THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

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Case No. 2017-CP-43-01118

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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.

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FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN FINDING THAT NO GENUINE ISSUES OF MATERIAL FACT EXISTED FROM WHICH A JURY COULD INFER AT LEAST NEGLIGENCE ON THE PART OF THE RESPONDENT IN PERMITTING HER HORSE TO STRAY FROM ITS PASTURE?

STATEMENT OF THE CASE

On June 19, 2017, Minnie Davis-Leaf, Elvis Nelson, and Samuel Hayward brought separate Complaints alleging causes of action involving negligence, gross negligence, and violations of South Carolina Code §47-7-110 and §47-7-130 stemming from a collision between their respective vehicles and a horse owned by the Respondent Wanda Davis on U.S. Highway 378 in Sumter County, South Carolina. On January 24, 2019, the Respondent filed Motions for Summary Judgment in the Sumter County Court of Common Pleas in regards to all three cases. A hearing on the Respondent's Motions for Summary Judgment was heard by the Honorable Kristi F. Curtis on September 9, 2019. On October 21, 2019, the Honorable Kristi F. Curtis issued her Orders granting the Respondent's Motion for Summary Judgment in regards to all three cases. On November 6, 2019, Appellant filed separate Notices of Appeal for each case. For the purpose of this appeal, these cases have been consolidated by the Court of Appeals.

STANDARD OF REVIEW

Summary judgment should not be granted except where it is perfectly clear that no genuine issue of material fact exists and an inquiry into the facts is not desirable to clarify application of the law. Bates v. City of Columbia, 301 S.C. 320, 391 S.E.2d 733 (S.C. Ct. App.1990). In determining whether to grant summary judgment, the pleadings and documents on file must be liberally construed in the nonmoving party's favor, and the nonmoving party must be accorded the benefit of all favorable inferences that might reasonably be drawn from the record. Id. citing, Grooms v. Marlboro County Sch. Dist., 307 S.C. 310, 312, 414 S.E.2d 802,

803 (S.C. Ct.App. 1992). "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 860 (2002). In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. Hancock v. Mid–South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

When evidence is susceptible to more than one reasonable inference, the issue should be submitted to the jury, rather than resolved at summary judgment stage. Murphy v. Tyndall, 384 S.C., 681 S.E. 2d 28 (S.C. Ct.App.2009). Since summary judgment is a drastic remedy, it should be cautiously invoked so no person will be improperly deprived of a trial of the disputed issues. Id.

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from the evidentiary facts, summary judgment should be denied. Baugus v. Wessinger, 303 S.C. 412, 401 S.E.2d 169 (1991); Nelson v. Charleston County Parks & Recreation Comm'n, 362 S.C. 1, 605 S.E.2d 744 (S.C. Ct.App.2004).

On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party. RWE NUKEM Corp. v. ENSR Corp., 373 S.C. 190, 644 S.E.2d 730 (2007); Connor Holdings, L.L.C. v. Cousins, 373 S.C. 81, 644 S.E.2d 58 (2007); Willis v. Wu, 362 S.C. 146, 607 S.E.2d 63 (2004); *see also* Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326 (S.C. Ct.App.2003) (stating that all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party).

FACTS

On October 24, 2014, the Respondent sent her seventeen-year-old daughter, Madison Davis, to feed her horse, Swinger, sometime after 4:30 p.m. Swinger was being boarded at a pasture owned by Kelsey and Carroll Jones. The pasture was located adjacent to U.S. Highway 378 in Sumter County, South Carolina. Madison Davis described the pasture where Swinger was kept as having two gates, a large gate and a small gate. [R. p. 121, lines 8-14, p. 153, lines 8-14, p. 185, lines 8-14]. At her deposition, Madison Davis testified that on October 24, 2014, she fed the horses at the pasture and left within ten (10) minutes. [R. p. 120, lines 1-6, p. 152, lines 1-6, p. 184, lines 1-6,].

Later that evening at approximately 9 p.m., the Appellants Samuel Hayward and Elvis Nelson were traveling west in a van on U.S. Highway 378. The van was being driven by Appellant Samuel Hayward. As the Appellants, Samuel Hayward and Elvis Nelson, were traveling on U.S. Highway 378, their van struck the Respondent's horse, that was in the middle of U.S. Highway 378. As a result of the collision with the Respondent's horse, the Appellant Samuel Hayward and the Appellant Elvis Nelson were severely injured and required medical treatment. Shortly after the initial collision between the Respondent's horse and Appellants' van, a vehicle being driven west on U.S. Highway 378 by Appellant Minnie Davis-Leaf struck the Respondent's horse as well. As a result of the collision with the Respondent's horse, the Appellant Minnie Davis-Leaf's vehicle flipped and landed upside down on U.S. Highway 378, and the Appellant Minnie Davis-Leaf was severely injured and required medical treatment.

At the time of the collision on October 24, 2014, the owners of the pasture, where the Respondent's horse was being boarded, were out of town and were notified by law enforcement via telephone of the collision involving the Respondent's horse. Upon learning that a collision had occurred, the owners of the pasture contacted family members to go to the pasture and

determine how the Respondent's horse had escaped. [R. p. 129, lines 6-24, p. 161, lines 6-24, p. 193, lines 6-24,]. When the pasture owners' family arrived, they discovered that the small gate of the pasture was open. Soon thereafter, the owners of the pasture notified the Respondent of the collision involving her horse. Despite being notified of the collision, the Respondent neither came to the scene of the collision nor came to the pasture. [R. p. 115, lines 24-25, p. 116, lines 1-3, p. 147, lines 24-25, p. 148, lines 1-3, p. 179, lines 24-25, p.180, lines 1-3].

ARGUMENT

II. DID THE TRIAL COURT ERR IN FINDING THAT NO GENUINE ISSUES OF MATERIAL FACT EXISTED FROM WHICH A JURY COULD INFER AT LEAST NEGLIGENCE ON THE PART OF THE RESPONDENT IN PERMITTING HER HORSE TO STRAY FROM ITS PASTURE?

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 the present case, the Respondent was the owner of the horse that was wandering unattended in the middle of U.S. Highway 378 in Sumter County on the night of October 24, 2014 when the horse was then struck by Appellants' Samuel Hayward and Elvis Nelson's van. After being struck by one vehicle, the horse was struck by the Appellant Minnie Davis-Leaf's vehicle.

In accordance with S.C. Code Ann. §47-7-110, the Appellants must next submit evidence from which the jury could infer at least negligence on the part of the Respondent in permitting her horse to stray. In order to prevail in an action for negligence, a plaintiff must establish that:

"(1) defendant owes a duty of care to the plaintiff, (2) defendant breached the duty by a negligent act or omission, (3) defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) plaintiff suffered an injury or damages." Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999).

In her Memorandum in Support of Summary Judgment, the Respondent correctly asserted that South Carolina does not recognize the doctrine of res ipsa loquitur. *See* Crider v. Infinger Transp. Co., 248 S.C. 10, 16, 148 S.E.2d 732, 734–735 (1966). However, in an action for negligence, the plaintiff must prove by direct or circumstantial evidence that the defendant did not exercise reasonable care. Snow v. City of Columbia, 305 S.C. 544, 553–55, 409 S.E.2d 797, 803–04 (S.C. Ct.App.1991). "Proximate cause is normally a question of fact for determination by the jury, and may be proved by direct or circumstantial evidence." Player v. Thompson, 259 S.C. 600, 606, 193 S.E.2d 531, 533 (1972).

While counsel for the Respondent stated at the hearing on Respondent's Motion for Summary Judgment that Respondent's daughter testified unequivocally that the gates to the pastures were secure, that is simply not the case. [R. p. 56]. At her deposition, the Respondent's daughter testified that she never physically inspected the gates at the pasture and didn't know if the gates were secured. [R. p. 125, lines 1-15, p. 157, lines 1-15, p. 189, lines 1-15]. Additionally, 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. [R. p. 112, lines 17-19, p. 144, lines 17-19, p. 176, lines 17-19, p. 123, lines 13-20, p. 155, lines 13-20, p. 187, lines 13-20]. 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. [R. p. 116, lines 4-25, p. 148, lines 4-25, p. 180, lines 4-25]. 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. [R. p. 116, lines 4-25, p. 148, lines 4-25, p. 180, lines 4-25]. 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. [R. p. 116, lines 4-25, p. 148, lines 4-25, p. 180, lines 4-25]. 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." [R. p. 113, lines 15-23, p. 148, lines 15-23, p. 177, lines 15-23]. Despite acknowledging her responsibility, the Respondent chose to do or say nothing.

The deposition testimony of Madison Davis also provides evidence from which a jury could infer negligence on behalf of the Respondent in allowing, permitting, or facilitating her horse to run at large. In her deposition, Madison Davis testified that she went to the pasture to feed the Respondent's horse, Swinger, and another horse, Maximus. Madison Davis testified that she was at the pasture for approximately ten (10) minutes and parked approximately 100 feet away from the pasture fence. [R. p. 122, lines 2-5, p. 154, lines 2-5, p. 186, lines 2-5]. She also testified that 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. [R. p. 124, lines 11-18, p. 156, lines 11-18, p. 188, lines 11-18]. Ultimately, Madison Davis testified that she did not physically check the security of the gates on October 24, 2014. [R. p. 125, lines 1-6, p. 157, lines 1-6, p. 189, lines 1-6].

In her deposition, the Respondent acknowledged that if a pasture gate is open, then a horse could get out of the pasture and end up on the highway. [R. p. 116, lines 17-19, p. 148, lines 17-19, p. 180, lines 17-19]. The Respondent went on to testify, that if a horse got out of the

pasture it could end up in the highway and that this would be dangerous for people traveling on the roadway. [R. p. 116, lines 17-19, p. 148, lines 17-19, p. 180, lines 17-19].

The testimony of the Respondent, along with the testimony of Madison Davis, presents a mere scintilla of evidence from which the jury could infer that the Respondent was at least negligent in permitting her horse to run at large on U.S. Highway 378. For instance, this small gate was previously found unsecured and open by the Respondent. The Respondent never informed the owners of the pasture about the small gate being unsecured, despite the Respondent stating that she should have notified the pasture owners about the condition of the small gate. It is of significant importance to note that this was the same small gate that was found open following the Appellants' collision with the Respondent's horse on the night of October 24, 2014. Clearly, more than a mere scintilla of evidence exists to support an inference of negligence on the part of the Respondent in not properly securing the pasture containing her horse on the night of October 24, 2014.

In Reed v. Clark, 277 S.C. 310, 286 S.E.2d 384 (1982), the South Carolina Supreme Court addressed a case involving a horse that had escaped from its pasture. The South Carolina Supreme Court found that there was sufficient evidence from which a jury could infer that the defendant negligently failed to maintain a reasonably adequate pasture fence. Id. at p. 387. Specifically, there was testimony that the fence at the place where the horse(s) apparently escaped was not strong enough under the attending circumstances: this portion of fence was next to a stall where horses congregate, the pasture was adjacent to a four-lane highway, and the risk to motorists, if horses escaped, was a potentially dangerous one. Id. Further, there was evidence of prior escapes by horses on at least five occasions, admittedly known by the plantation employee who maintained the fences. Id. Additionally, the record showed that 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.

The South Carolina Supreme Court in Reed went on to determine that the fact that the same horse had escaped numerous times, even though from a different pasture with a different fence, is at least some competent evidence showing the propensity of this particular animal to seek freedom outside a fenced area. Id. This propensity takes on increased significance in light of the large size of a horse and the proximity to a major highway. Id. The South Carolina Supreme Court also held that knowledge by the employee of this horse's inclination to escape is imputed to the defendant. Id. In conclusion, the South Carolina Supreme Court held that the trial judge did not err in denying defendant's motions for directed verdict and judgment n. o. v. Id.

In the present case, the Respondent moved for summary judgment as opposed to a directed verdict and judgment n.o.v. It stands to reason that if there existed sufficient evidence to deny motions for a directed verdict and judgment n.o.v. asserted by the Defendant in Reed, then clearly there is a mere scintilla of evidence to preclude granting the Respondent's motions for summary judgment. Specifically, there exists more than a mere scintilla of evidence from which a jury could infer negligence on the part of the Respondent. First, the horse's pasture was adjacent to U.S. Highway 378, and the horse owned by the Respondent was wandering in the middle of the four-lane highway. Like the situation in Reed, this incident involved a large horse and occurred at night along a dark stretch of U.S. Highway 378. It is once again important to note that the Respondent did not inform the owners of the pasture about any problems in securing the small gate despite her knowledge of the problem and her testifying that she should have done so.

CONCLUSION

Like the same horse in Reed escaping from different pastures, the same small gate in the case had been found opened and unsecured on previous occasions. For the reasons stated, this Court should reverse the grant of summary judgment by the circuit court. It is clear from the evidence and the testimony of the witnesses in the present case and viewing the evidence and all reasonable influences in the light most favorable to the Appellants that there exists a mere scintilla of evidence in which the jury could infer at least negligence on the part of the Respondent in permitting her horse to go onto U.S. Highway 378. As such, the Appellants request that the Court reverse the lower court's grant of summary judgment in all three cases involved in this appeal.

Respectfully submitted,

July 7, 2020

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CERTIFICATE OF COMPLIANCE

This is to certify that Appellants' Final Brief complies with Rule 211(b), SCACR.

July 7, 2020

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