

ONEIDA JUDICIARY

Tsi nu téshakotiya?tolétha?

TRIAL COURT

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

v.

CASE NO: 23-CT-088

DATE: September 19, 2023

**Marcella John,
Defendant.**

STIPULATION AND ORDER

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

Appearing telephonically: Attorney Kelly McAndrews, representing Plaintiffs; *Appearing In-Person:* Marcella John, Defendant.

BACKGROUND

On September 7, 2023, Defendant was issued a dangerous animal determination letter and a citation for allegedly violating Oneida Code of Laws (O.C.L.) Domestic Animals, Possessing a Dangerous Animal, O.C.L. 304.10-1 – 1st offense, \$500.00 fine plus \$25.00 court costs. The determination and citation stem from an incident on September 7, 2023, when Defendant's dog was allegedly running loose in a neighbor's backyard where the dog attacked and killed a chicken owned by the neighbor. On September 7, 2023, Defendant filed with the Trial Court a written objection to contest the dangerous animal determination. This filing provides an automatic stay on the requirement to remove the dog from the Oneida Reservation within three days after receiving the dangerous animal determination. The stay remains in place pending the outcome of a hearing on the dangerousness determination. At the September 18, 2023, dangerous animal determination hearing, the parties proposed a stipulation and agreement for the Court to consider.

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 September 7, 2023, at 10:10 a.m., Oneida Police Department (OPD) officers were dispatched to respond to a complaint that two dogs owned by Defendant were running loose and one of the dogs, a black Rottweiler, was in Defendant's neighbor's backyard where it killed a chicken.
4. Defendant's dog is a 1-year-old black Rottweiler named, Chance.
 - a. Chance is not licensed as required under O.C.L. 304.6-1.
 - b. Defendant attaches Chance to a leash tied to a tree when Defendant places Chance outdoors.
 - c. Defendant's yard is not fenced.
5. On September 7, 2023, Defendant was issued the following:
 - a. A dangerous animal determination letter requiring Defendant to remove her dog, Chance, from the Oneida Reservation within three business days after receiving the determination letter; and
 - b. A citation for violating Oneida Code of Laws (O.C.L.) Domestic Animals:
 - i. Possessing a Dangerous Animal, O.C.L. 304.10-1 – 1st offense, \$500.00 fine plus \$25.00 court costs.
6. On September 7, 2023, Defendant filed a written objection with the Trial Court to contest the dangerous animal determination.
7. On September 18, 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 she signed the form.
 - c. The parties presented a written proposed stipulation and agreement for the Court's consideration that required the parties to do the following:
 - i. Plaintiffs' attorney dismissed the dangerous animal determination.

- ii. Plaintiffs' attorney amended the citation for Possession of a Dangerous Animal to a citation for O.C.L. 304.6-4, Running at Large – 1st offense, \$75.00 fine plus \$25.00 court costs.
 - iii. Defendant entered an Admit plea to the Running at Large citation.
 - iv. Within 60 days after this order is signed, Defendant agreed to pay the following:
 - 1. \$20.00 to her neighbor for the loss of the chicken; and
 - 2. \$75.00 fine plus \$25.00 court costs for a total of \$100.00 to the Oneida Judiciary.
- d. Defendant admitted she voluntarily agreed to the stipulation and was not under duress or coerced.
8. Defendant agreed to obtain an Oneida Nation license for Chance and file proof of licensing with the Court within 60 days after this order is signed, or on or before November 18, 2023.

PRINCIPLES OF LAW

Title 8. Domestic Animals – Chapter 304

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.

304.10-1. *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.

304.10-2. *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.

(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.

(c) If an owner or caretaker fails to follow the requirements for harboring a dangerous

animal pending a hearing, the animal may be impounded by the Oneida Police Officer or Oneida Conservation Warden issuing the dangerous animal determination.

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.

(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.

(c) The Trial Court may mandate attendance at an additional Trial Court hearing if restitution is appropriate.

Oneida Code of Laws Title 8. Judiciary - Chapter 807 Citations

807.5. Stipulations

807.5-1. Authority for Stipulations and Case Settlement. An authorized attorney of the Nation is granted the discretion to seek the settlement of a citation.

- (a) When seeking to enter into a stipulation the authorized attorney shall explain to the defendant all provisions included in the stipulation as required by section 807.5-2(a)-(d).

807.5-2. Form of Stipulation. Any stipulation between an authorized attorney and the defendant shall be in writing and signed. The stipulation shall include the following:

- (a) A summary of the citation violation information included on the citation;
- (b) The details of the stipulation including any fine, penalty, condition, or payment plan the defendant shall comply with;
- (c) A statement that by entering into the stipulation the defendant is admitting that he or she committed the act for which the citation was issued or is entering a plea of no contest and thereby waives his or her right to contest the citation with the Court; and
- (d) A statement that all parties signed the agreement free of duress and coercion.

807.5-3. Submission of the Stipulation to the Court. If the authorized attorney and defendant reach an agreement through the stipulation, the stipulation shall be submitted to the Court for the Court's approval.

- (a) If the Court enters an order approving the stipulation as written, a copy of the order shall be provided to the authorized attorney and defendant.

ANALYSIS

Under the Oneida Citations law, the Plaintiffs' attorney, as representing both the Nation and the Nation's police department, is authorized to work with the Defendant to seek a settlement of the case outside of court. The settlement is represented by a stipulation, otherwise referred to as an agreement, between the Plaintiffs' attorney and Defendant that they put in writing and present to the court for the court's approval.

In this case, the parties presented the Court with a written stipulation and agreement that was reasonable. Plaintiffs' attorney agreed to dismiss the dangerous animal determination and amend the citation for possession of a dangerous animal to a citation for animal running at large. Defendant agreed to enter a plea of admit to the amended citation, pay the fine and court costs, and pay restitution to her neighbor for the chicken her dog killed. Plaintiffs' attorney argued the stipulation was reasonable for the following reasons: she believed it was likely a chicken does not meet the law's definition to be a domestic animal, the incident did not include multiple

chickens, and it was this dog's first offense. Finally, because the Nation's law requires owners to obtain a license for any dog and the parties' stipulation and agreement did not address Defendant's failure to obtain a license for Chance, the Court ordered Defendant to file proof of licensure. In conclusion, the Court finds this stipulation and agreement reasonable and approves it.

ORDER

1. The Court accepts Defendant's Admit plea to the amended citation for O.C.L. 304.6-4, Animal Running at Large -- 1st offense and finds Defendant **GUILTY**.
2. The parties' written Stipulation and Agreement, as incorporated in this order, is **APPROVED**.
3. Defendant shall provide the Court with proof that Defendant's dog is licensed with the Oneida Nation **on or before November 18, 2023**.
4. Defendant shall pay \$20.00 in restitution directly to Mr. Brian Smith **on or before November 18, 2023**.
5. Defendant shall submit proof of payment to Mr. Smith to the Court on or before November 18, 2023.
 - a. Proof may be in the form of a typed or handwritten receipt; and
 - b. the receipt **MUST** be signed and dated by Mr. Smith.
6. Defendant shall pay the \$75.00 fine plus \$25.00 court costs to the Oneida Judiciary **on or before November 18, 2023**:

23-CT-049; *Animal Running at Large*, 1st Offense; 304.6-4.

Fine:	\$75.00
Court Costs:	<u>\$25.00</u>
Amount owed by Defendant:	\$100.00

IT IS SO ORDERED.

By the authority vested in the Oneida Trial Court pursuant to Resolution 01-07-13-B of the General Tribal Council this order is signed on September 19, 2023.


Patricia Ninham Hoeft, Trial Court Judge /