STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0374

In the matter of a Potentially Dangerous Dog declaration involving a black, tan & white colored Caucasian Shepherd (Ovcharka) dog identified as "Judas".

Filed January 21, 2025
Affirmed
Harris, Judge

City of Maplewood
File No. 23-029639

Dustin Lehrke, Maplewood, Minnesota (pro se relator)

Joshua P. Weir, Kennedy & Graven, Chartered, Minneapolis, Minnesota (for respondent City of Maplewood)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

Relator Dustin Lehrke filed a petition for a writ of certiorari asking us to review respondent City of Maplewood's decision designating his dog as potentially dangerous. He argues that the hearing officer's conclusions were arbitrary and capricious, and that he was denied his procedural due-process rights because he was not given a meaningful notice and opportunity to be heard. Because the substantial evidence supports the hearing officer's conclusions and because relator was afforded procedural due process, we affirm.

FACTS

This case is about a dog named Judas. Judas is a 115-pound Ovcharka, or Caucasian shepherd, owned by Dustin Lehrke and Dr. Heidi Lehrke. The City of Maplewood designated Judas as "potentially dangerous," after an incident with T.H. and her dog Blu, a giant male schnauzer. The Lehrkes appealed the city's initial determination and requested an administrative hearing. The following facts were developed at the administrative hearing.

On the evening of November 7, 2023, T.H. was walking Blu on a leash and passing by the Lehrkes' property. While walking along the Lehrkes' property line, T.H. heard a "low growl" when Judas suddenly came at her and knocked her to the ground. She maintained her grip on Blu's leash after falling, and started screaming, yelling, and kicking Judas. According to T.H., Judas grabbed onto and bit Blu, and T.H. continued to yell, scream, and kick the dog. Dr. Lehrke was at home at the time and heard the commotion outside. Dr. Lehrke explained that it was very dark outside, and she could not see T.H. but that she could see Judas in her yard. She asked T.H. if Judas went "out of the yard," to which T.H. responded, "yes, he attacked my dog." And when Dr. Lehrke asked T.H. if her dog was okay, T.H. yelled "no."

T.H. called 911 and later met with Officer M.M. to file a bite report. Later that night, she checked Blu for injuries but could not find any. T.H. checked again the following morning and found a wound on Blu's shoulder and immediately took him to the vet. T.H. initially believed that Blu suffered only a puncture that could be stitched quickly, but after further examination, the veterinarian recommended surgery because Blu was bitten down

to his muscle. The cost of the surgery, general anesthesia, sutures to stitch the wound, and medication was $1,226.02.

T.H. testified that she had no reason to believe that Judas was not the aggressor dog, and that this was not her first encounter with Judas. T.H. testified that Judas had charged after her and Blu several times in the past, and that Judas is "very aggressive toward other animals and people when he's in the yard unrestrained." However, the November 2023 incident was the first time that Judas made contact with her or Blu, and she had not reported any prior instances of Judas charging after her and her dog.

Mr. Lehrke did not witness the incident. At the hearing, he argued that T.H.'s yelling and screaming provoked Judas's attack. He also pointed to Officer M.M.'s initial report, which stated that "there was not enough evidence to prove that the dog bite was *unprovoked*." (Emphasis added.) Officer M.M. clarified that it was a typo and that "[he] actually meant to say *provoked*." (Emphasis added.)

The hearing officer reminded both parties that he would review all the materials submitted. After the hearing, Mr. Lehrke submitted additional evidence to support his claim that Judas did not meet the statutory definition of potentially dangerous. He included letters written by neighbors attesting to Judas's behavior, his and Dr. Lehrke's analysis of the veterinary bill and photos of Blu's wound, an audio recording from a neighbor's security camera on the night of the bite incident, and a compilation of edited videos.

The hearing officer issued a written order sustaining the city's decision. The hearing officer concluded that T.H. established a prima facie case that Judas was the aggressor dog. The hearing officer also concluded that "the bite incident" from Judas met the statutory

criteria as a "potentially dangerous dog" under Minnesota Statutes section 347.50, subdivision 3 (2022). In its decision, the hearing officer provided the full statutory definition of a "potentially dangerous dog." Notably, the second definition, or prong, of a potentially dangerous dog was italicized and bolded. The decision read:

> A. When unprovoked, inflicts bites on a human or domestic animal on public or private property;
>
> B. ***When unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack;*** **or**
>
> C. Has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

Mr. Lehrke appeals by writ of certiorari.

DECISION

I. The city's determination that Judas is a potentially dangerous dog was not arbitrary, capricious, unreasonable, or without any evidence to support it.

Lehrke argues that the city's designation of Judas as "potentially dangerous" is unsupported by the record. He insists that: (1) the city's determination that Judas's attack was unprovoked is arbitrary and capricious; (2) substantial evidence does not support the conclusion that Judas bit the victim dog; and (3) substantial evidence does not support the conclusion that Judas was in an apparent attitude of attack. However, we find these arguments unpersuasive because Lehrke's arguments do not challenge whether the hearing officer's findings are supported by the record, but instead are fundamental disagreements with how the hearing officer weighed the evidence.

Review by certiorari is restricted to "'questions affecting the jurisdiction of the board, the regularity of its proceedings, and, as to merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.'" *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (quoting *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992)). A decision is arbitrary and capricious only if the decision-making body: "(1) . . . relied on factors not intended by the ordinance; (2) entirely failed to consider an important aspect of the issue; (3) offered an explanation that conflicts with the evidence; or" (4) arrived at a decision that "is so implausible that it could not be explained as a difference in view or the result of the city's expertise." *Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 484 (Minn. App. 2002). A city's decision is not arbitrary and capricious if the city has explained "how it derived its conclusions, and [the city's] conclusion is reasonable on the basis of the record." *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 635 (Minn. 2012). We "may not substitute [its] own findings of fact for those of a city or engage in a de novo review of conflicting evidence." *Id.* We "will uphold the decision if the agency provided any legal and substantial basis for its action." *Hannan v. City of Minneapolis*, 623 N.W.2d 281, 284 (Minn. App. 2001) (quotation omitted).

A. The city's determination that Judas's attack was unprovoked is not arbitrary and capricious.

First, Lehrke argues that the conclusion that the attack by Judas was unprovoked was arbitrary and capricious because the hearing officer made no determination beyond vague

declarations and made no specific findings of fact to support the conclusion. Because Lehrke's arbitrary-and-capricious argument is not well developed and is based on little more than mere assertions, we disagree.

Minnesota law defines "potentially dangerous dog" as any dog that:

> (1) when unprovoked, inflicts, bites on a human or domestic animal on public or private property;
> (2) when unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack; or
> (3) has a known propensity, tendency, or disposition to attack unproved, causing injury or otherwise threatening the safety of humans or domestic animals.

Minn. Stat. § 347.50, subd. 3.

"'Provocation' means an act that an adult could reasonably expect may cause a dog to attack or bite." Minn. Stat. § 347.50, subd. 8 (2022). For an act to constitute provocation, it "must be voluntary, thus inviting or inducing the injury." *Bailey v. Morris*, 323 N.W.2d 785, 787 (Minn. 1982). Whether a dog was provoked is generally an issue for the finder of fact. *Id.*

Here, the hearing officer considered testimony from T.H., the Lehrkes, and Officer M.M. The hearing officer also reviewed exhibits including letters from the Lehrkes' neighbors attesting to Judas's character, veterinarian records, photographs, and police reports. Additionally, the neighbor's security camera captured the audio of the incident between T.H.'s dog and Judas. The hearing officer ultimately concluded that "Judas caused the incident by either tooth or claw," that the wound suffered by Blu was consistent

with the "chain of events described in testimony," and that "[t]he manner in which this incident occurred [did] not meet the standard of provocation."

Lehrke contests the hearing officer's determination that Judas's attack was unprovoked. He claims that the hearing officer never listened to the audio and thus did not consider that T.H. could have been the provoker by screaming and yelling. However, the record demonstrates that the hearing officer did, in fact, listen to the audio and considered Lehrke's arguments. For example, the hearing officer concluded that "[t]he fact that [T.H.] was in an area she had a legal right to be, can be heard screaming and kept her dog restrained throughout the incident is prima facie evidence that Judas was the aggressor dog."

The record demonstrates that the hearing officer considered the evidence in the record and sufficiently explained the basis for determining that the attack was unprovoked. We therefore conclude that the determination that Judas was the aggressor dog was not arbitrary and capricious.

B. Substantial evidence in the record supports the determination that Judas inflicted bites on the victim dog who was a domestic animal.

Next, Lehrke asserts that the city's determination was not supported by substantial evidence in the record because the wound to the victim dog was a "superficial laceration" and was "more likely a result from a claw" rather than a bite.

Substantial evidence to support a determination consists of: "1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2) more than a scintilla of evidence; 3) more than some evidence; 4) more than any evidence; and

5) evidence considered in its entirety." *Am. Fed'n of State, Cnty. & Mun. Emps., Council No. 14, St. Paul v. County of Ramsey*, 513 N.W.2d 257, 259 (Minn. App. 1994) (quotation omitted).

The hearing officer concluded that the "bite incident" satisfied the statutory criteria for a potentially dangerous dog. The hearing officer considered testimony from T.H. and the Lehrkes, photographs of the wound stitches after Blu's surgery, and the invoice from the veterinarian, which shows that the veterinarian administered anesthesia for surgery. This is consistent with T.H.'s testimony.

Lehrke argues, however, that this finding is unsupported by the record because he submitted exhibits that contained "[their] clear opinion that the injury did not likely result from a bite."[1] He supports this argument with his and Dr. Lehrke's analysis and opinion of the veterinarian bill and photographs from the veterinarian. Based on his review of these records, Lehrke argues that Blu more likely suffered an injury from a claw rather than a tooth. We are not persuaded. Neither of the Lehrkes personally examined Blu's injuries and neither were direct witnesses to the incident. As the city points out, Lehrke's assertions are based upon indirect observations and inferences. Moreover, the hearing officer considered all testimony and evidence presented at the hearing in reaching its conclusion. The hearing officer concluded that "[b]ased on the veterinary report, police report and

[1] Later in his brief, however, Mr. Lehrke claims that the hearing officer's conclusion that there was "empirical evidence that Judas caused the incident by either tooth or claw" is vague, arbitrary, and unsupported by the record.

photographs, the wound suffered by the victim dog is consistent with the chain of events described in testimony."

In sum, the hearing officer's findings of fact that Judas inflicted a bite on the victim dog, a domestic animal, are supported by substantial evidence.

C. Substantial evidence in the record supports the determination that Judas was in an apparent attitude of attack.

Finally, Lehrke argues that the hearing officer's finding that Judas was in an apparent attitude of attack was not supported by substantial evidence. The hearing officer acknowledged that whether "Judas charged out of the yard demonstrating an aggressive attitude of attack [was] in dispute." However, the testimony from T.H. and the audio of the incident support the hearing officer's finding that Judas was the aggressor dog.

Lehrke argues that it was possible that Judas attacked Blu while on the Lehrkes' private property. The hearing officer determined that T.H. "was walking her dog on a leash along a public roadway adjacent to the Lehrke residence" and that "Judas ran across the front yard of the Lehrke property to engage [T.H.] on or along the right of way." The hearing officer added that "[i]n this particular instance Judas charged out of the yard towards the victim dog in an intimidating manner." These findings are supported by the record, including the testimony by T.H. and Dr. Lehrke. For example, Dr. Lehrke testified that when she stepped outside, she could see T.H. and Blu "in the public right-of-way." T.H. testified that she "was walking on the street" on the night of the incident.

In sum, Lehrke has not shown that the hearing officer's finding that Judas was in an apparent attitude of attack was without substantial evidentiary support based on the entire record.

II. The city provided adequate procedural due process to the Lehrkes.

Lehrke also contends that his procedural due-process rights were violated because he was not given meaningful notice and opportunity to be heard. Specifically, he claims that the hearing officer impermissibly modified the prong under the potentially-dangerous-dog definition to conclude that Judas is a potentially dangerous dog.

Whether the state has violated a person's right to procedural due process is a question of law that we review de novo. *Sawh*, 823 N.W.2d at 632. To determine whether the state violated a person's right to procedural due process, we must first determine whether a protected liberty or property interest is implicated and then consider what process is due by applying a balancing test. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). "Put differently, if a protected life, liberty, or property interest is at stake, we must weigh the *Mathews* factors to determine what type of process is constitutionally due to a person deprived of such an interest." *Sawh*, 823 N.W.2d at 632. The *Mathews* test requires us to consider: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest, through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substantive procedural requirements would entail." *Mathews*, 424 U.S. at 335.

First, it is well established in Minnesota that dogs are personal property. *Zephier v. Agate*, 957 N.W. 2d 866, 871 n.2 (Minn. 2021). Therefore, Lehrke has a protected property interest in Judas. Because the city's actions implicate this interest, we proceed to the second step of the procedural due-process analysis and apply the *Mathews* balancing test to determine whether the city's procedures were constitutionally adequate. *Sawh*, 823 N.W.2d at 632-33. The government's procedures are adequate if they provide the individual with notice and a meaningful opportunity to be heard. *Id.*

A. Private Interest

The first *Mathews* factor requires us to identify the private interest that will be affected by the city's action. As discussed earlier, dogs are considered personal property. But under Minnesota law, animals are treated "like any other item of tangible personal property," despite an owner's "considerable sentimental attachment." *Id.* at 633. The city's determination that Judas is potentially dangerous imposes several burdens on the Lehrkes. These include carrying $300,000 in liability insurance, microchipping Judas, maintaining a proper enclosure, paying the city's registration fees, placing warning signs on their property, allowing the city to photograph Judas, notifying any tenants or landlords of the property and future sellers that Judas is potentially dangerous, and notifying the city of the death or transfer of Judas. These requirements are burdensome, and they undermine the Lehrke's possession and enjoyment of Judas.

B. Erroneous Deprivation

The second *Mathews* factor requires us to weigh the risk of an erroneous deprivation under current procedures and the probable value, if any, of additional procedures. Lehrke

alleges that he should have had the opportunity to avail himself of formal courtroom procedures to testify and cross-examine witnesses, and more time to present his case. Lehrke also argues that he did not have adequate time to prepare a defense for the second prong of the potentially-dangerous-dog definition because the initial notice served to him by the city indicated that Judas was designated as potentially dangerous under the first prong only ("when unprovoked, inflicts bites"). Because the hearing officer concluded that Judas was potentially dangerous under the second prong ("when unprovoked, chases or approaches a person"), he claims that he was not afforded proper notice.

Quasi-judicial hearings, like the one here, do not require the formal adjudication procedures available in a civil courtroom. In *Sawh*, the supreme court held that a hearing did not violate the dog owner's due-process rights where the dog owner presented witnesses, explained his version of events, and contested the city's evidence. 823 N.W.2d at 634. Here, the city allowed the Lehrkes to testify, present evidence, cross-examine T.H. and Officer M.M., and contest the city's arguments. The hearing officer also allowed Lehrke to submit additional documentation after the hearing to support his case.

Furthermore, the supreme court held that notice is constitutionally adequate if it "communicate[s] the interest at stake." *Schulte v. Transportation Unlimited, Inc.*, 354 N.W.2d 830, 834 (Minn. 1984). In this case, whether Lehrke was notified of Judas being a potentially dangerous dog under either the first or second prong, the interests at stake were the same. The notice contained the same six conditions of owning a potentially dangerous dog, which included enclosure, microchipping, liability insurance, registration with the city, allowing the city to photograph Judas, and notifying landlords of Judas's

status as a potentially dangerous dog. Thus, whether Lehrke was notified that the finding that Judas is a potentially dangerous dog was based on the determination that Judas "inflicts bites" or that he "chases or approaches" a person, Lehrke was properly informed of the interests at stake.

For these reasons, the second *Mathews* factor weighs in favor of the city.

C. Governmental Interest

The third *Mathews* factor evaluates the city's interest, including the fiscal and administrative burdens of additional or substitute procedures. *Mathews*, 424 U.S. at 335. The city undoubtedly has an interest in ensuring the public health and safety of its citizens, especially against dangerous animals. *American Dog Owners Ass'n, Inc. v. City of Minneapolis*, 453 N.W.2d 69, 72 (Minn. App. 1990) ("The City has a high interest in taking appropriate measures for animal control.").

Lehrke contends that the government would bear no fiscal or administrative costs by allotting him and his wife more time to speak, uninterrupted. If hearings are one hour, Lehrke suggests that preserving one-third of that time would permit more time for cross-examination and presentation of evidence. However, these more formal courtroom procedures would be more costly and time-consuming, and the city has an interest in ensuring accessible forums for its citizens to resolve disputes. We are not persuaded by Lehrke's arguments and conclude that the third *Mathews* factor weighs in favor of the city. Accordingly, Lehrke was afforded adequate procedural due process.

Lehrke finally argues that the hearing officer was not a neutral agent because he and Officer M.M. allegedly discussed the case before the hearing. He also argues that the

hearing officer was more concerned with following proper procedures to reduce the hearing officer's legal liability. Both arguments are unsupported by the record.

Because the city's decision did not violate Lehrke's right to procedural due process, was not arbitrary and capricious, and was supported by substantial evidence we affirm.

Affirmed.