

63608-1

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No. 63608-1-I

COURT OF APPEALS,
DIVISION I,
OF THE STATE OF WASHINGTON

KENNETH JENNINGS,

Petitioner,

vs

SEATTLE HOUSING AUTHORITY,

Respondent.

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SUPERIOR COURT
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AMENDED BRIEF OF RESPONDENT

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I. INTRODUCTION

Petitioner Kenneth Jennings filed a small claim case against Respondent Seattle Housing Authority (“SHA”) and Raymond Vincent (“Vincent”) seeking an award of damages because of a bite by Vincent’s dog. The small claims court dismissed the claims against SHA but awarded Jennings a \$500.00 judgment against Vincent. Vincent paid the judgment. Jennings then appealed the dismissal of the claims against SHA to King County Superior Court. The Superior Court affirmed the small claims court judgment and dismissed Jennings’s appeal. Jennings now seeks review of the Superior Court decision. The Superior Court decision was proper and should be upheld.

II. RESPONDENT’S STATEMENT OF ISSUES

A. Should the Superior Court order dismissing Jennings’s appeal and affirming the small claims judgment be upheld because Jennings had received full payment of the small claims judgment?

B. Should the Superior Court order dismissing Jennings’s appeal and affirming the small claims judgment be upheld because Jennings failed to comply with RCW 4.96.020?

C. Should the Superior Court order dismissing Jennings's appeal and affirming the small claims judgment be upheld because Jennings did not establish that SHA had any liability to him for a bite by a dog owned by another tenant?

III. STATEMENT OF THE CASE

On December 23, 2008, Petitioner Kenneth Jennings ("Jennings") filed a small claim complaint against Raymond Vincent ("Vincent") and SHA in the King County District Court, Seattle Division. CP 13-15. The small claim complaint included allegations that Jennings and Vincent were both tenants at the Bell Tower Apartments ("Bell Tower"), that SHA owned and operated Bell Tower, and that Vincent's dog, a Jack Russell terrier, attacked and bit Jennings as Jennings entered Bell Tower at the front entrance on September 26, 2007. CP 13. In his small claim complaint, Jennings prayed for an order "finding defendants Vincent and SHA liable for the injuries caused by defendant Vincent's dog on 9-26-2007" and for an order "for damages for his personal injury in the amount of \$5,000.00 against the defendants individually and severally." CP 15.

On January 16, 2009, SHA filed a motion with the small claims court seeking dismissal of Jennings's claims against SHA because Jennings

had failed to present his claim against SHA before commencing his lawsuit in violation of RCW 4.96.020 and because Jennings had failed to state a claim against SHA upon which relief could be granted. CP 20-22. A docket entry on January 23, 2009, made at the direction of District Court Judge Judith R. Eiler, indicated that SHA's motion to dismiss would be heard on the day of trial. CP 6. On February 9, 2009, Jennings filed a memorandum in which he argued that SHA had not established that it was a local government entity within the meaning of RCW 4.96.020 and that SHA had failed to record the identity of its appointed agent to receive claims for damages. CP 36-37.¹ In his memorandum of February 9, 2009, Jennings also argued that the statement of his claim in his small claim complaint more than satisfied the requirements imposed by RCW 12.40.050 and RCW 12.40060 and that it was not governed by CRLJ 12(b)(6). CP37.

The small claims court trial was held on February 12, 2009 with Judge Pro Tem James Schlotzhauer presiding. CP 7, 8, 61. No report of

¹ It is a matter of public record that on April 30, 2007, SHA recorded a document designating the identity and address of its agent for receiving claims. This document was recorded with the King County Auditor under recording number 20070430003010.

the proceedings at the small claims trial has been filed.² The case docket indicates that at the trial the court heard the testimony of Jennings, Vincent, Sarah Vanclieve (*sic*), and Maybell Dianne Thompson, admitted Exhibit #1 from Jennings and Exhibits # 2, 3, and 4 from Vincent, heard rebuttal from Jennings, and then ruled that all claims against SHA and Sarah Van Cleve were dismissed and that a judgment would be rendered for the plaintiff in the amount of \$500 for damages incurred by dog bite. CP 7. On February 12, 2009, a Small Claims Judgment was entered which granted a judgment to Jennings in the total amount of \$525.00 (principal \$500.00 and filing fee \$25.00). CP 61. The Small Claims Judgment included the following:

All claims against Seattle Housing Authority is dismissed from this matter; all claims against Sarah Van Cleve is dismissed from this matter. Judgment is rendered for the Plaintiff in the amount for five hundred dollars (\$500.00) for damages incurred by a dog bite.

CP 61. The judgment of \$525.00 against Vincent was satisfied on March 11, 2009. CP 98; Petitioner's Brief 14.

² On November 10, 2009, Jennings filed a statement of arrangements in which he stated that he had designated the audio recording of the small claims trial in his designation of clerks papers and exhibits but that a verbatim report of proceedings would not be filed unless the parties failed to stipulate to the contents of the recorded proceedings from the small claims trial. Statement of Arrangements (RAP 9.2(a)). On March 26, 2010, SHA filed a motion in Superior Court for an order requiring Jennings to file a report of proceedings.

On March 12, 2009, Jennings filed notice that he was seeking review in King County Superior Court of the small claims court decision. CP 1. The record of the small claims proceedings that was transmitted to King County Superior Court included a copy of the CD of the small claims court trial proceedings. CP 4. On April 23, 2009, Jennings filed a document in King County Superior Court entitled "Plaintiff's Appellate Brief for Review of King County District Court, West Division, Small Claims Trial Judgment" (hereinafter referred to as "Petitioner's Superior Court Brief"). CP 94-105. Petitioner's Superior Court Brief included a list of the issues Jennings was presenting for review by the Superior Court. CP 99. On May 11, 2009, Superior Court Judge Michael J. Fox issued an order stating that "the appeal is dismissed and the judgment of the District Court is Affirmed." CP 106.

On My 26, 2009, Jennings filed a notice that he was seeking review "of the Order, dated May 11, 2009, dismissing plaintiff's appeal to the King County Superior Court and affirming the judgment of dismissal by the King County District Court Small Claims Division which dismissed all of plaintiff's claims against the defendant Seattle Housing Authority." Notice of Appeal to Washington Court of Appeals, Division 1 (RAP 5.1 a).

IV. ARGUMENT

A. Appeal of Small Claims Judgment Was Rendered Moot When Jennings Accepted Full Payment

Jennings sought a judgment against both SHA and Vincent for damages from a dog bite. The small claims court dismissed the claim against SHA but awarded judgment in favor of Jennings against Vincent for damages from the dog bite. Vincent paid the full amount of that judgment.

Jennings now seeks to appeal the dismissal of his claim against SHA so that he can recover additional damages. But he has accepted the award of damages rendered in the small claims case, and he has received full payment of that award of damages. Even if Jennings were to obtain a decision that it was error to dismiss his claim against SHA, he could not recover any additional damages from SHA. The full satisfaction of his judgment for dog bite damages has rendered this matter moot, and the appeal should be dismissed.

Jennings had received full payment of the small claims judgment on March 11, 2009, before he gave notice of his appeal to Superior Court

on March 12, 2009. CP 98. This alone is sufficient basis to uphold the Superior Court's order.

B. Dismissal of Jennings's Claim Against SHA Was Proper Because of Failure to Comply With RCW 4.96.020

SHA is a public corporation created under the Washington Housing Authorities Law. RCW 35.82.010 *et seq.* The provisions of RCW 4.96.020 regarding claims for damages against all local governmental entities apply to claims against SHA. Under the provisions of RCW 4.96.020, a claim must be presented to SHA at least 60 days before an action is filed on the claim. Jennings did not present a claim prior to filing his small claim action against SHA, and he does not claim to have done so. CP 36. Rather Jennings claims that SHA failed to record the identity and address of its agent for receiving claims and that he should therefore be excused from the requirement of presenting a claim before filing an action. CP 36; Petitioner's Brief 28-29. However, it is a matter of public record that on April 30, 2007, SHA recorded a document designating the identity and address of its agent for receiving claims with the King County Auditor under recording number 20070430003010. Dismissal of Jennings's claim against SHA was proper because of his failure to comply with the statutory

claim notice procedure. *Reyes v. City of Renton*, 121 Wn.App. 498, 86 P.3d 255 (2004).

C. Dismissal of Jennings's Claim Against SHA Was Proper Because Jennings Did Not Establish a Basis for SHA Liability

Jennings concedes that it is the general rule in Washington that landlords are not liable for injuries caused by an animal owned or kept by a tenant. Petitioner's Brief 23-24. For this general rule, Jennings cites the Washington Supreme Court decision in *Frobig v. Gordon*, 124 Wn.2d 732, 881 P.2d 226 (1994). In that case, the Court expressed the general rule as follows:

The rule in Washington is that the owner, keeper, or harbinger of a dangerous or vicious animal is liable; the landlord of the owner, keeper, or harbinger is not.

Frobig v. Gordon, supra at 735.

Despite acknowledging this general rule, Jennings argued to both the small claims court and the Superior Court that the general rule should not be applied to a dog bite that occurred in a common area. CP 37-38, 97, 102. Jennings offers authority regarding the general duties of a landlord in connection with common areas, but he has presented no

authority indicating that the rule on non-liability of landlords for harm caused by tenants' animals is not applicable in common areas.

Further, Jennings has not established that the Superior Court did in fact reject his argument that landlords should be subject to liability for bites by tenants' dogs in common areas. It may be that his argument was accepted but that the Superior Court judge was persuaded by substantial evidence that SHA had no liability under the particular facts of the case. Jennings has not shown that there was a lack of sufficient evidence in the record to support such a finding.

Jennings also argues for an interpretation of Seattle Municipal Code 9.25.022 that a landlord should be deemed to be an "owner" of a dog owned by a tenant on the basis that the landlord "permits" the tenant to keep the dog. Petitioner's Brief 24-26. This interpretation is not consistent with the purpose and the other provisions of this code chapter. As one example, this interpretation would make the landlord subject to civil penalties for failure to license a dog owned by a tenant. Seattle Municipal Code 9.25.051 and 9.25.100.

But Jennings argues that, as an "owner" of a dog under his interpretation of the Seattle Municipal Code, a landlord is subject to strict

liability under RCW 16.08.040. CP 26. Even if his strained interpretation of the Seattle Municipal Code were correct, it does not follow that landlords would thereby be strictly liable for harm caused by tenants' dogs. Jennings cites no authority that being deemed an owner of a dog under his interpretation of the municipal code should thereby make a landlord liable under RCW 16.08.040.

V. CONCLUSION

Jennings sought a small claims judgment against SHA and Vincent for dog bite damages. His claim against SHA was dismissed, but the small claims court assessed his dog bite damages at \$500.00 and awarded a judgment in that amount against Vincent. Vincent paid Jennings the full amount of the judgment. Jennings has been made whole, and his appeal is now moot.

Further, Jennings failed to present a claim to SHA before filing his action against SHA for dog bite damages. This is a violation of the statutory claim notice requirement, and it justifies dismissal of Jennings's claim against SHA.

Jennings acknowledges the general rule that landlords are not liable for harm caused by bites of dogs owned by tenants, but claims that a

different rule should apply in common areas. He offered no authority to demonstrate that this was the rule in Washington.

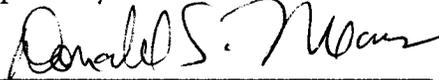
Moreover, the record does not rule out the possibility that the Superior Court judge accepted Jennings's argument but nonetheless ruled against him on the basis that the evidence presented did not persuade the judge that SHA was liable under this rule. Jennings has made no showing that there was insufficient credible evidence to support such a finding.

Jennings claims that landlords should be deemed to be owners of the pets of their tenants and thereby subject to strict liability for bites by tenants' dogs. But even if this interpretation of the Seattle Municipal Code provision were accepted, it does not lead to his conclusion that landlords should thereby be held strictly liable for bites by tenants' dogs.

The Superior Court's decision to affirm the judgment was proper.

Dated: March 26, 2010

Respectfully submitted,



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