

July 21, 2022

**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. **V22013101-A2201881**

CATHERINE CASTRO

Animal Services Enforcement Appeal

Activity no.: A22001881

Appellant: **Catherine Castro**

[REDACTED]
Bellevue, WA 98007

Telephone: [REDACTED]

Email: [REDACTED]

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
Telephone: (206) 263-5968
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FINDINGS AND CONCLUSIONS:

Overview

1. Catherine Castro appeals a violation notice for her dog, Chico, qualifying as vicious and needing to be confined. Although Ms. Castro was not credible, after hearing all witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the arguments and the relevant law, we cannot conclude that Animal Services has quite met its burden of proof. We thus grant Ms. Castro's appeal.

Pre-Hearing Background

2. On April 15, Adara Peterson filed a complaint after Chico injured her left hand. Ex. D2. Ms. Peterson sought medical attention, requiring multiple stitches and surgery to repair a dislocated finger. Ex. D3 and D4. The property's Assistant Manager, Angela Salas, provided a written statement regarding the concerns that other neighbors have expressed on Chico's aggressiveness. Ex. D6. On April 19, Animal Services issued Ms. Castro a violation notice. Ex. D7.
3. Ms. Castro timely appealed. Ex. D8. On May 10, we mailed and emailed notice of our June 8 hearing.
4. On June 7, Ms. Castro emailed to request that we reschedule the next day's hearing due to her 13-year-old grandson, Harrison, being seriously ill. (Harrison was the person walking Chico on April 14.) She also wrote that she did not receive anything from us in the mail. We replied and requested Ms. Castro to confirm her correct mailing address, which she did. The address on file was her correct mailing address.
5. Ms. Castro continued with another chain of emails. In one she wrote that she was unaware of prehearing submittal deadlines and that she had not received Animal Services' staff report. In another, she claimed that she was not aware that she was able to present exhibits or have others attend the hearing with her, as the email she received did not include an attachment. (We confirmed that the email had, in fact, included the attachment.) Her final email switched to *her* being sick.
6. We denied her rescheduling request via email the evening of June 7. Ms. Castro called our office the morning of June 8; staff advised her she could explain the situation at the hearing.

June 8 Hearing

Testimony of Chelsea Eykel

7. Chelsea Eykel from Animal Services testified that on May 25 she emailed the staff report to our office and Ms. Castro. On the same day, Sgt. Eykel mailed a hard copy of the staff report to Ms. Castro. Within a day or two of sending out the staff report, Sgt. Eykel received a call from Ms. Castro. Sgt. Eykel played a June 7 voicemail from Ms. Castro where Ms. Castro said she was working with an attorney and was concerned her testimony could be used against her in an eviction and that her neighbor should not be at the hearing. Ms. Castro's voicemail did not mention anything about illness or not having received any documents.

Testimony of Catherine Castro

8. Catherine Castro believes Animal Services is biased against her. Ms. Castro and her grandson have been sick since April. Her mailbox at her apartment has been unlocked, so she never received the physical copy of the staff report. She claimed again that there were no attachments in the email she received from Animal Services. (Animal Services did attach the staff report to its May 25 email to the Examiner and Ms. Castro.)

Testimony of Adara Peterson

9. Adara Peterson testified that on April 14 she left her apartment and walked down the sidewalk to go to the communal laundry room. She quickly turned a corner and came in contact with Harrison and a leashed Chico. Chico jumped on his hindlegs. Ms. Peterson guessed he jumped because she was in his bubble and because he is aggressive. Ms. Peterson has never seen Chico act calm.
10. While trying to defend herself, she was bit. Chico's mouth came in contact with Ms. Peterson's hand because he was on his hindlegs. Chico bit her. Ms. Peterson grabbed her injured hand and stepped back. As she was trying to walk away, Chico lunged at her a second time but did not again make contact. During the entire encounter Chico was barking ferociously, and Ms. Peterson was screaming.
11. Harrison eventually got Chico under control and brought him to his apartment. A few moments later, Ms. Castro came around the corner and asked Ms. Peterson what had happened. Ms. Peterson calmly explained the situation. Ms. Peterson did not feel safe letting go of her hand. Ms. Peterson asked Ms. Castro for her contact information, but Ms. Castro declined to provide that. Ms. Castro offered to drive Ms. Peterson to the hospital, but Ms. Peterson declined that offer.
12. Ms. Peterson's sister, Ms. Rowett, drove her to the emergency room, where she got two stitches and was x-rayed. She slept with a finger splint the first night. The next day she went to a specialist who performed surgery and eleven stitches on Ms. Peterson's fingers. She wore a soft cast for two weeks, and she was unable to return to work until May 7. Ms. Peterson is still unable to fully use her left hand.
13. On a day prior to the incident, while Ms. Peterson was walking her dogs, Chico attacked the blinds in the Castro apartment. During another interaction, Ms. Peterson was walking her dogs while Harrison and Chico were in Ms. Castro's car. Chico noticed Ms. Peterson and stepped over Harrison to bark at her from inside the car.

Testimony of Brin Rowett

14. Brin Rowett, Ms. Peterson's sister, testified that on the date of the altercation, she was pumping gas at the station on the other side of the apartment fence. Ms. Rowett was about to get into her truck when she heard barking and screaming. She recognized the barking. She got in her car and drove through the entrance of the apartment parking lot and saw her sister crouched, holding her hand, and Ms. Castro talking to her. As Ms.

Rowett approached, she heard Ms. Castro say she did not know why Harrison would not have had a hold of Chico.

15. Ms. Rowett tried to get Ms. Peterson to stand up, but she was shaken. Ms. Peterson did not want to look at her hand, and she was worried that Ms. Castro was mad at her. Ms. Rowett knew they could not afford an ambulance, so she drove Ms. Peterson to the emergency room. Ms. Rowett called the apartment building manager, who told her to contact Animal Control.
16. Prior to this incident, Ms. Rowett had encountered Harrison and Chico, who has barked at her.

End of June 8 Hearing and Interactions Prior to June 30 Hearing

17. At the end of Animal Services presentation, Ms. Castro said that she was not prepared to proceed and requested she be given additional time to submit exhibits and offer testimony. Erring on the side of reasonable accommodation for a child with a disability and Ms. Castro's assertion that she too is disabled, and in case Ms. Castro had really not received Animal Services' materials in advance of the hearing, we granted her request.
18. We orally explained that our office would send a new notice that day or the next. We stated that if, by the following Tuesday (June 14), Ms. Castro had not received our new notice, along with a copy of Animal Services' staff report and exhibits, it would be on her to let us know; otherwise, we would treat the material as being delivered to Ms. Castro.
19. We explained that we would give Ms. Castro until June 21 to submit any documents. We then discussed a new hearing date, with everyone agreeing to June 30. And we granted Animal Services' request that, since we were granting Ms. Castro's demand to hold a second hearing, we would start with Ms. Salas (an apartment manager), a witness who had initially been unavailable.
20. Later that afternoon we emailed notice of our June 30 hearing, along with Animal Services' exhibits. The notice gave Ms. Castro until June 21 to submit any exhibits and/or an amended appeal statement.
21. June 21 came and went without Ms. Castro sending anything. The evening of June 28, Ms. Castro emailed us exhibits. Ex. A1. On June 29, the day prior to our resumed hearing, Ms. Castro called requesting an extension to submit her exhibits due to her disabilities, her cards being hacked, and needing to use a public computer to submit her exhibits (per phone log). Staff responded, over the phone and via email, that she could make that request during the hearing the next day.

Hearing Testimony June 30

Hearing Opening

22. At the beginning of our June 30 hearing, Ms. Castro claimed that she did not know about the June 21 deadline to submit exhibits. When we reminded her that we had, in addition

to putting that in our notice, orally informed her of the June 21 deadline at the end of our June 8 hearing, she flatly denied that we had ever told her that. Animal Services did not object to entering exhibit A1 into the record, but requested that we also include a voicemail from Ms. Castro, which we did. Ex. D10.

Testimony of Angela Salas

23. Ms. Salas is the property assistant manager. She testified that on March 28 she was posting notices around the property. As she came to Ms. Castro's building, she saw Harrison walking Chico and holding onto Chico's leash and collar for extra grip. Ms. Salas kept her distance because Chico was aggressively barking and lunging towards her. She was afraid that Harrison would lose grip of the leash and Chico would attack her.
24. Ms. Salas alerted her supervisor about Chico's aggressive behavior and was instructed to email Ms. Castro to explain the incident. Ms. Castro acknowledged the email, but expressed feelings of unfairness and noted that Chico was their emotional support animal. For everyone's safety, Ms. Salas and Ms. Castro verbally agreed that Chico would only be walked by an adult.
25. Ms. Salas has also had other residents complain about Chico and that they are afraid to walk their dog on the property. Management has given Ms. Castro notice to remove Chico from the property.
26. Recently, Ms. Castro knocked on Ms. Salas's door. Ms. Salas did not open the door, but looked through the peephole. There was commotion outside, so Ms. Salas looked outside her window and witnessed Ms. Castro run after Chico, who was leashed under a carport. Ms. Castro was struggling to control Chico as residents walked by.

Testimony of Catherine Castro

27. Ms. Castro testified that her grandson, Harrison, is special needs and hard of hearing; Chico is his service dog, and Harrison is allowed to walk him. She asserts that she and Harrison are both covered under ADA. Prior to moving to their current apartment, they lived in Springhill Suites for a month and had no complaints regarding Chico. When they came to their current property, the place looked terribly beat up, but they were homeless, so they moved in. On their move-in day there was a drug scene and domestic violence in her building. Chico was already on edge from their last eviction and the hotel living; their current hostile housing situation amplified his anxiety.
28. On the day Ms. Castro knocked on Ms. Salas's door, she had been locked out and was looking for a spare key. She had Chico tied to the carport; all Chico did was bark. Ms. Castro states that Chico does not wear a collar, only a harness. On that day he was even wearing a muzzle.
29. As to the altercation with Ms. Peterson, Ms. Castro asserted that Chico did not purposely go bite Ms. Peterson. She opined that Chico was startled and provoked by the sudden encounter with Ms. Peterson and became aggressive only after Ms. Peterson crashed into Chico and Harrison.

30. Ms. Castro also recalled Chico and Ms. Salas’s dog playing together at a dog park on a separate occasion.

Testimony of Harrison¹

31. Harrison did not feel comfortable speaking. So, we asked him if his handwritten letter was the truth and nothing but the truth. He affirmed that it was. Thus, we accepted his letter as his testimony. Ex. A1 at 011. He wrote that as he and Chico walked on the pathway, Ms. Peterson ran out of a blind spot and crashed into them. He asserted that they did not see Ms. Peterson coming and that she hurt Chico and almost knocked him (Harrison) down.

Testimony of Adara Peterson

32. Ms. Peterson testified on rebuttal, noting that on the day of the altercation she was walking on a separate path when she encountered Harrison and Chico. When Ms. Peterson tried to step away, Chico lunged for a second time. Harrison struggled to regain control and eventually went back home. Ms. Peterson was wearing soft, flat shoes, ones she can feel even the slightest pebbles, and does not recall stepping on Chico’s foot; Chico gave no indication that he was injured.
33. Ms. Peterson did not encounter Ms. Castro during the incident. She only saw Ms. Castro *after* Harrison went back inside the apartment with Chico.

Legal Standards

34. Animal Services asserts that Chico 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, .230.H
35. 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

36. Ms. Castro has consistently undermined her reliability. It started more mildly, with her shifting rationales for her last-minute attempt to postpone the June 8 hearing, from a voicemail to Animal Services that mentioned her attorney’s concerns about proceeding with hearing but made no mention of not receiving documents or any illness, to

¹ We try to avoid providing publicly identifying information for minors. As he has a different last name from Ms. Castro, a first name here does not overtly identify him.

requesting that we reschedule the next day's hearing due to Harrison being sick, to a later email about not having received our notice and being unaware of prehearing deadline, to a later email about her being sick.

37. The above might have been explainable, but on June 30, she excused her failure to submit exhibits by the extended June 21 deadline by denying, under oath, that we had given her a deadline. Unfortunately for her, in addition to the emailed and mailed notice setting the June 21 deadline date, we have the audio from the June 8 hearing, where we orally advised her of the June 21 deadline. But it got more serious later.
38. At our June 30 hearing, Ms. Castro asserted that she witnessed the entire April 14 altercation with Ms. Peterson. That was contrary to Ms. Peterson's testimony that Ms. Castro only came around the corner and asked her what had happened *after* Harrison got control of Chico and brought him to his apartment. It is also inconsistent with Ms. Rowett's testimony that Ms. Castro said she did not know why Harrison would not have had a hold of Chico. It was also inconsistent with officer notes from his initial call with Ms. Castro four days after the April 14 altercation. Rather than provide the investigating officer with an eyewitness account about April 14, she passed the phone to Harrison. Ex. D5 at 004. That was an unusual response from someone, especially one who talks as much as Ms. Castro, if she had actually witnessed the initial altercation.
39. Most definitively, Ms. Castro submitted, on the eve of our June 30 hearing, a letter she claimed to have written and signed on April 14, the day of the altercation, asserting that she saw exactly what happened. Ex. A1 at 12. On its face, it is odd. In addition to not mentioning her allegedly eyewitness observations during her April 18 call with the officer, the April 14 letter is far more detailed than the actual appeal she filed on April 26; yet, according to her version of the timeline, she had *already* written a complete explanation almost two weeks earlier. And when we questioned her, under oath on June 30, as to when she actually wrote the letter, she doubled down and assured us that, yes, indeed she wrote it the evening of the April 14 attack.
40. The final undoing of Ms. Castro's reliability is contained in the final paragraph of her own letter, the letter Ms. Castro repeatedly claimed she wrote on the evening of the altercation, Thursday, April 14 and which carries her handwritten "04/14/2022" next to her signature. However, the paragraph above her signature contains the following: "We were sick and went to the ER on Saturday, which is why we were not there for an officer." Ex. A1 at 12. Saturday, April 16 (i.e., two days after the altercation) was the day the responding officer first went to Ms. Castro's apartment. Ex. D5 at 003, n.7. And in case there was any question as to dates, Ms. Castro closed her ostensibly April 14 letter by explaining that she had showed Animal Services "proof of being severely ill and proof of going to Overlake ER on Saturday April 16, 2022."
41. Ms. Castro wrote and signed a supposedly April 14 letter at some point on April 16 or later, likely after she filed her April 26 appeal and during the run up to our June 30 hearing. Fabricating a supposedly contemporaneous account (meaning an account she pretended to have completed and signed the day of the incident) likely to be relied on by a public servant in the discharge of official duties (an examiner proceeding) is a serious

matter. And testifying under oath that the letter was from April 14 is even more serious. Ms. Castro is an unreliable witness.

42. However, that is not outcome-determinative here. The code criteria described above focuses solely on the animal, not on the animal's owner. Usually, we write that in the context of a reliable appellant doing everything correctly before (and after) an incident, yet on the date in question the animal unexpectedly committed a violation. However, it is true in the opposite direction as well.
43. The other atypical piece here is that we usually deal with a dog clearly performing a "vicious" act, endangering the safety of a person or animal by, say, charging up to a person just standing there and biting her. We then entertain the argument that even though the dog "exhibited" vicious behavior during that one brief altercation, the act was so out of keeping with the dog's gentle nature and spotless history that we should not find that the dog "constitutes" a danger to people's safety. KCC 11.04.020.BB, .230.H.
44. Here it is the reverse. The credible testimony of Ms. Peterson, Ms. Rowett and Ms. Salas is that Chico consistently barks aggressively and lunges, leaving residents in fear for their, and their pets', safety. Ms. Peterson's comment that she has never seen Chico act calmly is perhaps the most telling. Ms. Castro excused Chico's behavior on her current situation. However, in an assessment she had done by the Doney Coe Pet Clinic back in March 2021, the clinician wrote that:

Chico appeared to suffer from a high level of general anxiety. He was reactive to the other dogs present. He showed signs of extreme situation stress which goes beyond dog reactivity.... Chico remained in a heightened state of emotional stress even without another dog present.

Ex. A1 at 014. He advised that she "avoid busy environments to keep [Chico] under threshold. Avoid triggers such as stranger dogs." *Id.* Chico is an aggressive, volatile, menacing dog; residents have good reason to fear for their safety when in Chico's vicinity.

45. However, we only get to that second step ("constitutes a danger") where the animal has performed at least one overtly "vicious" act. So, we turn to the two eyewitnesses to the April 14 altercation, Harrison and Ms. Peterson, and consider their testimony, along with their statements to the investigating officer and Ms. Peterson's initial complaint.
46. It is clear that things occurred rapidly and at close quarters, as Ms. Peterson quickly turned a corner and came close to Chico. This resulted in Chico's teeth injuring her hand. But it is less clear how to categorize what exactly happened, as Ms. Peterson's descriptions illustrate. And our uncertainty is not due to Ms. Peterson's lack of credibility; we found her forthright. It more reflects that those few meaningful seconds of interaction on April 14 defy easy placement in a defined box.
47. In her complaint the day after the altercation, Ms. Peterson wrote that as she rounded the corner she was "too close" to Chico and her hand "got caught in [Chico's] mouth." Ex. D2. That is consistent with Harrison's statement to the investigating officer a few

days later that, as Ms. Peterson raised her hands, she came in contact with Chico's mouth, and that it was more of a collision with Chico's open mouth than a real bite. Ex. D5 at 004, n.8. That same day the officer described that account to Ms. Peterson, who agreed with Harrison's statement that it was not so much a bite as a collision with Chico's open mouth. *Id.* Her testimony at hearing describing it both as Chico's mouth coming in contact and as Chico biting her.

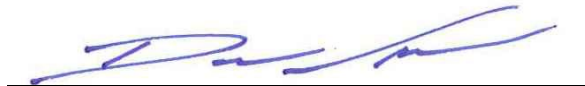
48. A bite is not a requirement for “vicious” behavior (“including, but not limited to, biting”); the critical inquiry being performing an act “endangering the safety” of a person or animal. KCC 11.04.020.BB. Chico did more than endanger Ms. Peterson's safety, he sent her to the hospital and required her to get surgery from which she had not (at the time of hearing) fully recovered. But a key touchstone of whether an act is legally unprovoked is whether the dog's reaction was proportional to the victim's act. *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs v. Jacobone*, 244 Mich. App. 263, 273-75, 625 N.W.2d 108, 113 (2001); *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000)). And Ms. Peterson agreed she quickly came around the corner and into Chico's bubble. If it was clearer that Chico reached out and intentionally bit her hand, that would be grossly disproportionate to merely entering a dog's bubble. But here it is not so clear whether that was the case, or whether Ms. Peterson more collided with Chico's mouth as he barked at her and reacted to her intrusion.
49. We have gone back and forth on the ultimate outcome as we have mulled it over and over. Certainly, if Ms. Castro had to disprove the violation, she would not have met her burden. But Animal Services carries the burden of proof, and we remain uncertain whether Animal Services has met that burden. And thus, we reverse Chico's viciousness designation.
50. That result is undoubtedly unsettling. Chico is a highly anxious, extremely reactive dog, in a heightened state of emotional stress, easily triggered by the presence of other people or their dogs. And he is currently living in what Ms. Castro describes as a high-stress location, meaning Chico's continued residence is not good for anyone. Absent some professional training and relocation to a less stressful environment, Chico will likely continue to exhibit aggressive behavior and engender safety concerns in those forced to be in his vicinity.
51. Muzzling Chico, as Ms. Castro asserted they have done since April 14, will help. It may reduce the fear felt by those who have to interact with Chico and see him straining at his leash towards them. And it will also limit the potential damage Chico can inflict; regardless of precisely how April 14 went down, Ms. Peterson would not have suffered her injury requiring stitches, surgery, and continuing hand issues if Chico had been wearing a muzzle. A muzzle is not a failsafe, but it should help.
52. Everyone, including Ms. Castro and Harrison, would benefit from a less powerful, less aggressive service animal than Chico. Yet ultimately that is beyond our jurisdiction to order, which would be true even if we balanced the evidence a slight notch the other way and upheld Chico's viciousness designation. And we offer no comment on management's actions in relations to Chico or Ms. Castro—that is a different entity

applying different standards and considerations than we do in determining whether KCC chapter 11.04's criteria have been satisfied.

DECISION:

We GRANT Ms. Castro's appeal.

ORDERED July 21, 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 *August 22, 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 JUNE 8, 2022, HEARING IN THE APPEAL OF CATHERINE CASTRO, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V22013101-A2201881

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Catherine Castro, Chelsea Eykel, Angela Salas, and Adara Peterson. 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 April 14, 2021, incident by Adara Peterson, dated April 15, 2022 |
| Exhibit no. D3 | Photograph of bite wound |
| Exhibit no. D4 | Surgeon's Order for Ms. Peterson to be off work, dated April 15, 2022 |
| Exhibit no. D5 | RASKC investigation report no. A22001881 |
| Exhibit no. D6 | Statement from Kimber Ridge management, dated April 18, 2022 |
| Exhibit no. D7 | Notice of violation no. V22013101-A2201881, issued April 19, 2022 |
| Exhibit no. D8 | Appeal, received April 26, 2022 |
| Exhibit no. D9 | Map of subject area |
| Exhibit no. D10 | Voicemail from Catherine Castro, submitted June 30, 2022 |

The following exhibits were offered and entered into the record by Appellant:

- | | |
|----------------|--|
| Exhibit no. A1 | Email and attachments, submitted June 29, 2022 |
|----------------|--|

July 21, 2022

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

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V22013101-A2201881**

CATHERINE CASTRO

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 July 21, 2022.



Jessica Oscoy
Office Manager

Adara Peterson, Brin Rowett

Hardcopy

Castro, Catherine

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Salas, Angela