



Missouri Court of Appeals

Southern District

Division Two

Minor J.D., by her mother and Next Friend)

A.O.,)

Plaintiff-Appellant,)

v.)

No. SD36791

RICHARD PARRISH, and MARY)

PARRISH,)

Filed: February 23, 2020

Defendants-Respondents,)

and)

LEE RICHMOND, and STEPHANIE)

LOWER,)

Defendants.)

APPEAL FROM THE CIRCUIT COURT OF CHRISTIAN COUNTY

Honorable Laura Johnson

AFFIRMED

A.O. (“Plaintiff”), mother and Next Friend of the minor child J.D. (“Child”), appeals the judgment entered in favor of defendants Richard and Mary Parrish (“Landlords”) on Plaintiff’s claim for money damages arising out of personal injuries Child received as the result of a dog bite. The dog at issue (“the dog”) was kept on property owned by Landlords and leased to their tenant, Stephanie Lower (“Tenant”), the dog’s owner. The judgment was entered via the summary-judgment process on the

ground that Plaintiff could not produce evidence that Landlords owned, possessed, or harbored the dog.

Plaintiff does not dispute that assertion. Instead, her sole point claims the trial court erred in granting judgment in favor of Landlords because “Missouri common law also recognizes liability for injuries caused by domestic animals under ordinary negligence theories which do not require ownership, possession or harboring of the domestic animal causing injury[.]” Finding no support for that claim, we affirm.

Standard of Review

The trial court makes its decision to grant summary judgment based on the pleadings, record submitted, and the law; therefore, this Court need not defer to the trial court’s determination and reviews the grant of summary judgment *de novo*. In reviewing the decision to grant summary judgment, this Court applies the same criteria as the trial court in determining whether summary judgment was proper. Summary judgment is only proper if the moving party establishes that there is no genuine issue as to the material facts and that the movant is entitled to judgment as a matter of law. The facts contained in affidavits or otherwise in support of a party’s motion are accepted as true unless contradicted by the non-moving party’s response to the summary judgment motion. Only genuine disputes as to material facts preclude summary judgment. A material fact in the context of summary judgment is one from which the right to judgment flows.

....

The record below is reviewed in the light most favorable to the party against whom summary judgment was entered, and that party is entitled to the benefit of all reasonable inferences from the record. However, facts contained in affidavits or otherwise in support of the party’s motion are accepted as true unless contradicted by the non-moving party’s response to the summary judgment motion. [*Goerlitz v. City of Maryville*,] 333 S.W.3d 450, 452-53 (Mo. banc 2011) (internal quotation marks and citations omitted).

Green v. Fotoohghiam, 606 S.W.3d 113, 115-16 (Mo. banc 2020).

The Summary Judgment Record

In counts seven and eight of her first amended petition,¹ Plaintiff sought damages on a premises-liability theory. Specifically, Plaintiff averred that: (1) Landlords had allowed the dog on their premises; (2) the premises were not safe as a result of the dog being there; (3) Landlords knew or should have known of this condition; and (4) Landlords failed to use ordinary care to either remove the dog or warn Plaintiff about the dog.

As relevant to this appeal, Landlords' motion for summary judgment asserted (and Plaintiff admitted) the following material, uncontroverted facts:

1. At all relevant times, [Landlords] owned the single-family home located at 202 Spruce Avenue, Clever, Missouri (hereinafter, the "Property").
2. [Tenant] entered into a lease agreement to rent the Property from [Landlords], which lease was in effect on August 11, 2017.
3. On August 11, 2017, [Tenant] lived at the Property with her two children, her three dogs, and Lee Richmond and his son.
4. Neither [Landlord] lived at the Property.
5. [The dog] was owned by [Tenant].

Citing *A.T. by R.T. v. Satterfield*, 597 S.W.3d 797 (Mo. App. S.D. 2020), our most recent pronouncement on a nearly-identical issue, the trial court granted Landlords' motion for summary judgment on the ground that

Missouri courts have made it clear that landlords cannot be held liable for injuries caused when a tenant's dog bites a visitor to the leased property. The Court finds that this applies whether the claim is in negligence or premises liability. Thus, a landlord cannot be liable for injuries caused when a tenant's dog bites an invitee to the leased premises unless the evidence shows the landlord was also a harbinger of the dog. Because there is no evidence in this case that [Landlords] were harborers of the dog, the Court sustains their [motion for summary judgment].

¹ The judgment became final after Plaintiff dismissed the remaining counts in her amended petition.

Analysis

Plaintiff's sole point on appeal claims the trial court erred in granting Landlords' motion for summary judgment because "Missouri common law . . . recognizes liability for injuries caused by domestic animals under ordinary negligence theories which do not require ownership, possession or harboring of the domestic animal causing injury[.]" We disagree.

In *Satterfield*, as here, the minor child was bitten by a dog that was kept on premises owned by the defendant landlords. *Id.* at 798. The plaintiff claimed that the landlords allowed a nuisance to remain on their property when they permitted their tenant to harbor dogs – including the one that bit the child – that the landlords knew had vicious propensities. *Id.* at 798-99. We rejected that argument and upheld the trial court's grant of summary judgment in favor of the landlords. *Id.* at 802.

In so ruling, we concluded that "Missouri courts have refused to extend liability in negligence[] for harm caused by a domestic animal beyond owners, possessors, or harborers of animals." *Id.* at 801 (quoting *Miles ex rel. Miles v. Rich*, 347 S.W.3d 477, 483 (Mo. App. E.D. 2011)). Possessing the land on which the animal is kept, even when coupled with permission to do so, is not sufficient to make the possessor of land liable as a harborer. *Satterfield*, 597 S.W.3d at 800 (citing the Restatement (Second) of Torts section 514, comment *a* (Am. Law. Inst. 1977) ("the Restatement")). We also found "no meaningful distinction between a negligence claim and a nuisance claim for the purposes of applying these principles. Nor does the Restatement recognize such a distinction -- it simply states when an owner, possessor, or harborer 'is subject to liability for harm done

by the animal to another[.]’” *Satterfield*, 597 S.W.3d at 801 n.8 (quoting the Restatement at sections 509, 514, and 518).

The Statement of Uncontroverted Facts at issue in *Satterfield* was virtually the same as the one at issue here, which claims that Landlords, who own the property but leased it to Tenant, did not own, possess, or harbor the dog.²

In an effort to avoid the governing law as set forth in *Satterfield*, Plaintiff claims that *Duren v. Kunkel*, 814 S.W.2d 935 (Mo. banc 1991), and cases cited therein, “support[] allowing an alternative common law cause of action [for premises liability] . . . as a result of injuries caused by a domestic animal against a defendant that also did not own, possess or harbor the domestic animal.” These cases do not support that claim.

In *Duren*, the defendant’s bull attacked plaintiff. *Id.* at 936. It was undisputed that defendant owned, harbored and possessed the bull. *Id.* at 936-37. The question in *Duren* was whether the defendant knew, or should have known, that the bull had abnormally dangerous propensities. *Id.* at 936. The other cases Plaintiff cites are similarly inapposite. See *Alexander v. Crotchett*, 124 S.W.2d 534, 537 (Mo. App. K.C.D. 1939) (treating the defendant as standing in the shoes of the owner because it had legal control of the bull), and *Swain by Swain v. Simon*, 699 S.W.2d 769, 771 (Mo. App. W.D. 1985) (the dog, owned by the defendant’s son, was being kept on the defendant’s premises when the bite occurred).

² Specifically, the uncontroverted material facts at issue in that case were the following:

1. Defendant Roger Satterfield leased the property at 1211 N. Main Street, Apt. A, Nixa, Missouri (the “subject property”), to tenant [Ms.] Fors and said lease was in effect on April 3, 2014.
2. [Wyatt] was living with [Ms. Fors] at the subject property on April 3, 2014.
3. The dog that bit [A.T.] was owned by [Wyatt].

Satterfield, 597 S.W.3d at 801.

Plaintiff offers no persuasive argument as to why *Satterfield* does not govern the disposition of this appeal. Plaintiff's point is denied, and the judgment of the trial court is affirmed.

DON E. BURRELL, J. – OPINION AUTHOR

JEFFREY W. BATES, P.J. – CONCURS

MARY W. SHEFFIELD, J. – CONCURS