

**TRIAL COURT GRANTED MOTIONS FOR SUMMARY JUDGMENT FOR
DEFENDANT VETERINARY HOSPITAL AND DEFENDANT VETERINARIAN
REGARDING TREATMENT OF AN EAR INFECTION IN A DOG.**

Connor v. Hill Country Animal Hospital, 2019 WL 5251142 (Tex. Ct. App. 2019)

BASIS OF THE COMPLAINT:

Connor took her golden retriever, Owen to Hill Country for treatment of an ear infection where is was treated by a veterinarian who is not a party to this action. A medication was prescribed which Connor received from the in-house pharmacy. It did not clear the problem and Owen was seen by Dr. Holcomb, a defendant in this action, that concluded that Connor had not regularly applied the medication. When the infection did not resolve, Dr. Holcomb took a culture of the ear which revealed that the medicine prescribed was not effective against the bacteria isolated on the culture. He prescribed a different medication which Connor again purchased from the in-house pharmacy. Owen's symptoms improved but then significantly worsened and Dr. Holcomb told Connor she must not be administering the medication correctly. Connor consulted several other veterinarians and a veterinarian at a specialty clinic diagnosed a yeast infection and prescribed appropriate medication. The specialist explained that the second medication prescribed by Dr. Holcomb had cured the original bacterial infection but created a "favorable environment" for a yeast infection.

LEGAL PROCEEDINGS:

Connor sued Hill Country and Dr. Holcomb alleging that Dr. Holcomb was negligent for failing to recognize and treat the yeast infection and that Hill Country, acting through Dr. Holcomb, misrepresented the effectiveness of the medications from its pharmacy in violation of the Texas Deceptive Trade Practices Act (DTPA). Hill Country filed a motion for summary judgment arguing that the Veterinary Licensing Act barred Connor's DTPA claim as a matter of law. Dr. Holcomb argued that there was no evidence for any of the essential elements of Connor's negligence claim. Connor filed a verified response and attached an excerpt from Owen's chart documenting his treatment at the specialty hospital

The trial court granted the motions of Defendants without stating its reasons and Connor filed an appeal with this court.

DISCUSSION OF THE COURT:

Negligence Claim:

The parties disputed whether Connor must use expert testimony to raise a fact issue on the elements of negligence. That question will not be addressed by this court since Connor did not carry her burden even if expert testimony is not required. Connor's only summary judgment evidence is a page from Owen's chart at the specialty hospital. This evidence does not raise a fact issue regarding negligence by Dr. Holcomb.

DTPA Claim:

Connor claims that the trial court erred by concluding that the Texas veterinary Practice Act, which states that the DTPA “does not apply to a claim against a veterinarian for damages alleged to have resulted from veterinary malpractice or negligence. Connor argues that her claim arises from Hill Country’s misrepresentation that the drug it dispensed would cure the infection. In other words she claims that Hill Country was not engaged in the practice of veterinary medicine. We disagree. Associations and other legal entities may “engage in veterinary medicine” if “owned exclusively by one or more persons “licensed to practice veterinary medicine”. The dispositive question is whether Dr. Holcomb was practicing veterinary medicine when he made the alleged misrepresentations. Connor’s pleadings demonstrate on their face that Holcomb was engaged in the practice of veterinary medicine. Because her claim against Hill Country is based on Dr. Holcomb’s alleged veterinary malpractice, her claim is barred as a matter of law.

Adequacy of evidence:

Connor claims that her response to Defendants’ motion for summary judgment is competent evidence because she verified it with a sworn affidavit. Her response merely restates the factual allegations from her petition. We reject her request to treat her response as evidence.

JUDGMENT:

We overrule Connor’s issues on appeal and affirm the district court’s judgment.