

1998 WL 961175

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Circuit Court of Virginia.

Cammie D. WIGGINS

v.

BATTLEFIELD EQUESTRIAN
CENTER CORP., et al.,

No. 166789.

|
Dec. 9, 1998.

Opinion

VIEREGG, J.

*1 In this case, plaintiff Cammie D. Wiggins sued defendants, Battlefield Equestrian Center Corporation (“Equestrian Center”), Oscar Sanders, Mary Elizabeth Sanders, and Kim Sanders, contending that they are jointly and severally liable for damages she suffered when she (1) fell to the ground from a horse leased by the Center, and (2) slipped off a saddle owned by Kim Sanders and strapped to the plaintiff’s horse by Oscar Sanders. Cammie Wiggins alleges: that the defendant Equestrian Center’s employees were negligent in their improper manner of saddling the horse, in failing to sufficiently tighten the girth, and causing the saddle to slip during her ride which resulted in her fall and injuries. A bench trial was conducted on October 28, 1998, after which this Court took the matter under advisement.

The Facts of the Case

Certain facts related to Cammie Wiggins’ ride and fall are not in dispute. Cammie Wiggins and her husband were house guests of Oscar Sanders and his wife, Mary Elizabeth Sanders. Oscar and Mary Elizabeth Sanders, their son, David Sanders, and their daughter-in-law, Kim Sanders own the Equestrian Center’s corporate stock. On the morning of October 15, 1994, either Oscar or Mary Elizabeth Sanders invited the Wigginses to participate in a trail ride. Cammie Wiggins, reluctantly, elected to participate. Cammie Wiggins’ horse was leased by the Equestrian Center. Her horse was a small, calm, beginner trail horse “Salty.” Salty was saddled by Oscar Sanders approximately twenty minutes before the ride began.

Neither of the Wigginses saw Salty being saddled. Neither checked the tightness of the saddle on Salty. Kim Sanders, an expert horsewoman and manager of the Equestrian Center’s horse-boarding and horse training operation, thereafter adjusted Cammie Wiggins’ stirrups and checked the tightness of the saddle’s girth. At that point, none of the Sanderses had asked about or been informed of Cammie Wiggins’ riding ability. During the ensuing one hour ride, Cammie Wiggins loped¹ her horse with Oscar Sanders ahead of the other riders. Neither she nor any of the defendants checked the tightness of her saddle. At the end of the ride, she rode her horse down a grade to a stream, rode across the stream, and rode up a steep bank on the other side of the stream. Oscar Sanders and Cammie Wiggins then proceeded a short distance to a gate at the Equestrian Center. While Salty was standing near the gate, head down and grazing, Cammie Wiggins’ saddle slipped and rotated, and she fell to the ground sustaining serious injuries.

Trial testimony related to the accident differed in certain material respects. Cammie Wiggins and her husband testified she was an inexperienced rider. Although Cammie Wiggins testified she had as many as six riding lessons culminating in jumps over a low bar and that she had participated in several trail rides, she professed not to know how to saddle a horse. In her testimony at trial, she minimized the fact that during the ride, she had loped Salty at a fast gait well ahead of the other riders and had ridden Salty down and up a steep stream bank. Instead, she suggested that Salty had simply wanted to keep up with Oscar Sanders’ horse. Kim Sanders credibly testified that early in the ride Cammie Wiggins had professed to be an experienced rider, and that she had demonstrated riding experience by adroitly controlling her mount during the trial ride. Her testimony was corroborated by other witnesses, although denied by Cammie Wiggins.

*2 After considering all the testimony related to Cammie Wiggins’ horse-riding experience, I do not find as credible her testimony that she was an inexperienced rider. Her testimony that her horse simply attempted to keep up with that of Oscar Sanders’ horse, apart from her influence or control, was especially unpersuasive. I find that she was an experienced horsewoman.

Both Cammie Wiggins and her husband testified that immediately following the accident the saddle on Cammie Wiggins’ horse had rotated so that the saddle horn moved

between one hundred and twenty to one hundred and fifty degrees; and that shortly thereafter Kim Sanders had returned the saddle to a more upright position. Contrary to that testimony, Kim Sanders testified that the saddle had only rotated thirty to sixty degrees and that she had not returned the saddle to an upright position. Kim Sanders' testimony as to the angle of the saddle was somewhat corroborated by another witness, who later saw the saddle on Cammie Wiggins' horse when it was returned to the Equestrian Center compound. Oscar Sanders who was present at the time of the fall, testified that he did not, however, notice the degree of rotation of the saddle. On balance, I find that the evidence preponderates in favor of Cammie Wiggins' testimony that her saddle had rotated more than ninety degrees at the time of her fall. The matter is not free from doubt.

Cammie Wiggins testified that on the evening of her fall, Kim Sanders had stated that the accident had occurred as a consequence of Oscar Sanders' failure to properly affix her saddle. Kim Sanders denied such a statement. In view of Cammie Sanders's earlier questionable testimony, I find that Kim Sanders likely did not make the admission attributed to her by Cammie Wiggins. That testimony, is otherwise inconsistent with Kim Sanders' testimony that she checked Cammie Wiggins' saddle when adjusting the stirrups, a fact not seriously in dispute.

Expert Testimony

The cornerstone of Cammie Wiggins' negligence case was the testimony of Mr. Rutherford, her expert in horse saddling and riding safety. The gist of his testimony was that some horses bloat;² that calm trail horses are more prone to bloat than "performance" horses; that after bloating, a horse will usually exhale in approximately twenty minutes; that Cammie Wiggins' horse was a calm horse; and that Salty may have bloated, causing the saddle to become loose; that Cammie Wiggins' saddle girth had not been checked or tightened in the course of the ride; that Cammie Wiggins was an inexperienced rider; that as the sponsors of the ride and as experienced riders, both Oscar and Kim Sanders should have checked the tightness of Cammie Wiggins' saddle in the course of the trial ride; that Cammie Wiggins' fall occurred because her unchecked saddle became loose, probably due to bloating by Salty when saddled. Mr. Rutherford also testified that

the saddle may have slipped due to Oscar Sanders' initial failure to secure Salty's saddle.

Analysis

1. Negligence.

*3 In order to recover, Cammie Wiggins must prove, by a preponderance of the evidence, that the defendants owed a legal obligation to her; that they breached their duty of ordinary care; and that the breach of their duty was the proximate cause of her fall. See *Austin v. Consolidation Coal Co.*, 256 Va. S-11, 501 S.E.2d 161 (1998) (enumerating the essential elements of a tort).

I conclude that Cammie Wiggins failed to sustain her burden to prove the first two of these three necessary elements. First, as indicated, Cammie Wiggins did not demonstrate that Oscar Sanders breached a duty to securely saddle Cammie Wiggins' horse. Indeed, no evidence was presented as to any shortcomings in his method of securing the saddle to Cammie Wiggins' mount. Mr. Rutherford did emphasize that Mr. Sanders did not knee Salty prior to saddling to counter the effects of possible bloating. Mr. Rutherford, however, did not explicitly testify that failing to knee Salty constituted negligence. Mr. Rutherford acknowledged that not all horses-trail horses or otherwise-bloat; and further, that experienced horse owners know whether their horses bloat or not. Furthermore, no witness observed Oscar saddling Salty. And no witness testified that Salty had a propensity to bloat or that Salty bloated on the morning of accident. Kim Sanders, moreover, testified that Salty was not a horse which bloated.³ Accordingly, Cammie Wiggins failed to prove that Oscar Sanders improperly saddled Salty, either by failing to properly affix the saddle or by failing to knee Salty prior to saddling to avoid bloating.

Additionally, Cammie Wiggins did not sustain her burden to establish that either Oscar or Kim Sanders, as experienced riders, owed a duty to her to check her saddle during the trail ride. Such a duty would only have been owed, if Cammie Wiggins had been an inexperienced rider. This Court found that Cammie Wiggins was an experienced rider. Accordingly, she was responsible for checking the tightness of her saddle both at the beginning and during the course of the ride. The

necessary implications of the testimony of her own expert, Mr. Rutherford, is that if she was an experienced rider, ordinary care would have dictated that she should have checked the tightness of her saddle the course of the ride. Loose saddling is a risk of riding for which an experienced rider should exercise ordinary care. *Cf.*, [Restatement \(Second\) of Torts § 323 \(1965\)](#).

2. **Res Ipsa** Loquitur.

At trial, Cammie Wiggins argued that the doctrine of **res ipsa loquitur** placed the burden of proving the reason for the rotation of her saddle upon the defendants. She reasoned that her saddle's rotation must have eventuated from negligence of those in control of the trail ride. I find that argument unpersuasive. In Virginia, application of the doctrine of **res ipsa loquitur** is limited. *See City of Richmond v. Hood Rubber Prods. Co.*, 168 Va. 11, 17, 190 S.E. 95, 98 (1937) (stating that the doctrine if not entirely abolished was limited in its use). Before the doctrine of **res ipsa loquitur** is applied three conditions must be established by the evidence. They are (1) the instrumentality causing an accident must have been in the exclusive possession or under the exclusive management of the defendant, (2) the accident must have been of such nature and character as would not ordinarily occur if due care had been employed, and (3) evidence as to the cause of the accident would have been accessible to the defendant and inaccessible to the injured party. *See Lewis v. Carpenter*, 252 Va. 296, 477 S.E.2d 492 (1996).

*4 In this case, Cammie Wiggins' saddle, cinch, and girth were not in the exclusive control of the defendants. Cammie Wiggins had control of her horse and might have checked the tightness of her saddle during the ride had she

so elected. In addition, Cammie Wiggins failed to prove that this type of accident would not have occurred but for the defendants' negligence. Her own expert testified that a saddle might otherwise become loose in the absence of negligence. Accordingly, this Court finds that the doctrine of **res ipsa loquitur** is not applicable under the circumstances of this case.

3. Contributory Negligence

Irrespective of what caused Cammie Wiggins' saddle to become loose, it is plain that Cammie Wiggins' fall would have been avoided had she checked her saddle, cinch, and girth before the end of the ride. If there was a duty to check the saddle mid-ride, as her own expert suggests, Cammie Wiggins as an experienced rider had that duty to perform checks herself. She chose not to do so. Under well-recognized contributory negligence principles, this failure of ordinary care precludes her recovery in this case.

For the foregoing reasons, this Court finds the plaintiff has failed to sustain her burden of proving the defendants' separate or joint negligence, and this Court otherwise finds that principles of contributory negligence preclude her recovery in this case.⁴

Mr. Powell is directed to prepare an order consistent with this decision, to forward it to Mr. Cunningham for endorsement and exceptions, and to forward it to the Clerk of Court by December 18, 1998, for routing to me for entry.

All Citations

Not Reported in S.E.2d, 1998 WL 961175

Footnotes

- 1 Loping means riding a horse at an easy bouncing gait.
- 2 "Bloating" is a defensive action which some horses take immediately before saddling. The horse exhales air thus expanding its mid-section where the saddle is strapped.
- 3 Oscar Sanders had also stated in depositions that Salty does not bloat. While his testimony is not ascribed weight, because of his limited contact with the horse, that testimony was ignored by Mr. Rutherford and demonstrates that he chose to ignore apparent relevant facts in forming his expert opinion.
- 4 This Court further finds that no colorable showing was made of any duty of care owed by the Equestrian Center to Cammie Wiggins. She was a social guest of her hosts who simply had access to the corporate assets by virtue of their positions with the company. As such none of the individual defendants were acting within the scope of their duties for Equestrian Center. Furthermore, no facts were adduced demonstrating any negligent acts or omissions by Mary Elizabeth Sanders.

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