

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ADAM J. WARNER, ADAM W. WARNER	:	NO. 14 – 01,374
and JENNIFER WARNER,	:	
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
SHERIEL CAMPBELL and RICHARD EPSTEIN,	:	
Defendants	:	Preliminary Objections

OPINION AND ORDER

Before the court are preliminary objections to Plaintiffs’ Amended Complaint, filed by Defendants on June 30, 2014. Argument thereon was heard July 15, 2014.

In their Amended Complaint, Plaintiffs seek damages for alleged injuries from a dog bite inflicted on Plaintiff Adam J. Warner by a dog owned by Defendants. Defendants preliminarily object to Count III of that Amended Complaint, which sets forth a claim for medical expenses based on Section 459-502 of Pennsylvania’s “Dog Law”, in effect a claim of strict liability for those expenses. Defendants contend that Pennsylvania law does not recognize a cause of action for strict liability in a dog bite case and seek to have the claim dismissed.

The relevant section of the Dog Law provides as follows:

§ 459-502. Dog bites; detention and isolation of dogs

(a) CONFINEMENT.-- Any dog which bites or attacks a human being shall be confined in quarters approved by a designated employee of the Department of Health, a State dog warden or employee of the Department of Agriculture, an animal control officer or a police officer. The dog may be detained and isolated in an approved kennel or at the dog owner's property or at another location approved by the investigating officer. Where the dog is detained is at the discretion of the investigating officer. All dogs so detained must be isolated for a minimum of ten days. Any costs incurred in the detaining and isolation of the dog shall be paid by the offending dog's owner or keeper or both. If the dog's owner or keeper is not known, the Commonwealth is responsible for all reasonable costs for holding and detaining the dog.

(b) BITE VICTIMS.-- The following shall apply:

(1) The investigating officer shall be responsible for notifying the bite victim of the medical results of the offending dog's confinement. Any cost to the victim for medical treatment resulting from an attacking or biting dog must be paid fully by the owner or keeper of the dog. The Commonwealth shall not be liable for medical treatment costs to the victim.

(2)(i) For the purpose of this subsection, the term "medical results of the offending dog's confinement" shall mean, except as provided in subparagraph (ii), information as to whether the quarantined dog is still alive and whether it is exhibiting any signs of being infected with the rabies virus.

(ii) If a nonlethal test for rabies is developed, the term shall mean the results of the test and not the meaning given in subparagraph (i).

(c) EXCEPTION.-- When a dog that bites or attacks a human being is a service dog or a police work dog in the performance of duties, the dog need not be confined if it is under the active supervision of a licensed doctor of veterinary medicine.

3 P.S. Section 459-502. At first blush, the statute does appear to make dog owners strictly liable for medical expenses resulting from their dogs' bites: "Any cost to the victim for medical treatment resulting from an attacking or biting dog must be paid fully by the owner or keeper of the dog." *Id.* In Rosenberry v. Evans, 48 A.3d 1255, 1258 (Pa. Super. 2012)(citation omitted), however, the Superior Court declared that "Pennsylvania ... does not impose absolute liability upon dog owners for injuries occasioned by their dogs. ... Proof of the owner's negligence is required." The court therefore believes the statute must be interpreted as simply making clear that while the Commonwealth will be responsible for detention costs when the dog's owner is unknown, it will not be responsible for medical expenses of the victim. The Dog Law does provide a private cause of action to owners of sheep for damages caused by dogs "chasing or worrying sheep", 3 P.S. Sections 531 and 532, and the court thus concludes that the legislature's failure to provide a similar cause of action to victims of dog bites indicates its intention not to do so.

Accordingly, as the claim set forth in Count III is not based on a theory of recovery allowed in this Commonwealth, it must be dismissed.

ORDER

AND NOW, this day of August 2014, for the foregoing reasons, the preliminary objections filed by Defendants are hereby sustained, and Count III of the Amended Complaint is hereby DISMISSED. Defendants shall file an Answer to the remaining counts within twenty (20) days of this date.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson