STATE OF MICHIGAN

COURT OF APPEALS

HOWARD MOUNTS,

Plaintiff-Appellant,

v

HENRY VANBEESTE and DONALD BAXTER,

Defendant-Appellees.

UNPUBLISHED
August 3, 2004

No. 243155
Genesee Circuit Court
LC No. 00-068154-NI

Before: Bandstra, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the orders granting defendants' motions for summary disposition. We affirm.

This case arises from an accident in which plaintiff broke his pelvis after sliding off of a bucking horse owned by defendant Van Beeste and stabled at defendant Baxter's farm.

Plaintiff contends that the trial court erred in dismissing his claim on the ground that he failed to establish that defendants owed him a duty to warn him that the horse might be dangerous. We review de novo a trial court's decision to grant or deny summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). Under MCR 2.116(C)(10), summary disposition is appropriate when there is no genuine issue as to any material fact. Similarly, summary disposition is appropriate where a claim is barred because of immunity granted by law. MCR 2.116(C)(7).

It is undisputed that plaintiff suffered injury while riding a horse. Under the Michigan Equine Activities Liability Act (MEALA), MCL 691 1661, *et seq*, a person engaged in such an equine activity cannot bring suit against "an equine activity sponsor, an equine professional, or another person" for injuries "resulting from an inherent risk of an equine activity" unless one of the exceptions listed in the act applies. *Amburgey v Sauder*, 238 Mich App 228, 230-231; 605 NW2d 84 (1999). The act defines the "inherent risk of equine activity" to include "an equine's propensity to behave in ways that may result in injury, harm, or death to a person on or around it." MCL 691.1662(f). Among the exceptions to the general limitation on liability are situations in which the equine activity sponsor, equine professional, or other person "commits a negligent act or omission that constitutes a proximate cause of the injury, death or damage." MCL 691.1665. Plaintiff alleged that Van Beeste was negligent by telling plaintiff that the horse was "dead broke" when in fact Van Beeste knew that the horse had not been ridden often.

In order to establish negligence, a plaintiff must show that the defendant owed him a duty. *Richardson v Michigan Humane Society*, 221 Mich App 526, 528; 561 NW2d 873 (1997). The trial court determines whether a duty exists. *Trager v Thor*, 445 Mich 95, 105; 516 NW2d 69 (1994). Horses are classified as domestic animals. *Papke v Tribbey*, 68 Mich App 130, 136; 242 NW2d 38 (1976), citing Prosser, Torts (4th ed), § 76, p 500. In determining whether a duty exists in a negligence action involving domestic animals, trial courts must consider "the normal characteristics of the animal that caused the injury, as well as any abnormally dangerous characteristics of which the defendant has knowledge." *Trager, supra* at 105. Thus,

> if the possessor of such an animal, including one in temporary possession, has knowledge of some dangerous propensity unique to the particular animal, or is aware that the animal is in such a situation that a danger of foreseeable harm might arise, the possessor has a legally recognized duty to control the animal to an extent reasonable to guard against that foreseeable danger. [*Id.* at 106.]

Plaintiff contends that the trial court should have applied a reasonable person standard in determining whether Van Beeste had a duty to warn him that the horse might be dangerous. He asserts that a question of fact exists as to whether Van Beeste should have known that an animal with the horse's level of training was dangerous. We disagree. Plaintiff presented no evidence that Van Beeste had knowledge or awareness that the horse might be dangerous. Plaintiff failed to create a genuine issue of material fact as to an element of his negligence claim.

Concerning Baxter, the trial court found that any representations he may have made to plaintiff were made more than a year before the accident and were too remote for plaintiff to have relied upon them. Plaintiff asserts that this constituted an impermissible finding of fact and that, even if Baxter had not made any representations himself, he was vicariously liable for the representations made by Van Beeste as his agent. Regardless of when Baxter may have made representations concerning the horse's level of training, plaintiff failed to present any evidence that Baxter knew the horse might be dangerous. Like Van Beeste, Baxter had no duty and thus did not make a negligent representation. And even if Van Beeste was acting as Baxter's agent, Baxter cannot be vicariously liable where Van Beeste had no duty. See *Nippa v Botsford Gen Hosp*, 257 Mich App 387, 391; 668 NW2d 628 (2003), citing *Cox v Flint Bd of Hosp Mgrs*, 467 Mich 1, 11; 651 NW2d 356 (2002).

Plaintiff asserts that defendants owed him a duty because he was a social guest on their property. A social guest is a licensee. A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. *James v Alberts*, 464 Mich 12, 19; 626 NW2d 158 (2001). However, this duty only relates to hazardous conditions on the land itself, *id.*, and does not apply in the present situation.

Plaintiff also contends that, because Van Beeste was holding on to the rope attached to the horse's halter at the time of the accident, he had complete control over the horse and therefore had a duty to keep it from bucking. We disagree, because such claims are barred by MEALA.

Statutory language should be construed reasonably, keeping in mind the purpose of the statute. *Draprop Corp v Ann Arbor*, 247 Mich App 410, 415; 636 NW2d 787 (2001). When

interpreting a statute, courts must first examine the language of the act itself. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). "If the statute is unambiguous on its face, the Legislature will be presumed to have intended the meaning expressed, and judicial construction is neither required nor permissible." *Id.* Judicial construction is appropriate only if reasonable minds can differ with respect to the meaning of a statute. *Ryant v Cleveland Twp*, 239 Mich App 430, 433; 608 NW2d 101 (2000).

When interpreting a statute, courts must "construe an act as a whole to harmonize its provisions and carry out the purpose of the Legislature." *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 159-160; 627 NW2d 247 (2001). Additionally, in *Ryant*, *supra*, 433-434, this Court stated as follows:

> Unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. If the statute provides its own glossary, the terms must be applied as expressly defined. Otherwise, a court may consult dictionary definitions.

In enacting MEALA, "the Legislature intended to grant immunity to qualifying defendants." *Amburgey*, *supra* at 233. MCL 691.1663 bars suits seeking damages for personal injuries resulting from the inherent risks of equine activities and the act defines the phrase "engage in an equine activity" as "riding, *being a passenger upon*, or providing or assisting in veterinary treatment of an equine." MCL 691.1662(a), emphasis added. Because the act does not define the term "passenger," we may consult a dictionary to determine the plain and ordinary meaning of the term. *Ryant*, *supra* at 434. The *American Heritage Dictionary* (2nd College ed, 1985), defines the term as "a person who travels in a train, airplane, ship, bus, or other conveyance without participating in its operation." Based on the ordinary meaning of the term "passenger," the exemption from liability created by MCL 691.1663 includes personal injuries that occur when another is in control of the equine being ridden by the injured party.

Plaintiff asserts that Van Beeste was negligent for failing to control the horse when it began to buck. But the fact that a horse may buck constitutes one of the inherent risks of equine activity under MCL 691.1662(f). Even though Van Beeste may have been in a position to control the horse at the time of the accident, plaintiff was riding as a passenger and his injury resulted from one of the inherent risks of engaging in this activity. If the negligence exception created by MCL 691.1165 were to apply merely because another person had control of a horse when it acted in a dangerous manner, the phrase "being a passenger upon" in MCL 691.1662(a) would be rendered meaningless. And "every word of a statute should be given meaning and no word should be treated as surplusage or rendered nugatory if at all possible." *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 714; 664 NW2d 193 (2003), quoting *Feld v Robert & Charles Beauty Salon*, 435 Mich 352, 364; 459 NW2d 279 (1990). Thus, we conclude that MEALA bars negligence suits based on the theory that a person in a position to control a horse has a special duty to prevent it from acting in a manner that may result in injury to a passenger and affirm the trial court's order dismissing plaintiff's claim.

Next, plaintiff contends that the trial court erred in dismissing his claims because the faulty tack exception to MEALA applies. The faulty tack exception provides that the MEALA does not "prevent or limit the liability of an equine activity sponsor, equine professional, or another person if that person:

> (a) Provides equipment or tack and knows or should know that the equipment or tack is faulty, and the equipment or tack is faulty to the extent that it is a proximate cause of the injury, death, or damage. [MCL 691.1665]

Plaintiff argues that the halter and lunge line used on the horse were inadequate to control it and therefore constituted faulty tack. But the plain language of the statute states that the exception only applies when the tack used constitutes the proximate cause of the injury. During his second deposition, plaintiff agreed that there was nothing wrong with the halter. Further, he testified that, had Van Beeste reacted properly, he could have pulled down on the rope attached to the halter and effectively controlled the horse. Thus, plaintiff's sworn testimony contradicts his contention that the equipment used constituted the proximate cause of his injuries. Summary disposition cannot be avoided by conclusory assertions that are at odds with a party's prior sworn testimony. *Aetna Casualty & Surety Co v Ralph Wilson Plastics Co*, 202 Mich App 540, 548; 509 NW2d 520 (1993).

Plaintiff further asserts that the trial court failed address all of his theories of liability and therefore erred in granting summary disposition in favor of defendants. However, Plaintiff's claims that (1) defendant's represented the horse as "dead broke," (2) they failed to inform him of the number of times it had been ridden, and (3) that Van Beeste had assured him that the horse was safe are all variations of the claim that defendants breached a duty to disclose the fact that the horse might be dangerous. Because the additional theories merely reiterate a claim rejected by the trial court, plaintiff's contention that the trial court failed to address all of his theories is without merit.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra