

December 3, 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. **V21012539-A21004695**

**BETHANY AND ANDY DUCKWORTH**

Activity no.: A21004695

Appellants: **Bethany and Andy Duckworth**

[REDACTED]  
Maple Valley, WA 98038

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County  
*represented by* **Chelsea Eykel**  
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FINDINGS AND CONCLUSIONS:

Overview

1. Bethany and Andy Duckworth appeal a notice and order for their dog, Bella, running at large, trespassing on private property, qualifying as vicious, and needing to be confined. 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 deny their appeal but significantly reduce the fines.

### Background

2. Animal Services issued Ms. Duckworth a notice of violation asserting that Bella ran at large, trespassed private property, and attacked Maile Morgan's dog, Comet, and that Bella qualifies as vicious and needs to be contained. Ex. D8. The Duckworths timely appealed. Ex. D9.
3. Our October 20 notice for our November 17 hearing set deadlines for exhibits, the final one being November 10. However, the morning of the hearing, and one week after the cut-off, the Duckworths emailed multiple exhibits. These were untimely and were not entered into the record.

### Hearing Testimony

#### *Testimony of Maile Morgan*

4. Ms. Morgan and her husband, Marty Barber, are neighborhood friends of the Duckworths. Their properties set across SE 206<sup>th</sup> Street from each other. Ms. Morgan had, since the start of the pandemic, advised her 11-year-old son that if he sees Bella outside, he should grab their dogs if he can, but in any event to go inside the house and lock the door.
5. On September 16, as Ms. Morgan went out to walk, she saw Ms. Duckworth driving away. While Ms. Morgan was on her walk, her son messaged her to come home, because Bella was in their yard.
6. As Ms. Morgan jogged back home, she saw Bella on the street, about 20-25 yards west of her driveway. At that point Ms. Duckworth was at approximately the "1." on her map, with Bella at approximately the "2." Ms. Morgan called Ms. Duckworth, alerting her that Bella was out loose. Ms. Duckworth suggested that Ms. Morgan yell at Bella to "Go home!" Ms. Morgan then tried that.
7. However, instead of returning to the Duckworths, Bella turned to look at Ms. Morgan, growled, and started trotting east. Bella then darted up the Morgan yard toward the Morgan driveway. Ex. D6 (Bella's path). When Ms. Morgan got to the bottom of her driveway, she saw Bella lunge at Comet. Bella grabbed Comet's right hip and shook her like a rag doll. Ms. Morgan could see gravel and dust move. Comet was crying. Her other dog was barking, but did not intervene.
8. Ms. Morgan ran about 60 yards up to her sloped driveway to intervene. All the while Bella did not let go of Comet. When Ms. Morgan made it to the site, she screamed and kicked gravel at Bella and finally got Bella to release Comet. Comet lay on the ground, unable to move. Bella slowly jogged off the property, and Ms. Morgan called Ms. Duckworth again.
9. Ms. Morgan's brother, who lives next door, heard the screaming and came out to help her bring Comet inside. Comet was bloody, but Ms. Morgan was only able to find a wound on the inside of his leg. Since Comet has a thick coat, it was difficult to examine

- him, but at the time that was the only wound she saw. A veterinary friend advised Ms. Morgan to clean Comet's wound with hydrogen peroxide.
10. After about an hour, Comet drank some water, but was not eating. Ms. Morgan noticed that he was licking his outer part of his right hip and she noticed a second, larger puncture wound. Ex. D3. She took Comet to the vet the following morning. Ex. D4. She filed a complaint with Animal Services. Ex. D2.
  11. Prior to the incident, Ms. Morgan noticed that Bella was usually on a runner when the Duckworths' gate was open; however, more recently she had seen Bella off the runner, and this made her nervous. Ninety percent of the time Bella was barking. If the gate was open when Ms. Morgan walked past the Duckworths home, she would sweetly say, "Hey, Bella it is just me walking." Ms. Morgan would walk through the neighborhood often, and has been reasonable and easy-going around dogs; however, Bella makes her fearful enough not to go on walks anymore.
  12. There have been multiple incidents with Ms. Morgan having to text Mr. Duckworth that Bella was out loose. Ex. D7. On one of those incidents, Ms. Morgan was on her ATV; she had just turned it on to warm up when she saw Bella charging at her. Ex. D7-001 (Aug 29).
  13. In another incident, Ms. Morgan was at the bottom of her driveway, clearing brush, and the Duckworths were out with their dogs. It appeared as if Bella was going to grab Comet's back area, but Comet ducked; it was an aggressive action from Bella – one that she has not seen from another dog. Ms. Morgan felt uneasy about that altercation, but shrugged it off, thinking Bella was likely just overprotective of her owners, in their presence.
  14. Ms. Morgan does not recall the Duckworths communicating to her (prior to September 16) that Comet had been out loose or causing issues with Bella.

*Testimony of Bethany Duckworth*

15. On the day of the incident, Ms. Duckworth was driving her teenage daughter to basketball practice, when she saw Ms. Morgan walking on 206<sup>th</sup> Street. Soon thereafter, Ms. Morgan called Ms. Duckworth, belittling and yelling at her. Ms. Duckworth offered to have one of her renters corral Bella back home, but Ms. Morgan declined that offer.
16. Earlier that day, Ms. Duckworth recalled seeing Comet come down to their property and bark at Bella, who was at that point still on the Duckworth property. Ms. Duckworth texted Ms. Morgan, questioning if perhaps it was Comet that came down to their property first and provoked Bella. Ex. D7-002.
17. Ms. Duckworth testified that about a year ago she was walking with her toddler, who is now two-and-a-half years old. Comet bit him on the elbow, and he yelled, "No, Comet!"
18. Ms. Duckworth testified that ninety percent of the time when they walk in the neighborhood, the Morgan dogs come out to the road and bark at them. Multiple times

the Morgan dogs have even come onto the Duckworths' property to bark at them and their livestock. A week before the incident, Comet came to their fence (perhaps leashed, perhaps not) barking at Bella. A week after, Ms. Duckworth saw Comet come up to their fence line yet again.

19. On one occasion, Ms. Morgan and Mr. Barber were walking with an unleashed Comet, and Comet came down to the Duckworth property to bark at their dogs. Ms. Morgan insinuated that it was Ms. Duckworth that was not controlling *her* dogs. Ms. Duckworth realizes that she has stopped walking in the neighborhood because of fear of Comet; however, she did not report the incidents, even to Ms. Morgan. Ms. Duckworth believes that Comet's bite to her toddler's elbow may have contributed to Bella's anxiety.

*Testimony of Andy Duckworth*

20. Mr. Duckworth testified that he got his dogs to protect their livestock, and described the breed's characteristics. No one in their neighborhood has fencing around their property, and all the neighbors' dogs roam loose. It is a norm that the Duckworths have never found offensive, if perhaps a bit annoying. Mr. Duckworth has witnessed Comet out loose, chasing after bikers, and evening nipping them. Comet has provoked Bella for years. If Bella really wanted to hurt Comet, she would have.
21. The Duckworths were the first family to install fencing around their property last summer. Bella was kept on a runner for four years, but then the Duckworths hired a professional dog trainer to train Bella to maintain on the property, without the runner, once they had a fence installed. Mr. Duckworth admits that they need to be more diligent about closing the gate, as the renters sometimes forget to close it.

*Testimony of Marty Barber*

22. Prior to the hearing, Mr. Duckworth had not argued that it was *not* Bella, but perhaps their other dog of the same breed, that was involved in the attack. Ms. Morgan reported the altercation to Animal Services because that is what the veterinarian recommended.

Legal Standards

23. Was Bella trespassing, defined as a "domesticated animal that enters upon a person's property without the permission of that person"? KCC 11.04.230.K.
24. Was Bella "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.
25. Does Bella qualify 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.

26. 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.
27. One of the matters the Duckworths raised in their appeal statement was that the Morgan dogs had baited, taunted, and barked at Bella the day of the incident and many times before. Ex. D9 at 001. Although provocation is typically an affirmative defense, because “without provocation” is part of the viciousness definition, and because the issue was raised in an appeal statement, Animal Services bears the burden of showing, by a preponderance of the evidence, the lack of legal provocation.

#### Analysis

28. Mr. Duckworth’s attempt, the day of the hearing, to challenge whether it was Bella that went after Comet had more than a whiff of desperation and undercut their argument that Comet had come down to antagonize Bella, provoking Bella to respond. Identification is often an issue in a vicious dog appeal; in fact, it is often the *entire* basis for the challenge—that the cited dog was not involved in the attack. And where an appellant raises mis-identification in an appeal statement, we put Animal Services to the proof.
29. Here, however, in their October 5 appeal statement the Duckworths did not question whether it was Bella. Ex. D9. And “[t]he scope of an appeal shall be limited to matters or issues raised in the appeal statement and any amendments to the appeal statement the examiner may authorize.” KCC 20.22.080.G. Their initial appeal was not the Duckworths final opportunity to raise a new challenge; instead, our hearing notice closed with:

If the Duckworths would like to modify the issues or matters raised in the appeal statement, email that to [hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov) by **October 29, 2021**. If not, the issues for hearing will be those stated above and or contained in the original appeal statement.

We have no trepidation accepting Ms. Morgan’s identification of the dog who attacked Comet, Ms. Morgan having known Bella from years of neighborly interactions, and differentiating, at hearing, Bella from the Duckworths’ other dog, Grover. But again, the day of the hearing was not the time to raise identification as a challenge.

30. Typically appeals turn on witness credibility, figuring out which among conflicting eyewitness accounts of the same event(s) is most persuasive. Here we found all four witnesses credible and their accounts true. So, this case turns primarily on the *implications* of that testimony.

31. The critical piece here is “provocation,” perhaps the most judicially flushed-out concept in all of animal jurisprudence.<sup>1</sup>
32. Ms. Duckworth noted that a year and a half ago Comet bit her son. That is totally unacceptable. Ms. Duckworth did not mention whether Bella observed Comet do that, but even assuming Bella was right there watching, it would not be legal provocation for attacking Comet this September. For example, in *Stroop v. Day*, the court did not dispute that a dog is capable of remembering specific instances from the past, and it accepted that the bite victim had chased the dog with a fence post four to six weeks prior to the bite. 271 Mont. 314, 319, 896 P.2d 439 (1995). Yet the court ruled that that past event could not, as a matter of law, qualify as provocation for a bite four to six weeks later. That is even more true of an event from over a year ago.
33. Mr. Duckworth pointed to Bella being an Anatolian Shepherd, and characteristics of, and expectations for, the breed. However, the “provocation” inquiry is not whether, given Bella’s DNA, one would expect an Anatolian Shepherd to react the same way to the alleged incitement. Such a rule would create an unworkable system, based on supposed breed characteristics, like, “Well, pit bulls are bred to be aggressive, so my dog reacted no more aggressively than an average pit bull would.” Instead, the “provocation” inquiry “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)).
34. Similarly, the question is not whether, given years of what sounds like a really obnoxious dog coming down over the years and barking and occasionally trespassing, that *some* response by Bella was within reason. However, a key touchstone of courts’ analyses is that “provocation” requires the dog’s reaction be relatively proportional to the victim’s act. *Stroop* at 319; *Bradacs* at 273–75; *Kirkham* at 792.
35. Ours is not a situation where, say, Bella attacked Comet on the Duckworth property (where we likely would have concluded that Comet got what he deserved) or even at the street between the properties (where the analysis would have been nor more nuanced). Additionally, sometimes an altercation ends up in one place, but only after starting in another. Here, even assuming that Comet had earlier come down and barked at Bella, ours was not a scenario of Bella following Comet in hot pursuit and catching him. Instead, when Ms. Morgan got near her home, Bella was in the middle of the street, with Comet nowhere in the vicinity. Only after some significant period of time passed—at least enough time for Ms. Morgan to call Ms. Duckworth, Ms. Duckworth to suggested yelling at Bella to go home, and Ms. Morgan then following that advice, did Bella then decide to run way up onto the Morgan property to get at Comet. Ex. D6.
36. And what Bella did when she got there is critical. Mr. Duckworth characterized Bella as delivering a “warning nip” to Comet. A “nip” would fit with what Ms. Duckworth described Comet doing to her son. But that is not at all what happened on September 16.

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<sup>1</sup> As our High Court instructs us, when analyzing “terms of art” we look to “well-established meanings” of words in their specific context. *State, Dept. of Ecology v. Theodoratus*, 135 Wn.2d 586, 589, 957 P.2d 1241 (1998).

Bella did not deliver a nip and then quickly release. Instead, Bella grabbed Comet shook her. A shake is much more serious than a nip and can lead to tearing and real injury. And even then, Bella did not release, continuing to bite Comet the entire time it took Ms. Morgan to cover a long, uphill distance, and only finally releasing Comet when Ms. Morgan got within a few feet and kicked towards Bella.

37. We do not discount the Duckworths' testimony about Bella being protective of her flock. However, the code criteria for a viciousness designation is not about mean-spiritedness. In fact, it makes it even more troubling if Bella interpreted her role such that she thought it had a duty to charge way up the Morgan driveway, almost to the Morgan house, to violently shake a dog she felt posed a threat to her flock.
38. In sum, Bella performed a vicious act, grossly disproportionate to any incitement, and constitutes a danger. And Bella was both off her property and not restrained from approaching a bystander or other animal and on the Morgan property without permission. We uphold the notice and order.
39. We do, however, find a significant penalty reduction is order. September 16 was not an aberration in that Bella unexpectedly broke loose; Bella had a history of getting loose. However, the Duckworths painted a compelling picture—not disputed by Ms. Morgan or Mr. Barber—that dogs running free was the natural and accepted course of events in the neighborhood. And while at hearing Ms. Morgan recounted some trepidation with Bella prior to September 16, it is clear she never conveyed this to either Duckworth. The text stream in fact, shows just the opposite, with heart emojis and concern *for* Bella (that Bella would wander off) and not *about* Bella. Ex. D7.
40. So, we see nothing that should have indicated to the Duckworths any heightened need to contain Bella prior to September 16. Thus, September 16 was not caused by any irresponsible dog ownership. The Duckworths have put up fencing and taken other steps to prevent a repeat. Tacking on significant monetary penalties on top of those outlays seems unnecessary.
41. Finally, the Duckworths described Comet chasing and even nipping at passersby and biting their son. Ms. Duckworth was clear that they never conveyed this unacceptable behavior to Ms. Morgan or Mr. Barber. And it sounds like Ms. Morgan and Mr. Barber have added a containment fence and kept their dogs in check. That is wise, or next time it might be them receiving the violation notice.

DECISION:

We deny the Duckworth's appeal, except that we reduce the penalty from \$600 to \$150.

ORDERED December 3, 2021.



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David Spohr  
King County 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 *January 3, 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 17, 2021, HEARING IN THE APPEAL OF BETHANY AND ANDY DUCKWORTH, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21012539-A21004695**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Marty Barber, Andy and Bethany Duckworth, Chelsea Eykel, and Maile Morgan. 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 September 16, 2021 incident by Maile Morgan, dated September 17, 2021
Exhibit no. D3	Photograph of Comet’s injuries
Exhibit no. D4	Vet bill, dated September 17, 2021
Exhibit no. D5	RASKC investigation report no. A21004695
Exhibit no. D6	Diagram of where on the Morgan’s property the incident happened
Exhibit no. D7	Text messages between the Morgans and Duckworths
Exhibit no. D8	Notice of violation no. V21012539-A21004695, issued September 22, 2021
Exhibit no. D9	Appeal, received October 8, 2021
Exhibit no. D10	Map of subject area



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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V21012539-A21004695**

**BETHANY AND ANDY DUCKWORTH**

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 3, 2021.



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Jessica Oscoy  
Office Manager

**Duckworth, Bethany/Andy**

Hardcopy

**Eykel, Chelsea**

Regional Animal Services of King County

**Marty Barber, Maile Morgan**

Hardcopy

**Regional Animal Services of King County**