

IN THE COURT OF APPEALS OF IOWA

No. 5-103 / 04-0994

Filed March 16, 2005

DANA DARLING, Individually and as Executor of the Estate of LORI JANE DARLING, ERIC EVANS, and LORI SUE SHILLING,

Plaintiffs-Appellants,

vs.

HARRIET ANN REMINGTON,

Defendant-Appellee.

Appeal from the Iowa District Court for AdairCounty, John D. Lloyd, Judge.

Plaintiffs appeal from the district court's grant of summary judgment in favor of the defendant.
AFFIRMED.

Anthony Blessum, Winterset, for appellant.

Janice Thomas of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, L.L.P., Des Moines, for appellee.

Considered by Sackett, C.J., and Zimmer and Hecht, JJ.

ZIMMER, J.

Lori Darling was killed while riding a horse on farm ground owned by Harriet Remington. Plaintiffs sued Harriet claiming she is vicariously liable for the acts of her employee. Harriet moved for summary judgment. The district court granted summary judgment and dismissed the plaintiffs' claims. Plaintiffs appeal contending the district court erred in concluding that (1) Harriet was not vicariously liable for the actions of her son, Scott Remington, and (2) their claim is barred by Iowa Code section 673.2 (2001). Upon review of the record, we affirm the judgment of the district court.

I. Background Facts & Proceedings

Harriet Remington lives in Omaha, Nebraska. She owns a farm in Adair County, Iowa. Harriet operates a cow-calf operation on the farm. Her son, Scott, does most of the actual work on the farm and manages the operation in return for one-half of the profits. Scott also cares for hay ground using equipment owned by Harriet. Scott owns some horses which are kept on the farm. He occasionally uses the horses to check the cattle and fences. He and his friends also use the horses for pleasure riding. Scott does not live on his mother's farm.

On May 19, 2002, Scott had completed his chores on the farm and was pleasure riding and drinking beer with his friends, Able and Mary Castro. It was at this point in the day that Lori and her husband, Dana, stopped by the farm to thank Scott for allowing Dana's brother to hunt on the farm. Lori and Dana were also drinking beer.

After expressing an interest in riding a horse, Lori was invited to join Scott and Mary on a pleasure ride. Shortly after Lori mounted the horse she was to ride, the horse began throwing his head. It then "reared up," dropped to the ground, and died. The horse's death was attributed to a massive hemorrhage. No underlying pathological condition could be identified. At the time of the horse's death, other horses at the farm were being treated for equine distemper, but there is no evidence linking this disease with the hemorrhage.

Tragically, Lori died of injuries suffered in the incident. On December 16, 2002, Dana, acting on behalf of himself and in his capacity as executor of his wife's estate, filed a lawsuit against Harriet.^[1] The petition was later amended to add Dana and Lori's children as plaintiffs. The amended petition alleged that Scott was negligent and that Harriet was vicariously liable for his negligence as Scott's employer. The petition did not allege any act or failure to act on the part of Harriet.

On April 5, 2004, Harriet filed a motion for summary judgment. Following a hearing, the district court concluded that Harriet was not vicariously liable for Scott's allegedly negligent acts and omissions under the doctrine of respondeat superior. The court also concluded that the plaintiffs' claims were barred by operation of Iowa Code section 673.2.^[2] The court granted Harriet's motion for summary judgment and the plaintiffs' appealed.

II. Scope and Standard of Review

We review a summary judgment ruling for the correction of errors at law. *Kelly v. Iowa Mut. Ins. Co.*, 620 N.W.2d 637, 641 (Iowa 2001). Our supreme court recently set forth the standard of review of a district court's entry of summary judgment:

In reviewing the grant of summary judgment . . . the question is whether the moving party demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment on the merits as a matter of law. An issue of fact is 'material' only when the dispute is over facts that might affect the outcome of the suit, given the applicable governing law. The requirement of a 'genuine' issue of fact means that the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Our task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied. We examine the record in a light most favorable to the party opposing the motion for summary judgment to determine if movant met his or her burden.

Bill Grunder's Sons Constr. v. Ganzer, 686 N.W.2d 193, 196 (Iowa 2004).

III. Employer Liability Claim

Plaintiffs' first claim the district court erred in concluding that Harriet was not vicariously liable for the actions of her son, Scott.^[1] We disagree.

An employer is responsible for the tortious or wrongful conduct of her employee if the conduct occurs in the scope of the employment relationship. *Bethards v. Shivvers, Inc.*, 355 N.W.2d 39, 45 (Iowa 1984). An act is within the scope of employment if "such act is necessary to accomplish the purpose of the employment and is intended for such purpose." *Sandman v. Hagan*, 261 Iowa 560, 566-67, 154 N.W.2d 113, 117 (1967). Thus, in order for the plaintiffs to prove that Harriet was vicariously liable for the actions of Scott, they must show that (1) there was an employer-employee relationship between Harriet and Scott and (2) Scott's acts or omissions of which Dana complains were performed within the scope of that relationship. *Godar v. Edwards*, 588 N.W.2d 701, 705 (Iowa 1999).

In addressing the issue of Harriet's vicarious liability, the district court noted that there was "a factual dispute concerning the nature of the relationship between the defendant and Scott and that a jury could find that there was an employer-employee relationship." We agree with this conclusion. The court then discussed the second proposition required for the imposition of vicarious liability on Harriet. The court stated:

What is lacking in this entire scenario is even one piece of evidence that the horse was being ridden by Lori Darling for any purpose whatsoever except pure personal pleasure. There is no evidence that the proposed ride had even a mixed purpose of pleasure and going to check the cattle yet again that day. In fact, the evidence is undisputed that the farm chores were done and the charcoal was lit for the cookout. There is no evidence that the horses were being ridden for any purpose related to the employment of Scott Remington by the defendant or that it would accomplish any purpose of that employment. There is no evidence from which a fact finder could find that the horse ride involved the employment relationship between the defendant and Scott Remington. The simple fact that the manner of conveyance, the horse, and the location, the farm, were the same when Scott Remington was working as they were when he was playing, does not make his play a part of his employment, absent evidence that the play was for a purpose connected with his employment. That evidence is not present in this case.

We believe the record fully supports the district court's findings and conclusions regarding this issue.

Plaintiffs argue that Scott's allegedly negligent conduct occurred within the scope of his employment relationship with Harriet because Scott had used a horse earlier in the day to check on cattle, and "had been at the farm that day for the purpose of conducting chores." Like the district court, we conclude those facts fail to establish a basis for concluding that Scott was still within the scope of his employment during the horse ride that caused Lori Darling's death. The undisputed factual record reveals Scott had already completed his chores on the farm and was pleasure riding with his friends at the time Lori was injured. Accordingly, we conclude the district court properly granted Harriet's motion for summary judgment. In light of our resolution of the vicariously liability issue, we need not address the plaintiffs' additional claim that the district court erred in finding their claim was barred by Iowa Code section 673.2.

AFFIRMED.

^[1] The appendix does not contain the petition filed against Harriet on December 16, 2002. It does contain a petition filed by the plaintiffs against Scott Remington on April 30, 2004, which appears to have no relevance to this appeal.

^[2] Under section 673.2 “the owner of a domesticated animal . . . is not liable for . . . death suffered by a participant . . . resulting from the inherent risks of a domesticated animal activity.”

^[3] In their amended petition against Harriet, plaintiffs claim Scott was negligent because he (1) knew the horse was ill and/or unsafe to ride, (2) failed to notify the decedent of a dangerous latent condition by posting a warning sign, or (3) recklessly instructed the decedent to ride the horse and then negligently supervised the ride while under the influence of alcohol.