

March 8, 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. **V20011456-A20015329**

PADDY IRWIN

Animal Services Enforcement Appeal

Activity no.: A20015329

Appellant: **Paddy Irwin**

[REDACTED]
Enumclaw, WA 98022

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Timothy Anderson**
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) ordered Paddy Irwin to remove her dog from King County. Ms. Irwin timely appealed, and we went to hearing. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we grant her appeal and overturn the removal order.

Background

2. In October 2020, Ginger Montana (Ginger), Ms. Irwin's golden retriever, escaped off her property and killed several chickens belonging to Ms. Irwin's neighbor, Ernest Bessler. Mr. Bessler filed a complaint. Ex. D10. Animal Services served a violation notice asserting that Ginger qualified as vicious and placing requirements for Ginger's continued residence in King County. Ex. D14. Ms. Irwin appealed, but later accepted the determination and the confinement order, in return for a reduced monetary penalty. Exs. D16-17.
3. In December, Mr. Bessler filed another complaint and submitted photos to Animal Services showing that earlier that morning he had observed Ginger and Ms. Irwin's other dog loose and roaming without supervision. Ex. D3. Animal Services issued an order removing Ginger from King County. Ex. D5. Ms. Irwin timely appealed, asserting that she has been in compliance since she received the confinement order in October. Ex. D7. We went to hearing on February 24.

Hearing

Mr. Bessler's Testimony

4. Mr. Bessler testified that he observed both the black lab and golden retriever [Ginger] loose on the Irwin property on December 10, far away from the house and barn. He did not see anyone on the Irwin property that day. Knowing that [Ginger] needed to be contained, he took pictures of the dogs in the field and submitted those with his complaint to Animal Services.
5. In the past, Ms. Irwin's dogs have roamed off the Irwin property and into his property and other neighbors' properties. At some point prior to October 2020, the black lab killed some of his chickens. He has seen both dogs go through the gate by the barn; there is a gap in the gate where the dogs can slip through, across the cattle guard. He has not had to return the dogs to their property since the October attack.

Sgt. Chelsea Eykel's Testimony

6. Sgt. Chelsea Eykel was involved in the settlement agreement for the October violation. Animal Services agreed to reduce the fines and Ms. Irwin agreed to follow the terms set forth in the confinement order. She discussed with Ms. Irwin that Ginger had to be contained and behind a locked gate. Ms. Irwin had electronic collars for the dogs, but Sgt. Eykel explained to her that those did not meet the confinement order's fencing requirements. Since the Irwin property is over 50 acres, it was not reasonable to install a dog fence around the entire property.
7. In preparing for our hearing, Sgt. Eykel returned to the edge of the Irwin property to understand the location and perspective of the Bessler photos. Sgt. Eykel noticed that in one of the photos (exhibit D3 at 002) the dogs were in the field beyond the yellow fire hydrant. She measured the fence posts along the street to be approximately eleven feet

apart. She counted over 10 fence posts from the driveway to the fire hydrant. She calculated that the dogs were over 130 feet from the barn on December 10.

8. Sgt. Eykel also observed electric fencing running down the left side (as observed from the street) of the Irwin driveway. The electric fencing runs to the post on 264th Avenue and wraps around the post. It does *not* continue into the field off to the right, where the dogs were photographed on December 10. There was no electronic fence on 264th Avenue in the area where the dogs were playing.
9. Sgt. Eykel also inspected the cattle gate. She noticed there was a chain latching the gate closed, but the gate could still swing open and create a gap which a dog could possibly get through. She did not see the dogs, so she could not speak to whether Ms. Irwin's dogs could slip through the gap.

Ms. Irwin's Testimony

10. Ms. Irwin stated that she has taken every step she could to follow the confinement order. Ginger has been trained with an e-collar. When Ms. Irwin lets her out, she is in Ms. Irwin's sight at all times, under verbal control, and wearing the e-collar, which Ms. Irwin can control remotely. Ms. Irwin believes she was totally in compliance with the order. She also noted that there is hog paneling by the cattle guard. Exs. A17-A18.
11. On December 10, Ms. Irwin was in the barn yard, which is 25-30 feet wide. The barn yard gates could have been opened or closed. They would not have obscured her view of the dogs, but could have obscured the view of someone on the street (like Mr. Bessler) looking towards the barn. The pump house could also have obscured the view of someone on the road looking at the barn. Ex. A10. Ginger had her e-collar on that day. Ex. A1. The area on the property the dogs were playing was fenced, but the electric fence does not run along all four sides of that area. She also explained that the combination of the wood-hog fencing reinforced with a 4 x 4 grid made it so that the dogs could no longer escape. Since December 10, she has not taken the dogs out to that field.

Mr. Bessler's Outbursts

12. At the conclusion of Animal Services' case-in-chief and our questioning of Ms. Irwin, Mr. Bessler asked to pose questions to Ms. Irwin. That was an understandable request, but we explained that while *parties* (here, Animal Services and the appellant, Ms. Irwin) can ask questions and examiner can ask questions, the parties' *witnesses* (Mr. Bessler and Sgt. Eykel for Animal Services; Mr. Irwin for Ms. Irwin) may not ask questions. We explained that Animal Services would likely recall Mr. Bessler for its rebuttal presentation, but an appellant's case-in-chief was not his time for him to weigh in.
13. Ms. Irwin then called her son to testify. Amazingly, Mr. Bessler interjected, "No." When we explained that a witness does not get to decide who else may testify, he responded, that if he could not ask his questions and rebut her comments, then he was done with the hearing. We explained, again, that he would likely get his chance to rebut her

comments during the rebuttal stage, but a witness does not get to pose questions to other witnesses.

14. We offered Mr. Bessler the choice of continuing with the proceeding or leaving. He responded that, he was going to back out then because it was “turning into a farce of her lies” and he was “tired of listening to them.” He then hung up. Mr. Bessler thus forfeited his opportunity to rebut Ms. Irwin’s testimony. It was one of the more bizarre exchanges we can recall in our hundreds of hearings.

Morgan Irwin’s Testimony

15. Morgan Irwin, Ms. Irwin’s son, described his experience—as a police officer, state legislative representative, and city councilmember—working on vicious dog cases and related legislation. He also has trained bird dogs for hunting. He described how he and Ms. Irwin have trained the dogs using voice and visual commands. They “cast” the dogs out and let them sit and get “invested” in an activity (i.e., to ensure they are not paying attention to the handler). Then the trainer breaks their concentration and tries to get them to respond to a command.
16. Mr. Irwin explained that he was not present on December 10, so he cannot testify about that. He has observed Ms. Irwin be diligent about having the dogs wear the e-collars. And those e-collars have been 100% effective in controlling those dogs when the dogs are within 200 feet of the hand-held device. He thinks the controls might work beyond 200 feet, but neither he nor Ms. Irwin have pushed the envelope.

Legal Standard

17. The code under which Animal Services seeks removal, KCC 11.04.290.A.3, states:

Failure to comply with any requirement prescribed by the manager [*in that October 2020 order*] constitutes a misdemeanor. Such an animal shall not be kept in unincorporated King County after forty-eight hours after receiving written notice from the manager. Such an animal or animals found in violation of this section shall be impounded and disposed of as an unredeemed animal and the owner or keeper of the animal or animals has no right to redeem the animal or animals.

18. The requirement Ms. Irwin allegedly violated on December 10, triggering removal was:

Secure [Ginger] in a fenced area suitable for the size of [Ginger] when [Ginger] is unattended and outside your home. Lock all passages with a padlock to prevent accidental release.

19. In reviewing that, 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

Fencing

20. Ms. Irwin asserted that the fencing, with the improvements they have added, would be sufficient to contain the dogs. Exs. A2-A7, A12-A18, A19 at 002-003. Mr. Bessler disputed this, testifying that he had seen the dogs get around the gate/cattle guard. Sgt. Eykel thought the gate left a gap a dog could “possibly” get through. *See* Exs. A17-19 (gate/cattle guard photos).
21. Usually, the sufficiency of the fencing is not theoretical; after an owner receives a confinement order, either the dog *actually* escapes (meaning the fencing proved insufficient), or, say, a delivery driver enters through a gate and gets attacked (meaning all passages were not secured with a padlock). In those scenarios, the proof is in the pudding—we *know* the fencing was insufficient because it proved to be so; we do not need to speculate about what would hypothetically qualify as “suitable.”
22. Here, in contrast, there is no evidence that Ginger—or the black lab—have gotten out since October. This is the first removal order we have entertained that was not accompanied by a stand-alone violation—the dog ran at large, trespassed on someone else’s property, performed a vicious act on a visitor, etc.
23. In the end, we do not *think* the fencing was or is secure enough to meet the requirement for an unattended dog to roam in. However, we do not need to definitively decide that matter, because we find the fencing requirement itself was not triggered on December 10.

“Unattended”

24. The fencing sufficiency requirement only comes into play where the animal is “unattended and outside [the] home.” Ms. Irwin testified that she was attending Ginger that day, being inside the barn, with the controller, and keeping an eye on the e-collared dogs. *See also* Ex. A8-A10. Mr. Bessler seemed to deny this in his initial testimony, but he forfeited his ability to refute her testimony on rebuttal when he prematurely abandoned the hearing.
25. Mr. Bessler did his credibility no favors with his hearing performance; he brought a lot of heat, but little light. Moreover, in his December 10 complaint, in answer to the question asking him for a “description of incident,” he wrote that the dogs were “loose roaming neighborhood.” That is not even remotely accurate. As his own photos from that day showed, on December 10 the dogs were playing in the middle of the Irwin field, nowhere near the property line they would have had to cross to begin roaming the neighborhood. Ex. D2 at 002, 005-08.
26. Conversely, we found Ms. Irwin and Mr. Irwin credible. Thus, the facts we adopt are that Ms. Irwin had a sight line from the barn to the dogs on December 10, the dogs were wearing electronic collars while Ms. Irwin held the controller, that system had been

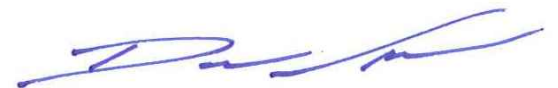
100% effective at controlling the dogs at a distance of up to 200 feet, and the dogs that day were a little over 130 feet from Ms. Irwin (as measured by Sgt. Eykel).

27. That brings us to what is meant by “attended.” Animal Services made an analogy to the definition of “running at large”—“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 meaning “either under competent voice control or competent signal control, or both, so as to be restrained from approaching any bystander or other animal and from causing or being the cause of physical property damage when off a leash or off the premises of the owner.” KCC 11.04.020.W, .AA; .230.B.
28. Animal Services’ analogy is a fair one. As Ginger remained at all times on the property, the off-the property bystanders and property damage are not germane here. So, “attended” here must mean something like “having competent signal control so as to restrain the animal from escaping the property.” As with the fencing, there is no proof-is-in-the-pudding here, because the electronic collars have successfully kept the dogs on the property since October. Moreover, on December 10 Ms. Irwin was a little over 130 feet from the e-collared dogs, with a sight line and a hand-held controller, and that set up has effectively controlled the dogs at distances up to 200 feet.
29. So, even assuming the fencing set up was not secure enough to itself meet the confinement order, that requirement related only to unattended dogs. We conclude that Ginger was not “unattended” on December 10. Thus, Ms. Irwin did not violate the terms of the October 23 compliance order. Removal under KCC 11.04.290.A.3 is not warranted. It would probably be *wiser* to have Ginger roam in an area with a better fence providing backup (to avoid some negative future occurrence), but the December 10 set up complied with the relevant requirement.

DECISION:

We **grant** Ms. Irwin’s appeal.

ORDERED March 8, 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 *April 7, 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 FEBRUARY 24, 2021, HEARING IN THE APPEAL OF PADDY IRWIN, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20011456-A20015329

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Tim Anderson, Ernest Bruce Bessler, Chelsea Eykel, Paddy Irwin, and Morgan Irwin. 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 December 10, 2020 incident by Ernest Bessler, dated December 20, 2020
Exhibit no. D3	Email and Photographs of dogs unattended
Exhibit no. D4	RASKC investigation report no. A20015329
Exhibit no. D5	Notice and order for removal no. V20011456-A20015329, issued December 16, 2020
Exhibit no. D6	Notice mailing/tracking history
Exhibit no. D7	Appeal, received December 31, 2020
Exhibit no. D8	Second supplemental appeal with photos
Exhibit no. D9	Additional Photos submitted by complainant
Exhibit no. D10	Online Complaint form of October 21, 2020 incident by Ernest Bessler, dated October 22, 2020
Exhibit no. D11	Photographs of dead chickens
Exhibit no. D12	RASKC investigation report no. A20014531
Exhibit no. D13	Officers photos of deceased chickens and feather strewn yard
Exhibit no. D14	Notice of violation no. V20011295-A20014531, issued October 23, 2020
Exhibit no. D15	NVOC mailing/tracking history
Exhibit no. D16	Appeal, received November 5, 2020
Exhibit no. D17	Settlement Agreement
Exhibit no. D18	Map of subject area

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

Exhibit no. A1	Photograph of dog with Garmin electrical collar
Exhibit no. A2	Photograph of boundary fence
Exhibit no. A3	Photograph of boundary fence
Exhibit no. A4	Photograph of boundary fence

Exhibit no. A5	Photograph of fence post
Exhibit no. A6	Photograph of fence post close-up “field view”
Exhibit no. A7	Photograph of fence post close-up – view from inside field
Exhibit no. A8	Photograph of all north fields from next to barn door
Exhibit no. A9	Photograph of view looking north from center of barnyard
Exhibit no. A10	Photograph of barnyard
Exhibit no. A11	Photograph with shadow
Exhibit no. A12	Photograph of boundary fence
Exhibit no. A13	Photograph of boundary fence, close-up
Exhibit no. A14	Photograph of boundary fence, close-up
Exhibit no. A15	Photograph of fence post
Exhibit no. A16	Photograph of fence post, close-up “field view”
Exhibit no. A17	Photograph of fence post, close-up from inside looking out and gate
Exhibit no. A18	Photograph of gate
Exhibit no. A19	Photographs of fence

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V20011456-A20015329**

PADDY IRWIN

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 March 8, 2021.



Lauren Olson
Legislative Secretary

Anderson, Tim

Regional Animal Services of King County

Bessler, Ernest Bruce

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Irwin, Morgan

Hardcopy

Irwin, Paddy

Hardcopy