



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Myers et al v. Gulmohar Enterprises Inc. (dba Menzies Pet Hospital) et al*,
2019 BCCRT 356

B E T W E E N :

Lindsay Myers and Nicholas Myers

APPLICANTS

A N D :

Gulmohar Enterprises Inc. (Doing Business As Menzies Pet Hospital)
and Eduard Partini

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about allegedly negligent veterinary care.

2. The respondent Gulmohar Enterprises Inc. (Doing Business As Menzies Pet Hospital) runs a veterinary clinic (Clinic). The respondent Eduard Partini is a veterinarian and an employee of the Clinic.
3. The applicants, Lindsay Myers and Nicholas Myers, brought their dog Cali to the Clinic to be spayed. Dr. Partini says after performing the initial skin incision, he felt and saw metal wires in Cali's abdominal wall. Dr. Partini says he immediately had the receptionist call the dog rescue organization who brought Cali to Canada, and JR from the rescue organization said they had no medical records for Cali but since she had metal wires she could likely have been spayed already. Dr. Partini says he decided to close the skin incision and not open the abdominal cavity, to avoid an aggressive and unnecessary procedure, and his staff told the applicants accordingly.
4. The applicants say that about a month later, Cali was bleeding so they took her to another clinic and after many tests learned she was unspayed and in heat. They seek \$747.45 for the extra testing and spay surgery at the other clinic, and \$500 for Cali's pain and suffering.
5. The applicants are self-represented. Dr. Partini is also self-represented, and the Clinic is represented by Harpal Mann, a principal.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Was the treatment the respondents provided for Cali negligent?
 - b. Are the applicants entitled to reimbursement for the subsequent tests and spay surgery?
 - c. Are the applicants entitled to damages as compensation for Cali's pain and suffering?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicants bear the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. The applicants say they brought Cali to the Clinic for the spay surgery on March 3, 2017, and the next day someone from the Clinic called and said when the veterinarian opened Cali up there were "metal clips" present which signified that she had already been spayed. The Clinic said they closed Cali up, and the applicants could pick her up.
13. The applicants say that on April 7, 2017, they noticed Cali bleeding and called another veterinary clinic, W Animal Hospital. They say the veterinarian told them to bring Cali in the next day if she was still bleeding, so they did. After urinalysis and x-rays, they determined Cali was in heat and had never been spayed, and had no metal clips as reported by the respondents.
14. The respondents say their client was the rescue organization, and that neither the rescue organization nor the applicants were charged any money for Cali's care. The

respondents say the applicants should have brought Cali back to them for assessment, as they offered to examine her when the applicants called and said she was bleeding.

15. The applicants say they took Cali to W Animal Hospital because it was closer to their home, and decided to have her spayed there because they no longer trusted the respondents. The applicants submit that the respondents were negligent, as they failed to meet a reasonable standard of care for veterinarians. They also say that the respondents never contacted JR from the rescue organization, and JR never suggested that Cali was already spayed.
16. The Clinic's records confirm that JR of the rescue organization was listed as the client on Cali's "patient chart". The chart states that on March 4, 2017, Dr. Partini did a pre-surgical examination, which was normal. According to the chart note, he anesthetized Cali, and when he made the incision he "saw metal wires (stitching) that has been done by some other vet". Dr. Partini wrote that this meant the dog was most likely spayed previously, so he did not open the abdominal wall but just closed the incision site with PDS 3-0 stitching.
17. Subsequent chart notes show that the applicants called in April 2017, reporting that Cali was bleeding, and that W Animal Hospital said she was not spayed and in heat. The chart notes confirm that Clinic staff told the applicants to bring Cali in, but they said it was too far to travel.
18. A party is liable for damage caused by negligence when they owe someone a duty of care and fail to meet that duty of care, resulting in damage. Based on the Clinic's records and JR's written statement, I accept that the rescue organization was their client, and so there was no contractual relationship between the parties. However, as the applicants were Cali's new owners I find the Clinic and Dr. Partini owed the applicants a duty of care with respect to Cali's care.
19. The standard of care for any medical professional, including veterinarians, is that which conforms to the recognized practices of the profession. Thus, the standard of care applicable to this dispute is the standard of a competent veterinarian.
20. Based on the evidence, before me I find the applicants have not established that the respondents failed to meet this standard.
21. Dr. Partini says that when he opened Cali up, he saw metal wires inside her abdomen. I accept this evidence, as it is written in the chart note prepared at the time of the procedure, and it is confirmed by the written statement of SP, a veterinary office assistant who was present at the time. Also, as noted by Dr. Partini, the

subsequent x-ray provided in evidence shows 5 stitches on the ventral side of the abdominal cavity. Dr. Partini says these stitches shown on the x-ray cannot be the stitches he used to close Cali's incision, because they are located on the abdominal wall rather than the skin, and he did not open the abdominal wall. He also says the sutures shown in the x-ray are metal rather than the synthetic suture material he used, the synthetic material does not show on x-rays, and he used a different stitching technique than shown on the x-ray.

22. The applicants say that someone from W Animal Hospital told them what they saw in the x-rays was the stitches performed by Dr. Partini in March 2017. However, I prefer the evidence of Dr. Partini on this point. First, the applicants are not medical experts, and they did not provide any statement or chart notes from W Animal Hospital, despite requests by the respondents. They also did not provide the name of the person who gave them this information.
23. Finally, the written statement of JR confirms that Cali had a prior, uncompleted spay surgery before March 2017. JR wrote that no one from the Clinic called her about Cali. I accept that, since there is no notation of such a call in Cali's chart note prior to June 2017. However, JR also wrote that before Cali was brought to Canada, she was sent to a veterinary hospital in California for a routine spay procedure. JR said that when the veterinarian opened Cali up, they determined that she was in the second term of pregnancy, so the rescue organization directed the veterinarian to close Cali up so she could carry the pups to term. JR said Cali later gave birth to 4 puppies, and later the rescue organization made the appointment with the respondents to have Cali spayed in Canada.
24. I find that this prior spay procedure provides the most likely and convincing explanation for the wire stitching Dr. Partini saw when he opened Cali's skin in March 2017.
25. The respondents say that Dr. Partini used reasonable judgment and did not open Cali's abdomen after he saw the metal wires, as it was an aggressive procedure that he thought was likely unnecessary. I accept that opinion, and again note there is no contrary opinion before me from a veterinarian or other medical expert suggesting that Dr. Partini did not meet a reasonable standard of care.
26. Also, in her written statement, JR says the rescue organization had an extensive and detailed medical history for Cali, including her prior spay procedure, as she was in their care for months. This information was not provided to the respondents, and I find that if it had been, Dr. Partini would have known with certainty that she was not previously spayed. Given that the respondents did not have this information, I find Dr. Partini exercised reasonable judgement in the circumstances, with the goal of

not performing needless invasive surgery. The fact that he was ultimately incorrect about Cali's spay status is not determinative, as I find he acted with reasonable professional judgement based on the information he had.

27. For these reasons, I find the respondents were not negligent, and therefore the applicants are not entitled to damages. I would have limited the amount of damages in any event, as the Clinic did not charge either the applicants or the rescue organization, and the respondents chose to attend another animal hospital when Cali began bleeding rather than let the respondents examine or treat her. Also, while I accept that it was very inconvenient to deal with a dog in heat, there is no indication that Cali suffered any permanent harm.
28. For all of these reasons, I dismiss the applicants' claims, and this dispute.
29. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicants were unsuccessful and so I dismiss their claims for reimbursement of tribunal fees and dispute-related expenses.

ORDER

30. I dismiss the applicants' claims, and this dispute.

Kate Campbell, Tribunal Member