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HORSES THE NEXT PIT BULLS? CONNECTICUT SUPREME COURT FINDS THAT HORSES ARE INCLINED TO BE MISCHIEVOUS, BUT THEY ARE NOT PRESUMED TO BE DANGEROUS

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In a matter of first impression, the Connecticut Supreme Court ruled that horses belong to a "species naturally inclined to do mischief or be vicious." The Court did not go so far, however, as to rule that horses are "presumed to be dangerous." Those questions will need to be decided on a case-by-case basis before a jury. As a result of the ruling, owners and keepers must now be more diligent than ever in their efforts to prevent their horses from causing foreseeable injuries, regardless of whether their animals have any known mischievous or vicious propensities.

It all started in 2006 when the Vendrella family patronized defendants' greenhouse and stable, Glendale Farms. After purchasing plants from the greenhouse, the Vendralla family wandered over to a paddock adjacent to the greenhouse to see the horses. Anthony Vendrella was petting the horses when, suddenly, Scuppy the brown horse bit his two-year-old son on the cheek. The bite ultimately required surgery and resulted in a permanent scar on the toddler's right cheek.

The Vendralla's filed a lawsuit against Glendale Farms' owners alleging various causes of action, including negligence. The defendants filed a motion for summary judgment contending that the case should be dismissed because defendants had no actual or constructive notice that Scuppy had mischievous or vicious propensities. In other words, this was Scuppy's first bite. In fact, the defendants had no knowledge of any incident, in the twenty eight years Glendale Farms had horses, where any of their horses had bitten or otherwise injured any person. Based on these facts, and relying on the legal premise that defendants, as owners of a domestic animal, can be held liable only where they had actual or constructive knowledge of the animal's vicious propensities, the trial court granted the motion and dismissed the case.[1] The plaintiffs appealed to the appellate court. In a decision that shocked the Connecticut horse industry, the appellate court reversed the trial court and held that horses belonged to a species naturally inclined to do mischief or be vicious. More specifically, the appellate court held that there was an issue of fact as to whether horses as a class possess a natural tendency to bite, possibly causing injury to a person, even if a particular horse had not previously displayed that propensity. Thus,

it was error for the trial court to dismiss the lawsuit based on the fact that the defendants had no prior knowledge that Scuppy specifically, and not horses generally, possessed a natural tendency to bite.[2]

The defendants' petitioned for certification to appeal. The Connecticut Supreme Court granted certification to resolve two issues: (1) did the appellate court properly conclude as a matter of law that a defendant has a duty of care to prevent injuries caused by a domestic animal that did not have known mischievous propensities if the injuries were foreseeable because the animal belongs to a class of animals that is naturally mischievous, i.e. naturally inclined to do an act that might endanger the safety of persons or property; and (2) if so, is there a genuine issue of material fact as to whether, under the specific facts and circumstances of the present case, the minor plaintiff's injury was foreseeable?[3]

After a thorough analysis of the substantive law governing liability caused by domestic animals, the Court affirmed the appellate court's decision and held that horses belong to a species naturally inclined to do mischief or be vicious. The Court concluded that, as a matter of law, the owner or keeper of a horse has an affirmative duty to take reasonable steps to prevent injuries that are foreseeable regardless of whether the animal had previously caused an injury or was roaming at large. Accordingly, the owner or keeper may be held liable for negligence if he or she fails to take such reasonable steps and an injury results. As to the second question, the Court determined that, under the circumstances present in the case, there was an issue of fact as to whether the minor plaintiff's injury was foreseeable because horses have a natural propensity to bite. The case was remanded back to the trial court for further proceedings.

What does this mean for Connecticut horse owners and keepers?

At first glance, the Court's ruling appears devastating to horse owners and keepers. The initial reaction by the horse industry is both anger (how can this Court say that horses are vicious?) and fear (how will this Court's decision impact the operation of equine-related businesses?). While the Court's decision will indeed remove certain legal obstacles for injured plaintiffs, and will obligate horse owners to tighten their safety measures, the decision does not reach as far as some may think. It is important to note what the Court did **not** decide:

- The Court did not decide that horse owners are strictly liable for injuries caused by the animal;[4]
- The Court did not rule that all horses are "presumed to be dangerous;"[5]
- The Court did not hold that all horse bites are foreseeable as a matter of law because all horses have a natural propensity to bite under all circumstances.[6]

Rather, the Court's decision can be distilled down to: (1) horses, as a species, have a natural inclination to bite; and (2) with the knowledge that horses have a natural inclination to bite, owners of horses have a legal obligation to take reasonable steps to protect people from foreseeable harm. A trier of fact will have to determine, on a case-by-case basis, whether the owner of a horse has taken reasonable steps to protect people from foreseeable harm. In other words, the question is — with the knowledge that horses are naturally inclined to bite, was it foreseeable that a person would be bitten under the facts of that particular case?

For injured plaintiffs, this is a huge step, and gets them over a difficult hurdle. No longer does a plaintiff who is bitten by a horse have to establish that the particular horse at issue had vicious propensities and that the defendant was aware of those propensities. Under the holding of this case, if a horse bites a person, the only issue is whether it was foreseeable that the horse would bite in that particular situation given the safety measures in place (or lack thereof). But that burden is still far from negligible.[7] Moreover, even if the plaintiff meets this burden, recovery could still be limited or barred by the principle of comparative negligence.

It is important to keep in mind that the injured plaintiff does not need to prove that the species as a whole has a tendency to inflict harm, but only that class of animals to which the specific animal belongs has such a tendency. Thus, if the animal in question was a three-year-old colt, rather than a fifteen-year-old well-broke gelding, the tendency to inflict harm will be much different and, by extension, the owner and keeper of that colt will be required to take greater precautions to control the animal than would be required of the owner or keeper of the gelding.

For defendant horse owners and keepers, the *Vendrella* decision bars the often-used defense that the horse owner or keeper had no knowledge that the particular animal in question had vicious propensities (i.e. they cannot rely on any "one free bite" defense). The owner or keeper is no longer permitted to assume, until there is some concrete indication to the contrary, that the horse is not dangerous. From this point forward, an owner should assume that his or her animals pose a particular kind of risk to people and must take action to prevent a foreseeable injury—or be prepared to pay for it. With that said, if the owner takes proper precautions making it unforeseeable that the horse would bite someone, then they can still reduce or avoid liability.

Proper precautions may include, for example, posting a warning sign notifying visitors of the various risks associated with equine activities. If a particular horse bites, kicks, or has another dangerous habit, the warning sign should be posted prominently at each entrance to the stall or enclosure and should inform the reader of the specific nature of the danger (i.e. "Horse Bites!"). For that same horse that is known to bite or kick, or the colt that is likely to exhibit such behaviors, the horse should be kept in a properly enclosed stall or paddock, where it cannot endanger visitors (i.e. a solid horse stall front versus a low rise stall front that allows the horse to hang its head into an aisle way). Horse owners and keepers should also take care in allowing visitors to feed treats to their horses, and should carefully select the particular horse that their guests are allowed to visit (i.e. allowing a child to feed a carrot to the old gelding versus the colt). The visits should be supervised.

The immediate impact of the Court's decision for the defendants is that a case that was once believed to be over is now headed for trial. But it remains to be seen what the ruling will ultimately mean for the defendants and the horse industry at large. It is clear, however, that horse owners and keepers must exercise significant caution and tighten their safety measures in an attempt to avoid preventable injuries. Otherwise, they should be prepared to pay the price.

[1] *Vendrella v. Astriab Family Ltd.*, 2010 Conn. Super LEXIS 2380 (Conn. Sup. Ct. Sept. 16, 2010).

[2] *Vendrella v. Astriab Family Ltd.*, 36 A.3d 7077 (Conn. App. Ct. 2012).

[3] *Vendrella v. Astriab Family Ltd.*, 2014 Conn. LEXIS 79 (April 1, 2014).

[4] *Id.* at *13-14. Strict liability means liability without proof that the defendant was negligent (i.e. the defendant is liable even if it took all proper steps to prevent a foreseeable harm).

[5] *Id.*

[6] *Id.* at *14.

[7] The Supreme Court clarified that, to prevail on a negligence claim, the plaintiff has the burden of establishing that: (1) the type of injury was foreseeable under all the facts and circumstances of the case because the animal belonged to a class of animals having naturally mischievous propensities and, only if the plaintiff proves that the injury was foreseeable; and (2) that the owner or keeper failed to take reasonable steps to prevent this injury. *Id.* at *47-48.