

December 14, 2020

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V20011234-A20014140**

TERESA CARDENAS AND FELIPE GOMEZ

Animal Services Enforcement Appeal

Activity no.: A20014140

Appellants: **Teresa Cardenas and Felipe Gomez**



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

Overview

1. Regional Animal Services of King County served a violation notice on Teresa Cardenas, asserting that her dog, Benji, was unlicensed and qualified as vicious. Ms. Cardenas and Felipe Gomez appealed, and we went to hearing. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we grant their appeal and reverse Benji's viciousness designation.

Background

2. On October 1, 2020, Afshar Mohammad filed a complaint stating that at approximately 7:59 p.m. on September 29 he delivered a pizza to the Appellants' home. As soon as he walked in the yard the customer (Ms. Cardenas) came out and her dog (Benji) bit his knee and ran away. Ex. D2. On October 7, Animal Services issued a Notice of Violation and Order to Comply to Teresa Cardenas for Benji being unlicensed and unaltered, vicious, and requiring certain compliance terms.
3. On October 13, 2020, Ms. Cardenas and Mr. Gomez (Benji's actual owner and Ms. Cardenas' brother-in-law) timely appealed. Ex. D8. We went to hearing on December 2, 2020, with a Spanish interpreter for Appellants. Mr. Mohammad did not appear. Chelsea Eykel attempted to put on Animal Services case without its witness. We left the record open so Mr. Gomez could submit the paperwork proving that Benji is neutered. The Appellants did so on December 9.

Hearing Testimony, Evidence and Argument

Testimony of Chelsea Eykel

4. Sgt. Eykel pointed to the appeal, which stated that Appellants ordered a pizza, knew the dog gets nervous with people it does not know, have the dog to protect their home from potential break-ins, have a beware of dog sign at the entrance, and have a fully-fenced yard and a dog crate. See Exs. D8 & D9.
5. Appellants invited the delivery person to their home when they placed their pizza order. Mr. Mohammad's primary language is not English, and Sgt. Eykel cannot say whether he saw the sign or not, but he was delivering the pizza as requested by the household. One cannot assume that a person is able to read and understand a beware of dog sign. Appellants are aware that Benji is not good with strangers, so they should have contained Benji if they knew someone would be coming to the house.
6. Benji bit Mr. Mohammad above the knee. Though Sgt. Eykel understands that Benji is a small dog and cannot do grave damage, Mr. Mohammad comes from a country where dogs have rabies, so he was afraid of contracting that disease. Animal Services' primary concern is public safety and preventing this from happening again to someone else.
7. Benji was not licensed or neutered at the time of the incident. Mr. Gomez has (since the violation) obtained a dog license for people with disabilities; however, that license is only for *neutered* dogs. Although the appeal states Benji is neutered, Appellants explained to Animal Services that they would neuter Benji in December. The disability license for Benji is only valid if he gets Benji neutered; otherwise he will need to obtain a different license. If the violations are upheld, one of the conditions for confinement is to use a lock on the gate in order to prevent another person from coming into the yard.

Testimony of Felipe Gomez

8. Mr. Gomez was not home at the time of the incident, but he does not agree that someone can come into a fenced property with a gate just like that. They have had problems in the past; there is a lot of violence in the neighborhood. When they had ordered a pizza in the past, the delivery person typically called them from the gate; in this instance, Mr. Mohammed did not call them or even knock on the door. Mr. Gomez had licensed Benji soon after receiving the violation notice, and he has an appointment to get Benji neutered on December 8. [Mr. Gomez followed-through and got Benji neutered. Ex. D11.]

Testimony of Teresa Cardenas

9. Ms. Cardenas testified that she was the only person home at the time of the incident. At around 7:30 p.m., she ordered a pizza delivery. Upon ordering, the person taking the phone order asked for her phone number for the delivery person to call when they were outside the home. She was told the pizza would arrive in approximately 40 minutes. Close to the time the pizza was supposed to be delivered, Ms. Cardenas took Benji outside into their fenced yard, intending to put him inside his cage so he would be out of the delivery person's way.
10. However, by the time she opened the door to take Benji out, Mr. Mohammad had arrived and was inside their yard. Benji went after Mr. Mohammad, but only scratched him and did not bite him. Ms. Cardenas was able to quickly get a hold of Benji. However, with his barking she lost control of him and Benji ran off the property through the gate Mr. Mohammad had left open. When Ms. Cardenas saw Mr. Mohammad's knee was hurt, she offered to take him to the hospital, but he wanted to leave. She insisted he stay so that she could clean the injury with alcohol.
11. Ms. Cardenas explained that she did not instruct the person taking the telephone order that the driver should stay outside the gate prior to calling her. However, there is a beware of dog sign with a picture of a dog, right outside their fence; Mr. Mohammad still opened the gate. When Benji is off his property he does not do anything to anyone, it is only when strangers come to the home that he acts this way.

Closing Arguments

12. Sgt. Eykel argued that Appellants knew the approximate time the pizza delivery would arrive and should have contained Benji prior to that. Mr. Mohammad was lawfully on the property conducting a delivery that Appellants ordered. Though Benji is small and not much damage was done, Mr. Mohammad was injured by Benji, unprovoked. Appellants have been very responsive and licensed Benji almost immediately. Animal Services has no objection to reducing the fines.
13. Ms. Cardenas argued that delivery drivers usually call them when they are outside, however Mr. Mohammad did not. Even though there was a beware of dog sign (with a picture of a dog) on their fence, Mr. Mohammad decided to open the fence and enter the property unannounced. Ms. Cardenas was in the process of containing Benji in his cage

when she encountered Mr. Mohammad on her property. Benji was only protecting the home and only ended up scratching his knee, but not biting him. Benji is only protective around the home.

Legal Standard

14. The code requires all dogs eight weeks old and older be licensed. KCC 11.04.030. Appellant states he is licensing and neutering Benji. Mr. Gomez licensed Benji after receiving the violation notice. Where an individual has duly licensed a pet after the violation but before our hearing, we typically reduce the penalty.
15. More seriously, Animal Services asserts that Benji 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.”

16. Although a viciousness designation is not as harsh a remedy as an order to remove a dog from the County, it still carries, in addition to a \$500 penalty, confinement terms and opens up the specter of a future removal order if the owner fails to comply with those terms. We are thus more exacting with this count than on the typical \$50 nuisance violation, the more being at stake. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (nature of private interest being impacted a 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”). It is an uphill battle for Animal Services to meet its burden on a viciousness appeal without a witness to testify, under oath and subject to cross-examination.
17. In answering those, 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

18. Although Mr. Mohammad was not there to testify or answer questions, the photo of his wound looks significantly more like a bite than a scratch, consistent with his written statement that the dog bit his knee. Ex. D4; Ex. D2 at 002. Attempting to come to the door to deliver a pizza Ms. Cardenas had ordered, he did not “provoke” Benji. Benji “bit[] a human being... without provocation” and meets KCC 11.04.020.BB’s definition.

We reject Appellants' attempt to shift the blame to Mr. Mohammad, who was just doing his job.

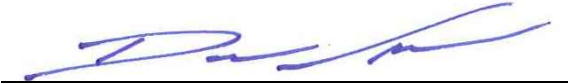
19. As to whether Benji qualifies as a nuisance, Benji meets the first part of KCC 11.04.230.H, having “exhibited vicious propensities” when he bit Mr. Mohammad without provocation. Whether Benji also “constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises” is more nuanced.
20. A dog biting someone, unprovoked, is usually strong evidence that the dog constitutes a danger. Vicious behavior has typically warranted a viciousness designation and the requirement to contain the dog to prevent the dog from again endangering more people or their pets. However, a few elements distinguish this case from our typical scenario.
 - We had no complainant at our hearing to testify, provide a perspective, and answer questions under oath.
 - Animal Services noted (and we agree) that, without a witness, the primary concern is public safety moving forward.
 - Even before September 29, Mr. Gomez had Benji contained in a fence, with a beware of dog sign showing a picture of a dog, and an outdoor kennel to put Benji in when visitors were expected. In general, that should be fairly protective of public safety, even for non-English speaking invitees (though not, as September 29, showed, in any sense a foolproof system).
 - More importantly, Benji, a vaccinated Chihuahua, charged at Mr. Mohammad and yet was only able to get up to his knee and to administer a superficial bite. That is in no way to minimize Mr. Mohammad’s trauma or fear, but Benji does not pose the same level of “danger” as most other dogs coming before us.
 - Finally, as Animal Services noted, neutering does not always help with aggression issues, but in many instances it can. That is backed up by at least one law review article asserting that unneutered males are 2.6 times more likely to bite than neutered males.¹
21. In sum, we do not conclude, based on our record, that Benji constitutes the requisite danger. If another incident happens, we may regret our finding. The outcome may be different next, so Ms. Cardenas and Mr. Gomez should double down on their efforts to keep Benji in check and to avoid another possible altercation. Yet based on today’s record we grant their appeal.

¹ Cynthia A. McNeely & Sarah A. Lindquist, *Dangerous Dog Laws: Failing to Give Man’s Best Friend a Fair Shake at Justice*, 3 J. Animal L. 99, 107 at n.112. (2007). Though the article is clearly written with an advocacy slant and not as an objective analysis, the authors’ point that unneutered males are less likely to bite than neutered males holds some weight.

DECISION:

1. Mr. Gomez having licensed and neutered Benji, we REDUCE the \$250 unlicensed/unaltered pet violation to \$75.
2. We REVERSE Benji's viciousness determination, compliance order, and \$500 penalty.

ORDERED December 14, 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 13, 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 2, 2020, HEARING IN THE APPEAL OF TERESA CARDENAS AND FELIPE GOMEZ, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20011234-A20014140

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Felipe Gomez, and Teresa Cardenas. 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	Complaint form of September 29, 2020 incident by Afshar Mohammad, dated October 1, 2020
Exhibit no. D3	RASKC investigation report no. A20014140
Exhibit no. D4	Photograph of injury
Exhibit no. D5	Bite Quarantine Notice, issued October 1, 2020
Exhibit no. D6	Notice of violation no. V20011234-A20014140, issued October 7, 2020
Exhibit no. D7	NVOC mailing/tracking history
Exhibit no. D8	Appeal, received October 13, 2020
Exhibit no. D9	2 nd Appeal statement, received October 15, 2020
Exhibit no. D10	Map of subject area
Exhibit no. D11	Proof of Neuter Surgery, received December 9, 2020

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20011234-A20014140**

TERESA CARDENAS AND FELIPE GOMEZ

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 14, 2020.



Lauren Olson
Legislative Secretary

Afshar, Mohamed

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Felipe Gomez, Teresa Cardenas

Hardcopy

White, Glenna