

September 22, 2022

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860

hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

ORDER ON MOTION FOR RECONSIDERATION

SUBJECT: Regional Animal Services of King County file nos. **V22013133 and V22013134**

NANCY AND ALLYN MURPHY
Animal Services Enforcement Appeal

Activity no.: A22002222

Appellants: **Nancy and Allyn Murphy**

[REDACTED]
Enumclaw, WA 98022

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
Email: raskcappeals@kingcounty.gov

Animal Services has filed a motion for reconsideration asking us to essentially reinstate Gizmo's removal order.

When we first read Animal Services' main ground for reconsideration, we thought Animal Services must be confused, because we had found that April 30 was the first breach of the confinement order, so why was Animal Services writing that we had concluded the opposite,

that April 16 was the first breach? However, re-reading our decision, we discovered the second-most inopportune typo of our entire career, sewing major confusion.

We started our analysis of April 16 in paragraph 40, explaining that:

40. Regarding April 16, while Ms. Kolodji-Sowa claimed in her complaint that Rocky's injury happened when Gizmo broke the plane of the fence, she clarified that she did not actually witness the event, and only surmised the sequence of events.... Ms. Murphy did witness it.

We then explained in paragraph 41 that:

41. Ms. Murphy was not a particularly credible witness. Beyond being untethered from reality regarding the threat Gizmo poses, Ms. Murphy claimed she did not know anything about the 2019 confinement requirement, despite her signing the five page appeal to that notice and order. And, for the later May 7, 2022, incident, Mr. Murphy claimed that Rocky "attacked" her son in his car, embellishing what her son Mike—who was ostensibly the victim of the alleged attack—merely described as dogs jumping on his door.

Finally, in paragraph 42, we concluded that analysis by saying that:

But what we know from that May 7 incident is that the Sowa dogs were able to escape their property. Even if Ms. Murphy was embellishing *what* happened on April 16, that is different from *where* the incident started.

Yet we somehow closed that paragraph by writing that "We *do find* that April 16 was a violation of the confinement order" (emphasis added).¹

We explained in paragraph 44 that, "Saving for a moment the January 27 breaking-the-fence plane issue, April 30 was the only clear violation of the 2019 order in a three-year period," and paragraph 45 that, "So that brings us back to January 27. If that was another violation, then April 30 was not a one-off and our above reasoning is inapplicable." Those implied that we had found April 16 not a violation. But people should not have to read between the lines to figure out our meaning. They should be able to trust that what we wrote was what we meant. And here we failed by not writing the end sentence of paragraph 40 as, "We do not find that April 16 was a violation of the confinement order." Our apologies at sewing confusion.

Animal Services also makes a slightly different, and solid, argument related to April 16, and not one we considered in writing our decision. We focused on the factual finding that the altercation started not with Gizmo trespassing onto the Sowa property, but when Rocky escaped from the Sowa property and coming at Ms. Murphy tried to *exit* the Murphy property in a vehicle. That seemed plausible because a few weeks later (May 7) Rocky escaped the Sowa property and came

¹ That was a similar blunder to our all-time worst typo. As a Justice Department trial attorney, we filed a brief in a case involving a \$100,000,000 in claimed damages, and at the end of a lengthy analysis explaining why the area in question was not a wetland, closed with the summation sentence, "The area is a wetland," somehow inadvertently dropping the "not" and necessitating us filing an embarrassing errata sheet with the court a day or two later.

at the Murphy son as he tried to *enter* the Murphy property in a vehicle, leaving scratch marks on the Murphy car.

However, Animal Services essentially asks us to focus on our legal conclusion, that *even if* we found the altercation started after Rocky escaped from the Sowa property and went after the Murphy party, Gizmo was still in violation because he was not contained behind a locked fence or on a leash. It is a good point, and not one we considered in reaching our decision. The argument gave us pause, and we have mulled it over. In the end, analogizing the car to the leash/fence confinement requirements, we would *not* find removal was warranted if, say, Gizmo was behind a fence or being walked on a leash when Rocky came at Ms. Murphy and Lily, and Gizmo either hopped the fence or broke the leash to meet Rocky's charge. Especially given the high standard for a removal order, it cannot be that a legally provoked act can trigger removal.²

The other points Animal Services raised were already ones we considered. Given Gizmo's violent history, it is plausible that, had Ms. Murphy not recalled Gizmo on April 30, Gizmo *would have* again inflicted injuries on a Sowa dog, but that calls for speculation. And while we are empathetic to Mr. Sowa's well-founded fear about a violent dog, it was not, and still is not, enough to tip the scales.

We DENY Animal Services' motion for reconsideration.

DATED September 22, 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 *October 24, 2022*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

² We have reached that same conclusion in the context of analyzing removals under KCC 11.04.290.B.2, which mandates that any animal that bites people twice in a two-year period must be removed from King County. Though that code section does not mention provocation, we have read in a requirement that a provoked bite does not qualify.

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V22013133 and V22013134**

NANCY AND ALLYN MURPHY
Animal Services Enforcement Appeal

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER ON MOTION FOR RECONSIDERATION** 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 September 22, 2022.



Jessica Oscoy
Office Manager

Clark, Justin

Eykel, Chelsea

Regional Animal Services of King County

Hedal, Jerry

Jennings, Peggy

Kolodji-Sowa, Rhonda/Paul

Hardcopy

Murphy, Mike

Murphy, Nancy and Allyn

Hardcopy

Schutt, Shirley

Hardcopy