COMMONWEALTH OF KENTUCK
SUPREME COURT
CASE NO. 2022-SC-0508-d

BRADLEY RACING STABLES, LLC, *ET AL*. APPELLANTS

v. ON APPEAL FROM THE

COURT OF APPEALS
CASE NO. 2021-CA-0766

JEFFERSON CIRCUIT COURT
CASE NO. 19-CI-001372

JOI DENISE ROBY, *ET AL*. APPELLEES

BRIEF OF APPELLANTS BRADLEY RACING STABLES, LLC AND WILLIAM "BUFF" BRADLEY

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the Brief of Appellants Bradley Racing Stables, LLC and William "Buff" Bradley was served this 15th day of June, 2023 as follows: electronically filed with the Kentucky Supreme Court, c/o Hon. Kelly Stephens, Clerk of the Supreme Court of the Commonwealth of Kentucky, State Capitol, 700 Capital Avenue, Room 235, Frankfort, Kentucky 40601; and one copy each by regular United States mail to: Hon. John F. Parker Jr., Hon. Katherine T. Watts, Hon. Patricia C. LeMeur, Phillips Parker Orberson & Arnett, PLC, 716 West Main Street, Suite 300, Louisville, Kentucky 40202; Hon. Jennifer R. Hall, Hall Legal Group, PLLC, 306 West Dixie Avenue, Elizabethtown, Kentucky 42701; Hon. Anthony G. Galasso Jr., Hon. Linda H. Clare, Kolb Clare & Arnold, PSC, 9400 Williamsburg Plaza, Suite 200, Louisville, Kentucky 40222; Kyle McGinty, 5119 Rock Bluff Drive, Louisville, Kentucky 40241; and Hon. Judith E. McDonald-Burkman, Judge, Jefferson Circuit Court, Jefferson County Judicial Center, 700 West Jefferson Street, Louisville, Kentucky 40202.

Respectfully submitted,

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INTRODUCTION

This is a premises liability case. Plaintiff Joi Denise Roby ("Roby") alleges she was bitten by a stable pony owned by Defendants Bradley Racing Stables, LLC and William "Buff" Bradley (collectively, "Bradley") when it was confined in a stall inside a barn located on the backside of Churchill Downs. Bradley has no relationship to Roby and was not present when the alleged bite occurred.

The Jefferson Circuit Court entered summary judgment in favor of Bradley, finding that: Roby's claims against Bradley are "barred by the Farm Animal Activity Act ["FAAA"], KRS 247.402(1)"; and, regardless, Bradley "had no duty of care to protect" Roby because Bradley's "interest in the stall was merely possessory without control."

The Court of Appeals "REVERSE[D] the circuit court's summary judgments, and REMAND[ED] this case for trial," finding that: the FAAA did not grant Bradley immunity because of the "'horse racing activities' exemption under KRS 247.4025"; and "Bradley's potential liability need not be viewed as a premises issue"[1] because Bradley "owned and controlled the personal property that caused the underlying injury," so "ordinary negligence principles apply,"[2] and the matter "should be left to the discretion of the jury."

STATEMENT CONCERNING ORAL ARGUMENT

Bradley believes oral argument would be helpful to this Court in deciding the issues presented by this appeal, particularly given the Court of Appeals's expansive interpretation of the horse racing activities exemption to the FAAA and its far-reaching implications.

[1] The Court of Appeals thus implicitly recognized that Bradley owed Roby no duty of care under a premises liability framework.

[2] Notably, an "ordinary negligence" claim was not asserted by Roby in her Amended Complaint, and, as such, that issue was neither briefed by the parties nor addressed by the Jefferson Circuit Court in its Order granting summary judgment to Bradley.

STATEMENT OF POINTS AND AUTHORITIES

STATEMENT OF THE CASE

I. Facts Underlying Roby's Claim

The factual background of this lawsuit is simple and undisputed.

Roby, a resident of Bullitt County, has been around and interacted with horses her entire life; indeed, she has owned a quarter horse for years that is stabled in a barn at her house. Roby depo. at p. 43-45, 49, 131-132. Because of this background, Roby knows well that horses can be unpredictable and can bite. Roby depo. at p. 131-132.

Bradley is a well-respected horse trainer who primarily operates out of Churchill Downs. Several of Bradley's horses are stabled in barns on the backside of Churchill Downs pursuant to a Stall Application agreement with Churchill Downs. Bradley MSJ at Attachment C. One of those horses is a stable pony used to escort thoroughbreds being trained by Bradley to and from the track. Bradley depo. at p. 11, 50. That horse has been described as one of the friendliest horses at the stable. Bradley depo. at p. 50; Kyle McGinty depo. at p. 50.

On May 5, 2018, Roby and her husband entered the backside of Churchill Downs as guests of Kyle McGinty ("McGinty"), a horse owner who uses Bradley to train his thoroughbred. Roby depo. at p. 55-56, 135; McGinty depo. at p. 19, 47. McGinty's wife was there as well. McGinty depo. at p. 26, 32-33. The four went to see the horse that won the 2018 Kentucky Oaks and then walked to the barn in which McGinty's horse was stabled. Roby depo. at p. 56, 62, 69-70. As Roby walked through the barn, she stopped at several stalls to pet, feed peppermints to, and take pictures with the horses stabled there. Roby depo. at p. 67, 70, 77-78, 84. Roby did not know who owned any of those horses, and she was not given permission to interact with them. Roby depo. at p. 67, 70, 134.

Roby claims that one of the horses she touched, alleged to be Bradley's stable pony, lifted up his head, lunged toward her, and bit her. Roby depo. at p. 83-84; Amended Complaint at p. 2.

Roby filed a bodily injury lawsuit against Bradley and Churchill Downs as a result of the bite. Amended Complaint at p. 1-3. Roby asserted only premises liability claims based upon the allegation that each of the Defendants "maintained, controlled, operated and/or supervised the barn" in which she was injured. Amended Complaint at p. 2.

II. Facts Underlying Bradley's Defenses

Bradley has no relationship to Roby, was not with Roby on May 5, 2018, and never consented or gave permission to Roby to interact with his stable pony. Roby depo. at p. 41-42; Bradley depo. at p. 37.

On the gate through which Roby entered the backside of Churchill Downs is posted the warning sign required by the FAAA, at KRS 247.4027(3): "WARNING. Under Kentucky law, a farm animal activity sponsor, farm animal professional, or other person does not have the duty to eliminate all risks of injury of participation in farm animal activities. There are inherent risks of injury that you voluntarily accept if you participate in farm animal activities." Bradley MSJ at Attachment A.

The agreement pursuant to which Bradley's stable pony was housed in a stall inside a barn located on the backside of Churchill Downs explicitly states at Section 4 that Bradley merely holds a "license" to "use" stall space and that Bradley has no leasehold interest in any stall (stall locations can be changed by Churchill Downs at any time) and has no right of control over the backside; indeed, Churchill Downs "maintains the sole interest in and exclusive control of its premises and facilities." Bradley MSJ at Attachment C.

III. Bradley's Motion For Summary Judgment Was Granted

The Jefferson Circuit Court found that the undisputed facts of record conclusively established that: Roby "was not invited by" Bradley; Roby "was not given permission to interact with" Bradley's stable pony that allegedly bit her; Bradley merely had "possessory rights to the stall where the stable pony was kept"; "Churchill Downs ultimately controls the property"; and Churchill Downs "had posted signage warning of the potentially dangerous nature of horses." June 16, 2021 Order at p. 1-3.

Based on these facts, the Jefferson Circuit Court entered summary judgment in favor of Bradley because: Roby's claims are "barred by the Farm Animal Activity Act ["FAAA"], KRS 247.402(1)"; and, regardless, Bradley "had no duty of care to protect" Roby because Bradley's "interest in the stall was merely possessory without control." June 16, 2021 Order at p. 3.

The Jefferson Circuit Court also noted that Roby, as a social guest of McGinty, was a licensee of McGinty who was owed "no duty to warn of an open and obvious hazard or one that could have been observed by [her] in the exercise of due care" – and Roby "was aware that horses can be unpredictable and she could merely have avoided the horse." June 16, 2021 Order at p. 3.

IV. The Reversal By The Court Of Appeals

The Court of Appeals "REVERSE[D] the circuit court's summary judgments, and REMAND[ED] this case for trial." Opinion at p. 12.

The Court first found that the FAAA did not grant Bradley immunity because of the "'horse racing activities' exemption under KRS 247.4025."[3] Opinion at p. 4. Distinguishing the instant case from Keeneland Assn. v. Prather, 627 S.W.3d 878 (Ky. 2021), the Court held that the exemption applied merely because horse racing was occurring on the track at Churchill Downs on the day Roby was allegedly bitten. In doing so, the Court entirely ignored the fact that Bradley's stable pony was confined in a stall inside a barn on the backside of Churchill Downs and neither it nor the absent Bradley were engaged in any "horse racing activity" when the stable pony allegedly bit Roby.

With the immunity question resolved against Bradley, the Court then found that "Bradley's potential liability need not be viewed as a premises issue" – and, in doing so, implicitly affirmed the Jefferson Circuit Court's ruling that Bradley owed Roby no duty of care under a premises liability framework – because Bradley "owned and controlled the personal property that caused the underlying injury," so "ordinary negligence principles apply," and the matter "should be left to the discretion of the jury." Opinion at p. 11. Importantly, however, an "ordinary negligence" claim was not asserted by Roby in her Amended Complaint, and, as such, that issue was neither briefed by the parties nor addressed by the Jefferson Circuit Court in its Order granting summary judgment to Bradley.

ARGUMENT

I. The Applicable Standard Of Review

Summary judgment is proper when the evidence demonstrates that "there is no

[3] The Court recognized that "[i]t is undisputed that if the Exemption does not apply here, then [Bradley] would be relieved from liability pursuant to the affirmative provisions of the FAAA." Opinion at p. 5.

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56.03; accord Hallahan v. The Courier-Journal, 138 S.W.3d 699, 704 (Ky. App. 2004). To defeat a properly supported motion, the respondent must "present[] at least some affirmative evidence showing that there is a genuine issue of material fact for trial." Steelvest v. Scansteel Serv. Ctr., 807 S.W.2d 476, 482 (Ky. 1991); accord City of Florence v. Chipman, 38 S.W.3d 387, 390 (Ky. 2001). "[T]he focus should be on what is of record rather than what might be presented at trial." Welch v. Am. Publg. Co. of Ky., 3 S.W.3d 724, 730 (Ky. 1999). When it appears that it would be impossible for the respondent to produce evidence at trial warranting judgment in its favor, summary judgment is appropriate. Paintsville Hosp. Co. v. Rose, 683 S.W.2d 255, 256 (Ky. 1985). Such is the case when the movant shows that the respondent cannot prevail under any circumstances. James Graham Brown Found. v. St. Paul Fire & Marine Ins. Co., 814 S.W.2d 273, 276 (Ky. 1991).

"Appellate review of a summary judgment involves only legal questions and a determination of whether a disputed material issue of fact exists. So we operate under a *de novo* standard of review with no need to defer to the trial court's decision." Shelton v. Ky. Easter Seals Soc., 413 S.W.3d 901, 905 (Ky. 2013).

II. Bradley Is Immune From Roby's Claims Under The FAAA

The FAAA immunity statute, KRS 247.402(1), provides:

> [N]o 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 . . . any other person for injury . . . of the participant resulting from any of the inherent risks of farm animal activities").

The General Assembly enacted the immunity statute because of the "inherent risks" that exist when interacting with farm animals, including horses, that "are essentially impossible . . . to eliminate." KRS 247.401; see Daugherty v. Tabor, 554 S.W.3d 319, 321-322 (Ky. 2018); see also Garcia v. HCF, 2017-CA-001271-MR, 2019 Ky. App. Unpub. LEXIS 317, *7 (May 3, 2019) and Davis v. 3 Bar F Rodeo, 2006-CA-002212-MR, 2007 Ky. App. Unpub. LEXIS 301, *5-6 (Nov. 2, 2007). "Inherent risks" include such things as "[t]he propensity of a [horse] to behave in ways that may result in injury, harm, or death to persons around them" and "[t]he unpredictability of the reaction of a [horse] to sounds, sudden movement, and unfamiliar objects, persons, or other animals." KRS 247.4015(9)(a) & (b). Through the FAAA, the General Assembly codified "the policy of the Commonwealth of Kentucky that persons do not have a duty to eliminate risks inherent in farm animal activities which are beyond their immediate control if those risks are or should be reasonably obvious, expected, or necessary to participants engaged in farm animal activities." KRS 247.4013.

An exception to FAAA immunity exists, however, if the defendant was "engaged in horse racing activities" at the time the alleged injury occurred. KRS 247.4025(1). The FAAA defines "horse racing activities" as "the conduct of horse racing activities within the confines of any horse racing facility . . . ." KRS 247.4015(8). The term "horse racing activity" thus contains both a conduct element (engaged in horse racing activities) and a situs element (at a horse racing facility).

In the instant case, as the Court of Appeals noted, "[i]t is undisputed that if the Exemption does not apply here, then [Bradley] would be relieved from liability pursuant to the affirmative provisions of the FAAA." Opinion at p. 5. In other words, the parties

agree that Bradley is immune from Roby's claims under KRS 247.402(1) unless the KRS 247.4025(1) "horse racing activities" exception is applicable.

Less than two years ago, this Court provided a comprehensive analysis of the FAAA and its "horse racing activities" exception in Keeneland Assn. v. Prather, 627 S.W.3d 878 (Ky. 2021). Like Roby in this case, Prather needed to show that the defendant was "engaged in horse racing activities, rendering the FAAA inapplicable," to be able "to proceed on his claims." Id. at 885. This Court ultimately held that the "horse racing activities" exception did not apply because both elements of the statutory "horse racing activity" definition were not present. Id. at 886 (the FAAA requires "not only a licensed horse racing facility but also horse racing activity in order for the FAAA exemption to apply"). While Keenland is a horse racing facility (so the situs element was met), the defendant was not engaged in horse racing activities when the injury happened (so the conduct element was not met). So, too, here.[4] While Churchill Downs is a horse racing facility (so the situs element is met), neither Bradley nor his stable pony were engaged in horse racing activities when the alleged injury happened (so the conduct element is not met).

The only real difference between Prather and the instant case is that Roy Prather was allegedly injured during Keenland's September Yearling Sale whereas Roby was allegedly injured on Derby Day. But the fact that horse racing was occurring on the track at Churchill Downs on the day Roby was allegedly bitten is a red herring – particularly as regards Bradley. Bradley was not present at Churchill Downs, and his stable pony was

[4] Indeed, both Prather and this case involve an alleged injury to a plaintiff caused by a horse not involved in horse racing activities while in the backside of a horse racing facility.

confined in a stall inside a barn on the backside of Churchill Downs. As such, Bradley was not engaged in any "horse racing activity" when his stable pony allegedly bit Roby.[5]

The Jefferson Circuit Court correctly recognized this important distinction in granting Bradley's motion for summary judgment. The Court of Appeals, however, glossed over it entirely in holding that the "horse racing activities" exception is applicable because "live racing was occurring" at Churchill Downs when Roby was allegedly bitten ("If such events are not considered the 'conduct of horse racing activities,' it begs the question of what does?"). Opinion at p. 7. The Court of Appeals failed to appreciate the simple and undisputed fact that Roby's injury is in no way connected to the horse racing taking place on the Churchill Downs track that day.

The Churchill Downs complex is large, occupying more than 147 acres with its backside barns housing more than 1,400 horses each year.[6] Keeneland is even more massive, at over 1,000 acres with its backside barns being able to house more than 1,900 horses at a single time.[7] Obviously, the vast majority of these stabled horses are not racing or otherwise involved in any way with the races on a given meet day. But the Court of Appeals's opinion effectively holds that any activity involving any of these horses would be considered a "horse racing activity" as long as the plaintiff's alleged injury occurred on a meet day – and any person in any way involved with any of these horses thus potentially becomes exposed to liability because the FAAA immunity statute would be inapplicable.

[5] In Prather, this Court discussed the fact that the "sale" of horses is included within the statutory definition of "farm animal activity" at KRS 247.4015(3)(d). Id. at 886-887. Similarly, the "boarding of horses" is included within the statutory definition of "farm animal activity" at KRS 247.4015(3)(c).

[6] https://www.churchilldowns.com/visit/about/churchill-downs/.

[7] https://www.kentucky.com/sports/horses/keeneland/article44027766.html.

This Court has "long held 'that a statute must not be interpreted so as to bring about an absurd or unreasonable result.'" Cromwell Louisville Assocs. v. Commonwealth, 323 S.W.3d 1, 5 (Ky. 2010) (quoting George v. Alcoholic Beverage Control Bd., 421 S.W.2d 569, 571 (Ky. 1967)). The statutory interpretation adopted by the Court of Appeals is "so unreasonable that the legislature could not have intended it." Lee v. Ky. Dept. of Corr., 610 S.W.3d 254, 262 (Ky. 2020).

"[C]ommon sense must not be a stranger in the house of the law." Cantrell v. Ky. Unemp. Ins. Com., 450 S.W.2d 235, 237 (Ky. 1970). The "horse racing activity" exception to the FAAA immunity statute must, by its plain wording, be interpreted as limited to those defendants who are actually somehow engaged in the racing of horses and to those injuries caused by horses that are actively performing some sort of activity in support of the racing of horses. The fact that a plaintiff is allegedly injured by a horse at a horse racing facility on a day that horses are racing should not, by itself, be enough to trigger the exception. Such a result effectively ignores the conduct element found in the statutory definition of "horse racing activities."

III. Bradley Owed No Duty To Roby As Regards The Premises

"A negligence claim brought under a theory of premises liability asserts that a land possessor has violated his duty to maintain his premises in a reasonably safe manner." City of Barbourville v. Hoskins, 655 S.W.3d 137, 140-141 (Ky. 2022). "The determination of whether a duty exists is a legal question for the court." Shelton v. Ky. Easter Seals Soc., 413 S.W.3d 901, 908 (Ky. 2013); accord Bramlett v. Ryan, 635 S.W.3d 831, 839 (Ky. 2021).

It is well-settled in Kentucky that "the possessor of premises for premises-liability purposes is that person (or entity) in occupation of the premises (or entitled to immediate occupation) with the intent to control them." Grubb v. Smith, 523 S.W.3d 409, 422 (Ky. 2017).

Roby's claims against Bradley are premised on the allegation that Bradley "maintained, controlled, operated and/or supervised the barn" in which she was injured. Amended Complaint at p. 2. But the Jefferson Circuit Court correctly recognized that Bradley owed had no duty of care to Roby as regards the premises because, under the agreement pursuant to which Bradley's stable pony was housed in a stall inside a barn located on the backside of Churchill Downs, Bradley merely holds a "license" to "use" stall space. Bradley has no leasehold interest in any stall (stall locations can be changed by Churchill Downs at any time), and Bradley has no right of control over the backside; indeed, Churchill Downs "maintains the sole interest in and exclusive control of its premises and facilities." Bradley MSJ at Attachment C. Bradley's resulting "interest in the stall was merely possessory without control," which does not give rise to a duty under a premises liability framework. June 16, 2021 Order at p. 3. In fact, the Court of Appeals implicitly affirmed the Jefferson Circuit Court's ruling on this point by side-stepping this issue.[8] Absent the existence of a legal duty owed, Roby's claim against Bradley fails as a

[8] Additionally, even if Bradley is somehow considered to be a possessor that owed Roby a duty of care, that duty would be limited in scope to the property he actually possessed: the stall which he had a license to use. But Roby was not inside the stall when she was allegedly bitten; Bradley's stable pony was inside the stall, and Roby was standing outside of the stall in the "hallway" of the barn. Consequently, there was no "activity taking place on the premises" that would give rise to a duty. Bramlett v. Ryan, 635 S.W.3d 831, 839 (Ky. 2021).

matter of law. E.g., Pathways v. Hammons, 113 S.W.3d 85, 88 (Ky. 2003) ("[A] negligence case . . . requires proof that (1) the defendant owed the plaintiff a duty of care.").

IV. Bradley Breached No Duty Owed To Roby As Regards The Premises

Regardless of the status of an entrant, whether an invitee or a licensee, a possessor of land will not be subject to liability if an adequate warning of a dangerous condition is provided or if the entrant has knowledge of the dangerous condition and the risk involved. Smith v. Smith, 563 S.W.3d 14, 18 at fn. 2 (Ky. 2018) (citing Restatement (Second) of Torts § 342).

The Jefferson Circuit Court correctly noted that Roby, given her extensive history of interacting with and caring for horses, admittedly "was aware that horses can be unpredictable and she could merely have avoided the horse." June 16, 2021 Order at p. 3. The Court of Appeals did not address this issue.

Assuming *arguendo* that Bradley owed any legal duty to Roby, absent a breach of such arguable duty, Roby's claim against Bradley fails as a matter of law. E.g., Pathways v. Hammons, 113 S.W.3d 85, 88 (Ky. 2003) ("a negligence case . . . requires proof that . . . (2) the defendant breached the standard by which his or her duty is measured."). And, in such situations, "assumption of the risk is not subsumed by comparative fault and, hence is a complete defense." Jordan v. Lusby, 81 S.W.3d 523, 525 (Ky. App. 2002). Because Roby had knowledge of the dangerous condition presented by and the risk involved in interacting with horses, Bradley breached no duty arguably owed to Roby as regards the premises, and, additionally, Roby assumed the risk.

V. Roby Asserted No "Ordinary Negligence" Claim Against Bradley

As noted above, in her Amended Complaint, Roby asserted only a premises liability claim against Bradley based upon the allegation that Bradley "maintained, controlled, operated and/or supervised the barn" in which she was injured. Amended Complaint at p. 2. Since Roby did not assert an ordinary negligence claim in her Pleading, the issue of ordinary negligence was neither briefed by the parties nor addressed by the Jefferson Circuit Court in its Order granting summary judgment to Bradley. Despite this, the Court of Appeals found that "Bradley's potential liability need not be viewed as a premises issue" because Bradley "owned and controlled the personal property that caused the underlying injury," so "ordinary negligence principles apply," and the matter "should be left to the discretion of the jury." Opinion at p. 11. This was improper.

"[T]he Court of Appeals will not consider arguments to *reverse* a judgment that have not been raised in the prehearing statement or on timely motion." Wright v. House of Imports, 381 S.W.3d 209, 212 (Ky. 2012). "[A] reviewing court should limit its review to the issues raised by the parties, as it is possible for a party to waive assignments of error, either expressly or impliedly." Rainey v. Mills, 733 S.W.2d 756, 757 (Ky. App. 1987); see Grange Mut. Ins. Co. v. Trude, 151 S.W.3d 803, 815 (Ky. 2004) (finding waiver when a party failed to raise the issue on appeal). "An appellant's failure to discuss particular errors in his brief is the same as if no brief at all had been filed on those issues." Milby v. Mears, 580 S.W.2d 724, 727 (Ky. App. 1979) (collecting cases). It is not an appellate court's "function . . . to research and construct a party's legal arguments." Hadley v. Citizen Deposit Bank, 186 S.W.3d 754, 759 (Ky. App. 2005).

Roby did not assert at any time either in the Jefferson Circuit Court or in the Court of Appeals that she was alleging an "ordinary negligence" claim against Bradley (which is not surprising given that her Amended Complaint included only a premises liability claim). Because of this, Roby has waived on appeal any argument that she is actually alleging an "ordinary negligence" claim or that the Jefferson Circuit Court erred in granting summary judgment to Bradley by failing to consider this issue. The Court of Appeals improperly reversed and remanded for trial based on a non-existent (and, if existing, a waived) claim.

VI. Bradley Owed No Duty To Roby And Breached No Duty Owed To Roby As Regards "Ordinary Negligence"

As an initial matter, Kentucky courts "have never found liability in tort unless we have first found circumstances giving rise to a relationship of some kind in which one particular party owed a duty to another particular party." Jenkins v. Best, 250 S.W.3d 680, 691 (Ky. App. 2007). "[I]n order to establish duty between parties, a relationship must exist" between them. Biggs v. Eaton Sales, 2010-CA-000639-MR, 2011 Ky. App. Unpub. LEXIS 956, *27 (May 20, 2011). In this case, there is no relationship between Bradley and Roby giving rise to any duty. Bradley was not with Roby on May 5, 2018 and never consented or gave permission to Roby to interact with his stable pony. Roby depo. at p. 41-42; Bradley depo. at p. 37. Without an existing relationship – which Roby has not alleged, and regarding which there is no evidence of record – Bradley owed no duty to Roby.

But, even if a duty was owed, Bradley did not breach it because his stable pony was confined to its stall, and there is no evidence of record establishing that the horse possessed dangerous and vicious propensities, the horse was inclined to bite, or Bradley knew of the horse's dangerous propensities.

Bradley exercised reasonable care by ensuring his stable pony was confined to its stall. Cf. KRS 256.090 (providing that the owner of a horse that is fenced is not liable for trespass if the horse breaks through or over the fence and trespasses upon the premises of another which are not enclosed by a fence). There were no other reasonable actions Bradley could have undertaken to further protect Roby under the circumstances. See, e.g., Baker v. McIntosh, 132 S.W.3d 230, 232-233 (Ky. App. 2004) ("McIntosh did not breach his duty of care toward Baker. McIntosh was entitled to conduct his business as he was accustomed. The risk that stock being loaded into a trailer will bump against adjacent doors, particularly colts well known to be rambunctious and skittish, was, or should have been, as apparent to Baker as to McIntosh. McIntosh thus had no duty either to prevent the colt from falling against the trailer door or to warn Baker that contact with the door was possible.").

Additionally, "[u]nder Kentucky law, a horse owner may be liable only if the plaintiff can prove that: (1) the horse possessed dangerous and vicious propensities; (2) the horse was inclined to commit an injury of the class complained of; and (3) the owner knew of the horse's dangerous propensities." Mishler v. Coleman, 1994 U.S. App. LEXIS 14945, *5 (6th Cir. June 14, 1994) (citing Ewing v. Prince, 425 S.W.2d 732, 733 (Ky. 1968) and N. Hardin Developers v. Corkran, 839 S.W.2d 258, 261 (Ky. 1992)). The only facts of record concerning any of those three elements is the deposition testimony of Bradley and McGinty describing the stable pony as one of the friendliest horses at the stable. Bradley depo. at p. 50; McGinty depo. at p. 50.

Further, as detailed above, assumption of the risk operates as a complete defense because Roby had knowledge of the dangerous condition presented by and the risk involved in interacting with horses.

Thus, contrary to the Court of Appeals's holding, the mere fact that Bradley "owned and controlled" the horse is not enough to apply "ordinary negligence principles" – and, even if it were, summary judgment in favor of Bradley would still be appropriate because the undisputed facts of record (which the Court of Appeals did not even attempt to discuss or analyze) conclusively establish that there is no jury question because Bradley did not breach any duty he may have owed to Roby.

CONCLUSION

No genuine issue of material fact exists. The Jefferson Circuit Court correctly analyzed the issues of law and properly granted summary judgment in favor of Bradley. The Court of Appeals's October 28, 2022 Opinion should be reversed, and the Jefferson Circuit Court's June 16, 2021 Order should be affirmed.

Respectfully submitted,

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