

# Bob Barker Rule: Can dog owners be liable for a personal injury caused by their dog at a dog park, if the dog has not been spayed or neutered?

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Since the start of the pandemic, many New Jerseyans have been forced to live in essential isolation, however the 32.4% of New Jersey households who have at least one dog seem to have found respite from lockdown in the couple times per day they are able to take their pets out for walks. Many canine families have found a community in local dog parks and dog runs which provide them the social outlet that they have been craving. Generally, all dogs are welcomed, provided they abide by certain guidelines; however, what happens if a personal injury occurs by a dog who is in violation of a posted rule?

## What Happened at the Dog Park? A Golden Retriever Ran into a Golden Doodle's Owner's Knee:

Janet Freed took her female golden doodle to an off-leash dog area of Thompson Park in Lincroft, Monmouth County. While at the park, Ms. Freed conversed with Linda and Frank Bastry, while the Bastry's seven and a half month golden retriever played with the Freed's golden doodle. At one point, the Freed golden doodle ran in between Freed and the Bastrys while being chased by the Bastry golden retriever. Suddenly the golden retriever barreled into Freed, knocked her over, and fractured her knee, requiring multiple surgeries in order to repair the injury. A lawsuit was filed.

## Why Does the Retriever's Age Matter?

As noted above, the golden retriever was seven and a half months in age. Freed claimed the Bastrys were responsible for the accident because their dog was not neutered before six months and was therefore in violation of the posted park rule that any dog over six months must be spayed or neutered

to enter the park. Freed retained a canine behavioral expert who relied on studies to conclude that "[h]ad the [d]efendants properly neutered their dog prior to letting him run free . . . , the dog would have been less aggressive and therefore less likely to have run into the [Freed]'s leg." Through her attorney, Freed claimed that the Bastrys had a duty to have neutered their dog before bringing him to the park, as per the park guidelines.

## Was the Park's Guideline Equal to a Law or Regulation? How did the Court Rule?

The New Jersey Appellate Division ruled in Freed v. Bastry, Docket Number A-3284-18T2, that the Bastrys were not liable for Freed's injury by not having neutered their dog, in spite of the park rule requiring such. Since the guidelines do not have the same force and duty as a law or regulation, it cannot be accepted as such. Further, even if it was accepted as a municipal ordinance, the reason for spaying and neutering the dog was to reduce the likelihood of sexual aggression toward other dogs, or the biting of dogs or humans; the purpose was not to prevent the dog from running around or jumping on humans.

As such, Freed's case was dismissed, and thus could not recover for her injury, since she was not able to prove the Bastrys were negligent or at fault for the golden retriever running into her. Specifically, she could not show that the purpose of the dog park policy of neutering dogs over six months was to prevent incidents like hers from happening, or that the injury occurred because the Bastry's failure to neuter their dog at seven and a half months was the reason why this incident occurred.

## Did the Court Imply What Kind of Injury Might Hold a Dog Owner Liable, Even Under a Guideline?

While the dog park guideline was not enough to hold the defendants liable for Freed's injury, the Court insinuated that had the Bastry's Golden Retriever bit Freed, or if the dog had impregnated the Golden Doodle, they might have been held liable for not neutering the golden retriever by six months. This reasoning is in line with the purpose of neutering or spaying dogs before they are six months old: biting of other dogs or humans, or sexual aggression toward other dogs. So just to be on the safe side, as Bob Barker used to say: Don't forget to have your pets spayed or neutered.