Cjohnson appellate brief

# IN THE COURT OF APPEALS OF THE STATE OF FICTION

# No. 00-00001

MARCIA HANSON,

*Petitioner,*

v.

JOHN and RITA SMART,

*Respondent.*

ON APPEAL TO THE COURT OF APPEALS OF

THE STATE OF FICTION FROM

THE FICTITIOUS TRIAL COURT

# BRIEF OF PETITIONER

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# Cases

*Party A v. Party B,* \_ \_ XX \_ \_ \_ (Fict. 199\_)

*You v. Me, \_ \_ \_ XX*.2d \_ \_ (Fict. 197\_)

**Statutes**

Fiction State Statute § XX-X-XXX

# STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction pursuant to Fiction Code Annotated § xx-x-xxx

# QUESTIONS PRESENTED

DOES Fiction State Statute§ XX-X-XXX PROVIDE FOR A DISMISSAL BASED ON A FIRST BITE DEFFENSE?

# STATEMENT OF THE FACTS

On April 23, 2008, at approximately 4:00 AM, Marcia Hanson was delivering newspapers for The Smalltown newspaper in Anytown, Fiction. As Ms. Hanson approached the home of John & RITA SMART, their dog, a male pit bull named Spot, ran barking from the back of the house and approached Ms. Hanson on the sidewalk. Spot then charged Ms. Hanson, biting her on the right leg, ankle and foot. Mrs. SMART unsuccessfully attempted to call Spot off of Ms. Hanson. Hearing the commotion, Mr. SMART came out of the house and commanded Spot to “hold down,” at which time the dog immediately released Ms. Hanson’s foot and ran to Mr. SMART. Mrs. SMART called 911 and within minutes the Anytown Fire Department and paramedics arrived at the scene. They staunched the flow of blood from Ms. Hanson’s foot and transported her to Smalltown Hospital where she was sedated and received 140 stitches in her right leg, ankle and foot. She was given a tetanus shot and admitted for overnight observation.

Smalltown Police Department arrived at the scene where they took a report from Mr. & Mrs. SMART, recorded Spot’s rabies number, and informed them that Spot would have to be impounded for 10 days as required by county ordinance. The SMART’s informed the police that they would take Spot to their veterinarian for the period of impoundment. The police attempted to interview Ms. Hanson at the hospital, but she was heavily sedated and could not speak at the time.

Trial was held in Fictitious Trial Court on December 19th, 2008, Honorable Judge Noble Judge presiding. Judge Judge ruled that while Ms. Hanson was in fact bitten by Spot and was required to have 140 stitches, the Defendant’s would not be held liable under the “first bite” doctrine. The first bite rule exempts dog owners from liability for damages incurred if the dog has not previously bitten anyone.

# ARGUMENT

**A DOG OWNER WHO IGNORES THE DUTY TO KEEP THE DOG UNDER**

**CONTROL IS LIABLE FOR DAMAGES TO SOMEONE WHO IS NOT TRESPASSING.**

Fiction State Statute§ XX-X-XXX – Injury caused by dogs; civil liability; exceptions; limitations provides the following in part:

*(1)(a) The owner of a dog has a duty to keep that dog under reasonable control at all times, and to keep that dog from running at large. A person who breaches that duty is subject to civil liability for any damages suffered by a person who is injured by the dog while in a public place or lawfully in or on the private property of another.*

(*1)(b)* The owner may be held liable regardless of whether the dog has shown any dangerous propensities or whether the dog’s owner knew or should have known of the dog’s dangerous propensities.

*(2) Subsection (1) shall not impose liability upon the owner of the dog if:*

*(2) (b) The injured person was trespassing on the property of the dog’s owner.*

Pursuant to the above, the owner of a dog has a duty to keep that dog under reasonable control at all times. Neither Mr. nor Mrs. SMART had Spot under their control, as evidenced by the fact that he was able to reach Ms. Hanson at the sidewalk before she had even crossed the property line. If the dog was unleashed, it can be considered “at large.” Subsection (1)(b) also clearly states that the owner will be held liable regardless of any dangerous propensities, known or unknown, thus invalidating any first bite provisions.

Subsection 2 above relieves the owner of liability if the person was trespassing. Hanson was delivering the paper at the request of the SMART’s as they subscribe to home delivery of the paper. Hence, she was in no way trespassing.

The trial court, therefore, erred in dismissing Hanson’s claim and the SMART’s should be held liable for damages.

In *Party A v. Party B,* \_ \_ XX \_ \_ \_ (Fict. 199\_) Party B lived in a rural community and allowed his Doberman, Muffy, to run free each night between the hours of 1 and 2 am. Party A was bitten by Muffy while walking down the road at 1:30 am after his vehicle had run out of fuel. The Court awarded Party A damages, ruling that if the owner of a dog allowed the animal to run at large, the dog owner was liable for damages resulting from the dog’s biting a person. Allowing Spot out of the house without a leash constituted the dog’s “running at large” and the SMART’s, therefore, are liable for Ms. Hanson’s damages.

In *You v. Me, \_ \_ \_ XX*.2d \_ \_ (Fict. 197-) You was awarded damages when Me’s off-duty police dog bit her while she was delivering a pizza to the Me household. The Court held that the owner of a dangerous dog, kept on the owner’s property, owed guests the duty of ordinary care while the guest was on the premises. Mr. and Mrs. SMART subscribed to The Smalltown newspaper and knew that it was delivered early each morning, as it had been for nearly 3 years prior to the incident. While Spot is not a trained police dog, he was known to occasionally lunge and growl without provocation and the inherent dangerous nature of the breed should have caused the SMART’s to be more cautious. On the morning in question, Spot did bite Ms. Hanson causing her great bodily injury.

# CONCLUSION

The trial court erred in dismissing Ms. Hanson’s claim for damages. The SMART’s are liable for not keeping the animal under their control and allowing it to run at large which resulted in harm to the Petitioner, Marcia Hanson.

# RELIEF

WHEREFORE, Petitioner respectfully requests that this Honorable Court reverse the decision of the Trial Court and award Ms. Marcia Hanson all medical bills, lost wages, and pain and suffering in the amount of $150,000.00.