

December 23, 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. **V20011241-A20014150**

KATHY AND JAMES CAPTAIN
Animal Services Enforcement Appeal

Activity no.: A2014150

Appellants: **Kathy and James Captain**



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 (Animal Services) issued a Notice of Violation and Order for Confinement to Kathy Captain for their German shepherds, Heidi and Inga, running at large and qualify as vicious. Ms. Captain timely appealed, and we went to hearing. After entertaining the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny the Captains' appeal but we reduce the monetary penalty.

Background

2. On March 4, 2019, Robert Sappington filed a complaint for an incident that occurred earlier that day when he and his wife were walking with their leashed Australian Kelpie, Sasha. Ex. D8. He wrote that the Captains' two shepherds bit Sasha on the neck and thigh. Exs. D8 & D9. The attack resulted in injury requiring surgery, which the Captains paid for. Ex. D10. Animal Services issued a Warning Notice for Heidi and Inga running at large and being vicious. Ex. D12.
3. On October 2, 2020, Sheila Sappington filed a complaint for an incident that occurred the previous day. As the Sappingtons walked around Blackwell Elementary School, with Sasha on a leash, the shepherds came around the corner and lunged aggressively at them. She wrote that Captains' unwillingness to follow the law and lack of understanding of the seriousness of the situation prompted her complaint. Ex. D2.
4. On October 8 Animal Services issued a Notice of Violation and Order to Comply asserting that Heidi and Inga were each running at large and qualified as vicious, setting requirements for continuing to keep the shepherds in the County, and fining Ms. Captain a total of \$1,100. Ex. D6.
5. James and Kathy Captain timely appealed all violations, arguing that the October 1 altercation was due to Sasha's aggressive and mean nature and that Sasha started the confrontation. They also provided letters of support from various neighbors. Ex D7. We went to hearing on December 15.

Hearing Testimony

Sheila Sappington

6. In the March 2019 incident, Ms. Sappington described walking home on the sidewalk across from the Captains' home with Sasha on a leash. (The Sappingtons live three houses down.) Heidi and Inga came charging at them aggressively, acting like a pack, and immediately went after Sasha. The shepherds were not backing off and ended up puncturing Sasha. Ex. D9. Sasha required surgery. Ex. D10. The Sappingtons went to the Captains' home to discuss the incident and the Captains were very apologetic, accepted responsibility, and paid for Sasha's medical bills. She thought the Captains were aware of the potential risks their dogs posed and that they would assert better control of them going forward.
7. However, in May 2020, as they walked home with Sasha on a leash, Ms. Sappington described the shepherds charging at them again. Ms. Sappington was frightened and started yelling until someone in the Captains' household called the dogs back. In August 2020, a similar incident occurred. This time, however, Mr. Captain was unapologetic and argumentative, insisting that he was just putting the dogs in the car. Ms. Sappington did not report these incidences because she had no desire to punish the Captains. She just wanted to feel safe.

8. Finally, Ms. Sappington came to October 1, when they were walking Sasha on a leash. First, they encountered Mr. Captain in his driveway, who told them that Ms. Captain was walking the dogs. Ms. Sappington did not know how to take that comment, but it sounded like a warning to her. She assumed the shepherds would be on a leash.
9. The Sappingtons headed to Blackwell Elementary School. Heidi and Inga came around the corner, charging at them again. By the time Mr. Captain came into view, the shepherds were already close to the Sappingtons. Mr. Captain took no responsibility and suggested a possible solution that she bring Sasha to the Captains' home for a play date.
10. In all incidents, Ms. Sappington described the shepherds as charging aggressively, like a pack, and she had to yell forcibly for the dogs to back off. The shepherds seem to only focus on Sasha, viewing her as prey. Sasha becomes frightened and gets close to Ms. Sappington. Ms. Sappington testified that she must make her voice loud and low to command the shepherds to back off, and it takes a while for them to respond and back off.
11. If Ms. Sappington has a choice, she tries to avoid walking by the Captains' home to avoid any confrontation. She is fearful that someone will get hurt and she wants the Captains' to take responsibility and better control their dogs. Ms. Sappington feels the shepherds have the propensity to be potentially dangerous and she believes containing the shepherds in a fenced home would help.

James Captain

12. Mr. Captain testified they were not home during the March 2019 incident. Their son let the dogs out on the yard to go potty and then went inside the house. The son heard barking and commotion and a few minutes later the dogs returned. Ms. Sappington came to the door and rightfully chastised Mr. Captain's son. Mr. Captain was very apologetic and appalled at the situation. Mr. Captain states that the shepherds are twins and Heidi is the follower. Inga is the leader but is gentle and very protective. Inga must have sensed something in Sasha she did not like and thinks that Heidi was just going along.
13. For the May 2020 incident, Mr. Captain explained he was putting the dogs inside the car, with the garage door open. He acknowledges that he needs to close the garage door when putting the dogs inside the car. The shepherds are typically always on leash when off the property and in the neighborhood.
14. For the October 2020 incident that prompted the notice and order, Mr. Captain stated they were sitting on a park bench at the school about 15 feet from the corner. The shepherds were lying down with their leashes off, ready to get into the car. All dogs started barking. As to the running at large violation, Mr. Captain argues that as soon as the shepherds got up, Mr. Captain immediately got up to restrain them and they instantly obeyed.
15. Mr. Captain described the shepherds confronting the Sappingtons that day as an immediate surprise. The dogs ran in a straight line and did not rip around the corner. There was no physical attack. The confrontation was under four seconds. He did suggest

a plan for Sasha and the shepherds to socialize. The Sappingtons were skeptical of that solution. Mr. Captain was not dismissive, and he apologized if it seemed that way. The shepherds are not a danger to people, and they have only had one incident with Sasha. As to the provocation, Mr. Captain argues that his dogs can sense things, like a sixth sense. There is something about Sasha that his dogs do not like.

16. Mr. Captain stated that he realizes the gravity of the situation and has taken steps to ensure an incident does not occur again. The Captains are building a gate in their backyard, since the electric fence has not been working, and will be more diligent in using the dog shock collars. They acknowledge the need to keep the shepherds leashed at all times.

Arguments

17. Animal Services argues that even though the Captains took responsibility in the March 2019 incident and paid Sasha's vet bills and provided training for the shepherds, they were still unable to control their dogs and other incidences have occurred, and there is potential for another incident. Though Mr. Captain testified that he is not dismissive, his appeal statement said otherwise. Ms. Sappington is having to get in between the shepherds and Sasha to block them from each other. The shepherds seem to listen to Mr. Captain's commands, but the shepherds pose a public safety concern if he is not there with them. The shepherds have already performed a vicious act in March 2019 and have the propensity to do so again in the future. The shepherds meet the running at large code violation and need to comply with the Confinement Order.
18. The Captains argue that the shepherds are not vicious. They do not react the same way when they see other dogs as they do when they see Sasha. They have only had one incident with Sasha, and on October 1 the shepherds did not physically attack. The shepherds were unleashed only momentarily to put them inside the car, but the Captains were quickly able to get control of them, so they were not running at large.

Legal Standard

19. Animal Services asserts that Inga and Heidi were "running at large" on October 1, meaning "off the premises of the owner and not under the control of the owner, or competent person authorized by the owner, either by leash, verbal voice or signal control," with "under control" itself including "restrained from approaching any bystander or other animal" when "off the premises of the owner." KCC 11.04.020.W, .AA; .230.B.
20. More seriously, Animal Services asserts they both qualify as "vicious," meaning 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 “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.” KCC 11.04.020.BB; .230.H.

21. In reviewing 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.B.

Analysis

22. Inga and Heidi were off their premises on October 1 and not under sufficient control to be “restrained from approaching any bystander or other animal” when they came at Sasha. They were both running at large on October 1.
23. The term “vicious” is a legal term. Under the code, it does not mean a dog is mean-spirited, that it is vicious all the time, or that the dog’s owners do not take good care of the dog. It simply means that the animal meets the code criteria. And unlike running at large, viciousness is a more nuanced and broader inquiry.
24. The Captains present many out-of-court statements from people attesting to Heidi and Inga being friendly and nonaggressive. Exs. D7 at 006-015. None of them claim to have observed, let alone offered of different take on, any of the incidents the Sappingtons described. It may be that the shepherds do not react the same way to other dogs as they do to Sasha, but our issue “is not whether the animal is friendly to some, or even to most,” *cf. Matter of Brooks v. Hemingway*, 107 Misc.2d 190, 192, 433 N.Y.S.2d 551 (1980), but whether the shepherds meet the code criteria, including “endangering the safety of any ... animal.”
25. The Captains point the finger at the Sappingtons for “refus[ing] to train [Sasha] to be friendly.” Ex. D7 at 007. But there is no requirement that a dog be friendly. The Captains did not mention provocation as such, but seemed to point at Sasha as aggressive and mean and starting the confrontation. Ex. D7 at 001. They do not point to what if anything a leashed Sasha, walking with her owners, is alleged to have done during any of the four incidents that could qualify as provocation.
26. For the March 2019 attack that left Sasha with a gaping wound, Sasha was being walked on a leash on the other side of the street, when the shepherds charged off the Captain property and across the street to get her. In May 2020 and August 2020, the shepherds again charged off the property at Sasha, who was again being walked on a leash. And for the October 2020 altercation at the school, Sasha was leashed when the shepherds ran at her. Even assuming for the sake of argument that Sasha is aggressive and mean, she was

on leash, near her owners, each time the off-leash shepherds decided to come at her. That scenario is not even remotely provocation.¹

27. Thus, we have the shepherds performing the act of endangering the safety of any animal, when they attacked and gashed a leashed Sasha in March 2019, without provocation. Then they charged off their property and at a leashed Sasha two more times (March 2020 and August 2020). And they again went after Sasha in October 2020. Even if they do not constitute a danger to anyone’s safety but Sasha’s, they constitute a significant danger to Sasha. We sustain the viciousness violation.
28. That leaves the \$1,100 in penalties. At hearing Mr. Captain stated that he realizes the gravity of the situation and has taken steps to ensure an incident does not occur again, like building a gate in their backyard, since the electric fence has not been working, and being more diligent in using shock collars. In past cases, where an owner has taken steps to prevent a repeat, we have reduced the penalty. We will reduce the viciousness violations from \$500 per dog to \$300 apiece, bringing the total penalty down to \$700.

DECISION:

We DENY the Captains’ appeal, but we REDUCE the penalty from \$1,100 to \$700.

ORDERED December 23, 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 22, 2021*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

¹ As our High Court instructs us, when analyzing “terms of art,” 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).

**MINUTES OF THE DECEMBER 15, 2020, HEARING IN THE APPEAL OF
KATHY CAPTAIN, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE
NO. V20011241-A20014150**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Sheila Sappington, and James Captain. 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 October 1, 2020 incident by Sheila Sappington, dated October 2, 2020 |
| Exhibit no. D3 | Email correspondence from Sheila Sappington detailing prior incidents, dated November 22, 2020 |
| Exhibit no. D4 | RASKC investigation report no. A20014150 |
| Exhibit no. D5 | Photograph of school area |
| Exhibit no. D6 | Notice of violation no. V20011241-A20014150, issued October 8, 2020 |
| Exhibit no. D7 | Appeal, received October 28, 2020 |
| Exhibit no. D8 | Online Complaint form of March 4, 2019 incident by Robert Sappington, dated March 4, 2019 |
| Exhibit no. D9 | Photograph of Sasha's injuries |
| Exhibit no. D10 | Veterinary Bill, dated March 5, 2019 |
| Exhibit no. D11 | RASKC investigation report no. A19001035 |
| Exhibit no. D12 | Warning Notice V19009179-A19001035 |
| Exhibit no. D13 | Map of subject area |

DS/lo

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20011241-A20014150**

KATHY AND JAMES CAPTAIN
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 23, 2020.



Lauren Olson
Legislative Secretary

Captain, Kathy/James

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Sappington, Sheila

Hardcopy