IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WILLIAM GOODELL and TAMI GOODELL,	: No. 22-00906
Plaintiffs	: Civil Action – Law
vs.	:
SUSAN STROBLE,	: Motion for Summary Judgment
Defendant	:

OPINION AND ORDER

This matter came before the Court on July 20, 2023, for oral argument on Plaintiffs' Motion for Summary Judgment. Attached to the Motion is the transcript of the deposition of Defendant, conducted on February 21, 2023. The facts of this matter are substantially undisputed. The Defendant is the owner of a mixed breed dog named "Shadow." On June 9, 2022, Defendant attended an estate sale, driving a Honda Pilot. While Defendant was placing the items she purchased at the sale in the back of the vehicle, Shadow jumped out of the open rear door of the vehicle and attacked Plaintiff Tami Goodell. Shadow was not on a leash or otherwise restrained. It is undisputed that, prior to the incident of June 9, 2022, Shadow bit another woman, named Kim Hunter.

Plaintiff contends that, because Defendant failed to restrain Shadow on a leash or otherwise within the Honda Pilot on June 9, 2022, Defendant violated the Dog Law, 3 P.S. § 459-101 et. seq., and thus is negligent as a matter of law.

The Test for Summary Judgment:

In Pennsylvania, a party may move for summary judgement "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action…" Pa.R.C.P. No. 1035.2(1). In response, the adverse party may not rest on denials but must respond to the motion. Pa.R.C.P. No. 1035.3(a). The non-moving party can avoid an adverse ruling by identifying "one or more issues of fact arising from evidence in the record…" Pa.R.C.P. No. 1035.3(a)(1).

In considering a motion for summary judgment, it is not the Court's function to decide issues of fact. Rather, is it our function to decide whether an issue of fact exists. *Fine v. Checcio,* 582 Pa. 253, 273, 870 A.2d 850, 862 (2005).

> Summary judgment is appropriate only when the record clearly shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. The reviewing court must view the record in the light most favorable to the nonmoving party and resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Only when the facts are so clear that reasonable minds could not differ can a trial court properly enter summary judgment.

Hovis v. Sunoco, Inc., 2013 Pa.Super. 54, 64 A.3d 1078, 1081, quoting *Cassel-Hess v. Hoffer*, 44 A.3d 84-85 (Pa.Super. 2012). Our Pennsylvania Supreme Court has counseled that "doubtful cases should go to trial, especially those involving intricate relations demanding an inquiry into the facts of the controversy." *Gaul v. City of Philadelphia*, 384 Pa. 494, 510, 121 A.2d 103, 112 (1956), citing *Helfenstein v. Line Mountain Coal Company*, 284 Pa. 78, 81, 130 A. 301, 302 (1925).

In the matter of *Accu-Weather, Inc. v. Prospect Commc'ns, Inc.*, 435 Pa. Super. 93, 644 A.2d 1251 (Pa. Super. Ct. 1994), the Court described the proper test for a grant of summary judgment as follows:

> First, the pleadings, depositions, answers to interrogatories, admissions on file, together with any affidavits, must demonstrate that there exists no genuine issue of fact. Pa.R.C.P. 1035(b). Second, the moving party must be entitled to judgment as a matter of law. *Id.* The moving party has the burden of proving that no genuine issue of material fact exists. *Overly v. Kass,* 554 A.2d 970, 972 (Pa. Super. 1989). However, the non-moving party may not rest upon averments contained in its pleadings; the non-moving party must demonstrate that there is a genuine issue for trial. The court must examine the record in the light most favorable to the non-moving party and resolve all doubts against the moving party. *Stidham v. Millvale Sportsmen's Club,* 618 A.2d 945, 950 (Pa. Super. 1992), *appeal denied,* 637 A.2d 290 (Pa. 1993) (citing *Kerns v. Methodist Hosp.,* 574 A.2d 1068, 1069 (Pa. Super. 1990)). Finally, an entry of summary judgment is granted only in cases where the right is clear and free of doubt. *Ducko v. Chrysler Motors Corporation,* 639 A.2d 1204, 1205 (Pa. Super. 1993) (citing 562 A.2d 279, 280 (Pa. 1989)). We reverse an entry of summary judgment when the trial court commits an error of law or abuses its discretion.

Kelly by Kelly v. Ickes, 629 A.2d 1002, 1004 (Pa. Super. 1993) (citing 594 A.2d 337 (Pa. Super. 1991)).

Discussion:

Pennsylvania law requires owners to control their dogs as follows:

> (a) Confinement and control.--It shall be unlawful for the owner or keeper of any dog to fail to keep at all times the dog in any of the following manners:
> (1) confined within the premises of the owner;
> (2) firmly secured by means of a collar and chain or other device so that it cannot stray beyond the premises on which it is secured; or
> (3) under the reasonable control of some person, or when engaged in lawful hunting, exhibition, performance events or field training.

3 P.S. § 459-305 (hereinafter Dog Law). "An unexcused violation of the Dog Law is negligence per se." *Miller v. Hurst*, 448 A.2d 614, 618 (Pa. Super. 1982). A deliberate violation of the Dog Law suffices to show negligence but not absolute liability; a defendant may defend against liability by putting forth an appropriate defense. *Id*. Whether a violation of the Dog Law was proximate cause of injuries sustained by a plaintiff sustained is a question for the jury. *Villaume v. Kaufman*, 550 A.2d 793, 795 (Pa. Super. 1988).

The Court concludes that Defendant violated the Dog Law by failing to keep her dog confined within her vehicle, without a collar or chain. Thus, Defendant's actions were negligent, as a matter of law. It is equally clear, however, that Defendants' liability is not absolute. The question remains whether that negligence was a proximate cause of Plaintiff's injury. That question is for the finder of fact.

ORDER

Plaintiff's Motion for Summary Judgment is granted in part and denied in part. Because Defendant failed to keep her dog confined within her vehicle, without a collar or chain, Defendant's conduct was negligent per se. Plaintiff is entitled to an instruction to that effect. The question remains for the finder of fact whether her negligence was a proximate cause of Plaintiff's injury.

By the Court,

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William P. Carlucci, Judge

TSR/WPC
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