

**DISTRICT COURT OF THE COUNTY OF NASSAU
SECOND DISTRICT: CRIMINAL PART**

STEVEN GUTHRIE

Petitioner

PRESENT:
HON. SEAN WRIGHT

DECISION AND ORDER

-against-

Docket No. CV-002880-25HE

JOSEPH SMORTO

Respondent

x

Procedural History

On February 26, 2025, pursuant to Section 123 of the Agriculture and Markets Law (hereinafter "AML"), petitioner, Steven Guthrie commenced this dangerous dog proceeding against the respondent, Joseph Smorto. This proceeding stems from an incident which allegedly occurred on February 26, 2025, against petitioner and his dog. A hearing was held on March 4, 2025, to determine if the respondent's dog was a "dangerous dog" within the meaning of Section 108 of the AML, and if so, to determine what remedies should be ordered.

The hearing was conducted on March 4, 2025. Testimony was heard from three witnesses: the petitioner, and two Town of Hempstead Animal Control Officers. The Court also viewed photographs of the aftermath of the attack. The respondent did not appear.

The petitioner testified that on February 26, 2025, he was walking his dog, a 15-year-old, Chihuahua/Jack Russell Terrier mix dog named Dexter. They encountered a 7-year-old adult male pit bull terrier dog named Colossus. Being fearful of an attack, the petitioner picked up Dexter and held Dexter over his head to protect him from Colossus. Colossus bit the petitioner in at least three places on his body, knocked him to the ground, and then attacked Dexter. The attack ended when a witness intervened and struck Colossus with a windshield wiper. The petitioner also testified that Colossus, on previous occasions, had been roaming free on the street and barked at people.

As a result of Colossus's attack, petitioner suffered injuries that required medical treatment. The petitioner presented photographs illustrating puncture wounds to his left forearm, right wrist, and his right hand and finger. Petitioner's dog, Dexter, was so badly injured that he had to be euthanized.

The second witness was John Allback, a Town of Hempstead Animal Control Officer who testified that he was contacted by the police department about this incident. He identified the dog as a pit bull and testified that "sometimes pit bulls have dog aggression."

The final witness was Town of Hempstead Animal Control Officer, Melissa Gregoretti, who testified that the owner was served with the notice of the dog seizure and court hearing date.

Findings of Fact and Conclusions of Law

Based upon the testimony, the Court is convinced that petitioner and his dog did not provoke the attack. The victim was walking his dog on a public street.

“Dangerous dog” means any dog which (i) without justification attacks a person, companion animal... and causes physical injury or death”. A “physical injury” is impairment of physical condition or substantial pain. “Serious physical injury” is a physical injury which creates a substantial risk of death, or which causes death or serious or protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ (Agriculture and Markets Law § 108 (24)[a], (28) and (29)).

In this matter, the petitioner testified that he must take antibiotics and attend physical therapy sessions. He is still receiving medical care as of the date of the hearing. The Court finds that Steven Guthrie did not suffer serious physical injury because of the attack. The petitioner suffered a physical injury. (*see People v Jornov*, 65 AD3d 363 [4th Dept 2009] [the Court found that a victim who sustained a bite wound to his right leg, for which he was prescribed antibiotics, and a torn hamstring for which he was instructed to take anti-inflammatory medication and attend physical therapy for six to eight weeks, did not suffer a serious physical injury within the meaning of the statute]).

Colossus attacked a person, Steven Guthrie, and a companion animal, Dexter. Colossus caused physical injury to the petitioner and death to the companion animal. The Court finds that Colossus is a dangerous dog pursuant to the Agriculture and Markets Law § 108(24)(a)(i).

Having determined that Colossus is a “dangerous dog”, the Court must now consider the issue of permanent confinement.

Agriculture and Markets Law § 123(3) only authorizes permanent confinement if one of the three aggravating circumstances is established at the hearing:

1. the dog, without justification, attacked a person causing a serious physical injury or death;
or
2. the dog has a known vicious propensity as evidenced by a previous unjustified attack on a person, which caused serious physical injury or death; or
3. the dog, without justification, caused serious physical injury or death to a companion, farm or domestic animal, and has, in the past two years, caused unjustified physical injury or death to a companion, farm or domestic animal as evidenced by a prior “dangerous dog” finding.

None of the above aggravating circumstances are present here. Specifically, there was no evident testimony that the unjustified attack caused serious physical injury or death; or that the dog previously attacked a person causing serious physical injury or death; or evidence of any prior "dangerous dog" finding. Given the absence of any aggravating circumstances, the Court cannot order permanent confinement.

Remedies

In accordance with the Agriculture and Markets Law § 123(2), and notwithstanding that some of the remedial measures may have already been implemented, it is hereby

ORDERED that the dog, Colossus, be neutered or spayed, and be fitted with a microchipping device; and it is further

ORDERED that the dog Colossus, be immediately evaluated by certified applied behaviorist, a board-certified veterinary behaviorist, or another recognized expert in the field of completion of training or other treatment as deemed appropriate by such expert. The defendant shall be responsible for all costs associated with the evaluation and training ordered under this section; and it is further

ORDERED that secure, humane confinement of the dog, Colossus. To accomplish this, the defendants shall erect a fence that encloses the front and backyards. If a permit or variance is required, the defendants shall apply for the permit or variance and make good faith efforts to timely follow through with the process. The defendants shall bear the cost of the erection of the fence, and it is to begin that process as soon as practicable upon receipt of this order; and it is further

ORDERED that restraint of the dog on a leash by an adult of at least 21 years of age whenever the dog is in public; and it is further

ORDERED that muzzling of the dog whenever it is on public property that will prevent the dog from biting any person or animal, but shall not injure the dog or interfere with the dogs breathing or vision; and it is further


ORDERED that within 14 days of this order respondent shall obtain liability insurance in the amount of \$100,000. If there are any changes to the policy, the respondent is to notify this court as soon as practicable, but under no circumstances should be more than two weeks from the change in the policy.

To the extent that the respondent has already complied with some or all of these remedial measures, there should be no further action necessary on their part.

Failure to comply with any of these conditions will result in respondent being in violation of a court order.

This constitutes the Decision and order of the Court.

Dated: March 10, 2025
Hempstead, NY

A handwritten signature in black ink, appearing to read "Sean Wright", is written over a horizontal line.

Hon. Sean Wright, JDC