

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

MARISSA MILES, a minor by and through)	No. ED95112
Her Mother and Next Friend, DANA MILES,)	Appeal from the Circuit Court
Plaintiff,)	of the City of St. Louis
v.)	Honorable Robert H. Dierker, Jr.
LINDA DARLENE RICH,)	Date: April 26, 2011
Defendant/Third-Party Plaintiff/Appellant,)	
v.)	
HUMANE SOCIETY OF MISSOURI)	
d/b/a ST. LOUIS HUMANE SOCIETY,)	
Third-Party Defendant/Respondent.)	

Plaintiff filed an action against the defendant dog owner for damages arising from injuries sustained when plaintiff was bitten by the dog owner's dog. The dog owner then filed a third-party petition against the humane society from which she had adopted the dog, seeking contribution under a theory of common law negligence. The trial court dismissed the third-party petition with prejudice for failure to state a claim upon which relief may be granted.

AFFIRMED.

1. To maintain an action for contribution, both the party seeking contribution and the defendant against whom contribution is sought must be tortfeasors, originally liable to the injured plaintiff.
2. Except for animal trespass, one who possesses or harbors a domestic animal that he or she does not know or have reason to know to be abnormally dangerous is subject to liability from harm caused by the animal if he or she is negligent in failing to prevent the harm.
3. Missouri courts have refused to extend liability in negligence for harm caused by a domestic animal beyond owners, possessors, or harborers of the animal.
4. The third-party plaintiff has not demonstrated any basis for imposing an assumed duty on the Humane Society to prevent harm to members of the public caused by animals no longer in the Humane Society's possession or control.
5. The claim that the Humane Society was negligent in discharging a duty owed to the third-party plaintiff, rather than to the original plaintiff, fails to state a claim in contribution.
6. Since the third-party plaintiff has not proposed, much less demonstrated, an amendment that could cure the defects in her third-party petition, the trial court did not abuse its discretion in not granting the third-party plaintiff leave to amend her petition.

Opinion by: Kathianne Knaup Crane, P.J.
Robert G. Dowd, Jr., J. and Lawrence E. Mooney, J., concur.

Attorney for Plaintiff: Joseph K. Robbins

Attorneys for Appellant: Russell F. Watters and Scott H. Morgan

Attorney for Respondent: William T. Kacerovskis

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