

August 17, 2021

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file nos. **V21012093 and V21012095**

VIRGINIA AND GINNY PARADEZA

Animal Services Enforcement Appeal

Activity no.: A21002267

Appellants: **Virginia and Ginny Paradeza**

[REDACTED]
Kent, WA 98030

Telephone: [REDACTED]

Email: [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
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. The Paradezas' dog escaped, trespassed onto a neighbor's yard, and fatally wounded a cat. Regional Animal Services of King County issued a notices and orders. The Paradezas 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 uphold the violation but reduce the penalty.

Background

2. On May 22, Animal Services issued a notice and order to Virginia Paradeza for her daughter's dog, Sue, running at large, trespassing, being vicious, and needing confinement. Ex. D2. Animal Services issued a notice and order to Ginny Paradeza for Sue being vicious and for confinement. Ex. D3. The Paradezas timely appealed. Ex. D4. We went to hearing on July 28. During hearing, Ginny Paradeza requested seeing the photos of the cat. We held the record open through August 2 for Animal Services to send the photos and for the Paradezas to respond. The photos are gut wrenching. Ex. 9.

Jeanine Bowl Testimony

3. Jeanine Bowl testified that she heard something loud hit her front door that morning, and then heard terrible screaming and growling. She also heard something breaking, and gravel being thrashed around. She and her son ran downstairs and opened the front door. She saw a dog [Sue] out in her yard on top of something. She initially was not sure what Sue was on top of, and she continued to hear terrible sounds.
4. As Ms. Bowl ran out, she could see that Sue had pinned her cat, PJ. She saw Sue's mouth going at PJ. She continued to run and scream at Sue and then started to kick Sue to get it to go away. Sue turned around to try to get her. PJ then ran to the side of her house and Sue ran the other way. She followed Sue and yelled. Sue turned to her and growled and came at her.
5. Ms. Bowl calmed herself down and was able to also calm Sue. She was then able to approach Sue and get it by the collar to bring it back to her house. Her mother came out and put Sue on a leash. Ms. Bowl went to her son and saw PJ all bloody and messy under a bush. She could see bones sticking out.
6. Ms. Bowl took PJ to the nearest pet hospital, which evaluated him for 15 minutes and told her that PJ needed to go to a pet hospital in Seattle for surgery. The initial prognosis from the hospital was that PJ did not sustain too much internal trauma, mostly suffering from tears and rips. The vet thought PJ could recover and live a great life if they amputated the injured leg. They proceeded with the amputation. Ex. D9. After the surgery, PJ's vitals were low, and he was not taking in fluids. He went into sepsis and there was possibly an infection. Ms. Bowl and her family decided to then put PJ down.
7. PJ was brown with light tan stripes. Ms. Bowl has not seen the Paradeza dog out loose before or after this incident.

Virginia Paradeza Testimony

8. Virginia testified that the morning of the incident she was in the yard with Sue. Virginia noticed the yard grow quiet, and she could not find Sue. She called her daughter to come home and looked around the house and yard and could not find Sue. She then started to look in the neighborhood. Ms. Paradeza saw Sue on a leash with Mr. Bowl. She confirmed with him that she was looking for that dog. Animal Services arrived and she spoke with them as well.

9. Virginia fixed her side gate where she believes Sue was able to get under and out. She has repaired the fence to help with the boards' integrity and has a padlock on the gate. Ms. Paradeza apologized to Ms. Bowl.

Ginny Paradeza Testimony

10. Ginny testified that she was at work when she received a text from her mom that Sue was missing. She went home and saw her mom talking to the neighbors. Ginny went over and saw Sue on a leash being held by the neighbor. She spoke with Animal Services who was also at the neighbors. Ginny was in shock because this was very unexpected. She was apologetic.
11. Initially, Ginny was uneasy about Sue being labeled vicious; however, she now understands why Sue was classified this way. Ginny requested Animal Services send her the photos of PJ. Initially, she heard that PJ only broke a limb. Then she heard there was biting involved. She apologized and understood that this was a traumatic situation. Ginny is in the process of moving. Ginny moved Sue in with her mom so she could acclimatize Sue.

Legal Standard

12. Animal Services asserts that Sue:
 - A. Was trespassing, defined as a “domesticated animal that enters upon a person’s property without the permission of that person,” KCC 11.04.230.K.
 - B. Was running at large, defined as 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,” within “under control” in Kent meaning “a dog who is 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. Evidence that a bystander or other animal was approached by the dog, or evidence that the dog caused physical property damage, is prima facie evidence that the dog was not under control.” KCC 11.04.020.W, .AA; .230.B; Kent 8.03.030.G.
 - C. Qualifies 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,” which 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.”
13. In their appeal, the Paradezas questioned whether Sue was provoked. 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)). And 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. And although provocation is typically an affirmative defense, *Patterson v. New York*, 432 U.S. 197, 202-03 (1977), because lack of provocation is part of the definition (KCC 11.04.020), Animal Services bears the burden of showing, by a preponderance of the evidence, the lack of legal provocation.

14. 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

15. This is a straightforward case. Sue does not appear to have a history of aggression, or even of getting loose. The Paradezas would have been on no heightened alert before May 18 of what Sue was capable of or their need to control her. But Sue got out that day, was not under control, and trespassed onto a neighbor’s yard, where she viciously tore into a cat, wounding PJ so badly that the veterinarian needed to amputate his leg in an ultimately unsuccessful attempt to save PJ’s life.
16. The initial theory that maybe Sue was provoked came from earlier instances of an orange/white cat and another gray/black cat (neither of which matched PJ’s description), one of which, “Vader,” apparently lost its collar on the Paradeza property. Those cats do not appear to be PJ, but even if we are wrong, and one of them was PJ, that would not change the outcome here. Sue’s sustained, brutal attack on PJ, on PJ’s property, was grossly disproportionate to any incitement PJ might have caused entering Sue’s backyard. The average dog would not go to a neighbor’s property and tear into PJ, as Sue did, creating an extreme danger.
17. Animal Services has met its burden of showing all three violations. However, as Animal Services recognized, there was no history or reason for the Paradezas to think their precautions with Sue were insufficient; the Paradezas were not negligent. Where a violent incident occurs *despite*, not because of the level of care being taken, we typically reduce the penalty. We lower the \$500 fine associated with the Paradezas violation to \$150, meaning the total penalty due is \$250, not \$600.

DECISION:

We deny the appeals as to the violations and the need to contain Sue (as described in the May 22 notices and orders), but we reduce the penalty from \$600 to \$250.

ORDERED August 17, 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 *September 16, 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 28, 2021, HEARING IN THE APPEAL OF VIRGINIA AND GINNY PARADEZA, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS. V21012093 AND V21012095-A21002267

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Christopher Bowl, Virginia Paradeza, and Ginny Paradeza. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record:

- | | |
|----------------|--|
| Exhibit no. D1 | Regional Animal Services of King County staff report to the Hearing Examiner |
| Exhibit no. D2 | Notice of violation no. V21012093-A21002267, issued May 22, 2021 |
| Exhibit no. D3 | Notice of violation no. V21012095-A21002267, issued May 22, 2021 |
| Exhibit no. D4 | Appeal, received June 9, 2021 |
| Exhibit no. D5 | RASKC investigation report no. A21002267 |
| Exhibit no. D6 | Online Complaint form of May 18, 2021 incident by Jeanine Bowl, dated May 20, 2021 |
| Exhibit no. D7 | Blue Pearl Vet record, dated May 21, 2021 |
| Exhibit no. D8 | Map of subject area |
| Exhibit no. D9 | Photographs from vet, submitted July 28, 2021 |

DS/lo

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V21012093 and V21012095**

VIRGINIA AND GINNY PARADEZA

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 August 17, 2021.



Lauren Olson
Legislative Secretary

Bowl, Jeanine, Christopher

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Paradeza, Virginia/Ginny

Hardcopy