

January 13, 2020

**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. **V19010028**

JESSICA AND ADAM MORSE
Animal Services Enforcement Appeal

Activity no.: A19007561

Appellants: **Jessica and Adam Morse**
[REDACTED]
Enumclaw, WA 98022
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. There is no question that, on October 19, Pamela Kiel was injured when her dog and Jessica Morse's dog, Goliath, got into an altercation. The questions are whether the altercation occurred while Goliath was trespassing onto the Kiel property, and whether Goliath's actions qualify him as vicious. 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 trespass violation but overturn the viciousness designation.

Evidence

2. Ms. Kiel testified that she was coming out on a path, near the top of her property, where the road incline levels off and she parks her cars. Ms. Morse's dog, Goliath, came running at her dog. Her dog then "lost it," lunging and running at Goliath, yanking her to the ground in the process. The dogs started fighting. Ms. Morse retrieved Goliath. Ms. Kiel—who was already suffering from a dislocated knee and a bad back—reinjured herself and was not able to make it back to her house without help. She called 911 and the fire department got her home.
3. Ms. Morse testified that she saw Ms. Kiel walking near the gate that divides the properties. She also said the cable guy had alerted her to Ms. Kiel walking. She walks Goliath off leash on her property to mark (pee) on boundaries to protect her livestock providers. Goliath has gotten loose and onto the Kiel property on several occasions. On October 19, she went to investigate Ms. Kiel. Ms. Morse walked to the property line, did not see Ms. Kiel, and started back. She then saw Ms. Kiel emerge from the woods near the gate. Goliath was on the Morse property when Ms. Kiel's dog got loose and came at Goliath. The fight lasted maybe four to six seconds, with Goliath going backward while Ms. Kiel's dog advanced. Ms. Morse submitted several photographs depicting where she said the altercation took place. Ex. 9.
4. Adam Morse testified that on at least two previous occasions, Ms. Kiel had to return Goliath to the Morses.
5. Animal Services Ofc. Silvia Reyes testified that she visited the site to drop off a complaint form and to investigate. She met with Ms. Kiel and also with Ms. Morse. Ofc. Reyes described the incline of the driveway as it goes from the Morse property to the Kiel property. Well onto the Kiel property, the driveway flattens out. She explained, in detail and using a map, exhibit 10, why Ms. Kiel's version of where the altercation took place (on the flat part, well into Kiel property) was more persuasive than Ms. Morse's (on the incline, at the gate demarking the Morse-Kiel boundary).

Legal Standard

6. 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.

7. Substantively, the trespass allegation requires us to decide whether, on October 19, Goliath entered the Kiel property. KCC 11.04.230.K.¹ The viciousness designation requires us to decide whether Goliath:

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 “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.” KCC 11.04.020.BB; .230.H.

Analysis

8. Ms. Morse’s testimony was all over the map. Her eye rolling and drama certainly did not help. We did not find her credible. Ms. Kiel had some things that also did not quite add up with her narrative, but she was more credible than Ms. Morse, starting with the fact that she did not embellish Goliath’s role, but volunteered that her dog “lost it” and lunged and ran at Goliath. Ofc. Reyes was the most credible. She thoroughly did her homework and offered the most coherent narrative of where things went down. We find that, more likely than not, the incident occurred well onto the Kiel property. Goliath was trespassing.
9. That does not mean, however, that we uphold Goliath’s viciousness determination. As we have written many times, a viciousness designation is not a proxy for an owner’s lack of, or exercise of, responsibility. The focus of a viciousness hearing is on the dog, not on the owner.
10. Typically, that concept arises where an appellant’s dog bites someone *despite* the owner’s competent handling. For example, in one case an appellant was walking her dog down the sidewalk, on a harness, with her body and a stroller between her dog and oncoming pedestrians. She was acting exactly like a responsible dog owner should. Despite the care she was taking, without warning her dog suddenly darted behind her, lunged, and bit a passerby. We reduced the monetary penalty significantly, but still upheld the viciousness designation, not because the owner was culpable but because the dog bit a person without legal provocation and constitutes a danger.
11. However, the opposite is also true, as in this case. Ms. Morse has not been responsible with Goliath. She admitted Goliath has trespassed onto the Kiel property multiple times.

¹ With all the previous bad blood between the parties, there is no question that Goliath did not have Ms. Kiel’s permission to be on the Kiel property.

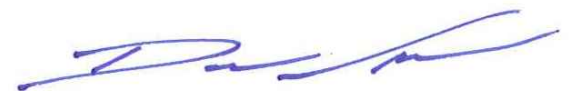
On October 19, Goliath was trespassing again, and approached Ms. Kiel and her dog. Because of Goliath's encroachment, Ms. Kiel wound up getting injured. But this is not a tort suit, where Ms. Kiel is seeking to recover damages for the harm Goliath's trespass set in motion. This is a viciousness tag which, if upheld, would remain with Goliath for the rest of his life.

12. 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' November 3 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. That is true even if there is no second act of aggression. So, for example, if Ms. Morse did not padlock a fence and Goliath later got out, Goliath could be removed from the County, even if the subsequent incident involved nothing more than Goliath wandering onto the Kiel property and wagging his tail.
13. 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 here the incident that prompted the viciousness designation was simply Goliath trespassing and running to another dog who then—in Ms. Kiel's own words—"lost it," lunged, and ran at Goliath. Ms. Kiel did not dispute Ms. Morse's characterization of a brief altercation where Goliath went backward while Ms. Kiel's dog advanced.
14. As we have written before, location is dispositive for a trespass allegation (either a dog is on a neighbor's property or it is not), but not for a viciousness designation. Location is still relevant, but nothing about Goliath's actions would have even arguably qualified as vicious if they occurred a little down the road on his own property. That the *result* of the dog's altercation was Ms. Kiel reinjuring herself when her own dog pulled her down does not mean that Goliath constitutes a danger to the safety of people or animals.
15. In the future, Ms. Morse will need to take significantly better care with Goliath, lest another altercation occur which could have a very different result. But Goliath's actions on October 19 do not, standing alone, warrant a viciousness designation.

DECISION:

1. We deny Ms. Morse's appeal as to the trespass violation. She shall pay the \$50 penalty to Animal Services by **February 12, 2020**.
2. We grant Ms. Morse's appeal as to Goliath's viciousness designation and its \$500 penalty.

ORDERED January 13, 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 12, 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 8, 2020, HEARING IN THE APPEAL OF JESSICA MORSE, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19010028

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Silvia Reyes, Pamela Kiel, and Jessica Morse. 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 | Complaint form of October 19 incident by Pamela Kiel, dated October 20, 2019 |
| Exhibit no. 3 | RASKC investigation report no. A19007561 |
| Exhibit no. 4 | Enumclaw Fire Department Report incident no. CEF190002018 |
| Exhibit no. 5 | Notice of violation no. V19010028, issued November 3, 2019 |
| Exhibit no. 6 | USPS Tracking |
| Exhibit no. 7 | Appeal, received November 21, 2019 |
| Exhibit no. 8 | Map of subject area |
| Exhibit no. 9 | Appellant: Photographs, submitted January 8, 2020 |
| Exhibit no. 10 | Revised Map of subject area, submitted January 8, 2020 |

DS/jo

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V19010028**

JESSICA AND ADAM MORSE
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 13, 2020.



Jessica Oscoy
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Kiel, Pamela

Hardcopy

Morse, Jessica

Hardcopy