

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

HEIDI M. MECUM and DONALD J. : NO. 04-00,555
MECUM, :
Plaintiffs :
 :
 : CIVIL ACTION - LAW
vs. :
 :
 :
SULYNN BARTHOLOMEW and :
DOUGLAS BARTHOLOMEW, :
Defendants : Preliminary Objections

OPINION AND ORDER

Before the Court are Defendants' Preliminary Objections to Plaintiffs' Complaint, filed June 9, 2004. Argument was heard August 13, 2004.

According to Plaintiffs' Complaint, Plaintiff Heidi Mecum was bitten by Defendants' dog on November 11, 2002, as she was approaching Defendants' residence, on Defendants' property. Plaintiffs Complaint alleges Defendants were negligent for failing to keep their dog under control and in failing to warn Plaintiff Heidi Mecum of the dog's "dangerous and vicious nature" and its "predisposition to attacking human beings." Plaintiffs seek damages for Plaintiff Heidi Mecum's injuries and also make a claim for loss of consortium by Plaintiff Donald Mecum. In their preliminary objections, Defendants demur to both claims, contending Plaintiffs have failed to state a claim for which relief can be granted.

In order to support a claim for injuries due to a dog bite, a plaintiff must prove negligence on the part of the owner, which may be based on either a violation of the Dog Law, 3 Pa.C.S. Sections 459-101 et seq., (negligence per se), McCloud v. McLaughlin, 837 A.2d 541 (Pa. Super. 2003), or by showing an owner's knowledge of his dog's viciousness and his failure to then take proper steps to prevent harm. Deardorff v. Burger, 606 A.2d 489 (Pa. Super. 1992). In the instant case, Plaintiffs have not alleged a violation of the Dog Law, nor have they alleged that Defendants knew or had reason to know of the dog's viciousness. Plaintiffs do, however, allege an attack on Plaintiff Heidi Mecum without provocation, and thus could allege a violation of the Dog Law, and do allege the lack of a warning "of the possibility of the dog's

vicious behavior and attack, or propensity of the dog to attack and bite”, thus implying the existence of such behavior or propensity, and therefore possibly could allege Defendants’ knowledge of such. Plaintiffs will be given the opportunity to amend the Complaint to include the necessary allegations.

With respect to the claim for loss of consortium, all a plaintiff need allege is that his or her spouse was injured and that as a consequence, he or she suffered a loss of the injured spouse's society and services.¹ See Kowal v. Commonwealth of Pennsylvania, Department of Transportation, 515 A.2d 116 (Pa. Commw. 1986). A plaintiff need not specify in a complaint exactly what the injured spouse is no longer able to do for the other spouse, and, in fact, need not even introduce evidence on the point. See Ball v. Johns-Manville Corp., 625 A.2d 650 (Pa. Super. 1993). Since Plaintiffs have alleged in their complaint that “as a result of the injuries to Heidi M. Mecum as a result of the dog attack, Donald J. Mecum was without the care, comfort, and society of his wife”, Plaintiffs have sufficiently set forth a claim for loss of consortium. While Defendants may be correct in their argument that “with no evidence that Mrs. Mecum materially lost the ability to aid, assist, comfort or serve her husband, husband has not made out a claim”, such is a matter for the jury and may not be decided based on the pleadings.

ORDER

AND NOW, this 25th day of August 2004, for the foregoing reasons, Defendants’ Preliminary Objections are hereby sustained in part and overruled in part. Plaintiffs shall have twenty (20) days in which to file an amended complaint in conformance with the foregoing opinion.

cc: Randy Brungard, Esq.
Marc Drier, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

BY THE COURT,

Dudley N. Anderson, Judge

¹ Of course, to support a claim for loss of the injured spouse’s consortium, a claim for the injuries to the injured spouse must first be established.