

RONALD W. YEAGLE and
SUSAN YEAGLE, his wife,
Plaintiffs

vs.

SCOTT BARTH and MARY
BARTH, his wife,
Defendants

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
:
:
: NO. 00-01,813
:
:
: SUMMARY JUDGMENT MOTION

Date: December 26, 2001

OPINION and ORDER

Before the Court is Defendants’ Motion for Summary Judgment filed October 23, 2001. The Motion seeks to dismiss Plaintiffs’ Complaint which seeks to recover damages for personal injury suffered by Plaintiff Robert Yeagle allegedly caused by Defendants’ dog as well as his wife’s, Plaintiff Susan Yeagle, loss of consortium claim. Plaintiffs filed their answer to Defendants’ Motion for Summary Judgment on November 21, 2001. Argument on the Motion was heard on November 30, 2001. For the reasons to be explained in this Opinion, Defendants’ Motion for Summary Judgment will be denied.

Facts

The parties submitted documents in the Motion and Response from which, together with the pleadings, the following statement of uncontested material facts is taken. The specific documents include the following: Deposition of Mary Ann Barth dated June 6, 2001; Deposition of Scott Burks dated June 6, 2001; Deposition of Ronald W. Yeagle, Sr. dated October 4, 2001; Plaintiffs’ Response to Defendants’ Interrogatory No. 12; Plaintiff Ronald Yeagle’s recorded statement dated October 25, 1999 given to Defendants’ insurance adjuster which has been transcribed and attached as Exhibit “B” to the Summary Judgment Motion.

Ronald W. Yeagle, Plaintiff, (and hereafter individually referred to as “Plaintiff”) in performing his duties as meter reader for the Williamsport Municipal Water Authority, on October 25, 1999, entered on to the Defendants’ home residence property at 2135 Central Avenue, Williamsport. He was walking, making his rounds as meter reader and carrying a hand-held computer device with him. He walked down the driveway and read the meter on Defendants’ house and had started to walk back out towards the street when halfway out the driveway he heard something running, coming up behind him in the driveway. He spun around to his right in response to the approaching sound and felt a pain in his back. The pain in Plaintiff’s back could be likened to a sledge hammer blow. He then saw the Defendants’ dog coming at him, approximately one to two feet away. On Plaintiff’s turning, the dog began to growl and bark, and its teeth were showing. *See* Response to Interrogatory No. 12 of Defendant; Yeagle Deposition at pp. 27-29; recorded the statement of Yeagle dated October 25, 1999 at pp. 2-3 (unnumbered).

Plaintiff had been aware at the time he heard the running behind him in the driveway that Defendants did keep a dog on the property. Plaintiff was also aware that the dog had to be restrained or be put in another room when he made prior calls at the house and needed to enter the house for meter reading purposes. On the day in question he had not heard any barking or other noise from the dog except for the running prior to the time he had turned around. At no time on October 25th did the dog make actual physical contact of any kind with Plaintiff.

Upon turning to face the dog Plaintiff instinctively thrust his hand-held computer in front of him and started to back away out of the driveway and attempted to mace

the dog. The dog appeared to back off somewhat but as Plaintiff continued to walk backwards out of the driveway and across the street the dog pursued and approached him. As Plaintiff reached the opposite side of the street Plaintiff again maced the dog and the dog then left. Plaintiff then collapsed on the ground. After five to ten minutes he was able to get to his feet, made his way back to his car and went to the emergency room where he was referred for an MRI and to a neurosurgeon.

Initially, the pain occasioned by Plaintiff was felt by him in the lower center of his back. Subsequently Dr. Hani Tuffaha diagnosed that Plaintiff had suffered a ruptured disk in the process of making the sudden turn to confront the dog.

Defendants' dog was a thoroughbred Golden Retriever. Earlier in the day, prior to Plaintiff coming to the property Defendants had left the property and tied the dog in the backyard. Defendant, Mary Barth testified in her deposition that she knew the meter reader would come about once a month, and that she took steps to keep the dog away from Plaintiff by putting the dog in the bedroom or tying him outside. Deposition of Mary Barth, June 6, 2001, p. 5. While both Defendants testified that the dog, to their knowledge, had never bitten anyone, they did admit that the dog does bark and growl at people entering Defendants' property. Deposition of Scott Barth, June 6, 2001, p. 35 & 38, Deposition of Mary Barth, June 6, 2001, p. 8 & 11. Defendants also testified that the dog would follow people walking or riding their bicycles down the street at their pace and barking as he followed. Deposition of Mary Barth, p. 11. Finally, Defendants testified that they were aware of several occasions when the dog had gotten loose from his clip while tied in the backyard. Depositions of Scott Barth, p. 29-30, Deposition of Mary Barth, p. 10.

Discussion

To determine the Summary Judgment Motion the Court must first determine whether there are genuine issues of fact to go to the jury. These issues regard the dangerous propensities of the dog and whether Defendants knew or should have known of those propensities.

Summary Judgment is properly entered where the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits demonstrate that no genuine triable issue of fact exists and that the moving party is entitled to judgment as a matter of law. *Smitley v. Holiday Rambler Corp.*, 707 A.2d 520, 525 (Pa. Super. 1998). The burden rests squarely on the moving party to prove that no genuine issue of material fact exists. *Id.* However, an adverse party is required to identify in response to the summary judgment motion “evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.” *Eddy v. Hamaty*, 694 A.2d 639, 643 (Pa. Super. 1997), citing Pa.R.C.P. 1035.3.

In reviewing a motion for summary judgment, the record is examined in the light most favorable to the non-moving party. *Long v. Yingling*, 700 A.2d 508, 512 (Pa. Super. 1997). Moreover, summary judgment should be granted only in cases that are free and clear from doubt. *Hoffman v. Brandywine Hospital*, 443 Pa. Super. 245, 250, 661 A.2d 397, 399 (1995). In order for a defendant to be successful in a summary judgment motion seeking to dismiss all of plaintiff’s claims defendant must be able to show that the undisputed material facts are such, when looked upon in a light most favorable to plaintiff, would entitle defendant at trial to the grant of a non-suit at the close of plaintiff’s case. Therefore, the issue before this

Court is whether the evidence Defendants had prior knowledge of possible dangerous propensities of their dog prior to the incident with Plaintiff would be sufficient to allow Plaintiff to avoid a non-suit at trial.

Defendants argue that they cannot be held liable because Plaintiffs have produced no evidence that the dog had ever bitten or attacked any person. However, Pennsylvania law does not require a showing that Defendant's dog previously bit or physically attacked someone. In *Snyder v. Milton Auto Parts, Inc.*, 428 A.2d 186, 188 (Pa. Super. 1981) the court stated:

As to the knowledge which the owner must possess in order to charge him with liability the authorities are generally agreed that a dog is not entitled to 'one bite' and that actual notice of the viciousness or mischievous propensities of the animal are not necessary. It is sufficient if he knew or should have known that the animal was a probable cause of harm. (Citing *Am Jur* proof of facts 2nd, vol. 13, p. 473).

It is undisputed in this case that Defendants knew that their large dog chased after people and barked and growled at people entering the property. Defendants also knew that the dog was able to get loose from its restraint system. Defendants knew that Plaintiff, as a meter reader, would be required to enter their property for the purpose of reading their water meter.

Pursuant to the evidence of record, it is clear Plaintiffs can present evidence at trial which require the issue of whether the Defendants had prior knowledge that their dog had dangerous propensities, which propensities resulted in Plaintiff suffering his injury. From the evidence Plaintiffs can present the jury can easily find: 1) Defendants were aware that their large breed dog barked, growled and chased people passing or entering the property; 2)

Defendants were also aware that the dog was capable of getting loose from his restraint while tied in the backyard. These facts are enough to raise an issue of Defendants knowledge of vicious or dangerous propensities of their dog. It is possible the jury could therefore reasonably conclude that Defendants should have known their dog was capable of alarming and scarring persons and foreseeable that such persons, in attempting to avoid the dog's approach or actions, would react, as did Plaintiff and suffer some harm as a result. The jury could also conclude Defendants owed Plaintiff a duty of taking greater precaution to ensure their dog did not chase after or pursue Plaintiff while he was lawfully on their property for the purpose of reading their meter. Because a genuine issue of material fact is present from which liability could be imposed at trial, Defendants' Motion for Summary Judgment will be denied.

ORDER

Defendants' Motion for Summary Judgment is hereby DENIED.

BY THE COURT:

William S. Kieser, Judge

cc: Gary L. Black, Esquire
Joseph R. Musto, Esquire
Judges
Suzanne R. Lovecchio, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)