

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, THIRD DEPARTMENT**

Soloman v. Taylor

91 A.D.3d 1180 (N.Y. App. Div. 3d Dep't 2012) · Decided January 19, 2012

SUMMARY

The court held that a horseback rider assumed the risk of injury when her horse was startled by dogs, because the risk was known, apparent, or reasonably foreseeable based on her experience and prior awareness of the dogs. The court also rejected the plaintiff's strict-liability claim based on the horse's purported vicious propensities and affirmed the lower court's order.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Lahtinen, J.; Mercure, A.P.J.; Spain, J.; Malone Jr., J.; Kavanagh, J.
JURISDICTION	New York
DECIDED	January 19, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order of Supreme Court that determined she assumed the risk of injury during a horseback-riding incident and rejected her strict-liability theory.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Soloman v. Taylor

TOPICS

assumption of risk strict liability personal injury torts

PRACTICE AREAS

torts personal injury premises liability

QUESTIONS PRESENTED

- Whether plaintiff voluntarily assumed the risk of injury associated with the horse's sudden and unintended actions under the circumstances.

2. Whether plaintiff could recover under a strict-liability theory based on the horse's purported vicious propensities.

HOLDINGS

1. Plaintiff assumed the risk of injury because the sudden and unintended actions of a horse, including shying or spooking and causing a rider to be thrown or fall, were known, apparent, or reasonably foreseeable to her under the circumstances.
2. Plaintiff's strict-liability theory based on purported vicious propensities was unavailing.

KEY QUOTATIONS

“As a general rule, participants in a sporting event or activity may be held to have consented to those injury-causing events which are known, apparent or reasonably foreseeable” (1181)

“The experience of the participant certainly is relevant in deciding whether he or she appreciated and, thus, voluntarily assumed the risks of the activity” (1181)

FACTUAL BACKGROUND

Plaintiff had prior horseback-riding experience, resumed riding in 2007, purchased a horse boarded at defendants' stable, and took riding lessons from Taylor one to three times per week. Her lessons included deliberately creating situations in which a horse might shy or spook, and she had experienced her horse shying on prior occasions. Plaintiff knew that defendants kept three dogs at the premises, knew Taylor sometimes rode with the dogs, had previously ridden while the dogs ran free, and had complained about that practice. During the incident, plaintiff was injured after a horse-related event involving the known risk that a horse might suddenly act, causing a rider to be thrown or fall.

PROCEDURAL HISTORY

Supreme Court found that plaintiff assumed the risk under the circumstances and rejected her strict-liability claim based on alleged vicious propensities. The Appellate Division affirmed the order, with costs.

DISPOSITION

affirmed

CASES CITED

- Rubenstein v Woodstock Riding Club, 208 A.D.2d 1160, 1160 (1994)
- Tilson v Russo, 30 A.D.3d 856, 857, 859 (2006)
- Dalton v Adirondack Saddle Tours, Inc., 40 A.D.3d 1169, 1171 (2007)
- Wendt v Jacus, 288 A.D.2d 889, 890 (2001), leave to appeal denied, 98 N.Y.2d 604 (2002)

OPINION

LAHTINEN, J.

Lahtinen, J. *1181“As a general rule, participants in a sporting event or activity may be held to have consented to those injury-causing events which are known, apparent or reasonably foreseeable” (Rubenstein v Woodstock Riding Club, 208 AD2d 1160, 1160 [1994] [citation omitted]). “[A]n inherent risk in sporting events involving horses is injury due to the sudden and unintended actions of the animals,... [including] being thrown or falling” (Tilson v Russo, 30 AD3d 856, 857 [2006] [internal quotation marks and citations omitted]). “The experience of the participant certainly is relevant in deciding whether he or she appreciated and, thus, voluntarily assumed the risks of the activity” (Dalton v Adirondack Saddle Tours, Inc., 40 AD3d 1169, 1171 [2007] [citation omitted]).

Plaintiff had horseback riding experience as a child and she started riding again in the fall of 2007. She purchased a horse, which she boarded at defendants’ stable, and had taken riding lessons from Taylor one to three times per week from September 2007 through the spring of 2008. Her lessons included situations purposefully intended to “shy or spook” the horse, which were known risks in riding, and how to handle such situations.

Plaintiff acknowledged several prior occasions where her horse shied while she was riding, including one instance involving dogs. She knew that three dogs were housed at defendants’ premises and was aware that Taylor liked to have the dogs with her when she rode. Plaintiff had previously ridden while the dogs were running free. She stated that she had complained about the dogs and told Taylor that she did not like the dogs running free when she was riding.

On the day of the incident, plaintiff was informed by Taylor’s boyfriend before going out riding that Taylor was probably already out riding and, while no mention was made of the dogs, she had not heard or observed them in the vicinity of the stable.

We are unpersuaded that Supreme Court erred in finding that plaintiff assumed the risk under these circumstances (see *Wendt v Jacus*, 288 AD2d 889, 890 [2001], lv denied 98 NY2d 604 [2002]). *1182Plaintiffs further assertion of a strict liability theory based upon purported vicious propensities is unavailing (see *Tilson v Russo*, 30 AD3d at 859). *Mercure*, A.P.J., *Spain*, *Malone Jr.* and *Kavanagh*, JJ., concur.

Ordered that the order is affirmed, with costs.