IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 8, 1999 Session

JUDY FRIEDLI, ET AL. v. HENRY FRANK KERR, ET AL.

Appeal from the Circuit Court for Davidson County
No. 97C-3733 Carol Soloman, Judge

No. M1999-02810-COA-R9-CV - Filed February 23, 2001

This appeal involves two passengers in a horse-drawn carriage who were injured after the driver lost control of the horse on the streets of downtown Nashville. The passengers filed a negligence action in the Circuit Court for Davidson County against the owner of the carriage business and the driver of the carriage. They asserted that the carriage business owed them the same heightened duty of care that common carriers and amusement ride operators owe to their passengers. The owner of the carriage business responded that he was immune from suit under Tennessee's equine liability statutes. Following a hearing on the parties' respective motions for partial summary judgment, the trial court held that the carriage business was not immune from suit and that it owed its passengers the same heightened duty of care expected of common carriers and operators of amusement rides. The owner of the carriage business sought and received the trial court's and this court's permission to pursue an interlocutory appeal. We have determined that the trial court correctly decided that the carriage business was not immune from suit under Tennessee equine liability statutes but that the trial court erred by holding that the carriage business owed the same heightened duty to its passengers that common carriers and amusement ride operators owe to their passengers.

Tenn. R. App. P. 9 Interlocutory Appeal; Judgment of the Circuit Court Affirmed in Part and Reversed in Part

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., M.S., and WILLIAM B. CAIN, J., joined.

Thomas M. Donnell, Jr. and Jennifer A. Lawrence, Nashville, Tennessee, for the appellants, Henry Frank Kerr d/b/a Nashville Carriage Service, II, and Christopher Lee Edwards.

Barbara J. Moss and Nancy A. Vincent, Nashville, Tennessee, for the appellees, Judy Friedli and David H. Friedli.

Douglas Berry, Nashville, Tennessee, for the appellee, Principal Mutual Life Insurance Company.

OPINION

On the evening of December 13, 1996, Judy and David Friedli celebrated their wedding anniversary by dining with two friends at the Wildhorse Saloon on Second Avenue in Nashville. After dinner, the Friedlis and their friends decided to tour downtown Nashville in a horse-drawn carriage. They chose a carriage owned by Henry F. Kerr who was doing business as Nashville Carriage Service II. Christopher Edwards was at the reins, and the carriage was being drawn by a horse named Talon that Mr. Kerr had purchased in July 1996.

The passengers boarded the carriage in front of the Hard Rock Café at the corner of Broadway and Second Avenue. During the carriage ride, a noise sounding like a loud "pop" or "crack" frightened Talon. He lunged forward, broke his singletree,[1] and jumped out of the carriage's shafts. Talon continued to gallop along, pulling the carriage behind him because he was still attached to the carriage by its corner straps. The noise created by the carriage shafts dragging along the pavement frightened the horse even more. Despite Mr. Edwards' best efforts, he was unable to bring Talon under control. The carriage eventually overturned, spilling its occupants onto the ground. When the carriage overturned, Talon broke free and continued galloping along his customary route.

On December 1, 1997, the Friedlis filed suit in the Circuit Court for Davidson County seeking damages from Mr. Kerr and Mr. Edwards. They asserted that the carriage service was a common carrier or an amusement ride and, therefore, that Mr. Kerr owed them a heightened duty of care. Mr. Kerr responded that he was entitled to immunity from the Friedlis' claims under Tennessee's equine liability statutes, Tenn. Code Ann. §§ 44-20-101, -105 (1993). Both the Friedlis and Mr. Kerr filed motions for partial summary judgment. Following a hearing on these motions, the trial court determined that Mr. Kerr was not entitled to immunity and that Mr. Kerr owed the Friedlis the same heightened duty of care that common carriers and operators of amusement rides owed to their passengers. The trial court later granted Mr. Kerr's application for permission to pursue a Tenn. R. App. P. 9 interlocutory appeal, and, on May 10, 1999, we granted Mr. Kerr permission to appeal.

I.
IMMUNITY UNDER TENNESSEE'S EQUINE LIABILITY STATUTES

We turn first to Mr. Kerr's affirmative defense based on Tennessee's equine liability statutes. Mr. Kerr asserts that he is an "equine activity sponsor" and is, therefore, entitled to the immunity from suit provided in Tenn. Code Ann. § 44-20-103. Based on the undisputed evidence regarding Mr. Kerr's business and the circumstances surrounding the Friedlis' injuries, we have determined, as a matter of law, that Mr. Kerr cannot claim the benefit of Tenn. Code Ann. § 44-20-103 for three

[1] A singletree is a horizontal crossbar, pivoted at the middle, to which the traces are fastened, giving freedom of movement to the shoulders of the horse or other draught-animal.

reasons. First, he is not an "equine activity sponsor." Second, Mr. Kerr's business is not an "equine activity." Finally, the Friedlis were not "participants" engaging in an "equine activity" when they were injured.

A.

Mr. Kerr's immunity defense is entirely statutory. Thus, in order to take advantage of the defense, he must demonstrate that he should be included among the class of persons that the General Assembly intended to benefit when it enacted the equine liability statutes. As we consider the equine liability statutes in light of Mr. Kerr's arguments, we must keep in mind that our role is to ascertain and to give effect to the General Assembly's intent as reflected in the statute's language. *Lavin v. Jordon*, 16 S.W.3d 362, 365 (Tenn. 2000). We must take care to avoid unduly restricting the statute's coverage or expanding the statute beyond its intended scope. *Blankenship v. Estate of Bain*, 5 S.W.3d 647, 651 (Tenn. 1999); *Hathaway v. First Family Fin. Servs., Inc.*, 1 S.W.3d 634, 640 (Tenn. 1999).

Our analysis must begin with the language of the statute itself. *Riggs v. Burson*, 941 S.W.2d 44, 54 (Tenn. 1997); *Realty Shop, Inc. v. RR Westminister Holding, Inc.*, 7 S.W.3d 581, 602 (Tenn. Ct. App. 1999). We must approach the text with the belief that the General Assembly chose its words carefully, *Tidwell v. Servomation-Willoughby Co.*, 483 S.W.2d 98, 100 (Tenn. 1972), and that the statute says what it means and means what it says. *Mooney v. Sneed*, 30 S.W.3d 304, 307 (Tenn. 2000); *Berryhill v. Rhodes*, 21 S.W.3d 188, 195 (Tenn. 2000); *BellSouth Telecomms., Inc. v. Greer*, 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997). Accordingly, we must construe statutes as we find them. *Watts v. Putnam County*, 525 S.W.2d 488, 494 (Tenn. 1975); *Pacific Eastern Corp. v. Gulf Life Holding Co.*, 902 S.W.2d 946, 954 (Tenn. Ct. App. 1995).

Our search for the meaning of statutory language must always begin with the statute itself. *Neff v. Cherokee Ins. Co.*, 704 S.W.2d 1, 3 (Tenn. 1986); *Winter v. Smith*, 914 S.W.2d 527, 538 (Tenn. Ct. App. 1995). This language draws its meaning from the context of the entire statute and from the statute's general purpose. *Wachovia Bank of North Carolina, N.A. v. Johnson*, 26 S.W.3d 621, 624 (Tenn. Ct. App. 2000); *BellSouth Telecomms., Inc. v. Greer*, 972 S.W.2d at 673. The words and phrases used in a statute should be given their natural and ordinary meaning, *Berryhill v. Rhodes*, 21 S.W.3d at 195; *Gleaves v. Checker Cab Transit Corp.*, 15 S.W.3d 799, 802 (Tenn. 2000), unless the General Assembly used them in a specialized or technical sense. *Cordis Corp. v. Taylor*, 762 S.W.2d 138, 139-40 (Tenn. 1988). When the meaning of statutory language is clear, the courts should interpret and apply it as written. *Hawks v. City of Westmoreland*, 960 S.W.2d 10, 16 (Tenn. 1997); *United Steelworkers of Am. v. Tennessee Air Pollution Control Bd.*, 3 S.W.3d 468, 472 (Tenn. Ct. App. 1998).

B.

Tennessee's equine liability statutes are the product of a nationwide effort beginning in the late 1980s to insulate the providers or sponsors of equine activities from liability. They are the

equine industry's response to the growing amount of litigation arising out of injuries or deaths of persons participating in equine activities and to the concomitant increases in the cost of insurance. Terence J. Centner, *The New Equine Liability Statutes*, 62 Tenn. L. Rev. 997, 1002-05 (1995); Sharlene A. McEvoy, *The Rise of Equine Activity Liability Acts*, 3 Animal L. 201, 214 (1997). In theory, their purpose is to codify the doctrine of assumption of the risk insofar as it applies to persons participating in equine activities. Krystyna M. Carmel, *The Equine Activity Liability Acts: A Discussion of Those in Existence and Suggestions for a Model Act*, 83 Ky. L.J. 157, 166 (1995).

Tennessee's equine liability statutes were enacted in 1992.[2] While the legislative debates reveal an alarmingly cavalier attitude about the impact of the statutes, the statutes themselves reflect the General Assembly's awareness that "the state and its citizens derive numerous economic and personal benefits" from equine activities. Tenn. Code Ann. § 44-20-101. Accordingly, despite its awareness of "risks involved in [equine] activities," the General Assembly deemed it expedient to "encourage equine activities by limiting the civil liability of those involved in such activities." Tenn. Code Ann. § 44-20-101. Thus, from and after July 1, 1992, "equine activity sponsors," "equine professionals," and others have enjoyed qualified immunity from suit in Tennessee.

The immunity provision operates in a straightforward manner. With certain statutory exceptions not relevant to this appeal,[3] Tenn. Code Ann. § 44-20-103 provides that an "equine activity sponsor" or an "equine professional" shall not be liable for the injury or death of a "participant" resulting from the inherent risks of "equine activities." Thus, determining whether a particular person is entitled to the qualified immunity afforded by Tenn. Code Ann. § 44-20-103 requires answering the following three questions: (1) Is the person seeking immunity as an "equine activity sponsor" or an "equine professional"? (2) Was the activity that caused the injury or death an "equine activity"? and (3) Was the injured person a "participant" in an equine activity? Immunity under Tenn. Code Ann. § 44-20-103 will not attach unless the answer to each of these questions is yes.

The equine liability statutes undertake to define the operative terms in each of these questions. With regard to the terms relevant to this appeal,[4] Tenn. Code Ann. § 44-20-102(4) defines an "equine activity sponsor" as an "individual . . . which sponsors, organizes, or provides the facilities for an equine activity . . . and operators, instructors, and promoters of equine facilities." Tenn. Code Ann. § 44-20-102(3) defines "equine activity" broadly. The definition contains a listing of specific activities included within the terms "equine activity." Included among this list are "[r]ides, trips, hunts, or other equine activities of any type, however informal or impromptu, that are sponsored by an equine activity sponsor." Tenn. Code Ann. § 44-20-102(3)(E).

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[2] Act of Apr. 28, 1992, ch. 974, 1992 Tenn. Pub. Acts 986.

[3] Tenn. Code Ann. § 44-20-104.

[4] We need not parse the statutory definition of "equine professional" because Mr. Kerr insists in his brief that he is not "engaged in such a business."

Tenn. Code Ann. § 44-20-102(7) defines a "participant" as "any person . . . who engages in an equine activity." Finally, Tenn. Code Ann. § 44-20-102(1)(A) defines "engages in an equine activity" as "riding, training, assisting in medical treatment of, driving, or being a passenger upon an equine, whether mounted or unmounted or any person assisting a participant or show management." As we understand the definition of "participant,"[5] being a participant requires actually riding on the equine or, at least, having some control over the equine. Apart from participants who are "upon" an equine, all the activities included in the statutory definition of "engages in an equine activity" appear to require some ability to control the animal. From a policy perspective, coupling proximity[6] and ability to control in the definition of "engages in an equine activity" is consistent with the principle that it would be unfair to truncate negligence claims by persons with no ability to protect themselves from injury. *Bothell v. Two Point Acres, Inc.*, 965 P.2d 47, 53-54 (Ariz. Ct. App. 1998).

There are no Tennessee cases to guide our determination of whether a business that provides pleasure rides in a horse-drawn carriage on a public street is entitled to qualified immunity from negligence claims under Tenn. Code Ann. § 44-20-103.[7] Moreover, even though approximately forty states have enacted equine liability statutes, our research has produced no case directly addressing the issue. Nevertheless, a textual reading of the plain meaning of Tennessee's equine liability statutes permits only one conclusion. Mr. Kerr is not entitled to immunity from the Friedlis' negligence claims.

Our conclusion that Mr. Kerr is not entitled to Tenn. Code Ann. § 44-20-103's qualified immunity rests on three grounds. First, the Friedlis were not "engag[ing] in an equine activity" and, consequently were not "participants" as defined in Tenn. Code Ann. § 44-20-102(7). The undisputed facts show that they were only riding as passengers in the horse-drawn carriage while Mr. Edwards was driving it. Thus, the Friedlis were not "riding, training, assisting in medical treatment of, driving, or being a passenger upon an equine, whether mounted or unmounted"[8] when they were injured.

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[5]We exclude those persons who are assisting a participant or the show management because Mr. Kerr does not insist that he was engaging in these activities.

[6]Tenn. Code Ann. § 44-20-102(1)(B) excludes spectators from the scope of "engages in an equine activity" as long as the spectators are not in an "unauthorized area" or "in immediate proximity to the equine activity."

[7]We have found only one Tennessee case interpreting the Tennessee Equine Activities Liability Act. In that case, an Eastern Section panel of this court upheld the trial court's determination that a summer camp, its riding instructors, and the stable that provided the horses were immune from a negligence action brought on behalf of a child who was injured while riding a horse at summer camp. *Cave v. Davey Crockett Stables*, No. 03A01-9504-CV-00131, 1995 WL 507760, at *1, 4 (Tenn. Ct. App. Aug. 29, 1995) (No Tenn. R. App. P. 11 application filed).

[8]In this context, the only sensible construction of the words "mounted or unmounted" in Tenn. Code Ann. § 44-20-102(1)(A) is that they modify the preceding phrase "being a passenger upon an equine." They cannot reasonably be construed to create a separate category of activities that constitute engaging in an equestrian activity.

Second, Mr. Kerr's carriage business was not an "equine activity" as defined in Tenn. Code Ann. § 44-20-102(3). Equine activities include "[r]ides, trips, hunts, or other equine activities of any type, however informal or impromptu, that are sponsored by an equine activity sponsor." Tenn. Code Ann. § 44-20-102(3)(E).[9] This rather circular[10] definition conveys more than one meaning. Arguably, it could include any activity involving an equine. It could also be construed less broadly because the General Assembly may not have intended to grant qualified immunity to a tortfeasor whenever the tortious activity somehow involves an equine.

Because of these two possible constructions of Tenn. Code Ann. § 44-20-102(3)(E), we turn to other familiar canons of statutory construction. Legislative history and the legislative debates can on occasion provide insight into the purpose of a statute. *McCoy v. T.T.C. Illinois Inc.*, 14 S.W.3d 734, 738 (Tenn. 2000); *Gragg v. Gragg*, 12 S.W.3d 412, 415 (Tenn. 2000). Regrettably, reviewing the General Assembly's discussions regarding these statutes is of no practical assistance.[11]

We may also look to other statutory provisions for guidance under the time-honored rule that statutes relating to the same subject should be construed in pari materia for the purpose of advancing their common purpose and intent. *Mandela v. Campbell*, 978 S.W.2d 531, 534 (Tenn. 1998); *Carver v. Citizen Utils. Co.*, 954 S.W.2d 34, 35 (Tenn. 1997). Thus, in order to construe the phrase "equine activity," we may look to the definition of the phrase "engages in equine activity." We have already determined that the phrase "engages in an equine activity" is not sufficiently broad to encompass taking pleasure ride as a passenger in a horse-drawn carriage. In view of this conclusion, we cannot think of a reason why the General Assembly would have intended the phrase "equine activity" to apply to virtually any activity in which a horse was involved. Thus, we conclude that the phrase "equine activity" does not including riding as a passenger in a horse-drawn carriage.

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[9] Obviously, Mr. Kerr's carriage business does not involve an equine show, competition or parade; equine training or teaching; boarding equines; permitting any person to ride, inspect, or evaluate an equine; or placing or replacing horseshoes on an equine. Tenn. Code Ann. § 44-20-102(3)(A)-(D), (F).

[10] The term "equine activities" forms part of the definition of "equine activity."

[11] The record contains transcripts of the committee and floor debates regarding the equine liability statutes. These transcripts contain scant discussion regarding the purpose or scope of these statutes. Instead the legislators' comments were often jocular in tone or betrayed confusion regarding the bill's contents or purposes. For example, during the floor debate of the House of Representatives, Representative Michael Kernell of Memphis wanted to know "[i]s there any liability if these people are just horsing around?" During the House Judiciary Committee's consideration of the bill, Chairman Frank Buck of Dowelltown commented "you're not exempting the negligent people, but any action of the horse, as horses be the ones assuming the risk, is that right?" The bill's sponsor, Representative Tommy Head of Clarksville, responded "[j]ust a negligent horse, Mr. Chairman." When the Senate initially debated the bill on the floor, Senator Randy McNally of Oak Ridge inquired whether the bill had anything "to do with immunity for the hackney ponies or robotic jockeys . . . ." The bill's sponsor, Sen. Carl Koella of Maryville replied "[n]o, no, robotic senators, either." Although the Friedlis assert that this last exchange shows a legislative intent to exclude horse-drawn carriages from the bill, we cannot in good conscience take any of the legislators' comments seriously enough to affect our interpretation of the statutes.

The third basis for our conclusion that Mr. Kerr is not entitled to immunity under Tenn. Code Ann. § 44-20-103 is that he is not an "equine activity sponsor." Clearly, he is not an operator, instructor, or promoter of an equine facility. Moreover, because we have determined that his business is not an "equine activity," it follows that he does not sponsor, organize, or provide the facilities for an equine activity. We recognize that the definitions of "equine activity" and "equine activity sponsor" are circular to the extent that the definition of each mentions the other.[12] Nevertheless, reading the statute as a whole we are satisfied that the General Assembly did not intend the definition of equine activity sponsor to cover businesses like Mr. Kerr's. Accordingly, we hold that the trial court correctly determined that Mr. Kerr cannot claim immunity under Tenn. Code Ann. § 44-20-103 from the Friedlis' negligence claim.

II.
MR. KERR'S STANDARD OF CARE

Mr. Kerr also asserts that the trial court erred by determining that he owes his customers the same heightened standard of care that common carriers and operators of amusement rides owe to their passengers. We agree and, therefore, hold that Mr. Kerr should be held only to the ordinary duty of care.

A.

The existence of a duty owed to the plaintiff by the defendant is a necessary ingredient in every negligence action. *McClenahan v. Cooley*, 806 S.W.2d 767, 774 (Tenn. 1991); *Shouse v. Otis*, 224 Tenn. 1, 7, 448 S.W.2d 673, 676 (1969); *White v. Metropolitan Gov't*, 860 S.W.2d 49, 51 (Tenn. Ct. App. 1993). All persons have a duty to use reasonable care in light of the surrounding circumstances to refrain from conduct that could foreseeably injure others. *Turner v. Jordan*, 957 S.W.2d 815, 818 (Tenn. 1997); *Pittman v. Upjohn Co.*, 890 S.W.2d 425, 433 (Tenn. 1994); *Dooley v. Everett*, 805 S.W.2d 380, 384 (Tenn. Ct. App. 1990). Since reasonable care is a flexible concept, this court has recognized that some occasions and circumstances may require a higher degree of care than others. *Phelps v. Magnavox Co.*, 497 S.W.2d 898, 906 (Tenn. Ct. App. 1972); *Fortune v. Holmes*, 48 Tenn. App. 497, 507, 348 S.W.2d 894, 899 (1960).

The existence and scope of a defendant's duty are questions of law to be determined by the court. *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89 (Tenn. 2000); *Rice v. Sabir*, 979 S.W.2d 305, 309 (Tenn. 1998). Summary judgments provide an appropriate way for resolving matters that can be decided based on legal issues alone. *Fruge v. Doe*, 952 S.W.2d 408, 410 (Tenn. 1997); *Basily v. Rain, Inc.*, 29 S.W.3d 879, 882 (Tenn. Ct. App. 2000). Accordingly, when the material facts are undisputed, a summary judgment is the appropriate vehicle for determining the scope of a

[12] As mentioned previously, the definition of equine activities includes certain events sponsored by an "equine activity sponsor," Tenn. Code Ann. § 44-20-102(3)(E), and an "equine activity sponsor" "sponsors, organizes, or provides the facilities for an equine activity." Tenn. Code Ann. § 44-20-102(4).

defendant's duty. *Dillard v. Vanderbilt Univ.*, 970 S.W.2d 958, 960 (Tenn. Ct. App. 1998); *Nichols v. Atnip*, 844 S.W.2d 655, 658 (Tenn. Ct. App. 1992).

B.
THE APPLICABILITY OF A COMMON CARRIER'S DUTIES

Common carriers owe a heightened duty of care to their passengers. *White v. Metropolitan Gov't*, 860 S.W.2d at 52. Consistent with the practical conduct of their business, they must exercise the utmost diligence, skill, and foresight, to provide for their passengers' safety. *Schindler v. Southern Coach Lines, Inc.*, 188 Tenn. 169, 173-74, 217 S.W.2d 775, 778-79 (1949); *Memphis St. Ry. Co. v. Cavell*, 135 Tenn. 462, 465, 187 S.W. 179, 180 (1916); *Henshaw v. Continental Crescent Lines, Inc.*, 499 S.W.2d 81, 86 (Tenn. Ct. App. 1973). Of course, passengers must still exercise ordinary care for their own safety. *Schindler v. Southern Coach Lines, Inc.*, 188 Tenn. at 177, 217 S.W.2d at 779; *Gray v. Brown*, 188 Tenn. 152, 157, 217 S.W.2d 769, 771 (1948).

Under the common law, common carriers are persons who hold themselves out to the public as engaged in the business of transporting persons or property from place to place, and offering these services to all persons, "with the result that [they] may be held liable for refusal, if there is no valid excuse, to carry for all who apply." *McGregor v. Gill*, 114 Tenn. 521, 524, 86 S.W. 318, 319 (1905); *Brown v. Allright Auto Parks, Inc.*, 61 Tenn. App. 543, 553-54, 456 S.W.2d 660, 665 (1970); 2 Stuart M. Speiser et al., *The American Law of Torts* § 9:29, at 1182 (1985) [hereinafter "*American Law of Torts*"]. Because the legal concept of common carriers predates widespread mechanized transport, the original carriers relied upon animal, oar or wind power. 3 Fowler V. Harper et al., *The Law of Torts* § 16.14, at 506-07 (2d ed. 1986); 2 *American Law of Torts* § 9:29, at 1181.

Tennessee also has a statutory definition of "common carrier." In a part of the Code entitled "Jitney[13] Service," the terms is defined, in part, as "[a]ny person operating for hire any public conveyance propelled by steam, gasoline, electricity, or other motive power,[14] for the purpose of affording a means of street transportation similar to that ordinarily afforded by street railways (but not operated upon fixed tracks) by indiscriminately accepting and discharging such persons as may offer themselves for transportation along the course of operation." Tenn. Code Ann. § 65-19-101 (1993). The statute's definition is somewhat narrower than that of the common law because it does not include carriers that use non-mechanical power, such as that of a horse. *City of Memphis v. State*, 133 Tenn. 83, 93, 179 S.W. 631, 634 (1915). However, the statute's function is to permit incorporated cities and towns to license, regulate and tax jitney businesses. Tenn. Code Ann. §§ 65-19-102, -106 (1993); *City of Memphis v. State*, 133 Tenn. at 95, 179 S.W. at 634-35; *Memphis St. Ry. Co. v. Rapid Transit Co.*, 133 Tenn. 99, 103, 179 S.W. 635, 636-37 (1915). Thus, we do not

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[13] A jitney is "[a]n omnibus or other motor vehicle which carries passengers for a fare, orig. five cents." 8 *Oxford English Dictionary* 244 (2d ed. 1989).

[14] Motive power is "the power acting upon matter to move it," or "the mechanical energy (as steam, electricity, air, etc.) used to drive machinery." 9 *Oxford English Dictionary* 1132 (2d ed. 1989).

believe that this statute changes the common law definition of common carriers where it concerns negligence causes of action.

Nevertheless, Mr. Kerr's carriage business in downtown Nashville is not a common carrier for two reasons. First, his carriages do not transport passengers from place to place. Rather, they take passengers on pleasure tours of the city. These tours are generally round-trips that return passengers to the place where they were originally picked up. Thus, the tours do not transport passengers from one place to another. Second, Mr. Kerr is not under a common-law or statutory obligation to transport all persons desiring to ride in one of his carriages. He may refuse to serve persons seeking carriage rides without penalty because they are not relying on his carriages to provide them with transportation from place to place. Accordingly, we have concluded that the trial court should not have imposed the same heightened duty on Mr. Kerr that the law imposes on common carriers.

C.
THE APPLICABILITY OF AN AMUSEMENT OPERATOR'S DUTIES

Tennessee courts have held operators of amusement park rides to the same heightened duty applied to common carriers. These decisions, however, have invariably involved mechanical amusement rides. *E.g., Loope v. Goodings Million Dollar Midways, Inc.*, 553 S.W.2d 573, 574 (Tenn. 1977); *Tennessee State Fair Ass'n v. Hartman*, 134 Tenn. 159, 160-63, 183 S.W. 735, 735-36 (1916); *Lyons v. Wagers*, 55 Tenn. App. 667, 673-75, 404 S.W.2d 270, 273-74 (1966); *Banner v. Winton*, 28 Tenn. App. 69, 72-73, 186 S.W.2d 222, 223 (1944). The rationale underlying these decisions was that unusual risks inhere in mechanical amusement park rides and, therefore, that amusement ride operators should make their rides as safe as possible with proper inspection, maintenance and repair. *Tennessee State Fair Ass'n v. Hartman*, 134 Tenn. at 163, 183 S.W. at 736; *Lyons v. Wagers*, 55 Tenn. App. at 676, 404 S.W.2d at 274; *Banner v. Winton*, 28 Tenn. App. at 73, 186 S.W.2d at 223.

Tennessee courts have not yet determined whether the operator of a business that provides pleasure rides in horse-drawn carriages on public streets should be held to the same standard of care as operators of mechanical amusement rides. We have determined that there are two reasons why the heightened duty of operators of mechanical amusement rides should not be imposed on operators of horse-drawn carriages. First, the conduct of horses, even when properly selected, trained, and handled, are inherently less controllable than properly maintained mechanical rides. Second, because of the unpredictability of domesticated animals even in the best of circumstances, no amount of diligence, skill, and foresight of a person handling a horse can minimize the risk of harm in the same way that inspection, maintenance, and repair can reduce the risk of harm to passengers on mechanical amusement devices. The conduct of domesticated animals is far less predictable than the operation of properly-maintained machinery. Accordingly, we have concluded that the trial court erred by holding that Mr. Kerr owed the same heightened duty to his passengers that operators of amusement rides owe to their customers.

III.

We affirm the denial of Mr. Kerr's motion for partial summary judgment based on his claimed Tenn. Code Ann. § 44-20-103 immunity and reverse the partial summary judgment determining that Mr. Kerr should be held to the same heightened duty expected of common carriers and operators of amusement rides. We remand the case to the trial court for further proceedings consistent with this opinion, and we tax the costs of this appeal in equal proportions to David and Judy Friedli and Henry Frank Kerr and his surety for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., JUDGE