

MOSCOW, THURSDAY, APRIL 5, 2018 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**BAERBEL LITKE, surviving spouse and)
successor in interest for Klaus Kummerling,)
and the marital community composed thereof,)**

Plaintiff-Respondent,)

v.)

**MARK MUNKHOFF and ROBYN)
MUNKHOFF, husband and wife, and the)
marital community composed thereof,)**

Defendants-Appellants,)

Docket Nos. 44735

and)

**CITY OF COEUR D'ALENE, IDAHO, a)
political subdivision of the State of Idaho,)
COEUR D'ALENE IDAHO POLICE CHIEF)
RON CLARK; and SAM MUNKHOFF, a)
single person,)**

Defendants.)

Appeal from the District Court of the First Judicial District for the State of Idaho,
Kootenai County. Hon. Cynthia K.C. Meyer, District Judge.

Winston & Cashatt, Spokane, for appellants.

Powell, Kuznetz & Parker, PS, Spokane, for respondents.

On July 30, 2013, Klaus Kummerling (“Kummerling”) was bitten by a pit bull dog named Bo (“Bo”). On July 29, 2015, Kummerling and his wife, Baerbel Litke, brought an action against the City of Coeur d’Alene, Coeur d’Alene Police Chief Ron Clark, Mark and Robyn Munkhoff (the “Munkhoffs”), and Sam Munkhoff alleging negligence, gross negligence, outrage, and nuisance. In early March 2016, the district court dismissed the City of Coeur d’Alene and Chief Clark as defendants. On March 17, 2016, the Munkhoffs filed a motion for summary judgment requesting that all of Kummerling’s claims be dismissed against them. The district court dismissed all claims except the negligence action. On September 19–22, 2016, the

case was tried to a jury. The jury returned a special verdict, finding that the Munkhoffs were negligent, negligent per se, and that the Munkhoffs' negligence was the proximate cause of Kummerling's injury. The Munkhoffs moved for a new trial pursuant to Idaho Rules of Civil Procedure 59(a)(1)(A), (F), and (G), or, in the alternative, for remittitur pursuant to Idaho Code section 6-807 and Rule 59.1, and for relief from judgment pursuant to Rule 60(b)(3). The district court denied the motion, and a judgment was filed on November 7, 2016.

The Munkhoffs appeal the district court's order denying summary judgment and order denying a new trial, remittitur, or relief from judgment. The Munkhoffs contend they were not liable as a matter of law because they did not have control over Bo at the time of the injury, that the actions of their son Sam were a superseding cause of the injury, and that they had no right or duty to control Sam's management of Bo when not on their property. The Munkhoffs also maintain that the district court abused its discretion when it denied their motion for new trial because there was insufficient evidence in the record to show that, at the time of the injury, the Munkhoffs were custodians of Bo and, therefore, owed a duty to Kummerling. Furthermore, the Munkhoffs argue the district court abused its discretion denying their motion for remittitur because the verdict was a result of the passion or prejudice of the jury. Finally, the Munkhoffs ask for relief from the district court's judgment because they assert the damages awarded were based on insufficient evidence to support their culpability.