THE HIGH COURT

2016 No. 4816 P.

BETWEEN

AISLING BEGADON

PLAINTIFF

AND

LAOIS HUNT CLUB LIMITED

AND

JAMES FERNEY

DEFENDANTS

JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 17th day of May, 2019

1. The plaintiff is an experienced horse rider and her date of birth 1st February, 1983. On 8th March, 2014, the plaintiff paid a levy to join a day's hunting with the Laois Hunt Club Limited and brings her proceedings claiming damages in respect of an incident which occurred on the lands of the second named defendant at Ballygeehan, Ballyacolla in the county of Laois. The said defendant was the owner, occupier and manager of the said lands,

2. The plaintiff had successfully traversed a river on the lands of the second named defendant and this led into a field with a whitethorn tree obstacle, on the other side of which were brambles and a fall-away portion. The plaintiff made the decision to jump this particular obstacle and the horse's feet got caught in the brambles causing the horse to roll on top of the plaintiff. The plaintiff suffered a severe back injury. Her claim is that this particular obstacle constituted a hazard which was foreseeable, in relation to which she ought to have been advised not to jump that particular obstacle.

3. Her claim is that the defendants did not take any reasonable care for her safety, failed to take any adequate precautions in terms of safety, examination or other measures, caused and/or her permitted on obstruction/danger which they have may or ought to have known the participant would have jumped over and failed to have adequate personnel or procedures in place. A full defence was filed pleading that any act or omission on the part of the defendants, their servants or agents was not sufficiently proximate to the alleged acts or omissions. It is expressly denied that she was required to jump the particular obstacle to enable her to continue with the hunt and that on the contrary, the Field Master of the hunt, having inspected the said obstacle, instructed the field not to jump it and led the hunt away from same. It is alleged that the plaintiff voluntarily assumed the risk of jumping the said obstacle of her own volition and that she deliberately ignored the instruction of the Field Master.

4. A plea of contributory negligence is also made. It is alleged that she jumped of her own volition, she failed to stay behind the Field Master and follow his line and that she disregarded the rest of the field who were led away from the particular obstacle in question, and that she jumped an obstacle which was not part of the hunt route, failing to have regard to her own previous experience, thereby exposing her to a risk of injury of which she knew or ought to have known and that she failed to have any or any due regard for her own safety. It is alleged that she failed to adhere to hunting etiquette and voluntarily assumed the risk.

Evidence of the Plaintiff

5. The plaintiff said that at 2:30pm on the day of the accident, after one and a half hours riding, she was near the back of the hunt and she thought that people were queuing up to jump the particular obstacle. A third party invited her to go first, but after she jumped to the left hand side there was a heap of brambles and her horse went into these going forward, pulling her forward and that the horse came down on top of her. She knew that she was seriously injured as she could only take shallow breaths and she knew that her teeth were damaged. She confirmed that she was wearing every piece of essential safety equipment including gaiters, a helmet and jodhpurs. Despite her requests that she ought not be moved she was physically lifted up and taken across the river and had to walk a quarter of mile before she reached a jeep belonging to a member of her family.

6. The plaintiff agreed that she was an avid hunt follower, and that she had broken in the mare she was riding and that she was an experienced rider but she thought that this particular obstacle looked like the route she was to follow and there was no one there to tell her that this was not the case.

7. The plaintiff agreed that the Field Master goes out front wearing a red coat, followed by the rest of the hunt and she further agreed that one does not pass him and that where he goes, the riders follow. The distinction between show jumping and cross country riding was discussed with her where one could walk the course in advance but it was put to her that fox hunting was unpredictable. The plaintiff believed that a person ought to be told about a danger and she accepted that her obligation was to keep up with the hunt insofar as she could.

8. The plaintiff's evidence was that she did not hang back in the hunt and she believed that her mare listened to her and that she was cantering into the jump, counting her rhythm into it and she was going to take a direct line into it. She believed that often red tape would be used and that there is a certain amount of predictability in this day and age. She said she did make an informed decision as whether to jump or not and she confirmed her life work as a pony club instructor teaching children and getting them ready for tests in terms of hunt etiquette. She said she was counting down her strides as she approached this jump and that she was well over it but then saw the brambles. She confirmed that she believed she ought not to have been moved in the manner applied and that an ambulance could have accessed the locus of the accident where she was.

Evidence of Commandant Derek Connell

9. The witness confirmed that he has been an ex-Irish Army horse coach and national showjumper, and he was aware that the plaintiff was an experienced rider. He did indicate that the plaintiff's mare had not done a huge amount of hunting and he said that a horse could have done ten years of hunting, twenty times a season and could still be an unsuitable horse and confirmed further that there was a certain amount of unpredictability in hunting.

10. This witness stressed that they were a group of people at the particular obstacle and that the Field Master ought to have filtered the message back not to jump the particular obstacle in question. He said there would no obligation to have a tape at the site. He

said that possibly there could have been a red flag put at the site to warn people. He noted that the Field Master ought to or could have told one of his subordinates to stay at that point to stop people jumping that obstacle and he said that to go around that obstacle was unsafe. His view was that the helpers at the hunt ought to have indicated that the riders ought not jump the particular obstacle, that there was an obvious danger and that it was not suitable. This etiquette ought to have dictated that this would have happened.

11. This witness accepted that one could have five or six ambulance cases in any one season and that most riders were not entering competitions and most horses were not hunting. He further indicated that there were few show jumpers who do hunt and that hunting is a different discipline and that there is an assumption that one would have a safe landing. This witness said that it was strange given the hazard that there had not been communication and that there was a relatively small time gap to assess the situation and he was surprised word did not filter back.

The Defence Case
12. Mr. David Lawlor gave evidence that he had 60 years hunting experience with the Laois Hunt and that he was Field Master of that hunt for last 25 years. He noted that the huntsman was paid, everyone else was voluntary and that there would normally be six to seven serious falls in a season.

13. This witness described the procedure involved for him in getting permission from surrounding farmers to traverse their lands in the days coming up to the hunt and that this would involve between 30 to 35 farms in the vicinity and that such hunting takes place twice a week in the season. He described the normal situation as having two whips in front helping with the hounds and that it was the Field Master's job to keep order and to make sure that as guests of the particular farmer whose lands they traverse that the riders do not abuse the situation. He explained that in fox hunting, the only given route is to the first "draw" and if there is no fox there, one proceeds to the second "draw". His view was that the unpredictability of fox hunting was the big attraction and that he had been out 30 days this season on his own hunter and that the particular mare which the plaintiff was riding was a novice, although it had hunted on one occasion prior to that day. This witness said no one uses red flags in fox hunting and that it goes against the nature of such hunting.

14. This witness gave evidence that on the day, there was no fox found at the first draw and he, therefore, took the field to the left and that there was a flood plain to the back and that he crossed the river and saw the bushes, 50 to 60 metres away when he came out of the river and that there was a pile of debris in it which had been taken out of the river and he could see wire and what he thought were the remains of a gate so he passed back the message that it was dangerous and unsafe.

15. This witness considered that this was a very obvious danger and that he himself was on an excellent horse and that he deemed the jump not safe. He gave evidence that he told a few people behind not to jump that obstacle and if a person then did so it was entirely at their own risk if they broke every bone in their body. A quarter of a mile down the river he was going on to the field and he saw two to three people around the particular obstacle and two horses run out of it i.e. they did not take that fence and he saw the plaintiff's horse fall from far away.

16. This witness's view was that there was no necessity to go near that particular obstacle, that it was 50 to 80 yards from where they came out of the river and that it was important theoretically for people to jump what they have to jump and when it was put to him that he knew that it was dangerous he said there were plenty of other things later that day which were dangerous to jump. He said that he himself would have checked and double checked and that the horse was on a first day's outing and that the plaintiff was a novice.

17. He personally informed people of a danger, he knew that he was not in a position during a fox hunt to inform everyone personally and that there would be nobody walking around. He said he never had to warn people to jump before, it was very rare. This witness did agree that it was unsafe to jump the particular obstacle in question.

Evidence of Mr. Christopher Ryan
18. Mr. Christopher Ryan said that he was an eighth generation huntsman and a horse rider with ten to fifteen years' experience and was a Senior Master of the Scarteen Hounds. This witness made the point that a horse can weigh up to half a ton and that a mistake could be a very bad one with the rider in primary control and that one has to look to the person in front in order to safeguard the horse and oneself. He described it as quite natural for a young horse to jump to the left as happened at the site of this incident but he stressed that it was the rider who was in primary control and he said with regard to the issue of whether the plaintiff was schooling her horse, he said that would not be allowed and that if a person did that they would not be allowed to hunt there again.

19. This witness felt that it was the duty of the rider to know what was on the other side of a jump and he said that a hunt ride is not a prepared track where every jump is flagged and that the hunting field by its nature is not prepared in that manner and that he never heard of a hunt taking responsibility for what happens. He further added that the rider is responsible for their horse and assumes responsibility and that she did not look at what was on the other side and that the horse has to learn to think for himself.

20. This witness believed that the Field Master, on this occasion, in informing those of his followers not to jump that fence, did everything one could reasonably expect. He noted that the stragglers were out of earshot of the field marshal and that it was very evident that no horse had jumped the particular jump and that people have to take responsibility for their own actions. He said that the whole idea was that riders watch the Field Master and take their lead from him. This witness indicated that it was not part of the culture of fox hunting to flag jumps to be avoided in his 27 years' experience of hunting. His view was that the plaintiff had paid €25 to be entitled to hunt and everything was prepared for her and that that money goes towards upkeep and costs.

Evidence of Ms. Suzanne Macken, B.A.
21. This witness prepared an expert report and knew that the plaintiff was a good rider, had her British Horse Society Exams and had looked at the fence with five paces to jump and that every fence ought to have been checked by the rider. She noted that the horse was young and that with such a horse there was a risk that it would go to the side and that if she herself had seen the back of the hedge, she would not have jumped the particular obstacle. Her view was that the plaintiff needed a good line to the fence and would have needed a good right side to stop the risk of the horse turning towards the left and also she ought to have checked by walking around the fence first and that one ought not to jump unnecessarily.

22. This witness took the view that the plaintiff had missed the fact that there were no tracks around the particular obstacle and that this ought to have been a sign to the plaintiff that the hunt was not taking that path.

23. This witness took the view that when one was out hunting, one is supposed to keep up with the Field Master and that it is not good to have stragglers hanging around at the back of the hunt and that that is an impossible situation. She said that word does not

always filter back in a hunt and that when one goes hunting, one exercises free will that from the hunt's perspective, no other action could have been taken.

The Plaintiff's Injuries
24. After a considerable period of time awaiting surgery, the plaintiff was transferred from Tullamore General Hospital to the care of Mr. Devitt, Consultant Orthopaedic Surgeon in Galway when he diagnosed unstable fractures in T6 and T7 vertebrae and she underwent open reduction and internal fixation of the fracture with instrumentation from T4 – T9. The plaintiff had to have two teeth crowned as a result of the injuries. No spinal cord injury was suffered by her and normal neurology was noted.

25. In all, the plaintiff spent three weeks in hospital, she had six sessions of physiotherapy, ten GP visits and six specialist visits and had to remain off work for a one year period. Her GP notes that there is ongoing back discomfort for between three to five years post injury. The plaintiff has normal spine alignment with a scar of 20 cm at the injury site, and some tenderness over the rod to the left. It is unlikely that an operation will be carried out to remove the rods on medical advice. There are no neurological deficits in her lower limbs.

The Law
26. In relation to the second named defendant, the general rule in terms of fox hunting is that the members of the field waive all claims against landowners for injuries to themselves or their mounts. The argument is made that the plaintiff in paying the cap fee, therefore, opts to follow the rules of hunting etiquette. Given her experience, it is accepted that her expertise in preparing others for tests in hunting etiquette, the plaintiff was therefore aware of the rules and accepted them.

27. In looking at the duty of care of the second named defendant towards the plaintiff, the test is one of reasonable care. Reference is made to Peart J. in *Vega and Cullen* [2005] IEHC 362, "there is no meaningful distinction between the common law duty of care and the statutory duty of care under the Occupiers' Liability Act 1995".

28. Under s. 3 of Occupiers Liability Act 2005:

> "(1) An occupier of premises owes a duty of care ('the common duty of care') towards a visitor thereto except in so far as the occupier extends, restricts, modifies or excludes that duty in accordance with section 5.
>
> (2) In this section 'the common duty of care' means a duty to take such care as is reasonable in all the circumstances (having regard to the care which a visitor may reasonably be expected to take for his or her own safety and, if the visitor is on the premises in the company of another person, the extent of the supervision and control the latter person may reasonably be expected to exercise over the visitor's activities) to ensure that a visitor to the premises does not suffer injury or damage by reason of any danger existing thereon."

29. In *Heaves v. Westmeath County Council* 20 ILT (ns) 235 (2001), where the Occupiers' Liability Act 1995 came into play regarding an incident on the grounds of a large house and in this case, it was found that the duty of care found under s. 3(1) of the Act was to take "reasonable care and no more".

30. In the instant case, given the nature of the hunt, in that it follows a fox's scent and that the fox could go anywhere on the land or property it is not, therefore, foreseeable that a safe route or safety audit could take place in advance of a person taking such a route. Therefore, on the balance of probabilities, the second named defendant could not be deemed not to have taken reasonable care regarding his property. His only involvement was that he was contacted by the Master of the Hunt in advance and gave permission for the hunt to cross his land. He can have no liability in the matter.

The law
31. In the English decision of *Caldwell v. Maguire and Fitzgerald* [2001] EWCA 1054 Holland J. sets out in relation to the issues of liability concerning jockeys, a test to assist with the determination of both liability and the duty of care and found that each contestant in a lawful sporting contest (and in particular a race) owes a duty of care to each and all other contestants.

32. Secondly, Holland J. found that that duty is to exercise in the course of the contest all care that is objectively reasonable in the prevailing circumstances for the avoidance of infliction of injury to such fellow contestants.

33. The Learned Judge also found that the prevailing circumstances are all such properly attendant upon the contest and include its object, the demands inevitably made upon its contestants, its inherent dangers (if any), its rules, conventions and customs and the standards, skills and judgment reasonable to be expected of a contestant. His view that this must include the rules of racing and the standards, skills and judgment of a professional jockey, i.e. all as expected by fellow contestants.

34. Fourthly, he found that given the nature of such prevailing circumstances, the threshold for liability is in practice inevitably high; the proof of a breach of duty will not flow from proof of no more than an error of judgment or from mere proof of a momentary lapse in skill and thus care (respectively, when subject to the stress of a race). Such are no more than incidents inherent in the nature of the sport.

35. Fifthly, in practice, it may therefore be difficult to prove any such breach of duty, absent proof of conduct that in point of fact amounts to reckless disregard for the fellow competitor's safety. The Learned Judge emphasised the distinction between the expression of legal principle and the practicalities of the evidential burden.

Findings of Fact and General Issues on Liability
36. The main contention of the plaintiff was that she ought to have been advised not to take the particular jump in question and that insufficient effort was made in terms of passing back the information to her that the Field Master had indicated to members of the hunt not to take the said jump. The question in this case is the extent of a duty of care towards an individual such as the plaintiff and whether such duty exists as a legally recognised obligation requiring the defendant to conform to a certain behaviour for others against reasonable risks.

37. The court has considered *Roote v. Sheldon* [1967] 116 CLR at 383, decided by the Australian Supreme Court examining the duty of care in relation to a water sports incident. The plaintiff in that case believed he ought to have been cautioned in relation to a boat nearby and on the basis that the boat allegedly had not been adequately controlled. Barwick C.J. found that these two grounds were not inherent risks but at p. 384 of his judgment, he indicated:

> "By engaging in a sport or pastime, the participants may be held to have accepted risks which are inherent in that sport

> or pastime…the tribunal of fact can make its own assessment of what the accepted risks are; but this does not eliminate all duty of care of the one participant to the other."

38. In the instant case, falling due to the nature of the sport must be considered to be an inherent risk. The plaintiff was aware of the nature of the sport and the fact that the hunt was taking place on unpredictable terrain on a working farm where the fox is unpredictable and can go anywhere and where the evidence was that the expanse of between 30 and 35 acres was in play in terms of the terrain which might or might not be covered. The argument therefore is that there was an inherent risk which the plaintiff assumed.

39. With reference to *Condon v. Basi* [1985] 1 WLR 866, Donaldson M.R. summarised reference to *Roote v. Sheldon:*

> "…you are under a duty to take all reasonable care taking into account of the circumstances in which you are placed;
>
> Which in a game of football are quite different from those which affect you when you are going for a walk in the countryside."

40. This Court finds that the Master of the Hunt the Field Master on the day in question was an experienced Master having been in that position since 1992. He was chairperson of the Irish Masters of the Foxhound Association and since he found no way of seeing the landing site he turned away from the particular obstacle and instructed the field. It seems to this Court therefore that the rules and etiquette of fox hunting were followed by him. It appears to this Court that the warning was properly communicated to a reasonable standard, that it was obviously given to a considerable number of people and only three of the rider group of 40 to 50 riders, including the plaintiff, attempted to jump the particular obstacle. Furthermore two riders turned away from the obstacle without taking that particular jump.

41. It seems to this Court that there was an obligation on all members of the hunt to follow the Field Master, to keep reasonably close to him and not to lag behind at the back of the hunt and to ensure they were appraised of any directions he gave. I find as a fact that the Field Master gave the warning to those behind him in the field whom he advised to pass the word on, and that in so doing he was following the established practice of fox hunting and that he did so in a manner that was entirely reasonable.

42. The plaintiff makes the complaint that those who came to give immediate assistance did not follow her request that she not be moved and the plaintiff complained as to the manner in which she was moved causing her to be assisted back over the river and to have to walk for a considerable distance, and being linked by two people where she was brought to a yard for her boyfriend to collect her by car. Although her evidence was that an ambulance could have reached on the particular piece of terrain in question and while I don't doubt the veracity of that, there was no evidence whatsoever adduced to suggest that this manner of moving her in anyway caused injury to her or made worse the injuries she had received.

43. This Court accepts the evidence of the Field Master of the Hunt and that of Ms. Suzanne Macken, in particular in terms of the rules and etiquette of hunting and in terms of the valid criticism made of the plaintiff and her approach to this hunt.

44. The plaintiff voluntarily assumed the risk of a mare which had only hunted once before, even though the plaintiff was an accomplished horse person she was an inexperienced hunter on an inexperienced horse taking part in an entirely unpredictable sport with the fox at its centre.

45. She did not have due regard for her own safety. She was obliged to keep up with the hunt and with the Field Master and not lag behind. She ought not to have jumped unnecessarily the dangerous jump in relation to which a warning had been given. The expanse of acreage involved and nature of fox hunting mean that the type of precautions which might be used in other forms of horse-riding could not reasonably be expected as the standard of fox hunting, given the nature of this sport.

Conclusion on Liability

46. There is no doubt but that the plaintiff suffered a serious injury in this accident. However, given that the Court has found against the Plaintiff on Liability the Court confines itself to that issue. It seems to this Court however that reasonable care was taken by both defendants in relation to the outing in question. Crucially, the rules and procedures of the sport were followed and the master did fulfil his obligations in relation to the jump, the defendant having the final decision to make as to whether she ought to jump or not the particular jump in question. It seems to this Court that the first named defendant in particular exercised all care objectively or subjectively reasonable in the circumstances of this particular case and while the second named defendant was joined in the proceedings his consent was obtained prior to this hunt to traverse his lands and there is no negligence found against him in all the circumstances. It is quite clear that although the Field Master sent back word not to jump the particular jump in question word does not always get back to all the participants and that one hunts of one's free will. It is noted also that the particular horse the plaintiff was using on the day in question had done one-day cross country hunting prior to that and it was assumed that she would not hunt on that horse given that it was its first day of an actual hunt. From the perspective of the hunt no other action could have been taken.

47. Taking into account the evidence given of the high level of unpredictability which was described as a feature of foxhunting, in the nature of the sport, and forming a big attraction to this sport, and that the use of red flags was not seen as a feature of the sport. Thus, the high bar required to prove negligence or reasonable foreseeability has not been reached. The court hereby dismisses the plaintiff's claim.