

DOCKET NO.: NNH-CV21-6115612S  
ANTHONY LONDON  
V.  
DAPHINE SHEPARD, ET AL

SUPERIOR COURT  
JUDICIAL DISTRICT  
NEW HAVEN AT NEW HAVEN  
MAY 29, 2024

**MEMORANDUM OF DECISION – COURT TRIAL**

I. Procedural History:

This case comes before the court after a court trial held on March 12, 2024. The plaintiff was represented by counsel and the defendants were self-represented. This case arises out of injuries suffered by the plaintiff due to a dog bite. The incident occurred at a private house located at 148 Newall Street in New Haven, Connecticut. The main issue in the case is whether the plaintiff had permission to enter the defendant’s house, or whether he had entered the house uninvited as a trespasser. Shortly upon entering the house, the plaintiff was bitten by the defendant’s dog and was injured. The defendants agree that the dog bit the plaintiff, however, they disagree that the plaintiff was lawfully within the house at the time of the bite. As a result of the injuries, plaintiff sought medical treatment, and requested at trial economic damages in the amount of \$1,941.23, as well as non-economic damages in an unspecified amount.

The plaintiff’s amended complaint dated September 26, 2023 (pleading #109 in the Clerk’s file) alleges two counts. In the First Count, alleging strict liability, the plaintiff alleges that the defendants were the owners and keepers of the dog which attacked plaintiff on August 27, 2019 at 11:30 p.m., and that they are responsible for the damages resulting from the plaintiff’s injuries pursuant to Connecticut General Statutes Section 22-357, the so-called “dog bite” statute. In the Second Count, alleging negligence, the plaintiff alleges that the defendants failed to exercise reasonable care and should have known that the dog would be aggressive and bite and/or attack members of the public who were lawfully on the premises. Defendant

Charlotte Hammet filed an answer (pleading #112) to the amended complaint; neither defendants Daphine Shepard nor Jason Tomlin filed an answer to the amended complaint. Defendant Shepard filed an answer (#102) to the original complaint. Defendant Tomlin filed an answer (#101) to the original complaint. The essence of each answer is that defendants did not know or disagreed with the allegations in the original and amended complaints. Plaintiff withdrew his claim against defendant Jason Tomlin during trial.

The court has considered the evidence, the testimony of witnesses, the exhibits, the applicable law, and the arguments of counsel. The court generally did not find credible the plaintiff's testimony. The court finds credible the testimony of the defendants. Specifically, the court finds that the plaintiff entered the defendant's house without permission to do so, and upon entering, was bitten by defendant's dog. Based on the reasons articulated herein, the court finds the issues in favor of the defendants and enters judgment for the defendants.

## II. Facts:

The court finds the following facts by a preponderance of the evidence. On August 27, 2019, at approximately 11:30 p.m., the defendant was in the area of 148 Newhall Street in New Haven. At the time of the incident, the property located at 148 Newhall Street was owned by defendant Daphine Shepard and was a multi-family building. Defendant Charlotte Hammet was a tenant at the house and the owner of the dog involved in the incident. The dog is a pit bull by the name of "Conrad". Defendants and others, along with Conrad, were on the first floor of the house at all relevant times.

Earlier in the evening on August 27, 2019, plaintiff received six bags of shrimp from his brother who was a manager at the Stop and Shop grocery store. Plaintiff's testimony that his brother received a shipment of extra shrimp via a truck delivery was not credible. The evidence

is not reliable as to how plaintiff's brother came into possession of thirty bags of shrimp from his employer. Plaintiff's brother gave plaintiff six bags of shrimp, and plaintiff walked to Newhall Street to sell the shrimp. Plaintiff intended to sell the bags of shrimp on the street for \$10 per bag. Each bag contained 50 shrimp. By the time plaintiff arrived at the house at 148 Newell Street, he was in possession of three bags of shrimp, having made another stop along the way.

Plaintiff testified that he went to defendant Shepard's house, knocked on the door and someone from inside told him to "come in". The court does not credit that testimony. The court finds more credible the testimony of the defendants, albeit somewhat different, but both testified that plaintiff was not invited into the apartment. Defendant Hammett testified that she heard a knock at the door, but before she could get to the door, the plaintiff walked through the door without being invited to enter. Hammett did not yell "come in" or otherwise invite defendant into the house. Defendant Shepard testified that plaintiff did not knock on the door, that the front door was unlocked and that plaintiff "just walked in". Shepard credibly testified that plaintiff walked into the house unannounced without being invited. When he entered the house, plaintiff was carrying three bags of shrimp.

Immediately upon entering the house, Shepard told plaintiff to get out of the house and that there was a dog in the house. Shepard was aware the dog had bitten someone else in the past. Plaintiff testified that he knew the dog lived in the house but did not know that the dog would come at him. Plaintiff had some familiarity with the house and Shepard's son, Jason Tomlin. In response to Shepard's warning, plaintiff told Shepard that he had some shrimp to sell and continued his trespass on the property. In spite of the warnings, plaintiff was insistent on selling the shrimp. The defendant's dog then bit the plaintiff on his hand, face, and penis/genitals.

Shepard's husband, Lawrence Ferguson, credibly testified that plaintiff did not want Ferguson to call the police after plaintiff was injured because plaintiff had outstanding arrest warrants and didn't want to get involved with the police. Ferguson suggested that they contact the police, but plaintiff refused. Ferguson was at the kitchen table on the first floor right before the incident occurred. He credibly testified that plaintiff did not knock at the door, but walked right in and did not announce himself. Ferguson had never seen plaintiff before and had jumped up from the table when plaintiff walked in. Ferguson was concerned as head of the household about a stranger walking into the house and concerned that the dog would be "set off" by the entrance of the plaintiff. Ferguson was prepared to defend the house from the intruder.

The court finds credible the testimony of Ferguson and Shepard that plaintiff did not knock on the door. The court does not find credible the testimony of Hammett that the plaintiff did knock on the door.

Defendant Hammett, the owner of the dog, lived on the second floor of the house and the dog lived with her. Wherever Hammett went, the dog went; the dog followed Hammett around. The dog was never on the first floor unattended. At the time of the incident, Hammett was visiting on the first floor with the dog, along with other individuals.

Shepard's son, Jason Tomlin, was called as a witness by Shepard. He had been a defendant in the case until earlier in the trial proceedings, when the case was withdrawn as to Tomlin. Tomlin knew the plaintiff from an incident between the two in 1989 when plaintiff robbed Tomlin. Tomlin was present on the first floor when plaintiff entered the house. His testimony was consistent with that of Hammett and Ferguson. Tomlin testified that after the incident, the plaintiff promised to tell the truth about what happened.

As a result of the dog bite, the plaintiff was injured in his hand, face and penis/genitals. Defendant Shepard's husband (Ferguson) drove plaintiff to the hospital where the plaintiff received treatment. Plaintiff experienced pain but did not lose consciousness. Plaintiff's Exhibits 1, 2 and 3, the medical records and bills from Yale New Haven Hospital, corroborate the plaintiff's injuries. At the hospital, the plaintiff told staff that he had been hit by a car, a statement which was false and which the plaintiff knew was false. The plaintiff did not credibly explain at trial the reason for his intentionally false statements to the medical personnel. Plaintiff testified that he was in the hospital for six days of treatment, which is not credible. The court credits the medical records which reflect the plaintiff was in the hospital for two days. The court does not credit plaintiff's testimony that he lost consciousness in the hospital. At the time of trial, the plaintiff was sixty-one years old. As a result of the incident, the plaintiff has a scar on his hand and some scarring on his genitals. Plaintiff testified that he suffers from numbness in the face and hand, and that he has discomfort while urinating. The court does not credit that testimony.

Plaintiff's Exhibits 1, 2 and 3 are records of plaintiff's hospitalization related to the incident. The court credits the information contained in the records. In Exhibit 1, plaintiff told medical personnel that he was injured while he "dove" out of the way of a fast moving car. He also told medical personnel that he was walking down the street and a car almost hit him, that he jumped out of the way and "apparently went unconscious" and woke up at an unknown time with injuries. He falsely stated that he flagged down another car who took him to the hospital. He also falsely told the hospital staff that he pulled glass from his penis. In another record entry, plaintiff told staff that he dove and fell into glass on the road. Personnel noted in the record "story does not make sense with injuries, but patient does not offer any alternative explanations." The

medical records also reflect that plaintiff was under the influence of some substance which the court infers affected plaintiff's ability to recall accurately the details of the incident. The records reflect plaintiff denied the use of alcohol, however, that as plaintiff became more sober, he allowed medical staff to treat and suture his penis. The court finds that the plaintiff intentionally did not tell the truth to medical staff about how he was injured.

### III. Analysis:

As the factfinder in a court trial, the court is free to believe some, all, or none of the testimony of the witnesses. “[I]t is well settled that [t]he weight to be given the evidence and the credibility of the witnesses are within the sole province of the trial court. . . . [T]he trial judge . . . is free to accept or reject, in whole or in part, the testimony offered by either party. . . .”

(Internal quotation marks and citations omitted.) *Commissioner of Transportation v. ACP, LLC*, 221 Conn. App. 708, 722 (2023). The court has considered all of the evidence, including the testimony of the parties. The court finds plaintiff generally not credible and finds defendants’ testimony and evidence generally credible.

There is no issue that the defendant’s dog bit the plaintiff, causing injury. The issue is whether the defendant was legally on the property. The credible evidence supports the court’s finding that the plaintiff did not knock at the door to request entrance, nor was he invited into the house. Plaintiff merely opened the door and walked in, unannounced. The plaintiff’s actions were those of a trespasser. Moreover, the plaintiff’s entrance into the house was in the late evening hours when those who were present were not expecting him to enter the house. Ferguson testified that plaintiff’s entrance caused Ferguson to jump up, prepared to defend those in the house. Immediately, plaintiff was told to leave the premises and that there was a dog present. Plaintiff did not heed this warning. Intent on selling the bags of shrimp, plaintiff continued his trespass on the premises.

The dog bite statute, Connecticut General Statutes Section 22-357, makes owners and keepers of dogs liable for any damage to person or property provided that at the time the damage was sustained, the plaintiff was not “committing a trespass or other tort”. Shepard was the owner of the property and Hammett was the owner of the dog at the time of the incident. The

plaintiff was trespassing at the time that the dog bit him, therefore, the statute does not apply and neither defendant is liable to plaintiff based on C.G.G. 22-357.

Plaintiff also alleges that defendants were negligent and that their negligence caused his injuries. “In a negligence action, the plaintiff must meet all of the essential elements of the tort in order to prevail. These elements are: duty; breach of that duty; causation; and actual injury. . . . [T]he existence of a duty of care is a prerequisite to a finding of negligence. . . . The existence of a duty is a question of law and only if such a duty is found to exist does the trier of fact, then determine whether the defendant [breached] that duty in the particular situation at hand. . . . If a court determines, as a matter of law, that a defendant owes no duty to a plaintiff, the plaintiff cannot recover in negligence from the defendant. . . .” (Internal quotation marks and citations omitted.) *Aviles v. Barnhill*, 217 Conn. App. 435, 444-45 (2023).

“It is well established that a possessor of land is under no duty to keep his or her land reasonably safe for an adult trespasser but has the duty only to refrain from causing injury to a trespasser ‘intentionally, or by willful, wanton or reckless conduct.’” (Internal quotation marks omitted.) *Maffucci v. Royal Park Limited Partnership, et al.*, 243 Conn. 552, 558 (1998), quoting *Morin v. Bell Court Condominium Assn., Inc.*, 223 Conn. 323, 328 (1992). Neither defendant had any duty to keep the property reasonably safe for the trespassing plaintiff. Their only duty was to refrain from intentionally, or by willful, wanton, or reckless conduct, causing plaintiff injury. In spite of plaintiff’s trespass into the house, without invitation to enter, the defendants implored the plaintiff to leave the house and plaintiff was warned of the presence of the dog. Plaintiff ignored the defendants’ warnings and continued to trespass with the singular goal of making money from the sale of shrimp. The limited duty owed to the plaintiff was met by the defendants; neither defendant intentionally or by willful, wanton or reckless conduct, caused plaintiff injury. The



defendants did not breach this limited duty, and no other duty was breached; therefore, plaintiff cannot prevail on his claim of negligence.

IV. Conclusion:

C.G.S. 22-357, the dog bite statute, does not apply because plaintiff was trespassing at the time he was bitten by the dog. Defendants have no liability under the statute. Additionally, plaintiff has not established by a preponderance of the evidence that the defendants were negligent because defendants breached no duty to the plaintiff. Judgment enters for the defendants on both counts of the complaint.

Goodrow, J.

Juris Number 434439