

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 22, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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**Appeal No. 2025AP137
STATE OF WISCONSIN**

Cir. Ct. No. 2022CV1603

**IN COURT OF APPEALS
DISTRICT IV**

ABIGAIL GOLDMAN-NAGEL,

PLAINTIFF-APPELLANT,

GROUP HEALTH COOPERATIVE OF SOUTH CENTRAL WISCONSIN,

SUBROGATED-PLAINTIFF,

V.

BRADLEY WERNTZ AND VERA NAPUTI,

DEFENDANTS-THIRD-PARTY PLAINTIFFS-RESPONDENTS,

4TH WARD LOFT CONDOMINIUM ASSOCIATION, INC.,

DEFENDANT-RESPONDENT,

V.

ROBERT F. NAGEL AND MOLLY LAWSON,

THIRD-PARTY DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
SUSAN M. CRAWFORD, Judge. *Affirmed.*

Before Graham, P.J., Blanchard, and Kloppenburg, JJ.

¶1 BLANCHARD, J. Abigail Goldman-Nagel appeals an order of the circuit court granting summary judgment dismissing her claim against the 4th Ward Condominium Association (the Association) for her damages resulting from a dog bite that occurred in a hallway of one of the Association’s buildings. There is no dispute that the dog that bit Goldman-Nagel was owned by defendants Bradley Werntz and Vera Naputi, and that Werntz and Naputi owned a unit in the building where the bite occurred. The court granted summary judgment in favor of the Association on the ground that there is no genuine issue of material fact that the Association could not be liable for the damages here under case law governing statutory and common law negligence claims for damages resulting from dog bites.

¶2 Regarding statutory liability, Goldman-Nagel argues that there is a genuine issue of fact as to whether the Association was either a “harborer” or a “keeper” of the dog that injured her, as those terms have been defined in the case law. Under either status, the Association would be strictly liable for her injuries under WIS. STAT. § 174.02 (2023-24).¹ We conclude that the only reasonable inference from the summary judgment materials is that the Association did not harbor or keep the dog.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

¶3 Regarding common law liability, Goldman-Nagel argues that case law which precludes negligence-based liability for those who own property where a dog is kept, based solely on that property ownership, does not apply to the Association. According to Goldman-Nagel, that liability-precluding authority applies only to landlords and not to condominium associations. We conclude that the authority precluding liability for property owners based solely on property ownership applies to the Association here, barring Goldman-Nagel’s claim against the Association. Under this case law, an owner of property can be liable for common law claims for negligence associated with injuries caused by a dog only if the property owner was an owner or a keeper of the dog. Again, the only reasonable inference from the summary judgment materials is that the Association was not an owner or a keeper of the dog, and therefore Goldman-Nagel cannot prevail on the negligence claim.

¶4 Accordingly, we affirm the circuit court’s order dismissing the complaint.

BACKGROUND

¶5 Goldman-Nagel commenced this action in June 2022. The complaint alleges the following in support of Goldman-Nagel’s claim that the Association was negligent in failing to prevent the dog bite at issue.

¶6 Goldman-Nagel was in a hallway of an upper floor of a building in Madison that was owned in part by the Association (“the condo building”).² She

² We note for context that the Association owned, in part, several other buildings as part of the same condominium established through the Association’s declaration, but the additional buildings play no role in our analysis. See WIS. STAT. § 703.02(4) (“‘Condominium’ means property subject to a condominium declaration established under this chapter.”).

(continued)

was accompanied by her father, Nagel, and Nagel had with him a dog owned by his partner, Molly Lawson. Goldman-Nagel and Nagel were waiting for an elevator to take them and Lawson's dog down to the first floor of the condo building. When the elevator arrived, Brad Werntz was in the elevator, and he had with him another dog, Pako, which belonged to Werntz and Vera Naputi. The elevator doors opened, and Pako bit one of Goldman-Nagel's hands.

¶7 According to Goldman-Nagel's complaint, the Association was negligent by failing to take actions that would have prevented Pako from biting Goldman-Nagel. As part of the negligence claim, Goldman-Nagel alleges that members of an Association board responsible for creating and enforcing its rules and regulations were aware before this incident that Pako was a dangerous dog and yet the Association failed to take steps that could have prevented this incident.

¶8 The Association moved for summary judgment dismissing Goldman-Nagel's claim against it. The Association argued that, under pertinent case law, it could not be liable under common law negligence principles for the injuries caused by Pako. Although the complaint did not explicitly reference liability under WIS. STAT. § 174.02, the Association further argued that it could not be liable for injuries caused by Pako under that statute. Goldman-Nagel opposed summary judgment, arguing that the Association was liable as an "owner" of Pako both under § 174.02 and also under a common law theory of negligence.

As we discuss in more detail below, we say that the condo building was "owned in part" by the Association because each individual unit inside the building is the exclusive property of the unit's owner, as distinct from "common elements" that are owned by all the unit owners collectively through undivided property interests. See WIS. STAT. §§ 703.02(2) and (15), 703.05, 703.13(1), 703.16.

¶9 The circuit court granted the Association’s motion. The court concluded that there is no evidence in the summary judgment materials that could show or support a reasonable inference that, at the time of the bite, any unit owner other than Werntz and Naputi, or any “agent or employee of the Association, was exercising any custody or control over Pako.” Instead, the court ruled, Werntz and Naputi exercised all of the custody and control over Pako that could support statutory or common law liability.

¶10 Goldman-Nagel appeals.

DISCUSSION

¶11 As we have foreshadowed, Goldman-Nagel relies on two theories of liability to argue that the circuit court should not have granted summary judgment in favor of the Association. One theory is based on statutory liability for dog bite damages under WIS. STAT. § 174.02. The other is based on common law liability for dog bite damages due to negligence. We conclude that the summary judgment materials do not give rise to reasonable inferences establishing that the Association is liable under either theory.

¶12 Summary judgment may be granted only “if there are no genuine issues of material fact, and the moving party ... is entitled to judgment as a matter of law.” **AccuWeb, Inc. v. Foley & Lardner**, 2008 WI 24, ¶16, 308 Wis. 2d 258, 746 N.W.2d 447 (citing WIS. STAT. § 802.08(2)). “Summary judgment materials, including pleadings, depositions, answers to interrogatories, and admissions on file are viewed in the light most favorable to the nonmoving party.” **Id.**; § 802.08(2). That is, we draw “[a]ll reasonable inferences” in favor of the nonmoving party that can be supported by the summary judgment materials. *See Johnson v. Rogers Mem’l Hosp., Inc.*, 2005 WI 114, ¶30, 283 Wis. 2d 384, 700 N.W.2d 27. We

review the circuit court’s grant of summary judgment de novo. ***Steffes v. Fond du Lac Reg’l Clinic, S.C.***, 2026 WI App 35, ¶8, 421 Wis. 2d 492, 37 N.W.3d 574.

¶13 The “[i]nterpretation and application of statutes and case law to a set of facts”—here, the summary judgment materials viewed in the light most favorable to Goldman-Nagel—are matters of law that we also decide de novo. See ***Meyers v. Bayer AG, Bayer Corp.***, 2007 WI 99, ¶22, 303 Wis. 2d 295, 735 N.W.2d 448.

I. WISCONSIN STAT. § 174.02

¶14 Under WIS. STAT. § 174.02(1), “the owner of a dog is liable” for either “the full amount of damages caused by the dog injuring ... a person” or, in certain circumstances, twice that amount. See § 174.02(1)(a)-(b). For purposes of WIS. STAT. § 174.02, an “owner” “includes any person who owns, harbors[,] or keeps a dog.” WIS. STAT. § 174.001(5). Thus, § 174.001 expands the definition of ownership for purposes of statutory liability for dog bite harm beyond persons who might be described as “legal owner[s]” of a dog to include any person who was a harbinger or a keeper of the dog at the time of the bite. See ***Pawlowski v. American Fam. Mut. Ins. Co.***, 2009 WI 105, ¶19, 322 Wis. 2d 21, 777 N.W.2d 67.

¶15 The meaning of “owns”—that is, who was the “legal owner” of Pako at relevant times—is settled here. See *id.* Goldman-Nagel does not argue that a factfinder could reasonably find, based on the summary judgment materials, that the Association was a legal owner of Pako. It is undisputed that Werntz and Naputi were the only ones who “own[ed]” Pako in this sense.

¶16 Turning to the status of harboring or keeping of a dog under WIS. STAT. §§ 174.001 and 174.02, these terms are not given statutory definitions, and their meanings are instead found in case law. See *Augsburger v. Homestead Mut. Ins. Co.*, 2014 WI 133, ¶¶20-21, 359 Wis. 2d 385, 856 N.W.2d 874. Although “some dictionary definitions” of harboring and keeping “are similar and ... the words seem to have overlapping meanings,” courts have given them somewhat distinct meanings in this context, consistent with the rule of statutory construction under which courts strive “to give each statutory word independent meaning.” *Pawloski*, 322 Wis. 2d 21, ¶¶21-22. Thus, while some activities that would contribute to a determination of harboring would also support a determination of keeping and vice versa, we address each as a separate status. That is, each of the two statuses that could qualify a person as an “owner” under § 174.02 is determined independently, even if some or all of the same facts will inform whether a person had either status. See *Pawloski*, 322 Wis. 2d 21, ¶¶21, 23, 30; *Augsburger*, 359 Wis. 2d 385, ¶¶38-39.

¶17 “Whether a person is one who ‘harbors’ or ‘keeps’ a dog is ordinarily a factual question for the fact finder and ‘depends upon the peculiar facts and circumstances of each individual case.’” *Pawloski*, 322 Wis. 2d 21, ¶20 (quoted source omitted).

A. Whether the Association was a Harborer

¶18 “Harboring” a dog means “‘sheltering or giving refuge to a dog.’” *Augsburger*, 359 Wis. 2d 385, ¶21 (quoted source omitted). To qualify as harboring, the plaintiff must show “‘something more than [the provision of] a meal of mercy to a stray dog or the casual presence of a dog on someone’s premises.’” *Id.* (quoted source omitted). In contrast to “keeping,” harboring does

not turn on the exercise of control over the dog—that is, harboring does not depend on activity that shows signs of having a ““proprietary aspect,”” or degree of ownership, over the dog. *Id.*, ¶¶21, 39 (quoted source omitted).

¶19 In *Augsburger*, our supreme court discussed how these standards for harboring are met, based on the control that a person has over property where a dog is kept. See *id.*, ¶¶22-42. In that discussion, the supreme court frequently spoke in terms of when a “landowner” is considered a harbinger, concluding that “mere ownership of the property on which a dog resides is insufficient to establish that an individual is a harbinger.” *Id.*, ¶42. The focus of the harboring analysis is on “the amount of control” that the possible harbinger “exerts over the premises on which the dog is kept.” *Id.*, ¶¶30, 39. Determining whether a person exercised control over the premises does not turn on whether there is an “official relationship”—such as the existence of a landlord-tenant relationship—between the potential harbinger and someone who legally owns, keeps, or cares for the dog on the property. See *id.*, ¶30. Thus, in *Augsburger* the court did not need to resolve the parties’ dispute over whether the property owner had a tenancy-at-will relationship with the family that kept the dog at issue. *Id.* Instead, the court considered facts reflecting the degree of control that the property owner had over the property. *Id.*, ¶¶43-47.

¶20 Further, our supreme court explained that the control over the premises which matters in the harboring analysis is not established by the person’s ability to set rules governing the use of the property, including rules that might have limited the ability of occupants of the property to possess dogs there. See *id.*, ¶29 (citing *Malone v. Fons*, 217 Wis. 2d 746, 766, 580 N.W.2d 697 (Ct. App. 1998)). Instead, the kind of premises control that counts is the control which was exercised by a person who was part of the same household as the dog. See *id.*,

¶¶22-29, 31-34. For these reasons, we consider the analysis from **Augsburger** to be instructive here, even though the Association’s role as a landowner did not extend to Werntz and Naputi’s individual condo unit. See WIS. STAT. § 703.05 (owner of an individual condo unit is “entitled to exclusive ownership and possession of his or her unit”).

¶21 As part of its harboring analysis, our supreme court cited the following Restatement principle as persuasive in determining the level of control over the premises where a dog is kept that is needed to qualify as harboring the dog for purposes of WIS. STAT. § 174.001(5). “[T]he possession of the land on which the animal is kept, even when coupled with permission given to the third person [occupying the land] to keep it, is not enough to make the possessor of the land liable as a harbinger of the animal.” **Augsburger**, 359 Wis. 2d 385, ¶31 (quoting RESTATEMENT (SECOND) OF TORTS § 514 cmt. a (1977)). Instead, “an individual ‘harbors an animal by making it part of his [or her] household,’ which the individual “‘may do by permitting a member of [the] household ... to keep the animal ... on the premises that are occupied as the home.” *Id.*, ¶32 (quoting RESTATEMENT (SECOND) OF TORTS § 514 cmt. a) (brackets from **Augsburger** omitted).

¶22 We observe that, under the harboring analysis, the location that matters most is not where the dog bite occurred, but rather where one or more people sheltered the dog. It is true that judicial opinions addressing when a landowner harbored a dog often involve, as one would expect, biting incidents that occurred on or near the place where the dog was generally kept, which also happened to be a place that was owned or rented by someone other than the dog’s undisputed legal owner or keeper. See, e.g., **Augsburger**, 359 Wis. 2d 385, ¶¶5-9; **Pawlowski**, 322 Wis. 2d 21, ¶¶9-11. But under the logic of those cases, a

landowner who is determined to have been a harbinger of a dog is liable under WIS. STAT. § 174.02 even for injuries that the dog causes at a location away from the dog's shared living area, and the bite location is treated as an incidental fact. See **Pawloski**, 322 Wis. 2d 21, ¶¶40-45 (discussing **Koetting v. Conroy**, 223 Wis. 550, 551, 270 N.W. 625 (1936) (father who permitted adult daughter and her dog to live in father's house liable for damages caused by the dog at a park, when the dog was accompanied only by the daughter)); **Augsburger**, 359 Wis. 2d 385, ¶¶27-28 (discussing **Koetting** as an opinion addressing the meaning of "harboring," even though **Koetting** used the term interchangeably with "keeping").

¶23 Applying these standards to the summary judgment materials here, we conclude that there is no genuine issue of fact that the Association did not harbor Pako. At all relevant times, the Association was a corporate entity comprised of all of its "unit owners acting as a group." See WIS. STAT. § 703.02(1m).³ There is no evidence that the unit owners acting as a group provided shelter, meals, or protection to Pako. The only evidence is that all of these were provided only by Werntz and Naputi, and there is no suggestion that any of this was done outside of the condo unit that was owned by Werntz and Naputi, and not by the Association. See WIS. STAT. § 703.05 ("A [condominium] unit owner is entitled to the exclusive ownership and possession of his or her unit."). Further, there was no evidence that Pako was a part of any household that could be defined as a group consisting of the unit owners acting collectively.

³ The declaration for the condominium at issue here specifies that the declaration, and the Association generally, were governed by WIS. STAT. ch. 703, the Condominium Ownership Act. Consistent with the Act's definition of "association," the declaration states that the Association is a non-stock corporation in which all unit owners in the condominium "shall be members."

Instead, in all relevant respects, Pako was exclusively treated as being part of the Werntz and Naputi household.

¶24 Goldman-Nagel appears to argue that the level of control that the Association exercised over relevant aspects of the condo building, through its rules, supports a finding that the Association harbored Pako. See WIS. STAT. § 703.10(1) (“[e]very unit owner shall comply strictly with the bylaws [for the administration of the condominium] and with the rules adopted under the bylaws”).⁴ She specifically emphasizes the rules in the Association’s governing documents that address the presence of pets in areas controlled by individual unit owners and common areas, such as the hallway where Pako bit Goldman-Nagel. One pertinent example was a rule that pets must “be carried or kept on a leash at all times” when the pet was in certain common areas, including the hallway here, for the purpose of leaving or reentering the building. Another rule provided that pets should not be allowed “to create a nuisance or cause an unreasonable disturbance” in any common or individually owned area. Goldman-Nagel apparently means to argue that, because Werntz and Naputi as unit owners were, in the words of the Association’s declaration, “strictly subject” to such rules, this represented sufficient control by the Association over premises where Pako was present to allow a factfinder to find that the Association harbored Pako.

⁴ Goldman-Nagel’s argument on this point is somewhat difficult to follow in part because she makes a brief reference to whether an individual is a keeper of a dog under WIS. STAT. § 174.001(5), but her associated argument addresses points that appear most relevant to the topic of control of property. See *Augsburger v. Homestead Mut. Ins. Co.*, 2014 WI 133, ¶39, 359 Wis. 2d 385, 856 N.W.2d 874 (“The control considered in the analysis of ‘keeper’ is control over the dog, not control over the property.”). In Goldman-Nagel’s favor, we assume that she intends to argue that the Association’s regulations related to pets when they are in common areas or in individually owned areas supports both a finding that the Association harbored Pako and a finding that it kept Pako.

¶25 Goldman-Nagel’s harboring argument fails for at least the following reason. The type of control that the Association exercised, through its rules, over the property where Pako lived is analogous to the “limited control” of a landlord over rented premises when the landlord was also not a member of the household where the dog lived. See **Pawloski**, 322 Wis. 2d 21, ¶52; WIS. STAT. § 704.05(2) (discussing right of tenant not in default to exclusive possession of rented premises unless agreed to by landlord and tenant in signed writing); **Apple Valley Gardens Ass’n, Inc. v. MacHutta**, 2009 WI 28, ¶¶3, 30-31, 316 Wis. 2d 85, 763 N.W.2d 126 (condominium by-laws can restrict use of individual units, but only when by-laws are duly enacted, and consistent with the condominium’s declaration and applicable law). Put in more general terms, a person who merely permitted the presence of a dog on property that the person owned—regardless of whether the presence of the dog is consistent with, or contrary to, rules established by that person for the use of the property by others—did not necessarily exercise the type of control that supports a finding that the person harbored the dog. See **Augsburger**, 359 Wis. 2d 385, ¶¶24, 29, 33; **Malone**, 217 Wis. 2d at 766 & n.7. Instead, the nature of the control that a person exercises over the premises where a dog is given food and shelter must be the type of control that involves the person being a member of the household where the feeding and sheltering occur. See **Augsburger**, 359 Wis. 2d 385, ¶¶21, 31.

¶26 Here, the Association, through its rules, gave Werntz and Naputi permission to shelter and care for a dog in their condo unit, with various requirements related to keeping a dog in the building. But what matters is that it was Werntz and Naputi alone who exercised that right and who were responsible for following the Association rules.

¶27 It is true that, when compared to the spaces within individual condo units, the Association’s level of relevant control under its declaration and bylaws was undoubtedly greater in some ways in common condo areas, such as the hallways between individually owned units. These common spaces were not the exclusive property of individual unit owners. Instead, consistent with the default arrangement established by statute, *see* WIS. STAT. § 703.13(1), the declaration provides that the unit owners who made up the Association held undivided percentage interests in the common elements of the condominium. Yet, there is no evidence in this case that Pako was cared for by anyone in common areas in ways that could support a finding of harboring. And, to repeat, the fact that the bite occurred in a common hallway, by itself, has little bearing on who can be considered a harbinger of Pako under pertinent legal standards.

¶28 Goldman-Nagel notes several ways in which the Association’s relationship with its individual members might have differed from a landlord’s relationship with tenants. But none of her points could support a determination of harboring. She observes that the unit owners who formed the Association all lived in the condominium’s buildings. This included the unit owners who were, at pertinent times, members of the Association’s board, the body charged by the Association’s governing documents with creating and enforcing the Association’s rules. Under Goldman-Nagel’s framing of the issue, this means that the Association and its board had “daily contact” with the condo building, which she contrasts with what she describes as the lack of “daily contact” that “a typical landlord” has with, for example, a multi-unit apartment building. But, Goldman-Nagel does not develop an argument from this daily-contact concept, supported by evidence that is related in any way to the Association or Pako, that could support a

reasonable inference that the Association or any agent of the Association participated in any activities that could support a finding of harboring.

¶29 In a similar vein, Goldman-Nagel contends that another difference between the condominium and landlord-tenant contexts that matters here has to do with the ability of tenants to pursue relief for constructive eviction or untenable conditions, such as might arise when a landlord fails to protect tenants from dangerous animals in common spaces around the rented premises. See WIS. STAT. § 704.07(4) (discussing the ability of a tenant to seek abated rent when conditions in the rented premises are subject to certain conditions that “materially affect[] ... the safety of the tenant”). Goldman-Nagel argues that condominium unit owners are relatively less able to surrender their interest in a condominium (which requires selling their unit and shared interests) when an association fails to adequately protect common spaces from dangerous animals, as she alleges the Association failed to do here. Assuming without deciding that condominium unit owners indeed have fewer remedies along these lines, Goldman-Nagel does not support the proposition that this in itself affects how the principles in cases such as *Augsburger* apply here. Rather, her argument suggests a reason that the legislature could alter the statutory definition of “owner” under WIS. STAT. § 174.001 in the specific context of condominiums to better protect the specific vulnerabilities of condominium unit owners.

¶30 Goldman-Nagel also appears to argue that there is a reasonable inference that the Association harbored Pako based on prior knowledge of Pako’s dangerousness by Association members. Specifically, this argument involves evidence that could support reasonable inferences that members of the Association’s board knew, before Pako bit Goldman-Nagel, that Pako was a dangerous dog who lived in the condo building, and that members of the board

failed to take steps that would have prevented the bite here, such as by directing that Pako be muzzled while in common areas. Goldman-Nagel’s argument is that, because a factfinder could find that the Association, acting through its board, could have taken steps that would have prevented the bite, that same factfinder could find that the Association in this sense harbored Pako.

¶31 This foreseeability-based argument fails because foreseeability is not a factor in determining whether there is liability under WIS. STAT. § 174.02. Section 174.02 is a form “strict liability” for legal owners, harborers, and keepers of dogs. See **Augsburger**, 359 Wis. 2d 385, ¶40. A plaintiff seeking to recover under § 174.02 needs to prove only causation and damages, and does not need to show “specific acts of negligence.” See **Fandrey ex rel. Connell v. American Fam. Mut. Ins. Co.**, 2004 WI 62, ¶9, 272 Wis. 2d 46, 680 N.W.2d 345 (quoted source omitted). Thus, a plaintiff under the statute need not prove the foreseeability element of a typical common law negligence claim. See **Haase v. Badger Mining Corp.**, 2004 WI 97, ¶¶39, 41, 274 Wis. 2d 143, 682 N.W.2d 389 (distinguishing strict liability claims from negligence claims based on foreseeability being an element of negligence claims only). Consistent with this, foreseeability is not a consideration relevant to the determination of whether a landowner is a harborer of a dog. See **Augsburger**, 359 Wis. 2d 385, ¶¶21-37.⁵

⁵ We note that, while foreseeability is not part of the liability considerations, in those cases in which liability is shown, damages and penalties are to be increased “if the owner was notified or knew that the dog had previously” caused the types of harms specified in the statute. See WIS. STAT. § 174.02(1)(b), (2)(b).

B. Whether the Association was a Keeper

¶32 “Keeping” a dog means exercising “‘care, custody or control over the dog.’” *Augsburger*, 359 Wis. 2d 385, ¶21 (quoted source omitted). This is “synonymous” with exercising “‘dominion over’” the dog. *Smaxwell v. Bayard*, 2004 WI 101, ¶46 & n.11, 274 Wis. 2d 278, 682 N.W.2d 923. Once an individual “ceases to exercise dominion over [a] dog, that is, once he [or she] ceases to have custody and control of the dog, the individual is no longer a ‘keeper.’” *Id.*

¶33 “The control considered in the analysis of ‘keeper’ is control over the dog, not control over the property” where the dog was kept. *Augsburger*, 359 Wis. 2d 385, ¶39. When a landlord of a residential unit or other place where a dog was sheltered had “the ability ... to enforce a lease provision” that excluded all dogs or that excluded only “vicious dogs,” this would be “a type of control that [the] landlord exercise[d] over the premises, not over [the] tenant’s dog on the premises.” *Ladewig ex rel. Grischke v. Tremmel*, 2011 WI App 111, ¶29, 336 Wis. 2d 216, 802 N.W.2d 511 (emphasis omitted). Thus, including such an enforceable provision in a lease does not make the landlord a keeper of the dog. See *id.*

¶34 Applying these principles from case law here, we conclude that the Association was not a keeper of Pako. The undisputed evidence is that the only person who, at the time of the bite, actively exercised control *over Pako*, as opposed to *over property*, was Werntz. The only other person who could be said to have control or custody of Pako was a member of the Pako’s household, Naputi. It was Naputi who had a general level of control and custody over Pako as the dog’s legal owner, though she was not present at the time of the bite. As noted above, the Association had multiple rules regarding the keeping of pets in the

condo building. But under the logic of cases such as **Ladewig**, these rules were part of the control exercised over the premises, not over Pako.

¶35 Goldman-Nagel emphasizes that, unlike in cases such as **Ladewig**, which involved landlord-tenant relationships, here the landowner at issue was a condominium association. But she does not identify, and we do not discern, a meaningful difference between, on the one hand, lease provisions governing the ability of tenants to keep dogs on leased or shared rental premises—which generally do not support a finding of keeping under **Ladewig**—and, on the other hand, the condominium rules that were in place here governing the same subject matters for unit owners. In both instances, for purposes of binding case law, the control exercised was over the premises, not over the dog, which is the key consideration in determining whether someone kept the dog under WIS. STAT. § 174.001(5).

¶36 Further, as with the harboring issue, Goldman-Nagel’s emphasis on evidence that could support a reasonable inference that the Association foresaw, or should have foreseen, that Pako might injure someone does not support a determination that the Association was Pako’s keeper. Case law addressing the meaning of keeper in this context establishes that keeper status does not depend on the foreseeability of a dog causing harm. See **Pawlowski**, 322 Wis. 2d 21, ¶56 & n.41 (noting that, in **Smaxwell**, the court precluded liability when a landowner merely allows “known dangerous dogs to run at large on the property,” based on the principle that only landowners who were *also* owners or keepers of a dog could be liable for harms the dog causes under common law negligence claims); **Smaxwell**, 274 Wis. 2d 278, ¶46 & n.11 (defining the keeper of a dog in significant part based on exercising control and custody over the dog, without any reference to foreseeability of harm).

¶37 Summing up on the statutory liability issues, Goldman-Nagel does not identify evidence in the summary judgment materials giving rise to the reasonable inference that the Association either harbored or kept Pako. This leaves no material dispute regarding whether the Association could be liable for Pako biting Goldman-Nagel under WIS. STAT. § 174.02.

II. Common Law Negligence Claim for Dog Bite Damages

¶38 Given what we have stated to this point, our discussion regarding the common law claim of negligence can be brief. This is because our supreme court has established that there can be no liability for “landowners and landlords,” “in [their] capacity as a landowner or landlord[,] unless [they are] also the owner or keeper of the dog causing injury.” *Smaxwell*, 274 Wis. 2d 278, ¶54 & n.18. This limit on liability for negligence is based on “public policy factors” and not on a lack of a duty to care owed by landowners and landlords. See *id.*, ¶¶45, 54. This is because, under Wisconsin law, landowners and landlords, in common with all other persons, have a duty of reasonable care to refrain from acts or omissions that unreasonably threaten the safety of others. See *id.*, ¶¶32-33, 35. Put differently, as a public policy limitation to negligence liability, the rule from *Smaxwell* applies even when a plaintiff can meet all of the ordinary elements of negligence. See *id.*, ¶39. Thus, this issue, like the statutory issue, does not depend on whether there is a genuine dispute regarding foreseeability.

¶39 Goldman-Nagel argues that the limitation on common law liability described in *Smaxwell*, which addressed a case involving a landlord and tenant, would need to be extended to limit the liability of condominium associations, and she contends that the rule should not be so extended. To the extent that Goldman-Nagel argues that that *Smaxwell* does not apply to a condominium association in

its capacity as a representative of all of the unit owners and of their collective ownership of common elements, she construes *Smaxwell* too narrowly. Our supreme court framed the limitation on negligence liability in broad terms. Specifically, as the Association notes, *Smaxwell* applies the limitation on liability to all “landowners” in their capacity as landowners. *Smaxwell*, 274 Wis. 2d 278, ¶54 & n.18.

¶40 It is not clear if Goldman-Nagel intends to argue instead that *Smaxwell* does not apply here because the Association was not the owner of Werntz and Naputi’s unit. See WIS. STAT. § 703.05 (“A unit owner is entitled to the exclusive ownership and possession of his or her unit.”). As noted above, she identifies various pet-related rules in the Association’s governing documents. She also emphasizes that the declaration granted the Association’s board the power to create additional rules, ones that she argues could have been created before the bite here to prevent it. For example, the declaration gave the board “sole discretion” to remove “an otherwise permitted pet” if the Board determined that the pet “becomes a nuisance to other” unit owners. This arguably involved a power of the board to regulate matters within individual units, as opposed to matters occurring in common areas.

¶41 But if Goldman-Nagel does intend such an argument, she does not develop it. Her argument for negligence liability based on the Association’s failure to take preventative steps fails to explain how a finder of fact could reasonably treat the Association here differently than the landowners and landlords who were immunized under the reasoning in *Smaxwell*. As noted above, she argues that unit owners have less flexibility than tenants in leaving a dangerous situation allegedly caused by a condominium association’s failure to adequately address the presence of a dangerous dog in common spaces. But Goldman-Nagel

does not explain—in a way that is supported by reference to pertinent reasoning in *Smaxwell* or other case law—how this potential difference makes the character of a condominium association’s powers materially different from those exercised by landlords and other kinds of landowners.

¶42 In sum on this issue, based on the allegations of fact in the summary judgment materials, we conclude that *Smaxwell* applies to bar liability for the Association. To repeat, under *Smaxwell*, the Association can be liable for the damages caused by Pako only if the Association owned or kept Pako. See *Smaxwell*, 274 Wis. 2d 278, ¶54. As discussed above, there is no genuine dispute that the Association did not own or keep Pako. The result is that the Association cannot be liable for common law damages caused by Pako, with the result that no such claim survives summary judgment.⁶

CONCLUSION

¶43 For all of these reasons, the order of the circuit court granting summary judgment is affirmed.

By the Court.—Order affirmed.

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⁶ Because we conclude that *Smaxwell* controls here, we do not reach Goldman-Nagel’s argument that this court should decide whether there should be a public policy-based exception to common law dog bite liability for condominium associations. See *Smaxwell v. Bayard*, 2004 WI 101, ¶¶39-41, 46-54, 274 Wis. 2d 278, 682 N.W.2d 923 (noting and applying “public policy factors” to conclude that liability for dog bite damages for landowners should be limited). It would be for our supreme court to revisit what is now a settled area of the law involving this policy choice, given the clarity of the reasoning in *Smaxwell*.

