[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-14319

Non-Argument Calendar

MICHELE FAHEY,

Plaintiff-Appellant,

versus

KOLCUN TREE CARE, LLC,
JOHN DOES NOS. 1-10,

Defendant-Appellee,

JOHN DOES NOS. 1-10,

Defendants.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 4:21-cv-00004-RSB-CLR

Before GRANT, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

A horse-drawn carriage ride in early Spring through the heart of Savannah, Georgia requires us to determine the scope of liability immunity under Georgia's Injuries from Equine, Livestock, and Llama Activities Act, Ga. Code Ann. § 4-12-3(a) (2018). Under the Act, "an equine activity sponsor, an equine professional, a livestock activity sponsor, a livestock professional, an owner of a livestock facility, a llama activity sponsor, a llama professional, *or any other person*, which shall include a corporation or partnership" is immune from liability for injuries to a participant in an equine, livestock, or llama activity caused by the inherent risks of animal activities. *Id.* (emphasis added). We must decide whether a tree services company qualifies as an "any other person" immune from liability under the Act. Georgia's longstanding rules of statutory interpretation dictate that it does not. Accordingly, we reverse.

I.

Michele Fahey was conducting a horse-drawn carriage tour in downtown Savannah, Georgia. During the ride, Fahey took the

tourists past a tree trimming crew employed by Kolcun Tree Care, LLC, a tree services company. The crew was pruning crepe myrtles in Savannah's historic Columbia Square, using a noisy woodchipper to remove trimmed branches from the jobsite. The noise startled Fahey's horse, causing it to bolt. Fahey lost control of the carriage, which crashed into a curb, flipped over, and injured Fahey.

Fahey sued Kolcun, alleging that her injuries were caused by Kolcun's negligent training and supervision of its employees. Kolcun moved for summary judgment, arguing that it was an "any other person" immune from liability under Georgia's Injuries from Equine, Livestock, and Llama Activities Act, § 4-12-3(a). The district court agreed and granted summary judgment for Kolcun. Splitting the phrase "any other person" into its component words, the court determined that the definitions of "any," "other," and "person," put together, "unquestionably" includes Kolcun. And because that phrase is unambiguous in isolation, the court believed it unnecessary to consult the greater statutory context to determine its reach.

Fahey appealed. She argues that, when read in its proper context, "any other person" under Section 4-12-3(a) limits immunity to persons engaged in equine, livestock, or llama activities and thus does not apply to tree services companies like Kolcun.

II.

We review a district court's grant of summary judgment *de novo*. *Cowen v. Ga. Sec'y of State*, 960 F.3d 1339, 1341 (11th Cir.

2020). Summary judgment is warranted where, viewing the evidence in the light most favorable the non-moving party, *id.* at 1342, "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law," Fed. R. Civ. P. 56(a).

Georgia's substantive law governs our interpretation of Section 4-12-3(a) in this diversity suit. *Grange Mut. Cas. Co. v. Woodard*, 826 F.3d 1289, 1295 (11th Cir. 2016); *see also Dowis v. Mud Slingers, Inc.*, 621 S.E.2d 413, 414 (Ga. 2005) (holding that, under Georgia choice-of-law rules, "a tort action is governed by the substantive law of the state where the tort was committed."). "We decide novel questions of state law 'the way it appears the state's highest court would.'" *Freeman v. First Union Nat'l*, 329 F.3d 1231, 1232 (11th Cir. 2003) (quoting *Ernie Haire Ford, Inc. v. Ford Motor Co.*, 260 F.3d 1285, 1290 (11th Cir. 2001)). In predicting how the Supreme Court of Georgia would interpret a statute, we may "examine Georgia's canons of statutory construction." *See Grange*, 826 F.3d at 1300.

III.

Section 4-12-3(a) of Georgia's Injuries from Equine, Livestock, or Llama Activities Act provides liability immunity to "an equine activity sponsor, an equine professional, a livestock activity sponsor, a livestock professional, an owner of a livestock facility, a llama activity sponsor, a llama professional, or any other person, which shall include a corporation or partnership" for injuries to a "participant" in an equine, livestock, or llama activity "resulting

from the inherent risks of animal activities." Ga. Code Ann. § 4-12-3(a) (West). For the purposes of this appeal, the parties agree that Fahey was a "participant" engaged in an equine activity at the time of the carriage accident; that Fahey's injury resulted from "the inherent risks of animal activities"; and that Kolcun, a tree services company, was not "an equine activity sponsor," "equine professional," "livestock activity sponsor," "livestock professional," "owner of a livestock facility," "llama activity sponsor," or "llama professional" under the statute. They dispute only whether Kolcun falls within the meaning of "any other person" under Section 4-12-3(a). We hold that it does not.

When interpreting a statute, Georgia courts "start with the statutory text itself" and afford it "its plain and ordinary meaning." *Alston & Bird, LLP v. Hatcher Mgmt. Holdings, LLC*, 862 S.E.2d 295, 298 (Ga. 2021). Kolcun argues that "read in isolation," the ordinary meaning of the phrase "any other person" in Section 4-12-3(a) unambiguously includes Kolcun, a tree services company.

But Georgia courts "consider text in context, not in isolation." *Elliott v. State*, 824 S.E.2d 265, 272 (Ga. 2019). Indeed, "even if words are apparently plain in meaning, they must not be read in isolation and instead, must be read in the context of the [statute] as a whole." *Upper Chattahoochee Riverkeeper, Inc. v. Forsyth County*, 734 S.E.2d 242, 245 (Ga. Ct. App. 2012). When consulting context, "we may look to other provisions of the same statute, the structure and history of the whole statute, and the other law . . . that forms the legal background of the statutory provision in

question." *In the Interest of T.B.*, 874 S.E.2d 101, 105 (Ga. 2022) (quoting *In the Interest of K.S.*, 814 S.E.2d 324, 325 (Ga. 2018)).

Three textual and contextual markers convince us that the phrase "any other person" in Section 4-12-3(a) does not include a tree services company.

First, the Act's text is a literal textbook case for the appropriate application of the interpretive canon *ejusdem generis*. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 201–02 (2012) (discussing with approval decision applying *ejusdem generis* to South Dakota's Equine Activities Act (citing *Nielson v. AT&T Corp.*, 597 N.W.2d 434 (S.D. 1999))). Under that longstanding rule, "where words particularly designating specific acts or things are followed by . . . words of general import, comprehensively designating acts or things, the latter are generally to be regarded as comprehending only matters of the same kind or class as those particularly stated." *Fleming v. City of Rome*, 61 S.E. 5, 6 (Ga. 1908); *accord, e.g.*, *Kinslow v. State*, 860 S.E.2d 444, 449 (Ga. 2021).

Here, the catchall phrase "any other person" follows a list of seven specific persons to whom the statute extends immunity: "an equine activity sponsor, an equine professional, a livestock activity sponsor, a livestock professional, an owner of a livestock facility, a llama activity sponsor, [and] a llama professional." § 4-12-3(a). And these enumerated persons share a characteristic: they each have an affiliation with equine, livestock, or llama activities. *See* Ga. Code Ann. § 4-12-2 (2017) (defining each specified person). Thus,

ejusdem generis instructs us to interpret the general phrase "any other person" as being limited to persons who also are affiliated with equine, livestock, or llama activities. *see Standard Oil Co. v. Swanson*, 49 S.E. 262, 263 (Ga. 1904) ("Where a statute . . . enumerates several classes of persons or things, and immediately following, . . . embraces 'other' persons or things, the word 'other' will generally be read as 'other such like' . . . ."). Kolcun, a tree care company, has no such affiliation. *Cf. Latham v. Stewart*, 78 S.E. 812, 812–813 (Ga. 1913) (statute imposing tax on sales "of any . . . medicines, . . . or appliances of any kind, . . . or jewelry, or stationery, . . . or soap, or *any other kind of merchandise or commodity whatsoever (whether herein enumerated or not),*" does not apply to sales of chicken, eggs, or butter, which, being food products, "are of a different nature altogether" (emphasis added)).

Second, were we to read "any other person" to include everyone—equine related or otherwise—the preceding list of specific persons would become redundant. And "it is well settled that in interpreting statutory text, 'courts generally should avoid a construction that makes some language mere surplusage.'" *Camden County v. Sweatt*, 883 S.E.2d 827, 837 (Ga. 2023) (quoting *Middleton v. State*, 846 S.E.2d 73, 79 (Ga. 2020)). If the legislature had wished to extend immunity to *any* person, it could have simply said "any person" rather than setting forth a detailed list and then rendering it meaningless by the concluding phrase "any other person." *See Latham*, 78 S.E. at 813; Scalia & Garner, *supra,* at 200.

Third, the Act's codified statement of intent in Section 4-12-1 buttresses our conclusion that Section 4-12-3(a)'s protective scope does not include persons with no relation to equine, livestock, or llama activities. *See* Ga. Code Ann. § 4-12-1 (2017). Section 4-12-1 states that "the intent of the General Assembly [is] to encourage equine activities, livestock activities, and llama activities by limiting the civil liability of those involved in such activities." Under Georgia law, this enacted preamble is a relevant indicator of meaning. *See City of Marietta v. Summerour*, 807 S.E.2d 324, 330 n.3 (Ga. 2017); *see also Harrison v. McAfee*, 788 S.E.2d 872, 877 n.5 (Ga. Ct. App. 2016) ("When the General Assembly codifies its intent for a comprehensive statutory scheme, that codified preamble becomes part of the statutory context in which we read individual passages."). The legislature's formal declaration of intent to excuse from liability "those involved" in "equine activities, livestock activities, and llama activities" supports our conclusion that the "any other person" afforded immunity under 4-12-3(a) must be a person affiliated with such activities. *See Holcomb v. Long*, 765 S.E.2d 687, 691 (Ga. Ct. App. 2014) (avoiding interpretation of § 4-12-3 that "would run afoul of the General Assembly's expressed desire [in § 4-12-1] of creating broad immunity *for equine professionals engaging in equine activities*" (emphasis added)).

In short, reading "the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would," *Deal v. Coleman*, 751 S.E.2d 337, 341 (Ga. 2013), we

conclude that Kolcun is not immune from liability under Section 4-12-3(a).

IV.

The district court's judgment is **REVERSED,** and this matter is **REMANDED** for proceedings consistent with this opinion.