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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-669 / 90-653

ALAN HOVDEN,

Appellant,

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vs.

WILLIAM L. MILLER and **WENDELL YOUNGDOFF,**

Appellees.

Appeal from the Iowa District Court for Fayette County, James L. Beeghly, Judge.

Plaintiff Hovden appeals denial of contract and negligence claims against defendants Miller and Youngdoff. **AFFIRMED.**

Marion L. Beatty and Linny C. Emrich of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for appellant.

James S. Updegraff, West Union, for appellees.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J.

Plaintiff Alan Hovden appeals a district court's judgment after a bench trial denying his contract and negligence claims against defendants William L. Miller and Wendell Youngdoff. Hovden contends that Miller and Youngdoff were negligent in and breached contractual obligations to care properly for a brood mare. We affirm.

Hovden owned a registered paint mare named Robins April Angel (hereafter Robin). Hovden showed Robin, and the mare was well regarded on the show circuit. Hovden testified that he had turned down a 1985 offer of $15,000 for the mare. Hovden retired Robin from the show circuit in 1986 when the mare was five years old and began to use her as a brood mare. Robin foaled three times between 1985 and 1988, and two fillies survived. Robin's last filly, a paint, was sired by Miller's stallion Johnny Que.

Pleased with the filly, Hovden arranged to hand breed Robin and Johnny Que again in April 1989. He also arranged to have a quarter horse mare named Della bred to Johnny Que at the same time. Hovden and Miller executed a written breeding contract. In relevant part, the contract stated that the "[s]tallion owner will not be responsible for accident, disease, or death to the mare." The contract required Miller to "provide suitable facilities for the mare and feed and care for her in a good and husbandmanlike manner." The trial court found that the parties expected Miller to handle the animals as a reasonable horse breeder

in that area would. Hovden claims to have expected the mares to be kept in separate stalls almost continuously except for brief periods of exercise, as was his practice. Hovden claims that Miller agreed to such an arrangement. Miller denied this, and the trial court found Miller more credible.

Hovden delivered the two mares and their foals to Youngdoff, who was managing the breeding for Miller. Hovden and Youngdoff discussed the method of breeding and management of the mares. Hovden told Youngdoff that the mares could be exercised together because they got along with each other. Hovden claims, however, that he instructed Youngdoff to keep the mares separate at all times, except when exercising. Youngdoff denied this, and the trial court found Youngdoff more credible.

Youngdoff, as was his practice, kept the stall doors open most of the time and allowed the mares and their foals to roam the paddock together, except when feeding them grain. Within a few days, Robin had been bred. Youngdoff saw that Della was exhibiting characteristic behavior of a mare going into heat, including warning gestures. Youngdoff temporarily separated the mares, but when they made a fuss, he released them and observed that they were getting along again. That evening Youngdoff heard a commotion and discovered Robin was favoring a leg. Both sides agree that Della probably kicked Robin and broke Robin's left rear femur. Robin went into shock and died.

Hovden brought breach of contract and negligence claims against Miller and Youngdoff. The trial court found all three men to be highly experienced with horses. The court found that all breeders have different practices, but even most careful breeders would allow mares who were adjusted to each other to roam free together. The trial court concluded that Miller and Youngdoff had not breached their contractual obligation to "care for [the mare] in a good and husbandmanlike manner." The court held that Youngdoff had not been negligent in allowing the mares to mingle and had provided adequate supervision and taken reasonable precautions. The court further held that there had never been an agreement pertaining to near-continuous confinement of the horses as alleged by Hovden. Hovden appeals.

We review for errors of law. Iowa R. App. P. 4. We are bound by the trial court's findings of fact if they are supported by substantial evidence. Iowa R. App. P. 14(f)(2).

Hovden argues that the trial court erred in failing to find that Miller and Youngdoff were negligent in their bailment of Robin. He contends that the breeding agreement created a bailment for hire, Meester v. Roose, 259 Iowa 357, 359, 144 N.W.2d 274, 276 (1966), and that the defendants failed to rebut a presumption that the defendants' negligence caused damage to bailed property, Naxera v. Wathan, 159 N.W.2d 513, 518 (Iowa 1968); Walters v. Sanders Motor Co., 229 Iowa 398, 399-400, 294 N.W. 621,

622 (1940) (citing Hunter v. Ricke Bros., 127 Iowa 108, 102 N.W. 826 (1905)); see also 8 Am. Jur. Bailments § 323 (1980); 8 C.J.S. Bailments §§ 110(b), 112(a) (1988). Appellees argue that, because there was a special contract modifying liability, the rule shifting burdens is not applicable. They contend that the sole question before the trial court was whether it was negligent to allow the horses to exercise together.

A bailor who alleges the negligence of a bailee initially has both the burden of persuasion and the burden of production. The bailor carries the initial burden of production (i.e., makes a prima facie case) "by proof of delivery of the property in good condition and redelivery in a damaged condition with proof of the amount of damages." Walters, 229 Iowa at 399-400, 294 N.W. at 622. This does not, however, relieve the bailor of the burden of persuasion. See 8 Am. Jur. Bailments § 326 (1980) ("The plaintiff . . . is not relieved of his burden of proving negligence on the whole case merely because there may be a presumption of negligence on the part of the defendant." (footnotes omitted)); 8 C.J.S. Bailments § 112(b) (1988) ("The ultimate burden of establishing negligence is on the bailor and remains on him throughout the trial, except that the bailor need not prove the bailee's negligence when the bailee fails to come forward with a satisfactory exlanation." (footnotes omitted)). "The bailee must then go forward with his proof to rebut this . . . prima facie

case by showing that the loss occurred through some cause consistent with due care on his part, in which case he is entitled to the verdict, unless the bailor sustains his burden of proof with evidence that, nevertheless, the loss would not have occurred but for the negligence of the bailee." Walters, 229 Iowa at 400, 294 N.W. at 622 (citing Hunter v. Ricke Bros., 127 Iowa 108, 102 N.W. 826 (1905)); accord 8 C.J.S. Bailments § 112(b) (1988) (citing Walters); see also 8 Am. Jur. Bailments § 326 (1980). We are presented no reason to depart from these rules today.

We think appellants have misperceived the effect of a "special contract." Bailment is a contractual arrangement and is governed by contact principles. See 8 Am. Jur. Bailments § 54 (1980); 8 C.J.S. Bailments § 4 (1988). Parties generally may modify their respective rights and responsibilities by a "special contract." See 8 Am. Jur. Bailments § 54 (1980). A bailor and an "ordinary bailee" who have substantially equal bargaining power may agree to exempt or extend liability for the bailee's own negligence. See 8 Am. Jur. Bailments § 144 (1980); 8 C.J.S. Bailments § 60 (1988); see also Farmers Elev. Co. v. Chicago, R. I. & P. R. Co., 260 Iowa 478, 483, 149 N.W.2d 867, 870 (1967) (lease provision relieving party from liability for negligence was not contrary to public policy when public interest or statutory provision not involved). There is nothing inherent in the fact that the parties have executed a written bailment contract that alters the

burdens of proof. Nor is there support for the proposition that a limitation on liability alters the placement of these burdens.

Having examined this mutual benefit bailment contract closely, it appears to contain a permissible limitation on bailee liability for negligence. The appellees seem to have urged their contractual nonliability before the trial court, but the court did not rely on this provision of the contract. Although it appears we may affirm the trial court on this ground, see Anderson v. Yearous, 249 N.W.2d 855, 863 (1977), we need not rely on this rationale.

At trial, Hovden carried his initial burden of production by introducing evidence of delivery in good condition, recovery in damaged condition, and damages. The defendants introduced evidence that the mare's death was "consistent with due care on [their] part." Walters, 229 Iowa at 400, 294 N.W. at 622; 8 Am. Jur. Bailments § 326 (1980); 8 C.J.S. Bailments § 112(b) (1988). Hovden introduced opposing evidence to show "the loss would not have occurred but for the negligence of the bailee." Walters, 229 Iowa at 400, 294 N.W. at 622; 8 Am. Jur. Bailments § 326 (1980); 8 C.J.S. Bailments § 112(b) (1988). In this sense, though for the wrong reason, appellees are correct in asserting that the main question in this action was whether appellees were negligent in performing their contractual duty of providing care for the mare "in a good and husbandmanlike manner."

Both Hovden's and defendants' evidence on whether defendants were husbandmanlike in allowing the mares to mingle consisted of testimony of numerous horse breeders and handlers in northeast Iowa. The evidence differed and necessarily depended much upon the credibility of the experts. The trial court concluded that when two or more mares are well adjusted to each other, "almost every breeder would allow the mares to lounge together and only separate them for purposes of feeding them measured quantities of grain." We find that there is sufficient evidence in the record to support this finding of fact on the standard of care and their compliance with it. We affirm the trial court's judgment finding defendants Miller and Youngdoff were not negligent.

Hovden also argues that the trial court erred in failing to find that Miller and Youngdoff breached the breeding contract. From Hovden's arguments, Hovden specifically appears to contend that defendants breached their duty of care.

We have established in detail above that the duty of care under this breeding contract is to "provide suitable facilities for the mare and feed and care for her in a good and husbandmanlike manner." In addition, both sides expected the horses to be handled as a reasonable horse breeder in that area would. We have also noted that both sides introduced considerable evidence on how this duty of care may be carried out, and there was substantial evidence

to support the trial court's finding that Miller and Youngdoff fulfilled their duty of care. Consequently, we hold that there was substantial evidence to support the trial court's conclusion that defendants did not breach the contract.

We find Hovden's various other arguments unpersuasive. In particular, even if we construe this agreement strictly against the scrivener (Miller), Farmers Elev. Co. v. Chicago, R. I. & P. R. Co., 260 Iowa 478, 483, 149 N.W.2d 867, 870 (1967), we find no ambiguity or lack of clarity in the contract. The standard contract, with which both parties were familiar, provides for a standard of care and a limitation on liability. These two provisions are not necessarily inconsistent or ambiguous. Had appellees breached their contractual duty of care, we might have been called upon to construe these provisions together. In so doing, we might have determined whether the exculpatory provision applied to cases involving the bailees' own negligence. We also might have determined whether a breach of the contractual standard of care caused the exculpatory provision to be ineffective and under what circumstances. See, e.g., Farmers Elev. Co., 260 Iowa at 483, 149 N.W.2d at 870 (recognizing exculpatory lease clauses may not protect against landlord's own affirmative negligence). These issues, however, are not before us.

We hold that the trial court did not err in concluding that Miller and Youngdoff did not breach their breeding

contract with Hovden. We also hold that the trial court did not err in concluding that Miller and Youngdoff were not negligent in their care of Hovden's mare. We therefore affirm the judgment and order of the district court.

Costs of this appeal shall be taxed to plaintiff.

AFFIRMED.