

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA09-1055

PAM MILLS, as parent and next friend of
CHRISTIAN CAPLES, a minor

APPELLANT

V.

MARIE FINCH

APPELLEE

Opinion Delivered FEBRUARY 24, 2010

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. CV09-188]

HONORABLE SANDY HUCKABEE,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

The issue in this case is simple: under Arkansas law, does a landlord have a duty to protect third parties from an animal owned by his or her tenant when the landlord knows that the animal has violent propensities? The Lonoke County Circuit Court answered the question in the negative, and it dismissed a lawsuit filed by Pamela Mills on behalf of her seven-year-old daughter, Christian Caples. Mills appeals from the circuit court’s ruling. The circuit court correctly found that Marie Finch had no duty to protect Christian against Finch’s tenant’s dog. Accordingly, we affirm.

According to Mills’s complaint, Christian was playing in her yard when a dog owned by Joe Stocks came into the yard. When Christian reached to pet the dog, the dog viciously attacked her, resulting in serious injuries. Stocks was renting a nearby residence from Finch, and

Mills alleged that Finch was aware that the dog had a propensity to be vicious and could attack without provocation. Mills sought damages for Christian's injuries, medical expenses, pain and suffering, and scarring. Finch responded, in part, by filing a motion to dismiss pursuant to Arkansas Rule of Civil Procedure 12(b)(6), wherein she argued that she owed Christian no duty of care to protect her from Stocks's dog. In so arguing, Finch relied on *Bryant v. Putnam*, 322 Ark. 284, 908 S.W.2d 338 (1995), citing it for the proposition that a landlord had no duty to protect third parties from a tenant's animals. After considering arguments from counsel, the court agreed with Finch and her interpretation of *Bryant*. An order dismissing the suit was entered on July 1, 2009, and this appeal followed.

The arguments before this court are the same as those before the circuit court. Mills argues that Finch had a duty to protect third parties from the dangerous propensities of Stocks's dog. Finch still relies on the *Bryant* decision and contends that she had no duty to protect Christian from Stocks's dog.

We review a circuit court's decision to grant a motion to dismiss pursuant to Rule 12(b)(6) by treating the facts alleged in the complaint as true and by viewing them in the light most favorable to the plaintiff. *See Biedenbarn v. Thicksten*, 361 Ark. 438, 206 S.W.3d 837 (2005). In viewing the facts in the light most favorable to the plaintiff, the facts should be liberally construed in the plaintiff's favor. *See id.*

In order to prove negligence, there must be a failure to exercise proper care in the performance of a legal duty which the defendant owed the plaintiff under the circumstances

surrounding them. *Marlar v. Daniel*, 368 Ark. 505, 247 S.W.3d 473 (2007). The law of negligence requires as essential elements that the plaintiff show that a duty was owed and that the duty was breached. *Id.* The question of what duty, if any, is owed a plaintiff alleging negligence is always a question of law and never one for the jury. *Id.*

In *Bryant*, the appellant sued for damages after he was attacked by dogs owned by the appellees' tenant. The appellant alleged that the appellees were negligent, in part, because they failed to provide adequate fencing in violation of a local ordinance that prohibited dogs from running at large. However, the appellant did not present proof showing that the appellees knew of the dogs' dangerous propensities. The trial court found that Arkansas law imposed no liability on landlords to third parties injured by a tenant's animals, and our supreme court agreed. The appellees also moved for Rule 11 sanctions, contending that the appellant had no good-faith basis for bringing the suit. The trial court denied the motion for sanctions, and the supreme court agreed, holding that the appellant had the right to advocate a change in the law.

Mills has presented facts suggesting that Finch was aware of the dog's dangerous propensities. She contends that, because of this distinguishing fact, *Bryant* is inapplicable and urges us to adopt the law from other jurisdictions that hold a landlord liable to third parties when the landlord is aware of a tenant's dog's dangerous propensities. Contrary to her argument, however, the court in *Bryant* made no distinction between a landlord who was aware of a tenant's animal's dangerous propensities and a landlord who was not. In either case, a landlord is not responsible to third parties who are harmed by animals owned by their tenants.

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This is consistent with the general rule in Arkansas that a landlord is not responsible for harm that comes to tenants or third parties. *See generally* Howard Brill, *Arkansas Law of Damages* § 25:9 (5th ed.).

We hold that a landlord has no duty to protect third parties from their tenant's animals, even if the landlord knows that the animal has the propensity to be dangerous. Thus, the circuit court properly dismissed Mills's complaint against Finch, and we affirm.

Affirmed.

HART and GLADWIN, JJ., agree.