

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

ISOBEL McGIVERN

-v-

PATRICK AND ELLEN GREEN

MORGAN J

[1] The plaintiff claims damages as a result of injuries she received when she fell at Milford Street Belfast at its junction with Lisfadden Crescent. She alleges that the fall was caused by two Alsatian dogs of which the defendants were the keeper. By virtue of article 29 (1) of the Dogs (Northern Ireland) Order 1983 the keeper of a dog which attacks a person commits an offence. That offence is actionable by virtue of article 53 of the said Order.

[2] The plaintiff was born on 11 March 1931. She says that at 7:30 p.m. on 2 August 2001 she was walking along Milford Street towards her home. She noticed two Alsatian dogs in the garden of a house at the junction of Milford Street with Lisfadden Crescent. As she walked past the junction she was attacked by two dogs which were very boisterous and had their paws up on her shoulders causing her to fall. She next remembers being brought to hospital. She suffered a fracture of her upper right tibia and fibula. She required manipulation under anaesthetic with closed reduction which was carried out on 4 August 2001. She had a long leg plaster of Paris for 12 weeks and a cast brace for a further five weeks. She then required physiotherapy and assistance by way of carers for a further period of months. As a result of this incident she no longer leaves the house on her own. She has a fear of dogs and a fear of falling. She uses a walking stick when she is out. Her social activities, including the ability to look after her grandchildren, have been restricted and she has suffered a loss of independence.

[3] In cross-examination she agreed that the garden in which she had seen the dogs was behind her at the time of her fall. She did not see where the dogs which attacked her had come from. She did not know who owned the house in which she had seen the dogs. It was common case that this house was next door to that occupied by the defendants. She did not see the dogs in that garden going over the fence. She agreed that the dogs which she had seen would have to get over the railings of the garden. She said she did not remember being visited by the defendants when she was in hospital. She said that her daughters had told her that the defendants had visited her. At the time she had been prepared for theatre. It was put to her that she said that the dogs belonging to Mr and Mrs Green had nothing to do with the accident. She said that she did not remember any such conversation.

[4] Evidence was given by the plaintiff's daughter. She described how her mother had been prepared for theatre on Friday but the operation had not been performed until Saturday. She said that the defendants arrived at the hospital on Friday evening with cordial and flowers to apologise. She said her mother did not engage in dialogue because she had been prepared for theatre. The defendants spoke to the daughter and apologised.

[5] In cross-examination she agreed that her brother was in Spain at the time. It was suggested to her that the Greens had decided to visit solely as good neighbours. She said that she had a clear recollection of the apology and that her mother was not capable of taking part in the conversation because of her medical condition.

[6] The first named defendant took no part in the hearing but both defendants admitted in their defence that they were the owners of 1 Lisfadden Crescent Belfast and the owners and keepers of two Alsatian dogs on the day of the accident. The second named defendant said that the two Alsatian puppies were outside with the children at lunchtime on the day of the accident. She says that they were locked up by about 5:30 p.m. that day. She says that she became aware from conversation in the neighbourhood that the plaintiff had fallen at the top of the street. She says she had the impression that the fall had occurred at lunchtime and consequently believed that her dogs might have been involved. She said that there were three or four other Alsatian dogs in the general vicinity. She said that she decided that she and her husband should visit the plaintiff because if the dogs were involved it would be an opportunity to get rid of them. She said she knew that the plaintiff's son was away and did not know if other members of the family were away. At the hospital she said that she spoke to the plaintiff and her daughter. She asked the plaintiff if the dogs had anything to do with the fall. She said that she asked this question because she was trying to get rid of the dogs. She said that the plaintiff told her in hospital that she had stumbled

and fallen on Thursday and had stumbled and fallen again on the day of Mrs Green's visit.

[7] In cross-examination Mrs Green said she thought the visit was on Saturday. She said she believed at that time that the fall had occurred at lunchtime on that day. She said that the plaintiff told her that she had been falling a lot recently. She said that the plaintiff did not suggest that any dogs were responsible for her fall. At first she said that the plaintiff never mentioned dogs. Then she said that the plaintiff mentioned the two Alsatians and described them as boisterous puppies but said they were not involved. She said that in the course of a general conversation when a neighbour advised her that the plaintiff had fallen it was suggested to her that the plaintiff might make a fraudulent claim on the basis that she had been knocked down by the Greens' dogs. She said that she had asked if the dogs were involved because she wanted rid of them.

[8] On the balance of probabilities I consider that Mrs Green's evidence was untruthful. The allegation that the plaintiff said that she had been falling a lot recently was never put to the plaintiff. I am satisfied on the balance of probabilities that this was an invention by Mrs Green in order to seek to avoid liability. She contradicted herself in relation to whether the plaintiff mentioned dogs. She said initially that the plaintiff had not mentioned dogs and then she made up an account in order to excuse her puppies. In her direct evidence she suggested that the reason for her going to visit the plaintiff in hospital was as a good neighbour. In cross-examination she said that her intention was to establish the involvement of her dogs in the incident so as to get rid of them. I am satisfied on the balance of probabilities that neither of these accounts is correct and that the purpose of the visit was to try to avoid any adverse consequence for the dogs. I am further satisfied that both defendants apologised and admitted that their dogs were involved at the hospital as alleged by the plaintiff's daughter.

[9] On the available evidence I am satisfied that the plaintiff was attacked by the two Alsatians of which the defendants were the keepers and that the defendants are, therefore, liable for the injuries sustained by the plaintiff.

[10] The plaintiff sustained a nasty fracture of the tibia and fibula. Although the fractures ought not to give rise to any degenerative change there has been a significant interference with the plaintiff's independence as a result of her fear of falling and her fear of dogs. She had a lengthy spell in plaster and a substantial period of physiotherapy thereafter. She continues to suffer intermittent pain. I assess general damages at £25,000 together with interest at the appropriate rate from the date of issue of the proceedings.