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TO BE PUBLISHED

# Commonwealth of Kentucky

# Court of Appeals

NO. 2026-CA-0102-MR

BRITTANY HOAK — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE SUSAN SCHULTZ GIBSON, JUDGE
ACTION NO. 24-CI-000390

LEFT BACK PROPERTIES, LLC — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, A. JONES, AND MOYNAHAN, JUDGES.

COMBS, JUDGE: Brittany Hoak was bitten by a dog on premises leased by Left Back Properties to Fermin Alvarado and occupied (at the time of the incident) by nine others, including Sixto Alvarado, Jennifer Mitchell, and Hoak. Hoak appeals the Jefferson Circuit Court's decision granting summary judgment with respect to the strict liability and common law negligence claims she asserted against Left Back Properties, LLC ("Left Back Properties"). Having examined the record and reviewed the applicable law, we affirm.

On the afternoon of November 7, 2023, Hoak entered the backyard of property rented to Fermin Alvarado by Left Back Properties. As she crossed the yard to access a side gate, Hoak was attacked by a pit bull terrier that lived with her and several others in the garage located at the back of the premises. Hoak's face and arm were badly injured. She also suffered a fractured jaw that required emergency surgery at University of Louisville Hospital. As an owner of the dog, Sixto Alvarado was cited by animal control officers.

On January 17, 2024, Hoak filed a civil action against Sixto Alvarado, Jennifer Mitchell, and Left Back Properties in Jefferson Circuit Court. (Alvarado and Mitchell were never served with process.) In her complaint, Hoak alleged that the defendants were liable for injuries she sustained as a result of the dog bite incident based upon theories of strict liability and common law negligence. Written discovery was served along with the complaint.

On May 17, 2024, Left Back Properties filed a motion to dismiss the claims against it for failure to state a claim for which relief could be granted. *See* CR[1] 12.02. By its order entered August 8, 2024, the Jefferson Circuit Court denied the motion on the basis that the "case is still in its infancy," giving Hoak an opportunity to conduct further discovery.

[1] Kentucky Rules of Civil Procedure.

On October 30, 2025, Left Back Properties filed a motion for summary judgment. Although Left Back Properties admitted that it owned the property leased by Fermin Alvarado, it explained that it did not know that a pit bull terrier was being kept on the premises and could not have known that the dog had dangerous propensities. Consequently, it argued that as a matter of law, it could not be held liable for Hoak's damages on a theory of common law negligence.

With respect to Hoak's statutory strict liability claim, Left Back Properties argued that a landowner could be deemed a dog owner for purposes of liability under the provisions of KRS[2] 258.235 only where it both owned *and* occupied the premises where the dog was kept. Because Left Back Properties did not occupy the premises leased to Fermin Alvarado, it contended that it was entitled to judgment as a matter of law.

Hoak filed an extensive response. She argued that Left Back Properties qualified as a statutory owner of the pit bull terrier by virtue of its visits to -- and inspection of -- the property rented to Fermin Alvarado; that genuine issues of material fact remained with respect to whether Left Back Properties knew of the dog and its vicious propensities; and that further discovery was necessary.

[2] Kentucky Revised Statutes.

The circuit court granted the motion of Left Back Properties for summary judgment. In its order entered December 23, 2025, the court concluded as follows:

> Despite being given the opportunity to conduct discovery after this Court's Memorandum and Order, entered August 8, 2024, [Hoak] has submitted no affirmative evidence which supports her claims that Left Back is statutorily liable for the alleged dog attack, or that Left Back knew of the dog and its vicious tendencies. As a result, there remain no genuine issues of material fact and Left Back is entitled to judgment as a matter of law.

This appeal followed.

On appeal, Hoak argues that the circuit court erred by granting summary judgment with respect to her claims. She also contends that the circuit court abused its discretion by granting summary judgment prematurely where more time for discovery was needed.

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56.03.

An appellate court's role in reviewing a summary judgment is to determine whether the trial court erred by concluding that no genuine issue of material fact existed and that the moving party was entitled to judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Because factual

findings are not at issue, a trial court's decision to grant summary judgment is reviewed *de novo. Pinkston v. Audubon Area Community Services, Inc.*, 210 S.W.3d 188, 189 (Ky. App. 2006) (citing *Blevins v. Moran*, 12 S.W.3d 698, 700 (Ky. App. 2000)).

Summary judgment is properly granted only where the party opposing the motion has been given adequate opportunity to complete discovery and then fails to offer controverting evidence. *Suter v. Mazyck*, 226 S.W.3d 837, 841 (Ky. App. 2007). However, it is not necessary to show that the respondent has actually completed discovery -- but only that she has had an opportunity to do so. *Hartford Ins. Group v. Citizens Fidelity Bank & Trust Co.*, 579 S.W.2d 628, 630 (Ky. App. 1979). Whether a party has had enough time and opportunity "must be determined within the context of the individual case" -- with more complex cases requiring more time. *Suter*, 226 S.W.3d at 842. Ultimately, there must be a limitation on the time the parties have to complete discovery. *Id.* at 844. "The trial court's determination that a sufficient amount of time has passed and that it can properly take up the summary judgment motion for a ruling is reviewed for an abuse of discretion." *Key v. CitiMortgage, Inc.*, 686 S.W.3d 630, 636 (Ky. App. 2023) (citing *Blankenship v. Collier*, 302 S.W.3d 665, 668 (Ky. 2010)).

First, we must determine whether Hoak was afforded sufficient opportunity to complete discovery. This was a straightforward tort action. When

she filed her complaint on January 17, 2024, it was accompanied by written discovery. Several months later, the trial court denied the motion of Left Back Properties for dismissal, thus giving Hoak further opportunity to conduct discovery. It was nearly two years after discovery began when the trial court granted summary judgment. While Hoak explains that numerous depositions remain to be taken (in part because the individual defendants could not be located), she does not explain why depositions of other witnesses were not scheduled in the many months after discovery commenced. Moreover, she does not explain what steps, if any, were ever taken to ensure the participation of Sixto Alvarado and Jennifer Mitchell in the action. Under the circumstances, the trial court did not abuse its discretion by determining that Hoak had adequate opportunity to conduct discovery and that sufficient time had passed for it to rule on the summary judgment motion in the final days of 2025.

Next, we consider Hoak's argument that the trial court erred by granting summary judgment with respect to her strict liability claim. KRS 258.235 provides that "any owner" whose dog is found to have caused injury to a person is liable for damages. Where applied to the proprietorship of a dog, KRS 258.095(5)(b)3. defines "owner" to include every person who "[p]ermits the dog to remain on or about premises owned **and** occupied by him or her . . . ." (Emphasis added.)

Hoak contends that Left Back Properties is responsible for her damages under this provision because the landlord is deemed an "owner" of the dog pursuant to the definition included in KRS 258.095(5)(b)3. Hoak observes that Left Back Properties retained a right to enter the property in its lease agreement (upon adequate notice). She notes that evidence existed indicating that Left Back's representative visited the property (on a single occasion) to collect the rent and to observe the state of the backyard. Therefore, she argues that Left Back Properties qualifies as both an owner and an occupier of the premises.

The trial court correctly rejected this reasoning. The court explained that prior to its amendment in 2017, the statute imposed strict liability upon anyone who owned **or** occupied the premises. However, in deliberate response to a court case (as will be noted below), the legislature amended the statute to require that the landowner also "occupy" the premises by replacing **or** with **and**. By that change in conjunctions, the legislature intended to limit a landlord's exposure to strict liability. The trial court opined that a landlord who does not reside on the premises does not meet the statutory definition. It concluded that no evidence of record indicated that Left Back Properties both owned *and occupied* the premises where

Hoak lived and the dog was kept.[3] Therefore, Left Back could not be classified as an "owner" pursuant to the provision imposing strict liability.

Just months before the circuit court granted the motion of Left Back Properties for summary judgment, the Supreme Court of Kentucky addressed the changes that our dog-bite strict liability statutes have undergone in recent years. In *Deramos v. Anderson Communities, Inc.*, 709 S.W.3d 197, 200–01 (Ky. 2025), it observed as follows:

> In 2012, the Court decided *Benningfield ex rel. Benningfield v. Zinsmeister*, 367 S.W.3d 561, 562 (Ky. 2012), and held that a landlord could be liable to a third party for injuries caused by a tenant's dog. On June 29, 2017, the General Assembly redefined the statutory definition of dog owner. In relevant part, the now-existing version of KRS 258.095(5)(b)[3.] defines a dog owner as a person who "permits the dog to remain on or about premises owned **and** occupied by him or her . . . ." (Emphasis added.) Therefore, landowners are only considered dog owners for strict liability purposes if they both own **and** occupy the premises where the dog-related injury occurs.
>
> The General Assembly has commanded: "[a]ll statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature . . . ." KRS 446.080(1). Generally, by creating a strict liability statute, the legislature has expressed that dog owners shall be strictly responsible for injuries caused by their dogs. However, by replacing the "owned **or** occupied" language with "owned **and**

[3] We note in passing that deposition testimony indicates that Hoak routinely cared for the dog by feeding it, letting it outside, cleaning up after it, and letting it sleep with her. This activity could arguably result in Hoak's being classified as a putative owner of the dog.

> occupied," especially in light of the *Benningfield* decision, the legislature has effectively reduced the imposition of strict liability on landlords for injuries caused by a tenant's dog.
>
> "[W]e presume that the legislature is aware of the state of the law when it enacts a statute, including the judicial construction of prior enactments." *Indep. Bank v. Welch*, 636 S.W.3d 528, 535 (Ky. 2021) (citation omitted). Here, this awareness includes this Court's interpretation in *Benningfield* that a landlord can be a statutory owner of a dog for strict liability purposes. 367 S.W.3d at 569. Arguably, the General Assembly acted after the *Benningfield* decision to address the Court's seemingly broad interpretation of landlord liability under the dog bite statute and chose to significantly narrow the circumstances where a landlord could be considered a statutory owner of another person's dog.

(Citations omitted.)

In light of the comments made by the Supreme Court of Kentucky, we agree with the circuit court's analysis of Hoak's strict liability claim. The circuit court was entirely correct to conclude that the exceedingly limited contact that Left Back Properties had with the premises where the dog was kept did not convert its mere ownership of the property into occupancy of the property. The circuit court did not err by concluding that Left Back Properties was not a statutory dog owner. To conclude otherwise -- under these circumstances -- would impermissibly broaden the reach of the very statute that the legislature specifically intended to narrow through amendment.

Finally, Hoak argues that the trial court erred by granting summary judgment with respect to her common law negligence claim. Again, we disagree.

A common law negligence claim and a statutory strict liability claim present separate and distinguishable legal theories of liability. *Deramos*, 709 S.W.3d at 201. Strict liability imposes responsibility regardless of fault—the fact that an injury occurred is enough to establish liability. *Id.* However, it is essential to establish fault where a common law negligence claim is pursued. *Id.* A plaintiff must prove that an entity's actions, or inaction, fell below the applicable standard of care, causing injury. *Id.*

As part of a common law negligence claim for a dog bite, a plaintiff must show that the defendant had prior knowledge of the dog's vicious or mischievous propensity. *See Hanna v. Shea*, 717 S.W.3d 568, 572 (Ky. App. 2025). We see absolutely no evidence in the record to indicate that Left Back Properties was even aware of the existence of the dog that attacked Hoak upon the property -- much less that it was aware that the dog had vicious or mischievous propensities. Consequently, the trial court did not err by concluding that Left Back Properties was entitled to judgment as a matter of law with respect to Hoak's common law negligence claim.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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