STATE OF MAINE
THE SUPREME JUDICIAL COURT SITTING AS THE LAW COURT
LAW COURT DOCKET NO. Som-25-264

AMY B. BEEM

Appellant

v.

NANCY M. TEMPLE

Appellee

BRIEF OF APPELLEE

On Appeal from the Somerset County Superior Court

Docket No.: SOMSC-CV-2023-22

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This appeal stems from the trial court's (*Mullen, J.*) entry of summary judgment in favor of Defendant Nancy Temple ("Ms. Temple"). In entering judgment in favor of Ms. Temple and based on evidence in the summary judgment record, the trial court found the following facts, which were material and not in dispute.[1]

On August 2, 2022, Appellant Amy Beem ("Ms. Beem") and her friend Judith MacPheters ("Ms. MacPheters") were riding equine animals on a multiuse trail between St. Albans and Harmony, Maine. (A. 11, 39). The multiuse trail connects to a private road known as "Devil's Head Road" ("the Road"). *Id.* The Road is a private road owned by abutting landowners including Defendant. *Id.* The posted speed limit on the Road is 25 miles per hour. (A. 11, 69).

As they were riding equine animals, Ms. Beem and Ms. MacPheters heard a motorized vehicle approaching them from behind as they encountered a curve in the Road. (A. 11, 40). Ms. Beem and Ms. MacPheters were riding staggered at the time, with Ms. MacPheters' horse ahead and to the right of Ms. Beem's mule, who was near the center of the Road. (A. 11-12, 40). When Ms. Beem heard the vehicle

[1] Appellee notes at the outset that many facts cited by Appellant in the fact section of her brief, (Blue Br. 5-6), were never actually found by the trial court and appear to be argument by Appellant. Those facts never found by the trial court as undisputed should be disregarded by this Court. *See Centamore v. Department of Human Services*, 664 A.2d 369, 371 (Me. 1995) (observing that argument is not evidence).

approaching, she began to move toward the left side of the road because she saw a ditch on the right side of the Road. (A. 12, 40). MacPheters, still ahead of Plaintiff, remained in the Road and turned to see the vehicle. *Id.*

Ms. Temple was operating the vehicle, which was a utility task vehicle ("UTV") and was traveling approximately 20-25 miles per hour. (A. 12, 40). Ms. Temple first observed MacPheters on the right. *Id*. Ms. Beem then placed and kept her foot on the brake to control her speed and began moving the UTV toward the left. *Id*. As Ms. Temple got closer to the curve, she noticed Ms. Beem toward the left side of the Road. (A. 12, 41)

Ms. Temple did not believe she had enough space to ride between Ms. Beem and Ms. MacPheters, so she crammed on her brakes and began moving further to the left. (A. 12, 41, 181). Ms. Temple was able to avoid striking Ms. Beem, Ms. MacPheters, or their equines, but in doing so her UTV crashed into a ditch on the left side of the road. (A. 12, 41, 181).

Following the crash, Ms. Beem's mule bolted and ran out of her control toward Ms. MacPheters. (A. 12, 41, 181). Ms. MacPheters' horse also began running, and both Ms. Beem and Ms. MacPheters eventually fell from their equines. (A. 12, 41-42). Ms. Beem believes she passed out, and that is why she fell. (A. 13, 42).

Ms. Beem and Ms. MacPheters are experienced equine riders. (A. 13, 42). Ms. Beem is aware that equines are known to behave in ways that the rider does not and cannot anticipate, such as shying, kicking, startling, biting, rearing, bucking, stumbling, and falling. (A. 13, 42). Unanticipated behaviors can result in injury to the rider. (A. 13, 42). Indeed, Ms. Beem's mule had been "spooked" one or two times per year over the last four years preceding the incident on the Road. (A. 13, 42, 182). Ms. Beem knows that motor vehicles and other objects approaching her mule quickly from behind may spook her mule, though her mule had not bolted prior to August 2, 2022. (A. 13, 42, 182).

Ms. Beem did not designate any expert witnesses to testify about equine animals, causation, or liability. (A. 13, 45).

Issues Presented for Review

I. Whether the trial court correctly concluded that Defendant Nancy Temple was entitled to summary judgment on the claims asserted against her by Plaintiff Amy Beem.

Standard of Review

This Court reviews a trial court's decision on a motion for summary judgment *de novo*, taking the facts in the light most favorable to the non-moving party. *See Morgan v. Kooistra*, 2008 ME 26, ¶ 19, 941 A.3d 447. Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, together with affidavits, if any, show that there is no genuine issue as to any

material fact and the moving party is entitled to judgment as a matter of law. *Id.* A dispute of material fact exists when admissible evidence exists such that the fact-finder must choose between competing versions of the truth. *Id.*

Summary of Argument

The sole issue on appeal is whether the trial court correctly concluded that Nancy Temple was entitled to summary judgment on the negligence claim asserted against her by Amy Beem. This Court should affirm the entry of summary judgment in favor of Nancy Temple for several reasons.

First, as found by the trial court, all of Ms. Beem's claims are barred by the Maine Equine Act. The Equine Act is unambiguous and provides that when a person is engaged in an "equine activity", and that person is injured as a result of the "inherent risks of" that activity, claims "for personal injury" are barred. 7 M.R.S. § 4103-A(1). The statute unambiguously defines "equine activity" to include riding or driving an equine . . . ." *Id.* § 4101(5)(A), (D). The statute also unambiguously defines "inherent risks of equine activities" as "those dangers and conditions that are an integral part of equine activities". These dangers and conditions include, but are not limited to, equines "propensity . . . to behave in ways that may result in damages", and causing injury by "bucking, shying, kicking, running, biting, stumbling, rearing, falling and stepping on". § 4101(7-A). In this case, it was not disputed that Ms. Beem (1) was engaged in an equine activity as defined by the Act;

(2) was injured as a result of her equine being spooked and taking off running; and (3) filed a lawsuit seeking damages for personal injuries as a result of falling off her running equine. Based on the plain and unambiguous language of this statute, her claims are barred.

Second, Ms. Beem's arguments regarding legislative intent or statutory interpretation miss the mark. Legislative intent is only relevant where the statute on its face is ambiguous. Here, there is simply no ambiguity based on the plain language of the statute. Even if the Court were to consider legislative intent, based on the committee and legislative documents, this is the exact scenario the statute was meant to preempt. That is, the statute was enacted to remove liability for injuries resulting to an individual engaged in an equine activity because of an inherent risk of that activity, such as the equine becoming spooked and running. If Ms. Beem believes the statute is too broad and should otherwise be amended, that is a job for the legislature. Based on the plain, unambiguous language and legislative history, the statute as enacted bars her claim in this case.

Third, even if Ms. Beem's claim was not barred by the Equine Act—which based on the plain and unambiguous language it is—Ms. Beem is unable to establish any liability or negligence on the part of Ms. Temple based on the undisputed evidence in the summary judgment record. In opposing summary judgment, Ms. Beem acknowledged that her "central argument is that Defendant was negligent in

her operation of the UTV because Defendant was speeding and failed to see what was plainly there to be seen." *See* Beem Opp at pp 3. This argument was based solely on her deposition testimony that she heard Ms. Temple approaching "at a high rate of speed." Ms. Beem is not qualified to opine on braking distances, speeds based on sound alone, or sight lines with respect to a UTV operator's duties. Ms. Beem did not designate any expert witness who would be qualified to opine on these issues and duties. As such, the only admissible evidence before the trial court on summary judgment was that Ms. Temple was traveling at or below the speed limit and successfully avoided striking either Ms. Beem or Ms. MacPheters when she encountered them while rounding a curve on a multiuse dirt trail. In light of these undisputed facts, Ms. Beem could not establish any liability against Ms. Temple, which is fatal to her negligence claim.

Finally, even if Ms. Beem could somehow establish liability against Ms. Temple—who was traveling within the speed limit and avoided striking Ms. Beem or her equine entirely—she is unable to establish the causation necessary to survive summary judgment. Ms. Beem does not know how she fell off her equine or how she was injured. At her deposition she testified that she "must have passed out" at some point and that is why she believes she ultimately fell off her equine. This fact was undisputed on summary judgment. (A. 13). This Court has been clear that a Defendant is entitled to summary judgment where a Plaintiff can only establish that

an injury occurred but cannot present sufficient evidence on what caused the injury. Here, there is no evidence of why she passed out and fell off her equine, much less evidence that Ms. Temple successfully avoiding striking her equine in the middle of the road was the cause of her later "passing out" and falling of her equine.

Based on the undisputed evidence in the summary judgment record, the trial court correctly concluded that Ms. Beem's claims against Nancy Temple are barred by the Maine Equine Act because her personal injury lawsuit stemmed from injuries caused by an inherent risk of the equine activity of which she was engaged. This Court could also affirm the grant of summary judgment given that Ms. Beem can establish neither liability nor causation against Ms. Temple based on the undisputed facts in the summary judgment record. Therefore, this Court should affirm the grant of summary judgment in Ms. Temple's favor on any or all of the above-referenced grounds.

Argument

A. The trial court correctly concluded that Ms. Beem's claims are barred by the Maine Equine Act.

In interpreting a statute, this Court will "look first to the plain language of the statute to determine its meaning if [it] can do so while avoiding absurd, illogical, or inconsistent results." *State v. Marquis*, 2023 ME 16, ¶ 14, 290 A.3d 96. "Unless the statute itself discloses a contrary intent, words in a statute must be given their plain, common and ordinary meaning . . . ." *Id.* Only if a statute is ambiguous would this

Court look beyond the words of the statute to examine other potential indicia of the legislature's intent, such as legislative history. *Id.* The main objective in construing a statute is to give effect to the will of the Legislature. *See Convery v. Town of Wells*, 2022 ME 35, ¶ 10, 276 A.3d 504.

a. *The Statute is unambiguous and applies to bar Ms. Beem's claims.*

Ms. Beem's personal injury negligence claim is explicitly preempted by 7 M.R.S. § 4101 and § 4103-A (the "Equine Act"). Maine's Equine Act provides broad immunity for injuries resulting from equine activities, and makes unmistakably clear that "a person may not make any claim . . . for personal injury or death resulting from the inherent risks of equine activities", and that "each participant . . . in an equine activity expressly assumes the risk and legal responsibility for any property damage or damages arising from personal injury or death that results from the inherent risk of equine activities." 7 M.R.S. § 4103-A(1).

Equine riding brings with it inherent risks which are unpredictable by their very nature. 7 M.R.S. § 4101(7-A); (A. 13, 42). To combat liability arising from these inherent risks, the Maine Legislature has excepted from tort recovery "any claim . . . for any property damage or damages for personal injury or death resulting from the inherent risks of equine activities." 14 M.R.S. § 4103-A(1). When a person is engaged in an "equine activity", and that person is injured as a result of the "inherent risks of" that activity, claims "for personal injury" are barred. *Id*.

Based on this plain language, the trial court, and this Court on appeal, need only answer three questions: (1) Was Ms. Beem engaged in an equine activity when she was injured? (2) Did the personal injuries sustained result from an inherent risk of that equine activity? (3) Does Ms. Beem's lawsuit seek personal injury damages as a result of numbers (1) and (2)? The facts pertinent to all three of these issues were undisputed on summary judgment.

First, the Equine Act comprehensively defines "equine activity" to include activities such as "riding or driving an equine" and "riding . . . an equine belonging to another person". § 4101(5)(A), (D). It was not disputed that Ms. Beem was engaged in "equine activity" at the time of her injuries because she acknowledged that she was "riding . . . an equine" animal at the time of the incident. (A. 11, 17-20, 39).

Second, Maine's Equine Act defines "inherent risks of equine activities" as "those dangers and conditions that are an integral part of equine activities." These dangers and conditions include, but are not limited to, equine's "propensity . . . to behave in ways that may result in damages", and causing injury by "bucking, shying, kicking, running, biting, stumbling, rearing, falling and stepping on." § 4101(7-A); *See also* (A. 17-19, 39). Section 4101(7-A) goes on to provide that equines are inherently unpredictable in their "reaction to sounds, sudden movement and unfamiliar objects, persons or other animals", and in their reaction to erratic actions

by others. *Id.* The statute unambiguously states that these unpredictable actions are an inherent risk of engaging in an equine activity, such as equine riding.

These listed dangers "pertain to the unpredictable nature of equine behavior, the unpredictable conduct of other individuals, and certain natural hazards rather than the more predictable behavior of sponsors or instructions (such as decisions related to tack, which are excluded elsewhere)." *Zuckerman v. Coastal Camps, Inc.,* 716 F. Supp.2d 23 (D. Me. 2010) (quoting recommended decision by the Magistrate Judge). Again, it was not disputed on summary judgment that Ms. Beem claimed her equine bolted as a result of the sound of the UTV and that she fell and was injured as a result of her mule bolting or running out of her control. (A. 12-13, 17-19, 41).

Further, the burden of these dangers and the responsibility to manage these risks rest exclusively with the rider, such as Ms. Beem. It is the equine rider alone who bears the responsibility to "heed all warnings" of danger, to "manage, care for and control" the equine, and to "refrain from acting in a manner that may cause or contribute to the injury of any person or damage to property." 7 M.R.S. § 4103-A(1). Indeed, the inherent unpredictability of equines is well known by Ms. Beem, and she knew that equines are known to behave in ways that a rider cannot anticipate, that equines may become spooked by approaching motor vehicles, and that this can result in injury to the equine rider. (A. 13, 42-43).

At her deposition, Ms. Beem described the cause of her injuries as follows:

> Q. What eventually happened was not a result of an impact with the UTV, but was after Meneely Belle bolted from the scene of that accident, right?
> A. Yes.
> Q. And you heard Judy talk about her memory of that bolting response that Meneely Belle had?
> A. Yes.
> Q. And you have no reason to doubt Judy's recollection as to how that all happened, right?
> A. I do not.
> Q. And so from that information you understand that you weren't injured from or you didn't fall off Meneely Belle at the scene or near the scene where you were stopped in the roadway or on the side of the roadway before the accident happened, right?
> A. Correct.
> Q. You were injured when you were some distance away from where that scene of the UTV accident was because Meneely Belle had bolted from that area?
> A. Yes.

(A. 113). Again, it was not disputed on summary judgment that Ms. Beem was injured when she eventually fell from her equine when it ran out of her control. (A. 12-13). It was also undisputed that Ms. Beem had knowledge and appreciation for the inherent risks associated with engaging in equine activities. (A. 12-13, 42).

Finally, it cannot be disputed, nor was it, that Ms. Beem's lawsuit against Ms. Temple is for personal injuries she sustained while engaged in an equine activity and which resulted from an inherent risk of an equine activity as defined by statute. (A. 17-20, 47-48); *see also* 7 M.R.S. §§ 4101, 4103.

Again, the trial court, and this Court, need only answer three questions to determine if the unambiguous language of the Equine Act bars Ms. Beem's claims. (1) Was Ms. Beem engaged in an equine activity when she was injured? (2) Did the personal injuries sustained result from an inherent risk of that equine activity? (3) Does Ms. Beem's lawsuit seek personal injury damages as a result of numbers 1 and 2? Because the answer to all three questions is an unequivocal yes based on the undisputed evidence of the summary judgment record, the trial court correctly concluded that Ms. Beem's claims are barred by the Maine Equine Act. Therefore, the trial court correctly entered summary judgment in favor of Ms. Temple.

b. *Ms. Beem's arguments on appeal are inapposite to the purpose and intent underlying the Maine Equine Act.*

i. *Legislative intent supports the trial court's Order.*

As the trial court found, the Legislature's intent is evidenced by the plain and unambiguous language of the Maine Equine Act. That is, the Act was enacted to bar claims for injuries sustained by a person engaged in an equine activity and as a result of an inherent risk of equine activity. (A. 18-19). Given the unambiguous language of the statute, this Court need not engage in any analysis of legislative history or intent.

Even if this Court were to consider the legislative history, however, that legislative history supports the trial court's grant of summary judgment.

First, the result reached by the trial court is supported by the analyst's summary of the enacted law:

> [Public Law 1999] Chapter 498 gives equine activity sponsors, equine professionals ***or other persons*** immunity from liability for property damage or for personal injury or death of a participate or spectator resulting from the inherent risk of equine activities.

L.D. 2108, Enacted Law Summary (199th Legis. 1999) (emphasis added); (A. 19-20). Consistent with this enacted law summary, the legislative documents before the committee contained a list of issues that it would consider as it worked to clarify the existing equine activity laws. *See An Act to Clarify the Equine Activity Law*: *LD 2108 Before the Agriculture, Conservation and Forestry Committee,* 119th Legis. (1999). One such issue for discussion was that the existing equine activity laws were limited to equine activity sponsors and professionals, while the new proposed law expanded immunity to include "other persons." *Id.* Given that the enacted law contains "other persons" within those entitled to immunity, it was clearly the intent of the Legislature to create broad immunity.

Second, those same legislative documents address the fact that the existing equine activity laws provide that a sponsor or professional could be liable for injuries if the act or omission leading to injury constituted a negligent disregard for the safety of the participant. *Id.* The new proposed statute, however, created a higher burden, stating that immunity would be removed only for an act or omission that was an ***intentional*** disregard for the safety of the participant and that intentional act or

omission caused injury. *Id.* This is again indicative of the Legislature's intent to provide broad immunity with this statute.

Third, the legislative documents and committee notes addressing the definition of "equine activity" lend further support for the broad immunity provided by the Act. With respect to the definition of "equine activity", the original proposed definition was:

> Equine shows, fairs, competitions, performances or parades that involve any breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, 3-day events, combine training, rodeos, driving, pulling, cutting, polo, steeple chasing, endurance trail riding, western game and hunting, Riding or driving an equine or riding as a passenger on or in a vehicle powered by equine.

Id. The enacted version of the law, however, broadens this portion of the definition of "equine activity" to apply to any situation involving "riding or driving an equine or riding as a passenger on or in a vehicle powered by equine." 7 M.R.S. § 4101(5)(A). This marks a clear intention of the Legislature for this definition to apply broadly and without limitation to the riding occurring during or as part of an equine sponsored event.

Finally, the committee testimony, much of which was from the equestrian community, noted that costs of insuring horses for injuries they may cause as a result of their unpredictable behaviors was cost prohibitive. *See An Act to Clarify the Equine Activity Law*: *LD 2108 Before the Agriculture, Conservation and Forestry*

Committee, 119th Legis. (1999) (written testimony). The equestrian community was in support of limiting liability for injuries caused by the unpredictable nature of equines when one was participating in an equine activity. *Id.* Indeed, the Maine Equine Industry Association stated in its written testimony that "if you spend enough time around horses you are going to get kicked, stepped on, bitten, and if you ride you're going to fall off. It is not a question of if, it is a question of when. . . . common sense tells us you should not be able to sue someone as a result of the obvious risks associated with an activity you are involved with." *Id.* (written testimony of the Maine Equine Industry Association). This testimony was clearly persuasive and is reflected in the enacted version of the Maine Equine Act. This testimony likewise supports the trial court's analysis of legislative intent and the application of the Equine Act to the undisputed facts of this case.

Although a plain reading of the Maine Equine Act reveals that the statute is unambiguous, and although the legislative history supports the trial court's application of the statute to the undisputed facts in this case, if there were ultimately policy considerations that warranted amendment of this statute, any such amendment would be a job for the Legislature, and not the courts. *See Pitts v. Moore*, 2014 ME 59, ¶ 18, 90 A.3d 1169; *Brann v. State*, 424 A.2d 699, 704-05 (Me. 1981). As drafted, and as supported by the legislative history, Ms. Beem's claims are barred by the

Maine Equine Act and the trial court correctly entered summary judgment in favor of Ms. Temple.

ii. The statutory exception to immunity does not apply.

Ms. Beem's arguments with respect to 7 M.R.S. § 4103-A(2) are unpersuasive for several reasons. Most importantly, the exceptions specifically apply only to "equine professionals", "an equine activity sponsor", or "other person[s] engaged in an equine activity." *See* 7 M.R.S. § 4103(A)(2). All of the above-mentioned terms are defined by statute. Applying those unambiguous definitions to the undisputed facts in the summary judgment record, Ms. Temple was not an "equine professional", "an equine activity sponsor", or "other person engaged in an equine activity." *Id.* § 4101(5)-(7). As such, this exception is not applicable to the claims at issue.

Even if Ms. Temple were somehow deemed to be an "equine professional", "an equine activity sponsor", or "other person engaged in an equine activity", the exceptions to immunity would nevertheless be inapplicable based on the undisputed evidence in the summary judgment record. Throughout her brief, Ms. Beem injects language that is not contained within Section 4103-A(2) in an attempt to potentially bring the facts of this case within a statutory exception to immunity. Specifically, Ms. Beem states throughout that immunity does not apply where the actions causing injury constitute negligence. (Blue Br. 11, 15, 17-19). This is incorrect. As noted above, the Legislature expressly considered and rejected negligence as a basis to

remove immunity. *See An Act to Clarify the Equine Activity Law*: *LD 2108 Before the Agriculture, Conservation and Forestry Committee,* 119th Legis. (1999); (Red Br. Section A(b)(i)). Instead, the conduct causing injury must rise far above mere negligence and must constitute reckless or intentional conduct. *See* 7 M.R.S. § 4103-A(2)(C)-(D).

The Maine Equine Act specifically states that "reckless" has the same meaning as "recklessly" as defined by 17-A M.RS. § 35(3). That statute provides:

> A. A person acts recklessly with respect to a result of the person's conduct when the person consciously disregards a risk that the person's conduct will cause such a result;
>
> B. A person acts recklessly with respect to attendant circumstances when the person consciously disregards a risk that such circumstances exist.
>
> C. For purposes of this subsection, the disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation

17-A M.R.S. § 35(3)(A)-(C).

The summary judgment record is devoid of evidence that Ms. Temple did anything recklessly or intentionally. Indeed, the entire theory of Ms. Beem's case, stated in her Complaint, Opposition to Summary Judgment, and here on appeal was that Ms. Temple was *negligent*. Negligent conduct was expressly rejected by the Legislature as an exception to the immunity provided by the Act.

Even if Ms. Beem attempted to argue that Ms. Temple acted recklessly, there is no admissible evidence in the summary judgment record to support a finding that Ms. Temple engaged in a gross deviation from the standard of care that a reasonable and prudent person would have observed in the same situation. 17-A M.R.S. § 35(3)(C). The summary judgment record is likewise devoid of any evidence that would establish that Ms. Temple was aware of a risk to Ms. Beem and consciously disregarded that risk. In fact, only contrary evidence exists in the summary judgment record. The undisputed facts in the summary judgment record establish that Ms. Temple was traveling within the posted speed limit on a road in which she owns a fee interest when she suddenly encountered Ms. Beem and Ms. MacPheters riding equines in other than a single-file line in the roadway and Ms. Temple avoided striking Ms. Beem, Ms. MacPheters, or their equines. (A. 11-12). As discussed below, these undisputed facts establish that Ms. Temple's conduct was not negligent at all, which likewise establishes Ms. Temple did not act recklessly.[2]

[2] Additionally, based on this undisputed evidence, namely, that Ms. Beem and Ms. McPheters were not riding in a single file and Ms. Temple was not speeding, Ms. Temple's actions in *successfully* avoiding the equines and their riders by turning her UTV and crashing is analyzed in the context of the sudden emergency she encountered. This Court has observed that an actor's conduct is adjudged under the emergency doctrine where the actor is found "in a position where [s]he must make a speedy decision, between alternative courses of action and that, therefore [s]he has no time to make an accurate forecast as to the effect of [her] choice." *See Hixon v. Mathieu*, 377 A.2d 112, 114 (Me. 1977). This Court has also observed that:

> "One confronted with a sudden, unexpected emergency not of [her] own making isn't necessarily held at [her] peril of making the wisest or right decision. [She] may make a mistake among [her] options to decide, and [she] may make a wrong choice,

iii. The Maine case law cited by Appellant is unavailing.

Ms. Beem's arguments regarding *McCandless v. Ramsey*, 2019 ME 111, ¶ 14, 211 A.3d 1157 miss the mark. In *McCandless*, plaintiff was a spectator who was hit and injured by the defendant who was riding a horse in a horse-riding arena. *Id.* at 1159. The plaintiff walked onto the riding track. *Id*. at 1160. Defendant, a minor rider, attempted to redirect the horse, but the horse was slow to respond to the commands, resulting in a collision and injury. *Id.*

This Court found that "[t]he dangers or conditions inherent in equine activities certainly include the danger of being injured when a horse and rider pass too close to a spectator standing in the track of a horse arena." In so holding, the Court reasoned that any reading of the Equine Act that excludes this accident would "thwart the entire purpose of the law", which is "to curtail liability for injuries arising from risks that are 'impracticable or impossible to eliminate due to the nature of equines' . . .." *Id.* at 1162 (citing L.D. 2108, Summary (119th Legis. 1999); *Hearing on An Act to Clarify the Equine Activity Law, L.D. 2108, Before the Joint Standing*

> and had [she] chosen something else, no damaging event might have occurred. [She's] not necessarily to be penalized for making the wrong choice, if no instrumentality or negligence, as we have administered it, the violation of the prudent man rule, takes place, the reasonably prudent man under all of the circumstances."

Hixon v. Mathieu, 377 A.2d 112, 114 n.2 (Me. 1977).

As a matter of law, driving within the posted speed limit and completely avoiding staggered equines in the road while navigating a downhill curve is completely reasonable, and therefore, not negligent, and certainly not reckless.

Committee on Agriculture, Conservation & Forestry, 119th Legis. (Apr. 1999) (materials submitted by Jacquelyn Krupinksy, Sarah Brooks, Rick Shepherd, Jim Jaeger, Stephen G. Ulman, and James A. Weber). If Ms. Beem's mule injured Ms. MacPheters as a result of the UTV accident, the Equine Act would undoubtedly grant Ms. Beem immunity. It is axiomatic that Ms. Beem herself cannot, therefore, sue Ms. Temple for the very actions that caused her own injuries in this case. Namely, her mule acted unpredictably and caused Ms. Beem to lose control over the animal.

By way of another example, let's assume that on the day of the incident in question, Ms. Beem and her riding partner were riding their equines on Devil's Head Road. At the same time, Ms. Temple was on her property abutting Devil's Head Road. Let's assume that Ms. Temple went to start an old UTV that she had negligently allowed to fall into a state of disrepair. When she started the UTV it backfired loudly. As a result of the loud backfire, Ms. Beem's equine was startled and took off running causing Ms. Beem to fall and sustain injury. According to Ms. Beem, Ms. Temple would be liable for her injuries in this scenario. This argument, however, is clearly inapposite to the plain language and stated purpose of the Maine Equine Act, which would bar her claims against Ms. Temple in this hypothetical scenario.

The result in the above-referenced hypothetical and the result reached by the trial court are directly in line with this Court's reasoning in *McCandless*. As stated

in *McCandless,* the purpose of the Equine Act is "to curtail liability for injuries arising from risks that are 'impracticable or impossible to eliminate due to the nature of equines' . . .." *Id.* at 1162 (citing L.D. 2108, Summary (119th Legis. 1999); *Hearing on An Act to Clarify the Equine Activity Law, L.D. 2108, Before the Joint Standing Committee on Agriculture, Conservation & Forestry*, 119th Legis. (Apr. 1999). An equine being startled or spooked by a noise on a multi-use trial is the exact type of behavior that is impractical or impossible to eliminate due to the unpredictable nature of equines.

Again, for the statute to apply and bar Ms. Beem's claims, her injuries must result from an inherent risk of an equine activity such as being injured by a startled or bolting equine while riding that equine. In this case, as in the example just discussed, Ms. Beem's equine was startled by a noise from a UTV. (A. 12-13, 41). This is not a case where Ms. Beem or her equine were actually struck by the UTV causing her to be thrown from the equine and sustain injuries. (A. 12-13, 41). An equine becoming startled and bolting or running and causing an injury to its rider is expressly contemplated by the statute as a situation in which the rider cannot recover for her injuries. "A horse's unanticipated resistance to the rider's directions is part and parcel of the 'propensity of an equine to behave in ways that may result in . . . injury . . . to persons on or around the equine.'" *Id*. 1161 (quoting 14 M.R.S. § 4101(7-A)(A)).

Similarly, Ms. Beem's citation to *Henry v. Brown,* 495 A.3d 324, 325-326 (Me. 1985), does nothing to remove this case from the purview of the Maine Equine Act for one very important reason. That reason is *Henry* was decided nearly 15 years before the Maine Equine Act was even enacted into law.

Ms. Beem goes on to set forth fact patterns that she suggests are "illustrating" with respect to when immunity would or could attach pursuant to the Maine Equine Act. (Blue Br. 12). These fact patterns, however, are not supported by any case law and appear to be based on the holding in *Henry*, which came more than a decade before the enactment of the Maine Equine Act. In her brief, Ms. Beem states:

> [m]erely driving past a horse with a rider, or a horse-drawn carriage is, of course, not negligence. However, "revving" one's engine intentionally to startle an equine *would* give rise to a triable factual issue on the basis that a motorist's intentional engine revving is not an inherent risk of equine activity. Other common examples clearly outside the ambit of the EAA include physically crashing into an equine (not an inherent risk of equine activity), or sliding off an icy road into an equine standing on the shoulder (not a named inherent risk)

(Blue Br. 12)

Contrary to any insinuation by Ms. Beem, the line for when claims are barred by the Maine Equine Act is quite bright.[3] If an equine is struck by a vehicle and a rider is injured, the Maine Equine Act does not apply. Why? Because being struck

[3] The use of intentional conduct in Ms. Beem's fact patterns is misleading as there is zero evidence in the summary judgment record that Ms. Temple did anything intentional to startle the equines in this case.

by a vehicle is not an inherent risk of engaging in an equine activity like riding a horse. On the other hand, if an equine is spooked by a noise, whether that be a revving engine, screeching tires, a crash, a car horn, a firework, a lawnmower, or any other noise, and the equine bolts injuring its rider, that claim is barred based on the plain, unambiguous language of the Act because the injuries resulted from an inherent risk of engaging in an equine activity.

iv. The case law cited by Appellant from other jurisdictions is likewise unavailing.

Ms. Beem is correct that upwards of 40 other jurisdictions have equine statutes that are somewhat similar to the one in Maine. (Blue Br. 16). Despite there being 40 other jurisdictions, Ms. Beem cites a single case from Ohio. *See Gibson v. Donahue,* 772 N.E.2d 646 (Ohio. 2002) in support of her argument. *Gibson*, however, is distinguishable from the present matter and need not be considered for serval reasons.

First, the language of Maine's Equine Act is unambiguous, and this Court has already addressed that language in *McCandless v. Ramsey*, 2019 ME 111, ¶ 14, 211 A.3d 1157. There is simply no need for this Court to review how other courts interpret statutes with differing language than Maine's in order to analyze the unambiguous language of Maine's statute and the undisputed facts at issue.

Second, *Gibson* and this case are not factually analogous. In *Gibson*, the Defendant was walking dogs off leash in an area that was expressly marked for

"Equine Use Only". *Id.* at pp 648. In this case, Ms. Temple was riding a UTV on a multi-use trial in which she had a fee ownership interest. (A. 11, 44). In *Gibson*, the Defendant's dogs chased the Plaintiff while she was mounted on her equine, eventually causing her to be thrown off and hurt. *Gibson,* 772 N.E.2d at 648. Here, there was no chasing of any kind. Instead, Ms. Beem's equine simply became spooked by sounds created by the UTV and Ms. Beem passed out, which is why she believed she eventually fell from her equine. (A. 12-13, 42).

Finally, the Ohio statute applicable in *Gibson* defines "equine activity" differently than Maine. Specifically, in instances in which equine riding is contemplated by the Ohio statute, it is strictly limited to situations where the riding is sponsored by an equine activity sponsor. This is entirely different than Maine's statute which defines "equine activity" more broadly, to include "[r]iding or driving an equine or riding as a passenger on or in a vehicle powered by equine." 7 M.R.S. § 4101(5)(A). Again, as noted above, the Maine Legislature certainly could have chosen to limit the definition of equine activity to only those actions occurring during an equine sponsored event. It did not, however, impose any such limitation. This was a conscious decision as evidenced by the fact that there are certain specific definitions of equine activity that are limited to an equine activity sponsor, but the other definitions, including "riding an equine", are not so limited.

The 10th Circuit's opinion in *Dullmaier v. Xanterra Parks & Resorts*, 883 F.3d 1278, is both illuminating and informative. In *Dullmaier,* the Plaintiff's spouse was killed during a guided-horseback ride in the Yellowstone National Park wilderness. During the ride, one horse became spooked and took off running, which caused the other horses to become spooked and run. The Plaintiff's spouse was killed falling from his horse that was spooked and running. The Plaintiff spouse brought a claim against the company providing the guided horseback ride, and that company moved for summary judgment based on Wyoming's Recreational Safety Act, arguing the death resulted from an inherent risk of horseback riding. The trial court granted Defendant's motion, and Plaintiff appealed.

On appeal, the 10th Circuit analyzed three cases that set guideposts in the world of equine activity in Wyoming. *See Cooperman v. David,* 214 F.3d 1162 (10th Cir. 2000); *Kovnat v. Xanterra Parks & Resorts,* 770 F.3d 949 (10th Cir. 2014); *Sapone v. Grand Targhee,* 308 F.3d 1096 (10th Cir. 2022). The court stated that it previously highlighted the fact in *Cooperman* that horses can act unpredictably when confused or frightened and that it concluded that such a response "clearly would qualify as inherent risks of horseback riding." *See Cooperman,* 214 F.3d at 1167. Additionally, one of the horse wranglers testified that "horses are prey animals, so they are spooky and worried about what is around them." *Dullmaier,* 883 F.3d at 1292. The court also made clear that it is an "unremarkable consequence of these

inherent risks that a rider may fall from a spooked, runaway horse." *Id*. The 10th Circuit found that the guided trail ride carried several inherent risks, and ultimately the grant of summary judgment to Defendant was appropriate.

The reasoning applied by the 10th Circuit is consistent with the plain language of Maine's Equine Act and the trial court's reasoning in entering summary judgment. Ms. Beem was engaged in an equine activity when she was riding her mule on a multi-use trail. (A. 11). Ms. Beem was aware that equines can become spooked by approaching vehicles, which may result in injury to the rider. (A. 13, 41-43). Ms. Beem's equine did in fact become spooked by a UTV while on a multi-use trail, and she claims she fell and was injured as a result. (A. 12-13). Ms. Beem, therefore, was injured by an inherent risk of an equine activity while engaged in an equine activity. As a result, the trial court correctly concluded that her claims were barred.

B. Even if not preempted by statute, Ms. Beem's negligence claim was nevertheless subject to summary judgment based on the undisputed evidence in the summary judgment record.

It is well established that to prevail on a claim of negligence, the plaintiff bears the burden of proving by a preponderance of the evidence that:

1) The defendant owed a duty of care to the plaintiff;

2) The defendant breached the duty of care; and,

3) The plaintiff's injury was proximately caused by the defendant's breach of its duty of care.

Parker v. Harriman, 516 A.2d 549, 550 (Me. 1986); *see Durham v. HTH Corp.,* 2005 ME 53, ¶ 8, 870 A.2d 577.

To successfully oppose a motion for summary judgment, "the plaintiff must establish a prima facie case for each element of [his or] her cause of action." *Bell v. Dawson*, 2013 ME 108, ¶ 16, 82 A.2d A.3d 827 (quotation marks omitted). Summary judgment is appropriate "against a plaintiff who presents insufficient evidence to support an essential element in her cause of action, such that the defendant would be entitled to judgment as a matter of law on that state of the evidence at a trial." *Id.*

a. *Based on the undisputed evidence in the summary judgment record, Ms. Beem cannot establish the causation necessary to support her claim*.

This Court has opined in numerous cases that "a defendant is entitled to summary judgment if there is so little evidence tending to show that the defendant's acts or omission were the proximate cause of the plaintiff's injuries that the jury would have to engage in conjecture or speculation to return a verdict for the plaintiff." *Houde v. Millett*, 2001 ME 183, ¶11, 787 A.2d 757, 759 (*citing Merriam v. Wanger*, 2000 ME 159, ¶10, 757 A.2d 778, 781). Where a plaintiff merely establishes that damage occurred rather than what caused the damage, the evidence is insufficient as a matter of law to establish liability. *See Addy v. Jenkins*, 2009 ME

46, ¶ 14, 969 A.2d 935 (observing that where plaintiff only established where she fell and not how she fell, defendant was entitled to summary judgment.)

In *Houde v. Millett*, 2001 ME 183, ¶12, 787 A.2d at 759, this Court discussed the common law rule that a plaintiff bears the burden of presenting sufficient evidence to support a finding by the factfinder, without engaging in surmise or conjecture, what caused her damages. *Id.* In that case, the Plaintiff alleged that a defective condition caused her to fall and sustain damages. This Court noted that: "The mere possibility of such causation is not enough, and when the matter remains one of pure speculation or conjecture, or even if the probabilities are evenly balanced, a defendant is entitled to a judgment." *Id.* (*quoting Merriam v. Wanger*, 2000 ME 159, ¶ 10, 757 A.2d 778, 781).

In *Durham v. HTH Corp.,* 2005 ME 53 870 A.2d 577, the plaintiff was injured when she tripped and fell down a set of stairs at a restaurant. The Plaintiff asserted that a metal strip at the top of the stairs was dirty, and there was evidence presented that following the accident the strip had been pulled up. The trial court granted summary judgment in favor of the defendant because there was insufficient evidence establishing the defendant restaurant's negligence. This Court affirmed the trial court's grant of summary judgment. In so doing, this Court specifically noted that there was a "lack of evidence with regard to causation" in that the plaintiff "testified

that she did not know what caused her to fall, and no other evidence in the record indicates causation." *Id.* ¶ 9 n. 2

In opposing summary judgment, Ms. Beem did not address any of the above-referenced cases. This failure is not surprising given that the present matter is directly in line with *Houde, Addy,* and *Durham*, in that Ms. Beem cannot establish that any action of Ms. Temple proximately caused her to fall and sustain an injury but instead can only establish that she was injured when she eventually fell off her equine some distance away from the scene of the UTV crash. (A. 12-13, 41-42). In fact, Ms. Beem is not even sure how she ended up falling off of her equine, only that she "must have passed out and that's probably why I came off". (A. 13, 42, 114). The summary judgment record only establishes that Ms. Beem likely passed out and fell off her equine some distance away from where the UTV crashed, but there is no evidence at all that the UTV crash caused her to pass out. This evidence, as a matter of law, is insufficient to establish the causal connection necessary to sustain a negligence claim against Ms. Temple as it would require a jury to impermissibly engage in both conjecture and speculation to find proximate cause. *Houde v. Millett*, 2001 ME 183, ¶11, 787 A.2d 757, 759. Therefore, Ms. Temple was entitled to judgment as a matter of law.

b. Based on the evidence in the summary judgment record, Ms. Beem cannot establish liability.

Alternatively, this Court need not reach the proximate causation issue to conclude that Ms. Temple was entitled to summary judgment given that Ms. Beem cannot establish liability based on the undisputed evidence in the summary judgment record and her failure to designate expert witnesses.

This Court has long recognized that "expert testimony may be necessary where the matter in issue is within the knowledge of experts only, and not within the common knowledge of lay[persons]." *Maravell v. R.J. Grondin & Sons*, 2007 ME 1, ¶ 11, 914 A.2d 709. *See Merriam v. Wanger*, 2000 ME 159, ¶ 17, 757 A.2d 778 ("Allowing a jury to infer causation on complex medical facts without the aid of expert testimony on the subject . . . stretches the jury's role beyond its capacity."); *Corey v. Norman, Hanson & DeTroy*, 1999 ME 196, ¶ 14, 742 A.2d 933 ("The Superior Court correctly concluded that the lack of expert evidence in regard to a different outcome absent [a lawyer's] negligence makes the link between [the negligent act] and the alleged damage . . . overly speculative.") (quotation marks omitted); *Seven Tree Manor, Inc. v. Kallberg*, 1997 ME 10, ¶ 7, 688 A.2d 916 (same regarding claims involving "professional engineer.")

Here, expert testimony is required to establish not only what duty of care Ms. Temple potentially owed to Ms. Beem while operating a UTV on a multi-use trail, but also that Ms. Beem's actions in maneuvering her UTV to avoid striking the

equines encountered staggered on the private dirt road was a breach of that duty. The rights, duties, and responsibilities of people riding equines on a private dirt road are simply not within the common knowledge of lay persons. Similarly, the rights, duties, and responsibilities of people operating UTVs on dirt roads are not within the common knowledge of lay persons. Therefore, Ms. Temple was required to designate expert witnesses to establish both what duties existed, and that any action Ms. Temple took was a breach of duty she owed Ms. Beem. Ms. Beem's failure to designate an expert witness to establish the applicable duty of care and any breach of that duty is fatal to her negligence claim.

In an effort to try and circumvent this omission, in opposing Ms. Temple's motion for summary judgment, Ms. Beem argued that a dispute of fact existed as to Ms. Temple's speed. (A. 162). Specifically, Ms. Beem stated that her "central argument is that [Ms. Temple] was negligent in her operation of the UTV because [Ms. Temple] was speeding and failed to see what was plainly there to be seen." *Id*. She also claims she heard Ms. Temple approaching her "at a high rate of speed". (A. 164). These arguments fail for the reasons discussed above. Ms. Beem never saw Ms. Temple prior to the incident and her equine bolting. Indeed, her only basis for saying anything with respect to speed is that she "heard" Ms. Temple approaching. The summary judgment record, however, was devoid of any admissible evidence that would qualify Ms. Beem as able to offer opinions on the speed of a UTV based

on sound alone. As a result, the only admissible evidence before the trial court was that Ms. Temple was traveling 20-25mph, or in other words, within the posted speed limit. (A. 11-12, 40).

Ms. Beem next argued, that even if she did not see Ms. Temple before the crash, the existence of skid marks on a dirt road support her claim that Ms. Temple was speeding. (A. 164-165). Again, Ms. Beem is not qualified to opine on speeds of UTVs based on the existence of skid marks left on a gravel or dirt road. This is the exact type of opinion that is outside the knowledge of lay persons and would therefore require expert testimony from an accident reconstructionist. *Maravell*, 2007 ME 1, ¶ 11, 914 A.2d 709.

The only admissible evidence with respect to liability that was before the trial court on summary judgment was that Ms. Temple was traveling within the posted speed limit on a multi-use trail in which she has a fee ownership interest. (A. 11-12, 39-40). As she traveled within the posted speed limit, she suddenly encountered Ms. Beem and her riding partner, who were not riding their equines in a single file line. (A. 11-12, 41). In an effort to avoid striking Ms. Beem, her riding partner, or their equines, Ms. Temple applied her brakes and steered to left. (A. 11-20, 41, 181-182). In so maneuvering, Ms. Temple's UTV left the roadway. *Id.* Ms. Temple successfully avoided striking Ms. Beem, her riding partner, and their equines. (A. 11-20, 41).

As this was the only admissible evidence before the trial court on summary judgment, Ms. Beem could not establish that Ms. Temple breached any duty owed to her, or that Ms. Temple was otherwise liable for Ms. Beem later falling from her equine when she "must have passed out". As such, Ms. Temple was entitled to summary judgment given that Ms. Beem could not establish prima facie evidence for the liability portion of her negligence claim. *Flaherty v. Muther*, 2011 ME 32, ¶ 51, 17 A.3d 640 (observing that a plaintiff must offer more than "conclusory allegations, improbable inferences, and unsupported speculation" to avoid summary judgment); *First Citizens Bank v. M.R. Doody, Inc.*, 669 A.2d 743, 744 (Me. 1995) (The party opposing summary judgment may not rest upon bare allegations, but instead must come forward with competent and admissible evidence to support each element of her claims).

CONCLUSION

Based on the plain and unambiguous language of the Maine Equine Act, the trial court correctly concluded that Ms. Beem's claims were barred and that Ms. Temple was entitled to summary judgment. Additionally, based on the undisputed evidence in the summary judgment record, Ms. Beem cannot establish liability or proximate cause against Ms. Temple such that Ms. Temple is entitled to summary judgment. This Court should affirm the grant of summary judgment in favor of Ms. Temple for all of the above-referenced reasons.

WHEREFORE, Appellee respectfully requests that this Court affirm the trial court's entry of summary judgment.

Dated at Portland, Maine, this 17th day of October, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that I have, this 17th day of October, 2025, caused two (2) copies of the Appellees' Brief to be served upon the following persons via U.S. Mail, First Class, postage pre-paid and by email.

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