

Case Nos. A11-191

State of Minnesota
Supreme Court

Gordon Helmer Anderson,

Respondents,

vs.

*Neil Raymond Christopherson and
Dennis Christopherson,*

Appellants.

APPELLANT DENNIS CHRISTOPHERSON'S REPLY BRIEF

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INTRODUCTION

The arguments set forth by Anderson in his response brief are largely identical to those raised during earlier stages of this litigation and were therefore preemptively addressed in Dennis Christopherson's original brief. However, there are three somewhat distinctive issues raised by Anderson that necessitate a short discussion in this reply. The first of these is Anderson's interpretation of *Lewellin v. Huber* and the contradictory nature of his proposed "rule of law" for when a dog "injures" under the meaning of §347.22. Second, Anderson wholly fails to distinguish the facts of this case from those in *Gilbert v. Christiansen*, and therefore Dennis Christopherson cannot, as a matter of law, be considered a "harborer" under the statute. Finally, Anderson's brief focuses on the protective nature and underlying principles of the dog bite statute in an effort to support his argument against the limitations on liability at issue in this appeal. This argument ignores the fact that absolute liability under §347.22 is not and was never meant to be an exclusive remedy. In the absence of liability under §347.22, Anderson's common law negligence claim against Neil Christopherson remains available. The existence of this alternative remedy is significant and bears consideration in evaluating the merits of Anderson's arguments in support of liability here.

ARGUMENT

I. ANDERSON MISSTATES AND MISAPPLIES *LEWELLIN* IN HIS RESPONSE BRIEF

In his response, Anderson sets forth a confused and purposefully limited analysis of this Court's opinion in *Lewellin v. Huber*, 465 N.W.2d 62 (Minn.1991). Anderson

goes on to then propose a rule of law that seemingly contradicts his own argument against a “focus” requirement and reinforces both the reasonableness and legitimacy of such a requirement in establishing absolute liability under Minn. Stat. §347.22.

First, and perhaps most significantly, Anderson suggests that the section of *Lewellin* from which the “focus” or “directed at” element arises is in fact a purely factual discussion that has no relevance to the issue of legal causation. *See, Lewellin*, 465 N.W.2d at 66. This argument ignores the plain meaning of the language utilized by this Court in *Lewellin*. The paragraph at issue is the final paragraph in the Opinion. The paragraph outlines and summarizes the Court’s reasoning for not finding legal causation under the facts presented. There is simply no other reasonable interpretation of the meaning of this paragraph or the Court’s language. Indeed, the Court concludes its summary of relevant facts by specifically stating that “[t]hough there may be causation in fact here, this chain of events is too attenuated to constitute legal causation for the radical kind of liability that the statute imposes. Consequently, we hold as a matter of law there is no causation for absolute liability under §347.22.” *Id.* Anderson argues that this section essentially constitutes dicta and is somehow irrelevant to the question of legal causation. This argument fails under an objective reading of the language and must fail as a matter of law.

Second, Anderson’s own proposed rule of law states as follows: “[a] dog ‘injures’ within the meaning of the statute, when it causes harm to a person who is directly and immediately implicated by the dog’s affirmative but nonattacking nonhostile behavior *relative to that person.*” Anderson Response Brief at p. 11 (emphasis added). What, if

any, distinction can be made between Anderson's own requirement of behavior "relative to that person" and the "focus" or "directed at" requirement at issue here? The suggested answer is: none. Even Anderson recognizes that there must be some kind of limiting clause or provision in determining absolute liability under Minn. Stat. §347.22, and this limitation should concern the target of the dog's conduct. The statute simply cannot apply to all individuals who suffer injuries causally connected to the actions of a dog. To hold otherwise would "extend absolute liability beyond its intended purpose and reach," and thereby fly in the face of this Court's holding in *Lewellin*, as well as public policy. *Lewellin*, 465 N.W.2d at 65.

We do not dispute that requiring a dog's conduct to be "focused upon" or "directed at" the injured party may, in some cases, result in a factual dispute to be decided by a jury. This eventuality, however, does not change the fact that such a requirement is necessary to adequately limit application of the "radical" kind of liability imposed by §347.22. Furthermore, as applied here, there is absolutely no factual dispute as to the subject of the dog's focus. There is not even a question as to Anderson's subjective belief of the dog's focus at the time of the incident. Bruno's conduct was at all times focused on the other dog and not Gordon Anderson. Pursuant to this Court's reasoning in *Lewellin* and significant public policy concerns, there can be no liability under §347.22 under these facts and Anderson's arguments to the contrary must fail as a matter of law.

II. ANDERSON FAILS TO ARTICULATE ANY DISTINCTION BETWEEN DENNIS CHRISTOPHERSON AND THE LANDLORD IN *GILBERT*, AND THEREFORE, AS A MATTER OF LAW DENNIS CHRISTOPHERSON CANNOT BE A “HARBORER” UNDER MINN. STAT. §347.22

Anderson’s sole factual basis for conferring liability upon Dennis Christopherson as a “harborer” is that (1) he owned the property in which Neil and Bruno were staying, and (2) he “affirmatively welcomed primary dog owner Neil Christopherson to refuge, shelter and lodge Bruno on the premises.” Anderson Response Brief at p. 30. It is notable that Anderson fails to elaborate on how Dennis Christopherson “affirmatively” welcomed Bruno on to the property.

The application of absolute liability under §347.22 to facts such as those presented by Anderson was decided approximately thirty-five years ago by this Court in *Gilbert v. Christiansen*, 259 N.W.2d 896, 897 (Minn.1977). The “mere right to exclude dogs” and mere “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 sufficient to confer liability as a harborer of the animal. *Id.* There are no facts reflected in either the record or Anderson’s response brief that would meaningfully distinguish the actions of Dennis Christopherson from the owner of an apartment complex who tells its tenants: “DOGS WELCOMED!” Dennis Christopherson did nothing more than allow Bruno to be on his property and it is undisputed that Dennis Christopherson was in South Dakota for the duration of his son’s visit. Under *Gilbert*, Dennis Christopherson cannot be considered a harborer under Minn. Stat. §347.22 and Anderson’s arguments to the contrary must fail as a matter of law.

III. ANDERSON IS NOT LEFT WITHOUT A REMEDY IN THE ABSENCE OF STATUTORY LIABILITY UNDER MINN. STAT. §347.22

A primary theme in Anderson's response brief is the protective nature and underlying purpose of the dog bite statute. He goes on to suggest that public policy is in favor of a broader scope of liability under Minn. Stat. §347.22 than that suggested by Appellants. The reasoning set forth by Anderson in support of these arguments disregards the fact that §347.22 is not an exclusive remedy. As specifically noted by this Court in *Lewellin*, a claim of common law negligence remains available to those unable to satisfy the legal requisites for absolute liability under the dog bite statute. *Lewellin*, 465 N.W.2d at 65. The existence of additional remedies was a significant motivating factor in this Court's decision to limit proximate cause to only the "direct and immediate results of the dog's actions." *Id.* at 65-66. Such a consideration remains significant in examining Anderson's arguments against continuing to enforce the limitations at issue in this case. It should be noted that Anderson's common law negligence claim against Neil Christopherson survived summary judgment and it is certainly conceivable that under the traditional concepts of causation, Anderson may yet recover on his claim for damages.

Absolute liability under Minn. Stat. §347.22 is a "radical" kind of liability that must have meaningful limitations in application. *See Lewellin*, 465 N.W.2d at 65. Minnesota's dog bite statute is not intended to cover all situations in which there may be common law negligence liability and that is the reason why the statute is not an injured claimant's exclusive remedy. In accordance with controlling case law and public policy,

the limitations on absolute liability under Minn. Stat. §347.22 must be enforced and Anderson's arguments to the contrary must fail as a matter of law.

CONCLUSION

The "focus" or "directed at" requirement comes straight from this Court's decision in *Lewellin* and is therefore a prerequisite in establishing absolute liability under Minn. Stat. §347.22. Anderson does little to contradict this argument apart from weakly suggesting that the cited portion of the *Lewellin* decision is irrelevant to the issue of legal causation. Based on this Court's language and the plain meaning of that paragraph, this argument must fail as a matter of law. The reasonableness and legitimacy of a focus-related requirement is underscored by the fact that Anderson's proposed rule of law attributes liability in situations where a dog's behavior "relative to [the injured] person" causes injury. As it is undisputed on every conceivable level that Bruno's conduct was not focused on Gordon Anderson at any time prior to or at the time of his injury, absolute liability under Minn. Stat. §347.22 does not apply.

In *Gilbert v. Christiansen*, this Court refused to hold landlords liable as "harborers" solely based on the "right to exclude" and legal ownership of the property upon which the dog was present. 259 N.W.2d at 897. These are the only factors articulated by Anderson relative to his argument that Dennis Christopherson is a "harborer" under Minn. Stat. §347.22. Because this issue has already been conclusively resolved by the highest court in the State, this argument must fail as a matter of law.

Finally, in examining Anderson's arguments against the limitations at issue, it is significant to note that liability under §347.22 is not Anderson's exclusive remedy. His

common law negligence claim remains live and well. Given the extreme nature of absolute liability and this Court's affirmative decision to limit the scope of that liability under §347.22, public policy and controlling case law strongly favor affirmation of the trial court's grant of summary judgment on Anderson's §347.22 claims.

For all those reasons set forth by brief and at oral argument, Dennis Christopherson respectfully requests the Court affirm the trial court's summary judgment order in its entirety.

Respectfully submitted,

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