

CANADA / JUDGMENT

Nigro v. Luciano

2026 ONCA 283

COURT

Court of Appeal for Ontario

DECIDED

17 April 2026

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Nigro v. Luciano

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COA-25-CV-0385

Judges

Gillese, Eileen E.; Madsen, Lene; Pomerance, Renee M.

Subject

Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Nigro v. Luciano, 2026 ONCA 283

DATE: 20260417

DOCKET: COA-25-CV-0385

Gillese, Madsen and Pomerance JJ.A.

BETWEEN

Amanda Nigro

Plaintiff (Appellant)

and

Michael Luciano and Amanda Luciano

Defendants (Respondents)

Shane Katz, for the appellant

Erica Lewin, for the respondents

Heard: April 2, 2026

On appeal from the judgment of Justice Vanessa V. Christie of the Superior Court of Justice, dated February 28, 2025.

Pomerance J.A.:

- [1] This appeal turns on the definition of “owner” in the Dog Owners’ Liability Act, R.S.O. 1990, c. D.16 (the “Act” or the “DOLA”). The appellant was employed as a dog-walker by the respondents. On one occasion, while the appellant was preparing the dog Forrest Gump (“Forrest”) for a walk, Forrest attacked the appellant causing significant injuries. The appellant brought an action against the respondents, alleging that, as “owners” of the dog, they were strictly liable for damages under the DOLA. The respondents brought a motion for summary judgment dismissing the claims against them, arguing that the appellant was herself an “owner” as defined by the Act, and that under the Act, all owners are jointly and severally liable. The motion judge agreed that the appellant was an owner. She granted summary judgment to the respondents on this basis.
- [2] The appellant submits that the motion judge erred in finding her to be an owner of the dog, and in granting summary judgment accordingly. For the reasons below, I would dismiss the appeal.

BACKGROUND AND EVIDENCE

- [3] The facts of the case are straightforward. The appellant was hired by the respondents as a part-time dog walker in November 2021. The respondents had two dogs, Forrest Gump, a large male Boxer, and Benny. Forrest was approximately five years old at the time of the incident in March 2022.
- [4] When Forrest was about six months old, the respondents hired a dog walking company. The appellant was a part time employee of the company. She began walking Forrest in November 2021 and attended at the respondents’ house approximately three times a week. She had a key to the house.

- [5] Forrest developed an infection in his foot in February 2022. The veterinarian advised the respondents that, among other things, he was not to have contact with mud or anything that could cause infection. It was recommended that Forrest wear rubber booties when walking in wet areas.
- [6] On March 15, 2022, the appellant was advised by the respondent Amanda Luciano, in a text message, that Forrest's toenails had been removed and that she would be purchasing booties for the dog. Ms. Luciano instructed the appellant to allow Forrest to walk only on the snow, not the mud, in order to avoid infection. On March 17, 2022, Ms. Luciano advised the appellant by text that, if there was snow when she arrived at the premises, there were booties available. The appellant confirmed that, if it was "mucky", she would put the booties on Forrest.
- [7] On March 22, 2022, Ms. Luciano texted the appellant that she should just visit and cuddle with the dogs for the next few days, rather than walking them. She told the appellant that Forrest could go into the backyard, as long as it was not soaking wet, and that she should keep his paws away from mud. The appellant texted Ms. Luciano that day advising that she had taken both dogs out and that the mud was dry. She had wiped Forrest's paws with apple cider vinegar as requested. No problems were reported.
- [8] On March 24, 2022, the appellant attended again at the respondents' residence, where she was alone in the home at the time of the events. She let the second dog, Benny, outside to use the washroom. She attempted to let Forrest out to the front yard. However, he refused to go. A bit later that morning, the appellant again tried to let Forrest outside, this time to the backyard. There was mud and snow, so the appellant decided to put booties on Forrest before exiting the house.
- [9] This was the first occasion on which the appellant tried to put booties on Forrest. As she approached Forrest with the booties in one hand, the dog lunged at her, bit into her left arm and started shaking it. After the appellant managed to get her arm loose, Forrest continued to attack her, biting her on various parts of her body. The appellant sustained injuries to her abdomen, left upper thigh, and both arms.
- [10] There was no history of aggressive behaviour by Forrest in the appellant's presence or otherwise.
- [11] The appellant brought an action against the respondents, claiming general damages in the amount of \$350,000 and special damages in the amount of \$650,000, for a total of \$1 million.

THE DECISION UNDER APPEAL

- [12] The motion judge granted summary judgment against the appellant and dismissed her claim against the respondents. Applying the principles set out by this court in *Wilk v. Arbour*, 2017 ONCA 21, 135 O.R. (3d) 708, the motion judge concluded that the appellant was an “owner” as defined in the DOLA and, on that basis, was jointly and severally liable for injuries caused by the dog. She therefore had no cause of action against other owners of the dog.
- [13] Pursuant to s. 1(1) of the DOLA, the motion judge observed that “owner” when used in relation to a dog, includes a person who possesses or harbours the dog. She also noted this court’s holding in *Wilk* that “a person who is in physical possession and control over a dog just before it bites or attacks another person or animal” is a person who “possesses” a dog, and is therefore an “owner”, under the Act.
- [14] The motion judge considered the appellant’s argument that she, as a hired dog walker, was simply carrying out specific instructions of the respondents who were the “true” owners. She rejected this argument, finding that the Act does not require that an owner have dominion or ultimate control over the animal. As she said: “[i]t is irrelevant whether the Plaintiff was exercising control over Forrest with or without the Defendants’ direction or approval”. Instead, the motion judge found that the appellant was “unquestionably” in physical possession of Forrest because she was “alone with Forrest in the Defendants’ home at the time, was most certainly exercising actual control of Forrest just prior to the incident and she was best placed to prevent the bite that occurred”.
- [15] Finally, the motion judge found that, as an owner, the appellant could not recover damages from another owner under the DOLA. On this basis, she granted summary judgment in favour of the respondents.

ANALYSIS

- [16] The standard of review is that of correctness because the motion judge was called upon to interpret a statute, which is a question of law.
- [17] The DOLA defines “owner” in s. 1(1) of the Act as follows:
- “owner”, when used in relation to a dog, includes a person who possesses or harbours the dog and, where the owner is a minor, the person responsible for the custody of the minor;*
- [18] Pursuant to ss. 2 and 3 of the Act:
- 2 (1) The owner of a dog is liable for damages resulting from a bite or attack by the dog on another person or domestic animal.
- (2) Where there is more than one owner of a dog, they are jointly and severally liable under this section.

- (3) The liability of the owner does not depend upon knowledge of the propensity of the dog or fault or negligence on the part of the owner, but the court shall reduce the damages awarded in proportion to the degree, if any, to which the fault or negligence of the plaintiff caused or contributed to the damages.

...

3 (1) Where damage is caused by being bitten or attacked by a dog on the premises of the owner, the liability of the owner is determined under this Act and not under the Occupiers' Liability Act.

- [19] In *Wilk*, Weiler J.A. interpreted "owner" in the DOLA as follows: "I would hold that the word 'possesses' in the definition of 'owner' under the DOLA includes a person who is in physical possession and control over a dog just before it bites or attacks another person or animal". She observed that the statutory definition of owner "includes a person who possesses or harbours the dog". I note that those who possess or harbour a dog have one thing in common: the ability to exercise control over the dog. The legislature chose to impose liability on those persons who are best placed to control the dog and prevent damage to persons and other animals.
- [20] The appellant argues that *Wilk* is distinguishable on two grounds. First, the appellant points out that the attack took place in the respondents' home. She argues that, in those circumstances, the respondents, as both homeowners and owners of the dog, should be liable for Forrest's actions. However, in my view, this is a distinction without a difference: liability is not governed by the location of the incident.
- [21] Lest there be any doubt, the DOLA expressly ousts application of the Occupiers' Liability Act, R.S.O. 1990, c. O.2, in relation to the liability of the owner, when the dog bite occurs on the premises of the owner. This reflects a policy choice to base liability on something other than ownership or possession of the building in which the incident occurred. The DOLA seeks to promote responsibility and accountability in those who are best able to prevent dog bites and attacks, wherever they occur. It would defeat this legislative objective if someone meeting the definition of owner could escape liability merely because they were in someone else's home at the time of the incident.
- [22] Second, the appellant argues that she is not a true owner because she was passively carrying out the wishes of the respondents, who directed that she place booties on Forrest before allowing him outside. This, too, is of no legal significance. It is not uncommon for dog owners to give instructions to those hired to care for their dogs, whether in matters of feeding, walking, administering medication, or other care instructions. The person in possession of the dog is best placed to assess whether, when and how such instructions are to be carried out.
- [23] Moreover, as was held in *Wilk*, the Act does not restrict liability to those who have the highest level of authority over the dog. By defining owners as those who possess or harbour a dog, "the legislature indicated an intention to impose liability on persons who had less

than the full collection of rights belonging to an owner but who had attributes of ownership, possession and harbouring (providing safe shelter to the dog) where a measure of control over the dog is exercised”: Wilk, at para. 30. There is no requirement that the possessor be the only owner, or that the possessor be acting exclusively on her own volition.

- [24] In short, given the statutory definition of owner, as interpreted in Wilk, there can be no doubt that the appellant was an owner of Forrest for purposes of the DOLA. The appellant was the sole person in the company of the dogs at the time of the incident. She was employed by the respondents and had attended at the house to care for the dogs three times a week. She had been in possession of the dogs on prior occasions, just as she was in possession of them on the day of the incident. As was found by the motion judge, she was unquestionably the person in a position to control the behaviour of the dogs at the critical time: see Wilk, at para. 35.
- [25] Finally, I note that the question of whether a person is an “owner” is fact and context specific. In Wilk, at para. 36, Weiler J.A. pointed out that, because of the broad range of circumstances that might arise, a rigid definition is to be avoided. During oral argument, the appellant posited a number of hypothetical situations, all of which were very different than the case at bar. It is unhelpful to speculate about how the statute applies to imaginary cases. Those cases are best addressed if and when they come before the court for consideration.

DISPOSITION

- [26] For all of these reasons, I would dismiss the appeal, with costs to the respondent in the agreed upon amount of \$5,000, all inclusive.

Released: April 17, 2026 “E.E.G.”

“R. Pomerance J.A.”

“I agree. E.E. Gillese J.A.”

“I agree. L. Madsen J.A.”

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