MISSOURI COURT OF APPEALS
WESTERN DISTRICT

WILLIE ROARK, Respondent,
v.
KC PET PROJECT, Appellant.

DOCKET NUMBER WD86960

DATE: December 17, 2024

Appeal From:

Jackson County Circuit Court
The Honorable Dale Youngs, Judge

Appellate Judges:

Division Two: Alok Ahuja, Presiding Judge., Edward R. Ardini, Jr., Judge, and W. Douglas Thomson, Judge.

Attorneys:

John M. McFarland, Kansas City, for Appellant,

Emmalee M. Miller, Lee's Summit, for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT

WILLIE ROARK, Respondent,
v.
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WD86960 Jackson County

Before Division Two Judges: Alok Ahuja, Presiding Judge, Edward R. Ardini, Jr., Judge, and W. Douglas Thomson, Judge

Since 2020, KC Pet Project has had a contract with the City of Kansas City, under which it performs all animal control enforcement activities in the City. Willie Roark was bitten and seriously injured by a pit bull in Kansas City in June 2021. Roark sued the Pet Project for negligence in the Circuit Court of Jackson County. Roark contended that the Pet Project should have taken more aggressive enforcement action against the dog which bit him, in response to an earlier complaint about the dog's dangerous behavior. Following a four-day jury trial, the circuit court entered judgment awarding Roark $200,000 in compensatory damages.

The Pet Project appeals.

AFFIRMED.

Division Two holds:

The Pet Project failed to preserve any of the arguments it raises on appeal in the circuit court.

The Pet Project first argues that Roark's claims are barred by the public duty doctrine and the doctrine of privity. The public duty generally holds that a public employee is not civilly liable for the breach of a duty owed to the general public, rather than a particular individual. The privity rule generally provides that a party to a contract owes no duty to a plaintiff who was not a party to the contract where there was no privity or direct transaction between them.

It is a bedrock principle of appellate practice that a reviewing court generally will not convict a lower court of error on an issue that was not put before it to decide. The Pet Project did not raise either its public duty or its privity arguments in the circuit court in its motion for directed verdict at the close of all of the evidence, or in its post-judgment motion for judgment notwithstanding the verdict ("JNOV"); indeed, it does not appear

that the Pet Project raised these arguments *at any time* in the circuit court. As such, the arguments are not preserved. Contrary to the Pet Project's claims, this is not an issue of Roark's *standing* which can be raised for the first time on appeal, but is instead a merits issue concerning the existence of an enforceable tort duty owing from the Pet Project to Roark.

The Pet Project also raises two arguments concerning the verdict-directing instruction on Roark's negligence claim. At the instruction conference, however, the Pet Project's counsel explicitly stated that she had "no objection" to the verdict-directing instruction, after the court clarified what closing arguments counsel would be permitted to make under the verdict director. This tactical decision to not assert any objections waives even plain-error review of any instructional error claim.

Opinion by: Alok Ahuja, Judge December 17, 2024

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