

STATE OF MICHIGAN
COURT OF APPEALS

JUDITH BISHOP and EARL BISHOP,
Plaintiffs-Appellants,

v

JAMES SEABOLT,
Defendant-Appellee.

UNPUBLISHED
September 21, 2001

No. 223141
Cheboygan Circuit Court
LC No. 98-006414-NI

Before: Cavanagh, P.J., and Markey and Cooper, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the judgment of no cause of action entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs brought this action for injuries received when their car struck a pig owned by defendant. Defendant had just bought the pig, and it escaped as he was attempting to move it from one pen to another. On appeal, plaintiffs maintain that the trial court erred in failing to give a requested strict liability instruction.

The determination whether a requested jury instruction is applicable and accurate is within the discretion of the trial court. *Moody v Pulte Homes, Inc*, 423 Mich 150, 176; 378 NW2d 319 (1985). To require reversal, the failure to give an instruction must have so unfairly prejudiced the requesting party that failure to vacate the verdict would be inconsistent with substantial justice. *Id.* at 178.

Plaintiffs rely on MCL 433.13 in support of their instruction. However, the statute specifically addresses only property damage:

(1) A person who sustains any loss of, or damage to, property by an animal running at large may demand reasonable compensation from the owner of the animal as reparation for the loss or damage or as ordered by the court. [MCL 433.13.]

Thager v Thor, 445 Mich 95; 516 NW2d 69 (1994) holds that strict liability attaches for harm done by a domestic animal when three elements are present: “(1) one is the possessor of the animal, (2) one has scienter of the animal’s abnormal dangerous propensities, and (3) the harm results from the dangerous propensity that was known or should have been known.” *Id.* at

99. Negligence actions present an alternative theory of liability when scienter cannot be shown. *Id.* at 105. A negligence action arises when there is ineffective control of an animal in a situation where it would reasonably be expected that injury could occur. *Id.* at 106.

The trial court did not abuse its discretion in determining that the strict liability instruction was not applicable under these circumstances. There is no basis for extending the strict liability of MCL 433.13 to personal injury actions. The court properly instructed the jury on a negligence theory.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Jessica R. Cooper