

IN THE MATTER of the Dog Control Act 1996

AND

IN THE MATTER of an objection against the classification of a dog as menacing pursuant to section 31(3) of the Dog Control Act 1996.

BETWEEN **Hayley Maree EDWARDS**

Objector

AND **Waikato District Council**

Respondent

BEFORE THE WAIKATO DISTRICT COUNCIL REGULATORY SUBCOMMITTEE.

Chairperson Cr Noel Smith
Members Cr Carolyn Eyre
Cr Janet Gibb

HEARING at Ngaruawahia on 16 September 2020

APPEARANCES:

Ms H Edwards, Objector (dog owner)
Ms T Oakes, Team Leader, Animal Control Officer, Waikato District Council
Ms A Davis, Animal Control Officer, Waikato District Council
Ms J Newall, Animal Control Officer, Waikato District Council
Ms K Ridling, Solicitor, Waikato District Council

DECISION

Pursuant to Section 31(4) of the Dog Control Act 1996 the Regulatory Subcommittee rescinds the classification of the dogs, known as 'Klouws' and 'Meelah', as dangerous dogs.

Introduction:

[1] On 19 March 2020 an incident was reported to Waikato District Council Animal Control Officers that two black dogs had attacked a small white dog at the premises of 31 Hartis Ave, Huntly. Animal Control staff attended shortly after the incident was reported, and as a result of interaction with two dogs at 32 Hartis Ave, Huntly and subsequently the dog's owner, Ms Hayley Edwards, the dogs 'Meelah' and 'Klouws' were seized. They were subsequently classified as dangerous dogs on 18 June 2020. Ms Edwards objected to the classification which necessitated a hearing before the Council's Regulatory Subcommittee (the Committee).

[2] The Committee was presented with a Council agenda which contained, amongst other correspondence, a copy of the complaint, extracts of legislation, Animal Control Officers statements – both sworn (containing witness statements) and unsworn, a copy of two dangerous dog classification notifications to Ms Edwards, her written objection and photos taken by Animal Control Officers as well as other associated documents. The Committee notes from the photos provided that the premises at 32 Hartis Ave is both fenced and gated. The Committee further notes that the property of 31 Hartis Ave has no roadside fencing and no apparent ability for any dog to be confined to that property. The Committee also noted that we were not provided with any photographic evidence of the seized dogs in the agenda or during the hearing.

[3] The two witnesses, Mr Christopher Amy and Mrs Karen Amy, were not present at the hearing to give evidence or provide the Committee with the opportunity to clarify any aspect of their witness statements.

[4] The witness statements outlined that two black dogs had been seen attacking a small white dog at 31 Hartis Ave, Huntly at 8.20am on the morning of 19 March 2020. A witness had run about 100m from his property and confronted the two black dogs. As a result the dogs were seen to run into the driveway of 32 Hartis Ave, Huntly.

HEARING:

Objector – Ms Edwards

[5] At the commencement of the hearing the Chairperson outlined how the hearing would take place. Some time was spent ensuring that Ms Edwards had a full understanding of the hearing processes.

[6] Ms Edwards explained that the first she knew of an incident involving dogs was when she was awoken by the noise being made by her dogs and the Animal Control Officers. She made the observation that the Animal Control Officers had had to come through a latched gate to enter her property. Ms Edwards asserted that her dogs were not involved as they could not leave the section and were locked in.

[7] Ms Edwards spoke of her interaction with the Animal Control Officers and of being threatened with the destruction of her dogs if she did not surrender them to the Animal Control Officers. She spoke of having previous interaction with the witnesses and told the Committee that both she and the witnesses did not get along as neighbours prior to the 19th of March 2020.

[8] Ms Edwards told of being given five minutes to surrender her dogs which she eventually did via a third party at the premises.

[9] Following the seizure of her dogs Ms Edwards outlined her discussions with Ms Tracey Oakes, Animal Control Team Leader, Waikato District Council. She noted she had taken on board Ms Oakes advice and she had the height of a driveway gate raised as well as installing a padlock on that gate to prevent the gate been opened and left open. She confirmed that her dogs had been outside her property once as outlined on page 48 of the agenda however since then the dogs had been kept inside the property at all times. Ms Edwards produced a photo of the gate showing the newly installed padlock. She also produced two photos showing two dogs wandering outside her property. One was described as a black dog that looks the same as her own dogs. The second a tan or brown dog was of a similar shape to her dogs but a different colour. She stated that there had been many instances of stray dogs wandering in her neighbourhood and she was concerned that her dogs were being blamed when they weren't responsible for the attack on 19 March.

Animal Control Officers:

[10] Ms Tracey Oakes, Animal Control Team Leader, read a statement to the hearing outlining the background to the incident on 19 March 2020 and spoke of her interaction and advice to Ms Edwards regarding improved security at her premises at 32 Hartis Ave, Huntly. Ms Oakes referred the Committee to the witness statements taken by the Animal Control Officers, the photographs of 31 and 32 Hartis Ave, Huntly and that both witnesses claimed to recognise the two dogs as coming from 32 Hartis Ave, Huntly.

[11] Ms Joanne Newell, Animal Control Officer then read a statement, included in the agenda, to the hearing outlining attending at 32 Hartis Ave, Huntly, locating two dogs believed to have been involved in the reported incident, her interactions with the owner Ms Edwards and the seizure and impounding of the two dogs, 'Klouws' and 'Meelah'. She went on to discuss the taking of a witness statement from Mr Amy. Both Ms Newell and Ms Amanda Davis (Animal Control Officer) then responded to questions from the Committee and one from Ms Edwards that was put via the Chairperson. Both Ms Newell and Ms Davis relied heavily on the witness statements taken from Mr & Mrs Amy.

Right of Reply:

[12] Ms Edwards referred to the photos she had produced in evidence and stated that, “*The black dog was about the same size as my dogs*”. She went on to expand on her earlier comments about wandering dogs and stated that the photos of the dogs she had produced were similar to two dogs that had attacked another dog on her street earlier in the year.

[13] Ms Edwards again asserted the dogs involved in the attack on 19 March 2020 were not her dogs. She also clarified her response on the day of the incident was because of the manner in which she had been approached and spoken to by one of the Animal Control Officers.

LEGISLATION:

[14] Section 31(1) of the Dog Control Act 1996 (the Act) states that:

A territorial authority must classify a dog as a dangerous dog if –

- (b) *the territorial authority has, on the basis of sworn evidence attesting to aggressive behaviour by the dog on 1 or more occasions, reasonable grounds to believe that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife;*

[15] Section 31(3) of the Act allows for an owner of a dog to object to the classification of a dog owned by them as a dangerous dog.

[16] Section 31(4) of the Act states:

In considering any objection under this section, the territorial authority shall have regard to –

- (a) *the evidence which formed the basis for the original classification; and*
- (b) *any steps taken by the owner to prevent any threat to the safety of persons and animals; and*
- (c) *the matters advanced in support of the objection; and*
- (d) *any other relevant matter –*
and may uphold or rescind the classification.

Analysis of the Evidence:

S.31(4)(a) of the Act

[17] The witness Christopher Amy stated in a statement taken by Animal Control Officer Newell, “*The dog is kept at 32 Hartis Ave Huntly*”. He then states, “*We walk past the dogs every day. I chased the dogs back to the property.*” He goes on to state, “*... and I saw 2 black dogs attacking a small white bischon type dog. I ran approximately 100 meters down the road to where the attack was happening.* He went on to say, “*I chased the dogs home. I am unsure if the dogs jumped back into the section or if they went through or under the gate.*” The statement does not comment on whether he saw the dogs in the section at 32 Hartis Ave behind either the latched gate or roadside fencing.

[18] In a statement taken by Animal Control Officer Davis a second witness, Karen Amy it states, *"I saw the dogs return to 32 Hartis. I have seen them at that address before. I was in my kitchen and suddenly I heard a dog screaming outside so I rushed to my window .."* She goes on to state, *"When Chris got to the dogs one of the black dogs ran back across the road to 32 Hartis Ave and the second dog hung around and did not leave for about 30 seconds."* In the later part of her statement she notes, *"I have never seen these dogs out before until today."* She finished her statement by stating, *"No person came out from number 32 Hartis Ave"*.

[19] Both of the Animal Control Officers affirmed an affidavit containing the words, *"Based on the aggression these dogs have displayed I believe these dogs constitute a threat to public safety"*. Ms Davis has attached as exhibit A, a copy of Karen Amy's signed statement dated 19 March 2020. Ms Newell has attached to her affirmed affidavit as exhibit A, a copy of the signed witness statement from Mr Christopher Amy. As exhibit B she has attached a report from the vet clinic that attended to the dog attacked in the incident of 19 March 2020.

[20] The basis of the classification of each dog rests on the evidence of Mr Christopher & Mrs Karen Amy that the dogs involved are from 32 Hartis Ave, Huntly. That is because neither Animal Control Officer described in their affidavit any observed behaviour that they themselves noted during their interaction with the dogs known as Klouws or Meelah. The Officers have each relied on the witness statements to form the basis of their sworn evidence.

[21] Ms Edwards has challenged the evidence of the witnesses and claimed that her dogs Klouws and Meelah could not leave the premises. The evidence given by the Animal Control Officers is that they found the two dogs behind a fence and latched gate. Thus the Committee must determine whether the evidence relied upon by the Animal Control Team Leader to classify the dogs as dangerous was sound. The following case from 2008 has given the Committee some guidance in considering this point.

***Tito v The Waikato District Council HC Hamilton CRI-2008-419-62 [2008]
NZHC 2645 (24 October 2008)***

[21] At first blush in any event, the prosecution case appears to be relatively strong. Ms Lockey lives just across the road from Ms Tito. She said in her affidavit that she recognises the dog as belonging to Ms Tito and she saw the dog go back to the front of Ms Tito's address.

[22] There are, however, other matters that suggest that a defence might be open to Ms Tito. First, issues of identification always require caution. Any judge who decides to base a case on the basis of eye-witness identification is required to pay heed to the principle that an honest witness can be a mistaken witness, and that a mistaken witness can be a convincing witness.

[23] Secondly, there is the fact that from the outset Ms Tito has maintained that her dog was not involved in the attack.

[24] Thirdly, Mr Bowler appears to have accepted that proposition when he visited Ms Tito on 15 December 2007. Faced with Ms Tito's denial he did not at that time seek to seize the dog or to take it into custody using the powers that were undoubtedly available to him. It is not clear, in fact, on the evidence whether or not he even asked to see Ms Tito's dog which was allegedly secured at the rear of her premises.

[25] Fourthly, there is the fact that Ms Tito's property is apparently reasonably securely fenced with a corrugated iron fence. There is also a gate that is said to be of a height that would prevent a dog from escaping. For these reasons Ms Tito will argue that her dog was secure at all times and could not have escaped from the back yard.

[26] Finally, Ms Tito points to the fact that there are approximately 30 dogs in her street. There therefore exists the possibility that Ms Lockey is mistaken when she says that Ms Tito's dog was the dog that attacked her cat.

[27] All of these matters persuade me that the justice of the case requires the issue of the identification of the dog to be determined in the usual way, with evidence given both for and against the prosecution. I am therefore satisfied that I should allow the appeal so far as it relates to the charges in respect of the events that allegedly occurred on 15 December 2007. The convictions and penalties imposed in respect of those charges are quashed, and those informations are remitted to the District Court at Huntly for re-hearing.

S.31(4)(b) of the Act

[22] We must now turn to any steps taken by the owner to prevent any threat to the safety of persons and animals. Ms Edwards has been in communication with the Animal Control Team Leader and has acted on all the recommendations made by Ms Oakes. That is, the gate height has been raised and the gate is now padlocked to ensure the gate is not inadvertently left open.

S.31(4)(c) of the Act

[23] When considering the matters advanced by Ms Edwards there are several issues to consider. Firstly she has undertaken all recommended actions by the Animal Control Team Leader. Secondly Ms Edwards is adamant that her two dogs are not the dogs involved in the incident and notes the Animal Control Officers found the dogs behind a latched gate inside her property. Ms Edwards noted that no one actually saw the two dogs involved in the incident enter her property and go beyond the latched gate. Ms Edwards has also produced photos of a similar type dog to those owned by her wandering on Hartis Ave outside her property. She also alluded to the motivation of the witnesses towards her as a result of prior incidents between her and the witnesses.

S.31(4)(d) of the Act

[24] When considering any other matters the Committee notes the time gap in the witnesses allegedly seeing the dogs enter the driveway of 32 Hartis Ave and the Animal Control Officers finding the two dogs in the section of 32 Hartis Ave. In short there is no eye witness that observed the two dogs actually entering into and remaining at 32 Hartis Ave, Huntly until approached by the Animal Control Officers.

REASONS AND DECISION:

[25] The reliance by Waikato District Council, the territorial authority, on the sworn affidavits of Ms Davis and Ms Newell, for the classification of the dogs, is in our view contrary to the legislation. This is because Ms Newell and Ms Davis have not included any of their own evidence relating to their own observations about the two dogs. They have relied on the unsworn witness statements and thus 'hearsay' evidence by including the witness statements as exhibits to their affidavits. In the *Tito* case, mentioned at paragraph [21] above, Justice Lang refers at paragraph [21] of the decision to the sworn affidavit of Ms Lockey produced in the District Court. Ms Lockey was the witness in that case. It is our view the sworn evidence, if it is to be relied upon for the classification of the two dogs, should have included the sworn evidence of Christopher Amy and Karen Amy. In short, a deponent's affidavit should not include the unsworn statement of another person especially when the sworn evidence is to be used for the purpose outlined in section 31(1)(b) of the Act.

[26] Setting aside whether the Councils classification of the two dogs is flawed, there is the question of whether or not the dogs seized from Ms Edwards are the same two dogs involved in the attack at approximately 8.20am on March 19, 2020. We are very mindful of the comments noted at paragraphs 22, 23, 25 and 27 of the *Tito* decision noted at paragraph [21] above and in particular paragraph [22] of the decision. On this matter the Committee notes that Mr Amy described the two dogs involved in the incident as, "*2 black staff cross, 1 (one) had white on its chest. Medium size one slightly large t(h)an other*". Mrs Amy described the dogs as, "*black stocky type dogs smaller than my boxer x no collars, short hair*". In her evidence Ms Newell described the dogs as "the offending dogs" providing no description of the dogs seized or photos of the dogs seized. Had photos been taken of the seized dogs and provided to the Committee, the Committee may have been able to match at least one of the dogs to the description Mr Amy had provided in his statement. However the only evidence the Committee has before it was that two black dogs were seized whereas Mr Amy described at least one black dog with white markings and one dog being bigger than the other.

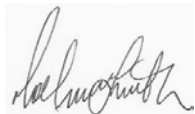
[27] While considering the identification of the two dogs involved in the dog attack the Committee is mindful of Mr Amy's comments that the first dog, "*was back in its driveway before the second dog stopped attacking*". Following that comment he makes the comment, "*I am unsure if the dogs jumped back into the section or if they went through or under the gate*". Had the Animal Control Officer taking the statement asked Mr Amy to include commentary as to whether he had very shortly thereafter seen either or both dogs beyond the gate or behind the fence at 32 Hartis Ave the Committee could have, in all probability, accepted that the dogs were those seized by Animal Control Officers. However without any direct or circumstantial evidence linking the dogs seen by Mr Amy on the driveway of 32 Hartis Ave to those located within 32 Hartis Ave some time thereafter by Animal Control Officers there is no certainty that they are one in the same dogs.

[28] Ms Edwards has taken on board the suggestions of Ms Oakes and has installed additional netting on the top of the access gate to the property and has supplemented the gate latch with a secure chain and padlock that firmly affixes to the dwelling thus preventing accidental opening of the gate. No evidence was provided to the hearing that either or both of the dogs 'Klouws' or 'Meelah' have wandered from the property since 19 March 2020.

[29] The Committee notes once again the reliance on witness statements by the territorial authority to prosecute its' position before the Committee. The Committee notes the comments in paragraph [27] of the *Tito* decision, at paragraph [21] above, in that without the ability of the Committee to hear directly from a witness and the ability to elicit evidence to fill the gaps in the written evidence tendered to the Committee the principles of natural justice cannot be easily met.

[30] For the above reasons the Committee has, after a period of lengthy deliberation, come to a majority decision.

[31] Pursuant to Section 31(4) of the Dog Control Act 1996 the Regulatory Subcommittee rescinds the classification of the dogs, known as 'Klouws' and 'Meelah', as dangerous dogs.



Noel Smith
Chairperson
Regulatory Subcommittee
Waikato District Council
05 October 2020