STATE OF MICHIGAN

COURT OF APPEALS

NICOLE BURLING, by Next Friend RICHARD BURLING,

Plaintiff-Appellant,

v

DENNIS MICHAEL SKIEF,

Defendant,

and

SASHABAW MEADOWS, LLC,

Defendant-Appellee.

UNPUBLISHED
October 22, 2020

No. 350575
Oakland Circuit Court
LC No. 2018-166072-NO

Before: METER, P.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order for entry of default judgment against defendant Dennis Michael Skief and challenges the trial court's order granting summary disposition to defendant Sashabaw Meadows, LLC (Sashabaw), under MCR 2.116(C)(10) (no genuine issue of material fact). We affirm.

I. FACTS & PROCEDURAL HISTORY

This case concerns a dog bite incident that occurred at Sashabaw's mobile home park. Plaintiff, then eight years old, walked up to Skief's front door, which was open with the screen door closed, to invite Skief's daughter to play. Stylez, Skief's two-year-old Labrador and Bullmastiff mix dog, was asleep near the front door, facing Skief's wife seated at the kitchen table. Plaintiff knocked on the screen door, "smashed" her face on the screen door, and asked if Skief's daughter was home, startling Skief's wife and prompting Stylez to jump up, lunge at the screen door, and break the door's latch. The door opened and Stylez ran out and bit plaintiff on the arm.

Plaintiff sued Sashabaw for negligence, alleging it knew or should have known of Stylez's vicious nature, yet still allowed Stylez to remain on Skief's property, directly and proximately

causing plaintiff's injuries. Moreover, plaintiff alleged Skief and Sashabaw violated Sashabaw's rules and regulations because Stylez was a vicious dog of a breed prohibited by those rules and regulations.

Sashabaw filed a motion for summary disposition and argued that plaintiff failed to present evidence that Sashabaw was aware of Stylez's violent tendencies, and that its rules and regulations regarding pets did not give rise to a duty of care. Plaintiff argued there was a genuine issue of material fact regarding whether Stylez was dangerous before the incident and whether Sashabaw should have known of the dog's propensities. Plaintiff argued Sashabaw's rules and regulations created a duty of care to protect others from a violation of those rules by another tenant because the primary purpose of the dog breed restriction was to protect people from harm. The trial court concluded there was no evidence to suggest Stylez was anything other than a peaceful pet before the incident, or Sashabaw knew or should have known of Stylez's violent tendencies and that Sashabaw's rules regarding pet ownership did not give rise to a duty to protect plaintiff from Stylez. The trial court granted Sashabaw's motion for summary disposition, denied plaintiff's motion for reconsideration and entered an order of default judgment against Skief. This appeal followed.

II. ANALYSIS

Plaintiff asserts the trial court erred when it granted summary disposition to Sashabaw. We disagree.

We review de novo a trial court's decision regarding a motion for summary disposition under MCR 2.116(C)(10), which tests the factual sufficiency of a claim. *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees v Pontiac No 2*, 309 Mich App 611, 617-618; 873 NW2d 783 (2015). This review includes questions of law such as whether a duty exists. *Hill v Sears, Roebuck & Co*, 492 Mich 651, 659; 822 NW2d 190 (2012). When deciding a motion for summary disposition under MCR 2.116(C)(10), we consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in a light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition should be granted when "there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

To establish a prima facie case of negligence, a plaintiff must prove duty, breach of that duty, causation, and damages. *Brown v Brown*, 478 Mich 545, 552; 739 NW2d 313 (2007). "It is well established where there is no legal duty, there can be no actionable negligence." *Blackwell v Citizens Ins Co of America*, 457 Mich 662, 667; 579 NW2d 889 (1998) (quotation marks and citation omitted). "Duty is essentially a question of whether the relationship between the actor and the injured person gives rise to any legal obligation on the actor's part for the benefit of the injured person." *Brown*, 478 Mich at 552 (quotation marks and citation omitted).

Plaintiff first argues the trial court erred in concluding that Sashabaw owed no duty to plaintiff. We disagree.

We consider the following factors to determine whether a duty exists:

> [F]oreseeability of harm, degree of certainty of injury, closeness of connection between the conduct and injury, moral blame attached to the conduct, policy of preventing future harm, and . . . burdens and consequences of imposing a duty and the resulting liability for breach. [*Braun v York Props, Inc*, 230 Mich App 138, 147; 583 NW2d 503 (1998), quoting *Buczkowski v McKay*, 441 Mich 96, 100-101, 101 n 4; 490 NW2d 330 (1992).]

Common canine behavior is usually "insufficient to show that a dog is abnormally dangerous or unusually vicious." *Hiner v Mojica*, 271 Mich App 604, 612; 722 NW2d 914 (2006). "[T]he mere fact that a dog barks, growls, jumps, or approaches strangers in a somewhat threatening way is common canine behavior." *Hiner*, 271 Mich App at 612. "Thus, such behavior will ordinarily be insufficient to show that a dog is abnormally dangerous or unusually vicious." *Id*.

Plaintiff contends Sashabaw owed a duty to plaintiff because her injury was foreseeable, alleging Sashabaw knew, or should have known, about Stylez's vicious nature 10 months earlier when it learned Skief had a dog. Indeed, Sashabaw learned Skief had Stylez 10 months before the incident, but Sashabaw was aware that Stylez was not one of the prohibited breeds and had no history in the community as an aggressive dog. Plaintiff relies entirely on the Oakland County Animal Control report, which references Stylez's conduct as "aggressive" before the bite and "territorial" after the bite, to argue Stylez had a vicious nature before the incident. However, the animal control report does not qualify whether "before the bite" means the behavior exhibited by the dog immediately preceding the incident, or a long-term behavior observed involving the dog. Moreover, Stylez was described as a friendly dog who played with the neighborhood children and liked to socialize at the dog park and Skief told an Animal Control Officer that Stylez "ha[d] never bitten anyone in the past . . . ." Additionally, even if Stylez was aggressive or protective before the bite, these are common traits associated with canines and generally do not satisfy a plaintiff's burden of establishing that a dog is abnormally dangerous or unusually vicious. *Hiner*, 271 Mich App at 612. Therefore, plaintiff's injury was not foreseeable and Sashabaw did not owe plaintiff any duty.

Moreover, Sashabaw owed no duty to plaintiff under their special relationship as landlord and tenant. Michigan law recognizes a special relationship exists between a landlord and a tenant, creating "a duty to keep reasonably safe from physical hazard areas over which they exert control." *Bailey v Schaaf*, 494 Mich 595, 605; 835 NW2d 413 (2013). A landlord's duty does not extend to areas "within the tenant's leasehold." *Id*. at 616. Because Skief retained control of the leased lot and home, Sashabaw owed no duty to plaintiff when she stood on Skief's porch, within his leasehold. See *id*.

Additionally, Sashabaw's rules regarding pet ownership on its property did not create a duty to protect plaintiff. A landlord has no duty to third parties to enforce a pet provision in its rules and regulations. *Braun*, 230 Mich App at 148-149. A landlord can only be held liable for injuries from a tenant's dog if the landlord knew of the dangerous nature of the dog at the time the parties entered into the lease. *Feister v Bosack*, 198 Mich App 19, 26; 497 NW2d 522 (1993). "If a third party is injured before the landlord lawfully could have evicted the tenant, the landlord cannot be liable, even if he knew about the dog's vicious nature." *Id*. Ten months before the incident, a Sashabaw maintenance worker learned Skief had a dog and reported it to Sashabaw.

Sashabaw notified Skief of the additional pet fee, in accordance with Sashabaw's rules, which Skief started paying. Under Sashabaw's rules and regulations, a failure by a tenant to comply with the pet rules was sufficient cause to warrant either a $50 per occurrence fee, or eviction. Skief's agreement to pay the pet fee brought him in compliance with Sashabaw's rules and Sashabaw had no authority to evict Skief on the day of the incident.

Contrary to plaintiff's argument, the trial court's reliance on *Szkodzinski v Griffin*, 171 Mich App 711; 431 NW2d 51 (1988) is not improper. See *Braun*, 230 Mich App at 142-144 (agreeing with the *Szkodzinski* Court that a landlord owes no duty to third parties for a tenant's dog); *Feister*, 198 Mich App at 22-24 (expanding *Szkodzinski* to prevent a landlord's liability for a tenant's dog unless the landlord had grounds to evict tenant before the injury); *Hiner*, 271 Mich App at 609-610 (recognizing a dog owner is strictly liable for damage only if he or she knows or has reason to know of the dog's vicious nature).

Plaintiff next argues that there was a genuine issue of material fact regarding whether Stylez was dangerous and whether Sashabaw knew, or should have known, of Stylez's dangerous nature and again relies entirely on the animal control report. As discussed above, the report is insufficient to establish that Stylez had a vicious nature or that Skief or Sashabaw knew about such an alleged nature, nor was Sashabaw obligated ascertain Stylez's nature when it learned Skief had the animal. See *Braun*, 230 Mich App at 148 (concluding that a landlord has no duty to third parties to enforce a pet provision in its rules and regulations). Thus, plaintiff's claim of error is without merit.

III. CONCLUSION

The trial court properly granted summary disposition in favor of Sashabaw. Accordingly, we affirm.

/s/ Patrick M. Meter
/s/ Douglas B. Shapiro
/s/ Michael J. Riordan