

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 11, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-0378

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

KURT OHRMUNDT,

PLAINTIFF-APPELLANT,

**BLUE CROSS & BLUE SHIELD
UNITED OF WISCONSIN,**

INVOLUNTARY PLAINTIFF,

V.

**GREG DEMARK, ROGER DEMARK AND
DONNA DEMARK,**

DEFENDANTS-RESPONDENTS,

ABC INSURANCE COMPANY,

DEFENDANT.

APPEAL from a judgment of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Reversed and cause remanded.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. Kurt Ohrmundt appeals from a summary judgment granted in favor of Roger and Donna Demark after the trial court found Roger and Donna were not “keepers” of the dog that bit Ohrmundt. Ohrmundt claims that the trial court erred in granting summary judgment because there are material issues of disputed facts as to whether Roger and Donna qualify as “keepers” of the dog as that term is used in §§ 174.001(5) and 174.02(1)(a), STATS. Because there are sufficient factual disputes that would support a jury finding that Roger and Donna were “keepers” of the dog that bit Ohrmundt, we reverse the judgment and remand for further proceedings.

I. BACKGROUND

On January 24, 1994, Ohrmundt was invited to Roger and Donna’s home by their minor son, Greg. Ohrmundt alleges that he was attacked and injured by a German Shepherd, named “Dakota,” that resided in the home. The home was owned by Roger and Donna. Their two sons, Greg, a minor, and Matthew, an adult, also resided in the home. It is undisputed that Roger and Donna were not home at the time that Dakota bit Ohrmundt.

Ohrmundt filed a lawsuit against Roger, Donna, and Greg, alleging that they were responsible for his injuries caused by the bite. The Demarks filed an answer denying that Roger, Donna or Greg were the owners of Dakota. The Demarks filed a motion for summary judgment, alleging that Matthew was the sole owner of Dakota. In support of this contention, they filed a dog license, obtained the day after Ohrmundt was bit, which indicates that Matthew is the sole owner of Dakota.

At the summary judgment hearing, Ohrmundt argued that Roger and Donna were “owners” as that term is used in § 174.02(1)(a), STATS., because they were “keepers” of Dakota. Section 174.02(1)(a) provides that “the owner of a dog is liable for the full amount of damages caused by the dog injuring or causing injury to a person.” The definition of “owner” under this statute is “any person who owns, harbors or keeps a dog.” Section 174.001(5), STATS. Ohrmundt informed the court that Roger and Donna had purchased Dakota as a gift for Matthew in 1990 and that there were no dog licenses indicating ownership of Dakota until the day after Ohrmundt was bit in January 1993.

The trial court granted summary judgment in favor of the Demarks. Ohrmundt appeals that decision.¹

II. DISCUSSION

The issue in this case arises from a grant of summary judgment. In reviewing a grant of summary judgment, we employ the same methodology as the trial court. *See Green Spring Farms v. Kersten*, 136 Wis.2d 304, 315, 401 N.W.2d 816, 820 (1987). We first examine the pleadings and affidavits to determine whether a claim for relief has been stated. *See id.* If a claim for relief has been stated, we then determine whether any factual issues exist. *See id.* If there is no genuine issue as to any material fact, and if the moving party is entitled to judgment as a matter of law, we will affirm the trial court’s decision granting summary judgment. *See id.* Our review is *de novo*. *See id.*

¹ We acknowledge that Ohrmundt does not challenge the trial court’s judgment in favor of Greg and, therefore, our analysis is limited to whether Roger and Donna’s dismissal was appropriate.

In conducting our review, we conclude that Ohrmundt has raised a material issue of disputed fact: whether Roger and Donna are “keepers” of Dakota as that term is used in the statute cited above. It is undisputed that Roger and Donna purchased Dakota in 1990 for their son Matthew and that Dakota resided in Roger and Donna’s home for several years before any dog license was obtained. Further, it is undisputed that Matthew obtained a dog license, denoting that he was the sole owner *one day after* Dakota allegedly attacked Ohrmundt.

Our jury instruction relative to this issue sets forth the law: “A person is said to be a keeper of an animal if, even though not owning the animal, the person has possession and control of it or if the person permits another person who is a member of his or her family or household to maintain the animal on his or her premises.” WIS J I—CIVIL 1391. Under these circumstances, there is a material issue of disputed fact as to whether Roger and Donna were “keepers” of Dakota. Giving Ohrmundt the benefit of a reasonable inference, there are sufficient factual disputes to allow a jury to find that Roger and Donna were “keepers.”

Roger and Donna’s reliance on *Pattermann v. Pattermann*, 173 Wis.2d 143, 496 N.W.2d 613 (Ct. App. 1992) is misplaced, as *Pattermann* is distinguishable from the facts presented here. In *Pattermann*, we concluded that the owner of the home was not a “keeper” under the statute because the dog was in the home for a brief period of time, having come with a family member for a visit. *See id.* at 149-50, 496 N.W.2d at 615-16. The dog did not live in the Pattermann home. *See id.* Thus, the instant case is not governed by *Pattermann*.

Accordingly, we reverse the summary judgment dismissing the complaint against Roger and Donna and remand for further proceedings consistent with this opinion.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

