No. 78

Karen Hastings et al.,
Appellants,
v.
Laurier Sauve et al.,
Respondents,
et al.,
Defendant.

Matthew H. McArdle, for appellants.
John W. Vandenburgh, for respondent Sauve.
Danielle N. Meyers, for respondent Delarm.

SMITH, J.:

We hold that the rule of Bard v Jahnke (6 NY3d 592 [2006]) does not bar a suit for negligence when a farm animal has been allowed to stray from the property where it is kept.

Karen Hastings was injured when the van she was driving

hit a cow on a public road. The cow had been kept on property owned by Laurier Sauve, and the cow itself was owned by either Albert Williams or William Delarm. There was evidence that the fence separating Sauve's property from the road was overgrown and in bad repair.

Hastings and her husband brought this personal injury action against Sauve, Williams and Delarm. Supreme Court granted summary judgment motions by Sauve and Delarm. The Appellate Division affirmed as to those defendants, and granted summary judgment as to Williams also, citing Bard and other cases for the proposition that "injuries inflicted by domestic animals may only proceed under strict liability based on the owner's knowledge of the animal's vicious propensities, not on theories of common-law negligence" (Hastings v Sauve, 94 AD3d 1171, 1172 [3d Dept 2012] [internal quotation marks omitted]). The Appellate Division expressed its "discomfort with this rule of law as it applies to these facts -- and with this result" (id. at 1173), and later granted plaintiffs leave to appeal to this Court. We now hold that the rule of Bard is inapplicable to a case of this kind, and reverse the Appellate Division's order.

In Bard, we denied recovery to a plaintiff who was attacked by a bull while working in the barn where the bull was kept. Noting that the bull "had never attacked any farm animal or human being before," we declined to "dilute our traditional rule" that a plaintiff in such a case must show that defendant

had knowledge of the animal's "vicious propensities" (6 NY3d at 597-598). We made clear that by "vicious propensities" we meant any behavior that "reflects a proclivity to act in a way that puts others at risk of harm" (id. at 597, quoting Collier v Zambito, 1 NY3d 444, 447 [2004]). We have followed Bard in two more recent cases involving plaintiffs who were attacked or threatened by dogs (Petrone v Fernandez, 12 NY3d 546 [2009]; Bernstein v Penny Whistle Toys, Inc., 10 NY3d 787 [2008]).

This case, unlike Collier, Bard, Bernstein and Petrone, does not involve aggressive or threatening behavior by any animal. The claim here is fundamentally distinct from the claim made in Bard and similar cases: It is that a farm animal was permitted to wander off the property where it was kept through the negligence of the owner of the property and the owner of the animal. To apply the rule of Bard -- that "when harm is caused by a domestic animal, its owner's liability is determined solely" by the vicious propensity rule (6 NY3d at 599) -- in a case like this would be to immunize defendants who take little or no care to keep their livestock out of the roadway or off of other people's property.

We therefore hold that a landowner or the owner of an animal may be liable under ordinary tort-law principles when a farm animal -- i.e., a domestic animal as that term is defined in Agriculture and Markets Law § 108 (7) -- is negligently allowed to stray from the property on which the animal is kept. We do

not consider whether the same rule applies to dogs, cats or other household pets; that question must await a different case.

In this case, while a number of important facts are disputed, the record read most favorably to plaintiffs would support a finding that any or all of the three defendants were negligent in allowing the cow to enter the roadway. Summary judgment in defendants' favor should therefore not have been granted.

Accordingly, the order of the Appellate Division should be reversed with costs and defendants' motions for summary judgment denied. The certified question is not necessary and should not be answered.

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Order reversed, with costs, defendants' motions for summary judgment denied, and certified question not answered on the ground that it is unnecessary. Opinion by Judge Smith. Chief Judge Lippman and Judges Graffeo, Read, Pigott and Rivera concur.

Decided May 2, 2013