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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Brenda Ostler,

Plaintiff,

vs.

Keith Segó, et al.,

Defendants.

No. CV-15-08026-PCT-PGR

ORDER

Pending before the Court is Defendants Keith and Rita Segó's Motion for Summary Judgment (Doc.35), wherein they seek judgment as to the entirety of the plaintiff's complaint, and Plaintiff's Cross-Motion for Summary Judgment (Doc. 41), wherein she seeks judgment as to Court IV of her complaint. Having considered the parties' memoranda, the Court finds that the plaintiff's cross-motion should be denied, and that the defendants' motion should be granted pursuant to Fed.R.Civ.P. 56 because there is no genuine dispute as to any material fact and the defendants are entitled to entry of judgment as a matter of law.¹

¹

Although the parties have requested oral argument, the Court concludes that oral argument would not aid the decisional process.

1 Background²

2 This diversity-based removed action arises from an accident inside a fenced-in
3 dog run in a RV park in which the defendants' dog ran into the plaintiff causing her
4 to fall and be injured. Notwithstanding the parties' inexplicable failure to
5 authenticate their summary judgment-related exhibits, the Court considers the
6 following facts to be either undisputed or at least not controverted for purposes of the
7 summary judgment motions: the plaintiff and defendant Rita Sego and their
8 respective dogs were inside the "big dog" run at the RV park at the time the
9 defendants' dog injured the plaintiff; the defendants' dog was playing off-leash at the
10 time of the accident; the dog run is enclosed by a chain link fence and is between
11 75 and 100 feet long and is much longer than it is wide; the dog run has a dual gate
12 system in which entry is made into the fenced area through an initial gate and then
13 into the dog run itself through a second gate; and dogs cannot enter or leave the dog
14 run by themselves.

15 Although the plaintiff's state court complaint contained four claims under
16 Arizona law, and the defendants have moved for summary judgment on all of them,
17 the plaintiff, in her response/cross-motion (Doc. 41, at 3), withdrew all but her fourth
18 claim, wherein she alleges a claim for strict liability pursuant to A.R.S. § 11-1020.³
19 Section 11-1020 provides that "[i]njury to any person or damage to any property by
20 a dog while at large shall be the full responsibility of the dog owner or person or
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23 Because the parties are familiar with the facts of the case, the Court
24 references only those facts necessary to explain its decision.

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26 The withdrawn claims are for negligence (Count I), strict liability
pursuant to A.R.S. § 11-1014(A)(2) [sic - § 11-1014.01(A)(2)] (Count II), and strict
liability pursuant to A.R.S. § 11-1012(D) (Count III).

1 persons responsible for the dog when such damages are inflicted.” A.R.S. § 11-
2 1001(2) defines “at large” for purposes of § 11-1020 as meaning “being neither
3 confined by an enclosure nor physically restrained by a leash.”

4 Discussion

5 The parties agree that the only issue that the Court needs to decide in order
6 to resolve the summary judgment motions is whether the defendants’ dog was
7 “confined by an enclosure” at the time it injured the plaintiff. The Court concludes
8 as a matter of law that it was so confined.

9 The parties disagree as to what the phrase “confined by an enclosure” means.
10 Under Arizona law, the interpretation of a statute is a matter of law. Barry v. Alberty,
11 843 P.2d 1279, 1281 (Ariz.App.1992). The Court’s goal in construing a statute is to
12 give effect to the intent of the state’s legislature, which requires that the Court apply
13 the usual or commonly understood meaning to each word or phrase in the statute
14 unless the legislature clearly intended a different meaning. Spirlong v. Browne, 336
15 P.3d 779, 782 (Ariz.App.2014); Canon School Dist. No. 50 v. W.E.S. Construction
16 Co., 869 P.2d 500, 503 (Ariz.1994) (“[W]here the language [of a statute] is plain and
17 unambiguous, courts generally must follow the text as written. ... Accordingly, absent
18 a clear indication of legislative intent to the contrary, we are reluctant to construe the
19 words of a statute to mean something other than what they plainly state.”) To
20 determine the plain meaning of a term, courts refer to established and widely used
21 dictionaries. Western Corrections Group, Inc. v. Tierney, 96 P.3d 1070, 1074
22 (Ariz.App.2004). The defendants argue, and the Court agrees, that they cannot be
23 liable to the plaintiff pursuant to § 11-1020 because their dog was not “at large”
24 because it was “confined by an enclosure” at the time of the accident. The dog run
25 in which the defendants’ dog was playing at the time of the accident, being fully
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1 fenced-in with a dual gate opening, constitutes an enclosure under the ordinary
2 dictionary meaning of the word and the defendants' dog, being unable to leave that
3 enclosure on its own, was confined within that enclosure at the time of the accident.

4 Such an interpretation does not, as the plaintiff argues, violate the intent of
5 §11-1020 by ending responsible dog ownership at the gates off a dog park. The
6 plaintiff's contention that the exceptions to § 11-1020 liability set forth by § 11-
7 1001(2) "require that the dog be limited, confined, and under the physical control of
8 the owner" is not supported by the plain language of § 11-1001(2). Being "confined
9 by an enclosure" and being "restrained by a leash" are two separate exceptions to
10 the "at large" requirement of § 11-1020. See Kaweske v. DeRosa, 2016 WL
11 3457898, at *3 (D.Ariz. June 24, 2016) (In an action by a plaintiff who was injured
12 by the defendants' unleashed dog inside a fenced-in dog park, the court noted that
13 the sole issue on summary judgment regarding the plaintiff's claim for strict liability
14 pursuant to § 11-1020 was "the legal question of whether a dog without a leash in
15 a fenced-in dog park is 'at large' under the statute." In granting summary judgment
16 to the defendants, the court concluded for purposes of § 11-1020 liability that "[a]
17 fenced-in area is an 'enclosure' in the ordinary sense of the word[,] and that "the
18 dog park is entirely fenced-in such that the dogs are restrained from leaving the dog
19 park on their own accord, and therefore the dogs that play in the dog park are
20 'confined by an enclosure.' A.R.S. § 11-1001. As such, dogs are not 'at large' when
21 they are in the dog park, regardless of whether they are leashed.") Therefore,

22 IT IS ORDERED that Defendants Keith and Rita Sego's Motion for Summary
23 Judgment (Doc. 35) is granted and that Plaintiff's Cross-Motion for Summary
24 Judgment (Doc. 41) is denied. The Clerk of the Court shall enter judgment for the

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1 defendants accordingly.

2 DATED this 8th day of August, 2016.

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Paul G. Rosenblatt
United States District Judge

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