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A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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"No Pit Bull Rule" No Problem For Property Owner

By Drew Broaddus

Victims of dog attacks often try to impose liability upon property owners, when the dog is owned by one of the property owner's tenants. However, Michigan courts have rejected the argument that property owners should be strictly liable for attacks by their tenants' dogs. *Szkodzinski v Griffin*, 171 Mich App 711 (1988). Unlike dog owners – who are strictly liable for injuries inflicted by their dogs per MCL 287.351 – more is required to impose liability upon a landlord. "[A] landlord is liable for injuries caused by the attack of a tenant's dog *only* where the landlord has actual knowledge of the dangerous propensities of the dog *and* where the landlord, having that knowledge, nevertheless leased the premises to the dog's owner or, by the terms of the lease, had the power to control the harboring of a dog by the tenant and neglected to exercise that power." *Braun v York Properties,* 230 Mich App 138, 144 (1998) (emphasis added). In short, such cases often turn upon whether the landlord knew that the dog had exhibited "dangerous propensities" before the incident.

The Court of Appeals recently applied these principles in *Stacey v Colonial Acres,* No. 300955 (decided December 15, 2011). In *Stacey,* the court determined, in an unpublished opinion, that defendants, the owner and operator of a manufactured home community, owed no duty to the plaintiff under the following facts: the plaintiff was a 16-year-old resident. On the date of the incident, plaintiff was visiting the Youngs, who were also residents in the defendants' community. Plaintiff had been to the Youngs' residence almost daily for several years without incident, as the Youngs' teenage son was plaintiff's best friend. However, on this date, the Youngs' Pit Bull bit plaintiff in the face, suddenly and without provocation. The manufactured home community's "Rules and Regulations" prohibited its residents to keep Pit Bulls on their property. Plaintiff sued the owner and operator of the community, asserting that they were negligent in failing to warn plaintiff of a prohibited, dangerous dog, and in failing to protect him from the same.

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Stacey **confirms that rules or regulations prohibiting certain dog breeds do not, by themselves, create a tort duty on the part of the property owner. Instead courts will look to the *Braun* factors.**

Stacey **also reaffirms the general principle that property owners will not have liability for injuries inflicted by their tenants' dogs unless the property owner knew, prior to the incident, both that the dog was being kept on the premises *and* that the dog had "dangerous propensities."**

Although plaintiffs sometimes argue that knowledge of "dangerous propensities" should be implied if the landlord knows that a Pit Bull is being kept on the premises, *Stacey* indicates that more is required. A plaintiff must show that the landlord had knowledge of the *particular* dog's dangerous propensities, and cannot simply point to its breed.

The trial court held that defendants owed no such duties, and therefore granted defendants' motion for summary disposition. The Court of Appeals affirmed, finding that there was no evidence of the dog showing any dangerous propensities prior to the attack, much less any evidence that defendants knew of such propensities. Plaintiff tried to show that defendants had knowledge of the dog's dangerous propensities by pointing to the Rules and Regulations. Plaintiff argued that by specifically banning the Pit Bull breed, defendants "acknowledged that Pit Bulls have dangerous propensities." The Court of Appeals rejected this argument as follows:

> It is true that certain breeds of dog are thought to be more inclined toward vicious behavior than others. However, an inclination does not equate with a certainty…. Moreover, while several other jurisdictions have imposed liability on landlords for their tenants' dog attacks against third parties, what these cases share in common is that liability attaches only where the landlord had actual knowledge of the *particular* dog's vicious propensities and not a general conception of vicious propensity based on breed alone. *Id.* at *4 (emphasis in original).

The Court of Appeals also addressed "the issue of whether a landlord who promulgates rules and regulations regarding tenants' dogs owes a third party a duty to use reasonable care to enforce those rules…." *Id.* The panel cited *Braun, supra* for the proposition that the creation of such rules does not necessarily create a duty to enforce them. Rather, the *Stacey* panel applied the seven-factor test set forth in *Braun, supra* at 145-148: (1) the foreseeability of harm to plaintiff; (2) the degree of certainty that plaintiff suffered injury; (3) the connection between defendant's conduct and plaintiff's injury; (4) the moral blame attached to defendants' conduct; (5) the policy of preventing future harm; (6) the burden on the defendant and consequences to the community of imposing the duty; and (7) the availability, cost and prevalence of insurance for the risk.

Considering these factors as a whole, the *Stacey* panel concluded that no actionable duty existed. Defendants' Rules and Regulations actually placed any risk associated with owning pets squarely upon the manufactured home owner, by stating: "residents are solely and totally responsible for the behavior of their pet." Although the Rules and Regulations also stated that management would make "every effort" to enforce the rules, the Court of Appeals declined to recognize a tort duty based upon this language. "This argument goes far beyond plaintiff's common law negligence claim. What plaintiff encourages is essentially akin to a strict liability standard whereby whenever a manufactured home community has a rule and the rule is not enforced, the landlord is strictly liable for the consequences, no matter what the factual scenario." *Stacey, supra* at *5.

The dismissal of plaintiff's claims against the landlord, based upon a finding of no duty, is not only consistent with previous dog bite decisions, but also with general tort principles. Under Michigan law, a legal duty is a threshold requirement before there can be any consideration of whether a person was negligent.[1]

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[1] *Romain v Frankenmuth Mut Ins Co,* 483 Mich 18, 22 (2009). See also *Boundaries,* December 22, 2011, "Their Way or the Highway: Michigan Supreme Court Holds that Private Parties are Under No Duty to Maintain Public Highways," by Drew Broaddus.

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