IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

KENNETH JENNINGS, Petitioner, v. SEATTLE HOUSING AUTHORITY, Respondent.	)	No. 63608-1-I DIVISION ONE UNPUBLISHED OPINION FILED: July 26, 2010

Becker, J. — Kenneth Jennings won a district court judgment awarding him damages from the owner of a dog that bit him as he entered the lobby of his apartment complex. He appeals because the court dismissed his complaint against the Seattle Housing Authority, owner and operator of the apartment complex, for failure to state a claim. Jennings argues the Housing Authority is strictly liable or negligent for the dog bite because the dog owner, like Jennings, was a resident of the complex. But it is well settled in Washington that an owner of a dog or dangerous animal is liable for injuries the animal causes; the landlord is not. Rejecting the argument that the Housing Authority was the "owner" of the dog under a municipal ordinance, we affirm.

We review de novo the propriety of a trial court's dismissal of an action under CR 12(b)(6) or CRLJ 12(b)(6). Burton v. Lehman, 153 Wn.2d 416, 422, 103 P.3d 1230 (2005). Dismissal is appropriate under CR 12(b)(6) only if it appears beyond doubt that the plaintiff cannot prove any set of facts which would justify recovery. Burton, 153 Wn.2d at 422. For purposes of review, we presume the plaintiff's allegations are true, and we may consider hypothetical facts not included in the record. Burton, 153 Wn.2d at 422.

On September 26, 2007, Jennings entered the lobby of the Bell Tower Apartments where he resided. Bell Tower is a public housing complex owned and managed by the Housing Authority. A Jack Russell terrier named Skoshie broke away from its owner, Raymond Vincent, and bit Jennings in the lower left calf. The attack was captured on the building's entranceway security camera. Skoshie inflicted five puncture wounds on Jennings' left calf, causing bleeding and pain.

Jennings reported the incident to Seattle Animal Control and Seattle Police, both of whom responded to Bell Tower. Vincent, also a tenant at Bell Tower, was cited under Seattle Municipal Code 9.25.084(G)(1). The Seattle Municipal Court found against Vincent on October 5, 2007.

On December 23, 2008, Jennings filed a small claims complaint against Vincent and the Housing Authority in King County District Court, Seattle Division. Jennings sought an order "for damages for his personal injury in the

amount of $5,000.00 against the defendants individually and severally." In January 2009, the Housing Authority filed a motion seeking to dismiss all claims against it and arguing Jennings had failed to comply with the prefiling requirements of RCW 4.96.020 and failed to state a claim upon which relief could be granted. The Housing Authority also asked the court to allow its legal counsel to appear at the small claims trial, a request the court granted.

On February 9, 2009, Jennings filed a memorandum with 11 exhibits in response to the Housing Authority's motion. According to this memorandum, Skoshie had bitten two other tenants in Bell Tower's lobby in the month before he was bitten, as well as attacked another tenant's dog, menaced tenants in the building's common areas, and demonstrated aggressiveness toward the Seattle Police officer who investigated Jennings' injuries. The memo claimed the Housing Authority allowed Vincent and Skoshie to remain at Bell Tower for four months, even though Jennings filed two lease grievances complaining about more encounters with Vincent and Skoshie. According to Jennings, when Vincent and Skoshie moved out of Bell Tower sometime in February 2008, they simply relocated to another Housing Authority building, Olive Ridge Apartments. Jennings asked the court to find that Vincent and the Housing Authority were "co-owners" of Skoshie at the time of the dog bite, and to impose $5,000 in damages.

As to the Housing Authority's assertion that his action was precluded for

lack of a prefiling claim, Jennings contended that the Housing Authority had failed to record the identity of its agent for service in King County and thus could not avail itself of the claim filing statute as a defense. The statute requires a plaintiff, prior to commencing a lawsuit for tort damages against a local government entity, to present its "nonjudicial claims" to the entity's agent. RCW 4.96.020(2), (4). After 60 days have elapsed, the plaintiff may file suit, and the statute of limitations is tolled during the 60 day period. RCW 4.96.020(4). If the entity does not appoint an agent and record the agent's identity with the county auditor, it is precluded from raising a defense under the claim filing statute. RCW 4.96.020(2); Estate of Connelly v. Snohomish County Pub. Util. District No. 1, 145 Wn. App. 941, 943, 187 P.3d 842 (2008).

On February 12, 2009, the small claims court trial was held before Judge Pro Tem James Schlotzhauer. The trial court heard from Vincent and a witness on his behalf, as well as Jennings, according to both parties. The court awarded judgment for Jennings against Vincent for $500 in damages and $25 for the filing fee, and dismissed claims against the Housing Authority and Bell Tower property manager Sarah Van Cleve. The judgment of $525 against Vincent was satisfied on March 11, 2009.

On March 12, 2009, Jennings appealed the dismissal to King County Superior Court and made arrangements to transfer the audio CD recording of his small claims trial. Jennings filed an appellate brief with the superior court on

April 23, 2009, arguing the Housing Authority was liable on strict liability and negligence grounds, and the trial court had erred in dismissing claims against it. Jennings also argued the Housing Authority should not be able to present argument or evidence beyond its defenses in small claims court, as it had failed to dispute any evidence and presented no legal arguments at trial. The Housing Authority argued Jennings had failed to comply with the requirements of RCW 4.96.020, failed to establish any basis for liability, and had already recovered the full amount of damages from Vincent, the dog owner.

On May 11, 2009, Superior Court Judge Michael J. Fox issued an order stating, "the appeal is dismissed and the judgment of the District Court is affirmed." On May 26, 2009, Jennings filed a notice of appeal of that order to this court.

The Housing Authority first asks that the appeal be dismissed as moot. Even though the court dismissed Jennings' case against the Housing Authority, his claim against Vincent went to trial and resulted in a judgment for damages of $500 that has now been satisfied. The remedy that Jennings requested in district court was to find both defendants liable, individually and severally, "for the injuries caused by defendant Vincent's dog." The remedy he requests in this court is reversal of the dismissal and entry of judgment of $4,475 against the Housing Authority. The Housing Authority contends that the district court's decision to award $500 for damages for the dog bite is conclusive and that even

if this court were to rule that the Housing Authority could be liable, Jennings would not be entitled to receive any more damages than the court awarded him against Vincent. The Housing Authority cites no authority in support of this argument, and therefore we decline to dismiss the appeal as moot.

As an additional basis for affirmance, the Housing Authority asserts the defense that Jennings violated the claim notice requirements of RCW 4.96.020. We do not adopt this rationale for affirmance because, as noted above, Jennings alleges the Housing Authority failed to record the identity of its agent for service with the King County Auditor. For purposes of review, we assume his allegation is true and therefore the defense is not available to the Housing Authority.

The Housing Authority also points out that Jennings failed to comply with a superior court order to perfect the record for appeal. In March 2010, the Housing Authority filed a motion asking Judge Fox to compel Jennings to file a report of proceedings for review by this court under RAP 9.5(c). On April 29, 2010, Judge Fox ordered Jennings to do one of the following by May 14, 2010: file a verbatim report of proceedings with this court under RAP 9.2, file a narrative report of proceedings under RAP 9.3, or file an agreed report of proceedings under RAP 9.4 that both parties approved. Jennings appeals the superior court's order regarding the record, as well as the district court's decision below to dismiss his claims against the Housing Authority.

Upon review of a superior court decision reviewing a ruling by a court of limited jurisdiction, the record shall consist of the record of proceedings and the transcript of the electronic record as defined in RALJ 6.1 and 6.3.1. RAP 9.1. Jennings asks us to waive these rules because the issues on appeal are issues of law, not of fact.

An appellate court may decline to address a claimed error when faced with a material omission in the record. State v. Wade, 138 Wn.2d 460, 465, 979 P.2d 850 (1999). The Housing Authority claims the record before us does not rule out the possibility that the superior court judge accepted Jennings' legal arguments but ruled against him because the evidence presented at trial in district court was insufficient to establish a factual case. But while the damages claim against Vincent was tried to the court, the claim against the Housing Authority was dismissed under CRLJ 12(b)(6). A dismissal under CRLJ 12(b)(6) raises a legal issue, and to the extent it can be resolved from an examination of the clerk's papers, we will proceed to address Jennings' claim that he established a legal basis for the liability of the Housing Authority.

Jennings argues the Housing Authority is liable for his injuries because it breached its duty to keep common areas of Bell Tower safe from an aggressive dog and was thus negligent. He further contends the Housing Authority is strictly liable for the dog bite under RCW 16.08.040 because the Seattle Municipal Code's definition of "owner" is so broad as to include landlords who

permit dogs to reside at their premises.

As Jennings concedes, a landlord is not liable under the common law for a dog bite by a tenant's dog. "The common law rule, which is the settled law of Washington, is clear: only the owner, keeper or harborer of such a dog is liable. The landlord of an owner, keeper or harborer is not." Clemmons v. Fidler, 58 Wn. App. 32, 35-36, 791 P.2d 257, review denied, 115 Wn.2d 1019 (1990). "In short, liability flows from ownership or direct control." Frobig v. Gordon, 124 Wn.2d 732, 735, 881 P.2d 226 (1994). In Frobig, a case where a woman was mauled by a Bengal tiger, the court concluded as a matter of law that landlords have no duty to protect third parties from a tenant's lawfully owned, but dangerous, animals. The victim unsuccessfully asserted that the landlord was both strictly liable and negligent. "Under Washington law, the landlords would not be liable to the tenant for the tiger's attack, so should not be liable to third parties for injuries inflicted by the animal." Frobig, 124 Wn.2d at 737. In Clemmons and Frobig, which involved severe and life-threatening injuries, the court was asked to extend the common law rule by holding that a landlord is liable for harm caused by his tenant's animal if the landlord knows that the animal has vicious tendencies. But each time, the courts declined, citing long-standing precedent and the statutory scheme of the Residential Landlord-Tenant Act of 1973, RCW 59.18.060, which already governs landlords' duties to tenants.

At common law, a dog owner who knows or reasonably should know of

his dog's dangerous propensities is liable for injuries caused by the dog, regardless of any negligence on the owner's part. Sligar v. Odell, No. 64916-7-I, 2010 WL 2674037, at *3 (Wash. Ct. App. July 6, 2010), citing Beeler v. Hickman, 50 Wn. App. 746, 751, 750 P.2d 1282 (1988). But RCW 16.08.040 changed the common law rule by removing the requirement of actual or imputed knowledge and holding owners strictly liable for the injuries their dogs inflict:

> The owner of any dog which shall bite any person while such person is in or on a public place or lawfully in or on a private place including the property of the owner of such dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.

(Emphasis added.) Because the statute is in derogation of the common law, it must be strictly construed. Beeler, 50 Wn. App. at 751.

Aware that the Housing Authority as a landlord is not liable for the dog bite, Jennings argues the Housing Authority was an "owner" of Skoshie under the definition of that term in the Seattle Municipal Code:

> "Owner" means a person who harbors, keeps, causes or permits an animal to be harbored or kept, or who has an animal in his/her possession or custody, or who permits an animal to remain on or about his/her premises, or who has legal title to an animal.

Seattle Municipal Code 9.25.022(B) (Ord. 122508 § 2, 2007). He contends that the Housing Authority satisfies this definition because it permits its tenants to keep animals in their apartments through pet leases.

Local legislative bodies may create different rules with respect to animal

liability in order to protect public safety, so long as these rules do not conflict with more general state laws. Rhoades v. City of Battle Ground, 115 Wn. App. 752, 763, 63 P.3d 142 (2002), review denied, 149 Wn.2d 1028 (2003). But we do not see any intent within the Seattle Municipal Code to depart from the state rule and create landlord liability for injuries caused by tenants' animals.

This court's objective in construing a statute or ordinance is to ascertain and carry out lawmakers' intent. Statutory interpretation begins with the statute's plain meaning, which is to be discerned from the ordinary meaning of the language at issue, the context in which that provision is found, related provisions, and the statutory scheme as a whole. Sligar, 2010 WL 2674037, at *3. We construe statutes to effect their purpose and avoid unlikely or absurd results. Thompson v. Hanson, 167 Wn.2d 414, 426, 168 Wn.2d 738, 219 P.3d 659, 664 (2009) (rejecting party's interpretation of the Uniform Fraudulent Transfer Act, chapter 19.40 RCW, because it would lead to strained results).

An interpretation of the Seattle Municipal Code as intending its definition of "owner" to reach as broadly as Jennings contends would be strained and lead to absurd results. If a landlord were deemed to be the owner of tenants' dogs merely by permitting the dogs on the premises through pet leases, the landlord would be subject to civil penalties for failure to license every dog owned by a tenant. Seattle Municipal Code 9.25.051, .100. Under this interpretation, a landlord would also be liable if a tenant abused his own dog and ran afoul of

animal cruelty laws. Seattle Municipal Code 9.25.081. Reading the definition of "owner" in context with the ordinance as a whole, we conclude it should not be given a construction so expansive as to include landlords.

Affirmed.

Becker, J.

WE CONCUR:

Leach, A.C.J.

Schindler, J.