Circuit Court for Baltimore City
Case No. 24-C-21-005654

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 650

September Term, 2023

DAVID WAGNER

v.

JESSICA CYGAN, ET AL.

Reed,
Shaw,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: April 16, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

David Wagner, appellant, filed, in the Circuit Court for Baltimore City, a civil complaint against the Estate of George Christou (the "Estate") after Wagner was bitten by a dog while he was on property that had been owned by Christou and that had been leased to the dog's owner, Jessica Cygan.[1] Wagner alleged negligence, premises liability and strict liability. The Estate thereafter filed a motion for summary judgment which, following a hearing, was granted. Wagner filed a motion for reconsideration, which the court denied without a hearing. This timely appeal followed.

In this appeal, Wagner presents two questions for our review. For clarity, we have rephrased those questions as:

1. Did the circuit court err in granting summary judgment in favor of the Estate?

2. Did the circuit court err in denying Wagner's motion for reconsideration?

For reasons to follow, we hold that the court did not err in granting summary judgment or in denying Wagner's motion for reconsideration. Accordingly, we affirm.

BACKGROUND

At all times relevant, Cygan was the owner of a dog, Shadow, and lived at 1414 Broening Highway (the "Property") with her father. The Property had been leased to Cygan by the Property's owner, Christou, who resided in Pennsylvania. Wagner lived on the same street as the Property and was friendly with Cygan.

[1] Cygan was also named in the complaint, but she defaulted and is not a party to the instant appeal. Although a final judgment has yet to be entered against Cygan, the instant appeal is nevertheless ripe for review, as the circuit court certified the instant judgment as final pursuant to Maryland Rule 2-602(b).

In April 2021, Wagner visited Cygan at the Property, which had a backyard that was enclosed by a fence. During that visit, Wagner went into the backyard where he encountered Shadow. As Wagner walked past Shadow, Shadow jumped up and bit Wagner on the face.

Wagner thereafter sued Christou, alleging premises liability, negligence, and strict liability based on the theory that Christou, as the owner of the Property and Cygan's landlord, was liable for Wagner's injuries. Those claims were rooted, in part, on allegations that Shadow was a "dangerous animal" and that Christou knew or should have known about Shadow's dangerous tendencies.

Shortly after the complaint was filed, Christou passed away, and the complaint was amended to add his Estate as the proper defendant. Sometime later, the Estate filed a motion for summary judgment on all counts. The Estate argued that, in order to establish landlord liability in a dog-bite case, there must be some evidence that the dog was dangerous, that the landlord had actual or constructive notice of the dog's dangerousness, and that the landlord had some control over the dog. The Estate argued that Wagner had failed to set forth any evidence that Christou had the requisite control over Shadow or that Christou had actual or constructive notice that Shadow was dangerous.

In his opposition to the Estate's motion, Wagner included several attachments containing allegations that, according to Wagner, supported an inference that Christou exhibited the requisite control over Shadow and had constructive notice that Shadow was dangerous. One of those attachments was an administrative decision and order from the Baltimore City Animal Hearing Panel, which was issued *following* the biting incident

involving Shadow and Wagner. According to that order, Cygan's father had purportedly testified that Shadow was a "moody dog" and that "they put a beware of dog sign on their front fence because they do not want the kids or anyone else to put their hands over the fence to pet Shadow." Wagner's attachments also included an investigative report that had been prepared by a private investigator at Wagner's behest. According to that report, Cygan's next-door neighbor, Rose Guinto, told the investigator that Shadow had bit her brother two-and-a-half years ago, that Cygan's father had paid for the treatment resulting from the bite, and that Shadow was known to bark and growl at people walking by the residence. Lastly, Wagner included several discovery documents showing that Shadow had lived at the Property for nine years and that Christou was aware of Shadow's presence. Those documents also showed that Christou owned a business, Travelers Lounge, located near the Property and that Cygan's father had worked at the business.

Summary Judgment Ruling

On January 30, 2023, the circuit court held a hearing on the Estate's summary judgment motion, at which the parties presented the aforementioned arguments and evidence, which the circuit court considered.

At the conclusion of the hearing, the court issued a detailed oral ruling granting summary judgment in favor of the Estate on all counts. At the outset of that ruling, the court found that the proffered statements contained in the investigative report, which concerned the alleged prior biting incident involving Shadow and the allegations that Shadow growled at passersby, were inadmissible hearsay. The court noted that "admissible evidence is required in imposing summary judgment."

As to Christou's liability, the court found that Wagner had failed to introduce sufficient admissible evidence that Shadow had dangerous propensities, that Christou had actual or constructive knowledge that Shadow posed a danger to others, or that Christou had exercised the necessary care, custody, or control over Shadow. Based on those findings, the court granted the Estate's summary judgment motion.

Motion for Reconsideration

Following the court's ruling, Wagner filed a motion asking the court to reconsider its decision to grant summary judgment in favor of the Estate. Attached to that motion was a signed affidavit from Rose Guinto, Cygan's neighbor, which was dated February 2, 2023, and stated: that Guinto lived next door to the Property where Cygan had been living; that Christou used to live at the Property and had for many years; that Guinto recalled seeing Christou at the Property "several years ago"; that "several years ago" Shadow had bit Guinto's brother; and that Cygan's father had paid for Guinto's brother's treatment stemming from the bite. Wagner argued that the affidavit, when considered in conjunction with the other evidence, provided a sufficient basis from which a fact-finder could infer that Christou had knowledge of Shadow's dangerousness.

The Estate opposed the motion, arguing that Wagner was attempting to "take a second bite of the apple" by introducing new facts by way of the Guinto affidavit. The Estate argued further that, regardless, the statements in the affidavit did not establish that Christou had actual or constructive knowledge of Shadow's dangerousness.

The court ultimately denied Wagner's motion without a hearing. This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

I. Summary Judgment

Parties' Contentions

In his argument that the circuit court erred in granting summary judgment in favor of the Estate, Wagner asserts that the court erroneously required evidence of actual knowledge on the part of Christou regarding Shadow's dangerousness, where the relevant law only requires evidence of constructive notice. Wagner argues that the court also erred in refusing to consider the statements made by Cygan's neighbor regarding the alleged prior biting incident involving Shadow and the allegations that Shadow growled at passersby. Wagner contends that the statements were not hearsay because they were not being offered for the truth of the matter asserted, but to establish that there was some basis for inferring that Christou had reason to know that Shadow was potentially dangerous. Wagner argues that, with those statements, there was ample evidence in the record to preclude summary judgment.

The Estate responds that the court applied the correct standard in granting summary judgment. The Estate asserts that the court was correct in refusing to consider, as hearsay, the statements made by Cygan's neighbor. The Estate further contends that, those statements aside, Wagner failed to adduce any evidence that Christou had the requisite notice or control to establish liability. Lastly, the Estate contends that, even with the statements, Wagner failed to produce sufficient evidence to defeat summary judgment.

Standard of Review

"In Maryland, a court shall grant summary judgment only if 'there is no genuine dispute as to any material fact and . . . the party in whose favor judgment is entered is entitled to judgment as a matter of law.'" *George v. Baltimore Cnty.*, 463 Md. 263, 272 (2019) (quoting Md. Rule 2-501(f)). "In an appeal from the grant of a defendant's motion for summary judgment, we review the facts and all inferences drawn from those facts in the light most favorable to the plaintiff." *Gurbani v. Johns Hopkins Health Sys. Corp.*, 237 Md. App. 261, 267 (2018). "'[I]f those facts are susceptible to inferences supporting the position of the [plaintiff], then a grant of summary judgment is improper.'" *RDC Melanie Drive, LLC v. Eppard*, 474 Md. 547, 564 (2021) (quoting *Ashton v. Brown*, 339 Md. 70, 79 (1995)). "The inferences drawn in favor of the plaintiff, however, 'must be *reasonable* ones.'" *Gurbani*, 237 Md. App. at 267 (quoting *Clea v. Mayor & City Council of Baltimore*, 312 Md. 662, 678 (1988)). Moreover, to defeat a motion for summary judgment, "the opposing party must present admissible evidence upon which the jury could reasonably find for the plaintiff." *Thomas v. Shear*, 247 Md. App. 430, 465 (2020) (quotation marks and further citation omitted) (quoting *Rogers v. Home Equity USA, Inc.*, 453 Md. 251, 263 (2017)). That evidence must be "legally sufficient," which "'means that the injured party cannot sustain its burden by offering a mere scintilla of evidence, amounting to no more than surmise, possibility, or conjecture.'" *Candolfi v. Allterra Grp., LLC*, 254 Md. App. 221, 237 (2022) (quoting *Dobkin v. Univ. of Balt. Sch. of Law*, 210 Md. App. 580, 590 (2013)). '"Whether summary judgment was granted properly is a

question of law.'" *George*, 463 Md. at 272 (quoting *Lightolier, a Div. of Genlyte Thomas Grp., LLC v. Hoon*, 387 Md. 539, 551 (2005)).

Analysis

For a landlord to be held liable for injuries inflicted by a tenant's dog, "there must be some evidence (1) of the dangerous propensities of the particular dog at issue, (2) that the landlord had notice that the tenant's dog posed a potential danger to humans, and (3) that the landlord had some right of control over the tenant's maintenance of the dog." *Solesky v. Tracey*, 198 Md. App. 292, 316 (2011).

To satisfy the first prong – dangerousness – a plaintiff must establish that the dog had exhibited viciousness or aggressive behavior prior to the injury at issue. *Id.* at 310, 315. Although a plaintiff in a dog-bite case need not show that the dog had previously bitten someone in order to establish that the dog was dangerous, *see id.* at 319-21, the plaintiff is required to show that the dog was "inclined to do the particular mischief that has been done." *Slack v. Villari*, 59 Md. App. 462, 474 (1984) (emphasis omitted).

To satisfy the second prong – notice – the plaintiff must establish that the landlord knew or should have known about the dog's presence and dangerous tendencies. *Shields v. Wagman*, 350 Md. 666, 685-89 (1998); *see also Ward v. Hartley*, 168 Md. App. 209, 214-15 (2006). Such a showing may be made by direct or circumstantial evidence, and a plaintiff need not prove actual notice. *Solesky*, 198 Md. App. at 318-27. Instead, a plaintiff need only present evidence from which a fact-finder could reasonably infer that the landlord either knew or had reason to know about the dangerous condition created by the

dog's presence. *Id.* Such inferences, however, "must be based on reasonable probability, rather than speculation, surmise, or conjecture." *Ward*, 168 Md. App. at 218.

To satisfy the third prong – control – the plaintiff must establish that the landlord exercised control over the presence of the dog on the leased property. *Matthews v. Amberwood Assocs. Ltd. P'ship, Inc.*, 351 Md. 544, 557-70 (1998). In *Matthews*, for instance, the Supreme Court of Maryland held that a landlord had retained the requisite control to be liable for injuries inflicted by a tenant's dog on leased premises, where the landlord had a written lease with the tenant that included a "no pets" clause and that permitted the landlord to terminate the tenancy upon a violation of that clause. *Id.* at 557-58. In *Ward v. Hartley*, by contrast, this Court held that a landlord had not retained the requisite control over the maintenance of pets on the leased premises, and thus was not liable for injuries inflicted by a tenant's dog, because, in part, "[n]o provision of the lease gave the landlord control over any portion of the rental premises." *Ward*, 168 Md. App. at 216-18.

With those principles in mind, we hold that the circuit court did not err in granting the Estate's summary judgment motion. First, we find no support in the record for Wagner's claim that the court required evidence of actual knowledge on the part of Christou regarding Shadow's dangerousness. At several different points in its oral ruling, the court expressly recognized that notice could be actual or constructive, and at each of those points the court expressly stated that Wagner had failed to introduce sufficient admissible evidence of either. Thus, the court applied the correct standard in reaching its decision.

We likewise reject Wagner's claim that the court erred in refusing to consider the statements made by Cygan's neighbor regarding the alleged prior biting incident involving Shadow and the allegations that Shadow growled at passersby. As the court noted, those statements, which were contained in the Animal Hearing Panel's administrative order, constituted inadmissible hearsay, as they were out-of-court statements offered for the truth of the matter asserted. Md. Rule 5-802. And, as noted, a party seeking to defeat a motion for summary judgment must present *admissible* evidence in support. *Thomas, supra*, 247 Md. App. at 465.

To be sure, Wagner claims that the statements were not hearsay because they were not being offered for the truth of the matter asserted, rather to establish that there was some basis for inferring that Christou had reason to know that Shadow was potentially dangerous. But that claim is belied by the record of the summary judgment hearing, where Wagner's counsel argued that the statements were being offered to establish both knowledge and dangerousness:

> [COUNSEL:] Truly, the issue here is whether or not the landlord had control of the premises. And with respect to that argument, we know that there is no lease. And as a result of no lease, looking in the light most favorable to the nonmovant, certainly, the landlord remained and retained control over this premise.
>
> Putting that into the fact that there is some foreseeability here, **we know that the dog has bitten in the past**, . . . there is a dispute as to control, whether or not the landlord at the time had control.
>
> He certainly stated that he knew that the dog was present. He certainly stated that he knew there were Beware of Dog signs. **And whether or not the landlord should have known of the violent, dangerous tendencies of this dog, we know . . . by the tenant's direct neighbor that the dog had**

> **bitten two and a half years before**, there is most certainly the foreseeability that this dog had an issue and that the landlord should have known.

(Emphasis added.)

Clearly, the statements were not being offered solely to show Christou's knowledge but rather to also show, based on the truth of the statements, that Shadow was dangerous. The statements therefore constituted inadmissible hearsay. *See CSX Transp., Inc. v. Miller*, 159 Md. App. 123, 223 (2004) (explaining that the admissibility of an out-of-court statement as non-hearsay depends upon the purpose for which the statement was offered).

Turning to the remaining evidence, the facts in support of Wagner's claims against Christou were: that the Cygans had posted "Beware of Dog" signs on the Property; that Shadow was "moody;" that Cygan had lived at the Property for many years and had owned Shadow for nine years; that Christou owned a business near the Property where Cygan's father worked; and that Cygan occupied the Property without a formal lease.

Considering those facts in a light most favorable to Wagner, we conclude that no reasonable inference could be made, without resorting to speculation, surmise, or conjecture, that Shadow was dangerous. A "moody" dog is not a "dangerous" dog, and such an inference does not rise above conjecture merely because the Cygans posted a "Beware of Dog" sign on the Property. *See Slack*, 59 Md. App. at 475 ("Neither will the fact that the animal is regularly maintained in an enclosure or otherwise restrained, standing alone, constitute legally sufficient evidence tending to show the owner's knowledge of the animal's vicious propensities or inclination to bite people."). Beyond that, there was no evidence whatsoever that Shadow had exhibited dangerous tendencies or that any person

had a reason to suspect that Shadow was dangerous. In fact, according to the Animal Hearing Panel's administrative order, Wagner admitted that even he "couldn't believe" Shadow had bit him and that "Shadow had never been like that before." Given that Wagner, Cygan's long-time neighbor, was himself surprised by the attack, no reasonable inference could be made that Shadow was dangerous prior to the attack, much less that Christou, a Pennsylvania resident, knew or had reason to know of any alleged dangerousness.

We also conclude that no reasonable inference could be made that Christou had any control over Shadow's maintenance. Although there was some evidence that Christou knew of Shadow's presence and that Christou may have been friendly with the Cygans, there was no evidence that Christou had retained any control over any portion of the Property after leasing it to Cygan or that he had even visited the Property at any point following his move to Pennsylvania. Unlike in *Matthews*, where the landlord had executed a written lease with the tenant that included a "no pets" provision, Christou and Cygan had no written lease or other agreement from which it could be inferred that Christou had the requisite control over Shadow. Indeed, Christou, as the owner of property located in Maryland, had the legal right to terminate the tenancy pursuant to Maryland law. But, as we explained in *Ward*, merely being a Maryland landlord is not, by itself, sufficient to establish control over a tenant's dog, where there is no evidence that the dog's presence constituted a violation of the law. *Ward*, 168 Md. App. at 214-20.

In sum, there were no material facts from which a reasonable inference could be made that Christou was liable for the injuries suffered by Wagner as a result of the dog bite. As such, the court did not err in granting summary judgment in favor of the Estate.

II. Motion for Reconsideration

Parties' Contentions

Wagner next claims that "the court abused its discretion in failing to accept the Rose Guinto affidavit[,]" in which Guinto reaffirmed her statements regarding the alleged prior biting incident involving Shadow. Wagner argues that the affidavit, which he submitted along with his motion for reconsideration, eliminated any hearsay concerns because Guinto would be called to testify at trial.

The Estate contends, and we agree, that there is no support in the record for Wagner's claim that the court failed to consider the Guinto affidavit which, in any event, amounts to nothing more than "after-acquired evidence" which would not justify the court in ordering reconsideration.

Standard of Review

Where, as here, a motion for reconsideration of a judgment is filed within ten days after entry of the judgment, the court may open the judgment to, among other things, receive additional evidence and/or amend the judgment. Md. Rule 2-534. The denial of such a motion is reviewed for abuse of discretion. *Rose v. Rose*, 236 Md. App. 117, 129 (2018). "[A]n abuse of discretion occurs when the court acts without reference to any guiding rules or principles, where no reasonable person would take the view adopted by the court, or where the ruling is clearly against the logic and effect of facts and inferences

before the court." *Brown v. State*, 470 Md. 503, 553 (2020) (quotations marks omitted) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)).

Analysis

To the extent that Wagner is claiming that the court abused its discretion in denying his motion considering the affidavit, we remain unpersuaded. The relevant facts established by the affidavit were: that Guinto lived next door to the Property where Cygan had been living; that Christou used to live at the Property and had for many years; that Guinto recalled seeing Christou at the Property "several years ago"; that "several years ago" Shadow had bit Guinto's brother; and that Cygan's father had paid for Guinto's brother's treatment stemming from the bite. Although those facts might have established a question of fact as to Shadow's dangerous tendencies, and that Cygan was aware of that fact, they do not, even when considered in conjunction with the facts from the summary judgment hearing, establish that *Christou* knew or had reason to know that Shadow was dangerous or that he had the requisite control over Shadow's maintenance.

The court did not abuse its discretion in denying Wagner's motion for reconsideration.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.