

H. 307 – An Act Relating to Strict Liability for Damages Caused by Domestic Dogs



Martin v. Christman, 196 Vt. 536 (2014)
99 A.3d 1008, 2014 VT 55

Pet's question by pointing to a more reasonable, safer course of conduct for the defendant.

Id. *con. b.*

¶ 13. These principles are generally followed in the United States, except in those states that have enacted legislation departing from the common-law rules. See *Amundson, Modern Status of Rule of Absolute or Strict Liability for Dogbite*, 51 A.L.R.4th 446 (1987) (collecting cases). The Restatement (Third) of Torts limits strict liability for animal owners to those who keep unreasonably dangerous animals. See Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 23 (2010) (“An owner or possessor of an animal that the owner or possessor knows or has reason to know has dangerous tendencies abnormal for the animal’s category is subject to strict liability for physical harm caused by the animal if the harm ensues from that dangerous tendency”). The comment to § 23 contrasts ownership of dangerous animals with pets and common farm animals as a matter entirely consistent with *Goodwin* and the other Vermont dog bite cases:

The premise of this Section is that, apart from animals that trespass and wild animals that pose an inherent risk of personal injury, most animals normally are safe, or at least are not abnormally unsafe in a way that would justify the imposition of strict liability. In addition, such animals provide important benefits to those who own or maintain possession of them. Thus, livestock such as cows, horses, and pigs are of substantial economic value, while pets such as dogs and cats provide essential companionship for households and families. Indeed, dogs and cats are frequently regarded as members of the family. Furthermore, ownership of animals such as dogs and cats is widespread throughout the public; therefore, the limited risks entailed by ordinary dogs and cats are to a considerable extent reciprocal. Accordingly, the case on behalf of strict liability for physical or emotional harm: “*It is not clear that all such ordinary animals might cause a weak.*”

¶ 14. Plaintiff argues that we should follow the majority in so many states that have adopted strict liability for dog bites. However, the overwhelming majority have done so by statute. See, e.g., *Ariz.Rev.Stat.* § 11-1020 (2014); *Cal. Civ.Code* § 3342 (2014); *Mass. Gen. Laws ch. 140, § 157* (2014); *Mich. Rev.Code* § 14.01.040, *1982 (2014). Only one state, South Carolina, has judicially eliminated the requirement of scienter for dog bites, and that decision has not been followed by other jurisdictions. *Hickel v. Conner*, 285 S.C. 367, 329 S.E.2d 418, 441 (1985).³ But see *Burke ex rel. Gomer v. Phil.*, 2003 WY 74, ¶¶ 34-37, 70 P.3d 267 (declining to follow *Hickel v. Conner*); *Gelvin v. Ramon*, 2003 SD 10, ¶ 15, 620 N.W.2d 771 (declining to follow *Hickel v. Conner*).

¶ 15. We similarly decline to follow such a course: “While this Court has and will ‘change the common law to meet changing needs of the people of this state,’ we also recognize instances where the issue presented ‘is better left for legislative resolution.’” *Schwab v. Durrin*, 2010 VT 45, ¶ 15, 188 Vt. 36, 998 A.2d 697 (quoting *State v. LaBlanc*, 149 Vt. 141, 145, 540 A.2d 1037, 1040 (1987)) (declining to recognize new common law cause of action for malicious injury to pet dog); see also *Goodby v. Repharm, Inc.*, 2009 VT 52, ¶ 11, 188 Vt. 63, 974 A.2d 1269 *442 (declining to extend recovery under Wrongful Death Act for loss of pet dog). As in *Schwab*, we are not persuaded that plaintiff’s case requires a major shift in the landscape of the common law.” 2010 VT 45, ¶ 15, 188 Vt. 36, 998 A.2d 697. Even if such a change were warranted, it should be left to the Legislature, which is better positioned to develop and consider relevant factors such as the number of dogs and dog owners in Vermont, the number and nature of injuries caused by dogs in Vermont, or whether liability insurance is available to cover dog bites. See *Burke*, 2003 WY 74, ¶¶ 34-36, 70 P.3d 267 (noting that “there are many ways to fashion a dog bite law” and identifying factors relevant to decisions whether to impose strict liability).

¶ 16. We recognize the seriousness of the child’s injury and her innocence of fault. We are not prepared, however, to depart from long-held principles of negligence to create a new field of strict liability. For these reasons, we affirm the decision of the trial court.

Affirmed.

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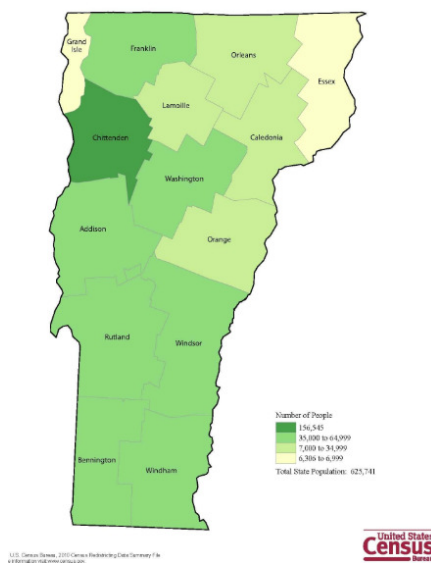


38% of Vermont homes have one or more dogs.



Source: American Veterinary Medical Association, U.S. Pet Ownership & Demographics Sourcebook (2012)

Number of households in Vermont: 259,589



Source: U.S. Census Bureau, <https://www.census.gov/quickfacts/VT>



