

# VIRGINIA LAWYERS WEEKLY

Vol. 28, No. 12

valawyersweekly.com

August 26, 2013

## Veterinarian records provide key to dog-bite win

BY DEBORAH ELKINS

A woman's offer to retrieve extra refreshments from her home for a neighborhood party left her liable for a \$125,000 jury award when her dog bit the neighbor who accompanied her to her home.

Veterinarian records had flagged the defendants' 130-pound Akita as displaying a high level of aggression, according to Norfolk lawyer John R. Fletcher, who represented the plaintiff. There was a contest over getting vet records in front of the jury, and one treating veterinarian testified for the defense, but a Chesapeake jury came back for plaintiff Claudia Hamrock on Aug. 20.

On Aug. 29, 2009, Hamrock was at a party with neighbor Denise Dunham, according to Hamrock's complaint in Chesapeake Circuit Court.

"They were all neighbors, it was a neighborhood party at another house," Fletcher said. Later that evening, "the ladies wanted Irish coffee, but the hostess had no Bailey's [Irish Cream], so the defendant volunteered to get the Bailey's" from her home.

Denise Dunham, Hamrock and another woman walked around the block and went into the Dunham home. Initially, there appeared to be no trouble with the Dunhams' seven-year-old Akita, "Kuma," who was "just walking around the house with the three ladies," Fletcher said.

As Hamrock sat next to the dog,



FLETCHER

petting it, it bit her in the face and forearm. Her past medical expenses ranged up to \$24,000, and she will need between one and three soft-tissue augmentation procedures as a result of the bite, Fletcher said.

Shortly after the incident, Hamrock told an animal control officer that she "was very intoxicated and did not remember a lot" about the incident, according to court records. During a deposition, Hamrock said she was not intoxicated and could remember details of the incident.

Hamrock tried to exclude any reference to her level of intoxication and any evidence the defense might present about the odor of alcohol being a stimulant that affects dogs.

Chesapeake Circuit Court Judge Randall D. Smith said Hamrock's statement could come in, as her admission that she was intoxicated and might have tripped over the dog laid a foundation. He deferred ruling on the alcohol-as-stimulant theory, and ultimately there was no evidence in play on this point.

There was some discussion over whether the veterinarian records were privileged and whether the vets had violated that privilege by talking with the plaintiff's lawyers.

The third woman in the Dunham

home testified that Hamrock did not trip over the dog, and the jury appeared to be persuaded by the testimony of two veterinarians who treated the dog that the Dunhams should have been aware of the risk he posed.

"Every vet has some method of internally rating animals for aggression," Fletcher said, in order to treat the animal, protect their own staff, and advise owners.

A veterinarian who treated the dog more recently testified for the defendant. But the two vets who testified for the plaintiff had treated Kuma over a period of three to four years and had made his owners aware of his tendency toward aggression, the plaintiff argued.

The larger legal framework for dog-bite cases can involve an assessment of a dog under the 2006 Virginia statute outlining a procedure for designation of a "dangerous dog" and a review of local ordinances.

"Local leash laws cover dogs roaming at large, but there's no statute about what you have to do with a dog inside your own home," Fletcher said. This case was determined by the owner's duty of care to Hamrock, an invitee in the Dunhams' home.

"These can be tough cases if you don't have evidence" of prior aggression, he said.

Midlothian lawyers Raymond J. Sinnott III and Erick F. Seamster, who represented the Dunhams, could not be reached for comment.