Entered 21-CI-00230 11/23/2022 Krissie Coe Fields, Barren Circuit Clerk

COMMONWEALTH OF KENTUCKY
BARREN CIRCUIT COURT
CIVIL ACTION NO. 21-CI-00230

ANGEL OUTLAND, et al. PLAINTIFFS

v. **ORDER**

JESSE JAMES RIDING STABLES, INC. DEFENDANT

This matter came before the Court October 31, 2022 for a hearing on Defendant's motion for summary judgment. The parties had thoroughly briefed the matter prior to the hearing. The Court having considered the arguments of the parties and applicable law, and being otherwise sufficiently advised,

IT IS HEREBY FOUND, ORDERED, AND ADJUDGED as follows:

The complaint in this action was filed on April 22, 2021. It alleges that all four Plaintiffs suffered various injuries as a result of being thrown from Defendant's horses during a trail ride. Defendant filed the present motion on September 30, 2022. It contends that the Farm Animals Activity Act (hereinafter the "FAAA") and the Kentucky Agritourism Act (the "KAA") exist to provide limited liability protection and to bar certain claims arising from farm animal and agritourism activities. According to Defendant, Plaintiffs' claims in this action fall squarely within the type of claims barred by these statutes, as Plaintiffs were engaged in a farm animal activity and an agritourism at the time of the subject incident and by law assumed the inherent risks of the activity. Defendant asserts that falling off a horse is perhaps the single most recognizable inherent risk of riding a horse.

On October 21, 2022, Plaintiffs filed a response to the motion. They argue that the FAAA does not absolve Defendant of liability in this action. While a horse slipping on a muddy surface

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may be an inherent risk of farm animal activity, they contend that Defendant's negligence consisted in its choices that caused the slip to happen, not in the slip itself. Plaintiffs assert that the decisions made by Defendant set in motion the chain of events which resulted in injury to all four Plaintiffs.

Any party in a civil action may move for summary judgment under CR 56.[1] To obtain summary judgment, the movant must show that there is no issue of material fact and that the movant is entitled to a judgment as a matter of law based on the undisputed facts.[2] Summary judgment can be used "to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant."[3]

Summary judgment is appropriate only when the moving party establishes that the adverse party could not prevail under any circumstances.[4] The party moving for summary judgment has the burden of establishing that no genuine issue as to any material fact exists.[5] The record must be viewed in a light most favorable to the party opposing the motion, and all doubts are to be resolved in that party's favor.[6] "Provided litigants are given an opportunity to present evidence which reveals the existence of disputed material facts, and upon the trial court's determination that there are no such disputed facts, summary judgment is appropriate."[7]

[1] Kentucky Rule of Civil Procedure (CR) 56.02 reads, in pertinent part, "[a] party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof."
[2] **New Amsterdam Casualty Co. v. The Allen Company**, 446 S.W.2d 278 (Ky.1969).
[3] **Roberson v. Lampton**, 516 S.W.2d 838, 840 (Ky.1974).
[4] **Kaze v. Compton**, 283 S.W.2d 204 (Ky.1955).
[5] **Continental Casualty Co. v. Belknap Hardware & Mfg. Co.**, 281 S.W.2d 914 (Ky.1955); **Steelvest, Inc. v. Scansteel Service Center**, 807 S.W.2d 476 (Ky.1991).
[6] **Dossett v. New York Mining and Manufacturing Co.**, 451 S.W.2d 843 (Ky.1970), **Rowland v. Miller's Adm'r**, 307 S.W.2d 3 (Ky.1956).
[7] **Hoke v. Cullinan**, 914 S.W.2d 335, 337 (Ky.1995).

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Under Kentucky law, "[t]o state a cause of action based on negligence, a plaintiff must establish a duty on the defendant, a breach of the duty, and a causal connection between the breach of the duty and an injury suffered by the plaintiff."[8] Proof of each element—the existence of a recognized duty, a breach of that duty, and a resulting injury—"is absolutely necessary."[9] In negligence cases, while duty is an issue of law, "[b]reach and injury, are questions of fact for the jury to decide."[10]

Defendant first argues that it is entitled to liability protection under the FAAA. According to Defendant, Plaintiffs were participating in a guided horse trail ride, which is a farm animal activity, when the incident occurred. As falling off a horse is an inherent risk of horseback riding, Defendant contends that the FAAA exempts it from liability.

The FAAA defines the duties owed by persons responsible for farm animals to people who participate in activities involving those animals.[11] It operates to bar, in most instances, farm animal activity participants from bringing claims against a farm animal activity sponsor, professional, owner, or handler.[12] Because "[t]he inherent risks of farm animal activities are deemed to be beyond the reasonable control of farm animal activity sponsors, farm animal professionals, or other persons …. no participant or representative of a participant who has been reasonably warned of the inherent risks of farm animal activities shall make any claim against, maintain an action against, or recover from a farm animal activity sponsor, a farm animal professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of farm animal activities."[13]

[8] **Lewis v. B & R Corp**., 56 S.W.3d 432, 436-437 (Ky.App.2001).
[9] **McCuiston v. Butler**, 509 S.W.3d 76, 79 (Ky.App.2017) (citing **Commonwealth, Transportation Cabinet, Department of Highways v. Guffey**, 244 S.W.3d 79, 81 (Ky.2008)).
[10] **Pathways, Inc. v. Hammons**, 113 S.W.3d 85, 89 (Ky.2003).
[11] **Keeneland Ass'n, Inc. v. Prather**, 627 S.W.3d 878, 883 (Ky.2021).
[12] Id.
[13] Kentucky Revised Statute (KRS) 247.402(1).

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However, farm animal activity professionals retain certain duties. These duties include posting warning signs, making sure prospective riders are reasonably suited for riding the animals, and refraining from negligent, willful, or wanton acts that cause injury.[14] Specifically, the FAAA requires the conspicuous posting of signs meeting certain standards and containing precise language that reasonably warns of the inherent risks associated with farm animal activities.[15] Compliance by a farm animal activity sponsor with this requirement creates the presumption that it has given the participant reasonable notice of the inherent risks of farm animal activities.[16]

The limitation on claims arising from farm animal activities serves to accomplish the purposes of the act itself. These include to recognize the importance of farm animal activities to the Commonwealth's economy, to preserve and promote the long Kentucky tradition of activities involving farm animals as well as the health and safety of Kentucky's citizens and visitors, and to promote farm animal activities for the benefit of Kentucky as a whole. [17]

In construing a statute, a court's fundamental duty "is to effectuate the intent of the legislature."[18] Thus, "if a statute is clear and unambiguous and expresses the legislature's intent, the statute must be applied as written."[19] The language of the FAAA is clear and the provisions are easily applied to the parties and activities in this case. Horses are included in the definition of farm animals.[20] Engaging in a farm animal activity includes riding or "being a passenger upon a farm animal, whether mounted or unmounted."[21] There is no question that Plaintiffs were engaging in a farm animal activity at the time of the incident. The FAAA explicitly recognizes that there are

[14] **Daugherty v. Tabor**, 554 S.W.3d 319, 321-22 (Ky.2018).
[15] KRS 247.4027.
[16] KRS 247.402(6).
[17] KRS 247.401. See also **Prather**, 627 S.W.3d at 888.
[18] **Commonwealth v. Plowman**, 86 S.W.3d 47, 49 (Ky.2002) (citing **Commonwealth v. Harrelson**, 14 S.W.3d 541 (Ky.2000)).
[19] **Griffin v. City of Bowling Green**, 458 S.W.2d 456, 457 (Ky.1970).
[20] KRS 247.4015(2).
[21] KRS 247.4015(1); (3)(e).

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inherent risks when participating in farm animal activities, and these risks are essentially impossible to eliminate.[22] Accordingly, it absolves a defendant of liability when an injury occurs because of the inherent risks of farm animal activity. If Plaintiffs' injuries arose from the "inherent risks of farm animal activities," then the FAAA bars their claims.

All injuries in this matter stem from Plaintiffs falling off their horses. Regardless of what caused the first horse to slip, the FAAA recognizes the unpredictability of a farm animal as an inherent risk.[23] By voluntarily participating in the guided trail ride and acting as farm animal activity participants, Plaintiffs subjected themselves to the inherent risks associated with horseback riding. "A horse becoming 'spooked' … is something farm animal activity sponsors and participants should recognize as an obvious risk."[24] Indeed, the FAAA recognizes that farm animals have a propensity to harm people around them; they may react unpredictably to sounds, sudden movements, and unfamiliar objects, persons, or animals; and their behavior may be affected by hazards such as surface and subsurface conditions.[25]

KRS 446.080(1) mandates that "[a]ll statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature...." Holding Defendant potentially liable for Plaintiffs' injuries in this case would contradict the purpose of the FAAA and ignore the protections afforded to farm animal activity sponsors, professionals, and persons for farm animal behavior. To do so would be to frustrate the stated intent of the General Assembly in passing the FAAA. It is hard to imagine a more inherent risk of trail riding than the chance that a horse might slip or get spooked, and a more inherent risk of horseback riding than the risk of falling off the horse. The mechanism of injury was foreseeable and covered under the FAAA.

[22] KRS 247.401.
[23] KRS 247.4015(9)(b).
[24] See **Prather**, 627 S.W.3d at 888–89.
[25] Id. at 888-89. See also KRS 247.4015(9).

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Apropos of the argument that summary judgment would be premature, the general rule is that a party should be given an opportunity to conduct discovery before being confronted with a motion to terminate the litigation as a matter of law.[26] "Although a defendant is permitted to move for a summary judgment at any time, [the Kentucky Supreme Court] has cautioned trial courts not to take up these motions prematurely and to consider summary judgment motions 'only after the opposing party has been given ample opportunity to complete discovery.'"[27] Thus, summary judgment may not properly be entered before the opposing party has had an opportunity to complete discovery.[28] However, it is only necessary to show that the opponent has had a chance to complete discovery, not that it has actually done so.[29] In determining whether a summary judgment motion is premature, "[t]he key word is opportunity."[30] There has been ample opportunity to develop the evidence through discovery in this action.

The FAAA provides that once reasonable warning of the inherent risks of farm animal activities has been provided, no participant in such an activity may maintain an action against a farm animal activity sponsor, a farm animal professional, or any person for injury, loss, damage, or death resulting from the inherent risks of farm animal activities.[31] While there are statutory exceptions to this rule, here they are inapposite.[32]

Despite the fact that this action was filed on April 22, 2021, the record is devoid of proof that Defendant failed to make reasonable and prudent efforts to determine the ability of Plaintiffs to engage safely in the trail ride, nor is there proof that Defendant failed to safely manage the

[26] See **Suter v. Mazyck**, 226 S.W.3d 837, 841-842 (Ky.App.2007).
[27] **Blankenship v. Collier**, 302 S.W.3d 665, 668 (Ky.2010), quoting **Pendleton Bros. Vending, Inc. v. Commonwealth Finance and Administration Cabinet**, 758 S.W.2d 24, 29 (Ky.1988).
[28] **Hartford Ins. Group v. Citizens Fid. Bank & Trust Co**., 579 S.W.2d 628, 630 (Ky.App.1979).
[29] **Hartford**, 579 S.W.2d at 630.
[30] **Hasty v. Shepherd**, 620 S.W.2d 325, 327-28 (Ky.App.1981) (internal quotation marks and citation omitted).
[31] KRS 247.402.
[32] The exceptions are set out in KRS 247.402(2).

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horses based on Plaintiffs' representations of their abilities. Plaintiffs have not presented proof of any dangerous latent conditions. They have not presented proof that Defendant committed any act or omission that constituted willful or wanton disregard for the safety of Plaintiffs and that caused the injuries allegedly suffered by Plaintiffs. Assuming *arguendo* that Defendant's posted notice stating "We Do Not Depart In Stormy Weather" is relevant to the standard of care, the only proof in the record is that there was a light rain. In fact, the deposition testimony indicates that there was no thunder, no lightning, and no stormy weather during the trail ride. Plaintiffs have adduced nothing to suggest that conducting a trail ride in a light rain is negligent, or that a guide's decision to comfort a crying child is negligent. The injuries were sustained because one or more horses slipped, then got agitated, and Plaintiffs fell from their mounts. These are inherent risks of riding horses, just as the mechanisms of injury in *Prather*[33] (a horse becoming "spooked") and *Daugherty*[34] (a rider losing control of and being thrown from a horse) were.

Courts "presume that the legislature is aware of the state of the law when it enacts a statute."[35] This presumption leads to the conclusion that the legislature meant to accomplish something when it passed the FAAA; namely, it intended to protect farm activity sponsors from liability for injury arising out of risks inherent in those activities. The statute has no meaning if it can be circumvented by a mere allegation that an injury directly traceable to an inherent risk of farm animal activity was caused by negligent choices of the proprietor, without evidence to support that allegation. The policy in this Commonwealth, as set out by the General Assembly, is that one has no duty to eliminate risks inherent in farm animal activities which are beyond his or her

[33] See n. 11, supra.
[34] See n. 14, supra.
[35] **Maysey v. Express Services, Inc**., 620 S.W.3d 63, 71 (Ky.2021) (citing **St. Clair v. Commonwealth**, 140 S.W.3d 510, 570 (Ky.2004)).

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immediate control if those risks are or should be reasonably obvious or expected.[36] To the extent that Plaintiffs suffered injury on the trail ride, their injuries resulted from dangers inherent in the farm animal activity of trail riding. The provisions of the FAAA insulate Defendant from liability in this action.

The analysis under the KAA is similar. Agritourism is defined as the act of visiting a farm, a ranch, or any agricultural, horticultural, or agribusiness operation for the purpose of enjoyment, education, or active involvement in the activities of the farm, ranch, or operation.[37] Qualifying activities include participation in recreational, entertainment, or educational endeavors in the course of agritourism.[38] No one can recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from an inherent risk of agritourism activities.[39] Those inherent risks include dangers or conditions that are an integral part of an agritourism activity, including hazards related to surface or subsurface conditions; natural conditions of land, vegetation or water; and the behavior of wild or domestic animals.[40] A posted warning meeting certain criteria is required to invoke the protections of the KAA.[41] The exceptions recognized in the KAA are similar to those set out in the FAAA.[42]

The surface condition of a trail and the risk of a horse slipping due to the natural condition of a trail that has been subject to light rain are inherent in the act of trail riding. The behavior of horses is also an inherent risk of such activity. The provisions of the KAA also insulate Defendant from liability in this action.

This is a final and appealable order, and there is no cause for delay in its entry.

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[36] KRS 247.4013.
[37] KRS 247.801(1).
[38] KRS 247.801(2).
[39] KRS 247.809(1)(b).
[40] KRS 247.801(5).
[41] KRS 247.809(1)(a). There is no argument that the required warning was not appropriately posted.
[42] KRS 247.809(2)(a).

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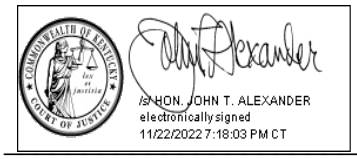
IT IS SO ORDERED this 22 day of November 2022.



HON. JOHN T. ALEXANDER
JUDGE, BARREN CIRCUIT COURT

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