COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA

JASMINE SPEECE, mother, individually and on behalf of PAISLEY FAHEY, Plaintiff,	:	NO. CV-2020-01125
vs.	:	
DAVID BAIER, Defendant.	:	CIVIL ACTION - LAW
vs.	:	
VANESSA ECK and DALTON J. RISHEL, Additional Defendants.	:	Motion for Summary Judgment

OPINION AND ORDER

This matter came before the Court on September 10, 2024, for oral argument on the Motion for Summary Judgement, filed by Defendant David Baier (hereinafter "Baier") on May 23, 2024. The Court hereby issues the following OPINION and ORDER on that Motion.

I. Background:

The Complaint was filed November 20, 2020, by Plaintiff Jasmine Speece (hereinafter "Speece"), against Defendant Baier. Speece alleges that 1) Baier is the owner of the apartments at 457 Grant Street, Williamsport, PA 17701 (hereinafter the "Property"); 2) Venessa Eck (hereinafter "Eck"), while a resident at the Property, owned and possessed an American Pit Bull (hereinafter the "Dog") at the Property; 3) Baier was aware that Eck owned the Dog, and that the Dog was located at the Property; 4) in May 2020, the Dog purportedly attacked a child in the neighborhood and the incident was investigated by the Pennsylvania Dog Law Enforcement Office; 5) in September 2020, Eck left the care of her apartment and the Dog to Dalton Rishel (hereinafter "Rishel"); 6) in October 2020, Speece and her daughter Paisley (hereinafter "Paisley") visited Rishel, at which time the Dog attacked Paisley; and 7) as a result of the attack, Paisley suffered severe injuries, including head trauma, traumatic brain injury, and lacerations which would require surgical intervention.

Therefore, under Count I of the Complaint, Speece alleges that because of Baier's negligence, Paisley suffered severe injuries as described above; and under Count II, that because Speece witnessed the attack of Paisley and was present during the transportation of Paisley to the hospital, Speece suffered emotional and psychological injuries due to Baier's negligence.

Baier filed an Answer, New Matter, and Crossclaim on December 10, 2020, claiming that that Baier was unaware of the Dog's breed; that after Eck terminated her lease in September 2020, the lease executed by Rishel prohibited pets; that Baier was unaware that Eck left the Dog to Rishel after Eck's lease ended in September 2020; and that the injury sustained by Paisley was the result of negligence by Speece for failing to supervise Paisley at the Property. Furthermore, Baier filed an Additional Defendant Complaint against Additional Defendants Eck and Rishel on the same date, asserting that the injuries sustained by Paisley were the result of negligence by Eck and Rishel.

On April 28, 2024, Plaintiff's counsel took the deposition of Baier (hereinafter the "Baier Deposition"). The Court notes that, relevant to the subject of this Motion for Summary Judgment, Baier's deposition testimony reveals 1) on page 32, having been asked why Baier allowed another resident to have dogs at the Property, Baier responded that because those dogs were "smaller dogs" and were not "vicious pitbulls"; 2) on page 32, in response to the query "[s]o you have an understanding at least at that point in time, pitbulls could be vicious," Baier answered "Yes[,]" noting further that his understanding came from "[j]ust reading about things, hearing about things[]"; 3) on page 33, in response to the query "[a]nd you knew [pitbulls could be vicious] from common experience, correct[,]" Baier answered "Yes"; 4) on page 33, in response to the query "[A]t that point in time, September 28, you don't want any vicious pitbulls on your property," Baier answered "Yes[]"; and on pages 34 and 35, in response to the queries "[Y]ou understand pitbulls to have a certain propensity…they can be vicious?" and "[Y]ou've heard about [pitbulls] attacking individuals and biting and being just overall vicious[,]" Baier answered "Yes." Baier Dep. 32:17-35:5.

After numerous motions over the years, Baier filed a Motion for Summary

Judgment on May 23, 2024, which is now before this Court.

II. The Test for Summary Judgment:

In Pennsylvania, a party may move for summary judgement "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action…." Pa.R.C.P. No. 1035.2(1). In response, the adverse party may not rest on denials but must respond to the motion. Pa.R.C.P. No. 1035.3(a). The non-moving party can avoid an adverse ruling by identifying "one or more issues of fact arising from evidence in the record…." Pa.R.C.P. No. 1035.3(a)(1).

In considering a motion for summary judgment, it is not the Court's function to decide issues of fact. Rather, it is our function to decide whether an issue of fact exists. *Fine v. Checcio*, 870 A.2d 850, 862 (Pa. 2005). Moreover, our Superior Court noted the following:

> Summary judgment is appropriate only when the record clearly shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. The reviewing court must view the record in the light most favorable to the nonmoving party and resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Only when the facts are so clear that reasonable minds could not differ can a trial court properly enter summary judgment.

Hovis v. Sunoco, Inc., 64 A.3d 1078, 1081 (Pa. Super. Ct. 2013)(quoting *Cassel-Hess v. Hoffer*, 44 A.3d 80, 84-85 (Pa. Super. Ct. 2012)); *accord Khalil v. Williams*, 278 A.3d 859, 871 (Pa. 2022)("We have explained that a trial court should grant summary judgment only in cases where the record contains no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.")(citing *Bourgeois v. Snow Time, Inc*., 242 A.3d 637, 649-50 (Pa. 2020)).

In the matter of *Accu-Weather, Inc. v. Prospect Commc'ns, Inc.*, our Superior Court described the proper test for a grant of summary judgment as follows:

> First, the pleadings, depositions, answers to interrogatories, admissions on file, together with any affidavits, must demonstrate that there exists no genuine issue of fact. Pa.R.C.P. 1035(b). Second, the moving party must be entitled to judgment as a matter of law. *Id.* The moving party has the burden of proving

> that no genuine issue of material fact exists. *Overly v. Kass,* 382 Pa.Super. 108, 111, 554 A.2d 970, 972 (1989). However, the non-moving party may not rest upon averments contained in its pleadings; the non-moving party must demonstrate that there is a genuine issue for trial. The court must examine the record in the light most favorable to the non-moving party and resolve all doubts against the moving party. *Stidham v. Millvale Sportsmen's Club,* 421 Pa.Super. 548, 558, 618 A.2d 945, 950 (1992), *appeal denied,* 536 Pa. 630, 637 A.2d 290 (1993) (citing *Kerns v. Methodist Hosp.,* 393 Pa.Super. 533, 536–37, 574 A.2d 1068, 1069 (1990)). Finally, an entry of summary judgment is granted only in cases where the right is clear and free of doubt. *Ducko v. Chrysler Motors Corporation,* 433 Pa.Super. 47, 48, 639 A.2d 1204, 1205 (1993) (citing *Musser v. Vilsmeier Auction Co., Inc.,* 522 Pa. 367, 370, 562 A.2d 279, 280 (1989)). We reverse an entry of summary judgment when the trial court commits an error of law or abuses its discretion. *Kelly by Kelly v. Ickes,* 427 Pa.Super. 542, 547, 629 A.2d 1002, 1004 (1993) (citing *Carns v. Yingling,* 406 Pa.Super. 279, 594 A.2d 337 (1991)).

Accu-Weather, Inc. v. Prospect Commc'ns, Inc., 644 A.2d 1251, 1254 (Pa. Super. Ct. 1994).

III. Question Presented:

A. Whether Defendant Baier is entitled to summary judgment on the claims asserted against him to docket # CV-2020-01125.

IV. Response:

A. Defendant Baier is not entitled to summary judgment, because there is a genuine issue of material fact as to whether Baier had actual knowledge of the violent propensity of the Dog.

V. Discussion:

It appears to the Court that the crux of this Motion for Summary Judgment is whether Baier had actual knowledge of the Dog's violent propensity. Reviewing the record in the light most favorable to the nonmoving party, the Court finds that Baier is not entitled to summary judgment, because there is a genuine issue of material fact as to whether Baier had actual knowledge of the violent propensity of the Dog.

Our Superior Court, in *Rosenberry v. Evans*, restated a two-prong analysis to determine whether a landlord could be held liable for injuries caused by animals owned by tenants:

> In order to establish a cause of action in negligence against a landlord for injuries caused by his tenant's dog, it must be proven that the landlord owed a duty of care, that he breached that duty, and that the injuries were proximately caused by the breach. *Martin v. Evans*, 551 Pa. 496, 711 A.2d 458 (1998). A landlord out of possession is not liable for attacks by animals kept by his tenant on leased premises where the tenant has exclusive control over the premises. However, a duty to use reasonable care will attach to prevent such injuries if the landlord has knowledge of a dangerous animal on the rented premises and if the landlord enjoyed the right to control or remove the animal by retaking the premises. *Palermo v. Nails*, 334 Pa.Super. 544, 483 A.2d 871 (1984).
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> ….
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> Actual knowledge of a dog's dangerous propensities is required before a duty is imposed upon a landlord to protect against or remove an animal housed on rental property.
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> ….
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> Our High Court has defined a dangerous or vicious propensity broadly. A dangerous propensity includes "a propensity or tendency of an animal to do any act that might endanger the safety of the person and property of others in a given situation." *Groner v. Hedrick*, 403 Pa. 148, 169 A.2d 302, 303 (1961) (citing Restatement (Second) of Torts § 518(1)).

Rosenberry v. Evans, 48 A.3d 1255, 1258, 1259, 1261 (Pa. Super. Ct. 2012); *see, e.g., McMahon v. Pleasant Valley W. Ass'n*, 952 A.2d 731, 737 (Pa. Commw. Ct. 2008)("As a general matter, there is no duty to control the acts of a third party unless a defendant stands in a 'special relationship'…In Pennsylvania, 'special relationships'…include a parent's duty to control a child (§ 316), a master's duty to control a servant (§ 317), a landowner's duty to control a licensee (§ 318)…."))(citations omitted); *see generally Seeley ex rel. Shepard v. Derr*, 2013 WL 3776424, at *4 (M.D. Pa. 2013)("[T]he complete paucity of evidence that [the landlord] had received prior that the offending dog…was dangerous is fatal to any claim against the landlord under Pennsylvania law….")(citations omitted).

In *Rosenberry*, a minor child, accompanied by his grandparents, visited an establishment and was bit by a pit bull. 48 A.3d at 1257. The minor child's parent filed a civil action against the landlord of that establishment, alleging that the landlord's negligence resulted in the minor child's injuries, and that the landlord was in control of the property where the injury occurred and "knew or should have known of the [pit bull]'s dangerous propensities." *Id.* The landlord filed a motion for summary judgment, alleging that the parent "had failed to adduce evidence that the dog had dangerous propensities or that [l]andlord had actual knowledge of any dangerous propensities of the dog that would give rise to a duty on his part to control the animal or protect the minor child." *Id*. The trial court granted summary judgment in favor of the landlord, and, on appeal, our Superior Court affirmed the trial court's decision. *Id*. at 1258, 1264. Restating the well-established law on the duty of care owed by a landlord, the Superior Court noted that—on the issue of whether the landlord had knowledge of the dog's dangerous propensity—the landlord testified, via deposition, that the dog "was not aggressive…"; that there was no record evidence the pit bull demonstrated any vicious characteristics; that there was no record evidence that the landlord ever witnessed the pit bull's demeanor; that, unlike *Palermo v. Nails*, 483 A.2d 871 (Pa. Super. Ct. 1984), where the landlord was notified by the police that the dog had attacked a child, the landlord here received no such notifications and no "evidence of complaints…that have been generally held to constitute knowledge of a dog's dangerous or vicious propensities." *Id*. at 1259, 1261, 1264 (noting that the landlord testified that "the dog 'didn't have a mean bone in its body.'"). Reasoning

that "there was no evidence from which one could reasonably infer that [l]andlord had actual knowledge of the dog's alleged dangerous propensities to impose a duty of care[,]" our Superior Court affirmed the trial court's grant of summary judgment in favor of the landlord.

Reviewing the record in the light most favorable to Speece, Baier's deposition reveals that 1) on page 32, having been asked why Baier allowed another resident to have dogs at the Property, Baier responded that because those dogs were "smaller dogs" and were not "vicious pitbulls"; 2) on page 32, in response to the query "[s]o you have an understanding at least at that point in time, pitbulls could be vicious," Baier answered "Yes[,]" noting further that his understanding came from "[j]ust reading about things, hearing about things[]"; 3) on page 33, in response to the query "[a]nd you knew [pitbulls could be vicious] from common experience, correct[,]" Baier answered "Yes"; 4) on page 33, in response to the query "[A]t that point in time, September 28, you don't want any vicious pitbulls on your property," Baier answered "Yes[]"; and on page 34 and 35, in response to the queries "[Y]ou understand pitbulls to have a certain propensity…they can be vicious?" and "[Y]ou've heard about [pitbulls] attacking individuals and biting and being just overall vicious[,]" Baier answered "Yes." Baier Dep. 32:17-35:5.

The record evidence that Baier had actual notice that the Dog had a dangerous or vicious propensity appears to be thin. It is possible that the testimony at trial will establish that Baier had no notice that the Dog had vicious tendencies, but only that Baier had "heard" of some such behavior by other dogs, of that breed. The requirement of notice of vicious tendencies set forth in *Palermo v. Nails*, 483 A.2d 871 (Pa. Super. Ct. 1984), is almost certainly notice of vicious tendencies by a particular animal, as distinguished from anecdotal evidence of a reputation among certain animal breeds. For present purposes, it is sufficient for the Court to conclude that the record includes some evidence of notice, however thin it may first appear.

Defendant further contends that the record establishes, as a matter of law, that Baier did not have sufficient time to re-take the Property. Specifically, Baier claims

that the time constraints contained in the Landlord Tenant Act of 1951 (e.g., providing thirty-day notice to quit under 68 P.S. § 250.501), are such that Baier could not have both complied with the Act and removed the Dog from the Property before the Dog attacked Paisley. *See* Brief for Defendant Baier at 8-9 (noting the statutory eviction process and the timing of the Dog attack on Paisley). The Court notes, however, that the plain meaning of the word "enjoyed," as used by the *Rosenberry* Court, is "to have for one's use, benefit, or lot." *Enjoy*, MERRIAM-WEBSTER'S DICTIONARY, https://www.merriam-webster.com/dictionary/enjoy (last visited Sept. 24, 2024).

While Baier did not appear to exercise or implement his "right to control or remove the [Dog] by retaking the [Property]" under the Landlord Tenant Act of 1951, Baier certainly "enjoyed" that right as the landlord—i.e., having, for his use or benefit, the right to evict tenants in breach of lease agreements. Therefore, a reasonable jury could find, by a preponderance of the evidence, that Baier "[E]njoyed the right to control or remove the animal by retaking the premises." 48 A.3d at 1258.

ORDER

AND NOW, this 27th day of September, 2024, for the reasons more fully set forth in the Opinion above, the Court finds that the record evidence in this matter reveals a genuine issue of material fact as to a necessary element of the cause for trial. For that reason, Baier's Motion for Summary Judgment is **DENIED**.

Nothing set forth herein is intended to preclude Defendant David Baier from making a motion for a compulsory non-suit at the conclusion of the Plaintiff's case at trial, in the event that Plaintiff fails to introduce evidence sufficient to permit a reasonable jury to find, by a preponderance of the evidence, that David Baier had actual notice that the Dog had a dangerous or vicious propensity.

By the Court,

_____
William P. Carlucci, Judge

WPC/aml

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