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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.

Reply Brief of the Appellant

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I. "Offensive Action" as Discussed in Elmore v. Ramos Includes Respondent's Dog Aggressively Bolting Down the Stairs and Causing Severe Injuries to Ms. Evett.

In Elmore v. Ramos, 327 S.C. 507, 489 S.E.2d 663 (SC Ct. App. 1997) the offending dog caused injury when it bumped into Ms. Elmore and Ms. Elmore testified that she was not "attacked." In Elmore, the Court of Appeals held the strict liability 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. So finding, the Court held that the statute does not require evil intent and that "attack" "applies to any offensive action." Id at 511[1].

The Respondent states in her brief that because the dog in this case was "running away" from Ms. Evett that the action of running away could not be considered a "hostile offensive action" as described in Elmore . Factually, the dog bolted from Ms. Evett in an aggressive manner, presumably chasing a squirrel. Ms. Evett was attached to the dog with a leash and the force of the large dog bolting caused her to go from the top of a nine-step side entrance to the concrete below in one swoop. Ms. Evett suffered serious injuries. Bolting at a squirrel and taking Ms. Evett with him is no different than if the dog bolted at another person or dog, injuring Ms. Evett in the process with the leash. Elmore stands for the proposition that a dog owner is responsible when the dog's aggressive actions which injure a person.

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[1] 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.

II. Padget v. Mercado States that the Statute Implies That If the Dog Takes Initiative In a Struggle the Case Would Fall Under the Strict Liability Statute of S.C. Code § 47-3-110.

The Respondent relies heavily on 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 Ms. Evett was not attacked by the dog; therefore, SC Code §47-3-110 is not applicable to these facts.

The Court in Padget, building on the case law in Elmore, states that the wording "otherwise attack" in the statute implies the "taking of initiative in a struggle" and the "attack" has also been defined as "any hostile offensive action." 341 S.C. 229, 232, 533 S.E.2d 339, 340 (Ct. App. 2000). In Padget, an animal control officer was injured when lifting a non-struggling dog into her truck. The dog in Padget took no action. Padgett was injured through her own initiative of trying to lift the dog. The dog did not struggle or make it harder in anyway for her to lift it. The dog was just too heavy. 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 were the equivalent of inanimate objects. The dog's actions played no part in the injuries. In this case, Respondent's dog's actions clearly caused Ms. Evett's extensive injuries. If Ms. Evett has tripped over the dog and been injured or injured herself trying to lift the dog in the vehicle, the Respondent would not be liable. Instead, the sole cause of Ms. Evett's serious

injuries is the fact that Respondent's dog aggressively bolted and pulled Ms. Evett from the top of the steps to the concrete below. This hostile offensive action of Respondent's dog caused grave injury to Ms. Evett and Respondent is strictly liable pursuant S.C. Code § 47-3-110, and, therefore, Respondent should not have been granted summary judgment.

III. Morris v. Weatherly and Hinman v. Alter 488 N.W.2d 508 (Minn App 1992),review denied (Minn. Oct. 28,1992), are Not Distinguishable from the Case at Bar as Stated in Respondent's Brief.

Respondent states in her Initial Brief that both Morris v. Weatherly and Hinman v. Alter are distinguishable from the case at bar because both cases involve a dog charging at the injured party and the instant case the dog was bolting away from the injured party. In Morris v. Weatherly, Mr. Morris was riding his bicycle when Mr. Weatherly's dog approached him at a run. Mr. Morris quickly dismounted his bicycle, his left leg collapsed causing him to fall and injure his shoulder. The dog stopped and walked away. Id at 510. In Hinman v. Alter, Mr. Hinman, a mail carrier, heard a dog barking at him and then saw a dog "flying through the air." An independent witness who saw the encounter just said that a dog ran past Mr. Hinman causing him to spin around. Id at 510. The Minnesota Court of Appeals did not analyze the cases based on the fact that the dogs in each were running near the injured parties but instead analyzed the case on if "the actions of the dogs caused the injuries without an attenuated chain of causation." Id at 511. The Court determined that because the dogs' actions caused the injuries, they fell within the scope of Minnesota's strict liability statute. Here Ms. Evett's injuries were incurred when the dog pulled her down the steps while bolting. Just as in Morris and

Hinman, the actions of the Respondent's dog caused the injuries without any attenuated chain of causation.

Respondent's dog, through its actions, directly and immediately caused severe injury to Ms. Evett and Respondent is strictly liable for Ms. Evett's damages as a result of the actions of her dog pursuant S.C. Code § 47-3-110, and, therefore, Respondent should not have been granted summary judgment.

IV. Respondent's Negligence under a Legal Theory of Premises Liability is a Question of Fact for a Jury.

In her brief, 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. Respondent ignores the fact that she is responsible for providing reasonably safe premises and whether or not she did that is a question of fact for the jury.

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).

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). 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. 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).

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.

"Ordinarily, one in possession of personal property is presumed to be the owner." Stephenson Fin. Co. v. Wingard, 238 S.C. 506, 511, 121 S.E.2d 1,3 (1961) "one who controls the use of property has a duty of care not to harm others by it use." Miller v. City of Camden, 329 S.C. 310, 494 S.E.2d 813, 815 (1997). The Respondent controlled the use of her property including real (the home) and personal (the dog). She had a duty of care not to harm others by their use.

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. 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 and the duty not to harm others by the use of her property (both personal and real) 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.

V. Respondent owed a duty to Ms. Evett of Reasonable and Ordinary Care Under a Simple Negligence Theory and her Breach of that Duty is a Question of Fact for the Jury.

Respondent claims she did not owe any duty to Ms. Evett, a person that was on her property to take her dogs to the kennel. Under common law, one who controls the use of property (both real and personal) has a duty of care not to harm others by its use. Miller at 314. 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 and to not harm her with the presence of the dog. 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. Respondent should not have been granted summary judgement.

CONCLUSION

For the above-stated reasoning, the undisputed facts of the Respondent's dog pulling Ms. Evett down and causing serious injury falls squarely within S.C. Code §47-3-110, and, therefore, Respondent is strictly liable to Ms. Evett. The Respondent should not have been granted summary judgment. Further, whether Respondent is liable under a premises liability/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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PROOF OF SERVICE

I certify that I have served the Appellant's Reply Brief, by depositing a copy of it in the United States Mail, postage prepaid, addressed to John Solar, Esquire and James Walsh, Esquire at 1164A Woodruff Road Greenville, South Carolina 29607 and by also sending them electronically to jsolar@clarksonwalsh.com and jwalsh@clarksonwalsh.com and ctappfilings@sccourts.org.

This 13th day of July 2025

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