

THE STATE OF THE LAW 2005-2006
Animal Law Section,
State Bar of Michigan

Animal Control and Protection Statutesⁱ

Dogs

Dog law of 1919

MCL 287.261 et seq.

Liability of Owner for Dog Bite Act of 1939

MCL 287.351

Registration and Identification of Dogs Act of 1939

MCL 287.301

Recreation Trespass Act of 1994

MCL 324.73101

Other animals

Dangerous Animal Act of 1988

MCL 287.321 *et seq*

Ferrets Act of 1994

MCL 287.891

Large Carnivore Act of 2000

MCL 287.1101

Wolf-Dog Hybrid Act of 2000

MCL 287.1001

Animal Shelters

Pet Shops, Dog Pounds, Animal Shelters Act of 1969

MCL 287.331 et seq.

Major amendments (1997 PA 7)

Added definitions for "adoption," "alteration," "animal control shelter," "animal protection shelter," "cat" and "ferret" to MCL 287.331.

Added mandatory sterilization of dogs, cats and ferrets from public shelters and nonprofit shelters (MCL 287.338a.)

\$25.00 deposit forfeited for failure to sterilize

Funds forfeited under this act to be used by the shelter to finance alterations; for public education regarding the value of having dogs/cats/ferrets altered; and to otherwise ensure compliance with this section.

Provides that an animal reclaimed by its owner does not need to be sterilized, unless required by a local ordinance (MCL 297.339(3)).

Public Health Code

MCL 333.3333 (2001 PA 231 subsections (8) - (14))

Authorizes and sets standards for the use of Class II controlled substance in euthanasia at dog pounds and animal shelters, and by Class B dealers.

Animals in Research Act of 1969

MCL 287.381 et seq.

Opinions 2005-2006

Dog bites

Brans v Extrom, 266 Mich App 216; 701 NW2d 163 (2005)

The plaintiff was walking backwards when she stepped on the defendants' "elderly Australian Shepherd." The dog bit her leg. She sued, alleging both strict liability under MCL 287.351 and common law negligence. At trial, the court gave an instruction "that provocation can be either intentional or unintentional." The jury found for the defendants on the statutory claim. It also found that the defendants "knew or should have known of" the dog's "dangerous propensities," but that the injury "did not result from the abnormally dangerous propensities of the dog." The Court of Appeals affirmed. "Had the Legislature intended only an intentional act to bar recovery it could have so specified." The court concluded, "a person can commit unintentional acts that are sufficiently provocative to relieve a dog owner of liability under the dog-bite statute." However, "[t]he question of provocation is a question of fact to be determined by the jury based on the circumstances of each case."

Durecki v. Alcock, unpublished opinion per curiam of the Court of Appeals, issued 11/17/05 (Docket No. 263640).

The plaintiff thought the defendants' garage was on fire and ran onto their property. He was bitten by one of the defendants' dogs and sued under the dog bite statute. The trial court granted the defendants' motion for summary disposition, finding that the plaintiff was a trespasser, but the Court of Appeals reversed. The court held that the plaintiff, as a volunteer or "Good Samaritan," was an "implied licensee." "There is no evidence suggesting that [the plaintiff] was on defendants' property for any reason other than to warn defendants of a perceived impending threat or danger in the form of a fire or to assist in extinguishing the fire." The court noted, however, that the trial court could still address the question of whether the dog had been provoked.

Giouroukos v Jungling, unpublished opinion per curiam of the Court of Appeals, issued 9/27/05 (Docket No. 255462).

The defendant was a painter who was working on the plaintiff's house. His dog was tied to his truck, but when he barked at the plaintiff, she ran away. Both the dog and the truck were on an adjoining property at the time. The plaintiff fell and broke her arm. She sued, alleging "strict liability" for the dog's "abnormally

dangerous propensity" to bark aggressively. The trial court granted summary disposition for the defendant and the Court of Appeals affirmed.

Although plaintiff's assertion that defendant knew of the propensity of his dog to bark is supported by evidence, defendant's awareness does not give rise to strict liability because barking, approaching strangers, and tugging on a leash are all common dog behaviors and thus are not "abnormally dangerous." In addition, the trial court's record is devoid of evidence tending to show that this dog's behavior was vicious or dangerous during the incident that caused plaintiff's injury.

The court also held that the owner did not have a duty to prevent the dog from barking.

Aside from plaintiff's unfortunate injury, plaintiff failed to show another instance where mere barking caused a passerby injury. Rather, plaintiff's reaction to the dog's barking was unusual and unexpected. . . [I]t is unforeseeable for a person to flee in a panic from a leashed dog . . .

Mitchell v Cunningham, unpublished opinion per curiam of the Court of Appeals, issued 3/16/06 (Docket No. 258239).

The plaintiff had knocked on the door of the defendants' house and found no one home. As she was walking away on the sidewalk in front of the house, the defendants' dogs escaped from a side door and ran toward her. She ran away and fell on the sidewalk, injuring her elbow. A local ordinance prohibited dogs "running at large." The trial court directed a verdict for the plaintiff, on the basis that the defendants had violated the ordinance. The court also excluded evidence of the dogs' prior behavior. The Court of Appeals reversed.

Although the violation of the ordinance was some evidence of negligence on defendants' part, [*Trager v Thor*, 445 Mich 95; 516 NW2d 69 (1994)] requires the fact-finder to consider all evidence relevant to "the total situation" at the time of the injury, to determine if defendants' exercised effective and reasonable control of their dogs. . . [T]he trial court erred in directing a verdict for plaintiff on the issue of negligence and in excluding evidence of the past behavior of the dogs and the circumstances surrounding the condition of the side door of defendants' home.

Equine activity

Hawkins v Ranch Rudolph, Inc, unpublished opinion per curiam of the Court of Appeals, issued 9/27/05 (Docket No. 254771).

The plaintiffs took a guided ride on a horse trail. The husband had never ridden a horse before. Both of them signed a release in accordance with the Equine Activity Liability Act (MCL 691.1666). The guide's horse allegedly "bolted," causing the plaintiff's horse to run as well. He claimed that his saddle was loose and slipped to the side, allowing his arm to hit a tree. He sued, alleging gross negligence. The trial court granted the defendants' motion for summary disposition but the Court of Appeals reversed. Applying the defendant of "gross negligence" from the governmental tort liability act (MCR 691.1407(2)(c)), the majority held, "[a] reasonable person could conclude that [the guide's] conduct of taking plaintiffs on a fast ride given their known lack of experience unreasonably

added to the risks of the already dangerous activity and was thus so reckless as to demonstrate a substantial lack of concern for whether an injury resulted.”

Terrill v Stacy, unpublished opinion per curiam of the Court of Appeals, issued 2/28/06 (Docket No. 265638).

The plaintiff was riding a horse at the defendants’ farm when the bit broke, leaving her unable to control the animal. She was thrown from the horse and injured. The Equine Activity Liability Act would have allowed an action for provision of defective “equipment or tack,” but the plaintiff had signed a release with much broader language. The Court of Appeals affirmed summary disposition for the defendants, holding the release was not ambiguous. “The release clearly expressed defendants’ intention to disclaim liability for all injuries, including any that would otherwise fall under an EALA exception.” The court also held that the defendants’ actions could not be characterized as “gross negligence” in avoidance of the release.

Plaintiff has provided no . . . evidence . . . that defendants knew the bit was defective, or defectively repaired, when they furnished it to plaintiff. Plaintiff has not presented evidence of what caused the bit to break or even that the bit broke. . . [She] presented at most a question of ordinary negligence.

Other tort issues

Henderson v Volpe-Vito, Inc, unpublished opinion per curiam of the Court of Appeals, issued 6/27/06 (Docket No. 266515).

The plaintiff rented a picnic area at a commercial recreation park. She found it littered with what turned out to be goose droppings. When the defendant’s employees failed to clean it to her satisfaction, she and others did it themselves. She later developed histoplasmosis, a disease caused by fungal spores. She sued the owner of the park. The Court of Appeals affirmed summary disposition for the defendant.

[T]he geese feces did not cause plaintiff’s ailment. Rather, the spores from fungus growing in ground enriched by the feces - and then stirred up - are alleged to have caused plaintiff’s ailment. . . . [The defendant] does not admit to any prior knowledge of the fungus - only to prior knowledge of the geese. Plaintiff would like defendant’s knowledge of the geese and their feces to attenuate into an implied knowledge of the fungus, the spores and the dangerous condition of defendant’s land. We decline to do so.

Schisler v Argenbright, Inc, unpublished opinion per curiam of the Court of Appeals, issued 6/20/06 (Docket No. 259728).

The plaintiff was making a delivery to a business when he was attacked by a Canada goose. He was injured when he bumped into a landscape berm while trying to defend himself from the goose. He claimed that the defendant knew that geese nested on their property and that it had knowledge of the “aggressive tendencies” of geese. There was no evidence that the defendant knew anything about the characteristics of the individual goose. The trial court denied the defendant’s motion for summary disposition. The Court of Appeals held that,

because the defendant was only the lessee of the premises, it did not have a duty to maintain the exterior common area. It also stated:

We note without drawing a conclusion as to the question of fact that even if other geese had exhibited protective behaviors toward their nests in the past, that does not equate to notice to defendants that this particular goose posed any threat to human safety. We further note that a history of hissing or chasing, generally warning passersby away from their nests, also does not equate to notice that a goose would attack.

The court added:

Geese are protected animals, and defendants were told by a representative of the Michigan Department of Natural Resources ("DNR") that a nesting goose cannot be removed. During the hearing on the motion for summary disposition, defendant described the lengthy process by which one might apply to the DNR to conduct the removal of a nesting goose, and we are convinced that defendants' failure to pursue this process was not unreasonable, particularly as there is no guarantee that the DNR will remove an animal that has not already posed an overt threat to human safety.

Boehmer v North Branch Food Lockers, Inc, unpublished opinion per curiam of the Court of Appeals, issued 6/23/05 (Docket No. 260945).

The plaintiff brought a steer to a meat-processing facility. He was injured by a heifer, belonging to another customer, that was running loose in a fenced area. The trial court held that the loose heifer was an "open and obvious" condition and that the plaintiff was aware of it. The Court of Appeals held that "the loose animal was not a condition on the land, rather it was an activity conducted on the land," so that the plaintiff did not have a premises liability claim. The court, however, reversed summary disposition on the plaintiff's general negligence claims and remanded for reconsideration of them.

Rodriguez v Gauger, unpublished opinion per curiam of the Court of Appeals, issued 5/12/05 (Docket No. 25213).

The plaintiff was a stable hand who was injured when the defendant's dog "spooked" a horse and it stepped on the plaintiff's foot. The trial court granted summary disposition to the defendant and the Court of Appeals affirmed.

[T]here was testimony that most horse farms had dogs roaming around and that interaction with the horses could be expected. [The dog's] occasional barking or running with the horses cannot in any way be deemed an abnormally dangerous characteristic for a farm dog. . . [The dog] would run with the horses or bark at them when they were out in the paddocks. There was no testimony that she acted that way in the barn. We cannot conclude . . . that [the] defendant was aware that [the dog] was in such a situation that a danger of foreseeable harm to plaintiff might arise.

Animal Cruelty

People v Robinson, unpublished opinion per curiam of the Court of Appeals, issued 9/29/05 (Docket No. 254863).

The defendant "hung" a Rottweiler puppy by a leash, then kicked and beat its head and trunk. He was convicted of animal torture (MCL 750.50b(2)) and sentence to 18 months to 4 years' imprisonment. He argued the evidence of intent was insufficient, but the Court of Appeals affirmed his conviction. "Although defendant asserts that evidence supporting his conviction was weak, the jury was entitled to accept or reject any of the evidence presented." The court also held that the appointment of an independent veterinary expert would not have added to the case, when the dog had been treated by four different veterinarians before the trial.

Property issues

Shroyer v Klein, unpublished opinion per curiam of the Court of Appeals, issued 5/16/06 (Docket No. 257842).

Two women had a partnership agreement relating to a breeding mare. The mare lived with one of the women on property owned by her parents, the Shroyers. The other woman sent two men to retrieve the mare and her foals. Mrs. Shroyer refused to let them take the horse and called the police. A sheriff's deputy, relying on registration documents presented by the two men, allowed them to take the mare and one of the foals. They damaged the Shroyers' septic fields in the process. The Court of Appeals held that the deputy was entitled to governmental immunity (MCL 691.1407), both because his actions did not amount to "gross negligence" and because they were not "the" proximate cause of the damage. The court also rejected the plaintiff's 42 USC §1983 claim as to the horses, because "available state tort remedies" are not "inadequate to redress her injury."

Administrative law

People v Talaske, unpublished opinion per curiam of the Court of Appeals, issued 4/11/06 (Docket No. 258073).

The Department of Agriculture ordered the defendant to quarantine 14 horses because they had not been tested for equine infectious anemia. The horses were boarded at a farm. Although the farm's owner told the defendant about the quarantine, he did not receive a copy of the written order. About two months later, the farm owner evicted the horses, so the defendant moved them to another location. He was prosecuted for violating the quarantine order and convicted after a jury trial. He argued that he did not have "notice" of the quarantine, but the Court of Appeals held "the law only requires knowledge" of the quarantine. The prosecution was not required "to show that defendant received written notice" of it.

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ⁱ Current to May 2006.