



Board of Appeals of Baltimore County

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February 5, 2016

Jonny Akchin, Assistant County Attorney
Department of Permits, Approvals and Inspections
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Toyia Haines
5501 Overlook Circle
Baltimore, Maryland 21162

RE: *In the Matter of: Toyia Haines*
Case No.: CBA-16-015

Dear Mr. Akchin and Ms. Haines:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review** filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Krysundra 'Sunny' Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: John Chandler, IV
Jon Cardin, Esquire
Bernard J. Smith, Chairman / AHB
Thomas Scollins, Assistant Chief / Animal Control Division
April Naill / Animal Control Division
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF
TOYIA HAINES - APPELLANT
5501 Overlook Circle
Baltimore, MD 21162

RE: Citation Nos. E41241A - Animal at Large
and E41241B -- Dangerous Animal
AHB Case No.: 4151

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA- 16-015

* * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Animal Hearing Board of Baltimore County (“AHB”) wherein the AHB dismissed Citation E41241A (Animal at Large) and upheld Citation E41241B (Dangerous Animal) and imposed a civil penalty of \$1,000.00.

A hearing before this Board was held on December 8, 2015. Ms. Haines represented herself. The County was represented by Jonny Akchin, Assistant County Attorney.

Factual Background

On May 12, 2015, John Chandler, IV (“Mr. Chandler”) of 5506 Overlook Circle, White Marsh, MD 21162 filed a Complaint against Toyia Haines (“Ms. Haines”) of 5501 Overlook Circle, claiming that while his minor daughters, Campbell (age 8) and Brynn (age 5), were attending a community yard sale on May 9, 2015, Brynn was attacked by a dog. The dog came out the front door of 5501 Overlook Circle, knocking Brynn to the ground and biting her multiple times.

At the AHB hearing, Mr. Chandler testified that he permitted his daughters to go the neighborhood yard sale. Mr. Chandler testified that he was standing in his driveway at 5501 Overlook Circle when he heard a dog growl and then saw a dog attack and knock Brynn to the ground. Mr. Chandler explained that, at the time of the attack, Campbell was on the opposite side

of the street from where the attack occurred. By the time Mr. Chandler ran to Brynn, someone had come to get the dog and bring it back into the house at 5501 Overlook Circle. Mr. Chandler saw bite marks on Brynn's neck, back, shoulders and upper arm. Brynn was taken by ambulance to Franklin Square hospital for treatment.

Campbell testified that she was across the street from 5501 Overlook Circle at the time of the attack. Campbell said that she saw the dog come out of the house at 5501 Overlook and headed directly toward her sister. At the time, she saw Brynn walking by herself along the sidewalk in front of 5501. She denied that her sister entered onto the front porch of the home. She first heard the dog growl, then she saw the dog jump on top of her sister and knock her down. Next, she witnessed someone come out of 5501 to retrieve the dog and go back inside the home. Campbell also confirmed that no one came out of the house at 5501 to see Brynn after the attack.

Ms. Haines acknowledged that her home was located at 5501 Overlook Circle. She testified that she was inside her home at 5501 on May 12, 2015, and that she was getting dressed when she first heard a "boom", then a "yelp" from the dog. She saw the dog barking on front steps of the porch. She said that the dog never left the porch area of the home. When Ms. Haines saw the dog outside, she came to the door, called the dog to come back inside and that her son directed the dog by the collar back into the house. Ms. Haines observed that Brynn was in the street and ran back onto her property. Ms. Haines said that she was unaware that any bite had occurred but was later informed by the police that a bite had in fact occurred. She did not know the identity of the girls at that time. She indicated that her son was outside during the entire incident. The AHB permitted her to testify that her son heard a bang, saw the door slam on the dog's tail and saw the girl had her arm out.

Ms. Haines said the dog was a 6 year-old German Sheppard. She agreed that the dog had not received any formal [obedience or behavioral] training before the attack. She explained that

the dog suffered from a pancreas injury and other medical issues. As a result, the dog had not been neutered. Ms. Haines personally walked the dog around the neighborhood 4 or 5 times a week. Ms. Haines did say that before she had a fence installed around her yard, she agreed that the dog would bark but was restrained. She testified that she did not have any prior notice, in writing or verbally, that there were any incidents of prior bites. Ms. Haines disagreed with Mr. Chandler that her landscaper was bitten by her dog.

As to a claim of a prior bite of another neighborhood girl, Ms. Haines testified that the girl was in Ms. Haines' yard, that the dog did bark but never pulled that girl down by her hair. Indeed, Ms. Haines said she personally observed the girl fall, that there was never an attack of the girl and that the girl's mother agreed that the girl was trespassing.

Ms. Haines indicated that she was willing to pay for any restitution and damages for the injuries to Brynn. She further testified that she was willing to continue to board the dog at K9 Koncepts where the dog had been located since the incident.

Testifying on behalf of Ms. Haines was Gordon William Campbell ("Mr. Campbell"), founder of K9 Koncepts. He identified the dog as "Cujo." Mr. Campbell began training dogs in 1976 and has previously admitted as an expert in dog psychology and training. Mr. Campbell indicated he had been working with Cujo since the incident. He opined the dog "could be a lower risk dog if the training continued." He testified that Ms. Haines has invested a lot of money in training Cujo and indicated that he believed that Ms. Haines would continue to pay for training. Mr. Campbell also testified that Cujo was suffering from pancreatitis.

Mr. Campbell also indicated that when Cujo was first brought to K9 Koncepts, he was "aggressive and unsocialized, and reactive." Mr. Campbell stated that there is no dispute that a bite of Brynn occurred (although he had no personal knowledge of the attack) and that the bite "should never have occurred." He affirmed that Ms. Haines had been present every day at the

training sessions and that the dog was improving. Mr. Campbell wanted Cujo for another month of training before the dog is discharged home.

Standard of Review

BCC §12-1-114 (f) and (g) requires that all hearings before this Board from the AHB be heard on the record from the AHB hearing. Upon review of the transcript and evidence in the AHB record, this Board has the authority to:

- (i) Remand the case to the Animal Hearing Board;
- (ii) Affirm the decision of the Animal Hearing Board;
- (iii) Reverse or modify the decision of the Animal Hearing Board if a finding, conclusion or decision of the Animal Hearing Board:

1. Exceeds the statutory authority or jurisdiction of the Animal Hearing Board;
2. Results from an unlawful procedure;
3. Is affected by any other error of law;
4. Subject to paragraph (2) of this subsection, is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
5. Is arbitrary and capricious.

When determining whether a factual finding of an agency, such as the Animal Hearing Board, is correct, the appropriate standard of review is whether there is substantial evidence from the record as a whole. *Eller Media Co. v. Mayor of Baltimore*, 141 Md. App. 76, 84 (2001). If reasoning minds could reasonably reach the conclusion reached by the agency from the facts in the record, then the agency's findings are based on substantial evidence and the court has no power to reject that conclusion. *Columbia Road Citizens' Ass'n v. Montgomery Cnty.*, 98 Md. App. 695, 698 (1994). Judicial review of an agency decision does not involve an independent decision on the evidence instead, a court is limited to determining whether there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the

administrative decision is premised upon an erroneous conclusion of law. *United Parcel Serv., Inc. v. People's Counsel for Baltimore Cnty.*, 336 Md. 569 577 (1994).

When considering whether an agency erred as a matter of law, the reviewing court decides the correctness of the agency's conclusions and may substitute the court's judgment for that of the agency. *People's Counsel for Baltimore Cnty. v. Prosser Co.*, 119 Md. App. 150, 168 (1998). The "substantial evidence test" also applies when there is a mixed question of law and fact. In other words, the agency has correctly stated the law and the fact finding is supported by the record, but the question is whether the agency has applied the law to the facts correctly. *Cowles v. Montgomery Cnty.*, 123 Md. App. 426, 433 (1998). Therefore, the order of an administrative agency must be upheld on review if it is not premised upon an error of law and if the agency's conclusions on questions of fact or on mixed questions of law and fact are supported by substantial evidence. *Kohli v. LOCC, Inc.* 103 Md. App. 694, 711 (1995).

Decision

At issue in this case are Citations for an "Animal at Large" (Citation E41241B) and for a "Dangerous Animal" (Citation E41241B). An Animal at Large is defined in BCC §12-1-101 as follows:

(c) *Animal at large.*

(1) (i) "Animal at large" means any animal off the premises of its owner and not under the control, charge, or possession of the owner or other responsible person.

(ii) "Animal at large" includes any dog off the premises of its owner and not under the control of the owner or other responsible person by a leash, cord, or chain.

An owner of an animal may not allow the animal to be an animal at large. BCC §12-3-110.

The definition of a “dangerous animal” is set forth in BCC as follows:

§ 12-8-102. DANGEROUS ANIMALS.

(a) In general. An animal poses a threat to the public health or safety if the animal:

- (1) Attacks or injures a person or a domestic animal;
- (2) Exhibits aggressive or dangerous behavior and is not adequately confined or restrained;
- (3) Is known or suspected to be an animal exposed to rabies and is not adequately confined or restrained; or
- (4) Has been subject to confinement or restraint orders from the Health Officer or the Animal Hearing Board and those orders have not been followed.

(b) Declaration.

(1) The Health Officer may declare an animal a dangerous animal if the animal poses a threat to the public health or safety.

(2) The declaration shall be based on:

- (i) Personal observation;
- (ii) Observations of animal control officers;
- (iii) The affidavits of individuals concerning the individual's personal experience with the animal;
- (iv) Bite contact or non-bite contact reports made to the Baltimore County Police, the Health Officer, or the Animal Services Division;
- (v) Animal control records; or
- (vi) Other documented information.

The AHB dismissed the Animal at Large citation because the evidence was undisputed that the attack took place on the Haines’ property. Based on our review of BCC §12-1-101(c) above and the AHB record, we find that the dismissal of the Animal at Large citation was correct as Cujo was not “off the premises of the owner” at the time of the attack.

As for the Dangerous Dog citation, BCC requires either a finding by the AHB that the animal: (1) attacks or injures a person or a domestic animal; or (2) exhibits aggressive or dangerous behavior and is not adequately confined or restrained.

The AHB heard the testimony of John Chandler and his daughter, Campbell Chandler, which recounted each of their personal observations of the attack on Brynn. The AHB accepted medical records and photographs showing the bite marks on various parts of Brynn's body from the attack. There was no dispute that the dog ran out the front door of the Haines residence and attacked Brynn.

Ms. Haines appealed the AHB decision on the basis that she was not adequately prepared for the AHB hearing, and that she was unable to secure an attorney to represent her at the time the hearing began. Ms. Haines further claimed that Animal Control failed to provide her with information that she might need at the AHB hearing. Because Ms. Haines did not know to bring notarized affidavits to the AHB hearing, she contends that she was unable to defend herself. In addition, she argues that the AHB decision was based on a false statement by Mr. Chandler as to his personal observations.

Of the fines listed on the Citation (\$1,030.00), the AHB ordered Ms. Haines to pay the maximum civil penalty in the amount of \$1,000.00. As the fact finder, the AHB has discretion to waive or reduce the civil penalty under BCC § 12-8-107(a)(2). Ms. Haines claims that the penalty of \$1,000.00 is excessive and that she cannot afford to pay it. She emphasized that she voluntarily had Cujo euthanized at the cost of \$425.00. She also incurred the cost to board Cujo at K9 Concepts.

In our review of the AHB recording, Mr. Chandler testified that he personally observed Brynn being attacked by the dog. Mr. Chandler stated that he was in his driveway when he heard a dog growl and then immediately observed Brynn being taken to the ground by the dog. In addition, his daughter Campbell, also witnessed the event and testified as such. The fact that Ms. Haines' son came to get the dog and bring it back into the house does not change the fact that the

attack occurred, or that both Mr. Chandler and Campbell Chandler personally observed it. Accordingly, we find that Ms. Haines was incorrect in her recounting of the testimony.

While Ms. Haines had the opportunity to present witnesses who personally observed the attack and could present a different set of facts (if there were any), including testimony of her teenaged son, she failed to do so. As such, the AHB appropriately accepted the Chandlers' version of events. Accordingly, we find that the AHB did not err in this regard as they had opportunity to assess the credibility of the witnesses under the standard of review above. This Board is not the fact finder but must defer to the findings made by the AHB.

As to her contention that she was unable to present a defense, or that she could not secure an attorney in time for the start of the hearing, John Cardin, Esquire, did appear on her behalf for the hearing, albeit not at the beginning. From our review of the Citation, on May 13, 2015 - the date she signed for the Citation when it was hand delivered to her - it should have been apparent from the face of that document that she was facing 2 charges with maximum potential fines of \$1,030.00. The citation also alerted her that a hearing would be held on June 2, 2015. She admitted that she appealed the citation 2 days later, on May 15, 2015, which indicates that she understood it. At that point, if she thought she needed the services of an attorney, it was incumbent upon Ms. Haines to secure legal representation to prepare for the June 2, 2015 hearing. An attorney could have explained the practice and procedure before the AHB. Despite her contentions, Animal Control is not obliged to assist Ms. Haines in her defense.

What is really at issue in this appeal is that Ms. Haines does not want to pay the \$1,000.00 fine. Under BCC §12-8-107(a)(2), the AHB has *discretion*, based on the evidence presented in each case, including the nature of the attack and the action or lack thereof taken by the dog owner, to waive or reduce the civil penalty listed on the citation. Ms. Haines' position is simply that the fine is excessive and that she cannot afford to pay it.

As to the amount of the penalty, our review of the record indicates that the AHB had before it, photographs of a 5-year old girl showing multiple bite marks on her neck, back, shoulder and upper arm requiring emergency medical treatment. The AHB heard evidence that there was a community yard sale on Overlook Circle and that it was attended to by the neighborhood where Brynn resides. Given this event, it would have be reasonable for the Haines to make sure that their front door was secure, even if, as they claim, they were not aware of any prior bites. It was undisputed that the attack was unprovoked. In addition, the AHB, in considering the action of Ms. Haines after the attack, had undisputed evidence that Ms. Haines did not contact, or attempt to contact, the Chandler family to even inquire as to Brynn’s medical condition. Even if Ms. Haines had no personal knowledge of a bite until she received the citation, she could have asked the Chandlers or even her son, whether Brynn was injured.

Based on the evidence presented, we find that the amount of the penalty was not arbitrary or capricious. To the contrary, as set forth above, we find that the amount of the penalty was supported by competent, material and substantive evidence in light of the entire record as submitted. It is clear that the \$1,000.00 fine did not exceed the statutory authority of the Board as it was the maximum statutory amount. We also do not find that there was any unlawful procedure or any other error of law by the AHB as Ms. Haines was afforded adequate due process in this case.

ORDER

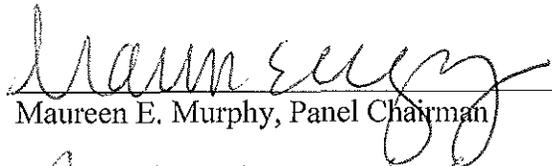
THEREFORE, IT IS THIS 5th day of February, 2016, by the
County Board of Appeals of Baltimore County,

ORDERED that the decisions of Animal Hearing Board in the above captioned case, that Ms. Haines’ dog was a “dangerous animal” as defined under BCC, §12-8-102(a)(1) and (2) and

the civil monetary penalty in the amount of One Thousand Dollars (\$1,000.00) be, and the same are hereby, **AFFIRMED** as supported by competent, material, and substantial evidence in light of the entire record as submitted.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chairman


Benfred B. Alston


James H. West