

January 29, 2020

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

King County Courthouse
516 Third Avenue Room 1200
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. **V19009779**

FRANK WILLIAMS

Animal Services Enforcement Appeal

Activity no.: A19005255

Appellants: **Frank Williams and Samantha Porter**

Bellevue, WA 98008

Telephone: [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
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) served a notice of violation and order to comply (NVO) on Frank Williams, asserting that Mr. Williams' dog, Duchess, was running at large on August 17, fatally attacked another dog, and qualifies as vicious. Ex. 2. Mr. Williams timely appealed. Ex. 3. We went to hearing on January 15. 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.

Events

2. Jason Gu testified that on August 17, he was walking his daughter's and son-in-law's dog, Obi, around Phantom Lake. Obi was on leash. As they stopped near the public restroom, Mr. Gu saw, from maybe 50 to 100 feet away, what turned out to be Mr. William's dog, Duchess, approaching. Duchess was not charging or growling, but just walking at a relaxed pace. Neither Mr. Gu nor Obi felt any danger from Duchess' measured approach. Thus, Mr. Gu did not pick up Obi, and Obi did not retreat behind Mr. Gu or bark. Obi just stood there, on his leash, by Mr. Gu's side.
3. As Duchess drew close, without barking or giving any other warning, she suddenly attacked Obi. Duchess first bit Obi's leg. Duchess then bit Obi's back. Obi tried to get away, and Mr. Gu tried to pull Obi away, creating marks on his hand from trying to yank on Obi's leash. Ex. 9 at 003-04.
4. Duchess clamped down with a more permanent hold, completely subduing Obi. Eventually, Mr. Williams came over. Duchess did not respond to Mr. Williams' orders. Mr. Williams then had to punch Duchess in the head a few times to get her to release Obi.¹ Mr. Williams finally got Duchess to release Obi, and Mr. Williams took Duchess away.
5. Mr. Gu followed Mr. Williams to the parking lot and asked for his identification. Mr. Williams told Mr. Gu that he was homeless and did not have identification. Mr. Gu took Obi to the veterinarian, but Obi died around midnight that night. Ex. 7.
6. Ian Donaldson (the son-in-law) described trying to locate Mr. Williams and Duchess after they left the scene. When he tracked them down two days later, Duchess was wearing only what Mr. Donaldson reasoned was the same harness Mr. Williams described Duchess as being in when she escaped on August 17 and attacked Obi. Ex. 9 at 005-06; Ex. 3 at 001 (Duchess "was on a leash w/ harness" and "slipped out"). Mr. Donaldson called the police and submitted photos showing Duchess.
7. Mr. Williams did not participate in our hearing, but his girlfriend, Samantha Porter, did. She testified that she and Mr. Williams have split up. She asserted that she was not there on December 17, and that Duchess is currently out of the County. She would like to bring Duchess back into the County.

Analysis

8. 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.

¹ That is consistent with Mr. Williams' written statement that he "started punching my dog Duchess in the ear because I know that is a weak spot. So as I punched her, Duchess let[] go of the other dog." Ex. 3 at 001.

9. The question we address is whether Duchess qualifies as “vicious,” that is, whether Duchess:

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

and “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.” BMC 8.04.060.BB & .300.H

10. We have reviewed 200+ viciousness appeals, overturning a fair percentage of those designations. Many of them have been tough calls, with handwringing on our part. This is not one of those. Duchess attacked a domesticated animal without provocation and constitutes a danger—an extreme danger—to people’s pets. Most scenarios where we sustain a viciousness designation start with a dog getting surprised by a situation and overreacting. Conversely, Duchess’s attack here was among the most cold-blooded, predatory attacks we recall—calmly walking up from a significant distance and killing a smaller dog who was just standing there, doing nothing.
11. In fact, having killed a domestic animal without provocation, Duchess is the rare dog to come across our desk that would (if we were operating under the state’s system) qualify as a *dangerous* dog, requiring a \$250,000 surety bond to retain the dog. RCW 16.08.070(2) & .080(6)(b). Our viciousness determination is a lower threshold than the state’s, and Duchess would easily meet our criteria even if Duchess had *not* fatally injured Obi. We sustain the violation.

Next Steps

12. The August 26 NVOC we uphold today required several steps in order to retain Duchess, including restraining Duchess on a leash or collar when off Mr. Williams’ property. Ex. 2 at 001. The law states that:

An animal, declared by the manager of the regional animal services section to be vicious, may be harbored, kept or maintained in the city of Bellevue *only* upon compliance with those requirements prescribed by the manager,

and where an owner fails “to comply with any requirement prescribed by the manager” (here the August NVOC’s requirements), the “animal *shall not* be kept in the city of Bellevue.” BMC 8.04.370.A.1 & A.3 (*italics added*).

13. Allegedly, Mr. Williams did not comply with all those requirements, and Duchess got loose and attacked two small dogs on October 22, with both the smaller dogs requiring medical care. Animal Services apparently served a second NVOC on Mr. Williams for the (alleged) October 22 viciousness and served a removal order for failing to comply with the terms of the August NVOC. Those were apparently not timely appealed.

14. The above paragraph comes entirely from Animal Services’ staff report. Ex. 1 at 003. We have no independent verification, and the second NVOOC and the removal order are not in our record. But if it is accurate chronology, then the second NVOOC and the removal order became “final and unreviewable” once those appeal deadlines passed. KCC 20.22.080.H. Animal Services will likely seize Duchess if Duchess returns. Ms. Porter could subject herself to significant civil penalties, BMC 8.04.090.C.2, and possibly even to criminal prosecution, as a failure to comply with a requirement related to a viciousness dog can constitute a misdemeanor. BMC 8.04.370.A.3. We are not offering legal advice; instead, Ms. Porter should consult with an attorney and understand her risks and options well *before* Duchess makes a return and Ms. Porter—or anyone else involved—find themselves in a world of hurt.

DECISION:

1. We deny Mr. Williams’ appeal.

ORDERED January 29, 2020.



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 *February 28, 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 JANUARY 15, 2020, HEARING IN THE APPEAL OF FRANK WILLIAMS, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19009779

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelby Russel, Ian Donaldson, Jason Gu, and Samantha Porter. 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. V19009779, issued September 26, 2019 |
| Exhibit no. 3 | Appeal, received September 19, 2019 |
| Exhibit no. 4 | RASKC investigation report no. A19005255 |
| Exhibit no. 5 | Online Complaint form of August 17, 2019 incident by Ian Donaldson, dated August 17, 2019 |
| Exhibit no. 6 | Online Complaint form of August 17, 2019 incident by Jason Gu, dated August 22, 2019 |
| Exhibit no. 7 | Aerowood Animal Hospital report |
| Exhibit no. 8 | Online Complaint form of August 17, 2019 incident by Darbi Macy, dated September 2, 2019 |
| Exhibit no. 9 | E-mail from Ian Donaldson, including 5 photographs, dated August 20, 2019 |
| Exhibit no. 10 | E-mail from Jason Gu, dated December 17, 2019 |
| Exhibit no. 11 | Map of subject area |

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V19009779**

FRANK WILLIAMS

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 January 29, 2020.



Jessica Oscoy
Legislative Secretary

Frank Williams, Samantha Porter
Hardcopy

Ian Donaldson, Jason Gu
Hardcopy

Russell, Shelby
Regional Animal Services of King County