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Court of Appeals of Minnesota.

Cynthia J. JOHNSTONE, Relator,
v.
MINNEAPOLIS ANIMAL CARE AND CONTROL, Respondent.

No. A08-1099.
|
May 19, 2009.
|
Review Denied Aug. 11, 2009.

Minneapolis Animal Care and Control, File No. 08-004255.

Attorneys and Law Firms

Cynthia J. Johnstone, Minneapolis, MN, pro se relator.

Susan L. Segal, Minneapolis City Attorney, Joel M. Fussy, Assistant City Attorney, Minneapolis, MN, for respondent.

Considered and decided by KALITOWSKI, Presiding Judge; LANSING, Judge; and SCHELLHAS, Judge.

UNPUBLISHED OPINION

LANSING, Judge.

***1** By writ of certiorari, Cynthia Johnstone appeals the Minneapolis Animal Care and Control's (MACC) administrative declaration that her dog was potentially dangerous. Johnstone also contends that during the administrative process, MACC unlawfully confined her dog without fresh air and exercise. We conclude that the evidence supports MACC's declaration of the dog as potentially dangerous and also conclude that the decision was not affected by error of law. Johnstone's allegations that her dog was improperly treated during confinement lack evidentiary support. We therefore affirm.

FACTS

An officer from the Minneapolis Animal Care and Control (MACC) seized and quarantined Cynthia Johnstone's dog, Tea Co, on June 4, 2008, based on a report that the dog bit a pedestrian on a city sidewalk. The next day, the pedestrian completed and signed a formal report describing the incident.

MACC sent Johnstone a notice on June 10, 2008, that it had declared Tea Co "potentially dangerous" under Minneapolis, Minn., Code of Ordinances § 64.110 (2008) "based on the fact that [Tea Co] was leashed to a car and bit a pedestrian who was walking on the sidewalk near the car." Relying on provisions in the ordinance, MACC notified Johnstone that, because of the declaration, she must meet requirements to ensure proper registration and safekeeping of the animal. The requirements included paying a $100 annual fee for a potentially-dangerous-dog registration, paying a $75 fee for a general license, obtaining a current rabies vaccination for the dog, implanting a microchip in the dog, providing a current photo of the dog, maintaining an outdoor kennel that meets ordinance requirements, and keeping the dog muzzled and restrained when outside the home if the dog was not in an approved kennel.

The notice provided Johnstone fourteen days to comply with the requirements and warned her that failure to comply could result in "[y]our animal being euthanized." MACC also informed her that she had a right to appeal the potentially-dangerous-dog declaration and enclosed an appeal form.

Johnstone completed and returned the appeal form and enclosed $100 for the appeal fee. She submitted a written statement saying that she did not see Tea Co bite anyone and that, if Tea Co bit someone, it was probably because the person provoked the dog in some way. She explained that she kept Tea Co in the car because the City of Minneapolis had condemned her home of eighteen years and that she had not been able to find a reasonable place to live. She also explained that Tea Co is her "therapy dog[ ] for anxiety, stress, and calming." Johnstone said that she took Tea Co to her mother's nursing home because the residents enjoyed the dog's company. And she submitted two letters from people in the community stating that Tea Co was not an aggressive dog.

MACC reviewed Johnstone's submissions and concluded that "there is not sufficient evidence to overturn the [potentially-dangerous-dog] declaration." At the end of June, MACC

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informed Johnstone that, because she had not met the requirements for registering her potentially dangerous dog, it had issued an order for the dog's destruction. Johnstone appealed the destruction order. MACC held a hearing and upheld the order.

***2** Johnstone filed this appeal on July 16, 2008, challenging MACC's decision to declare her dog potentially dangerous. While the appeal was pending, Johnstone filed a motion with MACC to stay the destruction order pending the appeal. MACC denied the motion on August 6, 2008. In the notice of the denial, MACC explained to Johnstone that "[p]rolonged residence in an automobile (especially a small car such as [Johnstone's] Chevy Corsica) is unacceptable for a dog." The MACC notice said that Johnstone's residence in her car made it impossible for her to construct the required kennel for Tea Co. MACC also told Johnstone that long-term confinement in a small space can lead to increased aggression, which would "expose the general public to unacceptable risk upon reintroduction or contact with the animal." Finally, MACC noted that Johnstone had demonstrated an inability to pay MACC's $25-a-day kenneling fee, which would be necessary for Johnstone to reclaim the dog.

Johnstone appealed MACC's denial of the stay to this court, and a special term panel determined that MACC did not abuse its discretion in declining to stay the destruction order. Johnstone now appeals MACC's administrative order declaring Tea Co a potentially dangerous dog.

DECISION

The City of Minneapolis has provided a prodedure for the regulation of potentially dangerous dogs under its code of ordinances. Minneapolis, Minn., Code of Ordinances § 64.110. This method of local regulation, permitted for any statutory or home rule charter city or any county, is authorized by Minn.Stat. § 347.53 (2008).

Section 64.110 authorizes MACC to "deem any animal as a ... potentially dangerous animal subject to the requirements under this Code and under ... Minnesota State Statute 347.50 subdivision (3) potentially dangerous dogs." The code defines a "[p]otentially dangerous animal" as "[a]ny animal that, when unprovoked, bites a person on public or private property, causing a minor injury not resulting in muscle tears or disfiguring lacerations or requiring multiple sutures, or corrective or cosmetic surgery." Minneapolis, Minn., Code of Ordinances § 64.110(d)(2). And Minn.Stat. § 347.50, subd. 3 (2008), defines "potentially dangerous dog" as any dog that "when unprovoked, inflicts bites on a human or domestic animal on public or private property."

In addition to defining the conduct that permits MACC to deem a dog potentially dangerous, the code also sets forth an appeal process that may be used to challenge a declaration that a dog is potentially dangerous. Minneapolis, Minn., Code of Ordinances § 64.110(f)(1). The appeal "consist[s] of a record review by [MACC] using the designated appeal form supplied by [MACC]." *Id.* It allows the owner to submit written evidence and affidavits that dispute the declaration and requires MACC to notify the owner, in writing, of the record-review results within ten days. *Id.* An oral hearing is provided for the appeal of a dangerous-dog declaration. *Id.* (f)(2). The ordinance provides that MACC's manager or the manager's designee is the hearing officer for the oral hearing. *Id.* When an animal is subject to an order for destruction, a hearing is also permitted, upon request, before MACC's manager or the manager's designee. *Id.* (n)(3).

***3** Johnstone does not dispute that a potentially-dangerous-dog declaration is a quasi-judicial decision that is subject to review by writ of certiorari. *See id.* (f)(6) (providing for appeal to the Minnesota Court of Appeals); *see also* *Honn v. City of Coon Rapids,* 313 N.W.2d 409, 414 (Minn.1981) (stating general rule that review by writ of certiorari is available for "proceedings of a tribunal exercising judicial or quasi-judicial functions"). The standard of review for quasi-judicial decisions is narrow. *W. Area Bus. & Civic Club v. Duluth Sch. Bd. Indep. Distr. No. 709,* 324 N.W.2d 361, 365 (Minn.1982). We will uphold the decision if the administrative body "furnished any legal and substantial basis for the action taken." *Id.*

We conclude that the record provides a substantial basis for MACC's decision to declare Tea Co a potentially dangerous dog and that the decision is grounded in the applicable law. The record contains a notice of animal-rabies quarantine stating that Tea Co, a golden-retriever mix, was seized on June 4, 2008, from Cynthia Johnstone after a pedestrian reported that she had been bitten by the dog. The pedestrian submitted a signed report the next day, stating that on June 4 at about 11:30 a.m. she walked westbound on the public sidewalk near the Norwegian Lutheran Church on East 21st Street in Minneapolis; that she observed a large golden retriever on a leash attached to a blue Chevy Corsica; that, when she passed by, the dog stood up and bit her on the left calf; and that the

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bite produced a minor scrape and bruising about two inches in diameter.

The pedestrian's signed report also states that she saw a woman who was working on the Chevy Corsica. The woman yelled at the dog, asked the pedestrian if the dog had ripped her jeans, and then put the dog in the car. The pedestrian noted the car's license plate number and sought medical attention. The doctor who examined the pedestrian's injury encouraged her to report the bite.

A MACC officer supplemented the pedestrian's report, stating that he found the car described by the pedestrian at the intersection of East 21st Street and Chicago Avenue South, within two blocks of the reported location of the dog bite. The MACC officer took photographs of the car and of the pedestrian's injury, and the photographs are included in the record.

This evidence supports the legal conclusion that the dog qualifies as a potentially dangerous dog under the Minnesota Statutes because, the dog bit a person on public property. Minn.Stat. § 347.50, subds. 3(1), (2). The evidence also satisfies the definition of a potentially dangerous animal under the Minneapolis code because the dog, without provocation, bit a person on public property, "causing a minor injury not resulting in muscle tears or disfiguring lacerations or requiring multiple sutures, or corrective or cosmetic surgery." Minneapolis, Minn., Code of Ordinances § 64.110(d)(2).

Johnstone emphasizes that she submitted evidence indicating that Tea Co has a mellow personality and would not attack a person unless she was provoked. But MACC determined that the evidence Johnstone submitted was not sufficient to overturn the potentially-dangerous-dog declaration. Our review of an administrative decision does not allow us to retry facts or make independent credibility determinations. *See Tews v. Geo. A. Hormel & Co.,* 430 N.W.2d 178, 180 (Minn.1988) (deferring to credibility determination); *Whaley v. Anoka-Hennepin Indep. Sch. Dist. No. 11,* 325 N.W.2d 128, 130-31 (Minn.1982) (deferring to factual findings). Because MACC did not err in applying the law and its decision does not lack evidentiary support, we sustain MACC's potentially-dangerous-dog declaration.

***4** Finally, we address Johnstone's contention that MACC confined Tea Co in violation of a statutory provision prohibiting cruel treatment to animals. The provision states, "No person shall keep any ... animal in any enclosure without providing wholesome exercise and change of air." Minn.Stat. § 343.21, subd. 3 (2008). In her written submissions to MACC, Johnstone alluded to this statutorily prohibited conduct by objecting to Tea Co's "solitary confinement."

We recognize that Johnstone had established a very strong bond with Tea Co, a dog that she described as providing therapy for "anxiety, stress, and calming," and that she was deeply concerned about Tea Co's "solitary confinement." But because the pedestrian had been bitten, MACC was proceeding under Minneapolis's rabies-control ordinance to quarantine-which essentially means to isolate-Tea Co. Minneapolis, Minn., Code of Ordinances § 66.40(b) (2008) (requiring owner to confine for ten days vaccinated dog that has bitten person and authorizing MACC to "seize any dog ... not quarantined"); *see also* Minneapolis, Minn., Code of Ordinances § 64.110(k)(1) (authorizing MACC to impound any animal that bites person or is subject to potentially-dangerous-animal proceedings). The record contains no evidence that suggests that MACC improperly confined Tea Co. The measures were heartbreakingly-and likely traumatically-necessary because of the circumstances.

Affirmed.

All Citations

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