

HEATHER M. SIMMONS,
Petitioner

vs.

GARY L. STRYKER and
NORMA J. STRYKER, his wife,
Respondents

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
:
: NO. 99-00,767
:
: CIVIL ACTION – LAW
:
: RULE 1925(a) OPINION

Date: September 21, 2000

**OPINION IN SUPPORT OF THE ORDER OF JULY 19, 2000 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Plaintiff has appealed this Court's Order which denied reconsideration of our prior Order of February 17, 2000, granting summary judgment to the Defendants and dismissing Plaintiff's personal injury claim arising out of a dog-bite incident. This Court's reasoning for granting the summary judgment motion initially and denying the Motion for Reconsideration set forth in detail in the Opinions and Orders dated February 15, 2000 (filed on February 17, 2000) and dated July 19, 2000, (filed July 20, 2000). It is appropriate, however, for this Court to note in response to the Plaintiff's Concise Statement of Matters Complained of on Appeal, filed August 11, 2000, a correction to a citation that is necessary to the Opinion of February 17, 2000, as well as to comment upon the reasons that the case cited by Plaintiff in the Concise Statement of Matters Complained of on Appeal, *Clark v. Clark*, 207 Pa.Super. 193, 215 A.2d 293 (1965), does not apply to this case.

First, as to the matter of correction of this Court's citations in the Opinion of February 15, 2000. On page 4, at the last sentence and last line of the first paragraph, the quote is attributable to the

case of “*Mann* at 384....” This citation is incorrect. The quote came from the case of *Rowe v. Landbater*, 27 D.&C.4th 380, 384, (Perry Co. C.P. 1994).¹

Plaintiff/Appellant’s Concise Statement of Matters Complained of on Appeal submits under item number 1 that this Court abused its discretion in failing to view in a light most favorable to Plaintiff that the dog in question had jumped up on people prior to Plaintiff being bitten and that such prior behavior was sufficient to put the Defendants on notice of the dog’s dangerous propensities, “. . . as an owner of a dog who has knowledge of its playful but dangerous propensities is under a duty to restrain the animal from injuring others. *Clark v. Clark*, 207 Pa.Super. 193, 215 A.2d 293 (1965).” Concise Statement of Matters Complained of on Appeal, filed August 11, 2000, paragraph No. 1. This Court’s prior opinions did not specifically address the facts or holding of *Clark*.

This Court believes Plaintiffs’ reliance upon the doctrine expressed in *Clark* is inapplicable to this case. In *Clark*, relying upon *Groner v. Hedrick*, 403 Pa. 148, 169 A.2d 302 (1961), the Superior Court recognized evidence showing defendant/dog owners were aware their dog jumped up on people on previous occasions made them potentially liable under a negligence theory, where the dog in question jumped up and knocked down and thereby injured the plaintiff. The owner had knowledge that the dog, although friendly, was prone to jump up on people. The Court stated this could be regarded as knowledge by the owners that the dog was dangerous and had the capability, considering its size and weight, to knock people down and injure them, just as knowledge

¹ The *Rowe* citation is a continuation of the citation appropriately attributed to *Rowe* which is set forth in the preceding sentence on page 4 and it is believed that little if any confusion resulted from the inappropriate citation.

of a dog being vicious could subject them to liability if the dog in being vicious inflicted harm. Accordingly, the Court in *Clark* did state, as held in *Groner v. Hedrick*, that a duty of restraint is imposed on the owner of a dog when he knows "... of the animal's playful but dangerous propensities." *Clark, supra* at 215 A.2d 196.

In the action now before the Court the Plaintiff was visiting the Defendants, her father and stepmother, for a family picnic. The Defendants' dog bit Plaintiff in the nose causing significant injury to Plaintiff. The biting incident occurred at a time after the dog had been secured by the Defendants, perhaps for various reasons, but most favorably to Plaintiff because the dog had become agitated towards another dog which another family member had brought to the picnic at Defendants' home.² Plaintiff at the conclusion of the day had offered to Defendants to take their dog from the place where it was restrained into the Defendants' garage for the evening. Defendants did not object. When Plaintiff approached Defendants' dog to remove it from the secured area the dog jumped up and bit Plaintiff in the face.

Plaintiff's theory of imputing prior knowledge to the Defendants that their dog had a dangerous propensity was based primarily upon Plaintiff's deposition testimony concerning her observations of the dog. Plaintiff testified that when her husband played with the dog, such as in a tug of war with a toy, that the dog would be aggressive, show his teeth and growl while engaged in the pulling activity. Plaintiff also stated she considered Defendants' dog to be agitated toward the other dog on the property and being most favorable to Plaintiff impliedly aggressive toward and prone to bite the other dog. These facts were

² Plaintiff has consistently asserted the Defendant's dog was "aggressive" toward another dog on the day in question. A careful reading of the applicable depositions, (most specifically Plaintiff's own deposition) reveals evidence only that, in retrospect, Defendants' dog was "agitated" at the other dog. *See* discussion at page 4 of our Opinion of June 30, 2000.

not contested. Nor was it contested that Defendants' dog, a two and one-half year old non-neutered, male, English Springer Spaniel, (its weight not being specified), had the tendency to jump on people on various occasions when people had visited the Defendants' home. Plaintiff also introduced testimony to show Defendants were aware of these actions by their dog. In doing so Plaintiff produced no evidence that these acts of the dog posed any danger to any person.

Unlike *Clark*, Plaintiff's injury did not result from the dog jumping on her and knocking her down or causing a bruise or other injury directly related to the propensity of the dog to jump. Rather, the dog biting her caused Plaintiff's injury. Plaintiff produced no evidence in response to the Defendants' summary judgment motion from which this Court or any factfinder could find that the Defendants knew or should have known that their dog was of a dangerous and vicious nature, that is that the dog had any propensity to bite humans.

Hence the Plaintiff's case must fail because Plaintiff has not introduced evidence which would allow the law to impose a duty to restrain on the Defendants on the theory of this dog having a dangerous propensity which caused her injury. See *Rowe, supra*.

Accordingly, this Court believes the appeal of Plaintiff should be denied.

BY THE COURT,

William S. Kieser, Judge