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SC Court of Appeals

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.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Minnie Davis-Leaf

Plaintiff,

v.

Wanda Davis,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2017-CP-43-01118

**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) SCRCF; *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. Ravoir*, 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

Case Number: 2017CP4301118

Type: Order/Summary Judgment

So Ordered

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

Electronically signed on 2019-10-21 15:52:54 page 10 of 10

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Samuel Hayward,

Plaintiff,

v.

Wanda Davis,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2017-CP-43-01819

**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 occupied by the Plaintiff struck a 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) SCRCF; *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. Ravoir*, 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: Samuel Hayward VS Kelsey Jones , defendant, et al

Case Number: 2017CP4301819

Type: Order/Summary Judgment

So Ordered

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

Electronically signed on 2019-10-21 15:57:44 page 10 of 10

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Elvis Nelson,

Plaintiff,

v.

Kelsey Jones, Carroll Jones, and Wanda
Davis,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2017-CP-43-01811

**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 occupied by the Plaintiff struck a 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) SCRCF; *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. Ravoir*, 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.

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Sumter Common Pleas

Case Caption: Elvis Nelson VS Kelsey Jones , defendant, et al

Case Number: 2017CP4301811

Type: Order/Summary Judgment

So Ordered

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

Electronically signed on 2019-10-21 16:04:00 page 10 of 10

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

CIVIL ACTION NO: 2017-CP-43-_____

Minnie Davis-Leaf

PLAINTIFF,

vs.

Kelsey Jones, Carroll Jones, and
Wanda Davis

DEFENDANTS.

COMPLAINT
(Jury Trial Requested)

The Plaintiff, complaining of the Defendants named herein, would respectfully show unto this Court:

1. That Plaintiff, Minnie Davis-Leaf, is a resident of the County of Sumter, State of South Carolina.

2. That Defendants, Kelsey Jones and Carroll Jones, upon information and belief, are residents of the County of Sumter, State of South Carolina.

3. The Defendant, Wanda Davis, is upon information and belief, a resident of Sumter County, South Carolina.

4. On or about October 24, 2014, the Plaintiff was traveling west in her 2015 Nissan automobile on Highway 378 in the County of Sumter, State of South Carolina, when suddenly and without warning, a horse ran onto Highway 378 and struck her vehicle.

5. That Defendant, Wanda Davis, was, upon information and belief, the owner of the horse that struck the Plaintiff's vehicle and the Defendants, Kelsey Jones and Carroll L. Jones, owned the property where the horse was being kept.

6. That Defendants failed to maintain control over their livestock and allowed their livestock to enter the roadway.

7. That Defendants had, or should have had, adequate opportunity to control this livestock and it was by and through the negligent, grossly negligent, careless, reckless, willful,

and wanton acts or omissions of Defendants that she failed to control her livestock, and further failed to stop her livestock before it struck the Plaintiff's vehicle.

8. That Defendants, by their acts or omissions, were negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars, to-wit:

- (a) In then and there failing to maintain the fence in which their livestock was located;
- (b) In failing to properly secure the fence in which their livestock was located;
- (c) In then and there failing to control their livestock;
- (d) In failing to properly maintain their livestock;
- (e) In allowing their livestock to enter into the roadway;
- (f) In then and there failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances;
- (g) In allowing their livestock to run at large beyond the limits of her own land in direct violation of S.C. Code § 47-7-110;
- (h) In allowing their livestock to run at large and damage the Plaintiff in direct violation of S.C. Code § 47-7-130.
- (i) In such other particulars as may be proven at trial.

9. The conduct of the Defendants was a proximate cause of the injuries to the Plaintiff. These injuries and impairments have resulted in damages to the Plaintiff including past, present, and future pain, medical expenses, suffering; mental and emotional anguish and illness; disfigurement, and disability; impairments which affect her enjoyment of life. Additionally, the Plaintiff has incurred consequential damages as a result of this collision and damages to her

vehicle, including repair costs, destruction of her vehicle, loss of use, towing costs, storage costs, and depreciation.

10. As a direct result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness on the part of the Defendants, as aforesaid, the Plaintiff has been actually damaged and is entitled to punitive damages.

WHEREFORE, the Plaintiff requests appropriate judgment against the Defendants, jointly and separately for actual damages, for punitive damages commensurate with the conduct of the Defendants for the costs and disbursements of this action, and for such other and further relief as the Court deems just and proper.

BRYAN LAW FIRM OF SC, L.L.P.

By: s/John R. Moorman
John R. Moorman
Attorney for the Plaintiff
17 East Calhoun Street
P.O. Box 2038
Sumter, SC 29151
(803) 775-1263

Sumter, South Carolina
June 7, 2017

Jury Trial Requested.

BRYAN LAW FIRM OF SC, L.L.P.

By: s/John R. Moorman
John R. Moorman
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

CIVIL ACTION NO: 2017-CP-43-_____

Samuel Hayward,

PLAINTIFF,

vs.

Kelsey Jones, Carroll Jones, and
Wanda Davis,

DEFENDANTS.

COMPLAINT
(Jury Trial Requested)

The Plaintiff, complaining of the Defendants named herein, would respectfully show unto this Court:

1. That Plaintiff, Samuel Hayward, is a resident of the County of Sumter, State of South Carolina.
2. That Defendants, Kelsey Jones and Carroll Jones, upon information and belief, are residents of the County of Sumter, State of South Carolina.
3. The Defendant, Wanda Davis, is upon information and belief, a resident of Sumter County, South Carolina.
4. On or about October 24, 2014, the Plaintiff was traveling west in his 1986 Ford truck on Highway 378 in the County of Sumter, State of South Carolina, when suddenly and without warning, a horse ran onto Highway 378 and struck the vehicle that he was driving.
5. That Defendant, Wanda Davis, was, upon information and belief, the owner of the horse that struck the Plaintiff's vehicle and the Defendants, Kelsey Jones and Carroll L. Jones, owned the property where the horse was being kept.
6. That Defendants failed to maintain control over their livestock and allowed their livestock to enter the roadway.
7. That Defendants had, or should have had, adequate opportunity to control this livestock and it was by and through the negligent, grossly negligent, careless, reckless, willful, and wanton acts or omissions of Defendants that she failed to control her livestock, and further failed

to stop her livestock before it struck the Plaintiff's vehicle.

8. That Defendants, by their acts or omissions, were negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars, to-wit:

- (a) In then and there failing to maintain the fence in which their livestock was located;
- (b) In failing to properly secure the fence in which their livestock was located;
- (c) In then and there failing to control their livestock;
- (d) In failing to properly maintain their livestock;
- (e) In allowing their livestock to enter into the roadway;
- (f) In then and there failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances;
- (g) In allowing their livestock to run at large beyond the limits of her own land in direct violation of S.C. Code § 47-7-110;
- (h) In allowing their livestock to run at large and damage the Plaintiff in direct violation of S.C. Code § 47-7-130.
- (i) In such other particulars as may be proven at trial.

9. The conduct of the Defendants was a proximate cause of the injuries to the Plaintiff. These injuries and impairments have resulted in damages to the Plaintiff including past, present, and future pain, medical expenses, suffering; mental and emotional anguish and illness; disfigurement, and disability; impairments which affect his enjoyment of life. Additionally, the Plaintiff has incurred consequential damages as a result of this collision and damages to his truck, including repair costs, destruction of his vehicle, loss of use, towing costs, storage costs, and depreciation.

10. As a direct result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness on the part of the Defendants, as aforesaid, the Plaintiff has been actually damaged and is entitled to punitive damages.

WHEREFORE, the Plaintiff requests appropriate judgment against the Defendants, jointly and separately for actual damages, for punitive damages commensurate with the conduct of the Defendants for the costs and disbursements of this action, and for such other and further relief as the Court deems just and proper.

BRYAN LAW FIRM OF SC, L.L.P.

By: s/John R. Moorman
John R. Moorman
Attorney for the Plaintiff
17 East Calhoun Street
P.O. Box 2038
Sumter, SC 29151
(803) 775-1263

Sumter, South Carolina
October 9, 2017

Jury Trial Requested.

BRYAN LAW FIRM OF SC, L.L.P.

By: s/John R. Moorman
John R. Moorman
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

CIVIL ACTION NO: 2017-CP-43-_____

Elvis Nelson,

PLAINTIFF,

vs.

Kelsey Jones, Carroll Jones, and
Wanda Davis,

DEFENDANTS.

COMPLAINT
(Jury Trial Requested)

The Plaintiff, complaining of the Defendants named herein, would respectfully show unto this Court:

1. That Plaintiff, Elvis Nelson, is a resident of the County of Sumter, State of South Carolina.
2. That Defendants, Kelsey Jones and Carroll Jones, upon information and belief, are residents of the County of Sumter, State of South Carolina.
3. The Defendant, Wanda Davis, is upon information and belief, a resident of Sumter County, South Carolina.
4. On or about October 24, 2014, the Plaintiff, Elvis Nelson, was traveling west in a 1986 Ford Truck on Highway 378 in the County of Sumter, State of South Carolina as a passenger, when suddenly and without warning, a horse ran onto Highway 378 and struck the vehicle that he was riding in as a passenger.
5. That Defendant, Wanda Davis, was, upon information and belief, the owner of the horse that struck the Plaintiff's vehicle and the Defendants, Kelsey Jones and Carroll L. Jones, owned the property where the horse was being kept.
6. That Defendants failed to maintain control over their livestock and allowed their livestock to enter the roadway.
7. That Defendants had, or should have had, adequate opportunity to control this livestock and it was by and through the negligent, grossly negligent, careless, reckless, willful, and

wanton acts or omissions of Defendants that she failed to control her livestock, and further failed to stop her livestock before it struck the Plaintiff's vehicle.

8. That Defendants, by their acts or omissions, were negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars, to-wit:

- (a) In then and there failing to maintain the fence in which their livestock was located;
- (b) In failing to properly secure the fence in which their livestock was located;
- (c) In then and there failing to control their livestock;
- (d) In failing to properly maintain their livestock;
- (e) In allowing their livestock to enter into the roadway;
- (f) In then and there failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances;
- (g) In allowing their livestock to run at large beyond the limits of her own land in direct violation of S.C. Code § 47-7-110;
- (h) In allowing their livestock to run at large and damage the Plaintiff in direct violation of S.C. Code § 47-7-130.
- (i) In such other particulars as may be proven at trial.

9. The conduct of the Defendants was a proximate cause of the injuries to the Plaintiff. These injuries and impairments have resulted in damages to the Plaintiff including past, present, and future pain, medical expenses, suffering; mental and emotional anguish and illness; disfigurement, and disability; impairments which affect his enjoyment of life.

10. As a direct result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness on the part of the Defendants, as aforesaid, the Plaintiff has been actually damaged and is entitled to punitive damages.

WHEREFORE, the Plaintiff requests appropriate judgment against the Defendants, jointly and separately for actual damages, for punitive damages commensurate with the conduct of the Defendants for the costs and disbursements of this action, and for such other and further relief as the Court deems just and proper.

BRYAN LAW FIRM OF SC, L.L.P.

By: s/John R. Moorman
John R. Moorman
Attorney for the Plaintiff
17 East Calhoun Street
P.O. Box 2038
Sumter, SC 29151
(803) 775-1263

Sumter, South Carolina
October 9, 2017

Jury Trial Requested.

BRYAN LAW FIRM OF SC, L.L.P.

By: s/John R. Moorman
John R. Moorman
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
C/A NO.: 2017-CP-43-01118

Minnie Davis-Leaf

Plaintiff,

v.

Kelsey Jones, Carroll Jones, and Wanda
Davis,

Defendants.

**ANSWER ON BEHALF OF WANDA
DAVIS
(JURY TRIAL DEMANDED)**

Defendant Wanda Davis, by and through her undersigned counsel and by way of
Answer to Plaintiff's Complaint, herein allege as follows:

FOR A FIRST DEFENSE

1. That Plaintiff has failed to allege facts sufficient to constitute a cause of
action against this Defendant and, therefore, the Complaint should be dismissed.

FOR A SECOND DEFENSE

1. That paragraphs 1, 2 and 3 are admitted upon information and belief.

2. That only so much of paragraph 4 is admitted that can be construed to allege
that on the date and location set forth, there was an accident between a horse and the
Plaintiff but the remaining allegations are denied and strict proof is demanded thereof.

3. That only so much of paragraph 5 is admitted that can be construed to allege
that the horse involved in the accident was owned by this Defendant and boarded on land
owned by the Defendants Jones. The remaining allegations are denied and strict proof is
demanded thereof.

4. That paragraphs 6, 7, 8, 9, and 10 are denied and strict proof is demanded thereof.

FOR A THIRD DEFENSE

1. Plaintiff's claims for punitive damages violate the United States and South Carolina Constitutions.

FOR A FOURTH DEFENSE

1. That if Defendant was negligent, grossly negligent, careless, reckless, willful and wanton as alleged, which allegations are herein expressly denied, the Plaintiff was herself negligent, careless, reckless, willful and wanton and the negligence, carelessness, recklessness, willfulness and wantonness on the part of the Plaintiff combined and concurred with any negligence, gross negligence, carelessness, recklessness, willfulness and wantonness on the part of this Defendant, proximately contributed to any injuries or damages sustained by the Plaintiff, and Defendant pleads that the Plaintiff's claim should either be barred or her recovery diminished under the doctrine of comparative negligence.

FOR A FIFTH DEFENSE

1. That Defendant pleads the open and obvious nature of the condition as a complete bar to the cause of action.

FOR A SIXTH DEFENSE

1. That Defendant pleads Act of God as a complete bar to the cause of action

FOR A SEVENTH DEFENSE

1. That Defendant pleads the sole and/or intervening negligence of another party or non-party as a complete bar to the cause of action.

WHEREFORE, having fully responded to Plaintiff's Complaint, Defendant Davis requests that the same be dismissed with fees and costs awarded to Defendant, and for such other and further relief as this Court may deem just and proper.

RILEY POPE & LANEY, LLC

s/Damon C. Wlodarczyk
Damon C. Wlodarczyk
Post Office Box 11412
Columbia, South Carolina 29211
Telephone: (803) 799-9993
Facsimile: (803) 239-1414
E-mail: damonw@rplfirm.com

Attorneys for Defendant Wanda Davis

Columbia, South Carolina
July 17, 2017

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Samuel Hayward,

Plaintiff,

v.

Kelsey Jones, Carroll Jones, and Wanda
Davis,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2017-CP-43-01819

**ANSWER ON BEHALF OF WANDA
DAVIS
(JURY TRIAL DEMANDED)**

Defendant Wanda Davis, by and through her undersigned counsel and by way of
Answer to Plaintiff's Complaint, herein allege as follows:

FOR A FIRST DEFENSE

1. That Plaintiff has failed to allege facts sufficient to constitute a cause of
action against this Defendant and, therefore, the Complaint should be dismissed.

FOR A SECOND DEFENSE

1. That paragraphs 1, 2 and 3 are admitted upon information and belief.

2. That only so much of paragraph 4 is admitted that can be construed to allege
that on the date and location set forth, there was an accident between a horse and the
Plaintiff but the remaining allegations are denied and strict proof is demanded thereof.

3. That only so much of paragraph 5 is admitted that can be construed to allege
that the horse involved in the accident was owned by this Defendant and boarded on land
owned by the Defendants Jones. The remaining allegations are denied and strict proof is
demanded thereof.

4. That paragraphs 6, 7, 8, 9, and 10 are denied and strict proof is demanded
thereof.

FOR A THIRD DEFENSE

1. Plaintiff's claims for punitive damages violate the United States and South Carolina Constitutions.

FOR A FOURTH DEFENSE

1. That if Defendant was negligent, grossly negligent, careless, reckless, willful and wanton as alleged, which allegations are herein expressly denied, the Plaintiff was herself negligent, careless, reckless, willful and wanton and the negligence, carelessness, recklessness, willfulness and wantonness on the part of the Plaintiff combined and concurred with any negligence, gross negligence, carelessness, recklessness, willfulness and wantonness on the part of this Defendant, proximately contributed to any injuries or damages sustained by the Plaintiff, and Defendant pleads that the Plaintiff's claim should either be barred or her recovery diminished under the doctrine of comparative negligence.

FOR A FIFTH DEFENSE

1. That Defendant pleads the open and obvious nature of the condition as a complete bar to the cause of action.

FOR A SIXTH DEFENSE

1. That Defendant pleads Act of God as a complete bar to the cause of action

FOR A SEVENTH DEFENSE

1. That Defendant pleads the sole and/or intervening negligence of another party or non-party as a complete bar to the cause of action.

WHEREFORE, having fully responded to Plaintiff's Complaint, Defendant Davis requests that the same be dismissed with fees and costs awarded to Defendant, and for such other and further relief as this Court may deem just and proper.

RILEY POPE & LANEY, LLC

s/Damon C. Wlodarczyk
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Attorneys for Defendant Wanda Davis

Columbia, South Carolina
November 22, 2017

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Elvis Nelson,

Plaintiff,

v.

Kelsey Jones, Carroll Jones, and Wanda
Davis,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2017-CP-43-01811

**ANSWER ON BEHALF OF WANDA
DAVIS
(JURY TRIAL DEMANDED)**

Defendant Wanda Davis, by and through her undersigned counsel and by way of
Answer to Plaintiff's Complaint, herein allege as follows:

FOR A FIRST DEFENSE

1. That Plaintiff has failed to allege facts sufficient to constitute a cause of
action against this Defendant and, therefore, the Complaint should be dismissed.

FOR A SECOND DEFENSE

1. That paragraphs 1, 2 and 3 are admitted upon information and belief.

2. That only so much of paragraph 4 is admitted that can be construed to allege
that on the date and location set forth, there was an accident between a horse and the
Plaintiff but the remaining allegations are denied and strict proof is demanded thereof.

3. That only so much of paragraph 5 is admitted that can be construed to allege
that the horse involved in the accident was owned by this Defendant and boarded on land
owned by the Defendants Jones. The remaining allegations are denied and strict proof is
demanded thereof.

4. That paragraphs 6, 7, 8, 9, and 10 are denied and strict proof is demanded
thereof.

FOR A THIRD DEFENSE

1. Plaintiff's claims for punitive damages violate the United States and South Carolina Constitutions.

FOR A FOURTH DEFENSE

1. That Defendant pleads the open and obvious nature of the condition as a complete bar to the cause of action.

FOR A FIFTH DEFENSE

1. That Defendant pleads Act of God as a complete bar to the cause of action

FOR A SIXTH DEFENSE

1. That Defendant pleads the sole and/or intervening negligence of another party or non-party as a complete bar to the cause of action.

WHEREFORE, having fully responded to Plaintiff's Complaint, Defendant Davis requests that the same be dismissed with fees and costs awarded to Defendant, and for such other and further relief as this Court may deem just and proper.

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Attorneys for Defendant Wanda Davis

Columbia, South Carolina
November 22, 2017

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SUMTER)
3) IN THE CIRCUIT COURT

4 MINNIE DAVIS-LEAF)
5 Plaintiff)
6 versus)
7 WANDA DAVIS, et al)
8 Defendants)
) No. 2017 CP 43 1118

9 SAMUEL HAYWARD)
10 Plaintiff)
11 versus)
12 KELSEY JONES, et al)
13 Defendants)
) No. 2017 CP 43 1819

14 ELVIS NELSON)
15 Plaintiff)
16 versus)
17 KELSEY JONES, et al)
18 Defendants)
) No. 2017 CP 43 1811

19) Sumter, South Carolina
) September 9, 2019

20 B E F O R E :

21 HONORABLE KRISTI F. CURTIS, Judge Presiding

22 HARRIET P. BENNETT
23 Reporter, S. C. Court Administration
24 5532 Colonial Chatsworth Circle
 North Charleston, S. C. 20418

25

1 A P P E A R A N C E S :

2 For Plaintiff Davis-Leaf: J. McELVEEN, III, Esq
3 J. MOORMAN, Esq.

4 For Plaintiff Hayward: J. McELVEEN, III, Esq.
5 J. MOORMAN, Esq.

6 For Plaintiff Nelson: J. McELVEEN, III, Esq.
7 J. MOORMAN, Esq.

8 For Defendant Jones: D. WLODARCZYK, Esq.
9 (All cases)

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I N D E X

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Statement, Mr. Wlordaczyk	5
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(No Ruling made)	

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EXHIBITS

NO EXHIBITS WERE PROFFERED OR MARKED

1 (The within matter came before the Court for hearing on
2 September 9, 2019)

3 THE COURT: All right. It looks like numbers four, five
4 and six are related if I'm reading this correctly.

5 First there is Minnie Davis-Leaf versus Wanda Davis and
6 then we've got Samuel Hayward versus Kelsey Jones, etcetera,
7 and then Elvis Nelson versus Kelsey Jones.

8 Mr. McElveen and Mr. Wlodarczyk.

9 And this is a Motion for Summary Judgment?

10 MR. WLODARCZYK: That's correct, Your Honor.

11 THE COURT: Filed by the Defendants?

12 MR. WLODARCZYK: That's correct.

13 THE COURT: Again, I just looked at it a minute ago and
14 I saw on the first case, the Minnie Davis-Leaf case, that
15 Carol Jones and Kelsey Jones have been dismissed as parties.

16 Were they dismissed as parties in all three actions or
17 just in the first one?

18 MR. McELVEEN: All three actions.

19 THE COURT: Okay. So the Defendant in all three cases
20 now is Wanda Davis. Is that correct?

21 MR. McELVEEN: That's correct, Your Honor.

22 THE COURT: Okay. Mr. Wlodarczyk, since this is your
23 Motion I will be glad to hear from you, sir.

24 MR. WLODARCZYK: Thank you. May it please Your Honor.

25 My name is Damon Wlodarczyk. I represent Wanda Davis

1 in this action.

2 By way of background, Your Honor, this is a incident
3 that occurred back in October of 2014. Ms. Davis, Ms.
4 Wanda Davis, owned a horse that she pastured at the prop-
5 erty of Ms. Jones.

6 Ms. Jones had put an ad in the paper for Fifty Dol-
7 lars a month she would allow boarding essentially, be re-
8 sponsible for providing space and a fence, a gate to go
9 through the fence, but they weren't responsible for feed-
10 ing or watering the horses.

11 That had occurred for some time. Not only did they
12 do it for Ms. Davis' horse, they also had their own horse.
13 They at other times had other horses on the property over
14 the course of twenty or thirty years.

15 This property is located somewhat in a rural area, 378
16 of Sumter County. There's a long driveway that goes out
17 the highway. You have two lanes going in one direction and
18 then you have a median and then two lanes going in the other
19 direction.

20 It is uncontested that on the date of this loss, Octo-
21 ber of 2014, that the Joneses were out of town. Carol Jones
22 was working out of town and Mr. Jones' wife was also out of
23 town.

24 My client's daughter, Madison, went to the property
25 with a friend sometime in the afternoon when she got out of

1 school. She was a minor at the time.

2 At some time around three o'clock in the afternoon she
3 drives out there to feed the horses. She testifies that when
4 she gets out there she's out there for about ten minutes.

5 She gets the food out of one of the storage areas; she
6 walks over and pours it into the bins for the horses.

7 She doesn't have to go into the pasture area. She put
8 -- she never went in the pasture area. She puts the stuff
9 back and leaves the property. That is some time around
10 three o'clock in the afternoon.

11 She unequivocally stated that when she was there -- and
12 there's two gates but really for purposes of this case only
13 one.

14 But there is an eight foot gate that you can unlock and
15 drive a vehicle through. There is also a four foot gate a
16 person as well as a horse can come and go from the pasture.
17 Specifically we believe that is an issue because there was
18 testimony that after this loss family members went there and
19 that four foot gate was open.

20 The testimony -- I may have to take leave to ask to sup-
21 plement the deposition excerpts that were received in the
22 Plaintiff's memorandum on Friday as it may raise some issues
23 that need to be addressed.

24 But essentially to describe that gate, it is metal and
25 has two locks on it. Two methods of securing it.

1 One, which is fairly common for a horse gate or a cow
2 gate or however you want to phrase it -- is you wrap a chain
3 around a post and it goes around the corner of the fence and
4 there's a J-hook or essentially a piece of metal that goes
5 up and you put the eye of the chain through the J-hook and
6 it locks.

7 In addition to that, they also have the rope they put
8 across the top of the fence and the post so you have, you
9 know, a rope on top and then you have a chain on the bottom.
10 That's how it is secured.

11 Miss Madison, the daughter, testified she was there at
12 three o'clock and unequivocally that gate was secured. She
13 leaves the property.

14 Some six hours later somehow the gate comes unsecured.
15 Two of the horses, one named Excelsior -- that's the horse
16 owned by the Joneses -- and my client's horse wandered down
17 the driveway into the road, across the median, and then the
18 Plaintiffs Nelson and Hayward were traveling in a van, saw
19 the Joneses' horse, Maximillian, in the median and then mov-
20 ing forward saw my client's horse, striking the horse, kill-
21 ing the horse in the road, and they pulled off the side of
22 the median.

23 Sometime thereafter Ms. Minnie Davis-Leaf, who is also
24 the first Plaintiff in the case, came along with her vehicle.
25 She didn't see the horse or the carcass of the horse in the

1 road, struck it with her car in the road, and she suffered
2 some injuries, substantial injuries.

3 Now, the reason why we're bringing this summary judg-
4 ment motion is there is no evidence from which the jury can
5 determine how the gate became unsecured.

6 THE COURT: Okay.

7 MR. WLOCARCZYK: I know that it is agreed that South
8 Carolina does not follow the Doctrine of *res ipsa loquitur*.

9 Again, the only testimony is that the gate was secured
10 six hours before this accident and nobody knows how the gate
11 came to be unsecured.

12 We then put in the brief Mr. Jones did testify he was
13 having incidents of vandalism at the time so obviously our
14 argument, should it ever go forth, would be that someone else
15 came and unlocked this fence.

16 But, for purposes of this argument, they have to show
17 some negligence. In reviewing the responsive brief it seems
18 like they are relying primarily on Miss Jones -- I'm sorry --
19 Miss Davis' testimony in her deposition that she never did
20 inspect the fences, never inspected the gate, never knew how
21 the gate locked.

22 And on one occasion she went out there and the Joneses'
23 horse, Excelsior, was outside of the pasture area and she
24 testified that she took the horse, put it back inside the
25 pasture area, and secured the fence, and she testified that

1 she never told the Joneses that the horse got out.

2 There is also an allegation which is supported by the
3 deposition that Ms. Davis was at the property on one particu-
4 lar occasion and the four foot gate at issue was unsecured,
5 and she testified that she secured the gate by putting the
6 rope over the top of it but she never told the Joneses about
7 the situation.

8 The Plaintiff is arguing as the owner of the horse she
9 had an obligation to at least bring this to the Jones' atten-
10 tion so they could somehow remediate the issue.

11 Now, in response to that, Your Honor, what I would like
12 to do, if the Court would allow, is to supplement with the
13 deposition testimony that the Joneses-- that Mr. Carol Jones
14 testified in his deposition that he knew of at least one oc-
15 casion that his horse, Maximillian, got out of the enclosure.
16 It was a smaller horse, a colt.

17 So he was aware of that. So whether or not Ms. Davis
18 told him that or not has no bearing in this case.

19 The second issue is he testified in the course of thirty
20 years either he or a family member on occasion would have
21 left that four foot gate unsecured at times and on various
22 occasions a horse would get out through that gate if it were
23 unsecured.

24 So again he is aware of that situation so there is no
25 issue as to whether Ms. Davis would have told him would put

10

1 him on any greater notice or any present notice.

2 He further testified in his deposition that he had the
3 sole obligation of maintaining the fence, maintaining the
4 gates, repairing the fences, repairing the gates, making
5 sure they were secure.

6 So that is on him as manager of the property. He also
7 testified that when locks were used -- I should not say
8 locks but the methods that were used to secure the four
9 foot gate were in place, that being the chain and the rope,
10 that it was fully secure and there was no way the horses
11 could get out of those gates, could push through it or some-
12 thing along those lines.

13 So basically what we're left then with is the second
14 argument that Madison went to the property at some time
15 three or six hours before and should have taken some steps
16 to inspect or make sure that the property was in a secure
17 position.

18 Madison is not the owner of the horse. Madison did
19 testify that the gates were one hundred percent secure.
20 There is no issue about her credibility. There is no issue
21 -- in fact, this law suit was filed almost three years af-
22 ter the statute of limitations is about to run. So there
23 was no -- nothing to indicate or know there was a claim out
24 there until three years later.

25 In addition, the only thing that they can argue would

11

1 be that she did not inspect the property. Again, she is not
2 the owner of the horse, not the manager of the horse, and
3 under South Carolina common law which our brief will supple-
4 ment there is no vicarious liability for the act of a child
5 in the parent's absence or showing some type of master and
6 servant or employer-employee relationship.

7 There is nothing from that and so to the extent that
8 they may have that Ms. Davis would be found to be vicari-
9 ously liable for the acts of her daughter when there is no
10 evidence she did anything wrong there is no argument they
11 can offer that it would go back to the parent.

12 So basically you have a situation that is classic res
13 ipsa loquitur; that the horses got out. We don't know how
14 the horses got out but absent some negligence the horses
15 wouldn't have got out and the accident would not have oc-
16 curred.

17 THE COURT: Thank you.

18 MR. MOORMAN: Your Honor, may it please the Court.

19 The Statute that we're dealing with here is South
20 Carolina Code Section 47 7-110, and it states it shall be
21 unlawful for the owner, which would be Wanda Davis in this
22 case, or the manager of any domestic animal of any descrip-
23 tion to wilfully or negligence -- and we're saying negli-
24 gently. There is no wilfulness alleged here -- to permit
25 any such animal to run at large beyond the limits of his own
12

1 land or the lands leased by or controlled by him.

2 Secondly, the standard here is to recover under this
3 statute the Plaintiff must offer evidence from which a jury
4 could infer at least negligence on the part of the Defen-
5 dant in permitting the animal to stray.

6 That is the standard. The summary judgment standard,
7 coupled with that, is a mere scintilla of evidence that
8 there is some negligence on the part of Wanda Davis.

9 Now, they are correct that South Carolina does not recog-
10 nize *res ipsa loquitur*. In reading the Defendant's brief
11 they stated that where there is no direct evidence in this
12 case to establish negligence, accordingly the Plaintiff must
13 rely on circumstantial evidence to survive summary judgment.

14 For circumstantial evidence to be sufficient to warrant
15 a finding of fact the circumstances must lead to the con-
16 clusion with reasonable certainty and must have sufficient
17 probative value to constitute a basis for a legal inference
18 and not for mere speculation.

19 Citing *Holland versus Georgia Hardwood Lumber Company*.

20 The next sentence says, from the same case, the exist-
21 ence of a fact or facts cannot rest on speculation, sur-
22 mise or conjecture. That's three times in that case.

23 Interestingly enough, there is a sentence in the middle
24 of those two sentences that was left out, and that sentence
25 reads, the facts and circumstances should be reckoned with

1 in the light of ordinary sense and such conclusions deduced
2 there from as common sense dictates.

3 And I have a copy of that case if you would let me
4 bring that up to you, Judge.

5 THE COURT: Sure.

6 MR. MOORMAN: And I have highlighted the portion . .

7 THE COURT: Okay.

8 MR. MOORMAN: What does common sense dictate here? We
9 have a pasture. We have an owner who sends her seventeen
10 year old daughter to do the feeding of this horse.

11 We have a large horse as testified by the owner, Wanda
12 Davis; a pasture that is adjacent to Highway 378, a busy
13 highway. This is right out by the Sumter County Flea Market,
14 just so you would know.

15 The speed limit on that highway is fifty-five to sixty
16 miles an hour. It is dimly lit. The risk to motorists if a
17 big horse escapes is significant.

18 The owner of the horse, Wanda Davis, testified that she
19 sent her daughter who was seventeen years old to take care
20 of the horse.

21 Madison Davis testified that she was only there for ten
22 minutes. She parks a hundred feet away from the pasture
23 fence. Yet she says she sees everything is okay, but when
24 I asked her did you physically inspect the gate she says no,
25 I did not physically inspect the gate or check it.

1 I asked her were you aware that there were some thefts
2 or vandalism allegations and she said yes.

3 I said do you believe there should be a lock on the gate
4 and she said yes. She testified there should have been a
5 lock.

6 The same small gate, Judge, was found to be open by Wanda
7 Davis, the owner of the horse. This is a large horse. She
8 goes and she says I get a rope and I tie it around the fence
9 to hold -- to keep the horses in. Yet she doesn't tell the
10 owners of the pasture about this.

11 Obviously common sense would dictate that there is some
12 negligence there in and of itself with knowing there is a
13 problem with the gate, yet the owner of the horse -- you say
14 nothing and then two people, or three people in this case,
15 get injured by a horse being in the middle of the road on a
16 busy highway in a dimly lit area at almost nine o'clock at
17 night.

18 And the car flips upside down because somebody is irre-
19 sponsible and negligent in not maintaining this fence. The
20 Jones family members go there afterwards and find the small
21 gate is the one that is open.

22 At no time ever following this incident does Wanda
23 Davis come to the scene to inspect the fence that her horse
24 got out of.

25 And I think that it is important to note in looking at

1 a case that is cited in my brief, Reed versus Clark, that
2 was decided by the South Carolina Supreme Court, where the
3 facts are similar to this.

4 A directed verdict motion and a judgment notwithstanding
5 the verdict were denied in that case, Judge, and the
6 verdict for the motorist was upheld in that case.

7 And that case involved a pasture located next to a busy
8 highway where a horse had previously escaped from another
9 pasture through a fence, not through a gate, and the Court
10 recognized this was a large horse and would present a huge
11 problem for the traveling public and that the information
12 there was sufficient to get to the jury.

13 THE COURT: That is Reed versus Clark?

14 MR. MOORMAN: That is Reed versus Clark and let alone
15 it passed a motion for summary judgment. I think there is

16 I think there is clearly more than a mere scintilla of
17 evidence in this case, a case cited on circumstantial evi-
18 dence.

19 As a matter of fact, Holland versus Georgia is a case
20 by the Industrial Commission back, I believe, in 1947 and
21 it was not deciding a summary judgment motion. It was de-
22 ciding an issue in a hearing in front of the Industrial
23 Commission. So there was no summary judgment standard
24 there as well.

25 Judge, I think that there is clearly evidence here to

1 withstand a motion for summary judgment, given the loca-
2 tion, the proximity of the pasture to Highway 378, the large
3 nature of the horse, the facts and circumstances surround-
4 ing Highway 378, a 55 to 65 mile an hour four lane highway
5 that is dimly lit in that area, and that a big horse in the
6 middle of the road could present some serious problem. It
7 did present serious problems, serious problems that my client
8 was injured because of.

9 Then, also too, that Wanda Davis knew that there was a
10 problem with this fence opening. If they had just talked to
11 the pasture owners about it.

12 And I believe that there is some inference there of
13 negligence, certainly in this case that common sense would
14 say that the circumstances should be reckoned with in the
15 light of ordinary extent; that such conclusions deduced
16 therefrom is common sense; that it wasn't physically
17 checked and it should have been.

18 And since she looked at it from -- Madison Davis looked
19 at it from far away and saw that it was wrapped around but
20 never checked the fence.

21 Thank you, Judge.

22 THE COURT: Thank you.

23 Mr. Wlodarczyk, you wanted to submit some additional ex-
24 cerpts?

25 MR. WLODARCZYK: Just from Mr. Jones where he testified

1 that if the gate was secured with the rope and the chain
2 it would not allow the horse to get out and that in fact he
3 is responsible for those matters, taking care of the gate,
4 making sure to have the gate locked, making sure that the
5 fence was in good repair; also, the legal arguments on no vi-
6 carious liability for the actions of a child in absence of
7 the parent, or an employee-employer relationship essentially,
8 what the cases set forth.

9 There is no evidence here of that, so everything he ar-
10 gued is to the child.

11 THE COURT: Can you submit that to me by Friday?

12 MR. WLODARCZYK: Yes, maam.

13 THE COURT: Okay, thank you very much.

14 MR. WLODARCZYK: Thank you, Judge.

15 MR. MOORMAN: Thank you, Judge.

16 END OF REQUESTED TRANSCRIPT OF RECORD-----
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CERTIFICATE

I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript of Record was transcribed to the best of my ability from DCRP Records, having been heard in the Court of Common Pleas for Sumter County, South Carolina, on September 9 of 2019.

FURTHER, I certify that I am neither of kin nor counsel to any party to this action, nor do I have any interest in the same.

December 26, 2019

A handwritten signature in cursive script that reads "Harriet P. Bennett". The signature is written in dark ink and is positioned to the right of the date line.

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.

Kelsey Jones, Carroll Jones, and Wanda
Davis,

Defendants.

**NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT ON BEHALF OF
WANDA DAVIS**

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the Defendants will appear before the presiding judge for Sumter County, ten (10) days after service hereof at 10:00 a.m., or at such other time and place as the Court may direct, and move for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting to the Defendant Davis Summary Judgment on the grounds there is no direct or circumstantial evidence of negligence and the doctrine of *res ipsa loquitur* is not recognized in South Carolina.

Said motion shall be based upon the statute and case law of the State of South Carolina, upon the pleadings and other evidence developed in discovery and other material properly received by the Court in connection therewith.

RILEY POPE & LANEY, LLC

s/Damon C. Wlodarczyk

Damon C. Wlodarczyk, SC Bar 70460

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Columbia, South Carolina 29211

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Attorneys for Defendant Davis

Columbia, South Carolina
January 24, 2019

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
C/A NO.: 2017-CP-43-01118

Minnie Davis-Leaf

Plaintiff,

v.

Kelsey Jones, Carroll Jones, and Wanda
Davis,

Defendants.

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT ON BEHALF OF
WANDA DAVIS**

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the Defendants will appear before the presiding judge for Sumter County, ten (10) days after service hereof at 10:00 a.m., or at such other time and place as the Court may direct, and move for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting to the Defendants Summary Judgment on the grounds that there is no direct or circumstantial evidence of negligence and the doctrine of *res ipsa loquitur* is not recognized in South Carolina.

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 drive 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.

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. Ravoirra*, 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.*

ARGUMENT

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 v. Smalls*, 390 S.C. 375, 381, 701 S.E.2d 772, 775 (Ct. App. 2010) (“Our 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.”); *Oconee Roller Mills, Inc. v. Spitzer*, 300 S.C. 358, 387 S.E.2d 718 (S.C. Ct. App. 1990) (“S.C. Code Ann. § 47-7-110 has been interpreted not to impose an absolute duty on an owner to prevent escape of livestock; rather, evidence of negligence in permitting animals to stray must be presented.”).

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.*

In the present case, Plaintiff has failed to provide any evidence of negligence in the horse’s escape. The Plaintiff’s sole argument appears to be that because the horse was struck and killed on the highway, the Defendants must have been negligent.

It is undisputed that Wanda Davis did not go to the pasture on the date of the incident. [Exhibit Wanda Davis Depo. p 27]. Rather, Ms. Davis’s daughter testified she and a friend went to the pasture to feed the horse on the afternoon of the incident. [Exhibit Madison Davis Depo. p. 26]. 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. [M. Davis Depo. p. 29]. Defendant Jones also confirmed it was not necessary to open the gates to the pasture to feed the horses. [Exhibit Carroll Jones Depo. p. 17-18].

The daughter testified she arrived on the property on the afternoon of the incident. [M. Davis Depo. p. 26]. She obtained the food from an area adjacent to the horse stalls, poured the food over the rails, and left. [M. Davis Depo. p. 28-9]. The daughter testified she spent approximately ten minutes at the Jones property. [M. Davis Depo. p. 28]. She testified she could say with certainty that the gates were closed when she was on the day of the incident. [M. Davis Depo. p 29, 51, 55, 86]. She did not observe either of the two (2) gates to be unsecured or open. [M. Davis Depo. p. 29, 51]. She testified she did not open either gate on the date of loss, nor did she enter the pasture by climbing over the rail. [M. Davis Depo. p. 29, 35, 52]. There is no evidence that either the Defendant or her daughter left either 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. [See Exhibit – Police Report]. The Plaintiff has no information as to how the horse was able to get out of the pasture.

The Defendant Carroll Jones testified that when he returned to the property following the incident, he inspected the fence and gates and there were no issues with either. [Carroll Jones Depo. p. 56]. Defendant 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. [C. Jones Depo. p. 35]. The Jones defendants have no personal information as to how the horse was able to get out of the pasture. [C. Jones Depo p. 30, Exhibit Kelsey Jones Depo. p 16, 17].

Clearly there is no direct evidence in this case to establish negligence. Accordingly, Plaintiff must rely on circumstantial evidence in order to survive summary judgment. “For circumstantial evidence to be sufficient to warrant the finding of a fact, the circumstances must lead to the conclusion with reasonable certainty, and must have sufficient probative value to constitute the basis for a legal inference, and not for mere speculation.” *Holland v. Georgia Hardwood Lumber Co.*, 214 S.C. 195, 204–05, 51 S.E.2d 744, 749 (1949). “The existence of a fact or facts cannot rest in speculation, surmise or conjecture.” *Id.*

As previously stated, there is no evidence that Defendant or her daughter opened either gate, failed to secure either gate, entered into the pasture, or failed to take any action on the date of the incident that would have resulted in the horse getting out of the secured pasture. There is no evidence that the Defendant or her daughter, at any time during the several years that the horse was pastured at the co-defendants’ property, ever failed to secure either gate, allowed the gate to remain unsecured, or otherwise took any action that

allowed any horse to escape the secured pasture. There is no evidence that there was any problem with the fence or gates at the time or following the incident.

Plaintiffs sole argument in support of her allegation of negligence is that defendant's daughter was the last person on the property several hours before the accident happened and, therefore, she must have done something to allow the horse to escape the enclosure. This type of speculation and conjecture is specifically prohibited. Therefore, Defendant Davis is entitled to judgment as a matter of law.

CONCLUSION

For the reasons set forth, Defendant Davis requests an Order granting judgment in her favor. Said motion shall be based upon the statute and case law of the State of South Carolina, upon the pleadings and other evidence developed in discovery and other material properly received by the Court in connection therewith.

RILEY POPE & LANEY, LLC

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E-mail: damonw@rplfirm.com
Attorneys for Defendant Davis

Columbia, South Carolina
February 19, 2019

ORIGINAL

SOUTH CAROLINA DPS/DHS & DMV USE ONLY				SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM				# Of Units		Amended, Attest Copy of Original Report		Notified		Arrived	
Page # 1				TR-310 (Rev. 11/2011)				02		Corrected		2-1-0-5		2-1-1-0	
Date	Time of Collision	County	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- PP	Collision Location (Rt. # / Name)			0- Main Line 1- Alternate 2- Spur	6- Connection 7- Business 8- Other	Alles.	Dir.	In (Near City or Town or)			
10-24-2014	2:10:0	43	2- US Primary	5- County	378 / MYRTLE BEACH HWY			0- Main Line	6- Connection	Alles.	Dir.	SUMTER			
Lane # / Dir.	Distance (Miles)	Direction	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Base Intersection (Rt. # / Name)			0- Main Line 1- Alternate 2- Spur	6- Connection 7- Business 8- Other	GPS COORDINATES 60 00 00.00		DEGREES MINUTES SECONDS			
2 / 4	45.00	N E	2- US Primary	5- County	657 / ALLIGATOR BRANCH RD			0- Main Line	6- Connection	Latitude		33 54 32.1			
R.R. Id.	From	Ramp Only	To	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Second Intersection (Rt. # / Name)			0- Main Line 1- Alternate 2- Spur	6- Connection 7- Business 8- Other	Longitude		80 15 49.6		
	N E	1- Entrance 2- Exit	N E	2- US Primary	5- County	1 SISTERS LN			0- Main Line	6- Connection					
E-848410				E-848411											
Driver/Pedestrian's Full Name				Driver/Pedestrian's Full Name											
DAVIS LEAF MINNIE MAE				HAYWARD SAMUEL J											
Unit #	Sex	Race			Unit #	Sex	Race								
01	F	B			02	M	B								
Birth Date				City, State, & Zip				SC 291538070				SC 291539233			
State				Class				Insurance Company				GOVERNMENT EMPLOYEES			
Year				Body				Vehicle Make				VIN #			
2015				4S				NISS							
State				Year				License Plate #				Owner's D.L. #			
SC				2012				FDU381				UNKNOWN			
Home Telephone				Owner's Full Name				Home Telephone				Owner's Full Name			
				LEAF								NELSON JULIA A			
Bus. Telephone				Street				Bus. Telephone				Street			
Contributed To Collision				City, State, & Zip				Contributed To Collision				City, State, & Zip			
Yes				No				Yes				No			
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Driver/Pedestrian's Full Name				State				Year				License Plate #			
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Home Telephone				Owner's Full Name				Home Telephone				Owner's Full Name			
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1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818
3

4 Minnie Davis-Leaf,)
5 Plaintiff,) DEPOSITION OF
6 vs.) WANDA DAVIS
7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
8 and Wanda Davis,)
9 Defendants.)
10 _____)
11

12 Deposition on oral examination of WANDA DAVIS,
13 reported by Patricia G. Bachand, Court Reporter and Notary
14 Public in and for the State of South Carolina; pursuant to
15 Rule 30 of the South Carolina Rules of Civil Procedure;
16 said deposition was taken at the Bryan Law Firm of SC, 17
17 East Calhoun Street, Sumter, South Carolina, on Friday, the
18 11th day of January 2019, and commencing at the hour of
19 12:14 p.m.
20
21
22
23
24
25

1 was insufficient to keep Swinger inside it?

2 A. Yes, it should have kept her inside. Yeah.

3 Q. No, I understand that. I'm asking you, at any
4 time while you were keeping your horse at the Jones'
5 property, did you ever think that it was insufficient to
6 keep her inside the enclosure?

7 A. I don't understand.

8 Q. Did you ever -- did you ever, in your mind, think
9 that the Jones' enclosure was insufficient?

10 A. No.

11 Q. If you had, you would have brought that to the
12 attention of the Jones, wouldn't you?

13 A. Yeah.

14 Q. Were you surprised to learn that Swinger had
15 gotten out of the enclosure?

16 A. Yeah.

17 Q. Had you ever known Swinger to get out of that
18 enclosure before?

19 A. No.

20 Q. Do you know how Swinger got out of the enclosure?

21 A. No. The only thing I heard, they said it was the
22 small gate open. That's what I was told.

23 Q. Had you been to the Jones' property on October
24 24th, 2014, prior to the incident?

25 A. No.

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

3
 4 Minnie Davis-Leaf,)
 5 Plaintiff,) DEPOSITION OF
 6 vs.) MADISON DAVIS
 7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
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 13 reported by Patricia G. Bachand, Court Reporter and Notary
 14 Public in and for the State of South Carolina; pursuant to
 15 Rule 30 of the South Carolina Rules of Civil Procedure;
 16 said deposition was taken at the Bryan Law Firm of SC, 17
 17 East Calhoun Street, Sumter, South Carolina, on Friday, the
 18 11th day of January 2019, scheduled for ten o'clock a.m.,
 19 and commencing at the hour of 10:22 a.m.
 20
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 25

1 A. Yes.

2 Q. And that's your initials down at the bottom right
3 of the drawing, correct?

4 A. Yes.

5 Q. The car you drove on there, just for the record,
6 you're drawing that's where if someone, such as you or your
7 mom, was coming to tend to the horses, that's where you
8 would park.

9 A. Yes.

10 Q. Is that what that's there to represent?

11 A. Yes.

12 Q. Had you been to the property -- the Jones'
13 property, on October 24 of 2014, the day that Swinger
14 unfortunately died?

15 A. Yes.

16 Q. What time did you arrive at the Jones' property
17 that day?

18 A. With it being four years ago, I don't remember
19 the time. But I know it was daylight.

20 Q. Do you remember the day of the week that was, by
21 any chance?

22 A. No. I could guess, but I'm not sure.

23 Q. Was anyone with you when you went?

24 A. I had a friend with me. He didn't get out of the
25 car.

1 long were you there on October 24th, 2014?

2 A. It couldn't have been more than ten minutes.

3 'Cause like I said, you go in the barn and you get the food
4 and you take it to her. And I might pet her for like a few
5 seconds, tell her "Bye" and then leave. So I wouldn't say
6 more than ten minutes.

7 Q. Let me ask you, it's been four years ago,
8 correct?

9 A. Yes.

10 Q. A little over four years ago, right?

11 A. Yes.

12 Q. Do you have a -- how would you describe your
13 memory of that date, now that we sit here today, a little
14 over four years later?

15 A. I only really remember like certain pieces.

16 Q. Okay.

17 A. I guess the things that really made me upset
18 about it, I remember those things.

19 Q. Do you remember what you did on October 24, 2014,
20 while you were there?

21 A. With Swinger?

22 Q. Yes.

23 A. I only fed her. 'Cause my friend was waiting in
24 the car, so I fed her and that was it. And again, like I
25 said, you can see the gates if they're open or closed when

1 you walk by them.

2 Q. And what did you observe with regards to the gate
3 when you were there?

4 A. They were closed.

5 Q. Is that something you would check on regularly
6 when you went?

7 A. Uh-uh. No, if I wanted to pet her, and she
8 happened to come to that gate, I'd go over there and pet
9 her.

10 Q. But on October 24, 2014, the gates were closed?

11 A. I never saw them open.

12 Q. I'm trying to understand your testimony, 'cause I
13 asked what you -- what you did when you were there, and you
14 said you only fed her. But then I believe you said, "But
15 the gates were closed."

16 A. You don't have to go in the gates to feed her.
17 You just walk in and pour it over the stall, the board
18 that's in front of it. I mean, there's no horses in any
19 barns, that you have to go through the gate to feed them;
20 you pour it over their stall doors.

21 Q. Sure. And I guess I'm just asking you, can you
22 say with certainty, when you were there on October 24 of
23 2014, that the gates were closed?

24 A. Yes.

25 Q. And that's because you observed them closed,

1 that you would go out there?

2 A. See, I can't remember. I think I was still in
3 school, so I don't remember.

4 Q. Did you see anyone else on the property, the
5 Jones' property, while you were there?

6 A. No. I usually don't see anyone. Like, I don't
7 ever see the Jones, besides Chastity. Every now and then
8 her parents let her come outside.

9 Q. Did you go -- and I think you've already answered
10 this question, but did you go through the little gate or
11 the big gate on October 24th, 2014?

12 A. No.

13 Q. Do you know if anyone went back to the property
14 before this incident occurred on October 24th, 2014?

15 A. No. But they told me that they were worried
16 about someone taking the horses, and that's why they were
17 building a second gate throughout here, and a gate to the
18 driveway.

19 Q. Tell me about that. Tell me what you mean.

20 A. All I really remember was them mentioning that
21 they felt like somebody might have been coming onto the
22 property. So they started to build like a fence and a gate
23 to the driveway, to try to secure it. But they never
24 finished it by the time that happened. They were just
25 putting it up.

1 Q. When you were there on October 24, 2014, the day
2 that you went to feed her before this incident occurred,
3 did you check to see if the gates were latched?

4 A. No. Because you could see them, like you would
5 see if the chain wasn't around it, or you would see if it
6 was open.

7 Q. And it's your horse that you cared for, correct?

8 A. Yes.

9 Q. So is that something that you would -- you would
10 observe when you would go to the property to see that the
11 gates were latched?

12 A. I would have noticed, yes.

13 Q. You would have noticed if they were unlatched?

14 A. Yes. I'm pretty observant, so I would have
15 noticed.

16 Q. So you feel like you observed that the gates were
17 latched when you were there?

18 A. The chains were around them. And that was the
19 only thing that was around them.

20 Q. But you're familiar with how the chains went
21 around the gates, correct?

22 A. From what I remember, they wrapped around. There
23 was a tiny little thing that came out of the gate, and then
24 the chain would fit right there in it. Like, the last
25 piece of the chain that would hold it shut, it fit right

1 there in that little piece.

2 Q. Did you feel like it was secure?

3 A. Yes.

4 Q. And you wouldn't have let your horse stay there
5 if you didn't feel it was secure, correct?

6 A. Right.

7 Q. When you were there on October 24 of 2014, did
8 you go in and out of any of these gates, the little gate or
9 the big gate?

10 A. No.

11 Q. Did you leave the little gate or the big gate
12 unlatched?

13 A. No. I hadn't been in them for months.

14 Q. If after the incident occurred, a gate was
15 discovered unlatched, would that surprise you?

16 A. Yes.

17 Q. And why would it surprise you?

18 A. Because they weren't unlatched whenever I left.

19 Q. Were you the last one on the property before this
20 incident occurred?

21 A. From what I know of, yes.

22 Q. Do you dispute leaving the gate unlatched?

23 A. I didn't open the gate. And it wasn't open.

24 Q. So you didn't -- it was latched when you left?

25 A. Yes.

1 knowledge that the Jones did anything or didn't do -- or
2 failed to do something that allowed the horse to get out?
3 Do you have any knowledge that they did or didn't do
4 something that allowed that horse to get out -- your horse
5 to get out?

6 A. I don't know. I'll have to think about that one.

7 Q. I guess what I'm asking -- the gate was latched
8 when you were there, correct?

9 A. That day, yes.

10 Q. And you felt like the enclosure was secure for
11 your horse, for Swinger, correct?

12 A. Yes.

13 Q. Swinger had never gotten out before, correct?

14 A. Correct.

15 Q. Would you have let Swinger stay in a pasture or
16 an enclosure if you felt like it wasn't safe and secure?

17 A. We wouldn't have allowed her to stay there. But
18 we were in the process of moving her from their property.

19 Q. Why were you going to move her from the property?
20 Do you know?

21 A. I believe it was so she could be closer to us.

22 Q. But it didn't have anything to do with your
23 concerns about the enclosure being enclosed and appropriate
24 to keep your horse enclosed, correct?

25 A. No. But I didn't really like her being there.

1 Q. And in response to Attorney Moorman's questions,
2 you said the chain went all the way around -- you observed
3 the chain went all the way around the gate --

4 A. Yes.

5 Q. -- and the fence post, correct?

6 A. Yes.

7 Q. And you're a co-owner of Swinger, correct, with
8 your mom, correct? You are a co-owner of Swinger, correct?

9 A. To an extent. I mean, I was really young, so I
10 can't just be --

11 Q. Well, you were --

12 A. -- like, "Oh, yeah."

13 Q. You felt like Swinger was your horse, right?

14 A. Yes.

15 Q. And so you liked to look out for your horse and
16 protect your horse, correct?

17 A. Yes.

18 Q. And you were comfortable when you left that day,
19 that your horse was safe and secure inside that pasture; is
20 that correct?

21 A. Yes.

22 MR. COX: That's all I got. Thank you.

23 Further deponent sayeth not.

24 (There being no further questions, the deposition
25 concluded at 12:11 p.m.)

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818
3

4 Minnie Davis-Leaf,)
5 Plaintiff,) DEPOSITION OF
6 vs.) CARROLL JONES
7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
8 and Wanda Davis,)
9 Defendants.)
10 _____)
11

12 Deposition on oral examination of CARROLL JONES,
13 reported by Patricia G. Bachand, Court Reporter and Notary
14 Public in and for the State of South Carolina; pursuant to
15 Rule 30 of the South Carolina Rules of Civil Procedure;
16 said deposition was taken at the Bryan Law Firm of SC, 17
17 East Calhoun Street, Sumter, South Carolina, on Friday, the
18 11th day of January 2019, and commencing at the hour of one
19 o'clock p.m.
20
21
22
23
24
25

1 a -- you know, a porch swing to. And then you wrap that
2 chain around it and put the chain in that hook. And it
3 also had a rope on the top of the gate, that was tied to
4 the gate. The rope hooked over to the post -- another
5 wooden post.

6 Q. And what about the eight-foot fence, how was that
7 secured?

8 A. The same way: With a chain around it and a hook.

9 Q. Did it have the rope as well, or just chain?

10 A. Just chain. It was very seldom used. Only to
11 put a tractor or something like that, going to the barn to
12 the pasture.

13 Q. Did you-all ever take your horses out of the
14 pasture into the area in front of it or around the side?

15 A. Yes.

16 Q. Would you use the four-foot gate or the eight-
17 foot gate to do that?

18 A. Four-foot gate.

19 Q. In terms of having to go into the pasture would
20 you -- or to the extent that you saw your family members,
21 would they use the four-foot gate to generally go back and
22 forth? Or would they use the eight-foot gate?

23 A. Four-foot.

24 Q. Did you have -- or would anybody have to access
25 the pasture, actually go in the pasture to feed the horses?

1 A. No, sir. It was not necessary.

2 Q. And the same question with regard to watering the
3 horse: From my understanding there was an area further down
4 that had the water trough, would you have to actually walk
5 into the pasture in order to water or refill the water?

6 A. No, sir.

7 Q. Prior to this October 24th, 2014 date, had there
8 ever been an occasion where any of the horses that were in
9 the pasture, got out of the pasture?

10 A. Yes, sir.

11 Q. Do you know on how many different occasions that
12 might have happened over the year -- say past ten years?

13 A. Maybe once.

14 Q. Do you remember which horse that was?

15 A. I know Maximus may have gotten out.

16 Q. And what do you know about that particular -- or
17 Maximus getting out?

18 A. Well, he was a small colt, so he would have been
19 able to get through the wire.

20 Q. And explain to me how that might have occurred
21 because -- describe the wire and describe how he would have
22 got out. I'm not sure of his size or anything like that,
23 so --

24 A. Well, colts are small, and sometimes they're big
25 -- bigger than a dog -- you know, maybe taller than a Great

1 A. No.

2 Q. -- unsecured?

3 A. I do not.

4 Q. And that would be from anybody: Your wife, her
5 niece, her husband, family members, friends, neighbors.
6 Anybody coming up to tell you -- total strangers saying,
7 "Hey, by the way, this is how that gate got opened." You
8 don't have any information about it?

9 A. I cannot tell you how the gate was open, that's
10 correct.

11 Q. When you got back to your property, do you recall
12 how many days it was after the 24th when this accident
13 happened?

14 A. It had been the next evening, or either that
15 Saturday, that weekend.

16 Q. Was your wife still in Raleigh at that time when
17 you got back?

18 A. No, I would say -- I can't remember. I couldn't
19 tell you.

20 Q. In other words, do you remember who came back
21 first?

22 A. I do not.

23 Q. Do you remember inspecting your property or the
24 fence, the gates, when you got back after this accident?

25 A. Yes, sir.

1 Q. Beside it. Again going out there today, if you
2 looked at the four-foot gate, would it have the same chain
3 and the same rope that you used back in 2014?

4 A. It's probably got the same chain. Now, I don't
5 know if the rope's still there.

6 Q. But it still would be a rope --

7 A. But I do have different ropes over the -- over
8 the years. I don't know if it's there now or not. We
9 don't have any horses anymore.

10 Q. When did Maximus go?

11 A. Probably a little over a year. Probably about a
12 year now. When Chas left home, the horse went.

13 Q. Did you ever have any problems at your house, in
14 the past ten years, with any type of vandalism that you
15 know of? You know, you find something that was broken? I
16 had someone steal a lawnmower at one time. Anything like
17 that --

18 A. Yes.

19 Q. Theft? Vandalism?

20 A. Several times.

21 Q. What type of issues did you have in terms of
22 either theft or vandalism?

23 A. The vandalism was my electrical box, twice, for
24 my fence.

25 Q. And what happened with that?

1 what the gate looked like, and send them to you?

2 A. Not to my knowledge. No, sir.

3 Q. Did anybody take any pictures, when they came
4 from Farm Bureau, when they came to look at your gate that
5 evening?

6 A. I'm sure they did.

7 Q. When you came home that -- you would have gotten
8 home that Saturday morning; is that right?

9 A. I can't remember. Some weekends I work. Some I
10 don't.

11 Q. When you got home from working that weekend, did
12 you go out and inspect everything?

13 A. I'm sure I did.

14 Q. What would you have done when you went out there?

15 A. Walked the fence around. Make sure the horse
16 didn't come out anywhere on the fence and everything's --
17 well, like I said my memory. But yeah, I would have walked
18 the whole pasture around, and tried to see if there was
19 only -- any other place the horse could have come out. And
20 that would have been the gate.

21 Q. 'Cause you didn't know -- did you personally know
22 when the last time that either Madison Davis or Wanda Davis
23 were there on October the 24th of 2014? Did you ever know
24 what time they came?

25 A. Time? No, sir.

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

3
4 Minnie Davis-Leaf,)
5 Plaintiff,) DEPOSITION OF
6 vs.) KELSEY JONES
7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
8 and Wanda Davis,)
9 Defendants.)

10 _____)
11
12 Deposition on oral examination of KELSEY JONES,
13 reported by Patricia G. Bachand, Court Reporter and Notary
14 Public in and for the State of South Carolina; pursuant to
15 Rule 30 of the South Carolina Rules of Civil Procedure;
16 said deposition was taken at the Bryan Law Firm of SC, 17
17 East Calhoun Street, Sumter, South Carolina, on Friday, the
18 11th day of January 2019, and commencing at the hour of
19 3:13 p.m.

1 how the gate came open on the 24th of October?

2 A. None whatsoever.

3 Q. It's my understanding you called Mrs. Davis to
4 inform her about the horse.

5 A. Yes.

6 Q. What did you tell her?

7 A. As best I recall, I told her that there had been
8 an accident; that Swinger had gotten onto the highway; as
9 far as I knew, I believe there were two vehicles, and
10 possibly three people injured.

11 Q. And when you were speaking to her, did you know
12 the status of the horse -- her horse that had died?

13 A. Yes.

14 Q. And did you tell her that?

15 A. I think I did.

16 Q. Do you know about how long the phone call lasted?

17 A. It was very brief.

18 Q. Did you have any conversations with her after
19 that, about any of this?

20 A. I don't remember any conversations.

21 Q. What about with Madison, did you have any
22 conversations with her about this accident?

23 A. I don't remember talking to her anymore.

24 Q. I'll just ask you this: Aside from guessing or
25 speculating, I just want to confirm as we sit here today,

1 you don't have any information as to how the gate came open
2 and Swinger got out on the road?

3 A. I do not.

4 MR. WLODARCZYK: I'm sure plaintiffs'
5 counsel has more questions for you.

6 CROSS-EXAMINATION BY MR. MOORMAN:

7 Q. Ms. Jones, my name is John Moorman. I asked your
8 husband some questions earlier. You said who you talked to
9 -- your sister-in-law, what is her name?

10 A. Cheryl Chandler.

11 Q. Cheryl Chandler. And your niece and her husband,
12 who is that?

13 A. Erin Hughes and Daniel Hughes.

14 Q. And then I also have that you spoke to Ms. Wanda
15 Davis; is that correct?

16 A. Yes.

17 Q. And did you speak to Madison Davis?

18 A. No.

19 Q. Did you speak with anybody with the highway
20 patrol, Sumter County or anybody like that?

21 A. I did.

22 Q. When did you talk to them?

23 A. I called the emergency room, probably two -- I
24 want to say it was late, maybe 2 a.m. to make sure that the
25 person who was admitted to the hospital was okay.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

C/A NO.: 2017-CP-43-01819

Samuel Hayward,

Plaintiff,

v.

Kelsey Jones, Carroll Jones, and Wanda
Davis,

Defendants.

**NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT ON BEHALF OF
WANDA DAVIS**

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the Defendants will appear before the presiding judge for Sumter County, ten (10) days after service hereof at 10:00 a.m., or at such other time and place as the Court may direct, and move for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting to the Defendant Davis Summary Judgment on the grounds there is no direct or circumstantial evidence of negligence and the doctrine of *res ipsa loquitur* is not recognized in South Carolina.

Said motion shall be based upon the statute and case law of the State of South Carolina, upon the pleadings and other evidence developed in discovery and other material properly received by the Court in connection therewith.

RILEY POPE & LANEY, LLC

s/Damon C. Wlodarczyk

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Attorneys for Defendant Davis

Columbia, South Carolina
January 24, 2019

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

C/A NO.: 2017-CP-43-01811

Elvis Nelson,

Plaintiff,

v.

Kelsey Jones, Carroll Jones, and Wanda
Davis,

Defendants.

**NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT ON BEHALF OF
WANDA DAVIS**

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the Defendants will appear before the presiding judge for Sumter County, ten (10) days after service hereof at 10:00 a.m., or at such other time and place as the Court may direct, and move for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting to the Defendant Davis Summary Judgment on the grounds there is no direct or circumstantial evidence of negligence and the doctrine of *res ipsa loquitur* is not recognized in South Carolina.

Said motion shall be based upon the statute and case law of the State of South Carolina, upon the pleadings and other evidence developed in discovery and other material properly received by the Court in connection therewith.

RILEY POPE & LANEY, LLC

s/Damon C. Wlodarczyk
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Attorneys for Defendant Davis

Columbia, South Carolina
January 24, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

CIVIL ACTION NO: 2017-CP-43-1118

Minnie Davis-Leaf,

PLAINTIFF,

vs.

Kelsey Jones, Carroll Jones, and
Wanda Davis,

DEFENDANTS.

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT WANDA
DAVIS' MOTION FOR SUMMARY
JUDGMENT**

**TO: DAMON C. WLORDARCZYK, ESQUIRE, ATTORNEY FOR THE DEFENDANT
WANDA DAVIS:**

FACTS

On October 24, 2014, the Defendant Wanda Davis 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 and located adjacent to U.S. Highway 378 in Sumter County, South Carolina. At her deposition, Madison Davis testified that on October 24, 2014, she fed the horse at the pasture and left within ten (10) minutes. (Exhibit Madison Davis Page 28, Lines 2-6). The pasture where Swinger was kept had two gates, a large gate and a small gate. (Exhibit Madison Davis Page 18, Lines 12-14).

Later that evening at approximately 9 p.m., the Plaintiff Minnie Davis-Leaf was traveling west in her 2015 Nissan automobile on U.S. Highway 378 in the County of Sumter, State of South Carolina. As Mrs. Davis-Leaf was traveling on U.S. Highway 378, Mrs. Davis-Leaf struck the horse, owned by the Defendant Wanda Davis, that had collided with a vehicle being driven by

Samuel Hayward. As a result of the collision with the Defendant's horse, the Plaintiff's car flipped and landed upside down on the side of the road. As a result of the collision with the Defendant's horse, the Plaintiff was injured and required medical treatment.

The owners of the pasture, where the Defendant's horse was being boarded were out of town and were notified by law enforcement via telephone of the collision involving the 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 Defendant Wanda Davis' horse had escaped. (Exhibit C Kelsey Jones Depo Page 14, Lines 11-17). When the pasture owners' family arrived, they discovered that the small gate of the pasture was open. The owners of the pasture notified the Defendant Wanda Davis of the collision involving her horse that same night. The Defendant Wanda Davis never came to the scene of the collision.

STANDARD

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP. "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. 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.*

ARGUMENT

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 wilfully 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, the 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 Defendant Wanda Davis was the owner of the horse that was wandering in the middle of U.S. Highway 378 in Sumter County on the night of October 24, 2014 when it was struck by the vehicle that the Plaintiff was riding in as a passenger. (Exhibit Wanda Davis Page 10, Lines 9-17).

The Plaintiff must next submit evidence from which the jury could infer at least negligence on the part of the Defendant 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).

The Defendant correctly asserts 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 (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).

At her deposition, the Defendant Wanda Davis testified that she never physically inspected the gates at the pasture and didn’t know how the gates were secured. (Exhibit Wanda Davis Page 22, Lines 24-25, Page 23, Line 10 and Exhibit Wanda Davis Page 23, Lines 17-21). The Defendant Wanda Davis testified that on another 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. (Exhibit Wanda Davis Page 54, Lines 17-19) and (Exhibit Madison Davis Page 40, Lines 15-24). The Defendant Wanda Davis testified that she had previously found the small gate at the pasture open before and that she had secured the gate with a rope. (Exhibit Wanda Davis Page 72, Lines 4-23). The Defendant Wanda Davis 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. (Exhibit Wanda Davis Page 51, Lines 19-23). The Defendant, Wanda Davis, testified that she didn’t talk to the owners of the property about properly securing the small gate to prevent it from being left open. (Exhibit Wanda Davis Page 72, Lines 4-23). 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, she responded, “I guess so.” (Exhibit Wanda Davis Page 72, Lines 4-23).

The deposition testimony of Madison Davis also provides evidence from which a jury could infer negligence on behalf of the Defendant Wanda Davis 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 Defendant Wanda Davis' 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. (Exhibit B Madison Davis Page 61, Lines 4-5). 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. (Exhibit Madison Davis Page 68, Lines 9-20). Ultimately, Madison Davis testified that she did not physically check the security of the gates on October 24, 2014. (Exhibit Madison Davis Page 81, Lines 1-6).

In her deposition, the Defendant Wanda Davis also acknowledged that if a pasture gate is open, then a horse could get out of the pasture and end up on the highway. The Defendant, Wanda Davis, went on to testify that she owned a large horse, that a horse was something that someone would not expect to see in the roadway, and that it was dangerous for people traveling on the roadway. (Exhibit Wanda Davis Page 46, Lines 14-25 and Page 47, Lines 1-5).

The testimony of the Defendant Wanda Davis, along with the testimony of Madison Davis, presents more than a mere scintilla of evidence from which the jury could infer that the Defendant Wanda Davis 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 Defendant Wanda Davis. The Defendant Wanda Davis never informed the owners of the pasture about the small gate being unsecured, despite the Defendant stating that she should have let the pasture owners know about the condition of the small gate. This was the same small gate that was found open following the Plaintiff's collision involving the horse on the night of October 24, 2014. Clearly, an inference of negligence can be made that the small gate was not properly secured 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 similar 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.* The record shows additionally 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 Defendant is moving 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 Defendant's motion for summary judgment. Specifically, there clearly exists more than a mere scintilla of evidence from which a jury could infer negligence on the part of the Defendant. First, the horse's pasture was adjacent to U.S. Highway 378, and the horse owned by the Defendant was wandering in the middle of the four-lane highway. Additionally, 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 Defendant Wanda Davis 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

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 Plaintiff that there is more than a mere scintilla of evidence in which the jury could infer at least negligence on the part of the Defendant in permitting her horse to go onto U.S. Highway 378. As such, the Plaintiff requests that the Court deny the Defendant's Motion for Summary Judgment.

BRYAN LAW FIRM OF SC, L.L.P.

By: s/John R. Moorman
 John R. Moorman
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 Sumter, SC 29151
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Sumter, South Carolina
 September 6, 2019

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

3
 4 Minnie Davis-Leaf,)
 5 Plaintiff,) DEPOSITION OF
 6 vs.) WANDA DAVIS
 7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
 8 and Wanda Davis,)
 9 Defendants.)

10 _____)
 11
 12 Deposition on oral examination of WANDA DAVIS,
 13 reported by Patricia G. Bachand, Court Reporter and Notary
 14 Public in and for the State of South Carolina; pursuant to
 15 Rule 30 of the South Carolina Rules of Civil Procedure;
 16 said deposition was taken at the Bryan Law Firm of SC, 17
 17 East Calhoun Street, Sumter, South Carolina, on Friday, the
 18 11th day of January 2019, and commencing at the hour of
 19 12:14 p.m.

APPEARANCES:

REPRESENTING THE PLAINTIFF:

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17 East Calhoun Street
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REPRESENTING THE DEFENDANTS KELSEY JONES AND CARROLL JONES:

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REPRESENTING THE DEFENDANT WANDA DAVIS:

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(damonw@rplfirm.com)

ALSO ATTENDING:

MADISON DAVIS

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(None proffered.)

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Court Reporter's Legend:

dashes [--] Intentional or purposeful interruption
 ... Indicates trailing off
 [ph] Denotes phonetically written
 [sic] Written as said

1 stuff, and he told me -- I guess -- I guess, like, I feed
2 her and take care of myself, and then he's responsibility
3 for everything else. Like, the property -- I didn't mess
4 with the property.

5 Q. Okay. And so let's get a couple of things, just
6 for the record, clear. Swinger is the horse that's the
7 subject of the case, correct?

8 A. Yes.

9 Q. And is Swinger your horse? Was Swinger your
10 horse?

11 A. Yes, she was -- she -- well, I had got her for my
12 daughter. Basically, I -- I'm the one that -- I mean, I'm
13 the one that, you know, supplied -- supplied everything for
14 her.

15 Q. So Swinger was your horse.

16 A. Well, she was mine. But she was mine for my
17 daughter. That's the reason I got her.

18 Q. You got Swinger for your daughter.

19 A. Yes.

20 Q. And so do you agree the ownership of Swinger
21 rested with you and your daughter?

22 A. I -- that's -- I'm going to freeze on that one.

23 Q. I mean, she was your horse.

24 A. I feel she was -- I mean, she was Madison's. But
25 then she -- I feel she was mine, 'cause I took

1 Q. And it's my understanding you went and got a
2 piece of rope and added it to the gate, to extra-secure it,
3 correct?

4 A. Yeah, I went and got a lead rope and tied it
5 around it, to make sure it was...

6 Q. A lead rope.

7 A. Yes, I went and got a lead rope and put around
8 it.

9 Q. What else was there to secure that gate when you
10 added the lead rope to it?

11 A. I didn't really -- I just -- I just put the lead
12 rope on it and that was it.

13 Q. But this was at least a couple or few years into
14 Swinger's tenure of staying at the Jones' property,
15 correct?

16 A. Yeah.

17 Q. That you -- that you saw this. All right.

18 A. Uh-huh.

19 Q. How did the gate -- during the first two or three
20 years of you keeping Swinger there, how did this gate lock
21 or latch?

22 A. That's the only thing I saw that was on the gate.
23 I mean, I don't -- I don't remember --

24 Q. What was the only thing that you saw that was on
25 the gate?

1 A. They had that rope over it.

2 **Q. They had a rope over the gate?**

3 A. Yeah, they -- it was up over it. And like I
4 said, I don't -- and then like I said, they could have had
5 something. I just -- I don't -- 'cause I don't never mess
6 much with the gate. That was the only time I ever messed
7 with it, 'cause it was open.

8 **Q. But they had a mechanism to secure the gate in**
9 **addition to the lead rope that you added to it, correct?**

10 A. I don't know if they stay -- the lead rope stayed
11 on it, 'cause I never messed with the gate after that.

12 **Q. I understand that. But I -- but what I'm trying**
13 **to get at is -- certainly, on this date that you saw the**
14 **gate open, that gate wasn't always open during the couple**
15 **few years that you'd been coming to the property, was it?**

16 A. No, that was the only time that I saw.

17 **Q. On the times that you went there and saw that it**
18 **wasn't open, how was it secured?**

19 A. I just know -- I never went over and messed with
20 it. If I didn't see it cracked -- or I didn't see it open,
21 I never messed with it.

22 **Q. Okay. So you -- are you able to tell me -- let**
23 **me do this: Before you decided to start leaving Swinger at**
24 **the Jones' property -- you saw an ad in the paper.**

25 A. Uh-huh.

1 A. They had that rope over it.

2 **Q. They had a rope over the gate?**

3 A. Yeah, they -- it was up over it. And like I
4 said, I don't -- and then like I said, they could have had
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14 **gate open, that gate wasn't always open during the couple**
15 **few years that you'd been coming to the property, was it?**

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18 **wasn't open, how was it secured?**

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20 it. If I didn't see it cracked -- or I didn't see it open,
21 I never messed with it.

22 **Q. Okay. So you -- are you able to tell me -- let**
23 **me do this: Before you decided to start leaving Swinger at**
24 **the Jones' property -- you saw an ad in the paper.**

25 A. Uh-huh.

1 **Q. Is the gates at the -- do the chains at the Jones**
2 **lock?**

3 A. It had like a little -- his was -- that one --
4 the one that I -- I messed with the big gate had a chain.
5 And it had like a little lip on it, you poked it down and
6 latched it.

7 **Q. Do you know if that -- but did the small gate**
8 **have that?**

9 A. No, I don't know.

10 MR. MOORMAN: That's all the questions I
11 have.

12 REDIRECT EXAMINATION BY MR. COX:

13 **Q. Just a couple for clarification. Ms. Davis,**
14 **before this incident are you aware of Swinger ever getting**
15 **out of the Jones' enclosure before?**

16 A. No.

17 **Q. Now, you mentioned one time you went to the**
18 **property and you said Maximus was outside of the enclosure?**

19 A. Yeah.

20 **Q. Chastity was home that day?**

21 A. No, if she was, she wasn't out there that day.

22 **Q. Okay. So --**

23 A. I didn't see her.

24 **Q. You pulled up to go feed Swinger, correct?**

25 A. Yeah.

1 fixed it, you know, I figured everything was okay.

2 Q. But you don't know if you --

3 A. See, I don't remember.

4 Q. And your fix was just putting a rope around it;
5 is that right?

6 A. Well, that's all that I could find, that he had
7 out there.

8 Q. You didn't talk to him about having to secure it
9 better or anything like that?

10 A. No.

11 Q. Whether there was a problem --

12 A. No.

13 Q. -- with security --

14 A. No.

15 Q. Would you agree with me that as a owner of that
16 horse, that's part of your responsibility is to tell other
17 people who are looking after this pasture land and
18 everything, that there might be a problem going on with
19 gates opening -- and if a gate's open, a horse can get out?

20 MR. WLODARCZYK: Object to the form. (To
21 the witness) You can answer it.

22 A. I guess so. But I don't -- I mean, I -- I mean,
23 I just figured I closed it up and it was -- it was secure.

24 Q. So you don't think you're responsible to tell the
25 Jones about that.

1 it?

2 A. No.

3 Q. Do you know if the Jones did that?

4 A. No, I do not.

5 Q. Do you know if there were any locks on any of the
6 gates?

7 A. No, there was no locks.

8 Q. Do you know if there are any locks on the gates
9 now?

10 A. No, I do not.

11 Q. And do you know -- and do you know if you were in
12 charge of making -- were there any instructions that the
13 Jones ever give you, about securing gates or anything like
14 that when you left?

15 A. No.

16 Q. They didn't ever say, you know, "Please do this
17 when you leave"?

18 A. No.

19 Q. Did you ever address any concerns with them?

20 A. No.

21 Q. Not even -- you don't -- you don't recall
22 addressing any concerns about that small gate being open?

23 A. No.

24 Q. In the paddock/barn, whatever you want to call
25 it, how many boards were in the front there, that would

1 give me more details. I didn't know much about all that.

2 Q. But you didn't try to find out any more details
3 from the Jones, about what had happened to your animal?

4 A. I hadn't talk to the Jones since that incident.

5 Q. Why is that?

6 A. I don't know. I just didn't -- I didn't talk to
7 them.

8 Q. You didn't ask them any questions? They didn't
9 call and ask you any questions?

10 A. No, they did not. They hadn't called me or --

11 Q. They didn't call and ask you anything about, you
12 know, how was out there during the day or anything like
13 that, taking care of the animals at all?

14 A. Uh-uh.

15 Q. They asked no questions whatsoever --

16 A. No.

17 Q. -- about this? And when State Farm called you
18 and talked to you, what did you tell them?

19 A. Basically -- I mean, from what I had heard,
20 that's the only thing I tell -- I mean, I didn't really
21 know much. Just something about a gate and my horse was
22 dead, and that the -- there was two cars involved. Two
23 vehicles.

24 Q. And did -- so you never physically went to the
25 scene at all.

1 A. No.

2 Q. You never went back out to the Jones' house.

3 A. No, I didn't go back at their house.

4 Q. And when you had saw that small gate being
5 cracked open before, and you put that rope around it, did
6 you tell the Jones about that?

7 A. I don't remember if I did. If I -- I don't
8 remember if I did or not.

9 Q. You think you should have told them about it?

10 A. Probably should have. I don't know. See, I
11 don't remember if I said something to them or not.

12 Q. That would be a reasonable thing to do, right?

13 A. I guess it would have been.

14 Q. Because if the gate comes open and -- a horse
15 could get out, right?

16 A. Yes, it could.

17 Q. And if the horse gets out it can end up on the
18 highway, right?

19 A. I guess it would have.

20 Q. And if a horse ends up in the highway and it's
21 dark outside, that's dangerous, right?

22 A. Yes.

23 Q. And not just for the horse but for people who are
24 traveling in the car, right?

25 A. Yes.

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

3
4 Minnie Davis-Leaf,)
5 Plaintiff,) DEPOSITION OF
6 vs.) MADISON DAVIS
7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
8 and Wanda Davis,)
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17 East Calhoun Street, Sumter, South Carolina, on Friday, the
18 11th day of January 2019, scheduled for ten o'clock a.m.,
19 and commencing at the hour of 10:22 a.m.

1 APPEARANCES:

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23
24 ALSO ATTENDING:

25 WANDA DAVIS

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(Copies of exhibits attached to transcript.)

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[ph] Denotes phonetically written

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1 long were you there on October 24th, 2014?

2 A. It couldn't have been more than ten minutes.

3 'Cause like I said, you go in the barn and you get the food
4 and you take it to her. And I might pet her for like a few
5 seconds, tell her "Bye" and then leave. So I wouldn't say
6 more than ten minutes.

7 Q. Let me ask you, it's been four years ago,
8 correct?

9 A. Yes.

10 Q. A little over four years ago, right?

11 A. Yes.

12 Q. Do you have a -- how would you describe your
13 memory of that date, now that we sit here today, a little
14 over four years later?

15 A. I only really remember like certain pieces.

16 Q. Okay.

17 A. I guess the things that really made me upset
18 about it, I remember those things.

19 Q. Do you remember what you did on October 24, 2014,
20 while you were there?

21 A. With Swinger?

22 Q. Yes.

23 A. I only fed her. 'Cause my friend was waiting in
24 the car, so I fed her and that was it. And again, like I
25 said, you can see the gates if they're open or closed when

1 A. No.

2 **Q. And then there's like some stables?**

3 A. Yeah, the stalls are like attached to it. The
4 fence runs to the end of the stalls and then there's like -
5 - they're made of wood. And there's like a giant wall, and
6 the fence is right there and then you see the stalls. But
7 there's, like, walls between the fence and the stall.

8 **Q. And other than the gate in the middle of the**
9 **pasture, that opens up into the larger pasture -- to a**
10 **larger fenced-in pasture, what access to get into the**
11 **enclosure are there?**

12 A. There's just a large gate near the stalls. And
13 then there's a smaller gate, like maybe a foot from the
14 large one.

15 **Q. From time to time would you -- let's see. Yeah,**
16 **from time to time would you go through the gate to be with**
17 **your horse, to go into the enclosures --**

18 A. No.

19 **Q. -- through the gate?**

20 A. I only opened the gate if I wanted to take her
21 out. I'm really small. I don't want to open that gate. I
22 just hop over the thing, the little wood, and then my mom
23 would stand on the outside if she was there. She wouldn't
24 climb over. She would just stand there.

25 **Q. Can you describe the gate for me?**

1 A. They're pretty close to the gates.

2 Q. When you say "pretty close," fifty feet? A
3 hundred feet?

4 A. Maybe a hundred feet. I'm not very good with
5 stuff like that.

6 Q. Which way did you park your car? Was it facing
7 the paddock? Was it facing the barn? Was it facing the
8 fence?

9 A. When you pull in, it faces straight. Like the
10 gates would be on your left and they --

11 Q. Okay.

12 A. -- would be facing the pasture.

13 Q. And you were driving the car?

14 A. Yes. It was a truck.

15 Q. You were driving the truck. So you got out of
16 the truck, walked to the barn; is that right? Is that the
17 first thing you did? What did you do first when you got
18 out of that truck?

19 A. I walked straight into the little side piece,
20 which is attached to the barn, to get the food. And then
21 you walk straight out and you walk into the barn and you
22 dump their food and then you leave.

23 Q. How much food did you give?

24 A. You give them one scoop.

25 Q. That's it?

1 A. No, I didn't -- I didn't know right away where
2 she had been hit. I just knew that she had been hit.

3 **Q. Were you shocked to learn that she -- were you**
4 **shocked to learn that she was hit by a car?**

5 A. Yes.

6 **Q. And why were you shocked to learn that?**

7 A. Because I never thought that would happen to her.

8 **Q. Did you understand when you got the news that**
9 **Swinger had gotten out of the enclosure --**

10 MR. COX: Let's take a short break.

11 (Off the record.)

12 EXAMINATION RESUMED BY MR. COX:

13 **Q. Ms. Davis, I meant to tell you, at any time if**
14 **you need a break just let me know, okay? I'll take as many**
15 **as you need. I think we're almost done, though. But had**
16 **Swinger ever escaped or gotten out of the enclosure at the**
17 **Jones' property before?**

18 A. No. Maximus has, the other horse.

19 **Q. Okay. But you said Maximus has?**

20 A. Yes.

21 **Q. Who is Maximus?**

22 A. That is their newest horse. It was a Paint. And
23 it was the only horse they had left, other than when we had
24 Swinger out there.

25 **Q. And you said it was a what?**

1 pole?

2 A. Attached to the gate.

3 Q. It's attached to the gate?

4 A. Yes.

5 Q. Whereabouts? On the side of the gate?

6 A. It's like on the inside of the gate.

7 Q. So you were able to see all the way from the
8 inside of the gate, that it was through the latch?

9 A. You could see the gate was closed, and that there
10 was chains multiple times around it.

11 Q. Do you know if it was through the latch or not?

12 A. No.

13 Q. And is there a lock on the gate?

14 A. No, not from what I remember.

15 Q. And do you believe that, that -- putting a lock
16 on the gate would provide more security for a horse getting
17 in and out of the fence?

18 A. Yes.

19 Q. And there are two gates, correct?

20 A. Yes.

21 Q. A small gate and a large gate, right? Do you
22 know which one the horses got out of on the -- on October
23 24th of 2014?

24 A. No.

25 Q. Do you know how long they had been out of the

1 Q. You didn't physically, that day on the 24th,
2 physically go up and check the security of the gates, did
3 you?

4 A. No, but you would -- it would be pretty obvious
5 that they were open. Like I've been saying before, you
6 would just notice that kind of thing.

7 Q. But you just mentioned earlier, you don't know if
8 the chain was through the latch or not.

9 A. No, but you could see that the chain went all the
10 way around.

11 Q. Right. But you don't know how tight the chain
12 was or how loose the chain was or anything like that.

13 A. No. But Swinger wouldn't push on stuff like
14 that. She never tries to get out. She's not that kind of
15 horse.

16 Q. Maximus, do you know if he does that?

17 A. With him being a baby, he might have been a
18 little mischievous. But I don't know. I'm not sure. I
19 only know Swinger. I don't know their horse.

20 Q. But you weren't there when the horse got out of
21 the fence, were you?

22 A. No.

23 Q. So you don't really know what happened, do you?

24 A. No.

25 Q. Other than the horse was out of the fence, right?

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2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

3
4 Minnie Davis-Leaf,)
5 Plaintiff,) DEPOSITION OF
6 vs.) KELSEY JONES
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ALSO ATTENDING:

CARROLL JONES

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[sic] Written as said

1 A. She did -- she did tell me it was Swinger.

2 **Q. And how would they know that? I'm just --**

3 A. I think it was the coloring. 'Cause ours is a
4 Paint with the big white spots on his body. And Swinger's
5 more solid brown.

6 **Q. Do you know if your sister actually went to your**
7 **property?**

8 A. I believe she was standing in front of our
9 property when she went out to speak to the EMS worker, and
10 talking to me.

11 **Q. And there was mention of your niece and her**
12 **husband. Do you know if they had any involvement with**
13 **going to your property or --**

14 A. As far as I know, yes. My niece went to check on
15 our horse, found our horse upset prancing. Also, I believe
16 it was her, or her husband, that found the gate opened and
17 closed the gate to keep Maximus inside.

18 **Q. So as far as you know, based on your**
19 **recollection, is that your sister, her daughter, which is**
20 **your niece, and your niece's husband were all at the**
21 **accident scene or on your property after this accident**
22 **happened on the 24th.**

23 A. My sister-in-law, yes, and my niece and her
24 husband, yes.

25 **Q. So it's your sister-in-law --**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

CIVIL ACTION NO: 2017-CP-43-1819

Samuel Hayward,

PLAINTIFF,

vs.

Kelsey Jones, Carroll Jones, and
Wanda Davis,

DEFENDANTS.

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT WANDA
DAVIS' MOTION FOR SUMMARY
JUDGMENT**

TO: DAMON C. WLORDARCZYK, ESQUIRE, ATTORNEY FOR THE DEFENDANT WANDA DAVIS:

FACTS

On October 24, 2014, the Defendant Wanda Davis 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 and located adjacent to U.S. Highway 378 in Sumter County, South Carolina. At her deposition, Madison Davis testified that on October 24, 2014, she fed the horse at the pasture and left within ten (10) minutes. (Exhibit Madison Davis Page 28, Lines 2-6). The pasture where Swinger was kept had two gates, a large gate and a small gate. (Exhibit Madison Davis Page 18, Lines 12-14).

Later that evening at approximately 9 p.m., the Plaintiff Samuel Hayward was driving west in a 1986 Ford Truck on U.S. Highway 378 in the County of Sumter, State of South Carolina. As Mr. Hayward was driving on U.S. Highway 378, the horse, owned by the Defendant Wanda Davis, was wandering on U.S. Highway 378 and struck the vehicle that the Plaintiff was driving. As a

result of the collision with the Defendant's horse, the Plaintiff Samuel Hayward was injured and required medical treatment.

The owners of the pasture, where the Defendant's horse was being boarded were out of town and were notified by law enforcement via telephone of the collision involving the 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 Defendant Wanda Davis' horse had escaped. (Exhibit C Kelsey Jones Page 14, Lines 11-17). When the pasture owners' family arrived, they discovered that the small gate of the pasture was open. The owners of the pasture notified the Defendant Wanda Davis of the collision involving her horse that same night. The Defendant Wanda Davis never came to the scene of the collision.

STANDARD

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP. "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. 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.*

ARGUMENT

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, the 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 Defendant Wanda Davis was the owner of the horse that was wandering in the middle of U.S. Highway 378 in Sumter County on the night of October 24, 2014 when it was struck by the vehicle that the Plaintiff was riding in as a passenger. (Exhibit Wanda Davis Page 10, Lines 9-17).

The Plaintiff must next submit evidence from which the jury could infer at least negligence on the part of the Defendant 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).

The Defendant correctly asserts 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 (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).

At her deposition, the Defendant Wanda Davis testified that she never physically inspected the gates at the pasture and didn’t know how the gates were secured. (Exhibit Wanda Davis Page 22, Lines 24-25, Page 23, Line 10 and Exhibit Wanda Davis Page 23, Lines 17-21). The Defendant Wanda Davis testified that on another 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. (Exhibit Wanda Davis Page 54, Lines 17-19) and (Exhibit Madison Davis Page 40, Lines 15-24). The Defendant Wanda Davis testified that she had previously found the small gate at the pasture open before and that she had secured the gate with a rope. (Exhibit Wanda Davis Page 72, Lines 4-23). The Defendant Wanda Davis 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. (Exhibit Wanda Davis Page 51, Lines 19-23). The Defendant, Wanda Davis, testified that she didn’t talk to the owners of the property about properly securing the small gate to prevent it from being left open. (Exhibit Wanda Davis Page 72, Lines 4-23). 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, she responded, “I guess so.” (Exhibit Wanda Davis Page 72, Lines 4-23).

The deposition testimony of Madison Davis also provides evidence from which a jury could infer negligence on behalf of the Defendant Wanda Davis 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 Defendant Wanda Davis’ 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. (Exhibit B Madison Davis Depo Page 61, Lines 4-5) 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. (Exhibit Madison Davis Page 68, Lines 9-20). Ultimately, Madison Davis testified that she did not physically check the security of the gates on October 24, 2014. (Exhibit Madison Davis Page 81, Lines 1-6).

In her deposition, the Defendant Wanda Davis also acknowledged that if a pasture gate is open, then a horse could get out of the pasture and end up on the highway. The Defendant, Wanda Davis, went on to testify that she owned a large horse, that a horse was something that someone would not expect to see in the roadway, and that it was dangerous for people traveling on the roadway. (Exhibit Wanda Davis Page 46, Lines 14-25 and Page 47, Lines 1-5).

The testimony of the Defendant Wanda Davis, along with the testimony of Madison Davis, presents more than a mere scintilla of evidence from which the jury could infer that the Defendant Wanda Davis 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 Defendant Wanda Davis. The Defendant Wanda Davis never informed the owners of the pasture about the small gate being unsecured, despite the Defendant stating that she should have let the pasture owners know about the condition of the small gate. This was the same small gate that was found open following the Plaintiff's collision involving the horse on the night of October 24, 2014. Clearly, an inference of negligence can be made that the small gate was not properly secured 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 similar 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.* The record shows additionally 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 Defendant is moving 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 Defendant's motion for summary judgment. Specifically, there clearly exists more than a mere scintilla of evidence from

which a jury could infer negligence on the part of the Defendant. First, the horse's pasture was adjacent to U.S. Highway 378, and the horse owned by the Defendant was wandering in the middle of the four-lane highway. Additionally, 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 Defendant Wanda Davis 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

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 Plaintiff that there is more than a mere scintilla of evidence in which the jury could infer at least negligence on the part of the Defendant in permitting her horse to go onto U.S. Highway 378. As such, the Plaintiff requests that the Court deny the Defendant's Motion for Summary Judgment.

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Sumter, South Carolina
 September 6, 2019

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

3
 4 Minnie Davis-Leaf,)
 5 Plaintiff,) DEPOSITION OF
 6 vs.) WANDA DAVIS
 7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
 8 and Wanda Davis,)
 9 Defendants.)

10 _____)
 11
 12 Deposition on oral examination of WANDA DAVIS,
 13 reported by Patricia G. Bachand, Court Reporter and Notary
 14 Public in and for the State of South Carolina; pursuant to
 15 Rule 30 of the South Carolina Rules of Civil Procedure;
 16 said deposition was taken at the Bryan Law Firm of SC, 17
 17 East Calhoun Street, Sumter, South Carolina, on Friday, the
 18 11th day of January 2019, and commencing at the hour of
 19 12:14 p.m.

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23
24 ALSO ATTENDING:

25 MADISON DAVIS

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(None proffered.)

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Court Reporter's Legend:

dashes [--] Intentional or purposeful interruption
 ... Indicates trailing off
 [ph] Denotes phonetically written
 [sic] Written as said

1 stuff, and he told me -- I guess -- I guess, like, I feed
2 her and take care of myself, and then he's responsibility
3 for everything else. Like, the property -- I didn't mess
4 with the property.

5 Q. Okay. And so let's get a couple of things, just
6 for the record, clear. Swinger is the horse that's the
7 subject of the case, correct?

8 A. Yes.

9 Q. And is Swinger your horse? Was Swinger your
10 horse?

11 A. Yes, she was -- she -- well, I had got her for my
12 daughter. Basically, I -- I'm the one that -- I mean, I'm
13 the one that, you know, supplied -- supplied everything for
14 her.

15 Q. So Swinger was your horse.

16 A. Well, she was mine. But she was mine for my
17 daughter. That's the reason I got her.

18 Q. You got Swinger for your daughter.

19 A. Yes.

20 Q. And so do you agree the ownership of Swinger
21 rested with you and your daughter?

22 A. I -- that's -- I'm going to freeze on that one.

23 Q. I mean, she was your horse.

24 A. I feel she was -- I mean, she was Madison's. But
25 then she -- I feel she was mine, 'cause I took

1 Q. And it's my understanding you went and got a
2 piece of rope and added it to the gate, to extra-secure it,
3 correct?

4 A. Yeah, I went and got a lead rope and tied it
5 around it, to make sure it was...

6 Q. A lead rope.

7 A. Yes, I went and got a lead rope and put around
8 it.

9 Q. What else was there to secure that gate when you
10 added the lead rope to it?

11 A. I didn't really -- I just -- I just put the lead
12 rope on it and that was it.

13 Q. But this was at least a couple or few years into
14 Swinger's tenure of staying at the Jones' property,
15 correct?

16 A. Yeah.

17 Q. That you -- that you saw this. All right.

18 A. Uh-huh.

19 Q. How did the gate -- during the first two or three
20 years of you keeping Swinger there, how did this gate lock
21 or latch?

22 A. That's the only thing I saw that was on the gate.
23 I mean, I don't -- I don't remember --

24 Q. What was the only thing that you saw that was on
25 the gate?

1 A. They had that rope over it.

2 **Q. They had a rope over the gate?**

3 A. Yeah, they -- it was up over it. And like I
4 said, I don't -- and then like I said, they could have had
5 something. I just -- I don't -- 'cause I don't never mess
6 much with the gate. That was the only time I ever messed
7 with it, 'cause it was open.

8 **Q. But they had a mechanism to secure the gate in**
9 **addition to the lead rope that you added to it, correct?**

10 A. I don't know if they stay -- the lead rope stayed
11 on it, 'cause I never messed with the gate after that.

12 **Q. I understand that. But I -- but what I'm trying**
13 **to get at is -- certainly, on this date that you saw the**
14 **gate open, that gate wasn't always open during the couple**
15 **few years that you'd been coming to the property, was it?**

16 A. No, that was the only time that I saw.

17 **Q. On the times that you went there and saw that it**
18 **wasn't open, how was it secured?**

19 A. I just know -- I never went over and messed with
20 it. If I didn't see it cracked -- or I didn't see it open,
21 I never messed with it.

22 **Q. Okay. So you -- are you able to tell me -- let**
23 **me do this: Before you decided to start leaving Swinger at**
24 **the Jones' property -- you saw an ad in the paper.**

25 A. Uh-huh.

1 A. They had that rope over it.

2 **Q. They had a rope over the gate?**

3 A. Yeah, they -- it was up over it. And like I
4 said, I don't -- and then like I said, they could have had
5 something. I just -- I don't -- 'cause I don't never mess
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14 **gate open, that gate wasn't always open during the couple**
15 **few years that you'd been coming to the property, was it?**

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18 **wasn't open, how was it secured?**

19 A. I just know -- I never went over and messed with
20 it. If I didn't see it cracked -- or I didn't see it open,
21 I never messed with it.

22 **Q. Okay. So you -- are you able to tell me -- let**
23 **me do this: Before you decided to start leaving Swinger at**
24 **the Jones' property -- you saw an ad in the paper.**

25 A. Uh-huh.

1 **Q. Is the gates at the -- do the chains at the Jones**
2 **lock?**

3 A. It had like a little -- his was -- that one --
4 the one that I -- I messed with the big gate had a chain.
5 And it had like a little lip on it, you poked it down and
6 latched it.

7 **Q. Do you know if that -- but did the small gate**
8 **have that?**

9 A. No, I don't know.

10 MR. MOORMAN: That's all the questions I
11 have.

12 REDIRECT EXAMINATION BY MR. COX:

13 **Q. Just a couple for clarification. Ms. Davis,**
14 **before this incident are you aware of Swinger ever getting**
15 **out of the Jones' enclosure before?**

16 A. No.

17 **Q. Now, you mentioned one time you went to the**
18 **property and you said Maximus was outside of the enclosure?**

19 A. Yeah.

20 **Q. Chastity was home that day?**

21 A. No, if she was, she wasn't out there that day.

22 **Q. Okay. So --**

23 A. I didn't see her.

24 **Q. You pulled up to go feed Swinger, correct?**

25 A. Yeah.

1 fixed it, you know, I figured everything was okay.

2 Q. But you don't know if you --

3 A. See, I don't remember.

4 Q. And your fix was just putting a rope around it;
5 is that right?

6 A. Well, that's all that I could find, that he had
7 out there.

8 Q. You didn't talk to him about having to secure it
9 better or anything like that?

10 A. No.

11 Q. Whether there was a problem --

12 A. No.

13 Q. -- with security --

14 A. No.

15 Q. Would you agree with me that as a owner of that
16 horse, that's part of your responsibility is to tell other
17 people who are looking after this pasture land and
18 everything, that there might be a problem going on with
19 gates opening -- and if a gate's open, a horse can get out?

20 MR. WLODARCZYK: Object to the form. (To
21 the witness) You can answer it.

22 A. I guess so. But I don't -- I mean, I -- I mean,
23 I just figured I closed it up and it was -- it was secure.

24 Q. So you don't think you're responsible to tell the
25 Jones about that.

1 it?

2 A. No.

3 Q. Do you know if the Jones did that?

4 A. No, I do not.

5 Q. Do you know if there were any locks on any of the
6 gates?

7 A. No, there was no locks.

8 Q. Do you know if there are any locks on the gates
9 now?

10 A. No, I do not.

11 Q. And do you know -- and do you know if you were in
12 charge of making -- were there any instructions that the
13 Jones ever give you, about securing gates or anything like
14 that when you left?

15 A. No.

16 Q. They didn't ever say, you know, "Please do this
17 when you leave"?

18 A. No.

19 Q. Did you ever address any concerns with them?

20 A. No.

21 Q. Not even -- you don't -- you don't recall
22 addressing any concerns about that small gate being open?

23 A. No.

24 Q. In the paddock/barn, whatever you want to call
25 it, how many boards were in the front there, that would

1 give me more details. I didn't know much about all that.

2 Q. But you didn't try to find out any more details
3 from the Jones, about what had happened to your animal?

4 A. I hadn't talk to the Jones since that incident.

5 Q. Why is that?

6 A. I don't know. I just didn't -- I didn't talk to
7 them.

8 Q. You didn't ask them any questions? They didn't
9 call and ask you any questions?

10 A. No, they did not. They hadn't called me or --

11 Q. They didn't call and ask you anything about, you
12 know, how was out there during the day or anything like
13 that, taking care of the animals at all?

14 A. Uh-uh.

15 Q. They asked no questions whatsoever --

16 A. No.

17 Q. -- about this? And when State Farm called you
18 and talked to you, what did you tell them?

19 A. Basically -- I mean, from what I had heard,
20 that's the only thing I tell -- I mean, I didn't really
21 know much. Just something about a gate and my horse was
22 dead, and that the -- there was two cars involved. Two
23 vehicles.

24 Q. And did -- so you never physically went to the
25 scene at all.

1 A. No.

2 Q. You never went back out to the Jones' house.

3 A. No, I didn't go back at their house.

4 Q. And when you had saw that small gate being
5 cracked open before, and you put that rope around it, did
6 you tell the Jones about that?

7 A. I don't remember if I did. If I -- I don't
8 remember if I did or not.

9 Q. You think you should have told them about it?

10 A. Probably should have. I don't know. See, I
11 don't remember if I said something to them or not.

12 Q. That would be a reasonable thing to do, right?

13 A. I guess it would have been.

14 Q. Because if the gate comes open and -- a horse
15 could get out, right?

16 A. Yes, it could.

17 Q. And if the horse gets out it can end up on the
18 highway, right?

19 A. I guess it would have.

20 Q. And if a horse ends up in the highway and it's
21 dark outside, that's dangerous, right?

22 A. Yes.

23 Q. And not just for the horse but for people who are
24 traveling in the car, right?

25 A. Yes.

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

3
4 Minnie Davis-Leaf,)
5 Plaintiff,) DEPOSITION OF
6 vs.) MADISON DAVIS
7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
8 and Wanda Davis,)
9 Defendants.)

10 _____)
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12 Deposition on oral examination of MADISON DAVIS,
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14 Public in and for the State of South Carolina; pursuant to
15 Rule 30 of the South Carolina Rules of Civil Procedure;
16 said deposition was taken at the Bryan Law Firm of SC, 17
17 East Calhoun Street, Sumter, South Carolina, on Friday, the
18 11th day of January 2019, scheduled for ten o'clock a.m.,
19 and commencing at the hour of 10:22 a.m.

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WANDA DAVIS

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(Copies of exhibits attached to transcript.)

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Court Reporter's Legend:

dashes [--] Intentional or purposeful interruption

... Indicates trailing off

[ph] Denotes phonetically written

[sic] Written as said

1 long were you there on October 24th, 2014?

2 A. It couldn't have been more than ten minutes.

3 'Cause like I said, you go in the barn and you get the food
4 and you take it to her. And I might pet her for like a few
5 seconds, tell her "Bye" and then leave. So I wouldn't say
6 more than ten minutes.

7 Q. Let me ask you, it's been four years ago,
8 correct?

9 A. Yes.

10 Q. A little over four years ago, right?

11 A. Yes.

12 Q. Do you have a -- how would you describe your
13 memory of that date, now that we sit here today, a little
14 over four years later?

15 A. I only really remember like certain pieces.

16 Q. Okay.

17 A. I guess the things that really made me upset
18 about it, I remember those things.

19 Q. Do you remember what you did on October 24, 2014,
20 while you were there?

21 A. With Swinger?

22 Q. Yes.

23 A. I only fed her. 'Cause my friend was waiting in
24 the car, so I fed her and that was it. And again, like I
25 said, you can see the gates if they're open or closed when

1 A. No.

2 **Q. And then there's like some stables?**

3 A. Yeah, the stalls are like attached to it. The
4 fence runs to the end of the stalls and then there's like -
5 - they're made of wood. And there's like a giant wall, and
6 the fence is right there and then you see the stalls. But
7 there's, like, walls between the fence and the stall.

8 **Q. And other than the gate in the middle of the**
9 **pasture, that opens up into the larger pasture -- to a**
10 **larger fenced-in pasture, what access to get into the**
11 **enclosure are there?**

12 A. There's just a large gate near the stalls. And
13 then there's a smaller gate, like maybe a foot from the
14 large one.

15 **Q. From time to time would you -- let's see. Yeah,**
16 **from time to time would you go through the gate to be with**
17 **your horse, to go into the enclosures --**

18 A. No.

19 **Q. -- through the gate?**

20 A. I only opened the gate if I wanted to take her
21 out. I'm really small. I don't want to open that gate. I
22 just hop over the thing, the little wood, and then my mom
23 would stand on the outside if she was there. She wouldn't
24 climb over. She would just stand there.

25 **Q. Can you describe the gate for me?**

1 A. They're pretty close to the gates.

2 Q. When you say "pretty close," fifty feet? A
3 hundred feet?

4 A. Maybe a hundred feet. I'm not very good with
5 stuff like that.

6 Q. Which way did you park your car? Was it facing
7 the paddock? Was it facing the barn? Was it facing the
8 fence?

9 A. When you pull in, it faces straight. Like the
10 gates would be on your left and they --

11 Q. Okay.

12 A. -- would be facing the pasture.

13 Q. And you were driving the car?

14 A. Yes. It was a truck.

15 Q. You were driving the truck. So you got out of
16 the truck, walked to the barn; is that right? Is that the
17 first thing you did? What did you do first when you got
18 out of that truck?

19 A. I walked straight into the little side piece,
20 which is attached to the barn, to get the food. And then
21 you walk straight out and you walk into the barn and you
22 dump their food and then you leave.

23 Q. How much food did you give?

24 A. You give them one scoop.

25 Q. That's it?

1 A. No, I didn't -- I didn't know right away where
2 she had been hit. I just knew that she had been hit.

3 Q. Were you shocked to learn that she -- were you
4 shocked to learn that she was hit by a car?

5 A. Yes.

6 Q. And why were you shocked to learn that?

7 A. Because I never thought that would happen to her.

8 Q. Did you understand when you got the news that
9 Swinger had gotten out of the enclosure --

10 MR. COX: Let's take a short break.

11 (Off the record.)

12 EXAMINATION RESUMED BY MR. COX:

13 Q. Ms. Davis, I meant to tell you, at any time if
14 you need a break just let me know, okay? I'll take as many
15 as you need. I think we're almost done, though. But had
16 Swinger ever escaped or gotten out of the enclosure at the
17 Jones' property before?

18 A. No. Maximus has, the other horse.

19 Q. Okay. But you said Maximus has?

20 A. Yes.

21 Q. Who is Maximus?

22 A. That is their newest horse. It was a Paint. And
23 it was the only horse they had left, other than when we had
24 Swinger out there.

25 Q. And you said it was a what?

1 pole?

2 A. Attached to the gate.

3 Q. It's attached to the gate?

4 A. Yes.

5 Q. Whereabouts? On the side of the gate?

6 A. It's like on the inside of the gate.

7 Q. So you were able to see all the way from the
8 inside of the gate, that it was through the latch?

9 A. You could see the gate was closed, and that there
10 was chains multiple times around it.

11 Q. Do you know if it was through the latch or not?

12 A. No.

13 Q. And is there a lock on the gate?

14 A. No, not from what I remember.

15 Q. And do you believe that, that -- putting a lock
16 on the gate would provide more security for a horse getting
17 in and out of the fence?

18 A. Yes.

19 Q. And there are two gates, correct?

20 A. Yes.

21 Q. A small gate and a large gate, right? Do you
22 know which one the horses got out of on the -- on October
23 24th of 2014?

24 A. No.

25 Q. Do you know how long they had been out of the

1 Q. You didn't physically, that day on the 24th,
2 physically go up and check the security of the gates, did
3 you?

4 A. No, but you would -- it would be pretty obvious
5 that they were open. Like I've been saying before, you
6 would just notice that kind of thing.

7 Q. But you just mentioned earlier, you don't know if
8 the chain was through the latch or not.

9 A. No, but you could see that the chain went all the
10 way around.

11 Q. Right. But you don't know how tight the chain
12 was or how loose the chain was or anything like that.

13 A. No. But Swinger wouldn't push on stuff like
14 that. She never tries to get out. She's not that kind of
15 horse.

16 Q. Maximus, do you know if he does that?

17 A. With him being a baby, he might have been a
18 little mischievous. But I don't know. I'm not sure. I
19 only know Swinger. I don't know their horse.

20 Q. But you weren't there when the horse got out of
21 the fence, were you?

22 A. No.

23 Q. So you don't really know what happened, do you?

24 A. No.

25 Q. Other than the horse was out of the fence, right?

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

3
4 Minnie Davis-Leaf,)
5 Plaintiff,) DEPOSITION OF
6 vs.) KELSEY JONES
7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
8 and Wanda Davis,)
9 Defendants.)

10 _____)
11
12 Deposition on oral examination of KELSEY JONES,
13 reported by Patricia G. Bachand, Court Reporter and Notary
14 Public in and for the State of South Carolina; pursuant to
15 Rule 30 of the South Carolina Rules of Civil Procedure;
16 said deposition was taken at the Bryan Law Firm of SC, 17
17 East Calhoun Street, Sumter, South Carolina, on Friday, the
18 11th day of January 2019, and commencing at the hour of
19 3:13 p.m.

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ALSO ATTENDING:

CARROLL JONES

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(None proffered.)

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Court Reporter's Legend:

dashes [--] Intentional or purposeful interruption

... Indicates trailing off

[ph] Denotes phonetically written

[sic] Written as said

1 A. She did -- she did tell me it was Swinger.

2 **Q. And how would they know that? I'm just --**

3 A. I think it was the coloring. 'Cause ours is a
4 Paint with the big white spots on his body. And Swinger's
5 more solid brown.

6 **Q. Do you know if your sister actually went to your**
7 **property?**

8 A. I believe she was standing in front of our
9 property when she went out to speak to the EMS worker, and
10 talking to me.

11 **Q. And there was mention of your niece and her**
12 **husband. Do you know if they had any involvement with**
13 **going to your property or --**

14 A. As far as I know, yes. My niece went to check on
15 our horse, found our horse upset prancing. Also, I believe
16 it was her, or her husband, that found the gate opened and
17 closed the gate to keep Maximus inside.

18 **Q. So as far as you know, based on your**
19 **recollection, is that your sister, her daughter, which is**
20 **your niece, and your niece's husband were all at the**
21 **accident scene or on your property after this accident**
22 **happened on the 24th.**

23 A. My sister-in-law, yes, and my niece and her
24 husband, yes.

25 **Q. So it's your sister-in-law --**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

CIVIL ACTION NO: 2017-CP-43-01811

Elvis Nelson,

PLAINTIFF,

vs.

Kelsey Jones, Carroll Jones, and
Wanda Davis,

DEFENDANTS.

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT WANDA
DAVIS' MOTION FOR SUMMARY
JUDGMENT**

**TO: DAMON C. WLORDARCZYK, ESQUIRE, ATTORNEY FOR THE DEFENDANT
WANDA DAVIS:**

FACTS

On October 24, 2014, the Defendant Wanda Davis 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 and located adjacent to U.S. Highway 378 in Sumter County, South Carolina. At her deposition, Madison Davis testified that on October 24, 2014, she fed the horse at the pasture and left within ten (10) minutes. (Exhibit B Madison Davis Depo Page 28, Lines 2-6). The pasture where Swinger was kept had two gates, a large gate and a small gate. (Exhibit B Madison Davis Depo Page 18, Lines 12-14).

Later that evening at approximately 9 p.m., the Plaintiff Elvis Nelson was traveling west in a 1986 Ford Truck on U.S. Highway 378 in the County of Sumter, State of South Carolina as a passenger. As Mr. Nelson was traveling on U.S. Highway 378, the horse, owned by the Defendant Wanda Davis, was wandering on U.S. Highway 378 and struck the vehicle that the Plaintiff was

riding in. As a result of the collision with the Defendant's horse, the Plaintiff Elvis Nelson was injured and required medical treatment.

The owners of the pasture, where the Defendant's horse was being boarded were out of town and were notified by law enforcement via telephone of the collision involving the 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 Defendant Wanda Davis' horse had escaped. (Exhibit C Kelsey Jones Depo Page 14, Lines 11-17). When the pasture owners' family arrived, they discovered that the small gate of the pasture was open. The owners of the pasture notified the Defendant Wanda Davis of the collision involving her horse that same night. The Defendant Wanda Davis never came to the scene of the collision.

STANDARD

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP. "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. 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.*

ARGUMENT

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 wilfully 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, the 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 Defendant Wanda Davis was the owner of the horse that was wandering in the middle of U.S. Highway 378 in Sumter County on the night of October 24, 2014 when it was struck by the vehicle that the Plaintiff was riding in as a passenger. (Exhibit A Wanda Davis Depo Page 10, Lines 9-17).

The Plaintiff must next submit evidence from which the jury could infer at least negligence on the part of the Defendant 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).

The Defendant correctly asserts 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 (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).

At her deposition, the Defendant Wanda Davis testified that she never physically inspected the gates at the pasture and didn’t know how the gates were secured. (Exhibit A Wanda Davis Depo Page 22, Lines 24-25, Page 23, Line 10 and Exhibit A Wanda Davis Depo Page 23, Lines 17-21). The Defendant Wanda Davis testified that on another 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. (Exhibit A Wanda Davis Depo Page 54, Lines 17-19) and (Exhibit B Madison Davis Depo Page 40, Lines 15-24). The Defendant Wanda Davis testified that she had previously found the small gate at the pasture open before and that she had secured the gate with a rope. (Exhibit A Wanda Davis Depo Page 72, Lines 4-23). The Defendant Wanda Davis 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. (Exhibit Wanda Davis Page 51, Lines 19-2). The Defendant, Wanda Davis, testified that she didn’t talk to the owners of the property about properly securing the small gate to prevent it from being left open. (Exhibit A Wanda Davis Depo Page 72, Lines 4-23). 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, she responded, “I guess so.” (Exhibit A Wanda Davis Depo Page 72, Lines 4-23).

The deposition testimony of Madison Davis also provides evidence from which a jury could infer negligence on behalf of the Defendant Wanda Davis 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 Defendant Wanda Davis’ 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. (Exhibit B Madison Davis Deposition Page 61, Lines 4-5). 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. (Exhibit B Madison Davis Depo Page 68, Lines 9-20). Ultimately, Madison Davis testified that she did not physically check the security of the gates on October 24, 2014. (Exhibit B Madison Davis Depo Page 81, Lines 1-6).

In her deposition, the Defendant Wanda Davis also acknowledged that if a pasture gate is open, then a horse could get out of the pasture and end up on the highway. The Defendant, Wanda Davis, went on to testify that she owned a large horse, that a horse was something that someone would not expect to see in the roadway, and that it was dangerous for people traveling on the roadway. (Exhibit A Wanda Davis Depo Page 46, Lines 14-25 and Page 47, Lines 1-5).

The testimony of the Defendant Wanda Davis, along with the testimony of Madison Davis, presents more than a mere scintilla of evidence from which the jury could infer that the Defendant Wanda Davis 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 Defendant Wanda Davis. The Defendant Wanda Davis never informed the owners of the pasture about the small gate being unsecured, despite the Defendant stating that she should have let the pasture owners know about the condition of the small gate. This was the same small gate that was found open following the Plaintiff's collision involving the horse on the night of October 24, 2014. Clearly, an inference of negligence can be made that the small gate was not properly secured 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 similar 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.* The record shows additionally 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 Defendant is moving 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 Defendant's motion for summary judgment. Specifically, there clearly exists more than a mere scintilla of evidence from which a jury could infer negligence on the part of the Defendant. First, the horse's pasture was adjacent to U.S. Highway 378, and the horse owned by the Defendant was wandering in the middle of the four-lane highway. Additionally, 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 Defendant Wanda Davis 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

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 Plaintiff that there is more than a mere scintilla of evidence in which the jury could infer at least negligence on the part of the Defendant in permitting her horse to go onto U.S. Highway 378. As such, the Plaintiff requests that the Court deny the Defendant's Motion for Summary Judgment.

BRYAN LAW FIRM OF SC, L.L.P.

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 Attorney for the Plaintiff
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 Sumter, SC 29151
 (803) 775-1263

Sumter, South Carolina
 September 6, 2019

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

3
4 Minnie Davis-Leaf,)
5 Plaintiff,) DEPOSITION OF
6 vs.) WANDA DAVIS
7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
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ALSO ATTENDING:

MADISON DAVIS

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1 stuff, and he told me -- I guess -- I guess, like, I feed
2 her and take care of myself, and then he's responsibility
3 for everything else. Like, the property -- I didn't mess
4 with the property.

5 Q. Okay. And so let's get a couple of things, just
6 for the record, clear. Swinger is the horse that's the
7 subject of the case, correct?

8 A. Yes.

9 Q. And is Swinger your horse? Was Swinger your
10 horse?

11 A. Yes, she was -- she -- well, I had got her for my
12 daughter. Basically, I -- I'm the one that -- I mean, I'm
13 the one that, you know, supplied -- supplied everything for
14 her.

15 Q. So Swinger was your horse.

16 A. Well, she was mine. But she was mine for my
17 daughter. That's the reason I got her.

18 Q. You got Swinger for your daughter.

19 A. Yes.

20 Q. And so do you agree the ownership of Swinger
21 rested with you and your daughter?

22 A. I -- that's -- I'm going to freeze on that one.

23 Q. I mean, she was your horse.

24 A. I feel she was -- I mean, she was Madison's. But
25 then she -- I feel she was mine, 'cause I took

1 Q. And it's my understanding you went and got a
2 piece of rope and added it to the gate, to extra-secure it,
3 correct?

4 A. Yeah, I went and got a lead rope and tied it
5 around it, to make sure it was...

6 Q. A lead rope.

7 A. Yes, I went and got a lead rope and put around
8 it.

9 Q. What else was there to secure that gate when you
10 added the lead rope to it?

11 A. I didn't really -- I just -- I just put the lead
12 rope on it and that was it.

13 Q. But this was at least a couple or few years into
14 Swinger's tenure of staying at the Jones' property,
15 correct?

16 A. Yeah.

17 Q. That you -- that you saw this. All right.

18 A. Uh-huh.

19 Q. How did the gate -- during the first two or three
20 years of you keeping Swinger there, how did this gate lock
21 or latch?

22 A. That's the only thing I saw that was on the gate.
23 I mean, I don't -- I don't remember --

24 Q. What was the only thing that you saw that was on
25 the gate?

1 A. They had that rope over it.

2 **Q. They had a rope over the gate?**

3 A. Yeah, they -- it was up over it. And like I
4 said, I don't -- and then like I said, they could have had
5 something. I just -- I don't -- 'cause I don't never mess
6 much with the gate. That was the only time I ever messed
7 with it, 'cause it was open.

8 **Q. But they had a mechanism to secure the gate in**
9 **addition to the lead rope that you added to it, correct?**

10 A. I don't know if they stay -- the lead rope stayed
11 on it, 'cause I never messed with the gate after that.

12 **Q. I understand that. But I -- but what I'm trying**
13 **to get at is -- certainly, on this date that you saw the**
14 **gate open, that gate wasn't always open during the couple**
15 **few years that you'd been coming to the property, was it?**

16 A. No, that was the only time that I saw.

17 **Q. On the times that you went there and saw that it**
18 **wasn't open, how was it secured?**

19 A. I just know -- I never went over and messed with
20 it. If I didn't see it cracked -- or I didn't see it open,
21 I never messed with it.

22 **Q. Okay. So you -- are you able to tell me -- let**
23 **me do this: Before you decided to start leaving Swinger at**
24 **the Jones' property -- you saw an ad in the paper.**

25 A. Uh-huh.

1 A. They had that rope over it.

2 **Q. They had a rope over the gate?**

3 A. Yeah, they -- it was up over it. And like I
4 said, I don't -- and then like I said, they could have had
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15 **few years that you'd been coming to the property, was it?**

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17 **Q. On the times that you went there and saw that it**
18 **wasn't open, how was it secured?**

19 A. I just know -- I never went over and messed with
20 it. If I didn't see it cracked -- or I didn't see it open,
21 I never messed with it.

22 **Q. Okay. So you -- are you able to tell me -- let**
23 **me do this: Before you decided to start leaving Swinger at**
24 **the Jones' property -- you saw an ad in the paper.**

25 A. Uh-huh.

1 Q. Is the gates at the -- do the chains at the Jones
2 lock?

3 A. It had like a little -- his was -- that one --
4 the one that I -- I messed with the big gate had a chain.
5 And it had like a little lip on it, you poked it down and
6 latched it.

7 Q. Do you know if that -- but did the small gate
8 have that?

9 A. No, I don't know.

10 MR. MOORMAN: That's all the questions I
11 have.

12 REDIRECT EXAMINATION BY MR. COX:

13 Q. Just a couple for clarification. Ms. Davis,
14 before this incident are you aware of Swinger ever getting
15 out of the Jones' enclosure before?

16 A. No.

17 Q. Now, you mentioned one time you went to the
18 property and you said Maximus was outside of the enclosure?

19 A. Yeah.

20 Q. Chastity was home that day?

21 A. No, if she was, she wasn't out there that day.

22 Q. Okay. So --

23 A. I didn't see her.

24 Q. You pulled up to go feed Swinger, correct?

25 A. Yeah.

1 fixed it, you know, I figured everything was okay.

2 Q. But you don't know if you --

3 A. See, I don't remember.

4 Q. And your fix was just putting a rope around it;
5 is that right?

6 A. Well, that's all that I could find, that he had
7 out there.

8 Q. You didn't talk to him about having to secure it
9 better or anything like that?

10 A. No.

11 Q. Whether there was a problem --

12 A. No.

13 Q. -- with security --

14 A. No.

15 Q. Would you agree with me that as a owner of that
16 horse, that's part of your responsibility is to tell other
17 people who are looking after this pasture land and
18 everything, that there might be a problem going on with
19 gates opening -- and if a gate's open, a horse can get out?

20 MR. WLODARCZYK: Object to the form. (To
21 the witness) You can answer it.

22 A. I guess so. But I don't -- I mean, I -- I mean,
23 I just figured I closed it up and it was -- it was secure.

24 Q. So you don't think you're responsible to tell the
25 Jones about that.

1 it?

2 A. No.

3 Q. Do you know if the Jones did that?

4 A. No, I do not.

5 Q. Do you know if there were any locks on any of the
6 gates?

7 A. No, there was no locks.

8 Q. Do you know if there are any locks on the gates
9 now?

10 A. No, I do not.

11 Q. And do you know -- and do you know if you were in
12 charge of making -- were there any instructions that the
13 Jones ever give you, about securing gates or anything like
14 that when you left?

15 A. No.

16 Q. They didn't ever say, you know, "Please do this
17 when you leave"?

18 A. No.

19 Q. Did you ever address any concerns with them?

20 A. No.

21 Q. Not even -- you don't -- you don't recall
22 addressing any concerns about that small gate being open?

23 A. No.

24 Q. In the paddock/barn, whatever you want to call
25 it, how many boards were in the front there, that would

1 give me more details. I didn't know much about all that.

2 Q. But you didn't try to find out any more details
3 from the Jones, about what had happened to your animal?

4 A. I hadn't talk to the Jones since that incident.

5 Q. Why is that?

6 A. I don't know. I just didn't -- I didn't talk to
7 them.

8 Q. You didn't ask them any questions? They didn't
9 call and ask you any questions?

10 A. No, they did not. They hadn't called me or --

11 Q. They didn't call and ask you anything about, you
12 know, how was out there during the day or anything like
13 that, taking care of the animals at all?

14 A. Uh-uh.

15 Q. They asked no questions whatsoever --

16 A. No.

17 Q. -- about this? And when State Farm called you
18 and talked to you, what did you tell them?

19 A. Basically -- I mean, from what I had heard,
20 that's the only thing I tell -- I mean, I didn't really
21 know much. Just something about a gate and my horse was
22 dead, and that the -- there was two cars involved. Two
23 vehicles.

24 Q. And did -- so you never physically went to the
25 scene at all.

1 A. No.

2 Q. You never went back out to the Jones' house.

3 A. No, I didn't go back at their house.

4 Q. And when you had saw that small gate being
5 cracked open before, and you put that rope around it, did
6 you tell the Jones about that?

7 A. I don't remember if I did. If I -- I don't
8 remember if I did or not.

9 Q. You think you should have told them about it?

10 A. Probably should have. I don't know. See, I
11 don't remember if I said something to them or not.

12 Q. That would be a reasonable thing to do, right?

13 A. I guess it would have been.

14 Q. Because if the gate comes open and -- a horse
15 could get out, right?

16 A. Yes, it could.

17 Q. And if the horse gets out it can end up on the
18 highway, right?

19 A. I guess it would have.

20 Q. And if a horse ends up in the highway and it's
21 dark outside, that's dangerous, right?

22 A. Yes.

23 Q. And not just for the horse but for people who are
24 traveling in the car, right?

25 A. Yes.

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

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 8 and Wanda Davis,)
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 12 Deposition on oral examination of MADISON DAVIS,
 13 reported by Patricia G. Bachand, Court Reporter and Notary
 14 Public in and for the State of South Carolina; pursuant to
 15 Rule 30 of the South Carolina Rules of Civil Procedure;
 16 said deposition was taken at the Bryan Law Firm of SC, 17
 17 East Calhoun Street, Sumter, South Carolina, on Friday, the
 18 11th day of January 2019, scheduled for ten o'clock a.m.,
 19 and commencing at the hour of 10:22 a.m.

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ALSO ATTENDING:

WANDA DAVIS

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* * * * *

Court Reporter's Legend:

dashes [--] Intentional or purposeful interruption

... Indicates trailing off

[ph] Denotes phonetically written

[sic] Written as said

1 long were you there on October 24th, 2014?

2 A. It couldn't have been more than ten minutes.

3 'Cause like I said, you go in the barn and you get the food
4 and you take it to her. And I might pet her for like a few
5 seconds, tell her "Bye" and then leave. So I wouldn't say
6 more than ten minutes.

7 Q. Let me ask you, it's been four years ago,
8 correct?

9 A. Yes.

10 Q. A little over four years ago, right?

11 A. Yes.

12 Q. Do you have a -- how would you describe your
13 memory of that date, now that we sit here today, a little
14 over four years later?

15 A. I only really remember like certain pieces.

16 Q. Okay.

17 A. I guess the things that really made me upset
18 about it, I remember those things.

19 Q. Do you remember what you did on October 24, 2014,
20 while you were there?

21 A. With Swinger?

22 Q. Yes.

23 A. I only fed her. 'Cause my friend was waiting in
24 the car, so I fed her and that was it. And again, like I
25 said, you can see the gates if they're open or closed when

1 A. No.

2 Q. And then there's like some stables?

3 A. Yeah, the stalls are like attached to it. The
4 fence runs to the end of the stalls and then there's like -
5 - they're made of wood. And there's like a giant wall, and
6 the fence is right there and then you see the stalls. But
7 there's, like, walls between the fence and the stall.

8 Q. And other than the gate in the middle of the
9 pasture, that opens up into the larger pasture -- to a
10 larger fenced-in pasture, what access to get into the
11 enclosure are there?

12 A. There's just a large gate near the stalls. And
13 then there's a smaller gate, like maybe a foot from the
14 large one.

15 Q. From time to time would you -- let's see. Yeah,
16 from time to time would you go through the gate to be with
17 your horse, to go into the enclosures --

18 A. No.

19 Q. -- through the gate?

20 A. I only opened the gate if I wanted to take her
21 out. I'm really small. I don't want to open that gate. I
22 just hop over the thing, the little wood, and then my mom
23 would stand on the outside if she was there. She wouldn't
24 climb over. She would just stand there.

25 Q. Can you describe the gate for me?

1 A. They're pretty close to the gates.

2 Q. When you say "pretty close," fifty feet? A
3 hundred feet?

4 A. Maybe a hundred feet. I'm not very good with
5 stuff like that.

6 Q. Which way did you park your car? Was it facing
7 the paddock? Was it facing the barn? Was it facing the
8 fence?

9 A. When you pull in, it faces straight. Like the
10 gates would be on your left and they --

11 Q. Okay.

12 A. -- would be facing the pasture.

13 Q. And you were driving the car?

14 A. Yes. It was a truck.

15 Q. You were driving the truck. So you got out of
16 the truck, walked to the barn; is that right? Is that the
17 first thing you did? What did you do first when you got
18 out of that truck?

19 A. I walked straight into the little side piece,
20 which is attached to the barn, to get the food. And then
21 you walk straight out and you walk into the barn and you
22 dump their food and then you leave.

23 Q. How much food did you give?

24 A. You give them one scoop.

25 Q. That's it?

1 A. No, I didn't -- I didn't know right away where
2 she had been hit. I just knew that she had been hit.

3 Q. Were you shocked to learn that she -- were you
4 shocked to learn that she was hit by a car?

5 A. Yes.

6 Q. And why were you shocked to learn that?

7 A. Because I never thought that would happen to her.

8 Q. Did you understand when you got the news that
9 Swinger had gotten out of the enclosure --

10 MR. COX: Let's take a short break.

11 (Off the record.)

12 EXAMINATION RESUMED BY MR. COX:

13 Q. Ms. Davis, I meant to tell you, at any time if
14 you need a break just let me know, okay? I'll take as many
15 as you need. I think we're almost done, though. But had
16 Swinger ever escaped or gotten out of the enclosure at the
17 Jones' property before?

18 A. No. Maximus has, the other horse.

19 Q. Okay. But you said Maximus has?

20 A. Yes.

21 Q. Who is Maximus?

22 A. That is their newest horse. It was a Paint. And
23 it was the only horse they had left, other than when we had
24 Swinger out there.

25 Q. And you said it was a what?

1 pole?

2 A. Attached to the gate.

3 Q. It's attached to the gate?

4 A. Yes.

5 Q. Whereabouts? On the side of the gate?

6 A. It's like on the inside of the gate.

7 Q. So you were able to see all the way from the
8 inside of the gate, that it was through the latch?

9 A. You could see the gate was closed, and that there
10 was chains multiple times around it.

11 Q. Do you know if it was through the latch or not?

12 A. No.

13 Q. And is there a lock on the gate?

14 A. No, not from what I remember.

15 Q. And do you believe that, that -- putting a lock
16 on the gate would provide more security for a horse getting
17 in and out of the fence?

18 A. Yes.

19 Q. And there are two gates, correct?

20 A. Yes.

21 Q. A small gate and a large gate, right? Do you
22 know which one the horses got out of on the -- on October
23 24th of 2014?

24 A. No.

25 Q. Do you know how long they had been out of the

1 Q. You didn't physically, that day on the 24th,
2 physically go up and check the security of the gates, did
3 you?

4 A. No, but you would -- it would be pretty obvious
5 that they were open. Like I've been saying before, you
6 would just notice that kind of thing.

7 Q. But you just mentioned earlier, you don't know if
8 the chain was through the latch or not.

9 A. No, but you could see that the chain went all the
10 way around.

11 Q. Right. But you don't know how tight the chain
12 was or how loose the chain was or anything like that.

13 A. No. But Swinger wouldn't push on stuff like
14 that. She never tries to get out. She's not that kind of
15 horse.

16 Q. Maximus, do you know if he does that?

17 A. With him being a baby, he might have been a
18 little mischievous. But I don't know. I'm not sure. I
19 only know Swinger. I don't know their horse.

20 Q. But you weren't there when the horse got out of
21 the fence, were you?

22 A. No.

23 Q. So you don't really know what happened, do you?

24 A. No.

25 Q. Other than the horse was out of the fence, right?

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19 3:13 p.m.

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CARROLL JONES

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(None proffered.)

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[sic]	Written as said

1 A. She did -- she did tell me it was Swinger.

2 **Q. And how would they know that? I'm just --**

3 A. I think it was the coloring. 'Cause ours is a
4 Paint with the big white spots on his body. And Swinger's
5 more solid brown.

6 **Q. Do you know if your sister actually went to your**
7 **property?**

8 A. I believe she was standing in front of our
9 property when she went out to speak to the EMS worker, and
10 talking to me.

11 **Q. And there was mention of your niece and her**
12 **husband. Do you know if they had any involvement with**
13 **going to your property or --**

14 A. As far as I know, yes. My niece went to check on
15 our horse, found our horse upset prancing. Also, I believe
16 it was her, or her husband, that found the gate opened and
17 closed the gate to keep Maximus inside.

18 **Q. So as far as you know, based on your**
19 **recollection, is that your sister, her daughter, which is**
20 **your niece, and your niece's husband were all at the**
21 **accident scene or on your property after this accident**
22 **happened on the 24th.**

23 A. My sister-in-law, yes, and my niece and her
24 husband, yes.

25 **Q. So it's your sister-in-law --**

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Minnie Davis-Leaf

Plaintiff,

v.

Wanda Davis,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2017-CP-43-01118

**REPLY TO RESPONSE IN
OPPOSITION TO SUMMARY
JUDGMENT**

On September 6, 2019, Plaintiffs filed a memorandum in opposition to the Motion for Summary Judgment. The hearing on the motions took place on September 9, 2019. At the hearing, the undersigned requested leave to file a Reply as to the arguments raised by Plaintiffs. The request was granted.

I. Wanda Davis

Plaintiffs acknowledge that they must present some evidence from which the jury could infer negligence on her part, as owner of the horse, in permitting her horse to stray from the Jones' property. [Opposition, p. 3]. Plaintiff argues the following deposition testimony from Wanda Davis presents at least a scintilla of evidence sufficient to survive summary judgment:

- A. Wanda Davis never physically inspected the gates and did not know how the gates were secured;
- B. On one occasion, she arrived at the Jones' property to feed the horse and discovered the Jones' horse, Maximus had escaped the pasture, but she never notified the Jones about this incident;

C. On another occasion, she arrived at the property and found the small gate open and she secured it with a rope but she could not recall ever addressing the open gate with the Jones;

D. When asked whether she had a responsibility to tell the Jones' about the horse being out of the pasture and the gate being open, she responded, "I guess so."

[Opposition, p. 4].

Plaintiffs argue that because Ms. Davis never informed the Jones about the small gate being open on one occasion, a jury could infer she was negligent in allowing her horse to escape because the same small gate was found upon on the night of the accident. [*Id.*, p. 5]. Plaintiffs stated "an inference of negligence can be made that the small gate was not properly secured" on the night of the incident. [*Id.*].

First, the Jones were aware that Maximus had gotten out of the pasture on one occasion when he was a small colt and able to get through the wire fence. [Exhibit 1, Carrol Jones Dep, p. 18, line 7-p. 20, line 4]. The Jones were also aware that if the gate was left open, their horses could get out of the pasture. [*Id.*]. Accordingly, Ms. Davis's report of the above issues would only provide the Jones with information already in their possession.

Next, there is no evidence that if the small gate was secured as designed, that it would allow the horses to escape the pasture. Mr. Jones testified that the small gate was secured with a swing chain and j-bolt as well as by a probe that hooked over the top of the gate and adjacent fencepost. [Exhibit 1, p. 16, line 15-p. 17, line 23]. 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. [Exhibit 1, p. 21, lines 8-16].

Finally, Mr. Jones testified that in terms of maintaining the pasture, fence, and ensuring the gates were working, it was the sole responsible of him and his family as the property owners. [Exhibit 1, p. 20, lines 20-25]. 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 coming to the property and fixing the fence, or providing materials to fix the fence, or provide materials to secure the fence. [Exhibit 1, p. 21, lines 1-7].

Upon returning home the next evening or so, 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. [Exhibit 1, p. 31, lines 1-17]. Mr. Jones, nor any other party, has any information as to how the small gate became unsecured on the date of the accident. [Exhibit 1, p. 29, line 24-p. 30, line 10].

II. Madison Davis

Plaintiffs also allege the testimony of Ms. Davis's daughter, Madison Davis, provides evidence from which a jury could infer negligence on behalf of Wanda Davis in allowing the horse to run at large. Plaintiffs rely on the following:

- A. Madison went to the pasture sometime after school on the date of the accident to feed the horses;
- B. Madison spent ten (10) minutes at the property and parked 100 feet from the pasture;

C. Madison could not see if the chains on the gate were on the latch and 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;

D. Madison did not physically check the security of the gates on the date of the accident.

[Opposition, pp. 4-5].

Madison Davis testified with certainty that when she fed the horses on the day of the accident, the gates were closed, and the chain was wrapped multiple times around the gates and the gates were secure. [Exhibit 2, Madison Davis Depo, p. 29, line 21-p. 30, line 10; p. 51, line 1-p. 52, line 25; p. 55, lines 7-14; p. 68, lines 7-12; p. 86, lines 15-21]. Additionally, the gates open inwards towards the pastures. [Exhibit 1, p. 21, line 20-p. 22, lines 13; Exhibit 2, p. 72, line 8-p. 73, line 4; Exhibit 3 (photo of small gate); Exhibit 4, (photo of large gate)]

Plaintiffs sole argument as to Madison Davis is that she did not physically inspect to make sure the chain was looped through the J-Hook, even though it was visibly wrapped around the fence post several times, the gate was not open, an it was secure. [Opposition, p. 5].

Plaintiffs attempt to impute Madison's actions or inactions at the pasture on the day of the accident to Wanda Davis as evidence of her negligence.

The parent is not liable for the negligence of the child by reason of the relation of parent and child, yet, if the child is the agent of the father, then the existence of the relation, parent and child, does not destroy the liability of the principal for the acts of the agent. So here the nonliability of the father for the acts of the son does not destroy the liability of the master for the acts of his servant done in the course of his employment.

Norwood v. Coley, 235 S.C. 314, 317–18, 111 S.E.2d 550, 551 (1959) (internal citations omitted).

Here, assuming *arguendo*, Madison can be considered the servant of her mother, Wanda, for the purpose of feeding the horses, there is no evidence of any act of negligence by Madison. Accordingly, nothing can be imputed to Wanda Davis.

ARGUMENT IN REPLY

“For circumstantial evidence to be sufficient to warrant the finding of a fact, the circumstances must lead to the conclusion with reasonable certainty, and must have sufficient probative value to constitute the basis for a legal inference, and not for mere speculation.” *Holland v. Georgia Hardwood Lumber Co.*, 214 S.C. 195, 204–05, 51 S.E.2d 744, 749 (1949). “The existence of a fact or facts cannot rest in speculation, surmise or conjecture.” *Id.*

The uncontested evidence in this case is that on the afternoon of the day of the accident, the gate at issue was closed and secured with the chain which was wrapped several times around the fence post. Accordingly, to find negligence, a jury would have to disregard the testimony of Madison Davis that the gates were closed and secured, speculate that horse(s) then pushed open the gate, which only opened into the pasture and not out to the road, and then left the property. The alternative is that the jury could speculate that someone came onto the property and unsecured the gate between the time Madison left and approximately six hours later when the accident occurred. This type of speculation and conjecture is specifically prohibited. Therefore, Defendant Davis is entitled to judgment as a matter of law.

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September 13, 2019

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18 11th day of January 2019, and commencing at the hour of one
19 o'clock p.m.

1 A. The same barn.

2 **Q. Same barn. Is it one large barn but -- it's my**
3 **understanding there may be a path that goes in-between**
4 **where the food was kept and where the horses were pastured.**
5 **Or maybe you can explain how the setup is with the --**

6 A. It's one large -- one large barn. There was a
7 16-by-16 enclosure, and she kept her feed in there. But as
8 far as the stall goes, it's sort of like lean-to. And you
9 would walk through there to the stalls to put the feed in
10 the stalls. And the box for the electrical panel was right
11 there behind -- right in front of the stalls.

12 **Q. How would you gain access to the pasture?**
13 **Besides climbing over a fence, of course.**

14 A. Through the gate right by the barn.

15 **Q. How many gates did you have?**

16 A. Two.

17 **Q. Do you know the size of the gates?**

18 A. Yes. One was a eight-foot gate, a drive-through
19 gate. And one was what we call a personnel -- you know, a
20 person gate, four -- four-feet wide, I believe, was what
21 that one was.

22 **Q. How was the four-foot gate secured or kept from**
23 **opening?**

24 A. It had a like a swing chain around the post, and
25 the post -- it was screwed in with a J-bolt, like you hook

1 a -- you know, a porch swing to. And then you wrap that
2 chain around it and put the chain in that hook. And it
3 also had a rope on the top of the gate, that was tied to
4 the gate. The rope hooked over to the post -- another
5 wooden post.

6 **Q. And what about the eight-foot fence, how was that**
7 **secured?**

8 A. The same way: With a chain around it and a hook.

9 **Q. Did it have the rope as well, or just chain?**

10 A. Just chain. It was very seldom used. Only to
11 put a tractor or something like that, going to the barn to
12 the pasture.

13 **Q. Did you-all ever take your horses out of the**
14 **pasture into the area in front of it or around the side?**

15 A. Yes.

16 **Q. Would you use the four-foot gate or the eight-**
17 **foot gate to do that?**

18 A. Four-foot gate.

19 **Q. In terms of having to go into the pasture would**
20 **you -- or to the extent that you saw your family members,**
21 **would they use the four-foot gate to generally go back and**
22 **forth? Or would they use the eight-foot gate?**

23 A. Four-foot.

24 **Q. Did you have -- or would anybody have to access**
25 **the pasture, actually go in the pasture to feed the horses?**

1 A. No, sir. It was not necessary.

2 Q. And the same question with regard to watering the
3 horse: From my understanding there was an area further down
4 that had the water trough, would you have to actually walk
5 into the pasture in order to water or refill the water?

6 A. No, sir.

7 Q. Prior to this October 24th, 2014 date, had there
8 ever been an occasion where any of the horses that were in
9 the pasture, got out of the pasture?

10 A. Yes, sir.

11 Q. Do you know on how many different occasions that
12 might have happened over the year -- say past ten years?

13 A. Maybe once.

14 Q. Do you remember which horse that was?

15 A. I know Maximus may have gotten out.

16 Q. And what do you know about that particular -- or
17 Maximus getting out?

18 A. Well, he was a small colt, so he would have been
19 able to get through the wire.

20 Q. And explain to me how that might have occurred
21 because -- describe the wire and describe how he would have
22 got out. I'm not sure of his size or anything like that,
23 so --

24 A. Well, colts are small, and sometimes they're big
25 -- bigger than a dog -- you know, maybe taller than a Great

1 Dane or something.

2 Q. So you're hand is about what, three and a half --

3 A. Yes, something like that. So if the top three
4 wires is hot, he could just step through the bottom wire.

5 Q. So the bottom wire was not hot --

6 A. That's correct.

7 Q. -- and the top three were? Were you aware of him
8 getting out on more than one occasion?

9 A. No.

10 Q. Did you actually see Maximus outside of the
11 pasture? Or was that something that was told to you, or
12 related to you by someone else?

13 A. Related.

14 Q. And who told you about it?

15 A. The family member. I can't specifically know
16 which one.

17 Q. Do you know how the family member came about to
18 discover that? Did someone tell the family member? Or did
19 the family member actually catch the horse outside the
20 pasture?

21 A. It may -- I couldn't -- I don't recollect.

22 Q. Other than Maximus and that one occasion, are you
23 aware of any other time any of your -- any of the horses
24 that were pastured there, getting outside of the -- of the
25 enclosure?

1 A. I mean, I have horses, you know, for all my life,
2 basically. And if I leave the gate open or something, sure
3 they'll walk out in the yard or something like that over --
4 over, you know, 35 years or 40 years.

5 **Q. Have you ever had tree limbs fall on parts of**
6 **your fence, which had to be repaired, where a horse could**
7 **get out if that happened?**

8 A. No, sir. The only time I've ever known our
9 horses to get out was through the -- like I said, when Max
10 was a colt or through the gate.

11 **Q. And if that occurred -- with respect to the gate**
12 **not him crawling underneath the wire --**

13 A. Sure.

14 **Q. -- would that have been just because family**
15 **members were coming and going and didn't secure the gate?**

16 A. That's correct.

17 **Q. Are you ever aware of any situation where the**
18 **horses pushed opened the gate that was secured?**

19 A. No, sir.

20 **Q. In terms of maintaining the pasture or the**
21 **fencing, would it be accurate to say that, that would be**
22 **you or your family, the owner's responsibility, to maintain**
23 **the wire to make sure the fences were working and the gates**
24 **were working and things along those lines?**

25 A. Yes.

1 Q. So is it accurate that there would be no
2 expectation that Ms. Davis or anybody, a co-worker who's
3 keeping a horse there, are responsible for coming and
4 fixing something with regard to the fence, or providing
5 materials to fix the fence or providing materials to secure
6 the fence?

7 A. Correct.

8 Q. To you knowledge was there any problems with
9 either of the gates -- I should say locking -- but securing
10 or being secured?

11 A. No, sir.

12 Q. So if someone shut the gate on your property, and
13 looped the chain the way it's supposed to be looped, and put
14 the rope on top of it, is it accurate that, that gate would
15 remain secured?

16 A. Yes, sir.

17 Q. And the only way to unsecure it would be to
18 unloop the rope and undo the chain?

19 A. Yes, sir.

20 Q. Did the gate -- the four-foot gate, in terms of
21 being in the pasture and coming out, did the gate swing
22 out, or did it swing in towards the pasture? If you were
23 in the pasture going out, would you push it out or would --
24 pull it in?

25 A. I think you had to push it in. But that's a

1 guess. And I shouldn't even say --

2 Q. Well, I don't want you guessing. Put it this
3 way: If we went out there today, would it be the same
4 situation as it was in 2014, in terms of pulling the gate
5 out or pushing the gate in, or it goes both ways?

6 A. It's the exact same way. Yes, sir, it would be
7 the same.

8 Q. So no modifications have been done to the four-
9 foot gate, that would be any different than it was in 2014.

10 A. That's correct.

11 Q. Would the same be true of the eight-foot gate?
12 Is it the same gate --

13 A. That's correct.

14 Q. Do you-all have any cameras set up on your
15 property? I know that's big now, but --

16 A. No, sir.

17 Q. No. Okay. Security systems? Anything along
18 those lines --

19 A. No, sir.

20 Q. -- other than your house?

21 A. No, sir.

22 Q. Do you-all have floodlights set up?

23 A. Yes, sir.

24 Q. Is that set up around the pasture or just your
25 house?

1 A. Yes, sir.

2 Q. And her husband?

3 A. Yes, sir. Daniel.

4 Q. And they live eight hundred yards away at the --
5 or is that --

6 A. They were just there as well. Her brother and
7 sister-in-law lives there. But they actually live in
8 Columbia.

9 Q. So I presume it's probably Erin's parents are the
10 ones that live next to you?

11 A. Yes, that's correct.

12 Q. And they were going to visit their parents for
13 dinner?

14 A. Yes.

15 Q. Someone reported that this incident happened, and
16 then Erin and her husband go to your house. And they're
17 the ones that found out that the gate was open, and must
18 have spoke to the police, and relayed that information to
19 your wife who then relayed it to you.

20 A. Correct.

21 Q. I'm surprised I kept that all straight in my head
22 for that question.

23 A. But I don't know if I have it all straight.

24 Q. As we sit here today, do you have any information
25 as to how the gate became opened or --

1 A. No.

2 Q. -- unsecured?

3 A. I do not.

4 Q. And that would be from anybody: Your wife, her
5 niece, her husband, family members, friends, neighbors.
6 Anybody coming up to tell you -- total strangers saying,
7 "Hey, by the way, this is how that gate got opened." You
8 don't have any information about it?

9 A. I cannot tell you how the gate was open, that's
10 correct.

11 Q. When you got back to your property, do you recall
12 how many days it was after the 24th when this accident
13 happened?

14 A. It had been the next evening, or either that
15 Saturday, that weekend.

16 Q. Was your wife still in Raleigh at that time when
17 you got back?

18 A. No, I would say -- I can't remember. I couldn't
19 tell you.

20 Q. In other words, do you remember who came back
21 first?

22 A. I do not.

23 Q. Do you remember inspecting your property or the
24 fence, the gates, when you got back after this accident?

25 A. Yes, sir.

1 Q. What did you do in terms of walking the property,
2 looking at it to see if everything was okay?

3 A. Just walk the property and look at the fence.

4 Q. Did you notice any problem with the fencing?

5 A. No, sir. I mean, I had other livestock in there,
6 so...

7 Q. What other -- aside from the horse, did you have
8 any other livestock?

9 A. No, that's it.

10 Q. Just the horse.

11 A. I mean, the horse.

12 Q. Did you notice any problems with the gate?

13 A. No, sir.

14 Q. Was the chain still there?

15 A. Yes, sir.

16 Q. Was the rope still there?

17 A. Yes, sir.

18 Q. Did you have any problems or concerns with
19 strangers coming on your property, that you were worried
20 about?

21 A. Not really.

22 Q. Did you ever decide to take any steps to put up
23 additional gates and fencing -- just not with regard to the
24 pasture, but to secure the way people get in through your -
25 - through your main road there?

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

3
 4 Minnie Davis-Leaf,)
 5 Plaintiff,) DEPOSITION OF
 6 vs.) MADISON DAVIS
 7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
 8 and Wanda Davis,)
 9 Defendants.)

10 _____)
 11
 12 Deposition on oral examination of MADISON DAVIS,
 13 reported by Patricia G. Bachand, Court Reporter and Notary
 14 Public in and for the State of South Carolina; pursuant to
 15 Rule 30 of the South Carolina Rules of Civil Procedure;
 16 said deposition was taken at the Bryan Law Firm of SC, 17
 17 East Calhoun Street, Sumter, South Carolina, on Friday, the
 18 11th day of January 2019, scheduled for ten o'clock a.m.,
 19 and commencing at the hour of 10:22 a.m.

1 you walk by them.

2 Q. And what did you observe with regards to the gate
3 when you were there?

4 A. They were closed.

5 Q. Is that something you would check on regularly
6 when you went?

7 A. Uh-uh. No, if I wanted to pet her, and she
8 happened to come to that gate, I'd go over there and pet
9 her.

10 Q. But on October 24, 2014, the gates were closed?

11 A. I never saw them open.

12 Q. I'm trying to understand your testimony, 'cause I
13 asked what you -- what you did when you were there, and you
14 said you only fed her. But then I believe you said, "But
15 the gates were closed."

16 A. You don't have to go in the gates to feed her.
17 You just walk in and pour it over the stall, the board
18 that's in front of it. I mean, there's no horses in any
19 barns, that you have to go through the gate to feed them;
20 you pour it over their stall doors.

21 Q. Sure. And I guess I'm just asking you, can you
22 say with certainty, when you were there on October 24 of
23 2014, that the gates were closed?

24 A. Yes.

25 Q. And that's because you observed them closed,

1 correct?

2 A. Yes. I mean, I always look. I glance over
3 there.

4 Q. And were they latched closed?

5 A. You could see that the chains were around them,
6 but that's it.

7 Q. So on October 24 of 2014, when you were there,
8 the gates were latched around the gate and the gates were
9 closed, correct?

10 A. Yes.

11 Q. Was anyone home at the property or at the
12 residence when you were there on October 24 of 2014?

13 A. From what I remember, there was a car there. But
14 they said that they were out of town -- the Jones said that
15 they were out of town. I never know if they're there or
16 not, unless Chastity would come outside and see me. 'Cause
17 we're still friends too.

18 Q. What do you -- what car do you -- what do you
19 remember seeing with regards to a car being there?

20 A. I think it was the Camry that their daughter
21 drove. Not Chastity, but the other daughter. I don't
22 remember her name right now.

23 Q. A Toyota Camry?

24 A. I think so.

25 Q. Do you remember the color?

1 Q. When you were there on October 24, 2014, the day
2 that you went to feed her before this incident occurred,
3 did you check to see if the gates were latched?

4 A. No. Because you could see them, like you would
5 see if the chain wasn't around it, or you would see if it
6 was open.

7 Q. And it's your horse that you cared for, correct?

8 A. Yes.

9 Q. So is that something that you would -- you would
10 observe when you would go to the property to see that the
11 gates were latched?

12 A. I would have noticed, yes.

13 Q. You would have noticed if they were unlatched?

14 A. Yes. I'm pretty observant, so I would have
15 noticed.

16 Q. So you feel like you observed that the gates were
17 latched when you were there?

18 A. The chains were around them. And that was the
19 only thing that was around them.

20 Q. But you're familiar with how the chains went
21 around the gates, correct?

22 A. From what I remember, they wrapped around. There
23 was a tiny little thing that came out of the gate, and then
24 the chain would fit right there in it. Like, the last
25 piece of the chain that would hold it shut, it fit right

1 there in that little piece.

2 Q. Did you feel like it was secure?

3 A. Yes.

4 Q. And you wouldn't have let your horse stay there
5 if you didn't feel it was secure, correct?

6 A. Right.

7 Q. When you were there on October 24 of 2014, did
8 you go in and out of any of these gates, the little gate or
9 the big gate?

10 A. No.

11 Q. Did you leave the little gate or the big gate
12 unlatched?

13 A. No. I hadn't been in them for months.

14 Q. If after the incident occurred, a gate was
15 discovered unlatched, would that surprise you?

16 A. Yes.

17 Q. And why would it surprise you?

18 A. Because they weren't unlatched whenever I left.

19 Q. Were you the last one on the property before this
20 incident occurred?

21 A. From what I know of, yes.

22 Q. Do you dispute leaving the gate unlatched?

23 A. I didn't open the gate. And it wasn't open.

24 Q. So you didn't -- it was latched when you left?

25 A. Yes.

1 knowledge that the Jones did anything or didn't do -- or
2 failed to do something that allowed the horse to get out?
3 Do you have any knowledge that they did or didn't do
4 something that allowed that horse to get out -- your horse
5 to get out?

6 A. I don't know. I'll have to think about that one.

7 Q. I guess what I'm asking -- the gate was latched
8 when you were there, correct?

9 A. That day, yes.

10 Q. And you felt like the enclosure was secure for
11 your horse, for Swinger, correct?

12 A. Yes.

13 Q. Swinger had never gotten out before, correct?

14 A. Correct.

15 Q. Would you have let Swinger stay in a pasture or
16 an enclosure if you felt like it wasn't safe and secure?

17 A. We wouldn't have allowed her to stay there. But
18 we were in the process of moving her from their property.

19 Q. Why were you going to move her from the property?
20 Do you know?

21 A. I believe it was so she could be closer to us.

22 Q. But it didn't have anything to do with your
23 concerns about the enclosure being enclosed and appropriate
24 to keep your horse enclosed, correct?

25 A. No. But I didn't really like her being there.

1 pole?

2 A. Attached to the gate.

3 Q. It's attached to the gate?

4 A. Yes.

5 Q. Whereabouts? On the side of the gate?

6 A. It's like on the inside of the gate.

7 Q. So you were able to see all the way from the
8 inside of the gate, that it was through the latch?

9 A. You could see the gate was closed, and that there
10 was chains multiple times around it.

11 Q. Do you know if it was through the latch or not?

12 A. No.

13 Q. And is there a lock on the gate?

14 A. No, not from what I remember.

15 Q. And do you believe that, that -- putting a lock
16 on the gate would provide more security for a horse getting
17 in and out of the fence?

18 A. Yes.

19 Q. And there are two gates, correct?

20 A. Yes.

21 Q. A small gate and a large gate, right? Do you
22 know which one the horses got out of on the -- on October
23 24th of 2014?

24 A. No.

25 Q. Do you know how long they had been out of the

1 Q. And in response to Attorney Moorman's questions,
2 you said the chain went all the way around -- you observed
3 the chain went all the way around the gate --

4 A. Yes.

5 Q. -- and the fence post, correct?

6 A. Yes.

7 Q. And you're a co-owner of Swinger, correct, with
8 your mom, correct? You are a co-owner of Swinger, correct?

9 A. To an extent. I mean, I was really young, so I
10 can't just be --

11 Q. Well, you were --

12 A. -- like, "Oh, yeah."

13 Q. You felt like Swinger was your horse, right?

14 A. Yes.

15 Q. And so you liked to look out for your horse and
16 protect your horse, correct?

17 A. Yes.

18 Q. And you were comfortable when you left that day,
19 that your horse was safe and secure inside that pasture; is
20 that correct?

21 A. Yes.

22 MR. COX: That's all I got. Thank you.

23 Further deponent sayeth not.

24 (There being no further questions, the deposition
25 concluded at 12:11 p.m.)





STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Samuel Hayward,

Plaintiff,

v.

Kelsey Jones, Carroll Jones, and Wanda
Davis,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2017-CP-43-01819

**REPLY TO RESPONSE IN
OPPOSITION TO SUMMARY
JUDGMENT**

On September 6, 2019, Plaintiffs filed a memorandum in opposition to the Motion for Summary Judgment. The hearing on the motions took place on September 9, 2019. At the hearing, the undersigned requested leave to file a Reply as to the arguments raised by Plaintiffs. The request was granted.

I. Wanda Davis

Plaintiffs acknowledge that they must present some evidence from which the jury could infer negligence on her part, as owner of the horse, in permitting her horse to stray from the Jones' property. [Opposition, p. 3]. Plaintiff argues the following deposition testimony from Wanda Davis presents at least a scintilla of evidence sufficient to survive summary judgment:

- A. Wanda Davis never physically inspected the gates and did not know how the gates were secured;
- B. On one occasion, she arrived at the Jones' property to feed the horse and discovered the Jones' horse, Maximus had escaped the pasture, but she never notified the Jones about this incident;

C. On another occasion, she arrived at the property and found the small gate open and she secured it with a rope but she could not recall ever addressing the open gate with the Jones;

D. When asked whether she had a responsibility to tell the Jones' about the horse being out of the pasture and the gate being open, she responded, "I guess so."

[Opposition, p. 4].

Plaintiffs argue that because Ms. Davis never informed the Jones about the small gate being open on one occasion, a jury could infer she was negligent in allowing her horse to escape because the same small gate was found upon on the night of the accident. [*Id.*, p. 5]. Plaintiffs stated "an inference of negligence can be made that the small gate was not properly secured" on the night of the incident. [*Id.*].

First, the Jones were aware that Maximus had gotten out of the pasture on one occasion when he was a small colt and able to get through the wire fence. [Exhibit 1, Carrol Jones Dep, p. 18, line 7-p. 20, line 4]. The Jones were also aware that if the gate was left open, their horses could get out of the pasture. [*Id.*]. Accordingly, Ms. Davis's report of the above issues would only provide the Jones with information already in their possession.

Next, there is no evidence that if the small gate was secured as designed, that it would allow the horses to escape the pasture. Mr. Jones testified that the small gate was secured with a swing chain and j-bolt as well as by a probe that hooked over the top of the gate and adjacent fencepost. [Exhibit 1, p. 16, line 15-p. 17, line 23]. 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. [Exhibit 1, p. 21, lines 8-16].

Finally, Mr. Jones testified that in terms of maintaining the pasture, fence, and ensuring the gates were working, it was the sole responsible of him and his family as the property owners. [Exhibit 1, p. 20, lines 20-25]. 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 coming to the property and fixing the fence, or providing materials to fix the fence, or provide materials to secure the fence. [Exhibit 1, p. 21, lines 1-7].

Upon returning home the next evening or so, 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. [Exhibit 1, p. 31, lines 1-17]. Mr. Jones, nor any other party, has any information as to how the small gate became unsecured on the date of the accident. [Exhibit 1, p. 29, line 24-p. 30, line 10].

II. Madison Davis

Plaintiffs also allege the testimony of Ms. Davis's daughter, Madison Davis, provides evidence from which a jury could infer negligence on behalf of Wanda Davis in allowing the horse to run at large. Plaintiffs rely on the following:

- A. Madison went to the pasture sometime after school on the date of the accident to feed the horses;
- B. Madison spent ten (10) minutes at the property and parked 100 feet from the pasture;

C. Madison could not see if the chains on the gate were on the latch and 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;

D. Madison did not physically check the security of the gates on the date of the accident.

[Opposition, pp. 4-5].

Madison Davis testified with certainty that when she fed the horses on the day of the accident, the gates were closed, and the chain was wrapped multiple times around the gates and the gates were secure. [Exhibit 2, Madison Davis Depo, p. 29, line 21-p. 30, line 10; p. 51, line 1-p. 52, line 25; p. 55, lines 7-14; p. 68, lines 7-12; p. 86, lines 15-21]. Additionally, the gates open inwards towards the pastures. [Exhibit 1, p. 21, line 20-p. 22, lines 13; Exhibit 2, p. 72, line 8-p. 73, line 4; Exhibit 3 (photo of small gate); Exhibit 4, (photo of large gate)]

Plaintiffs sole argument as to Madison Davis is that she did not physically inspect to make sure the chain was looped through the J-Hook, even though it was visibly wrapped around the fence post several times, the gate was not open, an it was secure. [Opposition, p. 5].

Plaintiffs attempt to impute Madison's actions or inactions at the pasture on the day of the accident to Wanda Davis as evidence of her negligence.

The parent is not liable for the negligence of the child by reason of the relation of parent and child, yet, if the child is the agent of the father, then the existence of the relation, parent and child, does not destroy the liability of the principal for the acts of the agent. So here the nonliability of the father for the acts of the son does not destroy the liability of the master for the acts of his servant done in the course of his employment.

Norwood v. Coley, 235 S.C. 314, 317–18, 111 S.E.2d 550, 551 (1959) (internal citations omitted).

Here, assuming *arguendo*, Madison can be considered the servant of her mother, Wanda, for the purpose of feeding the horses, there is no evidence of any act of negligence by Madison. Accordingly, nothing can be imputed to Wanda Davis.

ARGUMENT IN REPLY

“For circumstantial evidence to be sufficient to warrant the finding of a fact, the circumstances must lead to the conclusion with reasonable certainty, and must have sufficient probative value to constitute the basis for a legal inference, and not for mere speculation.” *Holland v. Georgia Hardwood Lumber Co.*, 214 S.C. 195, 204–05, 51 S.E.2d 744, 749 (1949). “The existence of a fact or facts cannot rest in speculation, surmise or conjecture.” *Id.*

The uncontested evidence in this case is that on the afternoon of the day of the accident, the gate at issue was closed and secured with the chain which was wrapped several times around the fence post. Accordingly, to find negligence, a jury would have to disregard the testimony of Madison Davis that the gates were closed and secured, speculate that horse(s) then pushed open the gate, which only opened into the pasture and not out to the road, and then left the property. The alternative is that the jury could speculate that someone came onto the property and unsecured the gate between the time Madison left and approximately six hours later when the accident occurred. This type of speculation and conjecture is specifically prohibited. Therefore, Defendant Davis is entitled to judgment as a matter of law.

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Attorneys for Defendant Davis

Columbia, South Carolina
September 13, 2019

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

3
4 Minnie Davis-Leaf,)
5 Plaintiff,) DEPOSITION OF
6 vs.) CARROLL JONES
7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
8 and Wanda Davis,)
9 Defendants.)

10 _____)
11
12 Deposition on oral examination of CARROLL JONES,
13 reported by Patricia G. Bachand, Court Reporter and Notary
14 Public in and for the State of South Carolina; pursuant to
15 Rule 30 of the South Carolina Rules of Civil Procedure;
16 said deposition was taken at the Bryan Law Firm of SC, 17
17 East Calhoun Street, Sumter, South Carolina, on Friday, the
18 11th day of January 2019, and commencing at the hour of one
19 o'clock p.m.

1 A. The same barn.

2 **Q. Same barn. Is it one large barn but -- it's my**
3 **understanding there may be a path that goes in-between**
4 **where the food was kept and where the horses were pastured.**
5 **Or maybe you can explain how the setup is with the --**

6 A. It's one large -- one large barn. There was a
7 16-by-16 enclosure, and she kept her feed in there. But as
8 far as the stall goes, it's sort of like lean-to. And you
9 would walk through there to the stalls to put the feed in
10 the stalls. And the box for the electrical panel was right
11 there behind -- right in front of the stalls.

12 **Q. How would you gain access to the pasture?**
13 **Besides climbing over a fence, of course.**

14 A. Through the gate right by the barn.

15 **Q. How many gates did you have?**

16 A. Two.

17 **Q. Do you know the size of the gates?**

18 A. Yes. One was a eight-foot gate, a drive-through
19 gate. And one was what we call a personnel -- you know, a
20 person gate, four -- four-feet wide, I believe, was what
21 that one was.

22 **Q. How was the four-foot gate secured or kept from**
23 **opening?**

24 A. It had a like a swing chain around the post, and
25 the post -- it was screwed in with a J-bolt, like you hook

1 a -- you know, a porch swing to. And then you wrap that
2 chain around it and put the chain in that hook. And it
3 also had a rope on the top of the gate, that was tied to
4 the gate. The rope hooked over to the post -- another
5 wooden post.

6 **Q. And what about the eight-foot fence, how was that**
7 **secured?**

8 A. The same way: With a chain around it and a hook.

9 **Q. Did it have the rope as well, or just chain?**

10 A. Just chain. It was very seldom used. Only to
11 put a tractor or something like that, going to the barn to
12 the pasture.

13 **Q. Did you-all ever take your horses out of the**
14 **pasture into the area in front of it or around the side?**

15 A. Yes.

16 **Q. Would you use the four-foot gate or the eight-**
17 **foot gate to do that?**

18 A. Four-foot gate.

19 **Q. In terms of having to go into the pasture would**
20 **you -- or to the extent that you saw your family members,**
21 **would they use the four-foot gate to generally go back and**
22 **forth? Or would they use the eight-foot gate?**

23 A. Four-foot.

24 **Q. Did you have -- or would anybody have to access**
25 **the pasture, actually go in the pasture to feed the horses?**

1 A. No, sir. It was not necessary.

2 Q. And the same question with regard to watering the
3 horse: From my understanding there was an area further down
4 that had the water trough, would you have to actually walk
5 into the pasture in order to water or refill the water?

6 A. No, sir.

7 Q. Prior to this October 24th, 2014 date, had there
8 ever been an occasion where any of the horses that were in
9 the pasture, got out of the pasture?

10 A. Yes, sir.

11 Q. Do you know on how many different occasions that
12 might have happened over the year -- say past ten years?

13 A. Maybe once.

14 Q. Do you remember which horse that was?

15 A. I know Maximus may have gotten out.

16 Q. And what do you know about that particular -- or
17 Maximus getting out?

18 A. Well, he was a small colt, so he would have been
19 able to get through the wire.

20 Q. And explain to me how that might have occurred
21 because -- describe the wire and describe how he would have
22 got out. I'm not sure of his size or anything like that,
23 so --

24 A. Well, colts are small, and sometimes they're big
25 -- bigger than a dog -- you know, maybe taller than a Great

1 Dane or something.

2 Q. So you're hand is about what, three and a half --

3 A. Yes, something like that. So if the top three
4 wires is hot, he could just step through the bottom wire.

5 Q. So the bottom wire was not hot --

6 A. That's correct.

7 Q. -- and the top three were? Were you aware of him
8 getting out on more than one occasion?

9 A. No.

10 Q. Did you actually see Maximus outside of the
11 pasture? Or was that something that was told to you, or
12 related to you by someone else?

13 A. Related.

14 Q. And who told you about it?

15 A. The family member. I can't specifically know
16 which one.

17 Q. Do you know how the family member came about to
18 discover that? Did someone tell the family member? Or did
19 the family member actually catch the horse outside the
20 pasture?

21 A. It may -- I couldn't -- I don't recollect.

22 Q. Other than Maximus and that one occasion, are you
23 aware of any other time any of your -- any of the horses
24 that were pastured there, getting outside of the -- of the
25 enclosure?

1 A. I mean, I have horses, you know, for all my life,
2 basically. And if I leave the gate open or something, sure
3 they'll walk out in the yard or something like that over --
4 over, you know, 35 years or 40 years.

5 **Q. Have you ever had tree limbs fall on parts of**
6 **your fence, which had to be repaired, where a horse could**
7 **get out if that happened?**

8 A. No, sir. The only time I've ever known our
9 horses to get out was through the -- like I said, when Max
10 was a colt or through the gate.

11 **Q. And if that occurred -- with respect to the gate**
12 **not him crawling underneath the wire --**

13 A. Sure.

14 **Q. -- would that have been just because family**
15 **members were coming and going and didn't secure the gate?**

16 A. That's correct.

17 **Q. Are you ever aware of any situation where the**
18 **horses pushed opened the gate that was secured?**

19 A. No, sir.

20 **Q. In terms of maintaining the pasture or the**
21 **fencing, would it be accurate to say that, that would be**
22 **you or your family, the owner's responsibility, to maintain**
23 **the wire to make sure the fences were working and the gates**
24 **were working and things along those lines?**

25 A. Yes.

1 Q. So is it accurate that there would be no
2 expectation that Ms. Davis or anybody, a co-worker who's
3 keeping a horse there, are responsible for coming and
4 fixing something with regard to the fence, or providing
5 materials to fix the fence or providing materials to secure
6 the fence?

7 A. Correct.

8 Q. To your knowledge was there any problems with
9 either of the gates -- I should say locking -- but securing
10 or being secured?

11 A. No, sir.

12 Q. So if someone shut the gate on your property, and
13 looped the chain the way it's supposed to be looped, and put
14 the rope on top of it, is it accurate that, that gate would
15 remain secured?

16 A. Yes, sir.

17 Q. And the only way to unsecure it would be to
18 unloop the rope and undo the chain?

19 A. Yes, sir.

20 Q. Did the gate -- the four-foot gate, in terms of
21 being in the pasture and coming out, did the gate swing
22 out, or did it swing in towards the pasture? If you were
23 in the pasture going out, would you push it out or would --
24 pull it in?

25 A. I think you had to push it in. But that's a

1 guess. And I shouldn't even say --

2 Q. Well, I don't want you guessing. Put it this
3 way: If we went out there today, would it be the same
4 situation as it was in 2014, in terms of pulling the gate
5 out or pushing the gate in, or it goes both ways?

6 A. It's the exact same way. Yes, sir, it would be
7 the same.

8 Q. So no modifications have been done to the four-
9 foot gate, that would be any different than it was in 2014.

10 A. That's correct.

11 Q. Would the same be true of the eight-foot gate?
12 Is it the same gate --

13 A. That's correct.

14 Q. Do you-all have any cameras set up on your
15 property? I know that's big now, but --

16 A. No, sir.

17 Q. No. Okay. Security systems? Anything along
18 those lines --

19 A. No, sir.

20 Q. -- other than your house?

21 A. No, sir.

22 Q. Do you-all have floodlights set up?

23 A. Yes, sir.

24 Q. Is that set up around the pasture or just your
25 house?

1 A. Yes, sir.

2 Q. And her husband?

3 A. Yes, sir. Daniel.

4 Q. And they live eight hundred yards away at the --
5 or is that --

6 A. They were just there as well. Her brother and
7 sister-in-law lives there. But they actually live in
8 Columbia.

9 Q. So I presume it's probably Erin's parents are the
10 ones that live next to you?

11 A. Yes, that's correct.

12 Q. And they were going to visit their parents for
13 dinner?

14 A. Yes.

15 Q. Someone reported that this incident happened, and
16 then Erin and her husband go to your house. And they're
17 the ones that found out that the gate was open, and must
18 have spoke to the police, and relayed that information to
19 your wife who then relayed it to you.

20 A. Correct.

21 Q. I'm surprised I kept that all straight in my head
22 for that question.

23 A. But I don't know if I have it all straight.

24 Q. As we sit here today, do you have any information
25 as to how the gate became opened or --

1 A. No.

2 Q. -- unsecured?

3 A. I do not.

4 Q. And that would be from anybody: Your wife, her
5 niece, her husband, family members, friends, neighbors.
6 Anybody coming up to tell you -- total strangers saying,
7 "Hey, by the way, this is how that gate got opened." You
8 don't have any information about it?

9 A. I cannot tell you how the gate was open, that's
10 correct.

11 Q. When you got back to your property, do you recall
12 how many days it was after the 24th when this accident
13 happened?

14 A. It had been the next evening, or either that
15 Saturday, that weekend.

16 Q. Was your wife still in Raleigh at that time when
17 you got back?

18 A. No, I would say -- I can't remember. I couldn't
19 tell you.

20 Q. In other words, do you remember who came back
21 first?

22 A. I do not.

23 Q. Do you remember inspecting your property or the
24 fence, the gates, when you got back after this accident?

25 A. Yes, sir.

1 Q. What did you do in terms of walking the property,
2 looking at it to see if everything was okay?

3 A. Just walk the property and look at the fence.

4 Q. Did you notice any problem with the fencing?

5 A. No, sir. I mean, I had other livestock in there,
6 so...

7 Q. What other -- aside from the horse, did you have
8 any other livestock?

9 A. No, that's it.

10 Q. Just the horse.

11 A. I mean, the horse.

12 Q. Did you notice any problems with the gate?

13 A. No, sir.

14 Q. Was the chain still there?

15 A. Yes, sir.

16 Q. Was the rope still there?

17 A. Yes, sir.

18 Q. Did you have any problems or concerns with
19 strangers coming on your property, that you were worried
20 about?

21 A. Not really.

22 Q. Did you ever decide to take any steps to put up
23 additional gates and fencing -- just not with regard to the
24 pasture, but to secure the way people get in through your -
25 - through your main road there?

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

3
4 Minnie Davis-Leaf,)
5 Plaintiff,) DEPOSITION OF
6 vs.) MADISON DAVIS
7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
8 and Wanda Davis,)
9 Defendants.)

10 _____)
11
12 Deposition on oral examination of MADISON DAVIS,
13 reported by Patricia G. Bachand, Court Reporter and Notary
14 Public in and for the State of South Carolina; pursuant to
15 Rule 30 of the South Carolina Rules of Civil Procedure;
16 said deposition was taken at the Bryan Law Firm of SC, 17
17 East Calhoun Street, Sumter, South Carolina, on Friday, the
18 11th day of January 2019, scheduled for ten o'clock a.m.,
19 and commencing at the hour of 10:22 a.m.

1 you walk by them.

2 Q. And what did you observe with regards to the gate
3 when you were there?

4 A. They were closed.

5 Q. Is that something you would check on regularly
6 when you went?

7 A. Uh-uh. No, if I wanted to pet her, and she
8 happened to come to that gate, I'd go over there and pet
9 her.

10 Q. But on October 24, 2014, the gates were closed?

11 A. I never saw them open.

12 Q. I'm trying to understand your testimony, 'cause I
13 asked what you -- what you did when you were there, and you
14 said you only fed her. But then I believe you said, "But
15 the gates were closed."

16 A. You don't have to go in the gates to feed her.
17 You just walk in and pour it over the stall, the board
18 that's in front of it. I mean, there's no horses in any
19 barns, that you have to go through the gate to feed them;
20 you pour it over their stall doors.

21 Q. Sure. And I guess I'm just asking you, can you
22 say with certainty, when you were there on October 24 of
23 2014, that the gates were closed?

24 A. Yes.

25 Q. And that's because you observed them closed,

1 correct?

2 A. Yes. I mean, I always look. I glance over
3 there.

4 Q. And were they latched closed?

5 A. You could see that the chains were around them,
6 but that's it.

7 Q. So on October 24 of 2014, when you were there,
8 the gates were latched around the gate and the gates were
9 closed, correct?

10 A. Yes.

11 Q. Was anyone home at the property or at the
12 residence when you were there on October 24 of 2014?

13 A. From what I remember, there was a car there. But
14 they said that they were out of town -- the Jones said that
15 they were out of town. I never know if they're there or
16 not, unless Chastity would come outside and see me. 'Cause
17 we're still friends too.

18 Q. What do you -- what car do you -- what do you
19 remember seeing with regards to a car being there?

20 A. I think it was the Camry that their daughter
21 drove. Not Chastity, but the other daughter. I don't
22 remember her name right now.

23 Q. A Toyota Camry?

24 A. I think so.

25 Q. Do you remember the color?

1 Q. When you were there on October 24, 2014, the day
2 that you went to feed her before this incident occurred,
3 did you check to see if the gates were latched?

4 A. No. Because you could see them, like you would
5 see if the chain wasn't around it, or you would see if it
6 was open.

7 Q. And it's your horse that you cared for, correct?

8 A. Yes.

9 Q. So is that something that you would -- you would
10 observe when you would go to the property to see that the
11 gates were latched?

12 A. I would have noticed, yes.

13 Q. You would have noticed if they were unlatched?

14 A. Yes. I'm pretty observant, so I would have
15 noticed.

16 Q. So you feel like you observed that the gates were
17 latched when you were there?

18 A. The chains were around them. And that was the
19 only thing that was around them.

20 Q. But you're familiar with how the chains went
21 around the gates, correct?

22 A. From what I remember, they wrapped around. There
23 was a tiny little thing that came out of the gate, and then
24 the chain would fit right there in it. Like, the last
25 piece of the chain that would hold it shut, it fit right

1 there in that little piece.

2 Q. Did you feel like it was secure?

3 A. Yes.

4 Q. And you wouldn't have let your horse stay there
5 if you didn't feel it was secure, correct?

6 A. Right.

7 Q. When you were there on October 24 of 2014, did
8 you go in and out of any of these gates, the little gate or
9 the big gate?

10 A. No.

11 Q. Did you leave the little gate or the big gate
12 unlatched?

13 A. No. I hadn't been in them for months.

14 Q. If after the incident occurred, a gate was
15 discovered unlatched, would that surprise you?

16 A. Yes.

17 Q. And why would it surprise you?

18 A. Because they weren't unlatched whenever I left.

19 Q. Were you the last one on the property before this
20 incident occurred?

21 A. From what I know of, yes.

22 Q. Do you dispute leaving the gate unlatched?

23 A. I didn't open the gate. And it wasn't open.

24 Q. So you didn't -- it was latched when you left?

25 A. Yes.

1 knowledge that the Jones did anything or didn't do -- or
2 failed to do something that allowed the horse to get out?
3 Do you have any knowledge that they did or didn't do
4 something that allowed that horse to get out -- your horse
5 to get out?

6 A. I don't know. I'll have to think about that one.

7 Q. I guess what I'm asking -- the gate was latched
8 when you were there, correct?

9 A. That day, yes.

10 Q. And you felt like the enclosure was secure for
11 your horse, for Swinger, correct?

12 A. Yes.

13 Q. Swinger had never gotten out before, correct?

14 A. Correct.

15 Q. Would you have let Swinger stay in a pasture or
16 an enclosure if you felt like it wasn't safe and secure?

17 A. We wouldn't have allowed her to stay there. But
18 we were in the process of moving her from their property.

19 Q. Why were you going to move her from the property?
20 Do you know?

21 A. I believe it was so she could be closer to us.

22 Q. But it didn't have anything to do with your
23 concerns about the enclosure being enclosed and appropriate
24 to keep your horse enclosed, correct?

25 A. No. But I didn't really like her being there.

1 pole?

2 A. Attached to the gate.

3 Q. It's attached to the gate?

4 A. Yes.

5 Q. Whereabouts? On the side of the gate?

6 A. It's like on the inside of the gate.

7 Q. So you were able to see all the way from the
8 inside of the gate, that it was through the latch?

9 A. You could see the gate was closed, and that there
10 was chains multiple times around it.

11 Q. Do you know if it was through the latch or not?

12 A. No.

13 Q. And is there a lock on the gate?

14 A. No, not from what I remember.

15 Q. And do you believe that, that -- putting a lock
16 on the gate would provide more security for a horse getting
17 in and out of the fence?

18 A. Yes.

19 Q. And there are two gates, correct?

20 A. Yes.

21 Q. A small gate and a large gate, right? Do you
22 know which one the horses got out of on the -- on October
23 24th of 2014?

24 A. No.

25 Q. Do you know how long they had been out of the

1 Q. And in response to Attorney Moorman's questions,
2 you said the chain went all the way around -- you observed
3 the chain went all the way around the gate --

4 A. Yes.

5 Q. -- and the fence post, correct?

6 A. Yes.

7 Q. And you're a co-owner of Swinger, correct, with
8 your mom, correct? You are a co-owner of Swinger, correct?

9 A. To an extent. I mean, I was really young, so I
10 can't just be --

11 Q. Well, you were --

12 A. -- like, "Oh, yeah."

13 Q. You felt like Swinger was your horse, right?

14 A. Yes.

15 Q. And so you liked to look out for your horse and
16 protect your horse, correct?

17 A. Yes.

18 Q. And you were comfortable when you left that day,
19 that your horse was safe and secure inside that pasture; is
20 that correct?

21 A. Yes.

22 MR. COX: That's all I got. Thank you.

23 Further deponent sayeth not.

24 (There being no further questions, the deposition
25 concluded at 12:11 p.m.)





STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Elvis Nelson,

Plaintiff,

v.

Kelsey Jones, Carroll Jones, and Wanda
Davis,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2017-CP-43-01811

**REPLY TO RESPONSE IN
OPPOSITION TO SUMMARY
JUDGMENT**

On September 6, 2019, Plaintiffs filed a memorandum in opposition to the Motion for Summary Judgment. The hearing on the motions took place on September 9, 2019. At the hearing, the undersigned requested leave to file a Reply as to the arguments raised by Plaintiffs. The request was granted.

I. Wanda Davis

Plaintiffs acknowledge that they must present some evidence from which the jury could infer negligence on her part, as owner of the horse, in permitting her horse to stray from the Jones' property. [Opposition, p. 3]. Plaintiff argues the following deposition testimony from Wanda Davis presents at least a scintilla of evidence sufficient to survive summary judgment:

- A. Wanda Davis never physically inspected the gates and did not know how the gates were secured;
- B. On one occasion, she arrived at the Jones' property to feed the horse and discovered the Jones' horse, Maximus had escaped the pasture, but she never notified the Jones about this incident;

C. On another occasion, she arrived at the property and found the small gate open and she secured it with a rope but she could not recall ever addressing the open gate with the Jones;

D. When asked whether she had a responsibility to tell the Jones' about the horse being out of the pasture and the gate being open, she responded, "I guess so."

[Opposition, p. 4].

Plaintiffs argue that because Ms. Davis never informed the Jones about the small gate being open on one occasion, a jury could infer she was negligent in allowing her horse to escape because the same small gate was found upon on the night of the accident. [*Id.*, p. 5]. Plaintiffs stated "an inference of negligence can be made that the small gate was not properly secured" on the night of the incident. [*Id.*].

First, the Jones were aware that Maximus had gotten out of the pasture on one occasion when he was a small colt and able to get through the wire fence. [Exhibit 1, Carrol Jones Dep, p. 18, line 7-p. 20, line 4]. The Jones were also aware that if the gate was left open, their horses could get out of the pasture. [*Id.*]. Accordingly, Ms. Davis's report of the above issues would only provide the Jones with information already in their possession.

Next, there is no evidence that if the small gate was secured as designed, that it would allow the horses to escape the pasture. Mr. Jones testified that the small gate was secured with a swing chain and j-bolt as well as by a probe that hooked over the top of the gate and adjacent fencepost. [Exhibit 1, p. 16, line 15-p. 17, line 23]. 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. [Exhibit 1, p. 21, lines 8-16].

Finally, Mr. Jones testified that in terms of maintaining the pasture, fence, and ensuring the gates were working, it was the sole responsible of him and his family as the property owners. [Exhibit 1, p. 20, lines 20-25]. 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 coming to the property and fixing the fence, or providing materials to fix the fence, or provide materials to secure the fence. [Exhibit 1, p. 21, lines 1-7].

Upon returning home the next evening or so, 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. [Exhibit 1, p. 31, lines 1-17]. Mr. Jones, nor any other party, has any information as to how the small gate became unsecured on the date of the accident. [Exhibit 1, p. 29, line 24-p. 30, line 10].

II. Madison Davis

Plaintiffs also allege the testimony of Ms. Davis's daughter, Madison Davis, provides evidence from which a jury could infer negligence on behalf of Wanda Davis in allowing the horse to run at large. Plaintiffs rely on the following:

- A. Madison went to the pasture sometime after school on the date of the accident to feed the horses;
- B. Madison spent ten (10) minutes at the property and parked 100 feet from the pasture;

C. Madison could not see if the chains on the gate were on the latch and 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;

D. Madison did not physically check the security of the gates on the date of the accident.

[Opposition, pp. 4-5].

Madison Davis testified with certainty that when she fed the horses on the day of the accident, the gates were closed, and the chain was wrapped multiple times around the gates and the gates were secure. [Exhibit 2, Madison Davis Depo, p. 29, line 21-p. 30, line 10; p. 51, line 1-p. 52, line 25; p. 55, lines 7-14; p. 68, lines 7-12; p. 86, lines 15-21]. Additionally, the gates open inwards towards the pastures. [Exhibit 1, p. 21, line 20-p. 22, lines 13; Exhibit 2, p. 72, line 8-p. 73, line 4; Exhibit 3 (photo of small gate); Exhibit 4, (photo of large gate)]

Plaintiffs sole argument as to Madison Davis is that she did not physically inspect to make sure the chain was looped through the J-Hook, even though it was visibly wrapped around the fence post several times, the gate was not open, an it was secure. [Opposition, p. 5].

Plaintiffs attempt to impute Madison's actions or inactions at the pasture on the day of the accident to Wanda Davis as evidence of her negligence.

The parent is not liable for the negligence of the child by reason of the relation of parent and child, yet, if the child is the agent of the father, then the existence of the relation, parent and child, does not destroy the liability of the principal for the acts of the agent. So here the nonliability of the father for the acts of the son does not destroy the liability of the master for the acts of his servant done in the course of his employment.

Norwood v. Coley, 235 S.C. 314, 317–18, 111 S.E.2d 550, 551 (1959) (internal citations omitted).

Here, assuming *arguendo*, Madison can be considered the servant of her mother, Wanda, for the purpose of feeding the horses, there is no evidence of any act of negligence by Madison. Accordingly, nothing can be imputed to Wanda Davis.

ARGUMENT IN REPLY

“For circumstantial evidence to be sufficient to warrant the finding of a fact, the circumstances must lead to the conclusion with reasonable certainty, and must have sufficient probative value to constitute the basis for a legal inference, and not for mere speculation.” *Holland v. Georgia Hardwood Lumber Co.*, 214 S.C. 195, 204–05, 51 S.E.2d 744, 749 (1949). “The existence of a fact or facts cannot rest in speculation, surmise or conjecture.” *Id.*

The uncontested evidence in this case is that on the afternoon of the day of the accident, the gate at issue was closed and secured with the chain which was wrapped several times around the fence post. Accordingly, to find negligence, a jury would have to disregard the testimony of Madison Davis that the gates were closed and secured, speculate that horse(s) then pushed open the gate, which only opened into the pasture and not out to the road, and then left the property. The alternative is that the jury could speculate that someone came onto the property and unsecured the gate between the time Madison left and approximately six hours later when the accident occurred. This type of speculation and conjecture is specifically prohibited. Therefore, Defendant Davis is entitled to judgment as a matter of law.

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Columbia, South Carolina
September 13, 2019

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

3
4 Minnie Davis-Leaf,)
5 Plaintiff,) DEPOSITION OF
6 vs.) CARROLL JONES
7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
8 and Wanda Davis,)
9 Defendants.)

10 _____)
11
12 Deposition on oral examination of CARROLL JONES,
13 reported by Patricia G. Bachand, Court Reporter and Notary
14 Public in and for the State of South Carolina; pursuant to
15 Rule 30 of the South Carolina Rules of Civil Procedure;
16 said deposition was taken at the Bryan Law Firm of SC, 17
17 East Calhoun Street, Sumter, South Carolina, on Friday, the
18 11th day of January 2019, and commencing at the hour of one
19 o'clock p.m.

1 A. The same barn.

2 **Q. Same barn. Is it one large barn but -- it's my**
3 **understanding there may be a path that goes in-between**
4 **where the food was kept and where the horses were pastured.**
5 **Or maybe you can explain how the setup is with the --**

6 A. It's one large -- one large barn. There was a
7 16-by-16 enclosure, and she kept her feed in there. But as
8 far as the stall goes, it's sort of like lean-to. And you
9 would walk through there to the stalls to put the feed in
10 the stalls. And the box for the electrical panel was right
11 there behind -- right in front of the stalls.

12 **Q. How would you gain access to the pasture?**
13 **Besides climbing over a fence, of course.**

14 A. Through the gate right by the barn.

15 **Q. How many gates did you have?**

16 A. Two.

17 **Q. Do you know the size of the gates?**

18 A. Yes. One was a eight-foot gate, a drive-through
19 gate. And one was what we call a personnel -- you know, a
20 person gate, four -- four-feet wide, I believe, was what
21 that one was.

22 **Q. How was the four-foot gate secured or kept from**
23 **opening?**

24 A. It had a like a swing chain around the post, and
25 the post -- it was screwed in with a J-bolt, like you hook

1 a -- you know, a porch swing to. And then you wrap that
2 chain around it and put the chain in that hook. And it
3 also had a rope on the top of the gate, that was tied to
4 the gate. The rope hooked over to the post -- another
5 wooden post.

6 **Q. And what about the eight-foot fence, how was that**
7 **secured?**

8 A. The same way: With a chain around it and a hook.

9 **Q. Did it have the rope as well, or just chain?**

10 A. Just chain. It was very seldom used. Only to
11 put a tractor or something like that, going to the barn to
12 the pasture.

13 **Q. Did you-all ever take your horses out of the**
14 **pasture into the area in front of it or around the side?**

15 A. Yes.

16 **Q. Would you use the four-foot gate or the eight-**
17 **foot gate to do that?**

18 A. Four-foot gate.

19 **Q. In terms of having to go into the pasture would**
20 **you -- or to the extent that you saw your family members,**
21 **would they use the four-foot gate to generally go back and**
22 **forth? Or would they use the eight-foot gate?**

23 A. Four-foot.

24 **Q. Did you have -- or would anybody have to access**
25 **the pasture, actually go in the pasture to feed the horses?**

1 A. No, sir. It was not necessary.

2 Q. And the same question with regard to watering the
3 horse: From my understanding there was an area further down
4 that had the water trough, would you have to actually walk
5 into the pasture in order to water or refill the water?

6 A. No, sir.

7 Q. Prior to this October 24th, 2014 date, had there
8 ever been an occasion where any of the horses that were in
9 the pasture, got out of the pasture?

10 A. Yes, sir.

11 Q. Do you know on how many different occasions that
12 might have happened over the year -- say past ten years?

13 A. Maybe once.

14 Q. Do you remember which horse that was?

15 A. I know Maximus may have gotten out.

16 Q. And what do you know about that particular -- or
17 Maximus getting out?

18 A. Well, he was a small colt, so he would have been
19 able to get through the wire.

20 Q. And explain to me how that might have occurred
21 because -- describe the wire and describe how he would have
22 got out. I'm not sure of his size or anything like that,
23 so --

24 A. Well, colts are small, and sometimes they're big
25 -- bigger than a dog -- you know, maybe taller than a Great

1 Dane or something.

2 Q. So you're hand is about what, three and a half --

3 A. Yes, something like that. So if the top three
4 wires is hot, he could just step through the bottom wire.

5 Q. So the bottom wire was not hot --

6 A. That's correct.

7 Q. -- and the top three were? Were you aware of him
8 getting out on more than one occasion?

9 A. No.

10 Q. Did you actually see Maximus outside of the
11 pasture? Or was that something that was told to you, or
12 related to you by someone else?

13 A. Related.

14 Q. And who told you about it?

15 A. The family member. I can't specifically know
16 which one.

17 Q. Do you know how the family member came about to
18 discover that? Did someone tell the family member? Or did
19 the family member actually catch the horse outside the
20 pasture?

21 A. It may -- I couldn't -- I don't recollect.

22 Q. Other than Maximus and that one occasion, are you
23 aware of any other time any of your -- any of the horses
24 that were pastured there, getting outside of the -- of the
25 enclosure?

1 A. I mean, I have horses, you know, for all my life,
2 basically. And if I leave the gate open or something, sure
3 they'll walk out in the yard or something like that over --
4 over, you know, 35 years or 40 years.

5 **Q. Have you ever had tree limbs fall on parts of**
6 **your fence, which had to be repaired, where a horse could**
7 **get out if that happened?**

8 A. No, sir. The only time I've ever known our
9 horses to get out was through the -- like I said, when Max
10 was a colt or through the gate.

11 **Q. And if that occurred -- with respect to the gate**
12 **not him crawling underneath the wire --**

13 A. Sure.

14 **Q. -- would that have been just because family**
15 **members were coming and going and didn't secure the gate?**

16 A. That's correct.

17 **Q. Are you ever aware of any situation where the**
18 **horses pushed opened the gate that was secured?**

19 A. No, sir.

20 **Q. In terms of maintaining the pasture or the**
21 **fencing, would it be accurate to say that, that would be**
22 **you or your family, the owner's responsibility, to maintain**
23 **the wire to make sure the fences were working and the gates**
24 **were working and things along those lines?**

25 A. Yes.

1 Q. So is it accurate that there would be no
2 expectation that Ms. Davis or anybody, a co-worker who's
3 keeping a horse there, are responsible for coming and
4 fixing something with regard to the fence, or providing
5 materials to fix the fence or providing materials to secure
6 the fence?

7 A. Correct.

8 Q. To your knowledge was there any problems with
9 either of the gates -- I should say locking -- but securing
10 or being secured?

11 A. No, sir.

12 Q. So if someone shut the gate on your property, and
13 looped the chain the way it's supposed to be looped, and put
14 the rope on top of it, is it accurate that, that gate would
15 remain secured?

16 A. Yes, sir.

17 Q. And the only way to unsecure it would be to
18 unloop the rope and undo the chain?

19 A. Yes, sir.

20 Q. Did the gate -- the four-foot gate, in terms of
21 being in the pasture and coming out, did the gate swing
22 out, or did it swing in towards the pasture? If you were
23 in the pasture going out, would you push it out or would --
24 pull it in?

25 A. I think you had to push it in. But that's a

1 guess. And I shouldn't even say --

2 Q. Well, I don't want you guessing. Put it this
3 way: If we went out there today, would it be the same
4 situation as it was in 2014, in terms of pulling the gate
5 out or pushing the gate in, or it goes both ways?

6 A. It's the exact same way. Yes, sir, it would be
7 the same.

8 Q. So no modifications have been done to the four-
9 foot gate, that would be any different than it was in 2014.

10 A. That's correct.

11 Q. Would the same be true of the eight-foot gate?
12 Is it the same gate --

13 A. That's correct.

14 Q. Do you-all have any cameras set up on your
15 property? I know that's big now, but --

16 A. No, sir.

17 Q. No. Okay. Security systems? Anything along
18 those lines --

19 A. No, sir.

20 Q. -- other than your house?

21 A. No, sir.

22 Q. Do you-all have floodlights set up?

23 A. Yes, sir.

24 Q. Is that set up around the pasture or just your
25 house?

1 A. Yes, sir.

2 Q. And her husband?

3 A. Yes, sir. Daniel.

4 Q. And they live eight hundred yards away at the --
5 or is that --

6 A. They were just there as well. Her brother and
7 sister-in-law lives there. But they actually live in
8 Columbia.

9 Q. So I presume it's probably Erin's parents are the
10 ones that live next to you?

11 A. Yes, that's correct.

12 Q. And they were going to visit their parents for
13 dinner?

14 A. Yes.

15 Q. Someone reported that this incident happened, and
16 then Erin and her husband go to your house. And they're
17 the ones that found out that the gate was open, and must
18 have spoke to the police, and relayed that information to
19 your wife who then relayed it to you.

20 A. Correct.

21 Q. I'm surprised I kept that all straight in my head
22 for that question.

23 A. But I don't know if I have it all straight.

24 Q. As we sit here today, do you have any information
25 as to how the gate became opened or --

1 A. No.

2 Q. -- unsecured?

3 A. I do not.

4 Q. And that would be from anybody: Your wife, her
5 niece, her husband, family members, friends, neighbors.
6 Anybody coming up to tell you -- total strangers saying,
7 "Hey, by the way, this is how that gate got opened." You
8 don't have any information about it?

9 A. I cannot tell you how the gate was open, that's
10 correct.

11 Q. When you got back to your property, do you recall
12 how many days it was after the 24th when this accident
13 happened?

14 A. It had been the next evening, or either that
15 Saturday, that weekend.

16 Q. Was your wife still in Raleigh at that time when
17 you got back?

18 A. No, I would say -- I can't remember. I couldn't
19 tell you.

20 Q. In other words, do you remember who came back
21 first?

22 A. I do not.

23 Q. Do you remember inspecting your property or the
24 fence, the gates, when you got back after this accident?

25 A. Yes, sir.

1 Q. What did you do in terms of walking the property,
2 looking at it to see if everything was okay?

3 A. Just walk the property and look at the fence.

4 Q. Did you notice any problem with the fencing?

5 A. No, sir. I mean, I had other livestock in there,
6 so...

7 Q. What other -- aside from the horse, did you have
8 any other livestock?

9 A. No, that's it.

10 Q. Just the horse.

11 A. I mean, the horse.

12 Q. Did you notice any problems with the gate?

13 A. No, sir.

14 Q. Was the chain still there?

15 A. Yes, sir.

16 Q. Was the rope still there?

17 A. Yes, sir.

18 Q. Did you have any problems or concerns with
19 strangers coming on your property, that you were worried
20 about?

21 A. Not really.

22 Q. Did you ever decide to take any steps to put up
23 additional gates and fencing -- just not with regard to the
24 pasture, but to secure the way people get in through your -
25 - through your main road there?

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF SUMTER) C/A NO.: 2017-CP-43-01818

3
4 Minnie Davis-Leaf,)
5 Plaintiff,) DEPOSITION OF
6 vs.) MADISON DAVIS
7 Kelsy Jones, Carroll Jones,) JANUARY 11, 2019
8 and Wanda Davis,)
9 Defendants.)

10 _____)
11
12 Deposition on oral examination of MADISON DAVIS,
13 reported by Patricia G. Bachand, Court Reporter and Notary
14 Public in and for the State of South Carolina; pursuant to
15 Rule 30 of the South Carolina Rules of Civil Procedure;
16 said deposition was taken at the Bryan Law Firm of SC, 17
17 East Calhoun Street, Sumter, South Carolina, on Friday, the
18 11th day of January 2019, scheduled for ten o'clock a.m.,
19 and commencing at the hour of 10:22 a.m.

1 you walk by them.

2 Q. And what did you observe with regards to the gate
3 when you were there?

4 A. They were closed.

5 Q. Is that something you would check on regularly
6 when you went?

7 A. Uh-uh. No, if I wanted to pet her, and she
8 happened to come to that gate, I'd go over there and pet
9 her.

10 Q. But on October 24, 2014, the gates were closed?

11 A. I never saw them open.

12 Q. I'm trying to understand your testimony, 'cause I
13 asked what you -- what you did when you were there, and you
14 said you only fed her. But then I believe you said, "But
15 the gates were closed."

16 A. You don't have to go in the gates to feed her.
17 You just walk in and pour it over the stall, the board
18 that's in front of it. I mean, there's no horses in any
19 barns, that you have to go through the gate to feed them;
20 you pour it over their stall doors.

21 Q. Sure. And I guess I'm just asking you, can you
22 say with certainty, when you were there on October 24 of
23 2014, that the gates were closed?

24 A. Yes.

25 Q. And that's because you observed them closed,

1 correct?

2 A. Yes. I mean, I always look. I glance over
3 there.

4 Q. And were they latched closed?

5 A. You could see that the chains were around them,
6 but that's it.

7 Q. So on October 24 of 2014, when you were there,
8 the gates were latched around the gate and the gates were
9 closed, correct?

10 A. Yes.

11 Q. Was anyone home at the property or at the
12 residence when you were there on October 24 of 2014?

13 A. From what I remember, there was a car there. But
14 they said that they were out of town -- the Jones said that
15 they were out of town. I never know if they're there or
16 not, unless Chastity would come outside and see me. 'Cause
17 we're still friends too.

18 Q. What do you -- what car do you -- what do you
19 remember seeing with regards to a car being there?

20 A. I think it was the Camry that their daughter
21 drove. Not Chastity, but the other daughter. I don't
22 remember her name right now.

23 Q. A Toyota Camry?

24 A. I think so.

25 Q. Do you remember the color?

1 Q. When you were there on October 24, 2014, the day
2 that you went to feed her before this incident occurred,
3 did you check to see if the gates were latched?

4 A. No. Because you could see them, like you would
5 see if the chain wasn't around it, or you would see if it
6 was open.

7 Q. And it's your horse that you cared for, correct?

8 A. Yes.

9 Q. So is that something that you would -- you would
10 observe when you would go to the property to see that the
11 gates were latched?

12 A. I would have noticed, yes.

13 Q. You would have noticed if they were unlatched?

14 A. Yes. I'm pretty observant, so I would have
15 noticed.

16 Q. So you feel like you observed that the gates were
17 latched when you were there?

18 A. The chains were around them. And that was the
19 only thing that was around them.

20 Q. But you're familiar with how the chains went
21 around the gates, correct?

22 A. From what I remember, they wrapped around. There
23 was a tiny little thing that came out of the gate, and then
24 the chain would fit right there in it. Like, the last
25 piece of the chain that would hold it shut, it fit right

1 there in that little piece.

2 Q. Did you feel like it was secure?

3 A. Yes.

4 Q. And you wouldn't have let your horse stay there
5 if you didn't feel it was secure, correct?

6 A. Right.

7 Q. When you were there on October 24 of 2014, did
8 you go in and out of any of these gates, the little gate or
9 the big gate?

10 A. No.

11 Q. Did you leave the little gate or the big gate
12 unlatched?

13 A. No. I hadn't been in them for months.

14 Q. If after the incident occurred, a gate was
15 discovered unlatched, would that surprise you?

16 A. Yes.

17 Q. And why would it surprise you?

18 A. Because they weren't unlatched whenever I left.

19 Q. Were you the last one on the property before this
20 incident occurred?

21 A. From what I know of, yes.

22 Q. Do you dispute leaving the gate unlatched?

23 A. I didn't open the gate. And it wasn't open.

24 Q. So you didn't -- it was latched when you left?

25 A. Yes.

1 knowledge that the Jones did anything or didn't do -- or
2 failed to do something that allowed the horse to get out?
3 Do you have any knowledge that they did or didn't do
4 something that allowed that horse to get out -- your horse
5 to get out?

6 A. I don't know. I'll have to think about that one.

7 Q. I guess what I'm asking -- the gate was latched
8 when you were there, correct?

9 A. That day, yes.

10 Q. And you felt like the enclosure was secure for
11 your horse, for Swinger, correct?

12 A. Yes.

13 Q. Swinger had never gotten out before, correct?

14 A. Correct.

15 Q. Would you have let Swinger stay in a pasture or
16 an enclosure if you felt like it wasn't safe and secure?

17 A. We wouldn't have allowed her to stay there. But
18 we were in the process of moving her from their property.

19 Q. Why were you going to move her from the property?
20 Do you know?

21 A. I believe it was so she could be closer to us.

22 Q. But it didn't have anything to do with your
23 concerns about the enclosure being enclosed and appropriate
24 to keep your horse enclosed, correct?

25 A. No. But I didn't really like her being there.

1 pole?

2 A. Attached to the gate.

3 Q. It's attached to the gate?

4 A. Yes.

5 Q. Whereabouts? On the side of the gate?

6 A. It's like on the inside of the gate.

7 Q. So you were able to see all the way from the
8 inside of the gate, that it was through the latch?

9 A. You could see the gate was closed, and that there
10 was chains multiple times around it.

11 Q. Do you know if it was through the latch or not?

12 A. No.

13 Q. And is there a lock on the gate?

14 A. No, not from what I remember.

15 Q. And do you believe that, that -- putting a lock
16 on the gate would provide more security for a horse getting
17 in and out of the fence?

18 A. Yes.

19 Q. And there are two gates, correct?

20 A. Yes.

21 Q. A small gate and a large gate, right? Do you
22 know which one the horses got out of on the -- on October
23 24th of 2014?

24 A. No.

25 Q. Do you know how long they had been out of the

1 Q. And in response to Attorney Moorman's questions,
2 you said the chain went all the way around -- you observed
3 the chain went all the way around the gate --

4 A. Yes.

5 Q. -- and the fence post, correct?

6 A. Yes.

7 Q. And you're a co-owner of Swinger, correct, with
8 your mom, correct? You are a co-owner of Swinger, correct?

9 A. To an extent. I mean, I was really young, so I
10 can't just be --

11 Q. Well, you were --

12 A. -- like, "Oh, yeah."

13 Q. You felt like Swinger was your horse, right?

14 A. Yes.

15 Q. And so you liked to look out for your horse and
16 protect your horse, correct?

17 A. Yes.

18 Q. And you were comfortable when you left that day,
19 that your horse was safe and secure inside that pasture; is
20 that correct?

21 A. Yes.

22 MR. COX: That's all I got. Thank you.

23 Further deponent sayeth not.

24 (There being no further questions, the deposition
25 concluded at 12:11 p.m.)





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Jul 08 2020

SC Court of Appeals

**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,

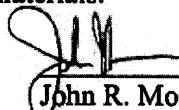
v.

Wanda Davis, ... Respondent.

ATTORNEY CERTIFICATION

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials.

June 24, 2020


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