SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1776-22

JOSEPH BERNSTEIN,

Plaintiff-Appellant,

v.

MARTIN NOSSEL,
KERRI NOSSEL, and
KERRI KASPER,

Defendants-Respondents.

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Submitted April 18, 2023 – Decided May 5, 2023

Before Judges Messano, Gummer, and Perez-Friscia.

On appeal from interlocutory orders of the Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-3223-21.

Lynch Lynch Held Rosenberg, PC, attorneys for appellant (Neil S. Weiner and Joseph M. Cerra, on the brief).

Gregory P. Helfrich & Associates, attorneys for respondents (Angela Lavelle, on the brief).

PER CURIAM

Ringo, defendants' miniature bull terrier, bit plaintiff Joseph Bernstein while he was in defendants' house. Plaintiff moved for summary judgment on liability based on N.J.S.A. 4:19-16, New Jersey's dog-bite statute. A judge denied the motion and plaintiff's subsequent motion for reconsideration, finding plaintiff's knowledge of "Jewish law" created an issue of material fact regarding whether plaintiff was lawfully on the premises. We disagree and reverse.

I.

We discern the material facts from the summary-judgment record, viewing them in the light most favorable to defendants, who were the non-moving parties. See Richter v. Oakland Bd. of Educ., 246 N.J. 507, 515 (2021).

Defendant Kerri Nossel asked Sarah Shore to house-sit for her and her husband, defendant Martin Nossel, and to care for their dog for two weeks in October 2019 while defendants and their children vacationed out of the country. She knew Shore was not married and believed she was about thirty-five years old. She told Shore a mutual friend named Judy could visit Shore in defendants' home while she was house-sitting. She did not tell Shore she was forbidden from having other visitors.

In a signed statement, Shore averred that while house-sitting for defendants, she had invited to the house an eight-year-old child whom she

babysat. Ringo chewed on the child's shoe, resulting in a cut on his foot. According to Shore, after she advised defendant Kerri Nossel about this incident, Nossel told Shore to "wait a few days before having anyone over the house, to let the dog get used to [her] before having anyone else over that the dog didn't know."

Toward the end of her house-sitting assignment, Shore invited plaintiff over to the house. In October of 2019, plaintiff and Shore were friends, having met sometime in 2015 or 2016. Shore texted plaintiff, telling him she was "dog-sitting," "kind of stuck here," and would "love to have visitors." They agreed he would come over a few days later. Plaintiff believed it was "imminently possible" someone might come over to defendants' house while he was there because Shore was "very lonely," "wanted to have some company," and "has other friends." He understood Shore had "invited people to come and [he] didn't know if the neighbors might show up at any time."

Plaintiff was at the house for approximately one hour. According to Shore, the front door was left open and "someone could have easily walked in and [said], 'Hey, you left the door open' . . . and they would have seen that there [was] absolutely nothing going on." After playing with the dog for forty-five minutes, plaintiff told Shore he was "exhausted" and "need[ed] ten minutes

somewhere to put [his] head down alone . . . ." Shore told him to go "upstairs to the first room" and "lie down on the bed" and she would wake him up in ten to fifteen minutes.

Shore took the dog for a walk. When she returned, she went upstairs to wake plaintiff. While plaintiff was still on the bed, the dog ran into the room and jumped on the bed. Plaintiff stood up, and the dog clamped its mouth onto plaintiff's foot, shaking it back and forth. The dog bit through and broke plaintiff's phalanx bone and his second toe, and "there was blood all over the place." Plaintiff subsequently was taken by ambulance to a hospital, where he had surgery and stayed for several days.

Plaintiff filed a complaint in which he alleged he had been invited to defendants' house by their "employee, agent and or dog sitter" and was "lawfully present" in their house when defendants' dog "repeatedly bit" him, proximately causing him to sustain "severe and permanent injuries," as well as other damages. He asserted defendants were strictly liable under N.J.S.A. 4:19-16. To recover under the statute, a plaintiff must prove: (1) the defendant owned the dog; (2) the dog bit the plaintiff; and (3) the bite occurred while the plaintiff was in a public place or lawfully in a private place, "including the property of the owner of the dog." De Robertis v. Randazzo, 94 N.J. 144, 151 (1983)

(quoting N.J.S.A. 4:19-16); see also Goldhagen v. Pasmowitz, 247 N.J. 580, 599 (2021). Plaintiff also asserted defendants were negligent under the common law.

Nine months later, plaintiff moved for summary judgment as to liability pursuant to N.J.S.A. 4:19-16. He argued he had satisfied the statute's three elements because defendants owned Ringo, Ringo had bit him, and he had been a lawfully-present guest in defendants' house.

Defendants conceded plaintiff had met the first two elements of the statute but argued a fact issue existed as to whether plaintiff was a trespasser because based on plaintiff's faith and his knowledge of defendants' faith, he could not reasonably have believed he belonged in their home alone with Shore or in the upstairs bedroom.

In opposing the motion, defendants asserted in a responding statement of additional facts that the parties and Shore were "all observant Orthodox Jews" and "Orthodox Jewish Law strictly prohibits unrelated single men and single women, like [p]laintiff and Ms. Shore, from being alone together in a secluded location, like [d]efendants' home, unchaperoned." In response, plaintiff admitted the factual assertion about the parties' and Shore's religion and denied the factual assertion about Orthodox Jewish Law, stating "[t]he law of Yichud

prohibits a Jewish adult from being alone in a closed, locked space with another adult of the opposite gender if they are unmarried and if no other person might unexpectedly enter the space," citing his and Shore's deposition testimony.

Defendants are observant Orthodox Jews. They knew of plaintiff "as part of our community" but had never spoken with him. Defendants understand Yichud as prohibiting a man and a woman from being together alone in a secluded location if they are unmarried and unrelated.

Shore has been a practicing Orthodox Jew for most, if not all, of her life. Shore viewed Yichud as a "very gray area" in Jewish law that allows an unrelated and unmarried man and woman to be "in the same vicinity, in the same house or the same room" "as long as someone is able to come in and see what is going on . . . and as long as there's not an extended period of time that [they] are in the same room . . . ." Shore understood that "as long as someone is able to walk into the house it's okay to be in the same house." Shore believed that if the dog bite had not happened, defendants "would not have cared" if plaintiff was taking a nap in an upstairs bedroom while she and plaintiff were in the house.

Plaintiff was born into a non-Orthodox Jewish family. He became orthodox through a "gradual process" beginning in his late twenties. The first

formal orthodox program he took was in Tsfat, Israel when he was twenty-eight years old. He also attended another program called Isralight in Jerusalem. When he was thirty-two, he attended an all-male program called Machon Shlomo in Jerusalem. In his mid- to late thirties, he attended "a standard high level, well-known" yeshiva in Jerusalem called the Mir. Plaintiff also taught three years in an orthodox school.

Plaintiff understood an unrelated and unmarried man and woman could be alone behind closed doors "if it's daytime and [they] know that someone might show up at any time," like if "[s]omeone could knock on a door or someone could just walk through the door . . . if it's possible that someone is going to come intervene, it's probably not a problem . . . ." In the Tsfat and Isralight programs, male and female students could be alone and unchaperoned in a room with the door shut during the day.

Plaintiff had not met defendants and did not know they were members of the Orthodox community before he visited their house on October 26, 2019. He knew their home was located in a community populated by "a large amount of Orthodox Jews" and from what he had observed about the house, had the impression an Orthodox Jewish family resided in it. Plaintiff did not believe it was a problem for him to visit Shore at defendants' house because "anyone can

knock on the door at any time and . . . it was broad daylight." He also "trusted [Shore]'s judgment that it was okay to come visit her . . . [b]ecause she was the one who was possessing the house at the time." He did not feel defendants would have been unhappy with him for taking a short nap in the upstairs bedroom.

During argument, defense counsel indicated defendants wanted to move for leave to file a third-party complaint against Shore. The motion judge adjourned the motion for thirty days to give defendants an opportunity to file that motion. Defendants did not take any action to add Shore as a party within that timeframe.

In an order with an attached statement of reasons, the judge denied plaintiff's motion. The judge held plaintiff had established the first two prongs of the dog-bite statute: defendants owned Ringo, and Ringo had bitten plaintiff in defendants' house. The judge also held defendants had not specifically limited the people Shore could invite to the house while she was house-sitting and that Shore had extended an invitation to plaintiff. Nevertheless, as to the third prong, the judge referenced Yichud and found "[p]laintiff's knowledge of Jewish law raises a triable issue regarding [his] reasonable interpretation of the invitation" extended to him. The judge concluded plaintiff "could have known that the

scope of the invite was heavily limited, or entirely invalid." The judge denied plaintiff's subsequent motion for reconsideration.[1]

We granted plaintiff's motion for leave to appeal. Contending he lost his motion because he is an Orthodox Jew, plaintiff argues he had satisfied all elements of the dog-bite statute and the judge erred in denying his motions. According to plaintiff, the motion judge confused the issue of whether plaintiff's presence in defendants' home was lawful with the question of whether it was moral under Jewish law, an irrelevant consideration under the dog-bite statute. Plaintiff also argues the motion judge's consideration of the religious law of Yichud violated the First Amendment's prohibition against entangling the court in matters of religious doctrine and the Fourteenth Amendment's provision of equal protection under the law.

We disagree with the motion judge that "[p]laintiff's knowledge of Jewish law" created a genuine issue of material fact as to the third prong of the dog-bite statute and, thus, conclude the judge erred in denying plaintiff's summary-

[1] During argument of the reconsideration motion, defense counsel advised the judge defendants did not intend to call a rabbi as a witness and asserted that "[t]his is not an issue of religion. This is an issue of customs and what customs both parties shared."

judgment and reconsideration motions. Because we reverse the orders on that basis, we do not reach plaintiff's constitutional arguments.

II.

We review a trial court's order on a reconsideration motion under an abuse-of-discretion standard. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). We review a trial court's summary-judgment decision de novo, applying the same standard used by trial courts. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). "The court's function is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). "A dispute of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Gayles by Gayles v. Sky Zone Trampoline Park, 468 N.J. Super. 17, 22 (App. Div. 2021) (quoting Grande v. Saint Clare's Health Sys., 230 N.J. 1, 24 (2017)).

"Rule 4:46-2(c)'s 'genuine issue [of] material fact' standard mandates that the opposing party do more than 'point[] to any fact in dispute' in order to defeat

summary judgment." Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016). Insubstantial arguments based on assumptions or speculation are not enough to defeat a summary-judgment motion. "'[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome' a motion for summary judgment." Dickson v. Cmty. Bus Lines, Inc., 458 N.J. Super. 522, 533 (App. Div. 2019) (quoting Puder v. Buechel, 183 N.J. 428, 440-441 (2005)); see also Hoffman v. AsSeenOnTV.com, Inc., 404 N.J. Super. 415, 426 (App. Div. 2009) ("Competent opposition [to a summary-judgment motion] requires 'competent evidential material' beyond mere 'speculation' . . . ." (quoting Merchs. Express Money Ord. Co. v. Sun Nat 'l Bank, 374 N.J. Super. 556, 563, (App. Div. 2005))).

Regarding the third prong of the dog-bite statute – whether a plaintiff was lawfully in a private place, our Supreme Court has held that "the legislative purpose would best be served by construing the term [invitation] broadly to include all those who have express or implied permission to be on the owner's property." De Robertis, 94 N.J. at 152. Thus, "those lawfully on the property include both invitees and licensees (including social guests), but not trespassers," and "[a]nyone whose presence is expressly or impliedly permitted on the property should be entitled to the protection of the statute." Ibid.; see

also Trisuzzi v. Tabatchnik, 285 N.J. Super. 15, 23 (App. Div. 1995) (the dog-bite statute "allows for recovery for invitees and licensees but not trespassers"). To prevail under the statute,

> a plaintiff must prove that he was lawfully on the premises at the time of the dog bite. That is, he must demonstrate that he had express or implied permission to be on the property and that he could reasonably believe the scope of that permission extended to the place of the accident.
>
> [De Robertis, 94 N.J. at 153.]

See also Trisuzzi, 285 N.J. Super. at 23 (under the dog-bite statute, "[a] plaintiff is entitled to prove that he or she had an express or implied invitation to be on the property and that he or she reasonably believed that the scope of the permission extended to the place of the incident").

These facts are undisputed: defendants retained Shore as their house- and dog-sitter; they knew she was an unmarried woman; they did not tell her she could not have guests and did not limit the types of guests she could have or where the guests could be in their house; Shore invited plaintiff over to the house and directed him to nap in the upstairs bedroom; and defendants' dog bit plaintiff while he was in defendants' house. The motion judge denied plaintiff's motions based on defendants' argument that the parties' shared customs and religion

raised a genuine issue of material fact as to whether plaintiff reasonably believed the invitation permitted him to be where he was when Ringo bit him.

The problem with defendants' argument is that it is premised on an assumption and defendants' conclusory assertion that because the parties are Orthodox Jews, they share customs that put plaintiff on notice that Shore's invitation was "heavily limited, or entirely invalid . . . ." That people share a religion does not establish they have a common understanding and practice of all tenets of that faith. See Ran-Dav's Cnty. Kosher, Inc. v. State, 129 N.J. 141, 147 (1992) (Court rejected suggestion of "universal agreement" in Judaism regarding the preparation and sale of food and recognized "there is considerable disagreement over what precepts or tenets truly represent the laws of kashrut"). To the contrary, the record demonstrates as to the custom at issue, Yichud, the parties did not have a common understanding or practice. Based on his understanding and practice of Yichud, plaintiff reasonably believed the invitation permitted him to be where he was when defendants' dog bit him. Nothing in the record demonstrates plaintiff knew or should have known defendants had a different understanding and interpretation of Yichud than he and Shore had.

Defendants' broad assertion that because he is an Orthodox Jew, plaintiff knew or should have known how defendants understood and practiced Yichud is not sufficient to create a genuine issue of material fact regarding plaintiff's reasonable understanding of Shore's invitation or his lawful presence on defendants' property. Accordingly, the judge erred in denying plaintiff's motions for summary judgment and reconsideration, and we reverse the orders denying those motions.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.