

Highlights of Animal Law 2013–2018

By Barbara H. Goldman

Animals and humans have lived side by side since long before recorded history, so it should be no surprise that our structured legal systems often deal with the interaction of members of one species—us—with members of other species. Animals appear in court as victims and perpetrators, property and companions, and sometimes in roles that do not lend themselves to ready classification. Following is a review of animal-related opinions from Michigan courts issued between 2013 and 2018.

Injuries by animals—dog bites and other injuries¹

Liability for injuries to people caused by dogs can be based on either statute² or common law.³ In practice, most plaintiffs plead both.

Owner liability

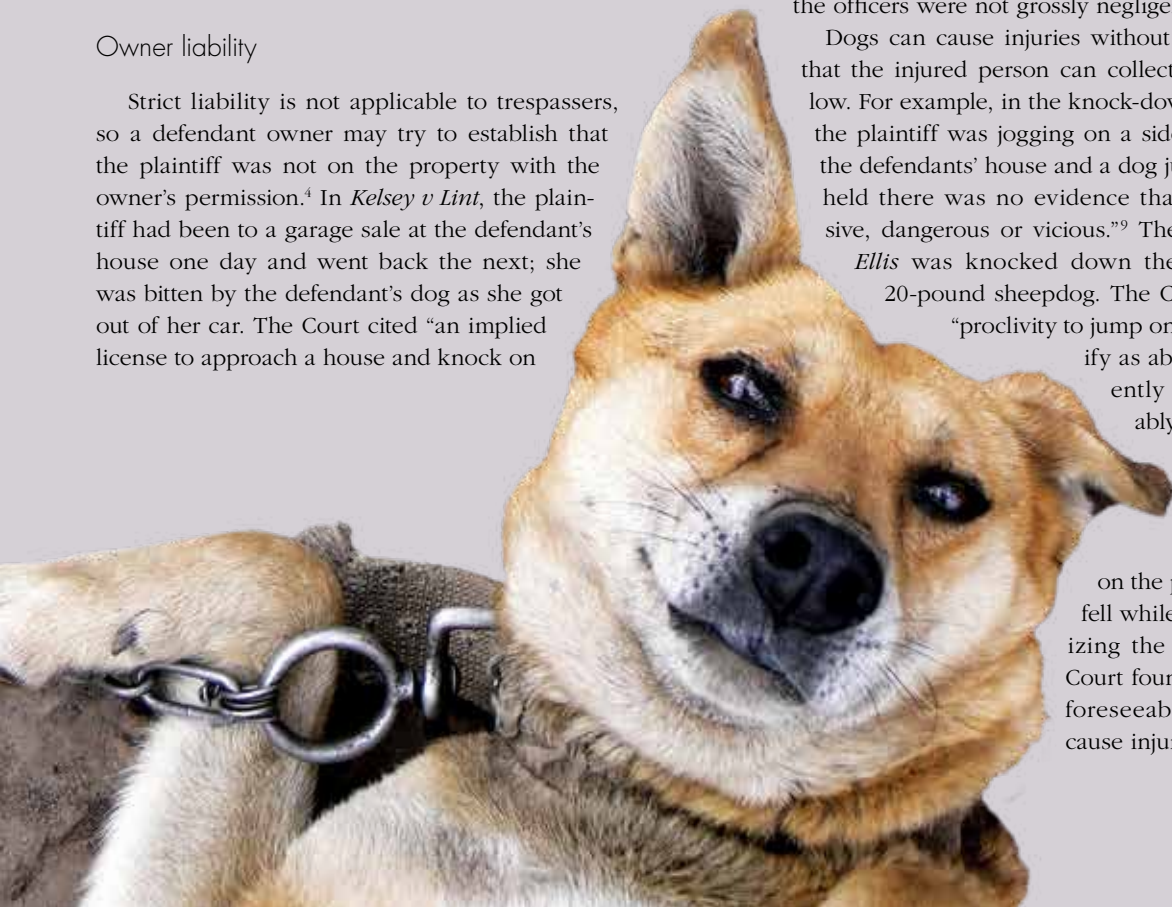
Strict liability is not applicable to trespassers, so a defendant owner may try to establish that the plaintiff was not on the property with the owner's permission.⁴ In *Kelsey v Lint*, the plaintiff had been to a garage sale at the defendant's house one day and went back the next; she was bitten by the defendant's dog as she got out of her car. The Court cited "an implied license to approach a house and knock on

the front door" and the defendant's "open, ungated driveway devoid of signs prohibiting entry" to hold that the plaintiff was a licensee.⁵ A trespasser defense was also raised in *Cummings v Girtman*, where the hand of a man visiting the yard next door "protruded into" the defendants' yard. The Court agreed that he did not have permission to place his hand into the defendants' backyard.⁶

In *Adams v Wooldridge*, the defendants were helping to look after a dog while its owners were away from the house where the dog was living, when the dog attacked and bit the plaintiff. The Court held that the defendants were not owners under MCL 287.261(2) and there was insufficient evidence that they knew the dog was dangerous.⁷ The plaintiff in *Mondak v Taylor Police Department* was bitten by a police dog while the defendant officers and several K-9 units pursued a group of young men during a fireworks display. The Court held that the officers were not grossly negligent.⁸

Dogs can cause injuries without biting, but the chances that the injured person can collect damages are generally low. For example, in the knock-down case *Kinney v Crane*, the plaintiff was jogging on a sidewalk when she passed the defendants' house and a dog jumped at her. The Court held there was no evidence that the dog was "aggressive, dangerous or vicious."⁹ The plaintiff in *Kirkman v Ellis* was knocked down the basement stairs by a 20-pound sheepdog. The Court held that the dog's "proclivity to jump on the door does not qualify as abnormal for a dog, inherently dangerous, or foreseeably likely to cause injury."¹⁰

Finally, the plaintiff in *Smith v Conroy* was a delivery driver who saw the defendant's dog on the porch, heard it bark, and fell while running away, not realizing the dog was chained. The Court found it was not reasonably foreseeable that the dog would cause injury.¹¹



Nonowner liability

Often a dog's owner is uninsured, so an injured person may look to another potential defendant for compensation. Such a plaintiff prevailed in only one case, *Ball v Fourment*. In this case, the plaintiff was bitten by a dog belonging to two employees of a pet food store as the plaintiff was trying to demonstrate the use of a pinch collar on her own dog. The Court agreed that the employer could be vicariously liable for the employees' negligence.¹²

There is no strict liability for nonbite injuries, and attempts to attribute negligence to a nonowner have not been successful. For example, in *James v Gutberie*, the target was a property management company. The tenant/owner had acquired a second dog after renting the property, but the Court held that even if the plaintiff could prove that both dogs were Akitas, there was no evidence that they were dangerous. The defendant also did not control the dog and had no indication that the second dog was vicious or dangerous.¹³ The plaintiff in *Burnett v Clarke* was a 12-year-old girl who lived in a manufactured home community that prohibited pit bulls and was injured when one lunged at her. The Court held the landowner was not liable.¹⁴

In *Cooper v Guitierrez*, the plaintiff was attacked on a sidewalk by two dogs that were owned by one defendant but living with his girlfriend, who rented the premises from another couple. The plaintiff based her claim against the landlords on a local ordinance, but the Court agreed that the ordinance did not create a private right of action and the landlords were not the dogs' owners under their interpretation of the ordinance because they did not knowingly allow the dogs to remain on the premises they occupied.¹⁵

Morgan v Nickowski is a variant on the typical case because the victim was another dog; the plaintiff incurred \$8,000 in vet bills and sued the owner's landlord. The Court held that the landlord was not liable because he no longer had possession and control of the property and there was insufficient evidence that he "had knowledge of the attacking dog's propensity for viciousness." It also held that a nuisance claim would have been meritless on its face.¹⁶

Injuries by animals other than dogs

The plaintiff in *Johnson v Outback Lodge & Equestrian Center, LLC* was a Girl Scout who was at a horseback riding camp conducted on the defendant's ranch when the horse she was on was "spooked" and ran away with her. She alleged that several individuals were negligent in providing her with the "equine, tack, and equipment," but she was not able to establish whether they worked for the ranch or the Girl Scouts. The Court found a "special relationship" existed between the plaintiff and the Girl Scouts, although it left it to the jury to decide if any of the counselors were negligent.¹⁷ In

Hudson v Canterbury Health Care, the plaintiff fell when she was frightened by an uncaged bird. The Court held that the bird had no dangerous propensities that would impose a duty on the defendant to keep it restrained.¹⁸

Injuries to animals

In a spate of recent cases, dog owners have sued police agencies for damages when a law enforcement officer killed the plaintiff's pet, typically by shooting one or more dogs during a police action. The results have been varied.

The most notable case, *Smith v Detroit*, is pending a decision by the Sixth Circuit Court of Appeals. Police officers shot and killed the plaintiffs' three dogs while executing a search warrant. The plaintiffs brought a Section 1983 claim, but the court held that the dogs were "contraband" because they were not licensed, and the plaintiffs, therefore, did not have a legitimate possessory interest in them. The court also found independent bases to affirm the shootings of each of the three dogs and that the plaintiffs had no claim for conversion because the dogs were unlicensed.¹⁹

In *Bullman v Detroit*, however, the court found that the owner retained a constitutionally protected property interest in an unlicensed dog, although the plaintiffs lost on their claims for conversion and intentional infliction of emotional distress.²⁰ In the third case, the police shot a dog chained on a porch; the defendant officer claimed he did not see the chain. The court held "it was objectively reasonable for [the officer] to believe that the dog posed an imminent threat to his safety."²¹

At a Glance

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A different twist appears in *Thomas v Briggs*. The plaintiff claimed that one defendant, a Detroit police officer, lured his dogs off the plaintiff's property and took them to an animal shelter run by another defendant. The court determined that the plaintiff had not established that either defendant was acting under color of state law but denied summary judgment on his Section 1983 claim.²²

The court in a related case, *Hardrick v Detroit*, held that a portion of an ordinance allowing officers to go onto private property and seize animals without a warrant was an unconstitutional “custom or policy,” but the city's negligence in caring for several dogs that died was not a denial of due process.²³

Criminal cases—cruelty, neglect, and abuse

Several defendants appealed convictions arising from the killing of an animal.

The defendant in *People v Collins* was intoxicated when she shot her dog, allegedly in an attempt to euthanize it. The Court rejected her defense that she shot the dog “to end [its] suffering resulting from its poor health.”²⁴ In *People v Hursley* the defendant was convicted of animal torture for beating a dog to death. The Court held there was sufficient credible testimony to support the conviction and rejected the defendant's argument that he was allowed to kill the dog after it bit him because the bite occurred as a result of the defendant's beating the dog.²⁵ The defendants in *People v Guzman-Cortez* and *People v Trejo-Chavarria* were both involved in an assault and robbery in which the victim's dog was also stabbed to death. Both were convicted of killing the dog and armed robbery and assault with intent to do great bodily harm. Guzman-Cortez was sentenced for three or more crimes against a person.²⁶

Two courts rejected search-and-seizure challenges in cases of animal neglect. The defendant in *People v Montross* kept animals on two farms; police found dead calves on a property the defendant had vacated and the owner of the other consented to a search. The Court affirmed the defendant's conviction for failing to provide adequate care for 10 or more animals.²⁷

In *People v Green*, a state police trooper investigating a complaint went into a pole barn where he found evidence used for a search warrant and seized approximately 200 animals. The Court found that the pole barn did not constitute part of the curtilage of the home so the defendant did not have a reasonable expectation of privacy with respect to it.²⁸

Criminal cases—dangerous animals

People v Lyons was a highly publicized case in which the defendant's pit bulls killed a child.²⁹ The owner was convicted of owning dangerous animals, but the Court held that the prosecution “was required to prove that defendant *knew* prior

to the attack” that the dogs were dangerous. The Court, however, affirmed the defendant's conviction of involuntary manslaughter for gross negligence in the performance of an act.³⁰

Veterinarians

Three cases involved alleged incompetence by a veterinarian. In *Department of Community Health v Anderson*, the respondent was the subject of a complaint for providing negligent and incompetent care during a C-section on a dog. The Court affirmed an order of discipline and also held that the department's failure to comply with designated periods in the discipline process did not require dismissal of the complaint.³¹

The respondent in *Bureau of Health Care Services v Pol* was disciplined after a complaint was filed by an out-of-state viewer based on an episode of his reality TV show. The Court took note of the lack of “standards that Michigan veterinarians are required by law to follow” and noted in a footnote that cost can be relevant in determining the standard of care in veterinary practice.³²

In *Department of Licensing and Regulatory Affairs v Langlois*, the respondent ran a high-volume practice, including two mobile clinics that provided spaying and neutering. The Court affirmed revocation of the respondent's license to practice based on a finding that he failed to provide follow-up care for surgical procedures and to keep adequate records.³³

Service animals

Three cases involved issues with service dogs. In *Arndt v Ford Motor Company*, Ford was studying how it could accommodate a dog on a manufacturing floor when the plaintiff resigned after an interview with an HR employee. The court held there was insufficient evidence of bad faith or failure to work toward a reasonable accommodation.³⁴ The plaintiff in *Lacaria v Aurora Borealis Motel* alleged a failure of “public accommodation” of an uncertified service dog. The Court found it “at least conceivable” that a dog could be an “adaptive aid.” The panel looked at the federal definition of “service animal” but did not find it dispositive.³⁵ Finally, the plaintiff in *Krueger v United States* sued the Department of Veteran Affairs for inhibiting his use of his service dog, but the court held that the record did not support his claim.³⁶

Employment

Two employees of animal shelters were plaintiffs in employment cases. In *McCrumb v McAloon-Lampman*, the plaintiff was a probationary employee who was fired, allegedly in retaliation for refusing to follow what he called three unlawful orders. The Court held that even if the orders were unlawful, the plaintiff had failed to establish a causal connection between his refusal to violate the law and his termination.³⁷

The plaintiff in *Dennis v Wexford County* suspected employees were improperly euthanizing animals and alleged that she was subject to retaliation for making a complaint. The Court found that the plaintiff had presented enough evidence to survive summary disposition with respect to her whistleblower claim.³⁸

Zoning

In *Engel v Monitor Township Zoning Board of Appeals*, the Court held that a horse training arena did not violate an ordinance because horses would not be “housed” in it.³⁹

Prohibited animals

The Court in *Johnson v Department of Natural Resources* affirmed a trial court ruling, based on two experts’ opinions, that the defendant’s pigs were a prohibited species.⁴⁰

Miscellaneous

In *Minor v Sylvan Lake*, the plaintiff was arrested for letting a dog run loose in violation of a local ordinance. He sued for false arrest and other claims, alleging in part that no one had ever before been arrested for violating the leash law. The Court held that the officer had probable cause to arrest him.⁴¹

As caselaw reflects, animals and humans interact in myriad ways. The State Bar of Michigan’s Animal Law Section will participate as animal law continues to evolve. ■

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ENDNOTES

- A more extended review of dog bite cases from 2010 forward will be published in an upcoming issue of the SBM Animal Law Section newsletter. For an outline of earlier cases, see Goldman, *Sinking Your Teeth Into Michigan Dog Bite Law*, SBM Animal Law Section Newsletter (Summer 2010) <<https://higherlogicdownload.s3.amazonaws.com/MICHBAR/871edf0a-0824-49b7-9289-ca23577cca1c/UploadedImages/pdfs/summer10.pdf>> (accessed May 31, 2018).
- MCL 287.351 provides for strict liability of “owners” for dog bites.
- MCL 287.288 preserves “common law liability of the owner of a dog for damages committed by it.” The leading case on negligence and dog bite liability is *Trager v Thor*, 445 Mich 95; 516 NW2d 69 (1994).
- MCL 287.321(a)(1) and MCL 287.351
- Kelsey v Lint*, unpublished per curiam opinion of the Court of Appeals, issued December 14, 2017 (Docket No. 336852).
- Cummings v Girtman*, unpublished opinion per curiam of the Court of Appeals, issued December 12, 2017 (Docket No. 334015).
- Adams v Wooldridge*, unpublished opinion per curiam of the Court of Appeals, issued April 23, 2013 (Docket No. 308506).
- Mondak v Taylor Police Dept*, unpublished opinion per curiam of the Court of Appeals, issued March 23, 2017 (Docket No. 330459). See MCL 691.1407(2)(c).
- Kinney v Crane*, unpublished opinion per curiam of the Court of Appeals, issued June 24, 2014 (Docket No. 314191).
- Kirkman v Ellis*, unpublished opinion per curiam of the Court of Appeals, issued December 18, 2014 (Docket No. 318406).
- Smith v Conroy*, unpublished opinion per curiam of the Court of Appeals, issued February 2, 2017 (Docket No. 329022).
- Ball v Fourment*, unpublished opinion per curiam of the Court of Appeals, issued February 21, 2017 (Docket No. 331670).
- James v Guthrie*, unpublished opinion per curiam of the Court of Appeals, issued August 26, 2014 (Docket No. 316636).
- Burnett v Clarke*, unpublished opinion per curiam of the Court of Appeals, issued March 14, 2013 (Docket No. 309373).
- Cooper v Guitierrez*, unpublished opinion per curiam of the Court of Appeals, issued February 2, 2014 (Docket No. 312526).
- Morgan v Nickowski*, unpublished opinion per curiam of the Court of Appeals, issued November 28, 2017 (Docket No. 334668).
- Johnson v Outback Lodge & Equestrian Center, LLC*, unpublished opinion per curiam of the Court of Appeals, issued March 10, 2016 (Docket No. 323556).
- Hudson v Canterbury Health Care, Inc*, unpublished opinion per curiam of the Court of Appeals, issued December 17, 2013 (Docket No. 310679).
- Smith v City of Detroit*, No. 16-11882, 2017 WL 3279170, at *6, *12 (ED Mich, August 2, 2017) and *Smith v City of Detroit*, No. 17-1907 (CA 6, argued April 25, 2018).
- Bullman v Detroit*, No. 16-12581, 2018 WL 1088074, at *6 (ED Mich, February 28, 2018).
- Hayes v Detroit*, No. 16-13098, 2017 WL 4785977, at *2 (ED Mich, October 24, 2017).
- Thomas v Briggs*, No. 15-10210, 2018 WL 480520, at *2, *3 (ED Mich, January 19, 2018).
- Hardrick v Detroit*, 876 F3d 238, 247 (CA 6, 2017).
- People v Collins*, unpublished opinion per curiam of the Court of Appeals, issued February 20, 2018 (Docket No. 337195).
- People v Hursley*, unpublished opinion per curiam of the Court of Appeals, issued March 6, 2018 (Docket No. 335638).
- People v Guzman-Cortez*, unpublished opinion per curiam of the Court of Appeals, issued April 14, 2015 (Docket No. 319212) and *People v Trejo-Chavarria*, unpublished opinion per curiam of the Court of Appeals, issued April 14, 2015 (Docket No. 320622).
- People v Montross*, unpublished opinion per curiam of the Court of Appeals, issued March 18, 2016 (Docket No. 325190). See MCL 750.50(4)(d).
- People v Green*, unpublished opinion per curiam of the Court of Appeals, issued April 9, 2015 (Docket Nos. 323433, 323435).
- Brand-Williams & Fournier, *‘They just ate him,’ mom says about dog attack on son*, The Detroit News (December 4, 2015) <<https://www.detroitnews.com/story/news/local/detroit-city/2015/12/03/owner-pit-bulls-deadly-attack-still-custody/76714712/>> (accessed May 31, 2018).
- People v Lyons*, unpublished opinion per curiam of the Court of Appeals, March 8, 2018 (Docket No. 334513). See MCL 287.321(a).
- Dept of Community Health v Anderson*, 299 Mich App 591; 830 NW2d 814 (2013). See MCL 333.16221(a) and MCL 333.16221(b)(i).
- Bureau of Health Care Servs v Pol*, unpublished opinion per curiam of the Court of Appeals, issued June 23, 2016 (Docket No. 327346).
- Dept of Licensing and Regulatory Affairs v Langlois*, unpublished opinion per curiam of the Court of Appeals, issued February 14, 2017 (Docket No. 330451).
- Amdt v Ford Motor Co*, 716 Fed Appx 519 (CA 6, December 13, 2017).
- Lacaria v Aurora Borealis Motor Inn, Inc*, unpublished opinion per curiam of the Court of Appeals, issued November 8, 2016 (Docket No. 329327). See 28 CFR 36.104.
- Krueger v United States*, No. 17-cv-10574, 2017 WL 5467743, at *8 (ED Mich, November 14, 2017).
- McCrumb v McAloon-Lampman*, unpublished opinion per curiam of the Court of Appeals, issued August 8, 2017 (Docket No. 333357).
- Dennis v Wexford Co Sheriff’s Dept*, unpublished opinion per curiam of the Court of Appeals, issued June 7, 2016 (Docket No. 325574).
- Engel v Monitor Twp Zoning Bd of Appeals*, unpublished opinion per curiam of the Court of Appeals, issued September 13, 2016 (Docket No. 327701).
- Johnson v Dept of Natural Resources*, unpublished opinion per curiam of the Court of Appeals, issued October 12, 2017 (Docket No. 335645).
- Minor v Sylvan Lake*, unpublished opinion per curiam of the Court of Appeals, issued November 25, 2014 (Docket Nos. 314220, 314230, 316793).