

NO. 70853-8-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

**SYLVIA WEBER, as mother and natural guardian of AMANDA S. WEBER, a
minor,**

Respondent,

vs.

JOSEPH GARRETT,

Defendant,

and

MONICA GLOVER,

Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 APR -7 PM 1:30
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APPEAL FROM SNOHOMISH COUNTY SUPERIOR COURT
Honorable George N. Bowden, Judge

REPLY BRIEF OF APPELLANT

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I. ARGUMENT

A. PLAINTIFF HAS NOT PRODUCED A SINGLE SPECIFIC FACT THAT MONIKA GLOVER WAS NEGLIGENT UNDER THE COMMON LAW.

Plaintiff has the burden of coming forward with specific facts showing that Monika Glover was negligent. Consequently, one would expect to find these facts in Plaintiff's Statement of Facts. But here are the sentences in plaintiff's Statement of Facts that mention Monika Glover:

One week prior to the incident, Ms. Weber met Mr. Garrett to inspect Taz at *Appellant Monica Glover's* home. Ms. Glover was not home for this first visit....

Ms. Weber returned to *Ms. Glover's* home one week later to pick up Taz....

...At that point, she [plaintiff Sylvia Weber] asked Mr. Garrett to hold the horse so that she could take Hannah inside *Ms. Glover's* house to use the bathroom. ... Ms. Weber handed Mr. Garrett the lead line and followed *Ms. Glover* into the house.

(Brief of Respondent 1-2) (emphasis added).

Where is the negligence that plaintiff claims Ms. Glover is guilty of? Plaintiff's real beef is with defendant Joseph Garrett: plaintiff claims that Amanda Weber fell off the horse "when Mr. Garrett made the horse trot." *Id.* at 2. The horse was owned by Mr. Garrett. (CP 30-31)

Unable to identify any specific facts, plaintiff attempts to muddy the waters by saying, "Although the parties dispute who suggested the

idea, it was decided that Amanda would ride Taz.” (Brief of Respondent 2) What plaintiff neglects to tell this Court is that the dispute is whether it was *Mr. Garrett or Amanda* who suggested the idea. (CP 37-38, 89) Plaintiff has not cited, and cannot cite, any evidence that Ms. Glover had anything to do with making the suggestion.

Citing *Tincani v. Inland Empire Zoological Society*, 124 Wn.2d 121, 875 P.2d 621 (1994), plaintiff claims that Monika Glover had a duty to warn her, a business invitee.¹ *Tincani* involved a minor who somehow left the main trail at a zoo and then attempted to rejoin his friends by trying to climb down a rock outcropping. He fell from a rock ledge. Citing RESTATEMENT (SECOND) OF TORTS § 343 (1965), the court held that the trial court had correctly instructed the jury that a landowner has a duty to inspect for dangerous conditions on the land, ““followed by such repair, safeguards, or warning as may be reasonably necessary for [the invitee’s] protection under the circumstances.”” *Tincani*, 124 Wn.2d at 139 (quoting RESTATEMENT (SECOND) OF TORTS § 343 *cmt. b* (1965)). Further, plaintiff concedes that under *Tincani*, the possessor of land must ““know[] or by

¹ For purposes of her summary judgment motion and this appeal only, Ms. Glover will assume plaintiff were business invitees.

the exercise of reasonable care ... discover” the dangerous condition. (Brief of Respondents 4) (quoting *Tincani*, 124 Wn.2d at 138.

Plaintiff’s reliance on *Tincani* is misplaced. Where is the dangerous condition on land that section 343 and *Tincani* require the landowner to find? Plaintiff mother and Mr. Garrett agreed that there was no condition on the property that caused the fall. (CP 71, 92-93)

Even if a horse could qualify as a condition on the property, there was nothing that Monika Glover should have realized would have involved unreasonable risk of harm, as required by section 343. In Washington horses are not presumed to be vicious or dangerous, *Patrick v. Sferra*, 70 Wn. App. 676, 687, 855 P.2d 320 (1993), *rev. denied*, 123 Wn.2d 1008 (1994); *Hojem v. Kelly*, 21 Wn. App. 200, 205, 584 P.2d 451 (1978), *aff’d*, 93 Wn.2d 143, 606 P.2d 275 (1980). There is no evidence that Taz, the horse here, was vicious or dangerous that would rebut this presumption. *Patrick*, 70 Wn. App. at 687; *Hojem*, 21 Wn. App. at 205. And indeed, both Amanda and Mr. Garrett, the sole witnesses to the accident, testified that Taz was calm and did nothing out of the ordinary. (CP 28, 38-39, 42, 67, 99)

Plaintiff claims that “a fully grown horse presents an unreasonable risk of harm to an eight year old girl with extremely limited riding experience.” (Brief of Respondents 5) Even if this were true, in

contradiction to the Washington law that horses are presumed not to be vicious or dangerous, plaintiff ignore that Ms. Weber, an experienced horsewoman, gave the reins to Mr. Garrett, once the owner of 6 horses. He remained with Amanda the entire time Ms. Weber, her youngest child, and Ms. Glover were in the house. (CP 27, 30-31, 39) There is not one shred of evidence that Ms. Glover had any reason to think that Amanda would not be safe with Mr. Garrett there.

Landowners are not guarantors or insurers of their invitees' safety. *Mucsi v. Graoch Associates L.P.*, 144 Wn.2d 847, 860, 31 P.3d 684 (2001); see *Degel v. Majestic Mobile Manor*, 129 Wn.2d 43, 54, 914 P.2d 728 (1996). Yet not once, in this Court or in the trial court, has plaintiff produced a specific fact, let alone a reasonable inference therefrom, that creates a genuine issue of material fact that Monika Glover might have been negligent.

Citing *Nivens v. 7-11 Hoagy's Corner*, 133 Wn.2d 192, 205, 943 P.2d 286 (1997), plaintiff also claims that a landowner owes a duty of care to invitees to take reasonable steps to protect them from imminent harm and reasonably foreseeable conduct by third persons. There is no evidence in this case that would support applying this rule of law.

The third person to whom plaintiff refers must be Mr. Garrett. As explained *supra*, there is *no* evidence that Monika Glover had any reason

to believe that Amanda would not be safe on the horse, given that Mr. Garrett was there with her. A party seeking to avoid summary judgment cannot rely merely on conclusory allegations. She must present specific facts. Plaintiff has failed to do so. *Boguch v. Landover Corp.*, 153 Wn. App. 595, 610, 224 P.3d 795 (2009).

Plaintiff's claims against Ms. Glover are frivolous. The trial court erred in denying Ms. Glover summary judgment.

B. MONIKA GLOVER IS IMMUNE FROM LIABILITY UNDER THE EQUINE ACTIVITIES ACT.

Even if there were arguably a genuine issue of material fact whether Monika Glover was negligent, she enjoys immunity under the Equine Activities Act. Pursuant to that statute, an "equine activity sponsor" is not liable for injury to or death of a "participant" engaged in an "equine activity." RCW 4.24.540(1). Plaintiff does not dispute that Taz, the horse Amanda was riding, was an "equine" as defined in RCW 4.24.530(1). Nor does she dispute that Amanda was a "participant" "engage[d] in an equine activity," since Amanda was riding a horse when she fell off. RCW 4.24.530(4)-(5).

Instead, plaintiff argues that Monika Glover does not qualify as an "equine activity sponsor" on the ground that she was not engaged in any of the activities specifically mentioned in RCW 4.24.530(3). But plaintiff

ignores two things: first, RCW 4.24.530(3) says that an “equine activity sponsor” includes “an individual,” “whether or not the sponsor is operating for profit or nonprofit,” which “provides the facilities for, *an equine activity*, including *but not limited to*” the activities specified in the statute. (Emphasis added.) Thus, the activities listed in RCW 4.25.530(3) are not the only activities included in “equine activity.”

RCW 4.24.530(2) sets forth the activities included in “equine activity.” These include the following:

- “boarding equines”;
- “riding, inspecting, or evaluating an equine belonging to another whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine”; and
- “rides, trips, hunts, or other equine activities of any type however informal or impromptu that are sponsored by *an* equine activity sponsor.” RCW 4.24.530(2)(c)-(e) (emphasis added).

Monika Glover was providing facilities for boarding Taz, the horse Amanda was riding. (CP 59) She was providing facilities for Amanda’s ride as part of trying out Taz, which still belonged to Mr. Garrett. (CP 60-63) She was providing the facilities for a ride, however informal or

impromptu, sponsored by yet another equine activity sponsor, Mr. Garrett, who—as the horse’s owner and potential seller who provided the tack—was an individual who sponsored or otherwise organized Amanda’s ride. (CP 27, 66, 67)

By the plain language of the Equine Activities Act, Monika Glover cannot be liable for Amanda’s fall off the horse as a matter of law. The trial court again erred in denying Ms. Glover summary judgment.

II. CONCLUSION

Monika Glover did not own the horse. She did not own the tack. She was not even present when the accident occurred, since she had to show plaintiff mother and her younger daughter where in Ms. Glover’s house the bathroom was. (CP 30-31, 66, 98, 99) Ms. Glover’s actions were precisely what a reasonable person in her situation would have done.

Under these circumstances, Ms. Glover should not be forced to incur the time, expense, and stress to go through a useless trial. Where, as here, plaintiff has utterly failed to produce a single specific fact that even hints that Ms. Glover might have been negligent, the trial court was duty bound to grant her summary judgment.

This Court should reverse the denial of summary judgment and remand for entry of summary judgment in Ms. Glover’s favor

Dated this 3rd day of April 2014.

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