

October 31, 2023

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

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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file nos. **V23014443** and **V23014648**

BETSABE ORELLANA

Animal Services Enforcement Appeal

Activity no.: A23004057

Appellant: **Betsabe Orellana**

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King County: Regional Animal Services of King County
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FINDINGS AND CONCLUSIONS:

Overview

1. Betsabe Orellana appeals a Regional Animal Services of King County (Animal Services) designation for her dog, Luna, qualifying as vicious and needing to be confined. 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 find that Luna currently qualifies as vicious, but we provide Ms. Orellana a two-month window to get Luna spayed and to avoid the consequences of that designation.

Background

2. Steven Weber filed a complaint for an incident on June 22 at Marymoor off-leash dog park; he provided documents of the injuries to his dog, Jedi. Exs. D3-D6.
3. Animal Services issued Ms. Orellana a violation notice and order for confinement. Exs. D8, D9. Ms. Orellana timely appealed. Ex. D10.

Hearing Testimony

Brett Egan Testimony

4. On June 22 Mr. Egan and Mr. Weber took their two dogs, Toby and Jedi, to Marymoor off-leash dog park. Mr. Egan noticed Ms. Orellana and Luna about 15-20 yards away, and there were other people further away. He saw a [Luna], about 3-4 feet behind Jedi, chasing him, and Jedi with a worried look. Suddenly, Luna lunged at Jedi's back legs, tumbling Jedi and prompting Jedi to run back to Mr. Egan.
5. Jedi started making squealing noises; his leg was bleeding, and his back leg was twisted about 45 degrees. Mr. Egan did not notice any holes in the ground. Toby stayed at Mr. Egan's side. Luna was trying to attack Toby several times, lunging and growling 3-4 times until Ms. Orellana's friend leashed Luna.
6. Mr. Egan and Ms. Orellana exchanged contact information. Mr. Egan later contacted Ms. Orellana and her boyfriend about Jedi's surgery, but he did not receive any response so he contacted Animal Services.

Steven Weber Testimony

7. At the park, Mr. Weber was paying attention to Toby when he heard someone yell, "No, stop!" Mr. Weber noticed Jedi was sitting next to Mr. Egan, screaming, which is unusual since Jedi is usually a quiet dog. Mr. Egan picked up Jedi; Jedi began biting at Mr. Egan, which was also unusual. Mr. Weber noticed Jedi's leg was bleeding and his paw was twisted at an angle. He also did not notice any holes in the ground.

Betsabe Orellana Testimony

8. When Ms. Orellana arrived at the park, Luna saw two German shepherds playing frisbee with their owner and started running towards them. Then, [Toby and Jedi] started running to Luna, and Luna turned around to smell them. Toby and Jedi ran away, startled, and Jedi got stuck in a hole. Both Jedi and Luna ran back to Mr. Egan as Luna chased after Jedi. Luna started barking because the other dogs were barking, particularly Toby, so she asked her friend to leash Luna. Luna never lunged at Toby. Ms. Orellana apologized to Mr. Egan. Luna did not have blood on or near her mouth.
9. Ms. Orellana testified that Luna has no history of aggression. Even that day at the park a few dogs got on top of Luna and Luna just sat down without any aggression. She explained that Luna was in heat that day, and she was unaware that she should not take

Luna out while in heat. Ms. Orellana did not respond to Mr. Egan’s text messages because he was inquiring about insurance, and she did not have insurance. Ms. Orellana is planning to label Luna as her emotional support animal as well as get Luna spayed.

Legal Standards

10. Does Luna qualify as “vicious,” which the code defines 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 [on June 22] without provocation?

KCC 11.04.020.BB. If so, is Luna an “animal that has exhibited vicious propensities [on June 22] and constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises? KCC 11.04.230.H.

11. 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

12. The medical evidence is not overwhelming. The attending surgeon was reported to have hesitated and noted that while the damage was extensive and there was a puncture site on Jedi’s foot consistent with a bite, it also could have been the result of a broken bone puncturing the skin from the inside. Ex. D2 at 004, n.7. Her written statement was that it was “most consistent with significant trauma (such as the dog bite) due to the severity of the fractures.” Ex. D7 at 003. Without the surgeon there to testify, we could not ask the obvious follow-up question, namely whether stepping into a hole while running could also cause significant enough trauma to create such serious fractures.
13. That Jedi started screaming—a high-pitched, continuous sound he had never made before—and then bit his owner perhaps makes it slightly more likely that it was a bite and not a step-caused break. But screaming and nipping is not entirely inconsistent with Jedi stepping in a hole and severely breaking his foot. After all, there is no question that Jedi was seriously injured and in a lot of pain, only the cause of that pain. It is not clear how much his screaming and nipping tells us about the *cause* of that injury.
14. That Luna had no blood near her snout also tells us very little. We have seen numerous scenarios with multiple, obvious bites, where eyewitnesses actually see the bites and or video or photos emerge of the dog seizing another animal, and yet the offending dog had no blood on its snout. In fact—and assuming for purposes of this paragraph that Luna did bite Jedi—we would be shocked if that single, split-second bite would have left Jedi’s blood on Luna. This was not, for example an extended mauling.

15. So, this question comes down to eyewitness testimony.
16. We found all three witnesses generally credible, but Mr. Egan had the best view. We find his description the most accurate. As he walked with his back to Jedi, Jedi sprinted past him with Luna in hot pursuit. Luna lunged at Jedi's back legs and Jedi tumbled. Because Luna was in front of him, Luna's body was obscuring Mr. Egan's view of Luna's mouth, so he could not actually see if Luna connected with Jedi's leg.
17. Ms. Orellana asserted that there was a hole in the area where Jedi went down, but she did not take a photo of it that day (understandable, in the heat of the moment) nor did she find it worth her while to return to Marymoor prior to our hearing in an attempt to re-locate the hole, photograph it, and submit that photograph as an exhibit. Neither Mr. Egan nor Mr. Weber saw a hole. Still, even assuming for purposes of this paragraph that there *was* a hole, we are left with two possibilities:
- Luna, in hot pursuit, lunged at Jedi's hindquarters and bit one of Jedi's back legs, causing Jedi to immediately tumble.
 - Luna, in hot pursuit, Luna lunged at Jedi's back legs, and in a coincidence to end all coincidences, just as Luna lunged at Jedi's back legs, Jedi just so happened to step in a hole and break his leg at that precise milli-second, causing Jedi to immediately to tumble.

We decide cases on a more-likely-than-not-standard, not the proof-beyond-a-reasonable-doubt standard that would apply in a criminal case. And circumstantial evidence can be as equally reliable as direct evidence, so long as the inferences from that evidence are reasonable.¹ We find that, more likely than not, Jedi's foot was injured by Luna's jaws and not by the ground. Thus, Luna meets the definition of "vicious," having endangering Jedi's safety on June 22, namely by biting Jedi without legal provocation. KCC 11.04.020.BB.

18. On July 15, the new code became effective; among other things it dropped the "vicious" designation and replaced it with a two-tiered "potentially dangerous" and "dangerous" system. Had Luna bit Jedi after July 15, that unprovoked bite would be sufficient, standing alone, to lead to a finding that Luna qualifies as potentially dangerous, meaning an "animal that when unprovoked: Bites or inflicts injury on a human or domesticated animal." KCC 11.01.320; KCC 11.04.230.F. But that was not the law as of the June 22 altercation.
19. And upholding a viciousness designation requires not only proof that the Luna "has exhibited vicious propensities," which she did on June 22, but also that she "constitutes a danger to the safety of persons or property off the animal's premises or lawfully on the animal's premises." KCC 11.04.230.H. Here there are three factors that counsel against that finding.

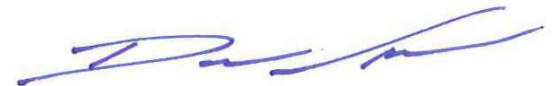
¹ *State v. Miller*, 179 Wn. App. 91, 105, 316 P.3d 1143 (2014). The inferences based on circumstantial evidence must, of course, be reasonable and not based on speculation. *State v. Vasquez*, 178 Wn.2d 1, 16, 309 P.3d 318 (2013).

- The impact of Luna’s bite here was serious, requiring extensive surgery to repair. But it was a single split-second bite, not a sustained attack with multiple bites or even the scenario where a dog, say, seizes another animal and shakes it.
 - Luna apparently continued being aggressive to Toby, but that is not inconsistent with Luna being in heat and being aggressive while in heat.
 - Most importantly, as Animal Services noted, June 22 does not necessarily mean that Luna is an aggressive dog, only a “hormonal teenager” in heat.
20. So where does that leave us? It seems generally accepted that unneutered males and unspayed females, especially those females actively in heat, are more likely to attack than altered dogs.² And we have clear evidence that an *intact* Luna constitutes a danger to other dog’s safety, at least when she is heat. So as of today, in her unspayed state, Luna constitutes a danger.
21. But a viciousness violation is a serious designation and a lifetime mark. We are wary of upholding that designation for a “teenager” when we are not convinced that a *spayed* Luna constitutes a danger. We thus uphold the violation and the compliance order. However, if within sixty days Ms. Orellana gets Luna spayed and submits proof of her spaying, the viciousness designation should be removed. Thus, we give Ms. Orellana a second chance. There will not be a third chance, so she should make the most of it. And she should double check with Animal Services, well before the deadline, to ensure it has received her copy of Luna’s spay record.

DECISION:

1. We uphold Luna’s viciousness designation, monetary penalty, and compliance order.
2. However, if by **December 29, 2023**, Ms. Orellana submits vet records to Animal Services showing that Luna has been spayed, then the viciousness designation, monetary penalty, and compliance order should be removed. If she does not, Luna’s viciousness designation, monetary penalty, and compliance order will remain.

ORDERED October 31, 2023.



David Spohr
Hearing Examiner

² Cynthia A. McNeely & Sarah A. Lindquist, *Dangerous Dog Laws: Failing to Give Man’s Best Friend a Fair Shake at Justice*, 3 J. Animal L. 99, 107 (2007).

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 *November 30, 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 OCTOBER 24, 2023, HEARING IN THE APPEAL OF BETSABE ORELLANA, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS. V23014443 AND V23014648

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Bret Egan, Chelsea Eykel, Steven Weber, and Betsabe Orellana. 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
Exhibit no. D2	RASKC investigation report no. A23-004057
Exhibit no. D3	Online Complaint form of June 22 incident by Steven Weber, dated June 27
Exhibit no. D4	Photograph of injuries to Jedi
Exhibit no. D5	Vet record from Redmond Kirkland Animal Hospital
Exhibit no. D6	Vet record from Blue Pearl
Exhibit no. D7	Online Complaint form of June 22 incident by Dr. Fujita, dated July 3
Exhibit no. D8	Notice of violation no. V23014443-A23004057, issued July 31, 2023
Exhibit no. D9	Order of Confinement V23014648-A23004057, issued July 31, 2023
Exhibit no. D10	Appeal, received July 31, 2023
Exhibit no. D11	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V23014443 and V23014648**

BETSABE ORELLANA
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, 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 October 31, 2023.



Jessica Oscoy
Office Manager

Bret Egan, Steven Weber

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Orellana, Betsabe

Hardcopy