IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 11, 2009 Session

LOWELL SMITH ET AL. v. STEPHEN DOUGLAS PHILLIPS, ET AL.

Appeal from the Circuit Court for Overton County
No. 4202-T Amy Hollars, Judge

No. M2009-00104-COA-R3-CV - Filed March 29, 2010

A man was bitten by a horse while on a trail ride with friends. He sued the owner of the horse that bit him, claiming that the owner had failed to properly restrain or control his animal. The trial court granted summary judgment to the owner, ruling that he was entitled to immunity under the Equine Activities Act, Tenn. Code Ann. § 44-20-101 et seq. The Act must be strictly construed, since it is in derogation of common law. We hold that under a strict construction of the act, the defendant is not entitled to immunity, and we accordingly reverse the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Kenneth Shannon Williams, William E. Halfacre, III, Cookeville, Tennessee, for the appellants, Lowell Smith and wife, Patricia Ann Smith.

John C. Knowles, Sparta, Tennessee, for the appellees, Stephen Douglas Phillips and wife, Melanie Phillips.

OPINION

I. UNDISPUTED FACTS

There are no disputed facts in this appeal, and its resolution hinges entirely on a single question of statutory construction: whether the defendant is entitled to immunity from liability under the Equine Activities Act for the injury the plaintiff suffered when he was bitten by the defendant's horse. To put the legal question into its proper context, we must

set out a brief summary of the undisputed facts.

Stephen Phillips, Lowell Smith, and several of their friends decided to go horseback riding in a rural area of Overton County, Tennessee. Phillips and Smith both owned several horses. Phillips loaded his horse, a stallion named Threat Pusher, into a trailer, and drove to Smith's house, where they loaded one of Smith's horses in the trailer. After picking up two girls who were going to ride with them, as well as a case and a half of beer, they met a third man named Ed Henry, who also planned to ride with them, and loaded his horse into the trailer.

When they arrived at the area where they intended to ride, they unloaded the horses and drank a few beers. They put the remaining beers into their saddlebags, and rode until they reached a creek, where they decided to stop for a while, to rest and drink a few more beers. When Smith was dismounted, he brought his horse close to Threat Pusher, at which point Threat Pusher lunged at Smith's horse and bit Smith's arm in the process, causing serious injury.

On August 20, 2007, Lowell Smith and his wife Patricia Ann Smith filed a complaint in the Circuit Court of Overton County, naming Stephen Phillips and his wife Melanie Phillips as defendants. The Smiths claimed that Stephen Phillips was aware of the dangerous propensities of Threat Pusher, but that he negligently failed to properly restrain or supervise the animal, thereby causing Lowell Smith's injuries.

The defendants' answer denied any negligence and contended that they were entitled to immunity in any case under the Equine Activities Act, Tenn. Code Ann. § 44-20-101 *et seq*. They also asserted that Melanie Phillips did not have any ownership interest in Threat Pusher and she did not participate in the trial ride and, thus, that she should be dismissed from the case.

On September 17, 2008, the Smiths filed a motion for partial summary judgment on the issue of whether the Equine Activities Act was applicable to this case. The Phillipses filed their own motion for summary judgment on October 17, 2008, asking the court to hold that they were indeed entitled to immunity under the Act, and to dismiss the case in its entirety.

The competing summary judgment motions were heard on December 10, 2008. At the commencement of the hearing, the plaintiffs agreed that Melanie Phillips was not liable as a matter of law and that the claim against her should be dismissed. The court heard arguments from both sides, and then determined that Stephan Phillips was entitled to summary judgment. The court accordingly dismissed the complaint in a order dated

December 19, 2008, which stated that ". . . the statute protects the defendant from liability on the basis that the plaintiff was engaged in an equine activity as defined by Tenn. Code Ann. § 44-20-102(1)(B), and that the conduct and activities of the plaintiff and defendant are covered by the immunity provisions of Tenn. Code Ann. § 44-20-103 . . . ." This appeal followed.

II. THE STANDARD OF REVIEW

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. The parties did not raise any disputed questions of material fact in their motions for summary judgment, so the sole issue before us is whether Mr. Phillips is entitled to judgment as a matter of law, or more specifically whether the Equine Activities Act protects him from liability.

The construction of a statute is question of law, which is reviewed *de novo* with no presumption of correctness accorded to the trial court's determination. *Saturn Corp. v. Johnson*, 197 S.W.3d 273, 275 (Tenn. 2008); *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000); *Hill v. City of Germantown*, 31 S.W.3d 234, 237 (Tenn. 2000).

This court's primary duty in construing a statute is "to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope." *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995); *State v. Sliger*, 846 S.W.2d 262, 263 (Tenn. 1993); *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn.1977). "Legislative intent is to be ascertained whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language." *Hilloak Realty Co. v. Chumley,* 233 S.W.3d 816, 822 (Tenn. Ct. App. 2007) (quoting *Eastman Chemical Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004)).

When a statute's language is unambiguous, legislative intent should be derived from the plain and ordinary meaning of the statutory language. *Carson Creek Vacation Resorts, Inc. v. Department of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993). When a statute's language is ambiguous and the parties legitimately assert different interpretations, we must look to the entire statutory scheme to ascertain the legislative intent. *Owens v. State*, 908 S.W.2d at 926; *Lyons v. Rasar,* 872 S.W.2d 895, 897 (Tenn. 1994). The court should seek to avoid a construction that would result in a conflict between statutes. Accordingly, insofar as possible, statutes should be construed so as to provide a harmonious operation of the laws. *Frye v. Blue Ridge Neuroscience Center,* 70 S.W.3d 710, 716 (Tenn. 2002); *McLane Co.,*

Inc. v. State of Tennessee, 115 S.W.3d 925, 928 (Tenn. Ct. App. 2002).

III. THE EQUINE ACTIVITIES ACT

A. THE ACT'S IMMUNITY

Tennessee Code Annotated § 44-20-103 sets out the scope of protection from liability provided by the Act:

> Except as provided in § 44-20-104, an equine activity sponsor, an equine professional, or any other person, which shall include a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities. Except as provided in § 44-20-104,[1] no participant or participant's representative shall make any claim against, maintain an action against, or recover from an equine activity sponsor, an equine professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of equine activities.

The legislature has explained the purpose of the Equine Activities Act in Tenn. Code Ann. § 44-20-101, which reads:

> The general assembly recognizes that persons who participate in equine activities may incur injuries as a result of the risks involved in such activities. The general assembly also finds that the state and its citizens derive numerous economic and personal benefits from these activities. It is, therefore, the intent of the general assembly to encourage equine activities by limiting the civil liability of those involved in such activities.

Thus, the legislature has indicated in Tenn. Code Ann. § 44-20-101 that it intends to limit the civil liability of those involved in certain kinds of activities that involve horses because of known risks associated with such animals, not that it intends to totally eliminate

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[1]Tenn. Code Ann. § 44-20-104 sets out the circumstances under which the protections of Tenn. Code Ann. § 44-20-103 do not apply. These include injuries caused by the provision of faulty tack or equipment; injuries caused by willful and wanton disregard for the safety of a participant; injuries that are intentionally caused; and injuries caused by a dangerous latent condition on land or facilities used for equine activities, where the equine activity sponsor or equine professional knows of such condition, but warning signs have not been conspicuously posted. None of these circumstances apply to the appeal before us. The final statute of the Equine Activities Act, Tenn. Code Ann. § 44-20-105, sets out the duty of equine professionals to post warning signs, as well as the content and forms of such signs.

such liability. The limitation on liability for injuries caused by negligent conduct of another is in derogation of common law and, therefore, must be strictly construed. *Sallee v. Barrett*, 171 S.W.3d 822, 828 (Tenn. 2005); *Limbaugh v. Coffee Medical Center*, 59 S.W.3d 73 (Tenn. 2001); *Jordan v. Baptist Three Rivers Hospital*, 984 S.W.2d 593, 599 (Tenn. 1999). "The common law may not be altered any further by statute than the statute expressly declares and necessity requires." *Steele v. Ft. Sanders Anesthesia Group*, 897 S.W.2d 270, 282 (Tenn. Ct. App. 1994); see also *Scott v. Pulley*, 705 S.W.2d 666, 670 (Tenn. Ct. App. 1985). Thus, we may not construe the Act in a way that reduces civil liability beyond the limits expressly contained in the Act or required by necessary implication from its provisions.

This court has had a few opportunities to interpret the Act since its enactment in 1992 [1992 Tenn. Pub. Acts, ch. 974].[2] We must follow the principles of statutory construction set out above to determine whether the immunity provided in the Act applies herein. The parties in the present case were just friends with horses who were out to have a good time on a trail ride. This case thus presents us with the question of whether the legislature intended the immunities provided by the Equine Activities Act to extend to injuries arising out of completely informal, social recreational activities involving horses or other equines.

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[2]In *Cave v. Davey Crockett Stables,* No. 03A01-9504-CV-00131, 1995 WL 507760 (Tenn. Ct. App. Aug. 29, 1995) (no Tenn. R. App. P. 11 application filed), a stable business and a summer camp were found to be immune from liability for an injury suffered by a twelve year old camper during a trail ride. Although that opinion focused on the nature of the risk that led to the child's injury, the defendants in that case clearly met the definition of "equine activity sponsor" as set out in Tenn. Code Ann. § 44-20-102(4), while the individual whose negligence allegedly led to the injury appears to have been an "equine professional" as that term as defined in Tenn. Code Ann. § 44-20-102(5). In *Friedli v. Kerr*, No. M1999-2810-COA-R9-CV, 2001 WL 177184 (Tenn. Ct. App. Feb. 23, 2001) (no Tenn. R. App. P. 11 application filed), this court held that the owner of a downtown Nashville carriage business was not immune from liability for injuries suffered by two passengers when the horse bolted and the carriage overturned, throwing them to the pavement. We found that the carriage business was not an "equine activity" as defined in Tenn. Code Ann. § 44-20-102(3), that the plaintiffs were not "engaging in equine activity," *see* Tenn. Code Ann. § 44-20-102(1)(B), and that they were therefore not "participants," as defined in Tenn. Code Ann. § 40-20-102(7). Additionally, in *Svacha v. Walden's Creek Saddle Club*, 60 S.W.2d 851 (Tenn. Ct. App. 2001) the trial court granted summary judgment to the defendant riding club for injuries to a woman who fell off a rented horse, finding that a release she had signed was binding on her. The woman contended that she fell when her saddle slipped because it had been negligently fastened by an employee of the defendant riding club. Tenn. Code Ann. § 44-20-104(b)(1)(A) states that those who provide tack or equipment that they knew or should have known was faulty are not immune from liability under the Equine Activities Act. However, this court remanded the case to the trial court without reaching the question of immunity, so that a proper transcript of the plaintiff's testimony could be made a part of the record on appeal. This holding is unrelated to the issues in the appeal before us.

B. DEFINITIONS DETERMINING APPLICABILITY

The Act provides immunity for certain actors involved in specified activities. To be entitled to that immunity, a party must show that his or her situation fits within the statutory language establishing the immunity. In order to qualify for the Act's immunity in the case before us, Mr. Phillips must show that Mr. Smith was a "participant" whose injury resulted from risks inherent in an "equine activity."

Tennessee Code Annotated § 44-20-102 contains the operative definitions for determining the scope of the immunities granted by the Act. The term "equine activity" is defined as follows:

> (A) Equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, English and Western performance riding, endurance trail riding and western games, and hunting;
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> (B) Equine training or teaching activities, or both;
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> (C) Boarding equines;
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> (D) 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;
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> (E) Rides, trips, hunts, or other equine activities of any type, however informal or impromptu, that are sponsored by an equine activity sponsor; and
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> (F) Placing or replacing horseshoes on an equine.

Tenn. Code Ann. § 44-20-102(3).

The above list sets out a range of possible activities involving horses and other equines[3] which meet the requirements of the statute. It is undisputed that the activities that led to the plaintiff's injuries are not described by subsections (B), (C), (D) or (F), since on the day of the incident in question, the parties were not involved in training or teaching, boarding an equine, inspecting or evaluating an equine belonging to another, or horseshoeing. Further, it is undisputed that the parties were not participating in a show, fair, competition, performance or parade. Thus, subsection (A) also does not apply in the present case.

[3]"'Equine' means a horse, pony, mule, donkey or hinny." Tenn. Code Ann. § 44-20-102(2).

Subsection (E) appears to encompass less formally organized activities because it refers to "[r]ides, trips, hunts, or other equine activities of any type, however informal or impromptu." The inclusion of the self-referring phrase "equine activities of any type" in this portion of the definition of "equine activity" adds little to our understanding of the scope of the definition. But in any case, all the activities set out in subsection (E) are modified by the phrase ". . . that are sponsored by an equine activity sponsor." The definition of "equine activity sponsor" is found at Tenn. Code Ann. § 44-20-101(4):

> "Equine activity sponsor" means an individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, that sponsors, organizes, or provides the facilities for an equine activity, including, but not limited to, pony clubs, 4-H clubs, hunt clubs, riding clubs, school and college-sponsored classes, programs and activities, therapeutic riding programs, and operators, instructors, and promoters of equine facilities, including, but not limited to, stables, clubhouses, ponyride strings, fairs, and arenas at which the activity is held.

This definition is not so broad as to allow us to designate either of the parties in this case as an "equine activity sponsor," especially in light of the requirement that statutes in derogation of the common law be strictly construed. The terms used by the legislature to describe a sponsor make it clear that the intent was to cover those entities or individuals engaged in regular events or programs, generally open to the public or to members, that promote equine activities, which is the purpose of providing immunity. Thus, the activities at issue in this case do not fall within the ambit of Tenn. Code Ann. § 44-20-102(3)(E).

As set out earlier, Tennessee Code Annotated § 44-20-103 establishes the scope of immunity provided by the Act. Under that statutory provision certain actors "shall not be liable for injury to . . . a participant resulting from the inherent risks of **equine activities**." Further, no participant "shall make any claim against, maintain an action against, or recover from" others "for injury, loss, damage, or death of the participant resulting from any of the inherent risks of **equine activities**."[4] Since we have determined that the activity engaged in

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[4]"Inherent risks of equine activities" means those dangers or conditions that are an integral part of equine activities, including, but not limited to:

(A) The propensity of an equine to behave in ways that may result in injury, harm, or death to persons on or around them;

(B) The unpredictability of an equine's reaction to such things as sounds, sudden movements, and unfamiliar objects, persons, or other animals;

(C) Certain hazards such as surface and subsurface conditions;

(continued...)

by Mr. Smith and Mr. Phillips, a social horseback outing among friends who owned horses, does not meet the statutory definition of "equine activities," clearly the immunity created in Tenn. Code Ann. § 44-20-103 does not apply. Further, based on the language of the statutes, we cannot conclude that the legislature intended that immunity apply to a social ride among horseowners who are friends.

C. Other Definitions

The trial court determined that Mr. Phillips was entitled to immunity from civil liability in reliance on its interpretation of a definition found in the Act. The court specifically cited Tenn. Code Ann. § 44-20-102(1) in its final order, the first listed definition in the statute, which reads as follows:

> (1)(A) "Engages in an equine activity" means riding, training, assisting in medical treatment of, driving, or being a passenger upon an equine, whether mounted or unmounted or any person assisting a participant or show management.
>
> (B) "Engages in an equine activity" does not include being a spectator at an equine activity, except in cases where the spectator places the spectator's person in an unauthorized area and in immediate proximity to the equine activity.

The definition of "engages in an equine activity" appears to be broader than that of "equine activity" standing alone, for it does not contain the qualifying language found in Tenn. Code Ann. § 44-20-102(3). Mr. Phillips argues that the definition clearly applies to the parties herein, for they were riding equines, and Mr. Smith's injury occurred while he was dismounted.

However, as set out above, the immunity from liability attaches to injuries resulting from the inherent risks of "equine activities." Consequently, it is the definition of that term that must be considered in applying the statutory immunity.

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[4](...continued)

(D) Collisions with other equines or objects; and

(E) The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within the participant's ability.

Tenn. Code Ann. § 44-20-102(6).

If we accepted Mr. Smith's interpretation, that would render meaningless every qualification in the definition of "equine activity" found in Tenn. Code Ann. § 44-20-102(3), such as "sponsored by an equine activities sponsor." Such an interpretation would be inconsistent with one of the basic rules of statutory construction, which requires "giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous." *Culbreath v. First Tenn. Bank Nat'l Ass'n*, 44 S.W.3d 518, 524 (Tenn. 2001). *See also Tidwell v. Collins*, 522 S.W.2d 674, 676-77 (Tenn. 1975); *Roy v. City of Harriman*, 279 S.W.3d 296, 302 (Tenn. Ct. App. 2008); *McGee v. Best*, 106 S.W.3d 48, 64 (Tenn. Ct. App. 2002).

We therefore do not believe that the purpose of Tenn. Code Ann. § 44-20-102(1) was to expand the definition of "equine activity" beyond the limits set out in Tenn. Code Ann. § 44-2-102(3), but rather to draw a clear distinction between those with an active connection with such activities, and those who merely observe them.

Mr. Phillips also relies on the term "or any other person," which appears twice in the immunity statute, Tenn. Code Ann. § 44-20-103, to argue that even if he does not meet the definition of an equine activity sponsor or an equine professional, he is still entitled to immunity under the Act, because he surely must meet the definition of "any other person." We need not determine whether Mr. Phillips fits within that term, however, because we have determined that immunity does not arise because of the definition of another term in the immunity statute.

IV.

In sum, we conclude that the trial court erred in finding that Mr. Phillips was entitled to immunity from liability under the Equine Activities Act, and we reverse its grant of summary judgment. Of course, our decision does not mean that Mr. Smith is automatically entitled to prevail; it simply means that Mr. Smith may proceed with his lawsuit.

The judgment of the trial court is reversed. We remand this case to the Circuit Court of Overton County for any further proceedings necessary. Tax the costs on appeal to the Appellees, Stephen Douglas Phillips and wife, Melanie Phillips.

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PATRICIA J. COTTRELL, JUDGE