

RENDERED: OCTOBER 29, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000059-MR

OSCAR SWANSTROM

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 08-CI-05852

JOHN R. SEADLER AND
MICHELLE SEADLER

APPELLEES

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: ACREE, JUDGE; HENRY AND ISAAC,¹ SENIOR JUDGES.

ISAAC, SENIOR JUDGE: Oscar Swanstrom appeals from an order by the
Jefferson Circuit Court granting John and Michelle Seadler's motion for summary

¹ Senior Judges Michael L. Henry and Sheila R. Isaac sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

judgment on Swanstrom's claim of negligence. For the following reasons, we vacate and remand.

On July 6, 2007, the Seadlers arranged for Swanstrom, an equine veterinarian, to come to their property and administer a sedative to one of their horses. The horse was located in a barn stall built by John Seadler in 1993. Soon after administering the sedative, the horse began rearing its head and staggering around the barn stall. Swanstrom exited the stall and closed and latched the stall door. The horse eventually fell into the stall door, causing it to collapse on Swanstrom, injuring him in the process.

Swanstrom filed a negligence-based complaint against the Seadlers alleging they had a duty to keep the premises in a reasonably safe condition and a duty to warn against latent defects they knew or should have known existed. Mark Williamson was deposed in preparation for the trial. Mr. Williamson stated that he had been in the building trades for 30 years, and during the last four years largely worked on horse barns and stall work. As a result of his experience, Mr. Williamson opined that the stall door collapsed because of the inappropriate materials and design used in its construction.

The Seadlers moved the court for summary judgment, which the trial court granted on the basis that "the Kentucky Farm Animal Activities Act, KRS 247.401 to 247.4029, shields the Seadlers from liability under the facts." The court further held the Seadlers "had no duty to warn Swanstrom of the inherent risk of farm animal activities" and were entitled to a judgment as a matter of law.

Whether or not the trial court properly granted summary judgment is purely a question of law. *Blevins v. Moran*, 12 S.W.3d 698, 700 (Ky.App. 2000). On appeal, when no factual issues are involved and only legal issues are before the court, we do not defer to the trial court and our review is *de novo*. *Hallahan v. Courier-Journal*, 138 S.W.3d 699, 705 (Ky.App. 2004).

Swanstrom argues that the trial court erred by ruling his negligence claim against the Seadlers was barred under KRS 247.402. We agree.

KRS 247.402 provides, in relevant part:

(1) The inherent risks of farm animal activities are deemed to be beyond the reasonable control of farm animal activity sponsors, farm animal professionals, or other persons. Therefore, farm animal activity sponsors, farm animal professionals, or other persons are deemed to have the duty to reasonably warn participants in farm animal activities of the inherent risks of the farm animal activities but not the duty to reduce or eliminate the inherent risks of farm animal activities. Except as provided in subsections (2) and (3) of this section, no participant or representative of a participant who has been reasonably warned of the inherent risks of farm animal activities shall make any claim against, maintain an action against, or recover from a farm animal activity sponsor, a farm animal professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of farm animal activities.

(2) Nothing in subsection (1) of this section shall prevent or limit the liability of a farm animal activity sponsor, a farm animal activity professional, or any other person if the farm animal activity sponsor, farm animal professional, or person:

.....

(c) Owns, leases, has authorized use of, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known or should have been known to the farm animal activity sponsor, farm animal professional, or person and for which warning signs have not been conspicuously posted;

.....

(e) Negligently or wrongfully injures the participant.

KRS 247.4015(8) defines “inherent risks of farm animal activities” to include “dangers or conditions which are an integral part of farm animal activities, including, but not limited to; (d) Collisions with other farm animals or objects[.]” A “latent defect” is defined as a “product imperfection that is not discoverable by reasonable inspection[.]” *Black’s Law Dictionary* 428 (8th ed. 2004).

In this case, Swanstrom alleges that numerous defects in the design, construction, installation and maintenance of the barn were latent defects that were known or should have been known to the Seadlers. In finding that the Kentucky Farm Animal Activities Act shields the Seadlers from liability, the trial court overlooked the specific and express language of the statute which states that there shall be no prevention or limitation on the liability of a member of the protected class if a person is injured by negligence or because of a dangerous latent condition which was known or should have been known by that member. The language of KRS 247.402 (2)(c) and (e) allows Swanstrom’s case to proceed. Factual determinations as to whether latent defects existed, whether they were known or

should have been known to the Seadlers, whether any warning sign posted was sufficient to warn of the latent defects, whether Swanstrom's injuries were caused by the defects alleged and whether Swanstrom was comparatively negligent are left to the jury. Accordingly, it was improper for the trial court to grant the Seadlers' motion for summary judgment.

The order of the Jefferson Circuit Court is vacated, and this case is remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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