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STRICTLY LIABLE LANDLORDS COULD MEAN THE POUND FOR PIT BULLS

Caitlin Biggins

I. Introduction

A pit bull escaped from his pen twice and attacked two boys on the same day, one of whom was Dominic Solesky.¹ The attack caused injuries that resulted in more than five hours of surgery and a seven-day hospital stay for Dominic.² Dominic's parents, Anthony and Irene Solesky, sued on behalf of Dominic.³ The Soleskys sued Dorothy Tracey, the landlord, for damages because she allowed her tenant to have a pit bull on the premises.⁴ The Maryland Court of Appeals ruled in favor of the Soleskys and changed the common law standard applied to dog attacks to a strict liability standard.⁵ This new strict liability standard was specific to pit bulls because the court held that pit bulls were inherently dangerous.⁶ The holding in *Tracey v. Solesky* will affect landlords and pit bull owners alike.⁷ Landlords may begin to ban pit bulls or all pets from their leased premises. Landlords who allow pit bulls may see increased insurance costs.⁸ Tenants who have pit bulls may face eviction or increased insurance costs if they do not get rid of their pet.⁹ Homeowners may also see increased insurance premiums and be forced to purchase liability insurance if they keep a pit bull on their premises.¹⁰

1. *Tracey v. Solesky ex rel*, 50 A.3d 1075 (2012), as amended on reconsideration (Aug. 21, 2012).

2. *Id.*

3. *Id.* at 1075.

4. *Id.* at 1079.

5. *Id.*

6. *Id.* at 1079-80.

7. *Id.* at 1079.

8. Jessica Anderson, *Fallout from pit bull ruling*, BALT. SUN (May 2, 2012), http://articles.baltimoresun.com/2012-05-02/news/bs-md-pit-bull-response-20120501_1_pit-bull-dog-owners-baltimore-humane-society.

9. *Id.*

10. Hillary M. Schwartzberg, *Tort Law In Action and Dog Bite Liability: How the American Legal System Blocks Plaintiffs from Compensation*, 40 CONN. L. REV. 845, 861 (2008).

II. Background

A. *Majority Opinion in Tracey v. Solesky*

On April 26, 2012, the Court of Appeals announced its holding changing the standard of liability imputed on landlords.¹¹ The Court of Appeals stated the issue as whether “harboring of American Staffordshire Terriers by tenants [was] an inherently dangerous activity for which landlords may be held strictly liable.”¹² The Court decided that a strict liability standard will now be applied to landlords,¹³ meaning that landlords may be liable for a dog attack regardless of whether they knew or had reason to know that the dog was dangerous.¹⁴

Prior to the *Solesky* case Courts have used the common law standard to impute liability to a landlord or dog owner.¹⁵ In *Matthews v. Amberwood Associates Limited Partnership, Inc.* the landlord’s employees had reported the pit bulls aggressiveness and viciousness on prior occasions to management. The Court held that knowledge was imputed to the landlord even though the attack occurred in the premises leased to tenant.¹⁶

The new strict liability standard applied by the Court in *Solesky* is if an owner or a landlord is proven to have knowledge of the presence of a pit bull, or should have had such knowledge, then a *prima facie* case of liability is established.¹⁷ The Court said that it is not necessary for the landlord or owner to have actual knowledge that the specific pit bull involved in an attack is dangerous, because pit bulls are inherently dangerous.¹⁸ The Court states the rationale behind the strict liability standard is when a defendant may be held liable, there is a strong incentive to prevent the occurrence of harm.¹⁹

11. *Tracey*, 50 A.3d at 1078.

12. *Id.* at 1078. The majority opinion written by Judge Cathell began by reviewing previous pit bull attack cases that reached the Court of Appeals. The Court stated that over the last thirteen years there have been seven instances of serious maulings by pit bulls on Maryland residents that have reached the appellate courts of the state. *Id.* at 1075. The Court mentions several cases involving pit bull attacks in Maryland that made it to the Court of Appeals or the Court of Special Appeals. They included *Shields v. Wagman* where a pit bull attacked a business invitee at a strip shopping center, owned and maintained by the landlord. *Shields v. Wagman, et al.*, 714 A.2d 881, 882 (1998). The court also mentioned *Moore v. et al, v. Meyers*, where an unleashed pit bull chased a twelve-year-old girl into the street where she was hit by a car. *Moore v. et al., v. Myers*, 161 Md. App. 868 A.2d 954, 959 (2005).

13. *Tracey*, 50 A.3d at 1080.

14. *Id.*

15. See, e.g., *Twigg v. Ryland*, 62 Md. 389, 385 (1884); *Shields v. Wagman*, 714 A.2d 881, 892 (1998); *Herbert v. Ziegler*, 139 A.2d 699, 702 (1958).

16. *Matthews v. Amberwood Assoc. Ltd. P’ship, Inc.*, 719 A.2d 119, 121 (1998).

17. *Tracey*, 50 A.3d at 1079.

18. *Id.*

19. *Id.* at 1084 (citing *Matthews*, 719 A.2d at 131-132). The Court ultimately reversed the trial court’s holding and sent the case back to the trial court

B. *Strict Liability in Other States*

Several other states have pit bull bans or strict liability standards for pit bulls, including Arizona, Florida, Illinois, Iowa, and New Jersey among others.²⁰ The District of Columbia has the Pit Bull and Rottweiler Dangerous Dog Designation Emergency Amendment Act of 1996. Under this act a plaintiff only has to prove that the pit bull had attacked without provocation and the owner or landlord knew the dog was a pit bull.²¹ Denver, Colorado has a law prohibiting any person from owning, possessing, keeping, exercising control over, maintaining, harboring, or selling a pit bull in the City and County of Denver.²²

C. *Response to the Tracy v. Solesky Holding*

On August 10, 2012, Senate Bill 2 passed the Senate in the Maryland General Assembly during a special session.²³ This bill applied strict liability to all dog owners regardless of breed.²⁴ This law however applies the common law standard to landlords, stating:

In an action against . . . [a] person who has the right to control the presence of a dog on the property, including a landlord, for damages for personal injury or death caused by a dog, the common law of liability relating to attacks by dogs against humans . . . is retained as to the . . . person who has the right to control the presence of a dog on the property without regard to the breed or heritage of the dog.²⁵

This bill would have created a strict liability standard for all dog owners, regardless of breed, but apply the common law standard to landlords.²⁶ However, this bill did not make it out of the House of the General Assembly so the ruling in the *Solesky* motion for reconsideration is still allowed to stand as is.

for a new trial using the strict liability standard. *Id.* at 1075. The dissent, written by Judge Greene disagreed that a strict liability standard should be applied. The dissent thought that the common law standard should be kept, and that under the common law standard the landlord would not have been found liable in *Tracey*. *Id.* at 1090 (Greene, J., dissenting). The dissent states that the majority uses weak evidence to support the finding that pit bulls are inherently dangerous and without sufficient evidence that pit bulls are inherently dangerous there is not a sufficient reason to change the common law. *Id.* at 1089.

20. *Tracey*, 50 A.3d at 1089.

21. 43 D.C. Reg. 2156 (Apr. 26, 1996).

22. Pit Bulls Prohibited, § D.R.M.C. § 8-55 (2012).

23. S.B. 2, 432d General Assemb., 2d Spec. Sess. (Md. 2012).

24. *Id.*

25. *Id.*

26. See Fiscal and Policy Note: SB 2 (2d Spec. Sess. (Md. 2012)), Dept. of Legislative Services available at http://mlis.state.md.us/2012s2/fnotes/bil_0002/sb0002.pdf.

On August 21, 2012 the Court of Appeals for Maryland granted a motion for reconsideration in part and denied the motion in part.²⁷ The Court amended the previous Court of Appeals decision to delete all references in the opinion to cross-breeds, pit bull mix, or cross-breed pit bull mix.²⁸ The court gave two reasons for its decision. First, the dog involved in the attack on Dominic Solesky was not a pit bull mix, therefore there was no reason to include pit bull mixes in the ruling.²⁹ Second, the term cross-breed is not defined and therefore it is not clear what would constitute a cross-breed pit bull.³⁰ The Court further states that this holding does not mean citizens will no longer be able to own pit bulls, but that people who allow pit bulls on their premises, such as landlords, are required to take reasonable steps to assure that the pit bulls do not injure anyone.³¹

III. Analysis

A. *Immediate Consequences of the Holding*

Upon this ruling many people in Maryland began giving up their pit bulls to animal shelters and landlords began to ban pit bulls from their buildings.³² A pit bull owner who recently moved to Baltimore said that she had difficulty finding a landlord who was willing to allow her pit bull on the premises.³³ The Baltimore Humane Society reported that it was inundated with phone calls from renters who owned pit bulls claiming that their landlords were demanding that they move out.³⁴ Montgomery County Delegate Heather Mizeur said she immediately began receiving calls from pit bull owners getting eviction notices from their landlords, and from animal shelters unsure how to handle the animals, given the new liability concerns.³⁵

B. *Possible Future Implications of the Ruling on Landlords and Tenants*

Landlords in any state should always be concerned about the possibility of being held liable for injury caused by one of his tenant's animals.³⁶ Landlords with properties in a state that imposes a strict liability standard for dog bites may be particularly concerned about pets on their premises.³⁷ In the future, landlords could opt to ban pit

27. *Tracey*, 50 A.2d 1096 (2012) (Greene, J., dissenting).

28. *Id.*

29. *Id.* at 1097 (Greene, J., dissenting).

30. *Id.*

31. *Id.*

32. Anderson, *supra* note 8.

33. *Id.*

34. *Id.*

35. Kevin Rector, *Pit bulls not 'inherently dangerous' just yet*, BALT. SUN (July 11, 2012), http://articles.baltimoresun.com/2012-07-11/news/bs-md-pit-bull-ruling-20120711_1_pit-bull-dominic-solesky-irresponsible-dog-owner.

36. Schwartzberg, *supra* note 10, at 872.

37. *Id.*

bulls entirely.³⁸ If a tenant were to violate a pit bull ban in a lease this could lead to an eviction.³⁹ Landlords who allow pit bulls may have a hard time finding an insurance company willing to insure them.⁴⁰

Animal law expert Anne Benaroya said one consequence of a strict liability standard for landlords is “insurance companies will cancel insurance policies and raise policy costs. . .anybody who carries an insurance policy will be discouraged economically from adopting these dogs.”⁴¹ Those insurance companies that are willing to insure will likely do so at a high premium.⁴² One member of a local property owners association noted that the market is in large part driven by the price of insurance; thus, if the cost of insurance is too high, landlords may prohibit their tenants from keeping pitbulls.⁴³

In the future, the strict liability standard applied to landlords could change. The law proposed in the Special Session of the General Assembly in 2012, which imposed strict liability on dog owners but applied the common law standard to landlords,⁴⁴ would perhaps be an appropriate compromise that would treat dog attack victims fairly and allow families who rent to keep their dogs.

C. *Legal Action Landlords Can Take to Avoid Liability*

Following this holding, depending on the terms of a lease a landlord may or may not have the ability to evict tenants who own pit bulls immediately. Arnold Politzer, a commercial and residential real estate lawyer, said a strict liability standard puts landlords who have leases that permit pit bulls in a difficult position because evicting residents for having a pit bull could put them at risk for a breach of contract suit.⁴⁵

Landlords may be able to get around any breach of contract issue if their lease includes a general clause forbidding tenants from doing anything dangerous. Robert H. Lande, a University of Baltimore law professor, stated that such a clause may be considered enough to allow a landlord to require a tenant to remove a pit bull.⁴⁶ In the future, to avoid this issue landlords may begin to include a clause in a lease forbidding pit bulls on the premises.⁴⁷

38. Anderson, *supra* note 8.

39. Rebecca J. Huss, *The Pervasive Nature of Animal Law: How the Law Impacts the Lives of People and Their Animal Companions*, 43 VAL. U. L. REV. 1131, 1140 (2008).

40. See Anderson, *supra* note 8.

41. *Id.*

42. *Id.*

43. *Id.*

44. S.B. 2, 432d General Assemb., 2d Spec. Sess. (Md. 2012).

45. Anderson, *supra* note 8.

46. *Id.*

47. See *id.*

Imposing the strict liability standard on landlords is unfortunate because it appears that the landlord's least expensive option would be to ban pit bulls from their premises.⁴⁸ The dissent in *Solesky* pointed out the only corrective action an owner, keeper, or landlord could possibly take to avoid liability for the harm caused to another by a pit bull or mixed pit bull is not to possess or allow possession of this specific breed on the premises.⁴⁹ If no pit bulls are allowed on the premises landlords will not have to worry about being held liable for any injury caused by a tenant's pit bull. Landlords may even opt to ban all dogs from the premises to avoid the issue of liability all together.⁵⁰ Provided that a state does not have a restrictive statute, a landlord has the ability to impose a "no pets" policy upon his tenants in the leased premises.⁵¹

"Homeowner's insurance, renter's insurance, landlord's insurance, dog owner's insurance, and business liability insurance all provide coverage for dog bite claims."⁵² Landlords could purchase landlord's insurance to protect themselves.⁵³ If landlords were to allow tenants to have dogs they may require tenants to purchase renter's insurance.⁵⁴ Tenants may have a hard time finding a company that is willing to provide renters insurance to a tenant with a pit bull; however, by requiring tenants to have renters insurance the landlord has protected him or herself.⁵⁵

D. Possible Future Implications on Homeowners

Homeowners will also be affected by the Court's holding. Insurance companies in states with breed specific legislation, which determine specific dog breeds to be inherently dangerous, have refused to write homeowner's insurance policies for households with dogs deemed dangerous. For example, Allstate Insurance Company will not write policies to any potential insured who owns a pit bull.⁵⁶ Those insurance companies that will write policies for families with pit bulls may charge them higher premiums.⁵⁷ Some cities require pit bull owners to have liability insurance. For example in Cincinnati, Ohio pit bull owners are required to have at least \$50,000 in liability insurance.⁵⁸

48. *Tracey*, 50 A.2d 1093 (2012) (Greene, J., dissenting).

49. *Id.*

50. *Id.*

51. Huss, *supra* note 39, at 1141.

52. Schwartzberg, *supra* note 10, at 877.

53. *Id.*

54. *Id.* at 70 n.166.

55. *Id.*

56. *Id.* at 861.

57. Larry Cunningham, *The Case Against Dog Breed Discrimination By Homeowners' Insurance Companies*, 11 CONN. INS. L.J. 1, 58 (2004).

58. Schwartzberg, *supra* note 10, at 864.

Homeowners who cannot afford to pay a higher premium may be forced to give up their family pet.⁵⁹

IV. Conclusion

The Maryland Court of Appeals decision in *Tracy v. Solesky* still has obstacles to overcome. The legislature could eventually pass a law changing the strict liability standard for landlords. In any state with a strict liability standard pit bull owners may be forced to give up their family pet, tenants may have a difficult time finding a pit bull friendly place to live and tenants, landlords, and homeowners could all see increased insurance costs.⁶⁰

59. *Id.*

60. See Anderson, *supra* note 8.