

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

1533

CA 17-00165

PRESENT: SMITH, J.P., CARNI, DEJOSEPH, NEMOYER, AND CURRAN, JJ.

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S.K., AN INFANT BY HER MOTHER AND NATURAL  
GUARDIAN, TIFFANY KOBEE, AND TIFFANY KOBEE,  
INDIVIDUALLY, PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

BEVERLY KOBEE AND DEVIN KOBEE,  
DEFENDANTS-APPELLANTS.  
(APPEAL NO. 1.)

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MURA & STORM, PLLC, BUFFALO (ROY A. MURA OF COUNSEL), FOR  
DEFENDANTS-APPELLANTS.

FINKELSTEIN & PARTNERS, LLP, NEWBURGH (VICTORIA LIGHTCAP OF COUNSEL),  
FOR PLAINTIFFS-RESPONDENTS.

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Appeal from an amended order of the Supreme Court, Erie County  
(Catherine R. Nugent Panepinto, J.), entered August 18, 2016. The  
amended order denied the motion of defendants for summary judgment  
dismissing the amended complaint.

It is hereby ORDERED that the amended order so appealed from is  
unanimously reversed on the law without costs, the motion is granted  
and the amended complaint is dismissed.

Memorandum: Plaintiffs commenced this action seeking, inter  
alia, damages for injuries sustained by the infant plaintiff  
(hereafter, plaintiff) when a dog owned by defendants bit plaintiff's  
face. In appeal No. 1, defendants appeal from an amended order  
denying their motion for summary judgment dismissing the amended  
complaint. In appeal No. 2, defendants appeal from a further order  
that, inter alia, granted plaintiffs' motion to quash a subpoena.

With respect to appeal No. 1, we agree with defendants that the  
court erred in denying their motion. Thus, we reverse the amended  
order in appeal No. 1, grant the motion and dismiss the amended  
complaint. Since at least 1816 (see e.g. *Vrooman v Lawyer*, 13 Johns  
339, 339 [1816]), "the law of this state has been that the owner of a  
domestic animal who either knows or should have known of that animal's  
vicious propensities will be held liable for the harm the animal  
causes as a result of those propensities" (*Collier v Zambito*, 1 NY3d  
444, 446 [2004]). It is equally well settled, however, that, "when  
harm is caused by a domestic animal, its owner's liability is  
determined solely by application of the rule articulated in *Collier*"

(*Bard v Jahnke*, 6 NY3d 592, 599 [2006]). Thus, "[t]here is no cause of action in negligence as against the owner of a dog who causes injury, but one may assert a claim in strict liability against a dog owner for harm caused by the dog's vicious propensities when the owner knew or should have known of those propensities" (*Clark v Heaps*, 121 AD3d 1384, 1384 [3d Dept 2014]; see *Blake v County of Wyoming*, 147 AD3d 1365, 1367 [4th Dept 2017]).

Here, defendants met their initial burden on their motion by establishing as a matter of law that they lacked actual or constructive knowledge that their dog had any vicious propensities (see *Scheidt v Oberg*, 65 AD3d 740, 740 [3d Dept 2009]; see generally *Doerr v Goldsmith*, 25 NY3d 1114, 1116 [2015]), and plaintiffs failed to raise a triable issue of fact (see *Scheidt*, 65 AD3d at 740-741; cf. *Arrington v Cohen*, 150 AD3d 1695, 1696 [4th Dept 2017]).

In light of our determination in appeal No. 1, we dismiss the appeal from the order in appeal No. 2 as moot.