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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3751-15T2

JEANETTE CARABELLO and  
GUILLERMO CASTRO,

Plaintiffs-Appellants,

v.

PATRICIA CARPENTER,

Defendant-Respondent.

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Argued May 9, 2017 – Decided September 5, 2017

Before Judges Messano and Espinosa.

On appeal from Superior Court of New Jersey,  
Law Division, Atlantic County, Docket No. L-  
1840-14.

Jeff Sheppard argued the cause for appellant.

Chad M. Moore argued the cause for respondent  
(Hoagland, Longo, Moran, Dunst & Doukas, LLP,  
attorneys; Mr. Moore, of counsel; Julio  
Navarro, on the brief).

PER CURIAM

Plaintiff,<sup>1</sup> who was bitten by a pit bull<sup>2</sup> named "Bear," that was residing in the home of defendant, appeals from an order granting summary judgment to defendant. We reverse.

We apply the same standard as the trial court in reviewing motions for summary judgment. Steinberg v. Sahara Sam's Oasis, LLC, 226 N.J. 344, 349 (2016). We consider the evidential materials "in the light most favorable to the non-moving party," R. 4:46-2(c). If there is no genuine issue of material fact and the moving party has demonstrated entitlement to judgment as a matter of law, a grant of summary judgment is appropriate. Ibid.; Bhaqat v. Bhaqat, 217 N.J. 22, 28 (2014).

Plaintiff's complaint alleged that in January 2014, she was bitten by "a dog owned by defendant." The complaint did not explicitly allege a cause of action under the strict liability statute, N.J.S.A. 4:19-16.<sup>3</sup> Rather, the allegations supported a

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<sup>1</sup> Guillermo Castro asserts a per quod claim. "Plaintiff" refers to Jeanette Carabello.

<sup>2</sup> Defendant testified that the dog was a sixty-pound "Stafford terrier." The American Staffordshire Terrier is one of several breeds included within the description of a pit bull. Pit Bull Rescue Central, Frequently Asked Questions, <http://www.pbrcinet/mq.html> (last visited Aug. 28, 2017).

<sup>3</sup> N.J.S.A. 4:19-16 imposes strict liability on the owner of a dog without regard to whether the dog is known to have a vicious propensity:

claim for common law negligence. The complaint alleged that the dog was known to have vicious propensities and that plaintiff suffered severe injuries that were "the direct and proximate result of the negligence of the defendant." At her deposition, she stated those injuries were to her upper thigh, where the dog bit her, and her back. She stated she was out of work for two weeks following the attack.

According to plaintiff, Bear was one of three pit bulls that Devon Carpenter brought with him when he moved back into his grandmother's house on August 10, 2013. While she was having a party that day, her best friend's one and one-half year old daughter tried to pet Bear through a gap in the fence between the two properties, and "the dog was just trying to get her." They took the child away from the fence and placed a big table there to keep the dogs at bay.

The dogs "were always without a leash, running around the neighborhood." In the summer of 2013, Plaintiff described another

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The owner of any dog which shall bite a person while such person is on or in a public place, or lawfully on or in a private place, including the property of the owner of the dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.

incident, when Bear came into her yard and jumped on her and "was smelling [her] all over." She was frightened and "froze." Devon, who was outside the front gate to plaintiff's house, called the dog by name and Bear went back to him.

On January 3, 2014, plaintiff and her husband came out of their house to shovel snow. She saw Devon was outside with the dogs, shoveling a neighbor's property. Before plaintiff went outside their fence to shovel, she called out to Devon and asked him to put his dogs away because she was coming out to shovel snow. Plaintiff said Devon "looked at [her] and . . . just laughed." When she saw Devon go to a house on the corner, she felt it was safe to open the gate and walked to the driveway. As she was shoveling, the dog "grabbed [her] on [her leg]." She screamed that she was bitten and the dog let go of her. She called 911; the police responded and she was taken to the hospital by ambulance. She was given a tetanus shot and antibiotics and released. Plaintiff later saw a pain management doctor because she continued to have pain in her leg and lower back.

When asked what defendant "did wrong," plaintiff stated:

That she kept those dogs, she allowed her grandson, because – to keep those dogs there knowing that they were vicious, because prior to my bite, those dogs had already killed another dog right from her yard through the fence a month before. . . . Because most of

the time she's never home, but he was always there with the dogs.

Plaintiff described an incident in December 2013 involving "Vee," another one of the pit bulls, to support her assertion that defendant knew the dog was vicious. She observed Vee attacking the German Shepherd of an elderly couple "through the fence. Grabbed the other dog right through the neck and killed the dog." There had been a commotion as the lady screamed and the man was trying, in vain, to hit the dog with a vacuum hose to get the pit bull off his dog. Devon also tried to get Vee off the neighbor's dog but was similarly unsuccessful. Plaintiff stated defendant screamed at her grandson, "I told you that you need to get rid of these dogs. . . . I'm tired of this, there's shit all over the place, and you don't take care of these dogs the right way; you need to get rid of these dogs."

Plaintiff testified that other people from the community complained to Devon about the dogs "running around" and sometimes "chasing people down the street" and told him the dogs should be leashed. She stated Devon just laughed.

No evidence was ever produced of a license or registration for the pit bull that attacked plaintiff. Defendant maintained she did not own the dog; the dog was owned by her grandson, who was only staying temporarily with her. Defendant admitted at her

deposition that she fed the dogs and let them out to relieve themselves on a regular basis.

The trial judge found defendant was not an owner and that as a "keeper" of the dog, she would have to know the dog had a vicious propensity to be liable under common law negligence.

In Pippin v. Fink, 350 N.J. Super. 270, 274 (App. Div. 2002), we considered whether the life partner of a dog's owner was an "owner" within the narrow definition of "owner" used under the strict liability statute. As we noted, the definition in that statute "serves a narrow[] purpose of eliminating scienter in a civil action to impose strict liability in favor of a bite victim." Id. at 273. In contrast, when a common law negligence claim is asserted, "owner" is used interchangeably with a "harborer" or "keeper" in determining "whether there was knowledge of a dog's vicious propensit[ies] and a failure to control the animal." Ibid. (citing DeRobertis by DeRobertis v. Randazzo, 94 N.J. 144, 151 (1983)).

Here, it is essentially undisputed that Bear was Devon's dog and therefore, the evidence must be viewed, with all reasonable inferences drawn in plaintiff's favor, to determine whether summary judgment was appropriate on her common law negligence claim.

The dogs resided at defendant's home for five months at the time of the attack. Defendant cared for the dogs on a regular basis when her grandson was not home. As plaintiff testified, the dogs were regularly observed running through the neighborhood, unleashed, and were known to chase neighbors down the street. It is reasonable to infer that defendant had knowledge of these facts. Based upon her reaction when Vee killed the neighbor's dog, defendant was certainly aware her grandson failed to exercise a reasonable degree of care and control for the dogs and found the circumstances sufficiently unsatisfactory to order him to get rid of the dogs.

We conclude a question of material fact exists regarding defendant's knowledge that the dog had vicious propensities. Therefore, it was error to grant summary judgment to defendant.

Reversed and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION