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## THE BASSETT BULLETIN™

### **THE NEW TEXAS SENTIMENT? INTRINSIC AND SENTIMENTAL DAMAGES MAY FINALLY BE RECOVERABLE FOR THE LOSS OF A FAMILY PET.**

For decades, the general rule in Texas was that a Plaintiff could not recover intrinsic or sentimental damages for the loss of a family pet, unless the services of that family pet brought the owner some tangible economic benefit. *See e.g., Petco Animal Supplies, Inc. v. Schuster*, 144 S.W.3d 554 (Tex. App. – Austin 2004, no pet.).

However, a new 2011 decision by a Texas Appellate Court (Ft. Worth division) held that a Plaintiff dog owner could recover intrinsic and sentimental damages for the loss of the Plaintiff's dog. *Medlen v. Strickland*, No. 02-11-00105 - CV (Tex. App. – Ft. Worth [2<sup>nd</sup> Dist.] November 8, 2011). Although the high court in Texas has not considered this issue for 120 years, the time may be ripe for the Texas Supreme Court to ultimately decide this new conflict of law between two Texas appellate districts.

### **IT HAS BEEN 120 YEARS SINCE THE TEXAS SUPREME COURT ADDRESSED THIS ISSUE.**

In 1891, the Texas Supreme Court addressed what the value of the loss of a pet is. *Heiligmann v. Rose*, 81 Tex. 222, 16 S.W. 931 (Tex. 1891). In *Heiligmann*, the aggrieved pet owner was allowed to recover damages. The damages could be determined by “market value, if the dog has any, or some special or pecuniary value to the owner, that may be ascertained by reference to the usefulness and services of the dog.” *Id.* at 932. The *Heiligmann* lost dogs were unique because they were trained to use different barks to signal whether an approaching person was male or female. *Id.* Because of that special feature, the *Heiligmann* Court reasoned that the jury could infer the value of the lost dogs to the owner. *Id.*

In 1891, a Plaintiff could not recover sentimental or intrinsic damages for the destruction of personal property. But now, sentimental damages can be recovered for the loss or destruction of **all** types of personal property. See *City of Tyler v. Likes*, 962 S.W.2d 489 (Tex. 1997); *Brown v. Frontier Theatres, Inc.*, 369 S.W.2d 299 (Tex. 1963).

Therefore, the *Heiligmann* Court decided the value of the loss of the family pet at a time when Texas law was different than it is now. And because the *Heiligmann* dogs were “unique,” there is no direct holding by the Texas Supreme Court as to the loss of “ordinary” family pets.

## **THE *MEDLEN* COURT HELD THAT FAMILY PETS ARE PERSONAL PROPERTY.**

In *Medlen*, the facts revealed that the Plaintiff’s dog escaped their backyard and was picked up by animal control. The Plaintiff notified animal control that they would pick up the dog once they could afford the fine. A “hold for owner” tag was placed on the dog’s cage, notifying animal control not to euthanize the dog. But the Defendant employee mistakenly put the dog on the wrong list and the dog was put down the next day.

The *Medlen* Court interpreted *Heiligmann* under the rule that sentimental damages are recoverable for personal property and held that “because an owner may be awarded damages based on the sentimental value of lost personal property, and because dogs are personal property,” a pet owner should be awarded sentimental damages for the loss of a family pet, regardless of whether or not that pet has any tangible economic value. *Id.* at p. 5. The *Medlen* Court did not limit its opinion to the tragic facts listed above and respectfully disagreed with the *Petco* decision. *Id.* at p.4.

## **HOW WILL THE *MEDLEN COURT’S DECISION AFFECT THE TEXAS LEGAL LANDSCAPE?***

The *Petco* decision is still binding law in the Austin district. The *Medlen* decision is now binding law in the Ft. Worth district. Even though other Texas districts are not bound by either of these decisions, the *Medlen* decision is now persuasive precedent in those districts. As a result, the *Medlen* decision may spread to other districts. It may be time for the Texas Supreme Court to decide the issue.

Practically speaking, the *Medlen* decision may open the door for more lawsuits against individuals, neighbors, animal control, bailees, pet boarding businesses, and other businesses whose purpose is to provide care or support for pets. If you are one of these entities, or an insurer who provides liability insurance for one of these entities, you may need to follow this changing area of law more closely and implement procedures to protect yourself from unwanted litigation fleas (yes, we meant to say that).



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