

July 22, 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. **V20010577**

LESETTE KINZ

Animal Services Enforcement Appeal

Activity no.: A20010792

Appellant: **Lesette Kinz**

[REDACTED]
Kent, WA 98032

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. Animal Services asserts that Lesette Kinz's dog, Kardi, was unlicensed and qualifies as vicious. Ms. Kinz timely 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 find that Kardi meets the criteria for a vicious dog

designation and was unlicensed at the time. However, Ms. Kinz was being responsible before, during, and after Kardi's attack. We therefore reduce the monetary penalty significantly and provide a potential avenue for Ms. Kinz to someday resume taking Kardi to off-leash dog parks.

Testimony and Evidence

2. Craig Warnke testified that on April 7 he was walking his dog, Bruce, on a leash, by an open space area with some power lines. Ms. Kinz approached and asked to pet Bruce. Mr. Warnke agreed. That worked out well; she even gave Bruce a treat. She then asked if she could introduce Bruce to her dog, Kardi. He agreed again. That did not work out so well.
3. Ms. Kinz retrieved Kardi from her vehicle, and leashed her. Mr. Warnke stated that as soon as Kardi saw Bruce, Kardi went right at Bruce. He was able to pull Bruce back. Although she tried her best, Ms. Kinz was not able to control Kardi. Kardi broke free and went for Bruce's throat. Kardi bit Bruce at least three times. Mr. Warnke tried to get Kardi off Bruce, and was bitten on his hand. Ms. Kinz was also trying to separate the dogs, but she could not either. Finally, Ms. Kinz's boyfriend came out and the three of them together were able to separate the dogs.
4. He took Bruce to the veterinarian, where Bruce required 60 stitches. Ex. D4 & D5. The vet informed him that he would need to submit a report. Mr. Warnke went to his doctor to get his hand looked at; he too required stitches. Exs. D5 & D7. His doctor advised him to call Animal Services. He has been seeing a hand specialist and hopes to recover.
5. Ms. Kinz testified that on April 7 she was retrieving Kardi at her then-boyfriend's home. She described the friendly interaction with Mr. Warnke. Because Kardi had been cooped up during quarantine, she was excited for Kardi to meet another dog. After she brought Kardi out, she quickly noticed that Bruce's and Kardi's tails were curved up in a manner she recognized as aggressive. Bruce lunged and growled, but Kardi was the first one to bite.
6. Kardi broke her harness, and Ms. Kinz tried to grab Kardi by the harness' broken ends. She tried kicking out Kardi's legs to mess up her balance. Her boyfriend came out and assumed Bruce was the aggressor, when Kardi was actually the aggressor, so he first tried to shake Bruce. Eventually the three of them were able to separate the dogs. She provided Mr. Warnke with her contact information
7. Ms. Kinz explained that nothing like this had ever happened before in her two-and-a-half years with Kardi, and she had no inkling Kardi was capable of that. She does not know why Kardi acted that way, although dog parks having been closed down for a month before April 7 (meaning Kardi had not been able to run or socialize with other dogs) contributed. Pre-pandemic, she or her son would take Kardi to a dog park almost every day, without any incidents. Kardi typically listens to her.
8. Kardi stayed in her cage for three days following the altercation, knowing she had done something wrong. Ms. Kinz licensed Kardi three days after the incident. Ex. D11 at 005.

She purchased a much more expensive harness. She should get Kardi spayed, and she plans to invest in a personal trainer for Kardi. She is scared now to take Kardi to a dog park. When walking Kardi on a leash, she even crosses the street to avoid other dogs.

9. Animal Services' Chelsea Eykel closed by stating that Ms. Kinz had not been negligent. While Kardi's bite to Mr. Warnke was probably a "displacement bite," nothing Bruce did was provocative enough to warrant Kardi's attack. She is fine waving the licensing penalty because Ms. Kinz promptly licensed Kardi after April 7. She explained that introducing dogs on a leash is wholly different, and more challenging, than when dogs are running free. Kardi may be experiencing hormonal changes, which spaying could help with. The confinement order should be upheld for now. The County might have some pet retention funds that can assist with spaying and/or training.
10. Ms. Kinz closed by stating she had not known Kardi needed a license, as no veterinarian had ever mentioned this. Getting Kardi fixed would calm Kardi down. There are no excuses, but the isolation of the quarantine contributed to Kardi's behavior on April 7.

Legal Standard

11. Substantively, our first question is whether, as of April 7, Kardi was unaltered and unlicensed, in violation of KCC 11.04.030.A, which requires all dogs eight weeks and older that are "harbored, kept or maintained" in King County be licensed and registered. And our second question is whether Animal Services Kardi is "vicious," which KCC 11.04.020.BB defines 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 11.04.230.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."

12. In answering those, we do 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.

Analysis

13. There is not much really in dispute here. We found Ms. Kinz extremely credible, but even under her version of events, Kardi was not "provoked" to attack Bruce or to bite Mr. Warnke. Kardi's intense and sustained attack, resulting in 60 stitches for Bruce and additional stitches for Mr. Warnke, was grossly disproportionate to a restrained Bruce

moving a little towards Kardi, growling, and curling his tail.¹ Kardi endangered the safety of Mr. Warnke and Bruce and constitutes a danger. We uphold her viciousness determination.

14. Unlike some owners who seem in utter denial, Ms. Kinz was candid that Kardi initiated the biting and, while explaining Kardi's behavior, did not attempt to excuse it. She was sharp enough to recognize the curled tails and to immediately grasp their import. During the attack she kicked at her own dog to try to end to violence. She gave Mr. Warnke her contact information. She licensed Kardi quickly afterward. She has kept Kardi on a literal tight leash since April. She recognized the need to get Kardi training and to spay her. She seems an extremely responsible pet owner. And that responsibility has two consequences.
15. First, monetary penalties are designed to discourage irresponsible ownership, and there is nothing of the sort to discourage here. Hindsight is always 20/20, but as Mr. Warnke noted, it would not have occurred to anyone "in their wildest dreams" that (after asking his permission to introduce the dogs and bringing Kardi out on a leash) things would have gone south like they did on April 7. We think a significant penalty reduction is in order. We reduce the penalty from \$750 to \$150.
16. Second, one of the terms for Kardi's continued residence in King County is being restrained on a leash with a collar or harness when taken off the Kinz property. Ex. D9 at 001. That would preclude Kardi going to an off-leash dog park again. Confinement orders are typically permanent, but Animal Services' position here is more nuanced: the confinement order should be upheld "for now."
17. We agree. We are not ordering Ms. Kinz to spay Kardi, but Animal Services opined that spaying could help reduce Kardi's hormones. And if Ms. Kinz and Kardi work with a licensed trainer or canine behaviorist, and if, after a course of training, that professional determines it is safe for Kardi to return to sanctioned dog parks, we will allow that option. (Ms. Kinz may want to contact Animal Services, let them know Sgt. Eykel noted there might be pet retention funds available to cover some of the spaying or training costs, and explore her options.) Whether her son could be a "competent and capable" person (in the words of Animal Service's order) might be a slightly different question, but April 7 was not about the wrong person trying to control Kardi, it was about a level of aggression that even a competent and capable person like Ms. Kinz could not control. We will write some language, below to allow the possibility of Kardi's future return to dog parks.

¹ Cf. *Bradacs v. Jacobone*, 244 Mich. App. 263, 273–75, 625 N.W.2d 108 (2001); *Kirkham v. Will*, 311 Ill. App.3d 787, 792, 724 N.E.2d 1062 (2000); *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995).

DECISION:

1. We sustain the viciousness and licensing violations.
2. We reduce the penalty from \$750 to \$150.
3. We sustain Kardi's confinement order. However, if:
 - Ms. Kinz and Kardi and her son work with a licensed trainer or canine behaviorist, and
 - if, after a course of training, that professional writes a letter, a copy of which Ms. Kinz should provide to Animal Services (contact information above) explaining why it is safe for Kardi to return to a sanctioned dog park, and
 - specifies who (Ms. Kinz, her son, etc.) is competent and capable of supervising Kardi at a dog park,

that person(s) can take Kardi to a sanctioned off-leash park, provided Kardi remains leashed outside the fenced-in area. If Animal Services disagrees with the assessment, or if a future dispute arises in relation to the dog park issue, we retain jurisdiction to weigh in again later.

ORDERED July 22, 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 *August 21, 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 JULY 8, 2020, HEARING IN THE APPEAL OF LESETTE KINZ, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20010577

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Craig Warnke, and Lesette Kinz. 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. D1	Regional Animal Services of King County staff report to the Hearing Examiner
Exhibit no. D2	Complaint form of April 7, 2020, incident by Craig Warnke, dated April 9, 2020
Exhibit no. D3	RASKC investigation report no. A2001079201
Exhibit no. D4	Photograph of a dog's injuries
Exhibit no. D5	Photograph of a hand with stiches
Exhibit no. D6	Benson Animal Clinic invoice, dated April 9, 2020
Exhibit no. D7	Regence incident report, dated April 9, 2020
Exhibit no. D8	Animal quarantine notice, dated April 9, 2020
Exhibit no. D9	Notice of violation no. V20010577, issued April 10, 2020
Exhibit no. D10	Photograph of NOV posted on a door
Exhibit no. D11	Appeal, received April 14, 2020
Exhibit no. D12	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20010577**

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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 July 22, 2020.



Jessica Oscoy
Office Manager

Eykel, Chelsea

Regional Animal Services of King County

Kinz, Lesette

Hardcopy

Warnke, Craig

Hardcopy