

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Fox v Ipswich City Council* [2019] QCAT 131

PARTIES: **COREY WILLIAM FOX**
(applicant)
v
IPSWICH CITY COUNCIL
(respondent)

APPLICATION NO/S: GAR050-19

MATTER TYPE: General administrative review matters

DELIVERED ON: 14 May 2019

HEARING DATE: 11 April 2019

HEARD AT: Ipswich

DECISION OF: Member Ann Fitzpatrick

ORDERS: **The decision of the Ipswich City Council to issue a destruction order for the dog Hendricks is confirmed.**

CATCHWORDS: ADMINISTRATIVE REVIEW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – whether destruction order of a dangerous dog ought to be set aside or confirmed.

Animal Management (Cats and Dogs) Act 2008 (Qld), s 3, s 4, s 59, s 60, s 61, s 89, s 94, s 127
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 20, s 24, s 28

Bradshaw v Moreton Bay Regional Council [2017] QCATA 139

APPEARANCES & REPRESENTATION:

Applicant: Self-represented

Respondent: Mr John Pukallus, Principal Officer (Investigations, Prosecutions and Training), Ipswich City Council

REASONS FOR DECISION

- [1] Mr Fox seeks review of a decision made on 7 February 2019 by Ms Goodwin, Manager – Animal Management Operations, Health, Security and Regulatory

Services, Ipswich City Council. The decision was an internal review of a decision dated 8 January 2019 to destroy a dog named 'Hendricks', a regulated dangerous dog.

- [2] The decision following the internal review was to confirm the original decision to destroy Hendricks.
- [3] In this review the Tribunal has power to confirm or amend the 7 February 2019 decision, set aside the decision and substitute its own or set aside the decision and return it to the Council for reconsideration.¹ The Tribunal's function is to reach the correct and preferable decision after a fresh hearing on the merits. The Tribunal must act fairly and according to the substantial merits of the case.²
- [4] Prior to the hearing on 11 April 2019, Mr Fox applied for an adjournment on the basis that on 8 April 2019 Hendricks had been stolen from the compound where he was being kept and that a police investigation was underway.
- [5] The application for an adjournment was refused.
- [6] The parties relied upon the material filed in the proceeding. No witnesses were called by either party. Mr Fox gave oral evidence and was cross-examined.

Factual Background

- [7] The following are uncontested facts:
 - (a) Hendricks is a male, tan and white Great Dane crossbreed implanted with microchip 900079000084654.
 - (b) Mr Fox is the owner of Hendricks.
 - (c) Hendricks was regulated as a dangerous dog by Moreton Bay Regional Council on 5 January 2018 as a result of a serious attack on another dog.
 - (d) On 20 March 2018 the Moreton Bay Regional Council advised the Ipswich City Council of the transfer of Hendricks to the Ipswich City Council area.
 - (e) Mr Fox failed to notify the Council when the dog was transferred to the Barellan Point property so that the Council could check its enclosure and compliance with the regulations applying to the dog as a dangerous regulated dog.
 - (f) On 18 April 2018, Hendricks was wandering in the street when he attacked a female dachshund named 'Maisey'. As a result of the attack on her, Maisey received a tear/rip to the back of her neck and was also bitten on the side of the face and eye. Extensive surgery was required. Mr Fox paid the vet bill in the sum of \$2,600.00.
 - (g) Maisey's owner Ms Schumann sustained a cut to the finger when separating the dogs.
 - (h) A destruction order was made by the Ipswich City Council on 4 May 2018.

¹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act'), s 24.

² *Ibid* s 20 and s 28(2).

- (i) On 28 May 2018, Council officers delivered Hendricks to the Karalee Vet and received a copy of the 'Euthanasia Consent Form' signed by Mr Fox. Without the knowledge of the Council officers, Mr Fox removed Hendricks from the Karalee Vet and returned him to Mr Fox's property at 171 Riverside Avenue, Barellan Point where he continued to keep the dog in breach of regulated dog conditions until seizure on 6 January 2019.
- (j) Neither Mr Fox, nor the Karalee Vet informed Council that Hendricks had not been euthanised in accordance with the destruction order.
- (k) On 6 January 2019, the Queensland Ambulance Service attended at Mr Fox's property but would not enter the house because of an unknown threat from Hendricks. An animal management officer from the Ipswich City Council attended at the house and took Hendricks away. That was Council's first knowledge the dog had not been euthanised.
- (l) On 8 January 2019, a new and updated destruction order was issued, the subject of the internal review.

Evidence of Mr Fox

- [8] Mr Fox relies on the material set out in his application to review the internal review decision. He also gave evidence consistent with the application. His evidence is that:
- (a) the Ipswich City Council assumed that there was no proper enclosure for Hendricks, however, at the time of the attack there was a proper enclosure and use of a dangerous dog sign issued by the Moreton Bay Regional Council.
 - (b) His neighbour has given a statement about the appropriateness of the enclosure used at the time of the attack on Maisey.
 - (c) a Council officer, Mr Manning, took advantage of Mr Fox's mental instability to obtain a surrender form on 19 May 2018.
 - (d) all vet bills were paid in full for the victim dogs.
 - (e) the owner of Maisey agreed that Hendricks had no intention of harming any human and her injury was accidental.
 - (f) Hendricks has been successfully and safely housed within the guidelines of the Ipswich City Council, with the exception of Ipswich City Council signage.
 - (g) After seven months of no incident, Hendricks does not pose a risk.
 - (h) The Ipswich City Council never followed up Hendricks having been taken from the Karalee Vet.
 - (i) Hendricks was secured on 18 April 2018 and it appears that someone let him out. The Council did not conduct an investigation into how he may have escaped.
 - (j) Hendricks has posed no further risk in the period 28 May 2018 to 6 January 2019.

- (k) He has trained Hendricks and has not allowed him to be at large. He is not a problem if he is kept as he is currently kept.
- (l) He pleads for the life of Hendricks and refers to his own mental health.

[9] Under cross-examination, Mr Fox agreed that:

- (a) on the day of the attack on Maisey, Hendricks had got out of Mr Fox's property;
- (b) he took Hendricks from the Karalee Vet to prevent the destruction order taking place;
- (c) he had been prosecuted for not keeping a dangerous dog in an appropriate enclosure. He said that he has been fined and he did not contest the claim.

Evidence of the Ipswich City Council

[10] I have referred to the following material filed by the Ipswich City Council including the material relied upon in making the internal review decision.

- (a) Statement of Ms Schumann, owner of Maisey.
- (b) Statement of Jodie Browning veterinary nurse at Karalee Village Clinic.
- (c) Statement of compliance officer, Ben Manning dated 3 May 2018 and further statement dated 10 January 2019.
- (d) Statement of neighbour, Brendan Burke.
- (e) Statement of animal collections officer, Brett Seeds.
- (f) Statement of animal management attendant, Christine Bushell.
- (g) Statement of veterinary nurse, Tanita Hurst, Karalee Veterinary Surgery.
- (h) Statement of animal management officer, Peter Viney.
- (i) Statement of paramedic, Wayne Johnstone.

[11] Additional material includes:

- (a) Photographs of injuries to Maisey.
- (b) Proposed Regulated Dog Declaration Notice – Moreton Bay Regional Council dated 5 December 2017.
- (c) Regulated Dog Declaration Notice – Moreton Bay Regional Council dated 2 January 2018.
- (d) Clinical notes from vet surgery.
- (e) Photographs referred to in the statement of Ben Manning, photographs of injury to Yvonne Schuman,
- (f) transcript of interview with Corey Fox.

- [12] No witnesses were called or required by Mr Fox for cross-examination.

Submissions of Ipswich City Council

- [13] Mr Pukallus submitted that although Hendricks has been taken from the pound on 8 April 2019, and the Council currently do not have possession of the dog, that is not relevant to the decision on the issue of the destruction order. I accept that submission.
- [14] Mr Pukallus submitted that the object of the Act is to ensure that risk to the community is managed. He submitted that destruction of a dog is a last resort, however, Mr Fox has demonstrated a lack of ability to control the dog and the dog is a risk to other dogs. The only way to manage the risk is to destroy the dog.
- [15] Mr Pukallus said that Mr Fox had been shown not to be responsible as an owner because the dog had been allowed to wander when living in the Moreton Bay Regional Council area and again in the Ipswich City Council area. Mr Fox took advantage of the Ipswich City Council by taking the dog from the Karalee Veterinary Surgery.
- [16] The only appropriate order is that the dog be destroyed.

Mr Fox's submissions

- [17] Mr Fox submitted that destruction of Hendricks should not be a first resort. He submitted that there was an enclosure at the time Hendricks attacked Maisey and it is wrong to assume that there was no enclosure.

Findings

- [18] I accept the evidence of the Ipswich City Council in relation to the lack of appropriate enclosure for Hendricks as at the date of the attack on Maisey. In the absence of cross-examination of the relevant officer, it is not possible to make the findings for which Mr Fox contends in relation to wrong assumptions about the adequacy of the enclosure for keeping Hendricks and a failure to properly investigate how Hendricks escaped.
- [19] The photographs taken by the Council Officer Mr Manning do not show a secure enclosure. There is no evidence before me of a secure enclosure for the dog as at 18 April 2018.
- [20] The statement of Mr Fox's neighbour does not provide any evidence that Hendricks was kept in an appropriate enclosure on 18 April 2018. At best there is some evidence that an enclosure was being constructed.
- [21] It is significant that Mr Fox pleaded guilty to failing to keep the dog in an appropriate enclosure on the relevant date and that he has been fined for that offence.
- [22] For these reasons I find that Hendricks was not kept in an adequate enclosure and as a result he was able to escape on 18 April 2018. There is no evidence before me in relation to a person releasing Hendricks. The allegation is mere speculation on the part of Mr Fox.
- [23] I find that Hendricks was not kept in an appropriate enclosure and as a result escaped and seriously injured another dog.

- [24] Hendricks has injured another dog in similar circumstances in the Moreton Shire Council region.
- [25] Mr Fox’s conduct in allowing Hendricks to escape, and removing Hendricks from the Karalee Veterinary Surgery, suggests that Mr Fox is unable to properly manage Hendricks and further that he cannot be relied upon to do so. Mr Fox made no effort to contact the Ipswich City Council to advise that Hendricks had not been euthanised and that the dog remained at the Barellan Point property. Mr Fox has demonstrated that he is prepared to take matters into his own hands and to ignore his obligations.
- [26] I am unable to make a finding that Mr Fox was taken advantage of when he surrendered Hendricks to the Ipswich City Council officer for destruction at the Karalee Veterinary Clinic. The allegation was not put to any Council witness to enable a response.

Conclusion

- [27] In the circumstances, I confirm the decision made on 7 February 2019 which itself confirmed the decision dated 8 January 2019 to destroy the dog Hendricks.
- [28] In making this decision I have considered and applied the *Animal Management (Cats and Dogs) Act 2008 (Qld)* (‘the AM Act’).
- [29] The purpose of the AM Act is to provide for the effective management of regulated dogs and to promote the responsible ownership of dogs.³
- [30] Section 4 of the AM Act sets out how the purposes are to be achieved and includes obligations on regulated dog owners to ensure dogs do not attack or cause fear.⁴
- [31] It is a serious matter to order the destruction of a pet. The decision requires the exercise of discretion including by reference to the community safety and meeting community expectations.
- [32] In *Thomas v Ipswich City Council*,⁵ it was stated:

It is clear that the AM Act is primarily directed towards the effective management and responsible ownership of dogs and that the destruction of a dog is a “last resort”. It is generally where the mechanisms in the Act from management fail, or are ineffective that destruction arises. 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 dog.

- [33] Because of the history of attacks, I find that Hendricks constitutes a threat to the safety of other animals by attacking them.
- [34] I accept the submissions of the Ipswich City Council that the threat may only be satisfactorily dealt with by the destruction of the dog.

³ Sections 3(c) and s 3(d) of the AM Act.

⁴ Ibid s 4(g) and (l).

⁵ [2015] QCATA 97, [18].

- [35] The exercise of the discretion requires a balancing of the public interest of community safety against Mr Fox's private interest to maintain his relationship with Hendricks.
- [36] Other than Mr Fox's own assertions as to the secure keeping of the dog, training undertaken and assurances that the dog is not a risk to other animals I have no other evidence which would give me any comfort that is the case. There is no evidence of the security of the enclosure and no evidence of a vet or other expert who has observed Hendricks.
- [37] In this case, given the history of Hendricks escaping and attacking other dogs and Mr Fox not complying with Council requirements in relation to notice as to keeping of the dog; and removal of the dog from the Karalee vet without authorisation, I am satisfied that the threat may only be satisfactorily dealt with by the destruction of the dog.