

August 3, 2023

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KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file nos. **V22013826, V22013827, V23014078, V23014082, and V23014077**

LISA ANDERSON

Animal Services Enforcement Appeal

Activity nos.: A22006091 and A23001555

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FINDINGS AND CONCLUSIONS:

Overview

1. Lisa Anderson appeals Regional Animal Services of King County (Animal Services) notices and orders and a removal order. 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 sustain four violations and overturn the others, including overturning the removal order.

Background

2. Nicolz Torrenueva filed a complaint for an August 30, 2021, incident. Animal Services issued Ms. Anderson confinement order V21012476. It also issued Dale Hayes notice and order V21012477, declaring Titan vicious, among other violations. These were not appealed. Ex. D5.
3. Terri Davis filed a complaint for a February 7, 2022, incident. Ex. D4. Animal Services gave Ms. Anderson a verbal warning, noting that Ms. Anderson was understanding and receptive. Ex. D4 at 005, n.2.
4. Jae Hur filed a complaint for a November 20, 2022, incident. Duke Ahn, Lisa Anderson, and Gil Goins provided written statements. On December 13, 2022, Animal Services issued Ms. Anderson notice and order V22013826 and removal order V22013827. Ms. Anderson timely appealed. On March 29, 2023, Animal Services issued Ms. Anderson notice and order V23014077. Ex. D3.
5. Jae Hur filed another complaint for a March 9, 2023, incident. On March 29, 2023, Animal Services issued Ms. Anderson a notice and order (V23014078). On May 2, 2023, Animal Services issued Ms. Anderson a removal order (V23014082). Ex. D2.
6. We held pre-hearing conferences on April 18 and May 30. We went to hearing on July 20.

Hearing Testimony

Jae Hur Testimony

7. Since 2011, Dr. Hur has been a dentist at Skyway Dental, located next to Ms. Anderson's property. Duke Ahn is a co-owner of the dental office. On November 20, 2022, Mr. Ahn was helping him move a dental chair out of the office with a dolly, when suddenly he felt pain in his left leg. He looked back and saw two German shepherds running away; the bigger dog was closer to him, about 5-6 meters away and the smaller dog was about 12-15 meters away. He assumed the bigger dog was Titan, the male dog, due to its size, and that the smaller dog was Kitty. Dr. Hur checked the bite and saw bleeding and his punctured pants. There was no barking prior to the bite.
8. Dr. Hur recognized the dogs as belonging to Ms. Anderson because he has previously noticed those same German shepherds barking loudly on her property. He has also seen the dogs poop in his backyard. Dr. Hur asked Mr. Ahn to immediately contact Ms. Anderson because he did not know whether the dogs had diseases. The dogs went back to Ms. Anderson's backyard.
9. Mr. Ahn went to Ms. Anderson's house. Ms. Anderson then came outside and Dr. Hur explained to her that one of her dogs bit him and he needed to go to the hospital. She said she would accompany him and would pay for any medical bills, and she apologized for the accident. She has not paid Dr. Hur.

10. Dr. Hur cleaned his wound with alcohol and then went to urgent care, where they did a similar cleaning. The wound healed within two months, and Dr. Hur did not need to return to urgent care.
11. On March 9, 2023, Dr. Hur's patient left the dental office before quickly coming back inside because she was fearful of a dog that was barking loudly in the parking lot. Dr. Hur noticed the dog was the larger, male Anderson German shepherd [Titan]. Dr. Hur accompanied his patient to her vehicle, and he saw a woman in front of the post office. That woman seemed too scared to move, so he brought her into his office to wait. He took photographs of Titan from about 20-30 yards away. Ex. D2-016 and D2-017. Titan went back to Ms. Anderson's house. He did not discuss that incident with Ms. Anderson.

Duke Ahn Testimony

12. Mr. Ahn has co-owned Skyway Dental for about five or six years. He only comes to the property when there is an issue that needs addressing. On November 20, 2022, he was helping Dr. Hur move a dental chair from the office. Mr. Ahn was dragging the chair outside when he heard Dr. Hur grunt and then say a dog bit him. Mr. Ahn saw two dogs running away. The bigger dog was about 10-15 yards away and the smaller dog was up on the road by Ms. Anderson's gate.
13. Mr. Ahn followed the dogs while Dr. Hur attended to his injury. The dogs got back inside Ms. Anderson's yard. The dogs barked at him from inside the fence but did not come after him. Ms. Anderson then came outside and said that whatever happened she would pay the medical bills.

Terri Davis Testimony

14. Ms. Davis works remotely. She occasionally walked to the post office in front of Skyway Dental to drop off mail. On February 7, 2022, Ms. Davis was walking to the post office with her puppy, Tyra. While she was waiting to drop the mail at the outside mailbox, a German shepherd ran up to her, without barking. She believes the dog came from the green house across the street, but there was also an RV parked in front of the green house. She recalls hearing someone yelling from the RV. Tyra got in front of Ms. Davis and the German shepherd bit Tyra. Tyra was wearing a snow suit that day and Ms. Davis noticed one puncture wound on the right side of the snow suit.
15. After a few minutes, a couple of people came out from the green house and the German shepherd ran back towards the green house. Ms. Davis called 911, but the operator informed her that they could not help. When Ms. Davis and Tyra tried to leave the area, a woman from the green house began chasing them. The woman had a brown paper bag in her hand and Ms. Davis "freaked out" and called 911 again. The woman then turned around and some people from the green house got into a car and pursued her.
16. Ms. Davis has never walked on the green house side because there are many bushes and RVs and the opposite side of the street is clearer. She typically places Tyra's droppings in a waste receptacle at the nearby elementary school or fire training facility, or she takes the droppings home if there is no waste basket nearby. Ms. Davis was confused by the

police statement that accused her of throwing droppings into the green house property. Ms. Davis and her puppy had walked that same route several times a week and had never had an issue. She waited a few weeks before walking to the post office again, and she has not seen the German shepherd since.

Steve Nickelson Testimony

17. Ofc. Nickelson gave Ms. Anderson only a verbal warning about the February 7, 2022, incident because no one was harmed and there was uncertainty about the German shepherd's ownership. Ms. Anderson's brother lived in the RV at the time of the incident. Ofc. Nickelson spoke to the brother who said the dog belonged to Ms. Anderson.
18. After the March 9, 2023, incident, Ofc. Nickelson spoke to Dr. Hur, who later submitted the photographs of the German shepherd. When Ofc. Nickelson talked to Ms. Anderson he noticed a female dog at the property, but that was not the dog in the photographs that Dr. Hur submitted. Instead, a German shepherd matching the photograph was in Ms. Anderson's front window, barking. Ofc. Nickelson discussed the confinement order with Ms. Anderson.
19. Ms. Anderson did not deny either the February 7 or March 9 incidents.

Simonne Fousha Testimony

20. Ms. Fousha is Ms. Anderson's daughter. On August 30, 2021, Ms. Fousha was with her four-year-old son at her mother's house, helping her clear out the yard. They were tearing down structures and trying to get debris out to the dump. They hired Dale Hayes to help them clean up. There was also a person driving an excavator. As they left to go pick up a rental vehicle, Ms. Fousha advised Mr. Hayes to take his lunch break and to not return until they arrived back. Ms. Anderson's two dogs were locked inside the house when the left; Ms. Fousha physically closed the door herself. The gate was properly latched as everyone left the property. Mr. Hayes went across the street while the rest of the party drove to get the second vehicle.
21. When they arrived back with the rental truck, they noticed police outside. The gate was open. Ms. Fousha went to the backyard and since the dogs normally greet her, she knew they were still inside the house. Ms. Fousha saw Mr. Hayes near the 7/11 with two buckets containing her son's blanket wrapping up metal. She noticed the metal pieces came from the air conditioner on the property.
22. On February 7, 2022, Ms. Fousha was outside Ms. Anderson's house when she recognized Ms. Davis walking by. Ms. Davis occasionally walks past the house, sometimes with her leashed dog, and Ms. Fousha has seen her throw dog poop into their yard (there had been a garbage can outside the fence, but they earlier moved it inside). Ms. Fousha asked Ms. Davis not to throw poop on their yard, but Ms. Davis waved her off. Ms. Fousha followed Ms. Davis and called 911 to alert them she was following Ms. Davis.

23. Ms. Fousha's son stays with Ms. Anderson often while Ms. Fousha works. The son was born with disabilities, and Titan helps him emotionally and physically. The son has grown up with Titan, and when the house is dark Titan will even help him navigate. They are currently trying to license Titan as the son's service animal. The son and Titan have a special bond and spend every moment they can together.

Lisa Anderson Testimony

24. Ms. Anderson has been living alone in her home for about a decade. She has had Titan for about eight years. Her neighborhood faces many types of crimes. Titan is the only reason she can close her eyes at night.
25. On August 30, 2021, Ms. Anderson recalls seeing the dogs inside the house when they returned from picking up the rental truck.
26. On February 7, 2022, Ms. Anderson's brother was living in an RV on the street next to her property between about February 2021 through the end of the 2022 summer. The brother owned four German shepherds. He allowed his dogs to run loose, and he even let them run into Dr. Hur's yard.
27. On November 20, 2022, Gil Goins arrived at Ms. Anderson's house through the driveway gate. Ms. Anderson let him inside to grab his tools. She let Mr. Goins take the dogs outside while she remained inside working. Later, Ms. Anderson heard another man's voice so she came outside and saw Mr. Ahn. She put the dogs back inside. She never saw the dogs leave her yard. The gate was closed and latched when she came outside to speak to Mr. Ahn.
28. On March 9, 2023, Titan did get out but he did not bite anyone. Ms. Anderson accidentally left her back sliding door open. She had a worker working to fix her gate and on that day the gate had not been completed.
29. Since the August 2021 incident, Ms. Anderson has spent significant time and money fixing her gate and fence. Ms. Anderson has always been against shocking dogs, but ultimately she installed electric fencing. Ms. Anderson has health complications, works remotely, and feels protected with Titan. She feels like she is taking the brunt for everyone else's German shepherds. There are many other German shepherds in the neighborhood.

Gil Goins Testimony

30. On November 20, 2022, Mr. Goins entered Ms. Anderson's sidewalk gate, which was closed as it always is. He closed the gate after he walked into the yard. Titan and Kitty were not in the yard; they were inside the house. He walked inside Ms. Anderson's house and they had small talk. Then, he went outside to the driveway to check her truck and the dogs came outside with him. He never exited the gate, so the gate was still locked.
31. Mr. Goins was underneath the hood of the truck, when he heard a man yelling from outside the gate. Mr. Goins is used to the commotion due to the proximity to the post

office, so he did not pay much attention to him. Next thing he noticed was the man walking away. The dogs came back inside the house. Dr. Hur was at his front door when he confronted Mr. Goins that a dog bit him. Mr. Goins opened the gate to speak to Dr. Hur and denied that Titan bit him because the dogs had been inside the yard the entire time.

Legal Standards

32. As to November 20, 2022:
- A. Did either Titan and/or Kitty trespass, defined as a “domesticated animal that enters upon a person’s property without the permission of that person?” KCC 11.04.230.K.
 - B. Was Titan a “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?” KCC 11.04.230.I.
 - C. Did Titan [re?]qualify as vicious, meaning “[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.
33. As to March 9, 2023, was Titan:
- A. trespassing (see KCC 11.04.230.K definition above)?
 - B. a vicious animal at large (see KCC 11.04.230.I definition above)?
 - C. “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” defined as “either under competent voice control or competent signal control, or both, so as to be restrained from approaching any bystander or other animal and from causing or being the cause of physical property damage when off a leash or off the premises of the owner?” KCC 11.04.020.W, .AA; .230.B.
34. Is Titan’s removal warranted under KCC 11.04.290.A.3, which states:
- Failure to comply with any requirement prescribed by the manager [i.e., in a compliance order] constitutes a misdemeanor. Such an animal shall not be kept in unincorporated King County after forty-eight hours after receiving written notice from the manager. Such an animal or animals found in violation of this section shall be impounded and disposed of as an

unredeemed animal and the owner or keeper of the animal or animals has no right to redeem the animal or animals.

35. Is Titan’s removal warranted under KCC 11.04.290.B.2, which states that:

Any animal that bites, attacks or attempts to bite one or more persons two or more times within a two-year period is declared to be a public nuisance and shall not be kept within unincorporated King County forty-eight hours after receiving written notice from the manager?

36. 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

37. There are four potentially significant incidents—August 30, 2021; February 7, 2022; November 20, 2022; and March 9, 2023. We tackle those in reverse chronological order, before moving to the removal analysis.

March 9, 2023

38. What we do know about March 9 is that despite Ms. Anderson’s efforts to reinforce her fencing, after Ms. Anderson left her sliding door open, Titan somehow escaped from the yard and made it into Dr. Hur’s parking lot. Dr. Hur photographed Titan, and Ms. Anderson positively identified the photo as Titan. And Dr. Hur saw Titan return to the Anderson property.
39. What we do not know is how Titan managed to escape the yard that day—Ms. Anderson was not sure. We also do not know what, other than barking, Titan did while he was running loose. Titan created fear in Dr. Hur’s patient; however, she was not available for questioning, so we do not know what she saw Titan actually do. Similarly, the woman standing in front of the post office looked visibly scared to Dr. Hur, but what precisely prompted that fear is also unclear. And Dr. Hur noted that when he exited the office and first saw Titan, Titan was over 20 yards away from anyone.
40. We uphold V23014077 for Titan trespassing onto the Hur property. And we uphold one of the two at-large violations in V23014078, but not both; whether March 9 was a normal running at large violation or a vicious animal running at large violation depends on whether Titan had previously qualified as vicious.

November 20, 2022

41. While engaged moving a chair out of his office, Dr. Hur felt a bite, turned around, identified the larger male as Ms. Anderson’s German shepherd [Titan] closer to him, with the smaller female German shepherd [Kitty] twice as far away. Mr. Ahn also saw the

larger dog closer to Dr. Hur and the smaller one further away. Mr. Ahn saw both dogs again on the Anderson property. Conversely, Mr. Goins said he closed the gate behind him, and Titan and Kitty were with him in the yard while he worked on a car. Ms. Anderson was inside at the time, and did not have a view one way or the other on where the dogs were between letting the dogs out to the yard with Mr. Goins and Mr. Ahn coming to the property.

42. We decide facts based on a preponderance standard. Standing alone—meaning simply weighing the testimony about November 20, 2022—we find the most likely scenario is that, while Mr. Goins was distracted, either working on the car or (as Ms. Anderson told the responding officer, exhibit D3 at 008, n.8) laying in an antigravity chair, Titan and Kitty slipped out and went onto the Ahn/Hur property, where Titan bit Dr. Hur before both dogs quickly retreated back onto the Anderson property.
43. Additionally, we learned two facts from our analysis of March 2023 that strengthen our assessment of November 2022. First, even after all improvements and efforts Ms. Anderson had made to contain her dogs over the years, Titan was still able to escape three-plus months later, with Ms. Anderson still not sure how Titan was getting out. And Dr. Hur is correctly able to identify Ms. Anderson’s dogs and distinguish between them, not by name or coloration but between the larger male dog [Titan] and the smaller female one [Kitty].
44. We find that Titan delivered an unprovoked bite to an unsuspecting Dr. Hur, thus meeting the definition of “vicious.” KCC 11.04.020.BB. But while an unprovoked bite is typically enough to satisfy KCC 11.04.230.H—after all, what is better evidence that a dog constitutes a danger than proof that, given some set of circumstances not arising to “provocation,” a dog actually bites a person—in appeals where the endangering act is at the low end of the spectrum (a relatively superficial injury), plus some incitement not arising to legal provocation but still provocation-*ish*, we have sometimes overturned a viciousness designation. For example, reaching one’s hand out to pet a dog typically does not constitute legal “provocation.”¹ And yet a dog’s split-second decision to nip a hand shoved in its face could be a scenario where we find an unprovoked endangering act and yet overturn a viciousness designation.
45. November 20 was not that at all. Dr. Hur was on his own property and even had his back turned. Without warning, Titan snuck up and bit him from behind. Animal Services has met its burden of proving that Titan qualifies as vicious.
46. That also resolves the specific March 9, 2023, violation. On that day Titan getting loose qualifies as a vicious dog at large. KCC 11.04.230.I. We toss out the normal running at large violation as duplicative.

February 7, 2022

47. The February 2022 incident could have been important. It was listed as a supporting cause of action for Animal Services’ May 2023 amended removal order, an order in

¹ *State v. Ruizi*, 9 Neb. App. 435, 443, 616 N.W.2d 19, 26 (2000).

which Animal Services asserted that removal was warranted under KCC 11.04.290.A.3 (failing to comply with containment order) and B.2 (two bites or attempted bites of people in a two-year period). Ex. D6 at 009.

48. However, unlike the November 2022 incident where Dr. Hur—who had seen Ms. Anderson’s dogs many times and has proven capable of distinguish between the larger male dog (Titan) and smaller female dog (Kitty)—Ms. Davis had no prior or subsequent familiarity with them. Moreover, February 2022 was during the approximately 18-month period (between February 2021 and the end of the 2022 summer) where there were six German shepherds on or adjacent to the Anderson property—her two, plus the four her brother had in his RV parked in front of her home.
49. Additionally, Ms. Davis was clear that she could not tell where the dog went when it returned to the Anderson property, because the RV was blocking her view. Sgt. Nicholson agreed that it was not clear which Anderson dog was loose—or even whether it was an Anderson German shepherd versus one of her brother’s German shepherds—which is why he only gave a verbal warning. He noted that the brother pointed the finger at his sister’s dog, but such deflection would not exactly surprise us. So, as it turns out, there is nothing of lasting import we draw from February 2022.

August 30, 2021

50. Now we turn to the most complex item, procedurally and substantively, involving the August 30, 2021, bite of a passerby adjacent to the Anderson property and the subsequent enforcement actions.
51. Animal Services argues that because neither Titan’s viciousness designation nor compliance order from August 2021 were challenged during that appeal window, it is water under the bridge. That is typically a winning argument, even assuming Ms. Anderson did not actually receive the compliance order. Animal Services met the statutory requirement to Ms. Anderson by mailing a certified, return-receipt-requested copy to her at her last known (and indeed current) address. KCC 11.04.260.D.2; Ex. D5 at 005. Our Court is clear that “due process does not require proof of actual receipt of the mail by the addressee,” and that if the legislature “had intended to require evidence of actual delivery, it could have said so expressly.”² And KCC 20.22.080.H states that where a person fails to timely deliver the appeal statement, the examiner has no jurisdiction to consider the appeal and the department’s decision becomes final and unreviewable.
52. However, two factors complicate that presumed finality.
53. First, the practice of serving the violation (here, viciousness) and fines to the person responsible for the animal at the time of the violation (here, Mr. Hayes, and in past cases, say, a professional dog walker), while serving the owner (who has responsibility going forward for maintaining their animal) with the compliance order, is the correct one. However, in at least some of the past scenarios we reviewed, Animal Services re-listed

² *In re Marriage of McLean*, 132 Wn.2d 301, 306-309, 937 P.2d 602 (1997).

the violation—with a \$0 fine—on the owner’s compliance order itself, just as when Animal Services serves a written warning it lists the alleged violation with a \$0 fine.

54. However, that did not happen here. Even if Ms. Anderson had received the August 2021 compliance order (exhibit D5 at 001), what would she have read? An order that nowhere mentioned the viciousness violation (KCC 11.04.230.H). Provided she was willing to live with the compliance terms—keep Titan securely on the property, leashed when off it, microchipped, and vaccinated—how would she, or similarly-situated owner, know she had to appeal lest her dog’s viciousness designation become final? The order’s reference to KCC 11.04.290 provides a clue, but that section also covers normal (meaning non-vicious) nuisance violations. *See* KCC 11.04.290.B.1.
55. There might be collateral evidence through which Animal Services could prove that the owner had *actual* notice that the dog had been declared vicious and that she needed to challenge that viciousness designation within the 24-day window, lest it become final.³ But that is a tenuous reed to rest on. The rule we announce today is that, where a compliance order does not list the underlying violation (presumably with a \$0 fine) or otherwise clearly put the owner on notice of the violation itself and the ability to challenge it (and not only the compliance terms), Animal Services opens itself up to a later collateral attack on the underlying violation itself, and Animal Service may need to prove actual, not just legal, notice for the violation to have preclusive effect.
56. Second, while Animal Services met the statutory notice requirement for Ms. Anderson’s compliance order (mailing a certified, return-receipt-requested copy of her compliance order at her then (and still current) address, it did *not* meet that for Mr. Hayes’ violation notice. Animal Services mailed a certified, return-receipt-requested copy to him, but at *Ms. Anderson’s* address. Ex. D5 at 007. Yet there is no evidence that Mr. Hayes ever lived in (or unlike Ms. Anderson’s brother, in front of) the Anderson abode, or had any connection to the property other than as a brief day-laborer-turned-thief. That might not have mattered if Ms. Anderson’s compliance notice had listed the viciousness violation, but again, the only document related to August 2021 that declared Titan vicious was the violation notice written to Mr. Hayes, a violation notice not served according to KCC 11.04.260.D’s requirements.
57. Thus, we do not treat as an established fact that Titan was the dog that bit the passerby in August 2021. Turning to the testimony, exhibits and arguments, we find the most likely August 30, 2021, scenario as follows. Although the perimeter of the Anderson property was not secure (as a backhoe driver had recently crashed into the fence), the Andersons (a) locked Titan and Kitty in the house and (b) instructed Mr. Hayes to stay off the property until the family returned. Mr. Hayes ignored that and, while the Andersons were gone, trespassed onto the Anderson property to burglarize it, went into the house (where he ransacked an AC and stole the child’s blanket), and in so doing let Titan and Kitty out into a yard. The yard was unsecured, allowing Titan and Kitty to escape. *See also* Ex. D5 at 016 n.1 (Animal Services recounting sheriff deputy’s statement

³ For example, even though the violation notice for Titan’s November 2022 bite to Dr. Hur was issued to Mr. Goins (as he was the one in the yard with the dogs when they escaped), Ms. Anderson had enough actual knowledge to timely appeal the violation in December 2022. Ex. D3 at 019-24.

that when he arrived on the scene the driveway gate was open, as was a window and the front door).

58. However, what happened while Titan and Kitty were loose and who did the actual biting are less clear. We asked the parties to bring any witnesses to that day, but Animal Services was not able to contact the bite victim (not exactly surprising, given two years had elapsed). And Ms. Anderson and Ms. Fousha only arrived back home after the action was over. That leaves us only with officer notes.
59. We do not know if the passerby was more like Dr. Hur (familiar with the dogs and able to distinguish Titan from Kitty) or more like Ms. Davis (who described her encounter as the only time she had ever seen a dog from the Anderson property). The responding officer noted that the dog that bit the person was already back in the residence, with the other dog contained in the police cruiser. Ex. D5 at 018, n.1. Our inference from that is that Titan was the biter and already back in the house, while Kitty was the non-biter the deputies put in squad car. However, that is undercut by the deputy's own entry that one dog was already back with the owner (presumably Titan), while the other dog (presumably Kitty) was running loose and "almost bit *another* person." Ex. D5 at 021 (emphasis added). And August 30 was during the extended period Ms. Anderson's brother and his four German shepherds were living at the edge of the Anderson property.
60. We draw few conclusions from August 2021.

Removal

61. Where does that leave us? We have:
 - an Animal Services finding from August 2021 that Titan bit a person, but that finding was not properly noticed and is difficult to independently corroborate now based on our limited record;
 - Titan's bite to Dr. Hur from November 2022, which is at milder end of the spectrum (exhibit D3 at 015-16);
 - a viciousness designation and compliance order from November 2022, which was violated when Titan escaped the property in March 2023;
 - a partially blind, developmentally delayed child who already has separation anxiety and relies on Titan;
 - Ms. Anderson also relying on Titan for her physical and emotional security, as she struggles with a variety of ailments; and
 - Ms. Anderson being described by Sgt. Nicholson as being receptive, especially to containment suggestions, and then her taking additional steps since March to up her fence game to avoid yet another Titan escape.

62. Removal under KCC 11.04.290.B.2 is an easy call. Animal Services has met its burden of showing that Titan bit, attacked, or attempted to bite once in a two-year period; Titan bit Dr. Hur in November 2022. However, Animal Services did not prove that Titan attempted to bite anyone when he was loose in March 2023, nor in February 2022, nor in August 2021. There is no second qualifying incident.⁴
63. Removal under KCC 11.04.290.A.3 is a closer call. Titan was correctly declared vicious in November 2022, and Ms. Anderson had actual notice of this and of her need to contain Titan. Unlike the August 2021 incident (where Mr. Hayes illegally trespassed onto her property and burglarized her home, setting the dogs loose in the process) in March 2023 she voluntarily let her dogs out into the yard with Mr. Goins, a yard from which they escaped. She thus failed to comply with requirement to secure Titan on the property or leashed him when off it. Yet three factors counsel against removal here.
64. First, the altercation that drew the vicious designation and compliance order—Titan’s November 2022 bite of Dr. Hur—was, relatively speaking, towards the milder end of the viciousness scale.⁵
65. Second, we have sometimes overturned removal orders where the violation of the compliance order is a single event where nothing damaging happens. While Titan scared at least two people while he was out in March 2022, it is unclear that he even accosted, let alone tried to bite, anyone that day.
66. And third, we are the most exacting of Animal Services when it comes to removals.⁶ Balancing the relatively minor November 2022 bite, the one post-November 2022 failure to comply with the confinement order apparently not result in anything more than Titan running around and barking, the steps Ms. Anderson’s has taken to prevent a repeat of Titan getting out yet again, and the harm to Ms. Anderson and especially to her grandson of removing Titan, we overturn the removal order.⁷

⁴ Note, counsel has made many strong, and sometimes winning, statutory interpretation arguments over the years. The argument he floated that KCC 11.04.290.B.2 requires that two bites (or attempted bites) be to the *same* person is not among them, being so weak as to detract from overall presentation credibility. That argument would mean that if Titan (who had bitten Dr. Hur in November 2022) bit again when he got loose in March 2023, removal would turn on whether the victim was again Dr. Hur (in which case removal would be warranted) or was the woman in the parking lot or by the bank (in which case removal would not be warranted). That argument is wrong on so many levels. *See Tingey v. Haisch*, 159 Wn.2d 652, 664, 152 P.3d 1020 (2007) (we avoid interpreting a code in a way that produces absurd results, because we do not presume the legislature intended absurd results). We would prefer not to hear it repeated in the future.

⁵ The August 2021 bite to the passerby (exhibit D5 at 020-21) was more serious, but there is insufficient proof that Titan was the culprit.

⁶ *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (nature of private interest impacted is a factor in determining how much process is due); *Repin v. State*, 198 Wn. App. 243, 284, 392 P.3d 1174 (2017) (Fearing, C.J., concurring) (analyzing court decisions recognizing “the bond between animal and human and the intrinsic and an estimable value a companion animal”); *Mansour v. King County*, 131 Wn. App. 255, 265, 128 P.3d 1241, 1246 (2006) (in the context of an order removing a dog from King County, “the more important the decision, the higher the burden of proof”); Exam. R. XII.B.4 (higher standards in proceeding involving divestiture of legally cognizable rights).

⁷ Although Animal Services’ officers are anything but softies, even a grizzled veteran like Sgt. Nickelson was clearly conflicted at the prospect of taking Titan away from the Andersons. Because we do not defer to agency opinions, we do

67. If Titan escapes again, the result next round may be different. Ms. Anderson should ensure that neither she nor anyone else lets Titan out of the house unless Titan is either in a securely-fence area and (with all passages are *padlocked* to prevent another accidental release) or is taken off the property on a leash and handled by a competent person.

DECISION:

1. We uphold:
 - A. Titan’s and Kitty’s trespass violations (KCC 11.04.230.K) for November 2022.
 - B. Titan’s viciousness violation (KCC 11.04.230.H) for November 2022.
 - C. Titan’s trespass violation (KCC 11.04.230.K) for March 2023.
 - D. Titan’s vicious animal at large violation (KCC 11.04.230.I) for March 2023.
2. We overturn all other violations and the removal orders.

ORDERED August 3, 2023.



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 *September 4, 2023*. 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 JULY 20, 2023, HEARING IN THE APPEAL OF LISA ANDERSON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS. V22013826, V22013827, V23014078, V23014082, AND V23014077

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Duke Ahn, Lisa Anderson, Terri Davis, Simonne Foucha, Gil Goins, Jae Hur, Mari Isaacson, Adam

not pay much mind to what an Animal Services officer thought or felt, only to their direct observations. Exam. R. XV.F.3. So, for consistency sake we will not include his reaction as a factor. But it was informative.

Karp, and Steve Nickelson. 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 Records relating to March 9, 2023, incident:
Notice of violation no. V23014078, issued March 29, 2023; Notice and order for removal no. V23014082, issued May 2, 2023; Online Complaint form of March 9, 2023, incident by Jae Hur, dated March 20, 2023; RASKC investigation report no. A23001555; Photographs
- Exhibit no. D3 Records relating to November 20, 2022, incident:
Notice of violation no. V23014077, issued March 29, 2023; Notice of violation no. V22013826, issued December 13, 2022; RASKC investigation report no. A22006091; Online Complaint form of November 20, 2022, incident by Jae Hur, dated November 22, 2022; Statement from Duke Ahn, from November 20, 2022 incident, dated November 23, 2022; Appeal, from Lisa Anderson of November 20, 2022 incident; Statement from Lisa Anderson, dated December 23, 2022; Statement from Gil Goins, dated December 31, 2022; Notice and order for removal no. V22013827, issued December 12, 2022
- Exhibit no. D4 Records relating to February 7, 2022, incident:
Online Complaint form of February 7, 2022, incident by Terri Davis, dated February 7, 2022; RASKC investigation report no. A22000614
- Exhibit no. D5 Records relating to August 30, 2021, incident:
Notice of violation no. V21012476, issued August 31, 2021; Notice of violation no. V21012477, issued August 31, 2021; Online Complaint form of August 30, 2021, incident by Nicolz Torrenueva, dated August 30, 2021; RASKC investigation report no. A21004325
- Exhibit no. D6 Appeal of V2314077 and V2314082, dated May 12, 2023; Appeal of V2314078 and V2314082, dated April 6, 2023
- Exhibit no. D7 Diagram from Duke Ahn, submitted July 20, 2023

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

- Exhibit no. A1 Photograph
- Exhibit no. A2 Photograph
- Exhibit no. A3 Photograph
- Exhibit no. A4 Letter, from Virginia Mason, dated February 28, 2023
- Exhibit no. A5 Letter, from HopeCentral, dated April 6, 2023
- Exhibit no. A6 Declaration, from Gil Goins
- Exhibit no. A7 Police report of Dale Hayes, submitted July 20, 2023
- Exhibit no. A8 USPS Tracking, dated September 22, 2021, submitted July 20, 2023

August 3, 2023

**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
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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V22013826, V22013827, V23014078, V23014082, and V23014077**

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, through Quadient-Impress, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED August 3, 2023.



Jessica Oscoy
Office Manager

Ahn, Duke

Hardcopy

Anderson, Lisa

Hardcopy

Davis, Terri

Eykel, Chelsea

Regional Animal Services of King County

Foucha, Simonne

Goins, Gil

Hardcopy

Hur, Jae

Hardcopy

Isaacson, Mari

Prosecuting Attorney's Office

Karp, Adam

Animal Law Offices of Adam Karp

Hardcopy

Nickelson, Steve

Regional Animal Services of King County