THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No.: 2020-000938

Katrina Stroman……..……...……Respondent/Appellant,

v.

Samuel Jeffords……..……..……. Appellant/Respondent.

APPELLANT/RESPONDENT'S INITIAL RESPONSE BRIEF

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STATEMENT OF THE CASE

On June 29, 2017, the Respondent/Appellant ("Stroman"), who is an African American female, filed a Summons and Complaint seeking damages for personal injuries suffered as a result of a dog bite. The Complaint identified a single cause of action for common law negligence against the dog owner Payten Padgett ("Tenant") and Appellant/Respondent ("Landlord"), a Caucasian male. Tenant and Landlord, through their respective counsel, filed and timely served Answers.

At the conclusion of discovery Landlord moved for summary judgment. Following a hearing a Form 4 Order was filed denying the motion and finding a genuine issue of material fact existed as to whether Landlord was liable for Tenant's dog biting Stroman.

On January 6, 2020, the trial court issued a Consent Order allowing Stroman to amend her pleadings to assert an additional cause of action for strict liability under S.C. Code §§ 47-3-50 and 47-3-110. Landlord filed an Answer to the Amended Complaint on January 10, 2020.

On January 13, 2020, the case was called for trial. Prior to jury selection, Tenant confessed judgment in the amount of $35,000.00, and was dismissed. The jury panel was qualified, and the parties selected a jury comprised of (2) African American females, three (3) African American males, five (5) Caucasian females, and two (2) Caucasian males. The alternate juror, a Caucasian male, was dismissed prior to jury deliberation.

After the jury was selected, Stroman moved to challenge the jury composition under *Batson v. Kentucky*, 476 U.S. 79 (1986). The trial court conducted a *Batson* hearing whereby Stroman presented her arguments that Landlord's preemptory challenges were not race or gender neutral. Landlord then argued the preemptory

challenges were supported by race and gender-neutral grounds. After hearing arguments and meeting in chambers, the trial court denied the *Batson* motion and the trial began.

At the conclusion of Stroman's case, Landlord moved for a directed verdict arguing Landlord was not liable under the common law or the strict liability statute because he was neither an owner, caretaker, or keeper of Tenant's dog. [Landlord Trial Exhibit 1 (Motion/Memo Directed Verdict); Trial Transcript ("TT") p. 156, line 24-p. 174, line 24]. The trial court granted the directed verdict motion on the common law negligence claim and denied the motion as to the strict liability claim. [TT p. 171, line 1-p. 187, line 10].

Landlord presented no witnesses in his case in chief as he was called as a witness by Stroman. After notifying the trial court that Landlord rested his case, Landlord renewed the directed verdict motion as to the remaining claim for strict liability, which was also denied. [Landlord Trial Exhibit 2 (Motion/Memo Directed Verdict); TT p. 199, line 1-p. 201, line 10].

The case was submitted to the jury for consideration and after deliberations, the jury returned a unanimous verdict in favor of Landlord. Stroman was granted ten (10) days to file post-trial motions.

Stroman timely filed a Motion for a New Trial arguing the trial court erred in granting Landlord's directed verdict motion on the common law negligence claim and the trial court should reconsider the denied *Batson* motion. The issues were briefed by the parties and the trial court requested proposed orders on the *Batson* issue only, which were submitted by both parties. On May 26, 2020, the trial court filed its Order granting Stroman a new trial finding Stroman had "proved purposeful racial discrimination by Defendant of African American females pursuant to *Batson* . . ."

Landlord filed and timely served his Notice of Appeal. Stroman filed and timely served a Notice of Cross-Appeal.

STATEMENT OF FACTS

Landlord is the owner of a house located at 375 Gospel Hill Road in Orangeburg, South Carolina, which is a rental property [the "Property"]. [TT p. 109, lines 17-24]. Landlord had a business relationship with Gregg Brooks–Tenant's father. [TT p. 90, lines 9-22; p. 116, lines 1-14; p. 116, line 25-p. 117, line 8]. The past three tenants of the Property had a personal relationship with Gregg Brooks; Tenant was his daughter and the other two renters were his employees. [TT p. 112, lines 2-5]. However, Landlord never hired Mr. Brooks to solicit or provide renters for the Property. [TT p. 116, lines 15-24].

When Landlord resided out of state for business, Mr. Brooks would monitor the Property, along with Landlord's other rental homes, and notify Landlord if something needed to be done to a property. Once notified, the two would coordinate to get the matter completed. If there was an emergency, Mr. Brooks had the ability to correct what was needed. [TT p. 111, line 18-p. 112, line 9]. Additionally, Landlord would hire and pay Mr. Brooks to make repairs or additions on both his personal and rental properties. [TT p. p. 117, lines 5-8; p. 125, lines 9-19].

Toward the end of 2012, Tenant was going through a separation from her husband and needed to find a place to live. [TT p. 102, line 21-p. 103, line 2]. Tenant's father, Mr. Brooks, assisted her with renting the Property from Landlord. [TT p. 95, line 23-p. 96, line 2; p. 106, lines 17-24]. Tenant paid $450 per month in rent, which she gave to her father, Mr. Brooks, who then deposited the money into Landlord's bank account. [TT p. 96, lines 3-8]. When Tenant moved into the Property, she had the utilities changed

from Landlord's name to her father's name to avoid the deposit requirement. [TT p. 101, line 23-p. 102, line 5].

Tenant and her two small children moved into the property along with Tenant's Pitbull dog. As Tenant was moving from a 2,300 square foot house, and the Property was 800 square feet, Tenant needed to keep the dog outside. Tenant had her father, Mr. Brooks, bring over a doghouse which he personally owned. Additionally, either Tenant or Tenant and her father installed a runner for the dog. Neither the doghouse nor the runner was present when Tenant moved in the Property. [TT p. 97, line 9-24; p. 103, line 3-p. 104, line 15]. No discussions took place between Landlord, Tenant, or Tenant's father concerning the dog. [TT p. 105, lines 23-25].

It is uncontested that the sole owner of the dog was Tenant and that Tenant was the one that was responsible for the dog when it bit Stroman. It is also undisputed that Tenant's father, Mr. Brooks, did not own the dog, did not provide food, water, or vet care for the dog. Mr. Brooks did not keep the dog or visit the Property to care for the dog. Mr. Brooks was not doing any work on the Property, or taking care of the dog, when Stroman was bitten. Finally, Landlord never paid Mr. Brooks to go to the Property to take care of the dog. [TT p. 91, line 8-p. 92, line 21].

It is also uncontested that Landlord did not take care of the dog, provide water or food for the dog, did not come to the property to walk the dog, and did not pay for the dog's vet bills. [TT p. p. 104, line 16-p. 105, line 13]. Landlord expressly denied knowing Tenant had a dog and there is no evidence showing Landlord knew of Tenant's dog. [TT p. 92, lines 22-25; p. 98, lines 7-11; p. 105, lines 23-25; p. 107, lines 13-16; p. 123, lines 16-19].

On December 1, 2014, Stroman was in her back yard which abuts the backyard of the Property. Hedges delineate the property boundary. Tenant was not home at the time but had left her dog outside and not secured to the run. While Stroman was cleaning out her car, the dog charged though the hedges and towards Stroman. As Stroman ran towards her house, the dog bit her on the right arm. Stroman got away from the dog after the bite and ran inside her house. [TT p. 134, line 1-p. 136, line 21].

Prior to the bite, there were no complaints about the dog and no prior incidents involving the dog. [TT p. 102, lines 6-12; p. 127, lines 9-13; p. 153, line 24-p. 154, line 7].

STANDARD OF REVIEW

"The trial court must deny a motion for a directed verdict . . . if the evidence yields more than one reasonable inference or its inference is in doubt." *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012). "An appellate court will reverse the trial court's ruling only if no evidence supports the ruling below." *Id.*

ARGUMENTS

I. THE TRIAL COURT CORRECTLY GRANTED RESPONDENT'S MOTION FOR DIRECTED VERDICT ON THE COMMON LAW NEGLIGENCE CLAIM.

Stroman contends South Carolina's common law extends liability to a landlord for injuries to third parties by the animals of their tenants under a theory of common law negligence. [Stroman Brief, p. 4]. While South Carolina's Residential Landlord Tenant Act ("RTLA") has modified a landlord's possible liability under certain circumstances, the RTLA is not applicable in the present case. Moreover, even if the RLTA applied,

there were not facts showing any liability, and, therefore, the trial court correctly directed a verdict in Landlord's favor on the common law negligence cause of action.

Under South Carolina common, "a landlord is not liable to a tenant's invitee for injuries inflicted by an animal kept by a tenant on leased property." *Clea v. Odom*, 394 S.C. 175, 181, 714 S.E.2d 542, 546 (2011) *citing Gilbert v. Miller*, 356 S.C. 25, 586 S.E.2d 861 (Ct.App.2003) (circuit court granted summary judgment on negligence claim, finding landlord was not liable where one tenant's dog attacked another tenant); *Bruce v. Durney*, 341 S.C. 563, 534 S.E.2d 720 (Ct. App. 2000) (landlord was not liable where a dog kept on tenant's leased property bit a child).

It is the owner of the animal that is tasked with ensuring the animal does not escape, cause injury to others, and does not damage the property of others. *See* S.C. Code Ann. § 47-7-130 ("[w]henever any domestic animals shall be found upon the lands of any other person than the owner or manager of such animals, the *owner* of such trespassing stock shall be liable for all damages sustained and for the expenses of seizure and maintenance."); S.C. Code Ann. § 47-7-110 ("[i]t shall be unlawful for the *owner or manager* of any domestic animal of any description wilfully or negligently to permit any such animal to run at large beyond the limits of his own land or the lands leased, occupied or controlled by him. . .") (emphasis added).

As articulated by the court in *Mitchell v. Bazzle*, and reaffirmed in *Bruce*, a landlord has, absent other elements, no obligation to remove an animal from the premises. *Mitchell v. Bazzle* 304 S.C. 402, 405, 404 S.E.2d 910, 911 (Ct. App. 1991) (holding a landlord is not liable under the common law for injuries caused by a tenant's dog, even when the landlord knows of the animal's vicious propensities and has the right to cancel

the tenant's lease); *Bruce*, 341 S.C. at 571, (". . . we find no authority imposing vicarious liability upon a landowner for the injuries caused by a tenant's dog . . .").

However, the *Clea* court addressed the novel issue of whether the RLTA's provision that a "landlord shall 'keep all common areas of the premises in a reasonably safe condition;" altered the common law concerning landlord liability. Specifically, the *Clea* court answered the following question: [[w]hether a landlord can be liable for injuries inflicted upon an invitee or licensee where the attack occurs in the *common area* of an apartment complex, i.e. whether § 27–40–440(a)(3) alters the common law rule . . ." *Clea*, 394 S.C. at 182, 714 S.E.2d at 546.

The *Clea* court determined the common law has since been abrogated, in part, by the RLTA, in that that a landlord may be liable for injuries inflicted upon an invitee or licensee "where the attack occurs in the *common area* of an apartment complex . . ." and when there is evidence the landlord has *actual knowledge* of a dog's vicious propensity and fails to remedy the situation. *Clea*, 394 S.C. at 182-83, 714 S.E.2d at 546-47.

In the present case, the undisputed evidence is that the dog bite *did not* occur in a common area, but rather, the bite occurred on Stroman's property. Stroman was neither a licensee nor invitee to the property when the bite occurred. The RLTA is not applicable in the present case, and, therefore, the general common law rule applies. Therefore, the trial court correctly granted Landlord's Motion for Directed Verdict on the common law negligence claim.

Moreover, there was no evidence that Landlord or Tenant's father knew the dog was allowed to be unrestrained and there was no evidence the dog had a vicious propensity.

There was no evidence at trial that Landlord knew about Tenant's dog, much less that it was unrestrained. [TT p. 91, line 8-p. 92, lines 21-25; p. 98, lines 7-11; p. 104, line 16-p. 105, line 13; p. 105, lines 23-25; p. 107, lines 13-16; p. 123, lines 16-19]. There was no evidence Tenant's father knew the dog was left unrestrained. [TT p. 85, line 12-p. 95, line 7]. Finally, prior to the bite, there were no complaints about the dog and no prior incidents involving the dog. [TT p. 102, lines 6-12; p. 127, lines 9-13; p. 153, line 24-p. 154, line 7]. Therefore, the trial court correctly granted Landlord's Motion for Directed Verdict on the common law negligence claim.

II. THE TRIAL COURT CORRECTLY GRANTED RESPONDENT'S MOTION FOR DIRECTED VERDICT FOR COMMON LAW NEGLIGENCE PER SE.

Stroman alleges the statutory violation of S.C. Code 47-3-50 gives rise to a claim for negligence *per se*, and the trial court erred in granting Landlord's Motion for Directed Verdict on the common law negligence claim. [Stroman Brief, p. 9].

> (A) It is unlawful in any county or municipality adopting penalty provisions pursuant to the provisions of this article for any dog or cat *owner or other keeper* of a dog or cat to:
>
> (1) allow his dog to run at large off of property owned, rented, or controlled by him;
>
> (2) keep a vicious or unruly dog unless under restraint by a fence, chain, or other means so that the dog cannot reach persons not on land owned, leased, or controlled by him;

S.C. Code § 47-3-50 (emphasis added).

While "other keeper" is not defined in the statute, South Carolina's strict liability dog bite statute contains a similar phrase.

"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. S.C. Code § 47-3-110.

"The Legislature's use of the phrase 'care or keeping' clearly requires that the 'other person' act in a manner which manifests an acceptance of responsibility for the care or keeping of the dog." *Clea v. Odom*, 394 S.C. 175, 180, 714 S.E.2d 542, 545 (2011) *citing Harris v. Anderson County Sheriff's Office*, 381 S.C. 357, 364, 673 S.E.2d 423, 427 (2009).

> There are three scenarios under § 47–3–110 when the attack is unprovoked and the injured party is lawfully on the premises: First, the dog owner is strictly liable and common law principles are not implicated. Second, a property owner is liable when he exercises control over, *and assumes responsibility for, the care and keeping of the dog*. Third, a property owner is not liable under the statute when he has no control of the premises and provides no care or keeping of the dog.

Clea, 394 S.C. at 180, 714 S.E.2d at 545 (emphasis added).

In *Nesbitt v. Lewis*, plaintiff brought an action against mother, son, and daughter who were property owners. *Nesbitt v. Lewis*, 335 S.C. 441, 517 S.E.2d 11 (Ct. App. 1999). Mother and son resided on the property and the dogs at issue were owned by mother and lived on the property. Daughter did not live on the property. *Id.* A jury returned a verdict against the mother, son, and daughter and awarded damages.

On appeal, this Court reversed the jury verdict as to daughter finding the evidence failed to show the dogs were in her care and keeping because she had not resided on the property for five (5) years, did not take care of the dogs, and did not own the dogs. The Court held daughter could not be liable as she lacked both possession and control over the property *and* the dogs, which precluded a finding that daughter owned the dogs or had them in her care and keeping. *Id*., S.C. 335 S.C. at 446, 517 S.E.2d 14.

In *Bruce v. Durney*, a plaintiff brought an action against the owners (tenants at will) of a dog that bit his minor child and against the record owner of the property (landlord) where the dog was kept. It was alleged the property owner knew, or should reasonably have known, of the dangerous condition created by the dog owners in that they allowed to dog to be unrestrained and failed to act as the property owner to remedy the condition. The plaintiff alleged the property owner had the right to control the property and was negligent in failing to do so. *Bruce v. Durney*, 341 S.C. 563, 565, 534 S.E.2d 720, 722 (Ct. App. 2000).

In affirming the trial court's grant of summary judgment in favor of property owner on the plaintiff's strict liability claim, this Court found, (1) property owner did allow the dog to be kept on the property where property owner did not live; and (2) property owner did exercise some measure of control in that he visited the property on average once a week. However, the court found that no evidence existed showing property owner provided any care or support for the dog and property owner could not be found to be the dog's keeper as it was obvious dog owner was the owner and keeper of the dog. As such, this Court affirmed the trial court's holding that property owner was not liable under S.C. Code § 47-3-110. *Id.*, 563 S.C. at 573-74, 534 S.E.2d at 725.

In the present case, there was no evidence at trial that Landlord knew about Tenant's dog. It was uncontested Landlord did not own the dog. There was no evidence Landlord ever provided any care for the dog or kept the dog. There was no evidence Landlord ever exercised any control over the dog. There was no evidence Landlord ever assumed any responsibility for the care or keeping of the dog. [TT p. 91, line 8-p. 92, lines 21-25; p. 98, lines 7-11; p. 104, line 16-p. 105, line 13; p. 105, lines 23-25; p. 107, lines 13-16; p. 123, lines 16-19]. Accordingly, there was no evidence in which the jury

could have found Landlord liable because Landlord never had the dog in his care and keeping at any point in time and, therefore, the trial court correctly granted Landlord's Motion for Directed Verdict on the common law negligence per se claim.

At trial, Stroman also attempted to establish liability against Landlord arguing he was liable for the actions of his agent, Mr. Brooks.

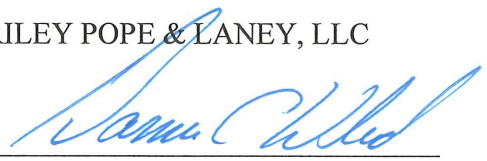
"The principal is responsible for the acts of the agent within the scope of his apparent authority, although he may act contrary to the directions of the principal." *Williams v. Tolbert*, 76 S.C. 211, 56 S.E. 908, 910 (1907). Under the evidence presented at trial, regardless of whether Mr. Brooks was acting in his role as Landlord's agent, there was no evidence of any wrongdoing by Mr. Brooks that would make him strictly liable for the dog bite. As such, there were no grounds to impute liability under an agency relationship.

As stated, it is undisputed that Mr. Brooks did not own the dog, did not provide food, water, or vet care for the dog. Mr. Brooks did not keep the dog or visit the property to care for the dog. Mr. Brooks was not doing any work on the Property on December 1, 2014, when Stroman was bitten. Mr. Brooks was not taking care of the dog in December 2014, when Stroman was bitten. Finally, Landlord never paid Mr. Brooks to go to the Property to take care of the dog. [TT p. 91, line 8-p. 92, line 21]. Accordingly, there was no evidence which the jury could have found Mr. Brooks liable because he never had the dog in his care and keeping at any point in time. If Mr. Brooks could not be found liable, then to the extent there was any principal-agent relationship, Landlord could not be found vicariously liable. Therefore, the trial court correctly granted Landlord's Motion for Directed Verdict on the common law negligence per se claim. [TT p. 159, line 12-p. 165, line 14; p. 165, lines 12-24].

CONCLUSION

For the reasons set forth, Appellant/Respondent respectfully requests that the trial court's Order granting the Motion for Directed Verdict on the common law negligence claim be affirmed.

RILEY POPE & LANEY, LLC



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November 16, 2020

THE STATE OF SOUTH CAROLINA
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APPEAL FROM ORANGEBURG COUNTY
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v.

Samuel Jeffords……..……..……. Appellant/Respondent.

CERTIFICATE OF SERVICE

As allowed by Supreme Court Amended Order 2020-05-29-02, this is to certify that I have this day caused to be served upon the person named below a copy of the **Appellant/Respondent's Initial Brief, Initial Response Brief, and Designations of Matter to be Included in the Record on Appeal** via electronic mail to counsel's AIS E-mail address as follows:

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November 16, 2020

(Via E-mail only: ctappfilings@sccourts.org)
The Honorable Jenny Abbott Kitchings
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Re: Katrina Stroman, Respondent/Appellant v. v. Samuel Jeffords, Appellant/Respondent
Appellate Case No.: 2020-000938
Our File No.: 5167.02117

Dear Clerk:

As allowed by Supreme Court Administrative Order 2020-05-29-02, please find attached for filing Appellant/Respondent's Initial Brief, Initial Response Brief, and Designations of Matter to be Included in the Record on Appeal.

Please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

s/Damon C. Wlodarczyk
S.C. Bar No. 70460

DCW/

cc: Virginia W. Williams, Esquire