

**FILED**

**SEP 10 2014**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 325091

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COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION III

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JAY RHODES

Appellant,

v.

RODNEY MACHUGH,

Respondent.

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*APPELLANT'S BRIEF*

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BENTON COUNTY SUPERIOR COURT  
CAUSE NO. 13-2-01855-9

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## INTRODUCTION

Appellant Jay Rhodes (Rhodes) was severely injured when attacked by a ram he was allowing the Respondent Rodney MacHugh (McHugh) to keep on his (Rhodes') property.

Rhodes does not claim "negligence", and does not claim that the ram was known to be a particularly "vicious" ram. However, as MacHugh himself acknowledged at his deposition, it's common knowledge that rams are unpredictable and quite capable of violence. Rhodes sought liability under strict liability principles.

The case was dismissed on Summary Judgment, the trial court holding that strict liability did not apply.

Rhodes asks this Court to enforce strict liability under the Restatement (Third) of Torts, section 23, which states:

"An owner or possessor of an animal that the owner or possessor knows or has reason to know has dangerous tendencies abnormal for the animal's category is subject to strict liability for physical harm caused by the animal if the harm ensues from that dangerous tendency".

The Restatement (Second) of Torts commented that rams have not historically been regarded as "being inherently dangerous

animals”, but the Comment (c) to the Third Restatement specifically says:

“In the future, courts might wish to give consideration to particular genders or breeds of a species that involve danger levels uncommon for the species itself. If so, it might be appropriate to impose strict liability, without individualized scienter, on the owner of such an animal.”

Thus, this appeal.

#### ASSIGNMENT OF ERROR

The Court erred in dismissing Rhode’s claims on summary judgment.

The issue is whether henceforth the owner of a ram should be strictly liable for harm caused by the animal.

#### STATEMENT OF THE CASE

Appellant Rhodes and Respondent MacHugh are friends and neighbors. Rhodes allowed MacHugh to keep sheep on his (Rhodes’) property. CP 27, 28.

In the Summer of 2012, Rhodes and MacHugh went to a livestock auction, where MacHugh bought a ram. CP 8,9,26. Pursuant to their agreement, Rhodes allowed MacHugh to keep the ram on his property. CP 22.

There is no evidence that the ram showed any vicious tendencies before the incident in question. Id.

However, on August 20<sup>th</sup>, 2012, Rhodes went into his yard, where the ram was being kept, to turn on the water. The ram attacked him, inflicting serious injuries. CP 22,23.

Rhodes sued MacHugh; the Court granted summary judgment. CP 38-39.

#### ARGUMENT

Rhodes' contention is simple: The dangerous propensities of rams are well-known and strict liability should attach, and this whether the animal is "domestic" or otherwise.

Though no Washington case can be found directly on point, it appears that the Supreme Court adopted the Restatement (Second) of Torts, Section 509, in Arnold v. Laird, 94 Wn.2d 867, 621 P.2d 138 (1980). That case involved an attack by a dog, and the Court said at 94 Wn.2d 871:

"The Restatement (Second) of Torts (1977) recognizes two separate causes of action regarding injury caused by animals. First, according to section 509, if the dog has known dangerous propensities abnormal to its class, the owner is *strictly liable*. Second section 518 provides that if

there are no known abnormally dangerous propensities, the owner is liable only if he is *negligent* in failing to prevent the harm.”

(emphasis in original)

Comment (e) to Section 509 stated:

“There are certain classes of domestic animals in which dangerous propensities are normal although abnormal in other classes of their species. Bulls are more dangerous than cows and steers; stallions are more dangerous than mares and geldings; rams are more dangerous than ewes and lambs. However, these animals have been kept for stud purposes from time immemorial so that the particular danger involved in their dangerous tendencies has become a normal incident of civilized life. This, together with the fact that the virility which makes them dangerous is necessary for their usefulness in performing their function in the socially essential breeding of livestock justifies the risk involved in their keeping. Therefore, the law has not regarded bulls, stallions and rams as being abnormally dangerous animals to be kept under the strict liability state in this Section.”

Again, no Washington case can be found that actually applied this rule.

Moreover, the Third Restatement of Torts, Section 23, appears to modify the “rule”, stating:

“An owner or possessor of an animal that the owner or possessor knows or has reason to know has dangerous tendencies abnormal to the animal’s category is subject to strict liability for physical harm caused by the animal if the harm ensues from that dangerous tendency”.

Comment (e) states in part:

“Overall, the common law had been satisfied with the generalization that livestock and dogs are not excessively dangerous and has applied this generalization to all livestock and dogs. In the future, courts might wish to give consideration to particular genders or breeds of a species that involve danger levels uncommon for the species itself. If so, it might be appropriate to impose strict liability, without individualized scienter, on the owner of such an animal.

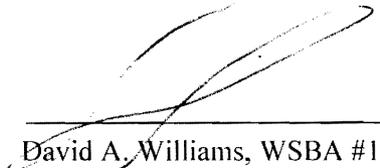
(emphasis added)

Thus does the newer Restatement acknowledge common sense: While “lambs” may be timid, “rams” are not. It is respectfully submitted that comment (e) to the Third Restatement should become the law in Washington. Rams are known to be dangerous and strict liability should apply.

#### CONCLUSION

The Court is asked to extend strict liability principles to Rams.

DATED this 8 day of September, 2014.

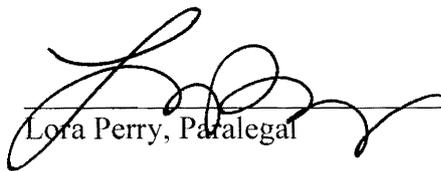
  
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**PROOF OF SERVICE**

I hereby certify that a copy of the **Appellant's Brief** was served in the manner indicated below, upon the counsel of record:

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DATED this 8 day of September, 2014.

  
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