

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Gligoric v Council of the City of Gold Coast* [2020]
QCAT 320

PARTIES: **TRACEY V GLIGORIC**
(applicant)

v

COUNCIL OF THE CITY OF GOLD COAST
(respondent)

APPLICATION NO/S: GAR 115-20

MATTER TYPE: General administrative review matters

DELIVERED ON: 27 August 2020

HEARING DATE: 26 August 2020

HEARD AT: Brisbane

DECISION OF: Member Fitzpatrick

ORDERS:

- 1. The decision of the Council of the City of Gold Coast made 4 March 2020 is set aside.**
- 2. The Tribunal substitutes its own decision that the grounds for a destruction order are not met.**
- 3. The Council of the City of Gold Coast, by its proper officer must conduct an inspection of the enclosure at 127 Dugandan Drive, Nerang within 7 days of the date of this Order and before release of the dog Cuda to Ms Gligoric.**
- 4. The dog Cuda is to be released to Ms Gligoric within 48 hours of the enclosure being approved as meeting the requirements of the *Animal Management (Cats and Dogs) Regulation 2009 (Qld)*.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – where dog declared menacing dog – history of dog roaming – where dog seized – whether grounds for destruction order in respect of dog should be exercised

Animal Management (Cats and Dogs) Act 2008 (Qld), s3, s89, s127

Queensland Civil and Administrative Tribunal Act 2009

(Qld), s19, s20, s21, s24

Thomas v Ipswich City Council [2015] QCATA 97

**APPEARANCES &
REPRESENTATION:**

Applicant: Self-represented

Respondent: M Travers, Animal Management Team Leader, Council
of the City of Gold Coast

REASONS FOR DECISION

- [1] The applicant Tracey Gligoric is the registered owner of a Staffordshire Bull Terrier known as Cuda, registration number 888340. I note that in many documents before the Tribunal the dog's name is spelled in different ways. I do not think there is any doubt that it is Cuda which is being referred to.
- [2] Cuda was declared a regulated menacing dog by Declaration made 7 January 2018. As a result, Cuda is required to be kept in accordance with conditions for keeping such dogs. The dog must:
- (a) be microchipped;
 - (b) wear an identification tag;
 - (c) be kept in an enclosure with a sign displayed;
 - (d) be kept under effective control;
 - (e) be de-sexed and
 - (f) be muzzled in public.
- [3] The relevant history of Cuda is that:
- (a) 4 November 2018 Cuda was involved in an attack on a human and dog. As a result, the menacing dog declaration was made. I note that Ms Gligoric disputes that Cuda bit the man in question, however no review of the declaration was ever sought, and it remains in force;
 - (b) 10 January 2019 Cuda escaped its enclosure and was involved in an attack on a human;
 - (c) 6 March 2019 Council issued a destruction order to Cuda's owner Ms Gligoric for failure to comply with permit conditions;
 - (d) 10 April 2019 an internal review of the destruction order resulted in the destruction order being withdrawn because Ms Gligoric relocated the approved enclosure to a more suitable location within her property; booked Cuda for de-sexing; was prepared to use a muzzle on Cuda when he is in a public place; and constructed a second pedestrian gate at the front of the property which creates a second barrier to prevent Cuda escaping through the front door;
 - (e) 12 April 2019 Cuda was released to Ms Gligoric;

- (f) 28 June 2019 an attempt was made to seize Cuda because of continued breaches of the conditions of keeping a Regulated dog involving the dog roaming at large on 28 June 2019;
 - (g) 4 July 2019 Council issued a compliance notice for regulated dog offences;
 - (h) 10 January 2020 annual regulated dog inspection of enclosure. Enclosure non-compliant;
 - (i) 12 January 2020 Cuda sighted wandering at large.
- [4] A warrant to enter and seize Cuda was issued on 1 February 2020. It was suspected that at 4.30 am on 30 January 2020 Ms Gligoric failed to take reasonable steps to ensure her dog did not attack another animal by not having her dog under effective control and allowing her dog to attack another animal.
- [5] Cuda was impounded on 1 February 2020.
- [6] It was later discovered that Cuda was not the dog involved in the incident on 30 January 2020. However, on 6 February 2020 a destruction order was issued under s127 of the *Animal Management (Cats and Dogs) Act 2009* (Qld) (AM Act).
- [7] The reasons for the destruction order are:
- failure by a relevant person for a declared menacing dog to comply with permit conditions.
 - Council has sufficient evidence by way of statements, photographs and video to confirm your dog was outside of its approved enclosure unsupervised.
- [8] Ms Gligoric sought a review of the destruction order dated 6 February 2020. By decision dated 4 March 2020 it was recommended that the original decision to order the destruction of the dog Cuda be upheld.
- [9] The reasons for upholding the destruction order are:
- (a) the dog Cuda was not being kept in compliance with the conditions of a Regulated (Menacing) Dog;
 - (b) The dog was sighted not being kept in an approved enclosure, resulting in the seizure of the dog.
 - (c) The approved enclosure remains in place, however Cuda spends large periods of time inside he home rather than inside the approved enclosure.
 - (d) Cuda has not been muzzled in public at any time as previously agreed.
 - (e) The Council has a duty of care to the community and the conditions imposed in relation to regulated dogs are to ensure that a similar incident will not recur.
 - (f) Council must take action to ensure a dog is unable to pose any further risk.
 - (g) It is unlikely the offer to relocate the dog will safely mitigate risk to public safety.
 - (h) Cuda is a powerful dog which Ms Gligoric says she has difficulty controlling when in a public place. Cuda has been able to escape Ms Gligoric's control on multiple occasions.

- (i) The decision made by the investigating officer was consistent with provisions of the AM Act.

[10] Ms Gligoric has now applied to the Tribunal for a review of the 4 March 2020 decision. She successfully obtained a stay of the destruction order. Cuda remains impounded at Ms Gligoric's cost.

[11] The Tribunal when reviewing a decision stands in the shoes of and has all of the powers of the decision maker. The Tribunal must hear and decide a review by way of a fresh hearing on the merits and the purpose of the review is to make the correct and preferable decision. The Tribunal may confirm or amend the decision, set aside the decision and substitute its own decision; or set aside the decision and return the matter for reconsideration to the decision-maker, with directions the tribunal considers appropriate.¹

Evidence

[12] At the hearing of this matter Ms Gligoric appeared. She did not call any witnesses. She relied on all the material filed in the Tribunal which I have marked as exhibits and to which I have referred.

[13] The respondent relied upon the material filed by it in the Tribunal, marked as an exhibit. I have referred to that material.

[14] Ms Gligoric submits that she understands the seriousness of the issues involved in keeping Cuda. She says that there is a compliant enclosure at her home at which Cuda can be contained. The respondent has not inspected the current enclosure.

[15] Ms Gligoric submits that Cuda was not involved in the incident on 30 January 2020 and that there was no proper basis for him to be seized. She makes the point that no attempt was made to seize Cuda after he was seen out of his enclosure on 12 January 2020, yet that is currently the basis on which it is proposed to destroy him.

[16] The representative for the Council acknowledged that there was no serious incident preceding the destruction order, however the order was based on ongoing non-compliance with permit conditions. He confirmed that Ms Gligoric's enclosure is not in issue. He said that it was the human factor in terms of Cuda running free of his lead or the enclosure.

[17] The Counsel's material reveals that neighbours of Ms Gligoric are worried by Cuda and are quick to report the dog if it is roaming outside its enclosure.

[18] I note the letter from Ms Gligoric's doctor that Cuda is an important support and comfort to her.

Legal framework and findings

[19] I have referred to the version of the AM Act in force at the date of the destruction order.

[20] By s89 (2) of the AM Act a dangerous dog declaration may be made for a dog only if the dog:

- (a) Has seriously attacked or acted in a way that caused fear to, a person or another animal; or

¹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act), ss 19, 20, 21, 24.

- (b) May, in the opinion of an authorised person having regard to the way the dog has behaved towards a person or another animal, seriously attack, or act in a way that causes fear to, the person or animal.
- [21] By s89(3) of the AM Act a menacing dog declaration may be made for a dog only if a ground mentioned in subsection (2) exists for the dog, except that the attack was not serious.
- [22] By s127 of the AM Act an authorised person may destroy a regulated dog such as Cuda, if relevantly, the person reasonably believes the dog is dangerous and the person cannot control it.
- [23] The Destruction Order does not give as a reason that Cuda was considered dangerous. Given the terms of s89 (2) the word dangerous must encompass factual circumstances which would justify a dangerous dog declaration.
- [24] Those circumstances are not present on the facts before me.
- [25] Ms Gligoric denies that she has said that she is unable to control Cuda in a public place.
- [26] S 3 of the AM Act sets out the purposes of the Act, including that it provides for the effective management of regulated dogs. Destruction of a dog is a last resort where the mechanisms in the Act for management fail or are ineffective. As stated in *Thomas v Ipswich City Council*:
- The essential question is whether the dog constitutes, or is likely to constitute, a threat to the safety of other animals or to people, by attacking them or causing fear, to the extent that the threat may only be satisfactorily dealt with by the destruction of the dog.²
- [27] There is no evidence that Cuda poses a threat to people or animals if he is kept in accordance with the relevant conditions.
- [28] I accept the evidence of Ms Gligoric that she has established an appropriate enclosure in the back yard of her home, that she muzzles the dog when in public and that she has a crate on the back of her utility in order to transport the dog.
- [29] I do not consider circumstances exist for the issue of a destruction order for Cuda. At best breaches of the relevant permit conditions are offences for which Ms Gligoric may be issued a Compliance Notice.
- [30] The respondent has indicated that if Cuba is to be released to Ms Gligoric an inspection of the enclosure at her home should be undertaken. I will order that occur.

Orders

- [31] The appropriate orders are:
- (a) The decision of the Council of the City of Gold Coast made 4 March 2020 is set aside.
- (b) The Tribunal substitutes its own decision that the grounds for a destruction order are not met.

² [2015] QCATA 97 at [18].

- (c) The Council of the City of Gold Coast, by its proper officer must conduct an inspection of the enclosure at 127 Dugandan Drive, Nerang within 7 days of the date of this Order and before release of the dog Cuda to Ms Gligoric.
- (d) The dog Cuda is to be released to Ms Gligoric within 48 hours of the enclosure being approved as meeting the requirements of the *Animal Management (Cats and Dogs) Regulation 2009* (Qld).