

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
 TENTH (10TH) JUDICIAL CIRCUIT

Steven P. Cross,)
)
 Plaintiff,)

FINAL ORDER & JUDGMENT

vs.)

C/A No. 2016-CP-04-02464

Gregory A. Weaver, Earl E. Weaver,)
 Terrie Fallow and Jason Seagraves,)
)
 Defendants.)

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SC Court of Appeals

THIS MATTER came before the Court for a non-jury final hearing on the merits on May 8, 2018. Plaintiff initiated this action by filing his Summons and Complaint against Gregory A. Weaver and Earl E. Weaver on November 2, 2016. An Answer was filed on behalf of Gregory A. Weaver and Earl E. Weaver on January 23, 2017.

Subsequently, on September 19, 2017, an Amended Summons and Complaint was filed by Plaintiff adding Terrie Fallow and Jason Seagraves as parties. Terrie Fallow was served with the Amended Summons and Complaint on September 25, 2017. She has not filed an Answer or otherwise made an appearance in this case, and is in default. Jason Seagraves was served with the Amended Summons and Complaint on September 24, 2017. He has not filed an Answer or otherwise made an appearance in this case, and is also in default.¹ The Answer previously filed by Gregory A. Weaver and Earl E. Weaver to the original Summons and Complaint was treated by the parties as an Answer to the Amended Summons and Complaint.

Plaintiff (hereinafter referred to as Plaintiff, Steven Cross or Steven) is represented by David J. Brousseau. The Defendants Gregory A. Weaver and Earl E. Weaver (hereinafter collectively referred to as Weavers or Landlords) are represented by David F. Stoddard.

This case stems from injuries sustained by Steven Cross when he was attacked by a German Shepherd breed dog on property owned by the Weavers. Jason Seagraves and Terrie Fallow (hereinafter collectively referred to as Tenants) are the owners of the dog. The Weavers leased the premises where the dog attack took place to the Tenants for commercial purposes.

¹ Terrie Fallow and Jason Seagraves were given notice of this hearing in accordance with Rule 5 SCRPC. The bailiff called their names three (3) times prior to the start of the hearing and no response was given.
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This case was tried at the same time as a case involving John Cross, Steven's father. John Cross was also attacked by the same dog on the day in question. Reference is invited to C/A No. 2016-CP-04-02468 for the Final Order and Judgment in that case.

For reasons more fully set forth herein, the Court finds that the Weavers are not liable to Plaintiff for the injuries he sustained in the dog attack. Tenants are jointly and severally liable in said amounts set forth herein. In arriving at this conclusion, the Court issues the following findings of facts and conclusions of law in support of this Final Order and Judgment.

Findings of Facts & Conclusions of Law

The Property

The facts of this case are essentially not in dispute. The Weavers own real property located at 4500 Belton Highway (corner of Belton Highway and Shirley Store Road) in Anderson County. The Weavers rented the property to Terrie Fallow and Jason Seagraves. The lease was not in writing, and was on a month-to-month basis.

A small building is located on the property, and it was operated by Tenants as a rummage or "garage sale" type store with various used items for sale. According to the Weavers, the Tenants sold items from this store on weekends.

The Incident and Attack

On April 19, 2016, based on a tip from a neighbor, Steven Cross went to the property in order to see if tools that were stolen from him were for sale at this store. His 8 year old daughter went with him, and stayed in their Jeep while he went to knock on the door facing Belton Highway. After knocking a few times, Steven Cross began looking at tool boxes on the ground nearby. He was then suddenly attacked by a German Shepherd breed dog.

Believing the dog was not leashed, when he got loose from the dog, Steven ran in the opposite direction of his vehicle to keep the dog away from his daughter. He was attacked again, and in the ensuing struggle with the dog, Steven's firearm was flung into a field.² Steven eventually got away from the dog. He called 911 and his father, John Cross.

John Cross arrived on the scene around the same time as law enforcement. Deputy Jamie Doyle of the Anderson County Sheriff's Office arrived on the scene. Believing that Deputy

² Steven has a concealed weapons permit.
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Doyle had the dog under control, John Cross was attacked when attempting to retrieve Steven's firearm.

As a result of the dog attack, Steven Cross had 32 puncture wounds and suffered a severely broken wrist / hand. He incurred \$68,876.10 in medical bills. Further, he missed approximately 5 months of work and lost \$40,000 in income. He was in intense pain for a number of months, and still experiences pain in his wrist to this day. Additionally, he described for the Court his fear of dogs and the efforts that he and his family, notably his daughter, have gone through to try to overcome this fear.

The Weavers

Earl Weaver owns and runs a garage and automobile salvage yard next door to the rummage store property. He and his son, Greg Weaver, live together five (5) minutes away, and they both drive by the rummage store at least twice a day. For at least six months prior to the attack on Steven, they saw the German Shepherd dog tethered outside the store on a long leash.

The Weavers testified that they would not approach or pet the dog. They testified that there was a "Beware of Dog" sign in the back of the property near the dog house. They both admitted that such a sign is an indication that a dog may have dangerous tendencies. Earl Weaver testified that the dog would bark and get upset whenever he opened the gate separating the rummage store property from the automobile salvage yard property. Photographs indicate that there are many items and debris that the dog could hide under or around.

The parties stipulated there was at least one (1) prior attack by this dog on this property. According to public records, that prior attack occurred on March 17, 2016.

Greg Weaver testified that Jason Seagraves told him about an attack by the dog on an individual trying to steal a boat. The attack described by Jason Seagraves to Greg Weaver was not factually similar to the attack on the Crosses. It is unknown whether the attack described by Greg Weaver is factually similar to the prior attack on March 17, 2016. (In other words, there may have been two (2) attacks prior to the attack on Steven Cross). Greg Weaver testified that after this conversation with Jason Seagraves, the dog returned to the rummage store property. Earl Weaver testified that after the attack on Steven Cross, the dog did not return to the rummage store property. Accordingly, I find that the Weavers had actual knowledge of a prior attack by this dog. Further, based upon their own interactions with the dog, I find that the Weavers knew

or should have known about the dog's dangerous propensities well before the attack on Steven Cross.

Despite this prior knowledge of the dog's dangerous propensities, the Weavers took no action. They did not inform either Terrie Fallow or Jason Seagraves to remove the dog from the property or install proper safeguards to protect the public. Further, they did not terminate the month-to-month lease, and continued to re-lease the property each month to the Tenants with knowledge of the dangerous dog being exposed to unsuspecting invitees.

Jason Seagraves & Terrie Fallow

Jason Seagraves and Terrie Fallow were the owners and keeper of the dog. Pursuant to S.C. Code Ann. § 47-3-110 (as amended), they are strictly liable to Plaintiff for all damages sustained by Plaintiff as a result of the dog attack. Additionally, I find they were negligent and grossly negligent in keeping a dog with known dangerous propensities outside of a commercial establishment exposed and open to the public and store patrons.

Damages

I find that Steven Cross incurred actual damages in the form of medical bills, lost income, and pain and suffering in the amount of One Hundred Seventy Five Thousand and 00/100 (\$175,000.00) Dollars. Additionally, due to the prior attacks by this dog and the known dangerous propensities of this dog, I also find by clear and convincing evidence that punitive damages are appropriate. I find that Steven Cross is entitled to punitive damages in the amount of Fifteen Thousand and 00/100 (\$15,000.00) Dollars.

Landlord Liability

The main issue in this case is whether or not the Weavers are liable, under a negligence theory, to Plaintiff for the injuries he sustained in this dog attack. Put another way, what duty does a landlord, in a month-to-month commercial lease, owe to third party invitees injured by a dangerous dog which the landlord knew or should have known existed in outside areas accessible to the public?

The arguments raised by Plaintiff in support of landlord liability may be reasonable on an appellate level. However, the Circuit Court must follow existing law.

“In a negligence action, a plaintiff must show (1) the 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 injury and (4) the plaintiff suffered injury or

damages.” *Jackson v. Swordfish, LLC*, 365 S.C. 608, 612, 620 S.E.2d 54, 56 (2005). “Whether the law recognizes a particular duty is an issue of law to be determined by the court.” *Id.*

Plaintiff contends that the Weavers were negligent in not affirmatively taking steps to have the tenants rid the premises of the dog or kennel the dog so that it would not be exposed to the public in the outside areas. Plaintiff further contends that the Weavers were negligent in continuing to re-lease the property each month with knowledge of the dangerous dog in a place where it was exposed to invitees. Plaintiff also attempts to differentiate cases involving dogs in the residential context versus the commercial context.

Generally, a landlord is not responsible for the negligent acts of its lessee in keeping a dangerous dog on lessee’s property. *Mitchell v. Bazzle*, 304 S.C. 402, 404 S.E.2d 910 (Ct. App. 1991). *Mitchell* was decided prior to the passing of the South Carolina Residential Landlord and Tenant Act (RLTA). See S.C. Code Ann. §§ 27-40-10 et. seq. (as amended). Following the passage of the RLTA, the Supreme Court reversed the trial court’s grant of summary judgment to a landlord of an apartment complex when an invitee was bitten by a tenant’s dog tethered in the apartment’s common areas. *Clea v. Odom*, 394 S.C. 175, 181, 714 S.E.2d 542, 546 (2011). Under a negligence theory, a landlord may be liable to injuries sustained by an invitee in common areas as the RLTA created a duty for landlords to “keep all common areas of the premises in a reasonably safe condition ...” *Id.*, 394 S.C. at 182, 714 S.E.2d at 546; see also S.C. Code Ann. § 27-40-440(a)(3) (as amended).

The RLTA does not cover this situation as the premises in question was not utilized as a residence and was instead utilized as a commercial establishment in which to sell used goods. This was a commercial lease on a month-to-month basis.

In the commercial lease context, “A duty may arise under the particular circumstances of an individual case based upon a showing of negligence constituting the proximate cause of the loss, even though the law does not impose a general duty on landlords to protect tenants or their guests from the criminal acts of third parties.” *Jackson*, 365 S.C. at 613, 620 S.E.2d at 56 (citing *Cramer v. Balcor Property Management, Inc.* 312 S.C. 440, 441 S.E.2d 317 (1994)). There are two (2) exceptions to the traditional rule of non-liability of landlords. *Id.* The exceptions are the “affirmative acts” exception and the “common areas” exception. *Id.*

In this case, there is no evidence that the Weaver ever engaged in any affirmative acts to protect the public from the dog. As such, the “affirmative acts” exception would not apply.

Plaintiff argues that the “common areas” exception should apply. A “common area” is generally an area common to tenants that is often controlled by the landlord. See *Wright v. PRG Real Estate Mgmt.*, 413 S.C. 276, 775 S.E.2d 399 (Ct. App. 2015). Plaintiff argues that while there are no other tenants with which to share a common area, the dog was kept outside of the building on a leash whereby the dog could attack any unsuspecting invitee to the business. Further, Plaintiff argues that due to the debris kept around the premises coupled with the Weavers’ knowledge of the dog’s dangerous propensities, that the Weavers had a duty to take some affirmative steps to mitigate the danger to the public. Plaintiff analogizes this outside area to a common area in other cases.

Plaintiff provided authority from other states to support its argument. The two (2) more persuasive cases provided by Plaintiff are *Shields v. Wagman*, 350 Md. 666, 714 A.2d 881 (Md. Ct. App. 1998) and *Portillo v. Aiassa*, 27 Cal. App. 4th 1128, 32 Cal. Rptr.2d 755 (Cal. Ct. App. 1994). Plaintiff further relies on Justice Pleicones’ dissent in *Jackson*.

Portillo includes in it a persuasive argument. In *Portillo*, the California Court of Appeals found that a landlord could be held liable when the landlord renewed a commercial lease with knowledge that a dog with dangerous propensities utilized as a “guard dog” stayed on the premises exposed to potential invitees. *Portillo*, 27 Cal. App. 4th at 1132, 32 Cal. Rptr.2d at 756. In differentiating between cases where a dog is kept in a residential lease versus a commercial lease, the Court stated:

Those cases [residential lease cases] involved a family pet kept in a single-family residence. In contrast here the animal was a guard dog in a liquor store which was open to the public. The risk that someone would be seriously injured was far greater in the instant case. Moreover, while we recognize that particular neighborhoods or circumstances may require the presence of guard dogs for safety reasons, there is no strong public policy in favor of guard dogs in public places. Such animals cannot be classified as ‘an important part of our way of life’ in the same way that pets can.

Id., 27 Cal. App. 4th at 1137-38, 32 Cal. Rptr. at 760.

As stated by the California Court of Appeals, “under these circumstances, a reasonable person would have sought additional assurances that the dog was not dangerous prior to transferring possession of the premises to the tenant.” *Id.*, 27 Cal. App. 4th at 1138, 32 Cal. Rptr. at 760.

In this case, this was a month-to-month lease of commercial property. The Weavers could have terminated the lease at any time for any reason or no reason at all. For six months they drove by the premises every day and saw the tethered dog. They both testified they would not approach or pet the dog. They both believed the dog was dangerous or had dangerous propensities, and was there to guard the premises. It was stipulated that an attack occurred on another individual more than a month before the attack on Plaintiff. They were aware that if any unsuspecting member of the public walked to the side of the building, like Steven Cross, that person could be attacked. However, they took no affirmative steps to notify the tenants of their concerns about the dog, inform the tenants to get rid of the dog, install safety measures (such as a kennel) for the dog, or terminate the lease in order protect unsuspecting invitees.

One of the major purposes of tort law is to encourage socially responsible behavior and deter wrongful conduct. J. Wade, V. Schwartz, K. Kelly, and D. Partlett, Prosser, Wade and Schwartz's Cases and Materials on Torts (9th Ed.), 1 (1994). In light of that, Plaintiff's argument regarding the Weaver's liability under these particular facts appears reasonable on an appellate level. However, this Court is constrained by the law as it currently stands. As this Court interprets the current law, the Weavers had no affirmative duty to act. As such, since the law imposes no legal duty on the Weavers they cannot be held liable under a negligence theory.

ACCORDINGLY, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Defendants Earl Weaver and Greg Weaver are dismissed as parties, with prejudice.
2. Defendants Terrie Fallow and Jason Seagraves are jointly and severally liable to Plaintiff Steven Cross in the amount of One Hundred Seventy Five Thousand and 00/100 (\$175,000.00) Dollars in actual damages and Fifteen Thousand and 00/100 (\$15,000.00) Dollars in punitive damages. This results in a total judgment against Terrie Fallow and Jason Seagraves, jointly and severally, in the amount of One Hundred Ninety Thousand and 00/100 (\$190,000.00) Dollars.

IT IS SO ORDERED.

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Anderson Common Pleas

Case Caption: Steven P Cross VS Gregory A. Weaver , defendant, et al

Case Number: 2016CP0402464

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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