

DISTRICT OF COLUMBIA
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THOMAS CARTER
Petitioner

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Respondent

Case No.: 2010-DOH-00335

FINAL ORDER

I. Introduction

By letter dated December 21, 2010 (“Determination”), the Department of Health (“DOH”) determined that Petitioner Thomas Carter’s german shepherd known as “Buer” (pronounced “bear”) 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.¹ According to the Determination, Buer, while running at large on the sidewalk adjacent to Petitioner’s house, attacked a dog named “Jake,” while Jake was leashed and walking with his owner, Mark Sleith. The alleged attack occurred on November 29, 2010, in front of 4134 22nd St., NE, and caused injuries to Jake. Petitioner challenged the Determination and requested a hearing pursuant to D.C. Code, 2001 Ed. § 8-1902(c).

I held the hearing on January 18, 2011. Assistant Attorney General Rudolf Schreiber

¹ By statute, a “dangerous dog” is a “dog that without provocation ... causes a serious injury to a person or domestic animal” D.C. Code, 2001 Ed. § 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. Code, 2001 Ed. § 8-1901(6).

represented DOH. Program Specialist Molly Lunar is testified for DOH, as did Mr. Sleith. Petitioner represented himself and testified. I admitted into evidence DOH Exhibits 100-104. 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 at 4134 22nd St., NE, along with his wife, children, german shepherd, Buer, and two small dogs (a miniature schnauzer and a bichon/poodle mix).
2. Mr. Sleith lives near Petitioner at 2222 Randolph St., NE, along with his welsh corgi, Jake.
3. On November 29, 2010, Mr. Sleith was walking Jake on a leash heading southbound in the 4100 block of 22nd Street, NE. Exhibits 100 and 101. They were on the public sidewalk. *Id.* When they reached Petitioner's house (4134 22nd St., NE), Buer came running across Petitioner's front yard and attacked Jake. *Id.*
4. Buer bit Jake about the neck and left shoulder. Exhibits 100 and 103. Petitioner was cutting the grass in his front yard and immediately stopped to separate the dogs. Exhibit 102. After Petitioner and Mr. Sleith were able to separate the dogs, they examined Jake, but did not see any injuries. Still, Petitioner gave Mr. Sleith his contact information and promised to pay any veterinarian bills stemming from Buer's attack.

5. When Mr. Sleith got Jake home, he was able to inspect Jake more closely and noticed a gash on his neck/shoulder area (left side). Exhibit 100. Mr. Sleith took Jake to Friendship Hospital for Animals. Exhibit 103.
6. As a result of Buer's attack, Jake suffered a "medium" laceration that required 15 staples to close. The veterinarian also left two wound drains in place. Exhibits 103 and 104. Finally, the veterinarian sent Mr. Sleith home with antibiotic (Clavamox) and anti-inflammatory (Rimadyl) medications. Exhibits 100 and 103. Petitioner paid Mr. Sleith's veterinarian bill (\$576).
7. Buer does not have a bite history. Buer is a good family dog, security dog, and companion animal for the two dogs he lives with.

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. Code, 2001 Ed. § 8-1901.

The parties agree on the material facts of this case; namely, that Buer attacked Jake without provocation, causing a laceration to Jake's left shoulder/neck area that required 15 staples to close, plus two wound drains. Exhibits 100-104. In Petitioner's words, "this incident

wasn't justified nor provoked” Exhibit 102. Mr. Sleith testified in open court about the attack and the resulting injuries. His version of the facts was detailed, credible, and consistent with the testimony from Petitioner. 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.

Petitioner argued that Buer is not dangerous because he is friendly and has never been a problem before this incident. Petitioner noted that Buer has been socialized around children and other dogs. In fact, Petitioner took full responsibility for the attack, maintaining that Buer just acted in the “nature of animals” when he attacked and bit Jake. Petitioner hypothesized that Buer incorrectly thought Mr. Sleith (not Jake) was coming on to their property and became aggressive to protect Petitioner, merely shifting his attention from Mr. Sleith to Jake when he saw Jake. Exhibit 102. Petitioner contended it was unfair to punish Buer for his (Petitioner’s) failure to monitor Buer correctly.

I am sympathetic to Petitioner’s concern for Buer, because ultimately he is correct: Buer acted as animals do. The problem occurs when pet owners don’t take appropriate steps to prevent dogs (or any other pets) from acting out their animal instincts on other humans or animals. But, to the extent the argument carries any weight at all, it cuts in favor of DOH and the conclusion that DOH properly declared Buer a “dangerous dog” pursuant to D.C. Code, 2001 Ed. § 8-1901. The applicable statutory definition does not exclude generally good dogs that attack without provocation only occasionally or for the first time. 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. The Determination is affirmed.

IV. Order

Based upon the above findings of fact and conclusions of law, and the entire record in this matter, it is this 25th day of January 2011

ORDERED, that the DOH Determination that Buer is a dangerous dog is **AFFIRMED**; it is further

ORDERED, that the terms and conditions for Petitioner to keep Buer, set forth in the DOH Determination, are **AFFIRMED**; it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.

Jesse P. Goode
Administrative Law Judge