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AURORA HOUGHTALING *v.* KIMBERLY BENEVIDES ET AL.
(AC 45568)

Bright, C. J., and Alvord and Moll, Js.

Syllabus

The plaintiff sought to recover damages from the defendants, B, a dog owner, and M, who the plaintiff alleged lived with B, pursuant to the statute (§ 22-357) that imposes liability on the owner or keeper of a dog for harm caused by the dog. B permitted the plaintiff to borrow a car to attend a meeting in another town, and the plaintiff agreed to take B's dog with her. When the plaintiff returned to the car after the meeting and partially opened the car door, B's dog jumped from the car and ran, wrapping the leash around the plaintiff's legs and causing her to fall to the ground and sustain injuries. The trial court granted the motion for summary judgment filed by M, concluding that there was no genuine issue of material fact that the plaintiff was the keeper of the dog at the time of the incident, and determined that, as such, she was barred from recovery under § 22-357. On the plaintiff's appeal to this court, *held* that the trial court properly rendered summary judgment in favor of M, there being no genuine issue of material fact that the plaintiff had the dog in her possession at the time of the incident and, accordingly, that she was a keeper of the dog, precluding her from recovering from M pursuant to § 22-357; at the time of the incident, the plaintiff exerted the degree of care and control over the dog similar to that of the owner, she voluntarily agreed to take the dog with her in the car, she had sole possession of the dog and no one else was in the car with her, it was clear that the plaintiff was charged with the responsibility and care of the dog during the time that she had the dog with her, the plaintiff exercised control over the dog's actions from the moment that she took the dog in the car to the moment she was injured, and she transported the dog away from the owner, driving from one town to another town; moreover, although the dog was in B's car, the plaintiff was in possession of both the car and the dog at a location away from B's property; furthermore, a keeper of a dog is not within the class of persons that the legislature intended to protect by enacting § 22-357.

Argued February 1—officially released February 28, 2023

Procedural History

Action to recover damages for personal injuries sustained as a result of an incident with a dog owned by the named defendant, brought to the Superior Court in the judicial district of New London, where the named defendant was defaulted for failure to plead; thereafter, the court, *Goodrow*, *J.*, granted the motion for summary judgment filed by the defendant Jakub Micengendler and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed*.

Christopher D. DePalma, for the appellant (plaintiff).

Daniel J. Krisch, with whom, on the brief, was *Jesse D. Conrad*, for the appellee (defendant Jakub Micengendler).

Opinion

ALVORD, J. The plaintiff, Aurora Houghtaling, appeals from the judgment of the trial court granting the motion for summary judgment filed by the defendant Jakub Micengendler[1] in this tort action, commenced pursuant to General Statutes § 22-357, commonly known as the dog bite statute. On appeal, the plaintiff claims that the court erred in rendering summary judgment because the underlying facts do not support the court's conclusion that there was no genuine issue of material fact that the plaintiff was a "keeper" of the dog that allegedly caused her to sustain an injury, thus precluding her from recovery pursuant to § 22-357. We affirm the judgment of the trial court.

The following facts, viewed in the light most favorable to the plaintiff, and procedural history are necessary for our resolution of this appeal. On December 4, 2018, the plaintiff borrowed a vehicle from Kimberly Benevides in Colchester to attend a meeting with the plaintiff's probation officer in Norwich. The plaintiff agreed to take Benevides' dog with her in the car. The dog was leashed while riding in the car, and no one else was in the car with the plaintiff and the dog.

The plaintiff left the dog in the car while she met with her probation officer. After her meeting, the plaintiff returned to the car. When she partially opened the door, the dog, still leashed, jumped from the car and ran in different directions. The dog's leash became wrapped around the plaintiff's legs, causing her to fall to the ground and sustain injuries.

In March, 2021, the plaintiff commenced the present action against the defendant and Benevides. The operative complaint, amended in April, 2021, alleged two counts pursuant to § 22-357, which imposes strict liability on the owner or keeper of a dog for any damage to the body or property of any person caused by the dog, with limited exceptions. In count one, the plaintiff alleged that Benevides was the "owner and/or keeper" of the dog. She alleged that Benevides told the plaintiff that she could use her vehicle on December 4, 2018, if the plaintiff took the dog with her. The plaintiff alleged that when she attempted to enter the vehicle after her appointment, the dog "bolted from the vehicle causing its leash to get tangled up with the plaintiff and causing her to be dragged to the ground." As a result, the plaintiff alleged that she suffered "severe and permanent injuries" including fractures of the right distal radius and ulnar styloid, deformities of the right wrist and elbow, scarring of her right arm and wrist, and loss of strength and mobility in her right arm. The plaintiff alleged that she has incurred medical and surgical expenses and has endured pain and suffering and loss of enjoyment in her normal life activities. The plaintiff alleged that she was not teasing, tormenting, or abusing the dog,

and was not committing a trespass or other tort. She alleged that Benevides was strictly liable for the plaintiff's injuries pursuant to § 22-357.

In count two, the plaintiff incorporated by reference the allegations of count one. She alleged that the defendant also was "the owner and/or keeper" of the dog. Specifically, the plaintiff alleged that, on the date of the incident, the defendant "was living with . . . Benevides and was providing room and board for the dog . . . and was also a keeper of said dog and thereby jointly responsible with . . . Benevides, pursuant to § 22-357 . . . ." On May 3, 2021, the defendant filed an answer, including special defenses,[2] in which he denied the allegations that he was the owner and/or keeper of the dog and that he was living with Benevides or providing room and board for the dog. The plaintiff thereafter filed a reply to the defendant's special defenses.

On February 14, 2022, the defendant filed a motion for summary judgment as to count two of the complaint and a memorandum of law in support of that motion. Therein, he argued that he was not the owner or keeper of the dog and, therefore, he could not be liable pursuant to § 22-357. Alternatively, he argued that, because the plaintiff was the keeper of the dog at the time of the incident, she could not recover pursuant to § 22-357.

The defendant attached to his memorandum of law: his own affidavit, the affidavit of Benevides, the plaintiff's responses to the defendant's requests for admission, and the plaintiff's responses to the defendant's interrogatories.[3] In the defendant's affidavit, he averred that he lived in Colchester at the time of the incident, he owns the property in Mansfield where Benevides lives, and he rents that property to her. The defendant averred that he has never owned or cared for the dog. Benevides averred that she lives in Mansfield and that the defendant never has lived at the home in Mansfield. Benevides averred that she purchased and owns the dog, cares for the dog, and the dog is solely her property. She averred that the defendant did not purchase, own, or care for the dog. In her responses to the defendant's requests for admission, the plaintiff admitted that she borrowed a vehicle from Benevides and the dog was in the vehicle that she borrowed. In her discovery responses, the plaintiff stated that she "believe[d] the owner of the vehicle was . . . Benevides."

On May 13, 2022, the plaintiff filed an objection to the defendant's motion for summary judgment, in which she argued that her "seemingly temporary relationship" with the dog was not sufficient to transform her into a keeper of the dog. (Emphasis omitted.) She argued that the defendant was a keeper of the dog. She attached her own affidavit, in which she averred that, on the date of the incident, she was living in Colchester and walked to 147 South Main Street, where Benevides and the defendant were living together. She averred that the

two had a romantic relationship and that the defendant provided financial support to Benevides and provided "lodging, refuge, and care for the dog . . . ." She further averred that the defendant would care for the dog while Benevides was incarcerated and that the plaintiff had been to the defendant's house in Colchester where the defendant was caring for the dog by himself. The plaintiff averred that she never had control of the dog "at any time prior to the incident." The plaintiff also appended to her objection various documents, including printouts of the Judicial Branch's criminal/motor vehicle conviction case details, a police press release, and a news bulletin entry, all purporting to show that Benevides lived at the address of 147 South Main Street in Colchester. In her objection, the plaintiff argued, based on the documents she submitted, that "[i]t appears [that Benevides] was in jail on multiple occasions wherein the defendant . . . was the sole keeper [of the dog] as asserted by the plaintiff." On May 20, 2022, the defendant filed a reply, reiterating his earlier positions. The court held oral argument on the motion for summary judgment on May 24, 2022.

On June 3, 2022, the court issued its memorandum of decision. The court concluded that there was no genuine issue of material fact that the plaintiff was the keeper of the dog at the time of the incident. Specifically, the court stated that the plaintiff, at the time of the incident, "had sole possession" of the dog, "accepted responsibility for the dog's care, and exercised dominion and control over the dog's actions." Accordingly, the court determined that the plaintiff was barred from recovery under § 22-357. Because it concluded that the plaintiff was a keeper of the dog at the time of the incident, the court declined to decide whether there was a genuine issue of material fact that the defendant was an owner or keeper of the dog.[4] This appeal followed.

Before turning to the plaintiff's claim on appeal, we first set forth our standard of review. "In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent. . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents

establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court under Practice Book § [17-45]. . . . Our review of the trial court's decision to grant [or to deny a] motion for summary judgment is plenary." (Footnote omitted; internal quotation marks omitted.) *Atlantic St. Heritage Associates, LLC* v. *Atlantic Realty Co.*, 216 Conn. App. 530, 539–40, 285 A.3d 1128 (2022).

On appeal, the plaintiff claims that the court erred in concluding that there was no genuine issue of material fact that the plaintiff was a keeper of the dog at the time of the incident. Specifically, she maintains that, "[a]t most, the plaintiff had temporary physical custody of [the dog]. This temporary physical custody . . . does not rise to the level of possession for purpose[s] of § 22-357." The defendant responds that "[t]he trial court properly held that the undisputed fact that the plaintiff had exclusive possession of [the dog] when she tripped over his leash entitles [the defendant] to judgment as a matter of law." We agree with the defendant.

We first review the substantive law governing liability pursuant to § 22-357, which provides in relevant part: "If any dog does any damage to either the body or property of any person, the owner or keeper . . . shall be liable for the amount of such damage, except when such damage has been occasioned to the body or property of a person who, at the time such damage was sustained, was committing a trespass or other tort, or was teasing, tormenting or abusing such dog. . . ." General Statutes § 22-357 (b). General Statutes § 22-327 (6) defines "[k]eeper" as "any person, other than the owner, harboring *or* having in his possession any dog . . . ." (Emphasis added.) "[Section] 22-357 imposes strict liability on the owner or keeper of a dog for harm caused by the dog, with limited exceptions."[5] (Internal quotation marks omitted.) *Coppedge* v. *Travis*, 187 Conn. App. 528, 533, 202 A.3d 1116 (2019). A "keeper" of a dog is precluded from recovery under § 22-357. *Murphy* v. *Buonato*, 42 Conn. App. 239, 250–51, 679 A.2d 411 (1996), aff'd, 241 Conn. 319, 696 A.2d 320 (1997).

Because the defendant argued that the plaintiff was a keeper by virtue of having the dog in her possession, and the court rendered summary judgment on that basis, our discussion focuses on the concept of possession. "[P]ossession [of a dog] cannot be fairly construed as anything short of the exercise of dominion and control similar to and in substitution for that which ordi-

narily would be exerted by the owner in possession." (Internal quotation marks omitted.) *Auster* v. *Norwalk United Methodist Church*, 286 Conn. 152, 160, 943 A.2d 391 (2008). "[A] person will not be deemed to be a keeper of a dog under § 22-357 unless that person exercises control over the dog in a manner similar to that which would ordinarily be exerted by the owner. . . . In other words, a nonowner of a dog cannot be held strictly liable for damage done by the dog to another in the absence of evidence that the nonowner was responsible for maintaining and controlling the dog at the time the damage was done. . . . [S]uch proof generally will consist of evidence that the nonowner was feeding, giving water to, exercising, sheltering or otherwise caring for the dog when the incident occurred." (Citations omitted; internal quotation marks omitted.) Id., 161–62.

Our Supreme Court previously has had occasion to construe the term keeper under different factual scenarios. The plaintiff relies principally on *Hancock* v. *Finch*, 126 Conn. 121, 9 A.2d 811 (1939). In that case, the plaintiff agreed to feed and provide water to the defendant's three dogs, who were kept in a kennel and runway behind the defendant's house, for five days while the defendant traveled. Id., 122. The plaintiff was instructed not to let the dogs out of the runway. Id. On the second day, while the plaintiff was preparing the dogs' food, he let the dogs out, and the dogs attacked and injured both the plaintiff and his wife. Id. Our Supreme Court determined that the trial court correctly declined to submit the defendant's special defense, which alleged that the plaintiff was a keeper of the dogs, to the jury. Id., 123. In support of its conclusion, the court stated that the plaintiff did not have possession of the dogs, in that he did not exert dominion and control similar to that which ordinarily would be exerted by the owner. Id. The court then reasoned that "[t]o subject one in the position of this plaintiff, having the temporary custody of a dog, to the heavy liability imposed by the statute would be to go far beyond its apparent object." Id.

Our Supreme Court reached the same conclusion in *Falby* v. *Zarembski*, 221 Conn. 14, 602 A.2d 1 (1992), on which the plaintiff also relies. There, the question for the court was whether there had been sufficient evidence presented at trial to establish that the defendant remodeling company was liable as a keeper of a dog who was owned by an employee of the remodeling company and brought to the work site by that employee. Id., 16–18. The employee had received permission from the company's president to bring the dog with him to the sites at which he would be working, and he frequently brought the dog to the sites, allowing him to run loose there. Id., 17. On one such occasion, the dog attacked a postal carrier delivering mail to a home at which the company was working. Id. On appeal following the jury

verdict returned in favor of the plaintiff postal carrier, our Supreme Court determined that the remodeling company did not harbor or have possession of the dog. Id., 19. In support of its conclusion, the court stated that there was no evidence that the company exercised any control over the actions of the dog. Id. It further noted a lack of any evidence that the company fed, watered, housed or otherwise cared for the dog. Id. Accordingly, the court reversed the judgment holding the company strictly liable as a keeper under § 22-357. Id., 20.

Finally, in *Auster* v. *Norwalk United Methodist Church*, supra, 286 Conn. 154, the defendant church appealed following a jury verdict in favor of the plaintiff, arguing that there was insufficient evidence to support a finding that the defendant was a keeper of a dog, which was owned by the defendant's employee and kept at the parish house where the employee lived. This court agreed with the defendant's claim and reversed the judgment of the trial court. Id., 156. Following certification, our Supreme Court affirmed the judgment of this court, reiterating that "ownership of the premises where a dog lives, unaccompanied by any evidence of caretaking of the dog or actual control over its actions . . . is not enough to hold a landlord or other property owner strictly liable for damage caused by the dog. This is true whether the dog's owner is a live-in employee, a tenant or merely a friend of the landlord." (Citation omitted; footnote omitted; internal quotation marks omitted.) Id.,163–64. Because there was no evidence that the defendant church had exerted control over the dog in a manner similar to that of an owner, the court determined that the plaintiff had failed to establish that the defendant was a keeper of the dog. Id., 164–65.

The defendant relies principally on *Murphy* v. *Buonato*, supra, 42 Conn. App. 240–41, in which this court concluded that the plaintiff was a keeper of a dog that he agreed to provide care for while the defendant traveled. This court recounted the following relevant facts: "On the evening before his departure, the defendant delivered the dog to the plaintiff, at the plaintiff's residence, and provided the plaintiff with dog food and a chain to secure the dog in the plaintiff's yard. The defendant instructed the plaintiff not to allow the dog to roam. The plaintiff took possession of the dog upon its delivery and, in doing so, assumed sole responsibility to feed and water it, to provide shelter for it, and to walk it. Furthermore, on the day he was bitten, it was the plaintiff who had tied the dog to a tree, later untied it and took hold of its collar to prevent the dog from running away." Id., 244. On the basis of these subordinate facts, this court determined that the plaintiff both harbored the dog, by providing it lodging and shelter, and exercised exclusive dominion and control over it. Id. Specifically, it considered that "the plaintiff . . . had sole possession of the defendant's dog, allowed it to live at his

own residence, provided it with shelter and lodging, accepted full responsibility for its care and controlled each of the dog's actions from the moment the defendant delivered it until the moment the plaintiff was bitten." (Emphasis omitted.) Id., 246. Last, this court rejected as unpersuasive the plaintiff's argument that he was not a keeper because his injuries occurred less than twenty-four hours after the dog was delivered to him and he was either asleep or at work for most of that time. Id. This court reaffirmed that "the determination of whether a person is a keeper turns on whether, and to what extent, a person in possession of a dog exercises dominion and control over it." Id.

Applying the principles expressed in our appellate case law to the facts of this case, we agree with the trial court that no genuine issue of material fact existed that the plaintiff had the dog in her possession at the time of the incident and, accordingly, she was a keeper of the dog. The facts of the present case are substantially dissimilar from those of *Hancock* v. *Finch*, supra, 126 Conn. 121, *Falby* v. *Zarembski*, supra, 221 Conn. 14, and *Auster* v. *Norwalk United Methodist Church*, supra, 286 Conn. 152, because in each of those cases the party alleged to be a keeper had care and control of the dog only to a limited degree or not at all. Instead, the present case is on all fours with *Murphy* v. *Buonato*, supra, 42 Conn. App. 239, in that the plaintiff, at the time of the incident, exerted the degree of care and control over the dog similar to that of the owner. First, the plaintiff voluntarily agreed to take the dog with her to her probation appointment in the car that she borrowed from Benevides. Second, the plaintiff had sole possession of the dog—no one else was in the car with the plaintiff and the dog. Thus, it was clear that the plaintiff was charged with the responsibility and care of the dog during the time that the plaintiff had the dog with her. Third, the plaintiff exercised control over the dog's actions from the moment that she took the dog in Benevides' car to the moment she was injured. Finally, the plaintiff transported the dog away from the owner, driving the dog from Colchester to Norwich; although the dog was in the owner's car, the plaintiff was in possession of both the car and the dog at a location away from the owner's property. Accordingly, we agree with the trial court that there existed no genuine issue of material fact that the plaintiff was a keeper of the dog at the time of the incident.

The plaintiff's arguments in support of her contention that she was not a keeper of the dog are unpersuasive. First, she focuses on the "temporary" nature of the relationship between her and the dog. The fact that the plaintiff may have been in charge of the dog only for the duration of the outing, however, in no way diminished her position of control over the dog at the time of the incident. Second, she argues that she "did not lodge, shelter or give refuge to the . . . dog." This argu-

ment is misplaced because it is premised on actions that could form the basis of a conclusion that a person harbored a dog, which is "to afford lodging, shelter or refuge to it." (Internal quotation marks omitted.) *Auster* v. *Norwalk United Methodist Church*, supra, 286 Conn. 160. The definition of "[k]eeper," however, includes both a person "harboring *or* having in his possession any dog . . . ." (Emphasis added.) General Statutes § 22-327 (6). Thus, the defendant was not required to demonstrate that the plaintiff harbored the dog.

Finally, as the plaintiff concedes, "[a] keeper of a dog is not within the class of persons that the legislature intended to protect by enacting § 22-357. Section 22-357 is drastic, and its purport is that a person who owns a dog does so at his peril. The same is true as to a keeper, so long as he remains a keeper." (Internal quotation marks omitted.) *Murphy* v. *Buonato*, supra, 42 Conn. App. 250–51. Because the plaintiff's status as a keeper precludes her from recovering from the defendant pursuant to § 22-357, the court properly rendered summary judgment in favor of the defendant.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] In her complaint, the plaintiff also named Kimberly Benevides, the dog's owner, as a defendant. On February 10, 2022, the plaintiff filed a motion for default for failure to plead as to Benevides, which was granted on February 25, 2022. For ease of reference, we refer in this opinion to Micengendler as the defendant and Benevides by name.

[2] The defendant alleged in his special defenses that the plaintiff's injuries were caused by her own actions and that the plaintiff's claim against the defendant was "barred by the applicable statute of limitations for an alleged injury by a dog of a tenant as against the landowner."

[3] The defendant also attached the sworn statement of Richard Pezzente, a cousin of Benevides. Pezzente stated that he was called by the plaintiff to retrieve the dog from the hospital where the plaintiff had driven herself and the dog. He brought the dog to Benevides. He stated that Benevides bought the dog in 2015 and still owned the dog.

[4] On appeal, the defendant claims, as an alternative basis on which to affirm the judgment of the trial court, that he was not the dog's keeper. Because we disagree with the plaintiff's claim on appeal, we need not consider the proposed alternative ground for affirmance.

[5] "[The] principal purpose and effect [of § 22-357] was to abrogate the common-law doctrine of scienter as applied to damage by dogs to persons and property, so that liability of the owner or keeper became no longer dependent upon his knowledge of the dog's ferocity or mischievous propensity; literally construed the statute would impose an obligation on him to pay for any and all damage the dog may do of its own volition." (Internal quotation marks omitted.) *Coppedge* v. *Travis*, 187 Conn. App. 528, 533, 202 A.3d 1116 (2019).