

July 28, 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. **V20010590**

PATRICK ROTH

Animal Services Enforcement Appeal

Activity no.: A20010975

Appellant: **Patrick Roth**

Black Diamond, WA 98010

Telephone: [REDACTED]

Email:
[REDACTED]

King County: Regional Animal Services of King County
represented by **Shelby Russell**
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 Patrick Roth's dog, Dazzle, was a vicious dog running at large. Mr. Roth appealed. At our hearing, Animal Services' representative did not appear. Despite Dazzle's caretaker exercising decidedly poor judgment and a lack of oversight on the day in question, after hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the relevant law, we nonetheless grant Mr. Roth's appeal.

Background

2. In March, we upheld Dazzle’s viciousness designation after he trespassed onto the neighboring Barrett property and bit the Barretts’ dog on its ear and its throat. Ex. D6. The underlying order we upheld required that—in order to keep Dazzle in the County—Mr. Roth needed to secure Dazzle in a fenced area suitable for Dazzle’s size when Dazzle was unattended and outside the Roth home, lock all passage ways with a padlock, and restrain Dazzle using a leash with a collar or harness when taking Dazzle off the Roth property. Ex. D5 at 001.
3. Animal Services served a violation notice asserting that on April 13, at a little after noon, Dazzle was a vicious dog running at large. Ex. D2. Mr. Roth appealed, disputing that Dazzle got out on April 13.
4. We went to hearing on June 17, but when it became clear that Animal Services had not produced the information our prehearing order had required, we rescheduled the hearing to July 14. Animal Services met its prehearing deadlines, but then did not participate in our July 14 hearing. It is the first hearing we can recall when an Animal Services representative failed to show. The Barretts, Mr. Roth, and Kim Cline did timely appear, and swore them in.
5. Amy Barrett testified that on April 13 she was jogging, heading uphill. As she turned onto 266th Avenue SE, she saw Dazzle in the road near a wooded section. She froze. Not having her cell phone with her, she asked to borrow a phone from a landscaping crew and called her husband to come pick her up to get her home in time for her meeting.
6. When we asked her to identify the spot, on Animal Services’ map, exhibit D13, she could not, as she did not have the map in front of her. Animal Services’ map shows an “X” at the intersection of the northwest corner of the Roth property, but it is unclear how Animal Services produced the map, as Animal Services was not at hearing to explain.
7. Ms. Barrett recalled Mr. Barrett coming and getting her, then stopping his car and taking photos out the window on their way back home. She knew it was Dazzle, because Dazzle had been in their yard on numerous occasions; it was unmistakably Dazzle.
8. Mr. Barrett testified that on April 13 he was working from home and got a call from his wife. He thinks the landscapers were on the Benton property (which would put them at 26604 SE 236th Street, exhibit D19). He saw Dazzle heading in the direction of the Barrett home. Dazzle was in the street, getting close to the Roth driveway, on the loose, with no one there. To the best of his recollection he took the pictures after he retrieved his wife, turned around, and headed home. One of his pictures shows Dazzle on the street. He did not see anyone controlling Dazzle, and his pictures—even the long one of the driveway—do not show anyone in the vicinity.
9. Mr. Roth was not present on April 13. He testified that the three pictures show Dazzle on his property and that his girlfriend, Kim Cline was home. He questioned the timing of

the picture. (Mr. Barrett then emailed screenshots of his phone, showing the timestamp did indeed match up to the date and time the Barrett’s alleged. Ex. D15)

10. Ms. Cline testified that she was working outside with Dazzle on April 13 and had him in her voice control the entire time. Even though the pictures do not show her anywhere in the vicinity, she claims she was right there. Dazzle did not get out to the street at any point. She confidently asserted that it was “not possible” that Dazzle could have ventured off and entered the street.

Legal Standard

11. Dazzle is a vicious animal by virtue of his 2019 viciousness designation. Our substantive question is whether on April 3 team he was “at large at any time it is off the owner’s premises and not securely leashed on a line or confined and in the control of a person of suitable age and discretion to control or restrain the animal.” KCC 11.04.230.I.
12. In answering that, 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. We cannot recall a scenario where the party representative did not appear, but the witnesses did. Beyond the procedural problem, substantively it would have greatly benefited Animal Services to be at the hearing and walk its witnesses through the exhibits and details; something is not quite adding up. If we are looking at the map and pictures and testimony correctly, Mr. Barrett drove out his driveway and took a right, heading north to pick up his wife. This meant he passed the Roth house on the right (east) side of the road. He then picked up his wife, who was late for a meeting and needed to get home. Ex. D9 at 003. He then took pictures while she was in the car heading home for her meeting. That would mean his car was heading south. All good so far.
14. However, one of the pictures Mr. Barrett took shows the mirror pointing south. Because the Roth property is on the east side of the street, regardless of whether the mirror is the passenger side or driver side mirror, the car had to have been pointed north when the picture was taken. That is inconsistent with Mr. Barrett driving Ms. Barrett back for her meeting and then taking a picture while she was (as she testified) with him in the car. There may be an explanation that Animal Services could have drawn out of its witnesses or offered in summation, but Animal Services did not attend.
15. The pictures themselves are worth a thousand words, but all three show Dazzle at the edge of the Roth property. While the public right-of-way typically extends well past the asphalted public road section, it is not clear from those pictures that Dazzle was actually off the Roth property.

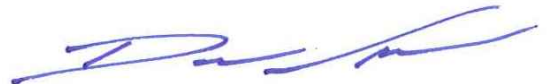
16. The problems with Animal Services' case here does not in any way give Mr. Roth or Ms. Cline a pass.
17. Ms. Cline shot herself in the foot by saying it was “impossible” that Dazzle was in the road that today. Impossible? Seriously? With Ms. Cline nowhere in any of the photos of Dazzle, the photos showing an impenetrable evergreen blocking site lines from further inside the Roth property, and the photos' showing Dazzle right at the very edge of the property, it was “impossible” Dazzle could have walked a few more feet and left the property boundaries? That was either the height of arrogance or the height of obliviousness, but in either case it was ineffective.
18. For Mr. Roth's part, he had a final order stating that Dazzle could only be taken off the property only “using a leash with a collar or harness”; the failure to comply with the order constitutes a misdemeanor and may result in Dazzle being impounded and removed from King County. Ex. D5; KCC 11.04.290.A.3.
19. Why—in the face of a possible misdemeanor, Dazzle being one step short of removal, and knowing that his neighbors are paying really, really close attention and likely to report any slip-up—would he leave Dazzle in the care of someone who thought it was sensible to allow Dazzle to wander the yard, without a leash or tether, while she was distracted doing gardening, and—even under the most appellant-favorable view of the evidence—to get within a few feet of the edge of his property? After all, the requirements under which Mr. Roth is allowed to keep Dazzle in the County does not include Dazzle being taken off the property under voice command—it is limited to “a leash with a collar or harness.” Stunning, really.
20. Mr. Roth wrote that, “I love my dogs and do not want to risk them being harmed in anyway whatsoever.” Ex. D3. But talk is cheap, and on April 13 he left them in the care of someone who callously put at least Dazzle at great risk. Mr. Roth is free to roll the dice and hope for a repeat of our hearing, where for the first time in our hundreds and hundreds of appeals Animal Services' representative did not appear to present its case,¹ or that there is some discrepancy in the next round of testimony, or that Dazzle miraculously stays a few feet on the Roth side of the property line when the next set of pictures are taken. But he cannot do that and claim he does not want to put Dazzle at risk “in any way whatsoever.” He has actually put Dazzle at *great* risk.
21. In sum, Animal Services' failure to appear put its case at a decided disadvantage. We asked questions to all witnesses and even (after allowing Ms. Cline, herself only a witness and not a party, to cross examine the Barretts) allowed the Barretts to cross examine her. But that was no substitute for having Animal Services present its evidence, elicit additional witness' testimony, walk its witnesses through the details (including precise locations on a map), cross examine Mr. Roth and Ms. Cline, and give a summation explaining why we should uphold the violation. Mr. Roth is catching a break this time, for Animal Services has not quite met its burden of proof here. Next time he may not be so lucky.

¹ A plausible explanation is that our animal hearings have typically all been on Wednesdays, and this was our first-ever Tuesday animal hearing.

DECISION:

1. We overturn the violation.

ORDERED July 28, 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 27, 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 14, 2020, HEARING IN THE APPEAL OF PATRICK ROTH, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20010590

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Amy and Thomas Barrett, Patrick Roth, and Kim Cline. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

The following exhibits were offered and entered into the record on July 14, 2020:

- Exhibit no. D1 Regional Animal Services of King County staff report to the Hearing Examiner
- Exhibit no. D2 Notice of violation no. V20010590, issued April 14, 2020
- Exhibit no. D3 Appeal, received May 4, 2020
- Exhibit no. D4 RASKC investigation report no. A2001097501
- Exhibit no. D5 Notice of violation no. V19010071, issued November 17, 2019
- Exhibit no. D6 Report and Recommendation to King County file no. V19010071, issued March 11, 2020
- Exhibit no. D7 Notice of violation no. V19010072, issued November 17, 2019
- Exhibit no. D8 Notice of violation no. V19010111, issued November 27, 2020
- Exhibit no. D9 Online Complaint form of April 13, 2020 incident by Amy Barrett, dated April 13, 2020
- Exhibit no. D10 Photograph of dog
- Exhibit no. D11 Photograph of dog
- Exhibit no. D12 Photograph of dog
- Exhibit no. D13 Map of subject area
- Exhibit no. D14 RASKC investigation report no. A19-007872-01

The following exhibits were offered and entered into the record on July 15, 2020:

- Exhibit no. D15 Email and photographs from Thomas Barrett, received July 15, 2020

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20010590**

PATRICK ROTH

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 28, 2020.



Jessica Oscoy
Office Manager

Barrett, Amy/Thomas
Hardcopy

Cline, Kim

Roth, Patrick
Hardcopy

Russell, Shelby
Regional Animal Services of King County

Wilcox, Allison
Regional Animal Services of King County