

DISTRICT COURT

NEGLIGENCE: No substantive evidence that driver who struck horse was not proceeding prudently . . . summary judgment for Defendant . . . Baugh.

Joseph Dooley was driving on King Ave. W., Billings, at 9:45 p.m. 5/19/08. He testified in his deposition that he was traveling approximately 45 and the speed limit is 60, and that he saw out of the corner of his eye what was later determined to be a horse coming from the side of the road and they attempted to occupy the same space at the same time. (The horse was not killed instantly, but was put down at the scene.) The horse's owner, Alex Hernandez, has not provided any contradictory evidence. He seems to argue that it is a fact question as to whether Dooley was proceeding in a reasonable, prudent, and/or cautious manner in an area which is allegedly classified as open range, although it is not disputed that his horses were within a fenced pasture. Whether fencing a pasture negates the classification and purpose of open range is a question which need not be answered at this time. Hernandez has presented only sheer speculation that Dooley was proceeding in an unreasonable and imprudent manner. Therefore, the Court concludes, based on the un rebutted evidence, that he was proceeding in a reasonable and prudent manner. Hernandez seems to hang his hat on Trooper Sampson's statement that all accidents are avoidable, concluding that it is a question for the jury as to whether Dooley was proceeding in a reasonable and prudent manner, but without any substantive, non-speculative evidence contradicting Dooley's contentions as to how the accident occurred. Summary judgment for Dooley.

Hernandez v. Dooley, Yellowstone DV-08-1201, 7/13/09.

Amanda Lenning (Patten, Peterman, Bekkedahl & Green), Billings, for Hernandez; Jared Dahle (Nelson & Dahle), Billings, for Dooley (Mountain West Farm Bureau Mutual Ins.).