

February 1, 2022

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

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

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V21012716-A21005841**

ZINA BENIN

Animal Services Enforcement Appeal

Activity no.: A21005841

Appellant: **Zina Benin**

[REDACTED]
Newcastle, WA 98059

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Rebecca Smokoska**
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. Zina Benin appeals a Regional Animal Services of King County violation notice for her dog running at large. 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 her appeal.

Background

2. On November 24, 2021, Animal Services issued a violation notice to Zina Benin for her dog, Bobby, running at large. Ex. D2. Ms. Benin filed an appeal on December 17, 2021. Ex. D8. We went to hearing on January 26, 2022.

Hearing Testimony

Testimony of Joel Wade

3. Joel Wade testified that on November 18 he saw the little brown dog [Bobby] running off-leash by the front entrance. Bobby's owner [Zina Benin] and a group of people were talking by a car nearby. In the past, Ms. Benin had aggressively interacted with Mr. Wade, so Mr. Wade sneakily took a video of the dog running loose. Ex. D15. He did not alter the video.
4. Mr. Wade has had multiple interactions before with Bobby. Mr. Wade filed a complaint about Bobby to Animal Services in the past; this turned into a very aggressive situation between himself and Ms. Benin. Another time, in the apartment's garage, Mr. Wade almost hit Bobby when Bobby darted out in front of his car, as Ms. Benin gave chase. Mr. Wade has seen Bobby off leash in the apartment shared spaces ten to fifteen times.
5. On rebuttal, Mr. Wade testified that on November 18 his partner, Melodee Dealy, came to his apartment and told him that Bobby was off-leash and running around, prompting him to take the video.

Testimony of Elina Benin

6. Elina Benin testified that when her mother, Zina Benin, received the report from Animal Services, she did not have the video; they only had a screenshot from the video. Ex. D15. The Benins' thought it was an old photo of Bobby. The Benins later received the video with the staff report and reviewed it.
7. Ms. (Elina) Benin testified that during the incident, Zina was about to pick up Bobby. Bobby was very excited to see Zina, so he jumped out of the car. Bobby had his harness on; he just slipped out. In the video, Zina is saying "come here" to Bobby. Zina was about to pick up Bobby. This was the moment when Mr. Wade walked by. Zina Benin did not purposely walk Bobby without a leash. It was a spur of the moment.
8. Ms. Benin testified that her mother does not walk Bobby off leash. This is a rough situation. Mr. Wade curses at her mother.

Testimony of Zina Benin

9. Zina Benin testified that Mr. Wade has never approached her, and she has never exchanged any words with him. He has a vendetta against her. Zina Benin testified that she would never disobey the rules. She always has her dog on a leash, unless it is a quick

accident. Mr. Wade has only done harm and he has been uncivil. Mr. Wade is being unfriendly.

10. Ms. (Zina) Benin was in the load-unload zone at the time of the November 18 incident. Bobby was very excited to see her. Bobby was in her friend's daughter's lap in the car and jumped out. In the video, you can hear the conversation between Ms. Benin and her friend. Ms. Benin got the leash and restrained Bobby right away.

Testimony of Melodee Dealy

11. Melodee Dealy testified on rebuttal that on the day of the incident, she was passing through the apartment's shared space when she saw Bobby running around off leash. She knew it was Bobby because she has had issues with Bobby feuding with her dogs in the past. She went upstairs and told Mr. Wade about Bobby running loose.

Legal Standards

12. Animal Services asserts that on November 18 Bobby 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.
13. 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

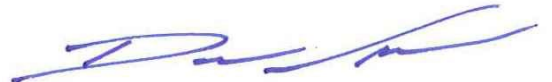
14. The analysis here is straightforward. We have consistently ruled that common areas, such as lobbies, hallways, and walkways, do not qualify as "the premises of the owner" for purposes of KCC chapter 11.04, even though only a subset of people (owners, tenants, invitees, etc.), and not the general public, are allowed in such areas. And on November 18 Bobby was off his premises and not under the control of the owner, or competent person. We sustain the violation.
15. While we often reduce the penalty for a \$500 viciousness designation or for a \$250 licensing violation, we rarely reduce a baseline, \$50 nuisance violation penalty. We conceivably could have reduced it here if, as the Benins testified, it was a spur of the moment thing where Bobby jumped out and the Benins were quickly able to retrieve him. But that is not what happened. Instead, we find that, more likely than not, Bobby was loose long enough for Ms. Dealy to walk by the entrance, make it up to her apartment, and tell Mr. Wade, and then for Mr. Wade to grab a cell phone, make it back to the entranceway, and videotape a still-unleashed Bobby. We do not reduce the penalty.

16. Obviously, these parties do not like each other, and they seem incapable of resolving their disputes on their own. If anything, the conflict seems to be escalating. A skilled mediator might be able to reverse the trend and help the parties more peaceably co-exist. The parties might wish to consult <https://kingcounty.gov/depts/alternative-dispute-resolution.aspx> or <https://kcdrc.org/> to see whether low- or even no-cost mediation might be an option.

DECISION:

We DENY Ms. Benin’s appeal.

ORDERED February 1, 2022.



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 *March 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 JANUARY 26, 2022, HEARING IN THE APPEAL OF ZINA
BENIN, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.
V21012716-A21005841**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Rebecca Smokoska, Joel Wade, Elina Benin, Zina Benin, and Melodee Dealy. 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	Notice of violation no. V21012716-A21005841, issued November 24, 2021
Exhibit no. D3	NVOC mailing/tracking history
Exhibit no. D4	RASKC investigation report no. A21005841
Exhibit no. D5	Initial email received from J. Wade, dated November 20, 2021
Exhibit no. D6	Online Complaint form of November 18, 2021, incident by Joel Wade, dated November 23, 2021
Exhibit no. D7	Screenshot of dog in video submitted by J. Wade
Exhibit no. D8	Appeal, received December 17, 2021
Exhibit no. D9	Notice of violation no. V21012716-A21005841, issued November 24, 2021
Exhibit no. D10	NVOC mailing/tracking history
Exhibit no. D11	RASKC investigation report no. A21002374
Exhibit no. D12	Online Noise Complaint form by Joel Wade, dated May 25, 2021
Exhibit no. D13	Appeal, received June 21, 2021
Exhibit no. D14	Pet License Receipt submitted by Z. Benin
Exhibit no. D15	Video submitted by J. Wade of Bobby running at large on November 18, 2021

DS/lo

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21012716-A21005841**

ZINA BENIN

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 February 1, 2022.



Lauren Olson
Legislative Secretary

Benin, Zina/Elina

Hardcopy

Melodee Dealy, Joel Wade

Hardcopy

Smokoska, Rebecca

Regional Animal Services of King County