

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DANIELLE WAGNER, Individually and as a	:	
Parent and Natural Guardian of	:	DOCKET NO. 15-01783
EMILY PRATT, a Minor,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
vs.	:	
	:	
BRANDI TENYCK and JERRI TENYCK,	:	
Defendants	:	PRELIMINARY OBJECTIONS

**OPINION AND ORDER**

Before the Court are Defendants’ preliminary objections pursuant to Pa. R. Civ. P. 1028, consisting of a set of demurrers, an objection to form, and an objection to lack of specificity. Upon consideration of argument and briefs, the Court overrules the demurrers and the objection to form and sustains the objection to lack of specificity.

*Demurrers*

In deciding a demurrer “it is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit a recovery. If there is any doubt, it should be resolved by the overruling of the demurrer.” Melon Bank, N.A. v. Fabinyi, 650 A.2d 895, 899 (Pa. Super. 1994) (citations omitted). “Preliminary objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are **clear and free from doubt.**” Bower v. Bower, 611 A.2d 181, 182 (Pa. 1992)(emphasis added).

The Court concludes that the complaint contains sufficient allegations for a cause of action for negligence per se for harboring a dangerous dog and failing to keep a dangerous dog under proper control in violation of Pennsylvania’s Dangerous Dog Law and Borough of Jersey Shore Codes pertaining to dog leash laws. Section 502-A of the Dog Law requires that three

elements be proven. Commonwealth v. Seyler, 929 A.2d 262 (Pa. Comwlth. 2007), *citing*, Commonwealth v. Baldwin, 767 A.2d 644, 646 (Pa. Cmwlth. 2001).

First, it must be established that the individual is the owner or keeper of the dog, and second, that the dog has committed one of four enumerated acts, one of which is attacking a human being without provocation. Finally, the third element that must be proven is that the dog has either or both a history of attacking human beings and/or domestic animals without being provoked and/or a propensity to attack human beings without provocation, which may be proven by a single incident. *Id.* Seyler, 929 A.2d

The propensity to attack human beings can be “deduced from the nature of the attack, even if it is only the first attack.” Seyler, *citing*, Baldwin. The Dangerous Dog Law requires that a dangerous dog either be contained within a dwelling or enclosure, or be muzzled. 3 P.S. § 459-504-A; § 459-505-A.

In the present case, the complaint alleges that a Doberman attacked a minor child after getting loose and that the child consequently suffered severe and permanent injuries. These allegations are sufficient to allege violations of 3 P.S. §§ 459-502A, 504-A, 505-A and any ordinance requiring a dog to be on a leash. Thus, the Complaint sufficiently alleges that the Defendants’ harbored a dangerous dog and failed to either keep the dog within a dwelling or enclosure or keep it muzzled. A dog’s first attack may be considered when determining whether the dog has “violent propensities” as defined by the Dangerous Dog Law. Underwood v. Wind, 954 A.2d 1199, 1205 (Pa. Super. 2008). Defendant’s prior knowledge need not be alleged. In Underwood, the Court distinguished between the dog owner and keeper as compared to an out-of-possession landlord. The landlord is not subject to the provisions of the Dangerous Dog Law. Underwood, *supra*, 954 at 1207. Plaintiff’s allegation that the dog got loose suffices as to the lack of control of a dangerous dog, regardless of whether the dog remained on the defendant Jerri Teneyck’s property. Accordingly, the Court overrules the demurrers.

*Objection to Form – Failure to Cite Code Sections*

Defendant objects to the complaint for failure to specify the provision of the Pennsylvania Dog Law and the Borough of Jersey Shore codes pertaining to dog leash laws. “Pennsylvania is a fact-pleading jurisdiction "under which courts are presumed to know the law and plaintiffs need only plead facts constituting the cause of action and the courts will take judicial notice of the statute involved.”” Denton v. Silver Stream Nursing & Rehabilitation Ctr., 1999 PA Super 25, 739 A.2d 571 (Pa. Super. 1999)(Concurring and Dissenting Statement), *quoting*, Heinly v. Commonwealth, 153 Pa. Commw. 599, 621 A.2d 1212, 1215 n.5 (Pa.Cmwlt. 1993). In the present case, the complaint alleges that the Defendants’ harbored a dangerous dog and that the dog got loose in violation of the Dangerous Dog Law and Borough’s dog leash laws.

*Lack of Specificity*

The final objection is that the complaint fails to specify the special damages at issue. Pa. R.C.P. No. 1019 (f) requires that items of special damages be specifically stated. In that the complaint fails to specify the amount of past medical bills to the extent known and the future medical bills anticipated, the complaint lacks sufficient specificity under Pa. R.C.P. No. 1019 (f).

Accordingly, the Court enters the following Order.

**ORDER**

AND NOW this 5<sup>th</sup> day of **January 2016**, it is ORDERED and DIRECTED as follows.

1. Defendants’ demurrers are OVERRULED.
2. Defendants’ objection based upon lack of form is OVERRULED.
3. Defendants’ objection based upon lack of specificity is SUSTAINED. Plaintiff shall file an amended complaint within 20 days. In its amended complaint, the Plaintiff shall specify the amount of past medical bills to the extent known, the future medical bills

anticipated, the permanent injuries and limitations in daily activities sustained by the child and whether the attack occurred at 108 or 110 North Broad Street, Jersey Shore.

4. This matter is placed on the Court's September 2016 Trial Term. A separate scheduling Order will be issued this date.

BY THE COURT,

January 5, 2015

Date

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Richard A. Gray, J.

cc: Bret J. Southard, Esq.  
Marc S. Drier, Esq.