

CAUSE NO. 087-21

JUDY SANTERRE
Plaintiff,

vs.

BASTROP VETERINARY HOSPITAL
LARGE ANIMAL SERVICES, P.C.,
DR. JEFFERY SCHROEDER, DVM,
DR. DARREN WEISS, DVM,
DR. STEFANIE MOSLEY, DVM, and
DR. LUCY PUTESJOVSKY, DVM
Defendant.

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

21st JUDICIAL DISTRICT

BASTROP COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW PLAINTIFF JUDY SANTERRE complaining of DEFENDANTS BASTROP VETERINARY HOSPITAL LARGE ANIMAL SERVICES, P.C., DR. JEFFERY SCHROEDER, DVM, DR. DARREN WEISS, DVM, DR. STEFANIE MOSLEY, DVM, and DR. LUCY PUTESJOVSKY, DVM, and would show the Court as follows.

I.

Discovery Control Plan

Discovery in this case is intended to be conducted under Level 2.

II.

Parties

Plaintiff JUDY SANTERRE ("Ms. Santerre") is an individual who resides in Bastrop, Bastrop County, Texas.

Defendant Bastrop Veterinary Hospital Large Animal Services, P.C. (“BVH”) is a Texas professional corporation having its principal place of business in Bastrop, Bastrop County, Texas. BVH previously appeared for all purposes in this matter.

Defendant Dr. Jeffery Schroeder, DVM (“Schroeder”) is an individual who resides in Bastrop, Bastrop County, Texas. He has previously appeared for all purposes in this matter.

Defendant Dr. Darren Weiss, DVM (“Weiss”) is an individual who resides in Austin, Travis County, Texas. He has previously appeared for all purposes in this matter.

Defendant Dr. Stefanie Mosley, DVM (“Mosley”) is an individual who resides in Dallas, Dallas County, Texas. She has previously appeared for all purposes in this matter.

Defendant Dr. Lucy Putesjovsky, DVM (“Putesjovsky”) is an individual who resides in Wharton, Wharton County, Texas. She has previously appeared for all purposes in this matter.

III.
Jurisdiction and Venue

The Court has jurisdiction over this matter pursuant to § 25.0003, TEX. Gov’t Code. Venue is proper in Bastrop County, Texas because all or part of the events giving rise to this lawsuit occurred there. The amount in controversy exceeds the minimum jurisdictional amount for this Court and the monetary relief sought is over \$200,000 but less than \$1,000,000.

IV.
Facts of the Case

This lawsuit arises from the tragic -- and needless -- death of Ms. Santerre’s beloved horse, Harvey. In September 2013, Ms. Santerre brought Harvey – an otherwise healthy 10-year old palomino performance gelding – to the Bastrop Veterinary Hospital (“BVH”) for diagnosis and treatment of a fresh cut on his right front ankle. When the Defendant vets, all employees of

BVH, accepted him for treatment on September 20, 2013, Harvey's prospects for a full and complete recovery were excellent. The Defendants portrayed themselves as possessing the clinical knowledge, experience and expertise to properly diagnose and to treat Harvey's injury, and to fully investigate and appropriately manage complications typically associated with such an injury. Their failure to do any of those things ultimately resulted in Harvey's death on April 24, 2014.

It is well-accepted that puncture wounds or lacerations of the limb over or near a joint or tendon sheath commonly result in joint infections in mature horses. It is likewise well-accepted that the most important part of treatment is early recognition of the condition and immediate (and appropriate) treatment. Well-documented clinical experience confirms that if a joint infection is not properly diagnosed and treated promptly and aggressively, then the chances of survival (let alone recovery) are significantly reduced. Accordingly, a wound over a joint is potentially life-threatening, and thus should be considered -- and must be treated as -- a medical emergency.

Defendants apparently took none of the recognized steps to prevent or detect a joint infection. Within days of initial treatment, Harvey's ankle swelled, the stitches broke, and a thick, yellowish fluid began draining from the wound. The lameness in his right leg intensified. These are well-known clinical signs of a joint infection, and clearly warranted immediate and aggressive treatment. Defendants, however, completely ignored these red flags.

Ms. Santerre kept Defendants fully informed of these developments as they occurred. She spoke to the Defendants on the phone and also sent them photos of Harvey's ankle. She asked repeatedly if she should bring Harvey to the clinic for an examination, diagnostic testing,

and an alternative treatment protocol. The Defendants consistently told her that no further examination or other treatment was warranted.

By way of illustration, on October 17, 2013, Ms. Santerre emailed a photo of Harvey's swollen ankle to Defendant Weiss. The photo clearly showed a thick yellowish discharge coming from the joint. Defendant Weiss confirmed receipt of both the photograph and Ms. Santerre's verbal description of Harvey's worsening condition. He did nothing more than to prescribe another round of the same medication (SMZ tablets) that clearly was having no effect. In the meantime, Harvey's condition was getting worse by the day.

On November 8, 2013, Ms. Santerre brought Harvey to the BVH and insisted that his deteriorating condition be re-evaluated. The top layer of the ankle wound had closed over, the joint was extremely swollen, and Harvey was profoundly lame. These are classic clinical indicators of a full-blown joint infection; indeed, there are few other explanations for profound lameness and effusion in a joint in an adult horse. Ms. Santerre specifically questioned Defendant Putesjovsky whether Harvey had a joint infection in his ankle. Defendant Putesjovsky assured Ms. Santerre that he did not. In connection with this "diagnosis," however, she did nothing more than to take two x-rays; neither was a view that would have shown changes in the bony structure of the joint associated with an infection. She prescribed "hand walking," and told Ms. Santerre that "Harvey would be fine."

In fact, however, under these circumstances a prudent vet would have immediately taken further diagnostic steps and would have implemented an aggressive treatment protocol. Such steps should have included, *inter alia*, taking a sample of the joint fluid for clinical analysis, blood work, and/or ultrasonography. Defendants took none of the appropriate diagnostic steps,

nor did they advise Ms. Santerre that such diagnostic procedures were warranted under the circumstances. As a result, Harvey's condition worsened.

Over the next 20 days, Ms. Santerre continued to apprise the Defendants of Harvey's deteriorating condition. They did nothing other than dispense bute and banamine, two anti-inflammatories that did nothing to address the massive infection in Harvey's ankle joint.

Ms. Santerre brought Harvey to the clinic again on November 29th. His ankle was even more swollen and he was "grade 4" lame. Defendant Putesjovsky performed no diagnostics at all; nevertheless, she again assured Ms. Santerre that Harvey did not have a joint infection. She put a sweat wrap on Harvey and sent him home. The proper treatment protocol at that point almost certainly would have involved some combination of joint lavage, intravenous and intramuscular antibiotics (or even local antibiotic administration), and arthroscopy. The warm, moist condition created by a sweat wrap Defendant Putesjovsky applied likely acted as a bacterial "super-charger" that kicked the ever-worsening infection into high gear.

Ms. Santerre called the clinic on December 2nd to report that Harvey's condition had not improved with the sweat wrap. The next day, the Defendants finally admitted for the first time that they had no idea what was wrong with Harvey or how to properly diagnose and treat his condition. They suggested that Ms. Santerre take Harvey to the veterinary teaching hospital at Texas A&M. Harvey was hospitalized at Texas A&M the next day. Proper diagnostic procedures revealed that under Defendants' "care" Harvey had developed a severe joint infection that, by the time the Defendants referred Harvey to Texas A&M, was extremely advanced. The veterinary professionals at Texas A&M implemented an aggressive treatment protocol, and even performed surgery on Harvey's ankle. But as a result of the Defendants' repeated failures to

follow accepted diagnostic protocol, resulting misdiagnoses and consistently improper treatments, Harvey's joint infection had become too advanced and severe, even before they even referred him for proper care. Due to the Defendants' misconduct, the measures taken by the vets at Texas A&M were not effective. Upon independent recommendations made by two highly-qualified veterinarians, Harvey was euthanized on April 24, 2014.

V.
Causes of Action

Despite holding themselves out as experienced, competent practitioners of veterinary medicine, the Defendants failed to give any attention to the likelihood that Harvey would develop a joint infection as a result of his ankle laceration. They ignored the very clear and dramatic warning signs that were both readily-observable, well-known to competent veterinary medicine practitioners, and repeatedly called to their attention. They took none of the diagnostic steps that were warranted under the circumstances. They directed a treatment protocol that fell far short of (and, in the case of the sweat wrap, was completely the opposite of) the accepted protocol for treatment of a joint infection. When Ms. Santerre asked them directly whether Harvey might have a joint infection, they assured her he did not; yet they had taken not a single one of the generally-accepted diagnostic steps required to make that determination. By the time they finally referred Ms. Santerre and Harvey to a qualified veterinary professional, his condition had deteriorated to such an extent that he could not be saved.

At all times relevant to the events giving rise to this lawsuit, the individual Defendant veterinarians were acting within the course and scope of their employment with BVH. Their acts and omissions alleged herein were within the general authority given them, were in furtherance of the business of BVH, and were for the accomplishment of the object for which the Defendant

veterinarians were employed. Accordingly, BVH is vicariously liable in connection with the acts and omissions of the individual Defendant veterinarians.

A. Veterinary Malpractice.

Defendants had a duty to meet the applicable standard of care in this case. Through their acts and omissions, they fell short of that standard. Such acts and omissions include, without limitation:

- Misdiagnosis
- Incorrect treatment
- Failure of skill in nonsurgical treatment
- Incorrect kind or amount of medication
- Violation of commonly accepted protocols
- Inadequate supervision
- Failure to provide preventative care
- Failure to suggest a referral to a specialist, or otherwise more qualified veterinarian

Defendants' acts and omissions resulted in Harvey's prolonged and deteriorating medical condition, and ultimately his death. Such acts and omissions were the proximate cause of Harvey's death and Ms. Santerre's damages.

B. Ordinary Negligence.

In the alternative, the Defendants' acts and omissions described above constitute ordinary negligence. Defendants had a duty not to engage in conduct that resulted in injury to Harvey. By their acts and omissions described herein, Defendants breached their duty. Defendants' acts and omissions were the proximate cause of Harvey's prolonged and deteriorating medical condition, his death, and Ms. Santerre's damages.

C. Actual and Exemplary Damages.

Defendants' wrongful conduct was the proximate cause of Ms. Santerre's actual damages including, without limitation, charges for medical treatment for Harvey, transportation costs, expenses for medicine, bandages and other necessary supplies and equipment, loss of use, and finally the total loss of Harvey.

Defendants' conduct was the result of malice and/or gross negligence, for which Texas law authorizes an award of exemplary damages in an amount to be determined by the trier of fact under Chapter 41 of the Texas Civil Practice & Remedies Code.

Ms. Santerre seeks to recover all such actual and exemplary damages herein.

VI.
Conditions Precedent

All conditions precedent to Ms. Santerre's right to recover herein have occurred or have been fulfilled.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Judy Santerre requests that upon final trial hereof, she be awarded her actual and exemplary damages, equitable relief as requested herein, her recoverable attorneys' fees and costs, and such other and further relief, at law or in equity, to which she may show herself justly entitled.

SIGNATURE PAGE TO FOLLOW.

Respectfully Submitted,

GRAVES, DOUGHERTY, HEARON & MOODY
A Professional Corporation
401 Congress Avenue, Suite 2200
Austin, Texas 78701
(512) 480-5651 Phone
(512) 480-5851 Fax

By: /s/ Kathryn Allen
Kathryn E. Allen
State Bar No. 01043100
Email: kallen@gdhm.com
Christopher L. Elliott
Stat Bar No. 06535400
Email: celliot@gdhm.com

ATTORNEYS FOR JUDY SANTERRE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been sent as noted below this 19th day of August, 2015 to the following:

Keith B. O'Connell
James W. Goldsmith, Jr.
O'CONNELL & AVERY, LLP
4040 Broadway, Suite 522
San Antonio, Texas 78209
Telephone: (210) 824-0009
Facsimile: (210) 824-9429
ATTORNEYS FOR DEFENDANTS

Email: keitho@oalawsa.com
Email: jimg@oalawsa.com

s/Christopher L. Elliott
Christopher L. Elliot