

NEW YORK COURT OF APPEALS ROUNDUP

COURT OVERRULES BARD AND RESTORES NEGLIGENCE LIABILITY FOR DOMESTIC ANIMAL ATTACKS

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In *Flanders v. Goodfellow*, the New York Court of Appeals delivered a landmark decision that significantly reshaped the legal framework governing liability for injuries caused by domestic animals.

The court reinstated both strict liability and negligence claims for a postal worker injured by a dog and, in so doing, overruled nearly two decades of precedent established by *Bard v. Jahnke*, 6 N.Y.3d 592 (2006), which had barred common-law negligence liability in such cases and limited plaintiffs to claims under strict liability theories of recovery that required establishing a defendant's actual or constructive knowledge of the animal's vicious propensities.

The decision appears to reflect a broader commitment to aligning New York tort law with principles of fairness, foreseeability, and the Restatement (Second) of Torts.

On Dec. 8, 2018, plaintiff Rebecca Flanders, a postal carrier, was delivering a package to the home of Defendants Stephen and Michelle Goodfellow. The Goodfellows did not have a working mailbox, so plaintiff drove into the horseshoe driveway to leave a package on the porch.

As she approached, she heard a dog barking but saw no signs or warnings about a dangerous dog—nor did her scanner or postal records indicate a dangerous dog at the location. Mr. Goodfellow opened the door to receive the package.

As plaintiff handed it to him, a large dog ran from within the house, slipped past Mr. Goodfellow, and lunged at plaintiff's neck. Plaintiff instinctively shielded herself with her hand, and the dog bit her shoulder, causing a severe muscle tear that required multiple surgeries and left permanent scarring. She sued the Goodfellows on both strict liability and negligence grounds.

Discovery revealed that the Goodfellows' dog had a history of uncontrollable behavior. It had dragged Ms. Goodfellow to the ground on a leash, required professional training, and fought with another dog during a training class.

The Goodfellows contended that the dog was not aggressive and rarely encountered strangers, suggesting they had no reason to anticipate violent behavior. Plaintiff, however, submitted affidavits from two other postal workers who had delivered to the same address over the years.

They described the dog as baring its teeth, growling, snarling, slamming into windows, and projecting saliva as though attempting to attack. They stated that the behavior was so loud and aggressive that the homeowners must have known about it.

This testimony formed the core of plaintiff's argument that the Goodfellows had at least constructive knowledge of their dog's dangerous propensities.

The Supreme Court, Onondaga County granted summary judgment to the Goodfellows, and the Appellate Division, Fourth Department affirmed. *Flanders v. Goodfellow*, 187 N.Y.S.3d 886 (4th Dep’t 2023).

Both courts concluded that there was no triable issue as to defendants’ knowledge of the dog’s vicious propensities under a strict liability theory and dismissed the negligence claim as barred under *Bard*. The Court of Appeals granted plaintiff leave to appeal. *Flanders v. Goodfellow*, 40 N.Y.3d 904 (2023).

Associate Judge Caitlin J. Halligan, writing for a unanimous court, reinstated the strict liability claim and reaffirmed that under New York law, owners of domestic animals can be strictly liable for injuries caused by their animals if they had actual or constructive knowledge of a “vicious propensity”—defined broadly to include any behavior reflecting a proclivity to endanger others.

The court emphasized that summary judgment may only be granted where there are no genuine disputes of material fact. Here, the affidavits of postal workers raised triable issues as to whether the Goodfellows should have known of their dog’s dangerous behavior.

The postal workers’ descriptions—growling, snarling, slamming into glass, and baring teeth—could reasonably support an inference of a dangerous disposition. The dog’s history of dragging its owner, scuffling with other dogs, and being kept isolated from strangers also undermined the Goodfellows’ claims of ignorance.

Finally, the court concluded that while the Goodfellows denied knowledge and pointed out the lack of formal complaints, those arguments simply created credibility disputes inappropriate for resolution at summary judgment. Accordingly, the strict liability claim was reinstated.

The court next turned to the negligence claim, which the lower courts dismissed as barred under the court’s 2006 decision in *Bard*. That case held that owners of domestic animals could only be held liable under a strict liability theory and not in negligence—effectively insulating owners from liability absent knowledge of a vicious propensity.

The court took a comprehensive look at the reasoning behind *Bard*, the subsequent erosion of its bright-line rule, and the evolving consensus in tort law nationwide. The court ultimately concluded that *Bard* was unworkable, inconsistent with general negligence principles, and had produced unjust outcomes.

The court noted that *Bard* departed from foundational negligence principles, which hold that people must exercise reasonable care under the circumstances to avoid foreseeable harm. The *Bard* rule removed incentives for animal owners to investigate or respond to risky behaviors and shifted the burden of injuries to the victims—even when those injuries were preventable through reasonable care.

This contradicted general tort principles as articulated by Judge Cardozo in *Palsgraf v. Long Island R.R. Co.* and applied in countless other contexts—ranging from driving cars to managing industrial machinery—where defendants are held liable for failing to act with due care.

Bard also placed New York outside the mainstream. At the time of its decision, nearly every other state and the Restatement (Second) of Torts §518 recognized that owners could be held liable for negligence even if they lacked knowledge of their animals’ vicious propensities.

By 2015, thirty-six states had embraced negligence liability for animal-induced injuries, and none had adopted a bright-line bar like New York. Thus, New York had become a legal outlier.

While *Bard* promised clarity, its rule had been steadily chipped away. In *Hastings v. Sauve*, 21 N.Y.3d 122 (2013), the court carved out an exception allowing negligence liability for farm animals that wandered onto roads.

In *Doerr v. Goldsmith*, 25 N.Y.3d 1114 (2015), it held that the wandering-animal exception did not apply to dogs, reaffirming the no-negligence rule for pets.

Yet, in *Hewitt v. Palmer Veterinary Clinic, PC*, 35 N.Y.3d 541 (2020), the court held that veterinarians and animal care professionals could be held liable in negligence for harm caused by animals under their care, further weakening the *Bard* framework. These exceptions made application of *Bard* increasingly incoherent and unpredictable.

Lower courts frequently struggled with or criticized *Bard*, describing it as harsh, unsatisfactory, and out of step with modern expectations of justice. For example, in *Scavetta v. Wechsler*, the Appellate Division, First Department was “constrained” to dismiss a negligence claim involving a metal bicycle rack dragged by a dog into a street, calling the result “most unsatisfactory.” 49 N.Y.S.3d 436, 442–43 (1st Dep’t 2017).

Given these developments, the court found that *Bard* had failed to provide the predictability and fairness that *stare decisis* is meant to protect.

Though *stare decisis* is a bedrock of judicial consistency, the court recognized it is not immutable. Precedent can and should be revisited when experience reveals it to be unjust, unworkable, or inconsistent with broader legal principles.

The court cited other instances where it had overturned long-standing tort rules to bring the law in line with modern needs. Here, the judges concluded that the time had come to overrule *Bard*’s limitation that an owner of a domestic animal may not be held liable in common-law negligence for harms caused by their pet.

The court did not decide whether plaintiff’s negligence claim could ultimately prevail on the merits. Since the lower courts had dismissed the claim solely on *Bard* grounds, the court remanded the case to allow the trial court to determine whether the record supported a triable issue of fact on the negligence theory.

In doing so, the court emphasized that plaintiffs now have two viable theories of recovery for animal attacks: (1) strict liability based on knowledge of vicious propensity, and (2) negligence based on failure to exercise reasonable care. Both theories now coexist in New York’s legal framework, restoring alignment with general tort law and national standards.

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