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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-900**

Gary Bruski,
Relator,

vs.

City of St. Paul
Department of Safety & Inspections,
Respondent.

**Filed September 14, 2010
Affirmed
Larkin, Judge**

City of St. Paul Office of Safety & Inspections

Gary Bruski, St. Paul, Minnesota (pro se relator)

Gerald T. Hendrickson, St. Paul City Attorney, Virginia D. Palmer, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Relator challenges an order for the destruction of a dangerous dog, arguing that the order is not supported by substantial evidence and that the hearing officer erred by refusing to continue the hearing at which relator challenged the grounds for destruction.

Because substantial evidence supports the conclusion that relator failed to comply with the requirements for keeping a dangerous animal and this failure is grounds for destruction, and because relator fails to show any prejudice from the hearing officer's alleged refusal to continue the hearing, we affirm.

FACTS

Relator Gary Bruski owns a dog named Inga. Inga was found to be a dangerous animal in August 2005, and as a result, Bruski had to comply with certain requirements for keeping the dog, which included maintaining a lifetime license for the dog, purchasing a lifetime tag for the dog, and submitting a Rabies certificate showing current anti-rabies vaccination. Bruski was also required to pay the required annual registration fee. On May 12, 2008, respondent City of St. Paul, Department of Safety and Inspections (DSI), sent Bruski a letter informing him that, at that time, he was in compliance with the requirements. The letter stated that Inga's rabies vaccination was due for renewal in September 2008 and that Bruski would be sent a reminder to submit a new vaccination certificate.

On December 30, 2008, Officer Richard McGuire of the St. Paul Police Department responded to United Hospital on a complaint that Inga had bitten B.R.P. B.R.P. told the officer that he had been bitten by Inga while visiting a friend at 781 Tatum Street in St. Paul. B.R.P. reported that he had not had problems with Inga before this incident and felt the attack occurred because he had been playing with Inga's puppies. Following the report, animal control made repeated, unsuccessful attempts to locate Bruski and Inga at Bruski's last-known address, 150 Acker Street East in St. Paul.

Animal control also spoke to Bruski's sister, who reported that Bruski and Inga were living in Red Wing.

On January 6, 2009, DSI sent Bruski a letter informing him that Inga's lifetime license had been due for renewal on September 30, 2008. The letter informed Bruski that he had until January 22, 2009, to provide DSI with Inga's current certificate of rabies vaccination and pay the dangerous-animal registration fee, which had been due on December 31, 2008. The letter informed Bruski that "[f]ailure to comply with the requirements or to notify [DSI] in writing of the relocation or death of the dog by January 22, 2009 will result in further enforcement action, which will include the seizure of the animal for destruction as an unlicensed dangerous dog." The letter was returned to DSI as undeliverable on January 26.

On February 24, animal-control officers were dispatched to 781 Tatum Street in St. Paul on a report that dogs were being kept in a van at that address. Due to previous incidents at that address—including the reported bite of B.R.P. by Inga—animal-control supervisor William Stephenson suspected that Inga might be one of the dogs in the van, and he also went to the scene. Upon their arrival, the officers observed a van containing three dogs, including one that matched Inga's description. Suspecting that the van belonged to Bruski, the officers "box[ed]-in" the van with their vehicles in an effort to delay or prevent removal of the van and dogs. Stephenson observed that the dog that matched Inga's description had a dog license, and animal control confirmed that the license was issued to Inga.

The officers requested assistance, and while they were waiting for the arrival of the additional officers, Bruski exited the house. The officers advised Bruski that they had been looking for him and Inga. Bruski entered the van without responding to the officers' statements and attempted to drive away, bumping into the animal-control vehicles in the process. Unable to move the van, Bruski exited the vehicle and let two of the dogs run free. He then grasped Inga's collar and ran from the officers with her. Stephenson pursued Bruski and Inga down the street and into a yard. Stephenson told Bruski that the officers were there to seize Inga for dangerous-animal violations and that he was not going to let Bruski leave with the dog. Bruski eventually released Inga, and Stephenson immediately snared her.

A notice of animal seizure and destruction was issued on March 4, citing the requirements of the January 6 letter and informing Bruski that Inga had been seized based on his failure to comply with the previously imposed requirements for keeping a dangerous animal. The notice also informed Bruski that he had a right to a hearing regarding whether those requirements had been violated. It further stated that in the absence of a hearing request, "or if [the owner] is found to have violated the conditions, the [DSI] hearing officer shall order the animal destroyed in a proper and humane manner."¹ The notice informed Bruski that he had until the close of the business day on

¹ The legislative code actually says that the hearing officer "may" order the animal destroyed, but Bruski does not raise this discrepancy as an issue on appeal. St. Paul, Minn., Legislative Code § 200.121(d) (2009).

March 20, 2009, to request a seizure hearing and that “[f]ailure to respond will result in the destruction of the animal.”²

Bruski requested a hearing, which was held on April 8. The following individuals testified at the hearing: Stephenson; Animal Control Officer Mike Koranda; Bruski; T.D. and B.L., two eye-witnesses to the December 30, 2008 bite; and an attorney representing Second Chance Animal Rescue. Bruski submitted two letters at the hearing, each appearing to advocate for reversal of the destruction order. Based on the testimony and review of the records, a DSI hearing officer determined that Inga’s seizure was justified and that the March 4, 2009 notice of animal seizure and destruction order would remain in effect. This pro se appeal follows.

D E C I S I O N

Bruski offers several arguments in support of reversal, which are best summarized as challenges to the sufficiency of the evidence supporting the hearing officer’s decision and to the hearing officer’s alleged refusal to continue the hearing. We address each in turn.

I.

A municipal agency’s action is quasi-judicial and subject to certiorari review “if it is the product or result of discretionary investigation, consideration and evaluation of evidentiary facts.” *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (quotation omitted). “A quasi-judicial decision of an agency that does not have statewide

² The notice cited an alternative ground for destruction, which is currently contained in St. Paul, Minn., Legislative Code § 200.12(c)(1), (2) (2009). But we limit our review to the first ground, which is under section 200.121(d).

jurisdiction will be reversed if the decision is fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law.” *Axelson v. Minneapolis Teachers’ Ret. Fund Ass’n*, 544 N.W.2d 297, 299 (Minn. 1996) (quotation omitted). As a court of review, we will not retry facts, and we will uphold the agency’s decision “if the lower tribunal furnished any legal and substantial basis for the action taken.” *Staeheli*, 732 N.W.2d at 303 (quotation omitted).

This case is governed by Title XX of the St. Paul Legislative Code. See Minn. Stat. § 347.53 (2008) (allowing any statutory or home rule charter city to regulate potentially dangerous and dangerous dogs). Under the code, when an animal is determined to be dangerous, a hearing officer may order the animal destroyed. St. Paul, Minn., Legislative Code § 200.12(c) (2009). If the hearing officer does not order destruction of a dangerous animal, the hearing officer must, as an alternative, impose certain conditions for keeping the animal. St. Paul, Minn., Legislative Code § 200.121(a) (2009). Included in these conditions are the requirements of a lifetime license for the animal, current rabies vaccination, and payment of a registration fee. *Id.* (a)(8), (10). When an owner of a dangerous animal allegedly fails to comply with duly prescribed conditions, the animal must be seized by animal control. *Id.* (d) (2009). If the animal’s owner requests a hearing and “is found to have violated the conditions, the [DSI] hearing officer may order the animal destroyed in a proper and humane manner.” *Id.*

Following the 2005 determination that Inga is a dangerous dog, DSI imposed the following requirements on Inga’s owners: maintain a lifetime license, submit a rabies certificate showing current rabies vaccination, and pay an annual registration fee. See *id.*

(a) (listing requirements that must be imposed following a dangerous-animal determination if the animal is not ordered destroyed). The March 4 notice of animal seizure and destruction was based on the alleged violation of these conditions. *See id.* (d) (requiring that animal control seize an animal whose owner allegedly fails to comply with prescribed conditions). The hearing officer found that Bruski had not provided DSI with a certificate of rabies vaccination as is required by dangerous-animal registration requirements or completed the annual dangerous-animal registration, and the hearing officer determined that “[t]he Notice of Animal Seizure and Destruction dated March 4, 2009 [would] remain in effect.”

Bruski argues that eye witnesses testified that Inga was not the dog that bit B.R.P. But a finding that Inga was the dog that bit B.R.P. is not necessary to support destruction in this case. A hearing officer may order the destruction of a dangerous animal if the owner (1) is subject to certain conditions for keeping the animal and (2) has been found to have violated those conditions. *Id.* And substantial evidence supports the hearing officer’s determination that Bruski violated the conditions for keeping Inga. First, the January 6, 2009 letter indicates that, as of that date, Bruski had not provided DSI with current proof of Inga’s rabies vaccination and had not paid the annual dangerous-animal registration fee, both of which were past due. Second, the March 4 notice of animal seizure and destruction similarly indicates that Bruski had not provided DSI with a current vaccination certificate or paid the annual registration fee. While the record contains a rabies vaccination certificate reflecting Inga’s receipt of the vaccine on August 30, 2008, this certificate was not provided to DSI until March 21, 2009—more

than two weeks after the issuance of the notice of animal seizure and destruction. Finally, the record contains no indication—and Bruski does not argue—that Bruski had paid the required registration fee. On this record, the hearing officer’s findings that Bruski failed to provide a certificate of rabies vaccination to the City of St. Paul as required and failed to complete the dangerous-animal registration are not clearly erroneous. *See Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (“Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” (quotation omitted)).

Bruski also argues that he was in full compliance with the dangerous-dog requirements, citing the May 2008 letter from DSI. But that letter merely indicates that Bruski was in compliance at that time. Subsequently, he failed to timely provide a certificate of rabies vaccination and to pay the registration fee necessary to renew Inga’s lifetime license. His argument based on the May 2008 letter is therefore unavailing.

II.

Bruski also claims that the hearing officer erred by denying his request for a continuance to allow the bite victim, B.R.P., to testify and by holding the hearing on a date when his brother, Inga’s co-owner, could not attend due to his incarceration.

It is not clear whether Bruski requested a continuance. Because the audio-tape recording of the hearing was inaudible, we ordered the parties to file statements of the proceedings under Minn. R. Civ. App. P. 110.03 and gave the hearing officer an opportunity to approve or modify the statements. The hearing officer’s modification states that (1) the bite victim did not contact the hearing officer to request a continuance,

(2) the hearing officer “does not recall” Bruski requesting a continuance or a new hearing date for the bite victim to be able to appear and testify, and (3) Bruski “did not mention anything about wanting or needing to wait until [his brother] was released from jail.” But even if we were to assume that Bruski requested, and the hearing officer denied, a request for a continuance based on the unavailability of the bite victim and Bruski’s brother, Bruski fails to establish that the denial necessitates reversal.

According to Bruski, the bite victim wanted to be at the hearing in order to “tell the truth of what happened” on the day of the bite. But as explained above, the destruction order is supported by Bruski’s failure to comply with the conditions of keeping a dangerous dog regardless of the biting incident. Similarly, Bruski does not explain how his brother’s absence affected the hearing officer’s decision. He simply declares that his brother “was the owner of Inga and a[n] eye witness to the bite and had the right to be at the hearing.” But Bruski’s brother has not challenged the destruction order. And Bruski does not explain how the hearing officer’s determination that Bruski failed to comply with the requirements of keeping a dangerous animal would have been different if his brother had attended the hearing. Absent a showing of prejudice resulting from the hearing officer’s alleged denial of Bruski’s alleged request for a continuance, reversal is not warranted. See *Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that to prevail on appeal, an appellant must show both error and prejudice resulting from the error); *Bloom v. Hydrotherm, Inc.*, 499

N.W.2d 842, 845 (Minn. App. 1993) (stating that the appellant bears the burden of demonstrating that error is prejudicial), *review denied* (Minn. June 28, 1993).

Affirmed.

Dated:

Judge Michelle A. Larkin