

IN THE MATTER OF  
FREDERICK BELL  
406 MONTROSE STREET  
BALTIMORE, MD 21228

APPEAL FROM THE ANIMAL  
HEARING BOARD

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. CBA-12-025

\* \* \* \* \*

OPINION

This case is before the Board on an appeal by Respondent, Frederick Bell, from the December 7, 2011 decision of the Baltimore County Animal Hearing Board (AHB), in which that Board found that Mr. Bell's dog, "Oliver", was a "dangerous animal" as described in Section 12-8-102 of the *Baltimore County Code*, and, based upon a recommendation of a behaviorist/ trainer, presented a threat to the public health and safety. The AHB ordered that "Oliver" would remain in Baltimore County custody and be humanely euthanized.

Because of the nature of the finding on "Oliver", this Board held a hearing *de novo* on January 31, 2012 and February 7, 2012. The County was represented by Ashley Hofmeister, Assistant County Attorney, and Mr. Bell was represented by Counsel, namely, E. Anna Benaroya, Esquire, from the Maryland Animal Law Center. Deliberations were held on February 14, 2012 and continued to allow Appellant to provide the Board with a transcript of the proceedings before the AHB. Counsel for the Appellant had indicated at the hearing that they wished to introduce a transcript of the hearing into evidence. After contacting Appellant's Counsel, the Board was advised that they were not going to be having a copy of the transcript prepared as the hearing was *de novo* and the recording of the hearing is in the file. Deliberations concluded on February 20, 2012.

BACKGROUND AND TESTIMONY

On September 30, 2011 the victim, Dr. Shamon Kaiser, was attacked by "Oliver" while mowing her yard. After reviewing affidavits prepared by Dr. Kaiser, Eric Lamb, Sheila Donovan, and Susan Slade, "Oliver" was removed from the appellant's home by an animal control officer. The Appellant was given

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a citation for an animal at large and a dangerous animal and fined \$525.00. Appellant requested a hearing before the AHB and a hearing date was set for November 8, 2011. The AHB upheld the violations, imposed the fine of \$525.00 and ordered that "Oliver" be evaluated by a behaviorist/trainer. The AHB held final disposition sub curia pending the evaluation. Sandra Reimann from Ryker K9 evaluated "Oliver" and submitted a written evaluation to the AHB. Based upon that evaluation, along with all of the evidence presented, by order dated December 7, 2011, the AHB ordered that "Oliver" be euthanized. This appeal followed.

At the de novo hearing before the Board, the Appellant stated that they were not arguing whether "Oliver" was a dangerous dog. They wanted to argue that there were other ways to protect citizens from "Oliver" besides euthanizing him.

The County produced and introduced into evidence photographs showing the residential neighborhood where the bites occurred and the injuries to the victim (County's Exhibit 1a and 1b). The County also introduced the police report filed by Dr. Kaiser (County's Exhibit No. 2).

The first witness called by the county was Thomas Scollins, the assistant chief of Animal Control. He had reviewed the photographs of bite marks, the police reports and the affidavits of the victim and witnesses. He testified that "Oliver" has been in the County's care since October 15, 2011. He sees the dog two-three times a week. "Oliver" jumps and barks at his kennel door, aggressively and defensively when he acted nonaggressively. The kennels are close together and a lot of dogs bark when people walk by, it is their way of defending their environment. He also observed "Oliver" outside of his cage at the evaluation. Approximately thirty percent of the animal population at Animal Control are dogs identified as "dangerous dogs". They also house dogs who have been abused or neglected.

Dr. Shannon Kaiser testified that she was outside cutting her lawn when "Oliver" attacked her. Her 11 year old daughter was also outside, she had been in the back yard and was coming around to the

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front. "Oliver" bumped into Dr. Kaiser and she lost her footing. He then grabbed onto her wrist and pulled her down. He began tugging at her and would not let go. When he did let go, he grabbed the other arm. Dr. Kaiser testified that she was screaming and her daughter tried to pull "Oliver" off of her. She injured her left shin and left hip. She had blood coming through her jeans and sweatshirt. The attack lasted 3-4 minutes. Dr. Kaiser testified that she thought the dog was going to kill her because he would not let go. The dog's owner came out but she could not stop it. Two men then came over and tried to put a leash on "Oliver" and he tried to bite them. Once they got the dog off Dr. Kaiser, the dog's owner, Kim Bell, began petting him, trying to calm him down. During the attack, Ms. Bell was unable to control the dog. When Dr. Kaiser asked Ms. Bell to take the dog away, she responded that he wasn't ready to go. The police and paramedics were called and Dr. Kaiser was taken to the hospital. At the time of the attack, "Oliver" was not on a leash. The next day, Dr. Kaiser spoke with animal control. Dr. Kaiser also testified that this was not the first time they had problems with "Oliver." Approximately a month earlier, Dr. Kaiser and her daughter stopped to speak with the Bells. "Oliver" was on a leash and he snapped at Dr. Kaiser's daughter, causing her mouth to bleed.

The photographs of Dr. Kaiser's injuries were taken 8 days later. Both arms had deep puncture wounds. Dr. Kaiser said that she had put her arms up to try and protect her face and head. Her right hip was injured where "Oliver" tore through her jeans. She still has scarring and soreness.

Dr. Kaiser testified that they have lived next door to the Bells for about 4 years. Her family has 4 chickens which they keep in an enclosed pen in the rear of their property. They let the chickens out when they get home. She is not sure where the chickens are now, they are missing.

Susan Slade testified next. She lives down the street. She testified that she was driving down the street when she heard a horrible noise. She looked and saw Dr. Kaiser being attacked by a dog. She got out of her van, stood on the edge of the yard and watched the attack. She saw Ms. Bell arrive and try

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three or four times to get the dog off Dr. Kaiser. Dr. Kaiser kept trying to get away but the dog kept knocking her down. She testified that when she first arrived, only Dr. Kaiser, her daughter, and “Oliver” were in the yard. Other neighbors then approached. Ms. Slade testified that it was a vicious attack and Ms. Bell could not control “Oliver”.

Sandra Reiman next testified. She trains dogs for agencies such as the police department, customs, and ATF. Her resume was introduced into evidence (County’s Exhibit No. 3) Her specialty is to modify aggression. She testified that there are two types of aggressive dogs. A dog who is defensively aggressive reacts based on fear and a dog who is offensively aggressive is confident. She tested “Oliver” using core behavior found in all dogs, prey behavior, to determine if he has offensive or defensive aggression. She was accepted by the Board to be an expert in dog aggression, modification, and animal training. She takes in aggressive rescue dogs, dangerous, aggressive dogs. If a dog has offensive aggressive behavior his behavior can be channeled. These are good dogs for police work. Weak, fearful dogs won’t hold up to the pressure. Fear is a defensive response used to repel a threat. She can train offensively aggressive dogs to become social and friendly.

Following her evaluation, she found “Oliver” to be a defensively aggressive dog. Ms. Reiman prepared a short report for the AHB and a second, more detailed report (County’s Exhibit No. 4 and 5). She found “Oliver” to be fearful. When she performed the noise test, he was in his own environment, yet he would tense and try to run. A defensively aggressive dog tends to look away and retreat.

The bites on Dr. Kaiser’s arm are prey bites, deep, defensive bites. You can determine the state of mind of a dog by where in the mouth a bite is made, where ears, eyes and tail are at the time of the attack. The dog felt in fear and charged. A dog who is fearful will respond based on fear. Additional training will not be able to override fear. In the instant case, when Ms. Bell was petting “Oliver”, she was actually rewarding him for his bad behavior.

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She testified that “Oliver” would need to be in a place where his fears could not be misdirected or redirected. He would need to be isolated or managed. Ms. Reiman did not use the ASPCA safer test to evaluate “Oliver”.

Valerie Stafford lives across the street from Dr. Kaiser and testified next. She was in the back of her house when she heard the screams. She ran to the front of her house and looked across the street. She saw people standing and watching on the street, she saw a car parked on the street, and she saw Dr. Kaiser on the ground. She was approximately 10 feet from her lawn mower. She also saw Ms. Bell standing there. She approached Dr. Kaiser who was crying and distressed. She saw puncture wounds on Dr. Kaiser’s left arm, top and bottom. Dr. Kaiser was hysterical and said she was afraid.

Ms. Stafford testified that Dr. Kaiser has a chicken coop in the back of her house. She has seen the chickens in the front yard and in the street. She has also seen them on neighbors’ property. Ms. Stafford did not see the attack. She had been around the front earlier and had seen the chickens out while Dr. Kaiser was mowing her yard.

Kimberly Bell testified next. They have lived next door to Dr. Kaiser for about 5 years. Dr. Kaiser has had the chickens for about a year and a half and they come onto her property all of the time (Appellant’s Exhibit No. 2). Her family has 2 dogs, “Oliver” is two and a half and “Lucy” is a year old. They also have two eight year old cats. They have a fenced in yard in the back with gates. The only time the dogs are off leash is when they are in the yard. The fence had a latch and sliding bar lock. They now have a padlock on the gate (Appellant’s Exhibit No. 3). They were unaware on the date in question that the gate was not locked.

She saw Dr. Kaiser out mowing her lawn on the day in question. She thought it was odd that the chickens were out while Dr. Kaiser was mowing. Ms. Bell went into her house, let the dogs out of their crates and let them out into the yard. When she had let the dogs out at lunchtime, there was no problem

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with the gate. This time, the dogs came running back towards the house but then “Oliver” got out of the yard and Ms. Bell took off after him. She ran down the sidewalk when she saw “Oliver” holding onto Dr. Kaiser’s leg. She went to grab him and she fell back, got all muddy and slipped. She saw “Oliver” grab Dr. Kaiser again and when she tried to grab him a second time she fell and rolled over. Dr. Kaiser’s daughter came running from the back yard. No one was helping, they were all standing around watching. She yelled that she needed a leash. She held “Oliver” until someone got her a leash. Ms. Bell testified that this was the first time “Oliver” had been off leash. She did not recall seeing Dr. Kaiser’s clothes torn or bloodied. Two weeks later animal control came and took “Oliver”. The family visits him in the shelter two-three times a week. “Oliver” had been through obedience training with Karen Decker, a professional dog trainer. She used clicker training. There was no advanced class or off leash training offered.

The record from the AHB was introduced into evidence as Appellant’s Exhibit No. 4. (Although the Appellant had indicated they wanted to introduce into evidence the transcript from the AHB, as Appellant’s Exhibit No. 1, Appellant failed to produce same and when contacted after the hearing, indicated that they did not intend to have the recording transcribed.) Included in the record from the hearing before the AHB were letters from Island Rescue and Karen Decker. “Oliver” went to Island Rescue with a mixed group of puppies. He was about 8 weeks old. He never showed any signs of aggression.

Appellant next called Dr. Myrna Milani, a veterinarian from New Hampshire. She works with animal behavior. Training comes out of behavior with humans. Ethnology is the study of animals in their natural environment. She has worked with aggressive dogs in homes with other pets or children (Appellant’s Exhibit No. 5) She explained the difference between studying animal behavior and studying ethnology. “How can I get the animal to do what I want him to do” is animal behavior. “Why does the

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animal act as he does” is ethnology. She was accepted by the Board as an expert in ethnology and veterinarian science.

Dr. Milani testified that she observed “Oliver” in his cage for about an hour. “Oliver” was then taken out of his cage, lead down the hall, through an area where the cats are housed and turned loose in a room. There was no eye contact. She just wanted to observe “Oliver”. She observed him in the room for about 15 minutes. There was no negative response to people walking by until two animal control officers walked by and “Oliver” became upset. He put his paws up on the grate and began barking. Dr. Milani did not believe that this was an offensive or defensive response.

Dr. Milani testified that there is no agreement on what it means to call a dog “aggressive”. Aggression is relative. She does not believe “Oliver” is aggressive or that he would repeat the behavior from the instant case. “Oliver” could have jumped the gate in the Bell’s yard any time if he wanted to do so. The question is what was special about this day and why did he go after Dr. Kaiser instead of the chickens?

Dr. Milani answered her questions by stating that dogs are attracted to motion. She testified that she believes “Oliver” became frustrated overtime because he could not get to the chickens. Dogs use their fangs to communicate. “Oliver” became stimulated by his target and by the environment. When Dr. Kaiser became hysterical, that provided him with additional stimulation.

Dr. Milani believes that “Oliver” could exist in a rescue environment. When she observed him, he show no evidence of aggression. She agrees that he can not go back home with Mr. and Mrs. Bell but he would do well if not confined to a small space. Dr. Milani also prepared a written report which was accepted as Appellant/Owner’s Exhibit No. 6.

On January 27, 2012, Debbie Winkler, CABC, CPDT, from Humane Domain evaluated “Oliver” her written was accepted as Appellant/Owner’s Exhibit No. 7.

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The next witness to testify was Ms. Turner, a certified veterinary technician who lives next door to Dr. Kaiser. She has known “Oliver” for about 5 years. The neighborhood is very lively and she has always had good experiences with “Oliver”. She testified that she has never heard him growl. He always appears to be a happy dog. She has never seen him react to anyone mowing their lawn and she has never seen him go after anyone. She is aware that Dr. Kaiser has 2 chickens. She would see them in the yard when Dr. Kaiser’s daughter would let them out. She believed that Dr. Kaiser used to have 4 chickens but two died.

The last witness called was Ms. Grace Froelich from Animal Rescue, Inc. located in Pennsylvania. Animal Rescue, Inc. is a shelter for life for abused, crisis animals. Although she had not met “Oliver”, she testified that they were willing to accept him. Her center is associated with a prison program which trains dogs known as HOPE: Hounds of Prison Education(Appellant’s Exhibit No. 8). If “Oliver” did not qualify for that program they would put him up for adoption. Anyone who adopts “Oliver” would be made aware of his past.

By way of closing argument, Appellant’s Counsel stated that they concede that “Oliver” meets the definition of a “dangerous dog”. They conceded that the County has met that burden as there was no legal provocation for the attack. The issue which they presented to the Board is the proper disposition for “Oliver”. They agree that it is a bad idea to return “Oliver” to the neighborhood but argued that euthanizing him should be a last resort. Placing “Oliver” with Animal Rescue is a reasonable alternative.

Appellant’s argued that Dr. Kaiser’s chickens created a “zone of interest” for “Oliver” when out in the yard. As an aside, Appellants noted that possession of the chickens was a violation of the Baltimore County Code. They argued that “Oliver” went after Dr. Kaiser instead of the chickens on this day because she was closer. They chickens are often in the Bells’ yard and they are an enticement to the



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dog. It was the smell of the chickens that drove “Oliver” towards the Kaiser’s yard on that day. They argued that “Oliver” is not inherently dangerous. His actions on that day were environment specific.

In response to Appellant’s arguments, the County argued that euthanizing “Oliver” is the only option. There is no way to predict what will trigger him in the future. He had to be forcibly removed from Dr. Kaiser. He is fearful and unpredictable.

On December 7, 2011, the Animal Hearing Board issued a decision finding that the actions of Mr. and Mrs. Bell’s dog “Oliver” , constituted those of a dangerous animal under *Baltimore County Code* Section 12-8-1029(a)(1) and (2). The AHB Board imposed a monetary penalty of \$525.00 and ordered that “Oliver” be surrendered to Baltimore County for euthanasia. A dangerous animal is one who is a threat to public health or safety. The Appellants conceded that “Oliver” meets this definition. This Board sympathizes with the fact that Mr. and Mrs. Bell do not want to see their dog euthanized. However, after listening to all of the witnesses, and reviewing all of the evidence presented, this Board does not feel that it should leave the dog in the area or send it to some other area where it might attack other dogs or pets.

DECISION

The Board finds that based upon the evidence presented at the hearing in this matter the dog “Oliver” is a Dangerous Animal as defined and described in Section 12-8-102 of the *Baltimore County Code*. The Board has determined that the appropriate sanction in this matter is the euthanasia of the dog “Oliver” and will uphold this decision of the Animal Hearing Board.

**ORDER**

THEREFORE, IT IS THIS 20<sup>th</sup> day of March, 2012, by the Board of Appeals for Baltimore County

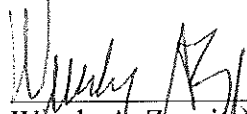
**ORDERED** that the decision of the Animal Hearing Board finding that the dog "Oliver" is a "dangerous animal" within the meaning of Section 12-8-102 (a)(1) and (2) of the *Baltimore County Code*, shall be **UPHELD**, and it is further

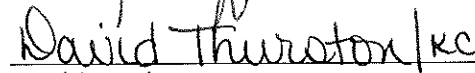
**ORDERED** that the canine known as "Oliver," presently in the custody of Baltimore County, shall be euthanized.

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**

  
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Wendell H. Grier, Chairman

  
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Wendy A. Zerwitz

  
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David L. Thurston