

Claim No: 351247

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: McNeil v. Weste, 2011 NSSM 42

BETWEEN:

BETTY McNEIL and GERALD McNEIL

Claimants

- and -

DR. JULIA WESTE

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on August 16, 2011

Decision rendered on August 17, 2011

APPEARANCES

For the Claimants Self-represented

For the Defendant Allison Kouzovnikov, counsel

BY THE COURT:

[1] The Claimants are suing the Defendant, a veterinarian, for \$2,000.00 in consequence of the death of their dog, which death they say should have been prevented.

[2] The unhappy circumstances were these. The dog, a 2-year-old English Bulldog named "Ice," became unwell on Wednesday, the 18th of May 2011. The main symptom was vomiting. He was not eating, and drinking very little. His stools had apparently been very dark, indicating possible internal bleeding.

[3] The Claimants held off for a couple of days to see how it might progress, but by Friday the 20th of May it was decided that Mr. McNeil would take him in to see the vet.

[4] Dr. Weste operates a practice in Lawrencetown and had seen this particular dog on several occasions since he was a pup.

[5] On that day, Dr. Weste examined the dog thoroughly. She testified that she palpated (i.e. felt) something in the abdomen that was concerning to her, but she could not tell what it was. She learned from the owner that the dog routinely was fed bones, which raised a possibility that a bone splinter had caused some internal damage.

[6] Here is where the evidence diverges. Dr. Weste testified that she suggested to Mr. McNeil that there were several tests she could order, without which she really could not determine what was wrong with the dog. Those tests

would have been either or both of X-rays and blood work. She says that Mr. McNeil opted to take a conservative, wait and see approach.

[7] Mr. McNeil testified that the Defendant did not suggest any tests, but just advised him to take the dog home and feed it some enticing liquids to make sure that it did not become dehydrated.

[8] On a balance of probabilities, I find as a fact that Dr. Weste did mention the possibility of tests, although it is also likely that she did not strongly recommend them. It would have been obvious to both parties that these tests are expensive, and that jumping into them is not always the right thing to do. If anything, vets (as well as medical doctors) are probably more criticized for recommending too many, rather than too few, tests. I do not mean to suggest that Mr. McNeil is deliberately lying, but I believe his memory is failing him. Dr. Weste's file notes at the time indicate that tests were discussed. Also, as was argued by her counsel, Dr. Weste had a financial interest in ordering tests because that is how she earns her living, so it is unlikely that she would fail to present that option.

[9] Based on what was known at the time, it is obvious that neither Dr. Weste nor Mr. McNeil had any inkling of how serious the underlying problem was. It is important to mention that, by all accounts, the dog's behaviour during that vet visit was pretty normal.

[10] The dog was taken home. The following morning, Mrs. McNeil awoke to find the dog in great distress having vomited blood and urinated all over her kitchen floor. She rushed him over to the Defendant's office, but there was no

vet on duty. The receptionist directed her to another nearby vet who would have been open. Unfortunately, the dog died on route.

[11] There were no tests done to determine why the dog died. The Claimants took him home and buried him. They were obviously distraught and came to blame Dr. Weste for failing to perform tests that would have determined the source of the problem and allowed for time to save the dog's life.

[12] Without a necropsy (the equivalent of an autopsy) the cause of death is simply not known. Without a definitive cause of death, we cannot be sure that the tests discussed would have revealed anything.

[13] To hold Dr. Weste liable for negligence, the Claimants would have to establish that:

- a. Her conduct fell below a reasonable standard of care, and
- b. That failure on her part was a contributing cause to the dog's death.

[14] The standard of care is that of a "reasonable veterinarian." Had the option of tests not even been mentioned, I might have concluded that Dr. Weste was being unreasonable, but those are not the facts. Her approach was to suggest tests, but (I find) not to push them aggressively. I cannot say that this was an unreasonable approach.

[15] It is easy in hindsight to say that something was terribly wrong - like a ticking time bomb in this poor dog's insides - but the test is what a reasonable veterinarian should have done with what was known at the time. On all of the

evidence, I cannot say that Dr. Weste should have foreseen what eventually happened.

[16] Also, without knowing a cause of death we cannot say that the tests, even if done, would have disclosed the seriousness of the problem. We also cannot say that the dog's life could have been saved. It might have been too late.

[17] For all of these reasons, the claim cannot succeed and must be dismissed.

Eric K. Slone, Adjudicator