MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Shawn A. Johnson,
Appellant-Plaintiff,

v.

Don Hobson Irrevocable Trust,
Appellee-Defendant.

September 21, 2021

Court of Appeals Case No. 21A-CT-627

Appeal from the Delaware Circuit Court

The Honorable John M. Feick, Judge

Trial Court Cause No. 18C04-1904-CT-43

Brown, Judge.

[1] Shawn A. Johnson appeals the entry of summary judgment in favor of the Don Hobson Irrevocable Trust. We affirm.

Facts and Procedural History

[2] At around 9:40 p.m. on August 9, 2018, Johnson was driving his vehicle on State Road 167 in Delaware County when he struck a horse. On April 5, 2019, he filed a complaint against the Don Hobson Irrevocable Trust alleging negligence in failing to properly house and control the horse.[1]

[3] On October 1, 2020, the trust filed a motion for summary judgment and designation of evidence. In his designated affidavit, Don Hobson stated that his trust was the owner of the horse and of property along State Road 167 and that he had lived on and maintained the property since 1970 when he purchased it from his grandmother. He stated that, when he purchased the property, he installed heavy metal pipe gates as part of a safe enclosure to confine his horses, the property has a pasture which is enclosed by a five-foot mesh wire fence, the fence has a dense weave which provides extra security, the fence connects to a metal pipe gate that allows ingress and egress from the pasture to the adjoining land, the metal pipe gate is secured by a chain lock, one end of the chain is welded to the gate, the other end of the chain wraps around a fencepost and is set in a metal slot, and placing the chain through the slot secures and locks the metal pipe gate. He stated the pasture adjoins a barn, there is a door which

[1] Johnson's complaint also alleged liability under the doctrine of *res ipsa loquitur*, but he later conceded that claim failed as a matter of law.

may be opened to allow the horses to move between the secured pasture and the barn, within the barn the horses are enclosed by another gate, the gate in the barn is just over five feet in height, and each metal pipe gate weighs around 150 pounds.

[4] Hobson stated the metal pipe gate in the barn is secured by two methods: first, a chain is used to secure the gate, the chain is welded to one fence panel, after being wrapped around the other gate pole the chain is pulled through and placed on top of a slot, and once the chain is situated on the slot the chain is taut and cannot be moved by a horse; and second, in addition to the chain-slot lock mechanism, twine binds the top and bottom of the gate to secure it and the binding twine is tied with a square knot. He stated the metal pipe gate in the barn is secured in three areas: the top twine binding, the chain-slot lock mechanism in the middle, and the bottom twine binding, and it cannot be opened by a horse. He stated there is a door on the side of the barn opposite the pasture which may be opened to provide airflow through the barn. He further stated that, on August 9, 2018, the mesh wire fence, the metal pipe gate providing ingress and egress to the pasture, the metal pipe gate in the barn, and the side door were in the same condition as depicted in exhibits attached to the affidavit and that the metal pipe gate located within the barn was secured in the same manner as shown in one of the exhibits. The exhibits attached to the affidavit include a diagram depicting the horses' enclosure and photographs of the fence, the gate providing access to the pasture, the gate in the barn, and the barn side door.

[5] Hobson further stated that he has a lifetime of experience with horses in his personal life and profession, he was a farrier (horseshoer) for seventeen years, in 1977 he started a company providing horse care products for professional and amateur horse owners, and in 2018 he was elected and became a member of the Farriers Hall of Fame at the International Hoof Care Summit. He stated he has maintained horses on the property since 1970, no horse had ever become loose from an enclosure and entered the roadway before August 9, 2018, and no horse had become loose from the property since August 9, 2018. He stated that, on August 9, 2018, he left the property around 3:00 p.m., before leaving he checked on the horses including the subject mare, when he left the property the metal pipe gate outside the barn was secure, the metal pipe gate located within the barn was secured by the chain, slot-lock, and two bindings of twine, and the horses were securely confined inside the enclosure. He stated he was unaware that any horses were outside of their enclosure until receiving a call from law enforcement informing him that the mare had been involved in an accident. He stated that he has continuously used the same metal pipe gate located within the barn to secure his horses since 1970, the gate and locking mechanisms he uses are standard methods for confining horses, and that, throughout his travels across the country caring for horses, he had seen this method used. He stated that, prior to August 9, 2018, he had no knowledge of any possible defect or inadequacy of the enclosure or of the two pipe gates used to secure the enclosure and that the gates and enclosure continue to function fine and contain the horses.

[6] In November 2020, Johnson filed a memorandum in opposition to the summary judgment motion and a designation of evidence which included an affidavit by Captain Anthony Johnson with the Delaware County Sheriff's Department and portions of Hobson's deposition. In his affidavit, Captain Johnson stated that he investigated the accident, he spoke with Hobson a day or two after the accident, and that Hobson stated the horse had been in his barn and had pushed through an iron gate to leave the enclosure.

[7] In his deposition, Hobson stated that he was born in 1932, his wife Ellen was born in 1945, and he and Ellen lived on the property, and when asked if he was the person who would have secured the gates in the pasture, he replied "[y]es, and my wife." Appellant's Appendix Volume II at 53. He referred to a photograph of the gate in the barn and noted the chain, and when asked "[w]hat are the little red ties," he said "[t]he red ties are my wife. She's got them all over the farm." *Id*. at 54. When asked "[b]ut the chain is what secures them," he answered "[y]es." *Id*. When asked "[d]o you recall what gates you would have locked and what gates your wife would have secured when you left," he replied "[t]he only thing my wife did was tie these here," and when asked "[a]nd that would have been through the run-in," he replied affirmatively. *Id*. at 55. When asked, "[i]f the gate in the run-out was locked, as it's shown in [the photograph], a horse couldn't push it open and get out," he said "[n]o. The more they push, the tighter it gets," and when asked "[b]ut this horse got out through that gate," he replied affirmatively. *Id*. at 56. When asked "would it be fair to say the gate wasn't secured like you thought it should

have been," he answered "[n]o, it was definitely secured," and when asked "[t]his is what your wife did," he answered: "No, I put the – I had the chain. I set it up. My wife tied strings above and below." *Id*. When asked "[i]s it possible then, the gate was not secured," he answered "[n]o, the gate was secured," and when asked "[b]ut . . . when you got there, was it still secured," he said "[n]o, both of them was swung open." *Id*.

[8] He indicated he did not recall telling a police officer that the horse had pushed through an iron gate to leave the enclosure. He further indicated the subject mare had a baby who was in the process of weaning, when asked "[i]n your 48 years of experience with horses, is it typical for a mare to want to leave her baby," he replied "[n]o. They stay right with them. You can hardly separate them," and when asked "[i]s it typical for a mare to want to leave the barn or pasture when she's nursing," he answered "[n]o." *Id*. at 57. He indicated there was no damage to the gate or the chain and the gate "was just open." *Id*. at 58.

[9] In December 2020, the trust filed a reply, a motion to strike portions of Johnson's memorandum, and supplemental designated evidence including an affidavit by Ellen Hobson. In her affidavit, Ellen stated that on August 9, 2018, the metal pipe gate in the barn was secured in the same manner as shown on an attached exhibit, she left the property around 3:00 p.m. that day, and the last time she witnessed the horses' enclosure, it was secured as she described. The trial court held a hearing on March 12, 2021.

[10] On March 19, 2021, the court granted the trust's summary judgment motion. It found that Hobson used the same enclosure with locking mechanisms on its gates to confine his horses for forty-eight years without any prior escapes from the enclosure, as such Hobson did not place his animal in a confinement which he knew or should have known would be ineffective, the forty-eight years of effective confinement also shows that Hobson could not reasonably foresee his horse would escape from the enclosure, and the evidence further indicates that a mare leaving the enclosure shared with her nursing foal was unusual and thus unforeseeable. The court found that no evidence or argument offered by Johnson shows the horse's escape from enclosure was foreseeable.

Discussion

[11] Johnson argues the trial court erred in entering summary judgment. He asserts, without citation to the record, that "there is evidence from which a jury can determine that Ellen Hobson inadvertently left the gate open on the date the horse escaped," on that date she "was placing ties on the gates to the run-in," and she "was the last person in control of the gates in the run-in." Appellant's Brief at 15. He argues, "[a]pplying common sense as well as every day life experiences, it certainly would be reasonable for a jury to determine that a 75-year old woman could have simply forgotten to have locked the gates." *Id*.

[12] The party moving for summary judgment has the burden of making a prima facie showing there is no genuine issue of material fact. *Brown v. City of Indianapolis*, 113 N.E.3d 244, 248 (Ind. Ct. App. 2018) (citing *Goodwin v. Yeakle's Sports Bar & Grill, Inc.*, 62 N.E.3d 384, 386 (Ind. 2016)). Once met, the

burden shifts to the non-moving party to show the existence of a genuine issue by setting forth specifically designated facts. *Id.* A trial court's grant of summary judgment is clothed with a presumption of validity, and the party who lost in the trial court has the burden of demonstrating that the grant of summary judgment was erroneous. *Id*. at 248-249. We will affirm a grant of summary judgment on any basis supported by the designated materials. *Id.* at 249.

[13] To prevail in a negligence action, the plaintiff must establish (1) a duty owed by the defendant to the plaintiff; (2) breach of that duty; and (3) injury to the plaintiff resulting from the breach. *See Briggs v. Finley*, 631 N.E.2d 959, 963 (Ind. Ct. App. 1994), *trans. denied*. A defendant may obtain summary judgment in a negligence action when the undisputed facts negate at least one element of the plaintiff's claim. *Brown*, 113 N.E.3d at 249. Negligence cannot be inferred from the mere fact of an accident. *Id.* An inference is not reasonable when it rests on no more than speculation or conjecture. *Id.* at 250. Where the facts are undisputed and lead to but a single inference or conclusion, the court as a matter of law may determine whether a breach of duty has occurred. *Id*.

[14] The owner of an animal has a common law duty to confine it. *Briggs*, 631 N.E.2d at 965. However, the escape of an animal is not negligence per se on the part of the owner. *Id*. To prevail on a claim of negligent confinement, the plaintiff must establish that (1) the owner placed the animal in confinement which he knew or should have known would be ineffective and could reasonably foresee the animal would escape therefrom, or (2) the owner knew the animal had escaped but took no reasonable steps to bring it back to

confinement. *Id*. The mere fact that an animal is loose is not alone sufficient cause or basis to support a finding of negligence. *Id.*

[15] Here, the designated evidence establishes that Hobson did not know that one of his horses had escaped until after the accident occurred, and that, in the forty-eight years prior to August 9, 2018, no horse had ever escaped from the enclosure, Hobson had used the same gate in the barn to secure his horses since 1970, and the gate and locking mechanisms are standard methods for confining horses. Hobson stated that, when he left the property on the day of the accident, the metal pipe gate in the barn was secured by the chain, slot-lock, and two bindings of twine and that the horses were securely confined inside the enclosure, and his wife Ellen similarly stated that the last time she witnessed the horses' enclosure, it was secured. Hobson also indicated at his deposition that his wife tied the twine on the gate in the barn above and below the chain, she could have done so on the day of the accident, he secured the chain, the chain and not the ties is what secures the gate, and the gate "was definitely secured." Appellant's Appendix Volume II at 56. Also, there is designated evidence that it is not typical for a mare to want to leave the barn or pasture when she is nursing. Johnson has not demonstrated that the grant of summary judgment was erroneous. *See Briggs*, 631 N.E.2d at 965 (holding the trial court properly granted the defendant's motion for summary judgment and the defendant was not negligent as a matter of law in the manner he confined his horses and could not reasonably foresee his horses were likely to escape where he locked them in a corral secured by chains and padlocks, the corral was connected to a secure

barn which opened into a field which was fenced in and secured with a bolt and chain lock, the horses had never before escaped, the horses could not unfasten the locks or jump over the corral or fence, and the defendant did not know the horse was out of the enclosure until after the collision); *Eisman v. Murdock*, 542 N.E.2d 236, 237-238 (Ind. Ct. App. 1989) (holding the defendant was entitled to summary judgment and could not reasonably foresee his horse was likely to escape where the gates were secured by two chains with snap locks which could not be opened by the horse, the horse had never before escaped from the enclosure, and the defendant did not know the horse had escaped until after the accident).

[16] For the foregoing reasons, we affirm the trial court.

[17] Affirmed.

Najam, J., and Riley, J., concur.