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THE HIGH COURT OF SOUTH AFRICA
FREE STATE PROVINCIAL DIVISION

Reportable: yes/no

Circulate to other Judges: yes/no

Circulate to Magistrates: yes/no

Case Number: 5566/2021

BONGANI DUNCAN TSHABALA

Plaintiff

and

THABO JUSTICE MOEKOENA

Defendant

CORAM: BERRY, AJ

HEARD ON: 20 MARCH 2023

DELIVERED ON: 12 SEPTEMBER 2023

JUDGEMENT BY: BERRY, AJ

JUDGMENT

[1] Quantum and merits are separated by agreement between the parties.

[2] The Plaintiff was bitten by two pit bull dogs on the night of 21 August 2021 at around 23:45.

[3] The Plaintiff travelled on his bicycle to his home from his business.

[4] The incident occurred in Makhobo Street, Phahameng, Bethlehem.

[5] It is not disputed that the incident occurred, but the Defendant denies that it was his dogs that bit the Plaintiff, as his property is fenced in, and his dogs cannot escape from the property.

[6] The Plaintiff testified that he saw two dogs in front of house number [...], Makhobo Street.

[7] As he passed them, they chased after him and attacked him.

[8] The one dog is brown and identified in the photo marked Exhibit A. This photo is crucial to the finding in this matter.

[9] The Plaintiff fell from his bicycle and managed to get hold of the collar of the brown dog depicted in Exhibit A, but he could not fend off the attack and suffered injuries to his lower left leg and calve, right arm, right ear, and right foot.

[10] The attack was stopped when members of the public intervened and chased the dogs away.

[11] The Plaintiff was hospitalised for 12 days.

[12] After the Plaintiff's release from hospital, he approached the community members that assisted him, and they informed him that the SPCA took the dog into its care after the attack.

[13] The Plaintiff met up with Mr. Motloun, an employee of the SPCA who helped him to identify the owner of the dog.

[14] Mr Motloung took a photo of the dog he took into the care of the SPCA. The photo was accepted as evidence and marked as Exhibit A.

[15] The Plaintiff identified the one dog that attacked him from the photo taken by Mr Motloung (Exhibit A). A brown dog with a leather collar with metal studs.

[16] The photo of the dog shown in Exhibit B was obtained from Facebook by the Plaintiff.

[17] The Plaintiff testified that the Facebook photo is the second dog that attacked him.

THE EVIDENCE OF MR MOTLOUNG (SPCA)

[18] Mr Motloung is employed for ten years by the SPCA, and his duties entail interacting with the community to prevent animal cruelty.

[19] He knows the Defendant as he assisted the Defendant to take the brown dog identified in Exhibit A to the veterinarian on 13 August 2021, eight days prior to the incident.

[20] He was requested to assist, as the Defendant could not manage the dog by himself.

[21] He had to use a catching pole, as the dog was aggressive.

[22] The dog shown in Exhibit A was identified by Mr Motloung, as the dog he took to the veterinarian and the dog he rescued on 22 August 2021.

[23] Mr Motloung testified that the dog wore the same brown leather collar with metal studs as shown in the picture, when he took it to the veterinarian.

[24] The Defendant also had another pit bull at his property when he assisted with the brown dog.

[25] The Defendant called him on the morning of 22 August 2021 and requested his assistance to look for both dogs as they escaped from his premises.

[26] Mr Motlounq testified that the Defendant told him that somebody left the gate open and that both his dogs escaped.

[27] As Mr Motlounq has seen both dogs before, he knew what they looked like.

[28] He received a call from the community members on Sunday 22 August 2021 to assist with the rescue of a dog. The community wanted to kill the dog because it attacked a person the previous evening.

[29] On his arrival he took the dog to the local shelter.

[30] He identified the dog he took into his care, as the dog in Exhibit A.

[31] Mr Motlounq testified that he personally took the photo marked as Exhibit A.

[32] He did not take another dog into the care of the SPCA as he only found the brown dog depicted in Exhibit A.

[33] On Monday 23 August 2023 he contacted the Defendant and advised that the dog depicted in Exhibit A was in the care of the SPCA.

[34] He only found the brown dog depicted in Exhibit A.

[35] The Defendant came to fetch the dog but did not complete any paperwork.

[36] Under cross examination Mr Motloun testified that a male dog would typically be fully active five days after being neutered and that five kilometres are not far for a dog to travel.

[37] I accept that Mr Motloun is not qualified to give an opinion on the period it would take a male dog to become fully active after being neutered, but the opinion was solicited by the Defendant.

EVIDENCE FOR THE DEFENDANT

[38] The Defendant testified that the distance between his home and the place where the attack occurred is five kilometres.

[39] As his male dog was neutered eight days prior to the incident, his dog would not have been able to walk the distance to the place where the attack occurred.

[40] The Defendant disputes that the photos of the dogs presented in evidence, are his dogs.

[41] The Defendant testified that he placed the photo of the dog (Exhibit B) on his Facebook profile, as it is a beautiful specimen and nothing more.

[42] The dogs in the photos are collared with leather collars, whilst he uses choke chains on his dogs.

[43] The Defendant denied that it was his dog that was rescued by Mr Motloun.

[44] The Defendant denied that he fetched the dog from the SPCA.

ANALYSIS

[45] The evidence of Mr Motloun is telling.

[46] He first met the brown dog eight days before the incident, and he rescued the same dog when the public wanted to kill it.

[47] The identification of the second dog via Facebook leaves doubt, but I accept that the brown dog identified in Exhibit A, belongs to the Defendant.

[48] This is a case where the attack did not occur on the premises of the owner, thus it presents difficulties in proving ownership of the dogs.

[49] I accept the evidence of Mr Motloun linking the brown dog with the Defendant as owner of the dog.

[50] The probabilities of the Plaintiff being attacked by a brown dog and the identified dog being rescued by Mr Motloun the next morning outweighs the denial of ownership of the dog by the Defendant.

[51] Mr Motloun testified that the Defendant phoned him and requested his assistance to look for his dogs as someone left his gates open.

[52] Therefore, the Defendant is liable for damages to be proven by the Plaintiff.

ORDER

[53] The following order is made:

1. The Defendant is liable for the damages suffered by the Plaintiff.

2. Damages stand over for later adjudication.
3. The Defendant is ordered to pay the cost of the trial to date.

AP BERRY, AJ

APPEARANCES:

For the Plaintiff: **Adv. J Van Der Merwe**
Instructed by: HL Buchner
 Honey Attorneys
 BLOEMFONTEIN

For the Defendant: **Adv. S Janse Van Rensburg**
Instructed by: HARRINGTONS INC
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 BLOEMFONTEIN