

IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY, TENNESSEE  
AT FRANKLIN

FILED

APR 21 2020

Debby M. Munn, Clerk  
Circuit Court

ZARMINA FOLAD, and husband,  
TONY FOLAD,

PLAINTIFFS,

VS.

QUILLCO, LLC d/b/a THE BOTTLE SHOP  
AT MCEWEN, and LISA QUILLMAN  
COVIELLO and DAVID COVIELLO,

DEFENDANTS.

NO. 2018-22

JURY DEMANDED

**MEMORANDUM AND ORDER**

This case is before the Court on Defendant Quillco, LLC d/b/a The Bottle Shop at McEwen's *Defendant's Motion to Dismiss all Remaining Claims and/or Motion for Summary Judgment* (hereinafter, "*Motion for Summary Judgment*").

In consideration of the pleadings and papers in the Court and all applicable law, Defendant's *Motion for Summary Judgment* is hereby **GRANTED**.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

This case involves personal injury to Plaintiff Zarmina Folad during an encounter with two dogs owned by Lisa Quillman Coviello and David Coviello (together, "the Coviellos").

On February 2, 2017, Folad and her six-year-old daughter were walking near a Whole Foods store when they came across the Coviellos' dogs, Brownie (a Labrador Retriever<sup>1</sup>) and Conor (a Golden Retriever<sup>2</sup>).<sup>3</sup> Brownie and Conor were unaccompanied and unrestrained in a

<sup>1</sup> Def.'s Mem. in Support of Mot. to Dismiss All Remaining Claims and/or for Summ. J. at 3.

<sup>2</sup> Def.'s Mem. in Support of Mot. to Dismiss All Remaining Claims and/or for Summ. J. at 3.

<sup>3</sup> Pls.' Compl. at 2.

nearby grass embankment.<sup>4</sup> Folad alleges that the dogs began to bark aggressively and approach her.<sup>5</sup> Folad then picked up and threw some stones in an attempt to distract the dogs.<sup>6</sup> When Folad attempted to run away from the dogs, she fell to the ground, injuring her hip and arm.<sup>7</sup>

On January 17, 2019, Folad filed a *Complaint* naming Quillco, LLC d/b/a The Bottle Shop at McEwen (hereinafter, “Quillco”), Lisa Quillman Coviello, and David Coviello as Defendants and seeking damages in an amount not to exceed \$2,500,000.00.<sup>8</sup>

Lisa Quillman Coviello owns 100% of the ownership interest in Quillco and is its sole member.<sup>9</sup> Quillco does business as The Bottle Shop at McEwen (“The Bottle Shop”),<sup>10</sup> which is a wine and spirits store located near the Whole Foods store.<sup>11</sup> Coviello sometimes takes Brownie and Conor with her to work at The Bottle Shop.<sup>12</sup> The dogs were present at The Bottle Shop with Coviello on the day of Folad’s injury.<sup>13</sup>

On January 14, 2020, the Court entered an *Agreed Order of Dismissal as to Defendants Lisa Quillman Coviello and David Coviello Only*. Accordingly, the only remaining Defendant is Quillco. Folad’s *Complaint* alleges Quillco’s violation of Tenn. Code Ann. § 44-8-408 and negligence.

On January 21, 2020, Quillco filed this *Motion for Summary Judgment*, accompanying memorandum of law, and statement of undisputed material facts. Quillco argues that there are no viable claims against Quillco remaining for trial. The Court agrees.

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<sup>4</sup> Pls.’ Compl. at 2.

<sup>5</sup> Pls.’ Compl. at 2.

<sup>6</sup> Pls.’ Compl. at 2.

<sup>7</sup> Pls.’ Compl. at 2.

<sup>8</sup> Pls.’ Compl. at 3.

<sup>9</sup> Def.’s Mot. to Dismiss All Remaining Claims and/or Mot. for Summ. J. at 2.

<sup>10</sup> Def.’s Mot. to Dismiss All Remaining Claims and/or Mot. for Summ. J. at 2.

<sup>11</sup> Def.’s Mem. in Support of Mot. to Dismiss All Remaining Claims and/or for Summ. J. at 2.

<sup>12</sup> Def.’s Mem. in Support of Mot. to Dismiss All Remaining Claims and/or for Summ. J. at 3.

<sup>13</sup> Def.’s Mem. in Support of Mot. to Dismiss All Remaining Claims and/or for Summ. J. at 3.

## **II. DISCUSSION**

### **A. Summary Judgment Standard**

Summary judgment is properly granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”<sup>14</sup>

“[S]ummary judgment is not a disfavored procedural shortcut but rather an important vehicle for concluding cases that can and should be resolved on legal issues alone. On the other hand, the procedure is clearly not designed to serve as a substitute for the trial of genuine and material factual matters.”<sup>15</sup>

To properly support a motion for summary judgment,

when the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party's claim or (2) by demonstrating that the nonmoving party's evidence at the summary judgment stage is insufficient to establish the nonmoving party's claim or defense.<sup>16</sup>

When evaluating a motion for summary judgment,

[t]he nonmoving party's evidence must be accepted as true, and any doubts concerning the existence of a genuine issue of material fact shall be resolved in favor of the nonmoving party. “A disputed fact is material if it must be decided in order to resolve the substantive claim or defense at which the motion is directed.” A disputed fact presents a genuine issue if “a reasonable jury could legitimately resolve that fact in favor of one side or the other.”<sup>17</sup>

Additionally, “the nonmoving party ‘may not rest upon the mere allegations or denials of the [nonmoving] party's pleading.’”<sup>18</sup> Instead, “[t]he nonmoving party must demonstrate the

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<sup>14</sup> Tenn. R. Civ. P. 56.04.

<sup>15</sup> *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993) (citations omitted).

<sup>16</sup> *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 264 (Tenn. 2015).

<sup>17</sup> *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008) (citations omitted).

<sup>18</sup> *Rye*, 477 S.W.3d at 262.

existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.”<sup>19</sup>

The Tennessee Supreme Court further states:

[W]hen the moving party carries its burden under Rule 56(c), then the nonmoving party must come forward with specific facts showing that there is a genuine issue for trial. To satisfy this burden, the nonmoving party must do something more than simply show that there is some metaphysical doubt as to the material facts . . . where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.<sup>20</sup>

Procedurally, Tennessee Rule of Civil Procedure 56.03 provides:

In order to assist the Court in ascertaining whether there are any material facts in dispute, any motion for summary judgment made pursuant to Rule 56 of the Tennessee Rules of Civil Procedure shall be accompanied by a separate concise statement of the material facts as to which the moving party contends there is no genuine issue for trial. Each fact shall be set forth in a separate, numbered paragraph. Each fact shall be supported by a specific citation to the record.<sup>21</sup>

#### **B. Statutory Liability**

Folad’s *Complaint* alleges Quillco’s violation of Tenn. Code Ann. § 44-8-408 and unspecified “laws of Williamson County, Tennessee.”<sup>22</sup> Tenn. Code Ann. § 44-8-408 imposes criminal liability upon owners of dogs who are allowed to run at large. Tenn. Code Ann. § 44-8-408 provides:

(a) As used in this section, unless the context otherwise requires, “owner” means a person who, at the time of the offense, regularly harbors, keeps or exercises control over the dog, but does not include a person who, at the time of the offense, is temporarily harboring, keeping or exercising control over the dog.

(b) The owner of a dog commits an offense if that dog goes uncontrolled by the owner upon the premises of another without the consent of the owner of the premises or other person authorized to give consent, or goes uncontrolled by the

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<sup>19</sup> *Rye*, 477 S.W.3d at 265.

<sup>20</sup> *Rye*, 477 S.W.3d at 251 (internal quotations omitted).

<sup>21</sup> Tenn. R. Civ. P. 56.03.

<sup>22</sup> Pls. Compl. at 2. The Court assumes that Folad references a local “leash law” ordinance, to which the parties have made no further reference.

owner upon a highway, public road, street or any other place open to the public generally.<sup>23</sup>

Tenn. Code Ann. § 44-8-413 imposes civil liability upon owners of dogs who are allowed to run at large. This is the provision which is relevant to this civil matter. Tenn. Code Ann. § 44-8-413 provides:

(a)(1) The owner of a dog has a duty to keep that dog under reasonable control at all times, and to keep that dog from running at large. A person who breaches that duty is subject to civil liability for any damages suffered by a person who is injured by the dog while in a public place of lawfully in or on the private property of another.

(2) The owner may be held liable regardless of whether the dog has shown any dangerous propensities or whether the dog's owner knew or should have known of the dog's dangerous propensities . . . .

(e) As used in this section, unless context otherwise requires:

(1) "Owner" means a person who, at the time of the damage caused to another, regularly harbors, keeps, or exercises control over the dog, but does not include a person who, at the time of the damage, is temporarily harboring, keeping, or exercising control over the dog; provided, however, that land ownership alone is not enough to qualify a landowner as a regular harborer even if the landowner gave permission to a third person to keep the dog on the land; and

(2) "Running at large" means a dog goes uncontrolled by the dog's owner upon the premises of another without the consent of the owner of the premises, or other person authorized to give consent, or goes uncontrolled by the owner upon a highway, public road, street or any other place open to the public generally.<sup>24</sup>

"Person" as used in this statute means: "an individual, corporation, partnership and any association of two (2) or more persons having a joint or common interest."<sup>25</sup>

(i) **Direct Liability**

Quillco argues that Tenn. Code Ann. § 44-8-413 imposes liability only upon a dog's owner, and the Coveillos (not Quillco) owned the dogs at the time of Folad's injury.<sup>26</sup> In

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<sup>23</sup> Tenn. Code Ann. § 44-8-408.

<sup>24</sup> Tenn. Code Ann. § 44-8-413.

<sup>25</sup> Tenn. Code Ann. § 44-2-101.

response to Quillco's *Statement of Material Facts as to Which There is No Genuine Issue for Trial*, Folad appears to dispute the dogs' ownership:

5. Defendants Lisa Coviello and David Coviello own the 2 dogs, Conor and Brownie, that allegedly caused injury to Plaintiff Zarmina Folad on 2/2/2017 when they briefly ran at large and were not under the control of the owners. Conor is a Golden Retriever and Brownie is a Labrador Retriever.

[Folad's] RESPONSE: Admitted as to [the] testimony of Lisa Coviello. Denied in part because the dogs were described as Quillco, LLC "dogs on duty" and "shop dogs."

6. The Bottle Shop does not own the dogs. The Coviellos are the owners of the dogs. Mr. and Mrs. Coviello have owned Conor since 2009 and Brownie since 2010.

[Folad's] RESPONSE: Admitted as to [the] testimony of Lisa Coviello. Denied in part because the dogs were described as Quillco, LLC "dogs on duty" and "shop dogs."<sup>27</sup>

Quillco argues that the business entity does not own the dogs within the meaning of Tenn. Code Ann. § 44-8-413(e)(1), and "at best it only had temporary custody or control of the dogs on 2/2/2017."<sup>28</sup> Maintaining temporary custody or control over a dog is expressly excluded from the statute's definition of ownership.<sup>29</sup>

In deciding this motion, the Court will take all facts and their associated reasonable inferences in favor of Folad as the non-moving party. Even so, the Court finds as a matter of law that Quillco does not own the dogs within the meaning of the statute. At the time of Folad's injury, the dogs were present at the store with their legal owner, Lisa Coviello. At all relevant times, the dogs remained under the care, custody, and control of Lisa Coviello. Neither the dogs' physical presence in the store nor their apparent presence in the store's promotional materials was sufficient to remove the dogs from the care, custody, and/or control of their owner Lisa

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<sup>26</sup> Def.'s Mot. to Dismiss All Remaining Claims and/or Mot. for Summ. J. at 2.

<sup>27</sup> Pls.' Response to Def.'s Statement of Material Facts as to Which There is No Genuine Issue for Trial at 2.

<sup>28</sup> Def.'s Mem. In Support of Mot. to Dismiss All Remaining Claims and/or for Summ. J. at 8.

<sup>29</sup> Tenn. Code Ann. § 44-8-413(e)(1).

Coviello and place the dogs under the care, custody, and/or control of the LLC. There is no evidence in the record which indicates that the dogs were engaged in any activity which would benefit or further Quillco's LLC business at the time of Folad's injury.<sup>30</sup> As a matter of law, Lisa Coviello, in her capacity as an individual, owned Brownie and Conor at the time of Folad's injury. At no relevant time did Quillco, as the LLC, assume ownership of the dogs.

Notably, the statute's definition of "owner" is prefaced with the phrase, "unless context otherwise requires."<sup>31</sup> Thus, even if Folad had demonstrated a genuine dispute of material fact as to whether Quillco may be considered a statutory owner,<sup>32</sup> the Court is empowered by the legislature to take into account the specific factual circumstances of this case. The factual circumstances of this case, even considered in the light most favorable to Folad, require the Court to conclude that Lisa Coviello owned the dogs in her capacity as an individual.

With respect to Quillco's alleged violation of Tenn. Code Ann. § 44-8-413, Quillco's *Motion for Summary Judgment* is hereby **GRANTED**. There are no genuinely disputed issues of material fact remaining for trial as to Quillco's alleged statutory violation.

(ii) **Vicarious Liability**

Folad alleges negligence of "the Defendants, their agents and/or employees."<sup>33</sup> Quillco argues that Quillco, as the principal, may not be held vicariously liable for its agent's (Lisa Coviello) alleged statutory violation because Folad has already settled all claims against the agent.

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<sup>30</sup> The Court notes, by way of example, that the dogs were not engaged as guard dogs for the store.

<sup>31</sup> Tenn. Code Ann. § 44-8-413(e).

<sup>32</sup> Folad specifically alleges: (1) the dogs were regularly present at the store; (2) while present, the dogs were allowed to roam the store; (3) the dogs have a bed in Lisa Coviello's office; (4) the dogs were advertised to the public as "dogs on duty," "4-legged employees on the clock," and "resident shop dogs;" (5) the dogs were featured on the storefront, the store's website, and in marketing/promotional materials; and (6) the store's employees were instructed to keep the back door closed when the dogs were present at the store.

<sup>33</sup> Pls.' Compl. at 2.

In *Abshire v. Methodist Healthcare-Memphis Hospitals*, the Tennessee Supreme Court outlines Tennessee's limitations on the vicarious liability of a principal:

It has long been recognized in Tennessee that a principal may be held vicariously liable for the negligent acts of its agent when the acts are within the actual or apparent scope of the agent's authority. It is also generally recognized that a plaintiff may sue a principal based on its vicarious liability for the tortious conduct of its agents without suing the agent. Even where the agent's conduct is the sole basis for the principal's liability, the agent remains a "proper, but not a necessary" party. Thus, a plaintiff is free to sue the agent, the principal, or both. This common-law framework is well-established in Tennessee law.

Notwithstanding the general rule permitting a plaintiff to file suit against the principal, the agent, or both, the courts have recognized that there are certain circumstances in which it would be improper to permit a plaintiff to proceed solely against a principal based on its vicarious liability for the conduct of an agent. The orderly development of the common-law in Tennessee has identified four such circumstances. These circumstances include: (1) when the agent has been exonerated by a finding of non-liability; (2) when the plaintiff has settled its claim against the agent; (3) when the agent is immune from suit, either by statute or by the common law; and (4) when the plaintiff's claim against the agent is procedurally barred by operation of law before the plaintiff asserts a vicarious liability claim against the principal.<sup>34</sup>

On December 27, 2019, Folad and the Coviellos (but not Quillco) entered into a settlement agreement.<sup>35</sup> As a result, on January 14, 2020, the Court entered an *Agreed Order* dismissing all claims against the Coviellos with prejudice. Quillco's *Motion for Summary Judgment* is predicated upon this settlement agreement and the resulting dismissals.<sup>36</sup> This scenario is described in *Abshire* category (2), "when the plaintiff has settled its claim against the agent."

The Court of Appeals, in *Lavoie v. Franklin County Publishing Co., Inc.*, further characterizes this limitation on vicarious liability as:

well settled in Tennessee. It is quite nearly blackletter law that a plaintiff is not permitted to pursue a claim against a principal based solely on vicarious liability

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<sup>34</sup> *Abshire v. Methodist Healthcare-Memphis Hospitals*, 325 S.W.3d 98, 105-106 (2010).

<sup>35</sup> Def.'s Mot. to Dismiss All Remaining Claims and/or Mot. for Summ. J. at 1.

<sup>36</sup> Def.'s Mot. to Dismiss All Remaining Claims and/or Mot. for Summ. J. at 1.



when the plaintiff has settled with the agent and thereby released the agent from liability . . . .

This rule applies to all manner of claims asserting vicarious liability, including those arising from employer-employee relationships in which liability is based on the theory of *respondeat superior* . . . . This rule is an exception to the general rule that a plaintiff may sue an agent (i.e., employee), a principal (i.e., employer), or both. Thus, once a plaintiff has settled with the employee, it may no longer maintain a suit based solely on the theory of *respondeat superior* against the employer.<sup>37</sup>

Folad argues that the Court's consideration of the settlement in deciding the pending *Motion for Summary Judgment* is inappropriate and in violation of Tennessee Rule of Evidence 408 and Tenn. Code Ann. § 29-11-105.

Tenn. R. Evid. 408 states:

Evidence of (1) furnishing or offering to furnish or (2) accepting or offering to accept a valuable consideration in compromising or attempting to compromise a claim, whether in the present litigation or related litigation, which claim was disputed or was reasonably expected to be disputed as to either validity or amount, is not admissible to prove liability for or invalidity of a civil claim or its amount or a criminal charge or its punishment. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence actually obtained during discovery merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution; however, a party may not be impeached by a prior inconsistent statement made in compromise negotiations.<sup>38</sup>

Quillco argues Tenn. R. Evid. 408 does not bar the Court from considering the settlement agreement because:

By its own language, TRE 408 does not require exclusion of evidence of settlements, or settlement negotiations, when the evidence is offered for another purpose. In this case, Lisa Coviello's testimony through her supporting affidavit regarding the settlement with Plaintiffs and release of all claims, is offered for another purpose: to demonstrate the limitation imposed by law on Plaintiffs' right

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<sup>37</sup> *Lavoie v. Franklin Cty. Pub. Co.*, No. M2010-02335-COA-R9CV, 2011 WL 1884562, at \*3 (Tenn. Ct. App. May 17, 2011).

<sup>38</sup> Tenn. R. Evid. 408.

to pursue a vicarious liability claim against The Bottle Shop for injuries caused by the agent's dogs. Thus, TRE 408 does not exclude evidence of the settlement for purposes of this summary judgment motion.<sup>39</sup>

Quillco also argues that, if the Court is not permitted to consider evidence of the settlement, "the limitation on Plaintiffs' ability to pursue such a vicarious liability claim against a principal as set out in the *Abshire* case could never be enforced."<sup>40</sup>

Tenn. Code Ann. § 29-11-105 states:

(a) When a release or covenant not to sue or not to enforce judgment is given in good faith to one (1) of two (2) or more persons liable in tort for the same injury or the same wrongful death:

(1) It does not discharge any of the other tort-feasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor.

(b) No evidence of a release or covenant not to sue received by another tort-feasor or payment therefor may be introduced by a defendant at the trial of an action by a claimant for injury or wrongful death, but may be introduced upon motion after judgment to reduce a judgment by the amount stipulated by the release or the covenant or by the amount of the consideration paid for it, whichever is greater.<sup>41</sup>

Quillco argues that this provision requires exclusion of a release only at trial, and does not bar the Court from considering Folad's release of all claims against the Coviello's at the pre-trial summary judgment stage.<sup>42</sup>

The Court finds Folad's position not well-taken. Rule 408 does not bar the Court's consideration of Folad's settlement with and release of claims against the Coviello's at the summary judgment stage, for this purpose. Rule 408 prohibits Quillco from introducing evidence

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<sup>39</sup> Def.'s Reply in Support of Def.'s Summ. J. Mot. at 2.

<sup>40</sup> Def.'s Reply in Support of Def.'s Summ. J. Mot. at 2.

<sup>41</sup> Tenn. Code Ann. § 29-11-105.

<sup>42</sup> Def.'s Reply in Support of Def.'s Summ. J. Mot. at 2.

of Folad's settlement with the Coviellos in order to dispute Quillco's liability. Rule 408 expressly "does not require exclusion when the evidence is offered for another purpose."<sup>43</sup> Demonstrating a procedural limitation under the law is a permissible purpose for the introduction of this evidence at this stage.

The express terms of Tenn. Code Ann. § 29-11-105 also allow evidence of the release of claims for certain purposes. The express terms of the statute allow the Court to consider a release of claims in order to effectuate a limitation under Tennessee law (i.e., to reduce the amount of any judgment to be consistent with the terms of the settlement). At present, the Court is called upon to give effect to a procedural limitation under the law on a pre-trial motion. The cited statute does not bar the Court's consideration of Folad's release of claims against the Coviellos for that purpose.

The Court of Appeals describes the procedural operation of the *Abshire* limitation on vicarious liability:

[O]nce the agent is released from liability by virtue of settlement with the plaintiff, the principal is automatically released. This occurs by operation of law .

...

If the agent can no longer be found liable in a judicial proceeding . . . then it automatically follows that the principal cannot be held liable, where, as here, the sole basis of the cause of action against the principal is vicarious in nature."<sup>44</sup>

With respect to Quillco's alleged vicarious liability for its agent Lisa Coviello's violation of Tenn. Code Ann. § 44-8-413, Quillco's *Motion for Summary Judgment* is hereby **GRANTED**. Any claim for vicarious liability predicated upon the actions of Lisa Coviello was automatically released by operation of law when Folad entered into a settlement agreement and covenant not to sue the agent Lisa Coviello.

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<sup>43</sup> Tenn. R. Evid. 408.

<sup>44</sup> *Lavoie v. Franklin Cty. Pub. Co.*, No. M2010-02335-COA-R9CV, 2011 WL 1884562, at \*5 (Tenn. Ct. App. May 17, 2011).

## **C. Negligence**

### **(i) Ordinary Negligence**

Folad alleges negligence on the part of Quillco for failing to control and allowing the dogs to roam at large.<sup>45</sup> Folad specifically alleges that an agent of Quillco was negligent in leaving the business's back door open, which allowed the dogs to leave The Bottle Shop.<sup>46</sup> For purposes of this motion, Quillco concedes that an employee of The Bottle Shop left the store's door open and allowed the dogs to escape.<sup>47</sup>

As an initial matter, Quillco argues that any common law negligence claim was abrogated by Tenn. Code Ann. 44-8-413.<sup>48</sup> Quillco further argues that Folad cannot maintain a negligence claim for two reasons: (1) the Coviellos, as the dog's owners under the statute, exclusively held the duty to keep the dogs from roaming at large,<sup>49</sup> and (2) there are no dangerous propensities of the dogs about which Quillco knew or should have known.<sup>50</sup>

Any common law negligence claim based upon an alleged failure to prevent the dogs from running at large falls wholly within the parameters of the statute, and was abrogated by the legislature's codification of that duty.<sup>51</sup> Accordingly, the only duty which was owed to Folad at the time of her injury was that duty outlined in Tenn. Code Ann. § 44-8-413(a)(1). Any breach of that duty is properly addressed by a cause of action for statutory violation, and not by an ordinary negligence claim.

With respect to dangerous propensities, Quillco states: "The dogs are not vicious. They have never attacked, bitten, or injured any person before the alleged incident of 2/2/2017. Even

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<sup>45</sup> Pls.' Compl. at 2.

<sup>46</sup> Pls.' Response to Def.'s Mot. to Dismiss All Remaining Claims and/or Mot. for Summ. J. at 1.

<sup>47</sup> Def.'s Reply in Support of Def.'s Summ. J. Mot. at 5.

<sup>48</sup> Def.'s Mem. In Support of Mot. to Dismiss All Remaining Claims and/or for Summ. J. at 7.

<sup>49</sup> Def.'s Mem. in Support of Mot. to Dismiss All Remaining Claims and/or for Summ. J. at 7-8.

<sup>50</sup> Def.'s Mem. In Support of Mot. to Dismiss All Remaining Claims and/or for Summ. J. at 9.

<sup>51</sup> See *Searcy v. Axley*, 2017 WL 4743111 (Tenn. Ct. App. Oct. 19, 2017) (holding that section (c)(1) of the Dog Bite Statute abrogates common law claims falling within its parameters).

here, the dogs did not bite or make any physical contact with Plaintiff Zarmina Folad.”<sup>52</sup> Folad offers no evidence of any viciousness by the dogs other than her own account of the specific incident which led to her injury. The statutory provision makes clear that a dog’s “owner may be held liable regardless of whether the dog has shown any dangerous propensities or whether the dog’s owner knew or should have known of the dog’s dangerous propensities.”<sup>53</sup> Because the statute has abrogated any common law cause of action encompassed by its provisions, it is only the statutory requirement which is relevant here.

With respect to a theory of ordinary negligence on the part of Quillco, Quillco’s *Motion for Summary Judgment* is hereby **GRANTED**. Folad may not proceed against Quillco on a common law negligence theory.

(ii) **Premises Liability**

Folad alleges that Quillco’s negligence in allowing the dogs to roam at large “created a dangerous condition to exist so as to cause the threat of harm to the public and actually [sic] harm to the Plaintiff, Zarmina Folad.”<sup>54</sup> Quillco takes this paragraph as a “hint at a claim” for premises liability.<sup>55</sup> Quillco argues that Folad cannot maintain a premises liability claim because Folad was not a customer of the business, never entered premises which were leased, owned, or controlled by the business, and was not injured on premises which were leased, owned, or controlled by the business.<sup>56</sup> Folad does not dispute any of those facts.

To the extent that Folad maintains a theory of premises liability, the Court finds that the undisputed facts support judgment as a matter of law in favor of Quillco. Quillco cannot be held

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<sup>52</sup> Def.’s Mem. In Support of Mot. to Dismiss All Remaining Claims and/or for Summ. J. at 9-10.

<sup>53</sup> Tenn. Code Ann. § 44-8-413(a)(2).

<sup>54</sup> Pls.’ Compl. at 2.

<sup>55</sup> Def.’s Mem. In Support of Mot. to Dismiss All Remaining Claims and/or Mot. for Summ. J. at 7.

<sup>56</sup> Def.’s Mem. In Support of Mot. to Dismiss All Remaining Claims and/or Mot. for Summ. J. at 7.

liable for Folad's injuries on a premises liability theory. Accordingly, with respect to premises liability, Quillco's *Motion for Summary Judgment* is hereby **GRANTED**.

### **III. CONCLUSION**

Defendant Quillco's *Motion for Summary Judgment* is hereby **GRANTED**. All remaining claims against Quillco are hereby **DISMISSED**.

**IT IS SO ORDERED.**

**ENTERED this 21st day of April, 2020.**

  
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**Joseph A. Woodruff**  
**Circuit Court Judge**

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing *Memorandum and Order* was mailed, postage prepaid, and/or emailed, and/or faxed, to:

Stanley A. Davis  
5214 Maryland Way, Suite 309  
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*Attorney for Defendant*

This the 22 day of April, 2020.

  
**Circuit Court Clerk**