

May 18, 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. **V21011636-A21000458**

JODI SCHLIMGEN

Animal Services Enforcement Appeal

Activity no.: A21000458

Appellant: **Jodi Schlimgen**

[REDACTED]
Sammamish, WA 98074

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Shelby Russell**
Regional Animal Services of King County
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FINDINGS AND CONCLUSIONS:

Overview

1. Jodi Schlimgen's two dogs, Dakota and Nash, got loose, ran out into the street, and attacked a neighbor's dog. Regional Animal Services of King County (Animal Services) declared both dogs vicious and ordered them contained. Ms. Schlimgen appealed. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we sustain Dakota's viciousness designation, overturn Nash's, and reduce the remaining penalty.

Background

2. The relevant facts here are straightforward. Ms. Schlimgen owns two boxers, Dakota and Nash. In May 2018, Dakota was attacked at a dog park. Per Ms. Schlimgen, the attack changed Dakota's personality; she "freaks out" when she sees other dogs and has had aggression issues ever since. While Ms. Schlimgen previously took her dogs hiking, she no longer felt safe doing that. She used to walk Dakota all the time, without problems, but (post-May 2018) anytime Dakota sees a dog, she barks. Ms. Schlimgen tried a trainer, but the trainer did not seem to help.
3. Neighbor Holly Snell had walked by Ms. Schlimgen and her boxers in past years; they had gone "crazy" at the sight of her then-dog. Ms. Schlimgen always had them on a leash, but seemed to be having trouble controlling their aggression.
4. On January 23, 2021, Ms. Snell and her eight-year-old daughter were walking their 11-month old golden retriever, Rexy, on the street in front of the Schlimgen house. Ms. Schlimgen's boyfriend, Jordan Ayers, did not close the front door quickly enough as he exited, and the dogs burst out. As Ms. Snell tried to retreat across the road, the dogs hunched down like they were in hunting mode, and then came at them, grabbing Rexy at both ends.
5. A driver, Daniel Urbina, captured much of the attack on the dash cam of his approaching truck, as he stopped to help. Ex. D7. The video shows Ms. Snell vainly trying to disperse the boxers. Mr. Urbina gets out to help. Eventually Ms. Schlimgen makes it to the road and calls back one of the boxers (later identified as Nash). Then—between Ms. Snell's and Mr. Urbina's physical interference and Ms. Schlimgen's verbal commands—Dakota eventually retreats.
6. The attack left Ms. Snell and her daughter traumatized. The daughter has bad dreams, is more anxious, and will no longer walk down that street.
7. After the January 2021 altercation, Ms. Schlimgen has taken Dakota, along with Nash, to a trainer better equipped to deal with aggression.
8. On February 10, Animal Services served a notice and order declaring both Dakota and Nash vicious, fining Ms. Schlimgen \$1000 (\$500 per viciousness violation), and requiring her to contain the dogs. Ex. D2. Ms. Schlimgen timely appealed. Ex. D3. We went to hearing on May 17.

Legal Standard

9. Animal Services asserts that Dakota and Nash each 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."

10. In answering whether one or both dogs meet the code criteria, 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

11. Both Dakota and Nash meet KCC 11.04.020.BB’s definition of “vicious.” Without even needing to decide whether the dogs actually endangered Ms. Snell or her daughter, they certainly endangered Rexy, “attacking a . . . domesticated animal without provocation.” (Ms. Schlimgen did not raise provocation, but even if she had, the Snells walking Rexy on a leash, on a public road, was in no sense legal provocation for chasing down and attacking Rexy.)
12. However, as the code criteria above articulates, sustaining a viciousness designation requires not only that the animal exhibited behavior meeting KCC 11.04.020.BB—which both Dakota and Nash did on January 23—but also that the animal constitutes a danger to the safety of persons or their pets. KCC 11.04.230.H. Attacking another pet or biting someone, unprovoked, is strong evidence that the animal constitutes a danger. But it does not, as Animal Services sometimes assumes, automatically lead to a finding that the dog constitutes a danger. In our jurisprudence, 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. But there must, almost by definition, be some subset, however small, of unprovoked bites or attacks on people or domestic animals where the circumstances will be such that a dog exhibiting vicious behavior is *not* found to constitute a danger safety of persons or their pets.
13. The case against Dakota is overwhelming. The video is difficult to watch. Dakota relentlessly continues attacking Rexy, even as Ms. Snell attempts to pull Dakota’s jaws off. Even after Ms. Snell and Mr. Urbina disengage Dakota, Dakota comes back for yet another bite. Ms. Schlimgen agreed that since getting attacked in May 2018, Dakota has had aggression issues and been hard to control; even without her testimony we would have little trouble finding that Dakota constitutes a danger. Hopefully the training will help alleviate some of that aggression, but Dakota’s viciousness designation is clear cut. Dakota constitutes a significant danger.
14. Nash’s situation is more nuanced. Reviewing the video prior to hearing—and before we read statements or heard testimony distinguishing the two dogs¹—it appeared obvious to us that one dog was committed to the violence, while the other dog was participating but at a significantly less ferocious level.
15. Near the beginning of the video, a dog we now find to be Nash retreats almost to the opposite side of the street. Nash then turns back and, seeing that Dakota is still attacking Rexy, rejoins the fray. The video then becomes hard to decipher, as both Dakota and

¹ We had previously reviewed Ms. Schlimgen’s appeal statement, but that statement did not really differentiate between Dakota and Nash. Ex. D3.

Nash disappear into the shadows. Nash appears to stay engaged, but what he is doing during those lost seconds is not precisely clear. What becomes obvious, as the attack moves back into the sunlight, is that Dakota still has her mouth clamped on Rexy's back, while Nash is more on the periphery, circling but not actively biting. Nash then exits the scene when called, while Dakota continues her unremitting assault.

16. Ms. Snell described both dogs as attacking, but one “more so.” As bystander David Nemiroff described it,

I observed an unleashed dog attacking a small dog [Rexy] that was leashed and in control of its owner. The owner of [Rexy] was attempting to cross the street, keep the larger dog from hurting her dog.... A truck [Mr. Urbina] stopped to help get the larger dog away from the smaller dog...

Ex. D6 at 002-03 (underscore added). Mr. Nemiroff did not even mention a second attacker. The video does provide unmistakable proof that Nash actively participated. However, the description of an eyewitness, who was apparently right there throughout the attack (including the initial portion not captured on Mr. Urbina's dashcam), focusing entirely on one Ms. Schlimgen dog (Dakota) and not even mentioning the other (Nash), is telling.

17. Ms. Schlimgen testified that Nash is usually not the type of dog to fight, but because he is Dakota's sister, if Dakota goes crazy, he gets involved. Owner reflections may be biased or self-serving (the same way our reflections on our own children would be), but two things there are notable. First, owner statements comparing their dogs with each other are typically less self-serving than other statements (the same way our description of one of our children as, say, kinder or smarter than our other child would likely carry more weight than us simply lauding our children as kind or smart). Second and more importantly, unlike, say, Mr. Ayers' statement that the dogs are not violent (which is completely refuted by the video), the video matches Ms. Schlimgen's narrative.
18. Nash's lesser role might not matter so much if together Dakota and Nash had inflicted grievous injuries on Rexy. However, Ms. Snell was candid that while there was blood on Rexy, it was “nothing major.” And while Dakota being the driving force does not excuse Nash's behavior, it does create a serious question in our mind of whether, if Dakota had not attacked, Nash would have attacked. Thus, if Dakota is contained in the future—as the order of confinement for Dakota we uphold today requires—would an unrestrained Nash pose a danger by himself?
19. A viciousness designation is serious. In addition to the default \$500 penalty, it imposes confinement terms that can be costly, and it raises the specter of future removal of the dog from the County, if the confinement terms are not met. *See* KCC 11.04.290. And because a viciousness designation carries with the dog. Thus, even if Dakota died or the dogs were otherwise separated, Nash's viciousness designation would remain. We are thus more exacting on viciousness designations than on most other violations, the more being at stake. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (nature of private interest being affected a factor in determining how much process is due). In the end, we are not

convinced that Animal Services has shown that Nash constitutes a danger. We thus overturn Nash’s viciousness designation.

Penalty

20. That leaves the \$500 penalty for Dakota. Unlike many vicious-related appeals we entertain, the violence here was not a culmination of a long history of an appellant living in denial and failing to contain the dog(s), until the inevitable happened and someone or some pet got hurt.
21. While there was a wood fence falling down, the investigating officer observed a welded wire fence inside the dilapidated wood fence that appeared to be constructed well enough to contain the Schlimgen dogs. Ex. D4 at 004, n.15. Ms. Snell was clear that the previous times she encountered the boxers, Ms. Schlimgen had them on a leash; in fact, Ms. Snell was “shocked” to see them loose on January 23. And since Mr. Ayers inadvertently let them out on January 23, Ms. Schlimgen has microchipped both dogs, made sure they were current on their rabies vaccinations, and enrolled them in more intense training. Ex. D3 at 002, Ex. D8.
22. We find a penalty reduction is in order.

DECISION:

1. We GRANT Ms. Schlimgen’s appeal as to Nash.
2. We DENY Ms. Schlimgen’s appeal as to Dakota’s viciousness designation and confinement order, but we REDUCE the penalty from \$500 to \$300.

ORDERED May 18, 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 *June 17, 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 MAY 17, 2021, HEARING IN THE APPEAL OF JODI
SCHLIMGEN, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.
V21011636-A21000458**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelby Russell, Holly Snell, Jodi Schlimgen, and Jordan Ayers. 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	Notice of violation no. V21011636-A21000458, issued February 10, 2021
Exhibit no. D3	Appeal, received March 5, 2021
Exhibit no. D4	RASKC investigation report no. A21000458
Exhibit no. D5	Online Complaint form of January 23, 2021 incident by Holly Snell, dated January 24, 2021
Exhibit no. D6	Online Complaint form of January 23, 2021 incident by David Nemiroff, dated March 16, 2021
Exhibit no. D7	Dash cam video provided by Holly Snell, dated January 23, 2021
Exhibit no. D8	Text from Jodi Schlimgen
Exhibit no. D9	Map of subject area

DS/lo

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21011636-A21000458**

JODI SCHLIMGEN

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 May 18, 2021.



Lauren Olson
Legislative Secretary

Jordan Ayers, Jodi Schlimgen

Hardcopy

Nemiroff, David

Hardcopy

Russell, Shelby

Regional Animal Services of King County

Snell, Holly

Hardcopy

Urbina, Daniel