

February 9, 2021

**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. **V20011281-A20014461**

DAVID HARDIN

Animal Services Enforcement Appeal

Activity no.: A20014461

Appellant: **David Hardin**

Seattle, WA 98168

Telephone: [REDACTED]

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. David Hardin appeals a Regional Animal Services of King County (Animal Services) violation notice asserting that his dog, Harley, ran at large and qualifies as vicious. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold the violations and confinement terms, but we reduce the monetary penalty.

Background

2. In June 2019, Kyle Miller filed a complaint asserting that both the Hardin dogs came running out to attack his dog. Mr. Miller wrote that he kept pushing them off with his foot, but they persisted until a female came out to pick them up. He noted that it had happened a few times before June 2019. Ex. D5. Animal Services contacted Wanda Hardin (David Hardin's mother) and served her with a written warning. Exs. D6-D7.
3. On October 15, 2020, Mr. Miller filed another complaint, asserting that earlier that night, Harley came across the street and charged him and his dog four to five times, and that this pattern had happened many times before. Ex. D2. Animal Services issued a violation asserting that Harley was running at large on October 15, qualified as vicious, and needed to be contained, and also assessing \$550 in penalties. Ex. D4.
4. In November, Mr. Hardin timely appealed, describing an earlier incident with a dog and its owners a few months prior, stating that Harley is under control when Mr. Hardin supervises him outside, opining that Harley is not vicious but instead is timid and shy in a confrontation, and arguing that the fine and required compliance terms are excessive. Ex. D8. We went to hearing on January 27, 2021.

Kyle Miller Testimony

5. At hearing, Mr. Miller testified that, in the two years or so leading up to October 2020, the Hardin dogs had frequently come into the street and accosted him and his dog as they walked by. The lighter-colored dog [Mocha] would come out but then hang back. However, the black dog [Harley] would lunge at Mr. Miller's dog's back legs and follow them. Mr. Miller would put himself between the dogs and face down Harley, at which point Harley would temporarily stop his lunging. The Hardin dogs were usually unsupervised, although occasionally he would see a younger woman outside with them but unable to control them.
6. Finally, on October 15, as he walked his dog on the opposite side of the street, Harley and Mocha came out of the yard and across the street. Harley was the agitator; Mocha just followed Harley. Harley nipped at his dog's heels. Mr. Miller attempted to keep the dogs separated and to keep walking. However, Harley kept at it, following them maybe 50 to 75 feet and lunging at them as they tried to retreat. Mr. Miller opined that had he not continually stepped in Harley's way, Harley would have made contact.
7. Mr. Miller noted that since that incident, he has not seen the dogs loose on any of his walks.

David Hardin Testimony

8. Mr. Hardin testified that he was oblivious to the October 15 event until the investigating officer talked to him about it a few days later. His dogs go up and down between the upper portions of the house where his sister and mom live and the lower level where he lives. His sister (Sherry) might have let Harley out that evening, but his mother (Wanda), who is in her 80s, would not have been able to do so. He said he was not aware of any previous incidents where his dogs left the property.
9. When he lets his dogs out, either he is actively with them or they are on a leash. They bark, but they remain with him on the property. Harley is protective of his territory, but has never lunged at anyone in Mr. Hardin’s presence. He could see how, if he was not there to anchor or reprimand the dogs, an altercation could happen.
10. The young woman Mr. Miller saw may have been Mr. Hardin’s son’s girlfriend; she does not live there anymore. Since October, the dogs have not been allowed out without a leash or under Mr. Hardin’s control. He is concerned with the expense of the penalty and with having to construct a fence.

Sherry Hardin Testimony

11. Ms. Hardin recalled letting Harley out on October 15, but was not sure about timing. She did hear him barking, so she told him to get back inside. Harley spends time upstairs with her and her mother (Wanda). Harley is in the house 95% of the time and only goes out to go potty or if her brother (David) is outside.

Appeal Issues

12. Was Harley “running at large” on October 15, 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.
13. Does Harley qualify as “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,

while 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. 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 must prove 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

15. We found Mr. Miller’s testimony credible. That does not mean we did not find either of the Hardins not credible, but neither of them witnessed the events Mr. Miller described.¹ We found Mr. Miller’s account of events an accurate one.
16. On October 15, Harley was in the street, off his premises and not under control enough to be restrained from approaching Mr. Miller and his dog. Harley was running at large.
17. A viciousness designation is not a proxy for how much or how little care an owner is exercising. Instead, the focus is on the dog, not on the owner. The question is not whether a dog is mean-spirited or behaves aggressively to most people or animals, but whether it meets the above-described code criteria. And, although the terms “vicious” and “dangerous” are sometimes conflated, the criteria for a viciousness designation under the County code is not nearly as severe as for a dangerous designation under state law.²
18. Bites are the clearest example of behavior endangering the safety a person or animal under KCC 11.04.020.BB’s definition, but not a necessary element (“including, but not limited to...”). Where an altercation did not result in an actual bite, our viciousness rulings have tracked RCW 9A.28.020’s definition of “criminal attempt,” requiring performance of an “act which is a substantial step toward the commission of that crime.” In our context, menacing barking or mere proximity to a person or other animal is insufficient; a dog must take some step towards contact, such as a lunge. To use a human-on-human scenario, getting up in another person’s face while shouting threats would not be enough. Conversely, taking a swing—even if the swing does not connect—would be.
19. Here Harley did much more than simply come out into the street, approach Mr. Miller and his dog, and bark threateningly. Harley lunged at them. And it was no single, split-second act; he lunged repeatedly at them as they attempted to retreat down the street. Moreover, October 15 was not a one-off, but the culmination of a series of incidents where he came after Mr. Miller and his dog as they walked the public street.
20. We do not discount Mr. Hardin’s explanation that, while protective, Harley has not lunged at other dogs in his presence. However, having entertained hundreds and hundreds of dog cases, Harley would be far from the first dog to behave differently

¹ Mr. Hardin discussed the encounter he described in his appeal statement, where his dogs stayed with him, on his property, while a couple walking their dog asserted his dogs were a threat. Those people appear unrelated to Mr. Miller, who walks his dog solo and had never heard or seen a male on the Hardin property. Mr. Hardin also submitted letters from neighbors asserting that Harley is not vicious. Ex. 5. Neither neighbor claimed to have witnessed Harley’s interactions with Mr. Miller and his dog.

² Compare the above KCC language with RCW 16.08.070(2), which requires inflicting severe human injury on a human, killing another animal, or multiple triggering events to warrant a “dangerous dog” designation.

when left to its own devices than it does under its master's careful supervision. We find that Harley endangered Mr. Miller and his dog and constitutes a danger to their safety. We uphold the viciousness designation.

21. As to the requirements for keeping Harley in the County, Mr. Hardin does not need to construct a fence. Harley may not leave the property except on a leash (second bullet point), but the fence requirement (first bullet point) only applies when the animal is outside the home and unattended. Exhibit D4 at 001. Given that the other Hardins appear not to have voice control over Harley, and given the potential consequences (monetary penalties, but also potential removal) if Harley escapes the property again, it seems foolish for anyone other than Mr. Hardin to let Harley out without a leash. And it may be wise for even Mr. Hardin to have Harley on a leash when outside in the yard. But there is no requirement to build a fence.
22. Finally, we turn to the penalty amount. Mr. Hardin opined that he and his family had not received any complaints prior to October 2020. Ex. D8 at 003. That is not accurate, as Animal Services' conversation with, and written notice issued to, Ms. Hardin in June 2019 indicate. The officer's notes from the October 2020 visit with Mr. Hardin *seem* to indicate that Mr. Hardin was aware Harley had been known to go into the street and be aggressive towards passersby's animals. Ex. D3 at 002 n.2. Still, Animal Services only spoke with the elder Ms. Hardin in June 2019, and Mr. Miller was clear that the only people he saw or heard on the Hardin property in any of his encounters were female. And we credit Mr. Hardin's testimony that Harley has not run off his property or gone after anyone while he was supervising Harley. We find a penalty reduction in order.

DECISION:

1. We UPHOLD the running at large and vicious violations and Harley's terms of confinement.
2. We REDUCE the penalty from \$550 to \$200.

ORDERED February 9, 2021.



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 *March 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 JANUARY 27, 2021, HEARING IN THE APPEAL OF DAVID
HARDIN, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.
V20011281-A200014661**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Kyle Miller, David Hardin, and Sherry Hardin. 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 15, 2020 incident by Kyle Miller, dated October 15, 2020
Exhibit no. D3	RASKC investigation report no. A20014461
Exhibit no. D4	Notice of violation no. V20011281-A200014661, issued October 17, 2020
Exhibit no. D5	Online Complaint form of June 24, 2019 incident by Kyle Miller, dated June 25, 2019
Exhibit no. D6	RASKC investigation report no. A19003334
Exhibit no. D7	Warning Notice V19009540-A19003334
Exhibit no. D8	Appeal, received November 10, 2020
Exhibit no. D9	Map of subject area

The following exhibits were offered and entered into the record by the Appellant:

Exhibit no. A1	Regarding lack of information
Exhibit no. A2	Regarding statement
Exhibit no. A3	Statement by Sherry and Wanda Hardin
Exhibit no. A4	Contact information for Sherry and Wanda Hardin
Exhibit no. A5	Statements by Kathleen and Roger Coleman

DS/lo

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20011281-A20014461**

DAVID HARDIN

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 February 9, 2021.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Hardin, David & Sherry

Hardcopy

Miller, Kyle

Hardcopy