

July 9, 2020

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
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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. **V20010653**

DANIEL AND HEIDI BLAKE
Animal Services Enforcement Appeal

Activity no.: A20011363

Appellants: **Daniel and Heidi Blake**

[REDACTED]
Kent, WA 98030

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
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FINDINGS AND CONCLUSIONS:

Overview

1. Animal Services asserts that Daniel and Heidi Blake's dog, Rudee, meets the code criteria for a viciousness designation. The Blakes 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 violation but reduce the monetary penalty.

Testimony and Evidence

2. Jennifer Zielinski testified that she has had three altercations with Rudee as she and her neighbor walked Ms. Zielinski's dog, Sheila, along the path from the cul-de-sac into a park.
3. At some point in the spring of 2019, as they walked into the park, Sheila seemed to sense something. Rudee came rushing out of the tree line at Sheila. Rudee came close, snapped at Sheila, and seemed to be trying to bite Sheila. Eventually Rudee dispersed. She had no interaction with the Blakes on that day.
4. That fall, Rudee emerged and came at a leashed Sheila on the same path. Rudee tried to bite Sheila and made some contact. Ms. Zielinski tried to move away, and the dogs circled each other. Eventually, Ms. Blake came out and got Rudee. Ms. Zielinski was upset and yelled at Ms. Blake, telling her she needed to leash Rudee. Ms. Zielinski said she would report the incident, but she did not.
5. Finally, on April 24, 2020, Rudee emerged from the Blake's yard, growling and barking and coming after Sheila. Sheila barked back. Rudee tried to bite at Sheila's throat. Ms. Zielinski tried to move Sheila away, but Rudee followed and came at Sheila at least one more time before Ms. Zielinski was able to get between them. Rudee eventually ran off. Ms. Blake came out and apologized.
6. Ms. Zielinski's walking companion, Julie Knauss, also described the incidents.
7. As to the incident last spring, Rudee came out through the trees snapping and growling. Ms. Knauss tried to keep them apart, and yelled for help, for someone to come get Rudee. Rudee's attack went on for several minutes, with no response. They finally managed to run Rudee off, and she and Ms. Zielinski took Rudee and got out of there quickly.
8. Ms. Knauss described the incident from last fall, when Rudee charged out from his home, barking, snarling, and being very aggressive. Ms. Knauss was shaken after running off Rudee. When Ms. Blake emerged, Ms. Knauss told her Rudee needed to be on a leash or in the Blakes' yard. Ms. Zielinski told her she would report the incident, although ultimately Ms. Zielinski did not do so.
9. Finally, on April 24, Ms. Knauss heard a jingling and then Rudee burst through the trees running very fast. As he got closer, he was barking and snapping. Ms. Knauss stepped between them and managed to run Rudee off. When Ms. Blake emerged, Ms. Knauss told her what happened.
10. Ms. Knauss stated that in all three altercations Rudee came from his yard, full-tilt (not trotting), snapping and trying to bite Sheila, essentially exhibiting the same behavior each time.
11. After the April incident, Ms. Zielinski did file a complaint. Ex. D2. The Blakes timely appealed. Ex. D8.

12. Mr. Blake testified that on April 24, he was working in the garden, moving a lot of dirt from the front to the backyard. Rudee was with them. Mr. Blake left the gate open because he was running the wheelbarrow back and forth.
13. Mr. Blake has never seen in Rudee the described behavior. Ms. Knauss' and Ms. Zielinski's testimony was the complete opposite of his experience with Rudee, leaving him speechless. He would have appreciated if he received an earlier notice. He opined that if Ms. Knauss' and Ms. Zielinski's testimony was accurate, he would expect he would have heard other complaints, but no one has ever complained, not even their homeowners' association.
14. Mr. Blake expressed sorrow at the events. He would have appreciated getting an earlier warning. April 24 was the first time he was aware of anything. Since then he has installed a lock spring. Ex. D8 (padlock). He would have acted immediately had he known of the situation earlier. He explained their financial hardship due to the Covid economic downturn.
15. Ms. Blake testified that she did not recall any interaction with Ms. Zielinski or Ms. Knauss prior to April 24. On that day she heard yelling from the front yard to get the dog. She had not met Ms. Zielinski or Ms. Knauss before. They told her Rudee had attacked, but Ms. Blake could not believe it and did not see Rudee. She went looking for Rudee afterwards, and found him in the garage.
16. Ms. Blake stated that she was in total shock. Rudee has never exhibited the behavior Ms. Zielinski or Ms. Knauss described in the house or in the park. Rudee likes kids. It was an accident that they left the gate open. She thinks Ms. Knauss or Ms. Zielinski should have contacted her earlier.
17. Ms. Blake closed by stating she had seen nothing prior to April 24 that matched Ms. Knauss' or Ms. Zielinski's testimony. She wants to get to know her neighbors. They have spent a lot of money getting Rudee microchipped, his booster shots, and putting a new lock on the gate.
18. The Blakes submitted letters from friends and neighbors about how friendly and gentle Rudee is. Exs. A1-A7.

Legal Standard

19. Our question is whether Rudee qualifies as “vicious,” which KCC 11.04.020.BB defines as “[h]aving 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.”
20. In deciding 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

21. Ms. Knauss and Ms. Zielinski asserted that they warned Mr. Blake last fall about Rudee’s behavior. Ms. Blake disputed that she had ever met them. Conversely, the Blakes questioned why Ms. Knauss or Ms. Zielinski did not come to their door after the first incident (last spring). Those are not particularly critical items. A viciousness determination is fundamentally about *the dog*. It is not a referendum about people or how they interacted with, or should have interacted with, each other.
22. We employ a lower threshold than courts do for allowing in hearsay statements, such as letters. We appreciate the writers taking their time, and we admit the letters into the record. However, none of those declarants purported to have witnessed any of the three altercations Ms. Zielinski or Ms. Knauss testified about. And we note that one letter described Rudee as instrumental in keeping strangers out of the park, another that Rudee will bark when someone gets close to the house, and another that Rudee tries to protect his territory and that there are homeless people in the area. Ex. A2; Ex. A1 at 002; Ex. A3. Those are not inconsistent with the behavior Ms. Zielinski or Ms. Knauss testified to, behavior that might have been acceptable on the Blake property but not in the adjacent public park. The letters do come back in play in our penalty discussion.
23. Ms. Blake only recalled seeing the aftermath of one of the incidents, not Rudee’s behavior during any of them. So, the case really rests on Ms. Zielinski’s and Ms. Knauss’s testimony. We found them credible, but the case turns more on the legal *implications* of their descriptions—basically that on three occasions Rudee charged out his yard and onto public property, coming full bore at Shelia, snapping and trying to bite her, as Sheila, Ms. Zielinski and Ms. Knauss maneuvered to try to prevent a bite, but that Shelia did not actually receive a bite.
24. “Vicious” behavior includes more than just a bite or attack, given the “including, but not limited to” language in the above code. We have consistently required something more than just approaching and barking aggressively and scaring people or animals. Our viciousness rulings have tracked RCW 9A.28.020, which includes in the definition of “criminal attempt” the requirement that the accused perform some “act which is a substantial step toward the commission of that crime”—here, some step towards an actual bite, not just proximity and barking.
25. We find that here. With no more provocation than two women walking a dog on a public space they had every right to be, Rudee came at Sheila and tried repeatedly to bite her. That endangered the safety of Sheila, Ms. Zielinski and Ms. Knauss, meeting KCC 11.04.020.BB. If it had just been one altercation, perhaps we could chalk it up to a bad day from Rudee or Ms. Zielinski and Ms. Knauss misinterpreting events. However, with three separate incidents of similar behavior, we find that Rudee constitutes a danger to at

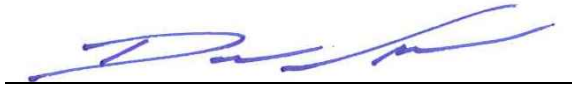
least Ms. Zielinski and Ms. Knauss and their dog, meeting KCC 11.04.230.H. We uphold the viciousness designation.

26. Turning to the penalty, there is a dispute about whether Ms. Blake had a conversation with Ms. Knauss and Ms. Zielinski last fall. We found Ms. Knauss and Ms. Zielinski more accurate on this topic, but neither testified that they told Ms. Blake last fall that Rudee had tried to actually bite Sheila, or said anything more than that the Blakes needed to contain Rudee. That is not the same thing as Ms. Blake being put on notice that Rudee was endangering (as opposed to just bothering) anyone. In this regard the letters are helpful, because rather than Rudee being a recognized trouble spot in the neighborhood, from which we might draw an inference that the Blakes were on notice, the letters show the opposite. And, post April 24, the Blakes took compliance steps like micro-chipping Rudee and locking the gate with a padlock. We will reduce the penalty.

DECISION:

We uphold Animal Services' May 1 violation notice and compliance order except that we reduce the applicable penalty to \$150.

ORDERED July 9, 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 10, 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 DANIEL
AND HEIDI BLAKE, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE
NO. V20010653**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Jennifer Zielinski, Julie Knauss, and Heidi Blake and Daniel Blake. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

The following exhibits were offered and 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	Complaint form of April 24, 2020 incident by Jennifer Zielinski dated April 24, 2020
Exhibit no. D3	Photograph of Notice of Violation
Exhibit no. D4	Photograph of street
Exhibit no. D5	RASKC investigation report no. A20-011363-01
Exhibit no. D6	Written statement of Julie Knauss, dated May 25, 2020
Exhibit no. D7	Notice of violation no. V20010653, issued May 1, 2020
Exhibit no. D8	Appeal, received May 15, 2020
Exhibit no. D9	Map of subject area

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

Exhibit no. A1	Yonas and Azeb Abraha, dated June 10, 2020
	Statement of Deborah Kulow, dated June 5, 2020
Exhibit no. A2	Statement of Diantha Stewart, dated June 5, 2020
Exhibit no. A3	Statement of Rock Peterson and Karen Stierwalt, dated June 8, 2020
Exhibit no. A4	Statement of Steven Grill, dated May 30, 2020
Exhibit no. A5	Statement of Yonas and Azeb Abraha, undated
Exhibit no. A6	Statement of Daniel Jeffrey Blake, dated June 1, 2020
Exhibit no. A7	Statement of Melissa Blake, dated June 9, 2020
Exhibit no. A8	Photograph of locked gate

DS/jf

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CERTIFICATE OF SERVICE

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DANIEL AND HEIDI BLAKE
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 9, 2020.



Jessica Oscoy
Legislative Secretary

Blake, Daniel/Heidi
Hardcopy

Eykel, Chelsea
Regional Animal Services of King County

Knauss, Julie
Hardcopy

Zielinski, Jennifer
Hardcopy