



New Kentucky Supreme Court Ruling May Increase Landlord's Liability For Dog Bite By Tenant's Dog While "On or About" Landlord's Property

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In a very recent decision, *Benningfield v. Zinsmeister*, --- S.W.3d ---, [2009-SC-000660-DG](#) (6/25/12), the Kentucky Supreme Court interpreted Kentucky statutes as permitting a landlord to be held liable when a tenant's dog attacks someone on or about the leased premises. In a plurality opinion, the Court determined that the landlord can be considered the statutory owner of the dog under KRS 258.095(5) if the landlord has permitted the dog to be kept on the leased premises.

In *Benningfield*, a child was attacked by a tenant's Rottweiler on a sidewalk across the street from the leased premises. There was evidence the landlord had previously given permission for the tenants to keep the dog. The child's parent sued both the tenant who owned the dog and the landlord. The trial court dismissed the claim, holding that the landlord could not be held liable because the attack occurred off the leased premises. The Court of Appeals agreed, adding that the landlord would also have to know of the dog's dangerous propensities in order to be liable for the attack.

The Supreme Court granted discretionary review and focused on the language of KRS 258.235(4) and KRS 258.095(5) in order to determine the landlord's liability. The dog-bite liability statute, KRS 258.235(4), creates liability for the owner of a dog who causes damage to person, property, or livestock. KRS 258.095(5) defines a dog owner as "every person having a right of property in the dog and every person who keeps or harbors the dog, or has it in his care, or permits it to remain on or about the premises owned or occupied by him."

The Supreme Court in *Benningfield* explained that under these statutes a landlord is an owner of a tenant's dog on the leased property when he or she allows the tenant to keep the dog on or about the property. In order to be considered "on or about" the property, the attack must occur either on the leased premises or within immediate physical reach (e.g., a sidewalk directly abutting the leased property). Because the attack in *Benningfield* did not occur on or immediately adjacent to the leased premises, the Supreme Court upheld the dismissal of the claim against the landlord.

The Court briefly discussed the question whether a landlord's liability can be affected by the common-law "one free bite" rule, under which a dog's owner is not liable for a dog-bite injury unless he or she is aware of the dog's propensity to cause harm (e.g., because of a prior dog bite). If the owner is aware of the dog's dangerous propensities, the owner is strictly liable for any injuries the dog causes others. In determining when this rule applies, the Kentucky Court of Appeals in a 2006 unpublished opinion said that "[KRS 258.235(4)] imposes liability only in circumstances where the owner could reasonably

expect a plaintiff to be in close proximity to the dog.” Otherwise, the Court of Appeals stated the common-law rule of “one free bite” prevails. *Adkins v. Johnston*, 2006 WL 3759549 (Ky. App. 2006). The plurality opinion in *Benningfield* observed that one seeking recovery for a dog bite may proceed under either the statute or common law, while stating that the statute had modified the common law and made it “simpler” for plaintiffs to establish liability.

As noted above, *Benningfield* was a plurality (i.e., less than a majority) opinion, meaning it is not necessarily binding precedent on future courts. Also, the opinion is not yet final, but was designated for publication in the South Western Reporter. Cases that are not final may not be cited as authority in Kentucky. Unless and until the statutes are changed or interpreted differently by the Kentucky Supreme Court, landlords should consider revising their leases, reviewing their insurance coverage, and/or adjusting their property management practices to protect against or avoid liability for tenants’ dogs.