STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	C/A NO.: 2017-CP-43-01118
Minnie Davis-Leaf Plaintiff, v. Wanda Davis, Defendants.	**ORDER GRANTING DEFENDANT WANDA DAVIS'S MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on Defendant's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

Defendant filed her Motion for Summary Judgment on January 24, 2019, and supporting memorandum and exhibits on February 19, 2019. On September 6, 2019, Plaintiffs filed a memorandum in opposition with exhibits. The hearing on the motion took place on September 9, 2019. Counsel for Plaintiff and Defendant were present at the hearing. At the hearing, Defendant requested and received leave to file a Reply as to the arguments raised by Plaintiff in her response memorandum. Defendant filed her Reply and exhibits on September 13, 2019.

Having reviewed the case law, memoranda, and exhibits filed and taking into consideration counsels' oral arguments, Defendant's motion is granted for the reasons set forth herein.

BACKGROUND

This case arises out of an auto accident that occurred on October 24, 2014, on Highway 378 in Sumter County when a car being driven by the Plaintiff struck a dead horse that was on the highway. The horse was owned by Defendant Davis and was pastured at

property owned by the Jones defendants, who have been dismissed from this case by consent of the parties. As a result of the accident, the Plaintiff suffered personal injuries.

STANDARD

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c) SCRCP; *Legette v. Piggly Wiggly, Inc.*, 368 S.C. 576, 579, 629 S.E.2d 375, 376 (Ct. App. 2006). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Bloom v. Ravoira*, 339 S.C. 417, 529 S.E.2d 710 (2000). Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings. *NationsBank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995). In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial. *Id.*

APPLICABLE LAW

At common law, "the owner of a domestic animal had no duty to keep his animal(s) off the highway [and] he was not liable for damages to a motor vehicle or to a person riding therein caused by the animal(s) being at large on the highway . . ." *Reed v. Clark*, 277 S.C. 310, 313, 286 S.E.2d 384, 386 (1982). However, the early common law has since been abrogated in South Carolina by the enactment of S.C. Code § 47-7-110. *Id.*

S.C. Code § 47-7-110 provides in pertinent part, "[i]t shall be unlawful for the owner or manager of any domestic animal of any description willfully or negligently to permit any such animal to run at large beyond the limits of his own land or the lands leased,

occupied or controlled by him . . .." It is well decided in South Carolina that the basis for liability for the alleged violation of this statute sounds in negligence rather than strict liability. *Williams v. Smalls*, 390 S.C. 375, 381, 701 S.E.2d 772, 775 (Ct. App. 2010) (stating liability for collisions with stock wandering into a highway rests on a negligence theory) (internal citations omitted).

In order for liability to attach under S.C. Code § 47-7-110, the Plaintiff must do more than reference the statute; evidence of negligence must be presented to overcome summary judgment. *Williams*, 390 S.C. at 381, 701 S.E.2d at 775 (stating "[o]ur supreme court has held the duty imposed by section 47-7-110 to not willfully or negligently allow stock to run at large will not support negligence per se, a plaintiff must provide evidence of negligence in order to overcome summary judgment.")*.*

It is well established that South Carolina does not recognize the rule of *res ipsa loquitur*. *Snow v. City of Columbia*, 305 S.C. 544, 555, 409 S.E.2d 797, 803 (Ct. App. 1991). "In an action for negligence, the plaintiff must prove by direct or circumstantial evidence that the defendant did not exercise reasonable care." *Id.* "When circumstantial evidence is relied upon the plaintiff must show such circumstances as would justify the inference that the damages suffered were due to the negligent act of the defendant and the question may not be left to mere conjecture or speculation." *Sunvillas Homeowners Ass'n, Inc. v. Square D Co.*, 301 S.C. 330, 334, 391 S.E.2d 868, 870 (Ct. App. 1990) (internal citations omitted). "The existence of a fact or facts cannot rest in speculation, surmise or conjecture." *Holland v. Georgia Hardwood Lumber Co.*, 214 S.C. 195, 204–05, 51 S.E.2d 744, 749 (1949).

ARGUMENTS AND EVIDENCE PRESENTED BY THE PARTIES

Defendant Davis argued it is undisputed that she did not go to the pasture on the date of the incident. Rather, Ms. Davis's daughter testified she and a friend went to the pasture to feed the horse on the afternoon of the incident. The daughter testified it was not necessary to open either of the two (2) gates to feed the horse and the food is poured over the rail fence. Former defendant Carroll Jones also confirmed it was not necessary to open the gates to the pasture to feed the horses.

Ms. Davis's daughter testified she arrived on the property on the afternoon of the incident. She obtained the food from an area adjacent to the horse stalls, poured the food over the rails, and left. The daughter testified she spent approximately ten (10) minutes at the Jones property. She testified with certainty that the gates were closed on the day of the incident. She did not observe either of the two (2) gates to be unsecured or open. She testified she did not open either gate on the day of the accident, nor did she enter the pasture by climbing over the rail. There is no evidence either Defendant Davis or her daughter left any gate unsecured at any time in the past.

The accident occurred at approximately 9:00 p.m., several hours after the daughter left the property. The Plaintiff has no information as to how the horse was able to get out of the pasture.

Carroll Jones testified that when he returned to the property following the accident, he inspected the fence and gates and there were no issues with either. Mr. Jones also testified he has had several incidents of vandalism and theft on his property and went so far as to install a fence and gate at the entrance of his property to protect his family when he was out of town. The Joneses have no personal information as to how the horse was able to get out of the pasture.

In opposition to the Defendant's motion, Plaintiff argued Defendant Davis testified that she never physically inspected the gates at the pasture and did not know how the gates were secured. Plaintiff also argued Defendant Davis testified that on one occasion she went to the property to feed her horse, and when she arrived, she found that another horse owned by the Jones had escaped from the pasture. Defendant Davis also testified she had previously found the small gate at the pasture open once before and that she had secured the gate with a rope. Defendant Davis testified she did not speak to the Joneses about these incidents.

Plaintiff further argued there was a genuine issue of material fact as to Defendant Davis being negligent because the Defendant's daughter, Madison Davis, testified that when she went to the pasture to feed the horses on the afternoon of the day of the accident, she was at the pasture for approximately ten (10) minutes and parked approximately one hundred (100) feet away from the pasture fence. She also testified she could not see if the chains on the gate were through a latch on the gate, that there was no lock on the gate, and that putting a lock on the gate would provide more security to prevent a horse from getting out of the fence. Plaintiff contends a jury could find Defendant Davis negligent in allowing her horse to wander onto a public highway because her daughter did not physically check the security of the gates when she was feeding the horses.

In reply, Defendant argued the record shows the Joneses were aware their horse, Maximus, had gotten out of the pasture on one occasion when he was a small colt and was able to get through the wire fence. The Joneses were also aware that if the small gate was left open, their horses could get out of the pasture. Accordingly, as Defendant contends, Ms. Davis's report of the above issues would only provide the Joneses with information already in their possession.

Next, Defendant argued there was no evidence that if the small gate was secured as designed the horses could escape the pasture. Mr. Jones testified the small gate was secured with a swing chain and j-bolt and by a probe that hooked over the top of the gate and adjacent fencepost. Mr. Jones testified there was never an occurrence where a horse pushed upon the gate when secured. Mr. Jones testified that if the rope and chain were used on the small gate, the gate would remain secure and the only way to unsecure the gate would be to unloop the rope and undo the chain.

Finally, Defendant argued Mr. Jones testified it was the sole responsibility of him and his family as the property owners to maintain the pasture, fence, and to ensure the gates were working. Mr. Jones further confirmed there would be no expectation for Ms. Davis, or any other non-family member keeping a horse on his property, to be responsible for fixing the fence, providing materials to fix the fence, or providing materials to secure the fence.

Upon returning home at some point the next evening, Mr. Jones walked his property and did not notice any problems with the fence or the gates. The gates still had both the chain and the rope. Neither Mr. Jones, nor any other party, has any information as to how the small gate became unsecured on the date of the accident.

In Reply to Plaintiff's arguments concerning Defendant's daughter, Madison Davis, Defendant cites to Madison's deposition where she testified with certainty that when she fed the horses on the day of the accident, the gates were closed, the chain was wrapped multiple times around the gates, and the gates were secure. Additionally, Defendant argued the gates open inwards towards the pastures.

CONCLUSIONS OF LAW

There is no direct evidence in this case to establish negligence. Accordingly, Plaintiff must rely on circumstantial evidence in order to survive summary judgment. However, as previously stated, "[t]he existence of a fact or facts cannot rest in speculation, surmise or conjecture." *Holland*, 214 S.C. at 204–05, 51 S.E.2d at 749.

There is no evidence Defendant, or her daughter opened the gate at issue, failed to secure the gate, or left the gate open on the day of the accident. There is no evidence the Defendant or her daughter entered the pasture or failed to take any action that would have resulted in the horse getting out of the secured pasture on the day of the accident. There is no evidence there was any problem with the fence or gates on the day of the accident or following the incident.

Plaintiff relies on *Reed v. Clark*, where the South Carolina Supreme Court addressed a similar accident involving a horse that escaped from its pasture, entered onto a public road, and was struck by the plaintiffs. 277 S.C. 310, 286 S.E.2d 384 (1982). In *Reed*, the Supreme Court found there was sufficient evidence from which a jury could infer the defendant was negligent in failing to prevent her horse from entering onto the public road because there was testimony that the fence at the spot the horse escaped was not strong enough under the attending circumstances, there was evidence of prior escapes by horses on at least five (5) occasions, the prior escapes were admittedly known by the plantation employee charged with maintaining the fence, and there was evidence the horses had been allowed to graze unrestrained outside the fenced pasture on prior occasions, thereby tending to induce a horse to seek greener pastures. *Id.* 277 S.C. at 314, 286 S.E.2d at 387. The Court finds the facts in *Reed* are distinguishable from the evidence in this case.

There is no evidence the Defendant or her daughter, at any time during the several years the horse was pastured at the co-defendants' property, failed to secure either gate, left the gate open, allowed the gate to remain unsecured, or otherwise took any action which allowed any horse to leave the secured pasture unattended. There is no evidence the Defendant's horse ever left or escaped the secured pasture unattended prior to the accident. There is no evidence the gates or fences were improperly maintained. Accordingly, there is no evidence upon which a jury could infer negligence by Defendant Davis in allowing her horse to stray onto the highway. *Id.* (stating "more than a showing of the presence of unattended animal on the highway" is required for negligence under § 47-7-110).

Plaintiff also argued a jury could infer Defendant Davis was negligent because her daughter did not physically inspect the gate when she was feeding the horses on the day of the accident—this argument is also unpersuasive.

A parent is not liable for the negligence of her child by reason of the relation of parent and child and absent a showing the child is the agent of the parent. If the child is the agent of the parent, then the existence of the parent-child relationship does not destroy the liability of the principal (parent) for the acts of the agent (child) so long acts of the agent (child) are done in the course of his employment with the principal (parent). *Norwood v. Coley*, 235 S.C. 314, 317–18, 111 S.E.2d 550, 551 (1959) (internal citations omitted).

There is no evidence Defendant's daughter was instructed by the Defendant to do anything other than feed the horses on the day of the accident. Accordingly, to the extent a principal-agent relationship could be construed, it would be limited in scope to feeding the horses. As such, any argument that the Defendant could be found negligent by a jury

because her daughter did not physically inspect the gates on the day of the accident is without merit.

Regardless, the uncontested testimony from the Defendant's daughter is that she was certain when she fed the horses on the day of the accident the gates were closed, the chain was wrapped multiple times around the gates, and the gates were secure. Additionally, there is uncontested testimony from Mr. Jones that if the rope and chain were used on the small gate, the gate would remain secure and the only way to unsecure the gate would be to unloop the rope and undo the chain. Mr. Jones further testified there was never an occurrence where a horse pushed upon the gate when secured. Finally, there is no evidence as to how the gate, which was closed at the time the daughter was feeding the horses, could have been opened when it swung inwards towards the pastures.

Ultimately, Plaintiff's arguments rely upon the assumptions that because the Defendant's daughter was the last known person on the property several hours before the accident happened the daughter must have done something or failed to do something which allowed the horse to escape the enclosure, and the Defendant is responsible because her horse ultimately entered upon the public highway. This type of speculation, surmise, and conjecture is specifically prohibited. Therefore, Defendant Davis is entitled to judgment as a matter of law. *See Holland*, 214 S.C. at 204–05, 51 S.E.2d at 749.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant's Motion for Summary Judgment is GRANTED, and this case is forever ended.

IT IS SO ORDERED.

SIGNATURE APPEARS ON FOLLOWING PAGE

Sumter Common Pleas

Case Caption: Minnie Davis-Leaf VS Kelsey Jones , defendant, et al

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So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762