

April 6, 2022

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file nos. **V21012753 & V22012850**

BRYAN SAXON

Animal Services Enforcement Appeal

Activity no.: A21006220 & A22000240

Appellant: **Bryan and Lyn Saxon**

[REDACTED]
Issaquah, WA 98027

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Rebecca Smokoska**
Regional Animal Services of King County
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FINDINGS AND CONCLUSIONS:

Overview

1. This case involves the Saxons' appeal of two notice and orders. After hearing the witnesses testimony and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we uphold most of the violations, but we reverse a viciousness designation, downgrade a vicious-animal-running-at-large to a simple running-at-large, and reduce the licensing-related penalties.

Background

2. On December 12, 2021, Regional Animal Services of King County (Animal Services) issued Bryan Saxon violation notice V21012753-A21006220 for his three dogs. For Bamboo, it was being unlicensed. For Hanna Mae, being unlicensed and trespassing on private property. And for Huckleberry, being unlicensed, trespassing on private property, and qualifying as vicious and thus needing to be confined. Ex. D2. Bryan and Lyn Saxon appealed on December 27. Ex. D5.
3. On January 18, 2022, Animal Services issued Bryan Saxon violation notice V22012850-A22000240 for Hannah Mae running at large, and for Huckleberry being a vicious dog running at large. Ex. D8. The Saxons appealed on February 2, not disputing that the dogs got loose that day, but noting that it was only for a few minutes and questioning whether the dogs' mere presence on someone else's driveway should result in such a hefty fine. Ex. D11.
4. We held our hearing on March 23.

Hearing Testimony

Testimony of Douglas Oien

5. Douglas Oien testified that on December 11 he left his house to go on a run. Mr. Oien noted that in the past, if Huckleberry hears anyone come in or out of the Oien front door, he starts barking. But that day Mr. Oien did not hear any barking.
6. As Mr. Oien walked up his driveway and got within about six feet of the Saxon gate, suddenly Huckleberry and Hanna Mae came out and were about a foot away from Mr. Oien. Mr. Oien was totally startled, and it seemed as though Huckleberry was startled too. Huckleberry stood and bared his teeth at Mr. Oien for about thirty to forty seconds. Hanna Mae, who was next to Huckleberry, just stood there. Huckleberry backed up and then turned around and ran away with Hanna Mae.
7. Mr. Oien went back inside and filed the complaint. This was the only incident between Mr. Oien and Huckleberry where he was concerned about potentially being bit. During this encounter, Mr. Oien did not think Huckleberry was going to rip him apart, just sink his teeth into him.
8. There were a couple dozen prior times when Huckleberry had come on the Oien property, ran circles around Mr. Oien, and tried to grab at his heels or pants. During these encounters, if there was a stick nearby, Mr. Oien would use it to keep Huckleberry away. On such occasions, Mr. Oien was only concerned about his pants getting ripped, not being injured.
9. Since the December incident, there have been six times when Mr. Oien has heard something that sounds like a dog fight coming from the Saxon property. When Huckleberry gets out and confronts another neighbor's German Sheperd, the dogs are

extremely aggressive. The Saxons have had to physically get Huckleberry; he is not under voice control when distracted.

10. Huckleberry started escaping from the Saxon property as soon as they got him. This was before the Hillbergs filed a complaint. Last week, the Saxon cats were on Mr. Oien's property. Mr. Oien did not file another complaint, but he wants the animals out of his yard. He clarified that, since January 26, the Saxon dogs have not been out.

Testimony of Lyn Saxon

11. Lyn Saxon testified that on that December day, the Saxons left the gate open while they ran to the grocery store. Ms. Saxon questioned whether the incident between Mr. Oien and Huckleberry happened, because she has never seen Huckleberry be aggressive. Huckleberry is exuberant, barks at everything, and loves sticks. In comparison, Hanna Mae is mellow.
12. She explained that they have the gate to keep cars out, not to keep their dogs in. After the November 2019 complaint, the Saxons were still leaving the gate open. In the past, when the Saxons drove into the yard, they were not good about making sure the dogs were contained. Now, when the Saxons return from being out, they put the dogs in the house before they open and shut the gate. At this point the dogs are not off the property.
13. The Saxons have lived on the same property for twenty-seven years. Douglas Oien's father, Jim Oien, lived at the Oien property until he passed away this summer. The elder Mr. Oien loved the Saxon dogs and gave the Saxons permission to let their dogs onto his property to access Issaquah Creek. The Saxons would open their gate, let the dogs go to the Oien property, and then call them back. She wishes Douglas Oien would have told them that he did not want the dogs on his property. She knows that Mr. Saxon can be unapproachable. There were ample opportunities for Mr. Oien to approach her about this issue.
14. The Saxons have been in a water dispute with one set of neighbors, the Hillbergs, since 2017. Additionally, Mr. Chancellor, another neighbor, took Mr. Saxon to court for harassment. Ms. Saxon believes the neighbors, except for the Oiens, are in cahoots. The Saxons have had animals on their property for about twenty-seven years, but only recently have they received complaints about the dogs. The Saxons recently spent twenty thousand dollars to put up a fence, which will be done by the end of April. This will make their borders secure.
15. Ms. Saxon is emotional about this incident because the dogs are her babies. The Saxon dogs do not wear collars unless they are off their property. Ms. Saxon agreed their dogs bark at the neighbors' dogs.

Testimony of Bryan Saxon

16. Bryan Saxon testified that he has never seen Huckleberry attack anyone. Mr. Oien has never told Mr. Saxon to keep the dogs off the Oien property. Huckleberry likes to jump and play with sticks. The Saxons are now taking this seriously. The dogs were not

licensed, but they are now licensed. Mr. Saxon did not threaten any Animal Services officers.

Legal Standards

17. In V21012753, Animal Services asserts:
 - A. That none of the Saxons' three dogs were licensed as of the December encounter, in violation of KCC 11.04.030.A, which requires all dogs eight weeks old and older be licensed and registered. The Saxons have since licensed each dog.
 - B. On that day Huckleberry and Hannah Mae trespassed, defined as "domesticated animal that enters upon a person's property without the permission of that person," KCC 11.04.230.K. The Saxons do not dispute this.
 - C. That Huckleberry qualifies as vicious, defined 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," with the violation itself framed as, "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." KCC 11.04.020.BB; .230.H. The Saxons dispute this.
18. As to V22012850, Animal Services asserts that in January Huckleberry and Hannah Mae got loose again and ran at large.
 - A. For Hannah Mae the violation 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..
 - B. Because Huckleberry had earlier been declared vicious, the running at large violation was the more serious KCC 11.04.230.I, "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."
19. 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

Credibility and Factual Findings

20. What stood out about the Saxons was a deep state of denial and consistent blame-shifting. In their initial appeal statement, they blamed the December altercation on Mr. Oien threatening their dogs. Ex. D5 at 002. That is breathtaking. Mr. Oien did nothing more that day than attempt to go for a jog, only to be accosted by Huckleberry. And after the dogs got loose again a month later, their second appeal blamed Mr. Oien for not understanding that Huckleberry just wanted to be pet, and accused Mr. Oien of harassing them. Ex. D11.
21. It did not get any better for the Saxons at hearing. Richly, they blamed Mr. Oien for not approaching them earlier to let them know their dogs were no longer welcome on his property. Again, Ms. Saxon admitted that Mr. Saxon can be “unapproachable.” The Animal Services officer who tried talking to Mr. Saxon reported receiving an earful of yelling, name-calling, and threats. Ex. D3 at 002 n.1. And Ms. Saxon described their ongoing conflicts with not one but two other sets of neighbors (the Hillsbergs and Mr. Chancellor). Why would Mr. Oien want any piece of that?
22. The Saxons continued digging their hole. Ms. Saxon offered a conspiracy theory that the neighbors are in cahoots against the Saxons. Mr. Saxon minimized Huckleberry’s aggressive behavior as simply jumping and playing with sticks. In sum, we found virtually nothing credible about the Saxons.
23. Mr. Oien was at the opposite end of the credibility spectrum. We carefully scrutinize a complainant’s testimony for embellishment, either purposefully or simply that, in the heat of an altercation and with adrenaline flowing, witness accuracy drops significantly after a threat appears and the recipient’s focus dramatically narrows. Yet there was nothing about his testimony that gave us real pause.
24. Instead of laying it on thick with some dramatic picture of a marauding dog terrorizing the neighborhood, he was clear that December was the only time he felt really threatened by Huckleberry. And rather than some thin-skinned individual who might (due to some deep-seated fear of dogs or generally fearful temperament) read too much into a situation, he noted that in past times where Huckleberry trespassed on his property and accosted him, Huckleberry was only trying to grab at his heels or pants and not trying to injure him...and he seemed unperturbed by that, beyond a concern that Huckleberry might harm his wardrobe.
25. Mr. Oien was concerned that Huckleberry would bite him (and not just his clothes) in December. He described Huckleberry staring and baring teeth for an extended period of time. (Conversely, he was clear that Hannah Mae did nothing aggressive, which again demonstrates that he understands the difference between a threatening dog and a nonthreatening one, and that he does not simply conflate a dog’s mere proximity with actual aggression.) But there too, he recognized that even that day was not a situation where Huckleberry charged at him, but instead where he and Huckleberry startled each other. And he did not think Huckleberry would try to rip him apart, only sink his teeth

into Mr. Oien. And he clarified that was what he *thought* Huckleberry would do, not that Huckleberry actually tried to bite him.

26. In sum, we found Mr. Oien’s recitation of the December altercation persuasive, and we adopt that as our facts. We now apply the law to those facts.

Legal Application of Those Findings

27. Jurisdictions using the state’s system have a potentially dangerous dog category, one that includes approaching a person “in a menacing fashion or apparent attitude of attack.” RCW 16.08.070(1). Huckleberry certainly menaced Mr. Oien in December. And that would be sufficient to uphold a potentially dangerous dog designation.
28. However, the County does not operate under that system. The County’s “vicious” designation (quoted above) is a higher legal standard than “potentially dangerous.” The fact that Huckleberry did not actually deliver a bite is not itself dispositive; the code does not require an actual bite to sustain a viciousness designation, given the “including, but not limited to” language in the County definition. However, we consistently require something more than just menace. Where an altercation did not result in actual contact, our viciousness rulings have tracked RCW 9A.28.020’s definition of “criminal attempt,” which requires performance of an “act which is a substantial step toward the commission of that crime.” In the dog context, a dog must take some step towards contact, such as a lunge, and not simply bark menacingly in mere proximity. Given Mr. Oien’s measured testimony, Animal Services has not met its burden to show that Huckleberry qualifies as vicious.

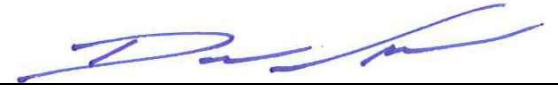
Other Matters

29. For V21012753, while none of the three Saxon dogs were licensed as of the December incident, the Saxons subsequently license them. Where a dog is unlicensed as of the date of violation but licensed before the date of our hearing, we typically reduce the penalty. Here we reduce each of the \$125 violations to \$60.
30. V22012850, because we overturn Huckleberry’s viciousness designation with respect to the December incident, Huckleberry was not a vicious dog running at large in January, but only (like Hannah Mae) a regular dog running at large. The penalty for a non-vicious dog running at large should have been \$50, not \$500.

DECISION:

1. As to V21012753, we grant the Saxons appeal as to Huckleberry’s viciousness designation, deny it as to all other violations, and reduce the licensing-related fines. The total penalty due under V21012753 is not \$975 but \$280.
2. As to V22012850, we uphold the violations, except that we note that, having tossed out Huckleberry’s viciousness designation, the penalty for Huckleberry running at large should have been \$50, not \$500. The total penalty due under V21012850 is not \$550 but \$100.

ORDERED April 6, 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 *May 6, 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 MARCH 23, 2022, HEARING IN THE APPEAL OF BRYAN SAXON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS. V21012753 AND V22012850

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Rebecca Smokoska, Douglas Oien, Bryan Saxon, and Lyn Saxon. 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. V21012753-A21006220, issued December 12, 2021 |
| Exhibit no. D3 | RASKC investigation report no. A21006220 |
| Exhibit no. D4 | Online Complaint form of December 11, 2021 incident by Douglas Randolph Oien, dated December 11, 2021 |
| Exhibit no. D5 | Appeal, received December 27, 2021 |
| Exhibit no. D6 | RASKC investigation report no. A21005360 |
| Exhibit no. D7 | Online Complaint form of October 25, 2021 incident by Douglas Randolph Oien, dated October 25, 2021 |
| Exhibit no. D8 | Notice of violation no. V22012850-A22000240, issued January 18, 2022 |
| Exhibit no. D9 | NVOC mailing/tracking history |
| Exhibit no. D10 | Online Complaint form of January 12, 2022 incident by Douglas Randolph Oien, dated January 12, 2022 |
| Exhibit no. D11 | Appeal, received February 2, 2022 |
| Exhibit no. D13 | RASKC investigation report no. A19008069 |
| Exhibit no. D14 | Photographs of submitted by reporting party, Dale Hillberg for A22008069 |

April 6, 2022

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V21012753 & V22012850**

BRYAN SAXON

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 April 6, 2022.



Lauren Olson
Legislative Secretary

Randolph Oien, Douglas
Hardcopy

Saxon, Bryan/Lyn
Hardcopy

Smkoska, Rebecca
Regional Animal Services of King County