

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000323-MR

ASHLEY BELL

APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 09-CI-00114

JOSEPH KRUSE

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * **

BEFORE: LAMBERT AND STUMBO, JUDGES; SHAKE,¹ SENIOR JUDGE.

STUMBO, JUDGE: Ashley Bell appeals from a partial summary judgment which determined Joseph Kruse was not liable for an injury resulting from a dog bite.

Bell argues that summary judgment was improper as Kruse was an “owner” of the dog as it is defined by statute. We agree and reverse the summary judgment.

¹ Senior Judge Ann O’Malley Shake, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Kruse owns a home in Covington, Kentucky. On February 4, 2007, Kruse leased the property to Timothy Herindon and Tina Robinson, two other defendants in the underlying case. Herindon and Robinson had three pit bulls. Kruse generally did not allow pets on his rental property, but made an exception in this case.

Sometime after Herindon and Robinson leased the premises, they allowed Bell to sublease a portion of the residence. On May 23, 2008, Bell was at the residence. Herindon and Robinson were upstairs with one of the pit bulls. Bell was downstairs with two other individuals. These two individuals began fighting and Bell attempted to intervene. Herindon and Robinson heard the disturbance. Herindon proceeded downstairs with one of the pit bulls. When the dog encountered the altercation, it became agitated and latched onto Bell's arm. Bell suffered significant injuries due to the dog bite. Bell filed the underlying suit seeking compensation for her injuries. She named Herindon, Robinson, and Kruse as defendants.

Bell supports her claim with two statutes, KRS 258.235 and KRS 258.095. KRS 258.235(4) states that “[a]ny owner whose dog is found to have caused damage to a person, livestock, or other property shall be responsible for that damage.” KRS 258.095(5) defines an owner, “when applied to the proprietorship of a dog, includes every person having a right of property in the dog and every

person who keeps or harbors the dog, or has it in his care, or permits it to remain on or about premises owned or occupied by him.” (Emphasis added.) Bell argued that because Kruse owned the house Herindon, Robinson, and the dogs resided in and permitted the animals to remain on the premises despite his usual policy, he was an “owner” of the dog for purposes of the dog bite.

Following discovery, all three defendants filed for summary judgment. Summary judgment was denied for Herindon and Robinson, but it was granted for Kruse. The trial court found that because Kruse did not know the pit bull had violent tendencies, he could not be liable for Bell’s injuries. At the request of the parties, the circuit court granted a *nunc pro tunc* order which held that the summary judgment in favor of Kruse was final and appealable. This appeal followed.

We find that granting summary judgment in favor of Kruse was in error. Kruse allowed Herindon and Robinson to keep dogs on the premises owned by him. He could have not allowed dogs on his rental property. By allowing the dogs to stay on the property, he became an “owner” pursuant to KRS 258.095(5). When the dog injured Bell, Kruse, along with Herindon and Robinson, became potentially liable for her injuries pursuant to KRS 258.235(4). These two statutes are clear and unambiguous. A plain reading shows that Kruse is an “owner” in this situation and may be to some degree liable for Bell’s injuries.

This is not to say Kruse is one hundred percent liable for the injuries; he has defenses.

Even if [KRS 258.235(4)] created a strict liability action, negligence principles are still applicable, as the dog owner's liability should be subject to the doctrine of comparative negligence. Under a strict liability theory, the owners of an animal may exculpate themselves from liability by showing that the harm was caused by the victim's fault, or by the fault of a third person for whom the owner was not responsible, or by a fortuitous circumstance.

Carmical v. Bullock, 251 S.W.3d 324, 327 (Ky. App. 2007). *See also Dykes v. Alexander*, 411 S.W.2d 47 (Ky. 1967) (no liability to trespassers); *Jordan v. Lusby*, 81 S.W.3d 523 (Ky. App. 2002) (no liability when the injured party assumed the risk).

We find that Kruse fits the definition of owner as set forth by the statutes above. It will, therefore, be up to the finder of fact to determine and, if appropriate, apportion the liability of the parties in this action. We reverse the summary judgment and remand this case to the circuit court.

ALL CONCUR.

BRIEFS FOR APPELLANT,
ASHLEY BELL:

Randy J. Blankenship
Erlanger, Kentucky

BRIEF FOR APPELLEE,
JOSEPH KRUSE:

Susanne M. Cetrulo
Edgewood, Kentucky