

IN THE MATTER of the Dog Control Act
1996

AND

IN THE MATTER of an objection to a
Notice of Disqualification from Dog Ownership
pursuant to s25 of the Dog Control Act 1996
in respect of **JOSEPHINE POLAND**
(BUCHANAN)

Objector

AND

WAIKATO DISTRICT COUNCIL

Respondent

Hearing by the Regulatory Subcommittee of the Waikato District Council held in the Council
Chambers, District Office, 15 Galileo Street, Ngaruawahia on **WEDNESDAY 18**
OCTOBER 2017.

Present:

Cr DW Fulton (Chairperson)
Cr JM Gibb
Cr JD Sedgwick

Attending:

Ms J Poland (Objector)
Ms M May (Animal Control Team Leader)
Ms C Pidduck (Senior Solicitor)
Mrs S O’Gorman
Mr R MacCulloch (Regulatory Manager)
Ms J Smout (Animal Control Officer)
Mrs LM Wainwright (Committee Secretary)
Mr M Senior (Victim)
Members of staff

DECISION

INTRODUCTION

This is an objection by Ms Josephine Poland against a notice of disqualification from dog ownership issued by the Waikato District Council pursuant to s25 of the Dog Control Act 1996.

Ms Poland was the registered owner of greyhound Sally, a female dog involved in an attack which killed a cat belonging to a neighbour, Mr. Mark Senior.

The attack occurred at approximately 7.15am on 24 October 2016, when Sally entered the neighbour's property at 22 Ocean View Rd, Port Waikato and attacked and killed their cat Smudgy.

Ms Poland made full admission of the event to Council's Animal Control Officer and Sally was surrendered to Waikato District Council.

On or about 10 November, Ms Poland rescinded her surrender form, the Council accepted her application and Sally was released to an alternative address under strict terms and conditions to mitigate any threat to public safety.

On 29 March 2017 Ms Poland appeared in the Pukekohe District Court, for two offences:

- a. one charge under s52(1) of the Dog Control Act 1996 for failing to keep Sally under control, and
- b. one charge under s 57(2) of the Dog Control Act 1996 of owning a dog that attacked a domestic animal.

Ms Poland pleaded guilty to both offences against s57(1) and 57(2) of the Dog Control Act 1996 at the Pukekohe District Court.

On 7 August 2017, the Pukekohe District Court sentenced Ms Poland. She was ordered to pay a fine of \$650.00 per offence and reparation to Mr Senior of \$415.00.

On 11 August 2017, following the sentencing, and in accordance with s 25 of the Act, Megan May, Animal Control Team Leader from the Waikato District Council issued a notice of disqualification from dog ownership against Ms Poland.

The disqualification is effective from the date of the offence 24 October 2016 and remains in place for 5 years unless the disqualification period is varied or terminated.

Waikato District Council received an objection from Ms Poland (in accordance with s26 of the Act (Objection to Disqualification) on 24 August 2016.

PROCEDURAL MATTERS

1. Cr Fulton opened the hearing at 10.30am on 18 October 2017 and adjourned it awaiting the appearance of Ms Poland, resuming at 10.45am.
2. Cr Fulton introduced the committee and took time to advise Ms Poland how the hearing would be conducted and ensured she understood what was required of her before continuing the hearing. The Committee notes that Mr. Senior was in attendance.

OBJECTION

1. Ms Poland told the Committee that she had obtained Sally after an unsuccessful rehoming and that she lived with her elderly dog Roxy, at her address at 19 Ocean View Rd, Port Waikato.
2. She outlined the fencing and decking on her property and answered questions of the committee regarding the security of the gates. Ms Poland drew a map which showed two gates on the property, and indicated one was not able to be secured easily due to wear and erosion and was normally propped shut. She said Sally had escaped through the other gate to enter the neighbour's property, and that Sally had a history of slipping out of the gates.
3. Ms Poland expressed remorse at the incident and sadness for all parties.
4. She surrendered Sally to Waikato District Council, but after representation from Greyhounds as Pets, she withdrew her surrender and Sally was rehomed.
5. Ms Poland said she was not made aware of the consequences of rescinding the surrender. She said all conversations were focused around Sally and not about the consequences of her other dog, should she be convicted. She felt documentation should be provided to owners in this situation, so that there could be no misunderstanding.
6. She said had she known that rescinding the surrender would place her ownership of Roxy in jeopardy, she would not have withdrawn it.
7. She drew the subcommittee's attention to her 45 years of dog ownership as proof of competency. She noted she had previously voluntarily had one dog euthanized because of aggressiveness.
8. Ms Poland outlined Roxy's health, saying the dog was deaf and struggled to walk. She indicated she had no desire to own any more dogs after Roxy's death.

WAIKATO DISTRICT COUNCIL ANIMAL CONTROL

1. Megan May, Waikato District Animal Control team leader spoke to the event which led to the death of the cat. She described the noise and blood, and drew the committee's attention to the victim impact statement. She said the offence was serious and had an ongoing effect on the cat's owners.
2. She said also made reference to Judge McGuire's comments in sentencing, about the importance of consequences and the severity of the attack. She noted that disqualification by the territorial authority was an outcome of the conviction, and was appropriate.
3. Ms May addressed Ms Poland's comments:
 - a. They differed in opinion in terms of what was discussed relating to the surrender and disqualification.
 - b. Ms May said she had indicated that if Ms Poland pleaded guilty and was convicted she would be subject to disqualification.
 - c. She noted Sally had escaped through the gate and that the gates' integrity was acknowledged as an ongoing problem.
4. Ms May acknowledged the emotional trauma to the cat owner family which lost a family pet through no fault of their own. She said if a decision was made to revoke the disqualification it would limit the Council's ability to ensure these incidents did not happen. She noted the on- going anxiety of Mrs. Senior to other roaming dogs in the neighbourhood, indicated in the victim impact statement.
5. She noted Judge McGuire had sent a clear message to dog owners and noted the risk of undermining the decision of the court.
6. Chair Fulton asked Ms May what the practice was to advise people in writing of the consequences of disqualification.
7. Ms May said the role of Animal Control was not to give legal advice.
8. When asked what might have happened if the surrender hadn't been rescinded, Ms May said the likelihood of following through with a prosecution would have been low. If Sally had been euthanized, there would not have been a conviction entered against Ms Poland.
9. The committee asked if the neighbours would still be opposed to Ms Poland owning Roxy and Ms May indicated this was the case.
10. Chair Fulton noted under the Dog Control Act 1996 there was no ambiguity, but that the territorial authority must disqualify the convicted owner.

LEGISLATION AND PROCESS MATTERS

1. Legal counsel Ms Pidduck reminded the committee that the disqualification was not imposed by the court, but by the territorial authority, referring to P24 of the agenda noting s 25 of the Dog Control Act, s25. Disqualification of owners:

*(1) A territorial authority must disqualify a person from being an owner of a dog if: -
(a) the person commits 3 or more infringement offences (not relating to a single incident or occasion) within a continuous period of 24 months, or
(b) the person is convicted of an offence (not being an infringement offence) against this act, or
(c) the person is convicted of an offence against Part 1 or Part 2 of the Animal Welfare Act 1999 section, s26ZZP of the Conservation Act 1997, or section 561 of the National Parks Act 1980*

2. that the territorial authority had turned its mind to subsection (1A) and determined the event did not warrant the exemption circumstances under subsection (1A) and therefore disqualification was the only option

*.....S(1A) if the territorial authority is satisfied that the circumstances of the offence or offences are such that:
(a) disqualification is not warranted: or,
(b) the territorial authority will instead classify the person as a probationary owner under s21.*

3. Ms Pidduck clarified the legal status of Ms Poland's verbal undertaking not to own additional dogs. She confirmed it no legal standing under the Dog Control Act 1996 and was not one of the outcomes that can be imposed by the hearings panel. It is not enforceable and has no legal authority.

MS POLAND'S CLOSING SUBMISSION

1. Ms Poland, in her right of reply, accepted that her offer to have no more dogs had no legal standing.
2. She differed with Ms May on aspects of the Dog Control Act, saying it was essential but the interpretation is black and white but supported the ultimate objective of ensuring public welfare
3. She pointed to Judge McGuire's low fines despite his comments on the severity of the attack, and she acknowledged Sally's action had caused serious pain to the Senior family, and to her own. She said she had already lost a dog (Sally).
4. She said she had been caught in the middle of a set of circumstances in taking Sally on and that losing Roxy as a result would cause considerable distress to her family, and that Roxy was the family's elderly and infirm dog with a short lifespan.

5. Ms Poland stated she had no prior history of offences under the Act and was a selected owner under the Council's policy

Chair Fulton noted the attendance and submissions, thanked Ms Poland and Mr. Senior for attending and adjourned the meeting at 11.35am to deliberate.

He indicated a decision would be made and Ms Poland would be notified as soon as possible.

DECISION

The committee were mindful of the message given by Judge McGuire on the severity of the attack.

We were also mindful that the property consistently failed the test of security and those failings were known to Ms Poland.

The Committee agrees the disqualification imposed by the Animal Control staff of Waikato District Council was in accordance with the Dog Control Act 1996.

The committee had three options to consider:

1. To uphold the disqualification of Ms Poland as a dog owner for a period of 5 years
2. To terminate the disqualification
3. To amend the period of the disqualification

From the starting position of the five-year disqualification served on Ms Poland the committee has made a decision to reduce the disqualification period, for the following reasons.

- I. That the Court had ruled that the circumstances were exceptional and therefore did not order destruction of the dog.
- II. We noted that Ms Poland held selected owner status, had no previous disqualifications nor had come to the attention of the Waikato District Council Animal Control officers previously.
- III. While not making a judgement on the discrepancies of the information given to Ms Poland with regards to her position when she revoked her surrendering of the dog Sally, consideration was given to what Ms Poland was told and what she believed she understood of the consequences of her actions.

We uphold the decision of the Waikato District Council animal control officers and accordingly, Ms Poland is confirmed as disqualified from owning a dog pursuant to section 25(l)(b), of the Dog Control Act 1996.

We have determined to amend the disqualification be reduced for a period of three years. Therefore, the period of disqualification shall run from 24th October 2016 until 24th October 2019. We understand that as a result of our decision Ms Poland will require time to make arrangements in relation to her current dog Roxy. The Committee urges the Waikato District Council to give Ms Poland up to 4 weeks from the date of this decision for Ms Poland to make the necessary arrangements

We record that should Ms Poland be dissatisfied with the decision of the committee she may, within 14 days of the date on which notice of the decision is given to her, appeal to the District Court against the decision in accordance with section 27 of the Dog Control Act 1996.

SIGNED ON BEHALF OF THE REGULATORY SUBCOMMITTEE

Cr Dynes Fulton (Chairperson)