


ASSEMBLING AN ANIMAL CASE


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ASSEMBLING AN ANIMAL CASE

CIVIL LAWSUITS INVOLVING ANIMALS – PLAINTIFF’S PERSPECTIVE

- Animal Custody Disputes
- Fraud/Misrepresentation
- Housing Disputes and "No Pet" Policies
- Shareholder Actions to Benefit Animals
- Veterinary Malpractice
- Wrongful Death or Injury to Companion Animals



ASSEMBLING AN ANIMAL CASE


TOPICS

- Animal Custody Disputes
- Fraud/Misrepresentation
- Housing Disputes and "No Pet" Policies
- Shareholder Actions to Benefit Animals
- Veterinary Malpractice
- Wrongful Death or Injury to Companion Animals

The Clients



- Animal Protection Organizations
- Business Owners
- Champion (Show) Animal Owners
- Companion Animal Owners/Guardians



The Clients



- Animal Protection Organizations
 - Standing Issues
 - Interest in Intentional Cruelty Cases
 - Shareholder Actions
- Business Owners
 - Contract Issues
 - Dog Bites (Animal Injury)
- Champion (Show) Animal Owners
 - Traditional Property Type Case w/ Variants
- Companion Animal Owners/Guardians

The Clients



- Companion Animal Owners/Guardians
- Fraud/Misrepresentation
 - Animal Purchase from Pet Store
 - Can Involve Other Statutes/Laws (Ex: IL Consumer Fraud v. IL Puppy Lemon Law)
 - SDL - Fraud
- Intentional Cases (Cruelty, Torture, IED)
 - Person Kills or Harms Companion Animal - Intent Required
 - Can Involve Other Statutes/Laws (Ex: IL Humane Care for Animals Act; TN Law)
 - SDL - Personal Injury
- Veterinary Malpractice
 - Negligence Type - Mistake/ Professional Standards
 - Can Involve Contract; Fraud; Other Statutes/Laws (Ex: Vet Practice Act)
 - SDL: Malpractice & Property & Fraud & Other
- Negligent Death or Injury to Companion Animals
 - Accident / Mistake / Res Ipsa (Ex: Boarding, Bite from Another Dog, Grooming Accident, Escape from Dog Walker)
 - SDL: Property & Other

The Clients



- Key Questions – Initial Consultation
- Against whom? [Conflicts & Private v. Govt. Actor]
 - When? [Statutes of Limitations]
 - What happened? [Intentional v. Negligent Act]
 - What paperwork is involved? [Contracts, Waivers, Etc.]
 - **What do you hope to gain by bringing lawsuit?**

- Managing Expectations
- Damages Will Vary
 - **Can Be Costly** (Filing Fees, Transcripts, Experts)
 - Evidence May Not Be Admitted
 - Emotional Investment
 - Public Scrutiny
 - Outcome Difficult to Predict

The Other Side



Important Considerations

Business or Professional

- Reputation
- Insurance Paying for Defense

Government

- Immunities
- Insurance Paying for Defense

Individual

- Ability to Find
- If No Insurance, May Not Be Able to Collect

Fraud / Misrepresentation



Examples – Taylor, Case No. 09-M5-000363

The dog Opie and seller Happiness is Pets (HIP)

Month of Inquiry & Discussion about Opie

- \$200 deposit (was to be refunded or applied to purchase)
- One point – puppy “out for surgery” (neutering)
- HIP represented Opie came to HIP from USDA licensed breeder & Owner of “Blue Ribbon”
- No medical issues; APR = AKC; “family tree” info. available for \$20 to APR

Spotted Italian Greyhound, purchased for approx. \$800 (reduced price – older puppy)

Day after purchase, Opie had difficulty breathing → Emergency Vet Care South

Called HIP, informed all vet care would be paid by HIP – wasn’t reimbursed

Fraud / Misrepresentation



Examples – Taylor

Regular vet visit → Informed Opie not neutered & continued respiratory issues

- Later learned “out for surgery” – being treated for loose stool & vomiting

Research into breeder → Not person stated & broker was “Levi Graber”

- No pedigree available from APR

No refund of \$200 deposit

No reimbursement for neuter & emergency vet

No microchip registration

Opie had *Giardia* and *Coccidia*, among other health issues



Fraud / Misrepresentation

Example: Taylor

Claims:

- Fraudulent Concealment
 - Intention to refund \$200
 - Neutered status of puppy
 - APK v. AKC
 - Broker involvement
- Fraud
 - Bad Faith Scheme
- Other Claims
 - Breach of Written Contract
 - Breach of Oral Contract
 - Negligent Misrepresentation
 - Injunctive Relief

Fraud / Misrepresentation



Elements of Fraud

- (LA) Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction.

Damages Available

- Enhanced
- Punitive or (LA) Attorneys Fees

Evidence of Fraud

- (LA) Fraud need only be proved by a preponderance of the evidence and may be established by circumstantial evidence.
- Other States: clear and convincing evidence is required.

Fraud / Misrepresentation

Example: Taylor

Important Considerations

- Pre-litigation Investigations - FOIA
- Discovery (Schemes)
- Public Interest in Puppy Mills

Outcome

- Settlement (Terms Confidential)

Fraud / Misrepresentation

Examples – Taylor – Since Replaced by IL Puppy Lemon Law



Fraud / Misrepresentation

Examples – Dafnis, 2014 L 004161

The dog Milly, guardian/owner Corey Dafnis, & veterinarian Matthews (Calumet Animal Clinic)
 CAC - Small Veterinary Practice (one vet, a couple techs)

March 21, 2014 - Milly (5 year old, healthy German Shepherd) brought in for spay surgery; assured surgery was safe for Milly & told Milly needed to stay overnight for observation following surgery

March 22, 2014 – Ms. Dafnis received call that Milly had died overnight
 • Told Milly died of hemophilia

March 22, 2014 – Milly brought to second vet for necropsy



Fraud / Misrepresentation



Example: Dafnis

Later Learned

- Milly's abdomen filled with blood due to one or more loose clamps (she bled out)
- Matthews was not licensed to administer controlled substances
- No persons checked on Milly "periodically" during the overnight stay
- Information received/alleged that surgeries being performed by techs (staff)
- Information received/alleged that techs (staff) engaging in questionable behavior
- Information received/alleged that persons at clinic took drugs intended for animals at clinic
- Not the first dog to die under similar circumstances at clinic

Fraud / Misrepresentation



Example: Dafnis

Complication:

- Exculpatory Clause in Form

Claims:

- Fraud in the Inducement (representations made before signing form)
- Fraud/ Misrepresentation
 - (no license; false claim that dog died of hemophilia; periodic checks)
- Fraud/ Concealment *

Other Claims:

- Professional Malpractice (breach of reasonable standard of care)
- Humane Care for Animals Act (cruelty)
- Negligence (breach of ordinary care)
- *Respondet Superior* (responsible for agent's actions)

Fraud / Misrepresentation



Example: Dafnis

Important Considerations

- Pre-litigation Investigations – Licensing Info., FOIA
- Attorney Correspondence = Admissions
- Public Interest – News Coverage
- Social Media – FB Pages & Supporters
- Involvement of IDFP – Disciplinary Review
- Exculpatory Clause Potentially Unenforceable

Media in Cases with Acts Against Animals



INVOLVEMENT OF NEWS/MEDIA

- Dafnis Case
- Trying Case in Court v. Public Opinion

This firm is in receipt of your letter dated April 29, 2014, demanding a response by 4pm today. Please be aware that Dr. Charles Matthews, DVM d/b/a Calumet Animal Clinic was served with process in Case No. 2014-L-004161 at 3pm on April 26, 2014. Since Defendant Matthews may not have provided you a copy of this Complaint, one is attached herein. A copy of the litigation hold letter sent to your client on April 4, 2014 is also attached for your review.

Further, and as to your client's demands for Ms. Dafnis' silence and his possible counterclaims for defamation please be aware that Illinois Anti-SLAPP Laws protect acts in furtherance of a person's rights of petition, speech, association or to otherwise participate in government. Please be aware that Ms. Dafnis has publicly reported and may continue to correspond regarding the events discussed in Case No. 2014-L-004161 with the Illinois Department of Professional and Financial Regulation, as well as other government authorities, and presumes you do not intend to prevent such protected acts.

Additionally, and while Ms. Dafnis is aware of other interviewees for the program you note, she stated to reporters that she did not wish to appear on camera and/or to discuss her case due to the pending litigation. Please be aware that Ms. Dafnis does not control other persons' access to publicly available items and cannot control what others say about your client.

Should you have any questions, please do not hesitate to contact me directly.

Very truly yours,

This firm does not constitute a complete or full statement of all of my client's legal claims. Such information should be passed to you as a matter of transparency, if you or your client have any questions.

Media in Cases with Acts Against Animals



INVOLVEMENT OF NEWS/MEDIA

Problem (for Attorney) if Litigation is Anticipated or Underway

- Ethics Rules May Prohibit
 - By Filing Suit, You Have Agreed to Submit Dispute to Courts
 - Publicity Can Taint a Jury Pool
- Client Statements Are Recorded & Now Evidence
- Client May be Misquoted or Portrayed Negatively
- May Destroy Settlement Talks
- May Bring Counterclaim for Defamation
- May Encourage Court to Issue Gag Order
- May Stall Civil Case if Criminal Prosecution Results

Media in Cases with Acts Against Animals



INVOLVEMENT OF NEWS/MEDIA

Benefits

- Brings a Public Matter to Light
- May Encourage Others to Speak
- May Allow You to Gauge Community Reaction
- May Give Rise to Additional Claims
- May Resolve Dispute More Quickly/ Directly

Media in Cases with Acts Against Animals



INVOLVEMENT OF NEWS/MEDIA

Attorney May Be Asked For Statement

- Refer to Ethics Rules
- Refer to Publicly Filed Documents
- Even if Responding to Accusations or AFTER Case Concludes – Need Client Approval

Client May Be Asked For Statement

- Warn/Advise Client of Potential Negative Consequences
- Be Present for Recording
- Be Prepared for Fallout

Intentional Acts Against Animals



Elements of Intentional Act

- (LA) In this case, the basic standard applicable to the defendant is that he must not intentionally invade or interfere with, the physical integrity of the plaintiff. By "intentionally", I mean the purpose or state of mind with which a person acts.
- (LA) Intent means that the person either (1) consciously desires the physical result of his actions or (2) knows that the result is substantially certain to follow from his actions. A defendant who is guilty of an intentional tort is liable for all of the consequences of his actions, even those which he did not actually intend or which were not reasonably foreseeable.


Damages Available

- Compensatory Losses
- Emotional Distress

Evidence of Intent

- Admission
- Eyewitness
- Circumstantial

Intentional Acts Against Animals




Example – Dafnis

- Defendant did NOT have a license to administer controlled substances
- Controlled substances necessary to prevent pain during surgery
- Surgery performed without controlled substance would cause pain

PRACTICE POINTER: **Veterinarians use a number of controlled substances – different DEA regulations attach to each class. Some substances used during surgery (propofol) are not controlled. Other substances are used to immobilize and do not prevent pain.**

Intentional Acts Against Animals




Example – Dafnis

- Illinois – Specific Statute
- Humane Care for Animals Act (510 ILCS 5/70)

Important Consideration:

- Criminal Charges = Possible Delay in Civil Case

Intentional Acts Against Animals




Example – Green

- Police shooting
- Involves Constitutional Violations (Civil Rights - Sec. 1983)
- Note: Government Actors – in particular police – qualified immunities**
 - Acts of Negligence are protected
 - Willful and Wanton conduct is not protected

Important Considerations

- Preserve Information ASAP
 - Preservation Letter (Litigation Hold Letter)
 - FOIA (radio communications, video, reports, calls received, photos, etc.)

Intentional Acts Against Animals




INVOLVEMENT OF NEWS/MEDIA

- Green Case
 - Animal Cases Draw Public Attention
 - Filing May be Picked Up by Reporter

CHECK ETHICS RULES
BEFORE SPEAKING TO REPORTERS

Veterinary Malpractice



Elements of Veterinary Malpractice

- Breach of the reasonable standard of care that was proximate cause of injury/death
 - What a reasonably prudent practitioner would do in the same or similar circumstances
 - Higher standard for specialists (board certified)
 - Will depend upon facts
- Res Ipsa Loquitur (that which speaks for itself)
 - Example: Removing wrong leg; Excessive dosages of medications, etc.


Damages

- Jurisdictional – Negligence/Property Based
- Fair Market v. Actual Value
- Varies: cost to bring back to health; sentimental value; loss of companionship; mental distress

Evidence

- Typically involves expert testimony/evaluation of records

Veterinary Malpractice



Example – Dafnis

- Failure to have license not enough
- Must show actions were proximate cause of injury/death
- Alleged a number of ways
 - Failing to use accepted surgical procedures (clips)
 - Failure to use pain relieving drugs
(note: must link to injury/death)

Veterinary Malpractice



Example – Dafnis

Dr. Matthews attempted to take his own life, which is a matter of public record.

Important Considerations:

- Unexpected Issues (deposition →)
 - Probative Value v. Protections
- State Disciplinary Involvement
 - Get Records (if able – sometimes they do not match discovery provided)
- Social Media
 - Witnesses – Fact Gathering
 - Counterclaims (possible defamation)
 - Allegations of Fraud (or using case to make \$\$\$)

Negligent Acts Harming/Killing Animals



Elements of Negligence

- Duty, Breach, Causation, Damages
 - Ordinary care expected for a given activity
 - (LA) Chapter 3 – Jury Instructions

*Damages for Negligence

- Compensation
 - Fair Market v. Actual Value
 - Varies: cost to bring back to health; sentimental value; loss of companionship; mental distress
- *Goals of Tort Law*
 - (1) Deter Misconduct; (2) Compensate Victims; (3) Comport with Societal Values

Evidence

Negligent Acts Harming/Killing Animals



Example – Crowley, 15-M1-300576

- Dog Jezebel, guardians/owners James & Mary Crowley, driver MaryPat McAuliff
- Jezebel – 3 yr. 10 mo., spayed female dog
- November 29, 2014, James Crowley was walking Jezebel (on leash) north on Clark Street (Chicago) with walk signal while crossing Superior Street
- MaryPat McAuliff turned her car into intersection and ran over Jezebel with her car, nearly hitting James Crowley as well.
- Jezebel's pelvis was crushed in three places, her right hip luxated, her right femoral head broken and part of her hip was removed. Jezebel's tail was also broken at the base and further surgeries were necessary. A few days later, Jezebel died from her injuries.

Negligent Acts Harming/Killing Animals



Example – Crowley

Claims

- Negligence
- Negligent Infliction of Emotional Distress

Outcome

- Settlement (\$20,000)

Important Considerations

- Genuine Sentiment
- Video of Events

14 Q. Okay. Do you feel, or have you felt
 15 that because of your own circumstances in
 16 walking the dog that you are or were guilty in
 17 some aspects of not preventing the incident
 18 itself, any feelings of guilt?
 19 A. Yes.
 20 Q. Explain, please.
 21 A. I shouldn't have jumped out of the way
 22 of the car. I should have let it hit me.

Negligent Acts Harming/Killing Animals



Example – Henson, 15-M1-10965

The dog Tugs, owner/guardian John Henson, dog walker David Drake (Millennium Dog Walkers)

Tugs was a 6 year old, Chinese Shar-Pei, companion canine and part-time therapy dog in Mr. Henson's private psychotherapy practice

On August 14, 2014, David Drake let Tugs get away from him on walk, Tugs was struck by a vehicle and died shortly thereafter at the emergency vet.

Negligent Acts Harming/Killing Animals



Example – Henson

Claims:

- Breach of Agreement (Special Care)
- Negligence
- Respondeat Superior

Outcome

- Jury Verdict (\$8,500) for Breach of Agreement

Negligent Acts Harming/Killing Animals



Example – Mengarelli, 11-L-47

The dog Dolce, guardians/owners Mike and Heather Mengarelli, dog owner Angela Marquardt, & business Orchard Road Animal Hospital (ORAH)

Dolce was a 3 year old Pomeranian rescue dog who competed with Heather in shows/events

In the afternoon of December 5, 2010, Mike & Heather brought their two dogs, Dolce and Lindsay to ORAH to get a picture taken with Santa Paws

Upon passing through the first set of doors and entering the corridor with Dolce (leashed) and Lindsay (held by Mike), a large mastiff barreled through the lobby doors and into the corridor, trapping Heather and Dolce

The large mastiff lunged at and grasped Dolce, ripping Dolce's leash from Heather's hand, violently thrashed Dolce (despite Mike's efforts to free Dolce & while Marquardt did nothing), Dolce fell to the ground and shortly thereafter died from the attack (despite some veterinary efforts to save Dolce)

Negligent Acts Harming/Killing Animals



Example – Mengarelli

Claims:

- Negligence (ORAH)
- Premises Liability Act (ORAH)
- Negligence (Marquardt)
- NIED (ORAH & Marquardt)
- Animal Control Act (Marquardt)

Outcome

- Settlement (\$19,000)

Negligent Acts Harming/Killing Animals



Example – Anzalone v. Kragness (1st Dist 2005)

- Suit brought for \$100,000 for negligent loss of cat during boarding (bailment case)
- Cannot dismiss for high demand alone – "actual value" standard
- Dicta


"Actual Value"

- No emotional distress ... BUT

Jankoski v. Presier Animal Hospital, Ltd. (1st Dist. 1987)

- Sued for "Loss of Companionship" as Independent Cause of Action
- Not Allowed As Independent Cause – But "Actual Value" May Include Some Element of Sentimental Value

Negligent Acts Harming/Killing Animals



Example – Anzalone v. Kragness
 • Jury Instruction – after REMAND

As the defendants have admitted liability, you must then fix the amount of money which will reasonably and fairly compensate her for any of the following elements of damages proved by the evidence to have resulted from the wrongful conduct of the defendants.

The damage to property, determined by the actual value to the owner immediately before the occurrence. This may include lots of companionship and loss of sentimental value. You may consider the length of time the plaintiff owned the property before it became damaged. You may exclude the purchase price as a basis for valuation, if the sum does not really reflect the value of the destroyed property.

Whether any of these elements of damages has been proved by the evidence is for you to determine.

Negligent Acts Harming/Killing Animals

Leith v. Frost (4th Dist. 2009)

Even if it were true that anyone would pay \$ 200 for a 7 1/2-year-old dog that is not a show dog, the reality is that Molly had already assumed value of the time of the injury. A reasonable person [***12] in defendant's position should have reasonably ascertained that if his dog escaped from their enclosure and injured plaintiff's family pet, plaintiff would feel compelled to pay considerably more than

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587 Ill. App.3d 436, 448, 89 N.E.3d 635, 754112009111, Axx LEXIS 1337, 0713

It is common knowledge that people are prepared to make great sacrifices for the well being and continued existence of their household pets, to which they have become deeply attached. They feel a moral obligation toward these animals. Consequently, they have no choice but to pay out great expenditures when these animals suffer a serious physical injury.

Motions



- Motions to Dismiss
 - Pleadings (Failure to State Cause of Action)
 - Merits/Proofs (Summary Judgment, etc.)
- Motions in Limine
 - Evidence Allowed
 - Photos
 - Testimony (Distress, etc.)
 - Prior Bad Acts
 - Damages Available
 - Market v. Actual Valuation



Jury Considerations



- Voir Dire
 - If Allowed, Ask Open Ended Questions
- Strikes
 - Use Cautiously & Carefully
- Jury Instructions
 - May Not Be Pattern



Settlements



- Things to Consider:
- For Business or Professional Defendant
 - Confidentiality
 - Sometimes Non-Disparagement
- **Use Caution if Settlement Seeks Non-Disparagement by Attorney
- CHECK ETHICS RULES.**



Questions?



Thank You!

