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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Court of Common Pleas

Patrick C. Fant, III

Appellate Case No. 2025-00703

Margie Evett,

Appellant,

v.

Desmine Sartain,

Respondent.

FINAL BRIEF OF RESPONDENT DESMINE SARTAIN

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b. Whether the Circuit Court properly granted summary judgment due to finding that the Respondent was not negligent under a legal theory of premises liability.

c. Whether the Circuit Court properly granted summary judgment due to finding that the Respondent was not negligent under a legal theory of general negligence.

STATEMENT OF THE CASE

Appellant filed her Summons and Complaint in the present action on January 16, 2023, and subsequently served the Respondent on January 31, 2023. (R. pp. 15-20). The Respondent filed an Answer denying the Appellant's allegations in the Appellant's Complaint on March 29, 2023. (R. pp. 21-27).

In the Appellant's Complaint, the Appellant asserted the following causes of action: (1) Negligence/Gross Negligence/Recklessness and Premises Liability; and (2) Strict Liability per South Carolina Code § 47-3-110. The Appellant alleged that the Appellant, while a guest at the Respondent's house, suffered injuries as a result of the actions of the Respondent's dog. (R. pp. 15-20).

After the conclusion of written discovery and eight (8) depositions, the Respondent filed a Motion for Summary Judgement. (R. p. 49). Subsequently, the Respondent submitted a Memorandum in Support of her Motion for Summary Judgment, while the Appellant submitted her own Memorandum in Opposition of Summary Judgment. (R. pp. 50-218-pp. 219-226)

The Respondent's Motion for Summary Judgment was heard by the Circuit Court on February 26, 2025. Both counsel for the Respondent and the Appellant made oral arguments to support their respective filings.(R. pp. 28-48). The Circuit Court, on February 27, 2025, issued a Form 4 Order granting the Respondent's Motion for Summary Judgment as to all causes of action. (R. p. 1).

On March 11, 2025, the Circuit issued a formal Order Granting Respondent's Motion for Summary Judgment as to all causes of action. (R. pp. 4-11). The Order granting Summary Judgment was based upon the following grounds:

(1) The actions of the Respondent's dog did not constitute strict liability pursuant to S.C. Code Ann. § 47-3-110;

(2) The Respondent did not owe a duty to the Appellant based on a legal theory of premises liability to warn Appellant of any latent or hidden dangers at the Respondent's property since there were in fact no latent or hidden dangers at the Respondent's property, or in the alternative the Respondent did not breach any legal duty to the Appellant to warn of any latent or hidden dangers at the Respondent's property since there were no latent or hidden dangers at the Respondent's property; and

(3) The Respondent did not owe a duty to the Appellant based on 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. (R. pp. 4-11).

In response, the Appellant filed a Motion to Reconsider pursuant to Rule 59(e), SCRP the same day as the Circuit Court's formal Order. (R. pp. 227-228). The Respondent filed a Memorandum in Opposition to Appellant's Motion to Reconsider on March 18, 2025. (R. p 242-244).

On March 31, 2025, the Circuit Court issued a Form 4 Order denying the Appellant's Motion to Reconsider based on the submissions of the Parties and the relevant law. (R. pp. 12-14). The Appellant subsequently filed a Notice of Appeal on April 11, 2025.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, 558, 671 S.E.2d 79, 85 (Ct. App. 2008). 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'Shaugnessy Realty Co., 380 S.C. 548, 557, 671 S.E.2d 79, 84 (Ct. App. 2008).

STATEMENT OF THE FACTS

The Appellant had been acquainted with the Respondent for at least eight years, and the Appellant started working as a housekeeper at the Respondent's house shortly after they met. (See Appellant's Depo Transcript Page 19, Lines 4-20 & Pg. 22 Lines 10- 20) (R. p. 75, Lines 4-20-p. 78, Lines 10-20). During the entire period of time that the Appellant worked for the Respondent, the Respondent had at least one German Shepherd dog at the Respondent's house. (Appellant's Depo Transcript Page 26, Lines 19-25 & Page 28, Lines 5-16 & Page 29, Lines 1-25 & Page 30, Lines 1-19) (R. p. 82, Lines 19-25-.p. 84, Lines 5-16-p. 85, Lines 1-25-p. 86, Lines 1-19). At some point in time while the Appellant was working for the Respondent, the Respondent obtained a new German Shepherd dog named Blue. (Appellant's Depo Transcript Page 31, Lines 1-10) (R. p. 87, Lines 1-10).

The Respondent would help feed Blue, or take Blue to the kennel on behalf of the Respondent. [1] (Appellant's Depo Transcript Page 31, Lines 16-25 & Page 32, Lines 1-18) (R. p. 87, Lines 16-25-p. 88, Lines 1-18). The Respondent never asked the Appellant to partake in anything that the Appellant thought was unreasonable. (Appellant's Depo Transcript Page 26, Lines 6-8) (R. p. 82, Lines 6-8).

On the day of the subject incident, the Appellant, who knew Blue for several years since Blue was a puppy, went to the Respondent's house to take Blue and another dog to the kennel. (Appellant's Depo Transcript Page 31, Lines 1-4, Page 34, Line 25 & Page 35, Line 1-25 & Page 36, Lines 9-13) (R. p. 87, Lines 1-4-p. 90, Line, 25-p. 92, Lines 9-13). At the Respondent's house, the Appellant placed her own personal leash on Blue, and took Blue outside through the side door of the Respondent's house.[2] (Appellant's Depo Transcript Page 42, Lines 18-25 & Page 43, Line 1) (R. P. 98, Lines 18-25-p. 99, Line 1). Once the Appellant and Blue were outside the entrance to the side door to the Respondent's house, the Appellant's right hand was through a "loop" in the leash attached

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[1] In the "Facts" section of the Appellant's final brief, it appears that the Appellant misstates the Circuit Court's Order in a footnote by stating that the Circuit Court Order states that "[Appellant] would routinely exit through this same door with the dogs, go down these same stairs and take the dogs on walks." The Appellant goes on to state that "[t]here was no evidence of this presented to the Court." The Appellant appears to misstate the Circuit Court's Order since the Circuit Court addressed in its Order that the Respondent had a history of owning German Shepherds, and that the Appellant had used the side door to exit with one of the Respondent's German Shepherds. However, the German Shepherd at issue was named Blue, and it is clear from the Order that the Appellant's experience with Blue was specifically referenced in the Order, and that the Appellant's experience with Blue involved feeding Blue and taking Blue to the kennel, not taking Blue on walks out the side door.

[2] In the "Facts" section of the Appellant's final brief, it appears the Appellant is trying to imply that the Appellant fell while trying to handle multiple dogs since the Appellant's final brief states: "one of the dogs bolted." However, the Appellant was very clear during her deposition that the Appellant was only holding onto the leash of one dog named Blue at the time of the subject incident, and that the other dog was still inside the Respondent's house. (Appellant's Depo Transcript Page 54, Line 25 & Pg. 55 Lines 1-16) (R. p. 110, Line 25-p. 111, Lines 1-16).

to Blue, and the Appellant's left hand was holding on to the rail to the Respondent's stairs. (Appellant's Depo Transcript Page & Page 59, Lines 15-23) (R. p. 115, Lines 15-23).

While the Appellant and Blue were at the top of the stairs and while the Appellant was holding Blue's leash, Blue, possibly due to seeing a squirrel, ran away from the Appellant and down the stairs. (Appellant's Depo Transcript Page 47, Lines 6-24) (R. p. 103, Lines 6-24). The Appellant, whose right hand was through the "loop" of the dog leash, was ultimately pulled down the stairs. (Appellant's Depo Transcript Page 47, Lines 6-24) (R. p. 103, Lines, 6-24). After the Appellant's fall, Blue ceased pursuing the squirrel, and sat at the bottom of the Respondent's stairs before ultimately helping the Appellant back up the set of stairs and back inside the Respondent's house. (Appellant's Depo Transcript Page 62, Lines 10-22 & Page 77, Lines 1-14) (R. p. 118, Lines 10-22-p. 133, Lines 1-14).

ARGUMENT

1. The Circuit Court Correctly Ruled That The Respondent Is Not Strictly Liable Pursuant To S.C. Code Ann. § 47-3-110.

S.C. Code Ann § 47-3-110(A), also known as South Carolina's Dog Bite/Attack Statute, 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.

The case Elmore v. Ramos, 327 S.C. 507, 489 S.E.2d 663 (Ct. App. 1997) stands for the proposition that an individual can be strictly liable pursuant to S.C. Code Ann. 47-3-110 for actions other than a dog bite.[3] In Elmore, the plaintiff's dog "jumped on" the plaintiff causing the plaintiff to fall and sustain injuries. Elmore v. Ramos, 327 S.C. 507, 510, 489 S.E.2d 663, 665 (Ct. App. 1997). The court in Elmore found that the phrase "otherwise attacked" contained in S.C. Code Ann. 47-3-110 meant "to set upon physically," "set upon [and] pounce," "fall upon" and any "offensive action." Elmore v. Ramos, 327 S.C. 507, 510, 489 S.E.2d 663, 665 (Ct. App. 1997). Therefore, the court in Elmore determined that the actions of the defendant's dog constituted "otherwise attacked," and the plaintiff could recover injuries pursuant to S.C. Code Ann. 47-3-110. Elmore v. Ramos, 327 S.C. 507, 489 S.E.2d 663 (Ct. App. 1997).

The case Padget v. Mercado, 341 S.C. 229, 533 S.E.2d 339 (Ct. App. 2000) stands for the proposition that S.C. Code Ann. 47-3-110 does not apply to injuries that did not result from a dog attack. In Padget, the defendant called animal control and requested the removal of an adult

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[3] It is unknown why the Appellant cites in her final brief to Elmore in support of Appellant's position that the Circuit Court erred since the Respondent has never claimed that the Respondent could only be liable pursuant to S.C. Code Ann. 47-3-110 for a dog bite, and the Circuit Court did not rule that an individual could only be liable pursuant to S.C. Code Ann. 47-3-110 for a dog bite. Moreover, Elmore clearly supports the Circuit Court's ruling in the instant case since the facts of Elmore demonstrate a "hostile offensive action" by the dog in Elmore towards the plaintiff in Elmore, while the facts of the instant case show that the Respondent's dog did not direct any "hostile offensive action" towards the Appellant's person since it is undisputed that the dog ran away from the Appellant.

rottweiler that the defendant could not control. Padget v. Mercado, 341 S.C. 229, 231, 533 S.E.2d 339 (Ct. App. 2000). 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, 231, 533 S.E.2d 339 (Ct. App. 2000). The plaintiff was subsequently successful in noosing the dog. Padget v. Mercado, 341 S.C. 229, 231, 533 S.E.2d 339 (Ct. App. 2000). However, while the plaintiff was lifting the dog into the plaintiff's truck, the plaintiff heard something "pop" in her shoulder. Padget v. Mercado, 341 S.C. 229, 231, 533 S.E.2d 339 (Ct. App. 2000), The plaintiff filed suit against the defendant alleging that the plaintiff sustained a shoulder injury as a result of a dog attack. Padget v. Mercado, 341 S.C. 229, 533 S.E.2d 339 (Ct. App. 2000),

In Padget, the court, in its analysis, 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."(Emphasis added).** Padget v. Mercado, 341 S.C. 229, 232, 533 S.E.2d 339, 340 (Ct. App. 2000). The court subsequently held that the plaintiff's 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 (Ct. App. 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 (Ct. App. 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 Bailey did not find that the set of circumstances whereby the plaintiff made contact with the defendant's dog and subsequently fell to be an "attack" because the woman was not attacked or injured by the dog. Padget v.

Mercado, 341 S.C. 229, 533 S.E.2d 339 (Ct. App. 2000) (citing Bailey v. Bly, 87 Ill. App. 2d 259, 231 N.E. 2d (Ill. App 5 Dist. 1967)).

The Appellant has cited Morris v. Weather, 488 N. W.2d 508 (Minn App 1992) and Hinman v. Alter, 488 N. W.2d 508 (Minn App 1992), which are consolidated cases regarding dog attacks in the State of Minnesota.[4] However, both cases are distinguishable from the instant case since they both clearly demonstrate liability following hostile offensive action directed by the defendants' dogs to the plaintiffs' person. In Morris, the plaintiff was riding his bicycle when he noticed the defendant's dog running towards him. Morris v. Weather, 488 N. W.2d 508, 509 (Minn App 1992). The plaintiff, fearful due to the defendant's approaching dog, subsequently dismounted from his bicycle in an attempt to avoid the defendant's dog, and in doing so he sustained injuries. Morris v. Weather, 488 N. W.2d 508, 509 (Minn App 1992). The court in Morris determined that the defendant was liable because the defendant's dog was "running toward" the plaintiff in an "aggressive manner," and the plaintiff was injured while attempting to protect himself from the defendant's dog. Morris v. Weather, 488 N. W.2d 508, 509, 510 (Minn App 1992).

In Hinman, the plaintiff, while delivering mail, noticed a dog barking at him from across the street. Hinman v. Alter, 488 N. W.2d 508, 509, 510 (Minn App 1992). The plaintiff subsequently saw another dog running towards him "flying through the air," which caused him to "spin around" and sustain injuries. Hinman v. Alter,, 488 N. W.2d 508, 509, 510 (Minn App 1992). The court in Hinman

[4] The Appellant also cited to Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 673 S.E. 2d 243 (2009). However, Harris is distinguishable from the instant case and not relevant because it simply stands for the proposition that a dog owner can be responsible for the acts that are allegedly committed when outside of the dog owner's custody, and the Respondent has never contested that legal principle nor did the Circuit Court base its Order on that legal principle. Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 673 S.E. 2d 243 (2009).

determined that the defendant was liable because the defendant's dog "approached [the plaintiff] at a fast pace," which caused the plaintiff to sustain injuries. Hinman v. Alter,, 488 N. W.2d 508, 509, 510 (Minn App 1992).

Here, the Appellant does not dispute that the Respondent's dog ran away from the Appellant's person rather than towards the Appellant's person. This undisputed fact clearly demonstrates that the Respondent's dog did not attack the Appellant since the Respondent's dog, like the dogs in Padget and Bailey, did not direct any "hostile offensive action" towards the Appellant's person. Moreover, unlike the plaintiffs in Morris or Hinman who both fell due to due dogs charging at them, the Appellant fell because the Appellant had placed the Appellant's right hand through a "loop" in the leash attached to the Respondent's dog, and the Appellant was subsequently unable to let go of the leash when the Respondent's dog ran away from the Appellant's person.

Therefore, based on the applicable case law and S.C. Code Ann. 47-3-110, the Circuit Court correctly ruled that the Respondent was not strictly liable pursuant to S.C. Code Ann. 47-3-110 because the Appellant's injuries were not the result of a dog attack since the Respondent's dog did not direct any hostile offensive action towards the Appellant or towards the Appellant's person.

2. The Circuit Court Correctly Ruled That The Respondent Is Not Liable To The Appellant For Negligence Under A Legal Theory Of Premises Liability

According to Roe v. Bibby, 410 S.C. 287, 296 763 S.E.2d 645, 650 (App. Ct. 2014), "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." "In a premises liability case, the invitee is offered the utmost duty of care by the landowner." Sims v. Giles, 343 S.C. 708, 715, 541 S.E.2d 857, 861 (App. Ct. 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,

716, 541 S.E.2d 857, 861 (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, 718, 541 S.E.2d 857, 864 (App. Ct. 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, 718 541 S.E.2d 857, 863 (App. Ct. App.). 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, 720, 541 S.E.2d 857, 863 (App. Ct. 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, 719, 541 S.E.2d 857, 863 (App. 2001).

Here, there is no evidence that the Respondent's dog had a propensity to run down stairs while leashed. Moreover, there is no evidence that there was something inherently unsafe with the Respondent's dog, or the Respondent's house, to include the Respondent's stairs or the Respondent's handrail to the stairs. Therefore, since there were no latent or hidden dangers at the Respondent's house, the Respondent did not have a duty to warn the Appellant of any latent or hidden dangers at the Respondent's house because one cannot have an affirmative duty to warn another of something that does not exist.

However, if the Respondent did have a duty to warn of non-existent latent or hidden dangers at the Respondent's house, the Respondent did not breach her duty since there were no latent or hidden dangers at the Respondent's house that the Respondent could have warned the

Appellant about. For argument's sake, it is also important to note that if there were latent or hidden dangers at the Respondent's house, the dangers would not have been latent or hidden to the Appellant since the Appellant had worked at the Respondent's house for years and was familiar with the layout of the Respondent's house. Moreover, the Appellant was aware of the existence of the Respondent's dog, the Appellant had interacted in various ways with the Respondent's dog for years prior to the subject accident, and the Appellant was aware of the dog's behavior.

Therefore, the Circuit Court correctly determined that the Respondent either had (1) no legal duty to warn the Appellant since there were no laten or hidden dangers at the Respondent's house; or (2) that the Respondent did not breach any legal duty to warn Appellant since there were no latent or hidden dangers the Respondent could have warned the Appellant about.

3. The Circuit Court Correctly Ruled That The Respondent Is Not Liable To The Appellant Under A Legal Theory Of General Negligence

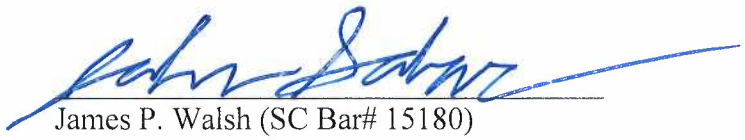
"To prevail in an action founded in negligence, the plaintiff must establish: (1) a duty of care owed by the defendant to the plaintiff, (2) a breach of that duty by a negligent act or omission, and (3) damage proximately caused by a breach of duty." Hinds v. Elms, 358 S.C. 581, 585, 595 S.E.2d 855, 857 (App. Ct. 2004).

Here, the Respondent is not aware of any general duty in the State of South Carolina to train an individual's dog. Moreover, the Respondent is not aware of any specific duty in the State of South Carolina to train an individual's dog not to run down a set of stairs while on a leash. Therefore, since there appears to be no general duty in the State of South Carolina to train one's dog, or a specific duty to train a dog not to run down a set of stairs while on a leash, the Circuit

Court correctly determined that the Respondent did not owe a duty to the Appellant regarding the training of the Respondent's dog based on a general legal theory of negligence.

CONCLUSION

A review of the record in this case reveals that the Circuit Court correctly dismissed the Appellant's causes of action since the Appellant was unable to establish genuine issues of material fact on her causes of action. Based on the foregoing, this Court should affirm the trial court's rulings and the granting of summary judgment in its entirety.



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PROOF OF SERVICE

I certify that I have served the Respondent's Final Brief by sending it electronically to ctappfilings@sccourts.org, and to vpoe@venuspoe.com. I have also deposited a bound copy in the United States Mail, postage prepaid, addressed to the South Carolina Court of Appeals, 1220 Senate Street, Columbia, South Carolina 29201 on this day.

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