

lights at every intersection, every time weather conditions became poor. Assuming *arguendo* that the intersection was somehow a dangerous condition, the next issue is whether the condition created a reasonably foreseeable risk of the kind of injury of which appellant complains. As previously stated, this accident was so extraordinary as to be legally unforeseeable and outside the scope of the duty owed by the city. See *Merit v. City of Chester*, 344 Pa. Super. 505, 496 A.2d 1220 (1985).

The final issue is whether the Township received notice of the alleged dangerous condition. The statute requires either actual or constructive notice of the dangerous condition at a sufficient time prior to the event to allow the Township to take remedial measures to protect against the condition. 42 Pa. C.S.A. § 8542(b)(4). It should be noted that appellant conveniently failed to address the issue of notice which is essential to recovery under the statute. 42 Pa. C.S.A. §8542(b)(4). Appellant's pleadings are bare of any facts which would give rise to either actual or constructive notice. Viewing all of the pleadings in the light most favorable to appellant, the Township never received actual or constructive notice of the alleged dangerous condition, and summary judgment must, therefore, be sustained.

CONCLUSION

Based on the foregoing analysis, the ORDERS of this Court should be AFFIRMED.

(Appealed to Superior Court April 4, 1994.)

Price v. Brown, V.M.D.

Preliminary Objections — Bailment — Practice of Veterinary Medicine — Veterinary Malpractice.

1. Preliminary Objections in the nature of a demurrer are deemed to admit all well-pleaded facts and all inferences reasonably deducible from such facts.
2. Preliminary Objections test the legal sufficiency of a pleading and will be sustained only in those cases where the pleader has failed to state a claim for which relief can be granted.
3. A bailment is created by the bailor's delivery of personal property to the bailee for a specific purpose pursuant to either an express or implied contract, in which the property is to be returned or accounted for upon completion of the purpose.
4. In order to be licensed to practice veterinary medicine in the Commonwealth of Pennsylvania, the candidate must have a doctorate degree from an approved school of veterinary medicine.
5. In order to recover damages for injury or death to an animal entrusted to a veterinarian's care, the plaintiff must plead and prove more than a bailment arrangement.

6. To prevail in an action for injury or death to an animal, the plaintiff must plead and prove: (1) the relevant recognized standard of care to be exercised by veterinarians; (2) the defendant's negligent departure from that standard in treating the animal; and (3) that the negligent departure was the proximate cause of the animal's death or injury.
7. An action brought against a veterinarian, like an action brought against a physician, is, and should be construed as, an action in professional negligence.

(Appealed to Superior Court November 11, 1993.)

C. P. Montgomery County, Civil Division. No. 93-07865. Tracy Price v. Nancy O. Brown, V.M.D.

William Halligan, for Tracy Price.

Christopher Dougherty, of Marshall, Dennehey, Warner, Coleman & Goggin, for Nancy O. Brown, V.M.D.

Joseph Manning, of Marshall, Dennehey, Warner, Coleman & Goggin, for Hickory Veterinary Hospital.

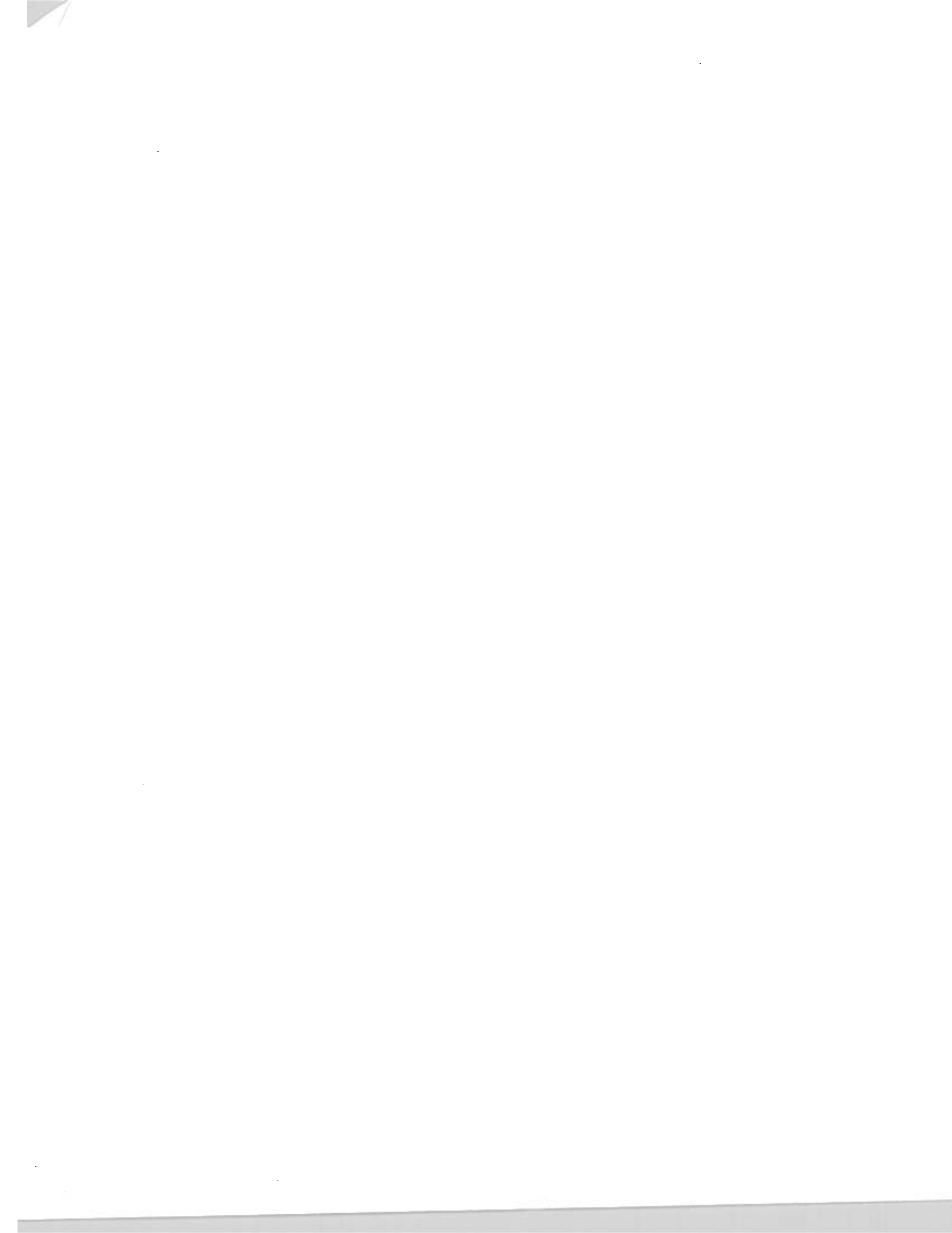
FURBER, J., March 18, 1994.

The plaintiff has appealed from an Order of the Court dated October 12, 1993 sustaining the defendant's Preliminary Objections in the nature of a demurrer.

Preliminary Objections in the nature of a demurrer are deemed to admit all well-pleaded facts and all inferences reasonably deducible from such facts. *McCaskill v. Philadelphia Housing Authority*, 419 Pa. Super. 313, 615 A.2d 382 (1992). They test the legal sufficiency of a pleading and will be sustained only in those cases where the pleader has failed to state a claim for which relief can be granted. *Rutherford v. Presbyterian University Hospital*, 417 Pa. Super. 316, 612 A.2d 500 (1992).

The material facts can be summarized as follows. On August 29, 1991, the plaintiff was the owner of an English bulldog. On that date, the plaintiff transported the dog to the defendant, a veterinarian, for surgery to correct a prolapsed urethra. On August 30, 1991 the defendant performed the surgery. On August 31, 1991, while at the defendant's clinic, the plaintiff noticed the dog to be in some distress. The defendant's associate advised the plaintiff that the dog's condition would be monitored on a 24-hour basis. On September 1, 1991, at approximately 1:00 A.M., the defendant closed her office and, later that morning, the dog died.

The plaintiff's Complaint seeks to recover the value of the dog on a strict theory of bailment. The defendant filed Preliminary Objections asserting that the doctrine of bailment was inapplicable and could not afford relief. The Court agreed, and sustained the Preliminary Objections dismissing the Complaint without prejudice to the plaintiff's right to amend



its Complaint.

A bailment is created by the bailor's delivery of personal property to the bailee for a specific purpose pursuant to either an express or implied contract, in which the property is to be returned or accounted for upon completion of the purpose. *Johnson v. Mathia*, 363 Pa. Super. 397, 526 A.2d 404 (1987).

Here, the plaintiff delivered the dog to the defendant for a particular purpose, namely surgical correction of a prolapsed urethra. The Court is aware of no Pennsylvania decision imposing liability on a veterinarian by reason of his breach of a bailment agreement under circumstances of this nature. While the Court agrees that a dog is personal property, the Court cannot agree that a theory of bailment can or should afford a remedy here. Allegations which might give rise to a bailment are, without more, insufficient to state a cause of action against a veterinarian for death or damage to an animal entrusted to his or her care for *veterinary treatment*. The Court further holds that in order to recover damages for such loss, the plaintiff must plead and prove negligence on the part of the veterinarian.

The Court bases this decision on the nature of the veterinary profession. It is beyond question that a veterinarian is a professional care provider. The legislature has defined "veterinary medicine" as:

"that branch of medicine which deals with the diagnosis, prognosis, treatment, administration, prescription, operation or manipulation or application of any apparatus or appliance for any disease, pain, deformity, defect, injury, wound or physical condition of any animal or for the prevention of or the testing for the presence of any disease." 63 P.S. 485.3.

Further, the legislature has defined "veterinarian" as:

"a person qualified by educational training and experience in the science and techniques of veterinary medicine and who is currently licensed by the board to practice veterinary medicine." 63 P.S. 485.3.

Finally, the legislature has defined the "practice of veterinary medicine" as including, but not limited to:

"the practice by any person who (i) diagnoses, prescribes, or administers a drug, medicine, biological product, appliance, application, or treatment of whatever nature, for the prevention, cure or relief of

a wound, fracture or bodily injury or disease of animals (ii) performs a surgical operation, including cosmetic surgery, upon any animal, (iii) performs any manual procedure upon an animal for the diagnosis or treatment of sterility or infertility of animals, (iv) represents himself as engaged in the practice of veterinary medicine, (v) offers, undertakes, or holds himself out as being able to diagnose, treat, operate, vaccinate, or prescribe for any animal disease, pain, injury, deformity, or physical condition or (vi) uses any words, letters, or titles in such connection or under such circumstances as to induce the belief that the person using them is engaged in the practice of veterinary medicine and such use shall be prima facie evidence of the intention to represent himself as engaged in the practice of veterinary medicine." 63 P.S. 485.3.

Moreover, in order to be licensed to practice veterinary medicine in the Commonwealth of Pennsylvania, the candidate must have a doctorate degree from an approved school of veterinary medicine. In addition, the candidate must pass a rigorous written, oral and clinical examination conducted by the Pennsylvania State Board of Veterinary Medicine. Lastly, once licensed, the veterinarian must conduct his practice in accord with a demanding code of professional conduct. 63 P.S. 485.9; 63 P.S. 485.16; 63 P.S. 485.21.

These statutory provisions governing the practice of veterinary medicine are not unlike those statutory provisions governing the practice of other health care professionals within the Commonwealth of Pennsylvania. This being true, the Court reasons that in order to recover damages for injury or death to an animal entrusted to a veterinarian's care, the plaintiff must plead and prove more than a bailment arrangement. Specifically, the plaintiff must plead and prove that in providing veterinary care, the veterinarian failed to use such reasonable care as would commonly be expected of a trained and prudent individual within the veterinary profession. To prevail in such an action, the plaintiff must plead and prove the following: (1) The relevant recognized standard of care to be exercised by veterinarians; (2) the defendant's negligent departure from that standard in treating the animal; and (3) that the negligent departure was the proximate cause of the animal's death or injury. See *Veterinary Malpractice*, 71 ALR 4th 811, (1989).

In *Darkin v. Equine Clinics, Inc.*, 313 Pa. Super. 75, 459 A.2d 417 (1983) the Superior Court implied that an action brought against a veterinarian is not unlike an action brought against a physician for



malpractice. If this is so, an action brought against a veterinarian, like an action brought against a physician, is, and should be construed as, an action in professional negligence.

Had the defendant been the operator of a kennel agreeing to provide temporary lodging for, or maintenance of, the animal, or had the defendant been a dog-walker, dog-trainer or dog-groomer, the plaintiff's position would be stronger. Those facts deemed to have been admitted herein for our purpose however, create an entirely different circumstance.

At all times materials to this cause of action, the defendant was a licensed veterinarian, holding herself out as a person skilled in the art and science of that professional discipline who was retained by the plaintiff to render professional services in that capacity. The defendant may well be liable for the dog's untimely passing by reason of some act or omission during her surgical or post-surgical treatment of the dog; however, the defendant's liability if any there be, can only be established by pleading and proving an action in professional negligence.

Accordingly, the Court concludes that an action in batiment will not lie, and thus sustains the defendant's Preliminary Objections in the nature of a demurrer.

(Appealed to Superior Court November 11, 1993.)

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