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Judgment: approved by the Court for handing down | *Delivered:* **14/06/05**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

KATHY BEATTIE

Plaintiff;

-v-

MICHELLE McCONNELL, FORMERLY GILMER, TRADING AS ROSEBANK BOARDING KENNELS

Defendant.

DEENY J

[1] The plaintiff in this action sued the defendant for damages for personal injuries sustained by her on a visit to the defendant's kennels at Killaughey Road, Donaghadee, Co.Down on 23 March 1999. Mr Dermot Fee QC led Ms Heather Gibson for the plaintiff and Mr Michael Maxwell appeared for the defendant.

[2] The plaintiff was born on 14 April 1961. She is married with two children. At the time of this accident she worked as a speech and language therapy assistant in special schools and now works more generally as a classroom assistant. She had left her Newfoundland dog in the defendant's boarding kennels while away for the weekend. She attended on Tuesday 23 March 1999 to collect the dog. She did so at about 8.45 am in the morning.

[3] It is a strong part of the defendant's case that their premises were not open at that time. Her witness said there was a sign on the gate which formed the entrance to the yard of the premises where the kennels were located. Secondly, Mrs Beattie would have known this from prior use of the

kennels. Thirdly, 8.45 am would be earlier than business premises would normally be open and, finally, they had a recorded message on the phone to that effect. As a result of the premises not being open for business five Newfoundland dogs, which are very large animals of between 10 and 12 stone in weight, were loose in the yard of the premises. The dogs and Mrs Beattie were clearly visible to one another as she drove up. They began barking. She was with her 12 year old daughter. (I did not hear evidence from this young lady who is, I was told, sitting her A level exams in the immediate future).

[4] The plaintiff says that she waited at the yard gate for one or other of two people whom she could see in the yard to catch sight of her and assist her in collecting her dog. She says that one of the dogs put its feet up on the bars with its head over the top of the tubular barred gate which was of a type familiar on farms. She demonstrated to the court that she stood with her arms crossed, about one and a half to two feet back from the gate while waiting. While doing so another Newfoundland dog put its head between the top and second rail of the gate and clamped its jaws firmly round her left forearm. She had the presence of mind to neither scream nor pull away knowing that the teeth of this large animal could do very grave damage if she had done so. After a little time the animal relaxed its grip and she and it parted.

[5] The issues in the case ultimately boil down to two matters. Firstly, whether she was telling the truth in the brief account which I have just given. Secondly, even if she was telling the truth whether she was guilty of contributory negligence which should properly reduce the damages awarded to her.

[6] As to the first issue the contention of the defendant was based on a theory, as Mr Fee pointed out. The theory was that she had not had the patience to wait but had reached herself between the top and second rail of the gate to open the gate and had succeeded in partially opening the gate. She then had been attacked by the dog. She was, therefore, it was contended, a trespasser within the meaning of the Dogs (Northern Ireland) Order 1983 and her claim failed. Otherwise counsel for the defendant accepted that his client was strictly liable for any injury caused by the dog in question.

[7] I heard the plaintiff give evidence. I was impressed by her demeanour. She gave her evidence in a clear and convincing manner. There was nothing in her character or age to cast any doubt on the reliability of her evidence and I would be strongly inclined to believe her.

[8] The counterview stemmed from the evidence of Mrs June Hayes and a theory advanced by the defendant's mother. Mrs June Hayes then worked for the defendant and she formed the impression, when she heard a disturbance that morning at the gate, that the plaintiff had been opening the gate and was

now closing it again having failed to safely make an entry to the yard. I use the word impression deliberately as that was the word the witness used. This theory was attacked by counsel for the plaintiff. He pointed out that it was unlikely that the plaintiff would do this knowing something of the propensities of Newfoundland dogs and knowing that there were five of them loose in the yard. Furthermore it was likely that one or other persons visible in the yard would come to her assistance shortly. They seem to me valid points. It seems to me further very unlikely that had she done so she would then worry about closing the gate again with this large dog attached to her arm.

[9] It should be noted that the dog in question was put down that very day. This seemed to suggest a guilty mind on the part of the defendant's mother who was responsible for that decision. However she called her son-in-law, a detective constable in the Police Service of Northern Ireland, to say that he had been telephoned by her that day and had given her that very advice. I accept therefore that she acted on that advice and that should not be held against her.

[10] It was suggested at one point by the defendant that it was impossible for the dog to have got its head between the two bars of the gate in question. However it transpired that these measurements which lead to that theory were not taken by any qualified person and on further investigations proved to be misplaced. Mr Michael Maxwell expressly accepted that. All the same it is right to say that there was certainly not a lot of clearance for the dog and a question mark was raised over whether it could really have reached 18 inches to 2 feet through the bars and successfully bitten the plaintiff's arm.

[11] Various other matters were debated in the course of the hearing but it does not seem to me necessary to go into them in detail. Suffice it to say that I have concluded that, subject to one matter, the plaintiff's evidence is to be preferred. I accept that she did not try and enter the yard, which would have been very foolish in the circumstances, but remained outside the gate where she was bitten by the dog.

[12] She is entitled therefore to succeed in negligence. However the defendant contends that she was guilty of such contributory negligence that her damages should be reduced by half. I consider that a number of factors tell against her in contributory negligence. As indicated at para. 3 above she knew that she was calling to these premises outside their normal opening hours. It was foreseeable that dogs might be free at that time when they would not be at normal calling hours and that the staff of the kennels would be less alert to the risks to visitors. Not only could she see some five dogs loose in the yard but one was actually standing up against the very barred gate which she was close to. Furthermore she was familiar with Newfoundland dogs and seemed to accept that this was something that they

would be capable of doing. In those circumstances therefore I consider that she was guilty of contributory negligence. It may be that she was a little closer to the gate than she remembered or, in the alternative, that this dog was able to reach so far. But given the various factors I consider that a careful person would have stood further back from the gate than 2 feet. This would not have impaired their ability to attract the attention of those working inside but should have ensured that they would not be bitten by any dog at the gate.

[13] Mr Fee argued that it was not appropriate to find contributory negligence against her for failing to foresee that a dog could put its head through the bars of the gate as the defendant's themselves had failed to foresee and guard against this by fencing the gate. However failure to anticipate the precise method of harm is not crucial. There was another dog on top of the gate which might have moved suddenly to attack. There were not meant to be people at the gate when the dogs were loose. For all the reasons outlined above I have concluded that the proper deduction in the case is one of twenty percent for her contributory negligence.

Quantum

[14] The plaintiff's principal injury consisted of two areas of scarring on her left forearm. These had reached a permanent situation when seen by me. I heard the evidence of Michael Brennan FRCS, a leading plastic surgeon.

He considered, in his second report, that the scars constituted some degree of disfigurement. He demonstrated the scars in court. When he invited the plaintiff to step back somewhat from my inspection of her scarring he was able to point out that they were still clearly visible and noticeable at a distance of 7 or 8 feet. There was some sensitivity of the skin surrounding the scars. She continued to get an aching sensation in her arm when working. Because of her self-consciousness about them she invariably wore long sleeves. She did not wear a watch on that wrist. She was a lady who was attentive to her appearance. She was 38 at the time of the incident. This was her dominant arm.

[15] She had indeed developed a phobic anxiety disorder with regard to the incident, in the opinion of Dr James Anderson, consultant psychiatrist. She had not undergone any treatment for that but it continued to bother her in a minor way right up to the trial. However in answer to a question from the court at the conclusion of his evidence it emerged that if she had undergone behavioural therapy with some medication there was a 60-70 percent likelihood of her ending this disorder. However in fairness to the plaintiff Dr Anderson did not feel that that had been expressly conveyed to her on any earlier occasion. He had only seen her once. Her duty to mitigate her loss should lead her to undergo such treatment.

[16] Mr Maxwell laid stress on the minor effect this had against her in practice eg she does not handle her own dog but they have retained it all these years. She is occasionally apprehensive of a large dog in the street. Clearly the scarring is much the bigger part of the case. I have concluded that the proper figure as fair and reasonable compensation for the plaintiff's injuries, on a full basis, is £25,000, from which £5000 must be deducted for contributory negligence.

[17] So far as interest is concerned, having heard the submissions of counsel, I consider it proper to award interest at 2 percent from the date of the writ, 19 July 2001, which by my calculations leads to a figure of £20,000 plus £1,582. I give judgment in the sum of £21,582.