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'S FINAL BRIEF OF RESPONDENT/APPELLANT

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STATEMENT OF ISSUES ON CROSS APPEAL

I. Whether the lower court erred in granting a directed verdict on Respondent-Appellant's claims of common law negligence?

STATEMENT OF THE CASE

This appeal arises out of a personal injury action in which a jury found in favor of Appellant-Respondent Samuel Jeffords ("Jeffords"). Respondent-Appellant Katrina Stroman ("Stroman") filed a complaint seeking damages from Jeffords for a dog bite suffered by Stroman on or about December 1, 2014, by a dog who was placed on Jeffords' rental property. The jury's defense verdict was rendered on January 14, 2020. Stroman filed a motion for JNOV or in the alternative, a motion for a new trial, on or about January 23, 2020, raising numerous issues. A hearing on these motions was set for March 30, 2020, but due to the COVID-19 pandemic the lower court requested proposed orders in effort to resolve the motions without a hearing. The lower court timely received the same from both parties, considered the arguments presented on all the issues, and ultimately granted Stroman's request for a new trial based solely on *Batson* issues on or about May 26, 2020. The lower court did not address the additional grounds Stroman presented for a new trial. Jeffords filed a notice of appeal on June 19, 2020, as to the *Batson* rulings. On June 24, 2020, Stroman filed her cross appeal.

FACTS

On December 1, 2014, Stroman was in her backyard, which adjoined Jeffords' property, when she was attacked by a pit-bull. (R. p. 15). The pit-bull was living at 375 Gospel Hill Road, Orangeburg, South Carolina, property owned by Jeffords. (R. p. 15).

Jeffords owned multiple rental properties. (R. pp. 187-188). Greg Brooks helped Jeffords maintain and monitor his properties, including the 375 Gospel Hill Road property, at the time of

this incident. (R. pp. 165-174, 189-191, 196-197). He also secured tenants for Jeffords at his various properties, including at 375 Gospel Hill Road. (R. pp. 165, 194). At the time of the dog-bite, Mr. Brooks' daughter, Payten Padgett, was living at the home with her child. (R. p. 173). Furthermore, Mr. Brooks had keys to Jeffords' properties and was also a signatory on Jeffords' account so that he could freely access money to make modifications to the rental properties. (R. p. 165, 166, 192-193).

Jeffords and Mr. Brooks took several steps to secure and protect 375 Gospel Hill Road while Ms. Padgett lived at the home: permitted a pit-bull to live there (R. pp. 167-168); provided a doghouse and dog runner on the property for the pit-bull (R. p. 171); erected a fence on the property (R. pp. 178-179); and put an ADT security system in the home (R. pp. 198-199).

As to the pit-bull, Mr. Brooks, Jeffords' agent/partner, was aware the dog was living on the property. (R. p. 171). Ms. Padgett also testified Jeffords was aware, or should have been aware, that the pit-bull was on the property because he had been on the property once or twice while Ms. Padgett lived there (R. pp. 175, 197); the dog runner and doghouse were in plain view from the front of the house (R. pp. 175-176); and the pit-bull typically roamed free on the property (R. p. 178). Ms. Padgett placed the pit-bull outside because her small child was living inside of the home. (R. p. 181).

At the close of Stroman's case, Jeffords moved for a directed verdict to strike Stroman's common law negligence cause of action. (R. p. 237). The lower court granted Jeffords' motion. (R. pp. 262-264). In furtherance of that decision, the lower court did not charge the jury on any form of negligence and posed two questions on the verdict form, specific to the strict liability statute:

1. Did the Defendant Samuel Jeffords, or his agent (if any), exercise control over the premises at the time of the dog bite?

2. Was the dog in Defendant Jeffords' or his agents' (if any) keeping at the time of the dog bite?

(R. pp. 10-11, *see also* R. pp. 255-256). The jury answered "yes" to the first question and "no" to the second. *Id*. Stroman challenged this ruling in her grounds for a new trial, but the lower court declined to make a ruling thereon, instead focusing on the *Batson* issues. (R. pp. 8, 46-50).

STANDARD OF REVIEW

"When upon a trial the case presents only questions of law the judge may direct a verdict." Rule 50, SCRCP. This rule requires the lower court to determine whether there is any evidence supporting the nonmoving party as well as any reasonable inferences in the light most favorable to the nonmoving party. *Unlimited Servs., Inc. v. Mackklen Enters., Inc.*, 303 S.C. 384, 401 S.E.2d 153 (1991).

ARGUMENT

The lower court incorrectly granted Jeffords' motion for directed verdict on Stroman's negligence claim because there remained a question of fact for the jury to consider as to negligence. In viewing the facts in a light most favorable to Stroman, there was evidence of common law negligence and thus, this matter should have gone to the jury.

I. THE LOWER COURT ERRED IN GRANTING JEFFORDS' DIRECTED VERDICT MOTION BECAUSE JEFFORDS HAD THE REQUISITE CONTROL AND KNOWLEDGE OF A DANGEROUS CONDITION UNDER *CLEA'S* COMMON LAW NEGLIGENCE ANALYSIS

The jury's first finding on the verdict form as to control over the premises is an element of common law negligence under *Clea*. South Carolina 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. *Clea v. Odom*, 394 S.C. 175, 714 S.E.2d 542 (2011). Before *Clea*, the common law of

South Carolina did not hold a landlord liable for the attack of the tenant's dog on a third party. *Gilbert v. Miller*, 356 S.C. 25, 586 S.E.2d 861 (Ct. App. 2003); *see also Bruce v. Durney*, 341 S.C. 563, 534 S.E.2d 720 (Ct. App. 2000). Our Supreme Court continued this line of thinking in *Fair v. USA*, holding the Residential Landlord Tenant Act (RLTA) does not alter the common law rule that a landlord is not liable to a tenant's invitee for an injury caused by a tenant's dog. *Fair v. United States of America*, 334 S.C. 321, 513 S.E.2d 616 (1999). The facts in *Clea*, however, presented a novel set of facts under the RLTA: "whether a landlord can be liable for injuries inflicted upon an invitee or licensee where the attack occurs in the common area of an apartment." *Clea* at 182, 714 S.E.2d 542 at 546. Because of this distinction of facts, the analysis changed. The basis for that change is founded in the control the landlord exerted over the dog's presence on the property and the knowledge the landlord had of the dog.

To analyze the *Clea* facts, the South Carolina Supreme Court looked at two cases from other jurisdictions: *Lidster v. Jones* and *Gentle v. Pine Valley Apts*. *Id*. (analyzing *Lidster v. Jones*, 176 Ga.App. 392, 336 S.E.2d 287 (Ga.App. 1985) and *Gentle v. Pine Valley Apartments*, 631 So.2d 928 (Ala. 1994)). In *Lidster*, "the appellant alleged the landlord had actual knowledge of the dog's vicious propensities because he knew the dog had previously attacked another child, and that the landlord did nothing to keep the dog out of the complex's common area." *Lidster*. The *Lidster* court also noted "a landlord's obligation to keep the common areas of the leased premises safe." *Id.* Similarly, in *Gentle*, "the presence of a tenant's vicious dog in a common area constituted a dangerous condition and that a landlord must exercise reasonable care to prevent injuries from such a dangerous condition, but only to the extent he was aware of its existence." *Clea* at 183, 714 S.E.2d at 546 (summarizing *Gentle*). Applying these two cases to the facts in *Clea*, the court held:

> While it is true that a landlord is typically not liable to someone attacked by a tenant's dog while that person is on the leased property, this case is distinguishable from other cases in our jurisdiction because those cases did not involve attacks occurring in common areas. We find this case is consonant with those cases from other jurisdictions where the landlord could be liable where the attack occurred in a common area.

Clea v. Odom, 394 S.C. 175, 183, 714 S.E.2d 542, 547 (2011).

The consideration of a "common area" was obviously significant to the *Clea* court. The "common area" in *Lidster* was described as "where the owner has retained control…to which tenants and others are allowed access." *Lidster* at 393, 336 S.E.2d at 288. In *Gentle,* the common area was described as a "courtyard area in the vicinity of the stair rail" or "areas shared by other tenants." *Gentle* at 929, 934.

South Carolina's Residential Landlord and Tenant Act also uses the term "common areas": "A landlord shall…keep all common areas of the premises in a reasonably safe condition…" S.C. Code Ann. §27-40-440(a)(3) (1986). The statute goes on in subsections (c) and (d) to specifically distinguish the partition of duties between a tenant and landlord when the leased premises is a "single family residence" or "any dwelling unit other than a single family residence." S.C. Code Ann. §27-40-440(b) and (c). There is no distinction in the definition of "common areas to indicate it only applies to multi-family dwelling units.

Our courts have interpreted common areas similarly to the *Lidster* and *Gentle* courts, emphasizing the landlord's control over the area. *See Jackson v. Swordfish Investments, LLC*, 365 S.C. 608, 613, 620 S.E.2d 54, 56-57 (2005) (defining common area as the place in a shopping center that the landlord had possession and control of as opposed to where the tenant/dance club was); *Pryor v. Northwest Apartments, Ltd.*, 321 S.C. 524, 527, 469 S.E.2d 630, 632 (Ct. App. 1996) (defining common area as an unpaved area between the tenant's apartment and the parking lot); and *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 494 S.E.2d 827, 831 (Ct.

App. 1997) (the common area is opposed to the "inside [of] an apartment"). The common factor in defining the common area is the landlord's control over the area relative to that of the tenant's and the use of that area by others.

In the case at hand, the jury conclusively found that Jeffords, or his agent, exercised control over the premises at the time of the dog bite. (R. p. 10). This verdict is amply supported by evidence of Jeffords' and/or Mr. Brooks' control over the property, particularly their efforts to secure and protect the Gospel Hill Court property: permitting a pit-bull to live there, providing a doghouse and dog runner on the property for the pit-bull, erecting a fence on the property, and installing an ADT security system in the home. When it came to protecting and securing the property, Jeffords and Mr. Brooks exercised significant control. There was also evidence presented that Jeffords and/or Mr. Brooks were aware the backyard where the pit-bull lived was used by individuals other than Ms. Padgett.

The other factor significant to the *Clea* court was the landlord's knowledge of the dog's vicious propensities. *Clea v. Odom*, at 183, 714 S.E.2d 542, 547. South Carolina case law gives insight as to what is considered knowledge of a dog's vicious propensities. *See Conoley by Conoley v. Riel*, 279 S.C. 521, 309 S.E.2d 291 (1983) (finding there was a question of fact for the jury when the dog's owner concedes after the dog bite that the dog should have been better restrained); *Giles v. Russell*, 255 S.C. 513, 180 S.E.2d 201 (1971) (finding evidence that the dog was "generally of a mischievous disposition" created an issue of fact to be made by the jury as to the dog's vicious propensities); *Clea v. Odom*, 394 S.C. 175, 714 S.E.2d 542 (2011) (finding evidence that dog had previously attacked another was evidence of the dog's vicious propensities); *McQuaig v. Brown*, 270 S.C. 512, 242 S.E.2d 688 (1978) (finding no evidence of vicious characteristics when the only evidence was that the dog had never exhibited any such characteristics and the dog was trained as

a hunting dog and not a guard dog); and *Mungo v. Bennett*, 238 S.C. 79, 81-82, 119 S.E.2d 522, 523 (1961) ("if it has a tendency to do a dangerous or harmful act, it has a vicious propensity").

In the case at hand, Stroman presented similar sufficient evidence to find that Jeffords and/or his agent had knowledge of the dog's vicious propensities. Ms. Padgett, Mr. Brooks' daughter, testified that she kept the pit-bill outside because she had a small child in the home and did not want the pit-bull in the house with her small child. (R. p. 181). Stroman argued to the jury that this, coupled with putting in a runner, was because it was known by Ms. Padgett, Mr. Brooks, and Jeffords, that the dog needed to be restrained and kept away from a small child because of its nature. (R. pp. 285-286). However, the jury was not allowed to consider this second question of Jeffords' common law liability in negligence even though it was presented with the first element and confirmed Stroman proved that element.

Stroman's case is distinguished from *Clea* in that the bite did not happen on Jeffords' property. However, the facts presented here obviate the necessity to correct that misapplied limitation. The duty in *Clea* comes from the RLTA, which reads "a landlord shall…keep all common areas of the premises in a reasonably safe condition…" S.C. Code Ann. §27-40-440(a)(3). This statutory provision has evolved to a duty owed by a landlord to keep the common areas in a reasonably safe condition. *Clea v. Odom*, 394 S.C. 175, 714 S.E.2d 542.

To better understand what "reasonably safe condition" entails, we turn to case law. Some cases address conditions outside of the rented apartment or home. *See Pryor v. Northwest Apartments, Ltd.*, 321 S.C. 524, 469 S.E.2d 630 (considering the condition of "a patch of mud covered with pine straw" near a paved walkway). Other decisions consider conditions inside the home or apartment rented. *See Nedrow v. Pruitt*, 336 S.C. 668, 521 S.E.2d 755 (Ct. App. 1999) (considering condition of a heater inside of an apartment); and *Durkin v. Hansen*, 313 S.C. 343,

437 S.E.2d 550 (Ct. App. 1993) (considering a slippery tile floor in the kitchen of a rented condo). The courts are obviously concerned with the nature of the condition and whether the condition existed because of something the landlord did or did not do. Where the injury happened is coincidental to the nature of the condition, not an inherent factor in finding the landlord liable.

Clea does nothing to limit a landlord's liability for a dangerous dog that is on the landlord's property. To do so would ignore the very nature of the dangerous condition – a dog that moves, breathes, bites and attacks. If the landlord creates, fosters, and permits this dangerous condition in a common area, it is illogical to excuse that negligence because the injury did not happen on the landlord's property.

The foundation of landlord liability for a tenant's dog under the common law is control and knowledge. The jury in this case agreed Jeffords and/or his agent had control over the premises at the time of the bite. It was further presented with evidence that Jeffords and/or his agent had specific control over a condition on the property – a dangerous dog – yet allowed it to roam free. As such, there was sufficient evidence before the jury to sustain common law negligence. The lower court erred in denying the jury from answering that factual question.

II. THE LOWER COURT ERRED IN GRANTING JEFFORDS' DIRECTED VERDICT MOTION BECAUSE STROMAN OTHERWISE PROVED COMMON LAW NEGLIGENCE BEYOND A LANDLORD'S DUTIES

Even if this Court rejects Stroman's analysis under the *Clea* case and the RLTA, Stroman proved Jeffords, separate and apart from any landlord duties, violated statutory law in permitting the dog to remain unrestrained on his property.

Stroman alleged statutory violations in her pleading, including section 47-3-50. (R. p. 25). That section reads:

> It is unlawful…for any dog or cat owner or other keeper of a dog or cat to…(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 Ann. §47-3-50 (Eff. May 19, 2000). The lower court charged this statute to the jury but did not charge it on negligence or negligence per se. (R. p. 328).

Negligence per se is founded in negligence with the duty established by a statute and the remaining analysis under the standard elements of a negligence cause of action. *Rayfield v. South Carolina Department of Corrections*, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988). "In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that [the plaintiff] is a member of the class of persons the statute is intended to protect." *Id*. at 103, 374 S.E.2d at 914. The plain language of this statute is to protect persons not on an individual's property from a vicious or unruly dog.

Stroman, who was bitten on her own property, is clearly in the category of persons this statute is intended to protect and she was injured by a vicious dog allowed to leave Jeffords' property. Furthermore, as previously detailed, the jury was presented with evidence that Jeffords' agent, Mr. Brooks, knew the dog was on the property where his daughter lived; he knew the dog stayed outside because his small grandchild was living in the home; and he provided a home and runner for the dog to stay outside. There was also evidence that the dog typically was in plain view running all around the property and Jeffords had been on the property at least one to two times. Viewing these facts in the light most favorable to Stroman, the jury could have found Jeffords, individually and/or through the acts and knowledge of his agent Mr. Brooks, violated this statute

and that the violation of this statute was the proximate cause of Stroman's injuries. This is a question of common law negligence, not a legal question of a landlord's duties for the court.

The two questions presented to the jury on the verdict form were posed based on the no-fault strict liability statute, section 47-3-110. The common law negligence question includes an analysis of Jeffords' fault and would simply be, was Jeffords negligent and did his negligence cause Stroman's injuries? The jury could have answered that question differently than the strict liability questions and it was presented with facts, and the law, to do so yet prohibited from reflecting its answer to that question on the verdict form.

CONCLUSION

For these reasons, the Court should GRANT Stroman a new trial, requiring the trial court to charge the jury on common law negligence.

April 1, 2021

Respectfully submitted,

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