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MONTANA SEVENTH JUDICIAL DISTRICT COURT, DAWSON COUNTY

NADINE SWISSE and BRUCE SWISSE,  
husband and wife,

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No. DV 12-121

Plaintiffs,

ORDER GRANTING DEFENDANTS'

v.

MOTION FOR SUMMARY JUDGMENT

CRAIG HUBER and KRISTIE HUBER  
d/b/a CROSS K HORSES,

Defendants.

This action was filed November 8, 2012 against the above Defendants and Cedar Creek Grazing Association. The Court previously dismissed Cedar Creek.

Defendants Hubers moved for summary judgment on the remaining issues and the Motion was argued October 30, 2013, Plaintiffs appearing personally and with their attorney, Paula Saye-Dooper. Defendants did not appear personally but were represented by Ryan J. Gustafson.

The Court has considered the briefs, arguments, pleadings, and applicable law and grants the Defendants' Motion for Summary Judgment for the reasons hereafter stated.

LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment is proper when the pleadings, supporting documentary evidence, admissions in open court, or supporting affidavits show no genuine issues of material fact, and that the moving party is entitled to judgment as a matter of law. Rule 56(c), Montana Rules of Civil Procedure, provides, in pertinent part:

1 "...The judgment sought shall be rendered forthwith if the pleadings, depositions, answers  
2 to interrogatories, and admissions on file, together with the affidavits, if any, show that  
3 there is no genuine issue as to any material fact and that the moving party is entitled to a  
4 judgment as a matter of law..."

5 The moving party must establish both the absence of genuine issues of material fact and  
6 entitlement to judgment as a matter of law. Bruner v. Yellowstone County (1995), 272 Mont. 261, 264,  
7 900 P.2d 901, 903. Once the moving party has met its burden, the opposing party must present material  
8 and substantial evidence, rather than mere conclusory or speculative statements, to raise a genuine issue  
9 of material fact. Gonzales v. Walchuk, (2002) 312 Mont. 240, 243, 59 P.3d 377, 379. "Mere denials will  
10 not prevent an order for summary judgment." Ponderosa Pines Ranch, Inc. v. Hevner, (2002), 311 Mont.  
11 82, 87-88, 53 P.3d 381, 385.

12 The purpose of summary judgment is to eliminate the burden and expense of unnecessary trials.  
13 Hughes v. Pullman, 2001 MT 216, 306 Mont. 420, 36 P.3d 339. However, "all reasonable inferences  
14 which may be drawn from the offered proof must be drawn in favor of the party opposing summary  
15 judgment". Cape v. Crossroads Correctional Center, 2004 MT 265, 323 Mont. 140, 99 P.3d 171. Where  
16 the movant has met its burden of showing that no genuine issues of material fact exist, the opposing party  
17 bears the burden of establishing an issue of material fact. The opposing party's facts must be material and  
18 of a substantial nature, and not fanciful, frivolous, or conjectural. Fleming v. Fleming Farms, Inc., 221  
19 Mont. 237, 717 P.2d 1103 (1986).

20 "If there is any doubt regarding the propriety of the summary judgment motion, it should be  
21 denied." Emery v. Federated Foods, (1993) 262 Mont. 83, 90, 863 P.2d 426, 431.

## 22 FACTS

23 Plaintiff Nadine and Sandy Knight were horseback riding April 8, 2010 at J & A Arena near  
24 Glendive. Nadine was aware of a horse available for sale through Defendants. The horse in question  
25 belonged to Defendant Craig's brother. Craig saddled the horse with Nadine's saddle and blanket and his  
26 tack. Nadine rode the horse without incident in the corral for ten to twenty minutes and then followed  
27 Defendant Kristie down a hill. Before reaching the bottom, Nadine was either bucked from or fell from  
28 the horse receiving injuries. After the incident, Craig rode the horse and intentionally tried to get it to

1 buck. He said it would not but Knight and Nadine said it did or would have if Craig had not prevented it  
2 from doing so.

3 Craig works full-time for the railroad and deals with horses in his spare time. Nadine is an  
4 experienced rider having ridden most her life and barrel racing since approximately 2006. Nadine had  
5 previously purchased a quarter horse from Defendants and was very satisfied with the horse. She had  
6 bought another horse named Rosie for Craig to work with, but he could not calm her down.

7 Plaintiff claims that Hubers were aware Nadine wanted a docile horse for her daughter-in-law,  
8 who was an inexperienced rider and that Hubers represented this horse as being appropriate. Nadine  
9 claims that Hubers misrepresented the horse. Nadine claims that Hubers were negligent in not speaking  
10 to previous owners of the horse and not learning of its history and thus being ignorant of the horse's  
11 propensity to buck. She also claims that Craig, using a snaffle bit, may have contributed to the horse's  
12 bucking since she was not familiar with it.

13 Craig was present when his brother, Chad, bought the horse a couple years earlier from Wayne  
14 Bacon. On the day the horse was picked up, Bacon rode her bareback. The same horse has been ridden  
15 by both Hubers, their eight year old daughter, Craig's brother Chad, and Craig's mother. Craig may have  
16 represented the horse to Nadine as calm and gentle. Craig had ridden the horse for five or six weeks  
17 through calving and branding. There was nothing to indicate that the horse had a tendency to buck or was  
18 otherwise unpredictable. Based on statements by Nadine to him, Craig was aware that she was an  
19 experienced rider who barrel raced and had won prizes.

#### 20 MONTANA EQUINE LAW

21 In 1993 Montana's Legislature in effect codified assumption of risk as a defense to accidents  
22 involving horses, ponies, mules, donkeys, and hinnies. Section 27-1-725, MCA, states that a person is not  
23 liable for damages sustained by another solely as a result of risks inherent in equine activities if those  
24 risks are or should be reasonably obvious, expected, or necessary to persons who engage in equine  
25 activities. Responsibility is limited to negligence that causes a foreseeable injury to a participant. Riding  
26 a horse is an equine activity as defined in 27-1-726(1) and (3)(d).

27 Risks inherent in equine activities for which there is no liability include "dangers or conditions  
28 that are an integral part of equine activities, including but not limited to (a) the propensity of an equine to

1 behave in ways that may result in injury or harm to or the death of persons on or around the equine; (b)  
2 the unpredictability of an equine's reaction to such things as medication; sounds; sudden movement; and  
3 unfamiliar objects, persons, or other animals; (c) hazards, such as surface and subsurface ground  
4 conditions; (d) collisions with other equines or objects; or (e) the potential of another participant to not  
5 maintain control over the equine or to not act within the person's ability.” Section 27-1-726(7).

6 Under § 27-1-727(2), an equine activity sponsor, such as Defendants, is not liable for injuries that  
7 result from an equine activity unless the sponsor “ provided the equipment or tack and the equipment or  
8 tack caused the injury because the equine activity sponsor or equine professional failed to reasonably and  
9 prudently inspect or maintain the equipment; provided the equine and failed to make reasonable and  
10 prudent efforts to determine the ability of the participant to safely engage in the equine activity and the  
11 participant's ability to safely manage the particular equine based on the participant's representations as to  
12 the participant's ability; or the land or facilities were caused by a dangerous latent condition or the  
13 sponsor committed an act or omission that constituted willful or wanton disregard for the safety of the  
14 participant or intentionally injured the participant.”

15 Probably because the law is so clear there has been minimal litigation reaching the Montana  
16 Supreme Court, the leading case being McDermott v. Carie, LLC, 329 Mont. 295 (2005). In that case, the  
17 plaintiff was a guest at a dude ranch. When he attempted to untie a rope from a hitching post, the horse  
18 pulled back tightening a rope that was around his finger and severing the finger. The Supreme Court  
19 notes that there are enumerated risks inherent in equine activities including a horse’s unpredictability to  
20 such things as sudden movement and unfamiliar persons. At page 302 the Court states, “The practical  
21 effect of these statutory provisions is to pronounce that equine activity sponsors do not have a duty to  
22 protect participants from either unavoidable risks, or the inherent risks of equine activities of which the  
23 participant is or should be aware. If injury is due to an inherent risk of equine activities and the participant  
24 expected that risk, then the equine activity sponsor cannot have been negligent--the injury was due to an  
25 unavoidable risk of which the participant was aware, so the sponsor could not have breached any duties to  
26 warn of or eliminate that risk. Thus, so long as the participant expects a risk inherent in equine activities,  
27 pursuant to the statute, the equine activity sponsor may not be held liable for injury suffered as a result of  
28 that risk.” In McDermott, the plaintiff signed an agreement acknowledging that horseback riding involves

1 inherent risks, including the unpredictable nature of horses. While such an agreement is lacking in this  
2 case, there is no doubt, based on the testimony of Nadine and others, that Nadine was an experienced  
3 horse rider who is familiar with the unpredictability of horses and that risks are associated with them.  
4 The Plaintiff surmises that the headstall and bit used by Craig or the strange saddle and blanket may have  
5 caused the horse to buck. The only person to claim it bucked was Nadine. Nadine has fallen from and  
6 been bucked from horses herself. There is no evidence that the hill that Nadine was descending contained  
7 any kind of latent condition such as a covered hole. There is no evidence that the Defendants were aware  
8 of the horse's propensity to buck, if in fact it did. There is no evidence that Craig was not sufficiently  
9 aware of the horse over the one to two years that his brother owned it and the weeks that he rode it that  
10 would indicate he was insufficiently familiar with the horse to allow a potential buyer such as Nadine  
11 with her experience to safely ride the horse. The horse was not being ridden by Nadine's daughter-in-  
12 law, who may have been inexperienced. It was ridden by Nadine, and the facts and applicable law are  
13 analyzed from her perspective, not the daughter-in-law's. There are no genuine issues of material fact.

14 For the above reasons, Defendants' Motion for Summary Judgment is granted and Defendants are  
15 awarded their costs.

16 Judgment shall be entered for the Defendants and further proceedings in this matter are  
17 dismissed.

18 The Clerk of Court is directed to file this Order and provide copies to counsel of record.

19 DATED this 5 day of November, 2013.

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22 RICHARD A. SIMONTON  
23 District Judge  
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## CERTIFICATE OF SERVICE

This is to certify that an exact and true copy of the foregoing ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT was duly served by mail upon the parties or their attorneys of record at the following addresses this 6 day of November, 2013.

Tammara Helmuth  
Clerk of District Court

\_\_\_\_\_  
Deputy Clerk of Court

Paula Saye-Doooper  
Attorney at Law  
175 N 27<sup>th</sup> St. , Suite 1302  
Billings, Mt 59101

Randall G. Nelson  
Attorney at Law  
2619 St. Johns Ave., Suite E  
Billings, MT 59102