IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ONA DEANE-GORDLY and TYRONE GORDLY, and the marital community composed thereof, Appellants, v. JOY WILLETT and JOHN DOE WILLETT, and the marital community composed thereof, AMERICAN MANAGEMENT SERVICES NORTHWEST LLC, a Washington limited liability company, GFS MAPLE GLEN LLC, a Washington limited liability company, and JOHN DOES 1-10, Respondents.	)	DIVISION ONE No. 65679-1-I UNPUBLISHED OPINION FILED: June 27, 2011

Dwyer, C.J. — Only the owner, keeper, or harborer of a dog is liable for injuries caused by the dog. The landlord of an owner, keeper, or harborer of the dog is not so liable. Consequently, Ona Deane-Gordly, terribly injured by a dog, cannot recover from the owner and the manager of the apartment complex where the dog's owner was a tenant. Accordingly, summary judgment dismissal of Deane-Gordly's claims was proper.

I

Maple Glen Apartments, located in Mountlake Terrace, is an apartment complex owned by GFS Maple Glen, LLC and managed by American

Management Services Northwest. Joy Willett was a tenant at Maple Glen Apartments, renting an apartment on the second story of one of the buildings. In 2006, Willett owned two dogs, one of which was a Rottweiler-Pit Bull mix named Cody.

On March 17, 2006, Deane-Gordly arrived at Maple Glen Apartments intending to visit two residences. On her way from one apartment to the next, Deane-Gordly walked along a pathway that "led to a cabana or park-like common area." Clerk's Papers (CP) at 68. At the time, Willett was on her balcony with her dog, Cody. Deane-Gordly asked Willett for directions. However, Deane-Gordly was unable to hear Willett over Cody's barking. Willett attempted to restrain Cody and get him inside, but he "suddenly escaped [Willett's] grasp, shimmied through the railings on the balcony and leaped" onto Deane-Gordly from the second-story balcony. CP at 69.

The impact knocked 61-year-old Deane-Gordly over, causing her head to hit the edge of nearby steps, which sliced open her face and sheared off her teeth. Cody then attacked Deane-Gordly for the next fifteen minutes, mauling her head, neck, face, arms, and legs. Deane-Gordly suffered severe injuries.

Willett tried to stop Cody's attack, but the dog bit her. When a police officer arrived on the scene to assist, Cody attacked him as well. Eventually, the officer fired his gun several times at the dog, and Cody ran off. Cody was later euthanized.

Deane-Gordly subsequently filed a lawsuit against Willett, GFS Maple Glen, LLC, and American Management Services Northwest. Herein, we refer to GFS Maple Glen, LLC and American Management Services Northwest collectively as "Maple Glen."

Maple Glen filed a motion for summary judgment. Deane-Gordly responded that numerous material questions of fact precluded summary judgment. Deane-Gordly also requested a continuance pursuant to CR 56(f) to obtain additional discovery. The trial court denied Deane-Gordly's CR 56(f) request for a continuance and granted Maple Glen's motion for summary judgment, dismissing Deane-Gordly's claims against the apartment owner and manager.

Deane-Gordly appeals.

II

We review summary judgment decisions de novo, engaging in the same inquiry as the trial court. Simpson Tacoma Kraft Co. v. Dep't of Ecology, 119 Wn.2d 640, 646, 835 P.2d 1030 (1992). Summary judgment is appropriate where the evidence, viewed in favor of the nonmoving party, shows that there is no issue of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c); Schaaf v. Highfield, 127 Wn.2d 17, 21, 896 P.2d 665 (1995). Summary judgment may be granted only where there is but one conclusion that could be reached by a reasonable person. Lamon v. McDonnell

Douglas Corp., 91 Wn.2d 345, 350, 588 P.2d 1346 (1979).

III

Deane-Gordly contends that summary judgment dismissal was improper because Maple Glen owed to Deane-Gordly a duty to protect her from Cody. We disagree.

To establish a negligence claim, "a plaintiff must prove four basic elements: (1) the existence of a duty, (2) breach of that duty, (3) resulting injury, and (4) proximate cause." Mucsi v. Graoch Assocs. Ltd. P'ship No. 12, 144 Wn.2d 847, 854, 31 P.3d 684 (2001). The existence of legal duty is a question of law. Mucsi, 144 Wn.2d at 854.

The well-settled rule in Washington is that *only* "the owner, keeper, or harborer of a dangerous or vicious animal is liable; the landlord of the owner, keeper, or harborer is not." Frobig v. Gordon, 124 Wn.2d 732, 735, 881 P.2d 226 (1994); see also Markwood v. McBroom, 110 Wash. 208, 211, 188 P. 521 (1920) ("At common law a person would not be liable for an injury resulting from the bite of a dog unless he was the owner, keeper, or harborer of the dog."); Sligar v. Odell, 156 Wn. App 720, 731, 233 P.3d 914 (2010), review denied, 170 Wn.2d 1019 (2011); Clemmons v. Fidler, 58 Wn. App. 32, 35-36, 791 P.2d 257 (1990); Beeler v. Hickman, 50 Wn. App. 746, 751, 750 P.2d 1282 (1988); compare RCW 16.08.040.[1] Washington courts have repeatedly recognized that

[1] RCW 16.08.040 holds only owners strictly liable for the injuries inflicted by their dogs: 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

"liability flows from ownership or direct control" of the animal. Frobig, 124 Wn.2d at 735. "[L]iability resulting from the ownership and management of those animals rests with [the owner] alone." Frobig, 124 Wn.2d at 737. Thus, a landlord, lacking direct control of a tenant's animal, is not liable for injuries caused by such an animal.

Our courts have consistently refused to deviate from this rule and the cases state no exceptions. Frobig, 124 Wn.2d 732 (holding that landlords were not liable for injuries suffered by a woman working for the tenant when she was attacked by the tenant's tiger); Clemmons, 58 Wn. App. 32 (holding that landlords were not liable for injuries suffered by a child who was visiting the tenants when the tenant's dog attacked the child); Shafer v. Beyers, 26 Wn. App. 442, 613 P.2d 554 (1980) (holding that landlord was not liable for injuries suffered by passerby when tenant's dog attacked the passerby on the sidewalk). In Frobig, our Supreme Court expressly held that "landlords have no duty to protect third parties from a tenant's lawfully owned but dangerous animals," even where the landlord knows that the dangerous animal is present on the property. 124 Wn.2d at 735, 740-41. The court concluded:

> The issue of the [landlord]'s duty to [the injured third party] is *not a question of fact* . . . nor is it a question of morality. . . . Rather, *the issue is a matter of law*, and we conclude that landlords have no duty to protect third parties from a tenant's lawfully owned but dangerous animals.

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person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.

Frobig, 124 Wn.2d at 740-41 (emphasis added).[2]

Deane-Gordly asserts that "it is absurd on its face to suppose that there could never be a tort cause of action related to a dog bite against any other party [other than the dog's owner, harborer, or keeper]." Appellant's Br. at 27. However, that is precisely the proposition promoted by prior decisions. Indeed, in Clemmons, the court stated that "[o]ur rule . . . promotes the salutary policy of placing responsibility where it belongs, rather than fostering a search for a defendant whose affluence is more apparent than his culpability." 58 Wn. App. at 38.

Pursuant to Washington law, Maple Glen is not liable based upon its status as Willett's landlord for those injuries caused by Cody. Accordingly, the trial court did not err by following applicable, controlling authority and dismissing on summary judgment Deane-Gordly's claims against Maple Glen.[3]

IV

[2] Deane-Gordly urges us to adopt a different rule based on the fact that she was injured by Cody within the common area of the apartment complex, which Maple Glen has an affirmative duty to maintain in a reasonably safe condition. Iwai v. State, 129 Wn.2d 84, 91, 915 P.2d 1089 (1996). We have walked that path before. The rule urged by Deane-Gordly resembles that articulated within our decision in Frobig, which was subsequently reversed by our Supreme Court. Therein, we deemed significant the landlord's control over the premises as the basis for liability. Frobig v. Gordon, 69 Wn. App. 570, 575-77, 849 P.2d 676 (1993). In contrast, in reversing our decision, the Supreme Court focused exclusively on control of the animal as the basis for liability, thereby rejecting our reliance on the landlord's control of the premises. Frobig, 124 Wn.2d at 737 ("[L]iability resulting from the ownership and management of those animals rests with [the owner] alone."). Deane-Gordly's assertion that Maple Glen's duty to maintain common areas in a reasonably safe condition extends to protecting others from injuries caused by tenants' animals cannot be harmonized with our Supreme Court's unequivocal holding in Frobig.

[3] Given that this issue is dispositive, we do not analyze Deane-Gordly's additional contention that summary judgment was inappropriate because there were material issues of fact regarding whether Maple Glen breached a duty to protect Deane-Gordly from Cody.

Deane-Gordly alternatively contends that a question of fact exists regarding whether Maple Glen was a harborer of Cody. We disagree.

"'Harboring means protecting, and one who treats a dog as living at his house and undertakes to control his actions is the owner or harborer thereof, as affecting liability for injuries caused by it.'" Markwood, 110 Wash. at 211 (internal quotation marks omitted) (quoting 2 Words & Phrases, at 820 (2d ed.)); see also Harris v. Turner, 1 Wn. App. 1023, 1029-30, 466 P.2d 202 (1970) (quoting Miller v. Reeves, 101 Wash. 642, 645, 172 P. 815 (1918)). There is no evidence in the record to support an inference that Maple Glen was harboring Cody. In the absence of evidence supporting such an inference, Maple Glen cannot be held liable for injuries caused by the dog. Accordingly, summary judgment was proper.

V

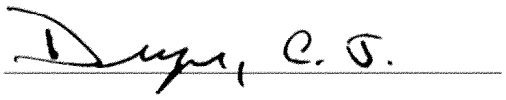
Deane-Gordly also contends that the trial court should have granted her CR 56(f) request for a continuance to allow her to develop further facts evidencing Maple Glen's breach of duty. We disagree.

A trial court may grant a continuance of a motion for summary judgment where the nonmoving party needs additional time to obtain affidavits, take depositions, or conduct other discovery. CR 56(f). "A trial court's decision on a CR 56(f) motion is reviewed for an abuse of discretion." Mossman v. Rowley, 154 Wn. App. 735, 742, 229 P.3d 812 (2009). A trial court may deny a motion

for a continuance of a summary judgment hearing where "the new evidence would not raise a genuine issue of fact." Butler v. Joy, 116 Wn. App. 291, 299, 65 P.3d 671 (2003).

Deane-Gordly claims that a continuance was necessary for her to obtain follow-up written materials and depositions. However, none of the desired evidence would have created a material question of fact regarding Maple Glen's duty to protect Deane-Gordly from Cody or regarding whether Maple Glen was a harborer of Cody.[4] Butler, 116 Wn. App. at 299. The dangerousness of Cody or the reason that Maple Glen allowed Willett to keep Cody would not negate the general rule that only the owner, harborer, or keeper of a dog is liable for injuries caused by the dog. Accordingly, the trial court did not abuse its discretion by denying the motion to continue. Butler, 116 Wn. App. at 299.

Affirmed.



We concur:

[4] The evidence Deane-Gordly sought related to the possible dangerous propensities of Cody or other tenants' dogs, to the reason that Maple Glen allowed Willett to have Cody on the premises, to Maple Glen's exercise of its right to evict tenants who were in violation of pet policies, and to possible witnesses to the attack itself.

Schindler, J. Cox, J.