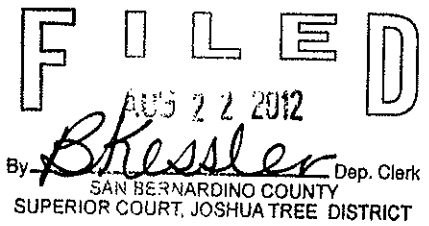
San Bernardino County Superior Court
6527 White Feather Rd, Joshua Tree, CA 92252



SUPERIOR COURT OF THE STATE OF CALIFORNIA

SAN BERNARDINO COUNTY, JOSHUA TREE COURTHOUSE

UNLIMITED CIVIL JURISDICTION

JAMES LOVELL, the guardian of Dakota and Blaze, Petitioner, vs. TOWN of YUCCA VALLEY Respondent.	Case No.: CIVMS 1200185 **STATEMENT OF DECISION**

PREAMBLE

Per Town of Yucca Ordinance 138, Sec. 10.02.120 a hearing was conducted on February 28, 2012, in the Town of Yucca Valley, California, to determine if there was sufficient evidence, to support a finding that the dogs, Blaze and Dakota, owned by James Lovell, Petitioner, were potentially dangerous, and thus, required imposition of conditions to their further maintenance and care.

The court has reviewed the administrative record filed and all the pleadings submitted by the parties.

The court is required to exercise its independent judgment and review the administrating

hearing to determine whether jurisdiction was properly exercised, whether the hearing was conducted fairly, conducted without prejudice, and whether the Findings of the Hearing Officer were supported by the evidence.

SUMMARY OF FACTS PRESENTED AT THE HEARING

On February 8, 2012, Animal Control Officer Kim Casey investigated the circumstances of an alleged attack by two dogs, that day, upon a local resident of a mobile park as she was walking along a public way near her home. The location was a public way for cars and pedestrians, adjacent to a row of mobile homes, bordering and opposite an open area (or, abandoned golf course as described by Mr. Lovell).

On the date of the incident, Officer Casey interviewed the victim and witnesses and Mr. Lovell. Afterwards, Officer Casey took two dogs owned by Mr. Lovell for quarantine, Blaze-a mixed breed male and Dakota-a mixed breed female, and cited Mr. Lovell for failure to license the dogs, a violation of Yucca Valley Ordinance 138, which initiated this proceeding.

At the hearing, Hearing Officer Mahoney heard testimony from Ms. Evelyn Chester, age 83, the subject of the incident, was walking along the roadway near her home when she was allegedly set upon by two dogs, one of which jumped upon her and caused her to fall to the ground and thereafter she received dog bites to her buttocks and ankles; Ms. Shiryl Mandeville, a witness, was alerted to dogs barking on the roadway and saw dogs jumping on a woman (Ms. Chester) and she also saw a man running to assist Ms. Chester while she went to call 911. After this call, Ms. Mandeville went to where Ms. Chester was still located and saw Ms. Chester's broken skin and she looked like she had been bitten. The man who Ms. Mandeville saw and come to Ms. Chester's assistance to help fend off the dogs and help Ms. Chester get up was not named nor did he testify. Mr. Lovell was also soon on the scene and took control of the dogs, removing them from the area.

Ms. Mandeville took Ms. Chester immediately to a doctor who treated the bites and bruises and gave her a tetanus shot.

Mr. Lovell testified that on that day, just before the incident, that he had planned to leave with one of the animals, he noticed that a small door to the garage was open and the male dog went through it and took off without his knowledge. Meanwhile the female dog was in his truck and never got out. Then he heard sounds (apparently) from the lady and he went out of his property to the roadway and saw the lady standing up; that he saw his first dog and attempted to get it under control. That's when the second dog ran up to the scene; that he took control of both dogs and returned them to his property nearby.

The Hearing Officer asked Mr. Lovell is he had any witnesses. He said that he did but that the person was unavailable.

The court notes that the transcript does not show any request to continue the hearing by Mr. Lovell or any cross-examination by Mr. Lovell of any witness.

After the hearing, the Hearing Officer prepared Findings which are part of the administrative prepared and filed in this case. In his findings of facts and recommendations, March 6, 2012, the hearing officer made the following orders:

1) Blaze and Dakota shall be properly licensed, vaccinated, and designated as potentially dangerous in registration records;

2) The owner shall have them micro-chipped or tattooed at his expense;

3) While on the owner's property they shall be provided adequate exercise area and

properly restrained. The fencing shall be pre-approved by Animal Control.

4) Blaze and Dakota must be restrained by leash if off the owner's property.

5) Owner must obtain a policy of insurance and proof given to Animal Control Services.

6) If either animal dies or is sold, written notice must be given to Animal Control Services in writing.

7) Blaze and Dakota shall be removed from the list of potentially dangerous dogs if no incident occur within 36 months. They may be removed earlier for sufficient changed circumstances.

8) Prior to release Mr. Lovell shall reimburse the Town of Yucca Valley for all expenses incurred.

9) If the above orders are not complied with within 14 days Blaze and Dakota shall be considered unredeemed.

FINDINGS

The court conducted a hearing in open court on August 20, 2012, and heard the arguments of Petitioner and Respondent with regards to issues before the court.

The court, having exercised its independent judgment, makes the following findings:

1. Jurisdiction was properly exercised;

2. The hearing was conducted fairly and without prejudice;

3. The finds of the hearing officer were supported by the evidence.

CONCLUSION

The court denies the Petition for Writ of Mandate in its entirety.

Dated: August 22, 2012

FRANK GAFKOWSKI, JR.

Frank Gafkowski Jr.
Superior Court Judge

PROOF OF SERVICE BY MAIL

FILED
AUG 2 2 2012
By BKessler Dep. Clerk
SAN BERNARDINO COUNTY
SUPERIOR COURT, JOSHUA TREE DISTRICT

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO)

I am employed in the County of San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 6527 White Feather Rd, Joshua Tree, CA 92252.

On 8/22/12, I served the foregoing document described as **STATEMENT OF DECISION** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Address

James Lovell
7444 La Honda Way
Yucca Valley, CA 92284

Christy Marie Lopez
Bar No. 229137
18881 Von Karman Ave
Suite 1700
Irvine, CA 92612

I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Joshua Tree, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on 8/22/12, at Joshua Tree, California.

BKessler
Bianca Kessler
Court Administrative Assistant II