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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1859**

Alicia A. Oldenhof, et al.,
Appellants,

vs.

David Hansen,
Respondent.

**Filed June 18, 2018
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CV-17-64

J.J. Cline, Cline Jensen, P.A., Fergus Falls, Minnesota (for appellants)

Brendan R. Tupa, Law Offices of Thomas P. Stilp, Golden Valley, Minnesota (for
respondent)

Considered and decided by Kirk, Presiding Judge; Johnson, Judge; and Bjorkman,
Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

A dog owner hired a woman to let out his two dogs briefly once each day while he was at work. On her first day, one of the dogs bit her left ear, causing a permanent injury. The woman and her husband sued the dog owner under both a statute and the common law. The district court granted the dog owner's motion for summary judgment. We conclude

that the plaintiffs may not recover on their statutory claim because the woman was responsible for “keeping” the dog that bit her. We also conclude that the dog owner did not have a common-law duty to warn the woman about the dog that bit her because he did not have any reason to believe that the dog was dangerous. Therefore, we affirm.

FACTS

In 2015, David Hansen owned two dogs, Gunner and Ace. Gunner was a male Chocolate Lab Springer that Hansen had obtained from an acquaintance in 2012. Ace was a male Chocolate Lab mix that Hansen had obtained from a rescue shelter in 2014. Gunner weighed 65 pounds, and Ace weighed 75 pounds.

On January 12, 2015, Hansen placed an online advertisement, seeking a person to let his dogs out each afternoon during the weekday while he was at work. Alicia A. Oldenhof responded to the advertisement. The following evening, Oldenhof and her husband met Hansen at his house. Hansen introduced Oldenhof to Gunner and Ace. Hansen showed Oldenhof how to let the dogs in and out of his house, where to find treats and toys, and how to lock the doors when leaving. Hansen asked Oldenhof to exercise the dogs indoors on rainy days by throwing balls to them. Hansen and Oldenhof agreed that he would pay her \$10 per day for her services.

On the next day, January 14, 2015, Oldenhof went to Hansen’s house to let the dogs out for the first time. As instructed, Oldenhof greeted the dogs with treats and led them out the back door into a fenced-in backyard. Gunner ran around the backyard, but Ace stood near the back door. Oldenhof tried to encourage Ace to walk around the backyard, but he did not move. After a few minutes, she let the dogs back inside the house. She gave

each of the dogs a treat. She rolled some balls across the floor in an attempt to give Ace some exercise. Ace did not play with the balls. Oldenhof walked toward the dogs to say good-bye and held out her hand so that Ace could smell it. Ace then jumped up onto Oldenhof and pushed her to the ground. While she was on the ground, Oldenhof felt a burning sensation in her left ear and realized that Ace had bitten it. After Ace let go of her ear, Oldenhof got up, ran out of the house, and locked the door. She sustained permanent injuries to the ear.

In January 2017, Oldenhof and her husband commenced this action. In count 1, Oldenhof sought a recovery for her personal injuries; in count 2, her husband sought a recovery for a loss of consortium. In September 2017, the parties filed cross-motions for summary judgment. The district court granted Hansen's motion and denied the Oldenhofs' motion. The Oldenhofs appeal.

D E C I S I O N

Oldenhof and her husband argue that the district court erred by granting Hansen's motion for summary judgment. A district court must grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo* standard of review to the district court's legal conclusions on summary judgment and views the evidence in the light most

favorable to the party against whom summary judgment was granted. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

I. Statutory Claim

Oldenhof and her husband first argue that the district court erred by granting Hansen’s motion for summary judgment on their claim under a statute that imposes liability on a dog owner for injuries caused by a dog.

The statute, which was enacted in 1951, provides as follows:

If a dog, without provocation, attacks or injures any person who is acting peaceably in any place where the person may lawfully be, the owner of the dog is liable in damages to the person so attacked or injured to the full amount of the injury sustained. *The term “owner” includes any person harboring or keeping a dog but the owner shall be primarily liable. . . .*

Minn. Stat. § 347.22 (2016) (emphasis added); *see also* 1951 Minn. Laws ch. 315, § 1, at 413-14. In short, a dog’s owner is, as a general rule, strictly liable to a person who has been attacked or injured by the dog. *Engquist v. Loyas*, 803 N.W.2d 400, 406 (Minn. 2011). The statute “contemplates either two or three parties to a dog-bite action: the third party victim, the first party legal owner, and in some cases, the second party harborer or keeper.” *Tschida v. Berdusco*, 462 N.W.2d 410, 411 (Minn. App. 1990), *review denied* (Minn. Dec. 20, 1990), *overruled on other grounds by Anderson v. Christopherson*, 816 N.W.2d 626, 633 n.3 (Minn. 2012). In a two-party action, a victim of an attack may recover against a dog’s owner. *See Tschida*, 462 N.W.2d at 411. In a three-party action, a victim may recover both against a dog’s owner, who is primarily liable, and against a person who harbored or kept the dog, who is secondarily liable. *See id.* But a person who was injured

while harboring or keeping a dog may not recover against the dog's owner. *Id.* at 412-13; *see also Carlson v. Friday*, 694 N.W.2d 828, 830 (Minn. App. 2005); *Kent v. Block*, 623 N.W.2d 906, 909 (Minn. App. 2001). The Oldenhofs do not challenge these general principles.

In this case, the district court concluded that Oldenhof was “keeping” Ace at the time of the incident. The Oldenhofs challenge that conclusion on appeal.¹ They contend that Oldenhof was not a “keeper” because her responsibilities were limited to letting Ace outside and inside and because she was not responsible for feeding, walking, training, disciplining, or grooming him.

More than 40 years ago, the supreme court interpreted the word “keeper” in section 347.22 to mean a person who “either with or without the owner’s permission undertakes to manage, control or care for [a dog] as dog owners in general are accustomed to do.” *Verrett v. Silver*, 309 Minn. 275, 277, 244 N.W.2d 147, 149 (1976). The supreme court reiterated this definition only six years ago, noting that “a keeper acts as if he or she is the owner but without legal ownership of a dog.” *Anderson*, 816 N.W.2d at 632. This court has further defined the concept of “keeping” by describing it as “a voluntary acceptance . . . of temporary responsibility . . . as it relates to the management, control, or care of the dog [that is] exercised in a manner generally similar to that of the dog’s primary legal owner.” *Carlson*, 694 N.W.2d at 831.

¹All parties appear to assume that Oldenhof’s husband may sue Hansen under the statute. Hansen has not argued that only a person who was attacked or injured by a dog may do so. For purposes of this opinion, we assume without deciding that Oldenhof’s husband may maintain a statutory claim.

The undisputed facts show that Oldenhof was keeping Ace at the time of the incident. When she was at Hansen's home on January 14, 2015, she was the only person responsible for Ace. She was responsible for letting Ace outside and letting him back inside. If Ace did not willingly go inside, Oldenhof was instructed to use treats to lead him into the house. If Ace would have escaped from the backyard, Oldenhof would have been expected to contact Hansen or the police. Oldenhof was also asked to exercise the dogs indoors on rainy days. Hansen would have done the same tasks that he hired Oldenhof to do if he had been at home instead of at work. Even if Oldenhof's responsibilities were limited to letting Ace outside and letting him inside, she was, at that time, acting as an owner would act. *See Anderson*, 816 N.W.2d at 632; *Verrett*, 309 Minn. at 277, 244 N.W.2d at 149; *Carlson*, 694 N.W.2d at 831. Her responsibilities were limited simply because she was hired to care for the dogs for only a brief part of each workday. The short duration of her daily duties does not mean that she was not a "keeper." Indeed, our caselaw acknowledges that even a "temporary responsibility" can make a person a "keeper," so long as the person's responsibilities are "exercised in a manner generally similar to that of the dog's primary legal owner." *Carlson*, 694 N.W.2d at 831.

Furthermore, the Oldenhofs' emphasis on the limited nature of Oldenhof's responsibilities is inconsistent with this court's opinion in *Kent*, the facts of which are strikingly similar to the facts of this case. In *Kent*, a woman agreed to go to a co-worker's house each day to feed, water, and exercise the co-worker's dog while the co-worker was on a one-week vacation. 623 N.W.2d at 907. On the first day of the co-worker's vacation, the dog injured the woman. *Id.* On review of a grant of summary judgment for the dog

owner, we noted that the woman “was the only individual responsible for the care of the dog while [the owner] and his family were gone on a one-week vacation,” and we concluded that the woman was a “keeper” of the dog. *Id.* at 908-09. In doing so, we specifically rejected the woman’s argument that “the concept of ‘keeping’ must include more than mere watering, feeding, and exercising.” *Id.* In short, *Kent* is indistinguishable from this case.

Thus, the district court properly concluded that Oldenhof was “keeping” Ace when he injured her and that she and her husband are not permitted to maintain their statutory claim against Hansen.

II. Common-Law Claim

Oldenhof and her husband next argue that the district court erred by granting Hansen’s motion for summary judgment on their common-law negligence claim.

A person who is injured by a dog may assert a cause of action “against the dog owner for common law negligence.” *Lewellin v. Huber*, 465 N.W.2d 62, 65 (Minn. 1991). In general, a claim of common-law negligence requires a party to show “(1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) that the breach of the duty of care was a proximate cause of the injury.” *Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 581-82 (Minn. 2012) (quotation omitted); *see also Boitz v. Preblich*, 405 N.W.2d 907, 912 (Minn. App. 1987) (stating elements of negligence claim in dog-bite case). In particular, a duty is owed by “one who [owns an animal] to make a reasonable effort to ascertain whether the [animal] has dangerous tendencies even though there are no circumstances which would warn a reasonable man that the [animal] may be dangerous.”

Harris v. Breezy Point Lodge, Inc., 238 Minn. 322, 326, 56 N.W.2d 655, 658 (1953). A dog owner is negligent “if he neglects to act so to prevent the risk of damage when he has such notice of the vicious propensities as would put a prudent man on his guard.” *Id.* at 325-26, 56 N.W.2d at 658.

In this case, the district court reasoned that Oldenhof and her husband cannot maintain their common-law claim because there is no evidence that Hansen had any reason to believe that Ace was dangerous. Accordingly, the district court reasoned that Hansen did not owe a duty of care to Oldenhof. Hansen’s deposition testimony supports the district court’s reasoning. He testified that he never observed any aggressive behavior by Ace toward any person. He described Ace’s disposition as passive and his general demeanor as loyal, friendly, and protective. He also testified that Ace never showed his teeth, growled, snarled, snapped, or lunged at any person. Hansen further testified that he had never used a muzzle on Ace.

Oldenhof and her husband argue that Hansen had a duty of care based on evidence that Ace had been aggressive in the past with other animals. Specifically, Oldenhof and her husband point to evidence that Ace had a tendency to play tug-of-war with Gunner and evidence that Ace had a tendency to chase, hunt, and kill rabbits in Hansen’s backyard. Oldenhof and her husband also point to evidence that Gunner (but not Ace) displayed some wariness toward a person who previously had been hired to let out the dogs. This evidence is not relevant to the question whether Ace had dangerous propensities. The evidence concerns Ace’s behavior toward other animals, not his behavior toward humans. Furthermore, Ace’s prior behavior toward other animals is not abnormal. It is common

knowledge that dogs sometimes play tug-of-war with an object. Hansen also testified that he did not perceive Ace's behavior with respect to rabbits to be aggressive because Ace is a "hunting dog." Moreover, the mere fact that the dog is "frisky" does *not* suggest that it has a "dangerous" propensity. *See Boitz*, 405 N.W.2d at 911. Lastly, the evidence concerning Gunner is completely irrelevant because it was Ace who attacked Oldenhof, not Gunner. In short, there is no genuine issue of material fact as to whether Hansen had notice that Ace had any dangerous propensities toward any person.

Thus, the district court properly concluded that Hansen did not owe a duty of care to Oldenhof.

In sum, the district court did not err by granting Hansen's motion for summary judgment.

Affirmed.