

Dog Bites and Personal Injury Cases: How an Injured Party's Actions May Affect the Claim.

August 16, 2021 | by Amanda Clark

In some circumstances, the injured party's role in the dog bite might significantly affect the value of any recovery. Here's what you need to know.

Many people presume that all dog bite personal injury cases are the same, with plaintiffs always recovering damages from the dog's owner. However, the dog owner has defenses and the ability to refute the case when the plaintiff provoked the dog or was otherwise negligent in actions with the dog. A recent case in the New Jersey Supreme Court, *Bonay Goldhagen v. Susan Pasmowitz*, addressed the value of a dog bite case, the allocation of fault and negligence, and the application of the state's Dog Bite Statute.

The New Jersey Dog Bite Statute Governs Personal Injury Matters Dealing with Dog Bites

New Jersey's Dog Bite Statute (N.J.S.A. 4:19-16), enacted in 1933, governs personal injury matters dealing with dog bites and establishes a "strict liability" cause of action that a plaintiff who is injured by a dog may assert against a dog's owner if the plaintiff proves the elements set forth in the statute. The term "strict liability" means that the dog owner is liable for damages, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness.

Victims of Dog Bites Can Still Be at Fault

It's important to understand that under the Comparative Negligence Act, strict liability can be challenged by the dog owner who can assert that the plaintiff was at fault for the incident. Under the Comparative Negligence Act, the judge or jury determines the full value of the plaintiff's damages and then assesses the extent of each party's negligence or fault in terms of a percentage. Based upon the

findings, the Court quantifies the verdict. If 51% or more of fault is allocated to the plaintiff, the plaintiff cannot recover damages.

Thus, in a dog bite case, the negligent actions of a plaintiff may reduce or end a plaintiff's claim in its entirety.

The Facts of Each Dog Bite Case Differ and Strict Liability Can be Challenged

Every dog bite case is fact sensitive and depends on several different circumstances, including the nature, extent and location of the scarring, the extent of the injury, the age and sex of the victim, whether the bite occurred in a jurisdiction that is plaintiff friendly, and whether there are any outstanding medical bills. The Supreme Court's decision in *Bonay Goldhagen v. Susan Pasmowitz* stated that, "When a plaintiff pursues a strict liability claim under the Dog Bite Statute and the defendant asserts the plaintiff's negligence as a defense, the plaintiff's negligence may bar the statutory claim, or diminish her recovery of damages in that claim. The plaintiff's background, experience, knowledge of the dog's potential dangers, and conduct in handling the dog, among other considerations, may be relevant factors in that determination."

Let's look at the facts of this particular case.

- The plaintiff was a groomer at a pet care facility where defendant boarded her dogs.
- Prior to boarding, the dog owner told the facility's manager that the dog had "bit" or "nipped" at her son and urged caution in handling the dog.
- In addition, the dog owner completed an intake form advising that her dogs were to eat separately – which was not only underlined and emphasized with an asterisk but also displayed right outside the kennel housing the dogs.
- Plaintiff admittedly did not review this form but indicated that a staff member informed her that the dogs should be fed separately.
- Since the facility only had one accommodation for the dogs, the plaintiff went into the kennel with both dogs to sit with them while they ate, at which time the plaintiff was bitten, resulting in a severe facial injury.
- The dog owner failed to inform the facility that the dog had previously bitten her face resulting in a laceration that required 30 stitches.

The Court Reasoned that a Jury Must Consider the Actions and Qualifications of the Injured Party

The Court's decision on August 5, 2021, delivered by Justice Patterson, sent the matter back to the trial court, stating that the defendant/dog owner "may raise plaintiff's experience in working with dogs, the warnings provided, her conduct in handling the dog, and other facts relevant to comparative negligence, and may argue in a summary judgment motion that plaintiff's comparative fault warrants dismissal of her statutory claim. If the case proceeds to trial, defendant may present evidence relating to plaintiff's professional status, knowledge, experience, and conduct and may seek an allocation of fault to plaintiff pursuant to the Comparative Negligence Act."

The Court also acknowledged the significant factual disputes regarding the information that the dog owner provided to the plaintiff and the facility regarding the risk posed by the dog, as well as the plaintiff's conduct before and during the incident, and other relevant issues.

How the Supreme Court's Decision Impacts Other Dog Bite Cases

In summary, the Court emphasized that the dog owner may assert the groomer's fault as a defense, and that under the Comparative Negligence Act, the groomer's background and status as a professional experienced in the care of dogs would be relevant in assessing fault.

How does this case apply to other [dog bite cases](#)? The decision underscores that strict liability can be challenged. As such, in dog bite cases, the value of the claim may depend upon relevant factors such as:

- The conduct of the person who was injured
- Whether there was any provocation or disregard of the owner's warning
- The victim's previous experience with the dog
- The victim's knowledge of dogs generally
- Whether the injured person was warned of the dog's dangerous propensities

The relevance of these, and other, factors, will be assessed by a trier of fact, and could decrease the value of the injured party's claim. If the *Bonay Goldhagen v. Susan Pasmowitz* matter goes to trial, the fact

that the injured party was a professional dog groomer and disregarded feeding instructions provided by the owner will be factors that the jury will consider in assessing fault. Depending on how a jury views all of the facts, the plaintiff's own actions could significantly reduce the award for damages. In order to understand the value of your particular case, contact the [personal injury attorneys](#) at Einhorn Barbarito for a consultation.