

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Economical Insurance Group v. Grandy, 2004 NSSM 33

BETWEEN:

Name Economical Insurance Group Claimant

Name Renee and Paul Grandy Defendants

DECISION

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on August 22, 2007.

Appearances:

Walter Tingley, agent on behalf of the Claimant Economical Insurance Group;
Renee Grandy on behalf of the Defendants.

[1] This matter came on before me on June 29, 2004. The Claimant Economical Insurance Group ("EIG") was the motor vehicle insurer of Heather MacKay whose car was damaged by a dog, owned by the Defendants, when it ran out into the road. At the commencement of the hearing, I advised Mr. Tingley that ordinarily I would have dismissed the claim of EIG because it had no independent standing to sue in its own name; and that it, rather, has to sue in the name of its insured, in this case Heather MacKay. However, because the insured Heather MacKay was present in Court and did give evidence, I made an order adding Heather MacKay as a Claimant to the action and, on that basis, the claim proceeded.

[2] Heather MacKay and Renee Grandy were both sworn and gave evidence.

[3] The house owned by Renee and Paul Grandy borders Old Sambro Road.

[4] On June 17, 2003 Mrs. Grandy was in the house with her seven-year-old son. The door was latched. They owned a large German Shepherd dog. According to Mrs.

- Grandy, the dog spent most of its time in the house. Whenever the dog was out it was leashed.
- [5] The dog had gotten away from them on only two occasions in the past: once when its leash broke and once when it got out of the house. On both occasions it had run into the woods behind the house.
- [6] On the day in question, Mrs. Grandy was at the sink in the kitchen. Her son was a few feet away. Her son wanted to go out to play and he opened the latched door. The dog pushed by him and ran out into the yard. Mrs. Grandy gave pursuit, but lost him in the woods.
- [7] Moments thereafter the dog ran out into Old Sambro Road. At that moment Mrs. MacKay was driving along the road. She saw the dog coming from her right and she could tell from his direction that he was probably going to be running out into the road. She slammed on her brakes, but as she did the dog hit the side of her car hard, damaging it.
- [8] Damage in the amount of \$957.15 was done to the car and it was repaired.
- [9] The Claimants take the position that the Halifax Regional Municipality by-laws require dogs to be leashed; and that the Defendants were negligent in their control of the dog. They rely on the decision of the British Columbia Court of Appeal in *Ruckheim v. Robinson* [1995] B.C.J. No. 163 (C.A.) wherein a homeowner had penned his dog, but placed the doghouse so close to the fence that the dog was able to get out. The Court there found that any reasonable person, looking at the pen, would have concluded that the dog could get out following the route that it did and, on that basis, found the defendants negligent and liable.
- [10] The test in these types of cases is the usual one with respect to negligence. As noted in *Dubois v. Penny* (1995) 145 N.S.R. (2d) 50 (S.C.) at para. 10 per Goodfellow J:

“The duty upon one who owns, controls or harbours an animal is a duty of reasonable care for the safety and security of all who might come into contact with the animal. The standard of this duty of reasonable care will be mandated by the circumstances that exist at the time of the alleged negligence. This standard will depend upon many factors including the size, natural tendencies of the animal, the historical propensities of such animal that have been exhibited, the proximity and composition of the public that is likely to come into contact with the animal, etc. etc.”

[11] In *Canada (Attorney General) v. Dingle Estate* [2000] N.S. J. No. 4 (C.A.) the Court dismissed a claim against a homeowner in circumstances remarkably similar to the ones at hand. In that case the dogs banged against an interior door, knocking it open, thereby escaping the house.

[12] In the case before me, the evidence established that the Defendants did take care to keep the dog leashed when out of the house and otherwise confined it to the house. The evidence did not establish that the dog had a propensity for running out into the road. The Claimant argued that the Defendants ought to have known that the dog would have run out by their son if he opened the door, but there is no evidence of that. In addition and in any event, in the circumstances of this case, to prevent what happened from happening, the Defendants would have had to put in place a system whereby their child could never leave the house to play in the yard without first going to his parents or some other adult person to physically restrain the dog.

[13] In my opinion this would have put too high a burden on the Defendants and would have gone beyond what was reasonable in the circumstances. I find that, on the evidence, the steps the Defendants did take (latching the door so that the dog could not get out on its own) to have been sufficient to discharge their obligation to maintain control and custody over their dog.

[14] I accordingly dismiss the claim.

Dated at Halifax, Nova Scotia this
5th day of July 2004

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ADJUDICATOR

W. Augustus Richardson

Original Court File
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