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LAURETTA A. WILSON-CARTER  
Petitioner

v.

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Respondent

Case No.: 2010-DOH-00229

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**FINAL ORDER**

**I. Introduction**

By letter dated July 15, 2010 (the “Determination”), the Department of Health (“DOH”) determined that Petitioner’s Pit Bull Terrier “Mocha” is a “dangerous dog” pursuant to the Animal Protection Amendment Act of 2008 codified at Title 8, Chapter 19 of the District of Columbia Code.<sup>1</sup> *See also* D.C. Act 17-493, 55 D.C. Reg. 9186, 9190-95 (August 29, 2008) (amendments pertaining specifically to dangerous dogs). According to the Determination, Mocha, while running at large, attacked a dog named “Jazz,” while Jazz was leashed and walking with his owner, Mrs. Eloise Ware. The asserted attack occurred on June 8, 2010, in an alley behind the 1600 Block of Lang Place, NE, and caused injuries to both Jazz and Mrs. Ware. Petitioner challenged the Determination and requested a hearing pursuant to D.C. Official Code § 8-1902(c).

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<sup>1</sup> By statute, a “dangerous dog” is a “dog that without provocation ... causes a serious injury to a person or domestic animal . . . .” D.C. Official Code § 8-1901(1)(A). “Serious injury” means “any physical injury that results in broken bones or lacerations requiring multiple sutures or cosmetic surgery.” D.C. Official Code § 8-1901(6).

I held the hearing on August 10, 2010. Assistant Attorney General Phillip Husband represented DOH. Program Specialist Molly Lunaris testified for DOH, as did Jazz's owner, Mrs. Ware, Mary Hammonds, and Mrs. Ware's daughter, Joyce Davis. Petitioner's daughter, Shereese Wilson, represented Petitioner as a non-attorney family member pursuant to OAH Rule 2839.8, 1 DCMR 2839.8. Ron Johnson testified as a character witness for Mocha. Mocha's owner, Petitioner Laretta Wilson-Carter also testified, but she did not see the asserted attack on June 8, 2010. The only eyewitness accounts of the attack and its immediate aftermath came from Mrs. Ware and Ms. Hammonds. In addition to the witness testimony, I admitted into evidence DOH Exhibits ("DX") 100-109, and Petitioner's Exhibits ("PX") 206-214, 231, 237-240, 244, 245, 250, 252, 257, and 258. Based on the testimony, the exhibits admitted into evidence and the entire record in this case, I now make the following findings of fact and conclusions of law:

## **II. Findings of Fact**

1. Petitioner lives in a single family row house at 1620 Lang Place, NE, along with her 65-pound Pit Bull Terrier, Mocha.
2. Mrs. Eloise Ware lives next door to Petitioner at 1622 Lang Place, along with her daughter Joyce Davis and their 20-pound German Shepherd mix, Jazz.
3. Petitioner and Mrs. Ware's back yards abut a common alley (hereafter, the "Alley") that runs behind all the row houses on the 1600 block of Lang Place, terminating at a T-shaped intersection behind a Merchants Tire Center on Bladensburg Road (hereafter, the "Merchants Intersection"). *See* DX-105 (Map of Alley and adjoining back yards).

4. Mrs. Ware, who is 80 years old and uses a cane, routinely walks Jazz with a leash from her back yard, through the Alley, and around the left corner of the Merchants Intersection, retracing the route on her return trip.
  
5. Mocha has a history of attacking Jazz and injuring Jazz and Mrs. Ware. Specifically, on May 31, 2008, Mocha was running at large and attacked Jazz during a regular leashed walk through the Alley. The attack injured Jazz and Mrs. Ware, who was knocked over and dragged while fending off Mocha with her cane. DOH investigated the attack and eventually returned Mocha to Petitioner, subject to a written agreement requiring Petitioner to satisfy a list of conditions designed to protect the public from future attacks, including keeping Mocha behind a locked security fence unless restrained by a harness and leash no longer than four feet. DX-109 (Agreement Between Loretta Wilson-Carter and the District of Columbia Department of Health).<sup>2</sup>
  
6. After the May 2008 attack, Petitioner enclosed her back yard with an 8-foot chain link security fence with a driveway gate consisting of two swinging 8-foot panels secured to a central metal pole with a chain and lock. *See* PX-237, 238, and 239 (photos of fence and locked gate). Petitioner also installed security cameras to monitor the backyard, including the fence and gate.

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<sup>2</sup> The findings about the May 2008 attack rest, in part, on an agreement (DX-109) that both parties referenced as a “settlement agreement.” Settlements are generally inadmissible in civil suits, but I admitted the parties’ agreement into evidence for two reasons: First, assuming it was a potentially excludable settlement, Petitioner did not object to admitting it into evidence and thus waived whatever rights she may have had, if any, to keep it out of the record. Second, regardless of semantics, the substance of the agreement does not resemble a typical excludable civil settlement, where parties compromise claims without admitting liability. Rather, the agreement explicitly acknowledges that on May 31, 2008, Mocha, “while running at large . . . , attacked a dog [referring to Jazz] in the 1600 Block of Lang Place, NE, causing injury to both the dog and its owner [referring to Jazz and Mrs. Ware].” DX-109 (Introductory Paragraph). This admission against interest, signed by Petitioner, leaves the May 2008 attack beyond dispute.

7. At all times relevant to this proceeding, the fence, gate, and locks enclosing Petitioner's back yard were intact and in generally good working order. The security perimeter had no discernable vulnerabilities that could be defeated by a dog, although a person could, in theory, let Mocha out of the yard by pulling the metal driveway pole out of the ground and slipping it through the locked chain securing the gate panels.
8. Despite Petitioner's security apparatus, Mocha ended up running at large in the Alley around noon on June 8, 2010. How this happened is unknown, in part, because Petitioner's security cameras were not working due to a PEPCO power outage.
9. While Mocha was loose on June 8, 2010, Mrs. Ware and Jazz were returning home from a routine leashed walk around the corner of the Alley near the Merchants Intersection. Mocha charged, grabbed Jazz around the stomach and bit and shook Jazz vigorously. As she had done two years earlier in May 2008, Mrs. Ware eventually fended off the attack with her cane.
10. A neighborhood resident, Mary Hammonds, was alerted to the attack by her husband, heard screams, observed the attack underway, and called 911. Metropolitan Police, Fire, and Rescue arrived on the scene shortly after the attack was over.
11. Mrs. Ware was knocked to the ground during the attack and suffered scrapes and bruises to her hands, arms, feet, and buttocks. *See DX-107* (composite photos of foot and elbow injuries). The stress of the attack also caused her

blood pressure to spike and she was taken by ambulance to a hospital for medical treatment.

12. Jazz sustained contusions to her midsection requiring multiple sutures, a drainage tube, and follow-up care. *See* DX-102 (Itemized Animal Hospital Bill); DX-106 (composite photos of untreated injuries); DX-108 (photo of sutured wound and drainage tube).

### **III. Conclusions of Law**

The Animal Protection Amendment Act of 2008 (the “Act”) governs whether a dog is dangerous as a matter of law. Absent narrow statutory exceptions inapplicable to this case, a dog is a “dangerous dog” if it attacks another dog or person without provocation and causes a “serious injury” requiring multiple sutures. The Act provides in pertinent part as follows:

For the purposes of this chapter, the term:

(1)(A) ‘Dangerous dog’ means any dog that without provocation:

(i) Causes a serious injury to a person or domestic animal ...

\* \* \* \* \*

(6) ‘Serious injury’ means any physical injury that results in broken bones or lacerations requiring multiple sutures or cosmetic surgery.

D.C. Official Code § 8-1901.

The overwhelming evidence presented in this case (indeed all of the evidence presented in this case) establishes that Mocha attacked Jazz without provocation, causing serious injuries to Jazz and injuring Mrs. Ware as well. Mrs. Ware testified in open court about the entire attack and the resulting injuries. She also displayed some of her partially healed wounds. Her version of the facts was detailed, credible, and consistent with the eyewitness testimony from Mrs. Hammonds about the attack and its immediate aftermath. It was also corroborated by all of the

documentary and photographic evidence admitted into the record, as well as hearsay testimony from Program Specialist Lunaris about the DOH investigation of the attack, and testimony from Mrs. Ware's daughter, Joyce Davis. In sum, all the evidence supports affirming the challenged dangerous dog Determination, and nothing supports reversing it.

Petitioner offered no conflicting evidence about the attack or the resulting injuries to Jazz and Mrs. Ware. Instead, Petitioner's daughter, Ms. Wilson, argued that Mocha is not dangerous because she is friendly and has never been "a problem," except for the May 2008 and June 2010 attacks. To state this argument is to reject it. Indeed, to the extent the argument carries any weight at all, it cuts entirely in favor of DOH and cements the conclusion that DOH properly declared Mocha a "dangerous dog" pursuant to D.C. Official Code § 8-1901. The applicable statutory definition does not exclude generally good dogs that attack without provocation only occasionally. One unprovoked attack against another dog or human being is sufficient to support a dangerous dog determination especially where, as here, the evidence of the attack and resulting injuries is beyond dispute.

Ms. Wilson also argued that the June 2010 attack was a "premeditated incident," and she offered to enter more than 300 exhibits into evidence to prove (i) that Mocha could not jump over Petitioner's 8-foot security fence, (ii) that the fence and gate were intact and locked at the time of the June 2010 attack, (iii) that a person (but not a dog) could pull the metal post securing the gate out of the ground, and (iv) that Petitioner's security cameras were off at the time of the attack because of the PEPCO power outage.<sup>3</sup> When pressed about how these points might add up to a premeditated incident relevant to the case, Ms. Wilson advanced the facially implausible theory that Mrs. Ware pulled the gate post out of the ground herself while the security cameras

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<sup>3</sup> DOH did not dispute any of Ms. Wilson's factual contentions, which I accepted as true without admitting hundreds of exhibits into the record.

