IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ARNOLD SATHER, CHERYL C. MITCHELL, CONNIE V. TEVLIN,	)	**No. 28288-1-III**
	)	**Consolidated with**
	)	**No. 28353-4-III**
Appellants,	)	
	)	**Division Three**
v.	)	
	)	
CITY OF SPOKANE and SPOKANIMAL C.A.R.E.,	)	**UNPUBLISHED OPINION**
	)	
	)	
Respondents.	)	
	)	

Brown, J. ─ Arnold Sather appeals a superior court order affirming a City of Spokane hearing examiner's decision. The examiner decided SpokAnimal C.A.R.E. (Companion – Animal – Relationship – Enrichment) correctly determined Mr. Sather possessed a "dangerous dog." Mr. Sather's attorneys separately appeal the court's imposition of sanctions. We affirm.

FACTS

The facts are derived from the unchallenged hearing examiner's findings of fact that are verities on appeal. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801,

808, 828 P.2d 549 (1992). We do not review the superior court's findings of fact and conclusions of law. *Humbert/Birch Creek Constr. v. Walla Walla County*, 145 Wn. App. 185, 192 n.3, 185 P.3d 660 (2008).

On November 10, 2008, Mr. Sather's pit bull approached Nicholas Villa as he was crossing the street. The dog circled Mr. Villa and bit him on the forearm. Mr. Sather exited his residence and retrieved the dog. A neighbor claimed Mr. Villa was taunting the dog. The dog was previously labeled a "potentially dangerous dog" based on a June 21, 2004 incident. SpokAnimal mailed Mr. Sather a potentially dangerous dog notice in 2004.

SpokAnimal impounded the dog and declared it to be a "dangerous dog." Mr. Sather appealed this determination to a Spokane city hearing examiner. He was provided notice of the appeal hearing date and citation to the hearing rules and procedures. Mr. Sather presented witness testimony in support of his position. The hearing examiner upheld SpokAnimal's "dangerous dog" determination. Mr. Sather appealed to the superior court.

Mr. Sather raised multiple issues for the first time and relied upon an unpublished superior court case in his briefing. The city wrote Mr. Sather's attorneys requesting they strike their response brief for relying on the unpublished superior court case and for raising issues not contained in and beyond the scope of the appeal record. Mr. Sather's attorneys declined. The city then asked the court to strike the

arguments and to impose sanctions. Mr. Sather asked for sanctions in return.

The court heard the appeal and the motions together, granted the city's motions, and imposed CR 11 sanctions, based on "inappropriate pleading and citation." Report of Proceedings (RP) at 41. The court found substantial evidence supported the hearing examiner's decision upholding the "dangerous dog" determination. The court rejected the new arguments, noting Mr. Sather had been afforded adequate due process and safeguards through the appeal process before the hearing examiner.

We consolidated separate appeals from Mr. Sather and his counsel.

ANALYSIS

A. Dangerous Dog Determination

In an effort to reverse the hearing examiner's decision, Mr. Sather raises numerous issues that we consider in four topics: jurisdiction, due process, hearing examiner, and confrontation. We acknowledge, but do not consider other issues in topic five.

We review de novo a hearing examiner's decision, not the superior court decision on review. *HJS Dev.*, *Inc. v. Pierce County ex rel.*, *Dep't of Planning & Land Servs.*, 148 Wn.2d 451, 483-84, 61 P.3d 1141 (2003). Our first question is whether substantial evidence supports the examiner's findings of fact. *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 647, 30 P.3d 453 (2001). Next, we review de novo whether those findings support the examiner's conclusions of law. *Id.* at 652. Finally, we review

whether the examiner's decision to affirm SpokAnimal's dangerous dog determination is clearly erroneous. *Id.* at 647. Any findings of fact or conclusions of law made by the superior court are treated as surplusage. *Humbert/Birch Creek Const.*, 145 Wn. App. at 192.

1. Jurisdiction. Mr. Sather first contends neither the hearing examiner nor the superior court had jurisdiction because the dangerous dog determination was a criminal matter rather than an administrative matter. Regarding the hearing examiner's jurisdiction, Spokane Municipal Code (SMC) §17G.050.070(B)(4) specifically states, "the hearing examiner conducts public hearings and renders decision on . . . decisions appealed from the animal control agency on dangerous dog determinations." And, the superior court has jurisdiction to review a hearing examiner's decision. *See Wells v. Whatcom County Water Dist. No. 10*, 105 Wn. App. 143, 150, 19 P.3d 453 (2001) (superior court reviews hearing examiner's decision de novo). Accordingly, both the hearing examiner and the superior court had jurisdiction over this matter.

2. Due Process. Mr. Sather next generally argues his due process rights were violated, citing the Fifth Amendment to the United Statements Constitution and article 1, section 3 of the Washington Constitution. Due process under both constitutions, "'require[s] the giving of notice and an opportunity to be heard.'" *In re Estates of Smaldino*, 151 Wn. App. 356, 367, 212 P.3d 579 (2009) (quoting in *In re Groen*, 33 Wash. 53, 56, 60 P. 123 (1900)). "Due process rights attach to dog ownership."

Mansour v. King County, 131 Wn. App. 255, 263 n.6, 128 P.3d 1241 (2006).

The administrative record shows Mr. Sather was notified of his "dangerous dog" hearing a few days before it occurred. The notice explained his rights, including the right to bring counsel, and the procedures for the hearing. Mr. Sather was present, without counsel, and was prepared. He did not request a continuance. Based on the examiner's unchallenged finding, his dog was previously found to be a "potentially dangerous dog" based on the June 2004 incident. The administrative record shows Mr. Sather was provided the opportunity to present his case with both witness testimony and his own testimony. Mr. Sather argues the process was too informal and this denied him due process, but administrative hearings are not judicial proceedings and are designed to be "conducted with the greatest degree of informality consistent with fairness." RCW 34.12.010. We cannot say the hearing procedures were constitutionally unfair, considering Mr. Sather received due notice of the hearing and had a full and fair opportunity to be heard. In sum, he was not denied due process.

3. Hearing Examiner. After appealing the matter to superior court, the hearing examiner filed a declaration regarding the hearing procedure. Mr. Sather contends the examiner then became a witness and was no longer an impartial decision-maker. Our Supreme Court has cautioned examiners from expressing their personal views "before the decision is made." *Nagatani Bros.*, *Inc. v. Skagit County Bd. of Comm'rs*, 108 Wn.2d 477, 482, 739 P.2d 696 (1987). But, the declaration here was not an expression

of the examiner's personal views. The declaration was akin to a settlement of the record and a partial narrative report of proceedings made after the examiner's decision-making was complete. Considering all, we find no error.

4. Confrontation. Mr. Sather next contends he was not permitted to cross-examine Mr. Villa. In a judicial setting, a defendant has a constitutional right under the Sixth Amendment of the United States Constitution to confront witnesses against the defendant. *Davis v. Alaska*, 415 U.S. 308, 315-18, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974). It is fundamental that a defendant charged with the commission of a crime should be given great latitude in the cross-examination of witnesses. *State v. Hopkins*, 134 Wn. App. 780, 790, 142 P.3d 1104 (2006). But, as noted, an administrative hearing is not like a contested judicial hearing. Nevertheless, the administrative record shows Mr. Sather was present at the hearing during Mr. Villa's statements and did not request to ask Mr. Villa questions.

Mr. Sather argues he was denied his right to confront witnesses against him because he did not have the authority to subpoena witnesses to compel attendance at the hearing. Relying on *Mansour*, he contends this is a guaranteed right. In *Mansour*, a pet owner challenged the county's issuance of an order requiring the pet owner to remove his dog from the county or have the dog euthanized. Counsel for the pet owner sought to subpoena and/or depose witnesses, and requested production of medical documents. *Mansour*, 131 Wn. App. at 261. The court held, "Due Process requires

that a pet owner contesting a removal order be able to subpoena witnesses and records." *Id*. at 270. Here, Mr. Sather is not contesting a removal. And, nothing in our record shows he sought to subpoena witnesses. Accordingly, we conclude Mr. Sather was not denied his confrontation rights in his administrative hearing.

5. Additional Arguments Acknowledged. Mr. Sather further argues the hearing examiner failed to provide proof of mailing and to specify the hearing rules, conflict of interest by SpokAnimal in making dangerous dog determinations and in testifying at the hearing, and he was denied his right to review all evidence against him. But, he fails to provide legal authority to support these arguments as required under RAP 10.3(a)(6). We therefore decline to consider these additional issues.

Given our analysis, we conclude the process followed during the administrative process meets constitutional requirements. Mr. Sather was properly afforded procedural safeguards relating to the hearing examiner's dangerous dog determination.

B. Sanctions

Cheryl C. Mitchell and Connie V. Tevlin, Mr. Sather's counsel, contend the trial court erred in imposing sanctions against them.

Preliminarily, Ms. Mitchell and Ms. Tevlin argue the court erred in not entering written findings of fact and conclusions of law. The trial court must make factual findings when it sanctions an attorney under CR 11. *State v. S.H.*, 102 Wn. App. 468, 475, 8 P.3d 1058 (2000). In the court's sanctions order and under the heading

"BASIS," the court stated that the sanctions are, "based on citing unpublished opinions and raising issues outside the scope of the dangerous dog appeal." Clerk's Papers (CP) at 245. Under the heading, "FINDING," the court found that "good cause exists" for the sanctions. *Id.* The court orally found counsel engaged in "inappropriate pleading and citation." RP at 41. A finding of "'inappropriate and improper' is tantamount to a finding of bad faith." *S.H.*, 102 Wn. App. at 475. These findings are sufficient for our review.

CR 11 authorizes sanctions when pleadings, motions, and legal memoranda are not well grounded in fact and warranted by law or are filed for an improper purpose. In other words, a court has the inherent authority to impose sanctions when it finds that an attorney or party has engaged in bad faith litigation conduct. *S.H.*, 102 Wn. App. at 474-75. The authority arises from the power vested in the court to "'enforce order in the proceedings . . . [and] [t]o provide for the orderly conduct of proceedings before it.'" *S.H.*, 102 Wn. App. at 473 (quoting RCW 2.28.010(2)-(3)). A decision to impose sanctions generally is reviewed for abuse of discretion. *S.H.*, 102 Wn. App. at 473. A trial court abuses its discretion if its order is manifestly unreasonable or is based on untenable grounds. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

The purpose of imposing sanctions is to deter, to punish, to compensate, and to ensure that the wrongdoer does not profit from the wrong. *Blair v. TA-Seattle East*

#176, 150 Wn. App. 904, 910, 210 P.3d 326 (2009) (citing *Wash. State Physicians Ins. Exch.*, 122 Wn.2d at 355-56)). "The trial court also has an interest in effectively managing its caseload, minimizing backlog, and conserving scarce judicial resources that justify the imposition of appropriate sanctions." *Blair*, 150 Wn. App. at 910.

Aside from the trial court's discomfort with Mr. Sather's attorneys' reliance on an unpublished superior court case, counsel raised issues outside the administrative record that counsel for the city was required to research and brief. These issues related to potential criminal charges, rules for the civil service commission, and violation of the Health Insurance Portability and Accountability Act (HIPAA). The sanctions amount is not at issue and was shaped to reflect the actual time the city spent responding to Mr. Sather's improper briefing. Based on the above, the court had tenable grounds for the imposition of sanctions based on bad faith and did not abuse its discretion.

C. Attorney Fees and Costs

Mr. Sather assigns error to the trial court's denial of his request for attorney fees and sanctions below. He fails to provide argument to support this assignment of error. The issue, then, is deemed waived. *See* RAP 10.3(a)(6) (appellant should provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record").

Mr. Sather requests attorney fees on appeal. He provides argument for his

request, but fails to provide legal authority. *See* RAP 18.1(a) (award of attorney fees must be based on applicable law). And he has not prevailed. We deny his request.

As the prevailing parties, the City of Spokane and SpokAnimal are entitled to their costs under RAP 14.2.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Brown, J.

WE CONCUR:

Korsmo, A.C.J.

Sweeney, J.