2016 IL App (2d) 150532-U
No. 2-15-0532
Order filed July 12, 2016

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SHANE BROWN, ADMINISTRATOR OF THE ESTATE OF GLADYS BROWN, DECEASED Plaintiff-Appellant, v. RON WOLDSZYNEK, REGENCY CANTERFIELD, LLC, and MICHELSON REALTY COMAPANY, LLC, Defendants (Regency Centerfield, LLC and Michelson Realty Company, LLC, appellees).	)	Appeal from the Circuit Court of Kane County. No. 13-L-386 Honorable Thomas E. Mueller, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted summary judgment in favor of owner and operator of apartment complex in dog-bite suit where there was no evidence that the dog in question had previously been aggressive towards humans.

¶ 2 I. INTRODUCTION

¶ 3 Plaintiff, Shane Brown (as administrator of the estate of Gladys Brown, deceased), appeals an order of the circuit court of Kane County granting summary judgment in favor of defendants, Regency Centerfield, LLC (Regency) and Michelson Realty Company, LLC (Michelson). For the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 This tort action arose out of an incident that occurred on June 19, 2013. On that date, it is alleged that a dog owned by Ron Woldszynek[1] (a codefendant—not a party to this appeal—and a tenant in an apartment complex owned by Regency and managed by Michelson) entered the apartment of plaintiff. Plaintiff's decedent was visiting at the time, and the dog allegedly caused her to fall and sustain injuries. The injuries allegedly "caused or contributed to her death" on February 6, 2014.

¶ 6 This appeal involves the potential liability of codefendants Regency and Michelson. It is plaintiff's theory that these defendants assumed a duty to enforce policies concerning pets that applied to residents of the apartment complex. Specifically, plaintiff points to two "community rules," which were incorporated by reference into his lease. The first states, "Pets which cause noise complaints or which display aggressive behavior will not be permitted to remain at the Apartment Community." The second required pets to be on a leash while outside.

¶ 7 A previous incident involving the dog in question—Abby—occurred on September 18, 2012, which was described by defendant Woldszynek's wife, Anita, during her deposition. Anita was walking Abby past plaintiff's apartment. Plaintiff owned two small white dogs. Plaintiff's dogs were barking, and Abby pulled toward the door of plaintiff's apartment and

[1] Defendant Woldszynek's name is spelled in various ways throughout the record. We will use this spelling as it is the spelling used in the caption of the trial court record.

started scratching at the screen. Anita was still holding Abby's leash and trying to pull her away from the door. Plaintiff's dogs were on the other side of the screen door, barking. Subsequently, the management company called Anita and informed her that the screen had been damaged. She and her husband agreed to pay for the damages. Management never discussed getting rid of the dog with her. Abby was involved in no other similar incidents.

¶ 8 On June 19, 2013, the incident at issue here occurred. Anita testified that her grandson opened the door and Abby ran outside. Abby headed toward plaintiff's apartment, and Anita attempted to call her back. Anita pursued Abby, who had run to plaintiff's screen door. Abby started scratching at the door. The door behind the screen door was a sliding glass door. As Anita approached, she could see someone pulling it shut, though she could not see into the apartment as there were blinds behind the doors. Abby was barking and so were plaintiff's dogs from inside the apartment. According to Anita, Abby never actually entered plaintiff's apartment. Anita grabbed Abby by the collar and took her home. The management company called a short time later. Plaintiff alleges that Abby entered the apartment and knocked over the decedent, causing her injuries.

¶ 9 The trial court granted summary judgment in favor of defendants. It initially noted that during the first incident between the dogs, Abby and plaintiff's dog met at the screen door and the screen was ripped. It observed that the "two dogs, not unusually, attempted to have some contact." The trial court stated that there was "no evidence of what nature" the contact was. However, it emphasized that there was no biting. The trial court stated that this incident was "very distinguishable from a bite of a human." As for the incident that formed the basis of this case, there was no evidence that Abby made contact with a person. Rather, she "simply alarmed this person causing the person to fall down." The court then stated that it did not see how the

management company could have had any control over the Woldszynek's grandchild opening the door and the dog running away. Finally, it held that there was no "basis at law to hold Regency and Michelson" liable in this case. Accordingly, it granted their motion for summary judgment. This appeal followed.

¶ 10 III. ANALYSIS

¶ 11 This case comes to us following a grant of summary judgment, so our review is *de novo*. *Giannetti v. Angiuli*, 263 Ill. App. 3d 305, 306-07 (1994). In conducting review, we must construe the record strictly against the movant and liberally in favor of the party opposing the motion. *Hall v. Flowers*, 343 Ill. App. 3d 462, 469 (2003). Summary judgment is a drastic remedy, and it should only be granted if the movant's entitlement to judgment is clear and free from doubt. *Jackson v. Graham*, 323 Ill. App. 3d 766, 779 (2001). A summary judgment motion should be granted only if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *Seymour v. Collins*, 2015 IL 118432, ¶ 49. The existence of a duty typically presents a question of law. *Vesey v. Chicago Housing Authority*, 145 Ill. 2d 404, 411 (1991). With these standards in mind, we turn to the substance of this appeal.

¶ 12 Plaintiff predicates the existence of a duty in this case on the policies contained in the "community rules" that were incorporated into his lease regarding pets. It is certainly true that a party in Regency's and Michelson's positions could assume a duty in this fashion. *Schoondyke v. Heil, Heil, Smart & Golee, Inc.*, 89 Ill. App. 3d 640, 644 (1980) ("At the time of plaintiff's fall, defendants, pursuant to the Declaration of Condominium and Condominium By-Laws, had assumed a duty to remove natural accumulations of snow and ice."). However, other considerations are also relevant to determining whether a duty exists, such as "the likelihood of

injury, the magnitude of the burden of guarding against it, and the desirability of placing the burden upon the defendant." *Id*. In cases involving injuries caused by dogs, a number of cases address considerations that are relevant to the "likelihood of injury."

¶ 13 In fact, this court confronted a similar issue in *Klitzka ex rel. Teutonico v. Hellios*, 348 Ill. App. 3d 594, 595 (2004), a dog-bite case, where the issue was: "under what circumstances does a landlord owe a duty of care to his tenant's invitees to prevent injury from an attack by an animal kept by the tenant on the leased premises." Ultimately, the *Klitzka* court concluded that no duty existed on behalf of the landlord because they had surrendered all control of the leased premises to the tenant. *Id*. at 597-98. In this respect, *Klitzka* differs from the instant case as Regency and Michelson had the ability to enforce the lease provisions incorporating the community rules regarding pets.

¶ 14 However, the *Klitzka* court went on to hold that, the landlord's surrender of control of the premises notwithstanding, an alternate basis existed upon which summary judgment was warranted. Specifically, the *Klitzka* court explained, "[T]here was inadequate evidence that their tenants' dog was vicious or that [the landlords] knew of such viciousness." *Id*. at 600-01. Relevant here, the dog in question had been involved in altercations with other dogs in the past. The court first cited the presumption that dogs are "tame, docile, and harmless absent evidence" of their viciousness. *Id*. at 601. In light of this presumption, the plaintiff would have to show that the landlords "actually knew that the dog was dangerous *to children*." (Emphasis added.) *Id*. The court then explained in detail:

> "There is no evidence of specific occurrences in which the dog bit or even growled at children before the incident. Although the dog was involved in two previous altercations, those involved unfamiliar dogs, not children. Because a dog ordinarily is not a danger to

> children, [the plaintiff] was required to present evidence to show that [the landlords] knew that the dog was a danger to children. We conclude that [the plaintiff] failed to present adequate evidence on that point to preclude the entry of summary judgment."

Plaintiff's case here suffers from the same flaw. *Id.*

¶ 15 Plaintiff presented evidence that Abby was involved in confrontations with other dogs. *Klitzka* teaches that this is an insufficient basis to disregard the presumption that a dog is "tame, docile, and harmless" with regard to humans. *Id.* Put differently, absent evidence that Abby was aggressive toward humans, there was no reason to suppose the "likelihood of injury" was anything but low. Requiring landlords to act under such circumstances (*i.e.*, any time two dogs are involved in a confrontation) would place a heavy burden upon landlords. As noted above, both the likelihood of injury and magnitude of the burden of guarding against the injury are relevant considerations in determining whether a duty exists. *Schoondyke*, 89 Ill. App. 3d at 644. Given that there was no evidence that Abby was aggressive towards humans, Regency and Michelson had no duty to guard against the sort of harm that occurred in this case, irrespective of whether they had the ability to do so by virtue of enforcing the lease provisions regarding pets.

¶ 16 IV. CONCLUSION

¶ 17 In light of the foregoing, the judgment of the circuit court of Kane County is affirmed.

¶ 18 Affirmed.