

RENDERED: MARCH 9, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000133-MR

BRYAN FULLER, FATHER AND
FRIEND OF ANDREW FULLER

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE REINHARDT WARD, JUDGE
ACTION NO. 10-CI-00437

JOANN BLAIR AND
CATHERINE BLACK

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: TAYLOR, CHIEF JUDGE; DIXON AND LAMBERT, JUDGES.

TAYLOR, CHIEF JUDGE: Bryan Fuller, father and friend of Andrew Fuller,
(collectively referred to as Fuller) bring this appeal from a final order entered by
the Campbell Circuit Court on December 15, 2010, which made final a summary

judgment entered in favor of JoAnn Blair on September 10, 2010, dismissing all claims against her. For the reasons stated, we affirm.

The facts of this case are rather straightforward and largely undisputed. In July 2009, Andrew Fuller, a minor, was bitten by a dog owned by Catherine Black. At the time, Black was renting a house owned by JoAnn Blair and the dog was kept by Black on the leased premises with Fuller's knowledge. Andrew was bitten by the dog while playing on the sidewalk near but not on Black's leased premises. The attack by the dog was unprovoked.

Fuller filed a complaint against both Black and Blair asserting claims based upon both strict liability and negligence. Fuller specifically alleged that Andrew suffered serious injuries and damages as a result of the attack by Black's dog. Subsequently, Blair filed a motion for summary judgment arguing that she was not an "owner" of the dog within the meaning of Kentucky Revised Statutes (KRS) 258.235(4) and could not be held strictly liable thereunder. She also maintained that no facts existed demonstrating her negligence.

The circuit court agreed and determined that Blair, as a landlord, was not negligent and could not be held strictly liable as an owner of the dog per KRS 258.235(4). The circuit court ruled in its September 10, 2010, order as follows:

Over the years the legislators have adopted different versions of the dog bite law. The recent version of the law set forth in K.R.S. § 258.235[4][¹]. The statutory provision establishes: "Any owner whose dog is

¹ Due to a clerical error, the circuit court erroneously cited Kentucky Revised Statutes (KRS) 258.235(1); however, the court intended to cite KRS 258.235(4). We substituted the correct citation in the above quoted material.

found to have caused damage to a person, livestock, or other property shall be responsible for that damage.[”] K.R.S. § 258.235[4]. “Owner” is defined as follows: “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.” K.R.S. § 258.095(5).

The Plaintiff requests this Court to find the Defendant, JoAnn Blair, an “owner” of Joe, the boxer, since Joe the boxer remained on her rental property with her knowledge. In support he cites Jordan v. Lusby, 81 S.W.3d 523 (Ky. Ct. App. 2002). In Lusby, the Kentucky Court of Appeals interpreted the word “owner” to expand liability to those parties who keep dogs, such as kennel owners, veterinarians, and other persons who keep dogs owned by others in their care, as well as any person who keeps a dog owned by another on their property. [Lusby,] 81 S.W.3d at 524.

After reading Lusby, and the clear and plain language of K.R.S. § 258.095(5), this Court does not believe that the Defendant, JoAnn Blair, is an “owner” of Joe, the boxer. The Court believes that the statute was intended to prevent a person who has a property interest in a dog, or who actually has the dog in their physical care or custody, to escape liability for harm caused by the dog. The Defendant, JoAnn Blair did not have any right of property to Joe, the boxer. She did not keep or harbor the dog in the home that she occupied. Nor did she care for Joe, the boxer. Defendant, JoAnn Blair, is not a kennel owner, veterinarian, or any other person who keeps dogs. The Court cannot accept the Plaintiff’s theory that any time a landlord owns a property in which a tenant has a dog that landlord is strictly liable for damages caused by the dog. Under that theory, if the tenant took the dog for a walk in the park and the dog bit someone the landlord would be responsible for damages. The Court does not believe that the legislators intended for such a result.

Since the Defendant, JoAnn Blair, is not an owner and cannot be strictly liable, the Court must consider whether she was negligent. The Plaintiff has presented no evidence to the Court that the Defendant, JoAnn Blair, was negligent. There is no evidence that she was aware that Joe, the boxer, was vicious or had bitten anyone in the past. There is no evidence that she knew Joe, the boxer, was free to roam the streets of Newport. The Plaintiff's sole contention against her is that she rented her property to the Defendant, Catherine Black, with the knowledge that Joe, the boxer, would be living in her property.

Consequently, all claims against Blair were dismissed by summary judgment. This summary judgment was interlocutory as it did not include Kentucky Rules of Civil Procedure (CR) 54.02 language. On December 15, 2010, the circuit court rendered a final judgment awarding Fuller \$19,648.12 in medical expenses and \$60,000 in pain and suffering against Black only. This appeal follows.

Fuller contends that the circuit court erred by rendering summary judgment dismissing his claims for strict liability and negligence against Blair. Fuller argues that Blair qualifies as an "owner" of the dog under KRS 258.235(4) because Blair knowingly permitted the dog to remain on the rented premises and thus, is strictly liable for Fuller's injuries. Fuller also argues that Blair was negligent in her role as landlord of the leased premises.

Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. CR 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). The material facts of this case are undisputed, so we must determine whether Blair was entitled to

judgment as a matter of law. We shall initially address whether summary judgment was proper upon the strict liability claim and then address whether summary judgment was proper under the negligence claim.

Resolution of the strict liability claim centers upon the legal interpretation of two statutes – KRS 258.235(4) and KRS 258.095(5).

KRS 258.235(4) reads:

Any 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) reads:

“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[.]

It is well-established that any ambiguous language in a statute must be interpreted to effectuate the underlying intent of the General Assembly. *Hearn v. Com.*, 80 S.W.3d 432 (Ky. 2002); *City of Covington v. Kenton Co.*, 149 S.W.3d 358 (Ky. 2004). In so doing, a statute may not be interpreted or construed to produce an unjust, unreasonable, or absurd result. *Wesley v. Board of Educ. of Nicholas Co.*, 403 S.W.2d 28 (Ky. 1966); *Ky. Indus. Utility Customers, Inc. v. Ky. Utilities Co.*, 983 S.W.2d 493 (Ky. 1998); *Executive Branch Ethics Com’n v. Stephens*, 92 S.W.3d 69 (Ky. 2002); *City of Covington*, 149 S.W.3d 358; *Revenue Cabinet v. O’Daniel*, 153 S.W.3d 815 (Ky. 2005).

Under KRS 258.235(4), an “owner” whose dog “caused damage” is strictly liable for such damage. The term “owner” is generally defined by KRS 258.095(5) and relevant herein is defined as one who “permits it [dog] to remain on . . . premises owned or occupied by him.” We cannot interpret the definition of “owner” in KRS 258.095(5) so broadly to include a landlord of leased premises under the circumstances of this case. Such an interpretation of KRS 258.235(4) and KRS 258.095(5) would result in an injudicious and unwarranted expansion of strict liability in Kentucky. Neither case law nor statutory law supports such an expansion. As previously noted by our Court, KRS 258.095(5) was:

[D]esigned to expand liability to those parties who keep dogs, such as kennel owners, veterinarians, and other persons who keep dogs owned by others in their care, as well as any person who keeps a dog owned by another on their property.

Jordan v. Lusby, 81 S.W.3d 523, 524 (Ky. App. 2002). Simply put, the General Assembly never intended to expand strict liability to a landlord who neither actually “kept” the dog nor was aware of any previous violent tendencies of the dog. See *Ireland v. Raymond*, 796 S.W.2d 870 (Ky. App. 1990); *Jordan*, 81 S.W.3d 523. Accordingly, we conclude that Blair was not an “owner” of the dog within the meaning of KRS 258.235(4) and KRS 258.095(5).² Therefore, Blair

² JoAnn Blair further argues that to the extent the attack on Andrew Fuller did not occur on Blair’s property, there could be no extension of the definition of owner under KRS 258.095(5) to Blair under these circumstances. We do not reach this issue as in our view Blair, as a landlord, is not an owner of the dog as defined in KRS 258.095(5).

cannot be held strictly liable for injuries sustained by Andrew under applicable Kentucky law.³

As for Fuller's next contention that summary judgment was improper upon her claim of negligence against Blair, we agree with the circuit court that there is a complete dearth of facts proving same. There was no evidence introduced that Blair knew the dog had a violent propensity or evidence that she failed to act in a reasonable manner in leasing the premises to Black. Rather, Fuller simply claims that Blair leased the premises to Black and allowed Black to keep the dog on the leased premises. Absent other supporting facts, this claim does not identify any duty owed by Blair to Fuller under applicable Kentucky law. Under these circumstances, we conclude that Fuller failed to set forth a *prima facie* case of negligence – a duty owed and breach thereof which causes an injury – and thus the circuit court properly rendered summary judgment dismissing the negligence claim against Blair. *See M&T Chemicals, Inc. v. Westrick*, 525 S.W.2d 740 (Ky. 1974).

In sum, we hold that summary judgment was properly rendered dismissing the strict liability claim and negligence claims against Blair.

For the foregoing reasons, the final judgment of the Campbell Circuit Court is affirmed.

ALL CONCUR.

³ Fuller also cites this Court to an unpublished opinion, *Bell v. Kruse*, 2010-CA-000323, by another panel of this Court rendered in 2011 as authority. However, the Opinion cited is not binding precedent on this panel pursuant to Kentucky Rules of Civil Procedure 76.28(4)(c), nor do we find its analysis persuasive as applied to this case.

BRIEFS AND ORAL ARGUMENT
FOR APPELLANT:

Michael A. O'Hara
Florence, Kentucky

BRIEF AND ORAL ARGUMENT
FOR APPELLEE JOANN BLAIR:

Barry Alan Rudell, II
Cincinnati, Ohio

NO BRIEF FILED FOR APPELLEE
CATHERINE BLACK.