

April 15, 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 nos. **V20010306 and V20010307**

EDGARDO AND CARLOS MORALES

Animal Services Enforcement Appeal

Activity no.: A2000662

Appellants: **Edgardo and Carlos Morales**

[REDACTED]
Bellevue, WA 98005

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by Chelsea Eykel
Regional Animal Services of King County
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Kent, WA 98032
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Email: raskcappeals@kingcounty.gov

FINDINGS AND CONCLUSIONS:

1. This case involves Carlos Morales' dog, Oliver. While, being walked by Mr. Morales' father, Oliver got loose and repeatedly attacked a pedestrian. Animal Services served (a) a violation notice on the father for Oliver being vicious and running out of control on public property and (b) a confinement order on Mr. Morales. Mr. Morales' appeal is limited to challenging the confinement term that would prohibit him from continuing to take Oliver to off-leash dog parks. 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 amend the compliance order to allow Mr. Morales and his wife to take Oliver to sanctioned off-leash areas, so long as Oliver is muzzled before he leaves the car and remains muzzled until after he is re-secured in the car.

2. 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. Here, that means Animal Services bears the burden of justifying its prohibition against Oliver running in off-leash parks.
3. At our hearing, the complainant, Matthew Cowan, attempted to describe what happened on January 24. His lack of self-control in doing so was almost unprecedented. At times it was difficult to figure out what was his disdain bubbling over and what was a mere factual recounting. We were a hair’s breadth away from having to remove him from the hearing, an almost unprecedented sanction.
4. Animal Services patiently attempted to direct and redirect Mr. Cowan to the relevant facts. What we can glean, relevant to our decision, is that as Mr. Cowan walked through Bannerwood Park’s parking lot, minding his own business and listening to music, a dog came out of nowhere and bit him on his arm, breaking the skin and bruising him. Mr. Cowan mostly focused his vitriol on the dog’s caretaker, the elder Mr. Morales, who Mr. Cowan described as not seeming to care that Oliver was retreating but then rushing him and re-attacking.
5. Mr. Cowan hardly could have performed less effectively during the hearing. However, Animal Services produced a solid witness.
6. Brad Behrman had no interaction with Mr. Cowan, Oliver, or the Morales before or after the January 24 altercation. On that day he happened to be working in the parking lot. He started maybe 200 feet away from the action. He did not see how the altercation started, but he responded to the commotion and observed Oliver retreating to the elder Mr. Morales, a distance of maybe 30 to 40 feet, and then charging again at least three times at Mr. Cowan. He disputed Mr. Cowan’s account that the elder Mr. Morales was indifferent; instead, he heard the elder Mr. Morales scream at Oliver to attempt to retrieve him. He confirmed that he saw Oliver directly at Mr. Cowan’s feet, harassing Mr. Cowan. He also saw Mr. Cowan’s ripped sweater. Mr. Berhman was extremely credible.
7. Mr. Morales testified next. The week before our hearing his father had fallen and fractures two ribs, making it difficult to move, talk, and even sit still. He did not want to subject his father to Mr. Cowan. Given Mr. Cowan’s repeated outbursts and lack of self-discipline at hearing, that was probably wise. The upshot, however, is that there was no testimony from the appellant’s side about what exactly happened on January 24.
8. That absence was not crucial, because Mr. Morales’ appeal did not challenge the violations themselves. Ex. 8. Even if he had, it is difficult to see how the outcome would have been any different. Nuanced eyewitness testimony is usually critical because the action is typically over in a few seconds, sometimes even in less than a second. In such scenarios, the outcome often turns on testimony about lightning-fast actions detailing precisely how an altercation started and exactly what occurred, micro-step by micro-step.

Here, Oliver retreated a long distance and then charged at Mr. Cowan multiple times, a rare scenario in our hundreds of animal appeals. Thus, for example, even if there were some inkling that Mr. Cowan initiated the initial contact—and there is nothing in the record to support that—that still would not have justified Oliver repeatedly retreating and re-attacking Mr. Cowan. The violation notice was warranted.

9. Instead, the thrust of Mr. Morales' testimony went to explaining Oliver's history in dog parks. Oliver goes on long walks two to three times a week at Marymoor. Oliver has always been amicable with other pets and their owners. Mr. Morales did not take his father's failure to secure Oliver on a leash on January 24—or to contain Oliver quickly—lightly. He has stopped having his parents take Oliver, but he wants to be able to continue taking Oliver to off-leash areas.
10. In the past, we have chided Animal Services for always rejecting a request that its compliance order be amended to allow a vicious dog to run in off-leash parks, a position inconsistent with the individualized inquiry, KCC 11.04.290.A.1 and .2 require for each vicious animal. Today's case is different; there is plenty supporting Animal Services' prohibition here.
11. Sometimes the vicious behavior occurs in a very different context, say a territorially protective dog biting a visitor to the dog's home. In such scenarios, it may be a stretch to conclude that such violence has any real likelihood of being repeated in the dog park context. Here, in contrast, Oliver was at a park, getting ready to be walked, when he attacked.
12. Similarly, unlike split-second altercations that dominate our vicious dog docket, Oliver's lengthy attack involved repeated retreats across a large distance and then repeated charging at a victim. And, as Animal Services pointed out, on January 24 Oliver was in the presence of a frequent caregiver, and yet that caregiver was unable to keep him in check or to quickly halt the attack.
13. The one factor cutting in Mr. Morales' favor is that he is not in denial about the threat Oliver poses. He did not challenge Oliver's viciousness designation. He recognized that, as his parents had proved unable to control Oliver, he could not have them continue taking Oliver. That would not sufficiently counter Animal Services' superior position here that Oliver poses too much of a threat to be allowed to run off-leash. However, it matters because in closing Mr. Morales asked about amending the compliance order to allow he and his wife to muzzle Oliver before letting him run in an off-leash area.
14. Animal Services countered that muzzles are not foolproof and can come off during roughhousing. We accept that. However, the lack of an iron-clad assurance is not always dispositive. We consistently apply a gas-and-clutch analysis to assessing remedies: the more damage the animal has a history and capability of inflicting, the more airtight the containment must be going forward.
15. For example, in one horrific case a 100+ pound dog attacked an invited guest, biting her and shaking her violently, breaking her wrist in six places. She underwent major reconstructive surgery and was unlikely to ever regain full use of that hand. We upheld

Animal Services' removal order there. We reasoned that there was no foolproof guarantee against a repeat if the dog remained in that home. And given the carnage that dog was able to inflict in a few seconds, we needed certainty that such violence would not be repeated.

16. In contrast, in a separate case we affirmed a viciousness designation for an eight-pound dog who bloodied a neighbor's calf. However, we modified Animal Services' compliance order to allow the owner to install and rely on an electric fence, instead of requiring the traditional solid fence (padlocked to prevent accidental release) normally necessary for a vicious dog to run at home unsupervised. We acknowledged that electric fencing was not foolproof: batteries can fail, collars may not quite be adjusted properly, or a particularly motivated dog can push through the pain and bust out. However, we reasoned that if the electric containment system misfired in the future, the result of a failure to contain an eight-pound dog would not be catastrophic.
17. Oliver can cause more damage than an eight-pound dog can cause, and we do not minimize Mr. Cowan's physical and emotional trauma. Yet the relatively small, superficial wound Oliver inflicted is more bloodied calf than multiple fractured, reconstructed, permanently damaged arm. Ex. 4 at 002. Carlos came across as a responsible owner not in a state of denial, so we are reasonably confident that he will dutifully attach the muzzle before loosing Oliver in a dog park. And if for some reason the muzzle does fail, he or his wife be better able to control Oliver than elderly parents were. In sum, we doubt the results of a muzzle malfunction, in Carlos' or his wife's presence, would be significant. Animal Services has not carried its burden in the face of Mr. Morales' amended request.

DECISION:

1. We uphold the violation notice, V20010306, issued to Edgardo Morales,
2. We modify the confinement order, V20010307, issued to Carlos Morales, as follows (A. through D. being substantively unchanged, and E. being new):
 - A. Secure Oliver in a solidly fenced area suitable for his size when unattended and outside the home. Lock all passages with a padlock to prevent accidental release.
 - B. Restrain Oliver using a leash no more than eight feet long, with a collar or harness, when taking Oliver off your property. A competent and capable person must always handle Oliver when attended outside.
 - C. If not already completed, microchip Oliver and provide the microchip number to the King County Animal Licensing Office (206) 296-2712 by **May 15, 2020**.
 - D. Keep Oliver current on his rabies vaccination.
 - E. Oliver is allowed to run in sanctioned off-leash dog parks, so long as he is wearing a secure muzzle, and provided Carlos Morales or his wife are present and

ensure that Oliver is muzzled before he leaves the car and remains muzzled until after he is re-secured in the car.

ORDERED April 15, 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 *May 15, 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 APRIL 1, 2020, HEARING IN THE APPEAL OF EDGARDO AND CARLOS MORALES, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS. V20010306 and V20010307

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Brad Behrman, Matthew Cowan, and Carlos Morales. 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 by Matthew Cowan, dated January 24, 2020 |
| Exhibit no. 3 | RASKC investigation report no. A20000662 |
| Exhibit no. 4 | Photographs of bite and torn clothing |
| Exhibit no. 5 | Notice of violation no. V20010306, issued January 30, 2020 |
| Exhibit no. 6 | Notice of violation no. V20010307, issued January 30, 2020 |
| Exhibit no. 7 | Quarantine Notice |
| Exhibit no. 8 | Appeal, received February 21, 2020 |
| Exhibit no. 9 | Map of Bannerwood Park |

DS/JO

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20010307 and V20010306**

EDGARDO AND CARLOS MORALES
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 April 15, 2020.



Jessica Oscoy
Legislative Secretary

Behrman, Brad

Cowan, Mathew

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Morales, Edgardo/Carlos

Hardcopy