

IN THE SUPREME COURT OF OHIO

ROSHEL SMITH, : Supreme Court Case No. 2011-1708  
 Plaintiff-Appellee, : Appeal from Summit County Court of  
 Appeals, Ninth District  
 v. :  
 DONALD E. LANDFAIR, : Court of Appeals  
 Case No. CA 25371  
 Defendant-Appellant.

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**REPLY BRIEF OF AMICUS CURIAE OHIO HORSEMAN'S COUNCIL IN SUPPORT  
 OF APPELLANT DONALD E. LANDFAIR**

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TABLE OF CONTENTS

I. "Spectator" Does Not Require a Prepossessed Intent to View an Activity . . . . 1

    I. The Court Should Reject Smith's Proposed Definition of "Spectator" . . . . . 3

II. Smith was a Spectator of Equine Activity . . . . . 5

    I. Smith Saw Landfair Untrailer Green Acre Annie . . . . . 5

        ii. Smith Intended to Watch Landfair Untrailer Green Acre Annie . . . . . 7

CONCLUSION . . . . . 8, 9

## TABLE OF AUTHORITIES

### Cases

<i>Allison v. Johnson</i> , 11th Dist. No. 2000-T-0116, 2001 Ohio App. LEXIS 2485 .....	2
<i>American Fiber Sys., Inc. v. Levin</i> , 125 Ohio St. 3d 374, 2010-Ohio-1468 .....	1
<i>Lawson v. Dutch Heritage Farms, Inc.</i> , 502 F. Supp. 2d 698 (N.D. Ohio 2007) .....	3
<i>Smith v. Landfair</i> , 9th Dist. App. No. 25371, 2011-Ohio-3043 .....	7

### Statutes

R.C. § 2305.321 .....	1
R.C. § 2305.321(A)(3)(g) .....	1
R.C. § 2305.321(A)(2)(a)(i-ix) .....	3
R.C. § 2305.321(A)(2)(a)(iv) .....	3
R.C. § 2305.321(A)(2)(a)(vii) .....	4

Appellee, Roshel Smith argues that she was not a spectator of equine activity under R.C. § 2305.321(A)(3)(g) because she did not “intend” to watch Donald Landfair untrailer his horse, Green Acre Annie. She contends that the word “spectator,” as used in the statute, implicitly requires purposeful intent. However, the term spectator is not ambiguous, and does not require a prepossessed intent on the part of the observer. To read a preconceived purpose into the word would lead to absurd results, whereby injured plaintiffs will claim they only intended to view the horses that did not injure them.

Alternatively, should the court determine that “spectator” requires a predisposed purpose, which it does not, Ms. Smith had the requisite purpose when she visited the fairgrounds and *purposefully intended* to look at horses, including Landfair’s. At that point, she was no longer an innocent bystander or mere passerby, but a “spectator” of equine activity under the statute. She cannot side-step the immunity statute on the basis that she did not intend to watch Landfair untrailer his horse when she arrived at the fairgrounds.

**I. “Spectator” Does Not Require a Prepossessed Intent to View an Activity**

Smith first argues that “spectator” requires an intended purpose to perceive an equine activity, as opposed to viewing an activity by happenstance. Appellee’s Merit Brief, p. 6. Smith correctly points out that “spectator” is not defined in R.C. § 2305.321. Therefore, the Court must accord the term its common, everyday meaning. *American Fiber Sys., Inc. v. Levin*, 125 Ohio St. 3d 374, 2010-Ohio-1468, ¶ 24.

Smith asks this Court to alter the meaning of "spectator" to suit her ends. A review of Appendix A to Smith's Brief lists various definitions of the word, not one of which includes an individual's predisposed purpose to watch an activity. Nevertheless, Smith would have this Court read such an intent into the definition.

Smith goes to great lengths to distinguish "spectator" from "witness," "viewer," and other common synonyms. However, this exercise is not necessary. The court in *Allison v. Johnson*, 9th Dist. No. 2000-T-0116, 2001 WL 589384, \*5, adequately defined "spectator" as follows:

Webster's II New College Dictionary (1999) 1060 defines spectator as "[a]n observer of an event." Similarly, Webster's Third New International Dictionary (1986) 2188 provides that a "spectator" is "one that looks on or beholds; \* \* \* one witnessing an exhibition." The Random House Dictionary, Concise Edition (1983) 840, states that a "spectator" is "a person who watched without participating."

When Smith saw Landfair untrailer his horse, she was a spectator of equine activity. The fact that she did not arrive at the fairgrounds that day with the preconceived intent of watching Landfair untrailer Green Acre Annie is not material to the Court's analysis.

Smith contends that unless the Court alters the meaning of "spectator," the scope of immunity is limitless. First, absent a clear legislative intent to define or limit the

meaning of "spectator," the Court must accord the term its common meaning. Applying the plain meaning of the term, Smith was a spectator of equine activity.

Second, the scope of immunity is not limitless. For example, if Smith happened on a horse walking out of her home one morning and was kicked and injured, she would likely not be considered a "spectator" of equine activity. R.C. § 2305.321(A)(2)(a)(i-ix). Similarly, if Smith was standing on a street corner and a horse unexpectedly ran over top of her, even if she saw it coming, she would likely not be a "spectator" of equine activity. *Id.* Indeed, the statute implicitly guards against providing immunity for truly random occurrences. *Id.* The law's list of equine activities focuses on a variety of specific horse-related happenings; it may be broad, but it is not all-encompassing.

What is more, the untrailer of a horse is a listed activity. R.C. § 2305.321(A)(2)(a)(iv). Smith watched Landfair untrailer his horse. Deposition of Roshel Smith, pgs. 35-37. The mere fact that the statute provides immunity under such circumstances does not mean it was unintended. *Lawson v. Dutch Heritage Farms, Inc.*, 502 F. Supp. 2d 698, 705-706 (N.D. Ohio 2007).

*i. The Court Should Reject Smith's Proposed Definition of "Spectator"*

Smith proposes the following definition of "spectator:"

[A] person who has physically placed himself/herself with the purpose of perceiving that equine activity. Appellee's Brief, pgs. 6 & 9.

Not only does this invented definition alter the ordinary meaning of the word, but it would require Ohio courts to determine a spectator's preconceived intent. Smith presents no evidentiary support that her definition is what the legislature contemplated when it drafted the statute.

Presumably, Smith implies a prepossessed purpose into the definition because "spectator" is often used to refer to patrons at sporting events or exhibitions, who typically attend such events purposefully. Appellee's Brief, Appendix A. However, it is clear from the statute that the legislature did not intend to limit the scope of the statute to such persons because the list of activities one might spectate includes those a person might not purposefully attend (e.g. the replacing of horseshoes on an equine). R.C. § 2305.321(A)(2)(a)(vii). Clearly, the statute was intended to provide immunity, not only in those instances where one purposefully attends a particular equine activity (e.g. a horse show patron), but also in circumstances like Smith's, where a person unexpectedly sees an equine activity taking place and watches it.

Accordingly, this Court should apply the plain meaning of the term "spectator," and find that Smith was a spectator of an equine activity. Smith has failed to cite one definition of the word which requires a preconceived purpose or intent to view a particular activity. If the scope of the immunity statute is to be limited, it should not be by arbitrarily altering the meaning of an otherwise clear term.

## II. Smith was a Spectator of Equine Activity

### *i. Smith Saw Landfair Untrailerling Green Acre Annie*

Here, Smith presents the following examples to the Court to support her argument that she was not a spectator. She concedes that a person who travels to the state fair to sit and watch a horse show is a spectator of an equine activity. Appellee's Brief, p. 15. However, she argues that Landfair's definition of "spectator" would also encompass the patron on the midway at the state fair, who is unexpectedly trampled by a horse. *Id.* Smith's fantastical example is distinguishable for several reasons.

First, it is possible that the "midway" horse is not engaged in one of the enumerated equine activities such that immunity would apply. Second, if a true "passerby" was blindsided by a horse hoof, then one could not reasonably say she was a spectator of equine activity. However, if that same person noticed a groom untrailerling a horse at the state fair, stopped, focused on the activity, internalized it, and purposefully moved towards it, then she would logically be a spectator of the activity.

Here, the events surrounding Smith's injuries are comparable to this latter twist on her aforementioned example. Smith was not standing idly by before she was unexpectedly pulverized by a horse. She was at a fairground where equine activity was commonplace, where she worked, and where she was watching her father train a horse. Smith Depo., pgs. 7-10; 12; 32. While her mere presence at the fairgrounds alone might not have rendered her

a spectator of equine activity, when she saw Landfair untrailer his horse, focused on the activity, internalized it, and purposefully moved towards it to assist, she became a spectator under the statute thereby triggering immunity. Smith Depo., pgs. 32-33; 35-37; 45-46. Indeed, she could not and would not have moved to assist Landfair with Green Acre Annie if she had not first watched what was happening. Id.

Smith argues that she never intended to watch Landfair unload Green Acre Annie. Her only purpose while at the fairgrounds was to visit her father and watch him train another horse. Appellee's Brief, p. 18. However, Smith's prepossessed intentions are not material under the statute, and do not change the fact that she watched Landfair untrailer Green Acre Annie. To hold otherwise would permit a plaintiff to side-step the equine immunity statute by arguing that she intended to spectate all of the horses at an equine activity, except, of course, the one that injured her.

Under Smith's definition of "spectator," a person could attend a horse show with the intent of watching only one horse in the competition. However, if on her way to her seat, she saw a different horse in training, she would become a spectator of that equine activity regardless of her earlier intentions. At the least, if she saw the horse in training, focused on it, and moved towards it, she would be a spectator of the activity and immunity would apply.

Similarly, a person could mistakenly believe she was going to a dog show with friends and end-up at a horse show. If she stayed, watched the horse show and was subsequently injured, then she would be a spectator of equine activity.

Under Smith's definition, all that matters is the person's original intent to patronize a dog show, not what she actually watches once she arrives at the event. Appellee's Brief, pgs. 6 & 9. Taking Smith's interpretation to its logical extreme, no matter how many equine activities that person watches while at the horse show, she could not be defined as a "spectator" because she did not place herself there with the purpose of perceiving equine activities. However, Smith offers no support for this redefining of "spectator."

Smith coyly attempts to convince the Court that this case is the same as the unsuspecting plaintiff at the state fair. Appellee's Brief, pgs. 15 & 18. However, unlike her example, Smith not only saw Landfair untrailer his horse, but turned, focused on it, digested it, and moved towards it. Smith Depo., pgs. 35-37. She did not merely "glance" at a horse, as the Court of Appeals suggested. *Smith v. Landfair*, 9th Dist. App. No. 25371, 2011-Ohio-3043, ¶¶ 15 & 16. She was at a fairground where horses were expected, and she was watching horses, including Landfair's. *Id.* at pgs. 7-8; 35-37. Thus, she was a spectator of equine activity. The fact that Smith may not have planned on watching Landfair untrailer Green Acre Annie when she arrived at the fairgrounds that day does not matter.

ii. *Smith Intended to Watch Landfair Untrailer Green Acre Annie*

Alternatively, should the Court agree with Smith that the term “spectator” implicitly requires some intent to view an equine activity, which it does not, the facts here satisfy that standard. Smith argues she was a mere “passerby,” with no intent to watch Landfair unload Green Acre Annie. Appellee’s Brief, p. 17. However, the facts tell a different story.

Smith was standing at a nearby barn door when Annie “spooked” as Landfair was untrailer her. Smith Depo., at pgs. 17 & 19. Smith *saw* this happen and she ran to help him. Id. at pgs. 35-37; 45-46. At the time, Landfair was still holding the lead shank. Id. at pgs. 32-33; 35-37. Thus, although Smith may not have initially intended to watch Landfair untrailer the horse, she admitted she witnessed the event. Id. Furthermore, Smith turned, focused on Annie and Landfair, and purposefully moved towards them. Id.

Based on the undisputed facts, Smith was a spectator by virtue of her purposeful intent to watch Landfair untrailer Green Acre Annie. Regardless of her initial intentions, when she turned and watched Landfair untrailer Annie, she became a spectator of that equine activity. There is a difference between “intent” and “want.” Smith may not have wanted to watch Landfair unload Annie, but she did, and did so intentionally. Her attempts to circumvent the immunity statute by arguing that she unintentionally saw Landfair untrailer his horse, are unavailing.

## CONCLUSION

In ruling that Smith was not an equine activity participant, the Court of Appeals acted contrary to the express language of the statute and intent of the legislature. The ruling of the Court of Appeals threatens to deny thousands of Ohio horse owners, professionals, and sponsors, the protection of statutory immunity from injuries incurred by "spectators" of equine activities. This conclusion is patently at odds with the express meaning and purpose of the law and warrants reversal by this Court.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that a copy of this Reply Brief was sent by ordinary U.S. Mail, postage prepaid, to counsel for Appellant Kenneth A. Calderone, Esquire, Hanna Campbell & Powell, LLP, Post Office Box 5521, 3737 Embassy Parkway, Akron, Ohio 43434; to counsel for Appellee John K. Rinehardt, Esquire, The John K. Rinehardt Law Firm, 2404 Park Avenue West, Mansfield, Ohio 44906; and to counsel for *Amicus Curiae* Ohio Association for Justice's counsel, Paul Giorgianni, Esquire, Giorgianni Law, LLC, 1538 Arlington Avenue, Columbus, Ohio 43212, on this 24<sup>th</sup> day of May, 2012.



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