

December 6, 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. **V21012422-A21003912**

KARA MORRISON

Animal Services Enforcement Appeal

Activity no.: A21003912

Appellant: **Kara Morrison**

Woodinville, WA 98072

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. Regional Animal Services of King County (Animal Services) issued Kara Morrison a notice of violation for her dog running at large, qualifying as vicious, and needing to be confined. Ms. Morrison does not contest the running at large, but challenged the viciousness designation. 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 the appeal.

Background

2. Animal Services issued Kara Morrison a notice of violation asserting that on August 9 her dog, Gus, was running at large, charged, and attempted to bite a person multiple times. Ex. D4. Ms. Morrison timely challenged the viciousness designation. Ex. D6. We went to hearing on November 18. Animal Services' representative joined the hearing a few minutes prior to closing statements.

Hearing Testimony

Testimony of Seth Talbott

3. Mr. Talbott testified that he has had two interactions with Gus. Once, Mr. Talbott was walking along the Morrison fence line and Gus followed him, inside the fence, barking aggressively.
4. More seriously, on August 9, as Mr. Talbott walked the street on a business call, Gus ran to him, jumped, and attempted to bite him about three times. Mr. Talbott tried kicking Gus away while yelling, "No!", but each time Gus just charged at him again. Ms. Morrison and her daughter heard the barking and screaming and came out to calm Gus down. They apologized to Mr. Talbott. Mr. Talbott walked back home, still on the call. He recounted the incident to his wife, who then left to discuss things with the Morrises.
5. Though Gus did not actually bite him, Mr. Talbott fears for his family's safety. They no longer walk on that street. He is also concerned that other neighbors told them they had expressed concerns about Gus directly to the Morrises but were unable to get the Morrises to manage the situation. Mr. Talbott filed a complaint with Animal Services. Ex. D2.

Testimony of Kara Morrison

6. On August 9, Ms. Morrison was outside her home, washing the windows. When she and her daughter heard barking, they ran out to the street. By the time they got to the altercation, it was over. Ms. Morrison calmed Gus down as he sat by the fence, and she repeatedly apologized to Mr. Talbott. After Mr. Talbott walked home, Ms. Morrison heard repeated honking outside her driveway; it was Ms. Talbott. Ms. Morrison repeatedly apologized to her as well.
7. About a year ago, the Morrises installed a fence across their property, including invisible fencing. Gus also wears a collar. Prior to the incident, they added wired fencing along the places in the fence that the Morrises thought Gus might be able to get out from. And their gate has been left open before.
8. After the incident, they added additional wired fencing. They have chosen not to chain Gus because of personal preference, though they did chain him up temporarily while they installed their fence.

9. Gus is a rescue dog, so there are things that the Morrises are still learning about him. They have never had any concerns with Gus around their kids or other smaller persons. Gus has escaped multiple times and the neighbors have called the Morrises to come and grab Gus. However, no neighbor has expressed concern to them about being intimidated by Gus.

Testimony of Todd Morrison

10. Mr. Morrison is not certain how Gus escaped on August 9, but the times either of their two dogs have gotten out, they had been able to dig holes under the fence. He has since added three layers of fencing. Even though Gus has not bitten anyone, Mr. Morrison acknowledges that Gus getting out is not a good situation, and he is very apologetic about Mr. Talbott's experience.
11. Mr. Morrison has not heard from any other neighbors that they are intimidated by Gus. Ms. Morrison even went to each neighbor's house to bring cookies, explain the August 9 incident, to ensure the neighbors felt safe and comfortable; no one expressed a concern about Gus being aggressive.
12. The Morrises have learned that Gus does not always have his collar on. When they notice a break in fencing, they immediately fix it. Mr. Morrison is apologetic that Mr. Talbott does not feel safe walking on their part of the neighborhood street, and he wants to do everything he can to keep Gus inside their property.

Legal Standards

13. Animal Services asserts that on August 9 Gus was "running at large," 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," 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. This is not disputed.
14. More seriously, Animal Services asserts that Gus 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," with "[a]ny 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. KCC 11.04.020.BB; KCC 11.04.230.H. This is disputed.
15. 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

16. We have not always required an actual bite to sustain a viciousness designation. The touchstone in the “vicious” definition is performing an act “endangering the safety of any person,” behavior which includes, but is expressly not limited to, “biting a human being” without legal provocation. Here, Gus endangered Mr. Talbott; lunging dogs have in several past cases, led to real injury even in the absence of a bite, when people less sure on their feet go down in the fracas.
17. Additionally, it is probably correct that, had Mr. Talbott, say, stayed still and not fought back, Gus would have bitten him. But that requires some extrapolation, and something is not quite adding up about the testimony. Mr. Talbott was apparently engaged in a serious altercation, with him having to—multiple times—fend off a dog actively trying to bite him. Yet he continued with a business call? That brings to mind one of the better Geico commercials,¹ but we are having some trouble picturing how Gus was really intent on biting, yet failed multiple times to land a bite on a person distracted by a phone call.
18. Thus, while we can say with certainty that Gus performed a vicious act, we cannot say with that level of clarity that Gus would have actually bitten Mr. Talbott. KCC 11.04.020.BB. And that matters because KCC 11.04.230.H. requires, in addition to having “exhibited” vicious behavior (which Gus did on August 9) a finding that the dog “constitutes” a danger. Typically, a single vicious act is sufficient. But, in every case we can recall upholding a viciousness designation, that single vicious act either caused actual injury (such as a bite or knock-down), or we were convinced the dog was truly trying to bite and was simply thwarted in its attempts, or there were additional threatening events.
19. There is some hearsay evidence that August 9 was not an isolated event. According to Mr. Talbott, Gus has apparently threatened other neighbors, and those neighbors have complained to the Morrisons to no avail. Testimony from one of those neighbors would have been critical, both to undercut the Morrisons credibility (as they steadfastly asserted that no one had complained about Gus doing anything more than running loose) and to show that the aggression Mr. Talbott experience from Gus was part of a pattern of Gus accosting people, not an isolated one-off. But on the testimony we have before us, while we can conclude that Gus performed a vicious act, we cannot conclude that Gus constitutes a danger.

DECISION:

1. We sustain the running at large violation.
2. We overturn the viciousness violation.

ORDERED December 6, 2021.



David Spohr, Hearing Examiner

¹ <https://www.youtube.com/watch?v=23B8LzNpjlq>.

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 *January 5, 2022*. 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 NOVEMBER 18, 2021, HEARING IN THE APPEAL OF KARA MORRISON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21012422-A21003912

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Kara and Todd Morrison, and Seth Talbott. 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 August 9, 2021 incident by Seth Talbott, dated August 10, 2021
Exhibit no. D3	RASKC investigation report no. A21003912
Exhibit no. D4	Notice of violation no. V21012422-A21003912, issued August 18, 2021
Exhibit no. D5	NVOC mailing/tracking history
Exhibit no. D6	Appeal, received September 13, 2021
Exhibit no. D7	Map of subject area

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CERTIFICATE OF SERVICE

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KARA MORRISON

Animal Services Enforcement Appeal

I, Jessica Oscoy, 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 December 6, 2021.



Jessica Oscoy
Office Manager

Eykel, Chelsea

Regional Animal Services of King County

Morrison, Kara

Hardcopy

Talbott, Seth/Jennifer

Hardcopy