SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0447-16T1

WENDY L. FAIRCLOTH,

Plaintiff-Appellant,

v.

JEREMY BEVILLE and PAM BEVILLE,

Defendants,

and

NEAL OWENS,

Defendant-Respondent.

Submitted October 4, 2017 – Decided February 13, 2018

Before Judges Manahan and Suter.

On appeal from Superior Court of New Jersey, Law Division, Cumberland County, Docket No. L-0009-15.

Jacob & Chiarello, LLC, attorneys for appellant (Joseph M. Chiarello, on the briefs).

Gruccio, Pepper, DeSanto & Ruth, PA, attorneys for respondent (Joseph E. Ruth, on the brief).

PER CURIAM

Plaintiff Wendy Faircloth appeals from an August 2016 order granting summary judgment to defendant Neal Owens (defendant) that dismissed with prejudice her claim for personal injuries from a dog bite. We affirm. We rely on the facts from the summary judgment record, viewing them in a light most favorable to the plaintiff. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). The facts are not in dispute.

On January 21, 2013, plaintiff was visiting her friends, defendants Jeremy and Pam Beville, at their residence when she was bitten in the face by the Bevilles' dog, Pepper. Pepper was a Dutch Sheppard that had been given to the Bevilles in 2009 when the dog was two or three years old. Pepper had not bitten anyone previously.

The Bevilles leased their residence from defendant with an option to purchase it. The parties agree that the lease did not prohibit pets.

Defendant did not know about Pepper or anything about its behavior. On one occasion in 2003, he did see Pam Beville holding a small white dog when he was at the property, but that dog was not Pepper. Defendant rarely was at the property when the Bevilles resided there.

Plaintiff sued defendant and the Bevilles for personal injuries arising from the dog's bite. The Bevilles declared bankruptcy, and plaintiff's claim against them was discharged.

In August 2016, defendant's motion for summary judgment was granted, which dismissed plaintiff's complaint with prejudice. The trial court held that defendant was not liable because he did not have notice that the dog was "problematic or likely to injure a party." The court rejected plaintiff's request to expand liability because that would be imposing "strict liability on the owner of the property, if there's no other indications that this particular dog is problematic."

On appeal, plaintiff contends the trial court erred in granting summary judgment. She argues, the current state of the law regarding landlord liability for dog bites is not consistent with premises liability law.

Our review of the summary judgment order is de novo, meaning that we apply the same standards used by the trial judge. W.J.A. v. D.A., 210 N.J. 229, 237 (2012). The question then is whether the evidence, when viewed in a light most favorable to the non-moving party, raises genuinely disputed issues of fact sufficient to warrant resolution by the trier of fact or whether the evidence "is so one-sided that one party must prevail as a matter of law."

Brill, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)).

"Under the common law, ordinarily a landlord is not responsible for injuries caused by its tenant's dog." Hyun Na Seo v. Yozqadlian, 320 N.J. Super. 68, 71 (App. Div. 1999) (citing Coqsville v. Trenton, 159 N.J. Super. 71, 74 (App. Div. 1978)). However, beginning with Linebaugh v. Hyndman, 213 N.J. Super. 117, 120 (App. Div. 1986), we held there were circumstances where a landlord could be liable for injuries caused by a tenant's dog. The landlord in Linebaugh was aware that one of the tenants owned a large German Shepherd that had previously bitten another person. A child playing in the shared common area of the rented duplex was seriously injured when she was bitten by the dog. We held that "[a]n abnormally [vicious] domestic animal is like an artificial [dangerous] condition on the property." Id. at 121 (quoting DeRobertis v. Randazzo, 94 N.J. 144, 157 (1983)). We stressed that the landlord's liability was "well within traditional principles of negligence law." Id. at 122. A landlord could be held liable where he permitted a tenant to harbor a vicious animal and failed to take curative measures.

In Hyun, we declined to impose liability on a landlord. There, a tenant was bitten by another tenant's dog and sued the landlord. 320 N.J. Super. at 71. We again determined that the

landlord's liability was based on "ordinary principles of negligence," holding that "in the absence of proof that the landlord was aware of the dog's vicious propensities, or perhaps that the dog was inherently vicious, liability should not be imposed upon the landlord." Id. at 72.

Here, defendant was not aware that the Bevilles owned Pepper and did not know whether the dog had bitten anyone else or had violent propensities. Under the existing case law, the landlord had no liability for injuries caused by the Bevilles' dog. Summary judgment was correctly entered.

Plaintiff contends that we should expand the landlord's liability to impose liability consistent with "premises liability law," citing Hopkins v. Fox & Lazo Realtors, 132 N.J. 426 (1993) and Monaco v. Hartz Mt. Corp. 178 N.J. 410 (2004) to support her proposition. In Monaco, the Court held that a landlord of a commercial premises had a duty to make reasonable inspections of its property and to warn invitees of hazardous conditions. 178 N.J. at 418. In Hopkins, the Court determined that real estate brokers had a duty to inspect and warn of dangerous conditions of the property for visitors at an open house. 132 N.J. at 444-45.

Plaintiff contends that "animals can be considered hazards and hazards should be discovered by landlords." She suggests that the landlord's duty to guests of a tenant should be expanded to

protect and insure against this harm. We decline to extend a landlord's liability as suggested by plaintiff. The effect would be to make landlords strictly liable for their tenants' pets whether or not they were aware of any known violent propensities. The legislature did not impose that obligation on landlords. See N.J.S.A. 4:19-16 (addressing the strict liability for dog owners). Further, the imposition of strict liability upon landlords under this scenario is without precedent as our courts have consistently evaluated the liability of a landlord under general negligence principles.

In sum, plaintiff provides no evidence or analysis that would cause us to revisit Hyun to include, as she suggests, an obligation to inquire about the danger of every dog kept by every tenant and then to insure the guests of tenants against injuries, even where the dog is not known to have violent propensities.

Affirmed.