

Matter of Dobinski v Lockhart
2013 NY Slip Op 33900(U)
November 1, 2013
Supreme Court, Erie County
Docket Number: 800381/2012
Judge: Diane Y. Devlin
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State of New York Supreme Court : County of Erie

Cheryl Dobinski

Plaintiff

vs.

DECISION**INDEX NO. 800381/2012****George O. Lockhart**

and

Milagros Lockhart

Defendant

Dennis J. Bischof, LLC
Attorney at Law
6720 Main Street
Williamsville, NY 14221

Keith N. Bond, Esq.
Walsh, Roberts & Grace
400 Rand Building
14 Lafayette Square
Buffalo, NY 14203

There are few disputed facts in the defendants' summary judgment motion. Plaintiff was riding a bike in front of defendants' home at on Salamanca Road in Franklinville, NY. Plaintiff states that defendants' dog gave chase to Plaintiff and ran directly in front of her bike. Plaintiff hit the dog and her bike crashed causing plaintiff to suffer a broken collar bone along with other injuries. Defendants own multiple dogs and several of other animals that are kept on their property.

Plaintiff's reliance on the Town Leash Law is misplaced as a foundation for negligence as a matter of law. It is horn book law that the Town Leash Law cannot be the sole basis for a lawsuit. However, a violation of the Town Leash Law is only some evidence of negligence. Until recently, it has been widely held that lawsuits involving vicious

propensities of animals could not be based on negligence. A claim for an injury resulting from a wandering animal could only be premised on strict liability.

Earlier this year the Court of Appeals addressed liability in a meandering farm animal case in *Hastings v. Sauve*, 21 N.Y.3d 122 (2013). The court reversed the Appellate Division decision and said “We hold that the rule of *Bard v Jahnke* (6 NY3d 592 [2006]) does not bar a suit for negligence when a farm animal has been allowed to stray from the property where it is kept.” The Appellate Division, in *Hastings*, had affirmed Summary Judgment to the defendants citing *Bard* and other cases for the proposition that “injuries inflicted by domestic animals may only proceed under strict liability based on the owner's knowledge of the animal's vicious propensities, not on theories of common-law negligence” (*Hastings v Sauve*, 94 AD3d 1171, 1172 [3d Dept. 2012]). The Court of Appeals distinguished *Bard* from *Hastings*. In *Bard*, the bull had never attacked any farm animal or human being before and the Court of Appeals declined to “dilute our traditional rule” that a plaintiff in such a case must show that defendant had knowledge of the animal's “vicious propensities”. The Court of Appeals did, however, clearly define what vicious propensities meant. Vicious propensities is any behavior that “reflects a proclivity to act in a way that puts others at risk of harm”.

The Court of Appeals holding in *Hastings* addressed cases involving a farm animal that was permitted to “wander off the property

where it was kept through the negligence of the owner of the property and the owner of the animal. To apply the rule of *Bard*—that “when harm is caused by a domestic animal, its owner's liability is determined solely” by the vicious propensity rule (6 NY3d at 599)—in a case like this would be to immunize defendants who take little or no care to keep their livestock out of the roadway or off of other people's property.” Therefore, a landowner or the owner of an animal may be liable under ordinary tort-law principles when a farm animal is negligently allowed to stray from the property on which the animal is kept.”

The court in *Hastings* then declined to address the rule as it might apply to household pets and then invited the question in future litigation by saying “that question must await a different case.”

It did not take long. The 1st Department took up the issue in October 2013 in *Doerr v. Goldsmith*, 2013 WL 5477151 (1st Dept. 2013), 2013 N.Y. Slip Op. 06442. The trial court had denied defendants' Summary Judgment in September 2011 in a case involving a dog running into the path of a bike rider in Central Park in New York City. Plaintiff sought to recover against defendants on a theory of negligence. There was no contention by plaintiff of traditional vicious propensities. On appeal, the Appellate Division affirmed the trial court and denied the defendant summary judgment.

Here, in addition to the developing case law, there are questions of fact as to the negligence of the owners in containing, controlling and training of their dogs in regards to chasing or pursuing vehicles both on and off the property. I, therefore, am denying defendants' summary

judgment motion and holding that ordinary negligence principals apply here.

Submit Order accordingly.

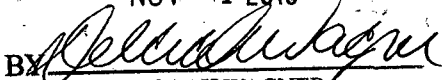


Hon. Diane Y. Devlin
Justice of the Supreme Court

DATED: November 1, 2013
Buffalo, New York

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