

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

Paul T. Harvey and Christa M. Jobes,	:	
	:	C.A. No. 07-10-0113
Plaintiffs,	:	
	:	
v.	:	
	:	
Jeremy Owens,	:	
	:	
Defendant.	:	

**Decision after trial.**

**Date of Trial: March 27, 2008**

**Date Decided: April 1, 2008**

**Judgment for the Plaintiffs.**

Paul T. Harvey, 14 Boyd Drive, Magnolia, Delaware 19962, *pro se* Plaintiff.

Christa M. Jobes, 14 Boyd Drive, Magnolia, Delaware 19962, *pro se* Plaintiff.

Jeremy Owens, 42 Boyd Drive, Magnolia, Delaware 19962, *pro se* Defendant.

Trader, J.

In this civil case, I conclude that the defendant violated 7 *Del. C.* § 1705(a) when he permitted his dog to run at large. I also conclude that a violation of the statute by the defendant constitutes negligence *per se*. Therefore, the defendant is liable to the plaintiffs for the veterinarian fees incurred when the defendant's dog attacked the plaintiffs' dog. Additionally, the defendant is also liable to the plaintiffs for the medical bills that they incurred as a result of being bitten when they tried to break up the fight between the two dogs.

The relevant facts are as follows: the plaintiffs, Paul T. Harvey and Christa M. Jobs, resided together at 14 Boyd Drive, Magnolia, Kent County, Delaware. The defendant, Jeremy Owens, resided at 42 Boyd Drive, Magnolia, Delaware, located immediately behind the plaintiffs' residence. The plaintiffs were the owners of "Rex," a mixed breed terrier, and the defendant was the owner of "Loco," a pit bull terrier. On April 6, 2007, the plaintiffs' dog was chained to a tree on their property. That afternoon, at 4:26 P.M., "Loco" became loose, went over to the plaintiffs' property, and started fighting with "Rex." Ms. Jobs heard the dogs fighting and went to the back of her property to separate the dogs. At that time, the defendant's pit bull had the plaintiffs' terrier by the head. Ms. Jobs, while trying to intervene in the fight between the dogs, was bitten by her dog. Thereafter, Mr. Harvey came into the backyard, tried to separate the two dogs, and was bitten by one of the dogs.

As a consequence of the dog bites, the plaintiffs immediately went to the emergency room and incurred medical bills from Bayhealth and Delmarva Emergency Physicians. Mr. Harvey returned to the emergency room on April 9, 2007, and incurred additional medical bills. Ms. Jobs returned to the emergency room for treatment on

April 9, April 11, April 13, and April 25, 2007, and she incurred hospital and doctors bills for those medical services. The plaintiffs also incurred pharmacy bills as a result of the dog bites as well as a veterinarian's fee for treatment of their dog. Additionally, "Loco" had not been currently vaccinated for rabies and, as a consequence, plaintiffs' dog was placed on quarantine. To comply with the quarantine, the plaintiffs purchased a cage for \$89.99 at Pet Smart.

Section 1705(a) of Title 7 of the Delaware Code provides in pertinent part, as follows: "[n]o dog shall be permitted to run at large at any time, unless the dog is accompanied by the owner or custodian and under the owner's or custodian's reasonable control . . . ." 7 *Del. C.* §1705(a). One of the purposes of the statute is to prevent human beings from being bitten or scratched by dogs. *Duffy v. Gebhart*, 157 A.2d 585, 587 (Del. Super. Ct. 1960).

The plaintiff's dog was on a chain in reasonable compliance with the statute and the plaintiffs' attempt to intervene in the dog fight was reasonable under the circumstances. Accordingly, there is no evidence that the plaintiffs were contributorily negligent. The defendant's dog was running at large at the time it bit the plaintiffs' dog around the head. The defendant's dog was neither confined within an enclosure as required by the statute nor under the control of its owner or custodian.

The evidence established that the defendant was in violation of 7 *Del. C.* §1705(a) and a violation of the statute constitutes negligence *per se*. *Duffy v. Gebhart*, 157 A.2d at 587. Defendant's negligence is the proximate cause of the injury to plaintiffs' dog. The defendant's negligence is also the proximate cause of the medical bills and pharmacy bills incurred by the plaintiffs. *See Moffitt v. Carroll*, 640 A.2d 169, 174 (Del. 1994)

(citing *Culver v. Bennett*, 588 A.2d 1094, 1097 (Del. 1991) ('but for' proximate cause test under Delaware law)). Based on the above legal analysis, the defendant is also liable to the plaintiffs for the veterinarian's bill resulting from the injury to plaintiffs' dog, and the defendant conceded that he was liable for that bill in the amount of \$323.00.

The defendant contends that although he had agreed to pay the veterinarian's bill, he, nevertheless, should not be liable for the plaintiffs' medical bills because each of the plaintiffs may have been bitten by their own dog. The defendant's contention is without merit. The plaintiffs would not have been bitten but for the fact that the defendant's dog was loose and allowed to get into a fight with Rex. Accordingly, the defendant is liable to the plaintiffs for the hospital, medical, and pharmacy bills incurred by the plaintiffs, as well as the cost of the dog cage.

Christa M. Jobses incurred the following medical bills from Bayhealth Medical Center: bill of \$285.75 for services performed on 4/06/07; bill of \$9.00 for services performed on 4/08/07; bill of \$643.25 for emergency room services performed on 4/09/07; bill of \$9.00 for services performed on 4/11/07; bill of \$144.00 for services performed on 4/13/07; and bill of \$651.00 for services performed on 4/25/07. Additionally, she incurred doctor's fees from Delmarva Emergency Physicians in the amounts of \$200.00 on 4/06/07 and \$187.00 on 4/09/07, and a bill from Milford Diagnostic Imaging in the amount of \$34.00 for services performed on 4/13/08. Christa Jobses incurred bills for the purchases of drugs in the amounts of \$27.49, \$19.99, and \$151.39. The total for the above services, drugs, the veterinarian bill, and the cage was \$2,774.86.

Paul Harvey incurred medical expenses from Bayhealth in the amount of \$187.75 for services performed on 4/06/07, and a bill in the amount of \$190.75 for services performed on 4/09/07. He also incurred a doctor's bill from Delmarva Emergency Physicians in the amount of \$200.00 for services performed on 4/06/07, and drug expenses in the amounts of \$19.99 and \$151.39. The total of his medical bills and pharmacy bills was \$749.88,

Based on these findings of fact and conclusions of law, judgment is entered in behalf of Christa M. Jobes and against Jeremy Owens for \$2,774.86, plus costs of these proceedings. Judgment is also entered in behalf of Paul T. Harvey and against Jeremy Owens in the amount of \$749.88, plus costs of these proceedings.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**