Circuit Court for Montgomery County
Case No. C-15-CV-22-000516

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1728

September Term, 2024

KEVIN MALLEY

v.

TEDDI BEWERNITZ, ET AL.

Shaw,
Arthur,
Getty, Joseph M.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw, J.

Filed: June 8, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On June 25, 2021, A. Malley, daughter of Appellant Kevin Malley, was injured on a trail ride during her horseback riding lessons in Mt. Airy, Maryland. Appellant filed a complaint in the Circuit Court for Montgomery County against Appellees, Teddi Bewernitz, A.'s trainer, and Coexist Stables LLC, Bewernitz's employer and owner of the stables, alleging that Appellees were negligent. The matter was tried before a jury and, at the close of all evidence, Appellees moved for a directed verdict, which the court granted. Appellant then filed a motion for a new trial, which was denied by the court. Appellant timely appealed and presents four questions[1] for our review, which we reduced to the following:

1. Did the trial court commit reversible error by granting the Defendants' motion for judgment when it found no issue of fact should be submitted to the jury on the question of whether the Defendants were negligent when they took [A.] on a trail ride off of their property without her parents' permission?

2. Did the trial court commit reversible error by granting the Defendants' motion for judgment when it ruled [A.] had assumed the risk?

3. Did the trial court commit reversible error when it found no issues of fact should be submitted to the jury on the question whether there were

[1] Appellant's original questions are as follows:

1. Did the trial court commit reversible error by granting the Defendants' motion for judgment when it found no issues of fact should be submitted to the jury on the question of whether the Defendants were negligent when they took [A.] on a trail ride from their property without her parents' permission?

2. Did the trial court commit reversible error by granting the Defendants' motion for judgment when it ruled horse riding is an inherently dangerous activity?

3. Did the trial court commit reversible error by granting the Defendants' motion for judgment when it ruled [A.] had assumed the risk[?]

4. Did the trial court commit reversible error when it found no issues of fact should be submitted to the jury on the question of whether there were intervening factors on the part of the Defendants that negligently increased the danger to [A.]?

> intervening factors on the part of the Defendants that negligently increased the danger to [A.]?

For reasons below, we hold the court did not err and we affirm the judgment of the circuit court.

BACKGROUND

Appellant filed a civil complaint "individually and as Father and Next Friend" of A. Malley against Appellees, Teddi Bewernitz and Coexist Stables, LLC ("Coexist") on February 1, 2022. Appellant averred two counts of negligence against Ms. Bewernitz, alleging she breached her duty of care to A. by taking A. on a trail ride without the permission and informed consent of A.'s parents; for failing to make sure A. was familiar with her horse, Seth; for failing to instruct A. on how to control her horse; and for failing to adequately supervise A. to ensure that A. could properly tack her horse, that A. was riding on safe terrain, and that A. was in a safe/familiar environment. Appellant averred one count of negligence and respondeat superior against Coexist, asserting it was negligent in allowing Ms. Bewernitz to take A. on a trail ride and was vicariously liable for the negligence of Ms. Bewernitz, as its agent. On March 17, 2023, Appellees filed a motion for summary judgment, which the court denied.

A jury trial commenced on August 19, 2024, where both parties presented witnesses. Elizabeth Tonti, a co-owner of Coexist Stables, testified that the Malleys paid for A.'s lessons, which included going on a trail ride and learning to ride outside of an arena. The trail rides went through property directly next to property owners who had dogs but did not cut through any neighboring backyards where the dogs were playing. Ms. Tonti testified

that she was aware that dogs spooked horses, and that Coexist prohibited dogs on the property and displayed a sign stating this. She confirmed that, on the day of the incident, Ms. Bewernitz decided to take A. on a trail ride, and that "instructors would do this if they're about to move up a level or as a treat." She stated she had not asked for parental permission, nor did she tell A.'s parents anything prior to the trail ride. She confirmed her previous claim that Nina Malley, A.'s mother, signed a participant agreement and before that, a summer horse camp registration form that included a waiver. She stated, "[e]verybody signs a waiver when they come," and she denied cutting and pasting Ms. Malley's signature from the summer camp registration form onto the participant agreement.

The referenced participant agreement provided, among other terms, that the signing individual:

> agree[d] to release, waive, and discharge . . . Coexist Stables, LLC, its respective members, managers, employees, volunteers, and agents . . . from any liability or responsibility for accident, damage, injury, or illness to myself or any horse owned by me or any horse not owned by CS, LLC but used by me, . . . resulting from the inherent risks of equine activities or from the ordinary negligence (active or passive) of CS, LLC.

The individual also agreed not to sue Coexist except in the event of its "wanton and willful and/or reckless conduct and/or gross negligence," and that he or she assumed the inherent risk of injury from equine activities, including "the unpredictability of an equine's reaction to such things as sounds, sudden movements, and unfamiliar objects, persons or other animals[.]"

In 2020 Ms. Malley signed a summer camp registration form, stating, (I):

> Understand that horse-back riding is a high-risk sport and I understand the inherent dangers of riding or being around horses and am participating at my

> own risk. Serious injury may result from using this facility. I am willing to accept the risk of working with/on horses.

She also agreed to:

> bring no . . . causes or action and/or litigation against Coexist Stables and/or its associates or owners as previously stated for any loss due to bodily injury or death sustained by me, my minor children, legal ward, or horse(s) in relation to the premises and operation of this facility, which includes riding, handling, or being near horses and/or other animals.
>
> Understand and agree that Coexist Stables is not responsible for any act, occurrence, or element of nature that can scare, endanger or cause harm to a horse, causing it to react in an unsafe manner.

Nina Malley testified that her daughter, A., took her first horse lesson between the age of four or five. A. began private lessons at age seven at River Bottom Farm, then later switched to lessons at Hidden Creek Farm. She stated that when A. was eight years old, she arranged and accompanied A. on two "back-to-back" trail rides at her prior facility. Ms. Malley explained that, after meeting with Ms. Tonti and viewing the Coexist facility, A. began attending Coexist in the Summer of 2020. She registered A. for their summer camp and lessons simultaneously. She testified that A. had taken between thirty to forty lessons by this time. Prior to starting Coexist, Ms. Malley testified that when registering A. for summer camp, she asked Ms. Tonti about trail rides and Ms. Tonti "assured [her] that there were no trail rides."[2] She stated Ms. Tonti told her the facility prioritized safety and had premier equestrian footing that made it safer for the rider. When asked, she confirmed Coexist did not tell her that A. would not be injured in the event of a fall but recounted a time when A. fell during lessons in the indoor arena and sustained no injuries.

[2] Ms. Malley testified that during this time she "was pregnant, and [she] pointed to [her] belly, and [she] said, 'well, that's good because I won't be going on a trail ride any time soon and I'd have to go with her.'"

She also observed two other riders fall and sustain no injuries.[3] Ms. Malley confirmed she signed, read, and understood the summer camp registration form, but did not cross out "trail rides" from the listed activities described on the form. When asked, she confirmed nothing changed to make her believe that there was less of a risk from when A. attended summer camp than when A. was taking lessons. She acknowledged that horseback riding was "risky" but reasoned she signed up A. for lessons "under certain conditions in an arena with her parents present to supervise."

Doctor Timothy Potter, an expert in equine science, next testified. Dr. Potter stated that he did not agree with the general principle that horseback riding is "inherently dangerous." He stated that it does not have to involve an inherent risk of injury. He testified that he reached three opinions, after reviewing the case: Coexist failed to "reasonably and prudently and properly prepare [A.] for the trail ride" which "increased the risk associated" and "created [a] dangerous condition" that caused A.'s fall; Coexist failed to adhere to industry standards regarding the preparation and instruction of a beginner for a trail ride; and Coexist knew or should have known their failure would "foreseeably" result in A.'s incident. Dr. Potter based his opinion on the fact that A. was a beginner on a horse she never ridden before; A. was not instructed how to handle a horse when spooked; and that Ms. Bewernitz observed them do a lap once in the arena before taking them on a trail ride. On cross examination, Dr. Potter stated he did not know what

[3] Ms. Malley testified she witnessed two other riders fall and were not injured. She specifically recalled when a "boy was violently thrown from the horse and he got back up on the horse" with no injury.

spooked the horse, nor did he see evidence of any instruction given on how to "handle a spook," A.'s actions, or her speed when the incident occurred.

Dr. Timothy Frasser, an expert in orthopedics and orthopedic surgeries, testified to the injuries sustained by A. He opined that as a direct result of A.'s fall she sustained a "type 3 supracondylar fracture" that required a "closed reduction, percutaneous pinning" of her injury. He stated A.'s injury was permanent as she was "experiencing tingling, numbness and weakness into her left upper extremity which is associated with a median nerve injury[4]" eighteen months after her injury.[5]

Appellant testified that, on the day of the incident, when A. and Ms. Bewernitz walked by him on their horses on the way out of the arena, he asked A. where she was going, to which she responded, "trail ride."[6] Upon this response, he left the stands and followed them out of the arena, entered the parking lot, and called Ms. Malley to inquire if she was aware of the trail ride. Ms. Malley stated that she was not aware. Appellant stated that when A. and Ms. Bewernitz were leaving, he was unsure of how to stop Ms. Bewernitz and ask where they were going because it "took [him] a minute to process what was going on," and he didn't "want to make a scene" if it was something else that he was unaware of.

[4] Dr. Frasser explained that A. suffered "chronic severe lesion of the median nerve" as a result of the fracture bone cutting her median nerve by fifty percent, which is a common injury seen from type three supracondylar fracture.

[5] Dr. Frasser, when asked, agreed that "supracondylar fractures" are commonly healed within six months, but distinguished, in A.'s case, she will be limited in the use of her upper left extremity such as "performing heavy vocational activities."

[6] Appellant explained that the indoor arena contained two sets of stands with a pathway in between where a person could walk through with or on their horse to enter and exit the arena. A. and Ms. Bewernitz passed through this pathway.

About five to ten minutes later, Appellant learned of A.'s fall, and when he arrived at the location of the fall, he assisted A., instructed Ms. Bewernitz to call the police, and after speaking with Ms. Malley on the phone held "off a boxer -- a brown boxer dog with one arm" from licking or accidentally stepping on A.

Ms. Bewernitz testified that on the day of the incident she announced in the arena that she, A., and another rider were going on a trail ride with both riders' parents present. She explained that it was "not standard practice" to seek parental permission for anything they did, and trail rides were frequently used during their lessons. She stated she assumed Mr. Malley consented to the trail ride because he raised no concerns upon her announcement. She acknowledged that she did not specifically tell A. where they were going. She stated that she was aware that dogs could scare the horses, that the trail ride passes behind houses, and that some of the surrounding property neighbors had dogs. She confirmed she did not check for "running dogs" prior to the trail rides because she had never seen "a free roaming dog" on the properties. Ms. Bewernitz confirmed that, in her deposition, she stated she would return to the stables on a trail ride with children, if she encountered any problems. She testified that, during the trail ride, all three horses "spooked a little," potentially caused by a dog barking. However, they continued the trail ride because A. and the other rider seemed "calm," able to manage, and they were "halfway along the track." Ms. Bewernitz testified that following A.'s fall, she told Ms. Tonti a bunny rabbit spooked A.'s horse. She clarified she was "speculating" with Ms. Tonti because it was "the only thing [they] could think of," since it was not a dog or a truck that caused the spook; she "didn't necessarily see a bunny." Ms. Bewernitz testified that after

A.'s fall, she did not recall seeing a dog run up to her, did not say it wasn't there, but she stated that one was not there prior to A.'s fall.

Appellant then called Jeffrey Payne, a forensic document examiner. Mr. Payne opined that, after his review of the 2020 Summer Registration form and the Participant Agreement, he determined that "[A.'s] and [Ms.] Malley's signatures from the summer registration form . . . [were] cut and pasted to the participant agreement that is undated," because the "[s]ignatures were identical."

Appellant's daughter, A., testified. She stated, during her lessons at Coexist, she used an English saddle, and she did not ride the same horse each time. She rode up to fifteen to twenty horses there, and she usually rode in the facility's indoor or outdoor arena. A. noted that she had fallen off a horse before in the indoor arena after it was spooked from hearing a machine start up outside; she sustained no injury, and she continued her lesson. She acknowledged that she had witnessed others fall from their horses, and that the purpose for wearing a helmet was to protect her head in the event of a fall. A. stated that on the day of the incident, she was not provided instructions on what to do if a horse spooked. She explained that it was her first time riding Seth, that Ms. Bewernitz told her they were going on a trail ride to "train her horse," and that a pink umbrella blowing on the property may spook her horse. She indicated that Appellant was sitting in the stands wearing headphones. She could not remember Ms. Bewernitz's announcement that they were going on a trail ride but confirmed she told Appellant that she was. She stated she was comfortable riding Seth, although she had "never ridden Seth and didn't have any reason to" have concerns; he was behaving that day. A. recounted that, during the ride, a dog

barked and spooked all three horses right next to them in a closed off area, but she could not recall what caused the horses to spook the second time. She stated where she fell was like "riding terrain," "pretty smooth," but similar to gravel and "bumpy," but on cross, she indicated she fell on the grass. She stated the horse jumped in the same manner but a "bigger version" than the first spook. She stated that when she fell, she "bl[a]cked out for a few seconds," and then gained consciousness.

At the conclusion of A.'s testimony, Appellant rested his case. Appellees moved for a directed verdict, arguing that Appellant failed to establish causation, and that Appellees enhanced the risks associated with horseback riding. Following the parties' arguments, the court denied Appellees' motion.

Appellees then called James Hillman, a co-owner of Coexist Stables, to testify. Mr. Hillman testified that an image at the entrance of the facility displayed signs, and specifically one stating that the property was an "equine facility" and gave the following warning:

> All activities on the grounds are subject to equine inherent risk law. By your presence on these grounds, you have indicated that you have accepted the limits of liability resulting from inherent risk of equine activities. This is not a spectator activity. All persons in this area will be regarded as participants and limited by the inherent risk law.

He testified that the field of grass where A. fell was "kept perfectly." He confirmed that riders had fallen from horses in the arena and sustained injuries before. When asked, he stated Ms. Malley never expressed to him that A. could not participate in trail rides.

Appellees recalled Ms. Bewernitz and Ms. Tonti to testify. Ms. Tonti clarified that A. was a "BS-I" rider ready to move up to a "BS-II" rider at the end of her session on the

day of the incident. She stated, at the facility, all children under the age of eighteen must be accompanied by a parent, and as a safety measure, Coexist maintained a no dog policy. Ms. Tonti confirmed that trail rides are considered a part of the curriculum. She explained that the facility does not offer trail rides to "outside people," but they have taken students of all levels on them for seven years for the purpose of "learn[ing] how to ride outside of the ring." She stated parents are informed of their child's participation "when they get to the lesson," and she could not recall a prior conversation with Ms. Malley, wherein Ms. Malley stated that A. could not or would not go on trail rides.

During Ms. Bewernitz's testimony, she confirmed that she had taken students on trail rides about once a week for the previous three years. She stated, on the day of the incident, she assigned Seth to A. because he was "available," one of the "two smallest ponies on the farm," and loved trail rides. She explained Seth was "good on trails," and because he was small, she felt, it "helps minimize the risk to a rider because there's always a risk of falling." She confirmed the trail ride that day served as an opportunity and reward for A.'s hard work. Ms. Bewernitz explained that she instructs her riders to place their feet underneath when riding, not to grip their legs on the horse, and to sit up when riding. Prior to the trail ride, she had A. and the other rider take a lap around the arena to "visually inspect to see if she's doing those things on her horse," or "having issues with her horse." She stated A. exhibited no signs of difficulty controlling Seth during the lap. She stated that in her lessons with A., she did instruct her on what to do when a horse is spooked, and that a horse being spooked was common both in and outside the arena, and it did not

warrant a complete stop of the trail ride. She explained that during the trail ride she rode to the side of the riders to watch them.

Appellees presented two expert witnesses. Timothy McCleary, an expert in horseback riding safety and instruction, opined that "horses are inherently dangerous." He explained that they are "somewhat unpredictable despite all of your best efforts to train them . . . And if they're provoked or frightened, they revert to their basic instincts . . . running away, spinning, moving quickly to the side, kicking, bucking, biting, falling down." Based on his review of the depositions, Mr. McCleary opined that A. seemed prepared for the trail ride, and that Ms. Bewernitz's decision not to turn around after the first spook was reasonable. He stated that he did not see an indication or know why the horses spooked. Therefore, he could not "ascertain that dogs were the reason for the spook," but he assumed, the horses were desensitized to dogs since they had been on the trail before. He opined that Coexist maintained a good program and educated their riders properly. He explained that within his twenty-three years in "equine college" that "riders fall off regularly," and that "[f]alling off of horses is a consequence of getting on horses."

Doctor Joshua Abzug, an expert in the field of pediatric orthopedics and orthopedic surgery, opined that a "supracondylar humerus fracture" is the "most common elbow fracture that children sustain, typically when they fall on an outstretched hand and your elbow locks in and that's the weak spot and the break occurs." He stated that type three factures, like A.'s, commonly occur as a result of children "falling off the monkey bars," but also, in his experience, they can be seen from "trampolines" or "children falling off of horses." He explained that a change in terrain would not eliminate the risk of the injury

because "[a]ny fall on an outstretched hand will put a child at risk for that break." He stated in A.'s case the nerve injury delays the healing but "the vast majority, well over 95 percent of them, have full recovery within a year." He confirmed that it was "not the typical pattern" for someone like A. to get better and then regress. Based on his examination of A., he stated her nerves and muscles were working, and that A. was not "using her muscles normally" because of psychological reasons and it could be improved with appropriate psychological counseling.

At the conclusion of the testimonies, Appellees moved for a directed verdict, arguing that Appellant did not establish a causal connection and therefore, failed to prove negligence. Following the argument of counsel, the court ruled:

> Well, we know that [A.] was somebody who was not a total novice horseback rider; that she had been taking lessons since approximately 4 years of age and that's over, approximately, five years. And in fact, more than half her life at the time of this incident.
>
> That she had between -- I think it was between 20 or 30 lessons prior to ever coming to Coexist Stables; that she was there for a summer before this incident in the summer camp where she was riding. That she then came back, had lessons, and riding in the summer camp the next year, was progressing well in the estimation of Ms. Bewernitz that she was ready to go on a trail ride, that she had had experience on the trail ride in the past. In the past, the trail ride had been accompanied by her mother.
>
> And I thought about this and I understand parents want to have control over what their children doing. But there's no evidence that if mom would have been on the trail ride that anything different would have happened in this case. Again, it's a causation situation that we have to deal with.
>
> The horse spooked and fell, and these things happen in a very quick period of time so that we sort of look at that. So she had experience, she was a rider. She was not novice. The question about whether she was riding a different saddle. Well, since she had been at Coexist, she had been riding the English saddle and I think even some variation of the English saddle. I can't remember the exact terminology that was used. But all intents and purposes, seemed to be fairly comfortable on it and was progressing.
>
> And that the skills on a trail ride – there's no testimony to me, that a trail ride is significantly more dangerous if you are in the English saddle than if you are in the Western saddle, and that she had approximately a year plus

in a English saddle. And there's not testimony that the skill from a Western saddle do not translate in any way to an English saddle. So the evidence is that she was able to ride, control a horse, and to do so.

Even on the trail ride, itself, the trail was described as well-groomed and manicured. That it was – that they could run a golf cart through there, and that the area where she fell was a grassy area, which is – initially [A.] said she fell on some gravel, but when shown the photographs, she acknowledged that she fell on grass. And so she fell and sustained the unfortunate and significant injury to her arm as a result of that.

So the question is what, if anything, did Ms. Bewernitz do to increase substantially -- to increase the risk that she would fall from a horse while she was riding the horse. There's no testimony, as I've said, that riding on a [trail] -- or riding on that particular trail, in any way, increased the risk.

The question about whether or not there was permission or informed consent, even assuming that to be the case, which I think the evidence, which is uncontradicted, notes that at least one parent had actual knowledge of the trail ride and acquiesced in the trail ride such that there would – the uncontradicted evidence is that there was at least some implied consent. But assuming that there wasn't, that's not causally related to the injury. It's not – there's no testimony that being on a trail is substantially more dangerous than being in the ring.

It's noted with respect to the appreciation of the risk, [A.] was quite able to testify at trial that she understood that there was a risk of falling from a horse; that she, in fact, had had a horse, I believe, spook in the ring and she fell. So at that point, she's -- not only is she aware of the potential of the harm, but she is aware of the actual reality that a horse may spoke, which would cause her to fall.

She certainly was aware that she was going on a trail ride that day. All the testimony is that she was excited and anxious –- I wouldn't say anxious -- excited and happy to go on a trail ride that day.

So in looking at whether or not -- and she further testified that she knew she wore a helmet because she could fall. And that is an inherent risk of horseback riding, that you could fall, especially in situations where a horse may act in a -- and suddenly move or spook; that that is part of the inherent dangers of horseback riding and, unfortunately, that's what occurred here.

Now, with respect to the expert, the expert for the plaintiff says, well, she didn't specifically instruct what to do when a horse becomes spooked; stay calm, don't grab – or use your legs to grab onto the body of the horse, and then to either pull the reins to the left or the right if the horse is seeking to run. But the expert plainly said that there's no evidence that she did not stay calm, there's no evidence that she grabbed the horse, and there is no evidence that the horse was running off that it was spooked.

But rather she lost her balance, which is a result of a horse making a sudden movement, which is inherent to horseback riding; whether in the ring or whether on the trail. So the lack of this alleged failure to instruct is certainly not causally related to what happened in the accident.

Additionally, the uncontroverted evidence at trial is that during her time, certainly at Coexist, that they could testify to, that she was properly instructed as to how to maintain control over the horse, how to walk with the horse, how to trot, how to appropriately sit in the saddle, how to use your weight. And in fact, the fact that she didn't fall the first time when the horse was spooked, showed that she knew how to adjust and deal with the horse that had spooked.

And so, again, there is no causal relation from the failure to give, what the expert says, were the three specific things that should be instructed, I guess, before every ride to every rider, which seems to me to be -- I think if you been riding for four or five years, you should know these things. And again, these are instructions that don't relate to what type of saddle you're in. There would be across both styles of riding.

The expert really said that he felt that she wasn't instructed because she fell from the horse. And that is simply a res ipsa type conclusion, which is not worth any weight since it is not factually supported in the record.

And so we have a situation where she falls and I've tried to noodle through what evidence there is that there is any increased risk; and I don't see it. I don't see that there's anything that Ms. Bewernitz did or Coexist, for that matter. But that any of them did that would have unreasonably increased the risk to [A.] in the ride. And that there's not that increase in risk, then there cannot be liability.

My conclusion I'm making is based upon my reading of both the foreign cases. I don't find that there's any activity which would even -- which would rise to the level of negligence on the behalf of Ms. Bewernitz or Coexist in the matter. I do note that *American Powerlifting* and there's some cases that suggest -- *American Powerlifting*, which is controlling authority on me says that the enhanced risk contemplates reckless or intentional conduct. Certainly there's nothing that rises to that level of conduct here.

But I believe that -- I think that this analysis may be distinguishable based upon -- yeah, at first, I thought it was distinguishable based upon people competing -- if I brought suit against somebody that cross checked me in a hockey game, I'd have to show that they were reckless or intentional.

Here, it's interesting because it's not the participants. It's people that are spotters that are put on by the organization that are there for the specific purpose to ensure the safety of the participants. And even there they said that it had to be reckless. So I'm not sure where it goes but I don't find that there's any negligent behavior by – or unreasonable behavior by the defendants, in this case, that increased the risk of harm -- the inherent risk of harm from a fall that is inherent in horseback riding.

***

So based upon that determination -- and I thought long and hard about this. Thought about it last night, I probably worked longer than -- I read more cases than I thought I was going to. But based on that, I think I'm compelled under the law to grant the judgment -- grant the motion for judgment in this case and enter judgment in favor of the defendants on the matter -- that

> there's not an issue to send to the jury in this matter. So I will grant the motion. I'll enter judgment in favor of the defendants in the case. All right.

Appellant filed a motion for new trial, which the court denied. Appellant timely noted this appeal.

STANDARD OF REVIEW

"A party may move for judgment on any or all of the issues in any action . . . in a jury trial, at the close of all the evidence." Maryland Rule 2-519(a). "We review a trial court's decision to grant or deny a motion for judgment *de novo*." *Steamfitters Loc. Union No. 602 v. Erie Ins. Exch*., 469 Md. 704, 726 (2020) (citation omitted). A reviewing court determines "whether on the evidence adduced, viewed in the light most favorable to the non-moving party, any reasonable trier of fact could find the elements of the tort by a preponderance of the evidence." *Blitzer v. Breski*, 259 Md. App. 257, 272–73 (2023) (quoting *Sugarman v. Liles*, 234 Md. App. 442, 464 (2017)). If there is any "meager evidence of negligence," *State v. Thurston,* 128 Md. App. 656, 662 (1999), "legally sufficient to generate a jury question, the motion should be denied," but should the evidence "permit[] but one conclusion, the question is one of law, and the motion must be granted." *Blitzer*, 259 Md. App. at 273 (citations omitted) (citation modified).

DISCUSSION

I. The court did not err in granting Appellees' motion for judgment.

Appellant argues the court disregarded Counts I and II, which alleged that Appellees were negligent in taking A. off the premises without parental permission, and that such actions "proximately caused" A.'s injuries. Appellant contends that this allegation "stood alone without any consideration concerning the nature of the activity for which A. was

taken off [Appellee's] property." Appellant argues that neither he nor Ms. Malley signed a form that waived Appellees' liability for injuries sustained during lessons, and even if they did, the plain reading of the waiver form only applies to "damages suffered 'while on the premises'" of Appellees. Appellant asserts there was no assumption of the risk, and the question of whether Appellees increased the risk of injury by having A. ride on a trail rather than in the arena was a question for the jury.

Appellees contend that Appellant's argument concerning parental permission is irrelevant for a determination of negligence, or in the alternative, if a breach of duty could be inferred, it "is an unconnected fact to establishing negligence." Appellees assert the applicable case law concerns "the degree of care owed to minors who participate in sports." Appellees argue, taken "in the light most favorable to [Appellant]", that the evidence was insufficient and did not show that the horse would have more likely been spooked on the trail ride rather than in the arena. Appellees argue there is no evidence that Seth was spooked by any of the stimuli referenced by Appellant's expert, Dr. Potter, no evidence Seth could not have encountered the same stimuli in the arena, and the only two eyewitnesses to the incident, A. and Ms. Bewernitz, did not know what Seth reacted to. Appellees argue Appellant failed to plead a cause for premises liability, did not provide evidence that riding in the arena would have reduced A.'s injury or that the trail ride enhanced it. Appellees argue that the injury could have been caused by how A. fell.

In order to establish negligence, one must demonstrate: "(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately

resulted from the defendant's breach of that duty." *Steamfitters Loc. Union No. 602*, 469 Md. at 727 (quoting *Rowhouses, Inc. v. Smith*, 446 Md. 611, 631 (2016)).

> Whenever the facts, and any rational inferences which may be drawn from them, point so strongly toward the non-existence of an essential element of a party's cause of action or defense that no reasonable man could find for its existence, the appropriate level of non-persuasion has been reached and a directed verdict is proper.

Slack v. Villari, 59 Md. App. 462, 474 (1984) (citation omitted).

"[N]egligence is not actionable unless it is a proximate cause of the harm alleged." *Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 316 (2022) (quoting *Pittway Corp. v. Collins*, 409 Md. 218, 243 (2009). "To be a proximate cause of an injury, 'the negligence must be 1) a cause in fact, and 2) a legally cognizable cause.'" *Id*. (quoting *Hartford Ins. Co. v. Manor Inn*, 335 Md. 135, 156–57 (1994)). "Causation-in-fact concerns the threshold inquiry of 'whether [the] defendant's conduct actually produced an injury.'" *Pittway Corp.*, 409 Md. at 244 (quoting *Peterson v. Underwood*, 258 Md. 9, 16–17 (1970)). A reviewing court can determine if cause-in-fact exists by applying either the "but for test" or the "substantial factor test." *Id.* (citations omitted). The court applies the "but for" test in cases "where only one negligent act is at issue" and "the injury would not have occurred absent or 'but for' the defendant's negligent act." *Id*. Upon establishing the existence of cause-in-fact, we must then determine whether the alleged negligent act "constitute[s] a legally cognizable cause of the complainant's injuries," and "consider whether the actual harm to a litigant falls within a general field of danger that the actor should have anticipated or expected." *Id*. at 245. We also consider the foreseeability of

the injury as a result of the negligent action alleged, the "remoteness of the injury," and the "injury's proportion to the negligent party's culpability[.]" *Id*. at 246.

According to the testimony adduced at trial, A., under the supervision of her instructor, participated in a trail ride with another student. The riders passed by neighboring homes where dogs resided, and Appellees were aware of this and the fact that horses can be frightened or stimulated by dogs. During the ride, the horses were first spooked by the sound of a barking dog. The second incident, where A. was injured, occurred shortly thereafter and when Appellant arrived at the trail, he saw and held off a brown boxer, while assisting A. No evidence was presented regarding the actual source of the spook, any prior unruly or excessive conduct or reaction by A.'s horse, or that dogs were known to be present on the trail itself. Ms. Bewernitz testified that A. was "calm" and able to manage Seth during the first spook and in the arena, prior to the trail ride, she displayed no signs of instability. She also testified that she provided instruction on how to properly handle and control a horse while riding.

Dr. Timothy Potter opined that Appellees were negligent in placing A. on a trail ride due to a lack of instruction, unfamiliarity with her horse, and the presence of more stimuli on a trail ride than in the arena. His opinion, however, was not supported by the record as Dr. Potter admitted neither he nor the parties were aware of any "stimuli" that caused Seth to be spooked, or whether A. struggled or improperly controlled Seth. Dr. Potter also testified that horseback riding is not inherently dangerous.

Appellees' expert, Timothy McClery, testified that falling off a horse is a natural consequence of engaging in horseback riding. There was also testimony from Dr. Abzug,

that A.'s injury was common among children on monkey bars, horses, or even trampolines, because of the manner in which they typically fall. There was no evidence that demonstrated A.'s probability of falling increased because of the change in terrain where her lessons were conducted. According to the testimony, the grounds inside the arena and on the trail were well manicured, the trail itself was not more dangerous than the arena, A. was not a novice, and there was no testimony that Appellees acted recklessly or intentionally.

Viewing the evidence in the light most favorable to Appellant, we do not find that "but for" Ms. Bewernitz's action, A.'s injury would not have occurred. We conclude that Appellant's evidence was legally insufficient, and, therefore, the court did not err in determining that a reasonable jury could not find the elements of negligence "by a preponderance of the evidence." *Blitzer*, 259 Md. App. at 273; *see Garval v. City of Rockville*, 177 Md. App. 721, 730–31 (2007) ("[T]he jury cannot be allowed to speculate as to what, out of infinite possibilities, might have caused the fall. To choose one disputed actual observation of an event over another contradictory observation is a classic function of fact-finding. To conjure up a theory out of nothing, by contrast, is rank speculation."). We agree with the trial court that, even assuming that there was no consent, the lack thereof, was not a cause of A.'s injuries.

II. The court did not commit error in determining A. assumed the risk of injury when horseback riding.

Appellant argues "there was a level of coercion on Bewernitz's part" because A. was nine years old, trusted her, would likely not "refuse her offer to go on a trail ride," and

it was "doubtful" that she would have considered the risk. Appellant cites *Kelly v. McCarrick*, 155 Md. App. 82 (2004), explaining that A. could not have "voluntarily encountered the risks involved" because unlike the petitioner in *Kelly*, A. (1) had never ridden an English saddle on a trail ride; (2) was not provided proper instruction for expectations of the trail ride nor how to handle one's horse; (3) had little experience to learn the tendencies of Seth prior to the trail ride; (4) was compelled by Berwernitz to abide by her wishes to go on the trail in order to move up from "Level 1 to Level 2"; and (5) was unaware of the potential "dogs in the surrounding properties that could spook her horse." Had those details been provided, Appellant asserts A. could have appreciated the risk. Appellant cites to Dr. Potter's testimony, opining that A. "should have been provided more time to acclimate to her horse," and that Appellees failed to "give a little girl enough time."

Appellees argue the evidence supports the conclusion that A. "assumed the risks inherent in falling from the pony[.]" Appellees point out that A. had taken between thirty to forty lessons prior to the incident, knew the purpose of her helmet was to "protect her head" in the event she fell, witnessed other riders fall, was aware she was going on a trail ride outside of the arena, and did not object to the activity. Appellees argue that A. was familiar with an English saddle because of its use in all of her lessons, A.'s level of instruction, A. knew that "spooking and falling from a horse" was a part of the sport, and there was no evidence that she was coerced into participating.

An assumption of risk "functions as a complete bar to recovery because 'it is a previous abandonment of the right to complain if an accident occurs.'" *Morgan State Univ. v. Walker*, 397 Md. 509, 515 (2007) (quoting *ADM P'ship v. Martin*, 348 Md. 84, 91

(1997)). "The very nature of an assumption of the risk defense is that 'by virtue of the plaintiff's voluntary actions, any duty the defendant owed the plaintiff to act reasonably for the plaintiff's safety is superseded by the plaintiff's willingness to take a chance.'" *Am. Powerlifting Ass'n v. Cotillo*, 401 Md. 658, 672 (2007) (quoting *Schroyer v. McNeal*, 323 Md. 275, 282 (1991)). "In Maryland there are three requirements that the defendant must prove in order to establish the defense of assumption of the risk: (1) the plaintiff had knowledge of the risk of danger; (2) the plaintiff appreciated that risk; and (3) the plaintiff voluntarily confronted the risk of danger." *C & M Builders, LLC v. Strub*, 420 Md. 268, 293 (2011) (quoting *Am. Powerlifting Ass'n*, 401 Md. at 672); *ADM P'ship*, 348 Md. at 90–91; *see Gibson v. Beaver*, 245 Md. 418, 421 (1967). To apply the doctrine of assumption of risk as a matter of law:

> the undisputed evidence and all permissible inferences therefrom [must] *clearly* establish that the risk of danger was *fully* known to and *understood* by the plaintiff. When it is clear, however, "that a person of normal intelligence in the position of the plaintiff *must* have understood the danger, the issue is for the court." Thus, in order for a plaintiff to have assumed the risk of his or her injuries as a matter of law, we require that a plaintiff "must" have known that the risk was "actually present," not that he or she "would," "should," or "could" have known that the risk "might well be present."

Poole v. Coakley & Williams Const., Inc., 423 Md. 91, 123 (2011) (citation modified) (internal citations omitted).

"When a risk is a foreseeable consequence of engaging in a particular activity, we have reasoned that there is an implied consent to relieve others of liability for injury and assumption of the risk may be established as a matter of law." *Poole*, 423 Md. at 117 (citing *Am. Powerlifting Ass'n.*, 401 Md. at 670); *see Nesbitt v. Bethesda Country Club, Inc.*, 20 Md. App. 226, 232 (1974) ("A voluntary participant in any lawful game, sport or

contest, in legal contemplation by the fact of his participation, assumes all risks incidental to the game, sport or contest which are obvious and foreseeable.").

"Assumption of the risk principles apply to children[.]" *Kelly*, 155 Md. App. at 95. "A child should be deemed to have assumed the risk if another child of similar age, intelligence, experience and development, would have acted differently, under the same circumstances." *Bliss v. Wiatrowski*, 125 Md. App. 258, 273–74 (1999). When a child is a "voluntary participant[] in [a] sports activit[y,] [he or she] may be held to have consented, by their participation, to those injury-causing events which are known, apparent, or reasonably foreseeable consequences of their participation." *Am. Powerlifting Ass'n*, 401 Md. at 670 (quoting *Conway v. Deer Park Union Free Sch. Dist. No. 7*, 234 A.D.2d 332, 651 N.Y.S.2d 96, 97 (1996)).

In analyzing the issue of negligent training or instruction, this court reviews the participant's "experience and familiarity with the sport" to determine whether he or she "appreciated the danger" of getting hurt from participating. *Kelly*, 155 Md. App. at 108. "In order to properly determine which risk is relevant or material to the assumption of the risk analysis, we must look to the immediate cause of the injury." *Am. Powerlifting Ass'n*, 401 Md. at 671. "[A] plaintiff only assumes those risks that are inherent in the activity in which he is engaged" and "might reasonably be expected to exist, and, if by some action of the defendant, an unusual danger arises, that is not so assumed." *Id*. at 672–73 (internal citations omitted). "The 'specificity, particularity, and magnitude' of risk that must be shown to establish knowledge and appreciation of the risk 'refer[s] to the scope and source of possible dangers.' 'It suffices if it is known to be within the range of possibilities; neither

sure nor necessarily apt to happen; but one that will happen if the conditions are ripe for it.'" *Kelly*, 155 Md. App. at 106 (quoting *Tavernier v. Maes,* 242 Cal. App. 2d 532, 51 Cal. Rptr. 575, 582 (1966)). We also examine the degree of instruction given and we note that, "coaching cannot insure against certain risks that are inherent to a sport." *Kelly*, 155 Md. App. at 113.

In the instant case, the court found, based on the evidence, that A. "appreciated the risk." The court stated:

> It's noted with respect to the appreciation of the risk, [A.] was quite able to testify at trial that she understood that there was a risk of falling from a horse; that she, in fact, had had a horse, I believe, spook in the ring and she fell. So at that point, she's -- not only is she aware of the potential of the harm, but she is aware of the actual reality that a horse may [spook], which would cause her to fall.
>
> She certainly was aware that she was going on a trail ride that day. All the testimony is that she was excited and anxious –- I wouldn't say anxious -- excited and happy to go on a trail ride that day.
>
> So in looking at whether or not -- and she further testified that she knew she wore a helmet because she could fall. And that is an inherent risk of horseback riding, that you could fall, especially in situations where a horse may act in a -- and suddenly move or spook; that that is part of the inherent dangers of horseback riding and, unfortunately, that's what occurred here.

We agree. In our review of the record, it was clear that A. had knowledge of and appreciated the risk of falling off a horse. A. had been riding horses for approximately five years, starting at the age of four, and she had taken between thirty to forty classes prior to the incident. A. had also participated in two trail rides. She understood the purpose of safety wear, her helmet, and that it was custom for her to use an English saddle and a different horse each time. A. was also familiar with the risk of falling as she not only witnessed others fall off their horse but experienced falling off a horse, herself.

The record, here, does not reflect that A.'s injuries resulted from improper instruction or training. Ms. Bewernitz testified that instructions were provided to A. regarding handling her horse and her form when riding a horse; she inspected A. on her ability to demonstrate the proper form; and she was always supervised. We agree with the court's findings based on the record that:

> The expert really said that he felt that she wasn't instructed because she fell from the horse. And that is simply a res ipsa type conclusion, which is not worth any weight since it is not factually supported in the record.

The evidence also does not show that A. was coerced, had doubt, or was improperly instructed. A. did not express or share concerns or hesitation about participating in the trail ride. A. testified she was "excited" to go on a trail ride with Ms. Bewernitz, she told Appellant that she was going, and she continued on with Ms. Bewernitz towards the trail. In our view, A. elected to participate in the activity, and thus, her consent could be implied from her actions. *Kelly*, 155 Md. App. at 102.

In sum, there was legally sufficient evidence presented that A. assumed the risk.

III. The court properly ruled that Appellees did not increase the risk of danger.

Appellant next argues that even if horseback riding is considered an inherently dangerous activity, whether Appellees increased the risk of danger to A., was a jury question. Appellant contends that because both parents were not given the opportunity to make an informed decision, Ms. Bewernitz "enhanced the risk and acted both intentionally and recklessly" by not abiding by their decision that A. would not participate in trail rides. Appellant argues that Ms. Bewernitz continued the trail ride without warning the riders of the "additional dogs on the property" or stopping the ride and returning to the stables after

the first spook of the horses occurred, considering that Appellee knew the "horses are frightened by dogs." Appellant asserts these actions enhanced the risk and caused A.'s injuries.

Appellees argue that the evidence presented by Appellant failed to establish that Appellees enhanced the risk of A.'s horse being spooked or A.'s injury. The only evidence presented was Dr. Abzug's testimony that the placement of A.'s arm at impact "was the driving factor." "[T]he theory of enhanced risk contemplates reckless or intentional conduct[.]" *Am. Powerlifting Ass'n*, 401 Md. at 673. The issue of whether a respondent "may have been negligent in failing to prevent an injury is irrelevant where the [petitioner] suffered the very type of injury that any person of normal intelligence would expect might result from the [defendant's] actions." *Id*. at 672. Enhanced risks are not "risks associated with *learning* a sport," but, rather, associated with situations such as requiring a participant to partake in an activity the participant was never instructed on. *See Kelly*, 155 Md. App. at 111, 113–15.

The evidence presented, here, did not support Appellant's claim that Ms. Bewernitz enhanced the risk of A. falling off a horse by "negligent training." Rather, the evidence presented was that A. had participated in trail rides prior to the incident; Appellees considered trail rides a part of the curriculum; and, in this case, A. had accomplished the required skills for a "BS-1" level rider. A. was "inspected" as to her handling abilities before continuing to the next skill level which included trail rides and warned of the possibility that her horse might be spooked by a pink umbrella on the property.

We note that horses are domesticated animals and can be "easily startled or frightened." *Finneran v. Wood*, 249 Md. 643, 648 (1968). It is not uncommon or unusual, given their "unpredictable" behavior, that a rider may fall off a horse from time to time. We note also that while an instructor should teach his or her students the techniques and skills to avoid injury, the failure of an instructor to teach the student about every possible scenario is not negligence, nor is it an enhancement of the risk of injury. The court did not err in granting a directed verdict.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.