2013 IL App (2d) 120657-U
No. 2-12-0657
Order filed March 12, 2013

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JONATHAN D. RICKERT	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 09-L-203
	)	
TONY MAURER and ROBIN MAURER,	)	Honorable
	)	Wallace Dunn,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted defendants' motion for a directed verdict; under the facts of this case, in order to recover under any negligence theory, plaintiff was required to present evidence that defendants knew or should have known of the dog's vicious or mischievous propensities, which plaintiff failed to do.

¶ 2 On a Sunday morning in April 2005, defendants, Tony and Robin Maurer, allowed their seven-year-old son Ayron to take their family dog on a walk. During the walk, the dog overpowered the boy and attacked a smaller dog belonging to plaintiff, Jonathan Rickert. Allegedly, while attempting to grab, lift, or jerk defendants' dog from the ground, plaintiff injured his back. At trial, following the close of plaintiff's case, the trial court directed a verdict in defendants' favor on the

issue of whether defendants were liable based upon a theory of negligent entrustment.[1] Plaintiff appeals. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 In an earlier action that plaintiff voluntarily dismissed, plaintiff had filed a two-count complaint against defendants alleging that they were liable for his injuries pursuant to section 16 of the Animal Control Act (510 ILCS 5/16 (West 2000)) (count I) and under a theory of common-law negligence (count II). In the earlier action, the trial court granted summary judgment in favor of defendants on the statutory-based count, for reasons not disclosed by the record. When plaintiff refiled the action, the only count at issue was the negligence count. In it, plaintiff alleged, in relevant part, that defendants were negligent either (1) in allowing their son to walk the dog when defendants knew, or should have known, that their son was of insufficient age, size, and experience to manage the dog; or (2) in allowing their son to walk the dog unsupervised.

¶ 5 The evidence at trial was as follows. Tony Maurer testified that in April 2005 he lived in Winthrop Harbor with his wife, his two children, and his two dogs. One of the dogs was a purebred boxer named Mac, who weighed about 70 pounds. Plaintiff lived three houses down on the same street. Tony's son, Ayron, had walked the dogs with the family before, but had never walked Mac alone. Ayron weighed between 50 and 60 pounds. On Sunday, April 3, 2005, when Ayron took Mac on a walk, which he did with his parents' permission, he used a four-to-five-foot long leash and a

[1]Our supreme court has defined negligent entrustment as consisting of "entrusting a dangerous article to another whom the lender knows, or should know, is likely to use it in a manner involving an unreasonable risk of harm to others." *Teter v. Clemens*, 112 Ill. 2d 252, 257 (1986); see also *Evans v. Shannon*, 201 Ill. 2d 424, 434 (2002) (providing a similar definition).

pincher collar. The pincher collar had metal links with two rubber-encased prongs per link that pointed in towards the dog's neck. The collar was used for training purposes and would tighten when the leash was pulled. Defendants had read about using a pincher-type collar in a book, and they used the collars when walking either of their dogs. Within five minutes of leaving the house, Ayron returned and said that Mac had gotten into a fight with another dog. Tony's wife, Robin, ran out of the house. Tony testified that, prior to the incident, Mac had no problems with the other dogs in the neighborhood.

¶ 6 Robin testified that in April 2005 her family had two dogs, Mac and Missy. Missy was a labrador. Mac never had any problems with Missy. However, prior to owning Missy, the family had owned another labrador named Midnight. Robin testified that, in 2001 or 2002, she remembered witnessing Mac get into a "squabble" with Midnight. She did not characterize it as a "fight" but only a "squabble." She yelled and the dogs stopped. Midnight had to be put to sleep in 2003 for reasons unrelated to the "squabble."

¶ 7 Robin further testified that, when the family walked the dogs together, she would let Ayron hold one of the leashes. She showed Ayron how to put his hand through the loop at the end of the leash and to wrap the leash once around his hand so that he would have a firm grip. Robin testified that Ayron weighed around 50 pounds and was 4 feet tall, while Mac weighed about 70 pounds and stood approximately 2 feet tall. On the morning of April 3, 2005, she put the pincher collar on Mac and handed Ayron the leash. She testified that the pincher collar was used for "basic dog obedience" and would tug on the dog's neck "to get its attention and to alert it that this is what you're supposed to be doing." After leaving the house, Ayron returned within five minutes. Robin ran out of the door and was at the front yard of plaintiff's house within 30 seconds.

¶ 8 Robin testified that, when she arrived at plaintiff's house, she saw a police officer holding a canister of pepper spray and plaintiff holding Mac by the neck. Plaintiff was "crouched over," holding the dog with one hand, but was standing up. Mac was sitting calmly. The officer told Robin that he had witnessed the entire event. Robin did not remember telling the officer that she should not have let Ayron walk the dog that morning. When the animal control truck came, Robin took Mac from plaintiff and placed him in the truck. Robin testified that she felt "very strongly" that Ayron had been ready for the responsibility of walking the dog. She testified, "Given the dog's nature and my son's independence and responsibility, I feel it was a good decision and I stand by that."

¶ 9 Plaintiff's wife, Lisa Rickert, testified that in April 2005 she and her husband had two children and owned a terrier named Buddy who weighed 18 or 19 pounds. On the morning of April 3, 2005, she heard a lot of noise and some screaming, walked out of the front door of her house, and saw her husband wrestling with defendants' dog, which had Buddy in his mouth. She testified that she recognized defendants' dog, because, more than a year prior to the incident, the dog had come into her back yard while she was outside with her children. The dog "didn't do anything," but she was afraid and took the children into the house. Lisa testified that, after she exited her house on the morning of the incident, she witnessed the officer use pepper spray on defendants' dog while her husband was holding the dog. She further testified that, while holding the dog, her husband "kind of leaned backwards and slid and fell."

¶ 10 Officer Waymon Vela of the Village of Winthrop Harbor police department testified that, on the morning of April 3, 2005, he was on patrol. While driving down the street, he saw a boy being dragged on his stomach by a dog. The dog dragged the boy approximately 10 to 15 feet from the street over a concrete curb and into a yard. He estimated the dog's weight to be 80 to 90 pounds,

and he testified that it appeared that the smaller boy "couldn't do too much" to restrain the dog. Officer Vela exited his vehicle and ran to the boy's aid. He took the leash off of the boy's wrist, then noticed that the larger dog had a smaller dog in its mouth. According to the officer, plaintiff arrived within a few seconds and began kicking the larger dog in the chest. The officer then "kicked the bigger dog with all [his] might and heard just a thump," which only made the dog more aggressive. Since the kicking was not working, he took out his pepper spray and sprayed the dog. Defendants' dog then released the smaller dog, laid down, and remained calm until Robin Maurer arrived and took custody of the dog. Officer Vela recalled Robin saying to him that "she knew better letting [*sic*] her small child walk the larger dog." Officer Vela did not recall plaintiff wrestling with the dog, touching the dog other than kicking it, or holding the dog by its neck.

¶ 11 Plaintiff testified that, on the morning of April 3, 2005, he was sitting on his deck in his back yard, watching one of his sons play with Buddy on the driveway next to the deck. Plaintiff testified that the first time he saw Mac, the dog was in his back yard next to the deck. He did not recall seeing a leash, and he did not recall seeing defendants' son with the dog. Plaintiff witnessed Mac grab Buddy by the neck. Plaintiff jumped off of the deck and started kicking Mac. According to plaintiff, this started in the back yard, and he and the dogs moved down the driveway towards the front yard. The officer arrived and began kicking Mac as well. The officer's kicking allowed plaintiff to "get a good hold" of the dog. While plaintiff was "choking" the dog, the officer sprayed the dog with pepper spray. The dog "immediately settled down," and plaintiff then "grabbed the dog, and dragged him down by the road." When asked if he fell down with the dog at any point, plaintiff testified, "Oh, yeah. In the mix of fighting with him." Plaintiff testified on direct examination that this occurred before the officer sprayed the pepper spray. Plaintiff had "tried

jerking the dog off the ground," but this "[d]idn't turn out too well," and he ended up on the ground with defendants' dog on top of him. On cross-examination, plaintiff again testified that he had attempted to pull defendants' dog off the ground before the officer used the pepper spray. However, after defense counsel impeached plaintiff with his deposition testimony, plaintiff agreed that he had pulled the dog off the ground after the pepper spray was applied. The following exchange occurred:

> "Q. And then at that point after the pepper spray was applied, it was your intention to pull the dog up off the ground, pin him to your chest and then slam him down so you could pin him to the ground with the weight of your body, correct?
>
> A. Yeah. I was pretty mad."

Plaintiff further testified that he pinned the dog in that position until the animal control truck arrived to take the dog.

¶ 12 At the close of plaintiff's case, defendants moved for a directed verdict. Defendants argued that (1) plaintiff could not prove that defendants' actions proximately caused plaintiff's injuries, because plaintiff's own negligent act of "attempting to separate two fighting dogs" was an intervening and superseding cause of plaintiff's injuries; and (2) plaintiff had not presented sufficient evidence to establish a cause of action for negligent entrustment. During oral argument on the motion, defense counsel explained that negligent entrustment required proof of a dangerous instrumentality, and that plaintiff had presented no evidence that defendants' dog was dangerous.

¶ 13 The trial court granted defendants' motion and entered a directed verdict in their favor on the issue of whether defendants were liable under a theory of negligent entrustment. The court found that there was no evidence that defendants' dog was dangerous. However, the court permitted the jury to decide the issue of whether defendants were liable as principals for the negligent acts of their

agent-son. On this issue, the jury returned a verdict in defendants' favor. The trial court denied plaintiff's posttrial motion. Plaintiff timely appeals.

¶ 14 ANALYSIS

¶ 15 On appeal, plaintiff argues that he was not required to prove that defendants' dog was an inherently dangerous instrumentality. He contends that, as stated in negligent entrustment cases involving automobiles, an instrumentality does not have to be inherently dangerous, but only dangerous when entrusted to a particular person, such as an incompetent, inexperienced, or intoxicated driver. Plaintiff contends that the key factor in negligent entrustment cases is that the entrustor has some reason to know that it is negligent or foolish to entrust the instrumentality to the entrustee. Plaintiff maintains that "Ayron's gross and obvious limitations of age[,] experience[,] and size relative to Mac," as well as Robin's purported statement to the officer that she knew better than to let the small boy walk the large dog, were sufficient evidence of negligent entrustment. Plaintiff also contends that Mac's earlier "squabble" with the family's labrador was evidence that Mac would be dangerous if entrusted to Ayron. According to plaintiff, it was foreseeable that Mac would break free of Ayron and injure another person.

¶ 16 In further support of his argument that he was not required to prove that Mac was inherently dangerous, plaintiff relies on *Meyer v. Naperville Manner, Inc.*, 285 Ill. App. 3d 187 (1996), for the proposition that, at common law, a plaintiff was not always required to prove that an animal had a dangerous propensity in order to recover for the animal owner's negligence. In *Meyer*, which involved injuries a young girl sustained when she fell from a horse at the defendant's horse riding school, the court held that proof of an animal's predisposition towards mischief or danger is not required where the animal is "merely the instrument by which the injury occurred as a result of

another's negligence." *Meyer*, 285 Ill. App. 3d at 188, 192. The alleged cause of the plaintiff's injuries in *Meyer* was the defendant's inadequate instruction. *Meyer*, 285 Ill. App. 3d at 192. Plaintiff contends that, here, the cause of his injuries was defendants' decision to allow Ayron to walk Mac when, *inter alia*, (i) Robin testified that Mac had been aggressive to their labrador; (ii) it was a Sunday morning with good weather, so defendants knew other people would be out; (iii) Ayron had never before walked Mac alone; (iv) Ayron was only seven years old; (v) Mac outweighed Ayron by at least 20 pounds; (vi) Robin told Officer Vela that she knew she should not have let Ayron walk Mac; and (vii) defendants always used a pincher collar when walking Mac, which showed that voice commands were not sufficient to control the dog. Plaintiff contends that these things constituted at least "some evidence" of defendants' negligence, such that his claim that defendants were negligent in allowing Ayron to walk the dog should have survived a motion for a directed verdict.

¶ 17 Finally, plaintiff argues that defendants could be liable under a theory of negligent supervision. Plaintiff cites section 316 of the Restatement (Second) of Torts (1965) and argues that defendants had a duty to exercise reasonable care to control their child so as to prevent the child from conducting himself in a manner that created an unreasonable risk of harm to others.

¶ 18 Defendants respond, first, that the common-law rule regarding liability for damages arising out of an animal's mischievous or vicious acts is applicable here. The common-law rule is as follows:

> "The natural presumption from the habits of dogs is that they are tame, docile, and harmless, both as to persons and to property, and the owner of a dog is not liable for damages resulting from the vicious or mischievous acts of the animal unless he had knowledge of his

> mischievous or vicious propensities, and such knowledge must be proved." *Domm v. Hollenbeck*, 259 Ill. 382, 385 (1913).

Defendants contend that a directed verdict was proper because plaintiff presented no evidence that defendants knew that their dog had any mischievous or vicious propensities. According to defendants, Robin's testimony concerning the "squabble" between Mac and Midnight was not evidence of a mischievous or vicious propensity. Defendants contend that, because the "squabble" occurred years prior to the incident and had not recurred, and because Mac had obeyed a simple voice command to stop, the undisputed evidence was that Mac was a "good well adjusted [*sic*] family dog." Defendants further contend that Robin's purported statement to the officer that she should not have let Ayron walk the dog, which Robin denied, only concerned Mac's size in relation to Ayron, not defendants' knowledge of any vicious or dangerous propensities.

¶ 19 Defendants next argue that the *Meyer* case is distinguishable. Defendants maintain that plaintiff's theory that defendants were negligent in allowing Ayron to walk Mac "still totally depends on the actions of the dog." According to defendants, the "gravamen of the entire action" is that Mac got loose from Ayron, ran into plaintiff's yard, and attacked plaintiff's dog. Defendants contend that these facts "necessarily inject the prior vicious propensity of the dog into the equation." Defendants argue that this situation is unlike the facts of *Meyer*, in which the animal was merely the instrument by which the injury occurred as a result of the defendant's negligent instruction.

¶ 20 Defendants also argue that, even if we characterize plaintiff's claim as one based on negligent entrustment, the claim still would fail, because the common law requires plaintiff to prove that defendants had knowledge of a vicious or mischievous propensity. Defendants maintain that treating a dog in the same manner that courts treat automobiles for purposes of negligent entrustment (*i.e.*,

that they may be dangerous if entrusted to an incompetent driver) would "fl[y] in the face" of the cases involving liability for a dog's actions under the common law.

¶ 21 Finally, defendants argue that plaintiff has waived his negligent supervision argument. Defendants contend that plaintiff raised this theory of liability for the first time in his posttrial motion and did not raise it in his pleadings, at trial, or during the hearing on defendants' motion for a directed verdict.

¶ 22 We review *de novo* a trial court's decision to grant a motion for a directed verdict. *Evans v. Shannon*, 201 Ill. 2d 424, 427 (2002). A court should direct a verdict only in cases where the evidence, when viewed in a light most favorable to the party opposing the motion, so overwhelmingly favors the movant that no contrary verdict based on the evidence could ever stand. *Evans*, 201 Ill. 2d at 428.

¶ 23 We agree with defendants that the common-law rule regarding liability for damages arising out of an animal's mischievous or vicious acts is applicable here. Under the common law, a dog is presumed to be tame, docile, and harmless. *Domm*, 259 Ill. at 385; *Lucas v. Kriska*, 168 Ill. App. 3d 317, 320 (1988). Thus, when injuries or damages arise out of a dog's aberration from its presumed tame, docile, and harmless nature, the dog's owner is liable under the common law only if the owner knew or should have known that the dog had vicious or mischievous propensities. *Domm*, 259 Ill. at 385; *Lucas*, 168 Ill. App. 3d at 320.[2] Here, as defendants argue, it cannot be

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[2]Section 16 of the Animal Control Act removes the requirement that the owner had knowledge of the dog's vicious or mischievous propensities (510 ILCS 5/16 (West 2000)); however, as stated above, the trial court granted summary judgment in defendants' favor on plaintiff's statutory-based count for reasons not disclosed by the record.

disputed that plaintiff would not have been injured but for Mac's conduct of overpowering Ayron, running into plaintiff's yard, and attacking plaintiff's small terrier. Mac's conduct was an aberration from his presumed tame, docile, and harmless nature. As our supreme court stated a century ago, the owner of a dog "is under no obligation to guard against injuries which he has no reason to expect on account of some disposition of the individual animal different from the species generally, unless he has notice of such disposition." *Domm*, 259 Ill. at 385.[3] For us to conclude, under the facts of this case, that plaintiff may recover against defendants without first proving that the dog had any vicious or mischievous propensities, we would be required to disregard and ignore the common-law rule, which, based on our research, has been followed in Illinois at least since 1859. See *Stumps v. Kelly*, 22 Ill. 140, 143 (1859). Plaintiff's reliance on a negligent entrustment theory does not alter this result.

¶ 24 We consider *Lucas* to be instructive on this point. In *Lucas*, the plaintiff was a minor who was injured by a dog while visiting the defendant's horse stable. *Lucas*, 168 Ill. App. 3d at 318. The defendant did not own the dog who attacked the plaintiff, but the defendant did permit the dog, who belonged to the defendant's sister, to run unleashed on her property. *Lucas*, 168 Ill. App. 3d at 319. Under the common law, a property owner, just like a dog owner, was not liable for injuries caused by a dog's vicious acts unless the property owner had prior knowledge of the dog's vicious propensities. *Lucas*, 168 Ill. App. 3d at 320. The plaintiff in *Lucas* argued that he was not required to present evidence that the defendant knew of the dog's vicious propensities because the defendant

[3]While the owner of an animal also is "bound to take notice of the general propensities of the class to which it belongs" (*Domm*, 259 Ill. at 385), plaintiff in this case presented no evidence whatsoever of the general propensities of purebred boxers, or of dogs in general.

was liable under premises liability law. *Lucas*, 168 Ill. App. 3d at 320. The court in *Lucas* rejected this argument, reasoning that, even under a premises liability theory, the common-law rule requiring proof of the dog's vicious propensities applied. *Lucas*, 168 Ill. App. 3d at 320. Likewise, we decline to overlook the common-law rule simply because plaintiff has styled his action under a theory of negligent entrustment.

¶ 25 We also agree with defendants that *Meyer* is distinguishable. The reason the common-law rule requiring proof of vicious or mischievous propensities was not applicable in *Meyer* was because the plaintiff alleged that it was the defendant's conduct (negligent instruction) that caused her to fall off of the horse, not the animal's conduct. *Meyer*, 285 Ill. App. 3d at 192; see also *Janis v. Graham*, 408 Ill. App. 3d 898, 904 (2011) (distinguishing *Meyer* on this basis). Here, by contrast, it was not defendants' conduct that caused Mac to overpower Ayron, run into plaintiff's front yard, and attack plaintiff's dog. Indeed, Robin's testimony was that she had instructed Ayron during family walks on how to place his hand through the loop on the end of the dog's leash and how to wrap the leash around his hand so that the dog could not get away. The evidence also established that Ayron dutifully abided by his mother's instruction, as he did not let go of the leash as Mac dragged him over the curb and into plaintiff's yard. Officer Vela testified that he had to free Ayron's hand from the leash. It clearly was the dog's conduct that was the principal force at play on the morning of April 3, 2005. Again, because that conduct was an aberration from the dog's presumed tame, docile, and harmless nature, in order to recover, plaintiff was required to present evidence that defendants knew or should have known of the dog's vicious or mischievous propensities. *Domm*, 259 Ill. at 385; *Lucas*, 168 Ill. App. 3d at 320.

¶ 26 While plaintiff argues that it was not Mac's conduct, but "Ayron's gross and obvious limitations of age[,] experience[,] and size relative to Mac," that renders defendants liable for entrusting the dog to Ayron, plaintiff's argument fails. For us to adopt plaintiff's argument, we would have to presume that, at the moment defendants granted Ayron permission to walk Mac alone, it was reasonably foreseeable that Mac would bolt off, overpower Ayron, and attack another dog. Under the common law, this is a presumption we cannot make. We must presume that Mac was tame, docile, and harmless, unless defendants had reason to know otherwise. *Domm*, 259 Ill. at 385. A parent who permits his or her child to walk a tame, docile, and harmless animal would not reasonably foresee that the animal would overpower the child and attack a neighbor's dog. Again, under the facts of this case—which indisputably involved the dog's vicious or mischievous conduct—plaintiff was required to present evidence that defendants knew or should have known of the dog's vicious or mischievous propensities. *Domm*, 259 Ill. at 385; *Lucas*, 168 Ill. App. 3d at 320.[4]

¶ 27 Next, we agree with the trial court that the evidence of purported viciousness or mischievousness that plaintiff presented was insufficient to survive a motion for directed verdict. Robin's testimony concerning the "squabble" that occurred in 2001 or 2002 between Mac and the

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[4]This is not to say an animal without vicious or mischievous propensities could never be considered a "dangerous instrumentality" for purposes of a negligent entrustment claim. That is not an issue we need to decide in order to resolve this case. Rather, we merely conclude that, under the facts of this case, because the incident arose out of Mac's vicious or mischievous acts, plaintiff was required to prove that defendants had knowledge of the dog's vicious or mischievous propensities before he could recover under any negligence theory.

family's labrador was not evidence of a vicious or mischievous propensity. According to Robin, the dogs ceased their "squabble" in response to Robin's voice command. If anything, this was evidence of an obedient dog. Similarly, Officer Vela's testimony that Robin told him that "she knew better letting [*sic*] her small child walk the larger dog"—a statement that Robin denied—was not probative of any vicious or mischievous propensity on Mac's part. If anything, the statement reveals that, in retrospect, Robin acknowledged that Mac was large enough to overpower Ayron, but the statement does not suggest that Robin had prior knowledge that Mac had a propensity to bolt off and attack other dogs while on walks. In fact, Tony testified that Mac had no prior problems with other dogs in the neighborhood. We also decline to infer knowledge of a vicious or mischievous propensity from the mere fact that defendants utilized a pincher collar. Defendants' undisputed testimony was that they used the pincher collars as obedience tools because their dogs responded to the tug on their necks that the collars provided. Plaintiff did not present any evidence that the pincher collar was necessary to restrain Mac from bolting off and attacking other dogs. Based on the evidence presented, making that inference would be impermissible speculation.

¶ 28 In sum, even viewing the evidence in the light most favorable to plaintiff, the evidence so overwhelmingly favored defendants that no verdict in plaintiff's favor could stand. The trial court properly directed the verdict in defendants' favor.

¶ 29 We next address plaintiff's argument that defendants could have been held liable under a theory of negligent supervision. As stated above, plaintiff cites section 316 of the Restatement (Second) of Torts (1965) and argues that defendants had a duty to exercise reasonable care to control their child so as to prevent him from conducting himself in a manner that created an unreasonable risk of harm to others. While defendants argue that plaintiff has waived this theory of liability by

failing to raise it prior to trial, we note that plaintiff's complaint did allege that defendants were negligent in allowing their son to walk the dog unsupervised, which, at least minimally, raises the issue of negligent supervision. However, we fail to see how the facts of this case implicate defendants' alleged negligent supervision of their child. Section 316 of the Restatement provides that "[a] parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them." As we stated above, the undisputed evidence was that Ayron held on to Mac's leash despite being dragged over a concrete curb and into plaintiff's yard. If anything, Ayron tried to prevent Mac from causing harm to others once the dog bolted off and began attacking plaintiff's dog. Moreover, the trial court allowed the jury to decide the issue of Ayron's negligence (as an agent of his parents), and the jury returned a verdict in defendants' favor. Even assuming that plaintiff did adequately raise the issue of whether defendants were negligent in failing to supervise Ayron, that theory does not provide us with a basis to reverse the trial court.

¶ 30 While defendant also argues that we could affirm the trial court on the alternative basis that plaintiff did not present any evidence that defendants' negligence was the proximate cause of plaintiff's injuries (and that plaintiff's own negligent actions in intervening in the dog fight and attempting to grab, lift, or jerk the dog from the ground were the sole proximate cause of his injuries), we need not address this issue, since we are affirming on essentially the same basis that the trial court granted the directed verdict (no evidence that the dog had dangerous, vicious, or mischievous propensities).

¶ 31 CONCLUSION

¶ 32 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 33 Affirmed.