IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JASON HARTMAN and EMILY HARTMAN,	)	
Plaintiffs,	)	
v.	)	C.A. No. N25C-08-200 SKR
	)	(Jury of Twelve Demanded)
SCANDIA CALABRESE, PETER CALABRESE, IVETTE DISAVERIO, and CLAUDIO DISAVERIO,	)	
Defendants.	)	

Submitted: May 27, 2026
Decided: June 15, 2026

ORDER DENYING DEFENDANTS IVETTE AND CLAUDIO DISAVERIO'S MOTION TO DISMISS

Upon consideration of Defendants Ivette Disaverio and Claudio Disaverio's Motion to Dismiss (the "Motion"), the opposition thereto, and the record in this case, it appears to the Court that:

Background[1]

1. Plaintiffs Jason and Emily Hartman (the "Hartmans") brought this action against Defendants Scandia and Peter Calabrese (the "Calabreses") and Ivette and Claudio Disaverio (the "Disaverios" and together with the Calabreses,

[1] Facts are drawn from the allegations in the Complaint (Docket Item ("D.I.") 1) ["Compl."].

"Defendants") asserting a claim for negligent infliction of emotional distress ("NIED"). The claim arises from a December 25, 2023, dog attack on the Hartmans' children, then ages four and six.[2]

2. That Christmas, the children walked to the home of their next-door neighbors—the Disaverios—to exchange cooking items.[3] Mr. Hartman watched the children through his storm door, while Mrs. Hartman remained "nearby and aware of the children's general location."[4] The children spoke with Mrs. Disaverio, completed the exchange, and began walking back to their home.[5]

3. At the time, the Disaverios were pet-sitting a pit bull owned by the Calabreses.[6] Before Mrs. Disaverio could close her door, the dog rushed past her and charged the children.[7] Mrs. Disaverio screamed, prompting Mr. Hartman to yell and run toward the children.[8] Hearing the commotion, Mrs. Hartman ran outside behind her husband.[9]

4. Before the Hartmans reached the children, the dog repeatedly bit the younger child.[10] By the time they arrived, the active attack had ended.[11] Mr.

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[2] Compl. ¶ 4.
[3] *Id.*
[4] *Id.* at ¶ 6.
[5] *Id.* at ¶ 7.
[6] *Id.* at ¶¶ 8–9.
[7] *Id.* at ¶ 11.
[8] *Id.* at ¶ 13.
[9] *Id.* at ¶ 14.
[10] *Id.* at ¶ 16.
[11] *Id.* at ¶ 17.

Disaverio secured the dog,[12] and the Hartmans took their children for emergency medical care.[13] The Complaint alleges that the injured child sustained permanent scarring to his buttocks.[14]

5. The Hartmans filed their Complaint on August 21, 2025. On December 29, 2025, the Disaverios filed the instant Motion, arguing that the Hartmans failed to state a claim for NIED under Delaware Superior Court Civil Rule ("Rule") 12(b)(6) because the Complaint does not allege that the parents were within the "zone of danger.[15] The Calabreses joined the Motion,[16] briefing followed, and the Court heard oral argument on May 27, 2026.[17]

Standard

6. On a motion to dismiss under Rule 12(b)(6), dismissal is inappropriate unless the plaintiff cannot recover under any reasonably conceivable set of circumstances susceptible of proof.[18] The Court accepts all well-pleaded factual allegations as true, even if vague, so long as they give the defendant notice of the claim.[19] All reasonable inferences must be drawn in the plaintiff's favor.[20]

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[12] *Id.* at ¶ 20.
[13] *Id.* at ¶ 26.
[14] *Id.* at ¶ 29.
[15] Motion (D.I. 13) ["Mot."].
[16] D.I. 16.
[17] D.I. 23.
[18] *Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 238 A.3d 863, 871–72 (Del. 2020).
[19] *Albence v. Mennella*, 320 A.3d 212, 221 (Del. 2024) (citing *In re GGP, Inc. S'holder Litig.*, 282 A.3d 37, 54 (Del. 2022)).
[20] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

Discussion

7. To state a claim for NIED under Delaware law, a plaintiff must allege: (1) negligence causing fright to the plaintiff; (2) that the plaintiff was in the "zone of danger;" and (3) that the contemporaneous shock produced physical consequences.[21]

8. The first and third elements are not seriously disputed for purposes of this Motion. As to the first element, the alleged negligence stems from the Disaverios' failure to control or secure the dog,[22] which caused the Hartmans to fear for their children's safety and their own.[23] Regarding the third element, the Hartmans allege that the contemporaneous shock caused physical consequences, including severe anxiety, nausea, loss of appetite, nightmares, flashbacks, and an acute flight-or-fight response to dogs.[24]

9. Instead, the Disaverios dispute the second element. They argue that because the Complaint acknowledges that the active attack had ended before the Hartmans reached their children, the parents were never in the "zone of danger."[25] Under Delaware law, which follows the Restatement (Second) of Torts § 313, the

[21] *J.S. v. Edgemoor Cmty. Ctr., Inc.*, 2024 WL 139236, at *1 (Del. Super. Jan. 11, 2024).
[22] Compl. ¶ 34.
[23] *Id.* at ¶ 37.
[24] *Id.* at ¶¶ 38–39.
[25] Mot. p. 5.

"zone of danger" is defined as the immediate area where the defendant's negligent conduct places a plaintiff in reasonable fear for his own safety.[26]

10. However, this Court has extended the "zone of danger" requirement to permit bystander recovery in certain limited circumstances where a plaintiff's fright arises from the peril of a closely related third party.[27]

11. The foundational case for this third-party extension is *Armstrong v. A.I. DuPont Hospital for Children*.[28] In *Armstrong*, a hospital discharged a five-year-old into his parents' care while the boy remained unconscious following a tonsillectomy.[29] The parents put him to bed, and later found him unresponsive.[30] Although they summoned an ambulance to rush him back to the hospital, the child ultimately died from anesthesia-induced respiratory distress.[31] Confronted by this tragedy, the Court addressed an issue long left open in Delaware jurisprudence: whether a plaintiff can recover for NIED when the fright arises from the peril of another. Borrowing from California's landmark framework, the Court adopted a three-factor test evaluating: (1) the presence of ongoing negligence witnessed by the

[26] *Elsey-Jones v. Gullion*, 2018 WL 2727574, at *4 (Del. Super. June 5, 2018) (emphasis added).
[27] *Armstrong v. A.I. DuPont Hosp. for Children*, 60 A.3d 414, 416 (Del. Super. 2012).
[28] *Id.*
[29] *Id.* at 417.
[30] *Id.*
[31] *Id.*

plaintiff; (2) the plaintiff's contemporaneous shock and outrage; and (3) the proximity of the plaintiff's relationship with the harmed individual.[32]

12. The *Armstrong* Court concluded that the parents met this third-party extension because they: (1) actively witnessed the hospital discharge their son and wheel him to their car in a wagon—representing the culmination of continuous acts of alleged negligence; (2) directly observed their son's critical condition, experiencing immediate shock and outrage; and (3) shared a parent-child relationship, noting that "[n]o closer relationship is possible."[33]

13. Subsequent Delaware cases have refined the *Armstrong* test. In *Boas v. Christiana Care Health Services, Inc.*, this Court declined to extend bystander recovery to parents who were informed after the fact that an unauthorized autopsy had been performed on their infant.[34] The Court reasoned that the alleged negligence—the autopsy—had not occurred in the parents' presence and was not ongoing when they learned of it.[35] Similarly, in *Chase v. Bell Funeral Home LLC*, this Court concluded that a plaintiff could not recover for NIED when her father was cremated against his wishes.[36] Because the "continuous" negligence leading up to the cremation, and the peril of the cremation itself, transpired before the plaintiff

[32] *Id.* at 426.
[33] *Id.*
[34] 2023 WL 4842102, at *1 (Del. Super. July 26, 2023).
[35] *Id.* at *4.
[36] 2026 WL 396672, at *2 (Del. Super. Feb. 12, 2026).

arrived at the funeral home, she merely discovered the aftereffects rather than witnessing an ongoing event.[37]

14. In *Elsey-Jones v. DeLoach*, this Court held that a plaintiff who auditorily perceived a vehicle fatally striking a pedestrian failed to state an NIED claim.[38] The plaintiff did not visually witness the crash, observed only its aftermath, and had no close personal relationship with the victim.[39]

15. Under the *Armstrong* framework, the Complaint adequately alleges that the Hartmans were in the zone of danger. First, the parents actively witnessed the alleged negligence as it unfolded, observing an unrestrained dog bearing down on their children and executing the attack.[40] Second, the Hartmans perceived their children's peril firsthand; unlike the plaintiffs in *Boas* or *Chase*, they did not merely suffer shock from discovering the consequences of a completed tortious act. Third, the parent-child relationship satisfies the close proximity requirement. Because the allegations support all three *Armstrong* factors, the Hartmans' NIED claim based on third-party peril survives dismissal.[41]

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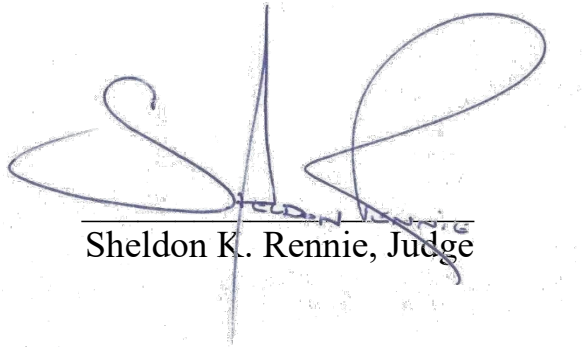
[37] *Id.* at *2–3.
[38] 2018 WL 2727574, at *5 (Del. Super. June 9, 2018).
[39] *Id.*
[40] Compl. ¶ 15 ("As Plaintiffs ran to the children, they helplessly watched the pit bull maul R.H., and heard the heart-wrenching screams of R.H. and D.H., who were overcome with terror and fear.").
[41] Within their NIED claim, the Hartmans contend that Defendants are strictly liable for their resulting injuries and damages pursuant Delaware's dog bite statute, 16 *Del. C.* § 3053F. Compl. ¶ 35. Because the Hartmans have sufficiently alleged that they were in the zone of danger, this statutory component of their claim may also proceed.

16. Although the Hartmans' claim safely proceeds under the *Armstrong* framework, the Court briefly addresses their argument regarding the Restatement's standard definition of "zone of danger."[42] At oral argument, the Hartmans' counsel contended that because the dog remained unsecured while the parents rushed to rescue their children, the parents were also placed in immediate fear for their own personal safety. While the Complaint articulates this first-party theory vaguely,[43] the overarching factual allegations put Defendants on notice of the potential claim. In the interest of efficiency, the Court will permit this alternate theory to proceed alongside the primary bystander claim.

IT IS HEREBY ORDERED that Defendants Ivette Disaverio and Claudio Disaverio's Motion to Dismiss and the joinder by Defendants Scandia Calabrese and Peter Calabrese are **DENIED**.



Sheldon K. Rennie, Judge

[42] *See, e.g., Chase*, 2026 WL 396672, at *2 (conducting standard analysis after bystander analysis).
[43] While the Complaint does not expressly allege that the Hartmans feared for their own safety, it places them in direct proximity to the danger as they ran toward the scene of the mauling. Further, because the pit bull was loose and unrestrained between the time of the attack and its eventual capture by Mr. Disaverio, the Complaint supports a reasonable inference that the Plaintiffs were placed in peril for their safety. *See* Compl. ¶¶ 15–21.