



Civil Resolution Tribunal

Date Issued: June 14, 2019

File: SC-2019-000092

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *PETIT v. ELLWOOD PARK ANIMAL HOSPITAL LTD.*, 2019 BCCRT 726

B E T W E E N :

EMIKO PETIT

APPLICANT

A N D :

ELLWOOD PARK ANIMAL HOSPITAL LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This dispute is about veterinary care. The applicant, Emiko Petit, took her cat, Bijou, to the respondent pet hospital, Ellwood Park Animal Hospital Ltd., after Bijou swallowed a string. Unfortunately, Bijou passed away the day after receiving an endoscopy at the respondent to get the string out.

2. The applicant says that the respondent was negligent in its care of Bijou and claims \$3,708.04, broken down as follows:
 - a. \$2,320.09 as a refund of the respondent's invoice,
 - b. \$187.95 for Bijou's cremation, and
 - c. \$1,200.00 for the cost of a new kitten.
3. The respondent denies that it was negligent and asks that the applicant's claims be dismissed.
4. The applicant is self-represented. The respondent is represented by an employee.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The respondent initially disputed the tribunal's jurisdiction to hear this dispute because the applicant had started a complaint with the College of Veterinarians of British Columbia (College). The respondent did not make any submissions about jurisdiction in the tribunal decision process, so I infer that it has abandoned this argument. In any event, the tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (Act), which includes claims for damage to personal property.
6. 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 some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that it

is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.

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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Was the respondent negligent in its care of Bijou?
 - b. If so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant must prove her case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
12. Before turning to the evidence, I note that there is considerable disagreement about which of the respondent's employees the applicant dealt with and whether one of those employees was a veterinarian. Both parties provided evidence and submissions to try to prove who was present and who was not at various times.

Because of my conclusion, I find that I do not need to decide which employees interacted with the applicant or cared for Bijou.

13. The applicant's allegations about who was present and whether they were veterinarians are part of the applicant's complaint with the College. To avoid the impression that I have made findings of fact about who was present at different times, I will refer to the respondent's employees collectively as the respondent.
14. On the morning of December 21, 2018, the applicant brought Bijou to the respondent because Bijou had ingested a long string during the night. The applicant's spouse and son went with the applicant.
15. The respondent performed x-rays and completed a physical exam. The respondent presented 3 options: wait and see if Bijou would pass the string naturally, perform an endoscopy, which involves pulling the string out through Bijou's mouth while Bijou is under anesthetic, or perform surgery.
16. The applicant says that the family chose an endoscopy because the respondent told them it was safe and was less invasive than surgery.
17. The respondent performed the endoscopy and successfully removed the string. The applicant took Bijou home later that day. The applicant was concerned about how Bijou looked when they left, but the respondent assured her that Bijou would be groggy and lethargic because of the anesthetic.
18. The applicant says that Bijou did not recover overnight as expected. The applicant took Bijou back to the respondent the next morning. The respondent determined that Bijou was dehydrated and had a low temperature. The respondent recommended leaving Bijou with the respondent to receive fluids and get warmed up, which the applicant did.
19. The respondent performed bloodwork and although Bijou seemed to "perk up" with fluids and warmth, the respondent believed that Bijou required an ultrasound and overnight monitoring. The respondent was not equipped to perform an ultrasound.

About 2 hours after the applicant dropped Bijou off, the respondent phoned the applicant to pick Bijou up and take her to an animal emergency clinic, which the applicant did.

20. By the time the applicant arrived at the animal emergency clinic, Bijou had already passed away. The animal emergency clinic's chart indicates that the attending veterinarian had "concerns related to potential cause but ultimately cannot be sure of underlying cause of acute deterioration and succumbing".
21. The applicant's claim is in negligence. The general elements of a negligence claim are:
 - a. The respondent owed the applicant a duty of care.
 - b. The respondent failed to meet the applicable standard of care.
 - c. The respondent's failure to meet the standard of care caused the applicant damage.
 - d. The damages were reasonably foreseeable.
22. The applicant alleges that the respondent made several errors in caring for Bijou. The applicant argues that the respondent breached the standard of care by failing to advise on the risks of an endoscopy procedure. The applicant says that the respondent never told her that it was possible that Bijou might die. The applicant suspects that the respondent downplayed the risk of an endoscopy in order to keep the patient. A surgery would have been referred out to another hospital, costing the respondent revenue.
23. The applicant says that the respondent should not have sent Bijou home after the endoscopy. The applicant says that she was unaware of the gravity of Bijou's situation when she picked Bijou up on December 22, 2018, because the respondent failed to communicate the results of the bloodwork at this critical time. The applicant says that Bijou never should have been transferred and that she should have been humanely put down by the respondent.

24. The applicant relies on section 211 of the College of Veterinarians of British Columbia's bylaws, which sets out the standards of informed consent. Bylaw 211(6)(d) requires a veterinarian to advise on the risks or dangers of a proposed veterinary service. The applicant says that the respondent gave no such advice.
25. The respondent says that it properly advised the applicant about the risks of an endoscopy, and that its care decisions were all appropriate.
26. Turning to the elements of a negligence claim, it is undisputed that the respondent owed the applicant a duty of care as the owner of the respondent's patient. However, I find that the applicant has failed to prove that the respondent breached the standard of care and that the applicant has failed to prove that the respondent caused Bijou's death.
27. First, in claims of professional negligence, it is generally necessary for the applicant to prove a breach of the applicable standard of care with expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). This is because an expert can explain the relevant standard of care in a particular industry and explain how certain conduct fell below that standard. I find that in this dispute, I would require expert evidence about the whether the respondent's veterinarians exercised the care and skill of reasonably competent veterinarians. I find that the standards of the veterinary profession are outside of the knowledge and expertise of an ordinary person (see *Thomson v. V&V ENTERPRISES INC.*, 2019 BCCRT 563).
28. Second, even if I accept the applicant's evidence about how the respondent breached the standard of care, the applicant has not provided any evidence that the breaches caused Bijou's death. One of the applicant's primary complaints is about the lack of communication about the risks of an endoscopy. However, she does not say that if she had been advised about the risks of an endoscopy, she would have selected another option. Furthermore, there is no evidence to suggest that the other options presented, doing nothing or performing surgery, would likely have resulted in a better outcome for Bijou. Finally, there is no evidence about what caused

Bijou's death, and so it is not possible to conclude that any of the respondent's alleged mistakes in Bijou's care caused or contributed to Bijou's death.

29. For these reasons, I dismiss the applicant's claims for compensation for Bijou's death.

30. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The applicant has not been successful so I dismiss her claim for reimbursement of tribunal fees and dispute-related expenses.

31. The respondent did not claim any dispute-related expenses.

ORDER

32. I dismiss the applicant's claims, and this dispute.

Eric Regehr, Tribunal Member