

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Furnell v Ipswich City Council* [2018] QCAT 369

PARTIES: **ASHLEIGH JADE FURNELL**
(applicant)
v
IPSWICH CITY COUNCIL
(respondent)

APPLICATION NO/S: GAR009-18 and GAR012-18

MATTER TYPE: General administrative review matters

DELIVERED ON: 5 November 2018

HEARING DATE: 28 May 2018

HEARD AT: Brisbane

DECISION OF: Member Quinlivan

ORDERS:

- 1. The decision by the Ipswich City Council made on 4 September 2017 for the destruction of the dog known as Lexi is set aside.**
- 2. The decision by Ipswich City Council dated 4 September 2017 to declare the dog Lexi as dangerous pursuant to sections 94 and 95 of the Animal Management (Cats and Dogs) Act 2008 Qld is confirmed.**
- 3. The decision by Ipswich City Council dated 4 September 2017 to declare the dog Bella as dangerous pursuant to sections 94 and 95 of the Animal Management (Cats and Dogs) Act 2008 Qld is confirmed.**

ADMINISTRATIVE REVIEW – ADMINISTRATIVE
TRIBUNALS – QUEENSLAND CIVIL AND
ADMINISTRATIVE TRIBUNAL – dangerous dogs -
whether destruction order of a dangerous dog should be
set aside or confirmed – where risk of non-compliance –
where dog declared dangerous dog

Animal Management (Cats and Dogs) Act 2008 (Qld), s
3(c) and (d), 4(g), (l) and (m), 89(1) and (2), 94, 95, 127,
127A

Imbrogno v Brisbane City Council [2017] QCATA 148
Thomas v Ipswich City Council [2015] QCATA 97

Winika v Moreton Bay Regional Council [2015] QCAT 436

**APPEARANCES &
REPRESENTATION:**

Applicant: Ashley Furnell represented by Mr Ben McMillan of Counsel

Respondent: Mr John Pukallus, Ipswich City Council

REASONS FOR DECISION

- [1] Ashley Furnell (the Applicant) is the owner of 2 dogs, a Boxer crossbreed known as Lexi and a Rhodesian Ridgeback crossbreed known as Bella.
- [2] At around 2.30 pm on 11 July 2017 at 27 Heathwood Place Collingwood Park, an incident occurred at the Applicant's property involving the 2 dogs and Ms Angela Griffiths (the complainant), who is a postal contractor for Australia Post.
- [3] Following the incident an Animal Management Officer from Ipswich City Council attended the Applicant's property and seized Lexi. As a result of information received from the Complainant, the Applicant agreed to bring Bella to the Council pound where it was also impounded.
- [4] A proposed regulated dog declaration notice was subsequently issued for both dogs and a concurrent destruction order was issued for Lexi.

Chronology of events

- [5] An Animal Management Compliance Officer from the Ipswich City Council, Ms Jasmine Viel, conducted an investigation into the incident. On 14 August 2017, Ms Viel recommended that Bella be regulated as a dangerous dog in accordance with section 89(1) of the Animal Management (Cats and Dogs) Act 2008 Qld (the Act).
- [6] On 14 August 2017, Ms Shannon Kasper, Acting Principal Officer (Animal Management) reviewed the Investigation Report and accepted the recommendations that both dogs be regulated as dangerous dogs with the concurrent proposed destruction order for Lexi. On the same day, Ms Kasper advised the Applicant of the Council's decision.
- [7] On 4 September 2017, Regulated Dog Declarations and Information Notices were signed by Ms Kasper for both dogs. Ms Kasper also signed a Destruction Order and Information Notice for Lexi. The notices were then delivered to the Applicant on the same day.
- [8] On 14 September 2017 the Applicant applied to the Council for a review of the decisions to declare Bella and Lexi to be dangerous dogs and the decision to make a Destruction Order in relation to Lexi.
- [9] On 1 December 2017 an Internal Review Officer, Ms Laura Nichols, confirmed all of the original decisions.
- [10] The relevant law is the **Animal Management (Cats and Dogs) Act 2008 Qld**.

- [11] The relevant sections of the Act are:
- Section 89 - Power to make declaration
 - Section 94 – Making declaration
 - Section 127 - Power to destroy seized regulated dog
 - Section 127A - Concurrent regulated dog declaration and destruction
 - Order.
- [12] The legislative framework is detailed in the decision of the Appeal Tribunal in the matter of *Imbrogno v Brisbane City Council*¹. The Appeal Tribunal stated that the Act provides for the effective management of regulated dogs and promoting the responsible ownership of dogs. The Appeal Tribunal continued that the purposes of the Act are achieved through, among other things, imposing obligations on regulated dog owners, imposing obligations on persons to ensure dogs do not attack or cause fear, and prohibiting anyone from allowing or encouraging a dog to attack or cause fear to people or other animals².
- [13] A regulated dog is: a declared dangerous dog, a declared menacing dog or a restricted dog. A local government may declare a dog to be dangerous, menacing or restricted. A declared dangerous dog includes a dog declared to be dangerous under s 94 of the Act. A dangerous dog declaration may be made if a dog:
- (a) has seriously attacked, or acted in a way that caused fear to a person or another animal; or
 - (b) may, in the opinion of an authorised person having regard to the way the dog has behaved towards a person or another animal, seriously attack, or act in a way that causes fear to the person or animal³.
- [14] ‘Seriously attack’ means to attack in a way causing bodily harm, grievous bodily harm or death. ‘Grievous bodily harm’ and ‘bodily harm’ have the meaning given by the Criminal Code Act 1899 (Qld), s 1.
- [15] If a local government proposes to make a regulated dog declaration it must first give to the owner of the dog a proposed declaration notice. The local government must consider any written representations and evidence submitted by the dog owner.
- [16] If the local government is satisfied that a ground for making the declaration still exists, it must make the regulated dog declaration.

Discussion

- [17] On 4 January 2018, the Applicant applied to the Tribunal for a review of the Ipswich City Council’s decision (GAR009-18) to destroy Lexi. The Applicant submitted that the Council had continuously disregarded her information about the incident and only acted on the behaviour of the dog on that day and not the dog’s overall temperament.
- [18] At the same time, she also applied for the decision (GAR012-18) to declare Bella to be a dangerous dog to be set aside. She claimed that the Council’s decision was based

¹ [2017] QCATA 148.

² Animal Management Act sections 3(c) and (d) and 4 (g), (l) and (m).

³ Ibid s 89(2).

on incorrect information. She insisted that while Bella was present at the time of the incident, she did not bite or attack the complainant. She argued that there is no reliable evidence that Bella poses any real threat or danger to the community.

[19] On 10 January 2018, The Tribunal directed that the Applications GAR012-18 and GAR009-18 were to be heard together.

[20] The purpose of this review is to produce the correct and preferable decision by way of a fresh hearing on the merits⁴

[21] The Applicant acknowledges that she is the owner and the person responsible for both of the dogs. She submitted that a number of facts were uncontested and may be accepted from the material:

- Lexi is a desexed female tan/white Boxer cross, approximately 3 years' old.
- Prior to the incident there is no history of Lexi being aggressive or causing injury or fear to any person.
- Bella is a desexed female Rhodesian Ridgeback Cross, approximately 18 months old.
- Prior to the incident there is no history of Bella being aggressive or causing injury or fear to any person. In her initial application for a review of the Council's decision, the Applicant describes Bella as a "goofy lanky 10 month old puppy with the attention span of a gnat". She says that Bella was just a bystander but she then acknowledges that the Council declared her dangerous because she caused "fear" which she believed was due to her large nature.
- On 11 July 2017, the Complainant entered the Applicant's property for the purpose of delivering a parcel in the course of her employment as a contract courier.
- As she approached the front steps of the Applicant's house, Lexi and Bella came through the front door and approached Ms Griffiths. The Complainant provides a much more vivid version of what happened in her statement.
- The incident occurred in which the Complainant sustained bodily harm including a deep laceration to her right for arm and minor lacerations to her left ankle and left thumb. In a Report dated 1 February 2018, Dr Orschulock, the Medical Officer at Ipswich Hospital states that the other 2 small lacerations "were not as severe as the forearm lacerations and no bone or fat was visible".
- The injuries were caused by Lexi. Again, the Complainant strongly argues that both dogs were involved and describes how both dogs aggressively attacked her.
- The deep laceration to the Complainant's right forearm required surgical repair. Dr Orschulock states that "there was also a second laceration on the

⁴ Section 20, QCAT Act 2009.

right forearm that was slightly more distal to the previous one that was similar in depth, slightly agape and had subcutaneous fat on show”.

- The medical opinion of Dr Orschulock, is that the Complainant’s injuries would “have caused pain and interfered with comfort but would not cause permanent injury to health if left untreated”.
- After the incident Lexi was seized by Council officers on 11 July 2018 and the Applicant voluntarily delivered Bella to Council impoundment on 12 July 2017.

- [22] The Complainant's version of events as set out in her statement on 14 July 2017, 3 days after the incident, has some significant differences to the apprehended agreed version offered by the Applicant. In addition to the comments above, she says that as she approached the steps to the house, the Applicant opened her front door and tried to squeeze through as her dogs were behind her. She claimed that both dogs knocked the Applicant out of the way and got through the front door. At that point, the Complainant states that she realised that she was going to be attacked.
- [23] She says that both dogs looked identical and were large dogs like American pit bulls with no collars.
- [24] She says that she started to retreat with both dogs still trying to attack and at that stage she was knocked to the ground. On her version, the first dog mauled her left ankle leaving a hole, so she was not able to get away from the second dog that started mauling her right forearm.
- [25] The Complainant insisted that the dogs didn't have collars on and the owner had no control of them.
- [26] She said that she managed to get away from the dogs but they both came back for a second time. She said there was a dog on the left and a dog on the right of her. She said the dog that attacked her ankle started to attack her head. She described how she put her hand up to protect her head and that is where she sustained injuries to her left thumb. She says that while this was happening the dog to her right had now started to attack the lower part of her right arm.
- [27] The Complainant alleged that the Applicant did not attempt to secure her dogs or take them away - no collars and no command over them, whilst she was screaming for her life.
- [28] In her statement to the Ipswich Council dated 16 August 2017, slightly more than a month after the incident, the Applicant says that she believed that Lexi was behaving out of natural instinct, she felt threatened and was protecting both her owner and her property. She then states “Yes, I admit I did not have effective control over my dog but it was a chaotic scene with screaming and commotion going on”.
- [29] As a result of the injuries which the Complainant sustained, she stated that she had to endure 6 days in hospital, 2 surgeries, and her whole life had now changed. She also described her concerns and fears for her future as a result of the attack.
- [30] Throughout the process the Applicant has strongly contended that the Complainant has exaggerated the whole situation. In her personal statement of reasons, she takes

issue with virtually every statement made by the Complainant. She says that the Complainant repeatedly over exaggerates the injuries she suffered and that the Complainant was never “fighting for her life”. The Applicant appears to adopt the role of a medical expert by stating that when the Complainant claims to have been “screaming in pain” that it was unlikely, it was due to pain because “adrenaline produced in the medulla within the adrenal glands reduces the body's ability to feel pain during a fight or flight response”.

- [31] The Applicant accuses the Complainant of lying throughout the investigation and submits that the Complainant's words cannot be trusted. With respect to the Complainant's six days in hospital, the Applicant argues that this was not due to the complexity of her injuries but rather to her surgery being delayed on three separate occasions due to other higher priority patients requiring urgent surgeries. She submits that this confirms that the Complainant's injuries were not life-threatening, severe or life ruining.
- [32] The Applicant also accuses the Ipswich City Council of having been unprofessional throughout the investigation. She claims that there is evidence of bias and prejudice. She submits that the Council have no real evidence regarding the dog Bella's involvement in the incident only contradicting statements from the “lying complainant”, an “unreliable witness” and the sole person who has told the truth throughout the investigation - namely herself. She claimed that she has no reason to make up fabricated stories whereas the Complainant has every reason to do so.
- [33] I find these comments by the Applicant to be self-serving, lacking insight and without merit. I have carefully examined all of the evidence in this case and I am satisfied that the Applicant will go to any length to justify her dogs’ behaviours.
- [34] At no time has she demonstrated any objectivity but has continued to blame others for what has occurred with no apparent reflection on her own lack of diligence and responsibility for ensuring that her dogs were properly restrained. I find that if not for her negligence in not ensuring that her dogs were appropriately contained in the backyard of her property, then this matter may never have come this far.
- [35] However, in this matter I am required to make the correct and preferable decision. I am mindful of the decision of the Appeal Tribunal in the matter of *Thomas v Ipswich City Council*⁵ where it is stated that the destruction of a dog is “a last resort”.
- [36] The Applicant points out that in the decision of *Winika v Moreton Bay Regional Council*⁶, the learned Senior Member stated:

A decision to destroy a dog is major one and it should not be made unless there is no other way to ensure that the community is protected from the risk of harm. A destruction order has been described as a last resort. The essential question is whether the dog constitutes, or is likely to constitute, a threat to the safety of other animals or to people, by attacking them or causing fear, to the extent that the threat may only be satisfactorily dealt with by the destruction of the dog⁷

⁵ [2015] QCATA 97.

⁶ [2015] QCAT 436.

⁷ *Ibid* at para 15.

- [37] I consider that the incident demonstrates that the Applicant was not diligent in ensuring that both Lexi and Bella were safely secured before opening the front door to her property. With some reservation, I have determined that an order declaring both dogs to be “dangerous dogs” will provide the Applicant with an opportunity to demonstrate that she does have the capacity to manage her dogs effectively so that they do not constitute a danger to the community.
- [38] I do not accept the submissions by the Applicant that Bella is a “goofy lanky 10-month old puppy with the attention span of a gnat” who did not participate in the attack on the Complainant. By her own admission, the Applicant states that Bella follows Lexi wherever she goes. The Applicant admits that both dogs went past her down the stairs towards the Complainant.
- [39] The actions of both dogs led the Complainant to fear for her life. The Complainant insists that both dogs were involved in the attack. This was confirmed to some degree by the independent witness who observed both dogs being present at the time.
- [40] I have already indicated that, in my view, the Applicant lacks credibility and while I accept that the Complainant's version of events is highly graphic and emotionally charged, it is understandable, in the circumstances, that her version of what happened is presented in such a manner.
- [41] I find that Lexi and Bella rushing down the stairs towards her clearly invoked absolute terror for the Complainant as she sought to escape from them. To find herself on the ground “in a foetal position” (as described by the Applicant) with two large dogs attacking her, it is understandable that she feared for her life. She is a member of the public going about her daily business and there is no justification whatsoever for what occurred. The suggestion that Lexi was the aggressor does not diminish from the role which Bella played in the incident.
- [42] I have considered all the evidence in this case and I make the following further findings on the balance of probabilities:
- [43] On 11 July 2017 at approximately 2.30pm, the dogs Lexi and Bella, owned by the Applicant, Ashley Furnell, escaped through the front door of the property at 27 Heathwood Place, Collingwood Park and then attacked and caused serious injuries to the Complainant, Angela Griffiths.
- [44] The Applicant did not maintain effective control of the dogs Lexi and Bella at the time of the incident.
- [45] The Applicant opened her front door, aware that the open back glass sliding door was not properly closed.
- [46] The Complainant was a person engaged in her normal work.
- [47] The Complainant did not engage in any behaviour that would cause either dog to act in an aggressive manner towards her.
- [48] The Complainant was screaming and feared for her life during the attack.
- [49] The dogs continued to attack the Complainant even after the intervention of the Applicant.

- [50] The submissions by the Applicant as to the possible actions that the Complainant could have taken to protect herself are disingenuous given the circumstances of the attack.
- [51] The Complainant sustained serious injuries to her right arm (x2), her left thumb and her left ankle in the attack.

Decision

- [52] I accept that there has been no opportunity for the Applicant to demonstrate that she can manage Lexi as a dangerous dog, pursuant to a declaration, so as to demonstrate that the risk to the community could be adequately mitigated by the existing mechanisms of the Act. I find that the destruction order issued by Ipswich Council was clearly not a “last resort” or made in circumstances where there is no other way to ensure the community is protected from the risk of harm.
- [53] With respect to the dog Bella, I am satisfied that Bella has acted in a way that caused fear to the Complainant and in her current environment it is possible that her behaviour could occur again.

The orders are:

1. The decision by the Ipswich City Council made on 4 September 2017 for the destruction of the dog known as Lexi is set aside.
2. The decision by Ipswich City Council dated 4 September 2017 to declare the dog Lexi as dangerous pursuant to sections 94 and 95 of the Animal Management (Cats and Dogs) Act 2008 Qld is confirmed.
3. The decision by Ipswich City Council dated 4 September 2017 to declare the dog Bella as dangerous pursuant to sections 94 and 95 of the Animal Management (Cats and Dogs) Act 2008 Qld is confirmed.