

July 8, 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. **V20010588**

LISA ANARDI
Animal Services Enforcement Appeal

Activity no.: A20010955

Appellant: Lisa Anardi
[REDACTED]
Auburn, WA 98092
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King County: Regional Animal Services of King County
represented by Chelsea Eykel
Regional Animal Services of King County
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FINDINGS AND CONCLUSIONS:

Overview

1. Animal Services asserts that Lisa Anardi's dogs, Jack and Zoe, were running at large and meet the code criteria for a viciousness designation. Ms. Anardi timely appealed. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold the violations but reduce the monetary penalty.

Testimony and Evidence

2. Morgan Winegrad testified to the events of April 12. After visiting with her parents, she walked Bohdi in the cul-de-sac near her parents' house. Bohdi was on a leash, and they were both on the asphalt portion of the public street. She saw two unleashed Labrador retrievers (Jack and Zoe) with a man later identified as neighbor. She yelled to the neighbor to please grab the dogs before they could hurt Bohdi. The neighbor did nothing. Bohdi was just standing there, and Ms. Winegrad tried to pull him in so she could protect him. Before she could grab Bohdi, both Jack and Zoe were on top of him, attacking.
3. As she tried to get them off Bohdi, the dogs tore off some of her fingernail attachments, causing a small wound to her thumb in the process. Ex. D4 at 002-03. The attack left her with a scabbed up knee and bruised ankle. Ex. D4 at 04-05. (Because Ms. Winegrad was not able to get the dogs' vaccination information, she eventually had to get shots.) The neighbor was completely unhelpful, simply stating the dogs were not his.
4. After the dogs dispersed, she called her mom to pick her up. She observed that the dogs had torn through Bohdi enough that she could see Bohdi's insides. Her mom retrieved them and took them to the veterinarian, where Bohdi required surgery.
5. The vet noted that Bohdi had suffered quite a bit of internal damage, with wounds penetrating to the chest cavity, requiring the veterinarian to suture up the muscle that had been torn open. Ex. D6. Bohdi suffered a cracked rib, tissue swelling, widening of the intercostal space, and subcutaneous gas. Ex. D5 at 003. The post-surgery shows Bohdi with a huge, sewn-up gash and a stint. Ex. D4 at 001.
6. Ms. Winegrad's father shot a phone video on June 4 of Jack and Zoe running at large and then charging at a fence. Ex. D11.
7. At hearing, Ms. Anardi apologized and noted that she had offered to pay (and then did pay) the Winegrads' the vet bills. The incident shocked her, because Jack and Zoe have not been vicious. They are friendly and roam the neighborhood, often visiting neighbors' houses. No one had ever complained, beyond the occasional poop in a yard.
8. Ms. Anardi testified that she could not believe the incident happened, so it makes her wonder if her dogs were provoked. She noted that little dogs can be aggressive. (In her appeal statement, she opined that Bohdi "most likely went after my dogs, so they felt threatened and reacted." Ex. D10.) Maybe the fact that Bohdi was leashed contributed to her dogs' reaction. Maybe Bohdi was going after her dogs.
9. Ms. Anardi acknowledged that her dogs had gotten out once since she received the April 13 confinement order (June 4). Ex. D7. Otherwise they have kept the dogs in the house or tethered to a line. They purchased invisible fencing and hired a dog trainer. She thinks the fine is excessive, given that she had no prior warning that her dogs could attack, and that since the incident she paid the Winegrad's \$1800 vet bill, and spent \$1000 in invisible fencing, \$100 for tether line, and \$300 for a trainer.

10. Ms. Anardi submitted multiple declarations from neighbors and from a canine coach about how kind and nonaggressive Jack and Zoe are. Ex. D10 at 003-006; Ex. A1.
11. On rebuttal, Erin Winegrad, Morgan’s mom, stated that when she picked up Morgan on April 12, she saw Morgan on the ground in the cul-de-sac, holding the six-pound Bohdi. Morgan was distraught, screaming, and inconsolable. Bohdi was bleeding and in shock. She drove them to the animal hospital.
12. On her rebuttal, Ms. Anardi noted that before the Winegrads bought the lot and built their house, it was a fully-wooded lot her dogs would walk on. So, Jack and Zoe were used to being over there. And in closing, she repeated that she was not sure the attack was unprovoked, that her dogs are not vicious, and that the penalty is excessive for a first-time offense.

Legal Standard

13. Our first question is whether that Jack and Zoe were “running at large,” meaning “off the premises of the owner and not under the control of the owner, or competent person authorized by the owner, either by leash, verbal voice or signal control,” with “under control” itself including “restrained from approaching any bystander or other animal” when “off the premises of the owner.” KCC 11.04.020.W, .AA; .230.B.
14. Our second question is whether Jack and Zoe are “vicious,” whether they “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.
15. In answering those questions, 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

16. The written statements from neighbors and the canine coach are hearsay (a statement made outside of the hearing room, offered for the truth of what it asserts) but we employ a lower threshold than courts do for allowing in hearsay statements, including such letters. Exam. R. XII.B.1. We admit these declarants’ statements into the record. However, none of those declarants purported to have witnessed the April 12 events, and none were subject to cross-examination.
17. The submittal from the Anardi’s canine coach, Amanda Lund, was ineffective. While animal trainers in past appeals have mostly cabined their commentary like objective expert witnesses should, Ms. Lund went far beyond. Not only did she make unsupported pronouncement like Jack and Zoe not being “aggressive dogs by any stretch of the

imagination”—despite the fact that they ripped open a six-pound dog and on another date were videoed charging against another dog’s fence—but she moved into legal advocacy by opining that without other witnesses, we should not draw negative conclusions. Ex. A1. We place little weight on her letter.

18. We accept the other letters, but have seen too many counter examples of dogs that behave wonderfully in general, but then show a very different side, to give such testimonials much weight. We recall one gruesome example where not only did the appellants produce uncontroverted testimonials about how friendly their dogs were, but the *complainant* who witnesses the day’s events expressed surprise at the attack, because she previously observed appellants’ dogs playing nicely with other animals. Yet on the day in question, those normally sweet dogs mauled one animal to death and were chewing on another, still alive, when the complainant broke it up. We do not mean to sound jaded, just experienced, having reviewed hundreds of vicious dog appeals.
19. The one letter that on first blush seemed to provide something more was a letter from Sarah Toney describing an incident where dogs ran off the Winegrad property and came after her leashed dogs. Ex. D10 at 005. However, there is nothing showing that the altercation she described involved Bohdi, a dog belonging to *Morgan* Winegrad, who does not reside with her parents, and not her parents’ dogs, and there is no evidence, beyond mere speculation, that Bohdi himself had ever gone after Jack or Zoe.
20. We put a little more weight on the video that starts off with Jack and Zoe being very friendly with Mr. Winegrad on June 4. The dogs are wagging their tails, but then there is a dramatic shift in behavior. The dogs react to another dog barking from behind a solid wooden fence. They turn and charge at the fence, growling and even bumping into the fence to get at the dog behind there. Ex. 12. June 4 was not April 12, but it does show how Jack and Zoe can turn quickly.
21. In only one of our hundreds of vicious animal appeals have testimonials tipped the scales. That case was *Chancellor*, where the complainant (a Mr. Wassell) wielded a shovel and froze an approaching, trespassing dog (Austin) when Austin was still 15 feet away. We concluded that:

testimonials and [expert] opinions [about how nonaggressive Austin was] would ring hollow if Austin had actually bitten Mr. Wassell, or if it was clear that Austin had already “attacked” Mr. Wassell before Mr. Wassell staved off any actual physical contact. But here Mr. Wassell stopped Austin in his tracks while Austin was still a ways off.¹
22. Thus, in *Chancellor* we were not dealing with evidence of *actual* violence. Instead, we were left to extrapolate what most likely *would* have happened if Mr. Wassell had not picked up the shovel—would Austin have actually instigated violence, or might Austin merely have been exhibiting non-violent aggression? Because there was no actual contact on the date

¹ https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2016/V16005716_Chancellor_corrected.ashx?la=en.

in question, we were left to sift through secondary information like testimonials and inferences. We wound up reversing Austin’s viciousness designation.

23. *Chancellor* notwithstanding, we decide cases based on the specifics of an altercation. This goes both ways. On the one hand, despite the “having the propensity to do any act,” in the viciousness definition—which seems to offer an alternative avenue for Animal Services to prove viciousness (i.e. divining that a dog that has not actually done anything violent nonetheless has an *inclination* to do something violent)—we have always based our decisions on an animal actually performing some act. On the other hand, all the supportive letters (or even testimony at hearing) from people not present for a disputed incident, about how friendly and well-behaved a dog generally is, have typically not trumped actual evidence of unprovoked violence.
24. The main thrust of Ms. Anardi’s appeal is her feeling that Bohdi must have provoked her dogs. Although provocation is typically an affirmative defense, *Patterson v. New York*, 432 U.S. 197, 202-03 (1977), because “without provocation” is part of the code definition itself, Animal Services bears the burden of showing, by a preponderance of the evidence, that Jack and Zoe’s attack was unprovoked. *Cf. Morawek v. City of Bonney Lake*, 184 Wn. App. 487, 495, 337 P.3d 1097 (2014) (analyzing a similarly-worded statute).
25. We found Ms. Winegrad credible. She was walking Bohdi, on a leash, on a public street, when two roaming dogs came at her and Bohdi. We do not find that Bohdi did anything beyond merely being present, on a leash, under control, and on a public street, a place he had every right to be. But even if, say, Bohdi was barking or posturing, provocation requires a dog’s reaction to be *proportional* to the victim’s act. *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). Jack and Zoe charging a leashed, six-pound Chihuahua on a public street and then tearing into Bohdi was grossly disproportionate to any incitement Bohdi created. Contrasted with Ms. Winegrad’s credible testimony about how the altercation unfolded, the hunch that Bohdi just must have done something does not hold much water.
26. We find that Jack and Zoe did more than just endanger Bohdi and Ms. Winegrad. They actually attacked Bohdi without legal provocation and they constitute a danger to the safety of at least Ms. Winegrad and her Bohdi. We thus sustain the viciousness determinations. We also find that Jack and Zoe were off their premises and not restrained from approaching a bystander or another animal. We thus sustain the running at large violations as well. Ms. Anardi will need to contain Jack and Zoe.
27. That leaves the monetary penalty. Animal Services request that we uphold the fines in total. We disagree. Yes, Ms. Anardi let her dogs roam freely up through April 12, but the neighbors appear to have welcomed the dogs’ visits. Ex. D10 at 003-006. There is no indication that Jack and Zoe had been aggressive in the past, let alone violent, or that Ms. Anardi should have known that Jack and Zoe were capable of the violence that perpetrated on April 12. And while Jack and Zoe did get out on June 4, they have

otherwise been tethered or restrained.² Ms. Anardi purchased fencing and training, and paid the Winegrad's \$1800 vet bill. We find a sizable penalty reduction is in order.

DECISION:

1. We sustain the violations and the order of confinement.
2. We reduce the \$1,100 penalty to \$350.

ORDERED July 8, 2020.



David Spohr
Hearing Examiner

² The Winegrads alleged that someone told them she had seen Jack and Zoe, post April 12, loose on a date(s) other than June 4. However, there was no actual testimony or even a written statement from an eyewitness to those events. We do not attach weight to such hearsay.

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 7, 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 JUNE 24, 2020, HEARING IN THE APPEAL OF LISA ANARDI, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20010588

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Morgan and Erin Winegrad, and Lisa Anardi. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were entered into the record by the Department:

- Exhibit no. D1. Regional Animal Services of King County staff report to the Hearing Examiner
- Exhibit no. D2. Online complaint form of April 12, 2020 incident by Morgan Winegrad, dated April 12, 2020
- Exhibit no. D3. RASKC investigation report no. A2001095501
- Exhibit no. D4. Photograph of dog and injury
- Exhibit no. D5. Animal medical records, dated April 14, 2020
- Exhibit no. D6. Veterinarian's Voicemail
- Exhibit no. D7. Notice of violation no. V20010588, issued April 13, 2020
- Exhibit no. D8. Official animal quarantine notice, dated April 13, 2020
- Exhibit no. D9. Certified mail receipt
- Exhibit no. D10. Appeal, received May 1, 2020
- Exhibit no. D11. Video of Jack and Zoe, June 4
- Exhibit no. D12. Map of subject area

The following exhibits were entered into the record by the Appellant:

- Exhibit A1 Letter from Amanda Lund, NorthStar Canine Coaching, dated June 22, 2020

DS/jf

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20010588**

LISA ANARDI

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 8, 2020.



Jessica Oscoy
Legislative Secretary

Anardi, Lisa
Hardcopy

Eykel, Chelsea
Regional Animal Services of King County

Winegrad, Morgan
Hardcopy