

December 11, 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](mailto:hearingexaminer@kingcounty.gov)  
[www.kingcounty.gov/independent/hearing-examiner](http://www.kingcounty.gov/independent/hearing-examiner)

**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V20011206-A20013913**

**ROBIN ASTENGO**

Animal Services Enforcement Appeal

Activity no.: A20013913

Appellant: **Robin Astengo**



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  
Telephone: (206) 263-5968  
Email: [raskcappeals@kingcounty.gov](mailto:raskcappeals@kingcounty.gov)

**FINDINGS AND CONCLUSIONS:**

Overview

1. Regional Animal Services of King County (Animal Services) asserts that Robin Astengo's dog, Baby, was unlicensed and qualifies as vicious. Ms. Astengo appealed. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and relevant law, and despite Ms. Astengo's significant creditability shortcomings, we reverse Baby's viciousness designation and reduce the licensing penalty.

## Background

2. On September 18, Douglas Olauson reported to Animal Services that the previous day Ms. Astengo's dog [Baby] attacked his dog [Shadow] in an off-leash dog park. Ex. D4 at 003, n.5. Animal Services reached out to Ms. Astengo several times, but Ms. Astengo refused to return their messages. Ex. D4 at 003, n.1, n.6 & n.8. Animal Services then served a violation notice and order to comply on Ms. Astengo, asserting that her dog was unlicensed and unaltered, and qualified as vicious. Ex. D8. That got Ms. Astengo's attention, and she finally responded, speaking with the officer on September 24. Ex. D4 at 004, n.12. Ms. Astengo later filed a timely appeal statement. Ex. D10.
3. We originally set this hearing for December 1. Animal Services' representative, along with its two witnesses, Douglas Olauson and Nora Smith, promptly called in at that time. Neither Ms. Astengo, nor anyone on her behalf, called in. Rather than dismiss her appeal, we pushed the hearing back. On December 9. Mr. Olauson and Ms. Smith called in promptly and Ms. Astengo called in a few minutes later. Animal Services' representative did not. We elected to get all the testimony into the record, and go from there.

## Hearing

### *Mr. Olauson*

4. Mr. Olauson testified that on September 17 he was at the off-leash dog park. He was momentarily not watching Shadow. He heard Shadow scream and turned to see Baby standing over Shadow, with Shadow's ear in her mouth. Baby bit Shadow again. Baby then let go, but as Shadow tried to leave, Baby grabbed Shadow by the nape of neck and started shaking, not enough to lift Shadow off the ground, but enough to cause a hematoma on Shadow's neck, which then swelled.
5. Mr. Olauson took Shadow to the veterinarian, who found an abrasion, 6 to 8 cm of fluid swelling on the scapular region, with a 10 to 12 cm raised area somewhat sensitive to the touch, and no open wounds. Ex. D7. The veterinarian did not prescribe any specific treatment beyond rest and potential pain meds, and discussed possibly draining the seroma if it pressurized or abscessed. *Id.*
6. Mr. Olauson submitted pictures of the punctures Baby inflicted on Shadow. Ex. D6. He estimates Baby left a total of 20 bite marks on Shadow that day.
7. September 17 was not Mr. Olauson's first interaction with Baby. On previous trips to dog parks, he had seen Baby attack other dogs. Baby had bitten Shadow before, but had not hurt Shadow before September 17. Ms. Astengo appears to have no way, or any desire, to control Baby. He has seen three or four people approach Ms. Astengo at multiple dog parks to ask her to leave. Ms. Astengo has not brought Baby to the park for several months (presumably, since she received the violation notice), and other dog owners have mentioned to him how relieved they are that Baby is no longer coming.

*Ms. Smith*

8. Ms. Smith testified that she is not friends with Mr. Olauson and was not at the dog park on September 17. She has, however, observed Ms. Astengo and Baby multiple times at dog parks. She does not think Baby is intentionally trying to hurt other dogs, but Baby does not know how to play with other dogs. She has observed Baby biting other dogs to try to engage them. Baby will take their toys and not give the toys back; if the other dog reacts, that can turn into an altercation. She has observed Baby bite and snap at other dogs' legs and necks.
9. Ms. Smith has also seen people at dog parks approach Ms. Astengo with their concerns. When they have, Ms. Astengo has refused to engage or has responded negatively to their entreaties. Baby needs training in how to engage with other dogs, in order to create a safe environment—for other dogs but also for Baby. A dog park is not a safe environment for any animals when Baby is there. She has seen an aggressive pattern of behavior with Baby and a lack of response from Ms. Astengo. She has seen five people ask Ms. Astengo to control Baby's aggression, and Ms. Astengo cannot [or at least will not] do it.

*Ms. Astengo*

10. Ms. Astengo testified that on September 17, Shadow came around the corner and went after Baby's neck. Only after Shadow bit Baby's neck did Baby turn around and bite Shadow. Shadow did not scream. Baby did not grab Shadow a second time.
11. In an earlier encounter at the park, Shadow has tried to provoke Baby a few times. She told Mr. Olauson that his dog was being aggressive, but he did not take heed. Baby barks but does not bite. No one has come up to her to talk about Baby's behavior or asked her to leave. When asked why, if she knows Baby is toy-protective, she would bring toys to the park, she replied that Baby gets energy from toys.

#### Legal Standard

12. The code requires all dogs eight weeks old and older be licensed. KCC 11.04.030. Baby was not licensed at the time of the violation. Ms. Astengo has since licensed Baby. Where an appellant licenses a pet after the violation but before our hearing, we typically reduce the penalty.
13. More seriously, Animal Services asserts that Baby 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.

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."

14. 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.

### Credibility

15. We found Ms. Smith the most credible of the three witnesses. Neither she nor her dog had any negative interactions with Baby nor Ms. Astengo to cloud her judgment, and she came across calm and collected. She was measured in her statements—e.g., Baby is not *intentionally* trying to hurt other dogs, but simply does not know how to constructively engage other dogs and so bites and snaps at other dogs. We also found Mr. Olauson credible.
16. We did not find Ms. Astengo credible. First, Ms. Astengo ignored several calls from Animal Services asking for her response to the complaint. In our experience, when an appellant has a starkly different perspective—remember, here Ms. Astengo’s story is that Mr. Olauson’s dog attacked hers—they tend to want to proclaim their truth early and often, for all to hear. So ducking Animal Services until after receiving a violation notice does not scream “credibility.” Ex. D4 at 004 n. 11.
17. Second, in the investigating officer’s notes on her September 24 conversation, the officer wrote that Ms. Astengo said Mr. Olauson’s dog “attempted to bite at” Baby. Ex. D4 at 004 n. 12. Yet at hearing, Ms. Astengo testified that Shadow did bite Baby. The officer was not present at this week’s hearing to testify about that earlier conversation, but why would she write “attempted to bite,” if what Ms. Astengo had told her was that Shadow actually bit Baby? More significantly, the officer wrote Ms. Astengo stated that Baby “bit at the dog” [Shadow] but “did not actually bite [Shadow] during this interaction.” Ex. D4 at 004 n. 12. Yet at hearing, Ms. Astengo agreed that Baby bit Shadow at least once. If Ms. Astengo had admitted to the investigating officer that her dog actually bit another dog, it is completely illogical that the officer would not report that admission in her notes, but would instead report a denial.
18. Third and most importantly, credibility is in sharpest relief in relation to testimony about events other than September 17. We focus not on events like a split-second, dog v. dog interaction where reasonable minds can (and do) differ and there is so much subtlety, but on Ms. Astengo’s interactions (or non-interactions) with other dog owners in dog parks.
19. Mr. Olauson testified that, in the times he has overlapped with Ms. Astengo at dog parks, he has seen three or four other people approach Ms. Astengo and ask her to leave. Ms. Smith testified that, in the times she has overlapped with Ms. Astengo at dog parks, she has seen five other people approach Ms. Astengo with their concerns about Baby’s aggression, and that when they have, Ms. Astengo has refused to engage or has responded negatively to those owners’ entreaties.
20. Conversely, for her part, rather than some nuanced, “Well, yes, other people have approached me, but [*explanation for why she disagreed with various owner’s assessment*]...,” Ms.

Astengo simply denied that anyone has come up to her with concerns about Baby’s behavior or to ask her to leave. That is simply not plausible. Ms. Smith and Mr. Olauson were far more persuasive. That puts the final nail in Ms. Astengo’s credibility.

21. That does not mean Ms. Astengo is lying. It is possible she is simply in denial; she would be far from the first owner to have a very skewed lens when it comes to viewing interactions involving her companion animal. Remote hearings make it especially difficult to pin down deception, and Ms. Astengo might well believe what she was saying. If so, her perception does not match reality (nor even her previous statements), and she seems oblivious to the true nature of what is going on around her. For example, as to why, if she knows Baby is toy-protective, she would bring toys to the park, her reply was that Baby gets energy from toys; that shows an utter lack of not just empathy but of even a basic understanding of the consequences that flow from her choices.

### Analysis

22. As we have written in decisions countless times before, a viciousness designation is fundamentally about the dog, not about the owner; it is not a proxy for how much or how little care an owner is exercising. Typically, we write that sentence in the context of upholding a viciousness designation where the dog blew through the safeguards a responsible owner had in place and nonetheless attacked.<sup>1</sup> Today, we write that in the opposite context: Ms. Astengo has exhibited a pronounced lack of control over, or even full awareness of, Baby, but that does not mean that Baby meets all the code criteria for a viciousness designation.
23. Although a viciousness designation is not as harsh a remedy as an order to remove a dog from the County, it still carries a \$500 penalty and confinement terms (such as a prohibition from ever allowing the dog to run, off-leash, off its property, again) and opens up the specter of a *future* removal order if the owner fails to comply with those terms. Baby’s designation would continue even if, for example, Ms. Astengo obtained training for Baby and exhibited a willingness to use those tools to contain Baby. We are thus more exacting with a KCC 11.04.230.H (viciousness) violation than with violations of other subsections of section .230, the greater interests being at stake. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (nature of interest being impacted a factor in how much process is due).
24. In determining whether Baby “performed the act of...endangering the safety of any...animal..., including, but not limited to, biting a human being or attacking a human being or domesticated animal without provocation,” KCC 11.04.020.BB, we focus on two terms. First, the way the drafters wrote “biting a human being or attacking a human being or domesticated animal” appears to mean that the aggression against another

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<sup>1</sup> In one of our earliest appeals (which thus stands out among our almost 700 animal-related appeal), an appellant was walking her dog down the sidewalk, on a harness, with her body between her dog and oncoming pedestrians. She was acting exactly like a responsible dog owner should. Despite the care she was taking, without warning her dog suddenly darted behind her, lunged, and bit a passerby minding his own business. We reduced the monetary penalty significantly, but still upheld the viciousness designation, not because the owner was culpable but because the dog met the code criteria.

animal must be something more than a bite to qualify as an “attack.”<sup>2</sup> Here, Baby’s second-round bite and shake probably qualifies, but the marks are not the gashes we often see in our appeals—the veterinarian found “no open wounds,” exhibit D7—so there is not a slam dunk.

25. Second, a provoked attack does not qualify, and Mr. Olauson was candid that he did not see how the interaction started. That ups the difficulty level on Animal Services showing that Baby’s action was “without provocation.” Unlike other portions of Ms. Astengo’s presentation, there was nothing outlandish in her September 24 statement that the altercation was triggered when Shadow “ran up behind [Baby] and attempted to bite at” Baby. Ex. D4 at 004 n. 12. Although Ms. Astengo changed her story at hearing to Shadow actually biting Baby, there seems no dispute that the incident started when Shadow came up to Baby and got in Baby’s space. Mr. Olauson did not, for example, offer a different version like, “Shadow and I were just standing there, alone, when Baby came charging up....”
26. That is not dispositive, because “provocation” only covers a dog’s reaction that is somewhat *proportional* to the inciting act. *Bradacs v. Jacobone*, 244 Mich. App. 263, 273-75, 625 N.W.2d 108, 113 (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, 442 (1995). While Baby biting Shadow the first round was likely proportional, latching onto Shadow after that *seems* disproportionate. Yet without either a more significant injury or clear details of what exactly Shadow did in the moments before Mr. Olauson turned his attention there, this is not crystal clear.
27. Turning to KCC 11.04.230.H, in addition to exhibiting “vicious propensities” on September 17, we must also decide whether Baby “constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises.” We found Ms. Smith’s take compelling: she does not think Baby is intentionally trying to hurt other dogs; Baby simply does not know how to engage other dogs in play and needs proper training. We agree with Ms. Smith’s assessment that Baby’s presence in a dog park makes the dog park an unsafe environment yet; however, per her testimony, that seems less a reflection on Baby and more reflection on Ms. Astengo’s inadequate training and control. Plus, Mr. Olauson explained that Baby has not been at the parks since Ms. Astengo received the violation notice, so, at this point, the threat is not ongoing.
28. In the end, this is a close call. If Mr. Olauson (or another witness) had observed the first part of the Shadow-Baby encounter, or if Baby’s response had been a little more injurious to Shadow (and thus grossly disproportionate to any provocation Shadow created, even if we did not know precisely what Shadow did before Mr. Olauson turned around), or absent Ms. Smith’s analysis that this is fundamentally an owner problem and not a dog disposition problem, or if Animal Services had been there to make its case and

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<sup>2</sup> “Attack” in animal parlance typically has a *lower* threshold than an actual bite. See, e.g., *Matter of LaBorie v. Habes*, 52 Misc.2d 768, 679, 277 N.Y.S.2d 70 (1967) (“Actual biting is unnecessary to an ‘attack’”). Yet KCC 11.04.020.BB only reads with internal cohesion if the drafters meant “attack” as something *more* aggressive than just a bite, and thus a mere unprovoked bite to a person would qualify, while it would take more against another animal to qualify.

present its arguments, Animal Services may have met its burden. But our actual record is a little murkier.

29. In the end, rather than uphold Baby's viciousness designation, with all that goes with it, a better solution seems to be for Ms. Astengo to get Baby trained *before* she again puts Baby and other dogs in harm's way at a dog park. We realize funds are tight for Ms. Astengo, but Animal Services has noted in past cases that there may be training-related resources someone like Ms. Astengo can take advantage of. She can call Animal Services (206) 296-7387 and ask, letting them know the Hearing Examiner suggested it.
30. If Ms. Astengo somehow was not on notice before that Baby's actions at dog parks are unacceptable, she is now. She is catching a break here, but the next time she (and Baby, not to mention other dogs) may not be so lucky, and she may face violations that will stick. She should use this second chance wisely.

DECISION:

1. Because Ms. Astengo has, since receiving the violation, licensed Baby, and given her financial condition, we REDUCE the licensing-related penalty from \$250 to \$75.
2. We OVERTURN Baby's viciousness violation and the \$500 penalty.

ORDERED December 11, 2020.



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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 11, 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 DECEMBER 9, 2020, HEARING IN THE APPEAL OF ROBIN  
ASTENGO, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.  
V20011206-A20013913**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Douglas Olauson, Nora Smith, and Robin Astengo. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were entered into the record:

- |                 |  |
|-----------------|--|
| Exhibit no. D1  | Regional Animal Services of King County staff report to the Hearing Examiner                           |
| Exhibit no. D2  | Online Complaint form of September 17, 2020 incident by Douglas Olauson, dated September 17, 2020      |
| Exhibit no. D3  | Online Complaint form of date September 17, 2020 incident by Douglas Olauson, dated September 22, 2020 |
| Exhibit no. D4  | RASKC investigation report no. A20013913   |
| Exhibit no. D5  | Photograph of Ms. Astengo with her dog and a ball at the park  |
| Exhibit no. D6  | Photograph of injuries to Mr. Olauson's dog  |
| Exhibit no. D7  | Veterinary report, dated September 17, 2020  |
| Exhibit no. D8  | Notice of violation no. V20011206-A20013913, issued September 24, 2020                                 |
| Exhibit no. D9  | NVOC mailing/tracking history  |
| Exhibit no. D10 | Appeal, received October 15, 2020  |
| Exhibit no. D11 | Map of subject area  |

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V20011206-A20013913**

**ROBIN ASTENGO**

Animal Services Enforcement Appeal

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 December 11, 2020.



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Lauren Olson  
Legislative Secretary

**Astengo, Robin**  
Hardcopy

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

**Olauson, Douglas**  
Hardcopy

**Smith, Nora**  
Hardcopy