

December 28, 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 nos. **V20011254 and V20011255**

KORY GANNON AND MONIQUE JENKINS

Animal Services Enforcement Appeal

Activity no.: A20014266

Appellants: **Kory Gannon and Monique Jenkins**



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
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FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) issued a notice of violation to Monique Jenkins and Kory Gannon (Appellants) for their dog, Bailey, running at large again and being unlicensed. Animal Services also served Appellants with an order requiring them to remove Bailey from the County. Appellants timely appealed the removal order, 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 sustain the running at large and licensing violations, reduce the licensing penalty, and overturn the removal order in favor of new restrictions, including timely completion of a fence and spring-loaded gates.

Background

2. According to one of Tracy Delgado's¹ complaints to Animal Services, on numerous occasions leading up to April 27, Bailey has escaped Appellants' house and attacked or aggressively ran towards Ms. Delgado's dog, Daisy, but Ms. Delgado had never filed anything. (Ex. D18 at 002-03.)
3. However, on April 29 she wrote that, two days earlier, Bailey again escaped and charged, injuring Daisy and also injuring Ms. Delgado as she tried to separate the dogs. Both Daisy and Ms. Delgado sought urgent care treatment. Two neighbors provided written testimony about the incident. Exs. D10–D15.
4. Ms. Delgado wrote that because Appellants were apologetic, immediately began looking for ways to remedy the situation, and accepted her request to muzzle Bailey anytime Bailey is outside or not close to the owners inside the house, Ms. Delgado did not want Animal Services to issue any fines, but instead to document events and discuss containment strategies with Appellants. Ex. D10 at 003. Animal Services thus only issued Appellants a warning notice. Ex. D17.
5. However, on June 22, Ms. Delgado filed another complaint for three other incidents (May 24, June 17, and June 22) where Bailey was running loose, off-leash, and without a muzzle. Exs. D18–D19. She also submitted Ring video footage. Ex. D20. On July 7, Animal Services issued Appellants a violation notice for Bailey running at large and trespassing. Ex. D22. On August 3, Appellants belatedly submitted an appeal. Ex. D23. Animal Services filed a motion to dismiss. Ex. D24. On August 13 we dismissed the appeal as time-barred. Ex. D25
6. Maria Stuck (Ms. Delgado's mother-in-law) filed a complaint describing an August 5 incident with Bailey, captured on Ring video, where Bailey escaped and came at Daisy's fence, lunging and barking to try to fight her way through the fence. Exs. D26–D27. Animal Services issued a violation for Bailey being on public property not under control and for trespassing onto private property. Exs. D29–D30. Appellants timely appealed. Ex. D31. On September 24, Animal Services notified us that the parties had reached an agreement and Appellants were dropping their appeal. Ex. D32. We dismissed the appeal the same day. Ex. D33.
7. On October 10, Ms. Delgado filed another complaint, stating that the previous day she and Ms. Stuck observed Bailey running loose. Ex. D2. Animal Services issued another violation notice (V20011254), asserting that Bailey was running loose down the street with an expired license. Animal Services also served a removal order (V20011255), given three violations within a one-year period. Exs. D5–D8. Appellants timely appealed the removal. Ex. D9. We went to hearing on December 16.

¹ To avoid confusion between the two Stucks who testified, we shorten "Delgado-Stuck" to simply "Delgado."

Hearing Testimony

Tracy Delgado

8. Ms. Delgado testified that Bailey has a history of aggressive behavior towards Daisy. On April 27, Ms. Delgado was walking Daisy on a leash with her five-year old son and Ms. Stuck. Ms. Delgado saw Bailey escaping from her house and running towards them. She started screaming, and Ms. Stuck took her grandson to the side. Bailey pounced on Daisy, biting her as well as Ms. Delgado. Two neighbors came out and were able to scare Bailey away. When Mr. Gannon finally came out, he apologized. Ms. Delgado and Daisy sought medical treatment afterwards. Ms. Delgado did not want to press charges, because she had a good relationship with Appellants and wanted to give them a chance to contain Bailey. Appellants said that they would build a fence or muzzle Bailey.
9. In June, Ms. Delgado called Animal Services to file a report describing three different incidents with Bailey since the April 27 attack. Two of those three times Bailey walked onto Ms. Delgado's property looking for Daisy; those were captured on surveillance video. On another occasion, she explained that Bailey did not come onto their property but instead ran down the street to a nearby horse barn. It took a while for Appellants to retrieve Bailey.
10. On October 9, Ms. Delgado described being inside her house while Ms. Stuck went for a walk. As Ms. Delgado watched Ms. Stuck leave, she noticed Bailey in the middle of the street and saw Ms. Stuck shoo her away. Bailey then took off and went into the neighbor's yard. At that point Appellants' son retrieved Bailey.
11. Ms. Delgado explained that Bailey has escaped four times since the April 27 attack. She had been walking as part of her daily routine, but she has not taken Daisy on walks since. She has even considered walking with pepper spray. Mr. Gannon suggested to Mr. Stuck that they should walk around with a stick, but Ms. Delgado does not want to have to walk around with a weapon. She is pregnant and is terrified of being out with her son for fear of another attack.
12. Ms. Delgado acknowledged Appellants' efforts to train Bailey, but she sees no control when it comes to people (especially kids) going in and out of Appellants' home. Ms. Delgado just wants to walk in her neighborhood without feeling endangered. She and her husband have considered Mr. Gannon's offer to pay for Daisy's training classes with Bailey; it would have to be her husband to participate. Ms. Delgado's greatest concern now is a lack of timelines and deadlines for solutions to be implemented.

Craig Gowin

13. Mr. Gowin is a neighbor whom came out to help Ms. Delgado during the April 27 incident. He testified that he heard screaming from inside his house, so he ran out and saw Ms. Delgado, her son, Ms. Stuck, and Daisy on a leash. Bailey was going after Daisy. He was able to scare Bailey away by putting himself in between Bailey and Daisy.

14. Mr. Gowin explained that he was able to get Bailey to retreat about 10-15 feet towards her home. Although Bailey was not blocked from getting back home, she stayed there in the street, still hyper. He is sure she would not have quit if he had not been there or Mr. Gannon had not come out to retrieve her. He saw Ms. Delgado's bleeding arm, but he did not see how that happened.

Maria Stuck

15. Ms. Stuck described some of her encounters with Bailey. During the April 27 altercation, she pushed her grandson away from the street, saw Ms. Delgado falling to the ground, and felt scared. On August 8, Ms. Stuck saw Bailey come to their fence and both Bailey and Daisy "went crazy." Though she knew Bailey could not get through the fence, she was still terrified. Bailey then took off towards the horse barn, but Ms. Stuck knew she would return, so she grabbed the water hose, just in case. Bailey did return, and Ms. Stuck hosed her.
16. On October 9, Ms. Stuck started a walk by herself, when she saw Bailey coming towards her house. She yelled at Bailey to go home, and Bailey backed off. The neighbor across the street saw that Bailey was loose and called out to Bailey. Bailey went towards the neighbor, and shortly afterwards Appellants' son came out with treats and retrieved her.

Kory Gannon

17. Mr. Gannon expressed disappointment in how they have handled the situation and how this has impacted the neighbors. After the April incident, Bailey began going through dog training twice a week; at this point she can sit and stay by herself, but only recently has she been integrated with other dogs. Bailey has now been around approximately 40 other dogs, but she has not shown the same tension she does with Daisy. They obtained a shock collar; Bailey is responsive to it, but they have not been diligent in applying it.
18. Mr. Gannon explained that they have small children that leave doors open; that is usually how Bailey ends up getting out. They have started locking Bailey in the garage for the duration of the day, while the kids play. He is very apologetic that the neighbors are terrified of going outside; they have taken steps to ensure it does not happen again. Appellants have not had the financial means to build a fence, as they have a household of seven depending on a single income.
19. Dog trainers have advised them that muzzling Bailey could have adverse effects. Bailey is not violent towards people; occasionally Mr. Gannon would take Bailey to the school bus stop and the kids would play with her. Bailey plays rough with another neighborhood dog, but no fighting is involved. Bailey is an integral part of the family and due to her anxiety, Mr. Gannon does not believe she will do well elsewhere. The family would be devastated if she was removed.
20. Mr. Gannon has offered to pay for Daisy to join Bailey in the training classes to socially integrate both dogs. Regarding the licensing violation, Bailey's license had expired two weeks before the violation, but Appellants re-instated it. On top of the extensive training costs they are paying, they have not been able to afford a fence. However, Mr. Gannon

offered to refinance their home, which may be a four-to-six week process, or perhaps borrow money from his parents, to be able to build a fence. He is willing to also add a shock fence, and he can work out a timeline agreement with Ms. Delgado and her husband. He is very ashamed that they are causing Ms. Delgado to be frightened to leave her house.

Monique Jenkins

21. Ms. Jenkins testified that she is a stay at home mom, while Mr. Gannon is mostly out. When they first got Bailey, she did well at dog parks. It took her a while to retrieve Bailey from the horse ranch on August 8 because she was sitting with that owner, letting Bailey and the owner's dog, Rain, play together. Ms. Jenkins said she does keep the shock collar on Bailey at all times, though they have not been able to test out if that solution works when the kids go out and play, because usually they only go in and out of the house in the summer time.
22. On October 9, she had the garage door open, and the children must have left the door between the house and the garage open; Bailey got out into the garage and then escaped. She believes Bailey did not leave the property, but instead, once Ms. Jenkins activated the shock collar, Bailey circled back around to the backyard.

Arguments

23. Animal Services' argues that the primary reason for removal is that, despite multiple violation notices, Bailey has continuously escaped Appellants' home. Bailey has shown propensities for vicious aggression, and her escaping and roaming loose is a threat to public safety. Animal Services sees Mr. Gannon as now taking the gravity of the situation to heart and being sincere about taking stricter steps to contain Bailey, while Ms. Jenkins (based on her testimony) does not seem to have that same level of commitment. Neighbors should not feel afraid to walk their dog. Animal Services has concerns with all the offered potential solutions, and is not confident Ms. Jenkins deems this important enough to make substantial changes. Therefore, Animal Services asserts that removal in this case is still necessary.
24. Mr. Gannon explained that removal of Bailey would devastate their family. Mr. Gannon apologizes if they came across as downplaying the situation. He truly wants to take the necessary steps to keep Bailey. He has proposed that Daisy join Bailey in training classes and has even offered to refinance his home, or borrow money from his parents to build a fence.

Legal Standard

25. Animal Services asserts that Bailey was "running at large" on October 9, 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. Ms. Jenkins explained how the violation occurred, but did not challenge that the violation occurred.

26. KCC 11.04.030.A requires all dogs eight weeks old and older that are harbored, kept or maintained in King County be licensed and registered. Mr. Gannon explained that Bailey had been licensed, but her license expired shortly before October 9. He has since licensed her.
27. Animal Services asserts that the October violation was Bailey's third in a year, warranting removal under KCC 11.04.290.B.1, which states that:

Any animal constituting a public nuisance as provided in this chapter shall be abated and removed from the county by the owner or by the manager of the regional animal services section, upon the receipt of three notices and orders of violation by the owner in any one-year period.... Where... no finding was entered showing that the owner will be able to provide reasonable restraints to protect the public from repetitions of violations, the manager of the regional animal services section shall notify and direct the owner of the animal to abate or remove the same from the county within ninety-six hours from the notice....

Appellants do challenge this.

28. 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. However, as seen above, the burden here is a little different. Animal Services has met its burden of showing three sustained violation notices in a one-year period, triggering mandatory "shall be... removed" language. However, the text allows reversal upon a certain finding, which we interpret as shifting the burden to an appellant to show reasonable restraints that will protect against violation repetitions.

Analysis

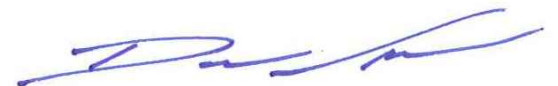
29. There was nothing about Ms. Jenkins' testimony that gave us confidence she understood the severity of, took responsibility for, or had the will and ability to prevent further Bailey escapes. She downplayed the incidents and seemed to be in a fair bit of denial.
30. Mr. Gannon came across far better, grasping the impact of Bailey's aggression on Ms. Delgado and her family (including Daisy), offering potential solutions, and exhibiting a commitment to do what was necessary to safely keep Bailey. And Ms. Delgado and Ms. Stuck are not demanding removal, only safety and the ability to walk again in their neighborhood without fear.
31. The intersection of those factors is that—especially since Ms. Jenkins is the one home most of the time—we would be hard-pressed to declare that any solution that rests on her will and diligence to implement qualifies as a restraint likely to protect against repetitions. Such items could add a protective layer but would not be sufficient safeguards by themselves.

32. Mr. Gannon offered to do what was necessary—including seeking a family loan or refinancing—to install a fence. A fence with spring-loaded, self-latching gates seems mandatory, as that does not rely on any kids roaming in and out remembering to latch a gate or close a door. On top of that, keeping Bailey’s shock collar on, running some controlled tests (after advising Ms. Delgado, so she can keep Daisy inside with her, in case the experiments fail) to see if the shock collars deter Bailey from leaving through an open door and provide Bailey with some negative reinforcement, and thereafter being diligent in putting on the shock collars, would provide another layer of protection.
33. Finally, we are not ordering Ms. Delgado or her husband to take up Mr. Gannon on his offer to pay to have a trainer attempt to acclimate Daisy and Bailey. However, such an effort might provide a nice additional cushion, minimizing the downside from, threat of, and anxiety about violence, should other measures fail to prevent a future Bailey escape.
34. In sum, Ms. Delgado and her family should not have had to live in fear for this long. But a fence, along with more consistent use of shock collars as a backup, should provide reasonable restraints to protect the public from repetitions of violations. And if Daisy participates in professional training to acclimate with Bailey, that should reduce the impact, should another Bailey escape occur. But if another Bailey escape does occur, a future removal dispute might have a very different outcome.

DECISION:

1. We SUSTAIN the running at large and licensing violations in V20011254. However, as Bailey was initially licensed, and then relicensed soon after the license expired, we REDUCE the licensing violation from \$125 to \$50, meaning the total penalty due is \$150.
2. We GRANT the appeal as to the removal order in V20011255, provided that
 - A. By **March 15, 2021**, Appellants install a fence with spring-loaded, self-latching gates.
 - B. By **January 18, 2021**, run some tests/trainings with the shock collar (after advising Ms. Delgado, so she can keep Daisy inside with her during the training/testing) and an open door.
 - C. Stay vigilant in keeping Bailey’s shock collar on.

ORDERED December 28, 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 27, 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 16, 2020, HEARING IN THE APPEAL OF KORY GANNON AND MONIQUE JENKINS, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20011254 and V20011255

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Tracie Delgado-Stuck, Craig Gowin, Maria Stuck, Kory Gannon, and Monique Jenkins. 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 9, 2020 incident by Tracie Delgado-Stuck, dated October 10, 2020 |
| Exhibit no. D3 | RASKC investigation report no. A20014266 |
| Exhibit no. D4 | Photographs of Gannon and Delgado Stuck Residences |
| Exhibit no. D5 | Notice of violation no. V20011254-A20014266, issued October 11, 2020 |
| Exhibit no. D6 | NVOC mailing/tracking history |
| Exhibit no. D7 | Notice and order for removal no. V20011255-A20014266, issued October 11, 2020 |
| Exhibit no. D8 | NVOC Proof of Service |
| Exhibit no. D9 | Appeal, received November 4, 2020 |
| Exhibit no. D10 | Online Complaint form of April 27, 2020 incident by Tracie Delgado-Stuck, dated April 29, 2020 |
| Exhibit no. D11 | Photographs of injuries to Tracie Delgado Stuck |
| Exhibit no. D12 | Medical record, dated April 27, 2020 |
| Exhibit no. D13 | Photographs of injuries to Bailey |
| Exhibit no. D14 | Veterinarian Statement, dated November 23, 2020 |
| Exhibit no. D15 | Witness Statements |
| Exhibit no. D16 | RASKC investigation report no. A20011446 |
| Exhibit no. D17 | Warning Notice V20010649-A2011446 |
| Exhibit no. D18 | Online Complaint form incidents by Tracie Delgado-Stuck, dated June 22, 2020 |
| Exhibit no. D19 | Text messages between Tracie Delgado Stuck and Officer Wilcox |
| Exhibit no. D20 | Surveillance Camera video of June 22 |
| Exhibit no. D21 | RASKC investigation report no. A20012300 |
| Exhibit no. D22 | Notice of violation no. V20010883-A20012300, issued July 7, 2020 |
| Exhibit no. D23 | Appeal, received August 3, 2020 |

Exhibit no. D24 Motion to Dismiss Appeal for being untimely
Exhibit no. D25 Order of Dismissal V20010883-A20012300, dated August 13, 2020
Exhibit no. D26 Online Complaint form of August 5, 2020 incident by Maria Stuck, dated August 8, 2020
Exhibit no. D27 Surveillance Camera video of August 5
Exhibit no. D28 RASKC investigation report no. A20013204
Exhibit no. D29 Notice of violation no. V20011009-A20013204, issued August 8, 2020
Exhibit no. D30 NVOC mailing/tracking history
Exhibit no. D31 Appeal, received August 27, 2020
Exhibit no. D32 Email notifying Hearing Examiner of Settlement, dated 24, 2020
Exhibit no. D33 Order of Dismissal V20011009-A20013204, dated September 24, 2020
Exhibit no. D34 Map of subject area

DS/lo

December 28, 2020

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20011254 and V20011255**

KORY GANNON AND MONIQUE JENKINS

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 28, 2020.



Lauren Olson
Legislative Secretary

Delgado-Stuck, Tracie/Maria
Hardcopy

Eykel, Chelsea
Regional Animal Services of King County

Gowin, Craig
Hardcopy

Monique Jenkins, Kory Gannon
Hardcopy