**[Cite as *Young v. Robson Foods, Inc.*, 2009-Ohio-2781.]**

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| STATE OF OHIO | ) | IN THE COURT OF APPEALS |
| | )ss: | NINTH JUDICIAL DISTRICT |
| COUNTY OF LORAIN | ) | |

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| LAUREN YOUNG | C.A. No. 08CA009499 |
| Appellant | |
| v. | APPEAL FROM JUDGMENT ENTERED IN THE |
| ROBSON FOODS | COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO |
| Appellee | CASE No. 08CV155101 |

DECISION AND JOURNAL ENTRY

Dated: June 15, 2009

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DICKINSON, Judge.

INTRODUCTION

**{¶1}** Jeff Swanson's dog attacked Lauren Young's daughter inside a house that Mr. Swanson was renting from Norman Loescher and Robson Foods Inc. Ms. Young sued Mr. Swanson, Mr. Loescher, and Robson Foods for her daughter's injuries. The trial court granted summary judgment to Mr. Loescher and Robson Foods because it determined that they did not have possession or control of the house. This Court affirms because Ms. Young failed to establish that a genuine issue of material fact exists regarding whether Mr. Loescher or Robson Foods harbored the dog, and she forfeited her argument that they were owners or keepers of the dog.

FACTS

**{¶2}** In September 2004, Mr. Loescher and Robson Foods rented property containing a single-family house to Mr. Swanson. The rental agreement provided that "[n]o animal shall be

brought into the premises . . . by [Mr. Swanson] . . . without the written consent of [Mr. Loescher]." Mr. Loescher later agreed to let Mr. Swanson have a dog, so long as it was not "anything like a pit bull or a Doberman or anything vicious like that." Mr. Swanson ended up getting a mid-sized "Heinz 57 mutt" named Max.

**{¶3}** In February 2008, Ms. Young's daughter was in the living room of the house visiting Mr. Swanson's son when Max jumped up and bit her in the face, causing significant injury to her teeth and lips. Ms. Young sued Mr. Swanson, Mr. Loescher, and Robson Foods for her daughter's injuries, alleging they were liable under Section 955.28(B) of the Ohio Revised Code and for common law negligence.

**{¶4}** Mr. Loescher and Robson Foods moved for summary judgment, arguing that they are not liable under Section 955.28(B) because they did not own, keep, or harbor Max. They argued that they are not liable for negligence because they did not own or harbor Max and because they had no knowledge of Max's vicious propensity. Ms. Young opposed their motion, arguing that a genuine issue of material fact exists regarding whether Mr. Loescher and Robson Foods harbored Max. The trial court granted summary judgment for Mr. Loescher and Robson Foods "[b]ecause [they] were neither in possession of the Swanson premises, nor in control of . . . Max, at the time [of the attack]." Ms. Young dismissed her claims against Mr. Swanson, and appealed the trial court's order granting summary judgment to Mr. Loescher and Robson Foods, assigning three errors.

## HARBORING

**{¶5}** Ms. Young's first assignment of error is that the trial court incorrectly granted Mr. Loescher and Robson Foods' motion for summary judgment because a genuine issue of material fact exists regarding whether they harbored Max. She has argued that, because Mr. Loescher

inspected the property on a regular basis, he retained ownership and control over it. In reviewing a trial court's ruling on a motion for summary judgment, this Court applies the same test a trial court is required to apply in the first instance: whether there are any genuine issues of material fact and whether the moving party is entitled to judgment as a matter of law. *Parenti v. Goodyear Tire & Rubber Co.*, 66 Ohio App. 3d 826, 829 (1990).

**{¶6}** Section 955.28(B) of the Ohio Revised Code provides that "[t]he owner, keeper, or harborer of a dog is liable in damages for any injury, death, or loss to person or property that is caused by the dog . . . ." "Under common law, a plaintiff suing for injuries inflicted by a dog must show that the defendant owned or harbored the dog, that the dog was vicious, that the defendant knew of the dog's viciousness, and that the defendant was negligent in keeping the dog." *Flint v. Holbrook*, 80 Ohio App. 3d 21, 25-26 (1992).

**{¶7}** This Court has held that a harborer of a dog is "one who has possession and control of the premises where the dog lives, and silently acquiesces to the dog's presence." *Stuper v. Young*, 9th Dist. No. 20900, 2002-Ohio-2327, at ¶13 (quoting *Flint*, 80 Ohio App. 3d at 25). Regarding the relationship between a landlord and tenant, "it is well-established that a lease transfers both possession and control of the leased premises to the tenant." *Richeson v. Leist*, 12th Dist. No. CA2006-11-138, 2007-Ohio-3610, at ¶13 (citing *Flint*, 80 Ohio App. 3d at 25). Accordingly, "[i]f the tenant's dog is confined only to the tenant's premises, the landlord cannot be said to have possession and control of the premises on which the dog is kept." *Godsey v. Franz*, 6th Dist. No. 91WM000008, 1992 WL 48532 at *4 (Mar. 13, 1992). For a landlord to be liable as a harborer for injuries inflicted by a tenant's dog, "the plaintiff must prove that the landlord permitted or acquiesced in the tenant's dog being kept in the common areas or areas shared by the landlord and tenant." *Stuper*, 2002-Ohio-2327, at ¶13 (citing *Godsey*, 1992 WL

48532 at *4). "[If] the leased property at issue consists of a single-family residence situated on a 'normal-sized city lot, there is a presumption that the tenants possessed and controlled the *entire* property.'" *Richeson*, 2007-Ohio-3610, at ¶13 (quoting *Engwert-Loyd v. Ramirez*, 6th Dist. No. L-06-1084, 2006-Ohio-5468, at ¶11).

**{¶8}** Ms. Young has argued that there is a genuine issue of material fact regarding whether Mr. Loescher and Robson Foods "retained enough control over the [Swanson property] to be harborers of the dog." She has argued that "[t]here is a genuine issue as to whether the driveway and front yard of the house, where the dog was primarily kept, was a common area[, and] . . . as to whether [Mr. Loescher and Robson Foods] retained control over the common area."

**{¶9}** Mr. Loescher testified that he went to the Swanson property at least once a month "to look around" and make sure everything was in order. He said that he "would pull into the driveway[,] . . . check to make sure the dog was in the dog house[,] . . . walk around the house[,] and see that no windows were broken or door was forcibly opened." He also said that he would not enter the house.

**{¶10}** A landlord is not "in possession and control of . . . premises . . . simply because [he] retained the right to inspect [them]." *Guerra v. Kresser*, 6th Dist. No. OT-05-016, 2005-Ohio-6524, at ¶14. Furthermore, even if Mr. Loescher's monthly visits to inspect the Swanson property made its yard a common area, it is undisputed that Ms. Young's daughter was attacked inside the house. Ms. Young has not argued, and did not submit any evidence to suggest, that the house was a common area under Mr. Loescher and Robson Foods' possession and control. See *Burgess v. Tackas*, 125 Ohio App. 3d 294, 297-98 (1998) (concluding plaintiff could not recover from trailer park when dog bite occurred inside one of the trailers).

**{¶11}** Ms. Young failed to establish that a genuine issue of material fact exists regarding whether Mr. Loescher had possession and control of the Swanson property. Because Mr. Loescher did not have possession or control of the property, it is immaterial whether he acquiesced in Max's presence. This Court, therefore, concludes that the trial court correctly granted Mr. Loescher and Robson Foods summary judgment on Ms. Young's claim that they harbored Max. Ms. Young's first assignment of error is overruled.

OWNER OR KEEPER

**{¶12}** Ms. Young's second assignment of error is that the trial court incorrectly granted summary judgment for Mr. Loescher and Robson Foods because a genuine issue of material fact exists regarding whether they were owners of Max under Section 955.28(B). Her third assignment of error is that the trial court incorrectly granted summary judgment for Mr. Loescher and Robson Foods because a genuine issue of material fact exists regarding whether they were keepers of Max under that section. Ms. Young, however, failed to raise either of those arguments in her brief in opposition to Mr. Loescher and Robson Foods' motion for summary judgment. She, therefore, has forfeited them. See *Holman v. Grandview Hosp. & Med. Ctr.*, 37 Ohio App. 3d 151, 157 (1987) ("Issues not raised . . . in the trial court cannot be raised for the first time on appeal."). Ms. Young's second and third assignments of error are overruled.

CONCLUSION

**{¶13}** The trial court correctly concluded that there was no genuine issue of material fact regarding whether Mr. Loescher and Robson Foods harbored Mr. Swanson's dog, and Ms. Young forfeited her argument that they were owners or keepers of him. The judgment of the Lorain County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

MOORE, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

CHRISTIAN R. PATNO, attorney at law, for appellant.

JOHANNA M. SFISCKO, and JOHN M. BOSTWICK, JR., attorneys at law, for appellees.

BRIAN T. MCELROY, attorney at law, for appellee.