

**FLAGLER COUNTY BOARD
OF COUNTY COMMISSIONERS**

**In Re: Two-Year Old Labrador Dog Named
Bacchus; Owners, Jay and Dawn Sweatt**

CASE NO: C03260115

RECOMMENDATION OF THE HEARING OFFICER

INTRODUCTION

On July 5, 2015, the Westfall's 8-year-old son, RW, was bitten by the dog Bacchus. On July 20, 2015, Katie DiPippo, Supervisor of Flagler Animal Services issued notice of sufficient cause to declare Bacchus a dangerous dog. On July 27, Dawn and Jay Sweatt disputed the determination and requested a hearing. The County and the owners of Bacchus appeared before Hearing Officer Charles J. Cino on August 11. The County presented testimony of Rickey Westfall Sr., Geri Westfall, and Katie DiPippo. Bacchus's owners presented testimony of Jay Sweatt, Dawn Sweatt, Sage Sweatt, Deborah Birmingham and Keith Neal. The Hearing Officer kept the case open and continued until August 19, 2015, in order to hear from RW (age 8). On August 19, the Sweatts recalled Ms. Birmingham, Mrs. Sweat and Ms. DiPippo. County called RW and the Sweatts called RS (age 8) to rebut.

FINDING OF FACTS

The Hearing Officer finds that on the morning of July 5, 2015, RW rode his bicycle from his father's house to the Sweatt family residence. Although the custom was to telephone first for permission to come over, no call was made that day. On arrival RW repeatedly rang the doorbell and knocked. Jay Sweatt answered the door and told RW to go home and that Jay's son, RS was asleep. Jay said they would call when it was okay for RW to return.

RW returned sometime later without a phone call. On the second arrival, finding the front door unlocked, RW walked into the front entrance of the home where he encountered the two-year-old chocolate Labrador named Bacchus. There was conflicting testimony about who opened the door. RW said RS opened the door. RS said RW opened the door. Sage Sweatt testified she could not see who opened the door, but she could see that nobody was in the entry way when the door opened and that she could see RS in another room. Sage Sweatt said she did not open the door nor invite RW into the home. Jay Sweatt indicated he was on the second floor and did not open the door for RW. There is no dispute that RW was bitten inside the home entry way. Per the testimony of Canine Behavior Consultant Deborah Birmingham, Bacchus was acting as a sentry, defending the home against an intruder. Bacchus bit RW once on the face and retreated. RW ran outside, and Bacchus returned to his crate. The attack caused RW to suffer several disfiguring lacerations requiring 44 sutures to his right cheek and inside his mouth.

The Sweatts reported the bite to Animal Control and Bacchus was quarantined for the requisite 10 days. The quarantine was lifted and Bacchus received a clean bill of health. Ms. DiPippo testified that she made her decision based entirely on the photographs of RW and the verbal report of Kevin Neal, and that she did not consider the statutory exemptions; but testified that was what the hearing was for. Animal control did not obtain affidavits from any person desiring to have Bacchus classified as dangerous. RW had visible marks on his cheek beneath his right eye from the bite. The Hearing Officer finds that Rickey Westfall was disfigured by the scar on his cheek.

CONCLUSIONS OF LAW

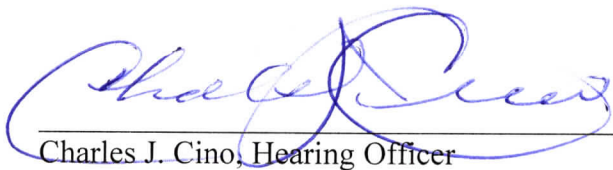
Florida Statutes state that a dog is a dangerous dog if it inflicts severe injury on a human being in public or private property. (FS 767.11(1)(a)). A severe injury is defined – in relevant part – to include “disfiguring lacerations requiring sutures.” (FS 767.11(3)). Since RW’s injuries do meet the common law definition of disfiguring, the grounds for finding Bacchus to be a dangerous dog were met.

However, Florida Statutes also recognize the necessity of a homeowner’s ability to protect the home from invaders. If the person injured was not lawfully on the property, the county cannot declare the dog dangerous. (FS 767.12(b)). Since RW entered the home without the knowledge of either Jay or Dawn Sweatt, the homeowners and was told by Jay Sweatt not to come over until called, and did not have authority or license to enter the home; therefore his presence was unlawful. Since RW was not legally on the property, the County cannot declare Bacchus a dangerous animal, since the dog may have been protecting the family from intruders.

RECOMMENDATION

The duly appointed Hearing Officer, after determining the facts as stated above and applying law to those facts, and considering there was no significant prior history; recommends to the Board of County Commissioners that Bacchus not be deemed a dangerous dog.

DONE AND ORDERED this 27th day of August, 2015.


Charles J. Cino, Hearing Officer