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Subject: Update on Important Case in Veterinary Medicine



Update: Non-economic Damages Case

Last week, the Texas Supreme Court heard oral arguments in the case of [Medlen v. Strickland](#). TVMA has been closely involved in this case because the ultimate decision can have consequences that will dramatically impact the practice of veterinary medicine.

Brief Case Outline

The case, *Medlen v. Strickland*, was filed in a Fort Worth trial court after the Medlen's dog escaped their backyard on June 2, 2009, and was picked up by local animal control. Mr. Medlen went to the shelter to retrieve the dog but did not have enough money to pay for its release. He was told that a hold-for-owner tag was placed on the dog; however, on June 6, Strickland, a shelter employee, included the dog on a list of animals that would be euthanized the following day. A few days later, when the Medlens returned to retrieve the dog, they found that it had already been euthanized.

The Medlens sued the shelter employee, Carla Strickland, alleging that her negligence was a proximate cause of the dog's death. In addition, the suit asked the court for a recovery of the sentimental or intrinsic value of the animal. Eventually, the trial court dismissed the claim on the grounds that such damages are not recoverable for the death of a dog. However, the Medlens appealed, and the appeals court picked up the case to determine the sole issue of whether a party can recover intrinsic or sentimental damages for the loss of a dog.

Traditionally, courts have followed the reasoning of the case of *Heiligmann v. Rose*, 81 Tex. 222, 16 S.W. 931 (Tex. 1891), which held that the value of a dog may be determined by "either a market value, if the dog has any, or some special or pecuniary value to the owner that may be ascertained by reference to the usefulness and services of the dog."

Since 1891, courts around the state of Texas have generally followed the reasoning in the *Heiligmann* case. However, the Fort Worth appeals court did not agree with other courts' interpretation of precedent and noted that the *Heiligmann* case was decided at a time when Texas law did not allow recovery for the sentimental value of any personal

property. More recent cases have held that, where personal property has little or no market value and its main value is in sentiment, damages may be awarded based on this intrinsic or sentimental value. The appeals court felt that if sentimental value is recoverable for heirlooms or property that take a long time to replace, such as trees, then special value may be derived from the attachment that an owner feels towards a pet.

Ramifications of the Decision from a Public Policy Perspective

Currently in Texas, if an animal is negligently injured or killed, the owner can recover their financial losses, including the animal's market value and any expenses caused by the harmful act. Additionally, punitive damages may be awarded in circumstances in which the conduct involved is particularly egregious. This system has produced a stable climate for animal care that has made pet ownership economically viable for most people. Consider the consequences if pet owners were able to collect tens of thousands of dollars every time a pet is injured or passes away. The routine awarding of such damages could potentially drive up the cost of everything associated with the care of pets: veterinary care, medicines, boarding, grooming, etc. For example, all pet owners could face increased liability when their pets get entangled with another person's animal. Auto insurance rates could rise as a result of litigation stemming from animals that are hit by cars. Law enforcement officers might hesitate before protecting themselves or the community from threatening loose animals. Also, local governments, animal shelters and animal rescuers could face hikes in liability and insurance premiums.

In addition, allowing pain and suffering-type awards for animals would be out of balance with all other tort law regarding human relationships. In comparable situations, pain and suffering damages are not currently allowed when a human's best friend, sibling, grandparent or grandchild is injured or killed. We love our pets and value their companionship, but is it really a good idea for our society to elevate that legal relationship to a higher status than relationships with people?

Ramifications of the Decision from a Veterinary Perspective

Veterinarians devote their lives to caring for and preventing the suffering of animals and understand the deep bond that develops between individuals and their pets. However, our members also have good reason to be concerned about the vast unintended consequences that will likely occur if the court of appeals decision is left to stand.

In addition to the damage that could occur to the trusting relationship between veterinarians and their clients, the simple cost of doing business is likely to rise as veterinarians attempt to limit their exposure to this additional liability. Despite claims to the contrary, when a wildcard like non-economic damages enters the equation, it is almost certain that the cost of litigation and liability insurance will increase, causing veterinarians to raise their prices to offset expenses. Studies show and practitioners understand that most people will spend only a limited amount of money on their pets, so if litigation costs cause an increase in the price of veterinary services, more animals would go untreated. Consequently, more pets will be abandoned, fewer will be adopted and a significant number will be put to sleep.

Another unintended consequence of such a change in the law is that veterinarians, like their human counterparts, may be forced to begin practicing defensive medicine, meaning more costly diagnostic and therapeutic measures will be recommended to safeguard against potential claims of malpractice. Consider for a moment the multitude of regular decisions that you, as a practitioner, may make differently if you believed yourself potentially on the hook for a pet owner's emotional damages. Perhaps you would not allow a client to refuse bloodwork due to the expense, or maybe you would be less willing to take a risky case.

In addition, there is no precedent for how to apply an intrinsic value to a pet, leaving many unanswered questions. Does a purebred dog demand a higher sentimental value than a mixed breed, simply on the basis of the original purchase price? Should the owner of a cat who has followed all of her veterinarian's recommendations for wellness care and diet receive a higher compensation than the owner of a cat who did not or who provides no healthcare for the animal? Finally, does the species of pet make a difference in value? Should dogs be valued more than cats, hamsters or goldfish?

Veterinarians, perhaps more than anyone, understand the deep grief and pain felt when a person loses a pet. But, allowing that grief to make changes with vast unintended consequences will do nothing but complicate care, tie up our courts and cause more distress and expense through unnecessary diagnostic testing that will ultimately increase costs and decrease the amount of care provided to individual animals.

Conclusion

Last week, oral arguments seemed to go very well from a veterinarian's point of view with the justices asking well-informed important questions of both sides. However, it's impossible to say how the Texas Supreme Court will ultimately rule on the matter. One thing is for certain: TVMA will continue to closely monitor the case, keep you informed and take necessary action to mitigate damages in the event of an adverse ruling. If you would like to watch the oral arguments, please click [here](#). If you would like to review the documents filed in the case, please click [here](#).

If you have any questions, you may contact Texas Veterinary Medical Association Director of Government Relations/General Counsel Elizabeth Choate, JD, at echoate@tvma.org or 512/452-4224.



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