

FINAL RULING

Judge Alison Mackenzie, Department 55

FILED
Superior Court of California
County of Los Angeles

DEC 03 2024

David W. Slayton, Executive Officer/Clerk of Court
By: S. Temblador, Deputy

Nelson Grande and Sylvia Franco vs. City of Burbank

24STCP02675

Background

Nelson Grande and Sylvia Franco live in Burbank and own an eight-year-old Pit Bull/Labrador mix named Conan. On January 14, 2024, Conan bit the arm of Deborah Drissi in the alley behind the home of Grande and Franco. In July 2024, the City of Burbank served Franco with a Notice of Administrative Hearing pursuant to Burbank Municipal Code (BMC) section 5-1-1603(A) and Food and Agriculture Code (“Food & Ag Code”) section 31621, for the purpose of having Conan declared a “vicious” dog under BMC 5-1-1602(B) and Food & Ag Code section 31603. The Hearing Officer issued an Administrative Hearing Decision and Order (“Decision”) that Conan is a vicious dog under the applicable code and statute and shall be turned over the Burbank Animal Shelter to be euthanized.

Grande and Franco filed this case to appeal the Decision. As provided in BMC 5-1-1605 and Food & Ag Code section 31622(b), the appeal consists of this Court conducting a hearing de novo to make its own determination as to whether Conan is a vicious dog and to make other orders.

This Court held a hearing de novo on October 18 and November 26, 2024. The Court heard testimony from the following witnesses: Grande, Franco, Drissi, Stacie Wood-Levin (Senior Animal Control Officer), Donald Capes (Animal Control Officer), Betsy Dennis (neighbor), and Dr. James Crosby (animal behavior expert).

Legal Standard

A vicious dog means a “dog that, when unprovoked, in an aggressive manner, inflicts severe injury on [] a human being.” Food & Ag Code section 31603(a); see also BMC 5-1-1602(B) (same). Severe injury is defined as “any physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.” Food & Ag. Code section 31604; see also BMC 5-1-1602(C) (same).

A dog may not be declared vicious based on “any injury or damage sustained by a person who, at the time the injury or damage was sustained, was ... teasing, tormenting, abusing, or assaulting the animal... No animal may be declared [vicious] if the animal was protecting or defending a person within the immediate vicinity of the animal from an unjustified attack or assault.” Food & Ag Code section 31626(a); BMC 5-1-16-1(C).

If the Court determines after the appeal (i.e., the hearing de novo) that the dog is vicious, the Court may order that the dog be destroyed. Food & Ag Code section 31645(a). Alternatively, the

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Court may determine that a vicious dog shall not be destroyed, in which case the Court “shall impose conditions upon the ownership of the dog that protect the public health, safety and welfare.” Food & Ag Code section 31645(b).

The Court makes this determination after admitting all relevant evidence and testimony, and the decision shall be decided by a preponderance of the evidence standard. Food & Ag Code section 31622.

Findings

The evidence is undisputed that Drissi suffered a severe injury from Conan’s bite. The bite severed nerves in her arm. She received 28 stitches on her arm and suffered nerve damage to her arm. She is still receiving physical therapy nearly a year after the injury. The pictures of her arm from after the attack reveal a gruesome injury with two deep wounds where Conan’s teeth bit her arm. Even Dr. Crosby, the expert testifying for Grande and Franco, acknowledged that it was a “significant” bite. Franco and Grande do not contest the severity of the bite. Thus, the City has proven by a preponderance of the evidence that Conan’s bite resulted in a “severe injury” on Drissi.

At the hearing Franco contended that Conan was provoked into biting Drissi. But the Court finds that the City has proven by a preponderance of the evidence that, in fact, the bite was unprovoked. Capes testified that when he arrived on the scene after the bite Franco said Conan came and bit Drissi while Drissi was standing in the alley talking to Franco. He did not recall Franco saying that Drissi had threatened Franco or Conan prior to the incident. Drissi denied she had done anything threatening to Conan or Franco before the bite.

The only testimony suggesting that Conan was provoked comes from Franco and Dr. Crosby (Grande did not witness the attack). Franco testified that Drissi screamed and waved her arms before Conan bit her and that Franco believes Conan was protecting her by biting Drissi. She testified that prior to the January 2024 incident, Drissi used to pass the gate behind Grande and Franco’s house on at least 5 to 10 occasions and hit the fence and yell at Conan. Franco did not testify to this information at the administrative hearing. She also did not tell this information to the police officer the day of the incident. As shown in the police body cam footage, Franco told the officer that Conan came out of the gate while she was speaking to Drissi, sniffed Drissi, jumped up and bit Drissi’s raised arm. The Court does not find credible Franco’s new claim that Conan was “protecting” her and that Drissi used to hit the fence and yell at Conan, and thus somehow provoked Conan. While Franco claimed the police officer did not give her a chance to tell her story, a review of the body cam footage reveals that the officer gave her plenty of time to tell her story from her point of view. Nor does she have any credible explanation for not providing this information at the administrative hearing. There is no other documentary evidence supporting Franco’s claims. It appears to the Court that Franco has changed her story to bolster her argument that the attack was provoked. It is an unconvincing effort.

Dr. Cosby’s expert opinion that Conan was provoked carries no weight because his opinion is based on Franco’s not credible testimony that Drissi had repeatedly hit the gate and yelled at

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Conan prior to the January incident, and that Conan only bit Drissi when Drissi started yelling and waving her arms.

The Court therefore finds by a preponderance of the evidence that Conan came out of the gate, approached Drissi, leaped up, and bit her on her arm, causing severe injury. This was an unprovoked attack. Even if the Court were to credit Franco's new testimony (and it does not), it would not change the Court's conclusion that the attack was unprovoked. Even if Drissi had hit the gate and yelled at Conan prior to January 2024, and even if Drissi was waving her arms and yelling while Conan was sniffing her feet, this would not constitute "teasing, tormenting, abusing, or assaulting" Conan at the time Conan bit Drissi. Food & Ag Code section 31626(a); BMC 5-1-16-1(C). Nor could such actions credibly constitute an "unjustified attack or assault" on Franco to justify Conan's behavior. *Id.*

While the Court concludes that Conan is a "vicious" dog, it does not find that the City has established by a preponderance of the evidence that releasing Conan to Grande and Franco "would create a significant threat to the public health, safety, and welfare" such that Conan should be euthanized. Conan has not bitten anyone before or after biting Drissi. The City did not move to impound Conan pending the administrative hearing. The City first moved to impound Conan by way of an ex parte application in November 2024. The Court denied the ex parte application. This means that Conan has lived at home with Franco and Grande since January 2024. No reported incidents have occurred during that 11-month time period. Finally, Franco and Grande have not disputed the seriousness of Drissi's injuries and have stated they would abide by conditions set by the Court.

At the hearing, Franco and Grande persisted in trying to claim that Conan was "provoked" into biting Drissi even though their own prior statements and other evidence did not support such a claim. They have not had Conan neutered, they did not provide any evidence that they have enrolled in any dog training class, and they have not provided any evidence that they have undertaken any other efforts to ensure that this would not happen again. Such inaction suggests that Franco and Grande lack insight into the severe injury their dog caused to Drissi, and lack of insight into the reality that owning a vicious dog entails significant responsibilities on the part of the owners. Their own expert acknowledged that he could not guarantee that Conan would not attack again. For these reasons, the Court concludes that it must impose significant conditions on the continued ownership of Conan to protect public health, safety, and welfare.

The BMC lays out various orders that an administrative hearing officer can issue if it finds a dog is vicious at the administrative hearing. The City also set forth various conditions it advocates for in the event the Court were to find that euthanasia is not warranted. Franco and Grande also advocated for certain conditions, though much less restrictive ones than those proposed by the City. The Court has considered all these potential conditions, and now lays out what Grande and Franco must do in order to maintain ownership of Conan. These conditions reflect the seriousness of Conan's "vicious dog" designation and the need for Franco and Grande to do their part to protect the community from Conan.

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1. Conan shall always be properly licensed by the Animal Shelter and vaccinated against rabies. Within 60 days, the Animal Shelter shall include the vicious designation in the registration records of the animal. The Animal Shelter may charge a vicious dog registration fee in addition to the regular licensing fee to provide for the increased costs of maintaining the records of the animal.
2. Conan shall be maintained on the owner or keeper's property, or property occupied by the owner or keeper, hereinafter referred to as the Premises, and shall, at all times, be kept indoors, or in a secure enclosure with a secondary perimeter fenced yard from which the animal cannot escape, and into which children cannot trespass. The secondary perimeter fence shall be installed within 60 days of this order. The animal may not be allowed off the Premises unless it is restrained by a substantial leash, of a fixed length of no more than six feet, humanely muzzled, and under the immediate control of Grande. If the animal escapes from the Premises, the owner or keeper shall immediately notify the City's Animal Shelter.
3. Conan shall not be allowed to go to dog parks or other off leash areas for dogs within the City. Conan shall not be allowed to walk on public areas in the City other than city sidewalks (and only when walked by Grande). In other words, Conan is not allowed on any places within the City where the public may gather.
4. If Conan dies or is sold, transferred, or permanently removed from the City, the owner or keeper shall notify the City of the changed condition and new location of the animal, in writing, within two business days of the changed condition.
5. Conan shall be neutered within 60 days and proof of neutering provided to the Animal Shelter.
6. Franco and Grande are required to provide a permanent identification by means of an implanted microchip that shall be registered with the City's Animal Shelter. A photograph of the animal is also required to be kept on record for identification, in addition to registration as a vicious dog.
7. For a period of six months, Grande and/or Franco shall take Conan to an in-person one-on-one training class (to meet at least once per week) with a curriculum focused on aggressiveness in dogs. The class shall be taught by an instructor certified by the Certified Council for Professional Dog Trainers. Franco and Grande must, within 60 days, submit proof of enrollment to the Superintendent of the Animal Shelter, or their designee. After that, Franco and Grande must submit proof of attendance to the Superintendent of the Animal Shelter, or their designee.
8. Within 60 days of this order, Grande and Franco are required to provide evidence to the Superintendent of the Animal Shelter, or their designee, of insurance coverage of no less than \$100,000.00 for combined claims of bodily injury to, or death of, any person, or for damage to property owned by any other person, which may result from the ownership, keeping, or maintenance of Conan, regardless of whether the animal is on the Premises or not. This condition shall be in place for 36 months.

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9. Grande and Franco shall allow access to the City's Animal Shelter personnel to inspect the Premises to ensure compliance with the provisions set forth above between the hours of 9:00 a.m. and 9:00 p.m. on any day of the week. Prior notification of the inspection to the owner or keeper of the vicious animal shall not be required. This condition shall be in place for 36 months.

The Court retains jurisdiction over the case. In the event the City determines that Grande and Franco are not in compliance with any of the above conditions, the City may file an ex parte application seeking appropriate relief, under the procedures set forth in CRC 3.1200 et seq.

Clerk to give notice.

IT IS SO ORDERED.

December 3, 2024



Judge Alison Mackenzie

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