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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-119

Filed 05 September 2023

Mecklenburg County, No. 20 CVS 12782

GLORIA HOLMES, JASON FOSTER, & LEONARD MCIVER, Plaintiffs,

v.

CHARLES BLACKMON, PATRICIA BLACKMON, PERNELL SINGS &
ANTRANIECE KIRBY SINGS, Defendants.

Appeal by plaintiff from order entered 22 March 2022 by Judge Lisa C. Bell in
Mecklenburg County Superior Court. Heard in the Court of Appeals 8 August 2023.

Hunter & Everage, by Charles Ali Everage, for plaintiff-appellant.

McAngus, Goudelock & Courie, PLLC, by Colin E. Scott, for defendant-appellees.

ARROWOOD, Judge.

Gloria Holmes (“plaintiff”) appeals from the trial court’s order granting Charles and Patricia Blackmon’s (collectively “defendants”) motion for summary judgment. On appeal, plaintiff argues the trial court erred in granting defendants’ motion for summary judgment because there were genuine issues of material fact and plaintiff should not have been required to show defendants had actual knowledge of

the dogs' dangerous tendencies. For the following reasons, we affirm.

I. Background

On 23 September 2020, plaintiff and Jason Foster (“Mr. Foster”) filed the initial complaint against defendants, Pernell Sings, and Antraniece Kirby Sings, asserting claims of negligence, strict liability, negligence *per se*, and requesting punitive damages. The lawsuit stemmed from a dog attack on 2 June 2018, where plaintiff was attacked while delivering mail by two pit bulls owned by the Sings (collectively “defendant tenants”), resulting in serious injuries. At that time, defendants owned the house defendant tenants resided in. During the attack, Mr. Foster, who was a firefighter responding to the scene, was attacked by the dogs while attempting to render aid to plaintiff.

The initial complaint alleged that there were multiple incidents involving the dogs going back to 2015. On several occasions, animal control was involved, the dogs were quarantined, and defendant tenants were issued warnings and citations. The complaint alleged that on the day in question, plaintiff, as well as a citizen who was “attempting to rescue [plaintiff] from the” dogs, Leonard McIver (“Mr. McIver”), were attacked by “[t]he unprovoked dogs.” When first responders arrived on scene, they were also “viciously attacked” and “had to break into a home to seek refuge from the attacking dogs and to protect [plaintiff] who was badly injured.” When law enforcement arrived, the dogs “charged at and attacked police officers until a police officer shot and killed one of the dogs while the other escaped.” It was only after law

enforcement arrived that the situation was under control and the victims were transported to the hospital.

Following the attack, plaintiff was hospitalized for five days, and her “physical and psychological injuries” left her “permanently disabled and unable to return to work.” The complaint also alleged that defendants, as landlords who leased the residence to defendant tenants, were responsible because they allowed defendant tenants to remain in the home “despite numerous complaints and attacks” which they knew or should have known about, and because they renewed the lease “on multiple occasions despite escalating and repeated acts evidencing the danger presented by the two dogs.” Furthermore, the complaint alleged defendants “were told the dogs presented a threat to the safety of others.”

Defendants timely answered, denying the claims. Thereafter, Mr. McIver was joined as a plaintiff and an amended complaint was filed. Defendants responded to the amended complaint, again denying the claims and requesting the complaint be dismissed.

Thereafter, plaintiff, Mr. McIver, and Mr. Foster sought default judgment against defendant tenants, who had failed to respond to the complaint. On 19 October 2021, defendants filed a motion for summary judgment, alleging the dogs were not theirs, they were not aware of the complaints involving the dogs, nor that the dogs even lived at the residence, since the lease did not allow it. Furthermore, defendants claimed plaintiff could not show defendants breached any duty owed to

plaintiff and asserted plaintiff misrepresented “one of the animal control reports in an effort to create an issue of material fact[.]”

Defendants motion for summary judgment came on for hearing in Mecklenburg County Superior Court on 16 March 2022, Judge Bell presiding. At the hearing, plaintiff argued that the case law does not require defendants to have actual knowledge of the dogs’ dangerous nature, but plaintiff can show defendants “should have known[.]” Plaintiff also argued that in one of the defendants’ answers to the interrogatories, they stated that in “the summer of 2017[.]” they “observed dogs in the yard[.]” but later amended their response to state that they only “heard” dogs, creating a genuine issue of fact foreclosing summary judgment.

Following the hearing, on 22 March 2022, the trial court entered an order granting summary judgment for defendants and dismissing plaintiff’s claims with prejudice. On 13 April 2022, the trial court entered an order certifying the grant of summary judgment for defendants was immediately appealable. Plaintiff filed notice of appeal 13 May 2022.

On 7 July 2022, the court entered default judgment against defendant tenants in favor of plaintiff. On 20 October 2022, the trial court issued a Notice of Final Judgment, as Mr. Foster and Mr. McIver dismissed all claims against defendants on 11 April 2022 and dismissed all claims against defendant tenants on 20 October 2022. That same day, plaintiff filed another notice of appeal.

On 21 November 2022, defendants filed a motion to dismiss plaintiff’s appeal.

Defendants argued plaintiff failed to respond to the Appellate Division Transcript Contract and “settle the Record on Appeal” within 45 days, as required by Rule 11 of the North Carolina Rules of Appellate Procedure, and the appeal should therefore be dismissed. Plaintiff opposed the motion to dismiss, contending the matter was not ripe for appeal until Mr. Foster and Mr. McIver dismissed their claims against defendant tenants, and until such time the matter was interlocutory. On 23 January 2023, Judge Bell entered an order denying defendant’s motion to dismiss plaintiff’s appeal, and finding the October 20 notice of appeal was proper.

II. Discussion

On appeal, plaintiff argues: (1) there were genuine issues of material fact as to whether defendants “violated city ordinance[s] requiring restraint of animals by adequate” fencing or enclosures; (2) there were genuine issues of material fact as to whether defendants “failed to exercise reasonable care in maintaining their property to prevent dogs from straying from the property”; and (3) the trial court erred in requiring plaintiff to demonstrate defendants had actual knowledge of the dogs’ dangerous tendencies. We address each argument in turn.

A. Standard of Review

“[T]he standard of review on appeal from summary judgment is whether there is any genuine issue of material fact and whether the moving party is entitled to a judgment as a matter of law.” *Bruce-Terminix Co. v. Zurich Ins. Co.*, 130 N.C. App. 729, 733, 504 S.E.2d 574, 577 (1998) (citation omitted). Summary judgment “shall be

rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C. Gen. Stat. § 1A-1, Rule 56(c) (2022). “We review an order allowing summary judgment *de novo*. If the granting of summary judgment can be sustained on any grounds, it should be affirmed on appeal.” *Wilkins v. Safran*, 185 N.C. App. 668, 672, 649 S.E.2d 658, 661 (2007) (citations and quotation marks omitted).

“[E]vidence presented by the parties must be viewed in the light most favorable to the non-movant.” *Bruce-Terminix Co.*, 130 N.C. App. at 733, 504 S.E.2d at 577 (citation omitted). However, “it is well established that ‘a plaintiff is required to offer legal evidence tending to establish beyond mere speculation or conjecture every essential element of negligence, and upon failure to do so, summary judgment is proper.’” *Est. of Tipton v. Delta Sigma Phi Fraternity, Inc.*, 264 N.C. App. 313, 321-22, 826 S.E.2d 226, 233 (citation omitted), *disc. review denied*, 372 N.C. 703, 831 S.E.2d 76 (Mem) (2019).

B. Genuine Issues of Material Fact

On appeal, plaintiff argues there were genuine issues of material fact as to whether defendants “violated city ordinance[s] requiring restraint of animals by adequate” fencing or enclosures and whether defendants “failed to exercise reasonable care in maintaining their property to prevent dogs from straying from the property.” We disagree.

1. City Ordinance Violations

First, plaintiff contends the trial court erred in granting summary judgment in favor of defendants on her negligence *per se* claim because there were genuine issues of material fact as to whether defendants “violated city ordinance[s] requiring restraint of animals by adequate” fencing or enclosures.

“It is the generally accepted view that the violation of a statute enacted for the safety and protection of the public constitutes negligence *per se*, *i.e.*, negligence as a matter of law.” *Carr v. Murrows Transfer, Inc.*, 262 N.C. 550, 554, 138 S.E.2d 228, 231 (1964). To establish a claim for negligence *per se*, the plaintiff must show:

(1) a duty created by a statute or ordinance; (2) that the statute or ordinance was enacted to protect a class of persons which includes the plaintiff; (3) a breach of the statutory duty; (4) that the injury sustained was suffered by an interest which the statute protected; (5) that the injury was of the nature contemplated in the statute; and, (6) that the violation of the statute proximately caused the injury.

Hardin v. York Mem’l Park, 221 N.C. App. 317, 326, 730 S.E.2d 768, 776 (2012) (citations omitted), *disc. review denied*, 366 N.C. 571, 738 S.E.2d 376 (Mem) (2013).

Here, the relevant ordinance states:

It shall be unlawful for any person owning or having possession, charge, custody *or control of any animal*, excluding cats, to keep such animal on his own premises or off the premises, unless such animal is under sufficient physical restraint to control the animal, or within a vehicle or adequately contained by a fence on the premises or other secure enclosure.

Charlotte Ordinance § 3-71(a) (emphasis added). Although, the ordinance does not define what is means to “control” an animal, “[u]ndefined words are accorded their plain meaning so long as it is reasonable to do so.” *Woodhouse v. Bd. of Comm’rs*, 299 N.C. 211, 225, 261 S.E.2d 882, 891 (1980) (“The rules applicable to statutes apply equally to the construction and interpretation of municipal ordinances.”) (citation omitted); *Surgical Care Affiliates, LLC v. N.C. Indus. Comm’n*, 256 N.C. App. 614, 620, 807 S.E.2d 679, 684 (2017) (citation and internal quotation marks omitted), *disc. review denied*, 370 N.C. 697, 811 S.E.2d 162 (Mem) (2018).

However, plaintiff argues that defendants did have control over the dogs, since the lease allowed defendants, as landlords, to remove pets or terminate the lease. This definition of control, stemming from premises liability, finds landlords do have “control” of the animals, if landlords have “sufficient control to remove the danger imposed by [a tenant]’s dogs.” *Holcomb v. Colonial Assocs., L.L.C.*, 358 N.C. 501, 508-509, 597 S.E.2d 710, 715, *reh’g denied*, 359 N.C. 198, 607 S.E.2d 270 (Mem) (2004). Still, “it is not mere generalized control of leased property that establishes landlord liability for a dog attack, but rather specific control of a *known dangerous animal*.” *Stephens v. Covington*, 232 N.C. App. 497, 499, 754 S.E.2d 253, 255 (2014) (emphasis added) (citations omitted). Knowledge of a dangerous animal does not require actual knowledge but can be shown if there is a reason for the landlord to know the dog was dangerous. *See id.* (affirming summary judgment for defendant landlords because the plaintiff did not provide “evidence that defendant . . . knew or had reason to know”

the dog in question was dangerous).

Here, although defendants maintained the ability to remove animals or terminate the lease, they still did not have “specific control of a known dangerous animal.” *See id.* Plaintiff presented no evidence animal control, defendant tenants, neighbors, mail carriers, or anyone else who encountered the dogs informed the landlords of the ongoing issues with the dogs’ aggression. Even, *arguendo*, had defendants seen or heard dogs on the property, that only gave them notice that a dog was there, not that the dog was aggressive. This information alone does not create a question of fact. Since plaintiff could not demonstrate that defendants knew or should have known that there was a dangerous animal at the residence that they had specific control over, summary judgment was proper. Accordingly, the trial court did not err in granting summary judgment in favor of defendants on this claim.

2. Maintenance of Rental Property

Next, plaintiff argues there were genuine issues of material fact as to whether defendants “failed to exercise reasonable care in maintaining their property to prevent dogs from straying from the property.” By contrast, defendants argue plaintiff should be estopped from arguing this claim, since it was not in the amended complaint.

We agree that failure to maintain the property was not specifically mentioned in the amended complaint, nor in plaintiff’s brief in opposition of summary judgment presented to the trial court before the hearing. However, plaintiff’s counsel did,

briefly, touch on this argument at the hearing, arguing there were “maintenance issues with a broken fence and a broken door. . . that allowed the dogs to escape” and for which defendants “should be held liable[.]” Without deciding whether plaintiff properly submitted this issue to the trial court to preserve it for appeal, we find that plaintiff did not present evidence sufficient for this claim to survive summary judgment.

Specifically, plaintiff claims that two incidents, from 2017 and 2018, prove that defendants failed to properly maintain the residence, which allowed the dogs to escape. In 2017, animal control responded to a call about one of the dogs running loose. Animal control returned the dog to the residence, and spoke with one of defendant tenants, who advised them “the gate was not closed properly[.]” allowing the dog to escape. “Upon inspection, of the gate, it appeared to be pushed apart and was no longer secured shut due to a broken chain.” Defendant tenant was “advised . . . to keep the canine inside until he could fix the gate[.]”

In 2018, one of the dogs was loose and when animal control attempted to return the dog to the residence, they found the front door open. While attempting to secure the residence, law enforcement found the front door “would not latch[.]” so animal control left the dog inside in a kennel. Plaintiff contends that an incident from 2006, where the fence needed to be repaired since there was a “crack” in it, and a different tenant and the owner of another dog agreed to repair it, is “historical evidence” of defendants’ inability to maintain the property. We disagree.

“Under the ordinary rules of negligence, a landlord may be held liable for personal injury to his tenants if he ‘knew, or in the exercise of ordinary care should have known’ that the defect or unsafe condition exists but fails to correct it.” *Terry v. Pub. Serv. Co. of N.C., Inc.*, 287 N.C. App. 362, 366, 883 S.E.2d 196, 199 (2022) (emphasis and citation omitted). There was no evidence that defendants knew or were informed of any issues with the premises, which would require plaintiff to show defendants had “constructive” knowledge of the issues, by providing “any forecast of evidence[.]” *Asher v. Huneycutt*, 284 N.C. App. 583, 592, 876 S.E.2d 660, 668 (2022) (citations omitted); *DiOrio v. Penny*, 331 N.C. 726, 729, 417 S.E.2d 457, 460 (1992) (citation omitted).

Plaintiff claims that the issues with the fence existed for some time, meaning defendants had constructive knowledge of the alleged defect, precluding summary judgment. However, plaintiff’s argument ignores the fact that each instance had to do with a different issue with the property. During the 2017 incident, there was an issue with the fence chain, the 2018 incident involved an issue with the front door, and the 2006 incident was related to a crack in the fence. Plaintiff does not point to any repeated issues, but difference issues with the property over the course of a twelve-year period. Furthermore, plaintiff failed to provide any forecast of evidence which would demonstrate defendants had constructive knowledge of the issue nor did they present any evidence that defendants failed to act with reasonable care.

Since plaintiff did not present any evidence, other than these reports from

animal control which contained no evidence that those documents or the information contained therein were provided to the landlord, the trial court did not err in granting summary judgment in favor of defendants on this claim. Accordingly, this argument is without merit.

C. Requirement of Actual Knowledge

Lastly, plaintiff contends the trial court erred by requiring defendants possess “actual knowledge of the dogs’ dangerous tendencies.” However, we disagree with this characterization. Although the trial court asked counsel whether case law requires actual knowledge, the trial court did not state, at the hearing nor in their order granting summary judgment, that they relied on defendants’ interpretation of the case law in their decision.

This Court has specifically stated that for a landlord to be held “liable for injuries caused by a tenant’s dog . . . , ‘a plaintiff must specifically establish both (1) that the landlord had knowledge that a tenant’s dog posed a danger; and (2) that the landlord had control over the dangerous dog’s presence on the property in order to be held liable for the dog attacking a third party.’” *Curlee v. Johnson*, 270 N.C. App. 657, 661, 842 S.E.2d 604, 608 (2020) (citation omitted), *aff’d*, 377 N.C. 97, 856 S.E.2d 478 (2021). However, this Court has found that “knowledge” can include actual knowledge, or whether the landlord “should have known” about the tenant dog’s dangerous nature. *See id.* at 663, 842 S.E.2d at 609; *Covington*, 232 N.C. App. at 500, 754 S.E.2d at 255.

HOLMES V. BLACKMON

Opinion of the Court

Here, for the reasons stated above, there was no evidence that defendants knew or should have known about the danger the dogs posed. Accordingly, the trial court did not err in granting summary judgment in favor of defendants.

III. Conclusion

For the foregoing reasons, we affirm the trial court's granting of summary judgment in favor of defendants.

AFFIRMED.

Chief Judge STROUD and Judge GRIFFIN concur.

Report per Rule 30(e).