Case Comment

Harris v Miller

(QBD, Judge Graham Wood QC, 4 November 2016, [2016] EWHC 2438 (QB))

Nathan **Tavares**

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Case:
Harris v Miller [2016] EWHC 2438 (QB) (QBD)

J.P.I.L. C1 On 22 September 2012, 14-year-old Ashleigh Harris was riding a horse. She fell off and sustained paraplegic life-changing injuries. The horse belonged to the defendant Rachel Miller. Ashleigh's case was that the horse bucked whilst cantering on flat ground. The defendant did not accept that and suggested that the horse had dipped its head when walking downhill. The behaviour and temperament of the horse were also in issue.

It was the claimant's case that if the court accepted her version of events, it must follow that a fall was reasonably foreseeable on the basis of the behaviour manifested by the horse. The defendant did not agree. She argued that this was insufficient as the court had additionally to assess breach of duty in the context of her knowledge of the horse and the claimant's riding experience.[1] She said that the decision to permit Ashleigh to ride the horse was reasonable in all the circumstances, especially bearing in mind her stated experience and prior interactions with the horse.

The case proceeded to a trial of liability only in relation to the claim brought by Ashleigh Harris both in negligence, and under the Animals Act 1971. However, on the particular facts of the case, Ashleigh Harris could not have succeeded in her claim under the Animals Act if she failed at common law. Because of this only negligence was pursued at trial.

HH Judge Graham Wood QC[2] preferred the evidence of the claimant. He considered her to be an impressive witness. In contrast the judge concluded that the defendant was not, having "allowed herself to develop misinformed recollections based on perception rather than actual fact".

The judge accepted that he had to consider the defendant's actual and constructive knowledge of both the horse and the rider. Nonetheless he held that permitting the claimant to ride the horse was a breach of the defendant's duty. Judge Wood held that an ordinary and reasonably prudent owner would ensure she possessed sufficient knowledge of the horse and the intended rider so as to assess the risk involved in this inherently dangerous activity.

The judge commented that if there was any doubt about the nature of this horse, and its potential difficulty for the claimant, it was removed by remarks made by the claimant which would or should have communicated insecurity to the defendant. Rachel Miller knew that Ashleigh Harris was a 14-year-old with limited riding experience and had not enquired whether she had ever ridden a horse, let alone a thoroughbred. This amounted to a "serious error of judgment" because Miller should have known that the horse was difficult to handle, even for a competent novice such as Ashleigh.

Accordingly, the defendant had exposed the claimant to an unnecessary risk of injury, in circumstances where it was reasonably foreseeable that the horse would be strong and difficult to control, and was likely***J.P.I.L. C2*** to unseat a rider of the claimant's competence and an injury of some sort was foreseeable.[3] Not foreseeing serious injury as a consequence was immaterial.

Breach of duty was been established, and judgment was entered for the claimant with damages to be assessed.

Comment

The common law duty of care owed by "the ordinary and reasonably prudent horse owner" extends to ensuring that a 14-year-old girl permitted to ride their horse should be competent to do so and that the horse should be safe for her. That was not controversial. Naturally the standard of care is measured by reference to the owner's knowledge of the animal's level of schooling and temperament, and her knowledge of the rider's skill and experience. The owner's actions are then measured against an objective standard of reasonable behaviour.

Similar principles apply to ownership of other types of animal or chattel; see for example, *Smith v Pendergast*,[4] where a man who had acquired a stray dog was liable to a child injured by the dog before the man had ascertained the dog's temperament. The situation of the negligent chattel owner also brings to mind a recent incident at a shooting range in the US, widely reported in the press, where an instructor was shot and killed by an eight-year-old child he was teaching how to shoot a sub-machine gun. Unusually, in that case, the claimant and defendant would have been one and the same person. Had the child been injured one can only assume that the instructor would have been liable!

Harris v Miller is not therefore likely to open any floodgates to claims against horse owners as it involved no novel duty of care. There was a stark difference in the parties' versions of the facts (as is often the experience in horse riding claims), and on the trial judge's finding of the primary facts there was little doubt that the owner had breached her duty of care.

In many situations involving borrowed horses the rider will, of course, have voluntarily accepted the risk of injury thereby preventing a successful claim. In cases where there was some dangerous or hidden characteristic in the animal unknown to the rider, a claim could potentially succeed under the common law, or the Animals Act 1974 and the overlap between the two causes of action is considerable. The Act rarely gives rise to the straight forward *strict liability* it was perhaps intended to do where horse riding accidents are concerned.

Consideration of the appropriate standard of care involved an analysis of the horse's behaviour and temperament, and in this regard the expert evidence was important. There was some criticism by the judge of the defendant's expert for becoming "a little too close to the case". The two examples of this he gave were first that the expert had undertaken a detailed analysis of the witness evidence and offered his views on the probability of the accuracy of such evidence. Secondly, he appeared to the judge to be unwilling to make concessions. On the first point experts run the very real danger of trespassing upon the function of the judge as finder of fact. But having said that, it can be a legitimate function of experts to offer assistance with interpreting the facts: guidance often seen as a preamble in expert agendas states:

"*Factual Disputes*: Where there is a dispute between factual witnesses as to what happened it is not the role of an expert to resolve such a dispute. Factual disputes are a matter for the trial judge. It may, however, be helpful to the Court to identify the material facts upon which opinions need to be given. You should feel free to comment on factual issues where your expertise may assist the Court in determining or interpreting the facts correctly.***J.P.I.L. C3** "

As regards the second point, the willingness of an expert to make appropriate concessions often gives them an air of credibility and reasonableness when compared with an expert who does not give an inch. The concessions may sometimes amount more to style than substance, but when a judge is faced with experts offering differing opinions, if there is nothing else to help him discriminate between them the style (if not substance) can make all the difference.

Practice points

- It was invaluable to the experts in this case to have ridden the horse in question. If a case is going to go to trial it is essential that the expert has the best possible information available, for example a site visit rather than relying on plans and photographs, and actually riding the horse in an appropriate case. The author knows of one equestrian expert who never rides the guilty horse. This puts him at a real disadvantage.
- Take care to ensure that an expert is not straying into the judge's fact-finding role, if necessary by asking them to remove value judgments about witness evidence from their reports. However, the expert is sometimes in a good position to say whether a particular part of the evidence of a witness is credible, for example, whether it was possible for the driver in an road traffic accident to have been "doing at least 100 mph".

Nathan Tavares
J.P.I. Law 2017, 1, C1-C3

1.
Relying on *Whippey v Jones [2009] EWCA Civ 452 (2009) 159 N.L.J. 598*.

2.
Sitting as a Deputy High Court Judge.
3.
Following the close of submissions, and prior to the circulation of the judgment in draft form, the judge was provided with an extract from *Clerk and Lindsell on Torts, edited by Mark Simpson QC, Professor Michael Jones and Professor Anthony Dugdale, 20th edn (London: Sweet & Maxwell, 2010), Ch.2, para.52* with the agreement of counsel, which confirmed this simple statement of law.
4.
Smith v Pendergast, *The Times*, 18 November 1984.