

**VETERINARIAN SUED FOR BREACH OF BAILMENT
FOR DEATH OF A DOG DURING SURGERY**

Price v Brown, 545 Pa. 216 (1996)

BASIS OF THE COMPLAINT:

Price brought her English Bulldog to Dr. Brown for surgical repair of a prolapsed urethra. Price visited the dog following surgery and, after noticing that the dog was panting strenuously and appeared groggy. She requested that the dog be monitored on a 24-hour basis and was assured by an agent of Dr. Brown that would be done. Price alleged that the dog was left unattended after midnight that evening and died the following morning.

LEGAL PROCEEDINGS:

Price asserted liability based only upon a theory of bailment. She alleged that the dog had been entrusted to Dr. Brown in reliance upon the promise and representation that she would perform the necessary surgery and return the dog to her in the same general health as before. Price alleged that Dr. Brown had breached the agreement by failing to monitor the dog's condition and failing to return the dog in good health. The trial court preliminary objections by Dr. Brown and dismissed the complaint without prejudice, concluding that allegations of a breach of a bailment agreement, without more, are insufficient to state a cause of action against a veterinarian for death of injury to an animal entrusted to his or her care for professional treatment.

The Superior Court reversed, finding that the complaint was sufficient to state a cause of action and that the issue of whether a bailment agreement existed was a matter for the fact-finder. The court did not consider the allegations that Dr. Brown failed to monitor the dog, reasoning that where the owner of an animal chooses to bring a cause of action in bailment rather than negligence the only relevant question is whether sufficient facts were presented to support an implied agreement between the parties. The Superior Court remanded to the trial court for further proceedings. The Supreme Court granted allocatur, reversed the finding of the Superior Court and reinstated the trial court's order dismissing the complaint.

DISCUSSION BY THE COURT:

The Supreme Court stated that they must examine the elements of a cause of action for breach of bailment agreement and those of a cause of action for professional negligence to determine whether preliminary objections were properly sustained by the trial court.

A bailment is a delivery of personality for the accomplishment of some purpose upon a contract, express or implied, that after the purpose has been fulfilled, it shall be redelivered to the person who delivered it, otherwise dealt with according to his directions or kept until he reclaims it. A cause of action on that basis arises if the bailor can establish that personality has been delivered to the bailee, a demand for return of the bailed goods has been made, and the bailee failed to return the personality. When the bailor produces evidence to satisfy those elements, the bailee has the duty

of going forward with evidence accounting for the loss and if the bailee fails to do so, he is responsible for the loss. It is assumed under those circumstances that the bailee has failed to exercise the duty of care required by the agreement. On the other hand, should the bailee go forward with evidence showing that the personality was lost and the manner in which it was lost, and the evidence does not disclose a lack of due care on his part, then the burden of proof again shifts to the bailor who must prove negligence on the part of the bailee.

Noting that malpractice claims have traditionally arisen in the context of services provided by the legal and medical professions, the court concluded that professional negligence concepts in those professions also extend to veterinarians since, as in the practice of law and medicine, the vocation of veterinary medicine involves specialized education, knowledge and skills. To state a cause of action based on the negligent actions or omissions of a veterinarian, the plaintiff must plead (1) the employment of the veterinarian or other basis for a duty of care; (2) the veterinarian's failure to exercise the appropriate standard of care; and (3) that the veterinarian's departure from that standard of care was the proximate cause of the animal's injury or death.

In an action based on negligence, the plaintiff must specifically allege that the veterinarian was negligent in the performance of his professional services. In contrast, a claim based on a breach of bailment agreement does not require an allegation of negligence be made. Under a bailment theory, the plaintiff does not bear the initial burden of producing evidence of the negligent acts or omissions of the veterinarian; however, does bear that burden when professional negligence is asserted.

Although the trial court recognized that a dog is personal property, it stated that allegations which might give rise to a bailment are, without more, insufficient to state a cause of action against a veterinarian for death or damage to an animal entrusted to his or her care for veterinary treatment. That court concluded that in order to recover damages for such loss, the plaintiff must plead and prove that the veterinarian was negligent.

The purpose for which an animal is entrusted to the care of a veterinarian is a material fact that must be considered in determining whether a plaintiff's complaint states a cause of action as a matter of law and Price's complaint failed to state a cause of action for professional negligence. The allegations relating to the professional services rendered by Dr. Brown cannot be deliberately excised from the complaint as if the veterinarian's services were not different than those offered by a kennel operator or dog groomer. There are significant differences between surgical services provided by a veterinarian and grooming or care-taking services.

The Superior Court erred in focusing solely on whether an implied bailment agreement could be found aside from an agreement to provide medical treatment for the animal. The specific allegations that Price's observations of her dog's condition following surgery prompted her to request that the dog be monitored around the clock, that the dog was left unattended after midnight, and that the dog died the next morning were not superfluous. The Superior Court's selective review of the allegations of the complaint was improper.

The order of the Superior Court is reversed and the trial court's order is reinstated.