

or shareholders of Quail Corners Animal Hospital.

6. At all times relevant to this action plaintiff was a client at Quail Corners whose male Irish setter dog ("Mason") and show bitch Irish setter Dunholm Lismore ("Meghan") were under the care and control of defendants or their employees, servants, or agents.

FACTS

7. At approximately 10:00 PM on December 24, 1987, plaintiff presented the dog Mason to the emergency service veterinarian at Quail Corners and pointed out several abdominal punctures she believed to be the result of gunshot.

8. Contrary to standard veterinary procedure, the attending veterinarian (identity unknown) failed to perform diagnostic x-rays and treated the dog Mason for dog bite wounds alone, thereby exposing the animal to continued risk of infection, internal injury, and lead poisoning as a result of numerous buckshot pellets left within his body.

9. The lead slugs in question were discovered and one of said slugs removed from the abdominal area of the dog during at its castration by defendant Jackson at Quail Corners on March 8, 1988.

10. Defendant Jackson declined to make any adjustment in fee for erroneous treatment referenced in paragraph 7.

11. Because of continuing dangers referenced in paragraph 8, diagnostic x-rays and testing to determine lead levels in the blood of the dog were required and were carried out at another animal hospital on December 19, 1988.

12. On or about March 15, 1988 the Irish setter bitch Dunholm Lismore ("Meghan"), which was valued at \$5000, was admitted to Quail Corners for the

purpose of correcting a condition known as bloat. Defendant Hassinger carried out this procedure.

13. At the time of admission the dog Meghan had not previously undergone any surgical procedures.

14. On or about April 14, 1988 defendant Jackson performed a second surgical procedure on Meghan to correct scar tissue around the sternum which had developed from the surgical procedure referenced in paragraph 12.

15. On December 1, 1988 the dog became ill and was transported to Quail Corners to determine possible recurrence of bloat. That condition did not develop.

16. X-ray diagnosis carried out at Quail Corners to determine cause of the current illness revealed the presence of a surgical needle within the diaphragm of the dog. Defendants denied responsibility and did not recommend removal.

17. On December 2, 1988 Meghan was again x-rayed at Oberlin Road Animal Hospital, Raleigh, by Dr. Joseph Gordon, who referred plaintiff to North Carolina State University School of Veterinary Medicine to determine position and movement within the body of the surgical needle through ultrasound techniques.

18. On December 7, 1988 the dog Meghan was examined and evaluated by Dr. Margaret Stone, Chief of Surgery at North Carolina State University School of Veterinary Medicine, who described the needle as moving dangerously within the body and recommended that it be immediately removed.

19. Meghan underwent surgery by Dr. Joseph Gordon and Dr. Sandra Albright at Oberlin Road Animal Hospital on December 8, 1988. Because the surgical needle had travelled deep within the diaphragm, highly invasive surgery was required. The needle was recovered deep within the chest wall, but the diaphragm ruptured, respiratory and cardiac arrest followed, and the dog expired.

FIRST CLAIM FOR RELIEF: NEGLIGENCE IN TREATMENT OF DOG MASON

18. The allegations of paragraphs 1-17 are realleged and incorporated herein by reference.

19. Failure to employ diagnostic x-ray techniques in the presence of suspected gunshot wounds falls below the accepted standard of veterinary care within the community.

20. Had diagnostic x-rays been obtained during the initial visit referenced in paragraph 7-8, appropriate emergency care could have been obtained, including immediate removal of lead pellets as warranted, and appropriate follow-up care could have been arranged to monitor dangers referenced in paragraph 8 from any pellets which could not be removed from body.

21. Negligence of defendants referenced in paragraphs 1-11 resulted in approximately \$200 unwarranted charges at Quail Corners and \$150 costs elsewhere for subsequent x-rays and blood test to determine the presence of lead poisoning.

SECOND CLAIM FOR RELIEF: NEGLIGENCE IN TREATMENT OF DOG MEGHAN

22. The allegations of Paragraphs 1-21 are realleged and incorporated herein by reference.

23. The death of the dog Meghan and subsequent grief, mental anguish, and financial loss would not have occurred as they did in the usual course of events and the plaintiff could not have done anything to prevent or avoid the death of the dog under these circumstances.

24. Defendants Hassinger and Jackson exclusively controlled the surgeries they performed upon Meghan, but it has not been possible to determine which defendant is responsible for failure to remove the surgical needle following the particular procedure he performed.

25. Defendants Quail Corners, Hassinger, and Jackson are responsible

for any attendant negligence of other doctors, nurses, or technicians having responsibility for the care and treatment of the dog Meghan who were employed by Quail Corners and acting within the scope of their employment at all times relevant to this action.

26. Leaving a surgical needle within the body of an animal during the surgical procedure is not an inherent risk of bloat surgery.

27. Presumptively under the doctrine of res ipsa loquitur either defendant Jackson or defendant Hassinger is guilty of negligence, since defendants or their agents should have counted the surgical pack following surgery, and the leaving of the surgical needle within the dog's body herein complained of would not have occurred in the absence of failure to do such counting or to do so correctly.

28. But for the negligence of defendant Hassinger or defendant Jackson or other agents of Quail Corners in leaving the surgical needle within the body of the dog Meghan, the highly invasive surgery referenced in paragraph 19, from which the dog did not recover, would not have been necessary.

29. Upon information and belief, earlier treatment of the condition of plaintiff's dog would have permitted either correction or mitigation of damage. Refusal to acknowledge and correct the error resulted in a delay of one week in consultation and scheduling of surgery during which time the surgical needle travelled further into the diaphragm, making its removal more difficult and dangerous.

30. As a direct result of defendants' negligence, plaintiff suffered actual damages of approximately \$4500 in veterinary costs and \$5000 in property loss of the dog Meghan.

THIRD CLAIM FOR RELIEF: GROSS NEGLIGENCE IN TREATMENT OF DOG MEGHAN

31. The allegations of Paragraphs 1-30 are realleged and incorporated herein by reference.

32. Defendants' failure to remove the surgical needle from the body of the dog Meghan following surgery displayed a manifestly smaller amount of watchfulness and prudence than the circumstances would require of a veterinarian or his agents exercising the ordinary standard of veterinary care within the community.

33. Once presence of the surgical needle was discovered through x-ray techniques, defendants had a legal duty to warn plaintiff of the dangers involved to the animal and to recommend immediate removal of said needle.

34. Defendants did wantonly and willfully minimize the danger of allowing the needle to remain within the animal and, with reckless disregard for probable consequences, deliberately refrained from recommending prompt removal of said needle.

FOURTH CLAIM FOR RELIEF: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

35. The allegations of paragraphs 1-34 are realleged and incorporated herein by reference.

36. Defendants negligently engaged in conduct resulting in the death of plaintiff's companion and show dog Dunholm Lismore ("Meghan"). But for their failure to remove a needle from the dog's body following surgery, subsequent highly invasive surgery, which the dog did not survive, would not have been required.

37. Defendants were aware of plaintiff's attachment to the dog Meghan, and it was reasonably foreseeable that such conduct would cause plaintiff

severe emotional distress.

38. Plaintiff's severe emotional distress was the foreseeable and proximate result of defendants' negligent conduct.

39. As a direct and proximate result of defendants' conduct, plaintiff has incurred financial and other loss, has endured severe mental and emotional distress, and plaintiff is therefore entitled to recover actual and exemplary damages in an amount to be determined at trial.

DAMAGES

40. The allegations of paragraphs 1-39 are realleged and incorporated herein by reference.

41. Plaintiff has suffered actual damages in an amount to be determined at trial as a direct and proximate result of the aforementioned acts of defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

- (1) judgment against defendant for a sum in excess of \$10,000; and
- (2) a sum to be awarded at trial for actual damages; and
- (3) a further sum to be determined at trial for exemplary or punitive damages; and
- (4) the costs of this action to be taxed by the clerk against defendants; and
- (5) for such and further relief to which plaintiff may be entitled.

PLAINTIFF HEREOF ENDORSES HER DEMAND FOR TRIAL BY JURY ON ALL ISSUES SO TRIABLE UNDER NORTH CAROLINA LAW.

This the 18th day of January, 1991.

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