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2014 IL App (4th) 130349-U

NO. 4-13-0349

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

February 25, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

|                      |   |                  |
|----------------------|---|------------------|
| STEVEN COLLINS,      | ) | Appeal from      |
| Plaintiff-Appellee,  | ) | Circuit Court of |
| v.                   | ) | Vermilion County |
| COUNTY OF VERMILION, | ) | No. 10SC1021     |
| Defendant-Appellant. | ) |                  |
|                      | ) | Honorable        |
|                      | ) | Karen E. Wall,   |
|                      | ) | Judge Presiding. |

PRESIDING JUSTICE APPLETON delivered the judgment of the court. Justices Holder White and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* Because there is an issue of fact as to whether plaintiff was in a place where he was lawfully entitled to be when the defendant's dog bit him, that is, whether he had a right to be inside the cage where the dog was confined, the trial court should have denied his motion for summary judgment in this action under section 16 of the Animal Control Act (510 ILCS 5/16 (West 2010)).

¶ 2 Defendant, Vermilion County, operates an animal shelter. Plaintiff, Steven Collins, visited the animal shelter, and a dog bit him when he reached into its cage. He sued defendant under section 16 of the Animal Control Act (510 ILCS 5/16 (West 2010)) and prevailed by summary judgment. The trial court awarded him \$2,276.71 in damages. Defendant appeals.

¶ 3 We reverse the summary judgment and remand this case for further proceedings because we do not find it to be clear and free from doubt that when the dog bit him, plaintiff was

in a "place where he \*\*\* [might] lawfully be." *Id.* See *MacMurray College v. Schiesser*, 132 Ill. App. 3d 436, 438 (1985) ("The moving party's right to summary judgment must be clear and free from doubt."). The "place," in this context, was the cage in which defendant had confined the dog. It is unclear that plaintiff had permission from defendant to reach into the cage.

¶ 4

### I. BACKGROUND

¶ 5 On February 11, 2010, plaintiff went to the animal shelter and chose a dog to adopt. While his fiancée filled in the forms necessary for the adoption of the dog, plaintiff walked, unaccompanied, to another room to look at the bigger dogs. It was permissible for patrons to be in that room. He saw a bigger dog inside a cage, a dog other than the one he was in the process of adopting. He reached into the cage to pet the dog, and the dog bit him on the hand, within the confines of the cage.

¶ 6 Defendant had a policy of prohibiting members of the public from reaching into the cages. But no one had informed plaintiff of that policy. Nor had plaintiff informed anyone of his intent to reach into the cage.

¶ 7

### III. ANALYSIS

¶ 8

#### A. The Single Element in Dispute

¶ 9

Section 16 of the Animal Control Act provides:

"If a dog or other animal, without provocation, attacks, attempts to attack, or injures any person who is peaceably conducting himself or herself in any place where he or she may lawfully be, the owner of such dog or other animal is liable in civil damages to such person for the full amount of the injury

proximately caused thereby." 510 ILCS 5/16 (West 2010).

¶ 10 The meaning of the statute is not in dispute. The appellate court has interpreted the statute as having four elements:

"(1) injury caused by a dog owned or harbored by the defendant;

(2) lack of provocation;

(3) peaceable conduct of the person injured; and

(4) the presence of the person injured in a place where he has a legal right to be." *Messa v. Sullivan*, 61 Ill. App. 2d 386, 392 (1965).

The parties agree the first three elements are fulfilled. They disagree only on the fourth element; and for purposes of the fourth element, they say the issue is whether plaintiff had a legal right to be in the cage. It is undisputed he had a right to be in the room where the cage was located. But defendant disputes that plaintiff had a right to be in the cage itself.

¶ 11 A person who is in a place where he or she has no legal right to be is a trespasser. "A trespasser is one who enters the premises of another for his own purposes without permission, invitation or other right." *Hendle v. Stevens*, 224 Ill. App. 3d 1046, 1055 (1992). In so many words, section 16 denies recovery to trespassers. Because plaintiff was not an employee or agent of defendant, his right to enter the cage, if indeed he had such a right, could have come only from defendant's permission or invitation. None of the staff at the animal shelter explicitly told him he could enter the cage. But, for that matter, it does not appear that any of the staff explicitly told him he could enter the animal shelter or the room in which the cage was located. And yet it is

undisputed that he had a right to enter the animal shelter as well as that particular room. His permission or invitation to do so was implied from the nature of the business, the business of an animal shelter. See *Messa*, 61 Ill. App. 2d at 392 ("From all indications on the exterior of the defendants' building, in its lobby and on the inside of the elevator cab itself, people like the plaintiff could only surmise that the entire building was devoted to business purposes and that it was intended that they should come there on business."); *St. Louis County v. Stone*, 776 S.W.2d 885, 887 (Mo. Ct. App. 1989) ("When a business, or public facility is involved and a portion thereof is open to the public, we believe that a person who enters an area open to the public at a reasonable time and in a reasonable manner, has the implied consent of the owner to enter the premises under a limited privilege, and as long as the privilege, based upon implied consent, is within the conditional or restricted consent of the owner to enter, the implied consent remains."); Restatement (Second) of Torts § 191 (1965) ("A patron of a public utility is privileged, at reasonable times and in a reasonable manner, to be upon any part of the land in the possession of the utility which is provided for the use of the public or necessary for their enjoyment of its facilities.").

¶ 12 Those who have consent to enter are not trespassers; consent confers a legal right to be in a place. *Hendle*, 224 Ill. App. 3d at 1055. But the consent can have conditions or limitations (*Avery v. Moews Seed Corn Co.*, 131 Ill. App. 2d 842, 845 (1971); Restatement (Second) of Torts §§ 168, 169 (1965)), and just as the consent can be implied, so can the conditions or limitations be implied. For example, the owner of a grocery store might not explicitly tell members of the public they may enter the store; nevertheless, from the very nature of a grocery store, they have the owner's implied consent to enter during business hours. *Messa*,

61 Ill. App. 2d at 392; *St. Louis County*, 776 S.W.2d at 887. This consent, however, will have limitations, which also might be left to implication: patrons may not enter the cash register or the storeroom or go behind the meat counter (even though there are no signs prohibiting them from doing so). The limitations to the consent are those which a reasonable person would "surmise" or infer under the circumstances (*Messa*, 61 Ill. App. 2d at 392), a person who is exercising his or her right "in a reasonable manner" (*St. Louis County*, 776 S.W.2d at 887; Restatement (Second) of Torts § 191 (1965)).

¶ 13 "If reasonable persons could draw different inferences from undisputed facts, an issue of fact exists," and summary judgment is unjustified. *Smith v. Armor Plus, Co.*, 248 Ill. App. 3d 831, 839 (1993); see also *Rhodes v. Illinois Central Gulf R.R.*, 172 Ill. 2d 213, 241 (1996) ("Where \*\*\* different inferences may be drawn from undisputed facts, the plaintiff's status [on the land where the plaintiff was injured] is a question of fact \*\*\*."). In our *de novo* review, we do not find it to be "clear and free from doubt" that plaintiff had permission from defendant to reach into the cage. *King v. NLSB*, 313 Ill. App. 3d 963, 965 (2000). When we construe the evidence strictly against plaintiff and liberally in favor of defendant (see *Smith*, 248 Ill. App. 3d at 839), we infer that plaintiff lacked such permission. Arguably, that inference can be drawn from the fact of a dog confined in a cage.

¶ 14 A cage can have various purposes. It can keep the animal from leaving its owner's custody. It can keep the animal from wandering about the premises and getting in the way and soiling the floor. It can keep the animal from harming people. If the caged animal is a parakeet, one assumes the cage is solely to keep the parakeet from flying away. If, by contrast, the caged animal is physically equipped to tear human flesh—for example, a large dog—the cage

might have more than one purpose: the cage might serve not only to prevent the dog from running at large but also to prevent it from injuring people. Arguably, the cage should have signified to plaintiff that he possibly did not have permission to reach therein, considering that one of defendant's purposes in keeping the dog in the cage might have been to protect patrons from the dog, a purpose that obviously would have been thwarted if plaintiff reached into the cage. Plaintiff has the burden of proving he had permission from defendant to reach into the cage (see *Beggs v. Griffith*, 393 Ill. App. 3d 1050, 1056 (2009)), and when we look at the evidence in the light most favorable to defendant, we do not find such permission to be clearly implied in these circumstances (see *King*, 313 Ill. App. 3d at 965).

¶ 15 Plaintiff seems to argue that he impliedly had permission to reach into the cage because, in the absence of any warning otherwise, the presence of the dog in the animal shelter was a guarantee of its friendliness. He argues:

"\*\*\* Collins entered the Animal Shelter for business purposes and it was intended that people come there on business. The dogs were displayed for the public to adopt. Therefore, for the purpose of adopting a dog and devoid of warnings or signage otherwise, one could only surmise that the entire building, including the cages, was devoted to business. Collins was a welcome member of the public and his status was not changed when he reached inside the cage. Reaching inside the cage to pet a dog was merely a step in the business process which would naturally include bonding with a potential new household pet."

¶ 16 Not all reasonable persons would agree that just because a dog in an animal shelter is available for adoption, the animal shelter vouches for the dog's friendliness and invites members of the public to reach into the dog's cage and "bond" with the dog. Statutory law requires animal shelters to provide the adopter certain information about the dog he or she is adopting, and an assessment of the dog's gentleness is not one of the items of information. 225 ILCS 605/3.5(a) (West 2010). Presumably, the animal shelter will not adopt out a dog that it knows to be vicious, but just because the animal shelter is unaware that a dog has any vicious tendencies, it does not reasonably follow that the animal shelter guarantees the dog to be safe and invites patrons to disregard the dividing bars it has placed between them and the dog.

¶ 17 III. CONCLUSION

¶ 18 For the foregoing reasons, we reverse the trial court's judgment and remand this case for further proceedings.

¶ 19 Reversed; cause remanded.