Michigan Law Review

Volume 50 | Issue 2

1951

NEGLIGENCE-VIOLATION OF A DOG-LEASH ORDINANCE AS A BASIS FOR NEGLIGENCE

John J. Edman S. Ed.
University of Michigan Law School

NEGLIGENCE—VIOLATION OF A DOG-LEASH ORDINANCE AS A BASIS FOR NEGLIGENCE—Defendant, in violation of a city ordinance requiring every owner or custodian of a dog to keep the animal on his own premises unless on a leash and under control of a competent person,[1] allowed his dog to run loose on the street.

[1] Los Angeles Mun. Code, Art. 3, §53.06.2 as amended by Ordinance No. 88853 of the City of Los Angeles, Cal., approved Nov. 9, 1944, states: "Every person owning or

On collision of the dog with plaintiff's motor scooter, plaintiff brought suit for injuries incurred, claiming negligence per se by defendant through violation of the ordinance. The trial court sustained defendant's demurrer. On appeal, *held,* reversed. The violation of the ordinance was negligence per se, since the purpose of the ordinance included the protection of people in traffic against the dangers that dogs may cause running loose. *Brotemarkle v. Snyder,* (Cal. App. 1950) 221 P. (2d) 992.

At common law the dog is placed in a preferred position, no liability being imposed upon an owner for damages caused by a dog left unattended upon a highway unless he ought to have known that the dog was dangerous.[2] Statutes and ordinances changing this rule are of two general types. One places civil liability upon an owner for damages caused by his dog, thus eliminating any need for a claimant to show knowledge or negligence on the part of the owner.[3] The other is penal in nature, and in order to predicate civil liability one must show that (1) he was of the class of persons intended to be protected and (2) that the ordinance or statute was meant to guard against the particular hazard from which his injury resulted.[4] It seems clear that if a person was bitten by a dog while walking on the sidewalk he would satisfy these requirements;[5] probably being run down by a large dog would be sufficient also.[6] However, the courts have been reluctant to find civil liability where the injury has been caused by the traffic hazard resulting from the violation of the penal type provisions. The courts have found either a failure to meet the aforementioned requirements[7] or a lack of proximate cause.[8] It is submitted that the latter finding omits a consideration of the real issue: whether there is any negligence present due to the violation of the statute. By holding that the injury is not caused by the breach of the ordinance, these courts in effect are finding that the statute was

having charge, care, custody or control of any dog shall keep such dog exclusively upon his own premises; provided, however, that such dog may be off such premises if it be under the control of a competent person and restrained by a substantial chain or leash not exceeding six feet in length."

[2] 1 R.C.L. 1095; PROSSER, TORTS §57 (1941).

[3] Kleybolte v. Buffon, 89 Ohio St. 61, 105 N.E. 192 (1913); Silverglade v. Von Rohr, 107 Ohio St. 75, 140 N.E. 669 (1923); Tasker v. Arey, 114 Me. 551, 96 A. 737 (1916); Malafronte v. Miloni, 35 R.I. 225, 86 A. 146 (1913). See annotations in 1 A.L.R. 1113 and 142 A.L.R. 436.

[4] PROSSER, TORTS §39 (1941); TORTS RESTATEMENT §286. California is a jurisdiction in which violation of either a statute or an ordinance may be negligence per se. Siemers v. Eisen, 54 Cal. 418 (1880); Fenn v. Clark, 11 Cal. App. 79, 103 P. 944 (1909); Satterlee v. Orange Glenn School District, 29 Cal. (2d) 581, 177 P. (2d) 279 (1947). For views taken by other jurisdictions see PROSSER, TORTS §39 (1941).

[5] Wistafka v. Grotowski, 205 Ill. App. 529 (1917).

[6] Eigner v. Race, 54 Cal. App. 506, 129 P. (2d) 444 (1942).

[7] Canavan v. George, 292 Mass. 245, 198 N.E. 270 (1935); Brown v. Moyer, 186 Iowa 1322, 171 N.W. 297 (1919). Query if the correct analysis is made in the cases which deny recovery because the plaintiff is not a member of the class meant to be protected. Suppose he were bitten by a dog while riding on a motorcycle, what result then?

[8] Nepsha v. Wozniak, (Ind. App. 1950) 92 N.E. (2d) 734.

not directed against the type of hazard involved.[9] In the principal case the court used the negligence approach and found a broader purpose of the ordinance to prevent not only dog-bites and similar injuries, but also the injuries resulting from traffic hazards caused by loose dogs. This holding seems to be a new development in the interpretation of the dog-leash ordinances, but it is submitted that it is justified. In the case of large domestic animals, a similar view is quite generally accepted,[10] and at least one jurisdiction has indicated that a like view would be adopted in the case of dogs.[11] In the light of present day transportation and the speeds at which vehicles move on our streets and highways, it seems reasonable to find that one purpose of dog-leash legislation is to eliminate the canine traffic hazard.[12]

John J. Edman, S. Ed.

[9] PROSSER, TORTS §39 (1941).

[10] Shipley v. Colclough, 81 Mich. 624, 45 N.W. 1106 (1890); Jewett v. Gage, 55 Me. 538 (1868); Hansen v. Kemmish, 201 Iowa 1008, 208 N.W. 277 (1926). Courts seem quite willing to find as a purpose of these statutes the protection of traffic against cattle, sheep, horses and hogs, but are reluctant to say that they are meant to protect against personal injuries by these animals. Decker v. McSorely, 111 Wis. 91, 86 N.W. 554 (1901) (horse kicked a child); Putermann v. Simon, 127 Mo. App. 511, 105 S.W. 1098 (1907) (horse bit the plaintiff).

[11] Cincinnati N.O. and T.P. R. Co. v. Ford, 139 Tenn. 291, 202 S.W. 72 (1918); Stagner v. Craig, 159 Tenn. 511, 19 S.W. (2d) 234 (1929). Both of these suits were brought by the owner of a dog which was killed in a collision with the defendants' train and automobile respectively. In both cases the defendant successfully pleaded contributory negligence upon the part of the plaintiff on the grounds that the dog was running loose contrary to statute.

[12] In the principal case the plaintiff cited a report by the National Institute of Municipal Law Officers, Report No. 100 MUNICIPAL REGULATION OF DOGS (1943), which points out the many dangers that loose dogs may cause, including that of being a traffic hazard.