

SUPREME COURT OF NEBRASKA

Grammer v. Lucking

292 Neb. 475 (2016) · No. No. S-14-1080 · Decided January 15, 2016

SUMMARY

The Nebraska Supreme Court reversed a summary judgment entered for dog owners in a strict liability action under Neb. Rev. Stat. § 54-601(1). The court held that the district court improperly considered only one definition of "chase" and failed to consider whether the dogs injured the plaintiff, because the statutory alternatives are disjunctive. The case was remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Connolly, J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.
JURISDICTION	Nebraska
DECIDED	January 15, 2016
DOCKET	No. S-14-1080
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiffs appealed from the Jefferson County District Court's grant of summary judgment to the defendants in a statutory strict-liability action involving injuries allegedly caused by dogs. The Nebraska Supreme Court granted the plaintiffs' petition to bypass the Nebraska Court of Appeals.
STANDARD OF REVIEW	Statutory interpretation is reviewed independently as a question of law. Summary judgment is affirmed only when the pleadings and admitted evidence show no genuine issue as to any material fact or ultimate inference and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Joleen Grammer, Terry Grammer v. Darren Lucking, Cory Lucking

TOPICS

- strict liability
- statutory interpretation
- summary judgment
- appellate procedure
- civil procedure

PRACTICE AREAS

torts

strict liability

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court erred by granting summary judgment after considering only one definition of "chase" under Neb. Rev. Stat. § 54-601(1).
2. Whether the statutory terms in § 54-601(1), including the alternative definitions of "chase" and the term "injuring," must be considered disjunctively.
3. Whether summary judgment was improper because the district court failed to consider whether the dogs injured Joleen within the meaning of § 54-601(1).
4. Whether the continued validity of *Donner v. Plymate* after the 1992 amendment adding "injuring" to § 54-601 was dispositive of the appeal.

HOLDINGS

1. Section 54-601(1) applies when a dog kills, wounds, injures, worries, or chases a person; the statutory alternatives are disjunctive. The alternative definitions of "chase" likewise must be considered disjunctively rather than conjunctively.
2. The district court erred by granting summary judgment without considering every relevant definition of "chase" and whether the dogs "injured" Joleen.
3. The court did not decide whether *Donner's* playful-or-mischievous-act limitation remained sound or was abrogated by the 1992 statutory amendment, because that issue was not dispositive where the district court had not considered all relevant statutory alternatives.

KEY QUOTATIONS

"Thus, § 54-601 applies when a dog kills or wounds or injures or worries or chases a person, under any relevant definitions of those terms." (479)

"Therefore, the district court should not have granted summary judgment without considering every relevant definition of 'chase' and 'injure.'" (480)

FACTUAL BACKGROUND

On July 16, 2013, Joleen and Terry Grammer were walking near the Luckings' home when two of the Luckings' dogs, one chained and one unrestrained, ran toward them barking and growling. Terry stepped in front of Joleen, but the unrestrained dog ran past him toward Joleen. As Joleen backed away, she stumbled and fell, injuring her elbow. Neither dog bit, scratched, or otherwise touched either plaintiff.

PROCEDURAL HISTORY

The Grammers sued under Neb. Rev. Stat. § 54-601(1), alleging that the Luckings' dogs injured Joleen Grammer by charging at and chasing her. The district court concluded that the dogs were not chasing Joleen in order to catch or harm her and entered summary judgment for the Luckings without considering the other statutory

definitions of "chase" or whether the dogs "injured" Joleen. The Nebraska Supreme Court reversed and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the district court for further proceedings not inconsistent with the opinion, including consideration of every relevant definition of "chase" and "injure" under § 54-601(1).

CASES CITED

- DMK Biodiesel v. McCoy, 290 Neb. 286, 859 N.W.2d 867 (2015)
- Donner v. Plymate, 193 Neb. 647, 228 N.W.2d 612 (1975)
- Underhill v. Hobelman, 279 Neb. 30, 776 N.W.2d 786 (2009)
- Hughes v. School Dist. of Aurora, 290 Neb. 47, 858 N.W.2d 590 (2015)
- Goodyear Tire & Rubber Co. v. State, 275 Neb. 594, 748 N.W.2d 42 (2008)