

July 28, 2020

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
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hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V20010682/A20001636**

MARK SPEIDEL

Animal Services Enforcement Appeal

Activity no.: A20011636

Appellant: **Mark Speidel**

[REDACTED]
Lake Forest Park, WA 98155

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 issued a violation notice asserting, among other things, that Mark Speidel's dogs, Calvin and Hobbes, met the code criteria for vicious. Mr. Speidel appealed those items. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny the appeal.

Background

2. In July 2019, Animal Services served a violation notice alleging that Hobbes had attacked a different neighbor's dog and qualified as vicious. Mr. Speidel did not challenge that finding, but sought to retain the option to revisit and perhaps lift the viciousness designation at a later date. In our September 2019 Summary Order, we dismissed his appeal on that basis, allowing Mr. Speidel to revisit the issue at a later date. Ex. D8.
3. That did not work out so well. On May 3, 2020, Calvin and Hobbes got loose, entered the yard of a neighbor, the Bixbys, and came after the Bixbys' dog, Mesa, on Mesa's porch.
4. McKenna Bixby testified that she was inside the house when she heard barking and yelping close to the house. Her brother got there first and yelled to get Calvin and Hobbes off. As Mesa moved about 10 feet off the porch to try to chase them out of his yard, Calvin and Hobbes doubled back and came at Mesa again. Both dogs were biting at Mesa. As she tried to protect Mesa, the dogs started biting her as well, although she received only minor bite marks to her hand. Mesa had no apparent physical injuries, but his back was wet with Calvin and Hobbes' slobber.
5. The brother, Parker Bixby, testified he was at his computer when he heard Mesa and two other dogs barking. He heard screaming and sprinted out. He saw Mesa on his back, with Calvin and Hobbes biting and attacking Mesa. Parker started screaming, and Calvin and Hobbes retreated. Mesa chased after them, but stayed in his yard and stayed behind Parker. Calvin and Hobbes then returned and attacked Mesa. Parker hit the dogs to try to get them off Mesa, as McKenna tried to cover Mesa. His dad came out and kicked at the dogs to get them away.
6. Their father, Ryan Bixby, heard loud barking and ran to the scene. He saw Mesa in front of the porch, with McKenna trying to protect Mesa. Both Calvin and Hobbes were actively biting at Mesa and McKenna, although Ryan was clear that he did not think Calvin or Hobbes were intentionally trying to bite McKenna. Ryan ran out and tried to kick at the dogs; he is not sure he made contact. The dogs left the yard, and Ryan chased them until Mr. Speidel took them back. Ryan noted that Mesa rarely leaves the porch and never leaves the property.
7. This was not the first time Calvin and Hobbes went after Mesa on the Bixbys' porch. Ryan described a time about two years ago when Calvin and Hobbes trespassed and badly injured Mesa. Ryan did not report it, as he thought was an isolated incident. Parker only observed the aftermath of that previous attack, with Mesa suffering a hole in his ear, gushing blood, and bite marks on his neck.
8. Mr. Speidel testified that he was working in the yard on May 3. He thinks the wind might have blown a door open, allowing his dogs to get out. Calvin and Hobbes and Mesa do not get along and tend to bark at each other. Calvin and Hobbes were rescue dogs who have aggression problems. He has worked with them to try to correct their behavior. After the incident he has rehomed both dogs and intentionally separated them, since they tend to feed off each other. He understands they were the aggressors that day, but does

not think they meet the viciousness criteria. He noted that the Bixbys have an open front yard, with nothing stopping dogs coming on.

Issues

9. Animal Services asserted that on May 3: Calvin was running at large, Hobbes was a vicious dog running at large, and both Calvin and Hobbes were trespassing. Animal Services asserts that Hobbes must be removed from the County. Mr. Speidel did not challenge these, and he removed Hobbes from the County.
10. Animal Services contends that Calvin and Hobbes qualify as “vicious,” defined as “performing the act of... 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,” with “[a]ny 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” qualifying as a nuisance. KCC 11.04.020.BB; KCC 11.04.230.H. Mr. Speidel does challenge this.
11. 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

12. The Bixbys have a responsibility to keep their dog on their yard, not to keep other dogs out of their yard. A dog sitting on its own porch barking at passersby is not justification for trespassers coming onto the property and violently attacking him on his own porch. After Parker initially chased them off, Mesa came towards them, but got no more than 10 feet past the Bixby porch and nowhere near the edge of the Bixby property. Instead of continuing to move towards the street, Calvin and Hobbes returned and attacked again, biting not only Mesa but also McKenna.
13. Calvin and Hobbes endangered McKenna and Bixby’s safety, biting McKenna and attacking Bixby. Even assuming that Mesa barked at Calvin and Hobbes before their initial attack, and then barked and took a few steps off the porch before their second attack, neither attack qualifies as “provoked.”¹ Even without their attack on Mesa two years ago and Hobbes’ attack on another dog last July (and certainly with it), Calvin and Hobbes constitute a danger to the safety of persons or property off Calvin and Hobbes’ premises. Animal Services has met its burden of proof.

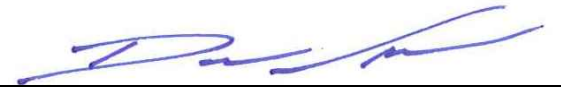
¹ “Provocation” requires the dog’s reaction to be proportional to the victim’s act, and Calvin and Hobbes’ reaction was grossly disproportionate to Mesa’s actions on Mesa’s own property. *Cf. Bradacs v. Jacobone*, 244 Mich. App. 263, 273–75, 625 N.W.2d 108 (2001); *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000); *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995).

14. That leaves only the monetary penalty, which Mr. Speidel asks us to reduce. There was an air of denial about Mr. Speidel—seeming to shift some of the blame to the Bixbys for not fencing *out* other animals, characterizing the case as a “disagreement” between dogs, and downplaying the severity of the incident both to Mesa and to the Bixbys. However, one criterion we examine in considering a request for a penalty reduction is the steps an owner has taken to prevent a repeat of the violation. Here, Mr. Speidel made the painful decision to give up his dogs and—recognizing that the dogs’ aggression feeds off each other—to consciously separate them. That counts for a lot.

DECISION:

1. We deny Mr. Speidel’s appeal as it relates to the violations in V20010682, but we reduce the monetary penalty from \$2150 to \$900.
2. Because Mr. Speidel previously removed Hobbes, the \$1,000 penalty associated with violating a removal order, V20010683, is moot.

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 15, 2020, HEARING IN THE APPEAL OF MARK
SPEIDEL, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.
V20010682/A20001636**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelby Russell, McKenna Bixby, Parker Bixby, Ryan Bixby, and Mark Speidel. A 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 | Notice of violation no. V20010682/A20001636, issued May 10, 2020 |
| Exhibit no. D3 | Notice and order for removal no. V20010683/A20001636, issued May 14, 2020 |
| Exhibit no. D4 | Appeal, received June 5, 2020 |
| Exhibit no. D5 | RASKC investigation report no. A2001163601 |
| Exhibit no. D6 | Online Complaint form of May 3, 2020 incident by Ryan Bixby, dated May 8, 2020 |
| Exhibit no. D7 | Written statement of McKenna Bixby, dated May 14, 2020 |
| Exhibit no. D8 | Summary Order from the King County Hearing Examiner, issued September 6, 2020 |
| Exhibit no. D9 | Map of Subject Area |

DS/jf

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20010682/A20001636**

MARK SPEIDEL

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

Bixby, Mckenna

Bixby, Parker

Hardcopy

Bixby, Ryan

Hardcopy

Russell, Shelby

Regional Animal Services of King County

Speidel, Mark

Hardcopy