

# boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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## Plaintiff Trespasser Could Not Recover Under the Michigan Dog Bite Statute

By James A. Swaim

In *Lieding v. Blackledge*, the Michigan Court of Appeals affirmed summary disposition of Plaintiff's statutory, common law, and attractive nuisance claims arising out of a dog bite incident.

Plaintiff was a seven-year-old child who was playing on Defendants' property. She had never been on the property before and had never seen Defendants' dog. The dog broke away from a leash and bit Plaintiff on the back. Plaintiff's lawsuit alleged liability under the Michigan dog bite statute (MCL 287.351), common law, and attractive nuisance. The trial court granted summary disposition in favor of the Defendants on all counts.

The Michigan dog bite statute creates almost strict liability for dog owners. Provocation is an available defense and a Plaintiff must have been on public property or lawfully on private property in order to recover. In this case, the Plaintiff admittedly did not have express permission to enter the property. Additionally, since she had never been there before and had never seen the dog, there was no evidence to support she had implied permission to be on Defendants' property.

### SECRET WARDLE NOTES:

A person must be on public property or lawfully on private property in order to seek recovery under the Michigan dog bite statute. A trespasser is not entitled to recovery under the statute.

## CONTINUED...

A common-law action requires proof that the owner or keeper of the animal knew or should have known of its vicious nature. The undisputed evidence supported the dog had never behaved in an aggressive manner before and had never bitten or attacked any other individual.

Plaintiff's attractive nuisance claim was dismissed because there was no evidence Defendants knew or should have known a child would be likely to trespass or that the dog would present an unreasonable risk of death or serious bodily harm.

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