

Guardrails, Not Leashes: Preserving the Zone of Danger's Boundaries

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1. Introduction

In *DeBlase v. Hill*, 83 Misc 3d 1242(A), 213 N.Y.S.3d 921 (N.Y. Sup. Ct. 2024) Justice Aaron D. Maslow took a significant step toward expanding tort liability by allowing a claim for negligent infliction of emotional distress (NIED) to proceed where the alleged injury was not to a human relative, but to a dog. Nan DeBlase witnessed her son's dog being struck and killed by a negligent driver while she was crossing a Brooklyn street.

The court found that because DeBlase was in close physical proximity to the accident and feared for her own safety, her emotional trauma was potentially compensable under New York's zone of danger doctrine, even though the decedent was a pet.

This decision pushes the bounds of a doctrine that the New York Court of Appeals has long treated with exceptional caution.

The zone of danger rule allows bystanders to recover for emotional harm only under tightly controlled conditions: where the plaintiff is in physical danger, suffers serious and verifiable emotional injury, and contemporaneously witnesses the death or serious injury of an immediate family member.

Courts have consistently rejected efforts to stretch this rule to include more attenuated relationships, emphasizing the importance of doctrinal clarity and administrable boundaries.

Expanding recovery to a pet owner risks undermining the doctrine's core principles.

New York's current zone of danger framework reflects a deliberate, policy-driven effort to pigeon-hole liability for emotional harm.

While society may value pets as family, the legal system does not recognize emotional injuries arising from harm to animals as compensable under this doctrine. Nor is there any statute in New York that permits recovery for emotional distress resulting from the injury or death of a pet. Multiple appellate courts have reaffirmed that pets are treated as personal property in tort, and emotional damages stemming from their death are not recoverable.

2. New York's Zone of Danger Doctrine: Tight by Design

New York's zone of danger doctrine stands out as one of the narrowest frameworks in the country for bystander emotional distress claims. Established in *Bovsun v. Sanperi*, 61 N.Y.2d 219 (1984) the rule permits recovery for NIED only when four distinct conditions are met: (1) the plaintiff was within the physical zone of danger created by the defendant's negligence, (2) the plaintiff contemporaneously observed the death or serious physical injury of a third party, (3) the third party was a member of the plaintiff's immediate family, and (4) the plaintiff suffered serious and verifiable emotional harm as a result.

The Court of Appeals has made clear that this doctrine is rooted not in empathy alone but in the fundamental need to “limit the legal consequences of wrongs to a controllable degree,” as first articulated in *Tobin v. Grossman*, 24 N.Y.2d 609, 619 (1969).

The narrowness of the rule reflects a deliberate tradeoff: preserving administrability in tort law at the expense of denying recovery in some emotionally compelling cases. The concern is not that emotional harm is unreal, but that permitting recovery based on subjective relationships or psychological trauma risks unbounded liability.

Courts have reinforced these limits. In *Trombetta v. Conkling*, 154 Misc.2d 844 (1992), the court allowed recovery for a niece who had been raised by her aunt and was holding her aunt’s hand when she was struck and killed by a truck.

However, this decision was later reversed, indicating judicial reluctance to broaden the scope of “immediate family” beyond traditional definitions. In *Thompson v. Dhaiti*, 103 A.D.3d 711 (2d Dept 2013), the Second Department denied recovery to a stepdaughter who had been raised and supported by her stepfather.

These decisions demonstrate that even quasi-parental relationships do not qualify unless they fall within the bright-line category of immediate family.

More recently, in *Greene v. Esplanade Venture Partnership*, 36 N.Y.3d 513 (2021), the Court of Appeals carved out a narrow exception by allowing a grandparent to recover under the zone of danger doctrine. In that case, the plaintiff grandmother was walking with her two-year-old granddaughter when a piece of a building façade broke loose and fatally struck the child.

The court emphasized that the grandmother was within the zone of danger and had directly witnessed the death. Its decision was influenced by societal changes, the special status of grandparents under New York family law, and the increasing recognition of their caregiving roles.

The court maintained its cautious approach, underscoring that the inclusion of grandparents was a discrete expansion limited to those with legally recognized familial status, and did not open the door to broader reinterpretations of the doctrine.

The throughline across these cases is judicial restraint. The zone of danger doctrine is not designed to reach every case of genuine emotional harm.

It is a narrow, purpose-built exception that rests on clear criteria, physical danger, contemporaneous observation, and close legal kinship, not subjective emotional bonds. This disciplined approach has preserved the doctrine’s legitimacy, even in the face of changing social norms.

3. Companion Animals: Valued, but Still Property

To many New Yorkers, pets are not just animals; they are companions, confidants, and, in many households, surrogate children. Courts have acknowledged as much in their rhetoric, recognizing that a pet is not just a thing and occupies a special place in its owner’s life.

New York law has been unequivocal: pets are classified as personal property. Emotional damages arising from a pet’s injury or death are not recoverable, even when the circumstances prove to be devastating.

The principle was clearly articulated in *Schrage v. Hatzlacha Cab Corp.*, 13 A.D.3d 150 (2004) where the First Department held that a pet’s death caused by negligence did not give rise to a claim for emotional harm.

The court reaffirmed that a dog, no matter how beloved, is property, and the owner’s remedies are limited to economic damages.

The same conclusion was reached in *Johnson v. Douglas*, 187 Misc.2d 509 (2001), where the court rejected emotional distress damages for the negligent destruction of a dog. see also *Young v. Delta Air Lines, Inc.*, 78 A.D.2d 616 (1980) (where the court reaffirmed that New York law does not permit recovery for mental suffering or emotional disturbance as an

element of damages for the loss of property, including pets).

Some trial courts have gestured toward a more compassionate view. In *Corso v. Crawford Dog and Cat Hospital, Inc.*, 97 Misc.2d 530 (1979), the court noted that a pet is not simply an item of personal property but occupies a special place between a person and a piece of property. In *Travis v. Murray*, 42 Misc.3d 447 (2013), a matrimonial court declined to treat a dog as a mere chattel in a divorce proceeding.

These decisions are the exception, not the rule. They do not alter the controlling doctrine in tort law. In fact, *Travis v. Murray* was later superseded by statute, reinforcing the Legislature's role in redefining the legal status of animals, not the judiciary's.

The law is clear: emotional harm caused by the loss or injury of a pet is not compensable in tort unless the plaintiff independently satisfies the narrow requirements of the zone of danger doctrine.

That doctrine requires fear for one's own physical safety, not merely grief over another's death, animal or human. While courts may acknowledge the emotional toll of losing a pet, they have repeatedly declined to transform that recognition into a basis for legal recovery.

4. Why Expanding Zone of Danger Recovery is Doctrinally Incoherent

Expanding New York's zone of danger doctrine to include emotional distress over the death of a pet would not merely stretch existing precedent, it would rupture the doctrine's core structure. The rule's legitimacy has always depended on its restraint.

It draws enforceable lines between compensable and non-compensable harm, not based on emotional intensity, but on objective, administrable criteria. Adding companion animals to the category of immediate family would unmoor the doctrine from its legal foundations and invite precisely the kind of speculative, subjective claims it was designed to avoid.

The trial court in *DeBlase v. Hill* acknowledged that Nan DeBlase feared for her own safety when

her son's dog was struck and killed in a crosswalk. That finding certainly placed her within the zone of physical danger.

However, the court's suggestion that witnessing the death of a dog may support a bystander claim under the zone of danger rule disregards decades of New York precedent limiting recovery to those who witness harm to immediate family members.

It is precisely in close-call cases like *Trombetta v. Conkling*, where the plaintiff had been raised by the decedent, or *Thompson v. Dhaiti*, where the stepdaughter was financially and emotionally dependent on the victim, that the Court of Appeals and Appellate Divisions have declined to extend the zone.

Pets, however cherished, do not share a recognized legal status within the family unit. In *Greene v. Esplanade Venture Partnership*, the Court of Appeals allowed recovery for a grandmother who witnessed her granddaughter's death, but only after grounding the decision in existing statutory recognition of grandparental rights under the Domestic Relations Law. *Greene*, 36 N.Y.3d.

The court took pains to clarify that it was not opening the door to broader expansion. *Greene* underscores the court's careful approach; expansion is permitted only when the class of claimants already enjoys a legally defined familial role.

The zone of danger doctrine has never been a vehicle for compensating grief alone. It is premised on a narrow category of emotional injuries rooted in the plaintiff's own physical peril.

As the court stated in *Bovsun*, the tort compensates not simply for the loss of another, but for the emotional disturbance resulting from a direct personal threat of physical harm. *Bovsun*, 61 N.Y.2d at 230. *DeBlase* reconfigures that formula.

It centers on the emotional loss of the pet, not the plaintiff's fear for her own safety. Although a subtle shift, it remains radical.

It is the Legislature that has created criminal protections for animals, custody rights in divorce,

and estate planning options for pet trusts. If New York wishes to recognize a new category of emotional harm tied to the loss of animals, that is a question for the Legislature.

5. Parallel Legislative Restrain: Grieving Families Act and the Role of Statutes

New York has a long tradition of grounding recovery for emotional and wrongful death damages in clear statutory frameworks. This tradition underscores the judiciary's reluctance to expand emotional distress recovery outside well-defined legislative channels.

The Estates, Powers, and Trusts Law (EPTL) confines wrongful death recovery to the decedent's "distributees", as defined by EPTL §4-1.1, reflecting the state's inheritance chart. Damages are apportioned among distributees based on their pecuniary losses, not emotional anguish. Stepchildren, romantic partners, or even siblings may be excluded entirely unless they qualify under the statute.

Efforts to change that paradigm have taken the form of proposed legislation like the Grieving Families Act. That Act seeks to expand wrongful death recovery to include non-economic losses, such as grief and loss of companionship, and to broaden the class of eligible plaintiffs to include domestic partners and other close family members.

Despite passing both houses of the legislature multiple times, the bill has been vetoed due to concerns over insurance costs, litigation burdens, and ambiguous definitional standards.

These legislative debates mirror the same policy concerns animating the judiciary's tight control over the zone of danger doctrine: the need to limit liability to a controllable degree.

Just as courts have declined to expand the class of zone of danger plaintiffs beyond traditional family relationships, the legislature has

been cautious in extending wrongful death recovery beyond pecuniary loss and statutorily defined distributees.

Importantly, while the Grieving Families Act reflects an ongoing policy conversation, there is no comparable bill seeking to expand the zone of danger doctrine to include pets or other non-human companions.

Judicial restraint in tort expansion is not judicial coldness. It is fidelity to the rule of law. Where legislative bodies have hesitated to act, courts should be even more cautious about creating new categories of emotional harm.

6. Leave Change to the Legislature

The emotional bond between people and their pets is undeniable. New York's zone of danger doctrine confines recovery for emotional distress to plaintiffs who were physically endangered and who witnessed the death or injury of a narrowly defined class of close family members.

Expanding that doctrine to include pet owners would undermine decades of doctrinal consistency.

The trial court's decision in *DeBlase v. Hill* may have been well-intentioned, but it signals a shift that the Court of Appeals has resisted. The judiciary has drawn the outer limits of bystander recovery with extraordinary care.

That line should not be moved based on emotional intuition. We await to see what the Second Department does on this matter. If New York is to recognize emotional damages for the death of a pet, it should do so through clear, legislative action, not through case-by-case judicial improvisation. The zone of danger doctrine was never meant to stretch. It was meant to hold.

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