Rule 13.4(d) Review

No. **59361-1-II**

SUPREME COURT
OF THE STATE OF WASHINGTON

Warner Robinson, a minor child, and Devin and Reba Robinson, a married couple on behalf of themselves and as Litigation Guardian Ad Litems of the minor child,

Petitioners

v.

Milestone at Hudson Heights, LLC, The Milestone Companies, LLC, Milestone Investment Properties, LLC, and Ronald Newman and "John/Jane Doe" Newman

Respondents

PETITION FOR REVIEW

STEVENS LAW PLLC
Rory L. Stevens WSBA #57152
14240 Interurban Ave S, Ste B-132
Tukwila, WA 98168
(206) 806-8787
Attorney for Petitioners

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A. IDENTITY OF PETITIONERS

Petitioners Devin and Reba Robinson are plaintiffs, individually and as Litigation Guardian ad Litems for their minor child, Warner Robinson, pursuing personal injury claims against Respondents Milestone at Hudson Heights, LLC, Milestone Investment Properties, LLC, The Milestone Companies, LLC, and Ronald Newman ("Milestone Defendants") for negligence. They ask this court to review the Court of Appeal's decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

On June 17, 2025, the Court of Appeals Division II filed its unpublished opinion affirming the trial court's grant of summary judgment dismissal to Respondents. A copy of the decision is in the Appendix at pages A1 through A17.

On July 7, 2025, Petitioners filed a Motion for Reconsideration.

On August 19, 2025, the Court of Appeals Division II filed its Order Denying Motion for Reconsideration. A copy of the order denying petitioner's motion for reconsideration is in the Appendix at pages A-18 through A-19.

C. ISSUE PRESENTED FOR REVIEW

Whether a landlord of a rental complex owes a duty to their tenants to protect them from foreseeable harm from a neighboring tenant's visiting, aggressive, vicious dog?

D. STATEMENT OF THE CASE

1. Facts of Loss

This case involves personal injuries suffered by a three-year-old child being attacked by a neighboring tenant's vicious dog in the common area of a townhome complex. The Robinsons and the Nomura Defendants were tenants at the Hudson Heights Townhome complex that the Milestone Defendants owned and managed. CP.17-25. On January 3, 2020, Reba Robinson complained to the Milestone Defendants' property manager about the Nomura Defendants' dogs, which she had seen chasing

and barking viciously after another woman and her children. *Id.* On April 7, 2020, when Devin Robinson took three-year-old Warner Robinson out to the common area playground between the Robinson residence and the Nomura residence, the Nomuras' front door opened, and a vicious dog came charging out toward Devin and Warner. *Id.* Devin tried to protect Warner from the dog, but the dog bit Warner severely, and Warner required sutures. *Id.* The Robinsons claim that the Milestone Defendants were negligent in their investigation of the dog and addressing the safety issue. *Id.*

2. Procedural Background and Proceedings At Issue

The Robinsons filed their complaint on July 29, 2022, naming Milestone at Hudson Heights, LLC, The Milestone Companies, LLC, and the Hudson Heights Homeowners' Association as defendants. On December 13, 2022, the Robinsons filed their first amended complaint, adding the Nomuras as defendants and asserting joint and several liability against the Nomura Defendants and the Milestone Defendants.

The trial court entered an Order of Default against the Nomura Defendants on April 21, 2023. On April 25, 2023, the Robinsons filed their second amended complaint, adding Milestone Investment Properties, LLC, Ronald Newman (the managing member of the Milestone LLC defendants), and L. Brandon Smith, the other managing member of The Milestone Companies, LLC. CP.17.25. L. Brandon Smith and the Hudson Heights Homeowners Association were later voluntarily dismissed on September 25, 2023 and October 16, 2023 respectively.

On August 25, 2023, the Milestone Defendants moved for summary judgment dismissing the Robinsons' claims against the Milestone Defendants, arguing that landlords were not liable to plaintiffs for injuries caused by tenants' dogs. CP.30-39. The Milestone Defendants primarily relied on the Washington Supreme Court decision in *Blanco v. Sandoval,* 197 Wn.2d 553, 485 P.3d 326 (2021), which held that landlords had no duty to protect third parties from a tenant's lawfully owned but

dangerous animal as a matter of law. CP.34-36. The Washington Supreme Court found that premises liability only attached to the possessor of the land who generally must occupy and control the land, and in a landlord-tenant relationship, control is transferred to the tenants. Id. at 559-60.[1] The *Blanco* court also found that the plaintiff's premises liability claim failed as a matter of law because "there is no basis to find the dog was a dangerous condition of the land, as required to establish a duty under *Restatement (Second)* § 343 or § 342," reasoning that conditions generally associated with premises liability duties involved physical features of the property. 197 Wn.2d at 562.

The Robinsons responded, arguing that a landlord's special relationship with their tenants imposed a duty to protect tenants from foreseeable harm from third parties. CP.60-75. The Robinsons primarily relied upon *Restatement* § 315, *Nivens v. 7-*

[1] The property where the dog attack occurred in *Blanco* was a single-family home. 197 Wn.2d at 555. The Nomuras and the Robinsons, on the other hand, lived in duplex units in a rental complex that shared common areas.

11 Hoagy's Corner, 133 Wn.2d 192, 200, 943 p.2d 286 (1997), and *Brady v. Whitewater Creek, Inc.* 24 Wn. App. 2d 728, 521 P.3d 236 (2022). CP.65-68. The Robinsons pointed out that the plaintiff in *Blanco* did not have any special relationship with the landlord defendant that would impose a duty, unlike the Robinsons' special relationship with the Milestone Defendants. CP.67. The Robinsons also argued that the Milestone Defendants' duty to protect them imposed a duty to control their other tenants' behavior under *Restatement (Second)* § 315(a). CP.67. The Robinsons also pointed out that while *Blanco* recognized that a tenancy is equivalent to a conveyance when the property is a single residential unit, the Hudson Heights Townhomes were not single family homes, but duplex townhomes that share common areas, including the playground area where Warner was attacked, and that the only exclusive control that the Nomuras had was over the interior of their unit, whereas the dog bite occurred in the common area of a

townhome complex that the Milestone Defendants still retained control over. CP.67.

The Milestone Defendants rebutted with the argument that *Nivens* only imposed a duty for a defendant to protect a plaintiff from foreseeable *criminal* harm and that the Nomura Defendants' conduct was not criminal.[2] CP.200-10. The Milestone Defendants cited several Washington authorities where a landlord was not held liable to third parties for their tenants' dog bites. None of the dog bite cases cited by the Milestone Defendants where the courts ruled in favor the landlord defendants involved plaintiffs who were tenants of the defendant landlord. The one case the Milestone Defendants cited where a landlord was held liable, *Oliver v. Cook,* 194 Wn. App. 523, 377

[2] In actuality, the Nomuras' dog was a "dangerous dog" per RCW 16.08.070(2) because he inflicted a severe injury on a human being without provocation. Warner Robinson's injury was a severe injury under RCW 16.08.070(3) because it was a physical injury that resulted in disfiguring lacerations requiring multiple sutures. Under RCW 16.08.100(3), the owner of any dog that aggressively attacks and causes severe injury or death in any human, whether or not the dog has previously been declared potentially dangerous or dangerous, shall, upon conviction, be guilty of a class C felony punishable in accordance with RCW 9A.20.021.

P.3d 265, 271 (2016), which had been deemed to be an outlier by the *Blanco* court, actually did involve a tenant plaintiff. CP.202-03. However, all of the other cases cited by the Milestone Defendants involved non-tenant plaintiffs who did not argue any special relationship with the defendant landlord.

Ultimately, the trial court granted the Milestone Defendants' motion for summary judgment, signing the Defendants' proposed order.[3] CP.219-21.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Per RAP 13.4(b), a petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a

[3] The Milestone Defendants also moved to dismiss Ronald Newman on the grounds that the Robinsons could not pierce the corporate veil against him, but this became a moot issue for the trial court, which considered that landlords were not liable for injuries caused by their tenants' dogs. Because the Court did not address pierce the veil issue, the Robinsons do not appeal that issue.

published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Review should be granted under RAP 13.4(b)(1), (2), and (4). First, the Court of Appeals' decision conflicts with this Court's decision in *Nivens v. 7-11 Hoagy's Corner*, 133 Wn.2d 192, 943 P.2d 286 (1997), where this Court held that the special relationship between a business owner and its invitees creates an affirmative duty to take reasonable steps to protect against foreseeable dangers, drawing from Restatement (Second) of Torts § 315. Here, the Robinsons, as tenants, had a direct landlord-tenant relationship with the Milestone Defendants, who retained control over the common areas where the attack occurred. The Milestone Defendants had prior notice of the Nomuras' dogs' aggressive behavior after Reba Robinson's complaint on January 3, 2020, making the harm foreseeable. Yet

the Court of Appeals narrowly limited *Nivens* to criminal conduct, ignoring its broader principles of duty arising from special relationships, and also failing to consider whether dog bites are criminal conduct on the part of the dog's owner/harborer. This creates a direct conflict.

Second, the Court of Appeals' decision conflicts with the published decision in *Oliver v. Cook*, 194 Wn. App. 532, 377 P.3d 265 (2016), which held that a landlord could be liable for a tenant's injuries caused by a visiting dog when the landlord knew of the dog's vicious propensities and retained some control over the premises. In *Oliver*, Division Two found a duty under premises liability principles, emphasizing the landlord's awareness and ability to act. Although this Court in *Saralegui Blanco v. Sandoval*, 197 Wn.2d 553, 485 P.3d 326 (2021), described *Oliver* as an "outlier," it did not overrule it, and *Blanco* involved a non-tenant third party with no special relationship to the landlord. The Court of Appeals here extended *Blanco* to dismiss claims by tenants in a multi-unit complex with shared

common areas, despite the factual distinctions and *Oliver*'s recognition of potential liability in tenant-plaintiff scenarios. This inter-division conflict warrants review to resolve inconsistencies in applying landlord duties under RAP 13.4(b)(2).

Finally, this petition involves an issue of substantial public interest under RAP 13.4(b)(4). Washington has a high rate of pet ownership, with approximately 42.8% of households owning dogs statewide,[4] and a significant portion of residents living in multi-family rental housing like townhome complexes. According to recent surveys, nearly 90% of renters are pet owners and want pet friendly apartments with access to pet amenities,[5] and Washington ranks among the most pet-inclusive states for housing.[6] However, dog bites remain prevalent, with

[4] https://www.pawlicy.com/blog/us-pet-ownership-statistics/#:~:text=Washington%20Pet%20Ownership%20Stats,Washington%20households%20own%20a%20cat.

[5] https://american-apartment-owners-association.org/property-management/latest-news/what-90-of-renters-want/?srsltid=AfmBOoqA4Y9K9AK2Bjyz-GKIehnllAt9z-oups5af5CgQHJ_xdYU_FC9

[6] https://www.seattlehumane.org/2024/10/10/a-case-for-more-pet-inclusive-housing-2/#:~:text=Washington%20state%20ranks%20among%20the,a%20laundry%20list%20of%20restrictions.

an estimated 4.5 million incidents annually in the U.S., many involving children and occurring in shared spaces.[7] In Washington, strict liability applies to dog owners under RCW 16.08.040, but when the responsible party is an uninsured tenant or visitor, injured tenants—especially vulnerable groups like young children—may be left without recourse if landlords face no duty to investigate or mitigate known risks in common areas. This case raises critical questions about tenant safety in rental complexes, where landlords retain control over shared spaces and owe duties under the implied covenant of quiet enjoyment (RCW 59.18.060) to maintain habitable and safe premises. Clarifying whether landlords must protect tenants from foreseeable harms like aggressive dogs aligns with public policy promoting safe housing, preventing avoidable injuries, and ensuring equitable recovery for victims. Without review, the Court of Appeals' broad application of *Blanco* to tenant relationships could erode protections for millions of renters,

[7] https://www.washingtondogbitelawyer.com/2024-washington-dog-bite-statistics/

implicating substantial public concerns about housing safety and landlord accountability.

F. CONCLUSION

This court should accept review for the foregoing reasons and reverse the trial court's decision to dismiss the Milestone Defendants.

This document contains 1,971 words.

Respectfully submitted,

s/ Rory L. Stevens_____
Rory L. Stevens WSBA #57152
Attorney for the Robinsons

DECLARATION OF SERVICE

I declare under penalty of perjury and the laws of the State of Washington that on the below date, I delivered a true and correct copy of **PETITION FOR REVIEW** via the method stated below to these parties:

Defendants Milestone at Hudson Heights, LLC, Ronald Newman, Milestone Investment Properties, LLC, and The Milestone Companies, LLC
Kasey C. Myhra WSBA #27100
Elizabeth F. Collura & Associates,
1501 4th Ave Ste 1020
Seattle, Washington 98101
Phone: 206-326-4217

Via E-file/E-Service and email
DATED this 18th day of September, 2025 at Tukwila, Washington.

s/ *Rory L. Stevens*
Rory L. Stevens

Filed
Washington State
Court of Appeals
Division Two

June 17, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WARNER ROBINSON, a minor child, and DEVIN and REBA ROBINSON, a married couple on behalf of themselves and as Litigation Guardian Ad Litems of the minor child, Appellants, v. MILESTONE AT HUDSON HEIGHTS, LLC, a dissolved Washington state limited liability company; THE MILESTONE COMPANIES, LLC, a Washington limited liability company; MILESTONE INVESTMENT PROPERTIES, LLC, a Washington limited liability company; RONALD NEWMAN and "JOHN/JANE DOE" NEWMAN, a married couple and the marital community thereof, Respondents, HUDSON HEIGHTS HOMEOWNERS ASSOCIATION, a dissolved Washington state non-profit corporation; L. BRANDON SMITH and "JOHN/JANE DOE" SMITH, a married couple and the marital community thereof; KAYNO NOMURA, a single individual; NAOMI NOMURA, a single individual; KAHNORA NOMURA, a single individual; DOES 1-10, inclusively; and DOE CORPORATIONS 1-10, inclusively, Defendants.	No. 59361-1-II UNPUBLISHED OPINION

GLASGOW, J.—In early January 2020, Reba Robinson saw two dogs barking at a woman and her child in a common area of the townhome complex Robinson lived in with her family. Milestone at Hudson Heights owned the complex. Robinson emailed Milestone's property

manager, Tanya Chapman-Nelson, about the dogs. Chapman-Nelson investigated and discovered at least one of the dogs was visiting the Nomuras, who were also tenants in the complex. Chapman-Nelson issued a warning to the Nomuras.

About three months later, one of the same dogs bit the Robinsons' three-year-old son while he was at the common playground area of the complex with his father. The Robinsons sued the Nomuras and Milestone for negligence. The Nomuras failed to appear and default judgment was entered against them. Milestone moved for summary judgment dismissal of the claims against it, arguing that landlords could not be held liable under a premises liability theory for a dog bite on their property and that they did not have a special relationship with the Robinsons that created a duty to protect them against dog bites from dogs they did not own. The trial court granted summary judgment in favor of Milestone. The Robinsons appeal.

We conclude that all of the Robinsons' claims against Milestone arise from premises liability, and as a result *Saralegui Blanco v. Sandoval*[1] controls. *Saralegui Blanco* reaffirmed a line of cases when it concluded that dogs belonging to tenants or their guests are not conditions of the land, a necessary prerequisite to premises liability.

Although *Saralegui Blanco* did not involve an injury that occurred in a common area, the opinion did not hold that the issue of whether a dog can be a condition on the land depends on the extent of the landlord's control over the portion of the property where the injury occurred. The *Saralegui Blanco* court instead held that the only prior case treating a dog as a condition on the land was an outlier and declined to endorse or follow it.

[1] 197 Wn.2d 553, 485 P.3d 326 (2021).

Additionally, the Robinsons rely on *Nivens v. 7-11 Hoagy's Corner,*[2] also a premises liability case that declared a special relationship between business owners and invitees and created a duty to exercise reasonable care to protect invitees from foreseeable harm from third parties. Moreover, the Robinsons rely on cases holding that landlords have a duty to protect tenants from certain foreseeable dangers in common areas. But all of these cases are premises liability cases. Under *Saralegui Blanco,* premises liability in dog bite cases depends on whether the offending dog was a condition on the land, and here, the visiting dog was not. We affirm.

FACTS

I. BACKGROUND

Because this is a review of summary judgment, we describe the facts in the light most favorable to the nonmoving party, the Robinsons.

On the morning of January 3, 2020, while in her home, Reba Robinson[3] heard dogs barking and a woman screaming outside. Reba looked outside and saw two dogs aggressively barking at a woman and her child by the playground area of the townhome complex where Robinson lived. Later that morning, Reba emailed the townhomes' property manager, Tanya Chapman-Nelson, to tell her that aggressive dogs were loose in the common areas. In her email, Reba described the dogs as "German Sheppard looking" and stated she believed the dogs belonged to the Nomura family, who lived in another townhome in the complex.

The same day, Chapman-Nelson investigated the incident and did not find any dogs at the Nomura home. The Nomuras denied that the dogs belonged to them but said that their daughter's

[2] 133 Wn.2d 192, 943 P.2d 286 (1997).

[3] Where there are multiple parties who share the same last name, we use first names for clarity.

dog had been visiting them. That dog belonged to their daughter, Kahnora. The lease indicated that no animals were allowed, even temporarily, unless they had been previously authorized in writing. There were also restrictions on the breeds of dogs that would be approved. Chapman-Nelson issued the Nomuras a notice of lease violation for the reported off-leash dogs "chasing child." Clerk's Papers (CP) at 112. Chapman-Nelson did not follow up with Reba to let her know that she had taken this action.

Almost three months later, on April 1, 2020, Reba and her husband, Devin Robinson, saw one of the dogs outside their back door. Reba did not report this to Chapman-Nelson or any other management staff.

A few days later, on the evening of April 7, 2020, Devin and three-year-old Warner Robinson walked from the front of their home to the playground area. Milestone admitted it oversaw and maintained the playground area. As they arrived and Devin was about to let Warner begin playing on the equipment, Kahnora Nomura's dog, Buddha, ran out the front door of the Nomura townhome and charged at Warner. Despite Devin's efforts to protect the child by pushing Warner behind him and blocking the dog, Buddha managed to bite Warner's head and left a wound that required four staples. Reba and Devin called the police and animal control.

Reba also emailed Chapman-Nelson to tell her about the dog bite and remind Chapman-Nelson of Reba's previous complaint. In her response, Chapman-Nelson informed Reba that she had issued a notice of lease violation to the Nomuras just after the January incident.

II. PROCEDURAL HISTORY

Reba and Devin, on behalf of themselves and Warner, filed a complaint in Pierce County Superior Court against Milestone at Hudson Heights LLC; Hudson Heights Homeowners' Association; The Milestone Companies LLC; Milestone Investment Properties LLC and Ronald Newman and "John/Jane Doe" Newman (collectively, Milestone). Also included were Brandon Smith[4] and "John/Jane Doe" Smith; Kayno Nomura; Naomi Nomura; and Kahnora Nomura. The Nomura defendants failed to appear, so the trial court entered default judgment against them. They are not parties to this appeal.

The Robinsons claimed that the Nomuras were strictly liable as owners of the dog that bit their son. They also alleged a theory of liability against the Milestone defendants:

> [The Milestone] [d]efendants . . . controlled the common playground area [and] owed a duty to the Robinsons to keep the common playground area safe from known dangers. Milestone and Newman breached that duty by failing to make sure that vicious dogs were not allowed to be owned by other renters or to roam freely in the common areas of the complex, and failing to make sure that Buddha, a known, vicious dog, had been removed from the Hudson Heights Townhomes.

CP at 6-7. Other than discussing a duty to keep a common area playground safe from known dangers, the complaint did not specify the basis of their claim as strict liability, premises liability, liability based on a special relationship, or some combination of these theories.

Milestone filed a motion for summary judgment. In its motion, Milestone argued that it was not liable because "[o]nly the owner, keeper, or harborer of a dog is liable for injury caused by the dog." CP at 18. Milestone also argued in part that any premises liability claim must fail

[4] Brandon Smith was a principal of Milestone and a governor of Hudson Heights Homeowners' Association. The Robinsons agreed to voluntarily dismiss Smith prior to summary judgment.

because the dog was not a dangerous condition on the land, as required for there to be a duty under a premises liability theory.

In response, the Robinsons argued that *Saralegui Blanco* was inapplicable because that case involved the dog of a tenant who attacked someone on property that only the tenant possessed. But here, the dog bite occurred in a common area possessed and controlled by the landlord. The Robinsons argued that there was an issue of fact as to whether Milestone breached its duty to protect its tenants from foreseeable risks of injury in common areas. The Robinsons also contended that under *Nivens,* as a landowner, Milestone had a duty to protect its tenants from foreseeable harm arising from the criminal acts of third parties as a matter of law. They claimed that because Reba informed Chapman-Nelson of the prior incident with the dogs, Chapman-Nelson and Milestone had a duty to protect Warner from "the foreseeable criminal conduct of the Nomuras," including allowing their dangerous dog to attack Warner. CP at 174.

In its reply, Milestone again argued in part that under *Saralegui Blanco* the dog had to be a condition on the land for liability to attach. The Robinsons failed to show that a dog visiting other tenants in the complex was a condition on the land for purposes of a premises liability analysis. Additionally, Milestone argued that there was no special relationship between the parties and even if there were, there was no criminal conduct at issue, a necessary element of the special relationship liability claim.

The trial court ruled in favor of Milestone and granted summary judgment. The trial court reasoned that Milestone had no duty to protect the Robinsons from the dog bite. The trial court held that there was no premises liability because the dog was not a condition on the land under *Saralegui Blanco*. And Milestone did not have a duty to protect Warner, despite a special

relationship, because the duty arising under *Nivens* only applies to criminal activity, and the dog bite was not criminal.

The Robinsons appeal.

ANALYSIS

"In an action for negligence a plaintiff must prove four basic elements: (1) the existence of a duty, (2) breach of that duty, (3) resulting injury, and (4) proximate cause." *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 48, 914 P.2d 728 (1996). Duty is an issue of law, and summary judgment may be appropriately granted where the defendant had no duty to prevent the alleged injury. *Id*. We review a trial court's ruling on summary judgment de novo. *Saralegui Blanco*, 197 Wn.2d at 557.

I. PREMISES LIABILITY FOR LANDOWNERS

In cases involving premises liability, a landowner owes a duty of care to their business invitees if certain conditions are met. *Johnson v. Liquor & Cannabis Bd.*, 197 Wn.2d 605, 612, 486 P.3d 125 (2021). Washington courts apply a premises liability analysis to civil claims of liability that tenants and their guests bring against landlords for injuries occurring on the landlord's property. *Saralegui Blanco,* 197 Wn.2d at 557 (applying premises liability where a guest of a tenant was injured); *Brady v. Whitewater Creek, Inc.* 24 Wn. App. 2d 728, 745-46, 521 P.3d 236 (2022) (applying premises liability where a tenant was injured). The *Johnson* court explained:

> A possessor of land is subject to liability for physical harm caused to his invitees *by a condition on the land* if, but only if, [the possessor]
>
> (a) [knew] or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and

> (b) should expect that [the invitee] will not discover or realize the danger, or will fail to protect themselves against it, and
>
> (c) fails to exercise reasonable care to protect them against the danger.

197 Wn.2d at 612 (emphasis added) (quoting RESTATEMENT (SECOND) OF TORTS §343 (AM. L. INST. 1965)*; see also Galassi v. Lowe's Home Centers, LLC*, ___ Wn.3d ___, 565 P.3d 116, 122 (2025). Thus, in order for premises liability to attach, the injury must have been caused by a condition on the land, and the landowner's duty is to protect against injuries caused by conditions on the land.

A. Premises Liability Cases Involving Dangerous Animals

In 1990, this court declined to extend common law liability for dog bites to landlords in *Clemmons v. Fidler*, 58 Wn. App. 32, 36, 791 P.2d 257 (1990). Fidler rented out a home to the Philbrooks who owned a dog. *Id*. at 33. Clemmons brought her two-year-old son to the Philbrooks' party and as she was leaving, the child got close to the dog, which bit her son on the face, causing serious injuries. *Id*. at 33-34. Clemmons sued Fidler, the landlord, claiming that Fidler knew the dog was vicious and was therefore liable for the child's injuries. *Id*. at 34.

This court explained that under the common law at the time, a dog's owner, keeper, or harborer who knew or had reason to know that the dog was dangerous was strictly liable for injuries the dog caused. *Id*. at 34-35. The *Clemmons* court declined to extend liability to a landlord, whether or not they knew that a tenant's dog was dangerous. *Id*. at 35. The *Clemmons* court reasoned that because a landlord could not be liable to a tenant for a dangerous defect in the land caused by a tenant themselves, the landlord could not be liable to that tenant's guests for injuries caused by the same danger. *Id*. at 37. Thus, the *Clemmons* court limited liability for a dog bite to the owner, keeper, or harborer of the dog, and it declined to hold a landlord who was not an owner, keeper,

or harborer liable for the dog bite. *Id*. at 34. The landlord had no duty to protect against harm from a dog owned by a tenant. *Id*.

The Washington Supreme Court then specifically addressed premises liability involving injuries from dangerous animals in *Frobig v. Gordon*, 124 Wn.2d 732, 881 P.2d 226 (1994). The Branches leased their property to Gordon, who owned wild and domestic animals for creative endeavors. *Id*. at 733. Gordon intended to use the property for business purposes, including housing a Bengal tiger. *Id*. Gordon verbally agreed to a list of safety conditions prior to housing the animals on the property; however, none of those conditions were included in the written lease. *Id*. at 734.

With Frobig's assistance, Gordon began filming a commercial for a business on the leased property, featuring the Bengal tiger who was unleashed during the filming. *Id*. The tiger attacked Frobig, who was severely injured. *Id*. Frobig sued the Branches as landowners for negligence. *Id*. at 735. The trial court granted summary judgment in favor of the Branches, dismissing the claims against them. *Id*. The Court of Appeals reversed the trial court, concluding the landlord could be liable under the theory that a landowner has a duty to take reasonable steps to protect third parties from foreseeable injuries. *Frobig v. Gordon,* 69 Wn. App. 570, 576, 849 P.2d 676 (1993).

The Washington Supreme Court reversed the Court of Appeals and affirmed summary judgment dismissal, focusing instead on the animal owner's control over the animal. *Frobig,* 124 Wn.2d at 735, 741. The Supreme Court rejected the reasoning in cases from other states that imposed a duty on landlords to act to enforce lease provisions to prevent injuries to third parties. *Id.* at 739-40. The Supreme Court reasoned that had Gordon adhered to the precautions agreed to prior to signing the lease, the injuries would not have occurred as they did. *Id*. at 739. The Supreme

Court ultimately held "that landlords have no duty to protect third parties from a tenant's lawfully owned but dangerous animals." *Id*. at 740-41.

Division Two later addressed premises liability for a dog bite in *Oliver v. Cook*, 194 Wn. App. 532, 377 P.3d 265 (2016). Oliver leased property from Mero to conduct his auto repair business. *Id*. at 535. One day, Mero's friend Cook brought his dog, Scrappy, to the property and left Scrappy in Mero's truck with the window partially down. *Id*. Mero knew that Scrappy could be aggressive. *Id.* Scrappy had a history of injuring another dog and aggressively chasing a child. *Id*. at 536. When Oliver arrived, he walked past the truck and Scrappy lunged out of the window, biting Oliver in the face and ripping off a piece of his nose. *Id*. at 535-36.

Mero was one of the parties that Oliver sued, alleging negligence under a premises liability theory. *Id*. at 536, 544. Mero moved for summary judgment and the trial court dismissed Oliver's claim. *Id*. at 538. Division Two reversed, finding there was an issue of material fact as to whether Mero breached a duty to Oliver under premises liability theory. *Id*. at 544. This court recognized that premises liability was a distinct claim from strict liability for an owner, keeper, or harborer of a dangerous animal and reasoned that prior dog bite cases had not addressed the distinct premises liability theory. *Id*. at 543, 545. In analyzing premises liability, this court stated, without further discussion, that Scrappy was a condition on the land. *Id*. at 544. This court concluded that summary judgment was not appropriate because there were issues of fact as to whether Mero, as the landowner, breached a duty to Oliver, as a business invitee, to make the property reasonably safe from dangers an invitee might not anticipate. *Id.* at 546. Thus, this court allowed the premises liability claim to proceed.

However, in 2021 the Washington Supreme Court decided *Saralegui Blanco*, describing *Oliver* as an outlier and declining to follow its reasoning, instead concluding that a dog was not a condition on the land. 197 Wn.2d at 555. The Sandoval family rented a single-family home from the Hernandezes. Two years after they moved in, the Sandovals got a puppy, notified the Hernandezes and, with their consent, built a wire fence around the yard. *Id*. Two years after they got the dog, Saralegui Blanco was visiting with one of the Sandovals in the driveway. *Id*. At the time, the dog was in the fenced in yard. *Id.* At the end of the conversation, Saralegui Blanco claimed she saw the dog jump over the fence, while Sandoval claimed the dog went through a hole in the fence. *Id*. at 556. The "dog then knocked Saralegui Blanco to the ground, attacked her, and bit her ear." *Id*. Prior to the attack, Saralegui Blanco had visited the home a number of times and knew about the dog. *Id*. The Hernandezes had seen the dog once before and never had any issues with the Sandovals or the dog. *Id*.

Saralegui Blanco brought claims against the Hernandezes as landowners under both strict liability and premises liability. *Id*. The Hernandezes moved for summary judgment and the trial court granted the motion, dismissing Saralegui Blanco's claims against the landlords. *Id*. The Washington Supreme Court granted review only on the issue of premises liability. *Id*. at 557. The court addressed the dissonance between *Frobig* and *Oliver*, and declared *Oliver* to be an outlier. *Id*. at 563.

Although the Supreme Court discussed the fact that the injury did not occur on property that the landlord still possessed, nor did it occur in a common area, *id* at 559-62, the Supreme Court identified another independent reason why the landlord could not be liable under a premises

liability theory—there was "no basis to find the dog was a dangerous condition on the land, as required to establish a duty." *Id.* at 562. The court explained:

> Under our cases, the conditions generally associated with premises liability duties involve physical features of the property. *See Adamson,* 193 Wn.2d at 188-89 (passenger ramp at a port); *Curtis v. Lein,* 169 Wn.2d 884, 890-91, 239 P.3d 1078 (2010) (wooden dock); *Iwai v. State,* 129 Wn.2d 84, 95, 915 P.2d 1089 (1996) (natural accumulations of snow and ice in a parking lot); *Degel,* 129 Wn.2d at 51-54 (natural body of water on the property); *Tincani v. Inland Empire Zoological Soc'y,* 124 Wn.2d 121, 137, 875 P.2d 621 (1994) (cliff drop off); *Geise,* 84 Wn.2d at 870 (accumulations of snow and ice).

Saralegui Blanco, 197 Wn.2d at 563. A tenant's animal is not a physical feature of the property that the landowner owns. The court further explained that *Oliver* was "best described as an outlier to the extent some language suggests the court there considered an animal to be a condition [on] the land." *Id*.

The court also stated, "The general rule, as reflected in *Frobig* and *Clemmons,* is that a nonpossessor landlord is not liable for injuries caused by a tenant's dog." *Id.* And the court "decline[d] to stray from the general rule" in that case and concluded "there [was] no basis to regard the possessing tenants' dog as a dangerous condition on the land." *Id*. Although these statements mentioned possession of the land, the court's overall reasoning and its rejection of *Oliver* made it clear that the court did not consider an animal the landowner did not own to be a condition on the land for purposes of premises liability. Indeed, holding otherwise would depart from *Clemmons,* as well as *Frobig*'s holding that "landlords have no duty to protect third parties from a tenant's lawfully owned but dangerous animals." *Frobig,* 124 Wn.2d at 740-41.

Saralegui Blanco alternatively argued that the fence was a dangerous condition on the land because it was inadequate to contain the dog. 197 Wn.2d at 563. The court rejected this argument,

recognizing instead that it was the dog—that the Sandovals brought onto the property—that caused the injury. *Id.*

In sum, under *Frobig* and *Saralegui Blanco*, a landlord cannot be liable under a premises liability theory for an injury caused by an animal belonging to a tenant or tenant's guest because a such an animal is not a condition on the land. Had the Supreme Court believed otherwise, it would have overruled *Frobig* and adopted the reasoning in *Oliver,* rather than calling *Oliver* an outlier and declining to follow it.

B. The Robinsons' Premises Liability Claim Is Barred Because the Nomura's Dog Was Not a Condition on the Land

Milestone is correct that *Saralegui Blanco* held that the dangerous dog in that case was not a condition on the land, a prerequisite to premises liability. Applying the holding of *Saralegui Blanco* here, the Nomuras' dog, which was visiting the property when it bit Warner, was not a condition on the land. Nothing in the record showed that the dog was a physical feature of the property. Instead, it is undisputed that the dog came and went from the property with the Nomuras' daughter. Because the dog was not a condition on the land, the trial court properly dismissed the Robinsons' premises liability claim against Milestone, relying on *Saralegui Blanco.*

Although the *Saralegui Blanco* court also discussed whether the landlord had possession over the portion of the property where the injury took place, the fact that Warner's injury arguably occurred in a common area does not change this result. The *Saralegui Blanco* court discussed the fact that the dog was not a condition on the land as an independent basis for dismissal because premises liability requires that the injury be caused by a condition on the land. To hold otherwise would make landlords liable for transient conditions created by their tenants, a result that the

Washington Supreme Court has rejected, expressly declining to follow this court's statement that a dog could be a condition on the land.

Instead of departing from the Supreme Court's reasoning in *Saralegui Blanco,* the trial court here followed that case and also ruled consistently with the longstanding principle that it is the owner, keeper, or harborer of the dangerous dog who is liable for injuries the dog causes. We conclude that the trial court did not err when it dismissed the Robinsons' premises liability claim on summary judgment because the Nomuras' visiting dog was not a condition on the land.

II. SPECIAL RELATIONSHIP

The Robinsons also argue that the trial court erred in dismissing their theory that Milestone owed the Robinsons a duty based on a special relationship. But the special relationship that the Robinsons rely on is that of a landowner to their invitee, or more specifically, a landlord and tenant. But the basis for liability in these circumstances remains premises liability, and thus, the requirement that an animal that caused injury be a condition on the land still applies.

A. *Nivens* Did Not Eliminate the Requirement That an Animal Be a Condition on the Land

The Washington Supreme Court addressed a special relationship in *Nivens*, a landowner's duty to protect business invitees from certain foreseeable injuries. Nivens was assaulted in the parking lot of a convenience store and he sued the landowner, alleging that they were negligent for failing to provide adequate security measures, including hiring security guards. 133 Wn.2d at 194-96. The court rejected the idea that the business owner had a duty to hire onsite security; however, the court expressly recognized that "a special relationship exists between a business and an invitee because the invitee enters the business premises for the economic benefit of the business." *Id*. at 202.

After declaring that this special relationship exists, the court expressly adopted *Restatement (Second) of Torts* §344, which states that a landowner who holds land open to the public owes a duty in certain circumstances to warn invitees or protect them against harm inflicted by third parties. *Id.* at 203-04. The *Nivens* court also explained limitations on this duty, stating that a possessor of land is not an insurer of an invitee's safety, but the possessor must exercise reasonable care to give invitees protection from foreseeable injury. *Id.* at 204 (discussing comments to §344). Because *Nivens* involved a third party's criminal conduct, the *Nivens* court held, "[A] business owes a duty to its invitees to protect them from imminent criminal harm and reasonably foreseeable criminal conduct by third persons." *Id.* at 205.

Here, the Robinsons fail to recognize that *Nivens* involved a specific type of premises liability for hazards created by the "conduct of people, particularly criminal conduct," as distinguished from physical hazards. *Id.* at 199. Although *Nivens* discussed the duty to keep business invitees safe from third party criminal conduct in certain circumstances, *Nivens* did not adopt any holding involving other types of hazards on the land. Nothing in *Nivens* eliminated the prerequisite that where an injury is caused by a dangerous animal, the animal must be a condition on the land before premises liability can arise.

B. A Landlord's Duty to Maintain Common Areas Is Also Based on Premises Liability

The Robinsons also argue that landlords have "'an affirmative obligation to maintain common areas in a reasonably safe condition for a tenant or [their] guest,"' Br. of Appellants at 30, relying on *Sjogren v. Properties. of Pacific. Northwest, LLC*, 118 Wn. App. 144, 75 P.3d 592 (2003) and similar cases. Generally, a landlord has no duty to protect a tenant from open and obvious dangers in a common area; however, in limited circumstances, a duty arises where the

landlord should anticipate the harm despite the obviousness of the danger. *Sjogren*, 118 Wn. App. at 149. A duty may therefore arise where it is foreseeable that a tenant or guest may fail to protect themselves against even an obvious danger in a common area. *Id.*

Here again, the theory of liability the Robinsons rely on arises from premises liability. *Sjogren* is a premises liability case that relies on *Frobig* and other premises liability authorities. *Id.* at 148-50. As discussed above, under the premises liability analysis specific to injuries caused by animals, the Robinsons must establish the dangerous animal was a condition on the land, something they fail to do after *Saralegui Blanco.* Thus, we hold that the trial court did not err when it dismissed the Robinsons' special relationship claim, which inheres in premises liability.[5]

CONCLUSION

We conclude that the Robinsons argue only two avenues for a landowner to be held liable for a dog bite under current Washington law: strict liability for those who own, keep, or harbor the offending dog; and premises liability, which requires that the offending dog be a condition on the land. The cases the Robinsons rely on that discuss a special relationship between landlords and tenants are premises liability cases, so even under a special relationship analysis, the dog must have been a condition on the land. Because Milestone did not own, keep, harbor, or control the offending dog, and the dog was not a condition on the land under *Saralegui Blanco,* Milestone did not have a duty to protect the Robinsons from the dog visiting the Nomuras. But the Robinsons could recover from the Nomuras, who owned, kept, or harbored the offending dog. We affirm.

[5] In their reply, the Robinsons raise for the first time other bases for liability, like a failure to investigate and negligent failure to warn. Reply Br. of Appellants at 27. But these claims were not articulated in the compliant, nor were they raised below. As a result, we do not address them further.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

GLASGOW, J.

We concur:

IJJ, J.

VELJACIC, A.C.J.

Filed
Washington State
Court of Appeals
Division Two

August 19, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WARNER ROBINSON, a minor child, and DEVIN and REBA ROBINSON, a married couple on behalf of themselves and as Litigation Guardian Ad Litems of the minor child,

Appellants,

v.

MILESTONE AT HUDSON HEIGHTS, LLC, a dissolved Washington state limited liability company; THE MILESTONE COMPANIES, LLC, a Washington limited liability company; MILESTONE INVESTMENT PROPERTIES, LLC, a Washington limited liability company; RONALD NEWMAN and "JOHN/JANE DOE" NEWMAN, a married couple and the marital community thereof,

Respondents,

HUDSON HEIGHTS HOMEOWNERS ASSOCIATION, a dissolved Washington state non-profit corporation; L. BRANDON SMITH and "JOHN/JANE DOE" SMITH, a married couple and the marital community thereof; KAYNO NOMURA, a single individual; NAOMI NOMURA, a single individual; KAHNORA NOMURA, a single individual; DOES 1-10, inclusively; and DOE CORPORATIONS 1-10, inclusively,

Defendants.

No. 59361-1-II

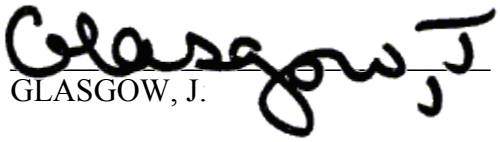
ORDER DENYING MOTION FOR RECONSIDERATION

The unpublished opinion in this matter was filed June 17, 2025. On July 7, 2025, appellants moved for reconsideration. After consideration, it is hereby

ORDERED that appellants' motion for reconsideration is denied.

PANEL: Jj. Lee, Glasgow, Veljacic.

FOR THE COURT



GLASGOW, J.

Chapter Listing | RCW Dispositions

Chapter 16.08 RCW

DOGS

Sections

RCW 16.08.010

Liability for injury to stock by dogs.

The owner or keeper of any dog shall be liable to the owner of any animal killed or injured by such dog for the amount of damages sustained and costs of collection, to be recovered in a civil action.

[1985 c 415 s 14; 1929 c 198 s 5; RRS s 3106. Prior: 1919 c 6 s 5; RCS s 3106.]

RCW 16.08.020

Dogs injuring stock may be killed.

It shall be lawful for any person who shall see any dog or dogs chasing, biting, injuring or killing any sheep, swine or other domestic animal, including poultry, belonging to such person, on any real property owned or leased by, or under the control of, such person, or on any public highway, to kill such dog or dogs, and it shall be the duty of the owner or keeper of any dog or dogs so found chasing, biting or injuring any domestic animal, including poultry, upon being notified of that fact by the owner of such

domestic animals or poultry, to thereafter keep such dog or dogs in leash or confined upon the premises of the owner or keeper thereof, and in case any such owner or keeper of a dog or dogs shall fail or neglect to comply with the provisions of this section, it shall be lawful for the owner of such domestic animals or poultry to kill such dog or dogs found running at large.

[**1929 c 198 s 6**; RRS s 3107. Prior: **1919 c 6 s 6**; **1917 c 161 s 6**; RCS s 3107.]

RCW 16.08.040

Dog bites—Liability.

(1) The owner of any dog which shall bite any person while such person is in or on a public place or lawfully in or on a private place including the property of the owner of such dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.

(2) This section does not apply to the lawful application of a police dog, as defined in RCW **4.24.410**.

[**2012 c 94 s 1**; **1941 c 77 s 1**; Rem. Supp. 1941 s 3109-1.]

RCW 16.08.050

Entrance on private property, when lawful.

A person is lawfully upon the private property of such owner within the meaning of RCW **16.08.040** when such person is upon the property of the owner with the express or implied consent of the owner: PROVIDED, That said consent shall not be presumed when the property of the owner is fenced or reasonably posted.

[**1979 c 148 s 1**; **1941 c 77 s 2**; Rem. Supp. 1941 s 3109-2.]

RCW 16.08.060

Provocation as a defense.

Proof of provocation of the attack by the injured person shall be a complete defense to an action for damages.

[**1941 c 77 s 3**; Rem. Supp. 1941 s 3109-3.]

RCW 16.08.070

Dangerous dogs and related definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 16.08.070 through 16.08.100.

(1) "Potentially dangerous dog" means any dog that when unprovoked: (a) Inflicts bites on a human or a domestic animal either on public or private property, or (b) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals.

(2) "Dangerous dog" means any dog that (a) inflicts severe injury on a human being without provocation on public or private property, (b) kills a domestic animal without provocation while the dog is off the owner's property, or (c) has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans.

(3) "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

(4) "Proper enclosure of a dangerous dog" means, while on the owner's property, a dangerous dog shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top, and shall also provide protection from the elements for the dog.

(5) "Animal control authority" means an entity acting alone or in concert with other local governmental units for enforcement of the animal control laws of the city, county, and state and the shelter and welfare of animals.

(6) "Animal control officer" means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this chapter or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals, and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal.

(7) "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of an animal.

[2002 c 244 s 1; 1987 c 94 s 1.]

NOTES:

Severability—1987 c 94: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 94 s 6.]

RCW 16.08.080

Dangerous dogs—Notice to owners—Right of appeal—Certificate of registration required—Surety bond—Liability insurance—Restrictions.

(1) Any city or county that has a notification and appeal procedure with regard to determining a dog within its jurisdiction to be dangerous may continue to utilize or amend its procedure. A city or county animal control authority that does not have a notification and appeal procedure in place as of June 13, 2002, and seeks to declare a dog within its jurisdiction, as defined in subsection (7) of this section, to be dangerous must serve notice upon the dog owner in person or by regular and certified mail, return receipt requested.

(2) The notice must state: The statutory basis for the proposed action; the reasons the authority considers the animal dangerous; a statement that the dog is subject to registration and controls required by this chapter, including a recitation of the controls in subsection (6) of this section; and an explanation of the owner's rights and of the proper procedure for appealing a decision finding the dog dangerous.

(3) Prior to the authority issuing its final determination, the authority shall notify the owner in writing that he or she is entitled to an opportunity to meet with the authority, at which meeting the owner may give, orally or in writing, any reasons or information as to why the dog should not be declared dangerous. The notice shall state the date, time, and location of the meeting, which must occur prior to expiration of fifteen calendar days following delivery of the notice. The owner may propose an alternative meeting date and time, but such meeting must occur within the fifteen-day time period set forth in this section. After such meeting, the authority must issue its final determination, in the form of a written order, within fifteen calendar days. In the event the authority declares a dog to be dangerous, the order shall include a recital of the authority for the action, a brief concise statement of the facts that support the determination, and the signature of the person who made the determination. The order shall be sent by regular and certified mail, return receipt requested, or delivered in person to the owner at the owner's last address known to the authority.

(4) If the local jurisdiction has provided for an administrative appeal of the final determination, the owner must follow the appeal procedure set forth by that jurisdiction. If the local jurisdiction has not provided for an administrative appeal, the owner may appeal a municipal authority's final determination that the dog is dangerous to the municipal court, and may appeal a county animal control authority's or county sheriff's final determination that the dog is dangerous to the district court. The owner must make such appeal within twenty days of receiving the final determination. While the appeal is pending, the authority may order that the dog be confined or controlled in compliance with RCW **16.08.090**. If the dog is determined to be dangerous, the owner must pay all costs of confinement and control.

(5) It is unlawful for an owner to have a dangerous dog in the state without a certificate of registration issued under this section. This section and RCW **16.08.090** and **16.08.100** shall not apply to police dogs as defined in RCW **4.24.410**.

(6) Unless a city or county has a more restrictive code requirement, the animal control authority of the city or county in which an owner has a dangerous dog shall issue a certificate of registration to the owner of such animal if the owner presents to the animal control unit sufficient evidence of:

(a) A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog;

(b) A surety bond issued by a surety insurer qualified under chapter **48.28** RCW in a form acceptable to the animal control authority in the sum of at least two hundred fifty thousand dollars, payable to any person injured by the dangerous dog; or

(c) A policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under Title **48** RCW in the amount of at least two hundred fifty thousand dollars, insuring the owner for any personal injuries inflicted by the dangerous dog.

(7)(a)(i) If an owner has the dangerous dog in an incorporated area that is serviced by both a city and a county animal control authority, the owner shall obtain a certificate of registration from the city authority;

(ii) If an owner has the dangerous dog in an incorporated or unincorporated area served only by a county animal control authority, the owner shall obtain a certificate of registration from the county authority;

(iii) If an owner has the dangerous dog in an incorporated or unincorporated area that is not served by an animal control authority, the owner shall obtain a certificate of registration from the office of the local sheriff.

(b) This subsection does not apply if a city or county does not allow dangerous dogs within its jurisdiction.

(8) Cities and counties may charge an annual fee, in addition to regular dog licensing fees, to register dangerous dogs.

(9) Nothing in this section limits a local authority in placing additional restrictions upon owners of dangerous dogs. This section does not require a local authority to allow a dangerous dog within its jurisdiction.

[**2002 c 244 s 2**; **1989 c 26 s 3**; **1987 c 94 s 2**.]

NOTES:

Severability—1987 c 94: See note following RCW **16.08.070**.

RCW 16.08.090

Dangerous dogs—Requirements for restraint—Potentially dangerous dogs—Dogs not declared dangerous.

(1) It is unlawful for an owner of a dangerous dog to permit the dog to be outside the proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under physical restraint of a responsible person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

(2) Potentially dangerous dogs shall be regulated only by local, municipal, and county ordinances. Nothing in this section limits restrictions local jurisdictions may place on owners of potentially dangerous dogs.

(3) Dogs shall not be declared dangerous if the threat, injury, or damage was sustained by a person who, at the time, was committing a wilful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog or was committing or attempting to commit a crime.

[**1987 c 94 s 3**.]

NOTES:

Severability—1987 c 94: See note following RCW **16.08.070**.

RCW 16.08.100

Dangerous dogs—Confiscation—Conditions—Duties of animal control authority —Penalties and affirmative defenses for owners of dogs that attack.

(1) Any dangerous dog shall be immediately confiscated by an animal control authority if the: (a) Dog is not validly registered under RCW **16.08.080**; (b) owner does not secure the liability insurance coverage required under RCW **16.08.080**; (c) dog is not maintained in the proper enclosure; or (d) dog is outside of the dwelling of the owner, or outside of the proper enclosure and not under physical restraint of the responsible person. The owner must pay the costs of confinement and control. The animal control authority must serve notice upon the dog owner in person or by regular and certified mail, return receipt requested, specifying the reason for the confiscation of the dangerous dog, that the owner is responsible for payment of the costs of confinement and control, and that the dog will be destroyed in an expeditious and humane manner if the deficiencies for which the dog was confiscated are not corrected within twenty days. The animal control authority shall destroy the confiscated dangerous dog in an expeditious and humane manner if any deficiencies required by this subsection are not corrected within twenty days of notification. In addition, the owner shall be guilty of a gross misdemeanor punishable in accordance with RCW **9A.20.021**.

(2) If a dangerous dog of an owner with a prior conviction under this chapter attacks or bites a person or another domestic animal, the dog's owner is guilty of a class C felony, punishable in accordance with RCW **9A.20.021**. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that he or she was in compliance with the requirements for ownership of a dangerous dog pursuant to this chapter and the person or domestic animal attacked or bitten by the defendant's dog trespassed on the defendant's real or personal property or provoked the defendant's dog without justification or excuse. In addition, the dangerous dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

(3) The owner of any dog that aggressively attacks and causes severe injury or death of any human, whether or not the dog has previously been declared potentially dangerous or dangerous, shall,

upon conviction, be guilty of a class C felony punishable in accordance with RCW **9A.20.021**. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the human severely injured or killed by the defendant's dog: (a) Trespassed on the defendant's real or personal property which was enclosed by fencing suitable to prevent the entry of young children and designed to prevent the dog from escaping and marked with clearly visible signs warning people, including children, not to trespass and to beware of dog; or (b) provoked the defendant's dog without justification or excuse on the defendant's real or personal property which was enclosed by fencing suitable to prevent the entry of young children and designed to prevent the dog from escaping and marked with clearly visible signs warning people, including children, not to trespass and to beware of dog. In such a prosecution, the state has the burden of showing that the owner of the dog either knew or should have known that the dog was potentially dangerous as defined in this chapter. The state may not meet its burden of proof that the owner should have known the dog was potentially dangerous solely by showing the dog to be a particular breed or breeds. In addition, the dog shall be immediately confiscated by an animal control authority, quarantined, and upon conviction of the owner destroyed in an expeditious and humane manner.

[**2020 c 158 s 1**; **2002 c 244 s 3**; **1987 c 94 s 4**.]

NOTES:

Severability—1987 c 94: See note following RCW **16.08.070**.

RCW 16.08.110

Breed-based regulations.

(1) A city or county may not prohibit the possession of a dog based upon its breed, impose requirements specific to possession of a dog based upon its breed, or declare a dog dangerous or potentially dangerous based on its breed unless all of the following conditions are met:

(a) The city or county has established and maintains a reasonable process for exempting any dog from breed-based regulations or a breed ban if the dog passes the American kennel club canine good citizen test or a reasonably equivalent canine behavioral test as determined by the city or county;

(b) Dogs that pass the American kennel club canine good citizen test or a reasonably equivalent canine behavioral test are exempt from breed-based regulations for a period of at least two years;

(c) Dogs that pass the American kennel club canine good citizen test or a reasonably equivalent canine behavioral test are given the opportunity to retest to maintain their exemption from breed-based regulations; and

(d) Dogs that fail the American kennel club canine good citizen test or a reasonably equivalent canine behavioral test are given the opportunity to retest within a reasonable period of time, as determined by the city or county.

(2) This section does not apply to the act of documenting either a dog's breed or its physical appearance, or both, solely for identification purposes when declaring a dog dangerous or potentially

dangerous.

(3) For the purpose of this section, "dog" means a domesticated member of the family canidae, specifically species *Canus lupus familiaris*, and excludes nondomesticated members of the family canidae and any hybrids thereof, including but not limited to wolves, coyotes, wolf-dog hybrids, and coyote-dog hybrids.

[**2019 c 199 s 2**.]

NOTES:

Findings—Intent—2019 c 199: "(1) A number of local jurisdictions have enacted ordinances prohibiting or placing additional restrictions on specific breeds of dogs. While the legislature recognizes that local jurisdictions have a valid public safety interest in protecting citizens from dog attacks, the legislature finds that a dog's breed is not inherently indicative of whether or not a dog is dangerous and that the criteria for determining whether or not a dog is dangerous or potentially dangerous should be focused on the dog's behavior.

(2) The legislature further finds that breed-specific ordinances fail to address the factors that cause dogs to become aggressive and place an undue hardship on responsible dog owners who provide proper socialization and training. The legislature intends to encourage local jurisdictions to more effectively and fairly control dangerous dogs and enhance public safety by focusing on dogs' behavior rather than their breeds." [**2019 c 199 s 1**.]

Effective date—2019 c 199: "This act takes effect January 1, 2020." [**2019 c 199 s 3**.]

STEVENS LAW PLLC

September 18, 2025 - 3:14 PM

Transmittal Information

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Appellate Court Case Number:	59361-1
Appellate Court Case Title:	Warner Robinson, Devin, & Reba Robinson, Appellants v. Milestone Hudson Heights, et al., Respondents
Superior Court Case Number:	22-2-07908-3

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