

No. A11-191

---

STATE OF MINNESOTA  
IN SUPREME COURT

---

Gordon Helmer Anderson,

Respondent,

vs.

Dennis Christopherson and Neil Raymond Christopherson

Appellants.

---

**AMICUS CURIAE MINNESOTA DEFENSE LAWYERS ASSOCIATION'S  
BRIEF AND ADDENDUM**

---

Troy A. Poetz #0318267  
Victoria A. Lupu #0391725  
RAJKOWSKI HANSMEIER, LTD.  
11 Seventh Avenue North  
PO Box 1433  
St. Cloud, MN 56302-1433  
Telephone: (320) 251-1055

*Attorneys for Appellant Dennis  
Christopherson*

Chad D. Dobbelaere #0332380  
TEWKSBURY & KERFELD, P.A.  
88 South Tenth Street, Suite 300  
Minneapolis, MN 55403  
Telephone: (612) 334-3399

*Attorneys for Appellant Neil Christopherson*

James S. Ballentine #209739  
William R. Sieben #100808  
SCHWEBEL, GOETZ & SIEBEN  
5120 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402-2246  
Telephone: (612) 377-7777

*Attorneys for Respondent*

Wilbur W. Fluegel #30429  
FLUEGEL LAW OFFICE  
150 South 5<sup>th</sup> Street, Suite 3475  
Minneapolis, MN 55402  
Telephone: (612) 238-3540

*Attorneys for Amicus Curiae Minnesota  
Association for Justice*

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).



Dyan J. Ebert # 0237966  
Garin L. Strobl # 0391519  
QUINLIVAN & HUGHES, P.A.  
400 South 1<sup>st</sup> Street, Suite 600  
PO Box 1008  
St. Cloud, MN 56302-1008  
Telephone: (320) 251-1414

*Attorneys for Amicus Curiae Minnesota  
Defense Lawyers Association*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

ISSUES..... 1

STATEMENT OF INTEREST ..... 2

INTRODUCTION..... 2

ARGUMENT ..... 3

I. THE COURT OF APPEALS’ DECISION CONTRADICTS ESTABLISHED  
PRECEDENT .....3

    A. Strict Liability, Proximate Cause, and the Dog Owner Liability Statute.....3

    B. Mr. Anderson’s Voluntary Decision to Become Involved in the Fight  
    Between Bruno and Tuffy is the Extra Link That Breaks the Chain of Causation.....7

II. THIS IS NOT AN APPROPRIATE FACTUAL SITUATION CHANGE THE  
CONCEPT OF “FOCUS” UNDER MINN. STAT. § 347.22 .....9

III. AN ABSENTEE HOMEOWNER WHO NEVER HAD CONTROL OR  
CUSTODY OF THE DOG SHOULD NOT BE CONSIDERED A “KEEPER” OR  
“HARBORER” UNDER MINN. STAT. § 347.22.....10

    A. Other Jurisdictions’ Definitions of “Keeper” and “Harborer” .....12

    B. Other Jurisdictions Regarding an Absentee Nonowner of Dog.....13

    C. “Owner” Under Minn. Stat. § 347.22 Should Not Extend to an Absentee  
    Homeowner Who Had No Control or Contact Over the Animal.....15

CONCLUSION ..... 16

CERTIFICATION OF BRIEF LENGTH .....18

INDEX TO ADDENDUM..... 19

## TABLE OF AUTHORITIES

### Cases

<i>Anderson v. Christopherson</i> , 802 N.W.2d 832 (Minn. Ct. App. 2011).....	9, 10, 15
<i>Boitz v. Preblich</i> , 405 N.W.2d 907 (Minn. Ct. App. 1987) .....	6, 7, 8
<i>Gilbert v. Christiansen</i> , 259 N.W.2d 896 (Minn. 1977).....	10, 11, 13, 15
<i>Hagenau v. Millard</i> , 195 N.W. 718 (Wis. 1923) .....	12, 13
<i>Hinman v. Alter</i> , 488 N.W.2d 508 (Minn. Ct. App. 1992) .....	5
<i>Knake v. Hund</i> , No. A10-287, 2010 WL 3119506 (Minn. Ct. App. Aug. 10, 2010).....	6, 7
<i>Lewellin v. Huber</i> , 465 N.W.2d 62 (Minn. 1991).....	2, 3, 4, 5, 6, 7, 8, 9, 16
<i>Malone by Bangert v. Fons</i> , 580 N.W.2d 697 (Wis. Ct. App. 1998).....	14
<i>Morris v. Weatherly</i> , 488 N.W.2d 508 (Minn. Ct. App. 1992).....	5, 6, 7, 8
<i>Mueller v. Theis</i> , 512 N.W.2d 907 (Minn. Ct. App. 1994).....	5, 6, 8, 9
<i>Pattermann v. Pattermann</i> , 496 N.W.2d 613 (Wis. 1992) .....	13
<i>Peshon v. Carney</i> , No. C9-99-396, 1999 WL 690196 (Minn. Ct. App. Sept 7, 1999) .....	11, 12, 15
<i>Seim v. Garvalia</i> , 306 N.W.2d 806 (Minn. 1981).....	3
<i>Steinberg v. Petta</i> , 501 N.E.2d 1263 (Ill. 1986).....	14
<i>Tschida v. Berdusco</i> , 462 N.W.2d 410 (Minn. Ct. App. 1990) .....	10
<i>Verrett v. Silver</i> , 244 N.W.2d 147 (Minn. 1976) .....	10, 11, 12, 15
<i>Wojciechowski v. Harer</i> , 496 N.W.2d 844 (Minn. Ct. App. 1993) .....	11

### Statutes

Minn. Stat. §347.22 .....	1, 2, 9, 10, 11, 13, 15, 16
---------------------------	-----------------------------

Minn. Stat. § 480A.08(3) .....	6, 11
1951 Minn. Laws, ch. 315, § 1 .....	2
Wis. Stat. § 174.02(1).....	12

**Rules**

Minn. R. Civ. App. P. 129.03.....	2
-----------------------------------	---

**Other**

Restatement (Second) of Torts.....	11
Illinois’s Animal Control Act, 510 Ill. Comp. Stat. § 5/16.....	12
John P. Ludington, Annotation, <i>Who “Harbors” or “Keeps” Dog Under Animal Liability Statute</i> , 64 A.L.R. 4 <sup>th</sup> 963 (1988).....	13

## ISSUES

1. The Minnesota Supreme Court has held that under the dog owner's liability statute, Minn. Stat. § 347.22, liability must be limited by proximate cause for public policy reasons. Did the district court properly hold that liability does not attach when a person inserts himself into a dog fight and is subsequently injured?
  
2. Minnesota courts, and other jurisdictions with similar dog owner's liability statutes, have held that individuals or corporations who hold title or manage a property where a dog-related injury occurred are not liable. Did the district court correctly find that an absentee homeowner is not liable as an "owner" under the statute?

## STATEMENT OF INTEREST

The Minnesota Defense Lawyers Association (MDLA), founded in 1963, is a non-profit Minnesota corporation whose members include representatives from over 180 law firms across Minnesota, with over 700 individual members. Among the MDLA's goals are protecting the rights of litigants in civil actions, promoting high standards of professional ethics and competence, and improving the many areas of law in which its members regularly practice.<sup>1</sup> Those interests translate into concerns regarding the practical impact of developing law within the civil justice system.

MDLA urges this Court to affirm the district court's ruling that appropriately limits the extent of liability under Minn. Stat. § 347.22. Moreover, the facts at hand do not support a change in the law regarding the analysis of a dog's "focus." In addition, "direct and immediate" should be narrowly construed in order to guard against unintended and impractical consequences creating liability under the Minn. Stat. § 347.22. Finally, strict liability should not extend to an individual simply because he or she is the title owner to the home where the incident took place.

## INTRODUCTION

In 1951, the Minnesota Legislature enacted what is commonly referred to as the dog owner's liability statute, Minn. Stat. § 347.22. 1951 Minn. Laws, ch. 315, § 1. The main purpose of the law is to protect "people who are subject to attacks and immediate harm from dogs." *Lewellin v. Huber*, 465 N.W.2d 62, 65 (Minn. 1991). Despite the importance of

---

<sup>1</sup> The undersigned counsel for Amicus authored the brief in whole, and no persons other than Amicus made a monetary contribution to the preparation or submission of the brief. Minn. R. Civ. App. P. 129.03.

protecting citizens from injuries incurred directly from a dog, the proximate cause standard used under this law should be limited to scenarios where there is a clear “direct and immediate” act on behalf of the dog that causes injury. As such, the threshold for “direct and immediate” is not meant to be extended to situations as the one we have here, where the injured party made the voluntary choice to insert himself in harm’s way. Even if liability is found on behalf of the legal dog owner, there is no legitimate basis on which to find liability on behalf of an absentee homeowner, who, at no relevant time, exerted control or custody of the dog.

## ARGUMENT

### **I. THE COURT OF APPEALS’ DECISION CONTRADICTS ESTABLISHED PRECEDENT.**

#### **A. Strict Liability, Proximate Cause, and the Dog Owner Liability Statute.**

Although this Court in *Seim by Seim v. Garvalia*, 306 N.W.2d 806, 812 (Minn. 1981) interpreted the dog owner’s liability statute to mean that dog owners (or anyone harboring or keeping a dog) would be strictly liable for the dog’s direct and immediate actions, the causation factor in the Court’s analysis is still limited to proximate cause under *Lewellin*. While analyzing the public policy basis for using a proximate cause standard under this statute, the *Lewellin* Court queried “Does any conduct by a dog, no matter how innocuous, if it sets in motion a chain of events causing injury to a person, result in liability? Or is the ambit of liability something less?” *Lewellin*, 465 N.W.2d at 64. The *Lewellin* Court found that it was “something less” and we urge the Court to find the same here.

*Lewellin* arose when the trustee for the heirs of a child who was killed when struck by an automobile whose driver was distracted by the dog riding in the vehicle. *Id.* at 63. In determining the standard liability under the dog owner's liability statute, the *Lewellin* Court noted "legal causation for absolute liability under the statute must be direct and immediate, i.e., without intermediate linkage." *Id.* at 64. This rationale, the Court noted, was supported by the legislative history of the statute. *Id.*

Although the Court recognized that absolute liability under the dog owner's liability statute extends to situations where a dog injures someone by "exuberantly jump[ing] upon or unintentionally run[nin]g into a person . . .," the Court cautioned, however, that "to elongate . . . the causal chain under the 'dog bite' statute would extend absolute liability beyond its intended purpose and reach." *Id.* at 64-65. Accordingly, because there was no immediate or direct linkage between the dog's actions and the injured child because the dog's conduct was completely concentrated on the drive of the car, the Court found that the circumstances leading to the injury was "[T]oo attenuated to constitute legal causation for the radical kind of liability that the statute imposes." *Id.* at 66.

This Court's departure from the traditional interpretation of proximate cause was done so on a public policy basis. Specifically, the *Lewellin* Court noted

Courts have always used the tort doctrine of proximate cause, as distinguished from causation in fact, to implement public policy in establishing the parameters of liability. Thus, this court has frequently quoted Prosser's statement that, "[a]s a practical matter, legal responsibility must be limited to those causes where are so close to the result, or of such significance as causes, that the law is justified in imposing liability. This

limitation is not a matter of causation, it is one of policy \* \* \*.” . . . In applying our dog owner’s liability statute, public policy and legislative intent are best served by limiting proximate cause to direct and immediate results of the dog’s actions whether hostile or nonhostile.

*Id.* at 65-66.

A year later, the Court of Appeals decided *Morris v. Weatherly*, which was a consolidated case centering on the issue of whether the dog owner liability statute could be triggered even if there was no physical contact between the animal and the injured party. 488 N.W.2d 508 (Minn. Ct. App.1992). The first case, *Morris v. Weatherly*, involved a man who was injured after trying to dismount his bicycle when he saw a dog running towards him appearing as though the dog was going to attack him. 488 N.W.2d at 509. *Hinman v. Alter*, the second case, arose when a mail carrier suffered back injuries after quickly spinning around when it looked like a dog was running at him. *Id.* In both cases, the Court of Appeals found that the injuries were direct and immediate results of the dogs’ actions. *Id.* at 510.

Likewise, in *Mueller v. Theis*, the Minnesota Court of Appeals was faced with the issue of whether a dog’s mere presence, which prompted a motor vehicle accident after the driver swerved to avoid the animal, qualified as “affirmative conduct” required under the statute. 512 N.W.2d 907 (Minn. Ct. App. 1994). The *Mueller* Court noted that under *Lewellin*, a dog’s “affirmative, but nonattacking behavior which injures a person who is immediately implicated by \*\*\* [that] behavior” can be inferred by the fact that the statute uses ‘attacks’ and ‘injures’ together.” *Mueller*, 512 N.W.2d at 910. In keeping with the test laid out in *Lewellin*, the *Mueller* Court held that the facts in their case did not meet

the threshold of the causation standard articulated by *Lewellin*. *Id.* at 910-11. Specifically, in the first case, the bicyclist's injuries were a direct and immediate result of the dog's action because the dog "focused its conduct on the injured bicyclist." *Id.* at 911.

Likewise, in the second *Morris* case, the mailman's injuries were a direct and immediate result of the dog because again, the dog focused its actions on the mailman by "approaching him in an attacking posture." *Id.* Consequently, the *Mueller* Court refrained from extending the statute "beyond its intended purpose." *Id.* (quoting *Lewellin*, 465 N.W.2d at 64-66).

The Court of Appeals also encountered the question of whether liability under the dog owner liability statute applies when someone is injured after a dog bumps into it in *Boitz v. Preblich*, 405 N.W.2d 907 (Minn. Ct. App. 1987). In *Boitz*, a man was injured after his neighbor's dog bumped into the back of his legs causing him to fall and sustain injuries. *Boitz*, 405 N.W.2d at 909. The Court of Appeals determined that the phrase "or injures" was also meant to include injuries that arise out of non-vicious attacks and found the dog owner liable. *Id.* at 910. This holding was supported by the court's hypothetical scenario situations where dogs "without malice rear up and place their front paws on small children or elderly or disabled persons, causing them to fall and suffer injuries." *Id.*

Finally, there is the recent case of *Knake v. Hund*, No. A10-287, 2010 WL 3119506 (Minn. Ct. App. Aug. 10, 2010).<sup>2</sup> Although unpublished, *Knake* is instructive on the issues in this case. *Knake* arose when a housecleaner slipped on some ice after the

---

<sup>2</sup> Pursuant to Minn. Stat. § 480A.08(3) a copy of this unpublished opinion is attached herein.

home owner's dog walked in front of her. 2010 WL 3119506 at \*1. Relying in part on the holding in *Lewellin*, the Court of Appeals determined that the dog's conduct was not the cause-in-fact of the housecleaner's injuries. *Id.* at \*3. Consequently, the Court of Appeals affirmed the district court's finding that "the icy sidewalk was clearly an attenuated link in the causal chain." *Id.* at \*1.

**B. Mr. Anderson's Voluntary Decision to Become Involved in the Fight Between Bruno and Tuffy is the Extra Link That Breaks the Chain of Causation.**

Regardless of the "focus" issue, there is no question that in order for liability to be invoked, Mr. Anderson's injuries cannot be the result of "intermediate linkage" or an extra "link in the chain of causation." However, this is exactly what we have in the instant case. Mr. Anderson created an additional "link" when he made the decision to get involved in the scuffle between the two dogs. Because of Mr. Anderson's voluntary choice to insert himself into a dangerous situation which resulted in him losing his balance and injuring himself, Mr. Anderson's injury should not be included in conduct that triggers liability under the statute.

It is notable that the Court of Appeals' decision is silent to the fact that Mr. Anderson was never personally threatened by any of Bruno's actions. Likewise, it never acknowledges that Mr. Anderson's injuries could have been avoided had he not made the decision to become involved in the dog fight. Mr. Anderson inserted himself into the fray whereas in *Morris*, the two injured individuals never made a voluntary decision to place themselves in harm's way. Rather, they were attempting to *protect themselves from injury*. Similarly, the common thread between the *Morris* and *Boitz* cases is that none of

the injured parties put themselves in a dangerous position. Further, the case at hand is nothing like the hypothetical situations warranting liability under the statute, such as a dog excitedly jumping up on someone, as articulated in prior Minnesota decisions.<sup>3</sup>

Therefore, finding that liability under the dog owner liability statute could extend to Mr. Anderson could spark endless scenarios of liability that does not coincide with the purpose of the law and established precedent. Where should the Court draw the line? Should liability extend to individuals who knowingly risk injury? What if Mr. Anderson was running across the street to break up Tuffy and Bruno and he fell along the way? If the Court confirms the reasoning of the Court of Appeals in this case, it would serve to extraordinarily broaden the scope of absolute liability beyond the original intent of the law.

Therefore, public policy mandates that there is some limitation to the interpretation of “attacks or injures” in the statute. This Court has already interpreted the concepts of “attacks or injures” in a way that is easy to apply and appropriately limits the span of scenarios that could conceivably apply under *Lewellin*, *Boitz*, *Morris*, and *Mueller*. In contrast, the Court of Appeals’ decision in this case has rendered an obscure measuring stick with which to determine liability. In order to continue rendering a meaningful and realistic test, Mr. Anderson’s conduct was appropriately considered to be “intermediate linkage” by the district court.

---

<sup>3</sup> *Lewellin*, 465 N.W.2d at 64-65.

## II. THIS IS NOT AN APPROPRIATE FACTUAL SITUATION CHANGE THE CONCEPT OF “FOCUS” UNDER MINN. STAT. § 347.22.

Over the years, the concept of a dog’s “focus” has come into play when interpreting the dog owner’s liability statute. *See e.g., Mueller v. Theis*, 512 N.W.2d 907 (Minn. Ct. App. 1994). This case, however, is not one of them.

*Lewellin* was the first Minnesota case to contemplate the focus element when this Court analyzed the concept of “attacks or injures.” 465 N.W.2d at 65. Instead of using the term “focus” the *Lewellin* Court relied on the phrase “directed at[,]” stating that a dog’s actions can be considered to be “directed at”: (1) when a dog exuberantly jumps upon, or (2) unintentionally runs into a person causing that person injury. *Id.* 64. A few years later, the *Mueller* Court used both the concepts of a dog’s “affirmative conduct” in addition to focus, to determine whether liability arose based on the dog’s actions. 512 N.W.2d at 910-911. Under this analysis, the Court opined that affirmative actions meant more than a dog’s “mere presence.” *Id.* at 910.

Regardless of whether the *Mueller* Court misapplied the test under *Lewellin*,<sup>4</sup> in this case, there does not seem to be any dispute that Bruno was ever focused on Mr. Anderson. In other words, determining whether Bruno was focused on Mr. Anderson is not required for the analysis. However, the Court of Appeals agreed with Mr. Anderson’s argument that “focus” somehow came into play with Bruno and Mr. Anderson. *Anderson*, 802 N.W.2d at 836. This analysis is simply misapplied in the present case.

---

<sup>4</sup> *See Anderson v. Christopherson*, 802 N.W.2d 832, 836 (Minn. Ct. App. 2011).

**III. AN ABSENTEE HOMEOWNER WHO NEVER HAD CONTROL OR CUSTODY OF THE DOG SHOULD NOT BE CONSIDERED A “KEEPER” OR “HARBORER” UNDER MINN. STAT. § 347.22.**

The Court of Appeals found that there was a material issue as to whether Dennis Christopherson could be considered a “harborer” under the dog bite statute. *Anderson*, 802 N.W.2d at 838. This decision was based on the fact that the district court relied on the interpretation of “harborer” under *Tschida v. Berdusco* where it was defined as “giving lodging, shelter, or refuge to a dog for longer than a limited time or for more than a limited purpose.” 462 N.W.2d 410, 411 (Minn. Ct. App. 1990), *rev. denied*, (Minn. Dec. 20, 1990). The Court of Appeals found that *Tschida* misinterpreted the language in *Verrett v. Silver*, 244 N.W.2d 147, 149 (Minn. 1976). *Anderson*, 802 N.W.2d at 838. In particular, under *Verrett*, “harboring” or “keeping” is defined as

[S]omething more than a meal of mercy to a stray dog or the casual presence of a dog on someone’s premises. Harboring means to afford lodging, to shelter or to give refuge to a dog. Keeping a dog . . . implies more than the mere harboring of the dog for a limited purpose or time. One becomes the keeper of a dog only when he either with or without the owner’s permission undertakes to manage, control or care for it as dog owners in general are accustomed to do.

Minn., 244 N.W.2d 149.

Minnesota case law supports the idea that ownership of the property where a dog-related incident occurred does not automatically rise to the definition of “owner” under the statute. *See, e.g., Gilbert v. Christiansen*, 259 N.W.2d 896, 897 (Minn. 1977) (corporation that managed the apartment complex not considered to be an “owner” of tenant’s dog noting “Absent any indicia of control over a dog within the tenant’s

apartment, a landlord is not a harbinger or keeper of a tenant's dog."); *Wojciechowski v. Harer*, 496 N.W.2d 844 (Minn. Ct. App. 1993) (landlord was not considered a "harborer" under the dog liability statute in part because the landlord never undertook any effort to control or manage the dog); *Peshon v. Carney*, No. C9-99-396, 1999 WL 690196 (Minn. Ct. App. Sept. 7, 1999)<sup>5</sup> (defendant's father, who rented the upstairs apartment of his home to his daughter, was not liable when daughter's dog bite a child at their home).

In *Gilbert*, a claim under Minn. Stat. § 347.22 was brought against the corporation that managed the property where a dog bit another tenant within the apartment complex. 259 N.W.2d at 896. In addition to relying on the language in *Verrett* regarding the definition of an "owner" under the law, the *Gilbert* Court also based its decision on the Restatement (Second) of Torts which states "[T]he possession of the land on which the animal is kept, even when coupled with permission given to a third person to keep it, is not enough to make the possessor of the land liable as a harbinger of the animal." *Id.* at 898-99. Accordingly, the *Gilbert* Court determined that the apartment managers could not be considered a "harborer" or "keeper." *Id.*

Similarly, *Peshon* involved a dog named Jekyll who was owned by Amber Carney, the tenant in an upper unit apartment that was owned by her father, Russell Carney. 1999 WL 690196 at \*1. Although Mr. Carney was also technically her landlord, the living arrangement operated more like a single household: Ms. Carney and her father shared meals typically twice a week, Mr. Carney kept his door open, and Ms. Carney and

---

<sup>5</sup> Pursuant to Minn. Stat. § 480A.08(3) a copy of this unpublished opinion is attached herein.

her eight-year old child where permitted to enter his apartment without knocking. *Id.* at \*1. One day, Ms. Carney's daughter brought a friend over from school who, while attempting to hug Jekyll, was bit on the face. *Id.* at \*1-2. Relying on the definition of "owner" under *Verrett*, the court noted that nothing in the record supported a finding that Mr. Carney had even "appreciable contact with Jekyll" and therefore his status as the homeowner did not rise to the level of an "owner" under the statute. *Peshon* at \*2-3.

The only Minnesota case that seems to stand in the way of this position is *Verrett*. In that case, this Court held that the homeowner was considered to be harboring his roommate's dog because the dog resided at the home. *Verrett*, 244 N.W.2d at 174. Unlike *Verrett* however, Dennis Christopherson was not living in the home as his residence.

#### **A. Other Jurisdictions' Definitions of "Keeper" and "Harborer"**

Some jurisdictions have statutes similar to Minnesota's in that they impose liability for injury or damage caused by a dog on the "keeper" or "harborer" of the dog.<sup>6</sup> The terms are generally distinguished, but are occasionally used interchangeably.<sup>7</sup> Specifically, courts generally define "keeping" as exercising some measure of care,

---

<sup>6</sup> Wis. Stat. §174.02(1) provides that "the owner of a dog is liable for the full amount of damages caused by the dog injuring or causing injury to a person, domestic animal or property,"; the relevant part of the Illinois's Animal Control Act is as follows:

If a dog or other animal, without provocation, attacks, attempts to attack, or injures any person who is peaceably conducting himself or herself in any place where he or she may lawfully be, the owner of such dog or other animal is liable in civil damages to such person for the full amount of the injury proximately caused thereby.

510 Ill. Comp. Stat. § 5/16.

<sup>7</sup> See, e.g., *Hagenau v. Millard*, 182 Wis. 544, 547, 195 N.W. 718, 719 (1924).

custody or control over the dog, while “harboring” is often defined as sheltering or giving refuge to a dog. Given the interplay between the two terms, “harboring” seems to lack the proprietary nature of “keeping.”<sup>8</sup>

Under its similar dog owner liability statute, Wisconsin courts have defined “harborer” in several decisions. *See, e.g., Hagenau v. Millard*, 195 N.W. 718 (Wis. 1923) (“[H]arbor in its meaning signifies protection . . . and [one] who undertakes to control [the dog’s] actions.”); *Pattermann v. Pattermann*, 496 N.W.2d 613 (Wis. 1992) (transient nature of dog’s stay at homeowner’s residence did not make homeowner a “harborer” of son’s dog).

In particular, *Pattermann* involves a situation where the dog bite victim sued the dog owner and owner of the home in which the incident occurred. 496 N.W.2d 614-15. The dog, Mandy, was temporarily staying at the Pattermann’s home to meet for a family reunion. *Id.* When a family member tried to pet Mandy, she was bitten on the face. *Id.* Relying partially on the holding in *Gilbert*, the court stating that “[s]trict construction of the word ‘harbor’ suggests that Mandy’s transient invasion of [the Pattermann’s] home . . . is insufficient to trigger the statute.” *Id.* at 616.

#### **B. Other Jurisdictions Regarding an Absentee Nonowner of Dog.**

In states with similar statutes to Minn. Stat. § 347.22, liability will generally not attach to those who do not have control over the animal in question.

---

<sup>8</sup> John P. Ludington, Annotation, *Who “Harbors” or “Keeps” Dog Under Animal Liability Statute*, 64 A.L.R.4th 963, 969 (1988).

One such case was an action against an absentee landlord brought by the parent of a minor victim to recover for injuries sustained when the child was bitten by a defendant tenant's dog in *Steinberg v. Petta*, 501 N.E.2d 1263 (Ill. 1986). The court held that the landlord was not liable, where he simply allowed tenants to have the dog on the premises and did not have the dog in his care custody, or control. *Steinberg*, 501 N.E.2d at 1266. According to the record, the dog was owned by the ground-floor tenants of the landlord's two-story house. *Id.* at 1264. Based on the fact that the landlord never had any custody or control over the animal, but simply permitted the tenants to keep a dog on the premises, the court stated “[B]y no fair inference could be deemed to have harbored or kept the dog [within the meaning of the statute] . . . To find the defendant liable [under the statute] in these circumstances would, we believe, expand the scope of the statute beyond that intended by its drafters.” *Id.* at 1266.

Likewise, Wisconsin courts have also found that without evidence that a landlord, besides allowing a tenant to keep a dog in the house, afforded lodging, or gave shelter or refuge to the dog, the landlord was not a "harborer" of the dog. *Malone by Bangert v. Fons*, 580 N.W.2d 697 (Wis. Ct. App. 1998), *review denied*, 584 N.W.2d 123 (Wis. 1998). In *Malone*, a child was bitten by a dog belonging to a tenant who was renting her single family home. 580 N.W.2d at 699. In deciding whether the tenant's landlord was a "harborer" the court noted "the mere fact that . . . tenants' dog had been on the premises that [the landlord] leased to the [dog owner] for a lengthy period of time does not make [the landlord] a harborer of his tenant's dog." *Id.* at 705.

**C. “Owner” Under Minn. Stat. § 347.22 Should Not Extend to an Absentee Homeowner Who Had No Control or Contact Over the Animal.**

In this case, Dennis Christopherson was essentially an absentee homeowner or landlord. At no relevant time did he exert any control or care over Bruno. If the Court of Appeals’ interpretation is affirmed on this issue, the definition of “owner” under the statute would unnecessarily extend the range of liability. That, in turn, could lead to a number of situations where liability would attach to any homeowner, regardless if he or she had any contact or control over the dog.

Finding that Dennis Christopherson was “harboring” or “keeping” Bruno is not supported by Minnesota law. Specifically, even cases relying on the definition of “harborer” under *Verrett* still seem to suggest that “harboring” necessitates some form of custody or control over the animal. *See, e.g., Gilbert* at 897-99; *Peshon* at \*2-3. Even more important is the fact that the homeowner in *Verrett* actually resided in same home as the dog. 244 N.W.2d at 148. It should be noted that in its decision of *Anderson*, the Court of Appeals seemed to ignore the fact that Dennis Christopherson was not living in the same home—or even the same state—at the time of the accident and never exerted any power or control over Bruno.

In an age where apartment or home renting is increasingly common, affirming the Court of Appeals on this issue could lead to a series of troubling instances of unintended liability. Will renters never be allowed to own a dog out of the fear that the landlord or homeowner could be found liable? Even if a renter is not involved, should homeowners be required to refrain from allowing family and friends to bring dogs over to their

residence for fear of liability arising from this statute? These scenarios do not make sense. Although there is clearly an interest in maintaining that someone charged with caring for an animal try to ensure that that dog does not directly injure anyone, that fear must be balanced by the fact that a line must be drawn somewhere. Accordingly, the district court should be affirmed on this issue.

### CONCLUSION

The issues presented in this case have been previously decided by Minnesota courts. Strict liability under Minn. Stat. § 347.22 has been appropriately limited to proximate cause under *Lewellin*. In other words, only the direct and immediate injuries caused by a dog should trigger liability. The district court involved in this matter properly interpreted the dog owner's liability statute in accordance with these purposes by concluding that strict liability does not extend to situations where there is intermediate linkage. Moreover, the district court correctly decided that an "owner" under the statute should not extend to someone who never had any custody or control over the animal. Solely having title to the residence where the dog-related incident occurred should not warrant absolute liability under Minn. Stat. § 347.22. The MDLA encourages this Court to revise the decision of the Court of Appeals and reinstate the order of the district court.

QUINLIVAN & HUGHES, P.A.

Dated: 12/22/11

By: Garin Strobl

Dyan Jean Ebert# 0237966

Garin L. Strobl # 0391519

Attorneys for Amicus Curiae

Minnesota Defense Lawyers

Association

400 South 1<sup>st</sup> Street, Suite 600

P.O. Box 1008

St. Cloud, MN 56302-1008

Phone: (320) 251-1414

Fax: (320) 251-1415

**CERTIFICATION OF BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 4,417 words. This brief was prepared using Microsoft Word 2010.

QUINLIVAN & HUGHES, P.A.

Dated: 12/22/11

By: Garin Strobl

Dyan Jean Ebert# 0237966  
Garin L. Strobl # 0391519  
Attorneys for Amicus Curiae  
Minnesota Defense Lawyers  
Association  
400 South 1<sup>st</sup> Street, Suite 600  
P.O. Box 1008  
St. Cloud, MN 56302-1008  
Phone: (320) 251-1414  
Fax: (320) 251-1415