

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 26-CV-00621

Nigel Churchill v. Eric Wunderlich, et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 1)
Filer: Kristin C. Wright
Filed Date: June 10, 2026

Plaintiff Nigel Churchill filed this lawsuit against Defendants Eric Wunderlich and his court-appointed guardian Ahn Klein, among others. He alleges that Mr. Wunderlich's dogs attacked and injured him, and that all Defendants were negligent in failing to restrain the dogs. Ms. Klein filed a motion asking to be dismissed from the case.

For the reasons below, the Court grants the motion and dismisses Ms. Klein from the case.

I. Legal Standard

In ruling on a motion to dismiss, the Court's task is to examine "[if] the bare allegations of the complaint constitute a statement of a claim under V.R.C.P. 8(a)." *Bethel v. Mount Anthony Union High Sch. Dist.*, 173 Vt. 633, 634 (2002) (mem.) (quotations and alterations omitted). In determining whether a complaint survives, the Court assumes the factual allegations made by the nonmoving party in the complaint are true. *Colby v. Umbrella Inc.*, 2008 VT 20, ¶ 5, 184 Vt. 1. The Court, however, is not required to accept as true "conclusory allegations or legal conclusions masquerading as factual conclusions" on a motion to dismiss. *Vitale v. Bellows Falls Union High Sch.*, 2023 VT 15, ¶ 28, 217 Vt. 611 (quotation omitted).

The Court will only grant the motion if "it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." *Alger v. Dep't of Labor & Indus.*, 2006 VT 115, ¶ 12, 181 Vt. 309 (citations and quotations omitted).

II. Background

Applying this standard, the Court accepts the allegations in the complaint as true for purposes of deciding this motion.

On February 13, 2023, the Probate Division appointed Heidi Anne Moberg and Ahn Klein co-guardians of Eric Wunderlich under 14 V.S.A. Chapter 111. After the appointment, on April 1, 2023, Mr. Wunderlich's two dogs attacked Mr. Churchill. At the time of the attack, the dogs were loose in Mr. Wunderlich's yard. Mr. Churchill cycled past the house when the dogs ran at him and attacked him, biting him on the legs, right hand, left wrist, head, and back.

Mr. Wunderlich's dogs had previously attacked other people on January 9, 2023, and February 11, 2023. On February 15 and 24, 2023, the Warren County, New York Public Health Officer sent letters to Mr. Wunderlich, notifying him of one of the prior dog attacks.

Mr. Churchill alleges that Ms. Klein

had a duty to the general public and to Nigel Churchill, specifically, regarding the dogs, including the duty to properly restrain the dogs; to keep the dog under control; to take reasonable measure to ensure the dogs would not cause injury to other persons; to adequately constrain or oversee the dog when they knew or should have known that the dog was a probable source of danger, and to generally take proper precautions to protect the public and Nigel Churchill from any dangers presented by the dog.

Compl. (filed Jan. 28, 2026) at ¶ 25. He alleges Ms. Klein took no action after being notified of the prior attacks.

III. Conclusions of Law

The complaint alleges two different theories of liability against Ms. Klein, and she moves to dismiss under both theories. First, Ms. Klein contends that Mr. Churchill has failed to make out a claim against her in her capacity as the owner or keeper of the dogs. Second, Ms. Klein asserts that in her capacity as a guardian for Mr. Wunderlich she owed no duty to a third party like Mr. Churchill. The Court addresses each argument in turn.

A. Ms. Klein as Owner/Keeper of the Dogs

Vermont does not impose strict liability on dog owners. See *Martin v. Christman*, 2014 VT 55, ¶ 15, 196 Vt. 536. An owner “is not liable to persons and property unless the owner had some reason to know the animal was a probable source of danger,” but where the owner knows the dog is dangerous, he has a duty “to exercise reasonable control and restraint” to avoid injury to others. *Gross v. Turner*, 2018 VT 80, ¶ 22, 208 Vt. 112 (quoting *Davis v. Bedell*, 123 Vt. 441, 442-43 (1963)).

Ms. Klein is not the owner of the dogs. Compl. ¶ 12. However, Vermont law holds “keepers” of dogs to the same standard as an owner. *Crowley v. Groonell*, 73 Vt. 45, 47 (1901). Keeper status turns on conduct toward the dog, not title. A defendant who “housed, harbored and fed the dog in the way such animals are usually kept by owners” may be regarded as its keeper even though another person owned it. *Plummer v. Ricker*, 71 Vt. 114, 116 (1898). Being a keeper “requires a person to exercise a similar degree of control and care for a dog as its owner.” *Gross*, 2018 VT 80, ¶ 23.

Here, Mr. Churchill makes the conclusory allegation that Ms. Klein was an “owner and keeper” of Mr. Wunderlich's dogs. Compl., ¶ 25. No other facts in the complaint support this legal conclusion and the Court is not required to accept as true “conclusory allegations or legal conclusions masquerading as factual conclusions” on a motion to dismiss. *Vitale*, 2023 VT 15, ¶

28 (quotation omitted). As a result, the Court does not accept the allegation that Ms. Klein was an owner or keeper of the dogs as true. It contradicts Mr. Churchill's prior statement that Mr. Wunderlich owns the dogs.

Because the complaint does not properly allege that Ms. Klein was an owner or keeper of the dogs, the Court dismisses this theory of liability.

B. Ms. Klein's Duty as Guardian

Mr. Churchill's principal theory of liability is that "[t]he relationship of a guardian and a person in need of guardianship resembles a special relationship, such as that between a parent and a child, and imposes a duty to control." Opp. to Mot. to Dismiss (filed May 27, 2026) at 3. Mr. Churchill argues that Ms. Klein is liable under sections 315 and 319 of the Restatement (Second) of Torts because she had a duty to control Mr. Wunderlich or his dogs. Ms. Klein moves to dismiss this theory on the basis that the complaint fails to allege sufficient facts to meet the standards in sections 315 and 319.

The starting point for the Court's analysis is the general principle of tort law that a person may not be held liable for the conduct of a third party. *Sorge v. State*, 171 Vt. 171, 176 (2000). A duty may arise where "a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct." Restatement (Second) of Torts § 315(a); see also *Sorge*, 171 Vt. at 176. Section 319 of the Restatement describes one type of special relationship: "[o]ne who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled." Restatement (Second) of Torts § 319; see also *Sorge*, 171 Vt. at 176 (observing that section 319 describes one of the special relations giving rise to affirmative duties under section 315); accord *Nasser v. Parker*, 455 S.E.2d 502, 504 (Va. 1995) (observing that courts must consider sections 315(a) and 319 together when "determining whether one has a duty concerning the conduct of a third person").

The key inquiry under sections 315 and 319 is therefore whether Ms. Klein owed a duty to Mr. Churchill based on her relationship to Mr. Wunderlich as his court-appointed guardian. Because Ms. Klein was not the owner or keeper of the dogs, the question is not whether she did not appropriately protect the public from the dogs, it is whether she owed a duty to protect the public from the way Mr. Wunderlich was handling his dogs.

In *Sorge v. State*, a case addressing these two Restatement sections, our Supreme Court observed that

a breach of the so-called "duty to control" is relevant to a claim of negligence only if it is first established that the State's relationship with the person to be "controlled" is such that it is fair and just to impose upon the State a duty to control the person's conduct to prevent him from causing harm to another.

171 Vt. at 176. Indeed, duty is generally "a question of fairness" and "[t]he inquiry involves a weighing of the relationship of the parties, the nature of the risk, and the public interest in the proposed solution." *Id.* at 177 (quoting *Langle v. Kurkul*, 146 Vt. 513, 520 (1986)).

In *Sorge* specifically, a case where a juvenile in the custody of the predecessor to the Department of Children and Families injured a third person, our Supreme Court provided that

[t]o find an exception to the common-law rule that there is no duty to control the conduct of another to protect a third person from harm, we conclude that the State’s purpose in taking charge of the third person must explicitly be to control that person. Furthermore, to invoke that exception, the State’s attempts to exercise that control must be consistent with the specific objective of insulating a person having dangerous propensities from uncontrolled contact with others whom the State knows or has reason to know are likely to be harmed by the person the State intends to isolate.

Id. at 180.

The Court is not aware of a case in Vermont or elsewhere that has addressed a case like this and articulated the test for determining if a guardian can be held personally liable in the circumstances alleged here. Combining the requirements of section 319, *Sorge*, and Vermont’s case law on the duties owed by dog owners to the general public, to survive a motion to dismiss Mr. Churchill is required to allege that (1) Ms. Klein sufficiently “took charge” of Mr. Wunderlich to establish the “special relation” required by section 315 and the control required by *Sorge*, (2) when Ms. Klein “took charge” of Mr. Wunderlich she knew or should have known that Mr. Wunderlich’s dogs were “a probable source of danger,” *Gross v. Turner*, 2018 VT 80, ¶ 22, (3) Ms. Klein failed to “to exercise reasonable control and restraint” of Mr. Wunderlich to avoid injury to others, *id.*; Restatement (Second) of Torts § 319, and (4) it is fair to impose liability in light of the public interest, *Sorge*, 171 Vt. at 177.

The Court concludes that Mr. Churchill has failed to allege the facts necessary to meet three of the four elements required to support a claim against Ms. Klein.

The allegations in the complaint do not establish that Ms. Klein “took charge” of Mr. Wunderlich in the manner contemplated by section 319 and *Sorge*. Although Ms. Klein was Mr. Wunderlich’s court-appointed guardian, that status alone is insufficient to establish that the exception for special relationships applies. See e.g., *id.* at 176-77 (“special relationship” did not exist between SRS and a juvenile solely by virtue of statutes that placed the juvenile with SRS).

The complaint does not allege anything about the scope of the guardianship or Ms. Klein’s role as a guardian. It does not allege that Ms. Klein “took charge” of or controlled Mr. Wunderlich in any specific way. Nor is it obvious under Vermont law that all guardians would have taken sufficient control over their ward for purposes of establishing a special relationship simply by virtue of being a guardian.

In Vermont, guardianships should be used “only as necessary to promote the well-being of the individual and to protect the individual from violations of his or her human and civil rights.” 14 V.S.A. § 3060. Indeed, guardianships are designed to “encourage the development and maintenance of maximum self-reliance and independence in the individual and only the least restrictive form of guardianship shall be ordered to the extent required by the individual’s actual

mental and adaptive limitations.” *Id.* The Probate Division grants powers to guardians “in the least restrictive manner appropriate to the circumstances of the respondent [, ... and ...] only to the extent required by the respondent’s actual mental and adaptive limitations.” *Id.* § 3069(c). The Probate Division selects only specific powers to grant to a guardian and may even “further restrict each power so as to preserve the respondent’s authority to make decisions commensurate with respondent’s ability to do so[.]” *Id.*; see also *id.* § 3069(e) (“The guardian shall exercise supervisory powers in a manner which is least restrictive of the personal freedom of the person under guardianship consistent with the need for supervision.”); *id.* § 3069(f) (“The guardian shall encourage the person under guardianship to participate in decisions, to act on his or her own behalf when practicable, and to develop or regain the capacity to manage his or her own personal affairs to the maximum extent possible. The wishes, values, beliefs, and preferences of the person under guardianship shall be respected to the greatest possible extent in the exercise of all guardianship powers.”); *id.* § 3071(a) (“The guardian shall maintain close contact with the person under guardianship and encourage maximum self-reliance on the part of the person under guardianship.”).

Mr. Churchill argues in his opposition to the motion that the Probate Division granted Ms. Klein “all guardianship powers, not just financial powers[.]” and asks the Court to consider the petition to appoint a guardian and the order of appointment. Plf. Opp. (filed May 27, 2026) at 4. These allegations were not made in the complaint and the probate documents were not attached to the complaint.

But even if the Court considers these attachments and allegations, they do not establish a section 319 special relationship in light of the purposes and policies underlying Vermont’s guardianship statutes. Plf. Ex. 2 at 1; see also *Off. of Auditor of Accts. v. Off. of Att’y Gen.*, 2025 VT 36, ¶ 8, 221 Vt. 266 (observing that when complaint relies on outside documents, those documents merge into the complaint, and the court may properly consider them on a motion to dismiss). These attachments point to a concern about harm to Mr. Wunderlich, not the public. They grant to Ms. Klein all guardianship powers, but do not direct that the “purpose in taking charge of” Mr. Wunderlich is “to control” him. *Sorge*, 171 Vt. at 180. No facts in the complaint suggest the guardianship was aimed at protecting third parties from Mr. Wunderlich.

Under *Sorge*, the exception to the no-duty rule applies where the actor’s “purpose in taking charge of the third person ... explicitly [is] to control that person,” and where the attempt to exercise control is “consistent with the specific objective of insulating a person having dangerous propensities from uncontrolled contact with others.” 171 Vt. at 180. That is not what Chapter 111 guardianship is about.

Accordingly, Mr. Churchill has failed to allege that Ms. Klein “took charge” of Mr. Wunderlich within the meaning of Restatement section 319 and *Sorge*, or in the words of section 315, that Ms. Klein and Mr. Wunderlich had a “special relation.” Other courts have been similarly reluctant to find a section 319 duty in comparable circumstances. See e.g., *Kaminski v. Town of Fairfield*, 578 A.2d 1048, 1052 (Conn. 1990) (parents who permitted adult schizophrenic son to live with them did not undertake a custodial relationship encompassing responsibility for controlling his behavior; “[a] familial relationship does not, per se, establish the capacity to control that § 319 envisages as a basis for liability”); *Knight v. Merhige*, 133 So. 3d 1140, 1146-47 (Fla. Dist. Ct. App. 2014) (parents who housed and financially supported an

adult son with a documented history of violence did not exercise control sufficient to place him within “the functional equivalent of their legal custody”).

Next, the Court looks at whether Mr. Churchill has sufficiently alleged that Ms. Klein was aware that Mr. Wunderlich’s dogs were a probable source of danger. The Court concludes that he has for purposes of surviving a motion to dismiss.

Turning to the third factor, even if Mr. Churchill could establish that Ms. Klein and Mr. Wunderlich had a special relationship and Ms. Klein owed a duty to Mr. Churchill, there is no allegation that Ms. Klein specifically failed to do anything as it relates to controlling Mr. Wunderlich. Even if Ms. Klein owed a duty to Mr. Churchill in this instance, it is not the same duty as Mr. Wunderlich owes to others – she does not stand in Mr. Wunderlich’s place in the traditional liability analysis articulated in *Martin v. Christman*. Ms. Klein, as a person who does not own or keep the dog, could at most owe a duty to put in place appropriate safeguards after considering all of the facts known to her about Mr. Wunderlich and the dogs. There are no allegations in the complaint regarding what Ms. Klein knew about Mr. Wunderlich’s control and restraint of the dogs and what she did in response to that.

Finally, the Court looks at whether is fair to impose a duty on Ms. Klein considering the facts alleged and the public interest. Were the Court to impose liability directly on a guardian in a case like this under Restatement section 319, it could “discourage families from providing a haven to troubled relatives for fear of civil liability” and would “foist those most in need of family interaction on the governmental and charitable social service networks.” *Knight*, 133 So. 3d at 1150-51. This Court is reluctant to impose a duty on Ms. Klein “that would disturb the delicate balance the Legislature has crafted between” protecting people in need of guardianship “and the broader interests of public safety.” *Sorge*, 171 Vt. at 180.

Mr. Churchill has failed to allege that Ms. Klein “controlled” Mr. Wunderlich in a way that it would be fair and just to impose upon her a duty to control Mr. Wunderlich’s conduct so as to prevent him from causing harm to third parties. See *Sorge*, 171 Vt. at 176.

The Court concludes that Ms. Klein owed no duty to Mr. Churchill based upon a failure to control the conduct of Mr. Wunderlich in her capacity as his court-appointed guardian. Absent this duty, the negligence claim against Ms. Klein fails. See *Rubin v. Town of Poultney*, 168 Vt. 624, 625 (1998) (mem.).

Order

Based on the foregoing, Ms. Klein’s motion to dismiss her from the case is granted. The Court dismisses the claim against Ms. Klein without prejudice.

Electronically signed on September 17, 2026, pursuant to V.R.E.F. 9(d).



Navah C. Spero
Superior Court Judge