



STATE OF MINNESOTA  
COUNTY OF FREEBORN STEELE

IN DISTRICT COURT  
PERSONAL INJURY  
THIRD JUDICIAL DISTRICT

Cristina Berrier,

File No. 74-CV-19-2217

Plaintiff,

vs.

**CONCLUSIONS OF LAW  
AND ORDER**

Minnesota State Patrol,

Defendant.

The above-entitled matter came on for a hearing before the Honorable Ross Leuning, Judge of District Court, on October 31, 2022, at the Freeborn County Courthouse in Albert Lea, Minnesota. Plaintiff Cristina Berrier appeared through her attorneys, Jeremy R. Stevens and Grant M. Borgen. Defendant Minnesota State Patrol appeared through its attorneys, Alexander W. Hsu and Michael Goodwin.

On October 26, 2022, the Court held a hearing during which parties argued for and against presentation of a strict liability claim under Minnesota Statutes § 347.22 to the jury. At the end of the hearing, the Court directed both parties to file memorandums supporting their positions by close of business on October 28, 2022.

Defendant, in its brief, contended that plaintiff's complaint did not fairly disclose an intent to pursue a claim under Minnesota Statutes § 347.22, and that in any case, such a claim would be barred by sovereign immunity. Plaintiff first countered that such contentions are essentially dispositive motions that are procedurally tardy this close to trial. Plaintiff argued that the complaint was sufficient to put Defendant on notice as to the statutory claim, or if not, that allowing amendment was proper due to a lack of prejudice to the Defendant. Lastly, Plaintiff

argued that the Minnesota legislature had waived sovereign immunity as to claims under Minnesota Statutes § 347.22.

The Court, having considered the parties' motions, testimony and other evidence, and oral arguments of the parties, and being fully advised in the premises, hereby makes the following:

### **FINDINGS OF FACT**

1. Plaintiff's complaint, while lacking a clear statement of intent to pursue a strict liability claim under Minnesota Statutes § 347.22, pled all elements necessary to support such a claim.
2. Plaintiff's complaint provided Defendant actual notice of this claim, as Defendant argued the elements of the claim in its response and other pleadings.
3. Plaintiff and Defendant continued to engage on the strict liability claim in correspondence during February of 2020, with each specifically referencing this claim.

### **CONCLUSIONS OF LAW**

#### **Sufficiency of the Complaint**

Minnesota requires only that a complaint provide "fair notice . . . of the incident giving rise to the suit with sufficient clarity to disclose the pleader's theory upon which his [or her] claim for relief is based." *Halva v. Minn. Stat. Colls. & Univs.*, 953 N.W.2d 496, 503 (Minn. 2021). Here the facts disclose that the strict liability theory was actually disclosed to the Defendant. Even if the complaint itself would be considered deficient, it did not prejudice the Defendant because the Defendant was actually aware of the strict liability claim just as it would have been if the complaint had pled it more clearly.

### Sovereign Immunity

Sovereign immunity prevents suits against states “unless the state has consented to suit.” *Nichols v. State*, 858 N.W.2d 773, 775 (Minn. 2015). Minnesota Statutes § 645.27 provides, “The state is not bound by the passage of a law unless named therein, or unless the words of the act are so plain, clear, and unmistakable as to leave no doubt as to the intention of the legislature.” Neither party asserts, nor could they, that Minnesota Statutes § 347.22 names the State. The argument of the parties centers on whether the act uses words that are “plain, clear, and unmistakable” in a way that “leave[s] no doubt” that the legislature intended to subject the State to suit. Minn. Stat. Ann. § 645.27 (West).

*Nichols v. State* analyzes this requirement and makes clear that the bar to meet it is very high. There, the statute at issue dealt with “any person, partnership, company, corporation, association, or organization of any kind, doing business in this state.” *Nichols*, 858 N.W.2d at 776 (quoting Minn.Stat. §§ 181.64). The Supreme Court, as directed by the plaintiff there, focused on the phrase “organization of any kind,” which the plaintiff argued “could be any ‘body of persons formed for a common purpose.’” *Nichols*, 858 N.W.2d at 777 (quoting *Black’s Law Dictionary* 1274 (10th ed.2014)). The Court concluded, “Although an expansive definition of ‘organization’ could encompass the State, it could just as easily refer only to business or other nongovernmental entities. ... The Legislature has applied the brakes to the kind of analysis *Nichols* urges here by requiring a waiver of sovereign immunity to be plain, clear, and unmistakable.” *Nichols*, 858 N.W.2d at 777. But it also noted that the second clause of § 645.27 must have some effect to avoid surplusage, so it refused to “foreclose the possibility that a statute may waive sovereign immunity without explicitly naming the State.” *Id.* at 779.

However, the Supreme Court has also said that “Minn.Stat. § 347.22 belongs to an ‘exceptional class’ of statutes. *Lewellin on Behalf of Heirs of Lewellin v. Huber*, 465 N.W.2d 62, 64 (Minn. 1991) (quoting *Seim v. Garavalia*, 306 N.W.2d 806, 811 (Minn.1981)). Under this statute, “liability is absolute. ... Whoever keeps or harbors the dog is subject to the statutory liability for the ‘full amount of the injury,’ and the dog’s owner remains at all times primarily liable.” *Lewellin*, 465 N.W.2d at 64. The Minnesota Supreme Court considered this statute’s applicability to municipalities and reasoned, “The term ‘owner’ includes ‘any person’ harboring or keeping a dog. The word ‘any’ is given broad application in statutes, regardless of whether we consider the result reasonable. And the word ‘person’ may be applied to include ‘bodies politic,’ such as municipalities.” *Hyatt v. Anoka Police Dep’t*, 691 N.W.2d 824, 826–27 (Minn. 2005) (citations omitted). It thus concluded “that the plain meaning of the words used in the dog bite statute includes a municipal owner of a police dog.” *Id.* at 827.

An unpublished opinion by the Minnesota Court of Appeals distinguished *Hyatt* “because it involved municipal liability, whereas the rule of construction in § 645.27 applies only to the immunity of the state, and not to that of municipalities.” *McClendon v. Roy*, No. A19-0528, 2019 WL 6112448, at \*3 (Minn. Ct. App. Nov. 18, 2019) (citations omitted). It also noted that *Nichols* found a phrase even broader than “any person” insufficient to waive sovereign immunity. *Id.* It thus concluded that “the fact that municipal dog owners can be liable under the dog-bite statute does not mean that the state can as well.” *Id.*

“Any person,” however, is not the only or even primary language describing who may be liable under § 347.22. The statute assigns primary liability to “the owner,” which merely “includes any person harboring or keeping a dog” – “but the owner shall be primarily liable.” Minn. Stat. Ann. § 347.22 (West). Besides the fact that “includes” does not imply “is limited to,”

there would be no need to contrast “any person harboring or keeping a dog” with “the owner [who] shall be primarily liable” if they were the same. *Id.* And the term “owner” is clear and absolute in a way that allows for little ambiguity.

*Nichols* relied in its analysis on an ambiguous term: “Organization” could include states, but “it could just as easily refer only to business or other nongovernmental entities.” *Nichols*, 858 N.W.2d at 777. The term was not clear, so it could not be “so plain, clear, and unmistakable as to leave no doubt as to the intention of the legislature.” Minn. Stat. Ann. § 645.27 (West). In contrast, “owner” leaves no ambiguity that raises a question of whether it would encompass a governmental owner. One who owns or possesses something is necessarily its owner; the term applies not based on the form of the entity, as does “organization,” but based on its relation to that which is owned. *See* OWNER, Black's Law Dictionary (11th ed. 2019). The term here encompasses all who own dogs, regardless of their form or characteristics, in a way that is “plain, clear, and unmistakable.” Minn. Stat. Ann. § 645.27 (West).

A further indication of intent to include the State in this definition is that “‘owner’ includes any person harboring or keeping a dog.” Minn. Stat. Ann. § 347.22 (West). As *Hyatt* noted, Minnesota Statutes § 645.44, subdivision 7 states, “‘Person’ may extend and be applied to bodies politic...” Minn. Stat. Ann. § 645.44 (West); *see Hyatt*, 691 N.W.2d at 826–27. This evinces a clear intent to include governmental entities in the definition of “person,” and thus “owner” – again in contrast to *Nichols*, where the legislature had provided no guidance as to whether “any organization” included governments, leaving it ambiguous. *Nichols*, 858 N.W.2d at 777.

In considering this, one must bear in mind the *Nichols* Court’s admonition against surplusage. *Nichols*, 858 N.W.2d at 779. It is likely that few statutes “are so plain, clear, and

unmistakable as to leave no doubt as to the intention of the legislature” without naming the State directly. Minn. Stat. Ann. § 645.27 (West). But if the second half of § 645.27 is to mean anything at all, some statutes must be able to meet its standard. *See Nichols*, 858 N.W.2d at 779. The categorical term “owner” and the specific definition of “any person” to include “bodies politic” are about as “plain, clear, and unmistakable” as words can be without crossing the line of naming the State itself. Minn. Stat. Ann. § 645.27 (West). Therefore the Court finds that the Minnesota legislature has waived sovereign immunity for Minnesota Statutes § 347.22.

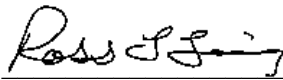
### ORDER

1. Defendant’s motion to dismiss based on sovereign immunity is **DENIED**.
2. Defendant’s motion for a continuance during appeal is **GRANTED**.

**IT IS SO ORDERED.**

Dated: 31 October 2022

BY THE COURT:

  
Leuning, Ross  
2022.10.31 14:41:23  
05'00'

Ross L. Leuning  
Judge of District Court