STATE OF MICHIGAN

COURT OF APPEALS

MICHELLE COLUMBUS,

Plaintiff-Appellant,

v

THOMAS L. MOORE, d/b/a SOUTHERN MICHIGAN PAINT & QUARTER HORSE AUCTION COMPANY, and J.R. COVELL,

Defendants-Appellees.

UNPUBLISHED
July 27, 2006

No. 267957
Ingham Circuit Court
LC No. 04-001440-NO

Before: Neff, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In November 2002, plaintiff was kicked by a horse during the Southern Michigan Paint & Quarter Horse Fall Sale (Fall Sale) at the Michigan State University Pavilion. Defendant Thomas Moore, d/b/a Southern Michigan Paint & Quarter Horse Auction Company, managed the Fall Sale at the MSU Pavilion, and defendant J.R. Covell owned the horse involved in the incident.

Plaintiff testified that she went to the Fall Sale with her husband to see the auction and to meet with friends. She was not in the market to buy a horse that day, but she was looking, and testified that she would possibly contact an owner later if the opportunity arose. Plaintiff was at the Fall Sale for approximately two hours before the incident. During that time, she looked at the trade show boutiques, talked to friends, and talked to people who were selling horses, although she testified that she did not talk to any of the horse owners for more than five minutes about their horses.

At the time of the incident, plaintiff was talking to friends and standing in an area of the MSU Pavilion facing two show rings with a large exercise ring to her side. There were many people standing in those areas where the horses were led to and from the stalls and the various rings. The horse involved in this incident was being led by its owner, defendant Covell, from the stall area to the show-exercise area. While he was leading that horse it jumped forward, knocked him down, and kicked plaintiff.

Defendants argued that plaintiff was unable to demonstrate a genuine issue of material fact because the Equine Activity Liability Act (EALA), MCL 691.1661 *et seq*., limits the liability of equine activity sponsors and equine professionals. Plaintiff, however, argued that she was a spectator and not a participant at the Fall Sale, and that the EALA does not limit liability concerning spectators. The trial court granted summary disposition in favor of defendants after determining that plaintiff was a participant in the event and that defendants were not liable under the EALA.

Summary disposition decisions, as well as questions of statutory interpretation, are reviewed de novo on appeal. *Amburgey v Sauder*, 238 Mich App 228, 231; 605 NW2d 84 (1999). The primary purpose of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Id*. The Legislature is presumed to have intended the meaning it plainly expressed. *Id*. at 232. We must presume that every word has some meaning and should avoid any construction that would render a statute or any part of it surplusage or nugatory. *Id*. If the language of the statute is clear and unambiguous, it must be applied as written. *Id*.

The EALA provides that an equine activity sponsor and equine professionals are not liable for injuries to participants that result from an inherent risk of an equine activity. MCL 691.1663. Similarly, the EALA states that a participant shall not make a claim against those equine activity sponsors and equine professionals for such injuries. MCL 691.1663. A "participant" is defined as "an individual, whether amateur or professional, engaged in an equine activity, whether or not a fee is paid to participate." MCL 691.1662(g). An "equine activity" includes, among other things, "[r]iding, inspecting, or evaluating an equine belonging to another, whether or not the owner receives monetary consideration or another thing of value for the use of the equine or is permitting a prospective purchaser of the equine or an agent to ride, inspect, or evaluate the equine." MCL 691.1662(c)(v). "Engage in an equine activity" "includes visiting, touring, or utilizing an equine facility as part of an organized event or activity including the breeding of equines, or assisting a participant or show management," but "does not include spectating at an equine activity, unless the spectator places himself or herself in an unauthorized area and in immediate proximity to the equine activity." MCL 691.1662(a).

The statute does not define spectator. When a statute does not define a word, that word is given the meaning as understood in common language considering the context in which it is used. MCL 8.3a; *Michigan Muni Liability & Prop Pool v Muskegon Co Bd of Co Rd Comm'rs*, 235 Mich App 183, 189; 597 NW2d 187 (1999). The *American Heritage Dictionary of the English Language* (1978), p 1241, defines spectator as: "1. One who attends and views a show, sports event, or the like. 2. An observer of an event; eye witness; onlooker."

In this case, plaintiff was at the MSU Pavilion during the Fall Sale, which was undisputedly an organized event or activity. Before the incident, plaintiff was talking to friends and to people who were selling horses at the sale. Plaintiff was not in the market to buy a horse that day, but spoke to horse owners about their horses. Plaintiff also testified that she might contact an owner after the Fall Sale if the opportunity arose. Based on the plain language of the statute, money does not have to exchange hands for a person to be involved in an equine activity. An equine activity can include evaluating and inspecting horses even though the owner receives nothing of value for permitting the prospective purchaser to inspect or evaluate such horses. MCL 691.1662(c)(v). Plaintiff's conversations with sellers constituted more than mere observance at the Fall Sale.

Additionally, while plaintiff was conversing with friends and talking with sellers she was in an area of the event where horses were frequently being led between the stalls and various rings. While there is no dispute that people were authorized to be in that area, there is also no dispute that horses were frequently going through that area.

While a spectator is merely an observer, plaintiff did more than observe when she attended the Fall Sale; she interacted with the sellers and other participants, and placed herself in an area of the equine event where horses were frequently in close proximity to people. For those reasons, the trial court correctly determined that plaintiff was a participant of the equine activity for purposes of MCL 691.1662(a) and therefore cannot assert a claim for damages against defendants when she was kicked by a horse.

We affirm.

/s/ Richard A. Bandstra
/s/ Brian K. Zahra