

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

AP.206/99

BETWEEN                    CATHERINE SEFTON

Appellant

AND                            THE MANUKAU CITY COUNCIL

Respondent

Hearing:                    4 April 2000

Counsel:                    Appellant in person  
L F Speedy for Respondent

Judgment:                April 2000

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**RESERVED JUDGMENT OF RANDERSON J**

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Solicitors:  
Manukau City Council, DX EP75557, Manukau for Respondent

[1] On 29 October 1999 the appellant was convicted in the District Court at Otahuhu on a charge of owning a dog which attacked a person contrary to s 57(5) of the Dog Control Act 1996. The appellant was convicted and fined \$150 together with Court costs of \$130. An order was also made for destruction of the dog. The appellant now appeals against that order.

### **Background**

[2] The background facts before the District Court were that the appellant owned a fox terrier dog. On 21 February 1999 the complainant was walking along the footpath outside the appellant's address in Mangere Bridge taking her three year old daughter for a walk in her stroller. She heard a dog barking and noticed that the gates to the appellant's property were open. The dog ran down the drive and bit the complainant on the back of her right calf. The skin was not broken but the complainant's leg was grazed and she sustained a large bruise in that area. The complainant later returned to the property to speak to the appellant and in cross-examination acknowledged that she knew it was a small dog and did not believe it could do her a great deal of harm. She thought that if it attacked her again she could deal with it.

[3] The learned District Court Judge, having heard the evidence of the complainant and a dog control officer employed by the respondent, found the charge to be proved accepting that all of the witnesses (including the appellant who did not observe the incident) were truthful witnesses.

[4] The learned Judge made it clear several times to the appellant that s 57(5) obliges the Court to make an order for destruction of the dog:

“Unless satisfied that the circumstances of the attack were exceptional and do not justify destruction of the dog.”

[5] In the circumstances of the case the Judge was not satisfied there were any exceptional circumstances and made the necessary order.

[6] It is common ground that the appellant had no previous convictions for offences of this kind and there was evidence before the Court that the dog is generally well behaved. It had never previously bitten anyone and there had been no difficulties with the dog and other children. In cross-examination, the appellant acknowledged the gates may have been open on the occasion in question.

[7] At the hearing, there was reference to the possibility of the charge being reduced to one of rushing at or startling a person under s 57(6). In such a case there is no presumption that an order must be made upon conviction for destruction of the dog. However, there are other consequences including the obligation on the part of the territorial authority to classify as a dangerous dog, any dog in respect of which the owner has been convicted of an offence under s 57(6). This obligation is spelt out in s 31(1)(a) and the consequences are detailed in s 32 of the Act. The appellant acknowledged there had been discussions to that effect but she declined that opportunity.

### **The issue on appeal**

[8] The sole question for consideration is whether the Judge erred in concluding that the circumstances of the attack were not exceptional such that the destruction of the dog was not justified. In approaching that question, counsel for the respondent has referred me to several authorities which support the following propositions:

[a] The term “exceptional” means unique or special or which disclose substantially unusual circumstances: *Pomana v Police* (High Court, Dunedin, AP.8/97, 8 April 1997, Gendall J).

[b] The focus is on the circumstances of the attack and not those of the attacker: *Sutherland v Rotorua District Council* (High Court, Rotorua, AP.9/97, 14 April 1997, Williams J). It follows that matters such as the previous behaviour of the dog and the lack of any history of attacks are generally not relevant: *Rotorua District Council v Whakaue* (High Court, Rotorua, AP.12/98, 16 March 1998, Giles J).

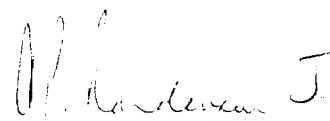
[c] Matters such as provocation by the victim of the attack may be relevant (*Pomana v Police*) as of course are the general circumstances of the attack, such as where and how it occurred.

[9] The matters relied upon by the appellant in support of the appeal were, in the main, matters which related to the dog rather than the circumstances of the attack. In particular, she submitted that this was a small dog which was regarded as a family pet. She referred to the fact that it has not attacked anyone before or since the incident in question. Unfortunately, these matters are irrelevant to the question which the Judge in the Court below had to decide. Ms Sefton submitted that the punishment was out of proportion to the crime given the relatively minor nature of the injuries. While that may be so, the Courts are obliged to apply the law as ordained by Parliament, unpalatable though that course may sometimes be.

[10] The appellant also referred to the fact that she and her family had only recently moved to the property and steps have since been taken to ensure that the dog is not able to escape onto the footpath. Unfortunately, those circumstances are not ones which may properly be taken into account as relating to the circumstances of the attack. Even if they were, they could not be regarded as unique or exceptional.

[11] While not unsympathetic to the appellant's case, I am satisfied that the learned District Court Judge was entirely correct in the conclusion which she reached. There was nothing in the circumstances of this attack to take it outside the ordinary run of cases of this kind and certainly nothing which could be regarded as exceptional within the meaning of s 57(5) of the Act.

[12] In the circumstances the appeal will be dismissed. There will be no order for costs.



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A P Randerson J