STATE OF MICHIGAN

COURT OF APPEALS

WHITNEY KAY FOX, Plaintiff-Appellee,	UNPUBLISHED August 28, 2014
v	No. 316058 Huron Circuit Court
DONALD KNOBLOCK d/b/a KNOBLOCK RIDING STABLES, Defendant-Appellant.	LC No. 11-104960-NO

Before: MURPHY, C.J., and WHITBECK and TALBOT, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's ruling following a bench trial that found defendant liable under the Equine Activity Liability Act (EALA), MCL 691.1661 *et seq.* The trial court awarded plaintiff $15,000 in damages, as well as attorney fees and costs totaling $4,942. Plaintiff, accompanied by two other horseback riders, was riding a horse provided by defendant when she fell from the horse after it began galloping or running, resulting in injuries to plaintiff. One of the other individuals riding a horse alongside plaintiff at the time was defendant's niece, who was employed at defendant's stables as a "trail guide," but who was enjoying a day off from work on the date of the incident. The trial court found that defendant's niece, acting as defendant's agent, intentionally and negligently sped up the pace of the horses, including plaintiff's horse, which increase in speed to a run or gallop caused plaintiff to fall and incur her injuries. We hold that there was no factual support in the record for the trial court's finding that the niece increased the speed of plaintiff's horse. Accordingly, we reverse and remand for entry of judgment in favor of defendant.

"This Court reviews a trial court's findings of fact in a bench trial for clear error and its conclusions of law de novo." *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003), citing MCR 2.613(C) and *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). In the application of the clearly erroneous standard, "regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). A factual finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). Interpretation of the EALA is a legal issue subject to de novo review. *DLF Trucking, Inc v Bach*, 268 Mich App 306, 309; 707 NW2d 606 (2005).

The trial court's ruling was ultimately based on an EALA exception to civil liability limitations, which exception is found in MCL 691.1665(d), and which provides for liability in regard to "a negligent act or omission that constitutes a proximate cause of the injury, death, or damage." The trial court ruled as follows:

> The question is whether the defendant or their agents committed actual negligence in the conduct of this ride. Both the defendant . . . and his niece, who was in charge of the ride, have testified that it is not safe for a beginning rider to be on a horse that is running. The Court finds that it was the . . . guide [niece] that increased the speed of the horses on this ride which resulted in the plaintiff's horse ultimately running causing the plaintiff to fall off the horse and suffer injuries as testified to.
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> This horse went from a walk to a canter to a gallop to a run not because it was scared, . . . but because it was following the guide's lead in speeding up the sojourn. It cannot be disputed that the guide made the conscious decision to speed this ride up. . . . It is the finding of this Court that a reasonable person would conclude and this Court does conclude that the guide's conduct of taking Plaintiff on a fast ride given her known lack of experience unreasonably added to the risks of the already dangerous activity and therefore constituted negligence.

Plaintiff testified that she did not cause the horse to run, but she additionally testified as follows:

> We actually crossed a stream. There was a small river and I don't know what happened to my horse, but as soon as we got through the water and were starting to go up the bank, it was a pretty big bank, my horse just takes off on a full sprint and I passed [my friend and niece] . . . and I had no idea what to do after that.

In discussing the circumstances with respect to why her horse took off running, plaintiff testified, "I didn't understand what was going on or why it would do that." Accordingly, plaintiff's own testimony did not support the trial court's factual findings; there was not even a suggestion that defendant's niece increased the speed of the horses or of plaintiff's horse that resulted in the fall.

Defendant's niece testified that the three riders went from a "walk" to a "trot," but she could not recall how that was initiated. The niece indicated that, regardless, plaintiff proceeded along comfortably in the trot. The niece further testified that the riders then went from a "trot" to a "canter," but again she had no recollection as to why the horses accelerated to a canter. According to defendant's niece, it was after the canter sped up that plaintiff exhibited signs of trouble, at which time the niece yelled at plaintiff to pull back on the reins, which plaintiff failed to do. When asked how plaintiff got her horse to go faster, the niece responded, "I don't know specifically." The niece did testify that "[w]e would have slowed down and walked" had plaintiff shown discomfort during the trot, but this testimony did not reflect that defendant's niece caused plaintiff's horse to subsequently start running, nor that the niece even caused the acceleration to a trot.

We conclude that the niece's testimony did not show that she increased the speed of the horses or of plaintiff's horse that resulted in the fall. Even were we to assume that there was some evidence to support the trial court's factual findings, we are nevertheless left with a definite and firm conviction, on review of the entire record, that the court was mistaken in regard to its findings. The record does not support the conclusion that defendant's niece acted negligently; therefore, there was no basis to hold defendant liable on an agency theory, assuming that the niece was even acting as defendant's agent during the ride or that an agency theory was otherwise implicated. Given our holding, there is no need to determine whether the trial court erred in allowing plaintiff to reinstate the negligence claim discussed above under MCL 691.1665(d) after the proofs had been closed.[1]

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction. Having fully prevailed on appeal, defendant is awarded taxable costs pursuant to MCR 7.219.

/s/ William B. Murphy
/s/ William C. Whitbeck
/s/ Michael J. Talbot

[1] MCL 691.1665(b) provides for liability where an equine activity sponsor "[p]rovides an equine and fails to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity and to determine the ability of the participant to safely manage the particular equine." The trial court never ruled on this provision, although plaintiff cited it in support of her case. We note that the record also does not support liability under this provision, considering that the evidence revealed that the "particular equine" provided to plaintiff was perfectly suited for a beginner rider, assuming plaintiff had no experience, and was used for beginners 80 percent of the time; there was no evidence to the contrary.