

STATE OF MICHIGAN
COURT OF APPEALS

BRANDI L. STOUT, a Minor, through her
Conservator, VICKI R. STOUT,

UNPUBLISHED
March 15, 2002

Plaintiff-Appellant,

v

ROBERT CARVER,

No. 228373
Ogemaw Circuit Court
LC No. 99-652668-NO

Defendant-Appellee.

Before: Bandstra, P.J., and Murphy and Murray, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition in this premises liability action involving a dog bite. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Brandi Stout was bitten by a dog owned by defendant's tenant. Another child had been bitten by the same dog approximately two months before. Plaintiff brought this action alleging that defendant knew of the vicious nature of the dog, and failed to exercise reasonable care to prevent an unreasonable risk of harm. The trial court granted summary disposition to defendant, finding that he owed no duty to plaintiff.

To establish a prima facie case of negligence, a plaintiff must establish that (1) the defendant owed a duty to plaintiff, (2) the defendant breached that duty, (3) the defendant's breach was a proximate cause of the plaintiff's injuries, and (4) the plaintiff suffered damages. *Phillips v Deihm*, 213 Mich App 389, 397; 541 NW2d 566 (1995). Under principles of premises liability, the right to recover for a condition on the land requires that the defendant have legal possession and control of the premises. *Morrow v Boldt*, 203 Mich App 324, 328; 512 NW2d 83 (1994).

Defendant relinquished control over the property to his tenant. The tenant did not own a dog at the time she began renting the property, and the oral rental agreement did not address dog ownership. A landlord's power to evict a tenant does not establish control over the dog. *Braun v York Properties, Inc*, 230 Mich App 138, 143; 583 NW2d 503 (1998). Defendant did not impose any rules that could be interpreted as giving him the power to exercise control over the dog. While the owner of a dog who has knowledge of its dangerous propensities would be strictly liable, *Trager v Thor*, 445 Mich 95; 516 NW2d 69 (1994), or liable under the dog bite statute,

MCL 287.351, this liability is not extended to a person who neither owns nor possesses the animal. *Id.* The trial court properly granted summary disposition to defendant.

We affirm.

/s/ Richard A. Bandstra

/s/ William B. Murphy

/s/ Christopher M. Murray