Reversed and Rendered and Opinion Filed February 11, 2026

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-01259-CV

ERNEST LATCHER, Appellant
V.
CAROLINE D. EDWARDS, Appellee

On Appeal from the County Court at Law No. 1
Dallas County, Texas
Trial Court Cause No. CC-22-01568-A

MEMORANDUM OPINION

Before Justices Garcia, Jackson, and Lee
Opinion by Justice Garcia

This negligence case arises out of injuries sustained by Caroline Edwards when Earnest Latcher's dog Winston knocked her over. In two issues, Latcher argues the evidence is legally insufficient to support the jury's negligence finding and the trial court erred in admitting controverted cost affidavits.

We conclude the evidence is legally insufficient to support negligence, reverse the trial court's judgment, and render judgment that Edwards take nothing on her claim.

I. BACKGROUND

On March 29, 2020, Latcher let his dog Winston out into the backyard to relieve himself. Winston is a fifty-five to sixty pound Labrador mix. The yard was fenced and had two gates, one of which was visible from the home.

Unbeknownst to Latcher, the side gate (the gate not visible from the home) was open and Winston left the backyard. Edwards was walking in the area with her headphones on and said that "all of the sudden" she "hit the ground." When she turned around, the dog was in front of her.

Edwards, distressed and in pain, returned home and called the police. Shortly thereafter, the police arrived at Edwards' home with Winston in tow. Edwards identified Winston as the dog she encountered on her walk. The police took Winston to the shelter.

In the meantime, Latcher went outside to bring Winston in and discovered that the side gate was open and Winston was missing. Latcher said that he did not leave the side gate open and he did not believe his wife left it open.

Edwards sued Latcher for negligence, seeking recovery of medical expenses incurred from a fractured wrist and other damages. Prior to trial, Edwards submitted billing affidavits to establish the reasonableness of her medical expenses. Latcher submitted a counter affidavit seeking to establish that the expenses were not reasonable. After a hearing, the trial court concluded that Edwards' affidavits were uncontroverted and admissible.

The case was tried to a jury. The jury concluded that Latcher was negligent and awarded damages for past medical expenses, past and future physical pain and mental anguish, and past and future physical impairment. The trial court entered judgment for $35,914.14 on the jury's verdict, in addition to costs, and pre and post judgment interest. This appeal followed.

II. ANALYSIS

Latcher's first issue argues the evidence is insufficient to support the jury's negligence finding because it was not foreseeable that Winston would escape from his enclosed backyard and harm someone. We agree.

When, as here, a party attacks the legal sufficiency of an adverse finding on an issue on which it did not have the burden of proof, it must demonstrate on appeal that no evidence supports the adverse finding. *Graham Cent. Station, Inc. v. Peña*, 442 S.W.3d 261, 263 (Tex. 2014) (citing *Croucher v. Croucher*, 660 S.W.2d 55, 58 (Tex. 1983)). An appellate court will sustain a no-evidence challenge if the evidence at trial would not enable reasonable and fair-minded people to reach the finding under review. *See City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005) ("The final test for legal sufficiency must always be whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review."). In evaluating the legal sufficiency of evidence supporting a finding, we review the record in the light most favorable to the factual findings, giving credit to favorable evidence if a reasonable factfinder could, and ignoring contrary evidence unless a

reasonable factfinder could not. *Id.* Evidence is legally sufficient if it "rises to a level that would enable reasonable and fair-minded people to differ in their conclusions." *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 601 (Tex. 2004).

A person injured by a dog or other domestic animal may bring a suit for negligent handling against the dog's owner. *See Herchman v. Lee*, No. 02-22-00217-CV, 2024 WL 4898787, at *3 (Tex. App.—Fort Worth Nov. 27, 2024, pet. denied) (mem. op.);*Cernak v. Studley*, No. 05-22-00659-CV, 2023 WL 3089817, at *2 (Tex. App.—Dallas Apr. 26, 2023, no pet.) (mem. op.); *Thompson v. Curtis*, 127 S.W.3d 446, 451 (Tex. App.—Dallas 2004, no pet.). Unlike strict liability, the plaintiff need not prove that the animal was vicious or dangerous. *Cernak*, 2023 WL 3089817, at *2. To recover on a claim of negligent handling of an animal, a plaintiff must prove: (1) the defendant was the owner or possessor of an animal, (2) the defendant owed a duty to exercise reasonable care to prevent the animal from injuring others, (3) the defendant breached that duty, and (4) the defendant's breach proximately caused the plaintiff's injury. *Labaj v. VanHouten*, 322 S.W.3d 416, 420 (Tex. App.—Amarillo 2010, pet. denied).

Proximate cause consists of two elements: (1) cause in fact, and (2) foreseeability. *Allen v. Albin*, 97 S.W.3d 655, 668 (Tex. App.—Waco 2002, no pet.). "Cause in fact means the negligent act or omission was a substantial cause in bringing about the injury and without which no harm would have been incurred." *Searcy v. Brown*, 607 S.W.2d 937, 941 (Tex. App.—Houston [1st Dist.] 1980, no

writ). An incident is foreseeable if a person of ordinary intelligence would have anticipated the danger created by a negligent act or omission. *See Read v. Scott Fetzer Co*., 990 S.W.3d 732, 737 (Tex. 1998). A party is not held responsible for the consequences of an act that cannot reasonably be foreseen. *Labaj*, 322 S.W.3d at 421.

The foreseeability element requires more than conjecture, guess or speculation. *W. Invs. Inc. v. Urena*, 162 S.W.3d 547, 551 (Tex. 2005); *Cernak*, 2023 WL 3089817, at *2 (injury not foreseeable when puppy escaped from open gate); *Garza v. Sancen*, No. 05-15-00666-CV, 2016 WL 1469345, at *3 (Tex. App.—Dallas Apr. 14, 2018, pet. denied) (mem. op.) (mere assertion that it was foreseeable that leaving gate open could lead to the dog getting out did not constitute competent summary judgment evidence); *Williams v. Sable*, No. 14-09-00806-CV, 2011 WL 238288, at *4 (Tex. App.—Houston [14th Dist.] Jan. 25, 2011, no pet.) (mem. op.) (no foreseeability when dog owner did not know plaintiff was there, was not the one who opened the gate, and dog had never done anything similar before).

Edwards would have this court believe that the jury could rationally have concluded that that the injury was foreseeable because Winston "roamed the neighborhood for a week." The argument mischaracterizes the evidence.

Significantly, there is no evidence that Winston was roaming the neighborhood for a week **before** his encounter with Edwards. The evidence shows

that Latcher let Winston out into the yard on March 29, which is the same day Edwards encountered him.

There is also no evidence that Winston roamed the neighborhood for a week **after** the Edwards encounter. Edwards relies on testimony that Winston was "missing for about a week" after the incident occurred. Latcher said that he discovered Winston was at the shelter about three days after he was missing. But when he went to the shelter he learned that the shelter only keeps animals for "maybe two days" and "they have volunteers who take control of the animals," and Winston "was in the possession of a volunteer." To this end, Latcher testified:

> Q. Okay. And did I -- do you remember me asking you how long or telling me **how long he was gone after he got out**?
>
> A. I -- I recall that, yes. I think it's – it was almost a week.
>
> Q. So, in fact, he was gone over a week after this attack; is that correct, sir?
>
> A. Almost a week.
>
> Q. All right. Almost a week?
>
> A. And that was from the time that I discovered him missing until the time I got him back.

(emphasis added).

The foregoing establishes only that it was a week before Latcher was able to bring Winston home. That Winston did not return home until about a week after the incident, however, does not equate to Winston "roaming the streets for a week," even by inference. Indeed, the evidence establishes that the police took Winston to the

shelter on the day of the incident. Nothing suggests that Winston was on the street at any time thereafter. Therefore, a rational jury could not rely on this evidence to conclude that Latcher was negligent.

There is no evidence to establish how the side gate was opened or for how long. There is no evidence to establish how long Winston was in his backyard before Latcher discovered he was missing. The record shows only that Winston was let outside and discovered missing the same day Edwards encountered him. Latcher testified that he did not leave the gate open and Winston had never escaped from the backyard before. Likewise, there was no evidence that Winston had ever startled, jumped on, knocked over, or otherwise injured anyone before. Therefore, on this record, there is nothing to suggest that a person with average intelligence might anticipate the danger. In short, the injury was not foreseeable.

Edwards attempts to distinguish this court's decisions in *Cernak* and *Garza* by arguing "those cases did not involve a dog roaming the street for days." As we have noted, neither did the case at bar.

Because there is no evidence that Edwards' injury was foreseeable, the evidence is legally insufficient to support the negligence finding. Having resolved this issue, we need not consider Latcher's second issue. *See* TEX. R. APP. P. 47.1.

We reverse the trial court's judgment and render judgment that Edwards take nothing on her claim.

/Dennise Garcia/
DENNISE GARCIA
JUSTICE