

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

STEPHANIE BRADACS,

Plaintiff-Appellant,

v

JAMES JACOBONE and BARBARA  
JACOBONE,

Defendants-Appellees.

---

FOR PUBLICATION

January 9, 2001

9:00 a.m.

No. 215055

Oakland Circuit Court

LC No. 96-532122-NO

Updated Copy

March 16, 2001

Before: Gribbs, P.J., and Kelly and Sawyer, JJ.

SAWYER, J. (*concurring*).

I concur in the result reached by the majority, but write separately because I do not agree with its analysis.

I believe that we must reach the question whether the provocation under the dog-bite statute, MCL 287.351; MSA 12.544, must be intentional or unintentional. In my view, there are three potential variations: (1) the victim intentionally provoked the dog (e.g., he kicked the dog), (2) the victim intentionally did an act that unintentionally provoked the dog (e.g., he intentionally petted the dog, not believing that the dog would take exception to being petted), and (3) the victim committed an unintentional act that provoked the dog (e.g., the victim accidentally tripped and fell, landing on the dog).

All would agree that the first category comes within the statute. We need not address the second category because this case falls within the third category. I do not believe that the

Legislature intended the third category (unintentional acts) to constitute provocation. Therefore, I agree with the majority that the decision of the trial court should be reversed.

/s/ David H. Sawyer