

December 6, 2019

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

King County Courthouse
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Seattle, Washington 98104
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V19009869**

ANGELA REIGEL

Animal Services Enforcement Appeal

Activity no.: A19006449

Appellant: **Angela Reigel**

[REDACTED]
Covington, WA 98042

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Shelby Russell**
Regional Animal Services of King County
21615 64th Avenue S
Kent, WA 98032
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FINDINGS AND CONCLUSIONS:

Overview

1. On September 11 Angela Reigel's dog, Drax, escaped off the Riegel property and accosted the Harrisons' young son. On September 16, Drax, escaped again and accosted Ms. Harrison, the son again, and a daughter. Animal Services cited Drax for running at large and viciousness related to the September 16 altercation. Mr. Reigel 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 sustain the running at large violation and overturn the viciousness designation; Drax's behavior comes perilously close to, but does not quite meet, the criteria.

Legal Standard

2. The County defines vicious as:

Having performed the act of, or having the propensity to do any act, 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 11.04.020.BB. And KCC 11.04.230.H declares as a nuisance, “Any 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.”

3. Our state’s system, employed in most other local jurisdictions, has two tiers. “Dangerous” requires something like inflicting “severe injury” (meaning broken bones or disfiguring lacerations) on a person or killing a domestic animal—significantly more than the County’s “vicious” criteria. RCW 16.08.070(2). Conversely, the state’s “*potentially* dangerous” designation covers, among other items, a dog that chases or approaches a person “in a menacing fashion,” RCW 16.08.070(1), a lower threshold than the County’s “vicious” criteria. The County, unfortunately, has only a single tier. A dog is either “vicious” or it is nothing.
4. We have not required an actual bite to sustain a viciousness designation, given the “including, but not limited to” language in the County definition. However, we have consistently required something more than just the chase-or-approach-a-person-in-a-menacing-fashion behavior that would be sufficient to sustain a potentially dangerous dog designation under the state’s two-tiered system. Our viciousness rulings have tracked RCW 9A.28.020, which includes in the definition of “criminal attempt” the requirement that the accused perform some “act which is a substantial step toward the commission of that crime”—here, some step towards actual contact, not just proximity.
5. Turning to some examples, in one appeal the dog lunged at the complainant, but the complainant swatted the dog’s head away. In another, the complainant fended off the dog’s advances with some firewood he had been chopping. In both those scenarios, the dog had not just gotten close and barked aggressively, it had actually made a move to bite the complainant. We upheld both those viciousness designations. To use a human-on-human scenario, getting up in another person’s grill while shouting threats would not be enough. Conversely, taking a swing—even if the swing does not connect—would be.
6. In addition, meeting the KCC 11.04.020.BB definition is only the *first* requirement for upholding a viciousness designation. In addition to the backwards-looking having “exhibited vicious propensities” (i.e., having performed an act endangering safety) there is also a forward- or at least current-looking requirement that the dog “constitutes a danger to the safety of persons or property.” KCC 11.04.230.H (underline added). Where the animal has *already* bit a person, appellants have had extremely low success arguing to us that because their dog is normally so friendly and well-behaved, the dog will not bite

again and we should overturn the viciousness designation.¹ But those are scenarios where the dog *already* bit (or at least attempted to bite) somebody.

7. We are especially wary of upholding a viciousness designation on something less than actual or attempted violence because the consequences of a viciousness designation are stark. An animal declared vicious may “only” be kept in the County upon compliance with all the requirements prescribed by Animal Services (here, those set forward in Animal Services’ September 23 order). KCC 11.04.290.A.1. A failure to comply with *any* of those requirements can result in removal of the animal from the County. *Id.* at A.3. That is true even if there is no second act of aggression. So, for example, if Ms. Reigel did not padlock a fence and Drax later got out, Drax could be removed from the County, even if the subsequent incident involved nothing more than Drax wandering onto a neighbor’s property and wagging his tail. That “one more strike and you’re out” approach may make sense for a dog who committed (or at least attempted to commit) a violent act, but not where the incident that prompted the viciousness designation was simply the dog invading personal space and barking aggressively.

Analysis

8. The videos are terrifying, especially viewing them as a parent with a young son and daughter of our own. On the September 11 video, Drax charges out from Ms. Reigel’s yard and accosts the Harrisons’ son. The son screams, drops his backpack, and runs away, as Drax runs back to the Reigel house. On the September 16 video, Ms. Harrison is walking with her young son, while carrying an even younger daughter. Drax charges them. Ms. Harrison alertly puts out her foot and hand, and Drax veers off, runs parallel to them for a few steps, and then runs back.
9. Animal Services’ viciousness designations is based on the September 16 altercation. The video speaks for itself, but Ms. Harrison provided credible commentary. Drax ran at her looking “pretty angry,” and Drax touched her foot, though she thinks with his paw. From the video it is clear that Drax did not run into her foot straight on, but came into contact as he was veering to her right (his left). So was Drax really trying to bite someone, and Ms. Harrison’s alertness stymied his attempt? It is certainly plausible that a dog intending to bite would be turned away by an adult foot and Ms. Harrison standing her ground.
10. However, we have one more piece of critical evidence that provides some context—the September 11 incident. As on September 16, on September 11 Drax charges, veers off, then runs back home. The critical distinction is that the son is all alone. He turns, screams, and flees. If Drax intended to bite, a defenseless boy running away would have

¹ We certainly could construct a hypothetical where we would not sustain a viciousness designation even for an unprovoked bite. Suppose someone is blowing soap bubbles to a girl and a dog. The dog and girl are chasing the bubbles to pop them, the girl with her hand, the dog with his mouth. At some point they both lunge for the same bubble, with her hand reaching it just as his mouth clamps down on both hand and bubble. The dog “bit[] a human being...without provocation,” but we would not find (absent other facts) that the dog “constitutes a danger.”

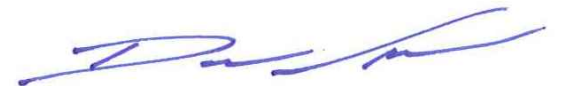
presented the perfect opportunity to—and potentially triggered the predatory response motivating a—bite. Yet, as on September 16, on September 11 Drax turned and ran.

11. To return to our human-on-human example from above, we think the September 11 and 16 incidents are closer to a person getting up in someone else's face and shouting threats, than they are to that person taking a swing. Animal Services does not quite meet its burden of proof, and we overturn Drax's viciousness designation.
12. Our decision today it is likely unsettling to the Harrisons and to Animal Services. It is definitely unsettling to *us*. On two separate occasions, Drax charged at, and scared the daylight out of, the Harrisons, including two young children. And yet under our current all-or-nothing system, we have no designation to place on Drax that reflects the threat level he poses or the need to keep him contained.
13. The obvious answer is to adopt a two-tiered system, like most other jurisdictions employ. On either the events of September 11 or r 16, and certainly on both, we would easily have sustained a "potentially dangerous" designation for Drax, if we had that option available.
14. For well over a year we have been working on a to-the-studs overhaul on KCC Title 11, one centerpiece of which is to put into place a two-tier, potentially dangerous/dangerous system. In fact, we expected legislation to have been formally introduced this fall. We now understand that the ordinance will not arrive until after the first of the year. So change is coming, and in the new future we should have more tools in our toolkit than the blunt, one-size-fits-all viciousness designation. But applying the law as it exists today, we overturn Drax's designation, as disquieting as that is.

DECISION:

1. We deny Ms. Reigel's appeal as to the running at large violation. She shall pay the \$50 penalty to Animal Services by services by **January 6, 2020**.²
2. We grant Ms. Reigel's appeal as to the viciousness violation.

ORDERED December 6, 2019.



David Spohr
Hearing Examiner

² Ms. Reigel was also cited for having two unlicensed dogs. Animal Services dropped that portion of the penalty after Ms. Reigel licensed the dogs.

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 *January 6, 2020*. 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 NOVEMBER 20, 2019, HEARING IN THE APPEAL OF ANGELA REIGEL, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19009869

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelby Russell, Michael and Lesley Harrison, Michael Harrison (son), and Angela Reigel. 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 of violation no. V19009869, issued September 23, 2019 |
| Exhibit no. 3 | RASKC investigation report no. A19006449 |
| Exhibit no. 4 | Online Complaint form of the September 16, 2019 incident by Michael Harrison, dated September 16, 2019 |
| Exhibit no. 5 | 2 Videos from the Harrisons |
| Exhibit no. 6 | Appeal, received October 12, 2019 |
| Exhibit no. 7 | Photographs taken by Shelby Russell, on September 17, 2019 |
| Exhibit no. 8 | RASKC investigation report no. A0101445501 |
| Exhibit no. 9 | RASKC investigation report no. A0101572801 |
| Exhibit no. 10 | RASKC investigation report no. A0800316601 |
| Exhibit no. 11 | Map of subject area |
| Exhibit no. 12 | Loki's license history |
| Exhibit no. 13 | RASKC: Photograph of fence, submitted November 20, 2019 |

DS/jo

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CERTIFICATE OF SERVICE

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ANGELA REIGEL
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 December 6, 2019.



Jessica Oscoy
Legislative Secretary

Harrison, Michael/Lesley
Hardcopy

Reigel, Angela
Hardcopy

Russell, Shelby
Regional Animal Services of King County