STATE OF MICHIGAN

COURT OF APPEALS

NEAL BARTHOLOMEW,

Plaintiff-Appellant,

v

RICHARD HAZY and CAROL HAZY,

Defendants-Appellees.

UNPUBLISHED
March 9, 1999

No. 207577
Oakland Circuit Court
LC No. 96-518509 NO

Before: MacKenzie, P.J., and Gribbs and Wilder, JJ.

PER CURIAM.

Plaintiff, who injured himself on a chimney cap after jumping on his truck bed to avoid defendants' dog, appeals by right from an order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We affirm.

We review de novo a trial court's grant of summary disposition under MCR 2.116(C)(10). *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). Like the trial court, we look at the entire record, view the evidence in favor of the nonmoving party, and decide if there exists a relevant issue about which reasonable minds might differ. *Id.* If, as in the instant case, the nonmoving party would bear the burden of proof at trial, that party, in order to avoid summary disposition, must provide documentary evidence showing the existence of a disputable issue. *Quinto v Cross & Peters*, 451 Mich 358, 362; 574 NW2d 314 (1996).

In the complaint, plaintiff sought compensation on three separate bases: common-law strict liability, negligent failure to control, and premises liability. For a successful strict liability claim, plaintiff had to show that his injury resulted from an "abnormal dangerous propensit[y]" of the dog and that defendants knew or should have known about the dangerous propensity. *Trager v Thor*, 445 Mich 95, 99; 516 NW2d 69 (1994). Plaintiff made no such showing. Although he alleged that the dog growled, barked, and charged him, he was unable to counter defendants' assertion that they had experienced no prior problems with the dog. Plaintiff attempts to construe defendant Carol Hazy's deposition testimony as meaning that she knew about the dog's tendency to charge people, but our review of the record reveals that Hazy knew merely of the dog's tendency to bark while running to greet

or investigate a stranger. We do not view this tendency as "abnormal" or "dangerous" and thus conclude that plaintiff did not establish a viable strict liability claim.

For a successful negligent failure to control claim, plaintiff had to show that defendants ineffectively controlled the dog "'in a situation where it would reasonably be expected that injury could occur.'" *Trager, supra* at 106, quoting *Arnold v Laird*, 621 P2d 138, 141 (Wash 1980). Moreover,

> The amount of control required is that which would be exercised by a reasonable person based upon the total situation at the time, including the past behavior of the animal and the injuries that could have been reasonably foreseen. [*Id.*]

As indicated earlier, plaintiff presented no evidence that defendants had reason to suspect that their dog would charge or attack someone. Moreover, it was not foreseeable that plaintiff, upon seeing the dog, would jump on the bed of his truck, trip over a rope or piece of rubber, and hit his hand on a chimney cover. Accordingly, plaintiff did not make a prima facie case of negligent failure to control.

For a successful premises liability claim, assuming arguendo that plaintiff was defendants' invitee, plaintiff had to show that defendants failed to exercise reasonable care to protect him from a foreseeable, dangerous condition on the land. *Hottmann v Hottmann*, 226 Mich App 171, 175; 572 NW2d 259 (1997). Again, plaintiff failed to show that any potential danger regarding the dog was foreseeable, and he therefore did not establish a viable premises liability claim.

Since all three of plaintiff's theories of recovery required that the alleged danger associated with the dog be foreseeable, and since plaintiff presented no such evidence, summary disposition was appropriate. Even though the trial court, in ruling on the summary disposition motion, appeared to focus only on the dog's characteristics on the day of the accident, as opposed to the dog's past characteristics and the corresponding foreseeability or unforeseeability of danger, this does not mandate a reversal of the ruling. We do not reverse a trial court's ruling, even if it used improper reasoning, as long as it reached the correct result. *Leszcynski v Johnston*, 155 Mich App 392, 396; 399 NW2d 70 (1986).

Plaintiff also argues that the trial court erred in denying his motion for reconsideration. He believes that the court should not have granted summary disposition with respect to all three counts of the complaint since defendants' motion spoke only to the premises liability claim. We review a trial court's decision to deny a motion for reconsideration for an abuse of discretion. *In re Beglinger Trust*, 221 Mich App 273, 279; 561 NW2d 130 (1997). We disagree that defendants' motion spoke only to the premises liability claim. Defendants did not fashion the motion as being for *partial* summary disposition, and, after setting forth the three theories of liability, they alleged that there was no basis for any of the allegations in the complaint. The trial

court implicitly ruled on all three of plaintiff's theories, and plaintiff's motion for reconsideration merely reiterated these theories. Thus, the trial court did not abuse its discretion in denying the motion for reconsideration. See MCR 2.119(F)(3).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Roman S. Gribbs
/s/ Kurtis T. Wilder