

SUPREME COURT OF VERMONT

Katherine Higgins v. Shawn Bailey and Suzan Bailey

Higgins v. Bailey, 7 Rob. 613 (Vt. 1867) · No. 2020-290 · Decided September 3, 2021

SUMMARY

The Vermont Supreme Court affirmed summary judgment for landlords in a negligence action arising from a tenant's dog attack on a visitor to leased property. The Court held that, at a minimum, a landlord cannot be liable for injuries caused by a tenant's dog absent notice of the animal's dangerous propensities, and that the landlords had no affirmative common-law duty to investigate the dog's history. The Court also rejected claims based on a realtor's observations and a Marshfield municipal ordinance.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Robinson, J.; Reiber, C.J.; Eaton, J.; Carroll, J.; Cohen, J.
JURISDICTION	Vermont
DECIDED	September 3, 2021
DOCKET	2020-290
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed the Superior Court's grant of summary judgment to defendant landlords in her negligence action arising from injuries caused by a tenant's dog.
STANDARD OF REVIEW	The Supreme Court applies the same standard as the trial court when reviewing summary judgment and affirms when there is no genuine issue of material fact and, viewing the evidence in the light most favorable to the nonmoving party, the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Katherine Higgins v. Shawn Bailey, Suzan Bailey

TOPICS

[duty of care](#)[landlord tenant](#)[negligence](#)[summary judgment](#)[standard of review](#)

PRACTICE AREAS

negligence

landlord-tenant law

premises liability

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether a landlord who lacks actual knowledge of a tenant's dog's dangerous propensities owes a common-law duty to a tenant's guest injured by the dog on the leased premises.
2. Whether the realtor's observations provided the landlords with notice, or constructive notice, of the dog's dangerous propensities.
3. Whether the Town of Marshfield dangerous-dog ordinance provided a basis for Higgins's tort claim against the landlords.
4. Whether summary judgment was proper under the undisputed material facts.

HOLDINGS

1. A landlord cannot be held liable to a tenant's guest injured by the tenant's dog on the leased premises when the landlord had no actual knowledge of the animal's dangerous propensities. The landlord also has no affirmative common-law duty to investigate a tenant's companion animal before leasing the property.
2. The realtor's observations that the dog had scratched door frames and sounded "tough and loud" were insufficient to establish knowledge that the dog posed an unreasonable danger to people.
3. Higgins failed to establish a potential tort claim against the landlords based on the Town of Marshfield ordinance. The ordinance could not supply the claim because the landlords had no established common-law duty, and Higgins did not adequately establish an independent private tort remedy under the ordinance.
4. Summary judgment for the landlords was proper because, even viewing the evidence in the light most favorable to Higgins, the undisputed facts did not establish a legal duty or a viable ordinance-based claim.

KEY QUOTATIONS

"We need not decide whether there are ever circumstances in which a landlord can be liable to a tenant's guest who is injured by a tenant's dog on the tenant's premises because we conclude that, at a minimum, the landlord cannot be liable if the landlord has no notice of the animal's dangerous propensities." (§ 8)

"Thus, even the cases that espouse a broader view of a landlord's common law duty of care to guests of a tenant within non-common spaces do not suggest that a landlord without actual knowledge has an affirmative common-law duty to investigate whether a tenant intends to keep a companion animal and the details of that animal's history and disposition before renting to a tenant." (§ 17)

"Because, for the reasons set forth above, landlords had no common-law duty to plaintiff in this case, the general rule embodied in § 286 has no application in this case." (§ 22)

FACTUAL BACKGROUND

Shawn and Suzan Bailey leased their Marshfield, Vermont, house to Skyler Bagalio and expressly permitted him to move in with his dog. Before the attack, the Baileys had no actual knowledge that the dog had previously bitten or injured anyone, and they did not ask Bagalio about the dog's history or disposition. A realtor observed scratched door casings and described the dog as sounding "tough and loud," but did not see the dog or know its breed, history, or behavior toward people. While visiting Bagalio at the rental property, Higgins, a neighbor, was seriously injured when the dog attacked her; the dog had previously bitten a child in the face.

PROCEDURAL HISTORY

Higgins sued the landlords for negligence after she was seriously injured by their tenant's dog while visiting the tenant on the leased property. After discovery, the landlords moved for summary judgment, arguing that they lacked knowledge of the dog's dangerous propensities and therefore owed no legal duty. The Superior Court, Washington Unit, Civil Division, granted summary judgment to the landlords. The Vermont Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Gross v. Turner, 2018 VT 80, 208 Vt. 112, 195 A.3d 654
- In re Carter, 2004 VT 21, 176 Vt. 322, 848 A.2d 281
- Estate of Alden v. Dee, 2011 VT 64, 190 Vt. 401, 35 A.3d 950
- LeClair v. LeClair, 2017 VT 34, 204 Vt. 422, 169 A.3d 743
- O'Connell v. Killington, Ltd., 164 Vt. 73, 665 A.2d 39 (1995)
- Langle v. Kurkul, 146 Vt. 513, 510 A.2d 1301 (1986)
- Stewart ex rel. Stewart v. Aldrich, 2002 ME 16, 788 A.2d 603
- Clea v. Odum, 714 S.E.2d 542 (S.C. 2011)
- Boots ex rel. Boots v. Winters, 179 P.3d 352 (Idaho Ct. App. 2008)
- Strunk v. Zoltanski, 466 N.Y.S.2d 716 (App. Div. 1983), aff'd, 468 N.E.2d 13 (N.Y. 1984)
- Matthews v. Amberwood Assocs. Ltd. P'ship, 719 A.2d 119 (Md. 1998)
- Sheldon v. Ruggiero, 2018 VT 125, 209 Vt. 33, 202 A.3d 241

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