

STANDARD OF REVIEW

Judicial review from a declaration of a “potentially dangerous dog” N.C.G. Stat. §67-4.1(c) provides that the appeal “shall be heard de novo before a superior court judge sitting in the county” in which the appellate Board whose ruling is being appealed is located. The appellate Board whose ruling is being appealed is located in the County of Durham and, accordingly, the Superior Court has subject matter jurisdiction over this proceeding pursuant to N.C.G. Stat. §67-4.1(c). Although N.C.G. Stat. §67-4.1 is silent as to the standard of proof, this Court has considered the matter and has applied the “greater weight of the evidence” standard to the facts. Having considered the petition as amended, the documentary evidence presented by both parties, the testimony of the parties and witnesses, the oral arguments of counsel for the parties, and the authorities cited, the court finds by the “greater weight of the evidence” the following:

FINDINGS OF FACTS

1. On or about April 11, 2015 at approximately 4 P.M. at 5510 Barbee Chapel Road, Durham County, North Carolina, Ms. Catherine Burnett and ten year old nephew were walking from a soccer game with a mixed breed one and a half year old dog that she owns, known as “Nugget”.

2. That Nugget was on a leash held by Ms. Burnett as she walked when Nugget was approached by a mixed breed four year old dog, known as “Maggie Chartrand” which was owned by Douglas Chartrand. That Maggie was led by Douglas Chartrand’s nine year old daughter when Maggie broke free from the child and moved some distance with the lease dragging behind the dog.

3. That the initial contact between the dogs was witnessed by Catherine Burnett who testified Maggie ran toward Nugget with a leash dragging behind her. Maggie stood in front of both Ms. Burnett and Nugget. Then Ms. Burnett attempted to go around Maggie, but Maggie stepped in front of both Ms. Burnett and Nugget. The evidence shows that the two dogs touched noses and that Maggie then began to attack Nugget, biting at the top of her body and down toward Nugget's back.

4. The evidence shows that Ms. Burnett attempted to separate the dogs by kicking Maggie, but Maggie's jaw was clenched into Nugget's left hind leg. Ms. Burnett then fell to the ground and held Nugget by the neck trying to protect Nugget while continuing to use her feet to kick Maggie. Unidentified men who were present at the scene attempted to intervene and get Maggie off Nugget. Maggie's jaw held onto Nugget. During this interaction, Maggie bit Nugget and ripped open her (Nugget's) skin causing a large laceration to her hind leg and which opened up the skin to the underlying muscle. The evidence shows that Mr. Chartrand was initially twenty to thirty yards away at the initial encounter between these dogs. He acknowledges that he saw the dogs sniffing and heard barking. He lost sight of the dogs for a brief period because a crowd formed around the scene. He ultimately arrived and saw the dogs at each other, their leashes entangled. Mr. Chartrand intervened by holding onto Maggie. The evidence shows through testimony to include Mr. Chartrand's that while Nugget was barking at Maggie that she (Maggie) lunged toward Nugget and bit her hind left leg causing the aforesaid six inch tear to Nugget's hind leg.

5. Ms. Burnett immediately thereafter took Maggie to Veterinary Specialty Hospital. The medical record was received in evidence and one of Nugget's treating veterinarians who had performed the surgical repair of the dog at Veterinary Specialty Hospital, Dr. Lee, testified.

6. That the medical record from Veterinary Specialty Hospital shows that on April 11, 2015, within an hour of the incident, Nugget was admitted to the Veterinary Specialty Hospital with a 7.5 cm x 2cm laceration over left lateral femur secondary to known dog bite. The physical examination also revealed “evidence of muscular penetration at ventral most aspect of laceration, intermittent slow trickle hemorrhage, and superficial abrasion noted over left lateral abdomen...”. The plan of care as recorded on that date by the treating veterinarian with Veterinary Specialty Hospital under the section entitled: “PLAN” states: “hospitalization, IV pain medication, wound care, place wet to dry with tie over bandage, re-evaluate wound tomorrow and replace wet to dry or close depending on vitality of underlying wound.”

7. Nugget was admitted to the Veterinary Specialty Hospital with Ms. Burnett’s consent. Nugget stayed overnight in the Veterinary Specialty Hospital for wound care in accordance with the plan of care established for the animal.

8. On April 13, 2015, Dr. Lee inspected Nugget’s wounds when he observed some necrotic tissue which prevented a surgical repair from being performed that day. However, Dr. Lee performed a surgical repair of Nugget’s wound on April 14, 2015. Nugget has a visible line on her hind leg in the area of the surgical repair. The evidence shows that Nugget continues to have a scar at the subject site and that she has essentially recovered.

9. The undisputed facts are that Maggie, while dragging her leash, approached Ms. Burnett and Nugget. That Nugget was on a leash. That Maggie bit Nugget and that bite caused a 7.5 cm x 2cm open tear to Nugget’s hind left leg which caused Nugget to be treated at Veterinary Specialty Hospital and which required hospitalization of Nugget on April 11, 2015 through April 12, 2015. The injury caused by Maggie upon Nugget constitutes a “serious injury” resulting in hospitalization.

Based upon the foregoing Findings of Facts, the Court makes the following:

CONCLUSIONS OF LAW

1. That the Court has jurisdiction over the parties and subject matter of this action;
2. That N.C.G. Stat. §67-4.1 (2) entitled: Definitions and procedures defines a potentially dangerous dog as:
 - (2) “Potentially dangerous dog” means a dog that the person or Board designated by the county or municipal authority responsible for animal control determines to have... inflicted severe injury upon a domestic animal when not on the owner's real property;... .
3. That N.C.G. Stat. §67-4.1 (5) defines a “Severe injury” as “any physical injury that results in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.”
4. That Maggie Chartrand bit Nugget, a domestic animal, on April 11, 2015 while off Douglas Chartrand’s property.
5. That Nugget required hospitalization on April 11, 2015 at Veterinary Specialty Hospital, constituting hospitalization within the meaning of N.C.G. Stat. § 67-4.1 (5). That Nugget underwent surgical repair of a 7.5 cm x 2cm wound to Nugget’s left leg at Veterinary Specialty Hospital further constituting hospitalization within the meaning of N.C.G. Stat. § 67-4.1 (5). That Nugget also sustained a disfiguring scar to hind left leg. Accordingly, Nugget sustained a “severe injury” as defined by N.C.G. Stat. § 67-4.1 (5).

Based upon the foregoing Findings of Facts and Conclusions of Law, it is **THEREFORE ORDERED, ADJUDGED and DECREED** that the dog known as “Maggie Chartrand” is

DECLARED to be a “potentially dangerous dog” within the meaning of N.C.G. Stat. §67-4.1; that the ruling of the Dangerous Dog Appeal Board for the County of Durham, North Carolina is **AFFIRMED**; and that the subject *Amended Petition of Review* is hereby **DISMISSED**.

This, the 4th day of January, 2016.



The Honorable James E. Hardin, Jr.
Superior Court Judge Presiding

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing Order in the above captioned action on all parties by depositing a copy hereof in a postpaid wrapper in a post office depository under the exclusive care and custody of the United Postal Service, addressed as follows:

FALCONE, EDWARD, J
120 E PARRISH STREET, SUITE 200
DURHAM, NC 27701

INSERRA, MARIE, COSTELLO
PO BOX 3508
DURHAM, NC 27702

This the 5th day of January, 2016.



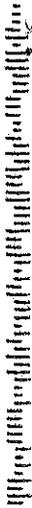
DURHAM COUNTY DEPUTY CLERK OF SUPERIOR COURT

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