

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIROA**

**CIV-2020-019-001003
[2021] NZDC 1451**

BETWEEN

ROPATA MARSHALL
Appellant

AND

HAMILTON CITY COUNCIL
Respondent

Hearing: 27 January 2021

Appearances: J Carter for the Plaintiff
S Eldridge for the Defendant

Judgment: 27 January 2021

ORAL JUDGMENT OF JUDGE R L B SPEAR

[1] This is an appeal against the disqualification of the appellant by the Hamilton City Council from being an owner of a dog. That disqualification was made under s 25(1) of the Dog Control Act 1996.

[2] The period of disqualification initially imposed was five years, being the maximum period available. At a review conducted by the Hearings Committee of the Hamilton City Council the period of disqualification was reduced to three years.

[3] The initial decision to disqualify for a period of five years was notified to apply from 17 February 2020. The appellant objected to that disqualification and the hearing by the Dog Control Hearings Panel determined on 1 September 2020 that the disqualification be upheld but for the reduced period of three years.

[4] The effect of disqualification is essentially that the appellant is not to own a dog and within 14 days of the decision to dispose of every dog owned by him.

[5] That objection to disqualification that was heard by the hearing panel was dealt with under s 26 of the Dog Control Act 1996. This appeal is brought under s 27 of the Dog Control Act. The ability of this Court to determine this matter requires it to have regard to the matters specified under s 26(3) and any submissions by the territorial authority in support of its decision. The District Court may uphold the determination, bring forward the date of termination or immediately terminate the disqualification.¹

[6] The case advanced for the appellant is that the three infringement offences committed by the appellant all concerned the dog “Batman” at a time when it was with another dog “Blue”. Batman is owned by the appellant. Blue appears to be a sibling of Batman and it was with the defendant at that time of the offences. By law, the appellant is deemed to have been the owner of Blue at that relevant time. I am informed by Mr Carter that Batman is a black and white male pit bull cross-breed dog.

[7] The disqualification came about because the appellant committed three or more infringement offences within a 21 month period. That required the territorial authority, specifically the Hamilton City Council, to disqualify the appellant from being the owner of a dog under s 25(1)(a). In each of the three cases where the appellant committed an infringement offence, he was fined an infringement fee - all as set out in the annexures to Mr Carter’s comprehensive submissions.

[8] Mr Carter contends that it is unnecessary to disqualify the appellant given particularly the circumstances of the infringement offences and the measures that the appellant has taken to ensure that the offending would not be repeated. Annexed to Mr Carter’s submissions are histories of the Hamilton City Council’s Dog Control officers in relation to both the dog Batman and the dog Blue.

[9] Of particular significance, the infringement offences relating to infringement notices issued on 29 January 2020, 10 February 2020 and 7 March 2020. Dealing with those in turn:

¹ Section 26(2) Dog Control Act 1996.

- (a) 29 January 2020, an infringement noticed issued in respect of the dog Blue for failing to keep that dog under control and confined. Blue was out roaming and when the Dog Control officers approached the dog it rushed the officers.
- (b) 10 February 2020, two infringement notices were issued in respect of the dogs Blue and Batman. It is said that a man was bailed up by the two dogs on Collins Road, another man came to his assistance but the dogs then turned on him although he was able to chase them away.
- (c) 7 March 2020, another offence relating to Batman in this case roaming on Collins Road.

[10] Those are the only occasions when infringement notices were issued but the attendances of Dog Control officers on the appellant are extensive in respect of Batman and Blue over the period 30 October 2019 to 20 March 2020.

[11] The dog Blue has been destroyed. Mr Carter contends that Batman was effectively led astray by Blue as they were together at this time but Blue can no longer be an influence on Batman. Furthermore, Batman has proven himself since March 2020 to be a dog kept under control.

[12] There was some suggestion by Mr Carter that the defendant could, instead of being disqualified, be classified as a probationary owner which would require him to attend training courses and other programmes designed to ensure that he was a knowledgeable and careful owner of dogs. However, I do not understand that to be a permissible outcome to an appeal of this nature notwithstanding that might otherwise have found favour. That does not appear to be an option under s 27(2) of the Act, although it would have been within the ability of the council to have followed that course under s 21(2) of the Act and that opportunity still exists.

[13] So, the issue for me, having regard to the various factors set out in s 26(3), is whether I consider that the decision to disqualify the appellant for a period of three years should be upheld or not. I note that the circumstances and nature of the

offences, which form the basis of the decision to disqualify the appellant, do appear to involve two dogs and it might well have been so that Blue was, as it were, the leader of the pack. Furthermore, since those two dogs were separated it does not appear that Batman has come to the attention of the council since March of 2020, even though I understand that Batman has been in the appellant's care and possession since that time.

[14] Mr Eldridge is quite correct, however, that it is not the behaviour of the dog that needs to be considered here but the conduct of the appellant as a dog owner and that must be so given that the disqualification is of course directed towards the appellant's ability to own a dog. I am informed that at the time these infringement offences were committed the appellant's property was not properly fenced to the point where it could contain the dogs on the property but that deficiency has now been remedied. Photos have been produced confirming Mr Carter's assertion that the property is now fully fenced and any dogs on that property cannot escape except through the gate.

[15] I consider that steps taken by the appellant in this matter have been such that the requirement to disqualify can be ameliorated to recognise the steps that he has taken to ensure that he is compliant with the requirement of the relevant legislation and good animal care practices, in particular, to ensure that dogs on his property are kept under control and are not allowed to roam.

[16] I propose to allow the appeal and terminate the disqualification. However, the council may well consider that given Mr Carter's indication that the appellant would not oppose being classified as a probationary owner so that the appellant can undertake further training to ensure that he is a responsible and compliant dog owner.

[17] For these reasons the appeal is allowed, the disqualification is terminated. There is no issue as to costs.

Judge RLB Spear
District Court Judge

Date of authentication: 04/02/2021