

NEGLIGENCE: Motorist who crashed into bull not likely to establish simple negligence under public nuisance theory, no need to consider constitutional challenge to gross negligence standard of livestock liability statute... Honzel affirmed (unpublished, IOR I-3(d)).

Victoria Rocco collided with a Black Angus bull on Lincoln Road in the Helena Valley in the early morning of 7/29/05. She suffered a head injury and serious facial cuts. She sued bull owners Phillip & Geraldine Ogle alleging negligence in failing to prevent the bull from wandering onto the road, and also asserted a claim of public nuisance. Ogles moved for summary judgment on the basis that §27-1-724 protects a livestock owner from liability for livestock wandering on the highways. Judge Honzel granted summary judgment to Ogles on the nuisance claim, noting that allowing Rocco to bring an action under the general nuisance statutes would circumvent liability limits under §27-1-724, which provides that a livestock owner is not subject to damages unless he was "grossly negligent or engaging in intentional misconduct." Rocco moved to declare 27-1-724 in violation of Art. II §4. Honzel denied her motion and granted summary judgment to Ogles. Rocco appeals.

Rocco argues that the gross negligence standard in §27-1-724 violates Montana equal protection and substantive due process provisions, and that she was entitled to pursue her independent claim for relief under a public nuisance theory separate from her negligence claim. She concedes that she cannot meet the gross negligence standard under §27-1-724. However, the record reveals that she likely could not establish even simple negligence. Thus her challenge to constitutionality of the gross negligence standard in 27-1-724 would have no effect on the outcome. We decline to undertake the requested constitutional analysis under these circumstances. It is manifest on the briefs and record that there are no material fact issues and that Honzel correctly interpreted the law. Affirmed.

Morris, Warner, Cotter, Rice, Nelson.

***Rocco v. Ogle*, DA 07-708, last brief 5/22/08, decided 11/25/08.**

Michael Fanning, Helena, for Rocco; Rochelle Loveland & James Halverson (Halverson & Gilbert), Billings, for Ogles.