

cellmate identified as Michael Buhrman, #275-420. When plaintiff entered inmate Walker's cell, both Walker and inmate Buhrman were present as well as the dog Vampire who was lying on the cell floor seemingly asleep. Plaintiff bent down over the resting dog, a movement which apparently startled the dog, who reacted by biting plaintiff on the face. Based on these facts, defendant has denied any liability in this matter. Defendant has contended plaintiff has failed to offer sufficient evidence to establish liability for the violent act of an animal residing at LCI.

{¶3} Defendant submitted a copy of a report compiled by LCI staff regarding the September 12, 2001 incident involving plaintiff and the dog, Vampire. Defendant's report indicates plaintiff entered inmate Walker's and inmate Buhrman's cell where the dog, Vampire, was asleep near inmate Walker's feet. Plaintiff knelt to pet the dog. The dog was startled when touched, arose, and bit plaintiff on the face. Language in the report related plaintiff was transported to a local medical center where he received four stitches in his upper lip and one stitch in his lower lip to treat the wound caused by the dog bite. Plaintiff's injuries were depicted as a 1/4 inch laceration of the upper right lip and a smaller laceration of the right lower lip in the corner of the mouth. After treatment, plaintiff was released from medical care and returned to LCI.

{¶4} Defendant filed a statement from inmate Walker who witnessed plaintiff's injury event of September 12, 2001. Walker related he was sitting on a chair in his cell watching television when plaintiff entered the cell. The dog, Vampire, was inside the cell on a leash with the leash tied to the cell bed. According to Walker, the dog was lying on the cell floor asleep when plaintiff bent down to pet him. Walker recollected the dog became startled as plaintiff touched him and reacted by snapping at plaintiff. Walker indicated he had never previously observed the dog react in this manner toward plaintiff or any other

inmate. Walker reasoned the dog was being protective when he snapped at plaintiff.

{¶5} Additionally, the claim file contains a statement from inmate Buhrman regarding his recollection of the September 12, 2001 incident. Buhrman recalled he was lying on the lower bunk in his cell watching television when plaintiff entered the cell. Buhrman related inmate Walker was sitting on a chair in the cell and the dog, Vampire, was sleeping on the floor in front of Walker as plaintiff entered the cell. Buhrman further related he saw plaintiff lean down and start to pet the dog. Then, according to Buhrman, "Vampire growled, jumped up, and went after inmate Barr." Buhrman explained he had never observed the dog displaying aggressive behavior toward anyone prior to this occasion. Buhrman believed the dog was startled and frightened by the act of plaintiff.

{¶6} Plaintiff submitted a response to defendant's position denying any liability in this matter. Plaintiff reiterated he was attacked and injured by a dog under the control and custody of defendant. Therefore, plaintiff has contended defendant is liable for all damages resulting from the dog bite injury. Although plaintiff has claimed the dog bite he received on September 12, 2001 left him "permanently scarred and/or disabled, both physically and emotionally," plaintiff did not offer any substantiating evidence to prove these damages.

{¶7} Defendant filed a reply to plaintiff's response. Defendant again denied liability for plaintiff's injuries. Defendant neither admitting nor denied the dog, Vampire, was under its control at the time the dog bit plaintiff.

{¶8} It is undisputed plaintiff was bitten by a dog being kept on defendant's premises with defendant's acquiescence if not sponsorship. R.C. 955.28(B) states as follows:

{¶9} "The owner, keeper, or harbinger of a dog is liable in damages for any injury, death, or loss to person or property that

is caused by the dog, unless the injury, death, or loss was caused to the person or property of an individual who, at the time, was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harborer, or was committing or attempting to commit a criminal offense against any person, or was teasing, tormenting, or abusing the dog on the owner's, keeper's, or harborer's property." ¹

{¶10} The application of R.C. 955.28 requires three issues to be determined by the trier of fact in order to find one strictly liable: (1) whether one is the owner, keeper, or harborer of the dog; (2) whether the actions of the dog were the proximate cause of damages; and (3) the monetary amount of damage. *Hirschauer v. Davis* (1955), 163 Ohio St. 105, 109. The court, in the instant action, concludes R.C. 955.28(B) has direct application to the facts presented.

{¶11} Under R.C. 955.28(B), defendant is classified as a "harborer" of the dog, Vampire. See *Pickett v. Department of Rehabilitation and Correction* (Dec. 27, 2001), Court of Claims No. 2000-02755. Additionally, a "harborer is one who has possession and control of the premises where the dog lives, and silently acquiesces to the dog's presence." *Flint v. Holbrook* (1992), 80 Ohio App. 3d 21, 25, citing *Sengel v. Maddox* (C.P. 1945), 31 O.O. 201.

{¶12} In the present claim it is clear plaintiff was bitten and injured by a dog being harbored by defendant. Furthermore, the facts of this claim support the position plaintiff sustained some damage as a result of being bitten. However, the actual

¹ After reviewing the circumstances involved with plaintiff suffering a dog bite, there has been no evidence offered to indicate plaintiff was "teasing, tormenting, or abusing" the dog, Vampire, at the time of the injury. Furthermore, no evidence was presented to show plaintiff was committing a criminal act or trespassing when he was bitten. These statutory affirmative defenses to strict liability imposed by R.C. 955.28(B) have not been raised and have no relevancy to the present situation before the court.

amount of damages remains at issue to be resolved by the trier of fact. Considering the nature of plaintiff's injury, the medical treatment he received, and the probability of scarring at the injury site, the trier of fact finds damages for pain and suffering and emotional distress have been established. The trier of fact does not find sufficient evidence has been presented to set damages at the amount claimed by plaintiff.

{¶13} The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42. Where the existence of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers* (1992), 82 Ohio App. 3d 148. Only reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782. Defendant is liable to plaintiff in the amount of \$500.00, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶14} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶15} IT IS ORDERED THAT:

{¶16} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶17} 2) Defendant (Lima Correctional Institution) pay plaintiff (Melvin Barr) \$525.00 and such interest as is allowed by law;

{¶18} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk