

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 3, 2023 Session

FILED
07/20/2023
Clerk of the
Appellate Courts

CAROLYN CRUISE v. BRITTANY BYRD

Appeal from the Circuit Court for Davidson County
No. 21C-1512 Clifton David Briley, Judge

No. M2022-01578-COA-R3-CV

This appeal arises out of a dog bite incident that occurred at a dog park within an apartment complex. The plaintiff filed a complaint against the defendant who owned the dog that bit her. The defendant filed a motion for summary judgment. The trial court entered an order granting the defendant’s motion for summary judgment and dismissing the plaintiff’s complaint with prejudice. The plaintiff appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and JEFFREY USMAN, J., joined.

Benjamin K. Raybin, Nashville, Tennessee, for the appellant, Carolyn Cruise.

Joshua G. Offutt and John Dana Slater, Nashville, Tennessee, for the appellee, Brittany Byrd.

OPINION

I. FACTS & PROCEDURAL HISTORY

The case involves a dog bite incident that occurred in September 2020. At the time of the incident, Ms. Carolyn Cruise and Ms. Brittany Byrd were both lawful tenants of an apartment complex in Nashville and were with each of their dogs at a dog park within their complex. The dog park was a fenced-in area on the property of the complex and was only used by residents of the complex. Neither dog was on a leash at the time of the incident.¹

¹ According to the rules of the dog park, dog owners were required to maintain control over their dogs at all times, but their dogs were not required to be on a leash while inside the dog park.

Ms. Byrd's dog attacked Ms. Cruise's dog, and Ms. Cruise was bitten and injured by Ms. Byrd's dog when she intervened. Afterward, Ms. Cruise was treated at Vanderbilt Medical Center where she received multiple stitches, a tetanus shot, and three rounds of rabies shots.

In September 2021, Ms. Cruise filed a complaint against Ms. Byrd alleging negligence and negligence per se. Ms. Byrd filed an answer. After discovery was conducted, Ms. Byrd filed a motion for summary judgment in August 2022. In support of her motion, she asserted that she could not be liable for negligence because she did not have knowledge of her dog's dangerous propensities and she fell under the residential exception in Tennessee Code Annotated section 44-8-413. She further asserted that she could not be liable for negligence per se under section 44-8-408 because her dog was on the premises of the apartment complex where she was a lawful lessee. Ms. Cruise filed a response submitting that the only issue for the trial court to decide was a legal one, which was whether the dog park at the apartment complex was a public place or a private residential property. She argued that the dog park within the apartment complex was a public place rather than a residential area.

The trial court entered its order in October 2022. The court found that the following facts were undisputed by the parties: (1) both parties were lawful tenants of the apartment complex at the time of the incident; (2) Ms. Cruise was injured by Ms. Byrd's dog while the parties and their respective dogs were inside the dog park on the premises of the apartment complex; (3) the dog park was available only to residents of the apartment complex and was not open for use by the general public; and (4) residents who used the dog park were not required to keep their dogs on a leash while inside the dog park. The court then found that Ms. Cruise presented insufficient evidence of Ms. Byrd's knowledge of her dog's dangerous propensities. Therefore, in order for Ms. Cruise to recover, the court stated that she must prove that the dog bite took place in a public location or that the dog was running at large.

The trial court explained it was undisputed that Ms. Byrd was a lawful tenant of the apartment complex where the dog bite took place and that Ms. Byrd was permitted to use the dog park. The court found that the proof was insufficient with respect to whether the apartment complex was anything other than residential. Additionally, the court found that the plain language of the statutes in question indicated the Legislature's intent that apartment complexes should fall within section 44-8-413(c)(1)'s inclusion of "residential, farm, or other noncommercial property," explaining that the statute expressly included "lawful tenant[s] or lessee[s]" of a property within its protection. The court stated that the dog park was a space made available to both parties as tenants of the apartment complex and that both parties gained a property interest in the dog park by signing their respective property leases. Therefore, the court found that they were both "lawful tenant[s] or lessee[s]" of the dog park, as well as their respective apartments. The court concluded, "The clear intent of the legislature was to narrow liability for dog owners in such situations, and it would be against the plain statutory language to read it any other way." Accordingly,

the court granted Ms. Byrd's motion for summary judgment and dismissed Ms. Cruise's complaint with prejudice. Thereafter, Ms. Cruise timely filed this appeal.

II. ISSUES PRESENTED

Ms. Cruise presents just one issue for review on appeal, which we have slightly restated:

1. Whether a dog park in an apartment complex is a "public place" or "private property of another," but not "residential . . . or other noncommercial property."

For the following reasons, we affirm the decision of the trial court.

III. STANDARD OF REVIEW

This is an appeal from a trial court's grant of summary judgment. Our review of the trial court's decision is de novo with no presumption of correctness. *Coffee Cnty. Bd. of Educ. v. City of Tullahoma*, 574 S.W.3d 832, 839 (Tenn. 2019) (citing *Rye v. Women's Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 250 (Tenn. 2015)). "Summary judgment is appropriate when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Id.* (quoting Tenn. R. Civ. P. 56.04; *Rye*, 477 S.W.3d at 250). In this appeal, however, the issue presented is legal question which requires interpretation of a statute. "Statutory interpretation . . . presents a question of law and our review is de novo with no presumption of correctness." *Beard v. Branson*, 528 S.W.3d 487, 495 (Tenn. 2017) (quoting *Kiser v. Wolfe*, 353 S.W.3d 741, 745 (Tenn. 2011)).

IV. DISCUSSION

The sole issue on appeal concerns the nature of the area where this dog bite took place, i.e., the dog park within the apartment complex. In order to address this issue, we must analyze Tennessee Code Annotated section 44-8-413 ("the Dog Bite Statute"), which governs civil liability for injuries caused by dogs.² The Dog Bite Statute states in pertinent part as follows:

(a)(1) The owner of a dog has a duty to keep that dog under reasonable control at all times, and to keep that dog from running at large. A person who breaches that duty is subject to civil liability for any damages suffered by a person who is injured by the dog *while in a public place or lawfully in*

² Although we refer to the statute as the Dog Bite Statute, we note that injuries caused by dogs are not necessarily limited to dog bites.

or on the private property of another.

(2) The owner may be held liable regardless of whether the dog has shown any dangerous propensities or whether the dog's owner knew or should have known of the dog's dangerous propensities.

...

(c)(1) If a dog causes damage to a person while the person is *on residential, farm or other noncommercial property*, and the dog's owner is the owner of the property, or is *on the property* by permission of the owner or *as a lawful tenant or lessee*, in any civil action based upon such damages brought against the owner of the dog, the claimant shall be required to establish that the dog's owner knew or should have known of the dog's dangerous propensities.

...

Tenn. Code Ann. § 44-8-413 (2016) (emphasis added). Very few cases have analyzed the Dog Bite Statute since its enactment in 2007.³ *Searcy v. Axley*, No. W2017-00374-COA-R3-CV, 2017 WL 4743111, at *4, 5 (Tenn. Ct. App. Oct. 19, 2017).

In *Moore v. Gaut*, No. E2015-00340-COA-R3-CV, 2015 WL 9584389, at *5 (Tenn. Ct. App. Dec. 30, 2015), this Court construed the Dog Bite Statute for the first time and recognized the “significant distinction” between subsections (a) and (c). Under subsection (a), a dog owner may be held liable for “injuries caused by dogs that are ‘running at large’ . . . and that are ‘in a public place or lawfully in or on the private property of another[.]’” *Id.* Under these circumstances, the dog owner “may be held liable *regardless* of whether the dog has shown any dangerous propensities or whether the dog's owner knew or should have known of the dog's dangerous propensities.” Tenn. Code Ann. § 44-8-413(a)(2) (emphasis added). “In other words, a dog owner is held strictly liable if the owner's dog injures a person because the owner failed to exercise reasonable control over the dog or the dog is running at large.” *Searcy*, 2017 WL 4743111, at *4. However, under subsection (c), “the statute provides certain exceptions, most notably, the residential exception.” *Id.* Under the residential exception, we have explained that “the statute clearly retains and codifies the common law requirement that a claimant ‘establish that the dog's owner knew or should have known of the dog's dangerous propensities.’” *Moore*, 2015 WL 9584389, at *5 (quoting Tenn. Code Ann. § 44-8-413(c)(1)).

³ Since its enactment, the statute was amended in 2016, but only to amend the definition of “owner” in subsection (e)(1). *Compare* Tenn. Code Ann. § 44-8-413(e)(1) (2007) *with* § 44-8-413(e)(1) (2016). To be clear, this definition relates to the owner of the dog and not the owner of the premises where an injury caused by a dog might have occurred. *See Folad v. Quillco, LLC*, 629 S.W.3d 134, 142 (Tenn. Ct. App. 2021) (explaining that the definition of the word “owner” in subsection (e)(1) was intended to apply to the owner of the dog and not the owner of the premises).

In the case at bar, this distinction is especially significant. Ms. Cruise appears to concede on appeal that she lacked the evidence to show Ms. Byrd was aware of her dog's dangerous propensities.⁴ She states, “[Ms.] Byrd asserts that her dog had never bit anyone or exhibited dangerous tendencies; [Ms.] Cruise has no evidence at this time to admit or deny that allegation.” Therefore, in order for Ms. Cruise to prevail under the Dog Bite Statute, she must do so under subsection (a). To prevail under subsection (a), the residential exception of subsection (c) must not apply. More precisely, the dog bite must have occurred “in a public place” or “in or on the private property of another,” rather than “on residential . . . or other noncommercial property.” Tenn. Code Ann. § 44-8-413(a)(1) and (c)(1). Ms. Cruise contends it was clear that the dog park should be considered either a public place or private property of another but not residential or other noncommercial property.

Despite the limited cases addressing the Dog Bite Statute, there is one case, *Cramer v. Oak Haven Resort, Inc.*, No. 3:16-cv-491-HBG, 2018 WL 4186392, at *12 (E.D. Tenn. Aug. 31, 2018), which we have found particularly persuasive. In *Cramer*, the District Court for the Eastern District of Tennessee addressed a similar issue as the one presented in this appeal. *Id.* There was a dispute concerning whether the residential exception under the Dog Bite Statute was applicable. *Id.* The plaintiff was injured when she tripped over a dog on property which was zoned for residential use, but the court concluded that the zoning was irrelevant. *Id.* Instead, the court found that “the use of the property is pertinent for purposes of the statute and not how the property was zoned.” *Id.* Given that the property where the injury had occurred was a resort, which was in the business of renting cabins to guests, the court found that the residential exception under the Dog Bite Statute was inapplicable. *Id.*

Unlike *Cramer*, the circumstances in this case lead us to conclude that the residential exception is applicable. Here, Ms. Cruise asserts that the apartment complex is commercial, and not residential, because it has been assessed as such by the Davidson County Property Assessor.⁵ However, relying on the reasoning in *Cramer*, the use of the property here—the apartment complex and the dog park within it—is fundamentally residential. In order to become a resident of an apartment complex such as this one, a person would have to enter into a lease agreement, which was what Ms. Byrd did when she entered into her “Tennessee Residential Lease Agreement.” Ms. Byrd was not a guest of the apartment complex; she was a resident. Only then was the dog park available for her

⁴ Furthermore, the trial court found that Ms. Cruise presented insufficient evidence to support a recovery based on Ms. Byrd's knowledge of her dog's dangerous propensity, and Ms. Cruise does not present an issue or any argument challenging this specific ruling.

⁵ Ms. Cruise cites to various other authorities to support her assertion that the apartment complex should be considered commercial. *See, e.g.*, Tenn. Const. Art. II § 28(c) (For taxation purposes, “[r]esidential property containing two (2) or more rental units is hereby defined as industrial and commercial property.”).

to use because its use was limited to residents of the apartment complex. Therefore, the apartment complex was used by its tenants, such as Ms. Byrd, as a residence.⁶ Although the dog bite in this case occurred at a dog park, this particular dog park was within the apartment complex and was used exclusively by the residents.

Additionally, the plain language of the Dog Bite Statute leads us to conclude that the residential exception is applicable. When interpreting a statute, the Tennessee Supreme Court has explained:

Our primary goal “is to carry out legislative intent without broadening or restricting the statute beyond its intended scope.” We presume that every word in a statute has meaning and purpose and that each word’s meaning should be given full effect as long as doing so does not frustrate the General Assembly’s obvious intention. Words ““must be given their natural and ordinary meaning in the context in which they appear and in light of the statute’s general purpose.”” When a statute’s meaning is clear, we ““apply the plain meaning without complicating the task’ and enforce the statute as written.”

Beard, 528 S.W.3d at 496 (quoting *Harris v. Haynes*, 445 S.W.3d 143, 146 (Tenn. 2014) (citations omitted)). The trial court found that the Legislature intended for apartment complexes to fall within subsection (c)(1)’s inclusion of “residential, farm, or other noncommercial property,” explaining that the statute expressly included “lawful tenant[s] or lessee[s]” of a property within its protection. We agree with this reasoning because the Dog Bite Statute is clear and there is no need to complicate the task of enforcing it as written. Moreover, in this Court’s view, adopting the interpretation Ms. Cruise proposes would restrict the intended scope of the Dog Bite Statute. As evidenced by her “Tennessee Residential Lease Agreement,” Ms. Byrd was a lawful tenant of the apartment complex. As such, she was on the premises of the apartment complex’s dog park as a lawful tenant when her dog bit Ms. Cruise. As a lawful tenant of the apartment complex, the plain language of the Dog Bite Statute afforded Ms. Byrd the protection of the residential exception of subsection (c) in this case, which required Ms. Cruise to establish Ms. Byrd’s knowledge of her dog’s dangerous propensities. *See* Tenn. Code Ann. § 44-8-413(c)(1) (providing that the residential exception applies to a dog owner who is on residential property and is on such property as a lawful tenant or lessee).

Pursuant to the Dog Bite Statute, we find that the dog park within the apartment complex was residential property and not a public place or private property of another. Thus, the residential exception of subsection (c) applies in this case and required evidence

⁶ In this case, we are addressing the circumstance in which a dog bite occurs in a common area of an apartment complex where the tenant has been expressly authorized to have her dog and to have her dog off a leash.

of Ms. Byrd's knowledge of her dog's dangerous propensities. Given that the residential exception is applicable, we affirm the trial court's decision granting Ms. Byrd's motion for summary judgment and dismissing Ms. Cruise's complaint with prejudice.

V. CONCLUSION

For the aforementioned reasons, we affirm the decision of the trial court. Costs of this appeal are taxed to the appellant, Carolyn Cruise, for which execution may issue if necessary.

CARMA DENNIS MCGEE, JUDGE