

STATE OF VERMONT

**SUPERIOR COURT
Rutland Unit**

**CIVIL DIVISION
Docket No. 513-7-10 Rdev**

**WILLIAM MILLER and
MARTINA MILLER,
Plaintiffs**

v.

**CITY OF RUTLAND,
Defendant**

DECISION ON APPEAL OF VICIOUS DOG DETERMINATION

This is an appeal from a determination by the City of Rutland Board of Alderman that William and Martina Miller's dog, Zoey, is vicious and should be permanently removed from the city. On July 15, 2010, this Court conducted a *de novo* trial in which it took testimony. At the conclusion of the trial, the Court appointed a special veterinary master to examine Zoey. The Millers were represented by Matthew Hart, Esq. The City of Rutland was represented by City Attorney Andrew Costello.

FINDINGS OF FACT

- (1) William and Martina Miller reside on Davis Street in Rutland.
- (2) The Millers own an eight year old black lab-mix dog named Zoey.
- (3) On April 3, 2010, John Moore was walking his dog at Ciofreddi Park at Northeast School in Rutland when he saw two dogs in the distance running towards him.
- (4) The two dogs were the Millers' dogs, Zoey and Lucy. While leashes were attached to the dogs' collars, Mr. Miller had control of neither of them.

- (5) Mr. Moore's dog was a rat-terrier mix. His dog was leashed and under control.
- (6) Mr. Moore picked up a stick for protection to scare the dogs away in case they came towards him.
- (7) Zoey attacked Mr. Moore's dog and got her teeth around the dog's neck in what Mr. Moore described as a kill position.
- (8) Mr. Moore believed he had to wrestle Zoey off of his dog or his dog would die.
- (9) Mr. Moore inserted his hand into Zoey's mouth in order to pry Zoey's jaws off of his dog's neck.
- (10) Mr. Moore cut his thumb on Zoey's teeth and he began to bleed heavily. He required medical attention.
- (11) Zoey did not bite Mr. Moore.
- (12) Mr. Miller was finally able to get control of Zoey and leash the dog.
- (13) Mr. Moore's dog had puncture wounds on her neck. His dog required veterinary attention. Mr. Moore's dog lived.
- (14) Mr. Miller was issued a municipal ticket for Zoey's action in molesting a passerby.
- (15) Mark Montgomery is a postal carrier for the United States Postal Service. He has been a letter carrier for 32 years and is the carrier on the route that serves the Millers' residence.
- (16) In 2008, Mr. Montgomery encountered Zoey twice while delivering mail.
- (17) The first incident occurred when Zoey escaped from the Millers' backyard

and attacked Mr. Montgomery across the street. Mr. Montgomery fought Zoey off with his mail bag. Zoey did not bite Mr. Montgomery.

- (18) The second incident occurred when Mrs. Miller was walking Zoey and Zoey backed out of her collar. Again, Zoey came at Mr. Montgomery and he was forced to defend himself with his mailbag. Zoey did not bite Mr. Montgomery on this occasion.
- (19) Mr. Montgomery testified that Zoey did not listen to any commands from Mrs. Miller.
- (20) William Miller, to dog's owner, testified that Zoey had been a good family pet since her adoption.
- (21) Throughout Zoey's life she has been around people, including children of all ages, without showing evidence of aggression.
- (22) At the conclusion of the trial, the Court appointed Veterinarian R.M. Dunton to examine Zoey for aggressive and vicious behavior.
- (23) Dr. Dunton is a licensed veterinarian with over 30 years experience in the general practice of veterinary medicine.
- (24) Dr. Dunton has provided consultation to many clients regarding their dogs' behavioral problems. She has also raised and trained eight dogs.
- (25) On July 20, 2010, for about one hour, Dr. Dunton examined Zoey for aggressiveness. The examination took place at Dr. Dunton's clinic with Attorneys Hart and Costello present. The Millers were not present.
- (26) At the clinic, Zoey accepted interaction with Dr. Dunton and a stranger in the waiting area.

- (27) Once in the examination room, Zoey accepted contact but did not relax.
- (28) Dr. Dunton took a mop out of a closet and moved towards Zoey with it. Zoey looked away from the stick-like object. Dr. Dunton then poked her and stroked her with the mop. Zoey looked away and did not react otherwise.
- (29) Dr. Dunton left the room and returned with a dog on a leash. Zoey interacted naturally with the dog in a relaxed manner, with her tail in a neutral position and with her face relaxed.
- (30) Dr. Dunton then brought in a dog with aggressive tendencies. The second dog snarled at Zoey. Zoey looked away, put her head down, and moved away from the dog. Dr. Dunton observed that Zoey's nervousness around her did not increase after seeing the aggressive dog.
- (31) Dr. Dunton then took Zoey to the basement of the clinic, which was dark and close. Dr. Dunton attempted to put Zoey in a kennel cage, but she resisted. Dr. Dunton then picked Zoey up and put her in the cage. Zoey immediately sat down.
- (32) Dr. Dunton put her hands through the bars of the cage. Zoey ignored that action.
- (33) When Dr. Dunton opened the cage and attempted to put a leash on Zoey, Zoey accepted the leash and made no attempt to escape or avoid contact.
- (34) In Dr. Dunton's opinion, while Zoey is a dog that has some fear of strangers and new situations, at no time during the examination did she display any aggressive behaviors. To the contrary, Zoey avoided situations

where aggression could have been triggered.

(35) Dr. Dunton acknowledged that dogs may act differently in other situations and dogs are sometimes protective of their owners. Dr. Dunton did not know how Zoey would have responded to situations similar to ones at the clinic if her owners had been present.

(36) Dr. Dunton recommended a full physical examination in order to rule out metabolic and physical reasons for abnormal behaviors.

CONCLUSIONS OF LAW

The Rutland Board of Alderman found the Millers' dog, Zoey, to be a "vicious" dog under the city ordinance. The Board ordered the Millers to remove Zoey from the City of Rutland. Vermont Rule of Civil Procedure 75 provides for Superior Court review of any action by a political subdivision of the State, including any department, board, commission, or officer, if review is not set forth by statute. Thus, review of the Board of Alderman's action is appropriate under V.R.C.P. 75. The Court may affirm, reverse, or modify the decision. V.R.C.P. 75(d).

The City of Rutland has its own rules relating to vicious dogs, which are set forth in Rutland Ordinance Title 13, Chapter 1. Under the ordinance, a "vicious dog" means "a dog which attacks or bites a person or other domestic pet and the person or pet attacked or bitten requires medical attention." City of Rutland Ordinance § 13-2552(e).

Upon a written complaint that a dog is alleged to be vicious, the Board of Alderman may hold a hearing on the acts of the complaint and, if the dog is found to be vicious, make such order as necessary to protect the public. City of Rutland Ordinance § 13-2557(a). Such an order may include, but is not limited to, any of the following:

confinement in a secure enclosure or other similar restriction, muzzling, adoption, or destruction in a humane manner. *Id.* In addition, the Board may revoke the privilege of any owner to keep, harbor, or have custody of any animals while in the City and that no new privileges be granted. City of Rutland Ordinance § 13-2557(a).

The Court finds that the Millers' dog, Zoey, fits under the City of Rutland's definition of a "vicious dog." Zoey attacked and bit Mr. Moore's dog, which was a domesticated pet. Mr. Moore's dog required medical attention for the puncture wounds on her neck.

In Dr. R.M. Dunton's opinion, however, while Zoey is a dog that has some fear of strangers and new situations, at no time during her court-ordered examination did she display any aggressive behaviors. According to Dr. Dunton, Zoey avoided situations where aggression could have been triggered. This included meeting strangers and getting poked by a mop.

The Court concludes that the Miller's dog, Zoey, committed a vicious act and is a "vicious dog" under the City's broad definition. However, the dog is not vicious to the point where needs to be permanently banished from the City of Rutland. Zoey must be kept under control by her owners at all times to avoid any further vicious acts.

ORDER

For the reasons state herein, the Court orders that:

- (1) The banishment order by the City of Rutland Board of Alderman is lifted.
- (2) William and Martina Miller must keep complete control over their dog Zoey at all times.
- (3) In accordance with Dr. Dunton's recommendation, the Millers shall have a

Veterinarian conduct a full physical examination on Zoey. This will include a complete blood count, chemistry panel, urinalysis, and a thyroid check (T4 and TSH).

- (4) The Millers shall consult with a Veterinarian regarding aggression training for Zoey and shall follow the recommendation of the Veterinarian.

Dated at Rutland, Vermont this _____ day of _____, 2010.

Hon. William Cohen
Superior Court Judge