

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUL 12 2019
SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2018-001-824
Trial Court Case Nos. 2016-CP-04-02464 and 2016-CP-04-02468

John Cross..... Appellant,

v.

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

And

Stephen P. Cross..... Appellant,

v.

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

RESPONDENT'S INITIAL BRIEF

David F. Stoddard
Attorney for the Weaver Respondents
320 East River Street
Anderson, South Carolina 29622
Phone (864)375-0000
Fax (864)375-0052

TABLE OF CONTENTS

Table of Authorities. ii
Argument. 1

CASES

Fair v. United States, 334 S.C. 321, 513 S.E.2d 616 (1999).

Mitchell v. Bazzle, 304 S.C. 402, 404 S.E.2d. 910 (S.C.Ct. App.1991).1,2

Portillo v. Aiassa, 27 Cal.App.4th, 32 Cal.Rptr.2d 755 (Cal.Ct.App. 1994).1

Shields v. Wagman, 350 Md. 666, 714 A.2d 881 (Md.Ct.App. 1998).1,2

Ucello v. Laudenslayer, 44 Cal.App.3d, 118 Cal.Rptr. 741 (1975). 1

STATUTES

S.C. Code Ann. §27-40-440(a)(2).1

ARGUMENT

The defendants owed no duty to third parties regarding the tenants' dog. In *Mitchell v. Bazzle*, 304 S.C. 402, 404 S.E.2d. 910 (S.C.Ct. App.1991), the Court of Appeals ruled that a landlord owes no duty to protect third parties from a tenant's vicious dog. The South Carolina Supreme Court approved of this ruling in ruling in *Fair v. United States*, 334 S.C. 321, 513 S.E.2d 616 (1999).

The Plaintiffs cite *Shields v. Wagman*, 350 Md. 666, 714 A.2d 881 (Md.Ct.App. 1998) as persuasive authority that a landlord owes a duty of care to third parties in regard to a tenant's dog, especially where the Landlord can terminate the lease. The Maryland court followed the reasoning of *Portillo v. Aiassa*, 27 Cal.App.4th, 32 Cal.Rptr.2d 755 (Cal.Ct.App. 1994). While the *Portillo* case was decided after *Mitchell*, the *Mitchell* court specifically rejected the reasoning of the California case on which *Portillo* is based. *Portillo* followed *Ucello v. Laudenslayer*, 44 Cal.App.3d, 118 Cal.Rptr. 741 (1975). The *Ucello* court held that a landlord owes a duty to the public in regards to a tenant's dog based on a California statute that provides for a duty of care in the management of one's property. In effect, the *Ucello* court found that the statute changed the common law. The South Carolina Court of Appeals specifically rejected this reasoning. It is important to note that the plaintiff in the *Mitchell* case argued specifically that where a landlord has a right to terminate a month-to-month tenancy, and has knowledge that the tenant's dog is vicious, the Landlord owes a duty to the public. The Court of Appeals rejected this rationale, and the Supreme Court approved of the *Mitchell* ruling in *Fair*.

In the *Fair* case, the court addressed the issue of the effect of the Residential Landlord Tenant Act (RLTA) on the *Mitchell* ruling. S.C. Code Ann. §27-40-440(a)(2) provides "a landlord shall ... make all repairs and do whatever is reasonably necessary to put and keep the premises in a *fit and habitable* condition." Based on this statute, the *Fair* court ruled that a landlord may be held liable only for defects relating to the inherent physical state of the leased premises, not the tenant's activities. The *Fair* case also involved injuries from a dog bite.

Base on *Mitchell* and *Fair*, South Carolina Law is settled on a landlord's duty regarding a tenant's dog. A Landlord owes no duty regarding tenants' pets, except in common areas.


The question of whether a landlord in a commercial lease owes a duty to the public regarding animals kept in common areas is not presented in this case. Where a property is occupied by multiple tenants, there can be common areas such as hallways, parking lots, walkways, etc. In this case, there is one single tenant and therefore no common areas.

Conclusion

The *Fair* and *Mitchell* cases are controlling authority in this case. The trial court's decision should be affirmed.

Respectfully submitted,

April 24, 2019
Anderson, South Carolina



David F. Stoddard
Attorney for the Weaver Respondents
320 East River Street
Anderson, South Carolina 29624
Phone 864)375-0000
Fax (864)375-0052
david@stoddlaw.com

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

RECEIVED
JUL 12 2019
SC Court of Appeals

Appellate Case No. 2018-001-824
Trial Court Case Nos. 2016-CP-04-02464 and 2016-CP-04-02468

John Cross.....
Appellant,

v.

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

And

Stephen P. Cross.....
Appellant,

v.

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

PROOF OF SERVICE FOR THE MOTION TO FILE INITIAL BRIEF (REVISED)

I certify that on 07/08/2019 I served Respondents' Initial Brief on the other parties to this Appeal by placing a copies of the same in the U.S. Mail, postage prepaid, addressed to each party as follows:

David J. Brousseau PO Box 197, Anderson SC 29622
Jason Seagraves 601 Calhoun Rd, Apt 30-D, Belton SC 29627
Terrie Fallow 2315 Broadway Lake Rd, Anderson SC 29621
McIntosh Sherard Sullivan & Brousseau 138 N. Main Street., Anderson, SC 29621



Stella Marie Morton

Paralegal to David F. Stoddard
320 East River Street
Anderson, South Carolina 29624
Phone (864) 375-0000
Fax (864) 375-0052
david@stoddlaw.com

David F. Stoddard

Attorney-At-Law
320 East River Street
Anderson, South Carolina 29624
Email david@stoddlaw.com

Telephone (864) 375-0000

Facsimile (864) 375-0052

July 08, 2019

The South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211
Attention: Mary Singleton

RECEIVED
JUL 12 2019
SC Court of Appeals

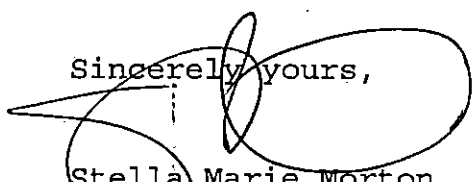
Re: John Cross v. Gregory Weaver
Appellate Case No.: 2018-001824

Dear Ms. Singleton:

Per our telephone conversation today, I have attached the Preliminary Brief, executed by Mr. Stoddard on April 24, 2019 with a Proof of Service. I have also provided suffice postage for return to same.

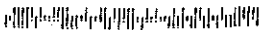
I appreciate your professional kindness and willingness to Help on this matter.

Sincerely yours,


Stella Marie Morton
Paralegal to
David F. Stoddard

/smm

Enclosure: As Stated
David Brousseau
Jason Seagraves
Terrie Fallow
McIntosh, Sherard Sullivan & Brousseau



David F. Stoddard
Attorney
320 East Fifth Street
Anderson, SC 29624

RECEIVED
JUL 12 2019
SC Court of Appeals

The South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211
Attn: Ms. Mary Singleton