STATE OF MICHIGAN

COURT OF APPEALS

KATHLEEN PULVIRENTI,

Plaintiff-Appellant,

v

SHIRLEY INGMAN d/b/a BAY RIDGE FARMS and LYNN CARROLL,

Defendants-Appellees.

UNPUBLISHED
May 10, 1996

No. 167300
LC No. 91-404523-NO

Before: MacKenzie, P.J., and Cavanagh and T.L. Ludington*, JJ.

PER CURIAM.

In this negligence action, plaintiff appeals as of right from a judgment of no cause of action entered following a jury trial. We affirm.

Plaintiff, an approximately forty-year-old novice rider, began taking horseback riding lessons at defendant Ingman's farm in the spring of 1990. Defendant Carroll was her instructor. According to plaintiff, Carroll told her that her regular horse, Cody, needed to be exercised every day and that she was welcome to come to the farm and exercise the horse whenever she wished. Plaintiff testified that, with both defendants' knowledge, she visited the farm almost every day including Mondays, when the farm was otherwise closed.

Plaintiff visited the farm on Monday, August 13, 1990. Although the farm was closed and defendants were not present, plaintiff decided to ride Cody. While she was riding, the horse was spooked by a passing truck and threw plaintiff, rendering her unconscious. Plaintiff testified that defendants did not require her to wear a riding helmet, and that Carroll never told her to wear a riding helmet or advised that she do so. Carroll, on the other hand, testified that she had recommended that plaintiff wear a helmet, but plaintiff refused.

* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff alleged that defendants (1) had a duty to require adults to wear a helmet, (2) supplied a horse with dangerous propensities, (3) failed to prevent plaintiff from riding without supervision, and (4) failed to warn plaintiff that she should wear a riding helmet. The trial court granted a directed verdict in favor of defendants on all but the fourth claim, ruling that there existed a fact question as to whether defendants warned plaintiff that she should wear a riding helmet.

On appeal, plaintiff first contends that the trial court erred in granting defendants' motion for a directed verdict with respect to the question of Cody's alleged dangerous predisposition. We disagree. Horses are classified as domestic animals. *Papke v Tribbey*, 68 Mich App 130, 136; 242 NW2d 38 (1976). In order for strict liability for harm done by a domestic animal to attach, the possessor of the animal must know or have reason to know that the animal has "dangerous propensities abnormal to its class." *Trager v Thor*, 445 Mich 95, 99; 516 NW2d 69 (1994), citing 3 Restatement Torts, 2d § 509, p 15. Here, although plaintiff presented some evidence that Cody had spooked before, she presented no evidence at trial that spooking is an abnormal trait among horses. Hence, plaintiff failed to set forth a prima facie case with respect to her claim against defendant Ingman, Cody's owner. Moreover, because defendant Carroll neither owned not "possess[ed]" Cody at the time of the accident, *id.* at 99-100, no liability could attach against her. We find no error.

Plaintiff also contends that the trial court erred in granting defendants' motion for directed verdict with respect to her claim that defendants were negligent in failing to prevent plaintiff from riding unsupervised. Again, we disagree. Farm policy was not to allow anyone to ride when no one was at the farm. When the accident took place, the farm was closed, defendants were not around, and plaintiff had not telephoned to arrange for someone's presence. Defendants thus had no opportunity to supervise plaintiff or to prevent her from riding alone. Further, as a general rule, absent special circumstances such as the participant's age, a recreational facility does not have a duty to supervise patrons to assure that they do not take unreasonable risks. *Dillon v Keatington Racquetball Club*, 151 Mich App 138, 141-142; 390 NW2d 212 (1986). Citing *Singerman v Municipal Service Bureau, Inc*, 211 Mich App 678; 536 NW2d 547 (1995), plaintiff contends that it was foreseeable that she would not follow the safety rules, and defendants therefore owed her a duty of reasonable care, including the duty to enforce the rule that she not ride alone. *Singerman*, however, is distinguishable in at least two critical respects. First, *Singerman* was a premises liability case, and not a failure to supervise case as is plaintiff's claim here. Second, to the extent *Singerman* suggests, contrary to *Dillon*, that a business invitor's duty of care includes the duty to supervise, the hockey facility in *Singerman* was open for business when the plaintiff was injured and presumably someone was on site undertaking to enforce the rules, although perhaps negligently. Here, on the other hand, the farm was closed, defendants were off the premises, and there was no representation that plaintiff's activity's would be supervised. Moreover, even if we were to accept plaintiff's theory that defendants' duty of care included the duty to supervise her after business hours, we agree with defendant Carroll's observation that there was no evidence that plaintiff's decision to ride without supervision was a proximate cause of her injuries. The evidence was that the horse was spooked unexpectedly by a passing truck. There was no evidence, however, that the horse would not have been spooked or that

plaintiff would not have fallen from the horse had someone been with her. Thus, because there was no evidence that defendants' absence caused plaintiff's injuries, a directed verdict on the claim was proper.

Plaintiff next argues that the trial court erred by failing to reread SJI2d 15.03 when the court, during deliberations, reinstructed the jury on proximate causation. The issue is not preserved, however, since plaintiff specifically consented to the instruction when it was given and did not timely object to the instruction as it was reread. *Janda v Detroit*, 175 Mich App 120, 126; 437 NW2d 326 (1989). In any event, the claim is without merit. See *Dedes v Asch*, 446 Mich 99, 106; 521 NW2d 488 (1994).

Plaintiff's final argument is that the trial court improperly excluded the expert testimony of Drucilla Malavase, a New Yorker, with regard to the standard of care involving Michigan horseback riding. We find no abuse of discretion in the court's decision to limit the witness's testimony to what she believed an instructor should have done in this matter. Malavase never worked in Michigan, admitted she was unfamiliar with the standard of practice of Michigan stables with respect to teaching beginners, and admitted she was unfamiliar with Michigan instructors' practice regarding requiring helmets. Given Malavase's admitted lack of familiarity with Michigan rules and customs, and plaintiff's failure to explain how she was prejudiced by the court's ruling, we decline to reverse on this basis. See *Downie v Kent Products, Inc*, 420 Mich 197; 362 NW2d 605 (1984).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Mark J. Cavanagh
/s/ Thomas L. Ludington