

Walter Lockett, &
Kristin Santose,
Husband & Wife,

V.

Defendant-Respondent.

PLAINTIFF-APPELLANT'S BRIEF

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Table of Contents

	<u>Page</u>
STATEMENT OF THE CASE	1
1) Nature of the Case	1
2) Nature of the Judgment	1
3) Statutory Basis of Appellate Jurisdiction	2
4) Effective Appeal Dates	2
5) Question Presented	2
6) Summary of Argument	2
7) Statement of Facts	3
ASSIGNMENT OF ERROR	6
<p>“The Circuit Court legally erred by reversing it’s own decision from the bench at trial and later ruling that Oregon tort law does not allow compensatory recovery for either emotional distress or loss of companionship for witnessing the traumatic death of a companion animal that is directly caused by the negligence of Defendant-Respondent.”</p>	
ARGUMENT	7
CONCLUSION	10
ENDNOTES	11
EXCERPT OF RECORD*	ER-1

*[Formerly Abstract of Record. Applicable references in “Statement of Facts” refer to the “Abstract” which directly correlates to “Excerpt of Record” pages: A-1 is ER-1, etc.]

Table of Authorities

OREGON REVISED STATUTES

	<u>Page</u>
ORS 19.205	2
ORS 19.255(1)	2

OREGON CASES

<u>Meyer v. 4-D Insulation Co., Inc.</u> , 60 Or.App. 70, 652 P2d 852, (1982)	7
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REFERENCE CITATIONS

Recovery of Non-Economic Damages For Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend, Animal Law Review, NW School of Law, Lewis & Clark, Volume 7, Page 45, et. seq., multiple authors, (2001).

Wrongful Death of a Companion Animal, Animal Law Review, NW School of Law, Lewis & Clark, Volume 4, Page 33, et. seq., Steven M. Wise, (1998).

Animal Law, Carolina Academic Press, Pages 175-204, multiple authors, (2000).
(Chapter 4, Section 1)

APPELLANT'S BRIEF
STATEMENT OF THE CASE

1) Nature of the Case

This is an appeal from a Circuit Court Judgment in which the Trial Court Judge reversed his own decision from the bench at trial and later awarded Plaintiff-Appellant's only nominal compensation for the death of their pet cat companion animal caused directly by Defendant-Respondent's negligence but which then denied any recovery for either emotional distress or loss of companionship. The applicable portion of the judgment reads as follows:

"That Plaintiff's claims for additional emotional distress and loss of companionship are hereby DENIED for the reasons stated in the Court's letter of June 22, 2001." (Page 2 of Judgment, Abstract item 1)

2) Nature of the Judgment

A bench trial was held before the Court on March 5, 2001. Although Defendant-Respondent had participated earlier by filing a general denial answer and testifying at arbitration, he did not appear or otherwise participate after appeal for de novo bench trial before the Circuit Court.

The facts were undisputed and the Court ruled Defendant's negligence was the direct cause of the death of Plaintiff-Appellant's pet cat companion animal. The Trial Court Judge initially ruled for Plaintiff-Appellants and found substantial damages for both emotional distress and loss of companionship. Although nominal economic value compensation was awarded the tort claims for both emotional distress and loss of companionship were then denied upon the grounds that Oregon law does not allow such

relief. It is the denial of these two tort claims by the Trial Court judge's later letter, emotional distress and loss of companionship, which Plaintiff-Appellants now appeal.

3) Statutory Basis of Appellate Jurisdiction

This appeal is before the Oregon Court of Appeals from the final Circuit Court Judgment after trial by authority of ORS 19.205¹.

4) Effective Appeal Date

The final judgment after trial was entered July 5, 2001. This appeal was timely filed on July 27, 2001 which is within thirty(30) days as required by ORS 19.255(1)².

5) Question Presented

Did the Circuit Court trial judge legally err by reversing it's own decision from the bench at trial and later ruling that Oregon tort law does not allow recovery for either emotional distress or loss of companionship for witnessing the traumatic death of a companion animal that is directly caused by the negligence of Defendant-Respondent?

6) Summary of Argument

The Trial Court Judge got it right the first time when he ruled from the bench that Defendant-Respondent's negligence entitled Plaintiff-Appellants to recover negligent tort damages for mental distress and loss of companionship for the traumatic and violent death of their companion animal before their very eyes.

This Court has already recognized the recovery of compensation damages for mental distress without physical injury when there is an independent basis of liability in certain cases. These certain cases are a matter of public policy and include many non-economic values that define one's sense of self, or "constitutive" property rights. As long as these rights are of sufficient importance and not trivial the dangers of frivolous litigation and living in an "eggshell society" can be avoided.

Negligent tort recovery for the death of the companion animal in a fact situation such as this one meets the test.

7) Statement of the Facts

Bench trial was held before the Circuit Court on March 5, 2001. Both Plaintiff-Appellants appeared, testified and offered a total of nine(9) exhibits, including affidavits of both Plaintiff-Appellants, all of which were received. (Transcript Index, P:1) Defendant did not appear or otherwise participate after previously filing an answer and testifying at an earlier arbitration (Transcript Page 2).

Plaintiff-Appellant Kristin Santose testified first. She is a professional pet sitter and has a personal companion animal, a cat named Ollie (Transcript P:4-5). Pursuant to her affidavit (Trial Ex. 1, Abstract Item (3)). Ollie was a spayed three-year old cat. On February 17, 2000, she saw two(2) loose pit bulls attack, chase and tear apart Ollie before her eyes. Ms. Santose indicated she was full of terror, panic and helplessness. The attack felt "like a knife enter my heart". She cried, "Oh Ollie", felt a weak heartbeat and rushed her to the vet. Ollie died in her arms after a last violent thrust en route to the vet. (See letter, attached to Affidavit, Trial Exhibit 1, Abstract/Excerpt item (3) herein)

The violent nature of this death is confirmed by Trial exhibits 3 (Abstract item (5)) and 4 (Abstract item (6)) which detail the extreme trauma and more significantly, that Ollie died in a "panicked, hyperadrenalized state". Exhibit 4, Page 2, further confirmed that all injuries occurred prior to death (Including skull fractures and active hemorrhaging). Extreme pain also led to shock. All these injuries took place when Ollie was conscious and prior to final cardiac arrest in Ms. Santose's arms. The photographs, Exhibit 6, need no explanation and originals can be viewed in the trial Court file (All documents are enclosed as Abstract items (5) through (7)). The Affidavit testimony is also summarized by Ms. Santose's trial testimony on pages 5-10 of the transcript.)

Kristin Santose also testified that she had already taken Ollie's picture to be on her Christmas Cards for year 2000. She proceeded to send out the cards but it was quite painful to explain what happened to Ollie whenever a client asked about her. (Trial transcript Page 13, See trial Exhibit 9, Abstract Number (7)).

Ms. Santose said she missed Ollie every day and can't face a number of everyday places and events without feeling sadness for Ollie. Ms. Santose no longer even "serves" pit bulls in her pet sitting business because of what "they" did to Ollie. (See Trial Transcript, pages 14-15).

Walter Lockett testified next (Begins, Trial Transcript, Page 16). He also testified about the two(2) pit bulls attacking Ollie and identified them as "Pretty" and "Pain" with Defendant-Respondent's name and address on collar-ID tags (Trial Transcript Page 18). Since the dogs were not "people-aggressive" he took them to the Humane Society and was confronted by Defendant-Respondent in the parking lot. The

Defendant-Respondent, Gary Hill, admitted the pit bulls were his and tried to take the leashes from Walter Lockett (Trial Transcript Page 20). Salem police arrived, the Humane Society kept the pit bulls and Mr. Lockett confirmed the next day with Dog Control officers that Gary Hill is the true owner (Trial Transcript Page 22). Much of this testimony connecting the pit bulls to Defendant-Respondent also appears on page 3 of Walter Lockett's Affidavit which is Trial Court Exhibit 2, Abstract Number (4). At no time did Defendant-Appellant apologize or express remorse for what his dogs did to Ollie (Affidavit Trial Exhibit 2, Page 3, Abstract Number (4)).

Damages were nevertheless calculated modestly. Although Kristin Santose said Ollie was "priceless", the complaint requests only \$10,000.00 for emotional distress and "a dollar a day" for each Plaintiff-Appellant for loss of companionship: \$8,700.00 total. (Trial Transcript, page 14, and trial court complaint)

The Trial Court Judge admitted "It's a pretty egregious case" (Trial Transcript page 25) and that the aggravating circumstances resulted in considerable emotional strains and stresses by the death of a close companion animal that is literally torn and killed before the owners eyes. (Trial Transcript Page 26)

The Trial Court judge initially agreed with, and recognized, Plaintiff-Appellant's tort claims and awarded \$6,500.00 for negligent emotional distress and \$1,000.00 for loss of companionship (Trial Transcript, page 26-27)

Some time after trial and before signing a final judgment consistent with his trial Court ruling from the bench the trial court Judge later withdrew this decision and issued a much different ruling by way of his letter of June 22, 2001.(See Abstract item(2) In this letter and the subsequent judgment the Trial Court Judge ruled that Oregon tort

law does not recognize tort claims of the type Plaintiff-Appellants seek and which were initially awarded at trial.

ASSIGNMENT OF ERROR

The trial Court erred by reversing it's own decision from the bench at trial in a later letter by ruling that Oregon tort law does not provide compensation for negligent emotional distress or loss of companionship for the traumatic death of a companion animal before the owner's own eyes.

A) Preservation of Error

At the close of trial the Trial Court Judge ruled that Defendant-Respondent's negligence in the control of his two(2) pit bulls was the direct cause of the death of Ollie, Plaintiff-Appellant's cat, before their very eyes. He stated this was an aggravated fact situation entitling Plaintiff-Appellant to compensation of the type pleaded: Negligent emotional distress and loss of companionship (Trial Transcript, pages 24-26).

Prior to signing a final judgment accordingly the Trial Court Judge sent Plaintiff-Appellant's attorney a detailed letter reversing this decision and stating:

"After announcing my initial decision on the record, I withdrew it and took this matter under advisement to further research the legal issues raised . . ." (6/22/01 letter, page 1, item 2 of Abstract)

"Accordingly, Plaintiffs are not entitled, as a matter of law, to recover damages for emotional distress as a result of Defendant's negligence as alleged and proved in this case." (6/22/01 letter, page 2 item (2) of Abstract)

"Similarly, with respect to the loss of companionship claim, there is no statutory or common law right to the recovery of emotional damages for the loss of companionship of domestic animals." (6/22/01 letter, pages 2-3, item (2) of Abstract)

B) Standard of Review

The Trial Court's conclusion that Oregon's negligent tort law absolutely prohibits emotional distress and loss of companionship claims despite undisputed and aggravated negligence, is an error of law on its face and no factual issues are involved. See Meyer v. 4-D Insulation Company, Inc., 60 Or.App. 70, 652 P2d 852, (1982), which is discussed extensively in Plaintiff-Appellant's argument set forth below.

ARGUMENT

The Trial Court Judge got it right at trial when he stated:

"Under our system of justice, the best we can do in these kinds of circumstances is to make an award that, really, goes towards compensating you folks for your loss. And I'm going to do that in this case." (Trial Transcript, Page 26)

It was almost three(3) months later when he reversed himself and determined that Oregon tort law did not allow recovery for emotional distress and loss of companionship of a companion animal that suffers a violent and traumatic death before the owner's own eyes.

In Meyer v. 4-D Insulation Co., Inc., 60 Or.App. 70, 652 P2d 852, (1982), this very Court determined that recovery of damages for negligently caused mental distress is recoverable absent physical injury to Plaintiff where there is an independent basis of liability in certain cases.

This Court admitted the type of case which so qualifies is a public policy matter:

"Rather, it is the kind of interest invaded that, as a policy matter, is believed to be of sufficient importance to merit protection from emotional impact that is critical." (At page 74)

And . . .

"Extension of the right to recover damages for mental distress in a given case is basically a policy decision." (At page 79)

In citing Justice Linde's reasoning, the Court went even further in Meyer, supra, and stated the cases which meet this public policy include:

"Such noneconomic values as personal association, love of a place, and pride in one's work that add up to one's sense of identity." (At page 77-78)

These policy standards prevent the floodgates of litigation that would occur if we lived in an "eggshell society". In Meyer, supra, Justice Rossman, in his dissent, stated:

"I agree with the majority's statement that damages for mental distress are inappropriate in cases not "involving an interference with the person beyond the inconvenience and distress always resulting from interference with property." However, the policy underlying that principle is served simply by requiring that the mental distress alleged is serious and not trivial. (At Page 85, Emphasis added)

The traumatic and violent death of a companion animal before the owner's own eyes should be one of those cases and of a type of personal interest invaded that meets this Court's own qualifying test as summarized in Meyer, supra.

The psychological importance of companion animals in modern society is being recognized more and more. Most recently in Oregon two(2) excellent law review articles were published on this very subject:

A) In Wrongful Death of a Companion Animal, Animal Law Review, NW School of Law Lewis & Clark, Volume 4, P:33 et.seq., Steven M. Wise, (1998), Law Professor Steven M. Wise refers to the wrong as an invasion of the Plaintiff's "constitutive" property rights-those that are bound up in one's own sense of self.

Professor Wise even discusses Meyer, supra, as a leading case which sets forth this legal concept.

B) In Recovery of Non-Economic Damages For Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend, Animal Law Review, NW School of Law, Lewis & Clark, Volume 7, Page 45 et. seq., multiple authors, (2001), the multiple authors outline the increased social and psychological roles companion animals have in modern society. These include the human/companion animal bond, the psychological/social benefits and the changes in public policy which are resulting. (The article includes many case citations from other jurisdictions.)

Finally, Chapter 4, Section 1, Pages 175-204, in a recently published law school hornbook, Animal Law, Carolina Academic Press, (2000), also deal with the evolving negligent tort for the death of a companion animal.

The distinction of this case from all the law review and hornbook citations is that the fact situation in this case is the most aggravated and worst of all. Ms. Santose and Mr. Lockett witnessed the tragic, traumatic and violent death of Ollie before their own eyes—in all cases cited by these reference materials the owners did not actually see their companion animal's violent death and yet the authors still argue for tort recovery.

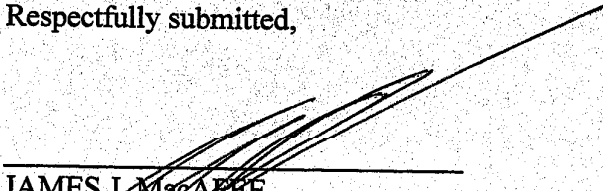
In summary, this Court should at least hold that witnessing the violent death of their companion animal is of such importance and of such interest to society as a

matter of policy that it meets the test set out in Meyer, supra, and should be allowed accordingly.

CONCLUSION

For the reasons stated in this brief the original decision of the Trial Court Judge should be reinstated. Oregon tort law should support these types of tort claims in at least extreme or aggravated cases such as actually witnessing the violent death of a companion animal. This is one of those cases which meets the test.

Respectfully submitted,



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