

September 25, 2023

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V23014380-A23003901**

MELEIGHA WESTBROOK

Animal Services Enforcement Appeal

Activity no.: A23003901

Appellant: **Meleighta Westbrook**

[REDACTED]
Covington, WA 98042

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
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FINDINGS AND CONCLUSIONS:

Overview

1. Meleighta Westbrook appeals a notice declaring her dog, Freya, vicious and ordering Freya be contained. 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 grant her appeal.

Background

2. On June 19, 2023, Regional Animal Services of King County (Animal Services) issued violation notice V23014380-A23003901 to Meleigha Westbrook for Freya qualifying as vicious and needing to be confined. Ex. D5.
3. Ms. Westbrook timely appealed. Ex. D7. We went to hearing on September 5.

Hearing Testimony

Christopher Nieves Testimony

4. Mr. Nieves testified that he went to his friend's house the evening of June 15 because earlier that day, Mr. Nieves' friend saw Freya pull the bottom of the fence board back. The top of the board was still attached, and the board swung into Freya's yard. Freya had tried to wiggle through the slats. Mr. Nieves' friend had put a board up to block the area. Mr. Nieves' friend did not want a confrontation between Freya and their new puppy or deaf dog, Leonard.
5. While Mr. Nieves was in the backyard, he saw Freya stick her head under the slat into the friend's yard. He walked over to the fence and told Freya to back up; she backed up a few feet. He was going to grab the slat so he could put it back. He grabbed the slat from the right side and Freya was on the left side. When he grabbed the slat, Freya bit his finger.
6. Mr. Nieves went to the emergency room and received seven stitches. Ex. D4. His finger got infected, probably due to the dog's saliva, so a doctor at Kaiser cleaned it. Mr. Nieves' family doctor then looked at his finger. The stitches were almost popping out, so the doctor cut one stitch to release tension. Pus started coming out, so his doctor sent him back to Kaiser. They did an emergency stitch removal and deep cleaned the wound, then added a stint. Mr. Nieves took antibiotics for two weeks.
7. Mr. Nieves went back to work on July 10. He wore a protective brace on his finger. At work, when he grabbed a tool his wound popped open again, gushing blood. He went back to the doctor to get it cleaned. The wound still swells, and he still gets a zapping pain in his finger from the severed nerve. Mr. Nieves is right-handed, so it makes many tasks difficult, such as pushing the button on a shaving cream can. Currently, Mr. Nieves has no medical issues except for his hand.
8. Mr. Nieves watched Freya once when the Westbrooks were out of town. He had no concerns with Freya prior to the incident.

Meleigha Westbrook Testimony

9. Ms. Westbrook testified that she was not aware of the loose fence board until she was contacted by Animal Services. She was not present during the June 15 incident. Ms. Westbrook's daughter was watching Freya at that time. Right before the incident, she had

let Freya out to potty. Ms. Westbrook wishes Mr. Nieves had knocked on their door and let them know about the fence.

10. There is a large potting shed in front of the fenced area where the loose board was. There are cabinets on the bottom, and the cabinet door must have been open the day Freya loosened the fence board. Freya is overweight so she would not be able to fit through the slat.
11. Mr. Nieves watched Freya six years ago and there were no issues. However, since then, every time Mr. Nieves comes over Ms. Westbrook locks up Freya. Their front and back yard are secured, and the back is even double fenced. She is trying to set up Freya for success. Ms. Westbrook has had Freya for six years and there have been no issues.
12. Mr. Nieves has had a lot of medical issues. He had issues with his hands before this incident.

Legal Standards

13. Does Freya qualify 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 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; KCC 11.04.230.H.
14. 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

15. This is an unfortunate case, because Mr. Nieves was trying to do the right thing—reach into the Westbrook yard and pull back a fence slat to avoid a potential dog-on-dog confrontation—when Freya bit him. And he continues to feel the impact of that bite.
16. Our first question is whether Freya qualifies as vicious, meaning performed an act endangering the safety of a person such as biting a person without provocation. KCC 11.04.020.BB. Freya bit Mr. Nieves, but the bite has to be unprovoked to count. The “provocation” inquiry in animal jurisprudence focuses on how an average dog, neither unusually aggressive nor unusually docile, would react to an inciting act.¹ And a key touchstone of courts’ analyses is that “provocation” requires the dog’s reaction to be

¹ *Bradacs v. Jacobone*, 244 Mich. App. 263, 273, 625 N.W.2d 108, 113 (2001) (citing *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000)).

roughly proportional to the victim’s act.² Reaching a hand through a fence, however well-meaning, is a somewhat provocative act to the average dog. That would not have mattered if, for example, Freya had bitten off Mr. Nieves’ finger or bit and twisted to inflict more tearing. Yet here Freya’s bite does not seem grossly disproportionate to a person reaching through her fence. Ex. D4-002.

17. The best provocation counterargument is that where a dog is *already* in attack mode, a victim intervening to protect a pet and then getting bitten did not make the dog bite “provoked.”³ There is some, but not conclusive, testimony about whether or not Freya was in actual attack mode before Mr. Nieves intervened to try to stop something from happening.
18. Regardless, even if a better reading of the facts and jurisprudence would show that Freya’s bite was legally unprovoked, Animal Services cannot show that, in addition to performing a legally unprovoked vicious act on June 15, Freya constitutes a danger to the safety of persons off of, or lawfully on, the animal’s premises. KCC 11.04.230.H.
19. Mr. Nieves did not have Ms. Westbrook’s implied or express consent to reach into her property.⁴ The legality of the person’s presence in a particular space has typically not been definitive, because it usually does not change whether the dog posed a danger to people being in a place where they have a right to be. For example, in our previous cases:
 - A complainant was in a subdivision park she had no right to be (not living in that neighborhood). Appellant and her dog then entered the park. As the complainant was walking away, and was already a good distance away from Appellant and her dog, Appellant dropped the leash and her dog charged and bit the complainant. From the dog’s and public safety perspectives there was no difference between that complainant and some other person from the subdivision who had a right to walk in that park. We upheld the viciousness designation.
 - A canvasser for a windows/roofing company came up the walkway and knocked on Appellant’s door. When Appellant opened the door, his dog charged and bit the canvasser’s crotch. Regardless of whether the neighborhood had posted “No Solicitation” signs, from the dog’s and public safety perspectives there was no difference between that canvasser coming to the door and, say, an invited delivery driver coming to the door. We upheld that viciousness designation as well.
20. Today’s scenario is different. Here, Mr. Nieves was admirably trying to do the right thing. Yet from the dog’s perspective, reaching a hand through its fence seems fundamentally more provocative than, say, someone strolling in a park or coming up the walkway to the front door. And unlike people strolling in parks or coming up the

² *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792.

³ *Koivisto v. Davis*, 277 Mich. App. 492, 493, 497, 745 N.W.2d 824 (2008).

⁴ *Sligar v. Odell*, 156 Wn. App. 720, 233 P.3d 914 (2010). *Sligar* is of somewhat limited value to our analysis, because the context was a statutory damages claim against an owner, not whether the dog itself qualified for a certain designation. But the facts seem similar—a person putting a finger through a fence and getting bitten.

walkways, reaching a hand through a dog’s fence is *not* the type of typically-legal behavior the code is trying to protect. Animal Services has not shown that Freya constitutes a danger to the safety of persons off, or lawfully on, Freya’s premises.

DECISION:

We GRANT Ms. Westbrook’s appeal.

ORDERED September 25, 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 *October 25, 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 SEPTEMBER 5, 2023, HEARING IN THE APPEAL OF
MELEIGHA WESTBROOK, REGIONAL ANIMAL SERVICES OF
KING COUNTY FILE NO. V23014380-A23003901**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Christopher Nieves, and Meleigha Westbrook. 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	RASKC investigation report no. A23003901
Exhibit no. D3	Online Complaint form of June 15, 2023, incident by Christopher Nieves, dated June 16, 2023
Exhibit no. D4	Photograph of injuries and medical record
Exhibit no. D5	Notice of violation no. V23014380-A23003901, issued June 19, 2023
Exhibit no. D6	NVOC mailing/tracking history
Exhibit no. D7	Appeal
Exhibit no. D8	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23014380-A23003901**

MELEIGHA WESTBROOK

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, 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 September 25, 2023.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Nieves, Christopher

Hardcopy

Westbrook, Meleigha

Hardcopy