
4/23/03 - Judge JANE L. EIKLEBERRY - CV 2001-1919 - BISHOP (David R. Farney and Ryan M. Wackerly of Harold Hyams & Associates, P.C.) v LOPEZ (David L. Curl of William B. Blaser & Associates) - PERSONAL INJURY - DOG BITE - WILLFUL AND WANTON MISCONDUCT. Plntf, female, age 51, who resided at the Oracle Apartments; alleged that, while walking her dog, at 8:30 A.M., by the tennis courts behind the apartment complex, a black and white dog blocked her return to the tennis courts, forcing her to walk into an unimproved desert wash area. At the same time, non-party Matison, the tenant of a residence owned by Dfnt, was walking with his four "unleashed" French Mastiffs, through Dfnt's unimproved six-acre parcel, adjacent to his rental property. Plntf alleged that, as she came through the "wash", non-party Matison's dogs ran toward her, knocked Plntf and her dog to the ground, and bit Plntf sixteen times. Non-party Matison had to kick and punch his dogs, to get them to "back off". Non-party Matison took Plntf to the hospital for treatment of her injuries. Plntf alleged that, although Dfnt's unimproved property had several "no trespassing" signs, Dfnt had given non-party Matison permission to use the parcel to walk his dogs. Plntf also alleged Dfnt had notice of the dogs' propensity to attack, and he was guilty of willful and wanton misconduct. Plntf called the investigating officer, who testified non-party Matison's dogs were twenty-eight inches high, at the shoulder, and weighed approximately one-hundred pounds each. (Dogs were impounded by Animal Control, and ordered removed from the County.) (NON-PARTY MATISON SETTLED BEFORE TRIAL, FOR AN UNDISCLOSED AMOUNT.) (DIRECTED VERDICT FOR DFNT ON THE ISSUE THAT HE WAS NOT THE OWNER OF THE DOGS, AND ON

THE ISSUE OF PUNITIVE DAMAGES.) Dfnt, male, denied liability, advancing the defense that he acted reasonably, based on the information available to him. Dfnt argued he was not the owner of the dogs, and was not responsible. Dfnt also argued the area where the dog attack took place was not on his property. In the alternate, Dfnt argued Pntf entered his property without permission. Additionally, Dfnt argued that, after he was informed of a prior dog bite incident, he instructed non-party Matison to get rid of the dog involved in the incident. Dfnt argued the remaining dogs were docile, and he had been around them on many occasions. Dfnt called the owner of a residence which abuts the tennis courts, who testified she owns a black and white dog, but argued she knew the dog was not outside the morning of the incident, because the dog has an electronic collar. Homeowner also testified she had seen a female walking a small white dog, two or three days per week, in the "wash area". Pntf sustained puncture wounds to the head and leg, plus a bruise from her elbow to the shoulder. Pntf's leg is two inches smaller than the other, and she has residual scarring. Pntf also alleged she experienced nightmares, and is now terrified of dogs. Prayer: Just and reasonable compensatory damages; \$2,153 medical expenses; plus \$547.50 lost wages. During trial, Pntf made a demand of \$10,000 - Dfnt offered \$2,500 (D). (Carrier: State Farm Insurance.) During closing arguments, Pntf's counsel argued Dfnt was liable, for failure to perform an adequate investigation of the prior dog bite incident, and for allowing non-party Matison to walk his dogs, unleashed, on Dfnt's property. Defense counsel argued liability, arguing there was no evidence of willful and wanton misconduct, because there was no evidence that harm was likely to occur. Defense counsel also argued the evidence showed Pntf was a trespasser, because there was no black and white dog, to block Pntf's return to the tennis courts. AFTER JURY BEGAN DELIBERATIONS, COURT DIRECTED A

VERDICT FOR DFNT ON THE ISSUE OF WILLFUL AND WANTON MISCONDUCT. Two day trial. Jury out one-plus hours. FOUND FOR DFNT. 6 - 2.
