

STATE OF MICHIGAN
COURT OF APPEALS

JAMES MICHALEK,

Plaintiff-Appellee,

v

ESTATE OF PATRICIA A. MALIK, by DONALD
S. PARKER, Personal Representative,

Defendant,

and

ASCENSION PROVIDENCE HOSPITAL,

Defendant-Appellant.

UNPUBLISHED

January 13, 2022

No. 355877

Oakland Circuit Court

LC No. 2019-177904-NO

Before: BOONSTRA, P.J., and CAVANAGH and RIORDAN, JJ.

PER CURIAM.

Defendant Ascension Providence Hospital (Ascension), appeals by leave granted¹ the trial court’s partial denial of Ascension’s motion for summary disposition. We reverse and remand for entry of an order granting summary disposition in favor of Ascension.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Plaintiff was bitten by a dog while visiting his dying aunt, Patricia A. Malik (the decedent), on Ascension’s property. The decedent’s son had brought the decedent’s dog, Brady, to the

¹ See *James Michalek v Estate of Patricia A Malik*, unpublished order of the Court of Appeals, entered April 1, 2021 (Docket No. 355877).

hospital with Ascension's consent. Plaintiff testified that as he bent down or squatted to kiss the decedent goodbye, Brady bit him on his face, causing injury to his nose.²

Plaintiff filed suit against the decedent's estate (the estate), alleging that the decedent was strictly liable for damages under Michigan's dog-bite statute, MCL 287.351. The estate answered the complaint and filed a notice of a nonparty at fault, alleging that Ascension was a responsible party because it had allowed Brady on its premises. Plaintiff subsequently filed an amended complaint adding two counts against Ascension: a common law negligence claim and a premises liability claim.

Ascension moved for summary disposition under MCR 2.116(C)(8) and (C)(10), arguing that the dog-bite statute placed all liability for damages on the dog's owner, not third parties. The trial court granted Ascension's motion for summary disposition regarding the common law negligence claim, finding that plaintiff had failed to establish that Ascension owed a duty to plaintiff other than its duty to an invitee as the property owner, but denied summary disposition on the premises liability claim, stating that a question of fact remained for a jury to determine whether Ascension had constructive notice of the danger Brady posed.

This appeal followed.

II. ANALYSIS

Ascension argues that the trial court erred by partially denying its motion for summary disposition under MCR 2.116(C)(8) because the dog-bite statute imposes absolute liability on Brady's owner. We agree.

We review de novo a trial court's denial of summary disposition. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint" and "[a]ll well-plead allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). We review de novo questions of statutory interpretation. *Herald Co, Inc v Eastern Mich Univ Bd of Regents*, 475 Mich 463, 470; 719 NW2d 19 (2006). "We interpret statutes to discern and give effect to the Legislature's intent, and in doing so we focus on the statute's text." *Clam Lake Twp v Dept of Licensing & Regulatory Affairs/State Boundary Comm*, 500 Mich 362, 373; 902 NW2d 293 (2017). "[W]here the statutory language is clear and unambiguous, the statute must be applied as written." *Mich Ass'n of Home Builders v Troy*, 504 Mich 204, 212; 934 NW2d 713 (2019) (quotation marks and citations omitted) (alteration in original).

Michigan's dog-bite statute, MCL 287.351(1) states:

If a dog bites a person, without provocation while the person is on public property, or lawfully on private property, including the property of the owner of the

² The decedent's niece testified that plaintiff walked over to Brady, knelt down, and put his face right up to Brady's nose.

dog, the owner of the dog shall be liable for any damages suffered by the person bitten, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness.

“The dog-bite statute has consistently been interpreted as creating an almost absolute liability in the dog owner except when there is provocation.” *Koivisto v Davis*, 277 Mich App 492, 495; 745 NW2d 824 (2008) (quotation marks and citation omitted); see also *Hill v Sacka*, 256 Mich App 443, 448; 666 NW2d 282 (2003); *Thelen v Thelen*, 174 Mich App 380, 386; 435 NW2d 495 (1989). “The statute places absolute liability on the dog owner, except when the dog bites after having been provoked.” *Id.* In *Hill*, a two-year old child was attacked by a dog; the plaintiff (the child’s father) was found by the jury to have been 75% at fault for not properly supervising his son. *Hill*, 256 Mich App at 446. But this Court held that fault is “simply not relevant” outside the context of provocation. *Id.* at 451. This Court specifically noted that “that the fault or negligence of a third person, i.e., not the dog owner or the direct victim of the dog bite, is [] not relevant.” *Id.* at 451-452. In other words, “any allocation of fault would be immaterial and simply not relevant because, if provocation exists, there would be zero liability, and if provocation is lacking, there would be absolute liability.” *Id.* at 454.

The language of the dog-bite statute is clear and unambiguous. *Mich Ass’n of Home Builders*, 504 Mich at 212. Absent provocation, a dog’s owner is liable for *any* damages to a person on public property or lawfully on private property arising from a dog-bite. MCL 287.351(1). The Legislature’s use of the word “any” encompasses such words as “all,” “every,” and “the slightest.” See *People v Hesch*, 278 Mich App 188, 195; 749 NW2d 267 (2008). Because, absent provocation, Brady’s owner was liable for any and all of plaintiff’s damages, Ascension as a third party could not be liable for any of those damages. *Hill*’s observation that the fault or negligence of a third party is not relevant clearly applies to plaintiff’s claims in this case. *Hill*, 256 Mich App at 451-452.

The trial court erred by denying Ascension’s motion for summary disposition under MCR 2.116(C)(8) because plaintiff failed to state a claim on which relief can be granted. Because we reverse the trial court on this ground, we need not consider Ascension’s alternative argument concerning its lack of notice that Brady was dangerous or vicious.

Reversed and remanded for entry of an order granting summary disposition in favor of Ascension. We do not retain jurisdiction.

/s/ Mark T. Boonstra
/s/ Mark J. Cavanagh
/s/ Michael J. Riordan