

CASE REPORT

PUBLIC DUTY DOCTRINE - FAILURE TO ENFORCE EXCEPTION - POTENTIALLY DANGEROUS DOGS. The failure to enforce exception to the public duty doctrine was applied to a Pierce County Code provision requiring evaluations to determine whether dogs are potentially dangerous when complaints are received. *Gorman v. Pierce County*, No. 42502-5-II, Division II Court of Appeals (Aug. 13, 2013).

I. Facts. Sue Ann Gorman was mauled by two dogs that entered her home through an open door. The dogs that attacked Gorman had previously been the subject of numerous complaints to Pierce County animal control. At least one of the dogs, a pit bull named Betty, regularly roamed around the cul-de-sac where Gorman lived and had aggressively confronted neighbors and Gorman on previous occasions, including one occasion in which Betty bit Gorman's pant leg. Betty's owner, Shellie Wilson, had also been reported on 10 previous occasions to Pierce County animal control about other dogs she owned. Following the attack, Gorman sued the owners of the dogs and Pierce County. Gorman claimed that the County negligently failed to take appropriate action in response to the complaints about the dogs before the attack. The Pierce County Code contained a provision stating: "The County or the County's designee *shall* classify potentially dangerous dogs. The County or the County's designee *may* find and declare an animal potentially dangerous if an animal care and control officer has probable cause to believe that the animal falls within the definitions [of "potentially dangerous dog"] set forth" in the Code. Former PCC 6.07.010(A). Pierce County moved for summary judgment, contending that the public duty doctrine shielded it from liability because the County owed no legal duty to Gorman individually. The trial court denied the motion, applying the failure to enforce exception to the public duty doctrine. The County appealed.

II. Applicable Law and Analysis. The Court of Appeals affirmed the trial court's ruling that the failure to enforce exception to the public duty doctrine applied, thus approving the trial court's decision to allow Gorman's negligence claim against the County to proceed to trial.¹ Under the public duty doctrine, a government's obligation to the general public is not considered a legal duty of care; instead, a government can only be liable for negligence for breaching a legal duty owed to a specific individual. However, the public duty doctrine is subject to four exceptions, including the failure to enforce exception. Under this exception, a government's obligation to the general public becomes a legal duty owed to a specific individual where: (1) government agents responsible for enforcing statutory requirements actually know of a statutory violation; (2) the government agents have a statutory duty to take corrective action but fail to do so, and (3) the plaintiff is within the class of persons the statute was intended to protect.

¹ The Court of Appeals also reviewed other issues in the case, including Pierce County's assertion that Gorman's contributory negligence caused her injuries. However, those issues are beyond the scope of this case report.

At issue in *Gorman* was whether the Pierce County Code provision quoted above created a statutory duty to take corrective action. Both the trial court and the Court of Appeals agreed with Gorman that the Pierce County Code created a statutory duty to classify potentially dangerous dogs. The Court reasoned that, although the Code provision at issue granted Pierce County the discretion to determine whether a specific dog met the definition of “potentially dangerous” by using the permissive word, “may,” the Code created a mandatory duty to evaluate a dog if the County received a report of a potentially dangerous dog by using the word “shall” in the first sentence. Thus, the County had a mandatory legal duty to engage in a classification process where a dog reported was likely potentially dangerous, even though it had discretion to classify or not classify any particular dog as potentially dangerous. In this case, there was no record that the County evaluated the two dogs that attacked Gorman, despite having previously received numerous complaints about the dogs.

III. Conclusion. Cities should review their animal control ordinances to determine if language similar to that appearing in the Pierce County Code requires animal control officers or other city officials to prepare a potentially dangerous or dangerous dog evaluation when a complaint is received. If you have any questions regarding the public duty doctrine and its exceptions, or would like to consult regarding amendments to your animal control ordinances, please do not hesitate to contact your city attorney.