

Minnesota Supreme Court Decisions - Highlights from 2011

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Dog Bite: Provocation

Engquist v. Loyas, 803 N.W.2d 400

Case #A09-1760

Justice Dietzen

Filed September 21, 2011

Jill Engquist brought suit under Minn. Stat. § 342.22 (2010) for injuries her daughter, nine-year-old Amber, suffered as the result of a dog bite at the dog owner's home. While playing in a darkened crawl space underneath a staircase, Amber and her friend, the daughter of the owners, called to the dog. The dog went into the crawl space and bit Amber on the face when she attempted to hug the dog. The district court instructed the jury that "provocation" meant any voluntary, deliberate act "which excites, stimulates, irritates, arouses, induces or enrages." The jury found that Amber provoked the dog, and the district court entered judgment in favor of the defendants.

HELD: The dog attack statute, § 342.22, makes a dog owner's liability absolute, and absolute liability under the statute "does not require negligence on the part of the dog owner, and is not barred by the contributory negligence of the plaintiff-victim." A plaintiff is not entitled, however, "to recover for a dog attack that is the result of provocation within the meaning of the statute." Though not defined in the statute, "provocation involves voluntary conduct by the plaintiff-victim that exposes the plaintiff -victim to a risk of harm from the dog of which the plaintiff-victim had knowledge at the time of the incident."

The court **affirmed** as modified the appellate decision **reversing** the district court.