she purchased.” Ex. 3 at 004. We closed by informing Ms. Clement that, “This decision shall be final and conclusive unless appealed to superior court by *December 14, 2018*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.” Ex. 3 at 005 (italics in original).

4. Ms. Clement did not appeal. Thus, Animal Services' September 6, 2018, determination that Thor and Juno were vicious and could be kept in King County only so long as they were (a) secured in a fenced area suitable for their size when unattended and outside the home, with all passages padlocked to prevent accidental release, and (b) restrained in a collar or harness when off the property, became final and conclusive. KCC 11.04.290.A.1; KCC 20.22.270.B.
5. If we were surprised that Ms. Clement did not complete the fence between the early September 2018 mauling and our late October 2018 hearing, we were floored to learn that that Ms. Clement had still not completed the fence before our October 2019 hearing.
6. In June 2019, the absolutely predictable happened.
7. First, on June 1, Thor and Juno trespassed back onto the Jones property. Ex. 4. In addition to personally witnessing the dogs on his property—and remembering them from the hours they spent on his property after mauling his goats in September 2019—Mr. Jones then looked at his security footage and observed Thor and Juno exiting the same barn they had previously mauled the goats in. Ex. 5. We found Mr. Jones' testimony and photographs definitive. Thor and Juno were trespassing on the Jones property on June 4.
8. Next, on June 4, neighbor Vangie Solozhuk complained to Animal Services that the dogs who had previously trespassed multiple times were back on her property. Ex. 6 at 003 n.3. Ms. Solozhuk did not testify at hearing. We typically admit the entire administrative file into our record, including written hearsay statements contained therein. However, with her not testifying under oath and being cross-examined about how and why she concluded that Thor and Juno had trespassed multiple times before June 4, we make no such finding.
9. Even without Ms. Solozhuk's statements, there is zero question that Thor and Juno were trespassing on the Solozhuk property on June 4. Animal Services came out on June 4 and actually *retrieved* Thor and Juno from the Solozhuk property. Ex. 6 at 001 n.2, 003 n.3 & n.8. Ms. Clement confirmed their identity as the trespassers when she personally redeemed Thor and Juno from Animal Services.
10. On June 4 and June 9, Animal Services served a violation notice for the June 4 trespass and a removal order. Exs. 8 & 9. Ms. Clement timely appealed on June 28, asserting that she was in the process of constructing the fence when the dogs got out, that the dogs only escaped when someone left the door open, and that she has added security. Ex. 13.
11. Thor and Juno were not done. On August 16, they were back on the Jones property. Ex. 11. Mr. Jones saw them within 30 feet, before they ran off. To him they were "without question" the same dogs. We find, more probably than not, that Thor and Juno were trespassing yet again on August 16.
12. Ms. Clement explained that she has been building a new dog run, an electric fence, and a traditional fence, work they began over the summer. Ex. 14. As of our October 2

hearing, the fence was just then being finished, with the hotwire ready to be turned on. The kennels were not yet installed, but she was just then finishing it. The dog run had just yesterday (i.e., October 1) been finished. She disputed that her dogs killed the goats back in September 2018, and claimed that she should not be held responsible for that. She explained that people have gone through the gate attached to the garage and not clicked it tight, allowing the dogs to escape.

13. 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. 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.
14. Beyond the normal burdens, we are the most exacting of Animal Services on removal orders, given what is 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) (analyzing court decisions recognizing “the bond between animal and human and the intrinsic and an estimable value a companion animal”). We have overturned more removals than we have sustained.
15. Yet today’s case presents the clearest-cut case for removal we have seen in our dozens of removal appeals. A vicious dog “may be harbored, kept or maintained in King County only upon compliance with those requirements prescribed” in the order declaring the dog vicious. KCC 11.04.290.A.1 (underscore added). Here, that meant the 2018 NVOC’s requirement that Thor and Juno be secured in a fenced area, with all passages *padlocked to prevent accidental release*, and restrained when taken off the property. Ex. 2 at 001. While the code typically provides second chances, it does not provide third chances: where an owner fails “to comply with any requirement prescribed” in that NVOC, the “animal shall not be kept in unincorporated King County.” KCC 11.04.290.A.3.
16. Ms. Clement had her chances—multiple chances—to (pad)lock down her dogs. She should have done this soon after Thor and Juno mauled the Jones’ goats to death in September 2018. Yet she had still not completely finished the containment system by the time of our October 2019 hearing. Her extreme denial and indifference to the destruction and trauma Thor and Juno have caused her neighbors is unconscionable. Certainly funds may have been tight, but her delay cost her another \$1,000 when her vicious dogs got out again in June. (We note that Animal Services showed measured restraint in not bringing additional violation notices for Thor’s and Juno’s other June

trespass and for their August trespass, which would have been boosted Ms. Clement's penalties by \$4,000.¹)

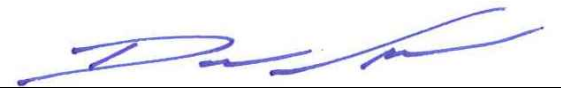
17. Hopefully the new fencing will be sufficient to contain *future* dogs Ms. Clement may obtain. But Ms. Clement long ago forfeited her right to keep Thor and Juno. We uphold Animal Services' order removing them from King County. The neighbors will not have to fear Juno and Thor for much longer.
18. However, Animal Services' order stating that Thor and Juno must be removed within 48 hours is not realistic. Ex. 9 at 003. How is anyone supposed to accomplish all the necessary requirements (set forward directly below) within two days? We give Ms. Clement six weeks to achieve compliance.

DECISION:

1. We deny Ms. Clement's appeal as to Thor and Juno qualifying as vicious dogs running at large on June 4. The \$1,000 penalty is due to Animal Services by **December 17, 2019**.
2. We deny Ms. Clement's appeal as to removing Thor and Juno from King County. By **December 17, 2019**, she shall either:
 - A. microchip Thor and Juno (if not microchipped already), find and disclose to a potential new owner that Thor and Juno were ordered removed from King County as a threat to public safety, have that person agree to take Thor and Juno on, actually get Thor and Juno out of King County, and provide Animal Services proof that this new owner lives outside of King County; or
 - B. surrender Thor and Juno to Animal Services.

So long as Ms. Clement timely and successfully follows one of those two courses by December 13, the \$1,000 penalty applicable to a removal order will not come due. If she does not, or if she is later complicit in Thor or Juno being brought back into, or remaining in, King County, she will owe the entire \$1,000 amount.

ORDERED November 5, 2019.



David Spohr
Hearing Examiner

¹ Per KCC 11.04.035.C.2.c, subsequent, vicious-related violations in the same year would be \$1000 per dog. Thus, the other June 2019 at large incident would have carried a \$2,000 penalty, with the August 2019 carrying an additional \$2,000 in penalties.

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 *December 5, 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 OCTOBER 2, 2019, HEARING IN THE APPEAL OF ELIZABETH CLEMENT, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS. V19009471 AND V19009470

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Mari Isaacson, Cannon Jones, David Britton, and Elizabeth Clement. 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 | Notice and order for confinement V18008604, issued A18004495, issued September 6, 2018 |
| Exhibit no. 3 | Hearing Examiner’s Report and Decision V18008604, dated November 14, 2018 |
| Exhibit no. 4 | Online Complaint form of June 1, 2019 incident by Cannon Jones, dated June 2, 2019 |
| Exhibit no. 5 | Photographs of dogs on the Jones’ property on June 1, 2019 |
| Exhibit no. 6 | RASKC investigation report no. A19002586 |
| Exhibit no. 7 | RASKC investigation report no. A19002610 |
| Exhibit no. 8 | Notice of violation no. V19009471, issued A19002610 |
| Exhibit no. 9 | Notice and order for removal no. V19009470, issued A19002610 |
| Exhibit no. 10 | NVOC mailing/tracking history |
| Exhibit no. 11 | RASKC investigation report no. A19005210 |
| Exhibit no. 12 | Map of subject area |
| Exhibit no. 13 | Appeal, received June 28, 2019 |
| Exhibit no. 14 | Appellant photograph of fence, received October 2, 2019 |

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V19009470 and V19009471**

ELIZABETH CLEMENT

Animal Services Enforcement Appeals

I, Jessica Oscoy, 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 November 5, 2019.



Jessica Oscoy
Legislative Secretary

Britton, David

Hardcopy

Clement, Elizabeth

Hardcopy

Isaacson, Mari

Prosecuting Attorney's Office

Jones, Cannon

Hardcopy

Solozhuk, Vangie

Hardcopy