

September 6, 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. **V22013250-A22002873**

HIRUT FETENE

Animal Services Enforcement Appeal

Activity no.: A22002873

Appellant: **Hirut Fetene**

[REDACTED]
Kent, WA 98031

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. Hirut Fetene appeals an order declaring her dog, Wensdae, vicious. After hearing witness testimony and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we find that Wensdae bit a lawful visitor without provocation. However, given the atypical circumstances here, we do not find that Wensdae meets the full code criteria. We thus reverse the violation.

Background

2. On June 14, 2022, Animal Services issued a violation notice to Hirut Fetene for her dog, Wensdae, qualifying as vicious. Ex. D5. Ms. Fetene appealed on July 1. Ex. D6. We went to hearing on August 24.

Hearing Testimony

Testimony of Sylvia Bothe

3. Sylvia Bothe testified that on June 1 she was sent to the Fetene residence to deliver medication from a pharmacy. A person who places an order for medication should receive a notification when the delivery is coming. When she arrived at the property, she called the phone number listed with the medication. There was no answer, so she called again. There was again no answer. She waited by the garage because there were a lot of small dogs in the front yard barking at her. Ms. Bothe saw a man [Mr. Fetene] open the house door, so she slowly proceeded through the gate towards the door.
4. As Ms. Bothe was walking towards the door, the dogs were nipping and biting her, even grabbing and pulling at her pants. The person opening the door did not tell Ms. Bothe not to approach the house. She did not see any “beware of dog” signs. There were also no delivery instructions regarding dogs. Ms. Bothe noted that Mr. Fetene did not control his dogs or do anything.
5. Ms. Bothe got to the door, requested Mr. Fetene’s signature, and handed him the medication. Her back was turned to the dogs. One of the dogs, whose face was all black [Wensdae], jumped up and bit the back of her thigh. The bite felt strong, like a sharp pain, and Ms. Bothe felt something running down her leg.
6. Ms. Bothe told Mr. Fetene that she was bitten. He offered Ms. Bothe his bathroom to see if she was bleeding. She went to the bathroom, pulled her pants down, and saw blood running down her leg. Ms. Bothe went back outside and told Mr. Fetene that she was bitten, and that it was bad. She could not show Mr. Fetene the bite because she would have needed to pull down her pants in front of him, and Mr. Fetene told her he did not need to see the bite. Ms. Bothe left the property. Mr. Fetene did not apologize to her about his dogs.
7. Ms. Bothe told her employer that she was bit and went to the emergency room. She did not know if the dogs were vaccinated or not. Two months have passed since the incident, and she still has a bruise and a scar—the skin in area where the dog bit is still rough.

Testimony of Hirut Fetene

8. Hirut Fetene testified that she was not home during the incident. Her husband, who was home at the time, has been disabled since 2009 and is in a wheelchair. She has a fence so her little dogs can be outside and not run away. The fence is metal, and people can see

through the fence to see the dogs. When people come in and out of the yard the dogs bark, but they never bite. They are friendly.

9. Her husband told her that Ms. Bothe told him that one of his dogs bit her. Mr. Fetene told Ms. Bothe the name of the dog. Mr. Fetene asked Ms. Bothe to show him the bite, to which Ms. Bothe said never mind and left. Mr. Fetene was not aware that Ms. Bothe said she was actually bitten until the police arrived. Ms. Fetene believes that Ms. Bothe made up the bite.
10. Ms. Bothe sent a bill to the Fetenes, but she did not include a return address. Ms. Fetene called Overlake hospital to try to pay the bill, but they would not let her pay.
11. Ms. Fetene's dogs are licensed and up to date on their shots. Their house doors are always locked. We asked Ms. Fetene if she wanted to call Mr. Fetene as a witness but she declined.

Legal Standards

12. Animal Services asserts that Wensdae qualifies as vicious, defined as “[h]aving 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 “[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.” KCC 11.04.020.BB; .230.H.
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. Ms. Fetene did herself no favors with her approach.
15. In her appeal statement, she victim-blamed, calling Ms. Bothe “ridiculous,” criticizing Ms. Bothe for not waiting to reschedule the drop off (as if Ms. Bothe had the time or responsibility to wait on the Fetenes to get their act together so Ms. Bothe could deliver medicine the Fetenes themselves requested), claiming that Ms. Bothe “must have fed [her] dog negative energy” to provoke a bite, and even calling Ms. Bothe's decision to seek medical treatment “ridiculous.”
16. Sometimes we see an appeal statement full of denial and responsibility-shifting, written in the heat of the moment soon after the violation. But then, after reviewing a photo of the bite and listening to the complainant's testimony at hearing, the appellant re-calibrates and offers a more reasoned defense. Unfortunately, that did not happen here. After receiving the photo (exhibit D3 at 001) clearly showing a bite and even after hearing Ms.

Bothe’s testimony, Ms. Fetene was still clinging to the conspiracy theory that Ms. Bothe was somehow “making it up,” even criticizing Ms. Bothe for essentially not pulling down her pants in a strange man’s house to show him her wounded thigh.

17. There is indeed something “ridiculous” about this situation, and it has been *Ms. Fetene’s* response, not Ms. Bothe’s. However, the code criteria quoted above contains no reference to owner behavior. A viciousness designation is fundamentally about the dog, not about the owners; it is not a proxy for how much or how little care an owner is exercising. So, we turn to the totality of the circumstances to analyze whether to uphold Wensdae’s viciousness designation.
18. Outside of Ms. Fetene’s mind, there is no serious question that Wensdae bit Ms. Bothe. The bite mark is obvious, exhibit D3 at 001, and Ms. Bothe’s testimony was credible. At the end of the hearing Ms. Fetene questioned how we know the biter was Wensdae (versus another dog on the Fetene property). However, Mr. Fetene had earlier identified Wensdae. Moreover, an appellant is free to question identity (indeed an entire appeal statement sometimes amounts to, “My dog was not the dog who ___”), and if identity is raised in an appeal statement, Animal Services bears the burden of proof on that issue. However, hearings are limited to the issues raised in an appeal statement, and nothing in Ms. Fetene’s appeal statement questioned whether another one of her dogs might have been the actual culprit. KCC 20.22.080.G; .210.B.
19. As to whether Wensdae’s bite was legally unprovoked, Ms. Bothe was legally on the property to deliver a prescription the Fetenes ordered. Ms. Bothe did nothing beyond walking the path to the open front door to deliver the Fetenes medication and get the required signature. A court’s “provocation” inquiry in the animal context “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 (2001) (citing *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000)). And a key touchstone of courts’ analyses is that “provocation” requires the dog’s reaction be relatively proportional to the victim’s act. *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792. The wound Wensdae inflicted was grossly disproportional to Ms. Bothe’s acts. Wensdae performed an act endangering the safety of a person, namely biting Ms. Bothe without provocation. She meets KCC 11.04.020.BB’s definition of “vicious.”
20. We next turn to KCC 11.04.230.H, which frames the violation itself as, “Any animal that has exhibited vicious propensities [which Wensdae did on June 1] *and* constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises.” An unprovoked bite is *typically* enough to satisfy the danger criteria. After all, what is better evidence that a dog constitutes a danger than proof that, given some set of circumstances not arising to legal provocation, a dog will actually bite or attack a person or pet? However, we interpret a statute so as not to render a term superfluous. *Chelan Basin Conservancy v. GBI Holding Co.*, 190 Wn.2d 249, 264, 413 P.3d 549 (2018). So, there must be some subset of cases where a dog who exhibited vicious behavior will *not* be adjudged to constitute a danger. Thus, in select appeals we have

found extenuating circumstances and overturned a viciousness designation even after an unprovoked bite or attack. There are a few pieces here that make this case nonstandard.

21. We in no way minimize the intense physical pain Wensdae inflicted on Ms. Bothe that day, the fear she experienced (especially about rabies), and the bruising and rough skin she still has three months later. However, Wensdae is a Chihuahua, and so the danger a Chihuahua can pose is objectively less than an equivalently-aggressive dog of almost any other breed.
22. In addition, unlike some past cases where we have upheld a viciousness designation for a Chihuahua with a track record, there was no evidence here about other instances of Wensdae's aggression. That does not mean we found Ms. Fetene credible or that we take her word that Wensdae had no prior history; if, even *after* seeing the bite photograph and hearing the testimony about multiple dogs biting Ms. Bothe, Ms. Fetene still denied that her dogs would bite anyone, what previous behavior might she be in denial about? Yet there is no counter-evidence in our record regarding aggression other than on June 1.
23. Moreover, as Ms. Bothe was walking towards the door, multiple dogs were nipping and biting her, even catching and pulling at her pants, until she got up to the door and Wensdae fully connected. And that makes this unusual in two respects. First, there was something about that situation such that *multiple* dogs misinterpreted it as appropriate to bite at a visitor, even if only Wensdae did any damage. Second, this was more a pack of dogs who fed off each other's aggression and repeatedly assaulted Ms. Bothe, and not a scenario where Wensdae was the clear initiator of the violence.
24. Finally, while not unusual, we note that this was a scenario involving dogs on their own turf, not assailing someone in public.
25. In sum, we cannot quite conclude that Wensdae constitutes a sufficient danger to the safety of people lawfully on her property to find KCC 11.04.230.H satisfied.
26. Moving forward, Ms. Fetene needs to wake up. She has a pack of aggressive dogs. Her protestation that they bark but do not bite is wholly refuted by what happened on June 1, where it was not just Wensdae but *multiple* dogs that bit at Ms. Bothe. If something like June 1 happens again, the result next round may be very different. To avoid that, at a *minimum* Ms. Fetene should:
 - advise Amazon, the pharmacy, the grocery store and anyplace else she orders from that she has biting dogs on the property and that no delivery person should enter until a family member can isolate the dogs; and
 - post a sign that visually conveys to people the threat her dogs pose, so that visitors unable to fully comprehend written English are nonetheless warned, something like:



DECISION:

We GRANT Ms. Fetene’s appeal.

ORDERED September 6, 2022.

A handwritten signature in blue ink, appearing to read "David Spohr", written over a horizontal line.

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 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 AUGUST 24, 2022, HEARING IN THE APPEAL OF HIRUT
FETENE, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NO. V22013250-A22002873**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Sylvia Bothe, and Hirut Fetene. 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 June 1, 2022, incident by Sylvia Bothe, dated June 2, 2022
Exhibit no. D3	Photograph of Ms. Bothe's injury
Exhibit no. D4	RASKC investigation report no. A22002873
Exhibit no. D5	Notice of violation no. V22013250-A22002873, issued June 14, 2022
Exhibit no. D6	Appeal, received July 1, 2022
Exhibit no. D7	Map of subject area

DS/lo

September 6, 2022

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V22013250-A22002873**

HIRUT FETENE

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 September 6, 2022.



Lauren Olson
Legislative Secretary

Bothe, Sylvia

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Fetene, Hirut

Hardcopy