



[Court Ruling Highlights Landlord's Possible Liability For Tenant's Dog](#)

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Residential landlords need to be aware of a recent decision of the Kentucky Supreme Court that highlights their possible liability for dog bites inflicted by their tenants' dogs. In *Benningfield v. Zinsmeister*, 367 S.W.3d 561 (Ky. 2012), the Kentucky Supreme Court interpreted Kentucky statutes as permitting a landlord to be held liable for personal injuries when a tenant's dog attacks someone on or about the landlord's 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) while the dog is on or in the immediate vicinity of the leased premises if the landlord has permitted the dog to be kept on the leased premises.

In *Benningfield*, a child was attacked by a renter'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 against the landlord, 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 two Kentucky statutes, 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 a 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 plurality opinion of 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. For purposes of the landlord's liability for an attack by the dog, the plurality found that 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 plurality upheld the dismissal of the claim against the landlord. The three Justices in the plurality were joined by one dissenting Justice who asserted that landlords should not be deemed owners of tenants' dogs under the statutes, or under the common law in the absence of knowledge of the dog's dangerous propensities.

The plurality opinion 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). Under that rule, if the owner was aware of the dog's dangerous propensities, the owner was 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 noting that the statute had modified the common law and made it

“simpler” for plaintiffs to establish liability. Thus, while knowledge of a dog’s dangerous propensities can still be a basis for liability, “one free bite” is no longer the law in Kentucky.

As noted above, *Benningfield* was a plurality (i.e., less than a majority) opinion, meaning that theoretically it is of limited precedential value in future cases decided by the Supreme Court. However, it is binding on lower courts. Also, two of the concurring Justices would not have limited the landlord’s liability for a dog that the landlord is deemed to be an “owner” of to injury on the premises or within an arm’s length of the premises. Thus, five of the seven members of the Court found that landlords can be liable, depending on the location of the injury. Unless and until the statutes are changed or interpreted differently by the Kentucky Supreme Court, landlords should consider revising their leases, reviewing and verifying their and their tenants’ insurance coverage, and/or otherwise adjusting their property management practices to protect against or avoid liability for tenants’ dogs.