

September 27, 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 nos. **V21012243 and V21012244**

DAVID & SHERRY HARDIN
Animal Services Enforcement Appeal

Activity no.: A21002793

Appellants: **David & Sherry Hardin**
[REDACTED]
Seattle, WA 98168
Telephone: [REDACTED]

King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
Regional Animal Services of King County
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Kent, WA 98032
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FINDINGS AND CONCLUSIONS:

Overview

1. Sherry Hardin, on behalf of her brother, David Hardin, appeals a violation notice and a removal order. 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 sustain the violations and the accompanying \$550 penalty (V21012243) but overturn the removal order (V21012244).

Background

2. On October 17, 2020, Animal Services cited Mr. Hardin for his dog, Harley, running at large and qualifying as vicious; Animal Services set out confinement terms that needed to be met to continue housing Harley in King County. Ex. D11. Mr. Hardin timely appealed and we went to hearing on January 27, 2021. On February 9, we upheld both violations and Harley's terms of confinement. Ex. D12. We explained that:

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. 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....

Ex. D12 at 005.

3. And we closed by writing that our decision would become final and conclusive unless appealed to superior court by March 11. Ex. D12 at 005. Mr. Hardin elected not to appeal. Therefore, Harley's designation as a vicious dog, the need to contain him to keep him in the County, and the containment terms themselves, became final and unchallengeable by March 12.
4. On June 19, Animal Services received a complaint from Matthew Ogletree stating that his neighbor [Ms. Hardin] allows her two dogs to run around the neighborhood whenever they go outside, multiple times a day, for at least the two years he had lived in the neighborhood. Ex. D3. He later filed a formal online complaint form expressing the same concerns. Ex. D4.
5. On June 27, Animal Services issued Mr. Hardin a notice of violation for Mocha running at large and for Harley being a vicious animal at large. Ex. D5. On July 1, Animal Services issued Mr. Hardin an order to remove Harley from King County for failing to follow the October 2020 containment order. Ex. D6.
6. Ms. Hardin left a voicemail on Animal Services' line on July 21 regarding questions on filing an appeal for her brother. Ex. D2-004 at n. 10. Sgt. Eykel did not receive the message until July 23. As the Hardin appeal deadline was July 22, Sgt. Eykel called Ms. Hardin and told her Animal Services would accept her appeal if she filed that day.
7. Ms. Hardin did file her brother's appeal later that day. Ex. D8. The appeal agreed that both dogs were off their property on June 19, explained that she had let them out to go potty and they ran to the street where people (one of whom was presumably Mr. Ogletree) were walking with their dogs, requested a penalty reduction, and sought to overturn Harley's removal order. Ex. D8.

8. We went to hearing on September 14, 2021.

Hearing Testimony

9. Sherry Hardin could not think of any steps she or the other Hardins took to contain Harley after the February order. However, since receiving the June violation notice and removal order, she has been leashing Harley and Mocha when they go outside. Mocha is good about going potty and coming back inside usually. On that day [June 19], Ms. Hardin had just gotten up and was not quite awake when she let the dogs out without their leashes. Before she knew it, they were off. Ever since then, she has put Harley and Mocha on leashes when they go out.
10. Ms. Hardin testified that they now have leashes by the front and back doors. They purchased these extra leashes, along with an exercise pen and tethers in August. The dogs hardly ever go outside except to go potty, but sometimes they use the pen to sun themselves. When they go outside, Ms. Hardin holds the leashes and stands on the porch or sidewalk. She is the main person responsible for letting the dogs out. When she is not home, her mother or nephew will put them on their leashes to let them out.
11. Ms. Hardin requested another chance with Harley. She believes it is not necessary to remove him. Using the leashes has not been a problem, and she has been able to keep Harley on the property since June. Despite Mocha and Harley being Mr. Hardin's dogs, Mr. Hardin is trying to put all of the responsibility on her. She has been trying her best to keep the dogs contained since February.
12. Mr. Hardin elected not to testify. Instead, he just muttered and cursed in the background and distracted Ms. Hardin from testifying.

Legal Standards

13. "Running at large," means "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.
14. KCC 11.04.230.I defines, as a nuisance, "Any vicious animal or animal with vicious propensities that runs at large at any time it is off the owner's premises and not securely leashed on a line or confined and in the control of a person of suitable age and discretion to control or restrain the animal."
15. The code which Animal Services seeks removal under, KCC 11.04.290.A.3, states:

Failure to comply with any requirement prescribed by the manager [in the 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.

16. 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

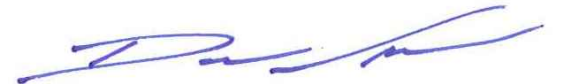
17. This case is straightforward. There is no dispute that the dogs got off the Hardin property on June 19 and were not restrained from approaching other dogs on the public street. For Mocha, that was a simple running at large violation with a \$50 penalty. However, as Harley had been previously declared vicious, he was a vicious dog running at large, which carries a \$500 penalty.
18. We do not find a penalty reduction in order. As we noted in our February 9 decision, Harley was not allowed to leave the property except on a leash, and recited to the potential consequences—monetary penalties, but also potential removal—if Harley escaped the property again, making it “foolish” to let Harley out without a leash. And we closed by explaining that our decision would become final and conclusive unless appealed to superior court by March 11. Ex. D12. Mr. Hardin elected not to appeal; therefore, Harley’s designation as a vicious dog, the need to contain him, and the containment terms themselves were set in stone. Yet Ms. Hardin could not think of a single step they took to contain the dogs between then and the June violations.
19. Mr. Hardin remained in an even more serious state of denial. Despite all contrary evidence from multiple neighbors describing the dogs escaping from the Hardin property, he claimed his dogs do not roam. He tried to shift the blame from his failure to contain his own dogs onto neighbors for walking their dogs down a *public* street. He first claimed the dogs did not get out on June 19, despite Ms. Hardin’s agreement that they did. Moreover, he still wanted to argue about whether Harley qualifies as vicious, which, again, he lost the right to do when he failed to file an appeal back in March. Ex. D2-003 n.4. He seems to have also tried to shift the blame to Ms. Hardin, when ultimately they are his dogs and his responsibility. And he assumed muttering and cursing in the background and distracting Ms. Hardin from testifying was an acceptable substitute for him actually testifying.
20. On these facts, we do not find any penalty reduction in order for Mr. Hardin.
21. We look at the removal order a little differently. We are the most exacting of Animal Services on removal orders, given what is at stake. We have overturned more removal orders than we have sustained. Although KCC 11.04.290.A.1 states that vicious animal may remain in King County “only” in upon compliance with the prescribed requirements, and while subsection A.3 employs mandatory “shall not be kept” language, A.3 also links the failure to follow the requirements to a crime.

22. In certain past scenarios, a person was following the compliance order, such as the term requiring a competent and capable person have the dog on a leash, and yet the dog broke loose from its collar and did something. Even though the *result* was a failure to contain, as the owner was complying with the order, we have often overturned the removal order. That is not the case here. The Hardins flaunted the October 2020 compliance order for Harley until the chickens came home to roost and they received more violations, penalties, and a removal order.
23. However, we have also been moved by a no-harm-no-foul argument, overturning removal orders where, say, a dog is not being kept in compliance with the order, but where the dog did not actually do anything aggressive after the compliance order went out, and the owner seems to have a solid plan for containment. Here, the complainant only asserted that June 19 was yet another instance of running at large; he did not assert Harley (or Mocha) did anything to endanger a person or their pet. And he elected not to testify at our hearing, leaving no evidence that Harley has gotten loose since June 19. Additionally, while Mr. Hardin still seems in denial, Ms. Hardin appears to have gotten the message and been diligent (since June) about leashing the dogs, especially Harley, when let out. Plus, the danger Harley poses as a Chihuahua is less than a larger dog would.
24. So, we will grant Ms. Hardin’s request for a second chance, and we overturn the removal order.
25. Looking forward, Mr. Hardin ensuring that his dogs are leashed when let out is important in two respects. First, if Harley runs loose again, the Hardins may be looking at another removal order, the outcome of which might be different from today’s. And second, if Harley runs at large again in the 12 months after the June 27 violation notice, the penalty would double from \$500 to \$1000.

DECISION:

1. We deny the Hardins’ appeal as to the violations and \$550 penalty contained in V21012243.
2. We grant the appeal as to the V21012244 removal order.

ORDERED September 27, 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 *October 27, 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 SEPTEMBER 14, 2021, HEARING IN THE APPEAL OF DAVID & SHERRY HARDIN, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS. V21012243 & V21012244-A21002793

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel 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	RASKC investigation report no. A21002793
Exhibit no. D3	Email from Mr. Ogletree, dated June 19, 2021
Exhibit no. D4	Online Complaint form of June 19, 2021 incident by Matthew Ogletree, dated June 19, 2021
Exhibit no. D5	Notice of violation no. V21012243-A21002793, issued June 27, 2021
Exhibit no. D6	Notice and order for removal no. V21012244-A21002793, issued July 1, 2021
Exhibit no. D7	Proof of Service
Exhibit no. D8	Appeal, received July 23, 2021
Exhibit no. D9	RASKC investigation report no. A20014461
Exhibit no. D10	Online Complaint form of October 15, 2020 incident by Kyle Miller, dated October 15, 2020
Exhibit no. D11	Notice of violation no. V20011281-A20014461, issued October 17, 2020
Exhibit no. D12	Hearing Examiner’s Report and Decision, dated February 9, 2021
Exhibit no. D13	Warning Notice V19009540-A19003334
Exhibit no. D14	Map of subject area

DS/lo

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V21012243 and V21012244**

DAVID & SHERRY 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 September 27, 2021.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Hardin, Sherry

Hardcopy

Ogletree, Mathew