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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE GREENVILLE COUNTY
Court of Common Pleas

Patrick C. Fant, III, Circuit Court Judge

Case No.: 2023-CP-23-000176

Margie Evett……..……..Appellant,

v.

Desmine Sartain……..……Respondent.

Initial Brief of the Appellant

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STATEMENT OF THE CASE

This is an appeal of the trial court's grant of summary judgment. The Respondent requested the Appellant take her dogs to the kennel. While the Appellant was attempting to leave the Respondent's home, her large German Shepard bolted and pulled the Appellant from the top step near the door to the concrete, nine steps below. The Appellant fell on her back and hip breaking her leg, injuring her shoulder and hitting her head. The Appellant sued the Respondent for damages under strict liability found in S.C.Code §47-3-110 and negligence. The Respondent filed for summary judgment stating that the dogs actions were not an attack under S.C. Code §47-3-110 and that the Respondent did not owe a duty to the Appellant under a negligence theory of the case.

The Circuit Court heard arguments on February 26, 2025, and issued a Form 4 Order granting the summary judgment on February 27, 2025. The final written Order was issued on March 11, 2025. The Appellant filed a timely Motion to Reconsider pursuant to SCRCP 59(e), which was denied on March 31, 2025. Appellant received a copy of that

decision on March 31, 2025. Appellant timely filed a Notice of Appeal on April 11, 2025. This appeal follows.

STANDARD OF REVIEW

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that the moving party is entitled to summary judgment, "if the [evidence before the court] show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." As stated in Town of Hollywood v. Floyd, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." 403 S.C. at 464, 477, 744 S.E.2d at 166.

In ruling on a summary judgment motion, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the non-moving party. Generally, if the pleadings and evidentiary matter in support of summary judgment do not establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented. Baird v. Charleston Co., 333 S.C. 519, 511 S.E.2d 69 (1999)

FACTS

Margie Evett was at the home of Desmine Sartain at 25 West Prentiss Avenue in Greenville, South Carolina, on January 24, 2020, to pick up Ms. Sartain's two German Shepard dogs and take them to the kennel. While Ms. Evett's hand was through the leash loop and attempting to leave the house, one of the dogs bolted. The dog pulled Ms. Evett from the top step to the concrete, at least nine steps below. She hit her head on a

flowerpot, broke her right leg, injured her shoulder and ripped all of the fingernails off her hand. She landed on her hip and back[1]. The Respondent's dog was the sole contributor to Ms. Evett's injuries.(Evett deposition, p.47-48, attached as an Exhibit to Respondent's Motion for Summary Judgment).

The Respondent agrees with the facts of the case, but filed a Motion for Summary Judgment stating that the dog's actions do not fall under the strict liability of S.C. Code §47-3-110 because the Ms. Sartain's dog did not direct any "hostile offensive action" toward the Appellant, therefore, Ms. Evett was not "otherwise attack[ed]" pursuant to the statute and that Ms. Sartain did not owe any duty to Ms. Evett.

ARGUMENTS

I. Ms. Sartain is strictly liable for her dog's actions pursuant to S.C. Code §47-3-110.

Ms. Sartain is strictly liable for Ms. Evett's injuries and damages under South Carolina Code Ann §47-3-110 which states:

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 h 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.. this section does not apply if, at the time the person is bitten or otherwise attacked: (1) the Person who was attacked provoked or harassed the dog and that provocation was the proximate cause of the attack…

[1] The Circuit Court states in its Order that Ms. Evett would routinely exit through this same door with the dogs, go down these same stairs and take the dogs on walks. There was no evidence of this presented to the Court. In fact, Ms. Evett stated in her deposition that she did not take this dog on walks. Evett deposition, page 33, lines 10-11.

The statute imposes strict or absolute statutory liability upon dog owners for all damages suffered whenever any person is bitten or "otherwise attacked."

The Circuit Court relies on the rulings in Padget v. Mercado, 341 S.C. 229, 233, 533 S.E.2d 339,340 (SC Ct App. 2000) and Bailey v. Bly, 87 Ill.,App. 2d 259, 231 N.E.2d (Ill. App. 5 Dist. 1967) in support of its conclusion that the Ms. Evett was not attacked by the dog; therefore, SC Code §47-3-110 is not applicable to these facts. In both of these cases, the dog did not have any action at all. In Padget, the Plaintiff was injured while lifting a dog for her job. She made no allegation that the dog struggled or made is hard by its actions to lift. The court in Padget ruled that because her injuries were not due to the dog's actions, but "resulted from her own actions" of merely lifting the dog, the strict liability statute did not apply. Id. at 233. The Illinois case of Bailey cited in Padget is about a woman merely tripping over a sleeping dog. Unlike in Ms. Evett's case, the dog's actions in Bailey did not play an active part in the injury. The dogs in both Bailey and Padget could have just as easily been furniture in their fact scenario and the cases are not applicable to the case at bar.

Next, the Circuit Court states that because the dog did not make physical contact with Ms. Evett to cause her to fall the Defendant is not subject to strict liability. Other states' appellate courts with statutes creating strict liability for dog "attacks" have defined the term similarly to South Carolina. In the case of Morris v. Weatherly, 488 N.W.2d 508 (Minn App 1992),review denied (Minn. Oct. 28,1992), Morris was bicycling when a dog ran at him. Morris quickly dismounted his bike, fell, and injured his shoulder. Id. The Court found that "Morris was injured as he attempted to protect himself, and, therefore, the actions of the dog caused the injuries and met the definition of attack". Id. at 510. In

the same ruling, the Court took up the case of Hinman v. Alter, the Court found that "Mr. Hinman twisted his back because a large dog ran past or around him…Although no physical contact occurred, the dog's actions directly and immediately produced Hinman's injury." Id at 510. The Court concluded that "[t]he actions of the dog caused the injuries without any attenuated chain of causation" Id at 511, and therefore, met the statutory requirement for strict liability. Here Ms. Evett's injuries were incurred when the dog pulled her down the steps while bolting. Just as in Hinman, the actions of the dog caused the injuries without any attenuated chain of causation.

"Clearly [the statute applies because] the Legislature considered other injuries besides those resulting from bites; hence the inclusion of the term "otherwise attacked" in the statute." Cf. Henry v. Lewis, 327 S.C. 336, 489 S.E.2d 639 (1997); Elmore v. Ramos, 327 S.C. 507, 489 S.E.2d 663 (Ct. App. 1997). In Elmore v. Ramos, the South Carolina Court of Appeals interpreted "otherwise attacked" in the statute's application to some actions by a dog other than a bite. In Elmore, the plaintiff sued for injuries she received when the defendant's dog caused her to fall by bumping into her from behind. The plaintiff actually testified that the dog "wasn't attacking me." Id. 327 S.C. at 510, 489 S.E.2d at 665. Nonetheless, the Court of Appeals held the statute must be construed so that it is interpreted consistent with the purpose, design, and policy of the lawmakers and found the plaintiff's claim was within the plain language of the statute. In this regard, it is clear that the intent behind our statute is to require dog owners to maintain control of their dogs or train dogs not to injure others who have a legal right to do whatever they may be doing. So finding, the court held that the statute does not require evil intent and that "attack" "applies to any offensive action." During the hearing for the Motion for

Summary Judgment in the case at bar, the Court expressed skepticism that Elmore held that the dog's intent was not material to application of the statute. Transcript p.12. The Court in Elmore stated: "Because the common law does not require an evil motive, we think had the legislature intended to require a showing of evil motive it would have specifically said so." Id 327 S.C. at 512.

Therefore, liability is imposed in situations where injury is caused by a dog doing something other than biting. Here, Ms. Evett was injured as direct result of the dog's actions of pulling her down nine brick steps. It would be no different than if the dog had pushed her. It was the dog's initiative in aggressively bolting and pulling Ms. Evett that was the proximate cause of Ms. Evett's injuries. There is also no evidence that Ms. Evett acted unreasonably or provoked the dog, the Defendant is strictly liable for the injuries and damages caused by the dog. The Circuit Court erred in granting summary judgment.

Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 673 S.E.2d 423 (2009), states that even though Ms. Evett was in charge of the dogs at the time the dog injured her, the strict liability found in the statute would still apply to Ms. Sartain as the owner of the dog. ("imposing a control requirement or other negligence principles by judicial fiat on the dog owner would impose requirements nowhere found in the statute." Id at 363). The Court also stated in Harris, "The owner of the dog is subject to liability for injuries caused by his dog." Id at 363.

Ms. Sartain's dog, through its actions, directly and immediately caused severe injury to Ms. Evett and Ms. Sartain is strictly liable for Ms. Evett's damages as a result of

the actions of her dog under current South Carolina law. The Circuit Court erred in grating Ms. Sartain's Motion for Summary Judgment.

II. Ms. Sartain's Negligence is a Question of Fact for a Jury

The Respondent conceded that Ms. Evett was an invitee on the Respondent's property. Respondent claims she did not owe a duty to Ms. Evett because there were no "known latent or hidden dangers" at the Respondent's home. In fact, the Respondent's argument is really that they did not breach their duty.

In a negligence action, a plaintiff must show the (1) defendant owed a duty of care to the plaintiff (2) defendant breached the duty by a negligent act or omission (3) defendant's breach was the actual and proximate cause of the plaintiff's injury and (4) the plaintiff suffered injury or damages. Dorrell v. South Carolina Dept. of Transp., 361 S.C. 312, 318, 605 S.E.2d 12, 15 (2004). Whether the law recognizes a particular duty is an issue of law to be determined by the court. Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996).

In addressing premises liability as it relates to an invitee, although a property owner is not an insurer of the safety of those who use the property, reasonable care must be used by the owner to keep the premises used by invitees in a reasonably safe condition. Henderson v. St. Francis Community Hosp., 303 S.C. 177, 180, 399 S.E.2d 767, 768 (1990). The owner of the property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of such duty. Larimore v. Carolina Power & Light, 340 S.C. 438, 531 S.E.2d 535 (Ct.App.2000). 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, *unless the possessor should anticipate the harm despite such knowledge and obviousness*. Callander v. Charleston Doughnut Corp., 305 S.C. 123, 406 S.E.2d 361 (1991)(emphasis added).

This duty is an active or affirmative duty. Hughes v. Children's Clinic, P.A., 269 S.C. 389, 237 S.E.2d 753 (1977); Garvin v. Bi-Lo, Inc., 337 S.C. 436, 523 S.E.2d 481 (Ct.App. 1999), cert. granted, March 21, 2000. It includes refraining from any act which may make the invitee's use of the premises dangerous or result in injury to him. Hughes, 269 S.C. at 397, 237 S.E.2d at 756; Garvin, 337 S.C. at 444, 523 S.E.2d at 485. It is not necessary that the precise manner in which the injuries were sustained be foreseeable. Hughes, 269 S.C. at 397, 237 S.E.2d at 757; Orr v. First Nat'l Stores, Inc., 280 A.2d 785 (Me.1971). Rather, "[i]t 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.... It was, therefore, a jury question whether the defendant had provided reasonably safe premises ... for the use of the ... invitee." Hughes, 269 S.C. at 397-98, 237 S.E.2d at 757 (quoting Orr, 280 A.2d at 794).

In Nesbitt v. Lewis, 335 S.C. 441, 517 S.E.2d 11 (Ct.App. 1999), the Defendants filed for summary judgment on two counts. First, that the Defendant did not owe a duty to the Plaintiff because they did not own the property or dog, and second, that the Plaintiff failed to state a cause of action under §47-3-110. The Court found summary judgment was appropriate in the negligence cause of action as to one owner with a partial interest in residential property where the owner did not reside at the property or have the

dogs in her care or keeping. The mother owned three Chow dogs which allegedly bit a child in her yard. The son lived in the home with his mother and was the caregiver and keeper of the dogs. The South Carolina Court of Appeals affirmed the circuit court's grant of summary judgment to the daughter because she had not lived in the home for five years, and she did not care for or keep the dogs. It is important to note that the Court kept the dog owners in the suit under both strict liability and a negligence theory.

There is no doubt, and the Respondent conceded, that she owed a duty to Ms. Evett. As stated in Respondent's Memorandum in Support of Summary Judgment, she owed Ms. Evett a duty to exercise reasonable and ordinary care for Ms. Evett's safety. As part of the duty to exercising reasonable and ordinary care, the Respondent has a duty to warn of any hidden or latent dangers. What Respondent is really arguing is that they did not breach the duty they have to Ms. Evett which is a question of fact for the jury. It is a greater than ordinary danger to have a large, rambunctious dog that tears at the blinds and at things outside. Ms. Evett testified that the dog would tear up blinds and growl and become aggressive if people or other dogs passed by the house or back fence. Margie Evett's deposition, page 51-52. Even if Ms. Evett is familiar with the dog and its potential hazard that does not absolve the Respondent of her duty to exercise reasonable and ordinary care by sufficiently training her dog not to injure others or provide Ms. Evett with a safe way to get her dog out of her home and into a vehicle.

III. Ms. Sartain Owed a Duty of Reasonable and Ordinary Care to Ms. Evett Under a Simple Negligence Theory and her Breach of that Duty is a Question of Fact for the Jury.

Defendant also owed a duty to Ms. Evett under a simple negligence theory. Even if the dog had pulled Ms. Evett down the stairs at the kennel and not at the Defendant's home, the Defendant would still owe Ms. Evett the duty of reasonable and ordinary care. The duty to train her dog not to bolt and pull people on its leash is part of reasonable and ordinary care owed to Ms. Evett or anyone else who the Defendant expects to walk her dog on a leash. If the Defendant breached that duty is a question of fact for the jury. The dog's actions were the actual and proximate cause of Ms. Evett's injuries. Ms. Sartain should not have been granted summary judgement.

CONCLUSION

For the above-stated reasoning, the undisputed facts fall squarely within S.C. Code § 47-3-110, and, therefore, Ms. Sartain should not have been granted summary judgment. Further, whether Ms. Sartain is liable under a negligence theory is a question of fact for the jury. For the foregoing reasons, the Appellant respectfully request that the trial court's grant of summary judgment be reversed, and this case be remanded for trial.

Respectfully submitted:

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