



CBRA Analysis Non-Economic Recovery for Animals

While the issue of pet ownership vs. pet guardianship is worthy of some attention, attempts in legislatures and courts to extend the liability of veterinarians and others by creating a cause of action for loss of companionship is of much more importance. Once this occurs, attacks on the property status of pets and other animals (including research animals) are significantly aided.

The recent award of \$30,000 in civil damages by a California superior court to an owner of a mixed-breed dog rescued from an animal shelter and the discussion by the California Veterinary Medical Association (CVMA) to propose legislation that would re-class domestic pets into a category of “special property” has caused added concern and questions among the research community as well as the veterinarian community on the consequences and meaning.

The few appellate court decisions in this state that allow or appear to favor allowing recovery for emotional distress for loss of an heirloom or property of special value are intermediate appellate court decisions. The California Supreme Court has not spoken on the issue. This means that one cannot say that the law in California allows for recovery for negligent destruction of or injury to heirlooms or property of special value. The supposition that such legislation as proposed by the CVMA is building on existing general law in the state is not fully valid. Efforts at non-economic recovery legislation such as that being considered by the CVMA are likely associated less with an effort to define animal’s legal standing or rights than with establishing a permanent cap on the non-economic damages that can be recovered from a veterinarian for malpractice, thereby limiting awards to plaintiffs.

The major appellate decision in this area, *Windeler v. Sheers Jewelers*, 8 Cal.App.3d 844, 88 Cal.Rptr. 39 (1970), did not involve a professional health provider, but a jeweler who apparently lost several rings that belonged to a widow's late husband, after the widow gave the rings to the jeweler to have the stones reset for her daughter. Moreover, the holding of the court was not that the widow was entitled to compensation for emotional distress, but for physical suffering resulting from the loss of the rings, including headaches, loss of sleep, aches and pains in her arms and shoulders, and general nervousness all resulting from shock to her nervous system.

The verdict in the recent case involving the Fountain Valley veterinarian and the dog with “special and unique value” as mentioned above does not become precedent unless and

until it is upheld by an appellate court--at least, an intermediate appellate court--and ideally by the state Supreme Court.

The likelihood of this case being upheld if it is appealed to the California Supreme Court is small, because with the exception of one case decided decades ago in Hawaii, animal extremists have lost every attempt in every intermediate or supreme court to award animal owners compensation for emotional distress or loss of companionship. In addition, an appeal to the state Supreme Court would mostly likely be unwelcome by animal extremists supporters, because the Court could declare that pet owners cannot recover for emotional distress, or the Court could declare once and for all that pets are *property*. That would spell the end of the guardianship movement here and perhaps in other states as well. Even the latter holding alone would be a major catastrophe for the Animal Legal Defense Fund (ALDF) and the animal rights movement.