VERMONT SUPREME COURT
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Case No. 22-AP-084

Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SEPTEMBER TERM, 2022

Melissa Lenter* v. Clover Acres Livestock Veterinary Services, LLC & Dianne Johnson, DVM	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Civil Division
	}	CASE NO. 240-7-20 Rdcv
	}	Trial Judge: Helen M. Toor

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals from a summary judgment decision in defendants' favor on her negligence complaint. We affirm.

Plaintiff was injured by her horse Emu during an equine competition and sued defendants for negligence. In granting summary judgment to defendants, the court relied on the following undisputed facts. Plaintiff has extensive experience in equine competitions and events, including endurance races. In competitive trail riding events, riders are judged in part on the horse's condition from start to finish. Plaintiff has experience with the use of veterinarians during distance riding events, including bringing her horses to veterinarians for vet checks before and after each event.

In July 2017, plaintiff registered for a fifty-mile endurance ride in West Windsor, Vermont, an event she had participated in before. She executed a release that included the following language:

> [I]n consideration of your accepting this entry, I hereby for myself, my heirs, executors and administrators, waive, release and discharge the Vermont Adaptive Ski and Sport (VASS), ECTRA [(Eastern Competitive Trail Riding Association)], AERC [(American Endurance Ride Conference)], all persons assisting or connected with the ride, and all landowners, their representatives, successors and assigns, from any and all rights, claims, or liability for damage, for any and all injury to me or my property or those arising out of or in connection with my participation in this event. I further agree that I will defend, indemnify and hold harmless the Vermont Adaptive Ski and Sport (VASS), ECTRA, AERC, its members and agents, or any of them against all claims, demands

> and causes of action, including court costs and attorney's fees, directly or indirectly arising from any action or other proceeding brought by me or prosecuted for my benefit contrary to this agreement. This release extends to all claims of every kind and nature whatsoever, whether known or unknown, and I expressly waive any benefits that I may otherwise have under provisions of the law of Vermont relating to the release of unknown claims. I understand that this release constitutes a limitation on my legal rights. The undersigned verifies acceptance of risks and responsibilities for the rider's and horse's condition. . . .
>
> I understand that if the horse I am riding is pulled for metabolic reasons and requires treatment on site or additional recheck by ride vet, this horse may not leave base camp until released by an authorized ride vet.

Defendant Dr. Johnson was the treatment veterinarian for the endurance ride. As such, she was responsible for establishing emergency protocol for riders, coordinating the supply and distribution of bulk materials, and establishing a plan for referring a sick or injured horse to a referral veterinary hospital. Dr. Johnson received a minimal stipend for her role as treatment veterinarian and, if any treatment was required during the endurance ride, she invoiced the rider a fee for the services provided.

Before beginning the ride, plaintiff brought Emu for a pre-ride vet check. The endurance ride included vet checks, which are mandatory holds, approximately every ten-to-twelve miles. Each horse was evaluated to determine if it was "fit to continue." Emu passed the first vet check without incident. Emu passed the second vet check as well but plaintiff became concerned about her horse's behavior. She administered Kaolin-Pectin to Emu and notified officials that she was resigning from the ride. She asked the treatment veterinarian have Banamine available to treat Emu. Plaintiff and Emu were transported to the treatment barn, where they met Dr. Johnson. Plaintiff asked Dr. Johnson to administer Banamine but agreed to the doctor's suggestion to first administer IV fluids. Plaintiff asked that Emu lay down and the doctor agreed. Plaintiff crouched to Emu's right side, within arm's length of the horse's head, and she held Emu's lead line while the doctor attempted to administer the fluids with a catheter. After about one liter of fluids had been administered, Emu had a seizure and rolled over onto plaintiff, breaking her leg. Plaintiff subsequently sued defendants for negligence.

Defendants argued in relevant part that plaintiff's claim was barred by the release she signed. Plaintiff disagreed. She maintained that "substandard veterinary care [was] neither necessary nor an inherent to the activity of competitive trail and endurance riding," and that by signing the release she was not agreeing to waive claims for negligent veterinary care that would result in injury to her. Plaintiff asserted that Dr. Johnson was negligent in allowing her to be near Emu while placing the catheter. She alleged that Dr. Johnson owed her a duty to not place her at risk of injury, and that Dr. Johnson breached that duty by allowing her to be in close proximity to Emu.

The court granted summary judgment to defendants, concluding that plaintiff waived her right to pursue her claim by signing the release set forth above. It described in detail the law governing releases. It agreed with defendants that the release in question was unambiguous and sufficiently specific to bar the negligence claim here. It explained that the release covered "any

and all rights, claims, or liability for damage" and its language regarding the causal nexus mirrored language in other cases where negligence claims were found to be barred. See Douglass v. Skiing Standards, Inc., 142 Vt. 634, 636-37 (1983) (concluding as matter of law that waiver plaintiff signed to enter skiing competition released defendants from liability for negligence even though agreement did not use word "negligence"); see also Provoncha v. Vt. Motorcross Ass'n, 2009 VT 29, ¶ 13, 185 Vt. 473 (relying on Douglass and finding release sufficiently clear so as to bar negligence claim).

The court rejected plaintiff's assertion that the activity at issue here was not covered by the release because it was not part of the actual riding. The court found the language of the release was not limited to injuries from riding a horse but instead reached "any and all rights, claims, or liability for damage, for any and all injury to me or my property or those arising out of or in connection with my participation in this event." The court also rejected plaintiff's argument that the phrase "all persons assisting or connected with the ride" created ambiguity because it did not specifically identify those providing veterinary care. The court found that Dr. Johnson was plainly a "person[] assisting or connected with the ride." It reiterated that the ride included a treatment veterinarian and vet checks approximately every ten-to-twelve miles and that during the event, each horse was evaluated to determine if it was "fit to continue." Participants knew that this was part of the process and that veterinarians were assisting with the ride.

The court was equally unpersuaded by plaintiff's remaining assertion that because Dr. Johnson billed her for the veterinarian care, her claim against the doctor somehow fell outside of the waiver. The court found that the case cited by plaintiff, Economou v. Economou, 136 Vt. 611, 619 (1979), did not support this proposition. In Economou, the Court held that a valid release "is a bar to recovery on the claim released;" it did not hold that a release could not encompass injuries from services associated with the event, as the release expressly provided here. Id. The court found that the fact that Dr. Johnson charged for her services did not mean that she was not "assisting [with] or connected with the ride." Her services were contemplated by and within the scope of the release. Finally, the court noted that plaintiff did not challenge the release on public policy grounds and it agreed with defendant that the release did not violate public policy. The court thus granted summary judgment to defendants. This appeal followed.

Plaintiff argues that the release unambiguously does not bar her claim because it does not specifically list negligence claims or negligence claims based on the conduct of third parties "occurring after participation in the actual endurance ride has concluded" or "the conduct of third parties whose services depend on additional consideration beyond that required for entry into the event." Alternatively, plaintiff contends that the language is ambiguous and must be construed against the drafter.

"We review summary judgment decisions de novo, using the same standard as the trial court . . . ." Morisseau v. Hannaford Bros., 2016 VT 17, ¶ 12, 201 Vt. 313. Summary judgment is appropriate where, giving the nonmoving party the benefit of all reasonable doubts and inferences, "the material undisputed facts show that the moving party is entitled to judgment as a matter of law." Id.; V.R.C.P. 56(a).

We agree with the trial court that the release unambiguously bars plaintiff's negligence claim here. As the trial court explained, a valid contractual limitation on liability creates an absolute bar to a plaintiff's recovery. See Restatement (Third) of Torts: Apportionment Liab. § 2 (2000). "Generally speaking, exculpatory contracts are disfavored, and are subject to close

judicial scrutiny; to be effective, such contracts must meet higher standards for clarity than other agreements, and must pass inspection for negative public policy implications." Provoncha, 2009 VT 29, ¶ 12 (citing Restatement (Third) of Torts: Apportionment Liab. § 2 cmts. d, e). "As with other contract provisions, we interpret those limiting tort liability based on the language of the writing, and where that language is clear, we must implement the intent and understanding of the parties." Thompson v. Hi Tech Motor Sports, Inc., 2008 VT 15, ¶ 17, 183 Vt. 218. A release need not explicitly state that it encompasses negligence claims, but in the absence of such language, "there must be words that convey a similar intent." Id. (citing Douglass, 142 Vt. at 637).

In Douglass, 142 Vt. at 637, we found a release sufficiently clear to release a ski area from liability for negligence even though it did not specifically include the word "negligence." The plaintiff there agreed:

> to release, hold harmless and forever discharge [the defendants] from any and all claims, demands, liability, right or causes of action of whatsoever kind of [sic] nature which [the plaintiff] may have, arising from or in any way connected with, any injuries, losses, damages, suffering . . . which he might sustain as a result of his participation in the competition.

Id. (quotation marks omitted). The plaintiff also "acknowledged that the agreement constituted a binding promise and a covenant on his part to fully discharge [the defendants] from any and all injuries or loss resulting from [his] participation." We found the language of the parties' agreement, including that cited above, "sufficiently clear to show the parties' intent that [the] defendants were to be held harmless for any injuries or damages caused by their own negligence." Id.

We reached a similar conclusion in Provoncha, finding the release at issue "indistinguishable from the release at issue in Douglass." 2009 VT 29, ¶ 13. We found "the form . . . comprehensive as to type of claim—'liability, loss, claims, and demands that may accrue from any loss, damage or injury' " and we concluded that "the causal nexus for the injury—'in anyway arising . . . from any cause what so ever' even more naturally include[d] negligence than Douglass's 'in any way connected with' language." Id. We deemed the release "sufficiently clear as to operate as a release of negligence claims against [the] defendants." Id. In reaching our conclusion, we distinguished Thompson, 2008 VT 15, ¶ 19, where the Court found that a particular release did "not exculpate [the] defendant from liability arising out of its own negligence" but covered only "claims for injuries resulting from dangers inherent to riding a motorcycle." We found the language in Provoncha more specific in its description of the types of claims covered and the causal requirement for the injury. 2009 VT 29, ¶ 13.

We agree with the trial court that the language in the release in the instant case contains the same level of specificity as in Provoncha and Douglass. The release covers "any and all rights, claims, or liability for damages" and "any and all injury to me or my property or those arising out of or in connection with my participation in this event." It also includes the "from any cause whatsoever" language that Provoncha found to be inclusive of negligence claims. See id. ¶ 13.

We reject plaintiff's arguments for the same reasons identified by the trial court. As set forth above, a release does not specifically need to use the word "negligence" to encompass such

claims. The language of the release makes clear that it was not limited only to injuries caused during the actual riding of a horse, as plaintiff asserts. As the treatment vet for the event, Dr. Johnson was plainly "assisting or connected with the ride" as set forth in the waiver. The undisputed facts show that the injury arose out of and in connection with her participation in the event, notwithstanding plaintiff's unsupported assertion to the contrary. The veterinary interaction was an integral part of the event and, indeed, a horse that was "pulled for metabolic reasons and require[d] treatment on site or additional recheck by [the] ride vet . . . [could] not leave base camp until released by an authorized ride vet." Finally, we reject plaintiff's legally unsupported assertion that because the doctor billed plaintiff for her services, that means plaintiff's claim somehow falls outside of the unambiguous language of the waiver.

Having concluded that the waiver unambiguously bars the negligence claim here, we do not address plaintiff's assertion that the language is ambiguous. Summary judgment was properly granted to defendants.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice