

Claim No: 311991

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Kervin v. Mattie, 2009 NSSM 34

BETWEEN:

WILLIAM KERVIN

Claimant

- and -

STEVE MATTIE

Defendant

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on July 28, 2009

Decision rendered on July 29, 2009

**APPEARANCES**

For the Claimant            self-represented

For the Defendant        self-represented

**BY THE COURT:**

- [1] The Claimant is the owner of a 3-lb. Pomeranian male dog named Foxy.
- [2] The Defendant is a former neighbour and friend of the Claimant.

**The Facts**

- [3] On the night of February 27, 2009, an incident occurred which led to the dog being injured, requiring expensive veterinary surgery and care. The Claimant seeks to hold the Defendant responsible for \$3,243.00 in such costs.
- [4] There are some differences in the accounts of what happened, but many of the elements are undisputed. The Claimant says that the Defendant and others were going outside for a smoke, and the dog tried to follow. The Defendant picked up the dog (to keep him from escaping), at which time he (the Claimant) told the Defendant not to pick up the dog because, he feared, the Defendant was unfamiliar with how to handle such a small dog. The Defendant then dropped the dog from about waist height onto a hard ceramic floor. It was this drop that presumably broke the dog's leg.
- [5] The Defendant's version differs slightly. He says that he bent down to release the dog, at which time the dog basically jumped down out of his arms to the floor and scampered away. He says that the dog seemed to be fine, and he did not learn about the injury until a bit later.

[6] There is no dispute that the Defendant's girlfriend drove the Claimant and the dog to the vet hospital. There is also no dispute that she stated at that time that the Defendant felt bad and they were willing to contribute to the cost. It is also clear that at that time the Defendant would not have known the full extent of the cost, and likely believed that it would be in the hundreds of dollars. The reason that it eventually cost so much is that the dog is particularly small and required specialized surgery which had to be done at a facility in PEI.

### **Findings of fact and discussion of liability**

[7] I believe that what happened is this. The Defendant picked up the dog, in good faith, as kind of a reflexive motion because he assumed the dog was not allowed outside off-leash, and was concerned that the dog might escape and come to harm. The Defendant was not that familiar with handling this dog. The dog very likely jumped out of his arms while still at a height that could produce injury. Also very likely, and by chance, he hit the ceramic floor in the worst position possible.

[8] It therefore can safely be said that the Defendant played a part in the dog's injury. But can it be said that he committed what the law refers to as a "tort" which renders him legally responsible for all of the foreseeable consequences?

[9] There are two kinds of torts - intentional and negligent. The only possible type of intentional tort involving an animal would be "trespass to property" as the law regards animals as property. It would be a trespass if he handled the dog without permission.

- [10] It would not be a trespass if there is a reasonable expectation that the owner consents to the object being touched or handled. In the context of a social relationship, where pets roam around freely interacting with people, in the absence of some notice to the contrary there is an implied understanding that pets may be touched and handled reasonably.
- [11] In the absence of an intentional tort, there can still be liability if there was negligence. Such a finding may be made if it is generally regarded as foreseeable that harm might result from a particular action, and the person acted without due care in light of those risks.
- [12] In the case here, I cannot say that the Defendant was negligent. It would not have been foreseeable that the dog could suffer such an injury from what seemed like such an innocent event. The Defendant appears to have acted reflexively out of a legitimate concern that the dog could come to harm by escaping. That concern may have been ill-founded, but it was sincere. Many people would have acted similarly.
- [13] I expect that the Defendant felt bad, and perhaps morally responsible for what happened, but his willingness then to be generous (to a point) was no admission of legal responsibility. Once the finger of blame was pointed at him, he had a right to deny responsibility.
- [14] I do not for a moment minimize how upsetting this has been for the Claimant, and how the expense of caring for the dog has been a hardship for him. However, what occurred was one of those freaky accidents which

cannot be blamed on anyone. The law simply does not extend its reach to someone who acted without any legal fault.

[15] In the result, the action must be dismissed.

**Eric K. Slone, Adjudicator**