



# Civil Resolution Tribunal

Date Issued: May 10, 2019

File: SC-2018-006891

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Thomson v. V&V ENTERPRISES INC.*, 2019 BCCRT 563

**B E T W E E N :**

Lorna Thomson

**APPLICANT**

**A N D :**

V&V ENTERPRISES INC.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about alleged negligent veterinary services. The applicant, Lorna Thomson, says a veterinarian Dr. Vinesh Jalan at the respondent veterinary clinic, V&V ENTERPRISES INC., is responsible for the applicant's pregnant English

Bulldog Emma's 2 unborn puppies becoming ill, with Emma dying shortly after and 1 puppy dying 2 months later.

2. The applicant says Dr. Jalan allowed an untrained employee to use an excessive dose of a non-FDA approved drug during her dog's c-section operation, which the applicant says caused the unborn puppies' illness. The applicant claims \$5,000 as reimbursement for the 2 puppies.
3. The applicant is self-represented. The respondent is represented by John Kohoot, who appears to be an insurance adjuster.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.

7. Under tribunal rule 9.3(2), 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.

## **ISSUE**

8. The issue is whether the respondent was negligent in handling the c-section operation of the applicant's dog Emma, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. Certainly, there is no question the outcome here was most unfortunate and understandably upsetting for the applicant. The respondent acknowledges this was a tragic outcome. The applicant expected her dog Emma to have a c-section and have new puppies. Instead, Emma died shortly after the delivery. The applicant says one puppy was sick and the other puppy died 2 months later.
11. However, the issue for me to decide is whether the applicant has proved the respondent is responsible for the outcome. For the reasons that follow, I find she has not done so.
12. I pause to note the applicant named only the veterinary clinic as a respondent, rather than Dr. Jalan personally. The applicant's claims are framed in negligence and her allegations refer to Dr. Jalan personally. There is no evidence before me as to whether Dr. Jalan was a clinic employee. Given my conclusion that the applicant has failed to prove her claim, nothing turns on it.

13. Briefly, the applicant alleges the problem was a drug overdose. She alleges Dr. Jalan allowed uncertified clinic staff to administer a non-FDA approved drug, Cefazolin, on Emma during her c-section. The applicant says the clinic had incorrectly recorded Emma's weight, and so this led to her being given an overdose of the drug. The applicant says the antibiotic Cefazolin has not been tested for side effects on dogs, and that Dr. Jalan knew pregnant English Bulldogs should only be given drugs if absolutely necessary, as they are sensitive dogs. However, in her reply submission, the applicant says that while Cefazolin is not FDA-approved, "vets do use it sometimes for operations and extreme infections".
14. The respondent says a veterinarian can instruct his staff to give an injection under supervision. Here, he says he had the IV catheter in Emma's leg already with IV fluid running, and his staff person inserted the injection through the injection port. The respondent also says the leading medical references state a broad spectrum antibiotic like cefazolin should be used if required during a c-section. The respondent says there is no medical evidence at all that administering this type of treatment during a c-section could result in developmental issues in puppies. The respondent also says even if there was a weight error recorded, as alleged, the dosage was still correct at 15 to 30 mg/kg.
15. The respondent also says that the autopsy performed by the Animal Health Centre of the Ministry of Agriculture showed the mother died due to suffocation, as a result of entrapment of the epiglottis behind the soft palate, as a result of "a combination of anatomic features". The respondent says the 1 puppy that later died had a similar autopsy and the same cause of death was identified.
16. So, what is the applicable law for a negligence claim like this one?
17. It is uncontroversial that the general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure did cause the claimed damages.

18. Clearly, the respondent owed the applicant client and its patient dog a duty of care, which is undisputed. The issue here is whether the respondent, through the conduct of Dr. Jalan and staff, breached the applicable standard of care, and, whether the applicant has proven any such breach caused her claimed damages. As noted, the burden of proof rests with the applicant, and I find she has not proved any breach.
19. Dr. Jalan is a veterinarian, a professional. The respondent clinic offers associated veterinarian services. Generally, in claims of professional negligence, it is necessary for the applicant to show a breach of the standard of care through expert opinion evidence. While I recognize there is not an absolute rule, I find expert opinion evidence is necessary in this case, because the subject matter is technical and outside the knowledge and experience of the ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283).
20. An expert can explain the relevant standard of care and demonstrate how the conduct in the dispute fell below that standard. I find that expert evidence would be necessary in order for the applicant to prove her claims. Such evidence is required to determine whether or not the respondent exercised the care and skill of a reasonably competent veterinarian in accordance with the standards of the profession. The applicant failed to provide the necessary expert evidence about the applicable standard of care or any evidence that Dr. Jalan or the respondent breached the relevant standard.
21. I acknowledge the applicant provided evidence that she says shows Emma's weight was incorrectly recorded on her patient chart and that this led to the incorrect dosage of Cefazolin being used. I also acknowledge her evidence that the respondent's clinic staff administered the Cefazolin without Dr. Jalan being present to supervise, which the respondent has addressed as set out above. However, none of this amounts to the required expert evidence. I say the same about the Cefazolin monograph printout.
22. Further, the respondent submits that the Cefazolin dose is not what caused the puppies' illness or Emma's death, based on an autopsy. While the applicant

disputes this, she has not provided any contrary evidence. In any event, again she has not provided the relevant expert evidence to show that the alleged misconduct (even assuming there was a breach) caused the resulting loss.

23. While the applicant provided a “charges estimation” from another veterinary clinic, nothing in that document explains the relevant standard of care or suggest that Dr. Jalan or the respondent breached it.
24. While the applicant says Cefazolin is not FDA-approved, one of the printouts she provided also stated that it is prescribed legally by veterinarians as an “extra-label” drug. I am not able to draw anything from the fact that Cefazolin may not be FDA-approved.
25. The veterinary standards and determination of what caused the puppies’ illness and death is not within my knowledge and experience as an ordinary person. I am not prepared to rely on the applicant’s interpretation of a compilation of various internet articles, none of which address the specific situation of Emma as treated by Dr. Jalan and the respondent clinic, as reflective of the applicable standard of care or that there was a breach of it. I find expert evidence about Emma’s treatment and its results is required and the applicant has failed to provide it.
26. Given my conclusion that the applicant has failed to establish the respondent was negligent, I find she has not proved the respondent is liable for her claimed losses. As such, I find it unnecessary to review the amount of her \$5,000 claim in any detail. I dismiss the applicant’s claims.
27. In accordance with the Act and the tribunal’s rules, as the applicant was unsuccessful, I find she is not entitled to reimbursement of tribunal fees.

## **ORDER**

28. I dismiss the applicant's claims and this dispute.

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Shelley Lopez, Vice Chair