

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Oneida Nation / Oneida Police Department,
PETITIONER,

v.

CASE NO: 20-CT-018

William J. Melchert,
DEFENDANT.

Date: October 8, 2020

ORDER

This case has come before the Oneida Trial Court, Honorable John E. Powless III presiding.

Appearing in-person: Attorney Kelly McAndrews for the Petitioner: Oneida Nation/Oneida Police Department, and Defendant: William J. Melchert.

STATEMENT OF THE CASE

A citation was issued to the Defendant on July 13, 2020, for violating Oneida Code of Laws section 304.10-1, Possessing a Dangerous Animal. A pre-trial hearing was held on August 20, 2020, at which time the court issued a Trial Scheduling Order. The court reconvened for a Trial on October 5, 2020 at 9:00 a.m.

PRINCIPLE OF LAW

O.C.L 3 Judiciary – Chapter 304: Domestic Animals

304.10. *Dangerous Animals.*

304.10-1. *Dangerous Animals.* No person shall own, keep, possess, return to or harbor a dangerous animal. An animal shall be presumed to be dangerous if the animal:

- b) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal

304.10-2. *Dangerous Animal Determination.* An Oneida Police Officer or Oneida Conservation Warden may determine an animal to be dangerous whenever, upon investigation, the officer finds that the animal meets the definition of dangerous animal provided in section 304.10-1.

- (a) Upon making a determination that an animal is dangerous, the Oneida Police Officer or Oneida Conservation Warden shall issue a written order with an accompanying citation declaring the animal to be dangerous.
- (b) The citation and order shall be personally delivered to the apparent owner or custodian of the dangerous animal.
- (c) Upon receipt of the written order and accompanying citation the owner shall remove the dangerous animal from the Reservation within three (3) business days

304.10-4. *Dangerous Animal Determination Hearing.*

(a) If the Trial Court concludes that the determination that the animal is dangerous is substantiated, then the Trial Court shall issue an order that mandates the animal be removed from the Reservation within forty-eight (48) hours of the determination.

(1) The order shall contain the requirement that the owner notify the Oneida Police Department within twenty-four (24) hours if the dangerous animal has been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental, Health, Safety, and Land Division within a reasonable amount of time.

(b) The Trial Court may order a dangerous animal to be destroyed. If such an order is issued, the Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.

304.11-1. *Owner Liability.* An owner shall be liable for damages caused by his or her domestic animal.

(a) *First Offense.* The owner is liable for the full amount of damages caused by the domestic animal.

O.C.L. 8 Judiciary – Chapter 807: Citations

807.6-2. *Citation Hearing.* For all persons entering a plea contesting the fact that he or she committed the act for which a citation was issued, the Court shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the pre-hearing when possible.

(a) The burden of proof at the citation hearing shall be by clear and convincing evidence.

(b) As a result of the citation hearing the Court may issue an order which includes a determination as to the underlying violation of law as well as any fine amount, restitution, suspension of any rights, privileges, or licensures, and/or any other penalty as authorized by law.

(c) A defendant who fails to satisfy a lawful order of the Court shall be subject to punishment for contempt of court which may include fines, revocation and/or suspension of any rights, privileges, licensures, or any other action authorized by law.

(d) The defendant's failure to satisfy a fine and/or restitution may result in per capita attachment, wage garnishment and/or other collection processes available to the Court.

O.C.L. 8 Judiciary – Chapter 803: Oneida Judiciary Rules of Civil Procedure

803.33.(1) *Relief from a Judgment or Order Harmless Error*

Corrections Based on Clerical Mistakes; Oversights and Omissions. The Court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a

judgment, order, or other part of the record. The Court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the Court of Appeals and while it is pending, such a mistake may be corrected only with the Court of Appeals' leave.

803.33-5. Harmless Error. Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the Court or a party—is grounds for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order.

FINDING OF FACTS

1. The court has subject matter, personal and territorial jurisdiction over this matter.
2. Notice was provided to all those entitled to notice.
3. The court issued a Trial Scheduling Order to the parties on August 21, 2020.
 - a. The parties were ordered to submit discovery, including a witness list to the other party and the court by September 21, 2020.
 - b. The Defendant did not provide any discovery to the court on or before September 21, 2020.
4. The Defendant did not contest the Petitioner's dangerous animal determination within the timeframe identified in 304.10-3.
5. A Trial was held on October 5, 2020.
 - a. The Defendant requested to call witnesses as part of his case.
 - b. The Defendant did provide documents to the Petitioner on September 21, 2020, but the documents did not consist of a witness list.
 - i. The court denied the Defendant's request to call witnesses because the Defendant failed to comply with the scheduling order requiring witnesses to be identified and provided to the other party and to the court by September 21, 2020.
6. The court finds the requirements in 304.10-2; Dangerous Animal Determination were met by the Petitioner.
 - a. The Defendant shall do one of the following:
 - i. Remove Nkwali from the reservation by either selling, giving away or re-homing to a humane society outside the reservation boundaries within forty-eight (48) hours of the determination. The Defendant shall notify the Oneida Police Department within twenty-four (24) hours if the dangerous animal has been sold, given away or re-homed to a humane society. The Defendant shall abide by all notice requirements in 304.10-4.
 - ii. Euthanize Nkwali; the Defendant shall be required to submit proof of destruction within five (5) business days from a licensed veterinarian. The Defendant shall abide by all other applicable notice requirements in 304.10-4.
7. The Defendant's dog, Nkwali, attacked and caused damages to another dog, resulting in the other dog being euthanized.
8. In the court substantiating the dangerousness declaration, the Defendant shall be responsible for the veterinarian damages in the amount of \$839.00.
9. The court waives the Defendant's \$500.00 fine but finds the Defendant shall pay \$25.00 in court costs to the Judiciary.

ANALYSIS

In accordance with 3 O.C. 304.10, in determining an animal to be dangerous, an animal shall be determined dangerous if it meets any of the criteria identified in this section. Additionally, once the declaration has been determined, the issuing agency shall issue a written order with the accompanying citation declaring the animal dangerous. The citation and order shall be personally served on the owner. Once the owner receives the written order and citation, the owner shall remove the animal within three (3) business days from the Reservation. In accordance with 3 O.C. 304.10-2, in the event the owner contests the determination, the owner shall file a written objection with the Trial Court to the order declaring the animal dangerous within three (3) business days of receipt of the order. Pending the outcome of the hearing, the court shall issue conditions on the animal until the next court hearing. If the Trial Court concludes the determination of dangerousness is valid, the Trial Court shall issue an order that mandates the animal to be removed from the reservation within forty-eight (48) hours of the determination. The Trial Court may also order a dangerous animal to be destroyed. In any event, the order shall contain a notification requirement in that the owner notifies the Oneida Police Department (OPD) of action taken, to removal or euthanize the animal.

Here, OPD presumed the animal dangerous based on the animal to have allegedly bit, inflict injury, attacks, or otherwise endangers the safety of a human being or domestic animal. On July 13, 2020, the Petitioner complied with the requirement to personally serve the order and citation on the Defendant, a requirement in 304.10-2. The testimony by the parties reflects the Defendant implemented additional safety measures, complying with conditions identified in the declaration of dangerousness. As stated, the Defendant had the opportunity to file a written objection to the Trial Court regarding the determination of dangerousness, but he did not. In the event the Trial Court determines the dangerousness declaration valid, the court shall act. The Petitioner is seeking the Trial Court to declare the animal dangerous and order any of the following: 1.) The animal be removed from the reservation within forty-eight (48) hours of the Trial Court's upholding the determination of dangerousness. In doing so, the animal may also be sold, given away or re-homed to a humane society outside the reservation boundaries in which the Defendant is responsible for all re-homing fees, 2.) the animal to be euthanized, follow notification requirements. Based on the Petitioner meeting the requirements identified in 304.10-2 and the presentation of cases, the court finds the Petitioner met all requirements in declaring the dog, Nkwali dangerous. Therefore, the court finds the requirements in 304.10-4 must be complied with.

In accordance with 8 O.C. 807.6-2, the burden of proof is on the parties to substantiate their claims at the hearing by clear and convincing evidence. The Petitioner substantiated its claims by presenting testimony that places Nkwali on the property of Valerie Groleau at the time of the incident. Testimony further identified an eyewitness account of Nkwali burrowing under the fence, returning to the Defendant's property following the incident. The Defendant was unsuccessful in proving his claim that Nkwali was not on the property of Valerie Groleau at the time of the incident. The Petitioner is further seeking damages in the amount of \$839.00 for veterinarian bills incurred by Valeri Groleau, the owner of the other dog, Presley. Ms. Groleau provided testimony that Presley was treated for a laceration and wounds resulting from dog bites, which resulted in the continued monitoring of Presley at the Green Bay Animal Hospital over the next couple of days. The veterinarian bill consists of the initial and continued treatment of Presley, as well as the fee to euthanize. The Defendant alleged Presley may have had pre-existing health conditions prior to July 6, 2020. The Defendant was unsuccessful in

substantiating this claim. Based on 304.10-6, the court finds it favorable to award damages in the amount of \$839.00 to Valerie Groleau.

Regarding the fine for the first offense of possessing a dangerous animal, the Petitioner proposed the court waive the \$500.00 fine, but the \$25.00 court cost fee would still apply. Based on the damages in this case, the court agrees with the Petitioner's proposal.

During the final hearing, the Petitioner incorrectly referred to 3 O.C. 304.11 as the designation for the section called *Dangerous Animal Determination Hearing*. In 2019, the Domestic Animal Ordinance was amended by BC resolution 05-08-19-D, which used 304.11 as the designation for this section. In 2020, the law was amended again. Under BC resolution 05-13-20-C, 304.10 is used to designate this section. When referring to the Domestic Animal Ordinance, the court will use the BC resolution 05-13-20-C version.

Additionally, in accordance with 8 O.C. 803.33, the court may correct a clerical mistake that is a part of a record, on its own motion. In this case, the Petitioner has submitted a Certificate of Service to the record. This document contains harmless errors the court will now correct.

1. The caption will be amended to 20-CT-018.
2. The date of service will reflect September 21, 2020.

ORDER

1. The court amends the Certificate of Service case caption to 20-CT-018 and date of service to September 21, 2020.
2. The court denied the Defendant's request to present witnesses at the final hearing.
3. The court substantiates the Oneida Police Department's declaration of the Defendant's dog to be a dangerous animal and orders the Defendant to:
 - a. Remove the Defendants dog, Nkwali from the reservation by either selling, giving away or Re-homing to a humane society outside the reservation boundaries within forty-eight (48) hours of the determination, OR,
 - b. Euthanize Nkwali.
4. The court orders the Defendant to comply with the following notification requirements:
 - a. If the Defendant sells or gives away the dog to a new owner or entity, the Defendant must notify the Oneida Police Department within 24 hours of the removal; the notice must include:
 - i. Evidence the Defendant also notified the police department or law enforcement agency of the dog's new residence, and
 - ii. The new owner or entity's name, address and telephone number.
 - b. If the Defendant chooses to euthanize his dog, the Defendant must provide notice to the Oneida Police Department within 24 hours of the dog's euthanasia. The notice must include proof of euthanasia from a licensed veterinarian.
5. The Court orders the Defendant to pay **\$25.00** to the Judiciary on or before thirty (30) days from the date of this order.
6. The Court orders the Defendant to pay **\$839.00** in damages to the Judiciary on or before one-hundred twenty (120) days from the date of this order.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary, pursuant to Resolution 01-07-13-B of the General Tribal Council, this Order is signed October 8, 2020.

John E. Powless III, Trial Court Judge