

Woodley Memorandum Draft

Introduction

Helen Woodley and mother, Elizabeth Woodley, are seeking damages from the Stone Zoo where they were visitors when a loose dog, owned by Sue Smith, bit young Helen. To determine the likely outcome of the client's case the following memorandum will examine the facts of this case in comparison to similar cases that address the Massachusetts Dog Bite Statute in terms of damages won or lost.

i. Facts

On January 1, 2006 Helen and her mother Elizabeth Woodley visited the Stone Zoo in Randolph, Massachusetts. This zoo has several brick buildings that look alike and contain the different exhibits of many animals. They wandered through the buildings for several hours. Elizabeth decided to visit one more building before they left for the day, selecting a brick building that was architecturally the same as all the other buildings but slightly set apart from the rest. There were no signs informing the client that the building was not an exhibit or that there was a dog on the premises. It had snowed and they followed the snowy path to the front door. When they were about 10 yards away from the building a German Shepherd suddenly appeared from the snowy bushes 5 yards to the left of the door, it was running loose and came to nuzzle them playfully. Elizabeth and Helen played with the dog for a few minutes before continuing towards the door. At this point Helen made a snowball and threw it at her mother, who ducked. The snowball hit the dog, not hurting it but startling it and the dog charged at Helen, biting her on the arm and hand. Helen needed 117 stitches. The building was later determined to be part of the groundskeeper, Sue Smith's, compensation package and contained her living area and the administrative offices. It was also determined that Smith owned the dog, who is was certified as a therapy canine and had never bitten or harassed anyone before biting Helen. Clients are seeking damages in accordance to the Dog Bite Statute of Massachusetts.

ii. Issue

Based upon the elements of the Massachusetts dog bite statute, G.L. c. 215, is Sue Smith, as the dog owner liable for the damages that her dog inflicted on Helen Woodley?

iii. **Rule**

The Massachusetts Dog Bite Statute G.L. c. 215: If a dog or any other animal, without provocation, attacks or injures any person who is peaceably conducting himself in any place where he may lawfully be, the owner of such dog or other animal is liable in damages to such person for the full amount of the injury sustained.

iv. **Application**

a. Ownership

Did Sue Smith own the German shepherd? In the case *Bjorstrom v. Carey Management Association*, 732 N.E.2d 441, 690 Mass. 332 (2005), Plaintiff 14-year-old Mark Bjorstrom, was bitten by a dog. The plaintiff was selling holiday cards for a non-profit in the Copley mall building which contains three level of public shopping centers, the fourth floor was Justin Carey's, of the Carey management associations, personal living area. He kept a dog in his apartment to guard the safe with the buildings collected rent. There were no notices posted anywhere that indicated that the fourth floor was not open to the public and so Bjorstrom headed there first to work his way down the levels. When he got to the top of the elevator the automatic door opened and there was a second very heavy manual door. He struggled to push it open, in the process of which missing the warning sign at the bottom of the door that indicated a dangerous attack dog. When he finally stepped into the hallway he was charged by the dog and attacked. In trial court he won damages, but Carey believed there were legal issues in the standard of law that the trial judge presented to the jury and appealed. The Appellate court investigated the four elements that must be present in the dog bite statute for it to be applied properly. The first element of the statute is that the injury is caused by a

dog owned or harbored by the defendant. Carey admitted that he did in fact own the dog, satisfying the first element. In the Woodley case, the facts are fairly similar. Helen and her mother were in a public area and entered an area that looked identical to the rest of the establishment with no signs indicating it was not. Additionally, in a discussion with Smith's attorney over the telephone it was admitted that Smith in fact owned the dog. In light of Bjorstrom v. Carey management Association and Smith's admission, ownership is legally and factually established.

b. Lawfully on the premises

Were Helen and Her mother Lawfully on the premises? To determine this, we will again look to the Bjorstrom case and the facts from above. The Appellate court investigated the four elements that must be present in the dog bite statute for it to be applied properly. The first element was satisfied, Carey agreed that he owned the dog. We will now look at the fourth element outlined by the court: the presence of the person injured in a place where he had a legal right to be. The court determined that the plaintiff was legally on the premises when he entered the fourth floor. This is because from all indication in the building and on the exterior any person could only surmise that the public was invited to do business on the premises. Additionally, there were no indications that any a part of the premises was used as a private residence. In the Woodley case the facts are very similar. The plaintiff claims that there were no posted signs that indicated that the building that was architecturally the same as the other exhibit buildings was a residence. If the plaintiff's assertions about there being no posted signs can be factually examined and confirmed, then based on the facts of the Bjorstrom case in comparison to the Woodley case, the clients were lawfully on the premises.

c. Lack of Provocation

1. Intentional provocation

Was there intentional provocation? In the case *Segal v. Chelsea*, 619 N.E.2d 555, 319 Mass. 234 (1992), Tom, a 7-year-old was playing cards on the deck at his friend Charlie Chelsea's house. They got bored of the cards and threw them at the family dog, who had stitches in its side from an automobile incident. The dog swiped away the cards, amusing the boys. Tom decided to kick the dog, making it growl and causing Charlie's mother to come out to the porch and send Charlie to his room and Tom back home before returning inside. Tom stayed on the porch and kicked the dog again, causing further growls. After a third kick the dog bit Tom's face. In court, Tom testified that he knew kicking the dog made it angry and that it had never growled at him before that moment. Based upon this testimony, the court ruled that Tom was acting in an intentionally provocative manner. In the Woodley case, neither Helen nor her mother kicked the dog, they also do not purposely harm the dog in any way. In light of the facts of *Segal v. Chelsea* when compared to the Woodley case, the clients were not intentionally provoking the dog.

2. Unintentional provocation

Was there unintentional provocation? In the case *Rose v. Leopold*, 718 N.E.2d 853, 415 Mass. 576 (2004), two-year-old Evelyn and her friends and friend's cousins were playing crack the whip in the defendant's yard. Evelyn was on the end and got thrown off, landing on the dog's tail causing it to bite her and cause permanent damage to Evelyn's tear duct. Evelyn's parents sought damages under the Massachusetts Dog Bite Statute. The defendant admitted that Evelyn was conducting herself peacefully, on the premises legally and that he owned the dog, however, the defendant claimed that Evelyn did not get bitten without provocation. The court ruled that Evelyn did in fact provoke the dog and that it reacted in a proportional manner. The court's explanation is as follows: The statute itself does not distinguish between an intentional act of provocation and an unintentional act of provocation. Additionally, the safety of the

commonwealth does not compel the adoption of such a distinction between the two because the court believes the statute was drawn to eliminate as much possible inquiry into the distinction. Furthermore, they concluded that the intent of the plaintiff is immaterial, as is the age of the child affected. However, in *Rose*, the court discussed that the dog reacted in a proportional measure to unintentional action. In the *Woodley* case, Helen threw the snowball aiming for her mother. However, her mother ducked, and it hit the dog. Although this was unintentional, based on the court's statements in *Rose v. Leopold* her age and intention are not considered. Her actions startled the dog, causing it to react. Unlike the reaction in the *Rose* case, his reaction was vicious and severe, disproportionate to the action that occurred. The actions in this case, when compared to the facts of *Rose v. Leopold*, will most likely uphold a different verdict, that unintentional provocation was not present due to the dog's disproportionate reaction.

d. Peaceable conduct

Was the plaintiff conducting herself in a peaceable way when she was bitten? To determine this, we will look at the case of *Dan v. Gilbert*, 818 N.E. 2d 325, 983 Mass. 332 (2004). Penny Dan, a frail 17-year-old, was bitten by a large dog owned by Josh Gilbert while she tried to sell Girl Scout Cookies in Carlisle, Massachusetts. The lawn had no signs posted warning people to stay off the property. When the plaintiff was 5 feet from the door the dog jumped on her and bit her cheek and eye which needed more than 30 stitches to heal. Based upon the dog bite statute and the facts, trial court awarded plaintiff \$250,000 in damages. The defendant is appealing based upon the assertion that the plaintiff was a trespasser on his property because the presence of the dog serves as constructive notice to the plaintiff that she should not enter the property. The court agreed with the defendant that a dog chained in a place where it can be seen is a preferable and adequate notice that entry on the land is prohibited. However, it was

determined by both parties that the porch was surrounded by bushes where the dog could have hidden and was not in sight at the time that the plaintiff entered the property. Based upon this the court determined that the plaintiff was legally on the defendant's property, conducting herself peaceably and doing so without provocation when she was bitten. In the Woodley's case the facts are similar, there were no posted signs, they couldn't see the dog before, they were just trying to visit another exhibit at reasonable hours of the day in a place determined to be one where they had a legal right to be. In light of the facts of Dan v. Gilbert and the facts of the Woodley's case the plaintiffs were conducting themselves in a peaceable way.

v. Conclusion

To determine the outcome of the client's case, the four elements of the Massachusetts dog bite statute must be satisfied: ownership, lack of provocation (intentional and unintentional), legally on the premises and peaceable conduct. A comparison to the case Bjorstrom v. Carey management Association determined that Smith owned the dog in question. Furthermore, the facts of Dan v. Gilbert determined that the plaintiffs were conducting themselves in a peaceable manner. The facts of Segal v. Chelsea when compared to the Woodley case demonstrated that the clients were not intentionally provoking the dog. The Facts of Rose v. Leopold also determined that due to a disproportionate reaction on the dog's part, they were not unintentionally provoking the dog either. The one element that can come into question is if the plaintiffs were legally on the premises. If the plaintiff's assertions about there being no posted signs can be factually examined and confirmed, then based on the facts of the Bjorstrom case in comparison to the Woodley case, the clients were lawfully on the premises. However, if there is found to be a visible sign that the plaintiffs overlooked, then they were not lawfully on the premises. In order to receive damages from the defendant all aspects of the Massachusetts dog bite statute must be satisfied. If there in fact were no visible signs then all elements of the statute will be satisfied and the Woodley's have successfully stated a cause of action under the dog bite statute.