

LAW REVIEW

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WHAT IS THE SENTIMENTAL VALUE OF YOUR PET?

Most of us grow very attached to our pets. Strong attachment. What happens if your veterinarian messes up and accidentally kills your pet, then lies to cover it up? Can you recover for the dog's sentimental and emotional value? I.e. damages beyond the cost to buy another dog?

"Tootsie" Dies

Gail McMahon is an owner, occasional breeder and handler of Maltese show dogs. One of her favorites was "Tootsie," who when she was two years old developed a respiratory illness which required surgery. The vet, Dr. Diane Craig, fully understood Tootsie's sentimental and unique value to McMahon and knew that McMahon would be emotionally devastated if Tootsie died.

Following surgery, Tootsie was placed in a cage and left unmonitored in the back of the hospital. Worse yet, she was given not only water but also baby food within two hours of her surgery to test her ability to swallow. Tootsie immediately aspirated the mixture into her lungs and died.

Dr. Craig advised McMahon that Tootsie had only been given water and had never been left alone. Wrong on both counts. Later Dr. Craig altered Tootsie's medical records to hide her negligence. A necropsy performed on Tootsie showed she died from aspiration pneumonia caused by food in her lungs.

Three days after the operation, Dr. Craig brazenly charged McMahon's credit card for the surgery knowing she would be unwilling to pay for Tootsie's treatment. *That* was a blunder

Vet Sued

McMahon sued for veterinary negligence, loss of companionship, misrepresentation, and infliction of emotional distress. She should have added a cause of action for "stupidity" for the billing. The trial court threw out the case. McMahon appealed.

Emotional Distress

California law allows emotional distress damages in very narrow instances. For example, where a bystander is an at-the-scene witness to an injury or death to a relative and suffers emotional distress beyond that of an unrelated witness. But that does not apply in Tootsie's situation.

Another circumstance when emotional damages may be recovered is when the victim has a special relationship with the plaintiff such that the plaintiff suffers unique emotional distress damages. An injury during delivery to a baby may result in emotional anguish to the mother.

The Court of Appeal analyzed several cases and wrote: "There is no doubt that some pet owners have become so attached to their family pets that the animals are considered members of the family. This is particularly true of owners of domesticated dogs who have been repeatedly referred to as "Man's Best Friend" and a faithful companion....Although we live in a particularly litigious

society, the court is not about to recognize a tortious cause of action to recover for emotional distress due to the death of a family pet.”

Loss of Companionship

McMahon, Tootsie’s owner, attempted to recover for loss of companionship, based on Civil Code section 3355, which provides that damages may be awarded for loss of certain property which has a “peculiar value” to a person if the person causing the injury or death was aware of the unique and special value to the plaintiff. McMahon sought \$100,000 for loss of Tootsie’s companionship.

The Court of Appeal recognized the “peculiar value” Tootsie had to McMahon, but limited those damages to the cost of replacing Tootsie, ruling out sentimental value. Peculiar value under section 3355 refers to unique economic value, not sentimental or emotional value.

The Court wrote in conclusion: “We recognize the love and loyalty a dog provides creates a strong emotional bond between an owner and his or her dog. But given California law does not allow parents to recover for loss of companionship of their children, we are constrained not to allow a pet owner to recover for loss of the companionship of a pet.”

So as surprising as it may seem, as a general rule if your beloved pet is injured or killed, you may not recover damages beyond the cost of buying another pet.

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