

NO. A11-191

State of Minnesota

In Court of Appeals

Gordon Helmer Anderson,

*Appellant,*

vs.

Neil Raymond Christopherson and Dennis Christopherson,

*Respondents.*

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RESPONDENT DENNIS CHRISTOPHERSON'S BRIEF AND APPENDIX

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

*Attorneys for Appellant Gordon  
Anderson*

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

*Attorneys for Respondent Neil  
Christopherson*

Troy A. Poetz (#0318267)  
Kristi D. Stanislawski (#348570)  
RAJKOWSKI HANSMEIER, LTD.  
11 Seventh Avenue North  
P.O. Box 1433  
St. Cloud, MN 55302-1433  
(320) 251-1055

*Attorneys for Respondent Dennis  
Christopherson*

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).

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## LEGAL ISSUES

### I.

#### Did The Trial Court Err When It Held That The Element Of Focus, Necessary For Application of Minn. Stat. §347.22 Was Not Present In This Case?

Answer: No, the trial Court properly held that the dog's actions were, at all times, focused on something other than the Appellant. (A35-A45).

Apposite Cases:

Lewellin on Behalf of Heirs of Lewellin v. Huber, 465 N.W.2d 62 (Minn. 1991)

Knake v. Hund, 2010 WL 3119506 (Minn.Ct.App.)

Morris v. Weatherly, 488 N.W.2d 508 (Minn.Ct.App.1992)

Mueller v. Theis, 512 N.W.2d 907 (Minn.Ct.App.1994)

### II.

#### Did The Trial Court Err When It Held That Appellant's Injuries Were Not the Direct And Immediate Result Of The Dog's Focus?

Answer: No, the trial court properly held that Appellant's injuries were a result of his actions of attempting to separate two dogs and that Neil Christopherson's dog was not focused on the Appellant. (A35-A45).

Apposite Cases:

Lewellin on Behalf of Heirs of Lewellin v. Huber, 465 N.W.2d 62 (Minn. 1991)

Knake v. Hund, 2010 WL 3119506 (Minn.Ct.App.)

Morris v. Weatherly, 488 N.W.2d 508 (Minn.Ct.App.1992)

Mueller v. Theis, 512 N.W.2d 907 (Minn.Ct.App. 1994)

### III.

#### Did The Trial Court Err When It Held That Dennis Christopherson Was Not A Harboring Of The Dog For The Purposes Of Minn. Stat. §347.22

Answer: No, the trial court properly held that Neil Christopherson's stay at the house was for a limited time and a limited purpose.

Apposite Cases:

Verrett v. Silver, 244 N.W.2d 147, 149 (Minn. 1976)

## STATEMENT OF THE CASE

Appellant Gordon Anderson was injured while walking his dog, Tuffy. (See Deposition of Gordon Anderson, p. 34-35, A9). When Anderson passed in front of a home owned by Respondent Dennis Christopherson, a dog ran out from the Christopherson yard and began fighting with Anderson's dog. (Anderson depo. p. 28, A7). While attempting to separate the dogs, Anderson fell to the ground, injuring himself. Although the home and yard where the dog came from was owned by Dennis Christopherson, the dog that fought with Appellant's dog was not owned by Respondent. This dog was owned by Dennis Christopherson's son, Neil who was temporarily staying at his father's home while visiting friends in Minnesota. (See Deposition of Neil Christopherson depo. p. 11, A21).

Appellant brought claims against Neil and Dennis Christopherson under Minnesota's "dog bite" statute, Minn. Stat. §347.22, as well as claims for common law negligence. (See Plaintiff's Complaint, A32- A34). The parties made cross motions for summary judgment. The District Court denied Appellant's motion, granted Dennis Christopherson's motion in full, and granted Neil Christopherson's motion in part.

An Amended Order was signed by the Court pursuant to Minn.R.Civ.P. 54.02. (See Amended Order Granting in Part Defendants' Motion for Summary Judgment, A35 - A45). Judgment was entered on December 13, 2010 and Mr. Anderson appeals from the judgment. In regard to Minn. Stat. §347.22, the Court found for Respondent Dennis Christopherson on three bases- 1) Neil Christopherson's dog was not focused on the Appellant at the time of the incident; 2) the injury was not the direct and immediate result

of the dog's actions; and 3) Dennis Christopherson did not meet the statutory definition of a harbinger. Finally, the Court found that no viable claim for common law negligence existed against Dennis Christopherson.<sup>1</sup>

### **STATEMENT OF FACTS**

This case arises out of an incident that occurred on September 27, 2009. At the time of the incident, Appellant was walking his dog, "Tuffy," down the street of a residential neighborhood in Andover, Minnesota. (Anderson depo., p. 20, A5).

As Appellant was walking by a home owned by Respondent Dennis Christopherson, a dog named "Bruno," owned by Dennis Christopherson's son, Neil, ran out from the Christopherson yard and bit Anderson's dog. (Anderson depo., p. 28, A7). Once Bruno bit Tuffy, he did not let go until the incident was over. (Anderson depo., p. 32, A8). While Bruno was holding onto Tuffy, Anderson began kicking at Bruno, trying to separate the two dogs. In the process of trying to separate the dogs, Anderson fell to the ground, injuring his hip. (Anderson depo., 34-35, A9).

Respondent Dennis Christopherson resides in South Dakota. (See Deposition of Dennis Christopherson p. 5-6, A46 – A47). He raised his children in Minnesota, but then moved to South Dakota to run his manufacturing business approximately 2 ½ years before this incident occurred. (N. Christopherson depo., p. 6, A20). Neil Christopherson also lived in South Dakota at the time this incident occurred. (N. Christopherson depo. p. 6, A20). Neil Christopherson and his girlfriend were staying at Dennis Christopherson's

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<sup>1</sup> Appellant does not raise this issue on appeal and therefore Respondent does not address the issue of common law negligence herein.

house while visiting friends in Minnesota. The couple planned to stay at the house for approximately one week. N. Christopherson depo. p. 16-17, A22). Neil Christopherson was allowed to occasionally stay at the home while visiting Minnesota. (D. Christopherson depo., p. 16-17, A49). Dennis Christopherson did not know that his son and his son's girlfriend were bringing their dog for the visit, though he would have had no objection, as long as Neil controlled the dog. (D. Christopherson depo. p. 18, A50).

On the week of their Minnesota visit, the couple brought along Bruno, who they had recently obtained from the Sioux Falls Humane Society. (N. Christopherson depo., p. 11, A21). Before Neil Christopherson acquired the dog from the Humane Society, Bruno was administered a series of behavioral tests and was approved as fit for adoption. (See Sioux Falls Area Humane Society document, A60).

On the date of the incident, Neil Christopherson was not present at the home. He later learned from his girlfriend, who was in the front yard with Bruno at the time of the incident, that Bruno had run from the yard and that his "shock" collar failed to work. (N. Christopherson depo., p. 27-30, A25 – A26).

#### **STANDARD OF REVIEW**

On appeal from summary judgment, the appellate court must determine whether genuine issues of material fact exist and whether the district court erred in applying the law. Betlach v. Wayzata Condominium, 281 N.W.2d 328, 330 (Minn. 1979). The appellate court must view the evidence in the light most favorable to the nonmoving party. Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993). "Any doubt as to whether issues of material fact exist is resolved in favor of the party against whom summary

judgment was granted.” Lubbers v. Anderson, 539 N.W.2d 398, 401 (Minn. 1995) (citation omitted). The appellate court reviews matters of law de novo. Frost-Benco Elec. Ass’n v. Minnesota Pub. Utils. Comm’n, 358 N.W.2d 639, 642 (Minn. 1984).

## ARGUMENT

### **I. SUMMARY JUDGMENT WAS APPROPRIATE BECAUSE APPELLANT’S INJURY WAS NOT THE DIRECT AND IMMEDIATE RESULT OF THE DOG’S ACTIONS AND THE DOG WAS NOT FOCUSED ON THE APPELLANT**

In order for Minnesota’s “dog bite” statute, Minn. Stat. §347.22, to apply to a case, the injury to the individual must be the “direct and immediate result of the dog’s actions.” *See: Lewellin on Behalf of Heirs of Lewellin v. Huber*, 465 N.W.2d 62 (Minn. 1991). In Lewellin, the Minnesota Supreme Court addressed the scope of Minn. Stat. §347.22 and held that by including the word “injures” in tandem with “attacks,” the legislature intended the statute “to cover a dog’s affirmative, but nonattacking behavior which injures a person who is immediately implicated by [that] behavior.” Id. at 64 (emphasis added).

The Lewellin court expressly limited proximate cause under the statute to the “direct and immediate results of the dog’s actions, whether hostile or nonhostile.” Id. at 66. The court stated that this limitation on traditional concepts of proximate causation was necessary as a policy matter to prevent courts from extending “absolute liability beyond its intended purpose and reach.” Id. at 65. Thus, in Lewellin, the court refused to impose absolute liability upon the owners of a dog that distracted a driver who then drove into a ditch, and struck and killed a child. Id. at 66.

Minnesota courts have interpreted the Lewellin causation standard to require an element of “focus” on behalf of the animal. In other words, in order for §347.22 to apply, the animal *must be focused on the injured party* at the time that the injury occurs. For example, in Lewellin, the dog focused its conduct on the driver rather than on the injured child, and the child's death was not the direct and immediate result of that focus, but instead was caused by the driver's conduct. Id. at 66.

In Mueller v. Theis, 512 N.W.2d 907 (Minn.Ct.App. 1994) this Court further clarified the status of Minnesota law on this subject. In Mueller, a motorist was injured in an automobile accident after he swerved to avoid hitting a dog standing in the roadway. Id. at 909. The motorist sued the dog owners, asserting an absolute liability claim under Minn. Stat. §347.22. The District Court granted the dog owner's summary judgment motion and the injured party appealed. The Court of Appeals held that the dog owner's liability statute does not create absolute liability for a dog's conduct that does not focus on the injured party. Id. at 910-11. The Court reasoned:

In our view, the ‘direct and immediate results of the dog's actions,’ require both that the dog's conduct be focused on the injured party and that the injury be the direct and immediate result of that focus...here, the dog's conduct was not focused on [Plaintiff] and therefore, his injuries cannot result from that focus. As in Lewellin, while the dog's conduct may be a “cause in fact,” imposing absolute liability under these circumstances would extend the statute beyond its intended purpose.

Id. Therefore, in order for §347.22 to apply, two elements must necessarily be satisfied.

First, the dog's conduct *must* be focused on the injured party and, second, the injury *must* be the direct and immediate result of that focus.

**A. Focus Issue**

In this case, Mr. Anderson testified in his deposition that the attention of the other dog, Bruno, was at all times focused on his dog, Tuffy. Bruno ran from the Christopherson yard and headed directly towards Tuffy. Bruno never growled, bit or showed any sign of aggression toward Anderson himself. (Anderson depo., p. 34, A9). Instead, he ran at Tuffy, bit Tuffy in the chest, and held on to the smaller dog until the entire incident was over. Mr. Anderson testified:

Q: And once he grabbed onto Tuffy, once he bit Tuffy, did he ever let go until the very end when the incident was over?

A: No.

Q: In other words, he didn't bite Tuffy three, four times. He just bit him once and held on?

A: Yes.

Q: From beginning to end?

A: Yes.

Q: And during that time is when you were trying to separate the dogs?

A: Yes.

(Anderson depo., p. 32-33, A8 - A 9).

Q: And it doesn't sound like at any time the dog tried to bite you. He was focused on Tuffy, huh?

A: Yes.

Q: All right. And it sounds like he was focused on Tuffy from the moment he came charging out of the yard; is that right?

A: Yes.

(Anderson depo., p. 34., A9).

The undisputed evidence shows that at no time was Bruno focused on the Appellant himself. Therefore, the first of the two necessary statutory elements is not satisfied because indisputably, the focus of the dog was never on the Plaintiff himself.

At the trial court level, Appellant argued that the focus of Bruno was on Mr. Anderson himself, rather than the Anderson dog:

“Here it was. The focus of what Bruno, the alleged pit bull did, was on Gordon Anderson, my client. Because my client was tethered by a leash to his dog and whether this dog that came charging at them, dog charging at them, how do we get in to Bruno’s head to determine if Bruno was going after them, or Tuffy, both of them whatever. He attacks them. My client is inextricably intertwined to his dog...”

(See Transcript of Summary Judgment Motion, p. 14, A75).

This argument did not comport with the unambiguous testimony from Gordon Anderson which has been cited above, revealing that at no time was Bruno focused on anything but the Anderson dog. Appellant seems to abandon this argument on appeal, and instead argues that the “focus” issue has improperly introduced a “subjective element which the statute does not contain.” (Appellant’s Brief p. 11). Specifically, Appellant points to the “criticism” leveled against the Mueller decision by this Court in Robinson v. Robinson, 1998 WL 901766 (Unpublished and attached hereto, A93 – A95). In Robinson, a six year old was injured while playing under a kitchen table. As she was petting her grandparent’s dog, the dog barked, prompting her to run and collide with the kitchen

table. Id. Like the Appellant, the Plaintiff in Robinson argued that the element of “focus” required the jury to attempt to ascertain the dog’s intentions. This Court found that the Appeal was not a review of Mueller and that the Supreme Court had declined review of Mueller.

This, of course, has not changed, and Mueller is still controlling. However, it is worth pointing out the material differences between this case and the Robinson case. Unlike the case *sub judice*, the Robinson fact scenario dealt with an animal whose focus, arguably, was on the Plaintiff, even if that focus resulted only in a bark. Here, there is no legitimate factual dispute that the focus of Bruno was, at all times, on something other than Mr. Anderson. As stated above, Appellant does not seem to dispute this on appeal. In any event, there is no need for a fact finder to attempt to ascertain Bruno’s intent. The unequivocal testimony from the Appellant himself reveals that Bruno, unlike the Robinson dog, completely ignored the Appellant, attacking the other animal instead. Therefore, the issue of “subjectivity” raised in Robinson is not present. Here, there is no differing interpretation about the dog’s focus. The Appellant himself testified that in his opinion, the other dog never focused his attention on the Appellant.

The Mueller case was recently cited by this Court in Knake v. Hund, 2010 WL 3119506 (Minn. Ct. App.) (unpublished and attached hereto, A96 – A99) a case that dealt directly with the focus issue. In Knake, a case which Appellant does not address, the Plaintiff was injured when she slipped on some ice after a dog, heading toward a garage, cut in front of her path. In upholding the trial Court’s summary judgment ruling, and applying the Mueller Court’s holding, this Court found that the dog was not focused on

the Plaintiff, but was instead focused on “getting to the garage.” Id. at 3. Like the dog in Knake and Mueller, Bruno’s attention was not focused on the individual and therefore the statute is inapplicable.

**B. Direct and Immediate Causation**

Appellant is correct that the Robinson case does address the focus issue, and indeed acknowledged the “potential problems created by the ‘focus’ language.”

However, it is more important to note that in the case, this Court also went on to analyze the second element necessary for liability under the statute- the requirement that the dog’s conduct “directly and immediately” produce the injury. Id. at 2. The Court found:

Additionally, this instruction, taken as a whole, is proper. Indeed the instruction also advised the jury that physical contact between the dog and Cammie was unnecessary for liability to apply, but that the conduct must have “directly and immediately produced the injury.”

Id. at 2. This “direct and immediate” language also had its origins in Lewellin, 465 N.W.2d 62. The Lewellin Court makes clear that it is prerequisite to establishing liability under Minn. Stat. §347.22:

We need not decide if legal causation for purposes of the dog owner’s liability statute under all possible scenarios requires direct contact between the dog and the injured person. It is enough to say here that legal causation for absolute liability under the statute must be direct and immediate, *i.e.*, without intermediate linkage.

Id. at 65. In this case, Mr. Anderson’s injuries were not the “direct and immediate” result of Bruno’s actions. According to Mr. Anderson’s own testimony, he fell while in the act of trying to separate the two dogs:

Q: Just so I understand, you lost your balance because you were in the midst of trying to separate the dog from Tuffy?

A: Yes.

(Anderson depo., p. 34, A9).

This is reinforced by the police report in this matter, as well as Appellant's Interrogatory responses. The police report states: "Mr. Anderson stated he injured his right leg and hip while trying to kick the pitbull<sup>2</sup> off of the small dog he was walking." (See Police Report, A 100 – A101). In his Interrogatory answers, Appellant writes: "Mr. Anderson tried to help his dog, and in trying to rescue his dog during the attack, fell down fracturing his right hip and injuring his right leg." (See Plaintiff's Answers to Defendant Dennis Christopherson's Interrogatories, p. 4, A105). There is simply no evidence that the other dog attacked or showed any aggression toward the Appellant and therefore, Appellant's fall and injury was not the "direct and immediate" result of the dog's actions.

In support of his causation argument, Appellant cites this Court's decision in Morris v. Weatherly, 488 N.W.2d 508 (Minn. Ct. App.1992). In Morris, a bicyclist dismounted his bike after being chased by a dog and, in dismounting, injured himself. The Court found that the injuries were the direct and immediate result of the dog's action. Id. at 510. Unlike the injured party in Morris, Appellant was not injured in the act of

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<sup>2</sup> There is no evidence that the dog was a pitbull and the Respondents have vehemently denied that the dog was a pitbull. However, for the purposes of the summary judgment motion, and to the extent that the dog's breed is material, the fact was unchallenged at the hearing.

fleeing an approaching animal. Instead, his injury occurred *after* the other dog's affirmative behavior.

This Court in Knake v. Hund, 2010 WL 3119506 addressed this issue in its August 2010 opinion. As described above, the Plaintiff injured herself as she slipped on ice when a dog crossed her path. However, this Court found that the injury was not a result of the Plaintiff attempting to avoid an attacking dog, or protect herself from a dog's actions. Id. at 3.

Mr. Anderson's action of kicking Bruno and attempting to separate the dogs is the type of intermediate linkage rendering the statute inapplicable. Had Mr. Anderson, for example, injured himself while leaping out of the way for fear of Bruno charging him, the Lewellin causation standard would have more applicability. Here, Bruno attacked the other animal and it is after this attack that the "intermediate linkage," Anderson inserting himself into the dog fight, destroys causation. In Knake, the Court reasoned that while "the dog's conduct may have been a 'cause in fact'" of the Plaintiff's injury, "it was not the 'direct and immediate cause of the victim's injuries.'" Likewise, while Bruno's actions may have been the cause in fact of Mr. Anderson's injury, they were not the direct and immediate cause. Mr. Anderson was injured while in "the midst of trying to separate the dog" from his own. (Anderson depo. p. 34, A9). It is this action by Mr. Anderson that creates the "intermediate linkage" discussed in Lewellin. Therefore, even if Appellant could somehow show that Bruno was focused on the person rather than the other dog, or that the element of focus has been impermissibly inserted by the Courts, the second statutory element- causation, remains unsatisfied.

## **II. SUMMARY JUDGMENT WAS APPROPRIATE BECAUSE DENNIS CHRISTOPHERSON WAS NOT AN “OWNER” FOR THE PURPOSES OF THE STATUTE**

The Minnesota dog bite statute, Minn. Stat. §347.22, contemplates either two or three parties to a dog bite action: the third party victim, the first party legal owner, and in some cases, the second party harborer or keeper. Tschida v. Berdusco, 462 N.W.2d 410, 411 (Minn. Ct. App.1990). The statute permits third party victims to maintain an action not only against the legal owners of the dog, but also against a third party deemed to be a “harborer” of the dog.

In relevant part, the language of Minn. Stat. §347.22, reads as follows:

If a dog, without provocation, attacks or injures any person who is acting peaceably in any place where the person may lawfully be, the owner of the dog is liable in damages to the person so attacked or injured to the full amount of the injury sustained. The term “owner” includes any person harboring or keeping a dog but the owner shall be primarily liable.

Id. Thus, an individual is considered an “owner” of a dog if that individual fits into any of three categories: (1) the legal owner; (2) one who keeps the dog; or (3) one who harbors the dog. Minn. Stat. §347.22.

Here, it is undisputed that Dennis Christopherson was not the legal owner of the dog. His son, Neil Christopherson, was the dog’s legal owner. (Defendant Neil Christopherson’s Answers to Plaintiff’s Interrogatories, p. 3, A117) Neil Christopherson’s name is found on the adoption papers and the dog had resided with Neil since he purchased the dog from the animal shelter. (Humane Society document, A60 See also, N. Christopherson depo., p. 11, A21). Because Dennis Christopherson was not the

legal owner of the dog, Plaintiff must show that he either “kept” or “harbored” the dog to fall within the statute’s purview.

The Supreme Court of Minnesota has stated that “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.” Verrett v. Silver, 244 N.W.2d 147, 149 (Minn. 1976) (emphasis added); Tschida v. Berdusco, 462 N.W.2d 410, 411 (Minn.Ct.App. 1990) (emphasis added). Minnesota courts have found that in certain circumstances a non-owner, for statutory purposes, can be a keeper of the dog. *See Tschida*, 462 N.W.2d at 411-13 (finding that a veterinarian and veterinary assistant became keepers of a dog when the owner relinquished control of the dog to the veterinarian and veterinary assistant for purposes of surgery); Kent v. Block, 623 N.W.2d 906 (Minn. App. 1990) (finding that a dog-sitter was a keeper of a dog when she voluntarily assumed individual responsibility for a dog by offering to feed, water, and exercise it). In 2005, the Minnesota Court of Appeals laid out a four-part test to determine when a person becomes a keeper of a dog. Carlson v. Friday, 694 N.W.2d 828 (Minn. Ct. App. 2005). This four-part test includes (1) a voluntary acceptance (2) of temporary responsibility (3) as it relates to the management, control, or care of the dog; (4) exercised in a manner generally similar to that of the dog’s primary legal owner. Id. at 831.

There is no evidence that Dennis Christopherson voluntarily accepted his son’s dog, assumed any responsibility for the animal, or that he managed, controlled, or cared for the dog in any way. At the time of this incident, Dennis Christopherson was in an

entirely different state than the dog and in no way did he act in a manner “generally similar to that of the dog’s primary legal owner.” Therefore, Dennis Christopherson can not be construed as a “keeper” of the dog for the purposes of the statute.

As well, Dennis Christopherson cannot reasonably be construed as a “harborer” of his son’s dog. The Minnesota Supreme Court has defined “harboring” as giving lodging, shelter, or refuge to a dog for longer than a limited time or for more than a limited purpose. Verrett v. Silver, 244 N.W.2d 147, 149 (Minn. 1976).

Appellant argues that because Dennis Christopherson allowed the dog on his premises for one week in conjunction with his son, he acted as a “harborer” of the dog for the purposes of the statute. This conclusion is factually unfounded for several reasons.

First, the one-week period in which Neil Christopherson was to stay at Dennis Christopherson’s home clearly fulfills the “limited time” exception within the definition of harboring. This fact alone renders the harboring provision inapplicable. To the extent that Dennis Christopherson allowed his son to bring the dog on the property, it is undisputed that the visit was for a limited time, brief in duration. (N. Christopherson depo., p. 17, A22).

Further, Minnesota courts have found that simply allowing a dog on your property does not designate the property owner as a “harborer” of a dog. Gilbert v. Christiansen, 259 N.W.2d 896 (Minn. 1977). In Gilbert, the case with facts most similar to those at issue, the plaintiff brought an action against a dog owner as well as Towns Edge, a corporation that managed the apartment complex where plaintiff lived. The trial court granted summary judgment on behalf of Towns Edge, the landlord of the property, and

the tenant who owned the subject dog. The Court held that Towns Edge was not an “owner” for the purposes of Minn. Stat. §347.22. On appeal, the plaintiff made two arguments in favor of a landlord being held strictly liable under the statute, including: (1) the fact that Towns Edge had a right to exercise control over the dog and therefore should be responsible for the dog’s conduct; and (2) that Towns Edge gained an economic benefit from the dog’s presence in the apartment building.

Despite the plaintiff’s arguments, the Supreme Court of Minnesota held that the managing corporation should not be held liable. Citing *Restatement, Torts 2d, §514, cmt. a*, the Court stated “the 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.” Gilbert, 259 N.W.2d at 897-98. In Gilbert, the mere right to exclude dogs was not “a sufficient ground to make Towns Edge an insurer of the conduct of dogs residing in the apartment complex.” Id. at 897. Similarly, the mere fact that Dennis Christopherson could have regulated the presence of dogs on his property is not sufficient grounds to make him liable under the law for the conduct of the dog. Moreover, the dog’s presence on Dennis Christopherson’s property does not rise to the level of “residing” as noted in Gilbert, when the apartment where the dog bite occurred was the dog’s permanent home. Here, the dog simply had a temporary presence on Dennis Christopherson’s property while staying with his true, legal owner, Neil Christopherson.

Appellant argues that the trial Court, in its reliance on the Verrett v. Silver decision, “cherry picked” certain language from the Verrett jury instruction, and decided

the summary judgment motion on only the temporary nature of Bruno's visit to Dennis Christopherson's home. This criticism is misplaced. The Verrett opinion, only three pages in length, concisely outlines what it means to be a harborer. The instruction read to the jury in Verrett stated, in pertinent part:

Harboring or keeping a dog means something 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, as used in the statute before us, 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.

Id. at 149. In granting summary judgment, the Trial Court in the instant action wrote:

“The Minnesota Supreme Court has defined harboring as giving lodging, shelter, or refuge to a dog for longer than a limited time or for more than a limited purpose.” (See Order Granting in Part Defendants' Motion for Summary Judgment; p. 3, A43 ). In Respondent's reading, the Court summarizes the Verrett instruction accurately and fairly. Perhaps most importantly, unlike Neil Christopherson, who was simply staying at his father's home for brief period of time, the dog owner in Verrett had “moved into defendant's residence about 3 weeks prior to the dog-bite incident.” Therefore, not only did the Verrett owner stay for a longer period of time than Neil Christopherson, she appeared to have moved into the home owned by the third party.

Finally, Appellant attempts to create a fact issue by citing his client's testimony about an incident which allegedly occurred approximately three weeks before his injury. Appellant writes that “three weeks before the incident a dog ran at Mr. Anderson from

the Christopherson home.” (Appellant’s Brief, p. 16). The actual deposition testimony reveals that in this prior incident, a dog ran up to Anderson’s dog rather than Anderson. The two dogs touched noses, and the other dog ran back to the yard. (Anderson depo., p. 22, A6) Although Appellant seems to imply that this was the same dog involved in the subsequent incident, the humane society records show that Neil Christopherson had not even yet adopted Bruno at the time this alleged incident occurred. (Humane Society document, A60). Despite this evidence, Appellant argues that “a jury could conclude that Dennis was in the habit of harboring Neil’s dog.” There simply is no evidence to support this conclusion, and the undisputed testimony is that Neil Christopherson’s dog was at his father’s home for a limited time, and a limited purpose (Neil and his girlfriend visiting Minnesota). Bruno’s presence on Dennis Christopherson’s property was exactly the type of “casual presence” that the Verrett Court stated does not create a harbinger.

To construe Dennis Christopherson as a “harborer” of the dog under these circumstances would broaden the scope of the statute far beyond its limits, and impose liability on virtually every homeowner whose guest brings a dog with them. This finding would not comport with the Verrett holding or the statute itself. Therefore, summary judgment is appropriate because Dennis Christopherson cannot be construed as a “harborer” of his son’s dog for the purposes of Minn. Stat. §347.22.

### **CONCLUSION**

The elements of Minn. Stat. §347.22 have not been met in this case and the Court acted properly in granting summary judgment to Respondent Dennis Christopherson. Based on the undisputed testimony of the Appellant himself, the dog never focused on

him. As well, the Appellant's injuries were not the direct and immediate result of the dog's actions. Appellant's own actions in trying to separate the animals is the intermediate linkage which breaks the causation chain deemed prerequisite by Minnesota Courts.

As well, Dennis Christopherson cannot be deemed a harbinger of the dog under these circumstances. The dog was temporarily at his home while he resided in another state. The dog was there with its owner for a temporary period of time and for a temporary purpose. Based on the law cited herein, this falls far short of a harboring scenario. Finally, though Appellant does not raise the issue on appeal, there is no viable claim for common law negligence against this Respondent, who did not own or control the dog and was not present during this occurrence.

For these and all of the aforementioned reasons, the Trial Court's ruling should be affirmed.

Respectfully submitted,

RAJKOWSKI HANSMEIER LTD.

By 

Troy A. Poetz - 0318267

Attorneys for Respondent Dennis Christopherson

11 North Seventh Avenue

P.O. Box 1433

St. Cloud, MN 56302

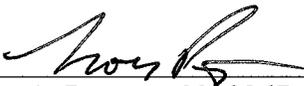
Telephone: (320) 251-1055

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**CERTIFICATE OF BRIEF LENGTH**  
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I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.02, Subds. 1 and 3, for a brief produced with a Times New Roman font. The length of this brief is 5192 words and 483 lines. This brief was prepared using Microsoft Word.

Dated this 31<sup>st</sup> day of March, 2011.

RAJKOWSKI HANSMEIER LTD.

By   
Troy A. Poetz - 0318267  
Attorneys for Defendants Dennis Christopherson  
11 Seventh Avenue North  
P.O. Box 1433  
St. Cloud, Minnesota 56302  
Telephone: (320) 251-1055