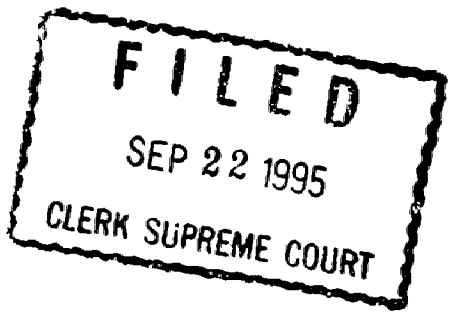
IN THE COURT OF APPEALS OF IOWA



No. 5-317 / 93-1944

DARIS McCONNELL,

Appellant,

vs.

JAMES E. HALLS and **DENNIS HALLS,**

Appellees.

Appeal from the Iowa District Court for Union County, J. W. Jordan, Judge.

Plaintiff appeals an order granting a motion for summary judgment and an order denying his motion for directed verdict. **AFFIRMED.**

Joseph B. Reedy, Council Bluffs, for appellant.

W. Don Brittin, Jr., and Hayward L. Draper of Nyemaster, Goode, McLaughlin, Voigts, West, Hansell & O'Brien, P.C., Des Moines, for appellee James Halls.

James C. Huber and Patrick D. Smith of Huber, Kelley, Book, Cortese & Happe, Des Moines, for appellee Dennis Halls.

Considered by Donielson, C.J., and Cady and Huitink, JJ.

DONIELSON, C.J.

Plaintiff, Daris McConnell, appeals two issues: 1) the trial court's grant of summary judgment to defendant James Halls; and 2) the trial court's refusal to direct a verdict on the issue of defendant Dennis Halls' liability. McConnell concedes affirmance by this court on the latter issue will moot the need for review of the former. Finding the trial court did not err in denying McConnell's motion for directed verdict, we affirm the jury's verdict and decline to address the propriety of the grant of summary judgment.

I. BACKGROUND.

On September 6, 1990, McConnell assisted James and Dennis Halls in herding their cattle so they could receive veterinary treatment for pink eye. One calf was blind and not readily subject to being herded into a corral. McConnell, Dennis Halls, the veterinarian and several other men attempted to lasso the blind calf and treat its eye. In the process, the calf injured McConnell's leg. McConnell filed suit against Dennis and James Halls.[1] McConnell's suit was based on various counts of negligence.

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[1]Suit was also filed against Ted Halls but he was subsequently dismissed as a defendant.

Prior to trial, summary judgment was granted to James Halls. At the conclusion of the trial, McConnell made a motion for directed verdict on the issue of Dennis Halls' liability.

> [PLAINTIFF'S COUNSEL]: Judge, in addition, the Plaintiff would like to move for directed verdict based upon the testimony of Dennis Halls and the *Coakley vs. Dairy Cattle Congress* case which has been cited by -- the Defendant Dennis Halls has stated that this animal had known vicious tendencies and propensities, and that case clearly states that if an animal -- a domestic animal has known vicious tendencies and propensities then the owner is responsible for the injuries inflicted. We would, therefore, ask for a directed verdict as to liability only.
>
> [COURT] Any response?
>
> [DEFENDANT'S COUNSEL] Our response is that this is not an an [sic] animal that has known vicious tendencies. This is just another calf that these men were trying to treat. That concept is a concept of having a history, an animal -- a particular animal that has been known to injure someone in the past, has shown propensities to injure and harm. That concept is totally inappropriate under these circumstances and is not any basis to assess liability on a legal basis.
>
> [COURT]: The Court does not believe that the record supports a factual basis upon which there could be no disagreement on this issue and, therefore, the motion for directed verdict on behalf of the Plaintiff is denied, that it does generate a fact question for the jury to decide.

We review a trial court's denial of a motion for directed verdict for correction of errors of law. *Podraza v. City of Carter Lake*, 524 N.W.2d 198, 202 (Iowa 1994). Our review is limited to the grounds raised in the motion. *Id.* We view the evidence in the light most favorable to the nonmovant and determine whether sufficient evidence existed to warrant submission of an issue to a jury. *Id.* "The movant is considered to have admitted the truth of all evidence offered by nonmovant and every favorable inference that may be deduced from it." *Hill v. Winnebago Indus., Inc.*,

522 N.W.2d 326, 328 (Iowa App. 1994). This standard of review requires us to consider whether reasonable minds could differ on the issues in controversy. *Podraza*, 524 N.W.2d at 202. If reasonable minds could differ, an issue is for the jury. *Hill*, 522 N.W.2d at 328.

The only ground on which the plaintiff sought a directed verdict was his contention that defendant Dennis Halls had admitted the calf "had known vicious tendencies and propensities." Under Iowa law the owner of a domestic animal is liable for injuries inflicted by it when the injuries were the result of known vicious tendencies or propensities. *Wenndt v. Latare*, 200 N.W.2d 862, 869 (Iowa 1972); *Coakley v. Dairy Cattle Congress*, 228 Iowa 1130, 1135, 293 N.W. 457, 459 (1940).

A review of the record reveals Dennis Halls was reluctant to characterize the calf as vicious and dangerous. He testified a blind calf is lost and confused, rendering it more rambunctious and a little more wild. Dr. Wright, the veterinarian who treated the calf, specifically testified this blind calf was no more vicious than a non-blind calf.

The evidence was disputed as to whether the calf had known vicious tendencies or propensities. There was sufficient evidence from which reasonable minds could differ on the issue of Halls' liability. The trial court did not err in denying the plaintiff's motion for directed verdict.

AFFIRMED.