

December 12, 2023

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

King County Courthouse
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file nos. **V23014667 and V23014668**

NANCY DOUTY AND DERIK SALLEE

Animal Services Enforcement Appeal

Activity no.: A23005473

Appellant: **Derik Sallee**

[REDACTED]
Maple Valley, WA 98038

Telephone: [REDACTED]

Email: [REDACTED]

Appellant: **Nancy Douty**

[REDACTED]
Maple Valley, WA 98038

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. Nancy Douty and Derik Sallee appeal violation notices and orders to comply involving Mr. Sallee's dog, Barli. 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 uphold Barli's potentially dangerous animal violation in compliance order, but we reduce the monetary penalty somewhat.

Background

2. On September 10, 2023, Regional Animal Services of King County (Animal Services) issued violation notices V23014668 to Nancy Douty for Barli, her neighbor's dog, qualifying as potentially dangerous. Ex. D10. Ms. Douty timely appealed. Ex. D11. The potentially dangerous designation letter was issued to Derik Sallee, the owner of Barli. Ex. D12. Mr. Sallee also timely appealed. Ex. D13. We went to hearing on November 28.

Hearing Testimony

Callie Krellwitz Testimony

3. Callie Krellwitz testified that there has always been conflict between her dog, Karl, and Barli. When Barli was a younger dog, he would wander onto Ms. Krellwitz' property. Ms. Krellwitz would inform Mr. Sallee when this happened. Karl would see Barli near his property, and Karl would chase Barli. This was aggravating to Mr. Sallee. Ms. Krellwitz then neutered Karl and did perimeter training with Karl. To her knowledge, Karl has not gone onto Mr. Sallee's property since that training. Last year in the summertime Mr. Sallee purchased an e-collar for Barli to prevent him from trespassing.
4. In January 2023, Ms. Krellwitz heard a racket, so she went outside and saw Barli at her back step. Barli had Karl on the ground by the throat. Ms. Krellwitz separated the dogs. Ms. Douty came down her drive to retrieve Barli. Ms. Krellwitz told Ms. Douty that Barli had attacked Karl. Ms. Douty apologized and took Barli away. Karl received medical treatment for a wound Barli gave him in that altercation. Ex. D7.
5. Ms. Krellwitz notified Mr. Sallee of the incident and vet visit. Mr. Sallee said he would make sure the e-collar would be charged and on Barli. But a week after that, Barli came back onto Ms. Krellwitz' property again and attacked Karl. Ms. Krellwitz ended up on the ground trying to break up the fight. Ex. D4. Ms. Krellwitz brought Barli home. Mr. Sallee said he would neuter Barli to try to resolve the situation. After Barli was neutered, Ms. Krellwitz had not seen Barli again until the September incident.
6. Then on September 9, 2023, she was doing yardwork with Karl when she heard a commotion to the west. She looked up and saw Barli and Karl fighting by her firepit a few feet into her property. For Barli to get to that location, he had to come up the riverbank. She yelled and tried to grab the dogs' collars to stop the fight. Ms. Krellwitz

grabbed Barli's collar; Barli spun his head around and bit Ms. Krellwitz' forearm. The dogs eventually separated.

7. Ms. Douty stood about ten yards away, just outside Ms. Krellwitz' property line. The dog fight happened five to six feet higher than where Ms. Douty was standing. Ms. Krellwitz showed Ms. Douty her arm and let Barli run to Ms. Douty. Ms. Douty offered to drive Ms. Krellwitz to receive medical treatment. Ms. Krellwitz just asked Ms. Douty to remove Barli.
8. Ms. Krellwitz brought Karl inside. She texted Mr. Sallee a photo of her injury. Ex. D8. She also walked to Mr. Sallee's house, but he was not home. Her neighbor came over and assisted with first aid. Her arm began to swell, and the pain increased. After speaking with a physician's assistant, she went to the emergency room. The next morning Ms. Krellwitz called Animal Services. Karl was not injured in that altercation; he was only shaking after the fight.

Derik Sallee Testimony

9. Derik Sallee testified that his previous dog, a Great Dane, would go to Ms. Krellwitz property and play with Karl when he was a puppy. Mr. Sallee then got Barli as a puppy. Karl would go to Mr. Sallee's property and mess with Barli. The two dogs do not like each other. They can see each other through the trees. It is a case of dogs being dogs.
10. Barli goes to the farmer's market with no issues. He plays with kids, and he has never had an issue with anyone or any other animal other than Karl. Barli and Karl just have a thing for each other. He would like to keep bringing Barli to dog parks.
11. The battery on Barli's perimeter collar sometimes dies. The collar needs to stay on Barli. After that October [2022] incident, Mr. Sallee texted Ms. Douty to keep Barli's collar on.
12. Ms. Douty walks Barli on Mr. Sallee's or her own property. She loves to hangout with Barli; they have a great connection. Barli is 123 pounds. Barli would probably jerk the leash out of Ms. Douty's hand.
13. His driveway goes through Ms. Krellwitz' property. Mr. Sallee does not even walk Barli up the driveway without a leash.

Nancy Douty Testimony

14. Nancy Douty testified that Karl used to come down and harass Barli when he was a puppy. One day when Ms. Douty was with Barli, Karl came and snapped at him.
15. Regarding the September incident, Ms. Douty removed Barli's collar and drove him to her house. They played in the yard and went down the trails. Ms. Douty had not realized they had gotten close to Ms. Krellwitz property. Barli went on a trail and Ms. Douty could not see him. He ended up on Ms. Krellwitz' yard. It was Ms. Douty's fault; she would have never brought Barli that close. She paid the \$960 vet bill and accepts responsibility.

Legal Standards

16. Does Barli meet the definition of “potentially dangerous animal”? KCC 11.04.230.F. Per KCC 11.01.320:

A. “Potentially dangerous animal” means any animal that when unprovoked:

1. Bites or inflicts injury on a human or domesticated animal;
2. Chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack;
3. Has a known propensity, tendency, or disposition to attack, to cause injury, or otherwise to threaten the safety of humans or domestic animals; or
4. Jointly engages, with one or more animals in conduct meeting subsections A.1., A.2., or A.3., of this section, in which case all animals are deemed potentially dangerous, absent an affirmative demonstration that a specific animal was not responsible for a qualifying act.

B. Regardless of provocation, an animal is a “potentially dangerous animal” if it enters onto private property without the consent of the owner or occupant and bites a human or animal or chases or approaches a person in a menacing fashion or apparent attitude of attack.

C. An animal shall not be declared a “potentially dangerous animal” if the threat, injury, or bite alleged to have been committed by the animal was sustained by a person who was at the time committing a willful trespass upon the premises occupied by the owner of the animal, or who was abusing or assaulting the animal, or who was committing, or attempting to commit a crime. This exclusion does not apply to actions taken in defense of oneself, other humans, animals, or property.

17. 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

18. This is a relatively straightforward case. While Barli’s initial 2022 trespasses onto the Krellwitz property did not result in violence, and Mr. Sallee tried to keep it from happening, in September 2022 Barli came on and prompted a dog fight. Ex. D4. Then in October, Barli again attacked Karl well into the Krellwitz property. In January 2023, Barli came all the way to the Krellwitz front door and had Karl by the throat; Karl required vet care. Ex. D7. In February 2023, Barli again trespassed and attacked, this time

resulting in Ms. Krellwitz winding up on the ground, thankfully without injury that time. Exs. D4-D6.

19. Ms. Krellwitz did not report any of those incidents to Animal Services, and it might have ended there. But on September 9, 2023, Barli again trespassed onto the Krellwitz property to once again go after Karl. *See also* Ex. D9 (neighbor observing Barli fighting in Krellwitz yard). As Ms. Krellwitz tried to break it up, Barli bit her. Ex. D8.
20. Thus, even looking just at September 9, Barli met the criteria for a “potentially dangerous animal,” namely one that “[b]ites or inflicts injury on a human or domesticated animal,” biting both Karl and Ms. Krellwitz. KCC 11.01.320.A. While normally the bite must be unprovoked to qualify, as noted above, an animal qualifies as potentially dangerous animal if—*regardless* of provocation—when “it enters onto private property without the consent of the owner or occupant and *bites a human or animal* or chases or approaches a person in a menacing fashion or apparent attitude of attack.” KCC 11.01.320.B (*italics added*). Barli bit at least Ms. Krellwitz and likely Karl as well, when he entered the Krellwitz property without her permission.
21. We note that the provocation argument would not get very far anyway. Per our code, “provocation... means to torment, agitate, or harass an animal immediately before the attack, chase, or menacing behavior, [and] does not include actions taken to defend oneself, other humans, animals, or property.” KCC 11.01.350. While Ms. Krellwitz did not dispute that, while Barli was a puppy, Karl would come onto the Sallee property and “mess with” (Mr. Sallee’s words) and “harass” (Ms. Douty’s description) Barli, not only was that not immediately before the September 9, 2023, attack, it was not in 2023 and may not have even been in 2022.
22. And Ms. Krellwitz intervening to defend her dog from a trespassing Barli going after Karl could not itself have qualified as provocation for Barli biting her. Where a dog is already attacking, and a person defends herself, another person, or a pet, such defensive actions (where proportionate) do not count as “provocation.”¹ Ms. Krellwitz trying to separate the dogs was not legal provocation for Barli to bite her.
23. And September 9 was not some bizarre one-off where Barli came on the Krellwitz property and exhibited aggression he never had before; it was part of a pattern. We do not dispute Mr. Sallee’s point that Barli only seems to behave this way around Karl. However, there is no my-animal-only-bit-one-person/animal exception. Animal Services has proven that Barli meets the criteria for a potentially dangerous animal.
24. Mr. Sallee questions the need for Barli to be leashed and muzzled when off his property. The requirement for a potentially dangerous animal to “be securely leashed, under the control of a competent adult, and humanely muzzled or securely restrained in a carrier or crate must” when off its property comes directly from the code. KCC 11.04.275.C. It is not something Animal Services made up on-the-fly. If Barli had been leashed and

¹ KCC 11.01.350. *See also* *Giandalone v. Zepieri*, 86 Misc. 2d 79, 80, 381 N.Y.S.2d 621 (1976); *Koivisto v. Davis*, 277 Mich. App. 492, 493, 497, 745 N.W.2d 824 (2008). *McBride v. XYZ Ins.*, 935 So. 2d 326, 332 (La. Ct. App. 2d Cir. 2006).


muzzled on September 9, he would not have attacked Karl and certainly would not have been able to bite Ms. Krellwitz, nor would he be able to do it again in the future.

25. Finally, Ms. Douty requests a reduction in her \$500 fine. Ms. Douty had been warned repeatedly—not only by Ms. Krellwitz but even by Mr. Sallee—of the need to contain Barli and keep him away from the Krellwitz property and Karl. Yet she took the e-collar off Barli and let him wander close to the Krellwitz property, where the completely foreseeable happened. Still, afterwards she accepted responsibility, including financial responsibility. We reduce the penalty somewhat.

DECISION:

1. We uphold Barli’s potentially dangerous animal designation and compliance order.
2. We reduce Ms. Douty’s \$500 penalty to \$350.

ORDERED December 12, 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 *January 11, 2024*. 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 NOVEMBER 28, 2023, HEARING IN THE APPEAL OF
NANCY DOUTY AND DERIK SALLEE, REGIONAL ANIMAL SERVICES OF
KING COUNTY FILE NOS. V23014667 & V23014668-A23005473**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Callie Krellwitz, Derik Sallee, and Nancy Douty. 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. A2300 other 5473
Exhibit no. D3	Online Complaint form of September 9, 2023, incident by Callie Krellwitz, dated September 10, 2023
Exhibit no. D4	Email with overview of text contacts with Mr. Sallee from Ms. Krellwitz
Exhibit no. D5	Photograph of text messages from October 2022 attack on Karl by Barli
Exhibit no. D6	Photograph of text messages regarding January 2023 attack on Karl by Barli
Exhibit no. D7	Vet bill from January attack
Exhibit no. D8	Photograph of bite wound from September 9, 2023
Exhibit no. D9	Witness Statement from Mark Ohme
Exhibit no. D10	Notice of violation no. V23014668-A23005473, issued September 10, 2023
Exhibit no. D11	Appeal from Ms. Douty, received September 10, 2023
Exhibit no. D12	Notice of violation no. V23014667-A23005473, issued September 9, 2023
Exhibit no. D13	Appeal from Mr. Sallee
Exhibit no. D14	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V23014667 and V23014668**

NANCY DOUTY AND DERIK SALLEE

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 December 12, 2023.



Lauren Olson
Legislative Secretary

Douty, Nancy

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Krellwitz, Callie

Hardcopy

Sallee, Derik

Hardcopy