

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN

—————
SARAH TAYLOR

Plaintiff

and

CATHERINE O'HARE

and

JOHN FARRELL

Defendants

—————
SHEIL J

[1] The plaintiff in this action is a 59 year old housewife. On 7 August 1998 she was walking home through Springfarm Heights, a housing estate outside Newry, having visited her daughter, when she was attacked by two dogs as she walked past a house owned and occupied by the first named defendant, Catherine O'Hare.

[2] The first dog which attacked her, was a large terrier dog which ran out from the first named defendant's house. The plaintiff knew the dog, which was called "Charlie". The dog was in the habit of barking at her when she passed by on previous occasions. On this occasion the plaintiff, as on previous occasions, told the dog to be quiet. Instead Charlie rushed out and seized her on her left wrist with his teeth. He held on to her as she struggled to become free. As she did so a second dog, a large black mastiff, ran out of the first named defendant's house. This dog, which was called "Lucy" put its large paws on to the plaintiff's back causing her to fall to the ground. It then proceeded to bite her on her right arm. Both dogs then joined in a concentrated attack on the plaintiff which lasted approximately ten minutes until she was rescued by a neighbour, who was also bitten, who brought the plaintiff into her house nearby.

[3] The first named defendant did not enter any appearance to the writ of summons served upon her and judgment in default of appearance was

subsequently entered against her on 31 July 2000. Accordingly the only issue before this court, insofar as the first named defendant is concerned, is the issue of damages to be awarded to the plaintiff.

[4] While the second named defendant did enter an appearance and delivered a defence denying liability, his solicitors on record, Sheila McGuigan & Company, came off record on 2 October 2002. Mr Trainor, solicitor for the plaintiff, informed the court that he had been in touch with Sheila McGuigan & Co and that he had been informed that the second named defendant was fully aware of what was happening and that the case was listed for hearing on 3 October 2002 but that the second named defendant had said that he was “indifferent” as to the outcome. Both defendants were called in the main hall of the law courts but there was no response. Accordingly I proceeded to hear the action. Insofar as the second named defendant is concerned, the action had to proceed against him, the plaintiff having to establish liability and damages.

[5] I gave leave to the plaintiff to amend her statement of claim to plead the certificate of conviction at Newry and Mourne Magistrates Court on 5 February 1999, where an order was made for the destruction of both dogs, although Lucy had already been put down prior to the making of the order. The certificates of conviction establish that (a) the first named defendant was the keeper of Charlie and that it attacked Sarah Taylor causing her injury on 7 August 1998, and (b) that the second named defendant was the keeper of Lucy and that it attacked Sarah Taylor causing her injury on 7 August 1998.

[6] According to the evidence of the plaintiff, both dogs ran out from the first named defendant’s house, the gate of which had been left open, onto the public road. Article 25(1)(a) of the Dogs (Northern Ireland) Order 1983 imposes a duty on the keeper of a dog not to cause or permit it to be on the public road unless it is under control. Article 29(1) of the same Order as amended by paragraph 4 of the Dangerous Dogs (Northern Ireland) 1991, provides that subject to the provisions of the Article (which provisions are not relevant in the present case) the keeper of a dog which attacks any person is guilty of an offence. Article 52 of the 1983 Order provides that breach of a duty imposed under Article 25 or Article 29 shall, if it causes damage, be actionable.

[7] In the light of the certificate of conviction, to which I have referred above, I am satisfied that the second named defendant was the keeper of Lucy and that he is liable in law at the suit of the plaintiff in this action. As already stated, judgment has already been entered by the plaintiff against the first defendant on the issue of liability in default of appearance.

[8] There is no claim for special damage in this action.

[9] On the issue of general damages the court had the benefit of a report from Mr McCann FRCS dated 18 August 1999, from Doctor Daly, Consultant Psychiatrist dated 19 September 2000 and from Doctor Cotter, Consultant Psychiatrist dated 27 September 2001.

[10] The plaintiff is naturally left handed although she writes with her right hand. On admission to the Daisy Hill Hospital, she was noted to have multiple teeth marks and puncture wounds over her right hand and forearm and also to have a painful left wrist and right ankle and bruising and abrasions over the region of her left loin. On her right forearm she now has five scars, ranging from small puncture type wounds which have healed as linear scars 0.5 centimetres long to a group of three scars together ranging from 1 centimetre by 0.5 centimetres and then to just over 3 centimetres almost parallel to each other on the ulnar border of the forearm. On the dorsum of the forearm there is a 1.5 centimetre scar. On the left forearm there are two small scars on the distal forearm, both about 0.7 centimetres. The plaintiff still has some weakness in her left wrist. She also sustained injury to her left ankle when she was thrown to the ground by the second dog, Lucy. Mr McCann FRCS in his report dated 18 August 1999 stated that there appeared to be some loss of proprioception in the plaintiff's left ankle at that stage and that she seemed to be somewhat unsteady on it, which he attributed to some damage to the proprioceptive fibres. At that time the plaintiff was also complaining of some tenderness at a point over the left flank in the lower ribs.

[11] This incident, which lasted approximately 10 minutes, was a most frightening one for the plaintiff and has left her, understandably, with a great fear of dogs, which has inhibited her in going out for walks, which she used to do frequently prior to the incident on 7 August 1998. She has been left with what will inevitably be a lifelong fear of dogs.

[12] In respect of the injuries to her left wrist and the ongoing weakness therein, which affects her everyday life, I award her the sum of £7,500 for general damages, which damages are awarded against the first named defendant, the owner of Charlie. In respect of the injuries to her right arm, which has more marked and extensive puncture wounds, the injury to her left ankle and to her back I award her the sum of £10,000 for general damages, which sum is awarded as against the second named defendant, the keeper of Lucy.

[13] Doctor Cotter, Consultant Psychiatrist, who examined the plaintiff on behalf of the second named defendant, stated in his report of 27 September 2001 that the plaintiff developed a phobic anxiety disorder as the result of the incident on 7 August 1998, which disorder is characterised by anxiety evoked solely or predominantly by encountering dogs. In his conclusion to that report Doctor Cotter stated:

“It is now just over three years since the subject incident. Mrs Taylor continues to describe a marked phobic anxiety with persistence avoidance behaviours. Her independence and social functioning have been obviously restricted. The duration of her complaints and lack of movement to date suggest that she will continue to have significant complaints for quite some time and that the prognosis for recovery is quite poor.”

In respect of this aspect of the claim I award the plaintiff £10,000 damages as against both defendants jointly.

[14] I award interest on the aforesaid sums at the rate of 2% per annum from the date of the service of the writ of summons until the date of trial.