

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
THIRTEEN JUDICIAL CIRCUIT

C.A. No.: 2023-CP-23-00176

Margie Evett, )  
 )  
Plaintiff, )

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

v. )

**RECEIVED**

Desmine Sartain, )  
 )  
Defendants. )

**Apr 11 2025**

**SC Court of Appeals**

This matter came before the Court on Wednesday, January 26, 2025, for a hearing on Defendant's Motion for Summary Judgment. Based on a review of the file, submissions by the parties, and arguments made during the hearing, I conclude that the Defendant's Motion should be granted.

**Facts**

This matter arises out of an incident whereby the Plaintiff alleges she was injured while holding a dog on a leash and allegedly fell while being pulled down a flight of stairs by a dog. The Plaintiff had known the Defendant between eight and ten years, and the Plaintiff started cleaning the Defendant's house shortly after they met. During the time period that Plaintiff worked for the Defendant, the Defendant always had at least one German Shepherd at the Defendant's house. The Plaintiff would help take care of the Defendant's German Shepherd dog, which included routinely exiting with the Defendant's German Shepherd dog through the side door of the Defendant's house, and down the Defendant's stairs to take the German Shepherd on walks. At the time of the alleged incident the Defendant had a German Shepherd dog named Blue. The Plaintiff would feed Blue and take Blue to the kennel on behalf of the Defendant. The Plaintiff claims that the Defendant never asked the Plaintiff to participate in any activity with Blue that the Plaintiff thought was unreasonable.

On the day of the alleged subject incident, the Plaintiff went over to the Defendant's house to take Blue and another dog named Koblenz to the kennel. While at the Defendant's house, the Plaintiff placed her own personal leash on Blue, and took Blue outside through the side door of the Defendant's house, which led to a set of stairs with a landing. Outside the entrance to the side door of the Defendant's house, and while holding the leash that was attached to Blue, the Plaintiff claims that she stepped down one step of the Defendant's stairs in order to go down the stairs. The Plaintiff's right hand was through a "loop" in the leash attached to Blue, and the Plaintiff's left hand was holding on to the rail to the Defendant's stairs. At this time, Blue, possibly due to seeing a squirrel, subsequently ran down the Defendant's stairs. The Plaintiff, whose right hand was through the loop of the dog leash, claims that she was pulled down the remaining stairs. After the Plaintiff's alleged fall, Blue sat at the bottom of the Defendant's stairs, and Blue ultimately helped the Plaintiff back inside the Defendant's residence by allowing the Plaintiff to hold onto Blue while they both went back up the stairs.

### **Legal Standard**

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Gauld at 558, 671 S.E.2d at 85. Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure, "a mere scintilla" of evidence is not the correct standard of proof for deciding whether the "non-moving party has created a genuine issue of material fact necessary to survive a motion for summary judgment. Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 460, 892 S.E.2d 297, 300 (2023). Rather, the "non-moving party has to present facts that would permit reasonable inference to be drawn from evidence that creates issues of fact for trial." Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 460, 892 S.E.2d 297, 300 (2023). Therefore, summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and

admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Gauld v. O’Shaughnessy Realty Co., 380 S.C. 548, 557, 671 S.E.2d 79, 84 (Ct. App. 2008).

### Discussion

The Plaintiff has alleged causes of action under S.C. Ann § 47-3-110(A), also known informally as South Carolina’s Dog Bite/Attack Statute, and negligence. S.C. Ann § 47-3-110(A) states the following:

**“(A) If a person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the dog owner or person having the dog in the person’s care or keeping, the dog owner or person having the dog in the person’s care or keeping is liable for the damages suffered by the person bitten or otherwise attacked. For the purposes of this section, a person bitten or otherwise attacked is lawfully in a private place, including the property of the dog owner or person having the dog in the person’s care or keeping, when the person bitten or otherwise attacked is on the property in the performance of a duty imposed upon the person by the laws of this State, the ordinances of a political subdivision of this State, the laws of the United States of America including, but not limited to, postal regulations, or when the person bitten or otherwise attacked is on the property upon the invitation, express or implied, of the property owner or a lawful tenant or resident of the property.**

Although S.C. Ann. § 47-3-110 is a strict liability offense, the Plaintiff must still prove that there was a dog attack or a dog bite. Padget v. Mercado, 341 S.C. 229, 233, 533 S.E.2d 339, 340 (SC App Ct. 2000) In Padget v. Mercado, 341 S.C. 229, 533 S.E.2d 339 (SC App Ct. 2000), the defendant called animal control and requested the removal of an adult rottweiler that the defendant could not control. The plaintiff, an animal control officer, responded and “enticed” the dog to the

fence in an effort to place the noose of a control stick, five feet in length, around its neck. Padget v. Mercado, 341 S.C. 229, 230, 533 S.E.2d 339 (SC App Ct. 2000). The plaintiff was subsequently successful in noosing the dog. Padget v. Mercado, 341 S.C. 229, 230, 533 S.E.2d 339 (SC App Ct. 2000). However, while the plaintiff was lifting the dog into the plaintiff's truck, something "popped" in plaintiff's shoulder. Padget v. Mercado, 341 S.C. 229, 230, 533 S.E.2d 339 (SC App Ct. 2000), The plaintiff filed suit against the defendant alleging that she sustained a shoulder injury as a result of a dog "attack." Padget v. Mercado, 341 S.C. 229, 533 S.E.2d 339 (SC App Ct. 2000),

In Padget, the Court, noted that the word "attack" implies the "taking of initiative in a struggle" and that "attack" has also been defined as "any hostile offensive action." Padget v. Mercado, 341 S.C. 229, 232, 533 S.E.2d 339, 340 (SC App Ct. 2000). The Court subsequently held in Padget that the plaintiff's alleged injury was not due to a dog attack, but due to the plaintiff lifting the dog into the plaintiff's truck. Padget v. Mercado, 341 S.C. 229, 232, 533 S.E.2d 339, 340 (SC App Ct. 2000). To further support its conclusion, the Court in Padget also cited to an Illinois case where a woman fell down steps after she stumbled over a sleeping dog, and she subsequently alleged that contact with the dog constituted an attack. Padget v. Mercado, 341 S.C. 229, 533 S.E.2d 339 (SC App Ct. 2000) (citing Bailey v. Bly, 87 Ill. App. 2d 259, 231 N.E. 2d (Ill. App 5 Dist. 1967)). However, as the Court in Padget noted, the Court in Illinois did not find that set of circumstances whereby the Plaintiff made contact with the Defendant's dog to be an "attack" because the woman not attacked or injured by the dog. Padget v. Mercado, 341 S.C. 229, 533 S.E.2d 339 (SC App Ct. 2000) (citing Bailey v. Bly, 87 Ill. App. 2d 259, 231 N.E. 2d (Ill. App 5 Dist. 1967)).

Here, like the Defendants' dogs in Padget and Bailey, the Defendant's dog, Blue, did not direct any "hostile offensive action" towards the Plaintiff since the Plaintiff's own testimony is

that Blue ran down the Defendant's stairs possibly to chase a squirrel. In fact, the Plaintiff's testimony shows the opposite of any "hostile offensive action" directed towards the Plaintiff since the Plaintiff's testimony was that Blue ran away from the Plaintiff rather than to or towards the Plaintiff. Therefore, it is clear that the Defendant's dog, Blue, did not "attack" the Plaintiff for the purposes of liability under S.C. Ann § 47-3-110(A) since Blue did not direct any "hostile offensive action" towards the Plaintiff.

The Plaintiff has also alleged a cause of action against the Defendant for negligence under a theory of premises liability and general negligence. According to South Carolina law, the nature and scope of duty in a premises liability action, if any, is determined based upon the status or classification of the person injured at the time of his or her injury. Roe v. Bibby, 410 S.C. 287, 763 S.E.2d 645 (SC Ct. App. 2014). In a premises liability case, the "invitee" is offered the utmost duty of care by the landowner. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001). An "invitee" is a person who enters onto the property of another at the express or implied invitation of the property owner. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001). The landowner owes to an "invitee" the duty of exercising reasonable or ordinary care for her safety, and is liable for injuries resulting from the breach of such duty. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001).

The landowner has a duty to warn an invitee only of latent or hidden dangers of which the landowner has knowledge or should have knowledge. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001). The landowner's duty to warn an invitee of latent or hidden dangers is an active or affirmative duty. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001). Foreseeability of the precise manner in which the injuries were sustained is not a prerequisite to a finding that a landowner breached his duty of care to an invitee; rather, it is sufficient that there is

a reasonable generalized gamut of greater than ordinary dangers of injury and that the sustaining of the injury was within this range. Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (S.C. Ct. App. 2001).

Here, the Plaintiff was an invitee under the law because the Plaintiff was at the Defendant's residence at the invitation of the Defendant to perform a benefit to the Defendant. However, no legal duty existed on the part of the Defendant because there were no known, or even unknown, latent or hidden dangers on the Defendant's property that caused or could have caused the Plaintiff's injuries. The Defendant's dog, Blue, also does not constitute a latent or hidden danger since the Plaintiff was familiar with the layout of the Defendant's house, the Plaintiff had been familiar with the Blue for years, and there is no evidence that Blue had a propensity to run down stairs prior to the subject incident. Therefore, the Defendant did not owe any legal duty to the Plaintiff since there were no known, or even unknown, "latent or hidden dangers" at the Defendant's property.

Although no legal duty existed, since there were no known, or even unknown, dangers located at the Defendant's property that the Defendant could have warned the Plaintiff about, even if there was such a legal duty, the Defendant did not breach her legal duty since the Defendant cannot warn the Plaintiff of a non-existent danger. There is also no legal duty under a general theory of negligence since there is no legal duty to train one's dog not to run down stairs, or to train one's dog in general. Therefore, even if the Defendant owed a legal duty under a theory of premises liability, the Defendant did not breach her legal duty to the Plaintiff nor did the Defendant owe any legal duty to the Plaintiff under a general theory of negligence.

Based upon the available evidence in this case and construing the evidence in the light most favorable to the Plaintiff, there is no genuine issue of to any material fact, and the Plaintiff cannot

establish a claim or cause of action pursuant to S.C. Ann § 47-3-110(A) or under a theory of negligence. As a result, summary judgment in favor of the Defendant is proper.

Therefore, IT IS HEREBY ORDERED THAT the Defendant's Motion for Summary Judgment is GRANTED and this case is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

\_\_\_\_\_  
The Honorable Patrick Cleburne Fant, III  
Presiding Judge

Date: \_\_\_\_\_  
Greenville, South Carolina



Greenville Common Pleas

**Case Caption:** Margie Evett vs. Desmine Sartain

**Case Number:** 2023CP2300176

**Type:** Order/Summary Judgment

So Ordered

Patrick C. Fant, III

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STATE OF SOUTH CAROLINA  
COUNTY OF Greenville  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO. 2023CP2300176

Margie Evett  
PLAINTIFF(S)

Desmine Sartain  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

This matter is before the Court pursuant to Plaintiff's Motion Pursuant to Rule 59(e), SCRPC. Based on a review of the submissions by the Parties and the relevant law, the Court hereby Denies the Plaintiff's Motion.


It is so ordered.

**ORDER INFORMATION**


This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/31/2025 .



**Apr 11 2025**



**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

ELECTRONICALLY FILED - 2025 Mar 31 8:44 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2300176

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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Greenville Common Pleas

**Case Caption:** Margie Evett vs. Desmine Sartain

**Case Number:** 2023CP2300176

**Type:** Order/Electronic Form 4

So Ordered

Patrick C. Fant, III