Circuit Court for Frederick County
Case No. 10-C-15-003040

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1167

September Term, 2016

GREGORY W. PHILLIPS

v.

J BAR W, INC., *et al.*

Woodward, C.J.
Nazarian,
Friedman,

JJ.

Opinion by Nazarian, J.

Filed: October 27, 2017

Gregory Phillips attended a rodeo produced by J Bar W Inc. ("JBW, Inc."), a company owned and operated by John Williams, Jr. ("Junior"), John Williams, Sr. ("Senior"), Sonny Williams ("Sonny"), and Lisa Williams ("Lisa") (collectively, "JBW"). While Mr. Phillips purchased food from a vendor outside the rodeo ring, he was struck, rammed into a food cart, and injured by a bull that escaped its enclosure. Mr. Phillips filed suit against JBW, alleging claims in negligence and strict liability. Before trial, the circuit court granted JBW's Motion to Dismiss the strict liability claims. At the close of Mr. Phillips's case at trial, the court granted JBW's Motion for Judgment on the negligence claim. Mr. Phillips appeals both decisions and we affirm.

I. BACKGROUND

The facts are largely undisputed. On June 2, 2012, Mr. Phillips attended a bucking bull rodeo event—a "Family Fun Night"—hosted and managed by JBW. At some point, Mr. Phillips left the stands to purchase food and rodeo merchandise with his fiancée from a vendor's tent located approximately 80 feet from the ring. While standing at the cart, Mr. Phillips heard people shouting that a bull was loose. He turned around, and the bull struck him and threw him into the cart. The bull, known as Bull Number 920 ("Bull 920"), weighed about 1,300 pounds; it hit one other patron and eventually was corralled.

Mr. Phillips was offered medical attention but refused, then returned to the arena to watch the rest of the rodeo because he didn't want to "disappoint [his nephews and son]. We were all geared up to see this rodeo." In the days that followed, though, Mr. Phillips suffered bruising and pain from his collision with the bull, and he eventually sought treatment at Frederick Memorial Hospital. Between 2012 and 2015, he underwent surgical

and rehabilitative procedures to treat chronic and persistent pain that he attributed to the collision, and he accumulated a significant amount of debt as a result.

J Bar W Ranch, which is owned by JBW Inc., produced "Family Fun Night." JBW Inc. primarily sells hay and crops, such as corn, and manages livestock for the rodeo and other agricultural purposes. JBW has put on rodeo events for over twenty years. The bull that struck Mr. Phillips escaped from a holding pen where it was waiting for its turn in the rodeo. During rodeo events, approximately forty-five bulls waited in the holding pens as five rodeo hands supervised the process of loading the bulls into chutes. During the rodeo event itself, the bulls were divided among fifteen holding pens, each of which typically held three to five bulls at a time.

Each holding pen was equipped with a WW Classic Series gate. Sonny testified at trial that this was the strongest gate available on the market, and was a "heavier built panel and gate." The holding pens were surrounded by a secondary fence meant to keep rodeo spectators away from the bulls, holding pens, and rodeo contestants' possessions; the gate for the secondary fence was not guarded, supervised, or otherwise secured. These were the only safety measures JBW took to protect rodeo spectators from escaped animals—Sonny testified that they took no other steps to secure the bulls because "it's something that's never happened before."

On the evening of June 2, 2012, Bull Number 920 escaped his holding pen; according to the testimony of a rodeo manager, the bull stuck his head between two bars of the gate and pushed up with his neck until "the gate started bending it just pretty much crinked it, and then, once the weakness of the pipe gave way, I mean [the bull] kind of went

right out underneath of it." The chains securing the gate did not shatter or break, and the gate otherwise remained intact. The entire sequence of events took no more than "a couple seconds." No witnesses saw how the bull escaped through the secondary fence, although one witness guessed that the gate may have been left open by a rodeo participant or that the bull escaped as someone entered through the secondary fence. The rodeo manager attempted to follow the animal and shouted to warn people of the danger, but the bull struck two people, including Mr. Phillips.

Mr. Phillips filed suit on June 2, 2015 in the Circuit Court for Carroll County; the case was transferred later to the Circuit Court for Frederick County. At first, Mr. Phillips alleged two counts: negligence on the part of JBW in failing to secure the bull and to protect business invitees, and strict liability against JBW on the ground that the bull was a dangerous wild animal. JBW moved to dismiss the strict liability claim for failing to state a claim upon which relief could be granted and the circuit court granted the motion. The court noted that there was "no statutory or case law in Maryland defining whether bulls are 'wild' or 'domestic,'" but was persuaded by the Restatement (Second) of Torts and other states' case law that bulls are domestic animals due to their customary use for agriculture and in the "economic service of mankind."

Mr. Phillips amended his complaint and re-stated the strict liability claim into two separate legal theories: strict liability for owning a wild animal, and strict liability for owning an abnormally dangerous domestic animal. JBW moved again to dismiss or strike both strict liability claims, and the circuit court granted the motion. The court noted that in the previous order, it ruled that the bull was a domestic animal and that "Plaintiff failed to

provide even a token suggestion that Defendants knew or should have known that this particular bull [] was prone to attack a spectator." The case proceeded to trial on the negligence count, and at the conclusion of Mr. Phillips's case, JBW moved for judgment. The trial court found that Mr. Phillips had satisfied two elements of the negligence claim—a duty and damages—but had not proven that JBW breached its duty of care or that its actions caused Mr. Phillips's damages. In addition, the court found that a bull escaping its pen was not more likely a "result of negligence rather than some other cause," and thus could not satisfy the first element of a *res ipsa loquitur* claim. Mr. Phillips appealed.

II. DISCUSSION

Mr. Phillips raises three issues on appeal that we have consolidated into two.[1] *First*, he contends that the circuit court erred when it dismissed his strict liability claims, both in

[1] In his brief, Mr. Phillips phrases the Questions Presented as follows:

> I. Under MD. RULE CIVIL PROCEDURE 2-322(b)(2) and applicable Maryland statutory and case law, did the trial court below abuse its discretion by classifying the bull at issue in the Complaint as "domestic" as a matter of law, thereby subjecting the pleading to Maryland law governing the application of strict liability to a "domestic" animal, ultimately dismissing Count II: Strict Liability of the Complaint accordingly?
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> II. Under MD. RULE CIVIL PROCEDURE 2-322(b)(2) and applicable Maryland statutory and case law, did the trial court below abuse its discretion by once again classifying the at issue in the Amended Complaint as "domestic" as a matter of law, thereby once again subjecting the pleading to Maryland law governing the application of strict liability to a "domestic animal, and ultimately dismissing Count II: Strict Liability – Wild Animal, and Count III: Strict Lability – Dangerous Animal, of the Amended Complaint?
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> III. Under MD. RULE CIVIL PROCEDURE 2-519, *Res Ipsa Locquitor* and applicable Maryland statutory and case law, did the trial court below abuse its discretion in granting the Appellees' Motion for Judgement in finding as fact that the Appellant failed to evidence breach of duty and proximate

the original complaint and as amended. He argues that a "classic rodeo bull" should be considered an abnormally dangerous animal, unlike bulls kept for stud or other agricultural uses that are labeled domestic "based in large part on the fact that its sister, the cow, typically falls within the definition of livestock." Mr. Phillips states generically that bulls are misclassified and that it seems "disingenuous" to hide behind a bull's "domestic" classification when JBW promotes their events based on the risk involved in a rodeo, but his brief offers no authority supporting this taxonomic shift. JBW responds that Mr. Phillips failed to plead viable strict liability claims, that his "bald allegations" that the bull was dangerous because it was a bull failed to allege any knowledge of the bull's dangerous propensities on the part of JBW, and that bulls are not "wild animals" for the purposes of strict liability in any event.

Second, Mr. Phillips argues that the trial court erred in entering judgment for JBW on his negligence claim. He claims that he offered enough evidence at trial for a jury to find that JBW breached its duty to protect Mr. Phillips as a rodeo spectator by negligently allowing a bull to escape. He argues as well that bulls typically don't escape their pens and ram rodeo spectators absent some kind of negligence on JBW's part, and thus that he established a basis for a claim in *res ipsa loquitur*. JBW counters that Mr. Phillips misstated some of the trial court's findings in granting the Motion to Dismiss, and "that there was absolutely no evidence or testimony presented at trial or at any other time during the history of this case, indicating that the bull in question [escaped through some

> causation, and/or in the alternative, that his injuries were not the type to occur absent negligence under a *Res Ipsa Locquitor* analysis?

negligence on JBW's part]." JBW also contends that *res ipsa loquitur* was not available in this case because there were other causes for the bull's escape besides JBW's possible negligence.

Two standards of review apply to the issues in this case. *First*, in reviewing the circuit court's decision to grant JBW's motion to dismiss, we determine whether the complaint sufficiently alleges a cause of action, while "presum[ing] the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom." *Schisler v. State*, 177 Md. App. 731, 742–43 (2007) (citation omitted); *see also Kaye v. Wilsom-Gaskins*, 227 Md. App. 660, 674 (2016), *cert. denied*, 449 Md. 420 (2016) (court reviews the plaintiff's allegations and determines whether, if true, those allegations would "satisfy the elements necessary to obtain the relief sought."). *Second*, we review the trial court's decision to grant JBW's motion for directed verdict against an "extremely strict" standard. *Slack v. Villari*, 59 Md. App. 462, 474 (1984). "A directed verdict is inappropriate where there is any legally relevant and competent evidence, however slight, from which a rational mind could infer a fact which if found to exist would prevent judgment for the moving party." *Cavalier Mob. Homes v. Liberty Homes*, 53 Md. App. 379, 385 (1983) (citing *Impala Platinum, Ltd. v. Impala Sales (U.S.A.)*, Inc., 283 Md. 296, 328–29 (1978)). "The sole issue [the Court] must address is whether there was any legally relevant competent evidence from which a rational mind could infer the fact in issue favorably [for the non-moving party]." *Mareck v. Johns Hopkins Univ.*, 60 Md. App. 217, 226 (1984). And only where the facts presented and inferences drawn "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," has "the appropriate level of non-persuasion [] been reached" and rendered a directed verdict proper. *Cavalier*, 53 Md. App. at 385.

A. Bulls Are Not Wild Animals And Mr. Phillips Did Not Plead Facts That Could Sustain A Claim That Rodeo Bulls Are Abnormally Dangerous.

Mr. Phillips's strict liability claims turn primarily on whether the bull qualifies either as a wild animal or an abnormally dangerous domestic animal. Owners of wild animals are subject to strict liability when the animal is the kind not generally kept for service to mankind, and the harm arises from the animal's feral nature. *Slack v. Villari*, 59 Md. App. 462, 473 (1984). Conversely, people injured by domestic animals generally must prove that the owner was negligent in order to recover. *Slack*, 59 Md. App. at 470. But animals categorized as "domestic" may expose their owners to strict liability if the animal was abnormally dangerous, in some way unique from its breed, *and* its owner had knowledge of this trait. *Id.*

For tort law purposes, bulls have historically been lumped in with the broader category of "cattle," which are domestic animals and are not wild or otherwise abnormally dangerous. *See, e.g.*, *Harrison v. Harrison*, 264 Md. 184, 188–89 (1972) ("[T]here was no apparent need to take any unusual precautionary measures in regard to this particular bull … [A] reading of RESTATEMENT OF TORTS, SEC. 509 at 20 (1938) is persuasive of the fact that the law has never considered bulls 'as abnormally dangerous animals.'"). Bulls may be more dangerous or aggressive in general than their female counterparts, but they generally aren't feral or roaming at large—they are kept for agricultural and reproductive purposes and, as a whole, are not considered to present much risk to the public.

RESTATEMENT (SECOND) OF TORTS § 509 cmt. d (AM. LAW INST. 1977) ("On the other hand, those who keep domestic animals such as bulls and stallions that are somewhat more dangerous than other members of their species do not introduce any unusual danger, since the somewhat dangerous characteristics of these animals are a customary incident of farming and the slightly added risk due to their dangerous character is counterbalanced by the desirability of raising livestock."); *accord* RESTATEMENT (SECOND) OR TORTS §518 cmt. f (AM. LAW INST. 1977) ("The high temper normal to stud animals is so inseparable from their usefulness for breeding purposes that they are not kept at the risk of the liability stated in § 509."). Normally, then, JBW would face strict liability for injuries caused by its bulls only if Mr. Phillips pled in his complaint that JBW had knowledge that a particular bull, in this case Bull 920, was abnormally dangerous in a way that is not typical for the standard bull.

He didn't. Mr. Phillips's complaint, even as amended, stated only the punchlines that JBW "had a wild [or dangerous] animal, a bull, under [its] care and custody," that "[b]ulls are inherently dangerous wild animals," and that "[b]y the exercise of reasonable care [JBW] knew or should have known of the bull's propensity to commit harm." Neither the initial nor the amended complaint alleged *anything* about the behavior or tendencies of bulls in general, or rodeo bulls in particular, that purported to distinguish this bull from the broader universe of domestic cattle. This may represent a missed opportunity: although no reported Maryland case has, to date, treated bulls as anything other than domestic, we can imagine allegations that rodeo bulls, at least, might be abnormally dangerous or have known dangerous propensities. *Tracey v. Solesky*, 427 Md. 627, 636 (2012) (recognizing a

sub-category of dogs, traditionally domestic animals, as "inherently dangerous"), *abrogated by statute*, MD. CODE ANN., CTS. & JUD. PROC. §3-1901. What if, for example, the complaint described how bulls are bred and raised and trained for the rodeo, how their breeding and training make rodeo bulls more violent, the kinds of dangerous behaviors rodeo bulls exhibit, the risks that rodeo bulls pose to people compared to normal bulls, and the measures (such as rodeo clowns) breeders and rodeos take to protect cowboys and rodeo staff and the public from rodeo bulls? We don't have that sort of complaint before us.

We don't want our decision to affirm the dismissal of these complaints to be read to foreclose this theory of recovery going forward. We can't say with certainty that a more detailed complaint would have prevailed. We can say, though, that this complaint failed to allege facts on which the circuit court here could have grounded a ruling that rodeo bulls in general or this bull in particular were abnormally dangerous or had a known dangerous propensity. The circuit court could analyze only "whether the well-pleaded allegations of fact contained in the complaint, taken as true, reveal any set of facts that would support the claim made." *Shenker v. Laureate Educ., Inc.*, 411 Md. 317, 335 (2009). And we agree that, in these complaints, "[Mr. Phillips] failed to provide even a token suggestion that Defendants knew or should have known that this particular bull [] was prone to attack a spectator."

B. The Trial Court Did Not Err In Granting JBW's Motion For Judgment As To Negligence.

A similar theme guides our analysis of Mr. Phillips's argument that the trial court erred in granting JBW's Motion for Judgment on his negligence claim. The court found that Mr. Phillips had not produced evidence that JBW was negligent in failing to confine Bull 920, that the holding pen gate might fail, or that the bull would not have escaped but for JBW's negligence. After reviewing the trial transcript, we agree.

To sustain a traditional negligence claim, a plaintiff must offer evidence sufficient to demonstrate "facts and circumstances which adequately set forth a duty owed by the defendant to the plaintiff, a breach of that duty, and injury proximately resulting from that breach." *Bramble v. Thompson*, 264 Md. 518, 520–21 (1972). For negligence relating to injuries caused by an animal,

> the claimant must show that the owner exercised 'ineffective control of an animal in a situation where it would reasonably be expected that injury could occur, and injury does proximately result from the negligence.' The requisite degree of control is that which would be exercised by a 'reasonable person based upon the total situation at the time…' In determining the requisite degree of control, the past behavior of the animal and the foreseeability of the injuries should be considered.

Moura v. Randall, 119 Md. App. 632, 645 (1998) (internal citations omitted). In the alternative, a plaintiff can establish negligence via the doctrine of *res ipsa loquitur* when there is no direct proof of negligence, but can establish an "inference of negligence to be deduced from all the circumstances." *Hickory Transfer Co. v. Nezbed*, 202 Md. 253, 262 (1953). To invoke *res ipsa loquitur*, though, the plaintiff must establish that the accident was "(1) of a kind that does not ordinarily occur absent negligence, (2) that was caused by

an instrumentality exclusively in the defendant's control, and (3) that was not caused by an act or omission of the plaintiff." *Holzhauer v. Saks & Co.*, 346 Md. 328, 335–36 (1997) (internal citations omitted).

The evidence Mr. Phillips put before the trial court didn't satisfy either standard. He offered no evidence to show JBW was negligent in how they contained Bull 920: although it was undisputed that Mr. Phillips was a business invitee owed the highest duty of care and that he was hit by the bull and injured, he didn't connect his injuries to JBW's negligence. There was no dispute that JBW employed a state-of-the-art rodeo gate, and no testimony that it failed. To the contrary, the undisputed eyewitness testimony revealed that the holding pen gate did not break—the bull bent it and wriggled out between the distended bars. The four chains JBW had affixed to secure the holding pen gate remained intact and secured. And JBW had no notice that the holding pen gate might be foiled in this manner—no bull had escaped in JBW's twenty-year rodeo history. No evidence or testimony cast doubt on the reasonableness or efficacy of the safety measures JBW used to stage the rodeo and secure Bull 920, and the circuit court did not err in granting JBW's motion for judgment as to negligence.

Mr. Phillips similarly failed to establish the *prima facie* elements of *res ipsa loquitur*. Even assuming, as JBW agreed, that the holding pen gate and Bull 920 were in JBW's exclusive control and that Mr. Phillips did not contribute to the bull's escape, Mr. Phillips offered no evidence from which a jury could conclude that his injuries were more likely than not caused by JBW's negligence. *Greeley v. Baltimore Transit Co.*, 180 Md. 10, 12–13 (1941) ("Thus, if a passenger's injury has been [caused] by the lurch of a car,

the case is brought within the doctrine if the lurch was such as would have been unlikely to occur if proper care had been exercised; but the mere fact that the passenger was injured does not of itself give rise to a presumption of negligence, in the absence of evidence that the sudden movement of the car was unusual or extraordinary."); *Pahanish v. Western Trails, Inc.*, 69 Md. App. 342, 360 (1986) ("To be entitled to the invocation of the *res ipsa* doctrine, the claimant must show it is more probable than not that the injury sustained would have occurred as a result of negligence, rather than some other cause.… Where "the probabilities are at best evenly divided between negligence and its absence, it becomes the duty of the court to [conclude] that there is no sufficient proof.") (internal citations omitted). As the trial court noted, the holding pen gate failing because Bull 920 bent it—perhaps that suggests a product failure, but nothing that came in at trial created a reasonable inference that JBW contributed to the gate failure or acted in a negligent manner that caused Bull 920 to escape.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. APPELLANT TO PAY COSTS.