

November 13, 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 no. **V19009806**

DIANE AND JOHN GANNON
Animal Services Enforcement Appeal

Activity no.: A19005621

Appellants: **Diane and John Gannon**

[REDACTED]
SeaTac, WA 98168

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King County: Regional Animal Services of King County
represented by **Shelby Russell**
Regional Animal Services of King County
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FINDINGS AND CONCLUSIONS:

Overview

1. Animal Services asserts that on August 25, the Gannons' two dogs attacked a neighboring dog. Animal Services cited the dogs for running at large and designated them as vicious. The Gannons appealed, asserting that their dogs were provoked to act. 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 overturn the running at large violation, uphold the viciousness designation, and reduce the monetary penalty.

Evidence

2. Leiu Ulugalu testified that she was helping extended family move into a neighboring house on August 25. Her dog, Goku was playing with the kids in the back. She did not hear the beginning of the incident, but came when her kids started screaming. She observed the Gannon dogs attacking Goku, even as the boys tried to get them off Goku. The 15-year old was laying on Goku, trying to protect him, as one dog bit Goku from behind, while the other dog bit Goku from the front. The dogs kept attacking, one dragging Goku from the backyard towards the cul de sac.
3. Ms. Ulugalu explained that by the time they chased off the Gannon dogs, Goku was bleeding all over. They took Goku to the vet, where he underwent surgery. The photographs document wounds, some of them deep, on his chest, hindquarters, legs and feet. Ex. 4.
4. Patelisia Inukianaangnaa testified that they had been helping to renovate the house for a year before the August 25 move-in date. The previous owners had been hoarders, piling things against the fence. While removing debris stacked against the fence, she saw the board (described in paragraph 7) wiggle. She did not recall if the board was totally loose, and she did not recall it swinging.
5. Ms. Inukianaangnaa testified that on August 25 she was unloading a U-Haul in front of the house. She heard screaming from the back and cut through the house. By the time she got to the back door, she saw the Gannon dogs on Goku, and their attack was moving to the side of the house. Her son tried to break it up. One dog was on each side of Goku, continuing to attack him. Goku was dragged toward the cul de sac. The boys finally got Goku away, and the Gannon dogs ran up the street.
6. The Gannons described the history between their dogs and Goku. Jonathan Gannon testified that on January 21, he was out back with his dogs, checking on his chickens. Goku was being walked, off leash, when he ran to gate and bit one of his dogs through the fence. Goku's owners just blew off his concerns. Exhibit 12 at 016 shows his dog's face a few minutes after the incident. Ms. Gannon testified that Goku has run along a different stretch of Gannon fence and jumped at it, pushing against it.
7. Ms. Gannon did not think that her dogs could have gotten loose on August 25 without someone knocking the fence board loose. The bracing is set up from the other side, meaning only something pushing *into* (not out of) the Gannon yard dog could have dislodged the board. Ex. 8 at 001. She estimated the gap on either side of the board at three inches. They do their best to keep the fence repaired and intact.
8. Eric Helland lives up the street. He saw the Gannon dogs outside on August 25. He opened the Gannon gate, and they went right back in, without incident. He has never

witnessed the Gannon dogs being aggressive, and he has no concerns with his grandkids playing near them.

9. Conversely, Mr. Helland testified that Goku is aggressive. In the past, Mr. Helland walked the public path abutting Goku's property. He eventually stopped using that path because Goku kept trying to get at him. Goku was chained, but repeatedly jumped against the fence. Ex. 12 at 008-10. At one point, Goku came into the street, barking at his granddaughter, who was riding her bike down the street.
10. Shelby Russell pointed to Exhibit 13 at file 8455 as showing scratch marks and the fence being dug under from the Gannon side. She opined that the Gannon dogs could have wedged into that crack and moved the board.

Analysis

11. 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.
12. Animal Services asserts that the Gannon dogs were “running at large,” meaning “off the premises of the owner and not under the control of the owner, or competent person authorized by the owner, either by leash, verbal voice or signal control,” with “under control” itself including “restrained from approaching any bystander or other animal” when “off the premises of the owner.” KCC 11.04.020.W, AA; .230.B. The Gannons assert that their dogs only got out for about half an hour, which is not relevant to the cited violation. More on point, the Gannons assert that their dogs only escaped because Goku pushed the fence board in on August 25.
13. The more serious allegation is that their dogs are “vicious,” which KCC 11.04.020.BB defines as having “performed the act of... endangering the safety of any person, animal or property of another, including, but not limited to, biting a human being or attacking a human being or domesticated animal without provocation.” KCC 11.04.230.H declares as a nuisance an animal that “has exhibited vicious propensities and constitutes a danger to the safety of persons or property off the animal's premises or lawfully on the animal's premises.”
14. Ms. Gannon does not contest that her dogs went after Goku on August 25, but asserts that they were provoked to do so. She points to the January 21 incident as provocation. We accept Mr. Gannon's version of what happened on January 21, but, as a matter of law, that is not “provocation” for an attack that happened over seven months later. In *Stroop v. Day*, the court did not dispute the owner's “claim that a dog is capable of remembering specific instances from the past,” and it accepted that the bite victim had chased the dog with a fence post four to six weeks prior to the incident in question. 271 Mont. 314, 319, 896 P.2d 439 (1995). Yet the court ruled that this event could not, as a matter of law, qualify as provocation for a bite four to six weeks later. *Id.* That principle

is much truer when applied to an event which occurred over seven months before the attack.

15. Ms. Gannon presents a plausible version of how the dogs got out on August 25—Goku was pushing on the fence board. She showed pictures and video of the fence, which was braced from the other side, the side Goku was on. Ex. 12 at 004. She opines that only a force from the Goku side could have pushed the board loose. That is not necessarily true; because there were gaps of approximately three inches on either side of the board, the Gannon dogs could have stuck a paw or snout through and worked it free. Ex. 8 at 001. In addition, even if the escape route was created by pushing on the Goku side of the fence, Ms. Inukianaangnaa testified that she recalled the board was loose well before August 25. The Gannons checked the fence, but only after the event. There is nothing definitive on whether the board was free before August 25 or if Goku knocked it free on August 25.
16. Nonetheless, while provocation is typically an affirmative defense, *Patterson v. New York*, 432 U.S. 197, 202-03 (1977), here lack of provocation is part of the definition itself. KCC 11.04.020 (“attacking a . . . domesticated animal without provocation”). Thus, where an appellant raises provocation in her statement, Animal Services bears the burden of showing, by a preponderance of the evidence, that the attack was unprovoked. *See also Morawek v. City of Bonney Lake*, 184 Wn. App. 487, 495, 337 P.3d 1097 (2014).
17. Here Ms. Gannon explicitly raised the fence issue in her appeal statement, asserting

the inability of our dogs to have broken free from our property without the complainant’s dog also exerting force on the fence boards. The fence bracing is on the neighbor property’s side, i.e. without the complainant’s dogs or another external entity jumping out or pushing on the loosened board, our dogs would have been incapable of leaving our property.

Ex. 9 at 003.
18. Thus, Animal Services was on notice that the fence board and how the incident started were at issue. The Gannons’ theory should have been fairly easy to prove or disprove. There were several children playing with Goku in the back yard at the start of the incident; Animal Services could have called any one of these eyewitnesses to describe what happened in the moments leading up to the attack. Perhaps Goku was nowhere near the fence, instead engaging with the children in the yard when the Gannon dogs unilaterally escaped and came after him. Yet the only two witnesses Animal Services called were candid that they were in the front of the house at the beginning and did not see how the incident started.
19. The problem for the Gannons is that even accepting that Goku pushed on the fence on August 25 and provided their dogs with an escape route and a reason to react, provocation requires the dog’s reaction to be proportional to the victim’s act. *Bradacs v. Jacobone*, 244 Mich. App. 263, 273–75, 625 N.W.2d 108 (2001); *Kirkham v. Will*, 311 Ill. App.3d 787, 792, 724 N.E.2d 1062 (2000); *Stroop*, 271 Mont. at 319. Thus, if the Gannon dogs had nipped at Goku to chase him away from their fence line, that might have been

proportionate to Goku pushing on the fence on August 25 and to earlier incidents with Goku running at a fence. Instead, what the dogs did on August 25 was much worse.

20. Not only did they bite Goku on his hindquarters to run him off, they bit him from both directions as they tag-teamed Goku. They continued biting even as a child threw himself on Goku to protect Goku. They dragged Goku towards the street. Their actions were grossly disproportionate to any “provocation” Goku caused by barking at or pushing on the fence. Their attack was not “provoked,” as courts interpret that term in dog bite cases. They may be friendly in general, but they constitute a danger to at least Ms. Ulugalu’s dog, off the Gannons’ premises. We uphold the viciousness designation.
21. The running at large is closer to the line. Normally, *how* a dog got out is not terribly relevant—it is merely *that* a dog was out and out of control that is dispositive. But if Goku pushed the fence board free in the seconds before the incident, that seems different from the scenario where, for example, a visitor does not close a gate (an entirely predictable event) or where a fence has come loose or been knocked down before a dog is let into the yard for the day. Again, it is not clear whether Goku pushed the board in. Yet Animal Services had a clear notice of, and avenue for answering this question (i.e., eliciting testimony from one of the eyewitnesses) and did not follow through. So, we overturn the running at large violation.
22. That brings us to the penalty amount. There is no evidence that the Gannon dogs were running amok on any day other than August 25. And it is murky whether August 25 happened because there was already an escape route the Gannons had not previously discovered and sealed up, or because Goku pushed the board loose seconds before the attack. In this context we halve the otherwise applicable \$1,000 penalty.
23. Our decision in no way vindicates Goku. January might have qualified as a vicious attack, had the Gannons timely filed a complaint. We found Mr. Helland’s testimony credible that Goku is aggressive with strangers. Even a previous viciousness designation would not have changed the nature of the August 25 incident—the Gannon dogs trespassed well onto the neighbor’s lot and continued to attack Goku, even as people tried to get them off Goku. Yet Ms. Ulugalu would do well to ensure Goku stays in check, lest more violence and Animal Services involvement follow.

DECISION:

1. We grant the Gannons’ appeal as to the running at large violation.
2. We deny the Gannons’ appeal as to the viciousness violation, but halve the penalty to \$500.

ORDERED November 13, 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 *December 13, 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 30, 2019, HEARING IN THE APPEAL OF DIANE GANNON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19009806

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelby Russell, Leiu Ulugalu, Patelisia Inukianaangnaa, Diane Gannon, John Gannon, and Eric Helland. 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 August 25, 2019 incident by Leiu Ulugalu, dated August 26, 2019 |
| Exhibit no. 3 | RASKC investigation report no. A19005621 |
| Exhibit no. 4 | Photograph of Complainant’s dog |
| Exhibit no. 5 | Video of broken fence board |
| Exhibit no. 6 | Vet bill |
| Exhibit no. 7 | Notice of violation no. V19009806, issued September 2, 2019 |
| Exhibit no. 8 | Photograph of poorly repaired fence by RASKC, taken on September 6, 2019 |
| Exhibit no. 9 | Appeal, received September 26, 2019 |
| Exhibit no. 10 | Map of subject area |
| Exhibit no. 11 | Appellant: CAD Report from January 21, 2019 |
| Exhibit no. 12 | Appellant: Photographs of fence, received October 30, 2019 |
| Exhibit no. 13 | Appellant: Videos of fence, received October 30, 2019 |

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November 13, 2019

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V19009806**

DIANE AND JOHN GANNON
Animal Services Enforcement Appeal

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 13, 2019.



Jessica Oscoy
Legislative Secretary

Gannon, Diane/John

Hardcopy

Helland, Eric

Hardcopy

Inukianaangnaa, Patelsia

Hardcopy

Russell, Shelby

Regional Animal Services of King County

Ulugalu, Leiu

Hardcopy