

March 2, 2020

**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. **V19010187**

DAVID DERRER AND CAROLE MULLIN
Animal Services Enforcement Appeal

Activity no.: A19009275

Appellants: **David Derrer & Carole Mullin**

[REDACTED]
Vashon, WA 98070

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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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Kent, WA 98032
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FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County served a Notice of Violation and Order to Comply (NVOC) on David Derrer and Carole Mullin (Appellants), asserting that their cat, Mouse, trespassed onto Gretchen Aro's property on December 10 and attacked and injured Ms. Aro's cat, Willow. Appellants timely filed a challenge. 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 find that Animal Service has not quite met its burden of proof that the culprit was Mouse.

Evidence

2. There was much testimony about interactions between Appellants and Ms. Aro that we do not find particularly relevant. We summarize here the most pertinent testimony and evidence.
3. Gretchen Aro testified to various attacks that a trespassing cat inflicted on Willow. *See also* Ex. 7. Three of those attacks required her to take Willow to the vet, including the one on December 10 that prompted Animal Services to serve the NVOC.¹
4. Ms. Aro stated that at least 10 times a week the same cat has been on her property. Multiple times a week, she watched the trespassing cat leave her property and go directly across the street and into Appellants' yard. (She clarified that when she sees the cat in the front yard, she can see it walking directly to Appellant's property, but when she has chased the cat off her back porch, she has no line of sight to see where it goes.)
5. She spoke with Appellants and left notes, and after her communications the trespass would stop for a week or two, but eventually the cat would resume its rounds. The cat was on her deck almost every day, but since Animal Services spoke with Appellants on December 20, the cat has not returned.
6. Ms. Mullins explained that she thinks the picture does not show Mouse, but a cat with a broader tail. Tabbies are extremely common; she saw one waiting for the ferry to take her to the hearing, and she has seen another one in the neighborhood that she first confused with Mouse. Mouse is old and neutered and never displays any aggressive behavior. He is gentle and mellow and gets along with other cats.
7. Mr. Derrer testified that Mouse is so timid that he would never exhibit the aggression Ms. Aro described—Mouse scatters even in his own house. Mr. Derrer's theory is that the culprit is an aggressive, non-neutered male, not Mouse. He agrees the photo of the cat on Ms. Aros' property looks very similar to Mouse, but he has seen lots of other such cats.
8. Exhibits 20, 21, and 23 are pictures of the invading cat on the Aro property. Exhibit 16 at 002-04 are of Mouse. Exhibit 16 at 001 and Exhibit 19 at 004-05 are of similar-looking cats taken off the web.

Analysis

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

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

¹ Exhibits 10, 12, 13, and 14 are evidence from the veterinarian related to Willow's wounds.

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. There is no question that the cat that repeatedly assaulted Willow qualifies as vicious. The question is whether that cat was Mouse. We weigh the evidence under a preponderance-of-the-evidence standard.²

10. There was something a tad off about Ms. Aro’s presentation. The easiest one to put our finger on was her testimony that at least 10 times a week she sees the same cat on her property. That seems implausible, both that the same cat would make multiple trips to her property on multiple days and that she would be there to observe it at those times. That testimony came across as embellished.
11. More visible was her demeanor seeming to change out of nowhere during the hour-and-a-quarter hearing. In her initial testimony, Ms. Aro came across as confident and poised. Then, while Appellants were explaining why they concluded it was not Mouse, she became visibly shaken. She went from calmly looking at whomever was speaking to later looking nervously around the entire room, opening and closing her mouth, and fidgeting. And nothing either appellant said, as they laid out their evidence for why the culprit was not Mouse, was hostile or baiting. The response it elicited from Ms. Aro was well outside the norm of what we observe day in, day out in our hearings. We are not sure exactly what to make of it, but it was memorable.
12. Appellants were credible. That they honestly and wholeheartedly believe that Mouse is not the culprit does not get us too far, however. Most animal owners in our vicious designation cases seem legitimately incredulous that their sweet animal could possibly have done X, Y, or Z.
13. Appellants’ testimony about Mouse’s calm, timid disposition carries a little more weight. We temper that, because it is what we hear in most vicious animal cases, even those where the violence is extreme and the identity of the perpetrator unmistakable. Sometimes the sentiment is an owner in denial, but other times that incredulity is shared by disinterested parties; we recall one case where the neighbor who called in a horrific attack expressed surprise, because she previously observed appellant’s animals playing so nicely with other animals. So accepting Appellants’ assessment of Mouse’s disposition as an objectively accurate depiction of Mouse on his own property and in the presence of his owners is not worth too much. Still, it is a data point.
14. Most importantly, we turn to the photographic evidence. There is no question that the invader and Mouse look strikingly similar. But Appellants presented numerous screenshots showing cats on the web that also look strikingly like the pictures of both Mouse and the invader—the grey coat with black stripes, the white bib, the white beard, and the white “mustache.” *See also* Ex. 19 at 011. So we dig deeper.

² *See* KCC 20.22.210.B and *Mansour v. King County*, 131 Wn. App. 255, 265, 128 P.3d 1241, 1246 (2006) (rejecting “arbitrary and capricious” as too low a standard, but rejecting “beyond a reasonable doubt” and “clear and convincing evidence” as too high a standard, and determining that a “preponderance of the evidence” was the correct standard for animal enforcement cases). *Mansour* occurred during an era where a different County tribunal, not the examiner, entertained animal enforcement appeals.

15. The shot of the invader on the yard is taken from a distance and is shaded, but still we note that the cat looks slightly larger and fatter than Mouse, with a bushier tail. *Compare* Ex. 21 at 001 *with* Ex. 16 at 002, 004. The invader under the Aro deck also seems to have a rounder face than Mouse’s more angular features. *Compare* Ex. 23 at 001 *with* Ex. 16 at 002-04. The best shot is the picture at the window; the invader’s head there looks larger and rounder than Mouse’s, with a pronounced scruff Mouse lacks. *Compare* Ex. 23 at 001 *with* Ex. 16, especially 002. And the cat in the window appears significantly larger than the fully-grown Willow, and Willow is in the foreground.
16. Still, the cats depicted in the pictures show more similarities than differences. The most important counterweight to the photo discrepancies was Ms. Aro’s testimony that she saw the invader at least 10 times each week up until Animal Services contacted Appellants in December, and never in the month-and-a-half since then.³ If we fully trusted that, then logic would dictate that only an amazing coincidence could explain a cat with a grey coat with black stripes, white bib, white beard, and white “mustache” consistently appearing on the Aro property, on average, over once each day, and then magically stopping cold turkey for the month-and-a-half after Animal Services came calling on Appellants. But again, there was something a quarter note off with Ms. Aro’s presentation.
17. In the end, this is an exceedingly close call. Our getting this decision out two days past the ten business days we are allotted is no coincidence. We left the hearing leaning towards overturning the violation, but started tilting the other way and began writing this as an affirmance. However, the more we study the photos of the invader and of Mouse, the less convinced we are that they depict the same cat.
18. Which party carries the burden of proof is *not* outcome-determinative in 99% of our cases. That is, we would reach the same result regardless of whether a department or appellant had the burden to show something was more likely than not true. But this is the outlier, the one case that arises maybe once every other year, where—even after studying and re-studying the evidence—we are left in equipoise. And because Animal Service carries the burden of proof here, that is fatal to its case. KCC 20.22.210.B.

DECISION:

1. We grant Appellants’ challenge, overturning the December 27 NVOC.

ORDERED March 2, 2020.



David Spohr
Hearing Examiner

³ Animal Services contacted Appellants on December 20, and our hearing was February 12. Ex. 4 at 001.

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 *April 1, 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 FEBRUARY 12, 2020, HEARING IN THE APPEAL OF DAVID DERRER AND CAROLE MULLIN, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19010187

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sgt Russell, Gretchen Spranger, Carole Mullin, and David Derrer. 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. V19010187, issued December 27, 2019 |
| Exhibit no. 3 | Appeal, Received January 8, 2020 |
| Exhibit no. 4 | RASKC Investigative report A1900928501 |
| Exhibit no. 5 | Online Complaint form of 12/10/2019 by Gretchen Aro dated 12/10/2019 |
| Exhibit no. 6 | Email from Gretchen Aro to RASKC dated 12/26/2019 |
| Exhibit no. 7 | Complaint from Gretchen Aro |
| Exhibit no. 8 | Copy of note left for neighbors |
| Exhibit no. 9 | Photograph of cat at door |
| Exhibit no. 10 | Photograph of injury |
| Exhibit no. 11 | Email from Dr. Halse to Sanchez Cherise dated 12/05/2019 |
| Exhibit no. 12 | Veterinarian clinics notes on “Willow” dated 11/24/2018 |
| Exhibit no. 13 | Veterinarian clinics notes on “Willow” dated 12/18/2019 |
| Exhibit no. 14 | Fair Isle Animal Clinic patient history report dated 12/21/2019 |
| Exhibit no. 15 | Photograph of a cat |
| Exhibit no. 16 | Email and photographs of cats from Carole Mullin to Officer Sanchez |
| Exhibit no. 17 | Photographic map of the house |
| Exhibit no. 18 | Photograph of computer screen with parcel information |
| Exhibit no. 19 | Appeal Received 1/28/2020 |
| Exhibit no. 20 | Photograph of cats at a door, Submitted 2/12/2020 |
| Exhibit no. 21 | Photograph of a cat in the grass, Submitted 2/12/2020 |
| Exhibit no. 22 | Photograph of the neighbor’s fence from complaints property, Submitted 2/12/2020 |
| Exhibit no. 23 | Photograph of a cat under a chair, Submitted 2/12/2020 |

DS/vt

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V19010187**

DAVID DERRER AND CAROLE MULLIN

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 March 2, 2020.



Jessica Oscoy
Legislative Secretary

Derrer & Mullin, David & Carole

Hardcopy

Russell, Shelby

Regional Animal Services of King County

Spranger, Gretchen

Hardcopy