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A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Court Holds No Duty To Protect Against Stray Dogs And Dogs Are Not Special Aspects

By James Swaim

In *Tosa v. Yono*, the Michigan Court of Appeals addressed the affect of a stray dog attack on premises liability, general negligence and nuisance claims. The Court of Appeals concluded that all three claims should have been dismissed by the trial court.

On August 13, 2004, Plaintiff Malik Tosa was a patron of a restaurant located on property owned by the Defendant. Plaintiff was walking across the restaurant parking lot when he was confronted by a stray dog. Plaintiff attempted to back away from the dog but fell on a crack and suffered injuries from the fall. Plaintiff's Complaint alleged that Defendant was aware that stray dogs would wander through the parking lot, creating a dangerous and hazardous condition for patrons. He further claimed that Defendant failed to fulfill his duty to provide a safe parking area and created a public nuisance.

The trial court granted summary disposition on the general negligence and nuisance claims. The court denied summary disposition of the premises liability claim, however, concluded that it did "not believe that a man chased by a pack of wild dogs can be expected to notice or protect against a depression in the sidewalk as a matter of law."

The Michigan Court of Appeals reversed the denial of summary disposition as to the premises liability claim, holding the presence of the stray dog "did not qualify as a special aspect to make a small crack in the pavement of a parking lot unreasonably dangerous." As a consequence, the fact that Plaintiff tripped was not found to be unreasonably dangerous. Summary disposition was also found to be appropriate because Plaintiff had repeatedly denied that he intended to bring a premises liability cause of action. Plaintiff

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The decision in *Tosa* supports a narrow definition of what constitutes a special aspect in order to overcome application of the open and obvious doctrine. A special aspect would be found when there is a danger of the condition itself. The decision also extends to stray dogs, the law holding there is no duty of a landowner to provide a safer environment on its premises than its invitees would encounter in the community at large.

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claimed at the trial court hearing that his injuries resulted from an attempt to flee from the dog rather than from a defect on the property.

The Michigan Court of Appeals affirmed summary disposition of the general negligence and nuisance claims. In addressing the general negligence claim, the Court of Appeals agreed with an analogy drawn by the trial court comparing the lack of duty to protect patrons from stray dogs to the lack of duty to protect patrons from third-party criminal activity. The Court advised “a landowner has no duty to control the incidence of stray dogs roaming onto his property, even in an area where stray dogs are known to be a common occurrence.” The Court added there was no public nuisance, as the record did “not support a finding that the animals’ presence created an unreasonable interference with a right common to the public or involved an unreasonable risk.”

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48083-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secrestwardle.com

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CONTRIBUTORS

Premises Liability Practice Group Chair

Mark F. Masters

Caroline Grech-Clapper

Editor

Erene Golematis

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