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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000249-MR

JERRY GUINN AND
DIANNE GUINN — APPELLANTS

v.

APPEAL FROM MERCER CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 10-CI-00320

JAMES C. THOMAS AND
SUSANNA B. THOMAS — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: MOORE, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Jerry Guinn and Dianne Guinn bring this appeal from an October 28, 2011, order of the Mercer Circuit Court granting a summary judgment dismissing with prejudice their negligence action against James C. Thomas and Susanna B. Thomas. We affirm.

James and Susanna Thomas own a 180-acre farm known as "Barter Farm" in Mercer County, Kentucky. Although the Thomases were not actively involved in farming the property, Susanna kept and trained horses on the farm. Susanna had spent most of her life working with and riding horses. In May 2008, Susanna was hired as Executive Director of the Maker's Mark Secretariat Center in Lexington, Kentucky. In 2009, Susanna hired Jerry to do maintenance work and provide care for the horses at the Secretariat Center. Jerry had worked with and ridden horses most of his life.

On September 13, 2009, Susanna asked Jerry to come to Barter Farm and accompany her on a trail ride. Susanna knew Jerry was an accomplished horseman and she was attempting to acclimate one of her stallions to trail riding with other horses. Jerry had previously accompanied Susanna and this stallion on other trail rides. While Susanna and Jerry were riding, the bridle broke on Susanna's stallion. Consequently, Susanna decided she and Jerry should return to the barn, so she recommended a shortcut between two fence lines. The shortcut was through an area overgrown with grass and littered with debris from trees. Susanna and Jerry dismounted their horses and were leading them through the tall grassy area when Jerry tripped over a log on the ground. The horse Jerry was leading then stepped on Jerry's ankle. After Susanna and Jerry returned to the barn, Susanna took Jerry to the hospital. It was later determined that Jerry's ankle was broken and surgery was needed to repair his ankle.

Jerry and his wife, Dianne Guinn, filed a premises liability action in the Mercer Circuit Court against the Thomases. The Guinns maintained that the Thomases were negligent by failing to mow the tall grass and/or remove the debris in the area where his injury occurred. Thereafter, the Thomases filed a motion for summary judgment claiming that they breached no duty of care to Jerry. On October 28, 2011, the circuit court granted the Thomases' motion for summary judgment and dismissed all claims. In so doing, the circuit court concluded:

> 2. At the time of [Jerry's] injury, [the Thomases] had posted warning signs regarding farm animal activities in compliance with [Kentucky Revised Statutes] KRS 247.402(7). . . .
>
> 3. Posting of the warning signs creates a presumption that the [Thomases] have given [Jerry] reasonable notice of the inherent risks of farm animal activities pursuant to KRS 247.402(6).
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> 4. Plaintiff, Jerry Guinn, is an experienced horseman, otherwise knowledgeable of the risks associated with farm animal activities.
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> 5. Plaintiff, Jerry Guinn has reasonable notice and warning of the inherent risks associated with farm animal activities.
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> 6. KRS 247.402 provides that once reasonable warning of the inherent risks of farm animal activities has been provided, no participant in such an activity shall make any claim against, maintain an action against, or recover from a farm animal activity sponsor, a farm animal professional, or any person for injury, loss, damage or death of the participant resulting from any of the inherent risks of farm animal activities. The fact that [Jerry] is allegedly unable to read is not a defense to the presumption set forth in KRS 247.402. This is especially

> true since [Jerry] has been engaged in farming activities for most of his adult life.
>
> 7. Plaintiff, Jerry Guinn was a participant in a farm animal activity and was provided reasonable notice of the inherent risks associated with that activity.
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> 8. Having been provided reasonable notice and having sustained injury while engaging in a farm animal activity, [the Guinns] are barred from making any claim or recovering from [the Thomases] for injury, loss or damage pursuant to KRS 247.402.
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> 9. [The Guinns] argue that the "dangerous latent condition" exception set forth in KRS 247.402(2)(c) is applicable.
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> 10. The Court finds that there was no "dangerous latent condition" which was known or should have been known to [the Thomases] and which caused [Jerry's] injury. The injuries [Jerry] complains of were caused by a horse he had been riding. [Jerry's] contention that tall grass, which is not uncommon on a farm, hid pieces of fallen tree limbs which caused [Jerry] to trip or stumble and allowed the horse to step on his leg is an "inherent risk" associated with farm animal activities. Therefore, the exception set forth in KRS 247(2)(c) [sic] is inapplicable.

This appeal follows.

To begin, summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). When reviewing a motion for summary judgment all facts and inferences therefrom are to be viewed in a light most favorable to the nonmoving party. *Steelvest, Inc.*, 807 S.W.2d 476.

The Guinns contend that the circuit court erred by granting summary judgment dismissing their negligence action against the Thomases. Initially, the Guinns argue that Jerry's injury was caused by a dangerous latent condition existing upon the property; thus, Kentucky Revised Statutes (KRS) 247.402 is not a bar to recovery. Jerry points out that the area where he fell was overgrown with grass and with fallen tree branches/logs and constituted a dangerous latent condition under KRS 247.402(2)(c).

KRS 247.401 to 247.402 is entitled "farm animal activities" and was enacted in 1999. It was intended to aid in "defining the duties of persons responsible for farm animals to others who have chosen to participate in farm animal activities." KRS 247.4013. KRS 247.402 is the particular section at issue herein and provides, in relevant part:

> (1) The 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. Therefore, farm animal activity sponsors, farm animal professionals, or other persons are deemed to have the duty to reasonably warn participants in farm animal activities of the inherent risks of the farm animal activities but not the duty to reduce or eliminate the inherent risks of farm animal activities. Except as provided in subsections (2) and (3) of this section, 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.

> (2) Nothing in subsection (1) of this section shall prevent or limit the liability of a farm animal activity sponsor, a farm animal professional, or any other person if the farm animal activity sponsor, farm animal professional, or person:
>
> . . . .
>
> (c) Owns, leases, has authorized use of, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known or should have been known to the farm animal activity sponsor, farm animal professional, or person and for which warning signs have not been conspicuously posted[.]

Under KRS 247.402, a farm animal sponsor owes no duty of care to an individual injured from farm animal activity if the sponsor reasonably warned of such inherent risks. However, KRS 247.402(2)(c) does impose a duty upon an animal activity sponsor where an injury is caused by a dangerous latent condition which was known or should have been known by the sponsor and no warning signs were posted.

Viewing the facts most favorable to Jerry, we think the tall grass and fallen tree branches did not constitute a dangerous latent condition under KRS 247.402(2)(c). From Jerry's testimony, it was immediately apparent and readily observable that the area was overgrown with grass and covered in broken trees/logs and that Jerry appreciated these risks before entering the area. In fact, Susanna and Jerry dismounted their horses, in part, because of the fallen tree

branches and logs covered the area. Consequently, we do not believe that a dangerous latent condition existed under KRS 247.402(2)(c).

The Guinns also assert that the Thomases failed to give Jerry reasonable notice and warn him as required by KRS 247.402(1) and, thus, rendering its provisions inapplicable.

In its summary judgment, the circuit court found that the Thomases posted warning signs that reasonably warned of the inherent risks associated with farm animal activities, thus complying with KRS 247.402(1). By affidavit, Jerry averred that the warning signs were not posted on the Thomases' property before his injury. Jerry believes that an issue of fact existed upon whether reasonable notice was given pursuant to KRS 247.402(1). However, the record reveals that Jerry's affidavit was only submitted to the circuit court after it rendered summary judgment and was attached to a motion to vacate under CR 59. And, even if an issue of fact were created and KRS 247.402 were inapplicable, we believe that summary judgment was still proper as the Thomases breached no duty of care to Jerry.

Viewing the facts most favorable to Jerry, it appears that Jerry was an invitee at the time of his injury. In this Commonwealth, a landowner possesses "no duty to protect invitees from injuries caused by 'natural outdoor hazards which are as obvious to an invitee as to an owner of the premises.'" *Horne v. Precision Cars of Lexington, Inc.*, 170 S.W.3d 364, 368 (Ky. 2005) *accord Ky. River Medical Center v. McIntosh*, 319 S.W.3d 385 (Ky. 2010).

In this case, the tall grass and fallen logs that Jerry alleges caused his injury clearly constitute a natural outdoor hazard. From Jerry's testimony, it was immediately apparent and observable that the area was overgrown with grass and covered with logs and that Jerry was aware of these risks before entering the area. The record plainly reveals that these natural outdoor hazards were obvious to Jerry before his injury. And, no facts indicate that Jerry's attention was reasonably distracted from such natural outdoor hazards. Thus, we conclude that the Thomases breached no duty of care to Jerry as an invitee. *See Horne*, 170 S.W.3d 364.

We consider Jerry's remaining issues as moot.

In sum, we conclude that the circuit court properly rendered summary judgment dismissing Jerry's negligence action.

For the foregoing reasons, the order of the Mercer Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

Preston Scott Cecil
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BRIEF FOR APPELLEES:

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