

STATE OF IDAHO)
County of KOOTENAI)^{SS}

FILED 12/05/2023

AT 12:45 O'Clock P. M

CLERK OF DISTRICT COURT
Janice Clausen
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

JEN HARTLEY, a single women,)
)
) *Plaintiff,*)
 vs.)
)
 JEREMY BORGES and JANE DOE)
 BORGES, husband and wife and the)
 marital community composed thereof.)
)
) *Defendants.*)
 _____)

Case No. **CV28-22-3067**
**MEMORANDUM DECISION
DENYING PLAINTIFF'S MOTION
FOR PARTIAL RECONSIDERATION
OF SUMMARY JUDGMENT**

I. BACKGROUND.

On November 21, 2023, this Court filed its Memorandum Decision Denying Defendant's Motion for Summary Judgment, Denying Plaintiff's Motion for Order to Continue Trial, and Granting Plaintiff's Motion for Attorney Fees and Costs. On November 28, 2023, plaintiff filed Plaintiff's Motion for Partial Reconsideration [of Summary Judgment], in which plaintiff moved for partial reconsideration of this Court's November 21, 2023, decision. Pl.'s Mot. for Partial Recons. 1. Plaintiff specifically did not request oral argument. *Id.* Plaintiff's motion for reconsideration is devoid of any reference as to what rule basis plaintiff brings such motion under. *Id.* Also on November 28, 2023, plaintiff filed Plaintiff's Memorandum in Support of Motion for Partial Reconsideration of Summary Judgment. The Court has reviewed such. In Plaintiff's Memorandum in Support of Motion for Partial Reconsideration of Summary Judgment, counsel for plaintiff simply reargues plaintiff's interpretation of *Boswell v.*

Steele, 164 Idaho 208, (2018). Pl.'s Mem. in Supp. of Mot. for Partial Recons. 1-3. Plaintiff's Memorandum in Support of Motion for Partial Reconsideration of Summary Judgment is likewise devoid of any reference as to what rule basis plaintiff brings such motion under. *Id.*

On November 30, 2023, defendants filed their Response to Plaintiff's Motion for Partial Reconsideration. The Court has read that brief.

II. ANALYSIS.

Although counsel for plaintiff has not articulated any rule basis for Plaintiff's Partial Motion for Reconsideration of Summary Judgment, the Court assumes plaintiff makes that motion under I.R.C.P. 11.2(b)(1). Counsel for defendants obviously is proceeding under that assumption. Resp. to Pl.'s Mot. for Partial Recons. 1. The Court agrees with every bit of the following found in defendant's Response to Plaintiff's Motion for Partial Reconsideration:

Here, Plaintiff reiterates the same arguments made, and available, in the summary judgment briefing. Plaintiff highlights for the Court the footnote in *Boswell v. Steele*, 164 Idaho 208, 211 (2018), which was also noted in Defendant's Motion for Summary Judgment (at n. 1 pg. 8), where the Court notes that "the Legislature has acted to supplant common law theories of liability...when it adopted Idaho Code section 25-2810." However, the *Boswell* court did not address how the statute affected common law, and it has not been addressed by a higher court until the ruling in *Wenk*.

As presented in the summary judgment briefing, the operative language of § 25-2810(11) creates a statutory cause of action, the elements of which must be determined consistent with the common law. See *Wenk*, 533 P.3d 1016, 1020 n. 4. As recognized in *Boswell*, "[i]t is the elements of the cause of action that are significant." *Boswell*, 164 Idaho at 211. "In cases where a domestic animal is not trespassing, the owner of the animal is liable for injuries caused if the owner knew or should have known of the animal's vicious or dangerous tendencies." *Id.* citing *Bright v. Maznik*, 162 Idaho 311, 396 1193 (2011). The *Boswell* court concluded "the district court erred when it held that the Boswells' claims sounded in negligence and so instructed the jury." *Id.*

Here, in accordance with the *Wenk* court's decision, the Court correctly analyzed the statute consistent with common law; requiring for

the statutory cause of action that the Plaintiff must prove that Defendant had or should have had prior knowledge of the domestic animals' dangerous propensity.

Resp. to Pl.'s Mot. for Partial Recons. 2-3. Based on the above, Plaintiff's Partial Motion for Reconsideration of Summary Judgment is denied.

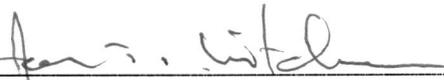
Additionally, this Court notes that not only did counsel for plaintiff fail to articulate the rule basis for plaintiff's motion (as mentioned above, this Court assumes the motion is made pursuant to I.R.C.P. 11.2(b)), this Court finds that even with that assumption, plaintiff's motion for reconsideration is an improper use of that rule. No new evidence has been presented to this Court by plaintiff. No new law has been cited to this Court by plaintiff. Counsel for plaintiff is simply regurgitating what plaintiff submitted to this Court at summary judgment. Doing so is simply a waste of this Court's time.

III. CONCLUSION AND ORDER.

For the foregoing reasons,

IT IS HEREBY ORDERED Plaintiff's Motion for Partial Reconsideration of Summary Judgment is **DENIED**.

Entered this 5th day of December, 2023.


John T. Mitchell, District Judge

Certificate of Service

I certify that on the 5th day of December, 2023, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Lawyer</u>	<u>email</u>	<u>Lawyer</u>	<u>email</u>
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Jeanne Clausen, Deputy Clerk