

Re: **Stokes v. City of Visalia**

Case No: VCU268648

Date: September 28, 2017

Time: 8:30 A.M.

Dept. 2 - The Honorable David Mathias

Motion: Hearing on Order to Show Cause re: Petition for Writ of Mandate to Set Aside Determination of Vicious Dog

Tentative Ruling: To Deny the Petition for Writ of Mandate

Petitioner seeks writ review pursuant to Visalia Municipal Code section 6.16.060(C) of a decision by the administrative hearing officer determining Petitioner's dog "Armani" to be a dangerous or vicious animal and ordering the dog to be humanely destroyed.

The court is to review the record and apply its independent judgment to determine whether the decision of the administrative hearing officer is adequately supported.

"When a trial court applies the independent judgment test in reviewing an administrative agency decision, it determines whether the agency's findings are supported by the weight of the evidence (CCP § 1094.5(c)). This is a kind of limited trial de novo, using the existing administrative record. In general, the independent judgment standard is used when the administrative decision affects a right that is vested or has been legitimately acquired, and that is of a fundamental nature in light of its economic effect or other importance." *International Bhd. of Electrical Workers v. Aubry* (1996) 42 Cal App 4th 861.

The record indicates that "Armani" escaped from Petitioner's yard and when Petitioner's neighbor (across the street from Petitioner) opened his garage door to go out for a walk with his two leashed dogs, "Armani" ran onto the neighbor's property, knocked the neighbor down and attacked one of the neighbor's dogs causing bite injuries to the dog. This evidence appears undisputed. The neighbor testified this was the second time "Armani" had gotten out and attacked his dogs. At the initial hearing, Petitioner did not dispute this contention. At the supplementary hearing held some months later, Petitioner now disputes the contention asserting one of her other dogs was involved in the prior incident.

At the initial hearing, Petitioner presented evidence that she was repairing the fence where her dogs were able to escape from Petitioner's back yard. She also presented evidence she was prepared to fortify her fencing, to have a kennel in her yard for her dogs, and to engage in training for herself and her dogs in an effort to avoid any future incidents.

The neighbor testified he was afraid of Petitioner's dogs and was concerned that Petitioner could not adequately restrain them. In addition, the animal control officer testified at the initial hearing that "Armani" displayed very aggressive behavior to other dogs while in Visalia's animal kennel.

At the supplemental hearing, Petitioner presented reports from Becky Holly and from Glenn Farris. The hearing officer discounted Ms. Holly's reports although she states she has substantial experience working with, training and placing dogs of similar breed to "Armani." Ms. Holly bases her reports on a single visit with "Armani" at the Visalia shelter in May of 2017. Ms. Holly observed no aggression towards her or other humans at the shelter. She concluded that "Armani" would be a good candidate for further training Ms. Holly also concluded Petitioner should acquire further training in handling large dogs like "Armani". Ms. Holly did not observe "Armani" with other animals. Ms. Holly opines that any aggressive behavior to other animals at the shelter is likely due to his confinement in a kennel.

Mr. Farris reached similar conclusions based on a single visit to the Visalia shelter in May of 2017. Mr. Farris did not observe any aggression towards himself or other people. He indicates owner and animal training would deter aggressive behaviors in any animal. He offers no specifics as to what would be required for "Armani" or his owner.

The hearing officer reviewed the reports from Petitioner's witnesses and concluded they did not adequately address the issue of aggression towards other animals. The declaration of Ivy Ruiz, an Animal Services Supervisor for Respondent indicates "Armani" displayed aggressiveness towards other animals at the shelter during Mr. Farris' visit.

Based on the record, the hearing officer could properly give lesser weight to Petitioner's current testimony that "Armani" was not involved in a prior incident with her neighbor. Petitioner does not dispute there was a prior incident.

Reviewing the entire record, the evidence before the hearing officer indicates that Petitioner has not been able to control her dogs on at least two occasions a year apart. "Armani" caused injury to a neighbor's dog and had escaped from Petitioner's yard at least twice. Petitioner only now, after two problems with her dogs asks to be permitted to obtain training for herself and "Armani" to control any aggressive behavior. The evidence presented to the administrative hearing officer was sufficient to support his decision.

While the Visalia Municipal Code contains provisions for probation with conditions if injuries caused by the animal were the result of improper handling of the animal, these provisions would only be applicable if there was insufficient evidence to establish the animal was dangerous or vicious as defined in the municipal code. That is not the case here.

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order.