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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MELVA CALDERON,

Plaintiff and Appellant,

v.

LOS ANGELES COUNTY
DEPARTMENT OF ANIMAL
CARE AND CONTROL,

Defendant and Respondent.

B294293

(Los Angeles County
Super. Ct. No. BS172397)

APPEAL from a judgment of the Superior Court for Los Angeles County, Mitchell L. Beckloff, Judge. Affirmed.

The Animal Law Office and Christine Kelly for Plaintiff and Appellant.

Mary C. Wickham, County Counsel, Jennifer A.D. Lehman, Assistant County Counsel, Armita Rabjabin, Deputy County Counsel; Carpenter, Rothans & Dumont, John J. Stumreiter and Jill Williams for Defendant and Respondent.

In an administrative hearing held under Los Angeles County Code¹ section 10.37.110, the hearing officer found that three dogs owned by appellant Melva Calderon were vicious dogs under section 10.37.030 and ordered that they be euthanized. Calderon sought judicial review of the hearing officer's decision by filing in the superior court a petition for writ of administrative mandamus under section 10.37.121 and Code of Civil Procedure section 1094.5.² The superior court denied the petition; it found, under both the substantial evidence and independent judgment standards of review, that the hearing officer's decision was supported by the weight of the evidence.

Calderon appeals from the superior court's judgment denying the petition. Although the legal argument in her appellant's opening brief includes 12 separate headings, Calderon essentially raises only two issues. First, she contends that the hearing officer's decision was improper because it was based entirely upon hearsay. Second, she contends there was insufficient evidence to support both the vicious dog designation and the euthanasia order. Neither contention has merit. Accordingly, we affirm the judgment.

¹ Further undesignated statutory references are to the Los Angeles County Code.

² Although Calderon also attempted to challenge the hearing officer's decision through an appeal to the superior court and by seeking a writ of mandate under Code of Civil Procedure section 1085, we need not address those other methods because Calderon's appeal in this court addresses only the administrative mandamus action.

BACKGROUND

A. Los Angeles County Code Provisions Relating to Vicious Dogs

Chapter 10.37 of the Los Angeles County Code “set[s] forth the procedures by which the [County of Los Angeles] Department [of Animal Care and Control (the Department)] can find a dog to be a potentially dangerous dog or a vicious dog and the consequences of such a finding.” (§ 10.37.010.) For purposes of this appeal, our focus is on vicious dogs. A vicious dog is defined to include “[a] dog that, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a person.” (§ 10.37.030(B).) “‘Severe injury’ means any physical harm to a human being that results in a serious illness or injury, including but not limited to a major fracture, muscle tears, or disfiguring lacerations requiring multiple sutures or corrective or cosmetic surgery.” (§ 10.37.040.)

If an animal control or law enforcement officer determines there is probable cause that a dog is potentially dangerous or vicious, the director of the Department may petition the superior court for a hearing or serve a petition for an administrative hearing to determine whether the dog should be declared potentially dangerous or vicious.

(§ 10.37.110(A).) If the dog is determined to be vicious, the dog may be destroyed by the Department if it is found that the release of the dog would create a significant threat to the public health, safety, or welfare.

(§ 10.37.140(A).) If a dog that has been declared vicious is not destroyed, certain safeguards must be put in place. (§ 10.37.140(B)-(E).) The owner or custodian of a dog determined to be a vicious dog may be prohibited from owning, keeping, possessing, controlling, or having

custody of any dog for a period of up to three years if it is found that ownership or possession of a dog by that person would create a significant threat to the public health, safety, or welfare.

(§ 10.37.140(G).)

When the determination whether a dog is potentially dangerous or vicious is made at an administrative hearing, either party may appeal the hearing officer's decision by seeking judicial review under Code of Civil Procedure section 1094.5. (§ 10.37.121.)

B. *The Administrative Proceeding*

1. *The Petition*

On November 15, 2017, the Department filed a “petition for administrative hearing to determine if dogs are vicious” under section 10.37.010, et seq. The petition alleged that on August 9, 2017, Calderon's three dogs, Precious (a five-year-old female pit bull), Miley (a three-year-old pit bull mix), and Grumpy (a two-year-old pit bull mix) attacked and mauled Mauro Omar Acosta, causing severe wounds that required multiple surgeries and several weeks of hospitalization. The petition also alleged two other incidents involving Miley (but not Precious or Grumpy) in March and June of 2017. Because (as noted below) Calderon's writ petition ultimately addressed only the designation and order regarding Precious, our discussion of the facts will be limited to the facts related to the only incident in which Precious was involved, along with the other two dogs.

In the petition, the Department sought (1) an order declaring all three dogs vicious within the meaning of section 10.37.030, (2) a finding

that the dogs may be destroyed, and (3) an order prohibiting Calderon from owning, keeping, possessing, controlling, or having custody of any dog for a period of up to three years. The petition attached sworn affidavits of witnesses to the incidents, including an affidavit from Acosta, and other exhibits.

a. *Exhibits to the Petition*

i. *Acosta's Declaration*

In his affidavit, Acosta stated that he was residing at a Motel 6 in Rowland Heights with Calderon and her wife at the time of the dog attack. In exchange for letting him stay with them, Acosta agreed to take care of Calderon's dogs. He was training and socializing the dogs, and they were obedient to his commands.

At approximately 5:30 p.m. on August 9, 2017, Acosta returned to the motel room with Precious, after taking her for a walk. He was about to make a phone call in the room when the smoke detector went off. The dogs started to bark, so he turned toward them to hush them. Without warning, Precious lunged at him and bit his throat. While he was trying to pry Precious' mouth open, the other two dogs attacked him and bit his left leg. He finally was able to get Precious to release his throat, and he threw her off of him. He hit Miley and told her to let go, and she did. With his right foot, he kicked Grumpy, who was biting his left calf. Precious then bit his right foot. Acosta fell down, and Miley lunged at his face. He put his left arm up to protect his face, and Miley bit his left forearm.

With Miley and Grumpy still biting him, Acosta yelled out for help. He managed to reach the door and partially open it. A man who was staying in a nearby room, Steve, came to the door and started jabbing at the dogs with a cane. The dogs finally released Acosta, and he crawled out of the room; Steve closed the door with the dogs inside.

Acosta was bleeding profusely. A motel employee helped him use his belt as a tourniquet to try to stop the bleeding while someone called 911. Acosta was taken by ambulance to the hospital and was taken into surgery; he has since had other surgeries to repair the damage to his arm and leg.

ii. *Other Exhibits*

In addition to Acosta's declaration, the Department's petition attached as exhibits investigation and/or incident reports for each of the alleged incidents.

The primary investigative report for the Acosta incident was written by the Department's investigator, Alfredo Lopez. The report included statements from Calderon and various witnesses to the attack that were taken by investigating officer Lopez.

There were two incident reports related to the Acosta incident by Animal Control Officer George Aguilar, the officer who responded to the call and conducted the initial investigation. The first report, completed on the day of the incident, included a statement by Calderon, as well as summaries of conversations Officer Aguilar had with the sheriff's deputy who responded to the call and an employee of the motel where the incident took place. Officer Aguilar reported that, because this was

his second emergency call involving Calderon's dogs, he impounded all three dogs pending further investigation. Officer Aguilar's second report described his follow-up investigation and included statements by a motel cleaning woman, who heard the attack, and by Steve Hammer, who responded to Acosta's cries for help. Hammer stated that when he responded to Acosta's screams, he saw the two tan dogs (i.e., Miley and Grumpy) biting Acosta. He grabbed a broom from the housekeeper and hit the dogs to get them away from Acosta. He stated that the third dog (i.e., Precious) was on the bed, barking; he did not see her bite Acosta.

There also was an incident report from Frank Medina, who interviewed Acosta in the hospital several days after the attack. Acosta's description of the attack was slightly different than how he described it in his declaration (which was signed two months later). Officer Medina stated in the report that Acosta said that Grumpy was the first dog to bite him (on his left foot), then Miley started biting his right arm. As he was fighting the dogs, he fell, and Precious began biting his neck; when he tried to fight her off with his left arm, Precious began biting that arm.

There were numerous photographs attached to the various reports, including many photographs of the injuries Acosta suffered, as well as Acosta's medical records.

b. *Notice of Hearing*

The petition and a notice of hearing were mailed to Calderon (at two different addresses) and to her attorney. The notice of hearing

stated that the hearing would be held at 9:00 a.m. on November 29, 2017.

2. *Administrative Hearing and Decision*

On November 29, 2017, neither Calderon nor an attorney representing her had appeared by 9:30 a.m., so the hearing proceeded without her. The Department was represented by Lieutenant Kim Schumann, who presented testimony from Officers Lopez, Medina, and Aguilar. All three officers testified about their investigation of the three incidents, and all three either read or discussed statements or declarations given by the various witnesses to those incidents.

The day after the hearing, the hearing officer issued a written decision. The hearing officer stated that in addition to hearing the testimony, he reviewed the investigative reports and written statements provided by multiple witnesses and victims. He also stated that he reviewed photographs documenting the victims' injuries as well as Acosta's hospital records.

With regard to the incident on August 9, 2017, the hearing officer found that Precious, Miley, and Grumpy jointly attacked Acosta, that Acosta was engaged in lawful activity at the time of the attack, that he sustained "highly serious" bite injuries to his throat, left thigh, left calf, and right foot, and that the attack likely would have resulted in Acosta's death had people not responded to Acosta's screams and intervened. The hearing officer concluded that all three dogs met the definition of vicious dog under section 10.37.030(B), and that the dogs would be a significant threat to public health, safety, or welfare if

released. Therefore, he ordered that the dogs be destroyed under section 10.37.140(A). Finally, he ordered that Calderon was prohibited from owning, keeping, possessing, controlling, or having custody of any dog for a period of three years. (Citing § 10.37.140(G).)

C. *Petition for Writ of Administrative Mandamus and Trial Court Decision*

Calderon filed a petition for writ of administrative mandamus in the superior court under Code of Civil Procedure section 1094.5. In her opening brief in support of her petition, Calderon noted that the relief she sought related only to Precious, because Miley and Grumpy were euthanized. She argued that the hearing officer's decision must be reversed because (1) Precious was not involved in the attack on Acosta; (2) the hearing officer was not fair and impartial; (3) a governmental taking of a dog by euthanasia must be supported by a "compelling" argument showing that such a harsh result is required; (4) the hearing officer erred by failing to determine whether there was provocation of the dogs (i.e., the sounding of the smoke detector), which would preclude a "vicious dog" finding; and (5) the euthanasia order violated her Fourth Amendment and due process rights under the United States Constitution.

The superior court denied Calderon's petition in a detailed written decision.

The court first addressed the standard of review. The court observed that, because an administrative decision whether a dog is dangerous does not involve a fundamental right, the decision is reviewed for substantial evidence. However, the court noted that even

if it were required to apply the independent judgment standard of review, it would reach the same conclusion as the hearing officer because it found the weight of the evidence supported the hearing officer's decision.

The court next addressed Calderon's assertion that Precious was not involved in the attack. The court described all of the evidence—with citations to the administrative record—that established Precious' participation in the attack, and explained why the evidence Calderon relied upon for her assertion did not support that assertion. The court also addressed Calderon's argument, made at the hearing on the petition, that Acosta's injuries did not come within the definition of "severe injury" set forth in section 10.37.040, and thus were insufficient to support a finding that Precious was a violent dog within the meaning of section 10.37.030(B); the court cited to evidence presented at the administrative hearing showing that Acosta's injuries were disfiguring and required multiple sutures. Finally, the court rejected Calderon's argument that the evidence did not support the finding that Precious was involved because it was hearsay. The court observed that section 10.37.110(C) specifically authorizes the admission of incident reports and affidavits, and, in any event, Calderon did not object to the admission of that evidence.

With regard to Calderon's assertion that the hearing officer was not fair and impartial, the court noted that Calderon did not object to the selection of the hearing officer. Therefore, no facts were developed at the time of the hearing to allow the court to "determine the foundational facts . . . necessary to support [Calderon's] claim."

Addressing Calderon’s argument that the euthanasia order was improper because it was not supported by a “compelling” argument that it was required, the court observed that once a dog is determined to be a “vicious dog,” the determination whether release of the dog “would create a significant threat to the public health, safety, or welfare” (§ 10.37.140(A)), and whether the dog should be euthanized, is committed to the discretion of the hearing officer under the Los Angeles County Code. The court found—with citations to the administrative record—that substantial evidence (or the weight of the evidence if the independent judgment standard of review applied) supported the hearing officer’s determination, and that the officer did not abuse his discretion in concluding that Precious should be euthanized.

The court found no error in the hearing officer’s failure to make an express finding of no provocation. First, the court pointed to the hearing officer’s questioning of the animal control officer who responded to the dog attack call as evidence that the hearing officer was aware that provocation was an issue in determining whether a dog meets the definition of a “vicious dog.” Thus, the court found that the hearing officer impliedly found that the dogs were not provoked. Second, the court pointed to specific and substantial evidence in the administrative record that supports that implied finding. Finally, the court rejected Calderon’s assertion that the injury to Acosta’s right foot was the result of provocation, finding that Precious initiated the attack and that Acosta’s efforts to protect himself (by kicking Grumpy to try to get her to let go of his leg) did not constitute provocation.

Lastly, the court rejected Calderon’s constitutional arguments. The court observed that Calderon was provided with notice and an opportunity to be heard, and she did not identify what other process was due. The court also observed that the County of Los Angeles has a legitimate governmental interest in protecting its citizens from a vicious dog, and that it authorizes such a dog to be euthanized only after the dog has been determined to be vicious and a determination has been made that release of the dog “would create a significant threat to the public health, safety, or welfare” (§ 10.37.140(A)). Thus, the court concluded that “an appropriate constitutional balance is struck between the interests of the [dog] owner and the interests of the County in protecting its citizens.”

The court entered judgment denying the petition for writ of administrative mandamus, from which Calderon timely filed a notice of appeal.

DISCUSSION

Calderon argues on appeal that the determination that Precious is a vicious dog and the order to euthanize her must be reversed because (1) both the hearing officer’s decision and the superior court’s decision were improperly based entirely on hearsay evidence, and (2) even if the hearsay evidence is considered, the evidence does not support the vicious dog determination. Neither argument prevails.

A. *Standard of Review*

The parties disagree on the appropriate standard of review is applicable here. Calderon argues that a de novo standard applies; the Department asserts the appropriate standard is substantial evidence. To the extent the issue is a purely legal one—such as whether the superior court made an error of law by concluding that a decision may be based entirely on hearsay—Calderon is correct that a de novo standard of review applies. (*Cassidy v. California Bd. of Accountancy* (2013) 220 Cal.App.4th 620, 627.) But to the extent Calderon argues the evidence did not support the determination that Precious is a vicious dog and must be euthanized, the Department is correct that the substantial evidence standard of review applies. (*Id.*; see also *Shenouda v. Veterinary Medical Bd.* (2018) 27 Cal.App.5th 500, 512.) This is true regardless whether the appropriate standard of review the superior court was required to apply was independent judgment or substantial evidence.³ (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 149 [review of superior court’s substantial evidence review]; *Shenouda v. Veterinary Medical Bd.*, *supra*, 27 Cal.App.5th at p. 512 [review of superior court’s independent judgment review].)

³ The only difference is that, where the superior court was required to apply the independent judgment standard, we determine whether the *superior court’s* findings are supported by substantial evidence (*Shenouda v. Veterinary Medical Bd.*, *supra*, 27 Cal.App.5th at p. 512), as opposed to determining whether the hearing officer’s findings are so supported when the superior court was required to apply the substantial evidence standard (*Bixby v. Pierno*, *supra*, 4 Cal.3d at p. 149). In this case, however, the treatment is the same, since the superior court’s findings mirrored the hearing officer’s findings.

Under the substantial evidence standard of review, we must determine whether substantial evidence supports the hearing officer's (or superior court's) findings. ““Substantial evidence is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”” [Citation.] “In determining whether substantial evidence supports a finding, the court may not reconsider or reevaluate the evidence presented to the administrative agency. [Citation.] All conflicts in the evidence and any reasonable doubts must be resolved in favor of the agency's findings and decision. [Citation.] [¶] In applying that standard, . . . ‘the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision.’” [Citations.]” (*Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 881-882.)

B. *Hearsay*

Section 10.37.110(C) provides, in relevant part, that at an administrative hearing to determine whether a dog is potentially dangerous or vicious, “[t]he . . . administrative hearing officer will admit all relevant evidence, including incident reports and the affidavits of witnesses.” Although this provision clearly allows the admission of hearsay, Calderon argues that such hearsay alone is not sufficient to support the vicious dog finding or euthanasia order. She contends that under the “residuum rule”—which applies in California—“an agency's decision must consist of at least ‘a residuum of legally admissible evidence.’” (*The Utility Reform Network v. Public Utilities Com.* (2014)

223 Cal.App.4th 945, 960-961.) Her contention fails, however, because she failed to object at the administrative hearing or seek reconsideration by the hearing officer.

It is well established that “incompetent hearsay admitted *without objection* is sufficient to sustain a finding or judgment.” (*Rupf v. Yan* (2000) 85 Cal.App.4th 411, 430-431; see also *Gallagher v. Connell* (2004) 123 Cal.App.4th 1260, 1268 & cases cited in fn. 18.) This requirement of an objection is reflected in the statement of the residuum rule found in the Administrative Procedures Act: “Hearsay evidence may be used for the purpose of supplementing or explaining other evidence *but over timely objection* shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.” (Gov. Code, § 11513, subd. (d), italics added.) Because Calderon did not make any objection at the administrative hearing to the use of hearsay evidence to support the hearing officer’s findings, she cannot rely upon the residuum rule as a ground for overturning the hearing officer’s decision.⁴

⁴ Calderon’s assertion that her attorney raised objections to the hearsay evidence in the superior court does not assist her. To bring the residuum rule into play, the objection must be timely made, i.e., before submission of the case to the hearing officer, or in a request for reconsideration by the hearing officer. An objection made in the appeal of the hearing officer’s decision (by means of a petition for writ of administrative mandamus) is not a timely objection.

C. *Sufficiency of the Evidence*

Calderon makes several contentions that, in essence, challenge the sufficiency of the evidence to support the vicious dog declaration and euthanasia order. First, she contends “the Court err[ed] in applying the Vicious [dog] designation upon Precious, because there is only one singular isolated incident which did not result in a severe injury at the hands/paws or mouth of Precious.” Next, she argues there was “ample” evidence of provocation sufficient to preclude the vicious dog finding. Finally, she contends there was insufficient evidence to support the order that Precious be euthanized. None of her arguments prevails.

In arguing that Precious did not meet the definition of “vicious dog” because she did not inflict a “severe injury” on Acosta, Calderon ignores the evidence—cited by the superior court in its ruling—showing that the bites from Precious left significant scars and/or required sutures. Acosta stated in his affidavit that Precious bit him in the throat, and would not let go until he put his hand in her mouth and gagged her. He did not describe any of the other dogs biting him in the neck (although Miley tried to, he blocked her with his arm). He also stated that Precious bit him on his right foot, while the other dogs bit him on his left side. The administrative record includes photographs showing deep puncture wounds to Acosta’s right foot and a significant scar on his neck, as well as medical records indicating that the wounds to his right foot required multiple sutures. This constitutes substantial evidence to support the hearing officer’s and superior court’s findings

that Precious caused “severe injury” to Acosta within the meaning of sections 10.37.030(B) and 10.37.040.

With regard to provocation, although Calderon states in her opening brief that “[t]here was ample provocation to remove Precious from a vicious designation,” she fails to cite to any evidence in the administrative record to support her statement.⁵ Thus, she has forfeited any claim of error. (*Shenouda v. Veterinary Medical Bd.*, *supra*, 27 Cal.App.5th at p. 514 [““The appellate court is not required to search the record on its own seeking error.” [Citation.] Thus, “[i]f a party fails to support an argument with the necessary citations to the record, . . . the argument [will be] deemed to have been waived””].)

In arguing there was insufficient evidence to support the euthanasia order, Calderon once again ignores the evidence—cited by the superior court—supporting the hearing officer’s determination that release of Precious would create a significant threat to public health, safety and/or welfare. First, Acosta stated in his affidavit that Precious was the first dog to attack him, and that he did nothing to provoke the attack. Calderon’s reliance on witness Steve Hammer’s statement that Precious was on the bed and did not bite Acosta is misplaced, since Hammer did not come to Acosta’s room until after Precious had initiated the attack and bitten his foot. Moreover, Officer Aguilar testified that more than three months after being impounded, Precious continued to display extremely aggressive behavior. Based upon her

⁵ Her sole citations are to the reporter’s transcript at the hearing in the superior court on her writ petition and to her brief filed in support of the writ petition.

aggressive behavior, Officer Aguilar believed that Precious could not safely be put up for adoption. In short, substantial evidence supports the hearing officer's determination that the release of Precious would create a significant threat to public health, safety and/or welfare, and therefore she should be euthanized.

We note that Calderon asserts a higher standard of proof should have been applied here. However, she cites no authority for imposing a higher standard on determinations to euthanize dogs found to be vicious and to present a danger to the public health, safety, or welfare. We see no basis for applying a higher standard, especially since Los Angeles County has left the euthanasia determination to the discretion of the hearing officer if the requisite finding is made. (§ 10.37.140(A).)

DISPOSITION

The judgment is affirmed. The County of Los Angeles Department of Animal Care and Control shall recover its costs on appeal.

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WILLHITE, J.

We concur:

MANELLA, P. J.

COLLINS, J.