

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

**Oneida Nation / Oneida Police Department,
Plaintiffs;**

v.

**Case No: 23-CT-069
23-CT-070**

Date: July 6, 2023

**Vincent Chambers,
Defendant.**

FINAL ORDER AND JUDGMENT

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

Appearing in person: Attorney Kelly McAndrews, representing the Plaintiffs; Vincent Chambers, Defendant.

BACKGROUND

On June 21, 2023, Defendant was issued a dangerous animal determination letter and two citations for violating Oneida Code of Laws (O.C.L.) Domestic Animals for an incident that occurred on June 20, 2023, when Defendant's dog attacked another dog and approached a police officer in a menacing fashion as the officer attempted to guide the dog to its home. On June 23, 2023, Defendant filed with the Trial Court a written objection to the dangerous animal determination that automatically stayed the requirement to remove the dog from the Oneida Reservation pending the outcome of a hearing on the dangerousness determination. At a July 5, 2023 hearing, the Court found the dangerous animal determination to be substantiated and ordered Defendant to remove the dog from the Reservation within 48 hours or on or before 4:00 p.m. on July 7, 2023.

ISSUES

1. Is the dog a dangerous dog according to O.C.L. 304.10-2 (a) and/or (b)?
2. Is the determination that the dog is a dangerous dog substantiated?

3. Should the dog not be deemed dangerous because the dog was acting to defend its owner or another person, protecting its young, defending itself against any person or animal which has tormented, assaulted, or abused it, or defending its' owner's property against trespassers?

FINDINGS OF FACT

The Court finds as follows:

1. The Court has subject matter and personal jurisdiction over this matter.
2. All entitled to notice received notice.
3. On June 20, 2023 at 11:24 p.m., Oneida Police Department (OPD) officers were dispatched to respond to a call from Mr. Floyd Silas to complain that Defendant's dog was in his backyard where it attacked Mr. Silas's German Shepherd dog named Punky.
4. Defendant's dog is a black Pitbull named Beastie.
5. On June 21, 2023, Defendant was issued the following:
 - a. A dangerous animal determination letter requiring Defendant to remove his dog from the Oneida Reservation within three business days after receiving the determination letter; and
 - b. Two citations for violating Oneida Code of Laws (O.C.L.) Domestic Animals:
 - i. Animal Running At Large, O.C.L. 304.6-4 – 1st offense, \$75.00 fine plus \$25.00 court costs; and
 - ii. Possessing a Dangerous Animal, O.C.L. 304.10-1 – 1st offense, \$500.00 fine plus \$25.00 court costs.
6. On June 23, 2023, Defendant filed a written objection with the Trial Court to contest the dangerous animal determination.
7. On July 5, 2023, a Dangerous Animal Determination hearing was held. At the hearing,
 - a. Defendant appeared without legal representation;
 - b. Defendant was provided a copy of the Acknowledgement of Rights form and he signed the form;
 - c. The parties were unable to agree to a stipulation when they met prior to the start of the hearing.
 - d. Oneida Police Officer Jessica Trimberger investigated the complaint immediately after arriving on the scene by:

- i. Directly observing Defendant's dog, Beastie, in Mr. Silas's backyard and run from Mr. Silas's backyard to Defendant's home;
 - ii. Directly interacting with Defendant's dog as she got out of her police vehicle to attempt to guide the dog onto Defendant's property but then returned to her vehicle when the dog lunged and snarled at her causing Officer Trimberger to display her emergency red and blue lights, shine a spotlight inside the home, and honk the vehicle's horn to alert anyone inside Defendant's home.
 - iii. Meeting with Defendant's mother, Ms. Louette Salzman outside Defendant's home after observing Ms. Salzman let the dog into the garage.
 - iv. Meeting with Mr. Silas and inspecting his dog to find wet spots, displaced fur, and tenderness on the dog's chest and rump; and
 - v. Examining the Defendant's dog's history on September 23, 2021 of a police response to a complaint by Mr. Silas that Beastie attacked Punky and provided the Court with a copy of the OPD Call Detail Report showing that Defendant was issued a verbal warning for violating O.C.L. 304.6-4, Running At Large.
- e. To corroborate Officer Trimberger's testimony, Plaintiff presented the following:
- i. Two separate video recordings from Officer Trimberger's body-worn cameras showing her meetings with Ms. Salzman, Mr. Silas, and the Officer's examination of Punky; and
 - ii. An OPD Call Detail Report showing Mr. Silas called to report his dog, Punky, was attacked by Defendant's dog, Beastie. Defendant was issued a verbal warning on September 23, 2021 for Beastie running at large
- f. Defendant did not present any defenses as allowed in O.C.L. 304.10-3(a) to show his dog was acting to defend its owner, protect its young or another animal, defend itself or its owner's property against trespassers.
- g. Defendant's dog, Beastie, is a pet that safely plays with Defendant's family members, some who are children. Defendant never observed his dog growl. Defendant said his dog likes people and never bit a human being.

- h. The Court concluded the dangerous animal determination was substantiated and ordered Defendant to remove Beastie from the Oneida Reservation within 48 hours of receiving the Court's oral conclusion.
- i. The 48-hour time period begins on July 5, 2023 at 4:00 p.m. and expires on July 7, 2023, at 4:00 p.m.
- j. Plaintiff offered, and the Court agreed, to the following:
 - i. Stay the \$500.00 fine if Defendant removes his dog, Beastie, to a new location outside the Oneida Reservation within 48 hours after receiving the Court's oral conclusion; and
 - ii. Dismiss citation, O.C.L. 304.6-4, Animal Running At Large,– 1st offense, \$75.00 fine.

PRINCIPLES OF LAW

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

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.

- (a) A stray dog or cat running at large may be referred to the Oneida Police Department or Oneida Conservation Department.
- (b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat running at large, the officer and/or warden shall, if possible, pick up and impound such animal.
- (c) Whenever any impounded animal bears an identification mark, such as a collar with identification tags or license tag, the owner shall be notified as soon as reasonably possible.

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

domestic animal;

(c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or

(d) has been declared to be a dangerous animal and/or ordered to be destroyed in any other jurisdiction.

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.

(b) Pending the outcome of the hearing, the animal shall be securely confined in a humane manner either on the premises of the owner or caretaker, or with a licensed veterinarian.

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.

ANALYSIS

When an Oneida Police Department Officer decides a dog is a dangerous animal, the officer issues to the dog's owner a letter of determination of dangerousness along with an accompanying citation declaring the animal to be dangerous. Within three business days after receiving the letter and citation, the owner must remove the dog from the Oneida Reservation or file a written objection with the Trial Court to contest the determination of dangerousness.

In this case, Defendant filed a written objection to contest the dangerous animal determination. By filing a written objection, the dog may continue to live with the owner so long as the owner complies with the requirements listed in the determination letter to ensure the dog is securely confined until the hearing is concluded. At the hearing, the Trial Court shall determine whether the dog is a dangerous dog and the determination that the dog is dangerous is substantiated. If the determination is substantiated, Defendant may argue that the dog should not be deemed dangerous because the dog was (1) defending its owner or another person from attack by a person or animal, (2) protecting its young or another animal, (3) defending itself against any person or animal which has tormented, assaulted or abused it, or (4) defending its owner's property against trespassers.

First, the dog is a dangerous dog. In accordance with O.C. 304.10-1(a)(b), Plaintiff must show by clear and convincing evidence that Defendant's dog (1) approached or chased a person or domestic animal in a menacing fashion or apparent attitude of attack, and/or (2) bit, inflicted injury, attacked, or otherwise endangers the safety of a human being or domestic animal. Here, Plaintiff makes two arguments. First, Plaintiff argues Defendant's dog attacked another dog. OPD Officer Jessica Trimberger testified she was one of two officers responding to a call received on June 20, 2023, at 11:24 p.m. from Mr. Floyd Silas complaining that

Defendant's dog, a black Pitbull named Beastie, was in Mr. Silas's backyard where Beastie attacked Mr. Silas's dog, a German Shepherd dog named Punky. Officer Trimberger testified she did not see the attack, but she saw Beastie in Mr. Silas's backyard and then run to Defendant's residence. Officer Trimberger also testified she saw Defendant's mother, Ms. Louette Salzman let Beastie inside Defendant's home through the side garage door. Officer Trimberger testified she physically inspected Punky, finding areas on Punky's chest and rump that were tender to the touch, hair parted and wet, and some redness but no puncture marks. Finally, Officer Trimberger testified Beastie has a history of attacking Punky. Officer Trimberger testified she reviewed Beastie's history that consisted of a complaint by Mr. Silas resulting in a verbal warning issued by a different OPD officer to Defendant on September 23, 2021 when Beastie ran away and onto Mr. Silas's property where Beastie attacked Punky.

At the hearing, Defendant provided no evidence showing Officer Trimberger's testimony as being mistaken or untruthful. Defendant argued Beastie has been in his family since being a puppy. Defendant argued he never observed Beastie growl. Defendant said his dog likes people, never bit a human being, and acts safely around children, including his nephews. However, Defendant said he was not home when Mr. Silas made his complaint on June 20, 2023 and admitted to receiving the verbal warning on September 23, 2021 when Beastie ran off Defendant's property. Based on Officer Trimberger's testimony that she saw first-hand Defendant's dog, Beastie, in Mr. Silas's backyard and running to Defendant's home and then physically inspecting the other dog to find wet fur and other signs of an attack, which was conduct corroborated by documented history of Beastie running at large in 2021 onto Mr. Silas's property to attack Punky, the Court finds that Plaintiff met its clear and convincing burden showing Beastie violated O.C.L. 304.10-1(b) by attacking another dog.

Secondly, Plaintiff argues Defendant's dog violated O.C.L. 304.10-1(a) by approaching Officer Trimberger in a menacing fashion and apparent attitude of attack when Officer Trimberger attempted to guide Beastie back to its property. On June 20, 2023, Officer Trimberger testified Defendant's dog approached her in a menacing fashion as she attempted to walk from her vehicle to Defendant's home to notify the resident the dog was on their property. Officer Trimberger testified "the animal charged and lunged at me, showing physical signs that it was being aggressive; it's tail was down, it barked, lunged towards me. So I then retreated to my OPD squad car and pulled forward, shined my light into, my spotlight into the residence, turned

on my red and blue lights, and utilized the horn to gain the attention of the resident as well as to keep the animal from approaching my vehicle again.” Officer Trimberger testified she was fearful of the dog. Defendant argued his dog did not act in a menacing fashion because it did not growl but becomes excited when told to “go home, go home.” Based on Officer Trimberger’s testimony that was not unproven by Defendant, the Court finds Plaintiff met its clear and convincing burden showing Beastie violated O.C.L. 304.10-1(a) by approaching a human being in a menacing fashion or apparent attitude of attack. Therefore, Defendant’s dog, Beastie, is a dangerous animal because it attacked another dog and approached a human being in a menacing fashion or apparent attitude of attack.

Dangerous Animal Determination is Substantiated. A determination is substantiated when an officer shows their determination was based on an investigation supported or based on sufficient evidence and reasonably made. Here, Officer Trimberger testified she was one of two officers who responded to Mr. Silas’s call on June 20, 2023 at 11:24 p.m. that Defendant’s dog, Beastie, was in his backyard and attacked his dog, Punky. Officer Trimberger testified she investigated the complaint by relying on her direct observations while on the scene. While on the scene, she observed both dogs and met with Mr. Silas and Defendant’s mother, Ms. Salzman because Defendant was not at home when the attack took place. Officer Trimberger testified she also considered past history of a police call about Beastie on September 23, 2023 when Mr. Silas reported Beastie was on his property and attacked Punky. This resulted in the issuance of a verbal warning to Defendant for violating O.C.L. 304.6-4, Running At Large. Thus, the Court concludes the dangerous animal determination was substantiated because Officer Trimberger was on the scene shortly after the attack, directly observed Defendant’s dog running to Defendant’s house from Mr. Silas’s backyard, directly interviewed Mr. Silas and Defendant’s mother shortly after the attack, and evaluated documented history of a complaint on September 23, 2021 that Beastie attacked Punky.

Finally, Defendant presented no available defense his dog should not be deemed a dangerous dog. Here, Defendant did not present any defenses as allowed in section 304.10-3(a) to show his dog was acting to defend its owner, protect its young or another animal, defend itself or its owner’s property against trespassers. In this case, the Court acknowledges the following: (1) the attack took place when Defendant was not at home so the dog was not under control of Defendant; (2) Beastie was not under control of Defendant’s mother who was at home when the

attack took place and it appears Ms. Salzman was unaware or unconcerned Beastie was not safely secured in her home because Officer Trimberger had to turn on her red and blue emergency lights, shine a spotlight in the residence, and honk the vehicle's horn to get the attention of Ms. Salzman that Beastie was running at large; (3) Beastie was off Defendant's property and in Mr. Silas's backyard where it attacked Punky; (4) this was the second time Mr. Silas called police to report his dog was attacked by Beastie; and (5) Defendant presented no evidence to show his dog did not attack Punky and did not approach Officer Trimberger in a menacing fashion.

In conclusion, the Court finds Defendant's dog to be a dangerous dog and the determination of dangerousness to be substantiated. Therefore, Defendant is required to remove Beastie to be placed with a new owner outside the Oneida Reservation within 48 hours after conclusion of the determination hearing on July 5, 2023.

ORDER

1. The Court concludes the determination that Beastie is a dangerous animal is substantiated.
2. Defendant is required to remove the dog, Beastie, from the Oneida Reservation **on or before 4:00 p.m. July 7, 2023** or within 48 hours after conclusion of the hearing on July 5, 2023.
3. **On or before July 7, 2023**, Defendant shall notify the Trial Court and Oneida Police Department (OPD) that the dog, Beastie, has been placed with a new owner outside the Oneida Reservation boundaries.
 - a. Defendant shall provide the name, address and telephone number of the new owner of the dog.
 - b. Defendant shall provide proof to the OPD showing that he notified the police department or other law enforcement agency of the dog's new residence, including the name, address and telephone number of the new owner.
 - c. The OPD shall forward all such notifications to the Environmental, Health, Safety, and Land Division within a reasonable amount of time.
4. The fine amount of \$500.00 is stayed, pending completion of removing the dog, Beastie, to a new location outside the Oneida Reservation boundaries **on or before July 7, 2023**.

5. If Defendant fails to provide proof of the dog's new location and new owner information as ordered, this Final Order and Judgment shall be vacated and Defendant will be ordered to pay the \$500.00 fine, and the OPD shall seize Defendant's dog, Beastie.
6. The citation, O.C.L. 304.6-4, Animal Running At Large – 1st offense, \$75.00 fine, is dismissed.
7. Defendant is required to pay \$25.00 court costs within 30 days after this order is signed or **on or before August 7, 2023.**
 - a. The total amount due is payable to the Oneida Judiciary and may be paid at the Oneida Judiciary or by calling the Trial Court Clerk at (920) 469-7200. Failure to pay is subject to the Nation's laws and remedies.

The parties have the right to appeal within 5 business days after this order is signed 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, this Order was signed on July 6, 2023.


Patricia Ninham Hoeft, Trial Court Judge