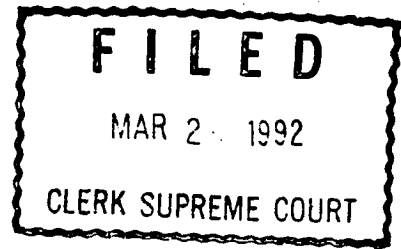


IN THE COURT OF APPEALS OF IOWA

No. 1-429 / 90-1752



DIANNA M. TONEY, ROBERT TONEY,
TONYA TONEY, A Minor, CRYSTAL TONEY,
A Minor, and SONYA TONEY, A Minor,
By Their Father and Next Friend,
ROBERT TONEY,

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Appellants,

vs.

JOSEPH R. BROWN and MARGARET BROWN,
Individually, and d/b/a CHARLOTTE HORSE
RIDING RANCH, INC., an Iowa Corporation,
and CHARLOTTE HORSE RIDING RANCH, INC.,
an Iowa Corporation,

Appellees.

Appeal from the Iowa District Court for Clinton County,
Max R. Werling, Judge.

Toneys appeal district court ruling directing a verdict
for Browns and overruling Toneys' motion for a new trial on
suit for injuries received when Dianna Toney was thrown
from a horse owned by Browns' horseback riding service.

AFFIRMED.

Candy K. Pastrnak of Snyder & Schwarz, P.C., Rock
Island, Illinois, for appellants.

Mike Kane, Maquoketa, for appellees.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

On July 7, 1987, Dianna Toney, along with two companions, went to Browns' farm for the purpose of hiring horses for a horseback ride. When they arrived at the farm, Dianna asked for a gentle, manageable horse. Dianna had ridden horses more than five hundred times by age twenty-four, but had only ridden occasionally in the several years preceding this date.

Browns' worker provided Dianna with a horse named Sydney. Dianna and her companions proceeded to ride for forty-five minutes during which the horses stopped to eat and one of them stood in a creek. The horses walked the whole time, and Sydney continually lagged behind the others. The riders complained the horses would not move along so they decided to terminate their ride early and return to the stables. Within eyesight of the stables, Sydney, who had been walking, suddenly bolted across the field throwing Dianna to the ground.

Witnesses testified Sydney was known as a slowpoke. Defendant Joe Brown viewed Sydney as a beginner's horse; Sydney was not known to have any vicious propensities. Toney's sued Browns for Dianna's injuries. In directing a verdict for Browns, the court believed Toney's introduced no evidence upon which the jury could determine Sydney had habits which Browns could have, or should have known, made him a dangerous horse. The court likewise believed Toney's introduced no evidence to establish Browns were guilty of

ordinary-negligence for running a dangerous business on the premises. The court denied Toney's motion for a new trial, and they have appealed.

Toney's first contend the trial court erred in granting a directed verdict. A directed verdict is appropriate in cases where each element of the claim is not supported by substantial evidence. Oberreuter v. Orion Industries, Inc., 398 N.W.2d 206, 209 (Iowa App. 1986). A court ruling on a motion for directed verdict must view the evidence in the light most favorable to the nonmoving party. Beitz v. Horak, 271 N.W.2d 755, 757 (Iowa 1978); Iowa R. App. P. 14(f)(2). To overrule the motion the court must find substantial evidence in support of each element of nonmovant's claim. Beitz, 271 N.W.2d at 757. If reasonable minds could differ, an issue is for the jury. Harvey v. Palmer College of Chiropractic, 363 N.W.2d 443, 444 (Iowa App. 1984). The trial court is vested with considerable discretion in determining whether evidence is sufficient. Hoover's Hatchery, Inc. v. Utgaard, 447 N.W.2d 684, 687 (Iowa App. 1989). We review the district court decision for correction of errors at law. Iowa R. App. P. 4.

Toney's contend the trial judge made all inferences in favor of Browns. In addition, they feel the facts in this case are similar to those in Evans v. Upmier, 235 Iowa 35, 16 N.W.2d 6 (1944). In Evans the supreme court held there was enough evidence in the record to generate a jury

question. Id. at 38, 16 N.W.2d at 8. Plaintiff in that case had not ridden a horse in over twenty years; he went to defendant's "riding academy" and was assigned a horse named Romeo. Id. Plaintiff was thrown off Romeo and against a tree. Id. at 39, 16 N.W.2d at 8. Defendant's workers testified they would assign Romeo to "any one who had done any amount of riding at all;" they "wouldn't assign Romeo to a beginner." Id. at 40, 16 N.W.2d at 8. Romeo was purchased by defendant in March, 1942, and sold in October, 1942. Id. at 38, 16 N.W.2d at 8. Plaintiff testified that on the trip

Romeo wanted to run; was hard to control; that he reared on his hind legs when the rider tried to hold him back; that on the trip he exhibited what are known as "outlaw" traits in wanting to be at the lead; that as they started home, Romeo ran on a gallop in spite of [plaintiff's] efforts to hold him back . . .

Id. at 39, 16 N.W.2d at 8. The Evans court found the evidence in that situation created a conflict such that it should be presented to the jury. Id. at 40, 16 N.W.2d at 8.

We believe the situation at present is quite different. Romeo exhibited "outlaw traits." Sydney, on the other hand, had the habits of eating grass, lagging behind, and going from a walk to a trot at the top of the hill. These habits are not dangerous nor could an owner foresee an injurious result from these habits.

[T]he question as to whether the owner knew, or in the exercise of due care should have known, the habits and propensities of a horse being rented is a proper one for the jury if there exist any facts

and circumstances indicating that the owner did have or could have had such knowledge. When the owner of a riding academy buys a horse to be hired to the public, common care and prudence require that the purchaser inform himself as to the disposition and propensities of the purchased animal.

Id. at 44, 16 N.W.2d at 10-11. Sydney was purchased in 1983 or 1984. Browns had owned Sydney for at least three years at the time of Dianna Toney's accident. Joe Brown had never had any complaints about Sydney, and no one had reported a bad experience with Sydney. Brown uses Sydney for beginning riders and children; he has never known Sydney to be unruly, vicious, or to buck.

We determine there are no facts and circumstances indicating Browns did have or could have had knowledge to foresee Sydney would misbehave. Even when viewed in light most favorable to Toney's, there is not substantial evidence to support a finding Browns knew or could have known of Sydney's behavior. We affirm the directed verdict in favor of the Browns.

Next, Toney's argue the application of Evans to the directed verdict is in error because their causes of action are also based on premises liability and ordinary negligence. Their theory is Browns should have warned Dianna that Sydney may become uncontrollable and that injury may result. We find these claims are also without merit.

A possessor of land is not liable to an invitee for physical damage caused "by any activity or condition on the

land whose danger is known or obvious to [the invitee], unless the possessor should anticipate the harm despite such knowledge or obviousness." Mundy v. Warren, 268 N.W.2d 213, 217 (Iowa 1978) (quoting Restatement (Second) of Torts § 343A(1) (1975)). Likewise, the owner of a horse has the duty to make the ride reasonably safe by providing a reasonably safe horse. Evans, 235 Iowa at 44, 16 N.W.2d at 10-11; see Mundy, 268 N.W.2d at 216-17. Sydney's known habits were not dangerous, and therefore, Browns made the activity of horseback riding reasonably safe. Browns, as possessors, could not have anticipated the harm. For the reasons above warranting a directed verdict, we find the motion for new trial was properly rejected.

Last, Toney's argue the court erred in not allowing testimony of Rebecca Mahanes, who was involved in a former accident at Browns' farm. The court allowed Mahanes to testify she had not received a gentle horse. This witness did not ride Sydney, so the court did not allow her to relate a story of an injury at Browns' farm. We believe it proper to limit the testimony to incidents involving Sydney. See Evans, 235 Iowa at 48, 16 N.W.2d at 12. The court did not abuse its discretion. See McCracken v. Edward D. Jones & Co., 445 N.W.2d 375, 379 (Iowa App. 1989).

We agree with the trial court determination that Toney's "introduced no evidence whatsoever upon which a jury could determine that Sydney had habits which [Browns] could have

or should have known [] made him a dangerous horse." We affirm the directed verdict in favor of Browns.

AFFIRMED.