IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT NASHVILLE

ROBERT EDEN and wife, TAMELA S. EDEN, and HEATHER D. EDEN, b/n/f ROBERT EDEN and wife, TAMELA S. EDEN,	)	
Plaintiffs/Appellants,	)	**Robertson Circuit No. 7393**
VS.	)	**Appeal No. 01A01-9603-CV-00141**
MIKE JOHNSON and wife, PAT JOHNSON,	)	
Defendants/Appellees.	)	

FILED

August 21, 1996

Cecil W. Crowson
Appellate Court Clerk

APPEAL FROM THE CIRCUIT COURT OF ROBERTSON COUNTY
AT SPRINGFIELD, TENNESSEE
THE HONORABLE JAMES E. WALTON, JUDGE

MICHAEL W. EDWARDS
Hendersonville, Tennessee
Attorney for Appellants

C. BENTON PATTON
MANIER, HEROD, HOLLABAUGH & SMITH
Nashville, Tennessee
Attorney for Appellees

AFFIRMED

ALAN E. HIGHERS, J.

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

BEN H. CANTRELL, J.

In this dog bite case, plaintiffs appeal from the trial court's grant of summary

judgment in favor of defendants.

On May 10, 1994, plaintiff, Robert Eden, drove a jeep that he had advertised for sale to the defendants' home in order for the defendants, Mike and Pat Johnson, to look at the vehicle. Mr. Eden brought his minor children, Heather and Shelby, with him. After arriving at the Johnsons' home, the Edens noticed that there were several dogs on the Johnsons' property, some of which were confined, while some were not. One of the dogs, a 30 to 40-pound mixed German Shepherd named “Papa Dog,” began barking at the Edens as they pulled into the driveway. Mr. Eden allegedly asked the Johnsons whether it would be safe to let his children out of the jeep due to the presence of the dogs on the property. According to Mr. Eden, Pat Johnson replied, "[T]he dogs won't bother you." After Mr. Eden and his children had emerged from the jeep, Pat Johnson allegedly told both Mr. Eden and Heather that her husband had just recently acquired Papa Dog, a stray dog. The Edens allege that as Heather was standing next to Mr. Eden, Papa Dog lunged at Heather without warning or provocation and bit her cheek.

In contrast to the Edens’ version of the facts, the Johnsons stated in their affidavit that they have owned Papa Dog for approximately a year and a half, and that during that time, the dog had never exhibited any aggressive or hostile behavior toward anyone. The Johnsons allege that on the day in question, Heather was chasing Papa Dog. Pat Johnson repeatedly asked Heather to stop and also asked Mr. Eden to instruct Heather to stop chasing the dog. Ultimately, Papa Dog "snapped" at Heather.

As a result of this incident, the Edens filed suit, alleging that the Johnsons were negligent in allowing Papa Dog to run at large on their property without confinement. The Johnsons filed a motion for summary judgment on grounds that they had no notice that Papa Dog had any vicious or malicious tendencies. In support of their motion, the Johnsons submitted an affidavit attesting to their lack of notice. The Edens filed a motion in opposition to the motion for summary judgment, asserting that the adoption of comparative fault in Tennessee abrogated the "one bite" rule, and that a genuine issue of

fact exists as to whether the Johnsons were negligent in placing Heather in a dangerous environment. Following oral argument on the motions, the trial court granted summary judgment in favor of the Johnsons, finding that there was no genuine issue of material fact as it related to the issue of notice. This appeal followed.

The Edens argue on appeal that the trial court erred in granting the Johnsons' motion for summary judgment because there exist genuine issues of material fact in the case *sub judice*. In addition, the Edens urge this court to hold that the notice requirement in dog bite cases was abolished by virtue of this state's adoption of comparative fault.

It has long been the law in Tennessee that a dog owner will not be liable for injuries inflicted upon a third person by his or her dog unless the owner knew or should have known of the vicious or dangerous propensities of the animal. Fletcher v. Richardson, 603 S.W.2d 734, 735 (Tenn. 1980). As stated by our Supreme Court in Fletcher:

> [T]he owner or keeper of the dog is not answerable for injuries done by it when in a place it had a right to be, unless the dog was in fact vicious or otherwise dangerous, the owner or keeper knew, or under the circumstances should have known, of the dangerous disposition of the animal, and the injuries resulted from the known vicious or dangerous propensity of the animal. The basic key to recovery of damages for injuries caused by a dog is the knowledge of the owner or keeper that the animal is vicious or has mischievous propensities.

Id. at 735 (internal citations omitted).

Accordingly, in order for a plaintiff to recover for injuries caused by a dog bite, a plaintiff must prove three elements. "First, [a plaintiff] must prove that the defendant owned the dog. Second, [a plaintiff] must prove that the defendant's dog caused the injuries. Third, [a plaintiff] must prove that the defendants knew or should have known about the dog's dangerous propensities." Thompson v. Thompson, 749 S.W.2d 468, 470 (Tenn. App. 1988).

It is apparent from cases decided since Tennessee's adoption of comparative fault that our courts have not dispensed with the notice requirement in dog bite cases. See,

e.g., Blackwell v. Westerwall, No. 01-A-01-9410-CV-00493, 1995 WL 153351 (Tenn. App. Apr. 7, 1995); McKenna v. Jackson, No 01-A-01-9510-CV-00438, 1996 WL 140496 (Tenn. App. March 29, 1996). Consequently, we find the Edens' contention in this regard to be without merit.

The Johnsons produced an affidavit in support of their motion for summary judgment attesting to the fact that the dog had never bitten anyone since they had owned him, nor had the dog otherwise exhibited any dangerous propensities. The Edens, however, offered no evidence to rebut the Johnsons' affidavit as to the issue of notice. It was incumbent upon the Edens to come forward with some type of evidence supporting a finding that the Johnsons knew or should have known of the dog's dangerous propensities. It is thus our opinion that although there are disputed issues of fact in this case relating to the events that transpired on the day of the incident, such facts are not material facts because there is no dispute as to the issue of notice.

Accordingly, the judgment of the trial court is affirmed. Costs on appeal are taxed to appellants, for which execution may issue if necessary.

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HIGHERS, J.

CONCUR:

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CRAWFORD, P.J., W.S.

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CANTRELL, J.