STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1407

Andre Haustein,
Relator,

vs.

City of St. Paul, Department of Safety and Inspections,
Respondent.

Filed June 20, 2011
Affirmed
Toussaint, Judge

City of St. Paul Office of Safety & Inspections

Andre Haustein, St. Paul, Minnesota (pro se relator)

Sara R. Grewing, St. Paul City Attorney, Virginia D. Palmer, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Toussaint, Presiding Judge; Connolly, Judge; and Willis, Judge.*

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Judge

Relator Andre Haustein challenges a hearing officer's determination that his dog is a dangerous animal and that its destruction is warranted under the dangerous-animal

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

ordinance of respondent City of St. Paul, Department of Safety and Inspections. Because the hearing officer furnished a legal and substantial basis for the dangerous-animal determination and the destruction order, we affirm.

D E C I S I O N

A municipal agency's action is quasi-judicial and subject to certiorari review "if it is the product or result of discretionary investigation, consideration and evaluation of evidentiary facts." *See Staeheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (quotation omitted) (quoting certiorari review of quasi-judicial city council action). "A quasi-judicial decision of an agency that does not have statewide jurisdiction will be reversed if the decision is fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law." *Axelson v. Minneapolis Teachers' Retirement Fund Ass'n*, 544 N.W.2d 297, 299 (Minn. 1996) (quotation omitted). As a court of review, we will not retry facts, and we will uphold the agency's decision "if the lower tribunal furnished any legal and substantial basis for the action taken." *Staeheli*, 732 N.W.2d at 303 (quotation omitted).

Dangerous Animal Determination

Relator argues that the dog in question is not a dangerous animal. The St. Paul Legislative Code defines a "dangerous animal" to include an animal that has, without provocation, "caused substantial bodily harm to any person on public or private property" or "engaged in any attack on any person under circumstances which would indicate danger to personal safety." St. Paul, Minn., Legislative Code § 200.01 (2009). The hearing officer appears to have upheld the respondent's determination that the dog was a

dangerous animal under these two definitions in the ordinance. *See also* St. Paul, Minn., Legislative Code § 200.12(a) (2009) (requiring a hearing officer to designate an animal that meets one or more of the definitions of a dangerous animal).

This court construes ordinances according to the plain and ordinary meaning of the language used. *Clear Channel Outdoor Adver., Inc. v. City of St. Paul*, 675 N.W.2d 343, 346 (Minn. App. 2004), *review denied* (Minn. May 18, 2004); *cf.* Minn. Stat. § 645.16 (2010) (providing that when the language of a statute is "clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit"). The first definition of a "dangerous animal" is clear and unambiguous. Thus, there is no need to interpret the ordinance, and we are prohibited from doing so. *See Hamline-Midway Neighborhood Stability Coal. v. City of St. Paul*, 547 N.W.2d 396, 399 (Minn. App. 1996) (stating that interpretation of an ordinance is only permitted when the language is ambiguous and requiring courts to otherwise enforce the plain meaning), *review denied* (Minn. Sept. 20, 1996).

An animal that has "caused substantial bodily harm to any person on public or private property" without provocation is unambiguously defined as a dangerous animal. St. Paul, Minn., Legislative Code § 200.01. Relator's dog bit K.K. Because there is nothing in the record to indicate that relator's dog was provoked and the hearing officer found that K.K. suffered "severe damage to her eye and eye socket" following the bite, the hearing officer did not err by determining that relator's dog was a dangerous animal under this definition.

Because the dog meets the first definition of a dangerous animal, we need not address whether the hearing officer erred by finding that the dog was a dangerous animal based upon the second definition—engaging in an unprovoked attack under circumstances indicating danger to personal safety. *See id.* (stating that "dangerous animal" means an animal that meets any one of six definitions).

Destruction Order

The St. Paul Legislative Code provides:

> The hearing officer, upon finding that an animal is dangerous hereunder, is authorized to order, as part of the disposition of the case, that the animal be destroyed based on a written order containing one . . . or more of the following findings of fact:
>
> (1) The animal is dangerous as demonstrated by a vicious attack, an unprovoked attack, an attack without warning or multiple attacks; or
>
> (2) The owner of the animal has demonstrated an inability or unwillingness to control the animal in order to prevent injury to persons or other animals.

St. Paul, Minn., Legislative Code § 200.12(c) (2009). In his order upholding respondent's destruction order, the hearing officer found facts supporting the conclusion that relator's animal engaged in a vicious and unprovoked attack by biting K.K. on the face when she attempted to give the dog a treat, resulting in a broken nose and severe eye and eye-socket damage and requiring an extended hospital stay. Based on these findings, the hearing officer declared the animal to be dangerous. On this record, the hearing officer's destruction order is not fraudulent, arbitrary, unreasonable, beyond the hearing officer's jurisdiction, or based on an error of law. Furthermore, it is supported by substantial evidence. The hearing officer therefore did not err by ordering the destruction of the animal.

Procedural Challenge

Relator also argues that he failed to appear at the hearing because he was detained by courthouse security until after the hearing adjourned.[1] We read this argument as asserting that the hearing officer abused his discretion by not granting a continuance or rescheduling the hearing. *See Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977) (applying abuse-of-discretion standard of review for the denial of a request for a continuance).

The record indicates that relator called the hearing officer approximately ten minutes after the hearing was scheduled to begin, stating that he was going to be late. After being told that relator expected to be present at the hearing within 15-20 minutes, the hearing officer told relator that the delay was acceptable and kept the hearing open. When relator failed to appear within 50 minutes after the initial phone call, without any follow-up communication to the hearing officer, the hearing officer closed the hearing. On this record, relator has failed to establish that the hearing officer abused his discretion in closing the hearing after relator failed to appear. *See also Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990) (stating that pro se appellants are not relieved of "the necessity of providing an adequate record and preserving it in a way that

[1] We note that relator's brief presents his version of the circumstances surrounding the bite. On a certiorari appeal, our review is limited to the record before the agency at the time it made its decision. *In re Resolution Revoking License No. 000337 W. Side Pawn*, 587 N.W.2d 521, 523 (Minn. App. 1998), *review denied* (Minn. Mar. 30, 1999). Because this argument is not part of the record, it is not properly before us on appeal, and we cannot consider it. *See also Haustein v. City of St. Paul, Dep't of Safety & Inspections*, No. A10-1407 (Minn. App. Jan. 19, 2011) (order) (denying relator's motion for permission to introduce new evidence on appeal).

will permit review"), *review denied* (Minn. Apr. 13, 1990).

Affirmed.