

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Oneida Nation / Oneida Police Department,
PLAINTIFFS

v.

CASE NOS: 22-CT-002
22-CT-003
22-CT-004
22-CT-005
22-CT-006

Lindsey A. Blackowl,
DEFENDANT

DATE: March 4, 2022

ORDER

This case came before the Oneida Trial Court, Honorable Patricia Ninham Hoeft presiding.

This matter came on for a dangerous animal determination hearing on the 1st day of March 2022.

Appearing in-person: The Oneida Nation and Oneida Police Department by their attorney, Kelly McAndrews; Oneida Police Department Officer, Brandon Davis; and Defendant, Lindsey A. Blackowl.

BACKGROUND

A pre-trial citation hearing was held on February 17, 2022. At the hearing, the Defendant entered pleas contesting a determination that the Defendant's dog is a dangerous animal and three of the five citations for violations under the Oneida Code of Laws, Chapter 304, Domestic Animals. For the remaining two citations, the Defendant pled no contest and was found guilty. Judgment was stayed on the two citations pending the outcome of a dangerous animal determination hearing. A dangerous animal determination hearing was held on March 1, 2022 to determine whether the determination was substantiated and for the parties to present arguments on the three citations being contested. At the determination hearing, the Court found the Dangerous Animal Determination to be substantiated and ordered the Defendant to remove her dog, Yo-Yo, from the Reservation within 48 hours after receiving the Court's decision, which was issued orally to the parties at the hearing.

ISSUES

1. Was the dangerous animal determination substantiated?
2. Did the Plaintiff show by clear and convincing evidence that the Defendant's dog approached or chased a human being or domestic animal in a menacing fashion or apparent attitude of attack?

3. Did the Plaintiff show by clear and convincing evidence that the Defendant was in possession of a dangerous dog?
4. Did the Plaintiff show by clear and convincing evidence that the Defendant did not obtain a license for the Defendant's dog?
5. Should the Court exercise discretion to determine substitutions or adjustments to the fines proposed as a result of the citations issued to the Defendant?

PRINCIPLES OF LAW

Oneida Code of Laws Title 3. Health and Public Safety, Chapter 304 – Domestic Animals

304.6. Dogs and Cats

304.6-1. *License Required.* An owner shall be required to obtain a license for any dog or cat five (5) months of age or older on an annual basis.

304.6-2. *Rabies Vaccinations Required.* An owner shall be required to obtain a rabies vaccination for any dog or cat five (5) months of age or older.

304.6-4. *Running at Large.* An owner shall not allow a dog or cat to run at large by being any place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash under the control of a person physically able to control the animal.

304.6-5. *Nuisance.* An Oneida Police Officer or Oneida Conservation Warden may pick up and impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a nuisance if the actions of the dog or cat:

- (a) resulted in two (2) or more verified disturbances due to excessive barking and/or other noise by the animal, or the animal running at large; and/or
- (b) resulted in one (1) or more verified disturbance due to threatening behavior by the animal running at large.

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:

- (a) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack.

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.

304.10-3. *Contesting a Dangerous Animal Determination.* If the owner wishes to contest the

dangerous animal determination, he or she shall file with the Trial Court a written objection to the order within three (3) business days of receipt of the order.

(a) The written objection shall include specific reasons for objecting to or contesting the order. An owner may argue an animal should not be deemed dangerous due to the animal biting, attacking or menacing any person and/or domestic animal because the animal was acting to:

- (1) defend its owner or another person from an attack by a person or animal;
- (2) protect its young or another animal;
- (3) defend itself against any person or animal which has tormented, assaulted or abused it; and/or
- (4) defend its owner's property against trespassers.

304.10-4. *Dangerous Animal Determination Hearing.* A hearing on the dangerous animal determination shall be held within fourteen (14) days of submission of the written objection with the Trial Court. At the hearing, the Trial Court shall determine whether the determination that the animal is dangerous should be substantiated.

(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.

304.10-5. *Appeal of the Trial Court's Decision.* An appeal of the Trial Court's decision on the dangerous animal determination may be appealed to the Nation's Court of Appeals.

(a) An appeal shall be submitted to the Court of Appeals within five (5) business days from the date of the Trial Court's decision.

(b) Upon an appeal to the Court of Appeals, the order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal.

Oneida Code of Laws Title 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.

FINDINGS OF FACT

The Court finds as follows:

1. The Court has subject matter, personal, and territorial jurisdiction over this matter.
2. The Defendant received proper notice.
 - a. At the February 17, 2022 pre-trial citation hearing:
 - i. The Court found that the determination letter failed to explain the Defendant was required to remove her dog, Yo-Yo, from the Reservation or file with the Trial Court a written objection, within three business days after receiving the determination.
 - ii. The Plaintiff admitted the December 7, 2021 determination letter was not clear and requested the Defendant be allowed to submit her objection to the dangerous animal determination at the pre-trial hearing. The Court agreed and accepted the Defendant's objection to the dangerous animal determination.
3. A Dangerous Animal Determination hearing was held on March 1, 2022 within the required 14-day timeline.
4. The Defendant did not submit a list of witnesses or evidence on or before the close of discovery as ordered by the Court.
 - a. At the Determination hearing:
 - i. The Defendant said she did not intend to submit a list of witnesses or other evidence because, after reviewing the Plaintiff's submission of witnesses and evidence prior to the hearing, any witnesses and evidence the Defendant would have provided were already being provided by the Plaintiff.
 - ii. The Court granted the Plaintiff's request to provide the Defendant with a binder containing paper copies of Plaintiff's evidence.
5. At the determination hearing, the parties agreed to address the following:
 - a. The dangerous animal determination and 22-CT-005, both issued to the Defendant on December 7, 2021.
 - i. The citation was issued for a November 26, 2021 violation of 304.10-1, *Possessing a Dangerous Animal*, \$500.00 fine plus \$25.00 court costs.
 - b. Two citations, 22-CT-004 and 22-CT-006 for violations of 304.6-2, *Rabies Vaccination Required*, \$75.00 fine plus \$25.00 court costs, and 304.6-1, *License Required*, \$25.00 fine plus \$25.00 court costs; and
 - c. Lifting the stay on judgment of the two citations the Defendant pled no contest to determine fines and penalties for 22-CT-002, 304.6-5, *Nuisance Animal*, 3rd Offense, \$500.00 fine plus \$25.00 court costs and 22-CT-003, 304.6-4, *Animal Running at Large*, 3rd Offense, \$500.00 fine plus \$25.00 court costs.
 - i. The Defendant pled no contest to each citation and was found guilty, but judgment was stayed pending the outcome of the March 1, 2022 hearing.
6. The Defendant's dog is a silver female Labrador mix breed dog named Yo-Yo.
7. At the hearing, the Plaintiff motioned the Court to dismiss 22-CT-004, 304.6-2, *Rabies Vaccinations Required*, \$75.00 fine plus \$25.00 court costs.
 - a. The Plaintiff received proof from the Oneida Conservation/Land/Tsyunhekwá

Departments that Yo-Yo is vaccinated and was vaccinated over the period of time when the violation on November 26, 2021 was cited; the Defendant did not object and the Court granted the motion to dismiss during the hearing.

8. Steven P. La Pierre called the Oneida Police Department on November 26, 2021 to complain that the Defendant's dog was on his property where it barked and growled at him and his dog.
 - a. Mr. La Pierre lives next door to the Defendant and owns a white and brown Brittany dog. Mr. La Pierre keeps his dog in a pen that is attached to his garage with a door allowing his dog to go back and forth between the pen and garage; the dog is able to run out of the garage when the door is opened.
 - b. The Defendant's dog has come onto Mr. La Pierre's property on multiple occasions and when his dog is outside.
 - c. On November 26, 2021, Mr. La Pierre and his wife were returning home and pulling into their garage when the Defendant's dog came onto their property. During this encounter:
 - i. The Defendant's dog entered Mr. La Pierre's property;
 - ii. While Mr. La Pierre was in his garage and getting out of his vehicle, the Defendant's dog was barking and growling;
 - iii. Mr. La Pierre said he knew it was the Defendant's dog growling because his dog does not growl;
 - iv. The Defendant's dog was behind Mr. La Pierre's truck that was parked near his open garage door;
 - v. The Defendant's dog did not lunge at Mr. La Pierre during this encounter;
 - vi. Mr. La Pierre yelled at the Defendant's dog to go home and remained standing outside to prevent the Defendant's dog from returning;
 - vii. Mr. La Pierre is afraid the Defendant's dog will eventually bite his dog or a family member. He keeps a 3-foot metal rod/bar in his garage to take defensive action, if needed. Mr. La Pierre also installed a doorbell ring video to monitor when the Defendant's dog is on his property. Mr. La Pierre carries a gun and will shoot the dog, if attacked.
 - viii. Mr. La Pierre was able to identify the dog to be the Defendant's dog because the dog has been on his property on multiple occasions and worn a path from the Defendant's home to his home; he has watched the Defendant's dog use the path when leaving his property.
 - d. The Plaintiff presented a doorbell ring video recording of Mr. La Pierre's November 26, 2021 encounter with the Defendant's dog. The Court watched the video which showed images and sounds of:
 - i. Mr. La Pierre's dog running behind his vehicle as he pulled into his garage;
 - ii. The Defendant's dog cannot be seen in the video;
 - iii. Barking and growling while Mr. La Pierre is in his garage; Mr. La Pierre was unable in his testimony to identify what dog in the video was barking and growling because he was testifying by telephone and unable to watch the video;
 - iv. Mr. La Pierre walking out of his garage toward the pine trees on the side of his house and yelling at the Defendant's dog, "Get out of here. Go home."

9. Oneida Police Officer Brandon Davis responded on November 26, 2021 to Mr. La Pierre's call about the Defendant's dog.
 - a. Officer Davis met with Mr. La Pierre shortly after his encounter with the Defendant's dog on November 26, 2021 and took Mr. La Pierre's written statement.
 - b. Officer Davis investigated the complaint by:
 - i. Meeting with Mr. La Pierre, reviewing his written statement and watching the doorbell video recording provided by Mr. La Pierre of the November 26, 2021 encounter between Mr. La Pierre and the Defendant's dog;
 - ii. Examining the Defendant's dog's history of citations issued for violations occurring on May 16, 2021, May 26, 2021, and January 14, 2021.
 - iii. Examining the Police Department's history of making multiple calls to the Defendant's home to respond to complaints about Yo-Yo and the Defendant's history of not responding to previous citations to prevent the violations from being repeated; and
 - iv. Talking with the Defendant and her spouse about the violations on November 26, 2021.
10. The Defendant did not present any defenses as allowed in 3 O.C. 304.10-3(a) to show her dog was acting to defend its owner, protect its young or another animal, defend itself or its owner's property against trespassers.
11. The Defendant's dog is a family dog, treated as a family member, and safely plays with the Defendant's children. The Defendant has never seen her dog act in a dangerous manner.
12. The Defendant obtained a license for Yo-Yo on February 16, 2022. The Defendant did not obtain a license for Yo-Yo in 2021.
13. The Plaintiff requested the Court to order fines and court costs as indicated on each citation.
14. At the hearing, the Court concluded that the Defendant's dog, Yo-Yo, was properly determined to be a dangerous animal. After finding the determination to be substantiated, the Court ordered the Defendant to remove Yo-Yo from the Oneida Reservation within 48 hours of receiving the Court's oral conclusion.
 - a. The 48-hour time period begins on March 1, 2022, at 12:45 p.m., and expires on March 3, 2022, at 12:45 p.m.

ANALYSIS

When an Oneida Police Officer makes a determination that a dog is a dangerous animal and the dog's owner objects to the determination, the Court must conduct a hearing to determine if the officer's determination was substantiated and to hear any defenses presented by the Defendant to show why the animal should not be deemed dangerous. However, to be deemed a dangerous dog, the Plaintiff must first prove that the animal meets the definition of dangerous animal provided in 3 O.C. 304.10-1(a). To prove the animal is a dangerous dog, the Plaintiff must show by clear and convincing evidence that the Defendant's dog approached or chased a person or domestic animal in a menacing fashion or apparent attitude of attack in accordance with O.C. 304.10-1(a).

1. Plaintiff must show by clear and convincing evidence that the Defendant's dog is a dangerous animal as defined by O.C. 304.10-1(a).

First, the Plaintiff argues that the Defendant's dog approached Steven P. La Pierre and his dog in a menacing fashion because the Defendant's dog was on Mr. La Pierre's property standing unprovoked by his truck parked near his open garage door, was unattended, and was barking and

growling. The law does not define the term “approach,” but according to the online dictionary, Meriam-Webster.com, the term’s plain meaning is “near” which means to be “within a short distance” of something. Here, Mr. La Pierre testified that on November 26, 2021, he saw the Defendant’s dog standing next to his truck that was parked outside near his open garage door. He testified he expected the Defendant’s dog to enter his garage if he had not walked out of the garage and toward the Defendant’s dog. Mr. La Pierre testified he recognized the dog to be the Defendant’s dog because he has seen the dog on his property on multiple occasions and watched the Defendant’s dog return to the Defendant’s home using a path it has worn between his home and the Defendant’s home. To corroborate Mr. La Pierre’s direct testimony, Plaintiff presented a doorbell video recording of the encounter provided by Mr. La Pierre. In the video recording, Mr. La Pierre’s dog is the only dog to be seen. Mr. La Pierre testified the Defendant’s dog could not be seen because it was standing behind the parked truck which is out of the video camera’s view. As a result, the video fails to corroborate Mr. La Pierre’s assertion that it was the Defendant’s dog he saw in his yard. However, the video does not disprove Mr. La Pierre’s assertion. The Court acknowledges Mr. La Pierre’s history in dealing with the Defendant’s dog gives him the background necessary to identify the Defendant’s dog when he sees it. Officer Davis’s testimony shows it is highly likely that Mr. La Pierre accurately identified the Defendant’s dog due to Mr. La Pierre’s previous complaints filed with the Police Department regarding the Defendant’s dog being in Mr. La Pierre’s yard. Officer Davis testified the Defendant’s dog has a history of violations for running at large and nuisance behavior occurring on Mr. La Pierre’s property and on the property of other surrounding neighbors. Officer Davis provided the Court with copies of previous citations issued to the Defendant for violations on January 14, 2021; May 16, 2021; and May 26, 2021. Citations issued for violations on May 26, 2021 of running at large and nuisance violations stem from the Defendant’s dog being on Mr. La Pierre’s property. At the hearing, the Defendant provided no evidence showing reasons why Mr. La Pierre’s identification of her dog was mistaken or untruthful. Based on Mr. La Pierre’s testimony that he saw first-hand the Defendant’s dog on November 26, 2021 on his property and standing near his open garage and the testimony by Officer Davis about Yo-Yo’s documented history of being off the Defendant’s property on multiple occasions and in Mr. La Pierre’s yard, the Court finds that the Plaintiff met its clear and convincing burden of proof showing Yo-Yo approached Mr. La Pierre and his dog by entering Mr. La Pierre’s yard and standing near his open garage on November 26, 2021.

Next, the Plaintiff argues the Defendant’s dog acted in a menacing fashion or apparent attitude of attack when it barked and growled at Mr. La Pierre and his dog. The law does not define the terms “menacing fashion” or “apparent attitude of attack.” According to the online dictionary, Meriam-Webster.com, the plain meaning for the term menacing is threatening. The phrase “apparent attitude”, as defined in the dictionary, means a state of readiness to respond in a certain way that is visible. Here, Mr. La Pierre testified that when he was getting out of his vehicle, he heard barking and growling. He testified that the Defendant’s dog was growling because his dog does not growl. When the Court watched and listened to the doorbell ring video, barking and growling was heard but did not show what dog was barking and growling. Mr. La Pierre was unable to identify what dog in the video was barking and growling because he was testifying by telephone and could not see the video. As a result, the doorbell video recording did not corroborate Mr. La Pierre’s direct testimony that he heard the Defendant’s dog barking and growling. However, the video did not disprove Mr. La Pierre’s assertion. The Defendant who was provided a copy of the recording prior to the hearing on February 28, 2022 did not present evidence to show that she watched the video in

order to determine if Mr. La Pierre was mistaken or untruthful when he said he heard the Defendant's dog barking and growling. During the hearing, the Defendant requested the Court to play the recording a second time in the courtroom so she could identify what dog was barking and growling. The Court acknowledges that it did not follow-up on Defendant's request after addressing other questions during the hearing. However, because the Defendant reviewed the recording prior to the hearing and did not present evidence at the hearing to refute Mr. La Pierre's statement, the Court finds its error in failing to follow-up with the Defendant's request during the hearing to be a harmless error. Mr. La Pierre testified that he is afraid that the Defendant's dog will eventually bite his dog or a family member if the Defendant continues to allow her dog to go onto his property, unattended and without his consent. He said he keeps a three-foot metal rod bar in his garage to take defensive action against the Defendant's dog, if needed. Mr. La Pierre also installed a doorbell ring video to monitor when the Defendant's dog is on his property. Mr. La Pierre said he carries a gun and will shoot the dog if he is attacked. Finally, Officer Davis testified that after evaluating the Defendant's dog's history of complaints, violations, and citations during 2021, he saw a pattern of Yo-Yo's behavior becoming more aggressive. Officer Davis testified that the Defendant's history of failing to respond to citations issued to her and take preventative measures makes it likely Yo-Yo will continue to enter Mr. La Pierre's property. Based on testimony by Mr. La Pierre and Officer Davis, it is clear and convincing that Mr. La Pierre heard the Defendant's dog barking and growling at him and his dog. In conclusion, the Court finds that the Plaintiff met its burden to prove by clear and convincing evidence to show that the Defendant's dog did the following as defined in 3 O.C. 304.10-1(a): approached or chased a person or domestic animal in a menacing fashion or apparent attitude of attack. Therefore, the Defendant's dog is presumed to be a dangerous animal as defined in 3 O.C. 304.10-1.

2. Is the Oneida Police Department's Dangerous Animal Determination substantiated?

When an Oneida Police Officer makes a determination that a dog is a dangerous animal and the dog's owner objects to the determination, the Court must conduct a hearing to determine if the Officer's determination was substantiated and to hear any defenses presented by the Defendant to show why the animal should not be deemed dangerous.

First, an officer meets their burden of proof by showing that their determination was supported or based on sufficient evidence and reasonably made. In this case, Officer Davis testified that he responded to Mr. La Pierre's call on November 26, 2021 to complain that the Defendant's dog was on his property. Officer Davis testified that he investigated the complaint and relied on the following evidence: Mr. La Pierre's verbal and written statements made to the officer shortly after the incident ended; Mr. La Pierre's doorbell ring video of the November 26, 2021 incident; a review of the Defendant's dog's history of citations, violations, complaints; a review of the Defendant's lack of responsibility to respond to the citations and failure to implement measures to prevent her dog from leaving her premises. Officer Davis testified that he also considered his own experience with Yo-Yo stemming from his responses to multiple complaints about Yo-Yo and meetings with the Defendant or her spouse. Additionally, Officer Davis testified that he based on his evaluation of the totality of the circumstances and the pattern of continued lack of responsibility by the Defendant to address complaints by her neighbors about Yo-Yo's violations committed when the Defendant allows the dog to run off the Defendant's premises unattended and uncontrolled. The Defendant did not present any defenses as allowed in section 304.10-3(a) to show her dog was acting to defend its owner, protect its young or another animal, defend itself or its owner's property against trespassers.

The Court acknowledges the Defendant's lack of responsibility to safely and securely confine her dog to her premises after she was issued multiple citations in 2021, occurring in January, two times in May, and in November 2021. The Defendant's lack of responsibility creates a potentially dangerous situation that Yo-Yo may eventually cause bodily injury to a person or dog in the neighborhood or a neighbor may cause harm to Yo-Yo. Because Officer Davis based his determination on an evaluation of several different sources of evidence and did not rely solely on the incident occurring on November 26, 2021 and the Defendant presented no defense, the Court concludes that the Defendant's dog, Yo-Yo, was properly determined to be a dangerous animal.

3. The Plaintiff must show by clear and convincing evidence that the Defendant is in possession of a dangerous animal.

The Defendant was issued citation, 22-CT-005, for a violation on November 26, 2021 of section 304.10-1, *Possessing a Dangerous Animal*. At a pre-trial citation hearing on February 17, 2022, the Defendant entered a plea contesting the citation and the Plaintiff notified the Court that the Defendant's dog lived with the Defendant. The Defendant was provided notice on December 7, 2021 that her dog was a dangerous animal when she was issued the citation, 22-CT-005, and the order determining her dog to be a dangerous animal. At the March 1, 2022 hearing, the Plaintiff provided the Court with evidence showing that the Defendant obtained a license for Yo-Yo that was issued on February 16, 2022 to the Defendant's spouse, Brandon Blackowl, who resides at the same address as the Defendant. Furthermore, the Defendant admitted Yo-Yo is her dog. Therefore, the Defendant is found guilty of possessing a dangerous dog as defined in section 304.10-1.

4. The Plaintiff must show by clear and convincing evidence that the Defendant failed to obtain a license for the Defendant's dog.

The Defendant was issued citation, 22-CT-006, for a violation on November 26, 2021 of section 304.6-1. *License Required*. At a pre-trial citation hearing on February 17, 2022, the Defendant entered a plea contesting the citation. At the March 1, 2022 hearing, the Plaintiff presented copies of a February 28, 2022 e-mail correspondence between a representative of the Oneida Conservation/Land/Tsyunhekwa Departments and Plaintiff's attorney. Based on the correspondence, the Defendant obtained a license for Yo-Yo that was issued on February 16, 2022. The Defendant did not have a license for Yo-Yo in 2021. The Defendant testified that she did not know she was required to obtain a license for her dog. The Plaintiff showed by clear and convincing evidence that the Defendant did not obtain a license for Yo-Yo at the time she was issued a citation on November 26, 2021. Thus, the Court finds the Defendant guilty. At the hearing the Plaintiff motioned the Court to assess the fine of \$25.00 plus \$25.00 court costs.

5. The Court should not exercise discretion to determine adjustments to the fines proposed as a result of the citations issued to Defendant.

The Defendant was issued five citations for violations on November 26, 2021 of the Nation's Domestic Animal Law, Chapter 304. Plaintiff asked the court to order fines and courts costs as issued on each citation which total \$1,625.00. While the Domestic Animal law defines a "fine" to mean a monetary punishment to a person violating the law, the Court acknowledges that a fine may also be used as a deterrent to motivate lawful conduct by persons. Section 304.12 provides the Court with discretion to substitute fines or penalties with community service. However, the Plaintiff did not request the Court to consider substitutions or adjustments to the monetary punishment. In this case, the Defendant is required to remove her dog from the Reservation because it was

determined to be a dangerous animal. Removal of a dangerous dog is one of two ways, the other being euthanasia of the dog, considered to be a last resort available to protect the health, safety and welfare of the neighborhood where the dog resides, specifically when the dog's owner fails to take responsibility to control the dog, as here. Because the Defendant continually failed to take responsibility for her dog after being notified on multiple occasions by police and being issued multiple citations in 2021, the Court will grant the Plaintiff's request to order the Defendant to pay the fines and court costs as presented on each of the four citations: 22-CT-002, 003, 005 and 006.

ORDER

1. The determination that Defendant's dog, Yo-Yo, is a dangerous animal is substantiated.
 - a. The Defendant shall remove Yo-Yo from the Reservation within 48 hours after the Court issued its determination. Because the determination was issued at the hearing on March 1, 2022, at 12:45 p.m., the 48-hour timeline expires on **March 3, 2022, at 12:45 p.m.**
 - b. The Defendant shall notify the Oneida Police Department within 24 hours after Yo-Yo is removed from the Reservation and shall provide the Department with the following information:
 - i. Name, address and telephone number of the new owner;
 - ii. Evidence showing the Defendant notified the police department or law enforcement agency having jurisdiction over Yo-Yo's new residence and providing that police/law enforcement agency the name, address and telephone number of Yo-Yo's new owner.
 - c. After expiration of the 48-hour timeline when the Defendant must remove Yo-Yo from the Reservation, the Oneida Police Department shall meet with the Defendant to verify that the dog was removed.
 - d. The order to remove Yo-Yo from the Reservation is stayed if the Defendant files an appeal within 5 business days after the Court issued its determination. Because the determination was issued at the hearing on March 1, 2022, the 5-day timeline to file an appeal expires on **March 8, 2022, at 4:30 p.m.**
 - i. If an appeal is filed before the 48-hour timeline expires, Yo-Yo may remain with the Defendant pending the outcome of the appeal.
 - ii. If an appeal is filed after Yo-Yo was removed from the Reservation and after the 48-hour timeline expired, the Defendant may reclaim Yo-Yo to allow the dog to remain with the Defendant pending the outcome of the appeal.
 - iii. If an appeal is timely filed and the removal order is stayed, the Defendant shall continue to comply with the requirements to securely confine Yo-Yo on the Defendant's premises pending the outcome of the appeal. The requirements are listed in section 304.10-4(b) and (c) and the December 7, 2021 Determination letter issued to the Defendant.
 - iv. The Defendant shall notify the Oneida Police Department that an appeal was filed within 24 hours after timely filing the appeal.
2. Citation, 22-CT-004, issued for a violation of 304.6-2, *Rabies Vaccination Required*, is dismissed.
3. Judgment is entered in favor of Petitioner and against the Defendant in the following amounts:

22-CT-002 – 304.6-5, *Nuisance Animal*, 3rd offense

Fine: \$500.00
Court Costs: \$ 25.00
Amount owed by Defendant \$525.00

22-CT-003 – 304.6-4, *Animal Running at Large*, 3rd offense

Fine: \$500.00
Court Costs: \$ 25.00
Amount owed by Defendant \$525.00

22-CT-005 – 304.10-1, *Possessing a Dangerous Animal*

Fine: \$500.00
Court Costs: \$ 25.00
Amount owed by Defendant \$525.00

22-CT-006 – 304.6-1, *License Required*

Fine: \$ 25.00
Court Costs: \$ 25.00
Amount owed by Defendant \$ 50.00

Total amount of fines and court costs owed by Defendant: \$1,625.00

4. The total amount due is \$1,625.00, payable to the Oneida Judiciary within 180 calendar days from the date this Order is signed. Failure to pay is subject to the Nation’s laws and remedies.

The parties have the right to appeal in accordance with the Nation’s laws.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council an Order was signed on March 4, 2022.

Patricia Ninham Hoefl, Trial Court Judge