

September 24, 2020

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V20010982 & V20010983 - A20013001**

CARYN SMITH

Animal Services Enforcement Appeal
V20010982 and V20010983

Activity no.: A20013001

Appellant: **Caryn Smith**

[REDACTED]
Enumclaw, WA 98022

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. Regional Animal Services of King County (Animal Services) served Caryn Smith with a violation notice and order to remove her dog, Connan. Ms. Smith timely appealed. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits

admitted into evidence, and considering the parties' arguments and the relevant law, we sustain the violation notice but overturn the removal order.

Background

2. On November 9, 2019, Connan attacked and fatally injured Maria Olea's dog. Ex. D10. Two days later, Animal Services issued a violation notice declaring Connan vicious and setting requirements for keeping him in King County. Ex. D9. Ms. Smith did not appeal, and Connan's viciousness designation and containment terms became final.
3. On July 29, 2020, Ms. Olea filmed Connan wandering outside, unattended. She walked Connan back to the Smith apartment. No one was home, but she noticed the Smiths' sliding door was open. Connan walked back inside. Ms. Olea filed a complaint with Animal Services. Testimony; Ex. D7.
4. Animal Services served Ms. Smith with a violation notice for Connan being a "vicious animal [*which Connan was by virtue of his 2019 designation*] that runs 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; Ex. D4.
5. Ms. Smith does not challenge the violation. She explained that when she left to go camping on July 29, she thought she had closed her doors. Since receiving the November 2019 order, she always has Connan on a leash when she takes him out. Given that his presence, even on a leash, makes Ms. Olea uncomfortable, she tries to minimize walking him in the immediate vicinity of the apartments. She takes him to play in the river, and keeps him on leash even there. She asserts that Connan left the apartment on July 29 because he was looking for her. She noted that other times when one of her children has failed to shut a door, Connan has stayed with her inside. Testimony.
6. Animal Services also sought Connan's removal from King County. Ex. D3. Ms. Smith temporarily rehoused Connan outside the County, but seeks to overturn the removal order so she can bring Connan back. Testimony; Ex. D5.

Analysis

7. 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.
8. We are the most exacting of Animal Services on removal orders, given what is at stake. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (nature of private interest impacted is factor in determining how much process is due); Exam. R. XII.B.4 (in proceeding involving divestiture of legally cognizable rights, examiner may require adherence to court rules to "assure that due process of law is afforded"); *Repin v. State*, 198 Wn. App. 243, 284, 392 P.3d 1174 (2017) (Fearing, C.J., concurring) (analyzing court decisions recognizing "the

bond between animal and human and the intrinsic and an estimable value a companion animal”).

9. While the vicious-dog-running-at-large violation is straightforward, and one we would have sustained even if Ms. Smith was challenging it, removal is a thornier question.
10. Of the four compliance terms from the November 2019 order, Animal Services notes that Connan has been microchipped, and there is no assertion that Ms. Smith did not timely vaccinate. Ex. D9; Ex. D1 at 1 (bottom). Instead two potentially relevant terms are:

Secure your animals in a fenced area suitable for the size of the animal when your animal is unattended and outside your home. Lock all passages with a padlock to prevent accidental release.

Restrain your animal using a leash with a collar or harness when taking it off your property. Your leash can extend no longer than 8’ in length. A competent and capable person must handle the animal at all times when attended outside.

11. The fencing and padlock requirement seems geared to the context of leaving an animal unattended and outside the home. That requirement has been triggered in past appeals where an owner lets a dog into an enclosed yard and a gate is left ajar. It would have been clearly violated if, for example, Smith had let Conan out, unattended, to go to the bathroom, as she had November 2019. The leash requirement would have been clearly violated if, for example, Ms. Smith let Connan go off-leash on their trips to the river. Ms. Smith inadvertently leaving her apartment’s sliding door open does not neatly fit into either of those.
12. The code under which Animal Services seeks removal, KCC 11.04.290.A.3, states:

Failure to comply with any requirement prescribed by the manager [*in that 2019 order*] constitutes a misdemeanor. Such an animal shall not be kept in unincorporated King County after forty-eight hours after receiving written notice from the manager. Such an animal or animals found in violation of this section shall be impounded and disposed of as an unredeemed animal and the owner or keeper of the animal or animals has no right to redeem the animal or animals.
13. The *result* here was a “failure”—Connan wound up unleashed and off his property on July 29. However, because the code frames the failure in terms of qualifying as a crime, we look to the criminal code’s requirements for culpability.¹ RCW 9A.08.010(1) describes

¹ Although this is a civil case, removal is not the only context where we draw from the criminal code. For example, in deciding appeals of viciousness determinations where an altercation did not result in an actual bite, our rulings have tracked RCW 9A.28.020’s definition of “criminal attempt” as requiring that the accused perform some “act which is a substantial step toward the commission of that crime—in our context, a dog taking some step towards contact, such as a lunge, and not simply menacing barking and mere proximity to a person or other animal.

different kinds of culpability, in descending order of severity: (a) intent (acting intentionally or with objective or purpose); (b) knowledge (awareness), (c) recklessness (disregarding a substantial risk that a wrongful act may occur), and (d) criminal negligence (grossly deviating from the standard of care that a reasonable person would exercise).

14. The lowest threshold, criminal negligence, is the one we focus on here. Forgetting to double check that an apartment backdoor was closed does not—when the record does not divulge other incidents after the November 2019 viciousness determination and compliance order where Connan escaped—seem a gross deviation from the standard of care a reasonable person would exercise. (The analogous scenario for the leash requirement would be one where a competent and capable person takes a dog for leashed walks, and on past leashed walks the dog had stayed contained, but on the date in question the dog unexpectedly breaks loose.) Add to this that we apply our most heightened scrutiny to removal orders, and we conclude that Animal Services has not met its burden of proving by a preponderance of the evidence the appropriateness of removal, this time. KCC 20.22.080.G.
15. That does not in any way discount the trauma Ms. Olea (not to mention her dog) suffered last year, or the trigger seeing Connan loose this year may have created. Obviously, Ms. Smith (and her children) need to do better to ensure it does not happen again. But based on our facts, and on the law as we have consistently interpreted it, we grant Smith’s appeal as to the removal order.

DECISION:

1. We SUSTAIN the vicious-animal-running-at-large violation and \$500 penalty in V20010982.
2. We OVERTURN the removal order and \$1000 penalty in V20010983.

ORDERED September 24, 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 *October 26, 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 SEPTEMBER 23, 2020, HEARING IN THE APPEAL OF
CARYN SMITH, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.
V20010982 & V20010983 - A20013001**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelby Russell, Maria Olea, and Caryn Smith. 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 and order to comply no. V20010999-A20013001, issued August 6, 2020
Exhibit no. D3	Notice and order for removal no. V20010983-A20013001, issued August 3, 2020
Exhibit no. D4	Notice of violation and order to comply no. V19010982-A20013001, issued August 6, 2020
Exhibit no. D5	Appeal, received August 14, 2020
Exhibit no. D6	RASKC investigation report no. A20013001
Exhibit no. D7	Online Complaint form of July 29, 2020 incident by Maria Olea, July 29, 2020
Exhibit no. D8	Video from Maria Olea
Exhibit no. D9	Notice of violation and order to comply no. V19010053-A19-007987, issued November 11, 2019
Exhibit no. D10	RASKC investigation report no. A19007987
Exhibit no. D11	Map of subject area

DS/lo

September 24, 2020

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20010982 & V20010983 - A20013001**

CARYN SMITH

Animal Services Enforcement Appeal
V20010982 and V20010983

I, Lauren Olson, 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 September 24, 2020.



Lauren Olson
Legislative Secretary

Olea, Maria
Hardcopy

Russell, Shelby
Regional Animal Services of King County

Smith, Caryn
Hardcopy