MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Alan Caruso,

Appellant-Plaintiff

v.

Donald Deel and Joan Deel,

Appellees-Defendants

April 26, 2024

Court of Appeals Case No.
23A-CT-1620

Appeal from the Lake Superior Court

The Honorable Kristina C. Kantar, Judge

Trial Court Cause No.
45D04-2003-CT-271

Memorandum Decision by Judge Mathias
Judges Bailey and Crone concur.

Mathias, Judge.

[1] Alan Caruso appeals the Lake Superior Court's entry of summary judgment in favor of Donald and Joan Deel (collectively, "Deel") on Caruso's complaint alleging Deel's negligence. Caruso presents one issue for our review, namely, whether the trial court erred when it granted Deel's summary judgment motion.

[2] We affirm.

Facts and Procedural History

[3] On April 10, 2018, Caruso was visiting at his friend Deel's house. Deel had two dogs at the time, Kobe, a twenty-five-pound standard poodle/bichon frise mix, and Rosie, a goldendoodle. Caruso and Deel were in the basement eating snacks when Kobe approached Caruso, who was sitting on a couch. Kobe was "growling," and he "rush[ed]" at Caruso. Appellant's App. Vol. 2, pp. 71-72. Kobe proceeded to bite Caruso's shoe. Caruso shoved a beer bottle in Kobe's face, but Kobe moved from Caruso's shoe towards his abdomen. In his effort to get away from Kobe, Caruso "pushed [him]self over the back of the couch and landed on the floor." *Id.* at 72. Kobe ran around the couch and started barking in Caruso's face. Deel finally restrained Kobe and removed him from the basement. Caruso sustained a rotator cuff tear in his left shoulder as a result of the attack.

[4] On March 10, 2020, Caruso filed a complaint alleging that Deel's negligence caused Caruso's injuries. Deel filed a summary judgment motion arguing that he was not liable to Caruso as a matter of law. In response, Caruso designated

evidence, including, in relevant part, Deel's deposition and his own deposition.[1] Following a hearing, the trial court entered summary judgment for Deel. This appeal ensued.

Discussion and Decision

[5] Caruso argues that the trial court erred when it granted summary judgment for Deel. Our standard of review is well settled.

> When this Court reviews a grant or denial of a motion for summary judgment, we "stand in the shoes of the trial court." *Burton v. Benner*, 140 N.E.3d 848, 851 (Ind. 2020) (quoting *Murray v. Indianapolis Public Schools*, 128 N.E.3d 450, 452 (Ind. 2019)). Summary judgment is appropriate "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Campbell Hausfeld/Scott Fetzer Co. v. Johnson*, 109 N.E.3d 953, 955-56 (Ind. 2018) (quoting Ind. Trial Rule 56(C)). We will draw all reasonable inferences in favor of the non-moving party. *Ryan v. TCI Architects/Engineers/Contractors. Inc.*, 72 N.E.3d 908, 912-13 (Ind. 2017). We review summary judgment de novo. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014).

Arrendale v. Am. Imaging & MRI, LLC, 183 N.E.3d 1064, 1067-68 (Ind. 2022).

And, as our Court has explained,

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[1] Caruso also designated as evidence American Kennel Club website printouts regarding the characteristics of standard poodles and bichon frises. Deel moved to strike the website printouts. Following a hearing, the trial court granted Deel's motion to strike. On appeal, Caruso does not challenge the trial court's order striking that proffered evidence.

> [n]egligence is a tort that requires proof of "(1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty; and (3) injury to the plaintiff resulting from the defendant's breach." *Rhodes v. Wright*, 805 N.E.2d 382, 385 (Ind. 2004). "Negligence will not be inferred; rather, all of the elements of a negligence action must be supported by specific facts designated to the trial court or reasonable inferences that might be drawn from those facts." *Kincade v. MAC Corp.*, 773 N.E.2d 909, 911 (Ind. Ct. App. 2002). "An inference is not reasonable when it rests on no more than speculation or conjecture." *Id.* "A negligence action is generally not appropriate for disposal by summary judgment." *Id.* "However, a defendant may obtain summary judgment in a negligence action when the undisputed facts negate at least one element of the plaintiff's claim." *Id.*

Evansville Auto., LLC v. Labno-Fritchley, 207 N.E.3d 447, 454 (Ind. Ct. App. 2023), *trans. denied*.

[6] Here, in support of summary judgment, Deel designated evidence showing that he had no actual or constructive knowledge that Kobe had dangerous propensities prior to the attack on Caruso. As we have explained,

> a duty to protect against harm caused by domestic animals can be established by one (or both) of the following: (1) a defendant's knowledge that a particular animal has a propensity for violence or (2) a defendant's ownership of a member of a class of animals that are known to have dangerous propensities, as the owner of such an animal is bound to have knowledge of that potential danger.

Perkins v. Fillio, 119 N.E.3d 1106, 1112 (Ind. Ct. App. 2019).

In *Poznanski v. Horvath*, 788 N.E.2d 1255 (Ind. 2003), our Supreme Court rejected the notion that a first-time, unprovoked biting is sufficient by itself for a jury to infer that the dog's owner knew, or should have known, of the dog's dangerous or vicious tendencies. *Id.* at 1259. In so holding, the Court explained that owners may be liable for harm caused by their domestic pet "but only if the owner knows or has reason to know that the animal has dangerous propensities." *Id.* Such knowledge, however, may be constructive rather than actual. *Id.* [Further], the Court explained as follows:

> [T]he owner is bound to know the natural tendencies of the particular class of animals to which the dog belongs. If the propensities of the class to which the dog belongs are the kind which one might reasonably expect would cause injury, then the owner must use reasonable care to prevent injuries from occurring.
>
> Thus, where there is no evidence of an owner's actual knowledge that his or her dog has dangerous propensities, the owner may nonetheless be held liable provided there is evidence that the particular breed to which the dog belongs has dangerous propensities. And this is so even where the owner's dog has never before attacked or bitten anyone. *See, e.g.*, *Holt v. Myers*, 47 Ind. App. 118, 93 N.E. 1002, 1002-03 (1911) (observing that the ferocious nature of a bulldog was sufficient to provide the owner with constructive notice of the dog's dangerous propensities).

Id. at 1259-60 (internal quotations and citation omitted) (emphasis supplied).

Daniels v. Drake, 195 N.E.3d 866, 869-70 (Ind. Ct. App. 2022), *trans. denied*.

Thus, Deel argued that, as he lacked prior knowledge of any dangerous

propensities, he negated the duty element of Caruso's negligence claim. We agree with Deel that his designated evidence established a prima facie showing that he was entitled to summary judgment.

[7] Thus, the burden shifted to Caruso to demonstrate the existence of a genuine issue of material fact. In his attempt to do so, Caruso designated evidence showing that Deel had previously observed Kobe growl at Deel's other dog, Rosie, over food. Caruso argued that that evidence showed that Kobe had "food aggression tendencies." Appellant's App. Vol. 2, p. 183. And Caruso designated as evidence Deel's own deposition testimony that Kobe had growled at Caruso right before he attacked him. Caruso argued that that evidence showed that Deel had a duty to keep Kobe away from Caruso when there was food present.

[8] We hold that Caruso's designated evidence fails to show a genuine issue of material fact regarding Deel's actual or constructive knowledge of Kobe's alleged dangerous propensities prior to the attack. Caruso's designated evidence showed only that Kobe had previously growled at Rosie, not at a human being. Without evidence of any previous aggressive behavior towards people, Caruso could not meet his burden to show a genuine issue of material fact precluding summary judgment. *See Daniels*, 195 N.E.3d at 870 (stating defendants had no actual knowledge of a dog's dangerous propensities where "he had not acted aggressively toward any person and had never needed to be muzzled, be restrained, or take calming aids" and where he "had barked at delivery drivers before but never growled or been aggressive").

[9] For all these reasons, Caruso has not shown that the trial court erred when it entered summary judgment for Deel.

[10] Affirmed.

Bailey, J., and Crone, J., concur.

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