

SUPREME COURT OF SOUTH DAKOTA

Ridley v. Sioux Empire Pit Bull Rescue, Inc.

932 N.W.2d 576 (S.D. 2019) · Decided August 7, 2019

SUMMARY

Darlette Mae Ridley was injured when a pit bull owned by Sioux Empire Pit Bull Rescue, Inc. and temporarily cared for by Susan Tribble-Zacher and Harry Podhradsky escaped its tether and attacked her at a South Dakota campground. The South Dakota Supreme Court held that the attack was not foreseeable under the circumstances and affirmed summary judgment for the defendants. The court's majority opinion was accompanied by a special concurrence and a dissent.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Chief Justice Gilbertson; Justice Jensen; Justice Salter; Justice Kern; Retired Justice Severson
JURISDICTION	South Dakota
DECIDED	August 7, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from the circuit court's grants of separate motions for summary judgment in favor of the dog-rescue organization and the dog's temporary caregivers in a negligence action arising from an unprovoked dog attack.
STANDARD OF REVIEW	The court reviews summary judgment de novo to determine whether the moving party demonstrated the absence of any genuine issue of material fact and entitlement to judgment as a matter of law, viewing the evidence most favorably to the nonmoving party and resolving reasonable doubts against the moving party.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of South Dakota
PARTIES	Darlette Mae Ridley v. Sioux Empire Pit Bull Rescue, Inc., Susan Tribble-Zacher, Harry Podhradsky

TOPICS

[summary judgment](#)[standard of review](#)[negligence](#)[duty of care](#)[personal injury](#)

PRACTICE AREAS

torts

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court properly granted summary judgment when the evidence, viewed in Ridley's favor, did not establish a genuine issue of material fact regarding foreseeability or breach of the defendants' duty of reasonable care.
2. Whether Meadow's pit bull type breed, prior fight with another dog, temporary foster placement, failure to undergo a two-week shutdown period, or tethering at the campground made an attack on Ridley reasonably foreseeable.
3. Whether South Dakota law recognizes a breed-specific heightened standard of care for pit bull type dogs.

HOLDINGS

1. Summary judgment was proper because, even viewing the evidence in the light most favorable to Ridley, no genuine issue of material fact showed that the defendants could reasonably have foreseen Meadow's attack on a human or otherwise breached their duty of reasonable care.
2. South Dakota law does not impose a breed-specific heightened standard of care based solely on a dog's pit bull type breed or historical breeding for aggression toward other dogs.
3. The alleged failure to comply with SEPR's two-week shutdown policy did not create a genuine issue of material fact because the record did not connect that policy violation to a foreseeable attack on a human.

KEY QUOTATIONS

"In reviewing a grant or a denial of summary judgment under SDCL 15-6-56(c), we must determine whether the moving party demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment on the merits as a matter of law." (932 N.W.2d at 577)

"Before a defendant can be held liable for negligence, the defendant must have breached a duty of care owed to the plaintiff." (932 N.W.2d at 578)

"The law in South Dakota does not support any such breed-specific standard of care." (932 N.W.2d at 582)

"Even when viewing the facts in a light most favorable to Ridley, there was no indication that it was foreseeable that Meadow would have attacked Ridley on the morning of August 9, 2015." (932 N.W.2d at 583)

FACTUAL BACKGROUND

On August 9, 2015, Darlette Mae Ridley was walking through Newton Hills State Park when Meadow, a pit bull type dog owned by Sioux Empire Pit Bull Rescue, Inc. and being temporarily cared for by Susan Tribble-Zacher and Harry Podhradsky, lunged at her. Meadow's collar broke while she was tethered to a tree, allowing her to reach Ridley, knock her down, and bite her. Ridley sustained cuts, a fractured finger requiring stitches, pain,

medical expenses, and lost wages. Meadow had previously fought with another dog, but the record contained no evidence that she had dangerous propensities toward humans or that the defendants should have anticipated the collar's failure or the attack.

PROCEDURAL HISTORY

Ridley sued Sioux Empire Pit Bull Rescue, Inc., Susan Tribble-Zacher, and Harry Podhradsky for injuries sustained when a dog in their care escaped its tether and attacked her. The defendants separately moved for summary judgment. After a hearing, the circuit court found no evidence of a lack of reasonable care and granted all three motions. The South Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Nicolay v. Stukel, 2017 S.D. 45, 900 N.W.2d 71
- Gades v. Meyer Modernizing Co., 2015 S.D. 42, 865 N.W.2d 155
- Lindblom v. Sun Aviation, Inc., 2015 S.D. 20, 862 N.W.2d 549
- Englund v. Vital, 2013 S.D. 71, 838 N.W.2d 621
- Locke v. Gellhaus, 2010 S.D. 11, 778 N.W.2d 594
- Gehrts v. Batteen, 2001 S.D. 10, 620 N.W.2d 775
- Rowland v. Log Cabin, Inc., 2003 S.D. 20, 658 N.W.2d 76
- Tipton v. Town of Tabor, 1997 S.D. 96, 567 N.W.2d 351
- Robinson v. Ewalt, 2012 S.D. 1, 808 N.W.2d 123
- Gul v. Ctr. for Family Med., 2009 S.D. 12, 762 N.W.2d 629
- Hanson v. Big Stone Therapies, Inc., 2018 S.D. 60, 916 N.W.2d 151

OPINION

GILBERTSON, J.

GILBERTSON, Chief Justice [¶1.] Darlette Mae Ridley was attacked and injured by a dog while walking in a state campground. The dog was a pit bull type belonging to Sioux Empire Pit Bull Rescue, Inc. (SEPR) and in the care of Susan Tribble-Zacher and Harry Podhradsky at their campsite. Ridley sued SEPR, Zacher, and Podhradsky claiming they were liable for her injuries.

SEPR, Zacher, and Podhradsky filed separate motions for summary judgment, which the circuit court granted. Ridley appeals. We affirm. Facts and Procedural History [¶2.] On the morning of August 9, 2015, Ridley and her family were camping at Newton Hills State Park in Lincoln County, South Dakota. At approximately 7:05 a.m., Ridley decided to take a walk around the campground.

Zacher and Podhradsky were also camping at Newton Hills with their son, their dog, and a pit bull named Meadow. At the time, Zacher and Podhradsky were dog sitting for Meadow. As Ridley walked by Zacher and Podhradsky's campsite, she claimed she heard a loud bark and turned to see Meadow tethered to a tree. [¶3.] Ridley claims she saw Meadow rear up on her hind legs and lunge toward Ridley.

As Meadow lunged, her dog collar unexpectedly broke, and she began to run free toward Ridley. Meadow knocked Ridley down onto the gravel road and allegedly bit her. Zacher called out for Meadow to return back to her and Meadow obeyed.

The parties agree that Ridley did nothing to incite or provoke the attack. [¶4.] As a result of the attack, Ridley sustained cuts on her elbow, left ring, and pinky fingers, and experienced pain in her lower back. Podhradsky assisted Ridley to a nearby bench and then into a campground bathroom to clean blood off of Ridley's hand. Zacher then helped Ridley back to Ridley's campsite and Ridley's husband drove her to the emergency room.

Ridley suffered a fractured finger that required cleaning and stitches. She incurred medical expenses and lost wages as a result of the *579dog attack. She eventually sued SEPR, Zacher, and Podhradsky claiming they were liable for the injuries she sustained. [¶5.] At the time of the attack on Ridley, Meadow was owned by SEPR. SEPR is an organization that accepts pit bulls from animal shelters, situations of abuse and neglect, and dog fighting rings.

The organization does not have its own physical location, so rescued animals are placed with foster providers until a permanent home for the animals can be located. [¶6.] Meadow was picked up by the Sioux City Humane Society sometime before July 2014. SEPR later took possession of Meadow and placed her with Jennifer Praske, a foster provider in Worthing, South Dakota.

Meadow stayed with Praske from July 2014 to December 2014. SEPR then transferred Meadow to live with Desiree and Jon Adams in Platte, Nebraska. On March 1, 2015, when the Adams were attempting to introduce Meadow to their family dog, a fight ensued and both dogs were injured.

In April 2015, Meadow was placed with Heather Boon, where she remained up until right before the attack on Ridley. [¶7.] Shortly before the attack, Boon wanted to go out of town, so she notified SEPR to find temporary foster providers for Meadow. SEPR arranged for Zacher and Podhradsky to act as Meadow's temporary caregivers. Zacher and Podhradsky had previously dog sat Meadow twice and had experience raising, fostering, and dog-sitting pit bulls.

On July 31, 2015, Boon brought Meadow to Zacher and Podhradsky's home. The pair were scheduled to take care of Meadow until Saturday, August 8, 2015. However, Boon contacted Zacher to notify her that her trip had been extended and that Boon would not return home until Sunday, August 9, 2015. Zacher and Podhradsky had already made plans to camp overnight at Newton Hills so they decided to take Meadow with them. [¶8.]

The parties disagree as to whether Zacher and Podhradsky violated SEPR's policy by bringing Meadow with them to camp at Newton Hills. SEPR's President, Rachel DeZell Leighton, testified in a deposition that SEPR requires that each animal undergo a two-week shutdown period after they are transferred to a new foster home.

The two-week shutdown period requires that the new caregivers segregate a dog and bond the dog to only one caregiver. [¶9.] During the two-week shutdown, a dog is kept separate from other animals and prohibited from leaving the caregiver's home or yard. Leighton testified that "[t]he two-week shutdown allows an animal to decompress and begin to bond with a handler.

It builds the relationship of trust" between the dog and the new foster care provider. Ridley claims that Zacher and Podhradsky violated SEPR's policy because they did not perform a two-week shutdown period with Meadow before bringing her to the Newton Hills campground. Zacher, Podhradsky, and SEPR claim that the two-week shutdown policy was optional in this situation, [¶10.]

After Ridley sued SEPR, Zacher, and Podhradsky for her injuries, SEPR, Zacher, and Podhradsky filed separate motions for summary judgment arguing that there were no disputed material facts and that they were entitled to judgment as a matter of law. Ridley resisted the summary judgment motions. A hearing was held on June 7, 2018.

The circuit court granted the motions for summary judgment, holding that there was no evidence showing a lack of reasonable care on the part of SEPR, Zacher, or Podhradsky. Ridley appeals, asking this Court to determine issues that can be consolidated into the question of whether the circuit court erred in granting SEPR, Zacher, and Podhradsky's motions for summary judgment.

Standard of Review [¶11.] "In reviewing a grant or a denial of summary judgment under SDCL 15-6-56(c), we must determine whether the moving party demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment on the merits as a matter of law." *Nicolay v. Stukel*, 2017 S.D. 45, ¶ 16, 900 N.W.2d 71, 77-78 (quoting *Gades v. Meyer Modernizing Co.*, 2015 S.D.

42, ¶ 7, 865 N.W.2d 155, 157-58). "We view the evidence most favorably to the nonmoving party and resolve reasonable doubts against the moving party." *Id.* (quoting *Gades*, 2015 S.D. 42, ¶ 7, 865 N.W.2d at 158). Analysis & Decision [¶12.] Ridley claims the circuit court erred in granting SEPR, Zacher, and Podhradsky's motions for summary judgement for two reasons.

First, she claims the circuit court incorrectly weighed the evidence, viewing the facts of the case in a light most favorable to SEPR, Zacher, and Podhradsky as opposed to a light most favorable to Ridley. She also argues that there was sufficient evidence for a jury to conclude that SEPR, Zacher, and Podhradsky breached their standard duty of care toward Ridley. [¶13.]

"Negligence is the breach of a duty owed to another, the proximate cause of which results in an injury." *Lindblom v. Sun Aviation, Inc.*, 2015 S.D. 20, ¶ 19, 862 N.W.2d 549, 555 (quoting *Englund v. Vital*, 2013 S.D. 71, ¶ 11, 838 N.W.2d 621, 627). Consequently, "[b]efore a defendant can be held liable for negligence, the defendant must have breached a duty of care owed to the plaintiff."

Locke v. Gellhaus, 2010 S.D. 11, ¶ 11, 778 N.W.2d 594, 597. "Whether a duty exists is a question of law; whether a defendant's conduct constitutes a breach of a duty is a question of fact." *Nicolay*, 2017 S.D. 45, ¶ 16, 900 N.W.2d at 78. [¶14.]

Under South Dakota law, "[o]wners of domesticated animals may... be held liable for harm caused by their pet...." *Gehrts v. Batteen*, 2001 S.D. 10, ¶ 7, 620 N.W.2d 775, 777. "[I]n such a case against a dog owner, the plaintiff must establish that as an ordinary, prudent person, the owner should have foreseen the event that caused the injury and taken steps to prevent the injury."

Rowland v. Log Cabin, Inc., 2003 S.D. 20, ¶ 8, 658 N.W.2d 76, 78. "Such liability may arise depending upon the kind and character of the particular animal concerned, the circumstances in which it is placed, and the purposes for which it is employed or kept." *Id.* (quoting *Gehrts*, 2001 S.D. 10, ¶ 9, 620 N.W.2d at 778). "[I]f a plaintiff proves that the dog owner knew or had reason to know of the dog's dangerous propensity the plaintiff will be deemed to have established the foreseeability element of negligence."

Id. ¶ 9, 658 N.W.2d at 79. "[T]o establish foreseeability, a plaintiff in a dog bite case may either argue to the jury that the owner knew or should have known of the dog's dangerous propensities or that, under the totality of the circumstances, injury to the plaintiff was reasonably foreseeable." *Id.* [¶15.]

Here, both parties agree. The circuit court granted the motions for summary judgment on the basis that the injury to Ridley was not foreseeable. As to SEPR, Zacher, and Podhradsky's knowledge of Meadow's dangerous propensities, the circuit court stated that: [I]t seems to me that there isn't any evidence to suggest that this dog had dangerous propensities. There wasn't any history of any kind of dangerous or *581aggressive behavior on the part of the dog.

The closest thing that the plaintiffs can suggest is that the dog was the victim of an attack by another dog two and a half years prior, and I don't think we can draw any inferences in the light most favorable to the plaintiff that are beyond that.... (Emphasis added.)

The circuit court also discussed the foreseeability of Meadow's attack on Ridley in detail, stating: There isn't any evidence to show that the defendants knew or should have known the collar was going to break on that morning at 7 o'clock if the dog put physical stress on it. It's anticipated that dogs were going to put stress on collars and that's why you have a collar that fits the dog and you

have a tether that's adequate to hold the dog, and there isn't indication that the defendants have any reason to believe that that wasn't an appropriate safety device.

So I can't draw any conclusion of negligence from that. We don't have any expert testimony to contradict that... so there isn't any evidence for the lack of reasonable care on the part of the defendants that's been brought to the record at this point in time. There's a suggestion that while they violated their own rule that you're supposed to have a two-week lockdown, but it sounds to me like that might be a made-up rule.

There isn't anything to justify it or establish it as a duty of care. And the testimony is it was, you know, an option within the discretion of the parties based upon their understanding of the pet and the circumstances, but in order to view that evidence as suggested by the plaintiff herein, I would have to find that it's negligence to take dogs camping and tether them to trees and-because the collar might snap.

And I just don't think that's foreseeable under the circumstances or in this particular case.... (Emphasis added.) Having detailed its view on the foreseeability of Ridley's injuries, the circuit court concluded that there was no dispute "as to any material facts in viewing all the evidence in the light most favorable to the plaintiff[.]" and granted summary judgment. [¶16.]

Here, Ridley does not contest the circuit court's findings as to knowledge, but rather, "asks this Court to reverse the trial court's grant of summary judgment based on the foreseeability test." In effect, Ridley argues that there was sufficient evidence for a jury to find that it was foreseeable that Meadow would have attacked Ridley because of Meadow's breed and character, and the circumstances in which Meadow was placed.

See Rowland, 2003 S.D. 20, ¶ 8, 658 N.W.2d at 78 (quoting Gehrts, 2001 S.D. 10, ¶ 9, 620 N.W.2d at 778). [¶17.] Ridley first points to evidence in the record that she believes shows that pit bull type dogs have inherently dangerous breed tendencies. Indeed, Leighton testified that bulldogs and terriers are "selectively bred for specific and superior fighting abilities[.]" and that SEPR instructs its volunteers to "never trust a pit bull not to fight" because "that is genetically what [the animals] were bred to do."

Leighton also testified that SEPR prohibits its dogs from going to dog parks and requires its dogs to be supervised and leashed at all times. Another SEPR board member, Brittany Snyders, testified that pit bulls are high energy dogs, and that SEPR trains its dogs to prevent aggressive behaviors. Ridley appears to argue that because these aggressive tendencies may be present in some pit bulls, a reasonable person should be held to a higher standard of care when caring for a pit bull type dog. [¶18.]

The law in South Dakota does not support any such breed-specific *582standard of care. We instead recognize that "[d]ogs... are presumed tame and docile and the burden is on [a] plaintiff[]

to show otherwise." *Tipton v. Town of Tabor*, 1997 S.D. 96, ¶ 24, 567 N.W.2d 351, 362.

Here, Ridley has failed to show that Meadow was the kind and character of dog which would make it foreseeable that Meadow would attack a human. [¶19.] Testimony in the record indicates that some pit bulls may possess aggressive tendencies, but only as it relates to other dogs and not to humans.

As to Meadow's own character, there was only one noted instance of aggression during Meadow's history with SEPR. That instance involved a fight with another dog belonging to one of Meadow's foster families and not an attack on a human. Prior to the attack on Ridley, Meadow was described as being "a really happy, sweet dog[,] "happy-go-lucky[,] "calm," and "easy to deal with."

Thus, Meadow's breed or character does not appear to have made the attack on Ridley foreseeable. [¶20.] Ridley next argues that Meadow's attack on her was foreseeable due to the circumstances in which Meadow was placed with Zacher and Podhradsky prior to the attack.

First, Ridley claims that Meadow should not have been brought to the campground because she had not been placed on a two-week lockdown in compliance with SEPR policy. Second, Ridley contends that a reasonable person would have foreseen that Meadow could cause harm because she lacked "consistency and structure in [her] living arrangements." Importantly, Ridley does not appear to contend that the collar worn by Meadow or the way in which Meadow was tethered made the attack on Ridley foreseeable. [¶21.]

Even if Meadow's presence at Newton Hills campground somehow violated SEPR's two-week shutdown period, the failure to comply with the policy did not make it foreseeable that Meadow, specifically, would cause injury. Podhradsky testified that he and Zacher had previously dog sat for Meadow in November of 2014. Podhradsky indicated that, at that time, he and Zacher did place Meadow into the two-week shutdown.

Zacher and Podhradsky dog sat Meadow again in the early summer of 2015 and interacted with Meadow at SEPR's various public meet-and-greet events. Meadow never exhibited any aggressive tendencies toward people or other dogs while in Zacher and Podhradsky's care.

In addition, both Zacher and Podhradsky had experience with handling pit bulls prior to Meadow's attack on Ridley. The couple owned two other pit bull dogs and had volunteered with SEPR since 2011. Zacher attended monthly SEPR meetings, had previously volunteered at another dog rescue, and had volunteered with the American Society for the Prevention of Cruelty to Animals (ASPCA) to help transition fighting pit bulls into shelters. [¶22.]

For these same reasons, Meadow's foster placement conditions between Boon, Zacher, and Podhradsky during the week prior to the attack did not make it foreseeable that Meadow would

attack Ridley. There was no evidence that, even under the potential stress of changing environments, Meadow would be likely to attack Ridley. [¶23.]

Moreover, the uncontested fact remains that at the time of the attack, Meadow was not allowed by SEPR, Zacher, or Podhradsky to roam free at the campsite. She was securely tethered to a tree by a rope and collar. It was not foreseeable that the collar would break allowing Meadow to come into physical contact with Ridley. Had the collar held, it and the rope would have restrained Meadow and the attack would have never occurred. *583[¶24.]

Even when viewing the facts in a light most favorable to Ridley, there was no indication that it was foreseeable that Meadow would have attacked Ridley on the morning of August 9, 2015. Therefore, SEPR, Zacher, and Podhradsky did not breach their duty of reasonable care toward Ridley.

The circuit court did not err in granting SEPR, Zacher, and Podhradsky's motions for summary judgment. We affirm. [¶25.] JENSEN, Justice, and SALTER, Justice, concur specially. [¶26.] KERN, Justice, and SEVERSON, Retired Justice, dissent. SALTER, Justice (concurring specially). [¶27.] I am in agreement with the majority opinion that the circuit court's decision to grant the motion for summary judgment should be affirmed, and I believe the Court correctly concludes that the injury to Ridley, unprovoked and unanticipated as it was, simply was not foreseeable.

This determination, however, is very much confined to this case-not only because of its unique facts, but also because of the state of the existing record. In my view, there is no set of permissible inferences from the material facts presented here that would support a submissible negligence claim. I write separately, therefore, to focus upon what I believe to be an uncomplicated application of our well-established rules for reviewing summary judgment orders under SDCL 15-6-56. [¶28.]

Among this case's constituent facts are a relatively small number of material facts whose determination "would affect the outcome of the suit... in that 'a reasonable jury could return a verdict for the nonmoving party.' " Robinson v. Ewalt, 2012 S.D. 1, ¶ 10, 808 N.W.2d 123, 126 (quoting Gul v. Ctr. for Family Med., 2009 S.D. 12, ¶ 8, 762 N.W.2d 629, 633).

Determining whether summary judgment was correct here requires us to consider these facts for more than their bare significance by allowing all reasonable inferences and viewing them in the light most favorable to Ridley.

The requirement that the inferences be grounded in reason necessarily means they must not be the product of "speculation or conjecture." Hanson v. Big Stone Therapies, Inc., 2018 S.D. 60, ¶ 40, 916 N.W.2d 151, 161. [¶29.] This basic standard applied here reveals the following facts which may be material to a determination of liability under a common law negligence theory: (1)

Meadow is a pit bull; (2) Pit bulls have historically been bred to fight other dogs; (3) Meadow was acquired by the Sioux City Humane Society sometime prior to July 2014; (4) Meadow had been cared for by SEPR volunteers for over one year prior to the August 9, 2015, attack; (5) Meadow had no known dangerous propensities; (6) SEPR requires a two-week shutdown period after a dog is placed in a new home; (7) Meadow did not undergo a two-week shutdown period when she was placed temporarily with Zacher and Podhradsky and was with them during their camping trip on August 9; and (8) Meadow was collared and tethered at a campsite on the morning of the August 9 attack. [¶30.]

These facts would not, themselves, support a verdict for Ridley, even when their impact is augmented with reasonable inferences and viewed in the light most favorable to Ridley. Whether considered in isolation or in concert, the range of permissible inferences from these key facts *584stalls under this record, and a factual theory of recovery under negligence principles unavoidably implicates conjecture. [¶31.]

For instance, the fact that Meadow is a pit bull and a member of a breed historically bred to fight other dogs does not support an inference that she was dangerous to humans. In fact, there is no evidence that any of the defendants knew or should have known that Meadow had any dangerous propensities.

In the absence of some showing that Meadow's attack was something other than random unexplained behavior, an adverse inference about the pit bull breed could not support a verdict for Ridley. [¶32.] Nor could Ridley establish liability because Zacher and Podhradsky did not require Meadow to undergo a two-week shutdown period. Though this period exists to allow a dog to adjust to new surroundings, concluding that the dog may precipitously attack a human in the absence of the two-week period requires speculation.

The only witnesses to testify about the purposes of the shutdown period were affiliated with SEPR, and their testimony does not support even an inference that the shutdown was related to human safety concerns. [¶33.]

Finally, as the Court's opinion ably points out, there is no showing here that it was reasonably foreseeable Meadow would break her collar, and attack Ridley. The apparent failure of Meadow's collar is unaccompanied by other evidence from which a reasonable inference of negligence could be drawn. A jury could not, without speculating, determine that the failure of the collar justified a verdict for Ridley. [¶34.]

There is certainly no allegation that Ridley contributed to the attack in any way, and I can understand her inclination to seek compensation. However, denying summary judgment on this record would effectively authorize strict or absolute liability for unprovoked and unanticipated

attacks by dogs. This result is not recognized under existing law, which is governed, instead, by negligence principles.

Our role requires us to faithfully apply these principles and our well-settled rules for reviewing summary judgment orders. Doing so here leads inexorably to the conclusion that we must affirm the circuit court's decision. [¶35.] JENSEN, Justice, joins this special writing.