



STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE
Office of the Commissioner



Steven K. Reviczky
Commissioner

860-713-2501
www.CTGrown.gov

September 28, 2018

Mailed USPS/certified mail/return receipt

Meri Foley
[Redacted]

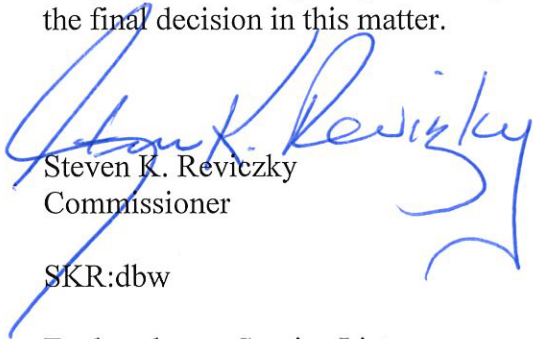
Re: Final Decision case # 2017 3.9 KAYA

Dear Ms. Foley:

I am the final decision maker in the matter of the appeal of a Restraint Order for the dog named "Kaya" owned by Meri Foley. The Restraint Order was issued by the Town of Hamden and its animal control officer on February 27, 2017

A Proposed Final Decision of the Hearing Officer, Wayne Kasacek was served upon the parties on or about July 31, 2018, through notice from the undersigned. The notice afforded each party the opportunity to present exceptions or briefs and requests for oral arguments to the Commissioner, as the final decision maker. No request was received. Accordingly, I am proceeding with issuance of the Final Decision in this matter.

I have read the entire record in this matter. Upon due consideration of the entire record, I find there is substantial evidence in the record to affirm the Restraint Order with the modification striking the words, "under the control of a responsible individual not less than 21 years of age" and replaced with the words, "under the control of a responsible individual not less than 18 years of age", and I hereby adopt the Proposed Final Decision of the hearing officer in its entirety as the final decision in this matter.


Steven K. Reviczky
Commissioner

SKR:dbw

Enclosed: Service List
Proposed Final Decision



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July 27, 2018

IN THE MATTER OF: APPEAL FROM RESTRAINT ORDER
ISSUED BY THE CITY OF HAMDEN

CITY OF HAMDEN
VS.
MERI FOLEY - "KAYA"

PROPOSED DECISION

FINDINGS OF FACT:

1. Commissioner Steven K. Reviczky appointed Wayne Kasacek to act as hearing officer and to issue a proposed decision in this matter. HO-4
2. Notice of a hearing scheduled for June 20, 2018 was provided via certified mail to the City of Hamden and its representatives, the owner of the canine subject of this appeal and her representative. HO-3
3. At issue is the appeal of a restraint order issued by the City of Hamden to Meri Foley concerning her dog known as "Kaya". HO-1
5. On June 20, 2018 a hearing was held and concluded. TR
5. Present at the hearing was Hamden Animal Control Officer, Chris Smith. The City of Hamden was represented by Attorney Brendan Sharkey. Attorney Matthew Popilowski for the named party, Meri Foley.
6. For the City of Hamden, Officer Smith testified that he received and investigated a complaint from a Helen Schaefer on 11/7/2016 alleging that on 11/5/2016 the dog "Kaya" left the yard of 78 Central Avenue, Hamden, CT crossed the street and attacked "Bosie", owned by Schaefer. Schaefer in Officer Smith's report was on leash and under the control of Schaefer while being walked. TR-18, T-1
7. Officer Smith testified that during the course of his investigation he learned that Kaya was in the care and custody of Elizabeth Trond, 78 Central Avenue, Hamden, CT at the time of the 11/5/2016 incident. Kaya was being watched by Trond at the request of the Foley's. Officer Smith testified that he interviewed Trond and Schaefer and that their accounts of the incident were in substantial agreement, that in fact Kaya left the yard of Trond and attacked Schaefer's dog Bosie in the street. Officer Smith testified that as a result of the attack, Bosie sustained injuries which required veterinary medical attention. Bosie was treated for injuries at Animal Medical Care of Connecticut as a result of this attack. TR-21 - 25, T-1, T-3
8. Officer Smith testified that during the course of his investigation he spoke with Foley regarding the 11/5/2016 incident and discovered that the dog Kaya was not current on rabies vaccination. As a result of the attack and the rabies vaccination status of the dog Kaya, Officer Smith ordered the dog



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quarantined on the property of Foley pursuant to C.G.S. § 22-358. Officer Smith testified that he issued an infraction to Elizabeth Trond for a nuisance dog and written warning for a roaming dog. Officer Smith testified that he issued a written warning to the Foley's for failure to vaccinate. TR-23, T-2

9. Officer Smith testified that he received a complaint on 2/22/2017 from Helen Schaefer regarding an incident that took place on 2/19/2017. Schaefer alleged a second attack on Bosie by Kaya. The complaint alleged that on 2/19/2017 Kaya left the property of Trond, crossed the street and attacked Bosie.

10. Officer Smith testified that his investigation revealed the 2/19/2017 incident was similar to the 11/5/2016 incident. The dog Kaya was in the care of Trond at the request of Foley at the time of the incident. That the dog Kaya caused injuries to the dog Bosie owned by Helen Schaefer. That the injuries required veterinary medical treatment. That the injuries to Bosie included an injury to the left eye and that injury resulted in the removal of that eye. TR 36 – 41, T-5, T-7

11. Officer Smith testified that as a result of his investigation into the 2/19/2017 incident he issued an infraction to David Trond as the person entrusted with keeping Kaya for the Foley's for nuisance dog and an infraction for roaming dog. Officer Smith testified that he issued an infraction to Meri Foley for failure to license Kaya. TR-38

11. Officer Smith testified that as a result of the 11/5/2016 and 2/19/2017 incidents and his concern for public safety he issued a restraining order pursuant to C.G.S. § 22-358(h). The restraining order specifies that the dog Kaya is to be on a secure leash of not more than six (6) feet in length, under the control of a person of not less than twenty one (21) years of age and muzzled when not on the property of its owner the Foley's. TR 42, T-6

12. For the dog owner Foley, Veterinary Doctor Marjorie O'Neill testified regarding a letter she and Veterinary ophthalmologist provided to Helen Schaefer. The letter stated that injuries to the left eye of Bosie "could have been due to blunt trauma during the dog fight". Dr. O'Neill testified that she could not definitively say the injury to and subsequent removal of the left eye was as the result of an injury caused by a fight with another dog. TR 101 – 102, TR-106, TR-108 T-7, R-1

13. Officer Smith testified that he had received information and photographs from Helen Schaefer on 5/2/2017 which show Sean Foley walking Kaya on a leash but without a muzzle. Officer Smith testified that he did not follow-up on this information. TR-53, T -12

DISCUSSION

It is undisputed that the dog Kaya on two occasions, while in the care and custody of David and Elizabeth Trond, Kaya did leave their property and attack the dog Bosie. It is undisputed that as the result of these attacks the dog Bosie required veterinary medical care. It is also undisputed that both attacks occurred when the dog Kaya was not under the control of either of the Foley's but was being cared for by the Trond's. No testimony was offered nor is there any record of any incidents regarding Kaya when Kaya was in the care and custody of its owner the Foley's.

Counsel for Meri Foley disputed the conclusion of Officer Smith that the incident on 2/19/2017 caused an injury that ultimately resulted in the removal of the left eye of the dog Bosie. Testimony of



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Marjorie O'Neill, a veterinarian who had treated Bosie could not definitively link a cause and effect as a result of the incident.

This hearing officer finds that the testimony of Officer Smith is both credible and sincere. Officer Smith at one point testified as to his attempts to recommend a muzzle type he believed would be more appropriate for the breed of dog only to be rebuffed by Mr. Foley. While Officer Smith erred when relying on the letter from Dr. O'Neill and Dr. Dorbrandt, Officer Smith had ample reason to be concerned about the actions of the dog Kaya and had sufficient justification to issue the restraint order.

As stated earlier in this discussion, Kaya was in the care custody of David and Elizabeth Trond at the request of the Foley's when both attacks on the dog Bosie occurred. In both attacks Bosie was not on the property of Bosie, Bosie was under control of its owner Helen Schaefer, Kaya left the property of its keeper, the Trond's and attacked Bosie. It is the conclusion of this hearing officer that the owners of Kaya, Meri and David Foley are ultimately responsible for the actions of their dog. The restraint order issued to Meri Foley on the Kaya is both reasonable and well thought out. That the dog Kaya be kept on a secure leash under the control of "a responsible individual not less than 21 years of age" when not on the Foley's property and that Kaya be muzzled when not on the property of the Foley's. This Hearing Officer does recommend that the restraint order be modified to "a responsible individual not less than 18 years of age".

LEGAL CONCLUSION AND RECOMMENDATIONS:

Connecticut General Statute 22-358(h) provides, in part, that "...If such officer finds that the complainant's animal has been bitten or attacked by a dog when the attacked animal was not on the premises of the owner or keeper of the attacking dog and provided the complainant's animal was under the control of the complainant or on the complainant's property, such officer, the commissioner, the Chief Animal Control Officer or any animal control officer may make any order concerning the restraint or disposal of such attacking dog as the commissioner or such officer deems necessary." It further provides that following a hearing on such order "the commissioner may affirm, modify or revoke such order as the commissioner deems proper."

Upon review of the evidence and exhibits of the parties and after much reflection, I propose that the Town of Hamden through Officer Smith established by a preponderance of the evidence in the record that Kaya is in fact a danger to dogs and public safety, and that statutory tests for the issuance of the restraint order in question have been satisfied. I propose that the restraint order be **MODIFIED** to strike the words "under the control of a responsible individual not less than 21 years of age" and replace them with the words "under the control of a responsible individual not less than 18 years of age".

Dated: July 27, 2018


Wayne Kasacek
Duly Appointed Hearing Officer

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