

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

12-2021

PetSmart, Inc. v. Dist. Ct. (Todd), 137 Nev. Adv. Op. 75 (Dec. 9, 2021)

Brenna Irving

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>

Recommended Citation

Irving, Brenna, "PetSmart, Inc. v. Dist. Ct. (Todd), 137 Nev. Adv. Op. 75 (Dec. 9, 2021)" (2021). *Nevada Supreme Court Summaries*. 1462.

<https://scholars.law.unlv.edu/nvscs/1462>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

PET STORE NOT LIABLE IN TORT ACTION WHEN IT DID NOT ASSUME A DUTY OF CARE OR HAVE AN AGENCY RELATIONSHIP WITH ADOPTION ORGANIZATION

SUMMARY

The Court examined whether a pet store may be held liable where a pet, who later attacked and injured a person, was adopted at the pet store through an adoption event run by an independent organization. The Court concluded that PetSmart cannot be held liable, reasoning that a pet store generally owes no duty to individuals who adopt in such circumstances. The Court stated that a store may only be held liable if it assumes a duty of care or establishes an agency relationship with the independent organization. Here, the Court found PetSmart had done neither. Thus, the Court granted PetSmart's petition for a writ of mandamus, directing the district court to grant PetSmart's motion for summary judgment.

FACTS AND PROCEDURAL HISTORY

PetSmart has an adoption program, named PetSmart Charities, that allows independent animal welfare organizations to set up adoption events for homeless pets at PetSmart stores. PetSmart vets these independent organizations, called "agency partners," to ensure that the agency partners are qualified and have a charitable status. Part of this vetting and qualification process includes the organizations entering into an agency-partner agreement with PetSmart. The agreement clarifies that the agency partner is "fully responsible" for the animals it places up for adoption. The agreement requires persons who adopt an animal from the agency partner to sign an adoption release form. Thus, PetSmart is aware of adoptions taking place at its stores but does not cross-reference adoption forms to determine if a pet has been adopted, returned, and re-adopted. Lastly, the agreement clearly states that no legal partnership or employer-employee relationship exists between PetSmart and the agency partner.

The adoption at issue in this case involved a large, mixed-breed dog named Chip. Chip was from an organization called The Animal Foundation (TAF). With TAF, Chip was adopted twice but returned both times for aggressive behavior. TAF determined that Chip was unadoptable, but for unknown reasons, Chip ended up with another organization, A Home 4 Spot (AH4S). AH4S entered into an agency-partner agreement with PetSmart and placed Chip up for adoption at one of PetSmart's stores. After two unsuccessful adoptions due to aggressive behavior that resulted in injuries, AH4S put Chip up for adoption a third time.

Raphaella Todd, an original plaintiff in this matter, adopted Chip. She signed a form that explained PetSmart was not affiliated with AH4S, thus releasing PetSmart and PetSmart Charities of liability. Raphaella took Chip home. Later, he attacked James Todd, biting his forearm and causing deep wounds in James's arm.

Following this incident, the Todds filed a complaint for negligence and negligent infliction of emotional distress against AH4S, TAF, and others. They sued PetSmart under the doctrine of respondeat superior. PetSmart moved for summary judgment, arguing it was not liable because it was not involved in Chip's adoption and exercised no control over Chip. However, the district court disagreed and found that PetSmart owed a duty to the Todds under

¹ By Brenna Irving.

Wright v. Schum.² The district court also found that genuine issues of material fact existed regarding an agency relationship between PetSmart and AH4S. Accordingly, PetSmart petitioned for writ relief. It argued that it did not owe a duty of care to the Todds and had no agency relationship with AH4S.

DISCUSSION

We exercise our discretion to entertain the writ petition

The Court began its discussion with an overview of writs of mandamus. First, it explained that a writ of mandamus compels the performance of an act when a law requires a duty or when it is necessary to control an abuse of discretion.³ Second, it noted that a writ of mandamus is an “extraordinary remedy” that is used when no other simple, efficient, and adequate remedy is available.⁴ Third, the Court explained that it has full discretion to entertain writ petitions,⁵ even though this type of remedy is uncommon for summary judgment motions.⁶ The Court stated that it may consider a writ petition if doing so would further judicial economy and either it is an issue of first impression or there is no factual dispute.⁷ Here, the Court found that the requirements were met. Accordingly, it exercised its discretion to entertain the writ petition.

Standard of review

The Court reviewed the case de novo.⁸ It noted that whether a defendant owes a duty of care to a plaintiff is a question of law.⁹

Whether PetSmart owed a duty of care

PetSmart argued that it did not owe the Todds a duty of care and thus could not be held liable. It further argued that this case was distinguished from *Wright*,¹⁰ the case the district court relied on when denying PetSmart summary judgment. The Court began by stating the general rule that defendants owe no duty of care to control or warn of dangerous conduct of another.¹¹ The Court then turned to *Wright* and identified a narrow exception in the case: a landlord could be held liable when he assumed a duty to protect others against a tenant’s aggressive dog.¹² The Court found that this exception did not apply to the current facts because PetSmart did not know about Chip’s aggressive behavior. Furthermore, the Court reasoned that the agency-partner agreement expressly affirmed that AH4S was fully responsible for the adoptable animals. Thus, PetSmart did not owe the Todds a duty of care.

² *Wright v. Schum*, 105 Nev. 611, 781 P.2d 1142 (Nev. 1989).

³ *See Cote H. v. Eighth Judicial Dist. Ct.*, 124 Nev. 36, 39, 175 P.3d 906, 907–08 (Nev. 2008).

⁴ *Id.*; *see* NEV. REV. STAT. § 34.170 (1911).

⁵ *Smith v. Eighth Judicial Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (Nev. 1991).

⁶ *Smith v. Eighth Judicial Dist. Ct.*, 113 Nev. 1343, 1344, 950 P.2d 280, 281 (Nev. 1997).

⁷ *Humboldt Gen. Hosp. v. Sixth Judicial Dist. Ct.*, 132 Nev. 544, 547, 376 P.3d 167, 170 (Nev. 2016).

⁸ *State, Dep’t Transp. v. Eighth Judicial Dist. Ct.*, 133 Nev. 549, 553, 402 P.3d 677, 681–82 (Nev. 2017).

⁹ *Scialabba v. Brandise Constr. Co.*, 112 Nev. 965, 968, 921 P.2d 928, 930 (Nev. 1996); *Perez v. Las Vegas Med. Ctr.*, 107 Nev. 1, 4, 805 P.2d 589, 590–91 (Nev. 1991).

¹⁰ *Wright v. Schum*, , 105 Nev. 611, 781 P.2d 1142 (Nev. 1989).

¹¹ *Sparks v. Alpha Tau Omega Fraternity, Inc.*, 127 Nev. 287, 296, 255 P.3d 238, 244 (Nev. 2011).

¹² *Wright*, 105 Nev. at 615–16, 781 P.2d at 1142–44.

AH4S was not PetSmart's agent

PetSmart argued that AH4S was not its agent and that the Todds could not have believed that AH4S was its agent because they signed a form expressly stating that no agency relationship existed between PetSmart and AH4S. The Todds countered that PetSmart's conduct made them view AH4S as an apparent agent. The Court stated that to claim apparent agency in this case the Todds must prove that they subjectively believed that AH4S had authority to act for PetSmart and that their subjective belief in AH4S's authority was objectively reasonable.¹³ The Court found that the Todds could not prove this because Raphaela Todd signed a form that stated she understood that AH4S was not PetSmart's agent. Therefore, the Court concluded that no genuine issue of fact existed as to whether AH4S was PetSmart's agent.

CONCLUSION

The Court held, based on the facts of this case, that "as a pet store typically owes no duty to the individual in such circumstances, the store can be held liable only if it assumes a duty of care or has an agency relationship with the charitable organization that conducted the adoption event. The Court held that PetSmart could not be held liable because it did not assume a duty of care or have an agency relationship with the charitable organization.

¹³ Great Am. Ins. Co. v. Gen. Builders, Inc., 113 Nev. 346, 352, 934 P.2d 257, 261 (Nev. 1997).