2026 IL App (3d) 250346

Opinion filed August 26, 2026

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2026

J.L.F, a Minor, by Her Parent and Next Friend, Melissa Fray, and MELISSA FRAY, Individually, Plaintiffs-Appellants, v. DENISE HANNA, and HANNABERRY FARM, LLC, a/k/a Hannaberry Farms, LLC, a/k/a Hannaberry Farm, Inc., a/k/a Hannaberry Farm, Defendants-Appellees.	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois. Appeal No. 3-25-0346 Circuit No. 20-L-552 Honorable Brian E. Barrett, Judge, Presiding.

JUSTICE ANDERSON delivered the judgment of the court with opinion.
Presiding Justice Hettel and Justice Bertani concurred in the judgment and opinion.

OPINION

¶ 1 J.L.F. was riding a horse when it was allegedly spooked by a dog. She fell from the horse and was injured. She and her mother, Melissa Fray (collectively, the Frays), filed claims for negligence and violation of the Animal Control Act (510 ILCS 5/1 *et seq.* (West 2024)). Defendants, Denise Hanna and Hannaberry Farms (collectively, Hanna), argue that the Equine

Activity Liability Act (Equine Act) (745 ILCS 47/1 *et seq.* (West 2024)) bars the Frays' claims. The circuit court granted Hanna's motion for summary judgment, finding that the Equine Act barred the Frays' negligence claim and preempted the Animal Control Act claim. We affirm.

¶ 2 I. BACKGROUND

¶ 3 The following is taken from the pleadings, admissions made in the written discovery process, and the parties' discovery depositions. Plaintiff Melissa Fray contacted Denise Hanna, the owner and operator of Hannaberry Farms, a horse-riding facility in Crete, Illinois, to arrange a horseback riding lesson for her then 11-year-old daughter, J.L.F., as a Christmas gift. Although the farm was closed on Christmas Day, Hanna agreed to provide the lesson and selected Ginger, a small horse or pony, for J.L.F. to ride. Ginger had previously been used in defendant Hannaberry Farms' lesson program and had experience with child and therapeutic riders. Hanna testified that Ginger had a calm temperament and had not previously caused a rider to fall at the farm. At the time of the lesson, Ginger was in her late twenties, stood approximately 14.1 hands tall, and weighed approximately 800 pounds.

¶ 4 J.L.F. had ridden horses approximately 10 times before the lesson. She arrived with her own riding helmet, boots, pants, and gloves. Hanna testified that she assessed J.L.F.'s ability during the lesson by observing how J.L.F. sat on, walked, stopped, and steered the horse and she concluded that J.L.F. was a beginner. J.L.F. testified that she did not recall discussing her prior riding experience with Hanna before the lesson began.

¶ 5 During the lesson, Ginger was equipped with an English-style saddle. The parties dispute the significance of the saddle and equipment used during the lesson, and J.L.F. testified that the Frays requested an English saddle. Photographs taken by Fray show a strap on the front of the saddle and J.L.F.'s hands positioned near the strap or front edge of the saddle.

¶ 6 The lesson occurred in a horse-riding arena controlled by Hanna. Hanna used a lunge line while instructing J.L.F. and testified that a lunge line allows the instructor to control the horse while helping a beginning rider develop balance and strength. During the lesson, Hanna led Ginger and J.L.F. in circles around the arena. At some point, Hanna instructed J.L.F. to release the reins. J.L.F. testified that she asked what she was supposed to hold onto and told Hanna she was afraid. According to J.L.F., Hanna instructed her to hold on with her legs and grab the horse's mane. Hanna testified that the use of the lunge line allowed J.L.F. to focus on balance and did not require her to steer the horse.

¶ 7 At some point, J.L.F. fell from the horse, although the reason for the fall is in dispute. Hanna testified that J.L.F. leaned to one side at the moment that Ginger moved to the other side, causing J.L.F. to lose her balance. She saw no dogs in the arena and testified that Ginger was accustomed to seeing dogs. But Melissa and J.L.F. testified that a dog ran into the arena, ran toward Ginger, and spooked the horse. The Frays testified that Ginger jumped, causing J.L.F. to fall. Of course, we do not, and cannot, *truly* know what, if anything, caused Ginger to jump.

¶ 8 The pleadings in this case are rather disjointed. Following the accident, Melissa filed a complaint in the Will County circuit court, alleging negligence by Hanna and Hannaberry Farms. Melissa claimed they were negligent for, among other things, having "allowed activities unrelated to horseback instruction to proceed at the same time and in the same arena where the minor [ ] was being given a horseback riding lesson, knowing that any of said unrelated activities could 'spook' or frighten a horse, causing the horse to buck or jump." The complaint speaks to ordinary negligence and does not mention willful or wanton conduct. In her answer and affirmative defenses, Hanna asserted that the Equine Act rendered her immune from liability and that Melissa had signed a liability waiver. Defendants subsequently filed a counterclaim against Fray based on the waiver. The counterclaim is rather sparse, consisting of just three paragraphs. It seems to rest on a breach of contract theory. It acknowledges that Hanna did not retain the alleged liability waiver but included an unsigned copy of the alleged waiver.

¶ 9 The Frays then filed something called a "counter-counterclaim." In that pleading, the Frays asserted that Hanna's failure to control the dog constituted a violation of the Animal Control Act. Hanna answered the counter-counterclaim, asserting affirmative defenses based on the Equine Act and the alleged liability waiver. The Frays then answered those affirmative defenses.

¶ 10 The circuit court allowed all claims to stand, and after limited discovery, Hanna moved for summary judgment. Hanna argued that the Equine Act barred the Frays' negligence claim because the Frays assumed the risks associated with participating in an equine-riding activity. Hanna also argued that the Frays' Animal Control Act claim was preempted by the Equine Act.

¶ 11 The Frays opposed summary judgment, arguing that exceptions to the Equine Act applied, including that Hanna failed to properly assess J.L.F.'s ability and that allowing a dog into the arena during the lesson was a willful or wanton act that allowed liability. The Frays also argued that the dog's actions triggered the Animal Control Act.

¶ 12 The circuit court granted Hanna's motion for summary judgment and denied the Frays' request to amend their complaint, with prejudice. The court concluded that there was no issue of law or fact that the Equine Act applied and that there were no exceptions to the Equine Act bar on recovery for the Frays' negligence claim. The court further concluded that the Frays' Animal Control Act claim was preempted by the Equine Act. The Frays filed a timely notice of appeal.

¶ 13 II. ANALYSIS

¶ 14 We begin by recognizing the stringent standards for summary judgment. Summary judgment is appropriate only when the pleadings, depositions, and affidavits in the record show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Murray v. Chicago Youth Center*, 224 Ill. 2d 213, 245 (2007). It is a drastic means of disposing of litigation, and this court has a duty to construe the record against the movant and in favor of the nonmoving party. *Id.* at 245-46. Summary judgment should not be granted unless the moving party's right to judgment is free from doubt, as the Frays are not required to prove their cases at the summary judgment stage. *Id.* at 246. We review *de novo* the circuit court's ruling on summary judgment. *Eyrich v. Johnson*, 279 Ill. App. 3d 1067, 1069 (1996).

¶ 15 The Frays raise two issues on appeal. First, they contend there are questions of material fact that could trigger statutory exceptions under the Equine Act. Second, they argue that the Equine Act does not preempt their Animal Control Act claim.

¶ 16 A. The Equine Act and Its Exceptions

¶ 17 The Equine Act codifies an assumption of risk relative to equine activities. See *Carl v. Resnick*, 306 Ill. App. 3d 453, 456 (1999). This represents a derogation of the common-law claim of negligence for equine-related injuries, requiring that the Equine Act be strictly construed in favor of the Frays to the extent it precludes recovery on a negligence claim. *Smith v. Lane*, 358 Ill. App. 3d 1126, 1129 (2005) (citing *Kush v. Wentworth*, 339 Ill. App. 3d 157, 161 (2003)). The statute provides:

> "Each participant who engages in an equine activity expressly assumes the risk of and legal responsibility for injury, loss, or damage to the participant or the participant's property that results from participating in an equine activity, except in the specific situations as set forth in Section 20, when the equine activity sponsor or equine professional may be held responsible." 745 ILCS 47/15 (West 2024).

The "equine activities" that are protected by the Equine Act include "[e]quine training activities, teaching activities, or both." *Id.* § 10(c)(2). One of the statutorily recognized risks includes "those dangers of conditions that are an integral part of equine activities, including, but not limited to" "[t]he unpredictability of an equine's reaction to sounds, sudden movement, and unfamiliar objects, persons, other animals, or other things." *Id.* § 10(f)(2).

¶ 18 The parties do not dispute that an equine activity was taking place at the time of the incident. However, they dispute whether an exception to the Equine Act applies. Relevant here, the Equine Act does not prevent or limit liability of an equine activity sponsor, an equine professional, or any other person if that sponsor or individual

> "(2) Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity and determine the ability of the participant to manage safely the particular equine based on the participant's representations of his or her ability.
>
> ***
>
> (4) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury." *Id.* § 20(b)(2), (4).

¶ 19 With regard to the exception in section 20(b)(2), the circuit court determined that the trainer performed a reasonable and prudent assessment to determine J.L.F.'s abilities to engage in the training exercise. The trainer continued the activity, walking with J.L.F. and the horse and, further into the activity, taking the reins away from J.L.F. to get J.L.F. to understand "the balance issue."

¶ 20 We agree with the trial court. There was unrebutted evidence that Hanna made reasonable and prudent efforts to determine J.L.F.'s riding abilities. There is no evidence demonstrating that

Hanna's assessment was inaccurate or that her efforts to assess J.L.F.'s ability were otherwise unreasonable or imprudent.

¶ 21 With regard to the willful or wanton conduct exception in section 20(b)(4), the Frays point to several instances of alleged willful or wanton conduct, including the use of an English saddle (which the Frays requested) and the claim that baling hay in the vicinity (prior to J.L.F.'s fall) exacerbated Ginger's skittishness. The trial court correctly rejected those as examples of willful or wanton conduct. The only claim of willful or wanton conduct that might merit discussion involves whether Hanna allowed a dog to enter the arena. But before we can even get to that issue, we are saddled with a threshold question. Hanna argues that we cannot consider section 20(b)(4) because the Frays never pled the existence of willful or wanton conduct. The Frays contend that willful or wanton conduct was raised and argued in connection with the summary judgment motion—but that does not mean it was *pled*.

¶ 22 Willful or wanton conduct is not a freestanding cause of action; rather, it is an aggravated form of negligence. *Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 19. Ordinarily, to prevail on an allegation of willful and wanton conduct, "a plaintiff must plead and prove the basic elements of a negligence claim—that the defendant owed a duty to the plaintiff, that the defendant breached that duty, and that the breach was a proximate cause of the plaintiff's injury." *Id.* A plaintiff also must allege either "a deliberate intention to harm or an utter indifference to[,] or conscious disregard for[,] the welfare of the plaintiff." *Doe v. Chicago Board of Education*, 213 Ill. 2d 19, 28 (2004). We will examine the pleadings to determine whether they include facts which, if proven, state willful or wanton conduct.

¶ 23 To do that, we must first identify which documents in the record constitute pleadings. Under our Code of Civil Procedure (Code) (735 ILCS 5/1-101 *et seq.* (West 2024)), a lawsuit is initiated with the filing of a complaint (*id.* § 2-201(a)). Other "pleadings" include counterclaims (a term that encompasses that which other jurisdictions refer to as cross-claims) (*id.* § 2-608), third-party complaints (*id.* § 2-406), affirmative defenses (see *Reverse Mortgage Funding, LLC v. Catchins*, 2023 IL App (1st) 221197, ¶ 28 (citing 735 ILCS 5/2-603(a), 2-613(a) (West 2020)), and answers (see *Larkin v. Sanelli*, 213 Ill. App. 3d 597, 602 (1991)) to all of the foregoing. In addition, pleadings may be amended (735 ILCS 5/2-616(c) (West 2024)) or supplemented (*id.* § 2-609) with leave of court.

¶ 24 We cannot identify a spot in the pleadings where the Frays alleged willful or wanton misconduct. For this inquiry, we include the improper "counter-counterclaim" that the Frays filed.[1]

¶ 25 In reaching this conclusion, we must reject the idea that raising something in a motion is the same as pleading it. While the terms "pleading" and "motion" are sometimes conflated,[2] they are not at all synonymous. Rather, these are distinct procedural devices that present very different legal implications.

¶ 26 A pleading generally consists of a party's formal allegations of their claims or defenses. *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 407 (2005). The purpose of pleadings is to present, define, and narrow the issues, to limit the proof needed at trial, and to inform the defendant and the court of the conduct for which the defendant is called upon to answer. *Harris v. Johnson*, 218 Ill. App. 3d 588, 591 (1991).

---

[1]A "counter-counterclaim" is a creature unrecognized by the Code. The Frays could have simply sought leave to file an amended complaint to add a count based on the Animal Control Act, but for whatever reason, they did not. This filing was improper and muddied the pleadings.

[2]One notable nuance occurs when a defendant is directed to "answer or otherwise plead" to a complaint. In that context, a motion to dismiss is technically not a pleading, even though it generally satisfies the "otherwise plead" requirement. While there may be a historical basis for this, it is today something of a semantic anomaly.

¶ 27 In contrast, a motion is generally a formal "application to the court for a ruling or an order in a pending case." *Wolff*, 355 Ill. App. 3d at 407. Motions arise throughout litigation and may concern virtually any matter that requires judicial resolution, from relatively routine procedural issues (such as requests for extensions of time, leave to amend a pleading, or additional discovery) to matters that may substantively affect the outcome of the case (such as motions to dismiss, motions for summary judgment, or motions for sanctions). They are the primary procedural vehicle for litigants to seek judicial action between the filing of pleadings and the entry of final judgment.

¶ 28 In short, arguing an issue within the context of a motion is not the same thing as pleading it. Motions and pleadings are different: a pleading identifies the matter to be litigated; a motion asks the court to do something about it. See *In re Marriage of Sutherland*, 251 Ill. App. 3d 411, 413 (1993). Because willful or wanton conduct was not pled in name or substance, it cannot form the basis for summary judgment. A summary judgment motion is confined to the issues raised in the pleadings, and a party cannot rely on unpled matters to support or defeat a motion for summary judgment. *Caulkins v. Pritzker*, 2023 IL 129453, ¶ 36; see *Filliung v. Adams*, 387 Ill. App. 3d 40, 51-52 (2008) (a complaint frames the issues in controversy, and if litigants wish to place an unpled issue into controversy, they must do it by requesting leave to amend their complaint rather than simply seeking summary judgment on an unpled theory). For these reasons, we do not consider the Frays' section 20(b)(4) argument.

¶ 29 B. Equine Act Preemption of the Animal Control Act

¶ 30 The circuit court concluded that the Frays' Animal Control Act claim was preempted by the Equine Act. Under these facts, we agree.

¶ 31 The Frays rely primarily on section 16 of the Animal Control Act (510 ILCS 5/16 (West 2024)). Section 16 provides,

> "If a dog or other animal, without provocation, attacks, attempts to attack, or injures any person who is peaceably conducting himself or herself in any place where he or she may lawfully be, the owner of such dog or other animal is liable in civil damages to such person for the full amount of the injury proximately caused thereby." *Id.*

The Animal Control Act was passed to protect the public by encouraging tight control of dogs but was eventually amended to include all animals. *Garcia v. Nelson*, 326 Ill. App. 3d 33, 40 (2001). The Animal Control Act creates a right of action unlike common-law negligence, and in order to recover under the statute, it is not necessary to prove owner negligence. *Bailey v. Bly*, 87 Ill. App. 2d 259, 261-62 (1967). The Animal Control Act also eliminates any requirement that the owner knew or had reason to know that the animal was vicious or had a propensity to attack. *Garcia*, 326 Ill. App. 3d at 40.

¶ 32 Assuming the dog walked into the arena and approached Ginger as the Frays claim, we must still reject their Animal Control Act claim, however. We conclude, under these facts, that the Animal Control Act is preempted by the Equine Act.

¶ 33 The legislature's inclusion of "other animals" in section 10(f)(2) of the Equine Act is significant. See 745 ILCS 47/10(f)(2) (West 2024). It specifically anticipates that horses may react unpredictably to the presence of other animals. A dog entering an arena and causing a horse to shy, bolt, rear, or jump is precisely the type of risk the statute recognizes. Because (under the Frays' theory) the rider's injuries resulted from the horse's reaction to another animal, they arise from an inherent risk expressly identified by the Equine Act.

¶ 34 The Animal Control Act presents a different analytical framework. It broadly imposes strict liability when any animal "attacks, attempts to attack, or injures" a person without provocation while the person is peaceably conducting himself or herself and is lawfully present. Admittedly, Illinois courts have interpreted the Animal Control Act liberally and have recognized that physical contact between the animal and the plaintiff is unnecessary. Thus, a dog that gets tangled up between a person's legs and causes a person to fall may still subject its owner to liability. See *McEvoy v. Brown*, 17 Ill. App. 2d 470, 477-78 (1958). Even in those cases, however, the dog itself was the direct instrumentality of the plaintiff's injury. The dog's conduct was directed toward the plaintiff, and the plaintiff's injury immediately flowed from that conduct.

¶ 35 Those circumstances differ materially from the situation presented by the Frays' theory of the case. The dog neither attacked nor threatened the rider. Instead, the dog's mere presence and proximity allegedly caused the horse to react. The immediate cause of J.L.F.'s injury was therefore allegedly not the dog's conduct toward her but, rather, the horse's reaction to the dog's presence. The causal chain runs as follows: dog enters arena, horse becomes frightened, horse jumps, rider is injured. That distinction is critical because the Equine Act expressly allocates responsibility for injuries resulting from a horse's reaction to "other animals" by classifying them as an inherent risk of equine activity.

¶ 36 Even if we viewed the dog as the proximate cause of the injury, we would still conclude that preemption exists. Construing the Animal Control Act to impose strict liability on these facts would substantially undermine the Equine Act. Nearly every case in which a horse reacts to a dog or another domestic animal could be recast as an Animal Control Act claim against the owner of the other animal. Such an interpretation would effectively nullify the legislature's express decision to identify a horse's reaction to "other animals" as an inherent equine risk. Reading the Animal Control Act to reach this situation would deprive the phrase "reaction *** to other animals" of much of its practical significance. See *People v. Jones*, 223 Ill. 2d 569, 594 (2006) (courts must avoid a construction that renders a part of the statute superfluous or redundant and instead presume that each part of the statute has meaning).

¶ 37 The statutes can instead be harmonized in a manner that preserves the operation of both. See *People v. McCarty*, 223 Ill. 2d 109, 133 (2006) (under the doctrine of *in pari materia*, two statutes or different sections of the same statute dealing with the same subject will be considered with reference to one another to give them harmonious effect). The Animal Control Act continues to govern injuries directly caused by a defendant's animal, so long as the injury does not involve a horse rider being injured because the horse reacted to another animal's presence. If the instructor's dog bit the rider or otherwise directly caused the rider's injuries, the Animal Control Act would apply notwithstanding the fact that the incident occurred during an equine activity. Conversely, when a dog merely serves as the stimulus for the horse's unpredictable reaction, the injury results from an inherent equine risk that the Equine Act specifically addresses. This construction allows each statute to occupy its own operational space without impliedly repealing or substantially limiting the other. We also apply the statutory construction maxim that, where both a specific statutory provision (such as the Equine Act) and a general statutory provision (such as the Animal Control Act) relate to liability for the same subject (*i.e.*, behavior of animals), the specific statute controls over the general statute. *Village of Franklin Park v. Dickman*, 165 Ill. App. 3d 1012, 1014 (1988).

¶ 38 Our preemption analysis is in line with the handful of other cases that have considered the interplay between these two statutes. See, *e.g.*, *Perkinson v. Courson*, 2018 IL App (4th) 170364, ¶ 70 ("[W]e note that the Illinois Equine Act may be applied to preempt the Animal Control Act in certain situations." (citing *Carl*, 306 Ill. App. 3d at 458-59, and *Smith*, 358 Ill. App. 3d at 1134)).

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, the judgment of the circuit court of Will County is affirmed.

¶ 41 Affirmed.

J.L.F. v. Hanna, **2026 IL App (3d) 250346**

Decision Under Review:	Appeal from the Circuit Court of Will County, No. 20-L-552; the Hon. Brian E. Barrett, Judge, presiding.
Attorneys for Appellant:	Sheila Genson, of The Winkler Group LLC, of Schaumburg, and Michel C. Goode, of Chicago, for appellants.
Attorneys for Appellee:	Jeffrey S. Pavlovich and Jonathan P. Schaefer, of Leahy, Eisenberg & Fraenkel, Ltd., of Joliet, for appellees.