

July 21, 2021

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V21012023-A21002104**

**KATE GAUNT**

Animal Services Enforcement Appeal

Appellant: **Kate Gaunt**

[REDACTED]  
Bellevue, WA 98006

Telephone: [REDACTED]

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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. Kate Gaunt appeals a Regional Animal Services of King County determination that her dog, Henry, qualifies as vicious, fining her \$500, and ordering that Henry be confined such that he would be permanently prohibited from continuing to take advantage of off-leash dog parks. 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 uphold the viciousness designation, reduce the monetary penalty, and modify the confinement terms to allow continuing off-leash dog park usage under specific criteria.

### Background

2. On May 8, Animal Services issued Notice of Violation and Order to Comply to Ms. Gaunt for a vicious dog violation and order for confinement. Ex. D6. Ms. Gaunt filed a timely appeal on May 21. Ex. D7. We went to hearing on July 7.
3. Erin Cosnowski testified that she was walking her dog, Penny, on the side of the street, with Ms. Cosnowski closer to the passing houses and Penny on the street side. As they passed by the Gaunt house, a dog [Henry] quickly jumped over the Gaunts' front yard fence and rushed at Penny. Ms. Cosnowski heard some growling, Penny yelled, and then Ms. Cosnowski started screaming. A car [Ms. Gaunt's] started to back out of the driveway. The two dogs separated momentarily. Henry started to come at Penny again, but Ms. Gaunt got out of the car and yelled at Henry, at which point Henry retreated.
4. That was the only interaction the two dogs had ever had. Before the incident, she did not observe Penny even noticing Henry; Penny typically focuses on the scent of rabbits. Henry and the kids in the Gaunt yard had not even registered to them.
5. After the incident, Ms. Cosnowski walked up the street and inspected Penny. She saw Penny was bleeding on the left side of her muzzle. Ex. D3. They walked home, where Ms. Cosnowski took a picture and then brought Penny to an animal hospital. The hospital recommended stitching the laceration, which required sedating Penny. Ex. D4. Penny had to wear a cone for two weeks until the stitches were removed.
6. Ms. Gaunt testified that she was in her car, in her driveway, when she heard dogs barking. She turned and saw her dog jump the fence. By the time she got out of the car, the dogs were separated, around eight to ten feet apart. She put her dog inside and then checked with Ms. Cosnowski to see if her dog was okay.
7. Henry is regularly in the front yard. He had never jumped the fence or exhibited any such behavior, despite myriad dogs walking by every day. Henry is no longer allowed in the front yard due to the incident. Her backyard is very steep, and she believes it is not an appropriate area for Henry to be able to get enough exercise. She brought Henry daily to the dog park for exercise, and he has never had any problems.

### *Legal Standards*

8. Animal Services asserts that Henry qualifies as "vicious," defined as "performing the act of... 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 is an "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" qualifying as a nuisance. BMC 8.04.060.BB, .300.H.
9. 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.

10. Ms. Gaunt contends that Henry was provoked to jump the fence and go after Penny. Although provocation is typically an affirmative defense, *Patterson v. New York*, 432 U.S. 197, 202-03 (1977), here “without provocation” is part of the definition itself. Thus, Animal Services bears the burden of showing, by a preponderance of the evidence, that Henry’s actions were legally unprovoked. *See also Moravcek v. City of Bonney Lake*, 184 Wn. App. 487, 495, 337 P.3d 1097, 1101 (2014).
11. The “provocation” inquiry in animal jurisprudence “focuses ‘on how an average dog, neither unusually aggressive nor unusually docile, would react to an alleged act of provocation.’” *Bradacs v. Jacobone*, 244 Mich. App. 263, 273, 625 N.W.2d 108, 113 (2001) (citing *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000)). A key touchstone of courts’ analyses is that “provocation” requires the dog’s reaction to be proportional to the victim’s act. *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792.

#### *Analysis*

12. Simply alleging that Henry’s reaction must have been provoked does not make it so. There is zero evidence that Penny did anything other than walk on a leash, with her owner, on the street-side of Ms. Cosnowski. We not infrequently see scenarios where the appellant’s dog comes out to the edge of their unfenced property and an altercation ensues. However, we can only think of a few times in our 800-plus animal appeals where an animal breaks through or scales over its own fence (a clear “my turf” line) to attack. There was nothing average about Henry’s reaction to Penny just walking by. Henry’s reaction was grossly disproportionate to Penny’s mere presence in the vicinity. And Henry did not just run up, deliver a bite, and then retreat. Instead, after Ms. Cosnowski initially separated the dogs, Henry started at Penny a second time, before Ms. Gaunt intervened. Henry attacked Penny without provocation and constitutes a danger. We uphold his viciousness designation.
13. That brings us to the remedy. In addition to requiring that Henry be contained in adequately fenced area, with passages padlocked to prevent accidental release when on the Gaunt property, Animal Services required that Henry be leashed and collared when taken off his property. This would essentially be a lifetime ban from Henry ever again going to a sanctioned off-leash area. Animal Services bears “the burden of proving by a preponderance of the evidence...the appropriateness of the remedy it has imposed,” here, the no-dog-park prohibition. KCC 20.22.080.G, .210.
14. In deciding whether to uphold a dog park prohibition, we look at several factors.
15. First, are the owners in denial about the threat their dog poses and/or have a history of not being able to control their dog, causing us to doubt their willingness or ability to do so in a dog park scenario?

16. Certainly, Ms. Gaunt exhibited more than an average level of denial and dismissiveness. However, compared to the ridiculous, jaw-dropping reactions we occasionally encounter, Ms. Gaunt's reaction was more mainstream, albeit towards the more denial/dismissal side of the stream. Many animal owners have a hard time squaring the animal they know to the behavior in question. And Animal Services agreed that the Gaunts would not have been on notice of Henry's capabilities before Henry actually jumped the fence and attacked, or on any heightened alert level of the need to do more to contain Henry. The Gaunts have restricted Henry's territory to only the separate, adequately fenced backyard, and they no longer allow him in the front yard.
17. Moreover, contrary to the scenario of a pattern of inability to control a dog, Ms. Cosnowski agreed that as Henry started to come at Penny again, Ms. Gaunt yelling at him was sufficient to get him to stop his second approach and retreat. Ms. Gaunt being able to get Henry to back off *mid-attack* gives us confidence that, in the dog park scenario, she or another adult would be able either to prevent an altercation from ever occurring, or to nip it in the bud before much damage was done.
18. Second, did the animal exhibit violent behavior in the scenario that translates to the dog park scenario? Animal Services is correct that a dog actually jumping its own fence—a clear “my turf” line—is significantly more troubling than a dog coming off its unfenced and murky (from a dog's perspective) property boundary. However, there is a distinction between a dog with overaggressive turf protectiveness versus a dog in the public park context (at least where the park does not abut the dog's property). Henry's ample history of unremarkable dog park usage cuts in Henry's favor.
19. And third, we look at the extent of the injuries and/or severity of the attack. While a bite to the face is serious, the gash was, thankfully, not as significant as many we have had the displeasure of reviewing. To be sure, Henry not being satisfied with an initial bite but coming back for more cuts against Penny. But Ms. Gaunt was able to prevent further violence by recalling him, and we would be speculating as to how bad Henry would have hurt Penny if Ms. Gaunt had not ended things as quickly as she did.
20. We are reticent to uphold what is effectively a lifetime ban on a dog taking advantage of the socialization and energy release provided by a dog park. We do not find that Animal Services has met its burden of showing that this portion of the containment order is appropriate. We will re-write it below.
21. Finally, as to the penalty amount, as noted above, we (and Animal Services) do not find that the May 6 attack was due to any negligence by the Gaunts, and they have taken steps since to prevent a repeat. We will halve the penalty.

#### DECISION:

1. We DENY the appeal as to the viciousness violations.
2. We REDUCE the penalty to \$250.

3. We MODIFY Animal Services' May 8, 2021, compliance order as follows (A. through D. being substantively unchanged, and E. being new):
- A. Secure Henry in a fenced area suitable for his size when unattended and outside the home. Lock all passages with a padlock to prevent accidental release.
  - B. Restrain Henry using a leash no more than eight feet long, with a collar or harness, when taking Henry off your property. A competent and capable person must handle Henry at all times when attended outside.
  - C. If not already completed, microchip Henry and provide the microchip number to the King County Animal Licensing Office (206) 296–2712 by **August 20, 2021**.
  - D. Keep Henry current on his rabies vaccination.
  - E. Henry is allowed to run in sanctioned off-leash dog parks, provided Ms. Gaunt or another adult is present, and provided Henry is leashed at all times when not in the car or in the fenced, off-leash area.

ORDERED July 21, 2021.



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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 *August 20, 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 JULY 7, 2021, HEARING IN THE APPEAL OF KATE GAUNT, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21012023- A21002104**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Erin Cosnowski, and Kate Gaunt. 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
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Exhibit no. D2 Online Complaint form of May 6, 2021 incident by Erin Cosnowski,  
dated May 7, 2021

Exhibit no. D3 Photograph of Penny's injury

Exhibit no. D4 Veterinary Bill, dated May 6, 2021

Exhibit no. D5 RASKC investigation report no. A21002104

Exhibit no. D6 Notice of violation no. V21012023-A21002104, issued May 8, 2021

Exhibit no. D7 Appeal, received May 21, 2021

Exhibit no. D8 Map of subject area

DS/lo

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V21012023-A21002104**

**KATE GAUNT**

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 July 21, 2021.



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Lauren Olson  
Legislative Secretary

**Cosnowski, Erin**

Hardcopy

**Eykel, Chelsea**

Regional Animal Services of King County

**Gaunt, Kate**

Hardcopy