Citation: *City of Whitehorse.* v. *Carey*, 2007 YKTC 6 Date: 20070126
Docket: T.C. 06-08544
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Overend

BETWEEN:

THE CITY OF WHITEHORSE

Plaintiff

AND:

LORI CAREY

Defendant

Appearances:
Karen Wenckebach Counsel for City of Whitehorse
Lori Carey Appearing on her own behalf

REASONS FOR JUDGMENT

[1] OVEREND T.C.J. (Oral): This is a hearing, a judicial review, pursuant to s. 90 of the City of Whitehorse Animal Control Bylaw, of a decision made by the Manager of Bylaw Services for the City. The Bylaw, s. 90, provides:

> Where notice is provided to a dog owner that a dog has been declared a dangerous dog, the notice shall include an appeal form to be returned to the Bylaw Services office within ten days. Upon receipt of an executed appeal form from the dog owner, the Manager of Bylaw Services shall, within fifteen days, set the matter down in Territorial Court for a determination as to whether the dog is a dangerous dog.

[2] The appellant's dog was deemed to be dangerous pursuant to the bylaw which defines a dangerous dog, in part, "as one which has bitten a human being without provocation on public or private property."

[3] The matter has been set down in Territorial Court for a determination as to whether the dog is dangerous. Earlier this week I decided that the appeal would be by judicial review rather than trial *de novo*. For the review, the City has filed an administrative record. From that record, and that record only, I am required to answer the matter before the court.

[4] In order to answer the question, firstly, I must decide what the standard of review is. To answer that question, I must decide the level of deference to be given to the decision of the Manager of Bylaw Services. In doing that, I take the following four factors into consideration:

(1) Whether there is a right of appeal in this case. In this case there is a right of appeal by s. 90.

(2) The expertise of the tribunal relative to the reviewing court. I will get back to that in a moment.

(3) The purpose of the legislation and the nature of the question to be resolved. That is, whether it is a mixture of fact and law, or of straight law. On the question of the expertise of the tribunal relative to the reviewing court, clearly, there is not a high level of expertise required here. The expertise appears to be based more on experience than on

science or education, but I am satisfied that the expertise of the Manager of Bylaw Services is certainly greater than that of the reviewing court. The purpose of the legislation is to protect the public from domestic animals who might be inclined to do what is in issue here.

(4) Finally, the nature of the question and whether it is a question of mixed fact or law, or a fact of law alone. It is a question of mixed fact and law here, but is largely a question of fact.

[5] With those factors I must decide what deference is to be given to the offence being appealed from. Less deference is required because there is a right of appeal, but more deference is required for the other three reasons I have set out. Namely, his expertise, the purpose of the legislation and the fact that this is largely a fact intensive decision.

[6] Based on those factors, I must then decide whether or not the decision was unreasonable or patently unreasonable, because the law clearly indicates that in this case, on these facts, significant deference should be given to the Manager of Bylaw Services. I am satisfied that the standard is patent unreasonableness.

[7] Because I have decided that patent unreasonableness is the standard, I must be able to say on a pragmatic and functional approach that the decision of the Bylaw Manager was clearly and obviously not one that was available to him. I must have no option but to conclude that his decision was defective on its face.

[8] Here, briefly, the important facts upon which the decision was made are set out at the administrative record in tab 2, pages 1, 2, 3, 4, 5 and 6, and particularly, pages 1, 2 and 6, as the complainant, Ms. Govindasamy, and Ms. Carey's son, at page 6, were the only persons who actually witnessed what took place.

[9] Reviewing each of those statements, I am unable to say that the decision of the bylaw officer was patently unreasonable. I cannot say that because on a cursory review of the statement of Ms. Govindasamy, she clearly states that she was attacked by the dog and sustained a puncture wound to her leg.

[10] Jordon also describes the incident, and while his evidence is not as clear as to who actually started it, he confirms that the dogs were fighting and the complainant was right there at the time.

[11] So my decision must necessarily be that the decision of the bylaw officer was not patently unreasonable in coming to his conclusion. I am not required today to say whether or not that was the decision I would have come to. I might well have come to a different decision, but that is not my function today. My only function is to say whether the Bylaw Services Manager was patently unreasonable. I cannot do that on the basis of the material before the court; therefore, I am satisfied that the decision is right and the dog is a dangerous dog.

[12] Is there anything else?

[13] MS. WENCHEBACH: No, thank you.

[14] THE COURT: All right. That is all for today then.

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OVEREND T.C.J.