STATE OF MICHIGAN

COURT OF APPEALS

RAMZIE HAMADE,

Plaintiff-Appellant,

v

MELVA GARZA,

Defendant-Appellee

and

IMELDA ARRENDANDO,

Defendant.

UNPUBLISHED
December 13, 2012

No. 305649
Wayne Circuit Court
LC No. 09-024903-NI

Before: JANSEN, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

In this dog-bite case, plaintiff appeals by right from the trial court's order granting summary disposition in favor of defendant. We reverse the trial court's decision because plaintiff presented sufficient evidence that defendant landlord was on notice of the dog's dangerousness and because plaintiff was attacked while walking along the street abutting the defendant's property where the dog was located.[1]

This case arises out of events on June 19, 2009. Plaintiff went for a walk in her neighborhood. She testified that as she walked along the sidewalk directly in front of the defendant's house, a large pitbull jumped over the chain-link fence and attacked her. The dog belonged to defendant's tenant, Imelda Arrendando.[2] Arrendando testified that she kept the dog on a four foot chain. However, a neighbor stated in an affidavit that that the chain was "at least 10 feet long," a second neighbor signed an affidavit that the chain was long enough to allow the

[1] We review de novo a trial court's decision to grant a motion under MCR 2.116(C)(10). *Brown v Brown*, 478 Mich 545, 551; 739 NW2d 313 (2007).

[2] Arrendando was never served with the complaint, and is not a party in this appeal. We therefore use the term defendant to refer exclusively to Garza.

dog to go beyond the fence, and plaintiff testified that the dog was able to get beyond the fence despite being tied up.

Defendant first contends that she had no notice of the dog's alleged viciousness. We agree that dismissal would be proper if there were no evidence that the landlord had such notice. However, a neighbor has signed an affidavit plainly contradicting defendant's assertion. Mike Lowe averred that in the spring of 2009, well before the attack on the plaintiff, he was walking along the alley next to defendant's house and that "the pitbull came under the fence [while chained] and tried to attack me" and that the chain used to restrain the dog was too long to keep it from getting past the fence. Specifically regarding the notice issue, his affidavit states "I called Ms. Garza [the landlord] to tell her what happened and told her that I was almost attacked by this pitbull. I warned Ms. Garza that someone might get seriously hurt by this dog."[3] A second neighbor, David Lowe, averred that he lived across the street from defendant's building and that: the dog was "always vicious and lunging at passersby;" the dog's chain was at least 10 feet long and that he saw the dog, while still on its chain, attack someone on the sidewalk abutting the house. We conclude therefore that there are questions of fact regarding the dog's viciousness and as to the defendant's knowledge of the dog's viciousness.

Defendant also argues that any duty she owed was only to persons on her property and not to anyone outside the property line. Plaintiff relies on two cases in which the duty of a premises owner to protect others from hazards on the premises extends to passersby. In *Bannigan v Woodbury*, 158 Mich 206, 207-208; 122 NW 531 (1909), the Supreme Court held that defendant was liable to a pedestrian who was injured by a window that fell out of defendant's building and onto the victim who was walking by, but not on, the premises. It held that a premises owner's duty to keep the premises in a safe condition extended to "travelers along the streets." *Id.* In *Langen v Rushton*, 138 Mich App 672, 677; 360 NW2d 270 (1984), our Court held that a landowner could be liable if a tree on her premises obstructed the view of traffic such that it caused a traffic accident. The *Langen* court stated: "our courts have long held that a landowner must maintain his or her land so as not to injure users of an abutting street." 138 Mich App at 678.

Defendant relies on *Feister v Bosack*, 198 Mich App 19; 497 NW2d 522 (1993), a case in which the Court affirmed summary disposition for a landlord whose tenant's dog escaped and bit someone off the premises. In order to properly resolve this appeal, therefore, we must harmonize these cases. In *Feister*, the attack occurred one-half mile away from the subject premises. The *Feister* majority stated in broad terms that "a landlord has no duty to protect third parties from

[3] In the briefs to the trial court, the defendant argued that the Mike Lowe affidavit should not be considered on the grounds that he did not appear for deposition. However, he did sign an affidavit and as he is not a party, his failure to appear for deposition does not provide grounds to strike it. If he fails to appear at trial the plaintiff would not be able to present the affidavit absent an applicable hearsay exception, but it is valid for purposes of a motion for summary disposition. MCR 2.116(G)(5) provides that affidavits filed in response to a motion under MCR 2.116(C)(10) "must be considered by the court."

injuries inflicted by a tenant's pet that occur away from the leased premises." *Id.* at 21. However, it did not cite any authority for this broad statement nor did it cite or distinguish *Bannigan* or *Lanyan.* Moreover, it also did not specify what being "*away* from the leased premises" means, i.e., does it mean "*off* the leased premises" or does it mean "a *significant distance* from the leased premises" as was factually the case in *Feister.*

The *Feister* Court also rejected the view that "once a landlord knows about a dog's dangerous proclivities, the landlord must act to protect all potential victims from this dog." However, *Bannigan* and *Lanyan* do not stand for the proposition that the landlord might be liable to *all* potential victims, but only those who are on the street abutting the subject property, i.e., foreseeable victims.

Feister can and should be read harmoniously with *Bannigan* and *Langin*. Accordingly, a landlord with notice of a dog's vicious propensities who fails to meet his duty may be held liable for attacks by the dog to persons lawfully on the premises or to persons travelling along the abutting street, as was plaintiff. We emphasize that this does not mean that landlords are insurers of those attacked by dogs kept by tenants. Even if the person attacked was a passerby on the abutting street, he may only recover damages if a jury concludes that the dog was dangerous, that the landlord knew of its dangerousness and that the landlord's response to that knowledge was unreasonable.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Karen Fort Hood
/s/ Douglas B. Shapiro