

August 18, 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. **V2001076-A20012045**

CHAD AND JOANNA PANKALLA
Animal Services Enforcement Appeal

Activity no.: A20012045

Appellants: **Chad and Joanna Pankalla**
[REDACTED]
Issaquah, WA 98027
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
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FINDINGS AND CONCLUSIONS:

Overview

1. On May 29, 2020, the Pankallas' dog, Bo, bit a visiting child. The bite required six sutures. Regional Animal Services of King County (Animal Services) served a violation notice asserting that Bo was unlicensed and qualifies as vicious. Chad Pankalla appealed, asserting that Bo is not vicious and was provoked to act. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny the appeal but reduce the monetary penalty.

Testimony and Evidence

2. The Pankallas and the James (Kingman) family share a common border and historically strong relations. The May 29 altercation that triggered Animal Services' involvement was not the first involving Bo and the Jameses. Alison James testified to an earlier incident where her cat escaped into the Pankalla garage. As she retrieved the cat, Bo bit her hand. Ex. D7 at 002.
3. Ms. James described another time when, after her son was playing on the Pankalla porch for a while, Bo bit her son's leg. Ex. D7 at 001. The wound did not require sutures, but it did require a lot of bandage changes. There were other Bo bites, including one to her husband, but those other bites did not break skin.
4. On May 29, Ms. James was sitting on her deck. The James and Pankalla kids were playing on her side of the backyard fence, when the kids decided to migrate into the Pankalla yard. One of the kids opened the gate, and the kids entered. She saw Bo bite her daughter. It required six sutures to treat the gash. Ex. D6.
5. Mr. Pankalla testified that in both kid bites, the child was running towards Bo. The bite to Ms. James' son was a compression bite. They have been working on Bo not to nip. For the bite to Ms. James in the garage, Bo was already irritated by her cat. Bo bit Ms. James only after the cat was hissing and scratching at Ms. James.
6. On May 29, the kids came in from the James yard for a bonfire and marshmallows. He sat Bo down about 15 feet from the gate. Because Ms. James' daughter had no shoes, he lifted her over the beauty bark. She then sprinted towards the fire pit and in the direction of Bo, which startled Bo. *See also* Exs A5 & A6.
7. Mr. Pankalla does not believe that Bo qualifies as vicious, because if Bo had a "propensity" for vicious acts, he would exhibit that against more than just the James family. Bo has no problem with other neighbors or in parks. Bo does not fear the general public. Mr. Pankalla takes Bo to work with him every day, without issue. Bo does not react to the neighbors on the other side, even though there is no fence there; he only fears things coming from the James property. Instead, Bo's reaction to the James family stems from Bo's anxiety with the James's dog, Buddy.
8. Mr. Pankalla submitted multiple letters from people explaining how kind and well-behaved Bo is with children and work colleagues. Exs. A1-A4. Mr. Pankalla has gotten Bo training, and Bo is obedient. They have put up a fence along their common border.
9. Joanna Pankalla testified that on the day Bo bit Ms. James' son, the boy was playing with the Pankalla daughter. Bo was inside the house and not aware the boy was there. When a Pankalla kid opened the door, Bo was surprised to see someone there. It looked to her like a compression bite.

Legal Standards

10. The violation notice here contains two items. First, as of May 29, Bo was unaltered and unlicensed, in violation of KCC 11.04.030.A, which requires all dogs eight weeks old and older be licensed and registered. Mr. Pankalla does not contest this, but he has since licensed Bo.
11. The more serious assertion is that that Bo 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.

And 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 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. Because “without provocation” is part of the definition itself, and because Mr. Pankalla raised this in his appeal, Animal Services bears the burden of showing, by a preponderance of the evidence, that Bo’s qualifying actions were unprovoked.

Analysis

13. The “propensity” to do an act endangering the safety of persons of any person is somewhat of a red herring. Propensity is not a required element, but an *alternative* method (having performed an endangering act or having the propensity to do such an act) of meeting the definition. That seems to allow Animal Services to prove viciousness by divining that a dog that has not actually attempted anything violent nonetheless is inclined to do so. However, we have always based our decisions on an animal actually performing some endangering act. Conversely, all the supportive letters or testimony 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.
14. As to whether any of the three bites that actually broke the skin were “provoked,” our high court instructs us, when analyzing “terms of art,” to look to “well-established meanings” of words in their specific context. *State, Dept. of Ecology v. Theodoratus*, 135 Wn.2d 586, 589, 957 P.2d 1241 (1998). “Provocation” is a staple of animal jurisprudence, and numerous courts that have analyzed the term in depth have noted that although dictionary definitions of “provocation” can be quite broad, the term applies more narrowly in the dog bite context. Otherwise, animal control ordinances “could be

interpreted to mean that provocation exists whenever any external stimulus has precipitated the attack or injury by an animal, *i.e.*, whenever the animal's actions are not completely spontaneous." *Robinson v. Meadows*, 203 Ill. App. 3d 706, 710, 561 N.E.2d 111 (1990). Thus, not every occurrence that stimulates a dog to bite an individual equates to provocation. *Stroop v. Day*, 271 Mont. 314, 318, 896 P.2d 439 (1995).

15. None of the three bite scenarios here meets the standard, as courts have analyzed provocation in the dog bite context. Bo's fear of Buddy may have indeed caused him to feel frightened. But unlike a scenario where, for example, Buddy was coming after Bo and Bo bit a person trying to separate the dogs, there is no indication that Buddy was on the Pankalla property for any of the three bites. It would be a huge expansion of "provocation" if the fact that Bo was scared of a neighbor *dog* meant that it was open season on any *people* (including young children) that came (without Buddy) from the James property.
16. In addition, the "provocation" inquiry "focuses 'on how an average dog, neither unusually aggressive nor unusually docile, would react to an alleged act of provocation.'" *Bradacs v. Jacobone*, 244 Mich. App. 263, 273, 625 N.W.2d 108, 113 (2001) (*citing Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000)). The average dog would not react to a woman struggling with her cat, a boy playing with his friends, or a girl running to a fire pit (especially after Bo could see his owner gingerly lift her over the beauty bark), by biting the person.
17. In addition, provocation requires the dog's reaction to be proportional to the victim's act. *Bradacs*, 244 Mich. App. at 273–75; *Kirkham*, 311 Ill. App. 3d at 792. None of the three scenarios warranted a bite, but even if we could find (which we do not) that Bo's bites that did not require medical attention were somehow proportionate to the provocation Ms. James or her son were creating, biting the daughter with enough force to require six sutures was grossly disproportionate to any provocation.
18. In sum, Bo bit people without legal provocation. Bo may be generally good to the non-James world, but he performed vicious acts and constitutes a danger to at least certain persons lawfully on Bo's premises. Animal Services has met its burden of proof in showing that Bo meets the code's criteria for a viciousness determination.
19. As to the penalty amount, between the violation notice and our hearing, the Pankallas licensed Bo and installed a fence along their border with the Jameses. The Pankallas have thus taken responsible steps to satisfy the licensing requirement and to reduce the chances that Bo will again bite. A penalty reduction is order.

DECISION:

We DENY Mr. Pankalla's appeal, except that we REDUCE the applicable penalty from \$750 to \$300.

ORDERED August 18, 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 *September 17, 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 AUGUST 4, 2020, HEARING IN THE APPEAL OF CHAD AND JOANNA PANKALLA, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V2001076-A20012045

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelby Russell, Sheila and Alison James, and Chad and Joanna Pankalla. 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 Animal Services:

Exhibit no. D1	Regional Animal Services of King County staff report to the Hearing Examiner
Exhibit no. D2	Notice of violation no. V2001076-A20012045, issued June 1, 2020
Exhibit no. D3	Appeal, received June 22, 2020
Exhibit no. D4	RASKC investigation report no. A2001204501
Exhibit no. D5	Online Complaint form of May 29, 2020 incident by Sheila Jones, dated June 1, 2020
Exhibit no. D6	Photograph of injury
Exhibit no. D7	Photograph of injury
Exhibit no. D8	Incident information
Exhibit no. D9	Incident information
Exhibit no. D10	Map of subject area

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

Exhibit no. A1	Letter from Terry Osthus
Exhibit no. A2	Letter from Chad Pankalla's mother
Exhibit no. A3	Letter from Toni McCullough
Exhibit no. A4	Letter from Brook Wood
Exhibit no. A5	Appeal, from Chad Pankalla
Exhibit no. A6	Rebuttal statement from Chad Pankalla
Exhibit no. A7	Certificate of Spay/Neuter

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V2001076-A20012045**

CHAD AND JOANNA PANKALLA

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 August 18, 2020.



Jessica Oscoy
Office Manager

James, Sheila/Allison

Hardcopy

Level, Madeline

Pankalla, Chad/Joanna

Hardcopy

Russell, Shelby

Regional Animal Services of King County