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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0538**

Alex Cooper,
Appellant,

vs.

Christopher Beaver,
Respondent.

**Filed October 22, 2018
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CV-16-11193

Jeffrey M. Montpetit, Marcia K. Miller, Sieben Carey, P.A., Minneapolis, Minnesota (for appellant)

Scott A. Brehm, Law Offices of Kelly R. Rodieck & Associates, St. Paul, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant claims that the district court erred by denying his motion for judgment as a matter of law (JMOL), arguing that respondent is liable under the dog-owner liability

statute, Minn. Stat. § 347.22 (2016), because appellant was injured when he fell off his bicycle after being frightened by respondent's dogs. We affirm.

FACTS

Respondent Christopher Beaver and Lester Michaels are neighbors. Behind their homes is a walking and bike path. Behind Michaels's home, the path is a very steep hill that causes some bicyclists to walk their bikes up the hill, and children riding down the hill to "squeal[]" on the brakes because they are scared to go down [the hill]." Beaver's home is at a point where the hill comes down at a steep angle and graduates to a more flat area. The path curves around Beaver's property. There is a curb along the path that ends at Michaels's property. The homes are on one side of the path and there is a "pretty shaded" wooded area on the other side of the path.

When Beaver and his family moved into their home, they had an invisible fence installed for their dogs. The Beavers had a standard fence at their previous home, but association bylaws prevented them from installing a similar fence at their new home. It is typical of Beaver's dogs to bark and run toward someone on the path. But the dogs wear collars that emit an audible signal if they approach the fence line. The dogs are restricted from going within approximately 27 feet of the path. Beaver never received a complaint about the dogs' interactions with people on the path, and the dogs never attacked or injured anyone. In June 2015, the fence was functioning properly when Beaver had two British Labrador retrievers.

On June 2, 2015, appellant Alex Cooper fell off his bicycle on the path. Cooper sued Beaver, alleging that he fell off his bicycle because Beaver's dogs "ran out barking and appearing to be in attack mode."

At a jury trial, Cooper testified that he was on a mountain bike wearing sunglasses, a helmet, and ear buds listening to "light background music." The bike has "cage[s]" clipped to the pedals to strap Cooper's feet and prevent them from sliding. Cooper testified that a month prior he had trouble with the bike when the chain got jammed, causing him to stop "quickly," go "over to [his] left," and receive "a gash on [his] chin."

Cooper testified that around 8:00 p.m. he was 19 miles into his ride in a "[v]ery shaded" area descending the hill behind Michaels's home. Cooper testified that when he was behind Beaver's home, he saw the dogs in the yard near the deck off Beaver's home. Cooper testified that when he and the dogs noticed each other, the dogs started "charging toward" him, "barking and making a lot of noise." Cooper testified that his first thought was whether the dogs were going to reach him. He decided to "stop and turn around and go the other way," because he "could easily" and more quickly go home. Cooper testified that he did not know whether he braked or hit just the front brake and then "there's a memory gap." He testified that he next remembered waking up bleeding on the trail. Cooper testified that he did not hit the curb because of "the curb ending prior to where [he] actually landed."

Michaels testified that he was sitting on his porch when he became aware of a bicyclist on the path, traveling approximately 10-15 miles an hour. Michaels testified that he saw Beaver's dogs running and heard them barking around the same time that he noticed

the bicyclist. Michaels testified that he could not see the bicyclist make “any corrective action . . . to try to avoid the dogs.” Michaels testified that he heard a “bike crash sound” and someone ask for help. Michaels found Cooper “pretty much on the curb,” “kind of laying on top of the curb,” and helped him get “untangled from the bike.” Michaels testified that the Beavers lived next door to him for 18 years and he had never seen one of the dogs jump on anybody on the path.

The first responder’s notes indicated that: “[Cooper] advised that as he was riding down a hill and around a bend in the trail, he saw two dogs running ‘right at [him].’ [Cooper] hit his breaks to avoid ‘getting bit’ and lost control of his bike, falling forward onto the trail.” It was also noted that Cooper “denie[d] loss of consciousness.”

The jury was asked to determine if the accident was “directly caused by the dogs.” The district court defined “direct cause” as “a cause that had a substantial part in bringing about the harm.” The jury determined that the accident was not directly caused by the dogs.

Cooper moved for JMOL. The district court denied Cooper’s motion because a reasonable jury could conclude that Cooper failed to prove by a preponderance of the evidence that his injuries were a direct and immediate result of the dogs’ actions. The district court stated that Cooper could not describe exactly what happened and concluded that: “Ample alternative explanations for the accident were supported by the evidence, including [Cooper] not paying attention and simply hitting the curb as he rounded a sharp downhill turn.” Judgment was entered and this appeal followed.

DECISION

Cooper argues that the district court should have granted his motion for JMOL. Appellate courts review a district court's decision to deny a motion for JMOL de novo. *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 n.5 (Minn. 2018). When reviewing the denial of a motion for JMOL, appellate courts construe the evidence “in the light most favorable to the prevailing party and ask whether there is [a] legally sufficient evidentiary basis for a reasonable jury to find for the prevailing party.” *Karl v. Uptown Drink, LLC*, 835 N.W.2d 14, 17 (Minn. 2013) (quotation omitted). A jury's verdict will be set aside “only if it is perverse and palpably contrary to the evidence, or where the evidence is so clear as to leave no room for differences among reasonable persons.” *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 888 (Minn. 2010) (quotation omitted).

Cooper argues that he was entitled to JMOL because Beaver is absolutely liable under Minn. Stat. § 347.22, which provides: “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.” Cooper claims that he fell off his bicycle as a direct and immediate result of becoming frightened by Beaver's dogs and trying to avoid an attack. Cooper asserts that his case is similar to *Morris v. Weatherly*, in which this court determined that two individuals could recover for injuries caused by dogs whose actions directly and immediately caused the injuries. 488 N.W.2d 508, 510 (Minn. App. 1992), review denied (Minn. Oct. 28, 1992).

Morris involved consolidated appeals. In *Morris*'s case, he was bicycling when he saw a dog approach from behind at "a dead run," "running low to the ground" with "his ears laid back." *Id.* at 509. When *Morris* quickly dismounted his bike, one of his legs collapsed, causing him to fall, twist his shoulder, and tear his rotator cuff. *Id.* The dog stopped several feet short of *Morris* and walked away without coming into physical contact. *Id.* The district court determined that the dog's "attacking" pursuit proximately caused *Morris*'s injuries. *Id.* at 509-10.

In the second case, a mail carrier noticed a large dog barking at him from across the street. *Id.* at 510. He then saw another dog running toward him "flying through the air." *Id.* A witness stated that the dog ran past the mail carrier, which caused him to spin around and injure his back. *Id.* Based on the jury's findings, the district court held the dog's owners strictly liable for the mail carrier's injuries. *Id.*

The dog owners appealed. *Id.* This court determined that the statute applied in both cases because the injuries were "the direct and immediate result of the dogs' actions." *Id.* This court reasoned that, while no physical contact occurred, no "intermediate linkage" connected the dogs' actions to the injuries. *Id.* This court stated:

Both cases fall within the scope of section 347.22. The actions of the dogs caused the injuries without any attenuated chain of causation. The statutory language does not require physical contact. We believe our conclusion is consistent with the recognized purpose of the statute, which is to protect people such as bicyclists and mail carriers who are subject to attacks and immediate harm from dogs.

Id. at 511.

Cooper argues that “[s]imilarly, in this case, causation is not too attenuated.” He claims that Beaver’s dogs “directly and immediately caused [him] to become fearful, attempt to turn around to avoid the dogs, and fall from his bicycle.” But Cooper was unable to explain his fall. In *Morris*, Morris’s leg collapsed when he quickly dismounted his bike, and the mail carrier injured his back when he spun around. Cooper testified that he decided to stop, turn around, and go home, but then “there’s a memory gap.” It is unclear from the evidence what happened between Cooper deciding to go home and ending up on the ground. Therefore, there was a question of fact, and the jury was left to weigh the evidence and make credibility determinations.

Cooper testified that he saw Beaver’s dogs in the yard near the deck off Beaver’s house and that when the dogs noticed him, they started “charging toward” him and “barking and making a lot of noise.” Cooper testified that he decided to “stop and turn around and go the other way,” but then “there’s a memory gap” and he next remembered waking up on the trail. But the first responder’s notes indicated that Cooper denied loss of consciousness.

Michaels’s testimony contradicted Cooper’s testimony regarding when the dogs started barking and running. Cooper stated that the dogs did not bark or run toward him until he was behind Beaver’s home, which is at the bottom of the hill. Michaels stated that he noticed Cooper in his peripheral vision coming down the hill around the same time he saw and heard the dogs. Michaels’s testimony regarding where he found Cooper also contradicted Cooper’s testimony. Michaels stated that he found Cooper tangled up in his bike “pretty much on the curb.” Cooper testified that he did not hit the curb because the

curb ended prior to where he landed. The district court instructed the jury that, to find Beaver liable, “[t]he greater weight of the evidence” must lead it to believe that Cooper’s claim is more likely true than not true. This conflicting evidence does not support a conclusion that Cooper’s claim that the dogs caused his fall is more likely true than not.

Cooper claims that there is no evidence of anything happening other than the dogs causing him to fall off his bicycle. However, the district court instructed the jury that a fact could be proved by direct or circumstantial evidence and that “[a] fact is proved by circumstantial evidence when that fact can be inferred from other facts proved in the case.”

Here, viewing the evidence in the light most favorable to the jury’s verdict, there was evidence that Cooper was riding his bicycle down a steep hill that has a blind corner that hugs Beaver’s property line. The hill was described as steep enough that bicyclists sometimes walk their bikes up the hill and children “squeal[] on the brakes because they are scared to go down [the hill].” There is a curb on the hill that ends at Michaels’s property.

Cooper descended the hill approximately 19 miles into his ride, traveling approximately 10-15 miles an hour. It was 8:00 p.m., in a “[v]ery shaded” area, and Cooper was wearing sunglasses. Cooper was also wearing a helmet and ear buds listening to “light background music,” and had his feet strapped to his pedals by cages. He was riding a bike that he had trouble with when the chain jammed the month prior.

As the district court stated, a reasonable jury could conclude that Cooper failed to prove by a preponderance of the evidence that his injuries were a direct and immediate result of the dogs’ actions. Cooper could not describe exactly what happened, and the jury

may have discredited his testimony that he lost consciousness. Based on the circumstantial evidence, the jury may have concluded that Cooper was not paying attention, was going too fast in that particular location, could not see well and hit the curb as he rounded a downhill turn, or experienced trouble again with the functioning of his bicycle. Viewing the evidence in the light most favorable to the verdict, we will not set this verdict aside because it is not “perverse and palpably contrary to the evidence.” *See Anda*, 789 N.W.2d at 888.

Affirmed.