

STATE OF MICHIGAN  
COURT OF APPEALS

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MARGUERITE TERRILL,

Plaintiff-Appellant,

v

TERRY STACY, MARCIA STACY, and  
AFANGI ICELANDIC HORSES, LLC,

Defendants-Appellants.

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UNPUBLISHED  
February 28, 2006

No. 265638  
Isabella Circuit Court  
LC No. 05-003874-NO

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was riding a horse at defendants' ranch, when, according to plaintiff, the horse bolted. As plaintiff attempted to control or stop the horse, the bit broke, and she was unable to control the animal. Plaintiff fell from the horse and was injured. Prior to participating, plaintiff executed a release and waiver of liability, in accordance with the Equine Activity Liability Act (EALA), MCL 691.1661 *et seq.*

Plaintiff filed suit alleging negligence. She maintained that the defective bit provided by defendants proximately caused her injuries. She alleged that defendants were negligent in failing to properly inspect the bit, by providing a broken bit, or by failing to properly repair the bit upon being notified that it was broken. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff's claim was barred by the release. Plaintiff countered that the release language was ambiguous and did not cover the nature of her injury. The trial court agreed with defendants that the release language was unambiguous, and granted their motion for summary disposition. Plaintiff then sought leave to amend her complaint to allege gross negligence. The trial court denied the motion.

Plaintiff argues that the trial court erred when it found that defendants were entitled to summary disposition. She maintains that the release language was ambiguous. We disagree.

Under the EALA, a person engaged in an equine activity cannot bring suit against "an equine activity sponsor, an equine professional, or another person" for injuries "resulting from an

inherent risk of an equine activity” unless one of the exceptions listed in the act applies. *Amburgey v Sauder*, 238 Mich App 228, 230-231; 605 NW2d 84 (1999). The act defines the “inherent risk of equine activity” to include “an equine’s propensity to behave in ways that may result in injury, harm, or death to a person on or around it.” MCL 691.1662(f). The act also provides:

(2) Two persons may agree in writing to a waiver of liability beyond the provisions of this act and such waiver shall be valid and binding by its terms. [MCL 691.1664(2)].

Plaintiff maintains that she falls within one of the exceptions listed in MCL 691.1665, which provides in pertinent part:

[MCL 691.1663] does not prevent or limit the liability of an equine activity sponsor, equine professional, or another person if the equine activity sponsor, equine professional, or other person does any of the following:

(a) Provides equipment or tack and knows or should know that the equipment or tack is faulty, and the equipment or tack is faulty to the extent that it is a proximate cause of the injury, death, or damage.

Defendants do not dispute the possible applicability of this exception, but argue that the broad language of plaintiff’s release bars all claims. The release stated in pertinent part:

I do hereby . . . release and forever discharge [defendants] . . . from any and all claims and demands of every kind, nature, and character which I may hereafter acquire or have accrued to me . . . for any and all property damages, losses, and injuries which may be suffered or sustained by me while I am present on the aforesaid land or participating in any activity originating from said property or any further events for which I may qualify. Included is riding Afangi horses at events or outings away from Afangi Icelandic Horse Farm. All such claims and demands are hereby waived and released, and I further covenant not to sue therefrom.

I, the undersigned, understand that equine activities are risky by nature. It is mutually understood and agreed that this release constitutes a waiver of liability beyond the provisions of the Michigan Equine Activity Act (1994 P.A. 351).

Under the Michigan Equine Liability Activity Act, and (sic) equine professional is not liable for an injury to or a death of a participant in an equine activity resulting from an inherent risk of the equine activity.

We review a summary disposition determination de novo as a question of law. *Borman v State Farm Fire & Casualty Co*, 198 Mich App 675, 678; 499 NW2d 419 (1993), aff’d 446 Mich 482; 521 NW2d 266 (1994). A defendant who moves for summary disposition under MCR 2.116(C)(7) may file supportive material such as affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). The court must consider any supporting material filed. MCR 2.116(G)(5). If the

defendant does not file such material, the court must review the plaintiff's complaint, accepting its well-pleaded allegations as true and construing them in a light most favorable to the plaintiff. *Turner v Mercy Hosps & Health Servs*, 210 Mich App 345, 359; 533 NW2d 365 (1995).

The interpretation of a release is a question of law. *Cole v Ladbroke Racing Mich, Inc*, 241 Mich App 1, 13-14; 614 NW2d 169 (2000). The scope of a release is governed by the intent of the parties as it is expressed in the release. If the text in the release is unambiguous, the parties' intentions are to be ascertained from the plain, ordinary meaning of the language of the release. A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation. *Id.*, citing *Rinke v Automotive Moulding Co*, 226 Mich App 432, 435; 573 NW2d 344 (1997). "The fact that the parties dispute the meaning of a release does not, in itself, establish an ambiguity." *Cole, supra* at 14. Strained or technical constructions of contract language are to be avoided. See *Dillon v DeNooyer Chevrolet Geo*, 217 Mich App 163, 166; 550 NW2d 846 (1996).

We agree with the trial court's interpretation of the release language and its decision to grant summary disposition to defendants. Plaintiff attempts to create ambiguity by focusing solely on the word "beyond" in the release above. She essentially ignores the remainder of the release which covered "any and all property damages, losses, and injuries which may be suffered or sustained by me" in her assertion that the release language is ambiguous. We have repeatedly held that, "there is no broader classification than the word 'all.'" *Skotak v Vic Tanny Int'l, Inc*, 203 Mich App 616, 619; 513 NW2d 428 (1994). See also *Cole*, 241 Mich App 17. Plaintiff incorrectly ignores the remainder of the waiver language rather than reading the language as a whole. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000).

In addition, we do not find plaintiff's analysis of the isolated phrase itself persuasive. Plaintiff maintains that "beyond the provisions of the Michigan Equine Activity Act" could reasonably be interpreted to constitute an intent to disclaim all liability with the exception of the residual liability under the EALA. We disagree. Such an intent is unlikely, especially considering that the waiver language occurs directly after an acknowledgement of the risks of equine activities. The release clearly expressed defendants' intention to disclaim liability for all injuries, including any that would otherwise fall under an EALA exception. The trial court did not err when it granted summary disposition to defendants.

Plaintiff also argues that the trial court improperly refused her request to amend her complaint to add a claim for gross negligence. She maintains that such a claim would remain viable despite the language of the release because Michigan law does not allow a party to release another from liability for injuries caused by one's gross negligence. *Lamp v Reynolds*, 249 Mich App 591, 594; 645 NW2d 311 (2002). Gross negligence is "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." *Jennings v Southwood*, 446 Mich 125, 136; 521 NW2d 230 (1994), quoting MCL 691.1407; see also *Xu v Gay*, 257 Mich App 263, 269; 668 NW2d 166 (2003).

We review a trial court's decision on a motion to amend for an abuse of discretion. *Frank W Lynch & Co v Flex Techs, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2000). Plaintiff has provided nothing to indicate gross negligence on the part of defendants. In her complaint, plaintiff alleged only that defendants failed to discover the alleged defect in the bit, or failed to adequately maintain or repair the bit. In making her request for leave to amend, plaintiff added

no new allegations, and merely sought to characterize the existing factual allegations as gross negligence. Plaintiff has provided no supporting documentation or other evidence to show that defendants knew the bit was defective, or defectively repaired, when they furnished it to plaintiff. Plaintiff has not presented evidence of what caused the bit to break or even that the bit broke. Even taking as true the allegations in plaintiff's complaint and construing them in her favor, plaintiff has presented at most a question of ordinary negligence. "[E]vidence of ordinary negligence does not create a material question of fact concerning gross negligence." *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999). The trial court did not abuse its discretion in refusing to permit plaintiff to amend her complaint, because such an amendment would have been futile. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996).

Affirmed.

/s/ Stephen L. Borrello  
/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald