STATE OF MICHIGAN

COURT OF APPEALS

EDNA COOPER, by her Guardian, LASHONDA EILAND,

Plaintiff-Appellant,

v

NATE GUITERREZ and GEOFFREY MOORE,

Defendants,

and

AMY SHOWLER, individually and as Personal Representative of the Estate of DAVID SHOWLER,

Defendant-Appellee.

UNPUBLISHED
February 4, 2014

No. 312526
Wayne Circuit Court
LC No. 10-010242-NO

Before: WILDER, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant Amy Showler, individually and as personal representative of the estate of her husband, David Showler, pursuant to MCR 2.116(C)(10). Because the ordinance relied upon by plaintiff to establish liability against appellees does not create a private cause of action and even if it did, the ordinance is inapplicable to these appellees, we affirm.

While walking down the street plaintiff, Edna Cooper, sustained injuries in an attack by two pit bull dogs.[1] Defendant Geoffrey Moore owned the dogs and they had escaped from property that Moore's girlfriend, Lisa Lewthwaite, was renting from Amy and David Showler, where the dogs were kept. Plaintiff initiated an action against Moore sounding in negligence,

[1] "Plaintiff" shall be used to refer to Edna Cooper, the injured party.

and sought to recover damages from the Showlers pursuant to a city of Westland ordinance.[2] Plaintiff alleged that the Showlers qualified as "owners" of the dogs under the Westland ordinance because they knowingly permitted the dogs to remain on premises occupied by their tenant. Amy Showler filed a motion for summary disposition under MCR 2.116(C)(10), arguing the Westland ordinance does not create a private cause of action and, even if it did, neither she nor David were "owners" of the dogs within the meaning of the ordinance, and further, the dogs were not "vicious and dangerous dogs" under the ordinance because they had never previously attacked anyone. The trial court granted Showler's motion, dismissing plaintiff's claims against Showler in her personal and representative capacity.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Johnson v Recca*, 492 Mich 169, 173; 821 NW2d 520 (2012). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). When reviewing a motion brought under this subrule, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party, and draw all reasonable inferences in favor of the nonmovant. *Id.*; *Dextrom v Wexford Co*, 287 Mich App 406, 415; 789 NW2d 211 (2010). Summary disposition "is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

This case also involves the construction of an ordinance. The rules of statutory construction also apply to ordinances. *Goldstone v Bloomfield Twp Pub Library*, 479 Mich 554, 568 n 15; 737 NW2d 476 (2007); *AFSCME Local 25 v Wayne Co*, 297 Mich App 489, 497; 824 NW2d 271 (2012). Statutory interpretation is a question of law that is considered de novo on appeal. *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 278; 831 NW2d 204 (2013). The primary goal of judicial interpretation is to ascertain and give effect to the intent of the Legislature. *Mich Ed Ass'n v Secretary of State (On Rehearing)*, 489 Mich 194, 217; 801 NW2d 35 (2011). The first criterion in determining intent is the specific language of the statute. *United States Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 13; 795 NW2d 101 (2009). If a statute defines a term, that definition controls. *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007). And, if the plain and ordinary meaning of the language is otherwise clear, judicial construction is normally neither necessary nor permitted. *In re Receivership of 11910 South Francis Rd*, 492 Mich 208, 222; 821 NW2d 503 (2012); *In re Moukalled Estate*, 269 Mich App 708, 713; 714 NW2d 400 (2006). If a statute is ambiguous, judicial construction is appropriate. *Whitman v City of Burton*, 493 Mich 303, 312; 831 NW2d 223 (2013). A statutory provision is ambiguous only if it irreconcilably conflicts with another provision or it is equally susceptible to more than a single meaning. *Fluor Enterprises, Inc v Dep't of Treasury*, 477 Mich 170, 177 n 3; 730 NW2d 722 (2007).

[2] David Showler died after the underlying incident. Therefore, Amy Showler was named as a defendant individually and as personal representative of David's estate.

On appeal, plaintiff asserts that the trial court erred in its analysis of the Westland ordinance and thus in granting Showler's motion for summary disposition. We disagree.

The Westland ordinance relied upon by plaintiff is found in Chapter 18, entitled "Animals" and provides, in pertinent part:

> ARTICLE I. – IN GENERAL
>
> Sec. 18-1. - Purpose. The purpose of this chapter is to promote the public health, safety, comfort and general welfare of the community through the proper control and care of animals by their owners and others.
>
> Sec. 18-2. - Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
>
> ***
>
> *Owner* means any person, group of persons, association, partnership or corporation owning, keeping or harboring a dog or other animal.
>
> ***
>
> Article II. – Regulation of Dangerous or Vicious Dogs
>
> Sec. 18-41. – Purpose. The city finds that certain breeds of dogs selectively bred for their fighting characteristics and those that are prone to have a disposition to cause unprovoked attacks or injuries are in need of special regulation to ensure the public peace, health, safety and welfare.
>
> Sec. 18-42. – Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
>
> *Owner* means any person or legal entity having a possessory property right in a dog or who harbors, cares for, exercises control over, or knowingly permits an animal to remain on premises occupied by such person or entity.
>
> ***
>
> *Vicious or dangerous dog* means:
>
> (1) A dog that without justification attacks a person or domestic animal causing physical injury or death,

(2) A dog that is used for dog fighting or other illegal activity,

(3) A dog that with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or to otherwise endanger the safety of humans or other domestic animals . . .

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Sec. 18-43. – Registration required; responsibilities of owner. The owner of a vicious or dangerous dog must:

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(4) Provide proof of at least $100,000.00 in liability insurance.

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Sec. 18-45. – Penalty for violation of article. Any person or legal entity violating the provisions of the article shall by guilty of a misdemeanor.

A regulatory ordinance does not create a private cause of action absent an express provision imposing liability on the property owner or person. See *Levendoski v Geisenhaver*, 375 Mich 225, 228; 134 NW2d 228 (1965); *Taylor v Saxton*, 133 Mich App 302, 306; 349 NW2d 165 (1984). Somewhat akin to the instant matter, in *Szkodzinski v Griffin*, 171 Mich App 711; 431 NW2d 51 (1988), a panel of this Court held that a Grosse Pointe Woods ordinance adopted pursuant to the provisions of the Dog Law of 1919, MCL 287.290, did not create a private cause of action. This Court, citing *Levendoski*, supra, agreed with the trial court that though the ordinance specifically provided that "any person owning, possessing or harboring any dog . . . shall be responsible for and shall be held accountable for any and all acts or actions of such dog" it nevertheless failed to create a private cause of action for a plaintiff injured in a dog bite incident against a premises owner whose rental tenant kept a dangerous dog on the premises and which dog had injured the plaintiff. *Id*. at 713.

Plaintiff in this matter contends that the Westland ordinance creates a private cause of action because it contains a provision requiring the owner of a vicious or dangerous dog to provide proof of at least $100,000 in liability insurance. Plaintiff contends that any construction of the ordinance that does not conclude that it creates a private cause of action would render this liability insurance provision meaningless. The ordinance, however, provides for criminal punishment, in the form of a misdemeanor charge, for violation of any provision of the ordinance such that no provision of the ordinance is arguably meaningless. And, an owner of a dog may still be subject to liability under the common law, or under Michigan's dog-bite statute, MCL 287.351, which imposes strict liability on the owner of a dog who bites another person without provocation, regardless of the former viciousness of the dog or the owner's knowledge of such

viciousness.[3] It is not necessary to construe the ordinance as creating a private cause of action to give effect to the liability provision in the ordinance. Because the ordinance does not contain an express provision imposing liability on a dog owner or other person, the trial court did not err in holding that it does not create a private cause of action.

Even if the ordinance did create a private cause of action, however, summary disposition was proper because the Showlers do not fall within the scope of the ordinance. Assuming, without deciding, that the pit bull dogs may qualify as "dangerous and vicious dogs" under article II of the Westland ordinance, the Showlers are not "owners" of the dogs as that term is defined in the ordinance. Article II of the Westland ordinance defines "owner" as

> any person or legal entity having a possessory property right in a dog or who harbors, cares for, exercises control over, or knowingly permits an animal to remain on premises occupied by such person or entity[.]

Plaintiff argues that the Showlers fall within the definition of owner under the last clause, because they knowingly permitted the dogs to remain on premises occupied by their tenant. Plaintiff's interpretation of the ordinance requires that the introductory phrase "person or legal entity" be read as applying only to the immediately following clause, i.e., "having a possessory property right in a dog," such that the last clause must be read as referring to an animal on the premises occupied by "any person or legal entity having a possessory property right in a dog." The ordinance is not susceptible to that interpretation. If the phrase "any person or legal entity" were limited only to the first clause (i.e., those having a possessory property rights in a dog), then there would be no defined class of subjects to whom the remaining clauses apply. To give meaning to the remaining clauses, the phrase "any person or legal entity" must be read as referring to each of the subsequently listed categories. Thus, an owner includes any person or legal entity (1) having a possessory property right in a dog, (2) who harbors a dog, (3) who cares for a dog, (4) who exercises control over a dog, or (5) who knowingly permits an animal to remain on premises occupied by such person or entity. Plaintiff does not dispute that the Showlers do not qualify as owners under any of the first four categories. For a person or legal entity to qualify as an owner under the last category, it is necessary that the person or entity occupy the premises on which the animal is knowingly allowed to remain. It is undisputed that the Showlers did not occupy the premises on which the dogs were allowed to remain. Therefore, the Showlers do not qualify as "owners" of the dogs under the ordinance. Accordingly, even if the ordinance did create a private cause of action, plaintiff cannot establish liability against the Showlers under the ordinance.

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[3] In *Szkodzinski*, 171 Mich App at 714, this Court also held that the plaintiff's common-law claim against the defendant-landlord was properly dismissed because, "[u]nder common law, the owner or keeper of an animal could be liable only if he knew of its vicious nature[,]" and there was no evidence that the defendant knew of the dog's vicious nature. In this case, plaintiff's theory of liability against the Showlers is premised solely on the Westland ordinance, not on the common law or the dog-bite statute.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto