

December 4, 2020

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

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file nos. **V20011142 and V20011143**

**CHESIL THYE**

Animal Services Enforcement Appeal

Activity no.: A2003778

Appellant: **Chesil Thye**



King County: Regional Animal Services of King County  
*represented by* **Chelsea Eykel**  
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**FINDINGS AND CONCLUSIONS:**

Overview

1. After Chesil Thye's dog, Benz, escaped yet again from the Thye property, Regional Animal Services of King County (Animal Services) served Mr. Thye with both a violation notice and a removal order. Mr. Thye challenged the removal order. 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 overturn the removal order but require Benz to always wear a basket muzzle when outside the home.

## Background

2. In November 2017, Shelyn Bray filed a complaint, concerned that Mr. Thye's German Shepherd (Benz) had run at her ferociously barking. Ex. D9. Ms. Bray requested that Animal Services issue only a warning to Mr. Thye, which Animal Services did a few days later. Ex. D12; testimony.<sup>1</sup>
3. In April 2018, Ms. Bray filed another complaint after Benz charged at her and continued to bark angrily. Ex. D13. When it happened again two days later, Ms. Bray filed an additional complaint. Ex. D15. Animal Services served two violations notices on Mr. Thye, one for each trespass. Exs. D18 & D19.
4. In October 2018, Ms. Bray filed another complaint, when Benz came into the yard again, just after Ms. Bray brought her puppy inside. Ex. D20. Animal Services served a violation notice on Mr. Thye, again for trespass. Ex. D23. As Benz's third nuisance violation in less than a year, Benz was subject to removal under KCC 11.04.290.B.1. However, Ms. Bray requested that Mr. Thye and Benz be given one more chance. Ex. D22 at 002 n.3.
5. Things were quiet for little over a year, until December 2019, when Benz got loose and yet again went on the Bray property, and this time actually bit Ms. Bray's 11-pound dog, not causing deep puncture wounds but leaving teeth scrapes and one small superficial puncture. Ex. D25 at 003. Animal Services served Mr. Thye with another violation notice, but this time, in addition to trespass, designating Benz as vicious and requiring that Mr. Thye contain Benz. Ex. D27.
6. Finally, just in September 2020, Benz again ran onto Ms. Bray's property. Animal Services issued a violation notice for trespassing and for Benz trespassing and being a vicious animal running at large. Ex. D5. Animal Services also issued a removal order. Ex. D6. Mr. Thye timely appealed, objecting to the removal of his dog and requesting a reduction in fines. We went to hearing on November 18.

## Hearing

### Testimony of Shelyn Bray

7. September 5 was Ms. Bray's first night back home in seven months, after a springtime flood forced her to temporarily relocate.<sup>2</sup> She took two of her dogs out to go potty. She heard a dog (Benz) barking and the neighbor (Mr. Thye) yelling "no, no" or "stop." As she was headed back to her home, she saw Benz running into her yard.
8. Ms. Bray discussed earlier encounters with Benz (as the above list of warnings and violations shows). Once, she was walking one of her foster dogs in the front part of the yard, and Benz chased them upstairs. Another time, while taking the garbage cans out to

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<sup>1</sup> Warning V17-009455 mistakenly cited tethering in public, when that was not the real issue.

<sup>2</sup> She noted she did have workers coming and going in the April-August, and she and would randomly come check up on the house.

the street at night, Benz and another dog ran from Mr. Thye's yard; the other dog stopped, but Benz came barking towards her. After that 2018 incident, Ms. Bray agreed to give Mr. Thye one more chance; Ms. Bray thought that the wrought iron fence that Mr. Thye had installed in 2018 would fix the situation.

9. On a third occasion (2019), Ms. Bray took her little dogs out to potty and could hear Benz barking loudly near them. Since she had her dogs on a leash, she was swinging them around to try to get them away from Benz. Benz got behind her and bit the top of one of her dogs. That was the last straw for her.
10. Ms. Bray feels she does not have freedom to go out into her own yard. Every time she takes her dogs out, she is on alert because whenever her dogs jingle their collar, Benz starts to bark. She also has a grandchild that comes to visit occasionally and certainly does not want Benz getting out while the grandchild is there.

#### Testimony of Chesil Thye

11. Mr. Thye agreed that everything Ms. Bray said is true. He has spent a lot of money trying to train Benz. Benz is very strong and at times was able to get out even on a leash. Mr. Thye installed an electric fence; that has worked on his other dogs, but not with Benz. Mr. Thye then installed a wrought iron fence to contain Benz. When the fence was first built, Benz had been able to push through the gate, but now there is a lock on it. The electric fence was out of order for a while, but he eventually got it fixed.
12. He still let Benz out on a 40-foot leash in the front (unfenced) yard to play and get Benz exercise. (The fenced area is relatively small.) As to the September 5 incident, he thought Ms. Bray was gone, but he acknowledged it was still his fault. He had Benz on a leash while he was playing. When Benz heard a sound, he broke through the neck piece of the leash.
13. Since September 5, when Mr. Thye takes Benz out, it is on a short leash; otherwise Benz is always inside. The dogs are like his kids. He is not denying the incidents, he just wants one more chance, even if there are more conditions. Benz is neutered and chipped and has been certified through dog training. Mr. Thye has brand new, long, double layered leashes and is thinking about building a bigger fence, so Benz can have space to run.

#### Analysis

14. In V20011142, Animal Services asserts that on September 9 Benz committed two violations: Trespass, defined as a “domesticated animal that enters upon a person’s property without the permission of that person,” and being a “vicious animal... 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 & K.<sup>3</sup> Ms. Thye does not dispute this. Even if he had, Benz entered Ms. Bray’s property without permission, and the vicious-animal-at

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<sup>3</sup> Note, the vicious-at-large violation does not require that the animal actually do anything aggressive or threatening when they get loose.

large violation did not require that Benz actually do anything independently vicious that day. Benz had a 2018 viciousness determination, and although he started out the incident leashed and contained, he broke free and was not under control when he entered Ms. Bray's property.

15. In V20011143, Animal Services asserts removal is warranted under KCC 11.04.290.A.3, which states: "Failure to comply with any requirement prescribed by the manager [in the 2019 order declaring Benz vicious] 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...." Mr. Thye did appeal this, and thus 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. In answering that, we do not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3.
16. In addition, 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) (recognizing "the bond between animal and human and the intrinsic and an estimable value a companion animal").
17. Of the four requirements from the 2019 compliance order, there is no dispute that Mr. Thye has vaccinated and microchip Benz. As to

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,

there was discussion about an earlier escape from the fenced area before Mr. Thye put a lock on it. And it was not clear if the lock Mr. Thye put on the fence was a padlock (a non-padlock does not count). But that incident was *before* Mr. Thye received the December 2019 compliance order. And on September 5, 2020, Benz was not "unattended"—Mr. Thye was actively playing with him, on a leash.

18. As to,

Restrain your animal using a leash with a collar or harness when taking 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,

the *result* here was a "failure." Although Benz was being handled by a competent and capable person when attended outside, and Mr. Thye did not intend to take Benz off the property (where the eight-foot leash limitation would apply), Benz wound up breaking his harness, exiting the Thye property unrestrained, crossing the street, and trespassing

onto the Bray property, causing Ms. Bray yet more emotional distress. Mr. Thye did not effectively contain Benz on September 5.

19. However, because the code frames the failure to meet a compliance requirement in terms of qualifying as a crime (“Failure to comply with any requirement...constitutes a misdemeanor”), we look to the criminal code for guidance. The lowest standard for culpability, criminal negligence, means grossly deviating from the standard of care a reasonable person would exercise. RCW 9A.08.010(1)(d).
20. The September 2020 set up does not seem like a gross deviation from the standard of care a reasonable person would exercise: Mr. Thye was actively engaging with Benz, Benz was on leash, and the leash was anchored. Yet Benz is a strong dog with a long rap sheet of escaping, albeit before Mr. Thye received the compliance order in December 2019. So, this was not a, “Wow, no one could have predicted Benz could get loose—that’s so unlike him.” And Ms. Bray should not have to be fearful on her own property. Given that Benz attacked one of her dogs on one occasion, and has been aggressive on numerous other occasions, her fear is completely justified.
21. As noted above, we apply our most heightened scrutiny to removal orders, and so in looking at “the appropriateness of remedy” imposed (here, removal), we peer through a different lens than for other issues. And here, specifically, Mr. Thye volunteered that he was willing to accept any additional conditions in order to keep Benz, and he wants one more chance.
22. We can think of two additional conditions that are more appropriate remedy than we will here: Mr. Thye must purchase a basket muzzle, and then make sure that basket muzzle his firmly affixed to Benz each time before he is let out the house, whether in the fenced area (which must still be secured with padlock) or on a leash. This means Benz’s ball chasing days are over—water and small treats can pass through the muzzle, but a ball cannot—but provided he has his muzzle on, off leash dog park areas should be open as an exercise option. And we will write the conditions as the true “last chance” Mr. Thye was requesting, and not as a return to square one.
23. That will not bring complete relief to Ms. Bray; presumably, hearing Benz bark will still set her on edge, understandably so. But should Benz break loose again, it would be more disturbing than physically threatening, as a muzzled Benz could bark and posture but would not be able to inflict actual harm on people or other dogs.

#### DECISION:

1. We UPHOLD the vicious-at-large and trespassing violations and the associated \$600 penalty.
2. We OVERTURN the removal order and the associated \$1,000 penalty. We will give Mr. Thye his “one more chance,” but with amended conditions for keeping Benz in King County.
3. We MODIFY Animal Services’ December 6, 2019, compliance order:

- A. Benz is not allowed out of the Thye home unless he is wearing a secured basket muzzle.
- B. When unattended and outside the home, a muzzled Benz must be secured in a fenced area suitable for his size, with all passages locked with a padlock to prevent accidental release.
- C. When attended outside and not in the fenced area, a competent and capable person must handle a muzzled Benz at all times. Benz must remain muzzled and on a leash with a collar or harness when leaving the Thye property.
- D. Benz must be kept current on his rabies vaccination.
- E. Benz is allowed to run in sanctioned off-leash dog parks, provided Mr. Thye is present and ensures Benz is muzzled before he leaves the car and remains muzzled until after he is re-secured in the car.

ORDERED December 4, 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 *January 4, 2021*. 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 NOVEMBER 18, 2020, HEARING IN THE APPEAL OF CHESIL THYE, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS. V20011142 AND V20011143**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelyn Bray, Chelsea Eykel, and Chesil Thye. 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  | Online Complaint form of September 5, 2020 incident by Shelyn Brae, dated September 9, 2020 |
| Exhibit no. D3  | RASKC investigation report no. A20013778  |
| Exhibit no. D4  | Video stills from surveillance camera   |
| Exhibit no. D5  | Notice of violation no. V20011142-A20013778, issued September 10, 2020                      |
| Exhibit no. D6  | Notice and order for removal no. V20011143-A20013778, issued September 10, 2020             |
| Exhibit no. D7  | Proof of service  |
| Exhibit no. D8  | Appeal, received October 5, 2020  |
| Exhibit no. D9  | Online Complaint form of November 27, 2017 incident by Shelyn Brae, dated November 27, 2017 |
| Exhibit no. D10 | Photographs from surveillance camera, dated November 27, 2017                               |
| Exhibit no. D11 | RASKC investigation report no. A17009455  |
| Exhibit no. D12 | Warning Notice V17007668  |
| Exhibit no. D13 | Online Complaint form of April 2, 2018 incident by Shelyn Brae, dated April 3, 2018         |
| Exhibit no. D14 | Surveillance camera video of April 2, 2018  |
| Exhibit no. D15 | Email complaint of trespass on April 4, 2018  |
| Exhibit no. D16 | Video of April 4, 2018 incident   |
| Exhibit no. D17 | RASKC investigation report no. A18001228  |
| Exhibit no. D18 | Notice of violation no. V20008052, issued April 11, 2018                                    |
| Exhibit no. D19 | Notice of violation no. V20008053, issued April 11, 2018                                    |
| Exhibit no. D20 | Online Complaint form of October 16, 2018 incident by Shelyn Brae, dated October 17, 2018   |
| Exhibit no. D21 | Surveillance camera videos, dated November 16, 2018   |
| Exhibit no. D22 | RASKC investigation report no. A18005279  |
| Exhibit no. D23 | Notice of violation no. V18008760, issued October 18, 2018                                  |
| Exhibit no. D24 | Proof of Service  |
| Exhibit no. D25 | Online Complaint form of November 30, 2019 incident by Shelyn Brae, dated December 2, 2019  |
| Exhibit no. D26 | RASKC investigation report no. A19008619  |
| Exhibit no. D27 | Notice of violation no. V19010143, issued December 6, 2019                                  |
| Exhibit no. D28 | Proof of Service  |
| Exhibit no. D29 | Map of subject area   |

December 4, 2020

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file nos. **V20011142 and V20011143**

**CHESIL THYE**

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 December 4, 2020.



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Jessica Oscoy  
Office Manager



**Bray, Shelyn**  
Hardcopy

**Eykel, Chelsea**  
Regional Animal Services of King County

**Thye, Chesil**  
Hardcopy