

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STACEY L. THOMPSON, :
 : C.A. No. K19C-05-027 WLW
Plaintiff, :
 :
v. :
 :
ALL ABOARD KENNELS, KENT :
COUNTY SPCA, FIRST STATE :
ANIMAL CENTER AND SPCA, and :
BRANDYWINE VALLEY SPCA, :
 :
Defendants. :

Submitted: December 18, 2019

Decided: March 17, 2020

ORDER

Defendant Kent County SPCA a/k/a
First State Animal Center and SPCA, Inc.'s
Motion for Summary Judgment.
Denied.

Heather A. Long, Esquire of Kimmel carter Roman Peltz & O'Neill, P.A., Christiana, Delaware; attorney for Plaintiff.

Steven Schwartz, Esquire of Schwartz & Schwartz, Dover, Delaware; attorney for Defendants Kent County SPCA and First State Animal Center and SPCA.

Lisa M. Grubb, Esquire of Marshall Dennehey Warner Coleman & Goggin, Wilmington, Delaware; attorney for Defendant All Aboard Grooming & Kennels.

David C. Malatesta, Jr., Esquire of Kent & McBride, P.C., Wilmington, Delaware and Arthur P. Caltrider, Jr., Esquire of Bodie Dolina Hobbs Friddell & Grenzer, P.C., Towson, Maryland; attorneys for Defendant Brandywine Valley SPCA.

WITHAM, R.J.

INTRODUCTION

Upon consideration of the Motion for Summary Judgment filed by Defendant Kent County SPCA a/k/a First State Animal Center and SPCA, Inc., who also did not file an Answer in this case, the opposition of the Plaintiff Stacey Thompson, and the record of the case, it appears to the Court that:

FACTUAL AND PROCEDURAL HISTORY

1. On or about June 6, 2017, Stacey Thompson, Plaintiff in this case, an Animal Control Officer, took a stray dog to a kennel located at 32978 DuPont Boulevard, Dagsboro, Delaware.¹ Before Plaintiff arrived, a pit bull was let out of his kennel.² The pit bull was placed back into a kennel prior to Plaintiff's arrival but was able to escape due to an allegedly faulty latch.³ When Plaintiff entered the building, the pit bull attacked and injured her.⁴ Plaintiff filed suit against Defendants on May 21, 2019.⁵

¹ See Plaintiff's Response to Defendant Kent County SPCA and First State Animal Center and SPCA's Motion for Summary Judgment ("Pl's Response") ¶ 1. Plaintiff claims that the property involved was Defendant's property; *see also* Defendant's Motion for Summary Judgment (D's Mot.) at 2.

² See Pl's Response ¶ 2. Plaintiff claims that an employee of Co-Defendant, Brandywine Valley SPCA, let the pit bull out.

³ *Id.* at ¶ 3 (Plaintiff alleges that the kennel had a faulty latch and did not close and lock).

⁴ *Id.* at ¶ 3-4.

⁵ *Id.* at ¶ 5.

PARTIES' CONTENTIONS

2. Defendant states that Plaintiff sued the wrong party.⁶ Defendant claims that the only relationship Kent County SPCA ever had with the entity that owned the property where Plaintiff got injured was a landlord-tenant relationship where Defendant Kent County SPCA leased the property from the owner from July 2007, through April 2012.⁷ Defendant further claims that because Plaintiff got injured in 2017, Defendant has no connection to the events that took place at the time of the incident.⁸ Defendant argues that any claims related to this incident against Kent County SPCA, also known as First State Animal Center and SPCA, Inc., are frivolous.⁹ Furthermore, Defendant states that defending this lawsuit through trial would unfairly require Defendant to channel resources away from its charitable mission.¹⁰

3. Defendant also claims that Plaintiff's cause of action is barred by Title 10 of the Delaware Code § 8119.¹¹ Defendant admits that the action was filed within the statute of limitations but argues that the action is barred because Plaintiff failed to act

⁶ D's Mot. at 1. Defendant also states that Kent County SPCA and First State Animal Center and SPCA, two of the named Defendants, represent the same entity and only one party in this case.

⁷ *Id.* at 2. Defendant states that All Aboard Kennels, Co-Defendant in this case, is the owner of the premises where Plaintiff got injured.

⁸ *See Id.* at 2-3.

⁹ *See Id.* at 3.

¹⁰ *Id.*

¹¹ *See Id.* at 3-4.

diligently to ensure that Defendant is served the Complaint and the Summons timely.¹² In sum, Defendant claims that insufficient copies of the Complaint and the Summons were provided by Plaintiff pursuant to Superior Court Civil Rule 3(a), and that there was no compliance with the Administrative Directive of the President Judge.¹³ Defendant also claims that a timely payment of the sheriff's fee was not made along with a paper copy of the Summons sealed, issued, and delivered to the sheriff for proper service.¹⁴

4. Plaintiff points out that discovery is still ongoing.¹⁵ Plaintiff states that Defendant never filed an Answer to Plaintiff's Complaint and never answered Plaintiff's interrogatories.¹⁶ Plaintiff claims that Defendant did not prove that Kent County SPCA exercises no control over the property, including the defective kennel.¹⁷ Plaintiff argues that Defendant's role remains unknown.¹⁸ Plaintiff claims that the only affidavit submitted by Defendant, which states that Kent County SPCA had no connection to the property involved at the time of Plaintiff's injury, is insufficient as

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Pl's Response ¶ 8.

¹⁶ *Id.* at ¶ 9.

¹⁷ *Id.* at ¶ 10.

¹⁸ *See Id.* at ¶ 11.

Stacey L. Thompson v. All Aboard Kennels, et al.
C.A. No. K19C-05-027 WLW
March 17, 2020

proof that Defendant should not be a party to this litigation.¹⁹ Plaintiff further states that Plaintiff's counsel did not yet depose Kevin Usilton, the person who prepared the affidavit.²⁰ Plaintiff argues that, at this point, it is unclear who actually owned and leased the property in question.²¹ Plaintiff further claims that Defendant's statute of limitations argument is misplaced because Plaintiff filed this action within the time period set out in the statute.²²

STANDARD OF REVIEW

5. Summary judgment will be granted when, viewing all evidence in the light most favorable to the non-moving party, the moving party demonstrates that "there are no material issues of fact in dispute and that the moving party is entitled to judgment as a matter of law."²³ The moving party bears the initial burden of demonstrating the nonexistence of material issues of fact; the burden then shifts to the non-moving party to show that there are material issues of fact in dispute.²⁴ If, after discovery, the non-moving party cannot make a sufficient showing of the existence

¹⁹ See *Id.* at ¶ 12-13.

²⁰ *Id.* at ¶ 13.

²¹ *Id.* at ¶ 15.

²² *Id.* at ¶ 18.

²³ *Enrique v. State Farm Mutual Auto-Mobile Insurance Co.*, 2015 WL 6330920, at *3 (Del. Super. Oct. 14, 2015) *aff'd* 142 A.3d 506 (Del. 2016) (citing *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991); *see also* Super. Ct. Civ. R. 56(c)).

²⁴ *Bishop v. Progressive Direct Insurance Co.*, 2016 WL 7242582, at *1 (Del. Super. Dec. 15, 2016).

Stacey L. Thompson v. All Aboard Kennels, et al.
C.A. No. K19C-05-027 WLW
March 17, 2020

of an essential element of the case, then summary judgment must be granted.²⁵ However, when material facts are in dispute, or “it seems desirable to inquire more thoroughly into the facts, to clarify the application of the law to the circumstances,” summary judgment will not be appropriate.²⁶

DISCUSSION

6. In this case, a factual dispute exists as to the ownership and control of the allegedly defective kennel. The moving party must produce evidence that “demonstrate to a reasonable certitude that there [is] no issue of fact...”²⁷ Even though Defendant provided an affidavit by Kevin Usilton, which states that Kent County SPCA had no connection to the property, this evidence, coupled with the fact that Defendant failed to answer Plaintiff’s interrogatories, is not sufficient to meet the initial burden of proof for summary judgment. The record in this case is not entirely clear as to who actually owned and/or occupied the property at the time of the incident. Furthermore, discovery is ongoing and incomplete. When discovery is not yet complete, summary judgment is typically inappropriate.²⁸ In *Savor*, similar to this case, the record was not fully developed when Defendant moved for summary

²⁵ *Slaubaugh Farm, Inc., et. al. v. Farm Family Cas. Ins. Co.*, 2018 WL 5473033, at *2 (Oct. 29, 2018) (citing *Burhart*, 602 A.2d at 59 cert. den., 504 U.S. 912 (1992); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986)).

²⁶ *Ebersole v. Lowengrub*, 180 A.2d 467, 468–69 (Del.1962).

²⁷ *Id.* at 470; see also *Delmar News, Inc. v. Jacobs Oil Co.*, 584 A.2d 531, 533 (Del. Super. 1990).

²⁸ See *Savor, Inc. v. FMR Corp.*, 2003 WL 21054394 (Del. Super. Apr. 3, 2003).

Stacey L. Thompson v. All Aboard Kennels, et al.
C.A. No. K19C-05-027 WLW
March 17, 2020

judgment.²⁹ The court denied the motion because it was premature.³⁰ In this case, further discovery is needed to determine which entity installed the kennel, exercised control over the premises, and maintained the property.

7. Furthermore, the action was filed within the 2-year statute of limitations that governs personal injury cases.³¹ In this case, another potential factual dispute exists as to why some delay took place before Defendant was served the Complaint and the Summons.³² It appears that for an action to still be barred by the statute of limitations when it was filed within the statute, a party must cause the delay of subsequent litigation purposely, at least to a degree, or must be so careless that his or her actions would almost certainly prevent the lawsuit from going forward.³³ Here, even assuming Plaintiff made some mistakes, she properly filed the action within the statute of limitations. Here, Defendant did not demonstrate prejudice. Defendant also did not demonstrate that Plaintiff acted purposely in delaying bringing Defendant into this lawsuit, or that Plaintiff failed “to put the judicial machinery in motion.”³⁴

²⁹ *Id.*

³⁰ *Id.* at *1.

³¹ Pl’s Response ¶ 18; *see also* 10 Del. C. § 8119.

³² *See Id.*; *see also* D’s Mot. at 4.

³³ *See Sines v. Wyatt*, 281 A.2d 499, 501 (Del. Super. 1971); *see also Russell v. Olmedo*, 275 A.2d 249 (Del. 1971).

³⁴ *Russel*, 275 A.2d at 250 (internal citations omitted).

Stacey L. Thompson v. All Aboard Kennels, et al.
C.A. No. K19C-05-027 WLW
March 17, 2020

CONCLUSION

8. For the foregoing reasons, Defendant's Motion for Summary Judgment is
DENIED without prejudice.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh