THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No. 2017-CP-43-01118

Minnie Davis-Leaf, ... Appellant,

v.

Wanda Davis, ... Respondent.

AND

Elvis Nelson, ... Appellant,

v.

Kelsey Jones, Carroll Jones, and Wanda Davis, Defendants Of Whom Wanda Davis is ..... Respondent.

AND

Samuel Hayward, ... Appellant,

v.

Wanda Davis, ... Respondent.

INITIAL REPLY BRIEF OF APPELLANTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

I. WAS THERE DIRECT OR CIRCUMSTANTIAL EVIDENCE TO INFER NEGLIGENCE BY THE RESPONDENT

While the Respondent argues that there is no direct or circumstantial evidence of the Respondent's negligence, there certainly exists evidence from which a reasonable person could infer negligence on the part of the Respondent.[1] According to S.C. Code Ann. § 47-7-110, "[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." To recover under this statute, a plaintiff must offer evidence from which the jury could infer at least negligence on the part of the defendant in permitting the animals to stray. McCullough v. Gatch, 251 S.C. 171, 161 S.E2d 182 (1968).

In Shepherd v. United States Fidelity and Guaranty Company, 233 S.C. 536, 106 S.E.2d 381 (1958), a plaintiff's automobile was in a collision with a defendant's runaway automobile, which had been parked by the defendant in her driveway. Id. at p. 539. The defendant testified that she knew she had set the emergency brake and placed the vehicle in park before exiting the vehicle because that was her fixed habit. Id. at p. 540. Following the collision with plaintiff's automobile, the defendant's runaway automobile was found not to have its brakes set and to be in neutral gear. Id. At trial, the defendant contended that this evidence was insufficient to submit the issue of her negligence to the jury. Id. The South Carolina Supreme Court dismissed the defendant's contention and held that the unexpected presence on the highway of the automobile without a driver or occupant raised a prima facie inference of negligence on the part of the owner sufficient of itself to take the question of the defendant's negligence to the jury. Id. at p. 541. The

[1] The Appellants are no way conceding that there is no direct or circumstantial evidence of the Respondent's negligence, but for the purpose of this Reply Brief, Appellants are addressing arguments contained in Respondent's Initial Brief.

Shepherd Court also stated that it preferred the term 'inference" when addressing negligence in this context as opposed to the term "presumption." Id. The South Carolina Supreme Court quoted with approval from Shearman & Redfield, Negligence, 5th Ed., Sec. 59, the following:

> 'When a thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from a want of care.' Id.

The South Carolina Supreme Court's analysis in Shepard in addressing the inference of an owner's negligence for a runaway car is appropriate in the present case in addressing an inference of an owner's negligence for a runaway, escaped horse. Following the reasoning of the Shepherd Court, the presence of a horse in the middle of the highway at night with no explanation as to why the horse is there coupled with other evidence presented in this case is sufficient to preclude summary judgment. A horse in the middle of Highway 378 is certainly a "thing...shown to be under the management of the defendant, and the accident is such as in the course of things does not happen if those who have the management use proper care..." The Respondent testified that she was the owner of the horse. (Plaintiff's Memo in Opp. To Summary Judgment, p. 11). The Respondent testified that the same gate that was open on the night of the collision that is the subject of this litigation is the same gate that she previously found open. The Respondent offered no explanation as to why her horse was in the middle of Highway 378 at night. As a matter of fact, the Respondent made or attempted no investigation or inquiry as to the facts and circumstances surrounding her horse being out of the pasture and in the roadway. (Plaintiff's Memo in Opp. To Summary Judgment, p. 18 and p. 19). Furthermore, the Respondent never called or contacted the owners of the pasture following the collision, never went to the scene of the collision, and she never inquired about the disposal of her dead horse following the collision. (Plaintiff's Memo in Opp. To Summary Judgment, p. 18 and p. 19).

In McQuillen v. Dobbs, 262 S.C.386, 204 SE2d 732 (1974), the South Carolina Supreme Court held that there were sufficient facts and circumstances that gave rise to the reasonable inference of a furnace malfunction that caused a fire. Id. at p. 735. Specifically, the South Carolina Supreme Court held that the record supported the conclusion that the fire in the home resulted from a malfunction in the control mechanism of the furnace, which was inspected and secured in a superficial manner. Id. The South Carolina Supreme Court went on the to hold that the defendants should have foreseen that the superficial (negligent) manner in which the defendant's inspected and secured the furnace would probably result in its malfunction and injury to others. Id. While there was no expert opinion as to what caused the fire that destroyed the home, the South Carolina Supreme Court held that there was evidence of facts and circumstances that an inference might be reasonably drawn that, but for the negligence of the defendants, the fire would not have occurred. Id.

The South Carolina Supreme Court's application of the law regarding circumstantial evidence to the facts and circumstances surrounding the destruction of the home in McQuillen v. Dobbs is similar to the present case. For instance, the Respondent testified that on a prior occasion she went to the property to feed her horse, and when she arrived, she found that another horse, Maximus, had escaped from the pasture. (Plaintiff's Memo in Opp. To Summary Judgment, p. 15). The Respondent testified that she had previously found the small gate at the pasture open before and that she had simply secured the gate with a rope. (Plaintiff's Memo in Opp. To Summary Judgment, p. 17). The Respondent also testified that she did not recall ever addressing any concerns with the owners of the pasture about the small gate not being secured properly. (Plaintiff's Memo in Opp. To Summary Judgment, p. 16 and 19). The Respondent testified that she did not talk to the owners of the property about properly securing the small gate to prevent it

from being left open. (Plaintiff's Memo in Opp. To Summary Judgment, p. 16 and 19). When asked at her deposition about whether she had a responsibility to tell others who were looking after the pasture that there was a problem with the gates opening and a horse getting out, the Respondent responded, "I guess so." (Plaintiff's Memo in Opp. To Summary Judgment, p. 16 and 19). It is important to note that this was the same gate that was open on the night of the collision that is the subject of this litigation. Despite acknowledging her responsibility, the Respondent chose to do or say nothing.

Conclusion

Based upon the arguments presented above as well as Appellants previous arguments, there was certainly a mere scintilla of evidence presented by the Appellants to support the lower court's denial of the Respondent's motion for summary judgment.

Respectfully submitted,

May 28, 2020

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PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellants on Wanda Davis by depositing a copy of it in the United States Mail, postage prepaid, on May 29, 2020, addressed to her attorney of record, Damon C. Wlodarczyk, Post Office Box 11412, Columbia, South Carolina 29211.

May 29, 2020

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May 29, 2020

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The Honorable Jenny Abbott Kitchings
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Case: Minnie Davis-Leaf, Appellant vs. Wanda Davis, Respondent AND Elvis Nelson, Appellant vs. Kelsey Jones, Carroll Jones, and Wanda Davis, Defendants, of whom Wanda Davis is the Respondent AND Samuel Hayward, Appellant, vs. Wanda Davis, Respondent

Appellants Case No.: 2019-001879

Dear Ms. Kitchings:

Enclosed please find herewith for filing with the Court the original and two (2) copies of the Appellants Initial Reply Brief along with a Proof of Service in the above-referenced matter. I would appreciate your filing the original and returning two (2) clocked copies.

By copy of this letter, I am serving the same upon opposing counsel.

Sincerely,

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