

JOCKEY INJURED BY “BLIND” HORSE?

This case deals an injured jockey at a fair racetrack where the plaintiff professional jockey was thrown over the track railing after the horse ran into the fence. Plaintiff claims the horse was blind but, he failed to provide proof that the alleged blindness in one eye was the cause of the accident. The case, although an old one—1950—has a good discussion of assumption of the risk by an experienced rider and the lack of evidence proving that any blindness was the cause of the accident i.e. proximate cause. Pertinent areas of the court’s discussion are set forth below:

[Gray v. Pflanz, 341 Ill.App. 527,94 N.E.2d 693 \(Ill. App. 4 Dist., 1950\)](#)

“...Plaintiff was a jockey engaged in the occupation of riding horses entered in running races. Plaintiff sustained his injuries while riding a horse belonging to defendant in a race held at Mt. Vernon, Illinois, Fairgrounds on July 15, 1948. The evidence discloses that the plaintiff was not acquainted with the particular horse in question nor with the defendant owner, but had been asked by the defendant to ride as a jockey in the particular race.

The amended complaint charges that defendant with full knowledge that the race horse was blind, entered the horse in the race without notice to the plaintiff that the horse was blind, and that the defendant knew at the time of entering the horse that to do so without notice to the plaintiff and to the officials of the Fair Association was a violation of Rules and Regulations relating to running of horses at the Fairgrounds. The complaint then alleges that as a result of the carelessness and negligence and violation of the Rules, and although plaintiff used expert skills of a professional jockey he was unable to prevent the race horse from plunging [341 Ill.App. 529] through the outside rail of the fence on the race track, which caused injury to the plaintiff consisting of a fracture of his right leg, etc.

On appeal in this Court defendant contends that the record is devoid of any proof of negligence on the part of defendant since there is no competent evidence of the blindness of the horse as alleged in the complaint, or any evidence whatsoever of any breach of any Rules & Regulations, and that under the evidence the proximate[341 Ill.App. 531] cause of the injuries sustained by the plaintiff might reasonably have been attributable to some cause independent of any deficiencies in the eye sight of the horse of which defendant could have had any knowledge prior to the accident; and in view of the slippery condition of the track and the fact that the jockey was a professional jockey and was in exclusive control of the horse and that his action in throwing and shifting his weight in the saddle and striking the horse on the nose might have caused the horse to lose its balance and be thrown into the rail. It is also contended there was a variance between the complaint and the proof; that there was an abuse of discretion in permitting the testimony of the jockey who testified for the plaintiff to the effect that he flicked his bat in front of the horse's

face prior to the race to determine the eyesight of the horse; that the verdict of the jury was against the manifest weight of the evidence; and that there were errors in the giving of certain instructions in the case. Motions for directed verdict and for judgment notwithstanding the verdict and for a new trial were made at the close of plaintiff's case and at the close of all the evidence.

We have gone through the evidence in the record and from a consideration of all the evidence are unable to discover any positive evidence of negligence on part of defendant showing a breach of duty by defendant to the plaintiff proximately resulting in an injury to the plaintiff. There was no evidence that defendant knew that the horse was blind and the evidence, in fact, tended to establish that the horse was not blind. There was no evidence of negligence on part of defendant in the record in this cause which could reasonably have been stated to have proximately contributed to the injury. It is true that plaintiff had discussed the condition of the horse with defendant, but there is no evidence from statements made by the defendant as to the horse's condition from which it could be said that the [341 Ill.App. 532] defendant knew or might reasonably have known that the eyesight of the horse was sufficiently impaired or that the horse was blind to such an extent that an injury of the kind which occurred could reasonably have been foreseen.

Plaintiff in this case was a professional jockey. He assumed the inherent risks of his profession and for those risks defendant could not be held liable. St. Louis [Nat'l Stock Yards v. Charles B. Morris, 116 Ill.App. 107](#); Hapke, Adm'rx v. Huston, 301 Ill.App. 191, 22 N.E.2d 124.

To prevent the operation of the assumption of such inherent risks of his profession it should appear that defendant knew or should have known of the defective eyesight of the horse and that his failure to warn plaintiff of such defective eyesight must have proximately contributed to the injuries sustained. It is in the latter aspect particularly that the action of plaintiff was basically deficient. Where no facts are shown by plaintiff to show that the injuries which were sustained were proximately caused or contributed to by an act or omission to act on part of defendant, a judgment based on such evidence cannot be sustained. [McGrath v. Chicago & A. R. Co., 95 Ill. App. 659](#); Terminal R. R. [Ass'n v. Larkins, 112 Ill. App. 366](#).

There was evidence to the effect that a blind horse actually responds to a rider much more readily than one which can see. Under the facts in the record there is no showing of the exact or proximate cause of the injury so that it can be fairly stated that any statement or representation which defendant had made to the jockey proximately contributed to the injury sustained by plaintiff. The evidence indicates the horse had been raced previously without any such result. Under the circumstances it was just as reasonable to assume that the injuries sustained by plaintiff resulted from the handling of the horse as to speculate that the deficiency in the eyesight of the horse was the cause of the injury. The only evidence of neglect on part of [341 Ill.App. 533] defendant which was found in the record consisted of the conversation with the jockey to which we have referred in the course of this opinion. There is nothing to indicate that the defendant could reasonably have

foreseen as a consequence of any such statement or conversation under the facts and circumstances in the record that the injury to plaintiff would proximately follow. Proximate cause involves more than a mere possibility, but Courts have concluded that the responsibility is imposed under such doctrine for consequences which are probable according to ordinary and usual experience. Follett, [Adm'r v. Illinois Central R. R. Co., 288 Ill. 506, 514, 123 N.E. 592.](#)

In view of the fact that it is our conclusion that there is insufficient evidence to sustain the judgment in favor of plaintiff, the judgment of the Circuit Court of Jefferson County will be reversed and judgment will be entered here in favor of defendant, Val Pflanz, in this action..."