RENDERED: MAY 3, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001271-MR

RAMON GARCIA — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 16-CI-01167

HCF, INC., D/B/A GUNSTON HALL FARM; JOE RUEL COWLES TRUST DATED DECEMBER 28, 1998; LARMON S. COWLES TRUST DATED DECEMBER 28, 1998; E. EDWARD HASTIE; WALTER RUEL COWLES A/K/A/ RUEL COWLES; LISA K. COWLES; AND LARMON S. COWLES — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, KRAMER, AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Ramon Garcia appeals from the Fayette Circuit Court's order granting summary judgment to HCF, Inc. (Gunston Hall Farm), its owners, operators, trusts, and trustee (collectively, the appellees). We affirm.

Garcia was injured while working as a temporary employee at Gunston Hall Farm, a thoroughbred farm in Lexington, Kentucky. In Garcia's supplemented answer to appellees' interrogatories, he described the manner in which the accident occurred:

> On March 29, 2015, I was to help Francisco [de la Luz, the barn foreman] load a mare into a horse trailer which was going to a breeding shed. The mare was in the barn. The farm had a specific place where horses were supposed to be loaded or unloaded to or from transport vehicles. That particular place (the shoe) is located in a large grassy area near the barn where the grass sloped gradually upward and to a point where the earth and grass reached a concrete abutment. The design of the area decreased the space between the ground and the entryway into a trailer. It also allowed for room to move around if the horse was not cooperating. On March 29, 2015, the driver of the trailer came to pick up the mare. The driver did not park his trailer in the proper area. He said his truck was too big. Instead, he parked his trailer so that the rear of the trailer was very near a blacktop driveway. The driver put down a ramp, and placed a mat on top of the ramp. The end of the ramp was inches from the blacktop driveway and we had to stand on the blacktop to try to load the mare. After trying for several minutes to load the mare, the driver was on the left side of the mare near its shoulder, I was behind the driver near the middle of the horse, and Francisco was on the right side of the mare near its shoulder. The horse backed up, stepped on top of my foot, and knocked me to the ground on the blacktop driveway, my head and

> shoulder hit the pavement and in the process the mare stepped on my hand pinning it against the driveway, and I was skinned-up from the pavement. If the attempt to load the mare had been done in the proper area instead, I would have had a much better chance to avoid being stepped on or injured because the ramp would not have had to be at such a steep angle and it would not have required me to be so close to the animal in order to use more effort to try to push it up into the trailer. If the attempt to load the mare had been done in the proper area, I also would not have been injured so severely if I was knocked down by the mare because I would have landed on the softer earth and grass instead of the solid pavement.

In his deposition testimony, Garcia described his position in relation to the horse as "right behind the mare, right on top of the tail." Garcia's injuries included several skull fractures (requiring a ten-day hospital stay) and a tear to his right rotator cuff. He participated in physical therapy for his shoulder and was advised that he needed surgery to repair the rotator cuff tear.

Garcia filed suit against the appellees on March 26, 2016. He later amended his complaint to include the owner and unknown driver of the horse vanning company (a man known as "Matteus" to Garcia), but those parties were dismissed as being untimely included under the applicable statute of limitations. Garcia does not appeal from that decision.

After discovery was complete, the appellees filed their motion for summary judgment, arguing that the Kentucky Farm Animal Activities Act (FAAA), Kentucky Revised Statutes (KRS) 247.401 *et seq.*, precluded recovery

under these circumstances. The Fayette Circuit Court held a hearing on the motion and respective counsel's arguments for and against. The order granting summary judgment in favor of the appellees was entered on July 11, 2017, and Garcia filed his timely appeal.

We begin by stating the standard of review, namely:

> This Court reviews a trial court's decision whether to grant a summary judgment motion *de novo*. *Shelton v. Kentucky Easter Seals Soc'y, Inc.*, 413 S.W.3d 901, 905 (Ky. 2013). When considering whether to grant summary judgment, a trial court must view the record "in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991).

Daugherty v. Tabor, 554 S.W.3d 319, 321 (Ky. 2018). "On appeal, '[t]he standard of review . . . of a summary judgment is whether the circuit judge correctly found that there were no issues as to any material fact and that the moving party was entitled to a judgment as a matter of law.'" *Caniff v. CSX Transp., Inc.*, 438 S.W.3d 368, 372 (Ky. 2014) (citation omitted).

There is no dispute that Garcia was a participant and the appellees were sponsors, and they and their activities fell within the scope of the FAAA. KRS 247.4013. However, Garcia maintains that he was entitled to recovery under one of the exceptions enumerated in KRS 247.402(2), which states:

> Nothing in subsection (1) of this section shall prevent or limit the liability of a farm animal activity sponsor, a

> farm animal professional, or any other person if the farm animal activity sponsor, farm animal professional, or person:
>
> > (a) Provided the equipment or tack, and knew or should have known that the equipment or tack was faulty, and the equipment or tack was faulty to the extent that it contributed to the injury;
> >
> > (b) Provided the farm animal and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the farm animal activity and to safely manage the particular farm animal based on the participant's representations of the participant's ability;
> >
> > (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;
> >
> > (d) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury; or
> >
> > (e) Negligently or wrongfully injures the participant.

Garcia insists that his injuries were caused by loading the reluctant mare near the blacktopped area instead of the designated grassy area; that the foreman's failure to

follow farm policy of returning the difficult animal to the barn – instead of continuing to load it onto the van - was imputable on the appellees; thus, the appellees' "willful or wanton disregard" for Garcia's safety was the direct cause of his injuries. KRS 247.402(2)(d). Furthermore, Garcia contends that it would not be unreasonable for a jury to determine that he was "negligently or wrongfully injure[d]" by the appellees. KRS 247.402(2)(e).

We disagree. The process of loading a horse into a van was an inherent risk of working on a thoroughbred farm. Garcia testified in his deposition that he was born and raised on a horse farm and had worked around horses most of his adult life. He was aware of the unpredictable behaviors of horses. He stated that Gunston Hall Farm had all the appropriate signage warning him of the dangers, and that he had read the signs. He even admitted that he had assisted in loading horses in the driveway rather than the grassy area on at least one previous occasion.

> "Inherent risks of farm animal activities" means dangers or conditions which are an integral part of farm animal activities, including, but not limited to;
>
> > (a) The propensity of a farm animal to behave in ways that may result in injury, harm, or death to persons around them;
> >
> > (b) The unpredictability of the reaction of a farm animal to sounds, sudden movement, and unfamiliar objects, persons, or other animals;

> (c) Certain hazards such as surface and subsurface conditions;
>
> (d) Collisions with other farm animals or objects; and
>
> (e) The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over a farm animal or not acting within his or her ability[.]

KRS 247.4015(9). It would have been contrary to the purpose of the statute to present this factual situation to the jury. "Consequently, no genuine issue of material fact exists as to [the appellees'] liability under the statute." *Daugherty*, 554 S.W.3d at 322-23.

We agree with the circuit court that the appellees were entitled to judgment under the FAAA. The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Michael B. Fox
Olive Hill, Kentucky

BRIEF FOR APPELLEES:

Jason S. Morgan
John Michael Carter
Lexington, Kentucky