

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TERESA M. CALAFUT,	:	NO. 08 – 02,164
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
DUANE DANIELS,	:	
Defendant	:	Preliminary Objections

OPINION AND ORDER

Before the Court are preliminary objections filed by Defendant on October 14, 2008, to the Complaint filed by Plaintiff on September 19, 2008. Argument was heard April 1, 2009.

In her Complaint, Plaintiff contends that while hiking with several other people and her dog, she observed Defendant, who was apparently hunting, saw Defendant aim his rifle in their direction, and observed her dog being hit by a bullet from Defendant’s rifle. Although Plaintiff took the dog to a vet for treatment, the dog died. Plaintiff seeks to recover for (1) Destruction of Personal Property; (2) Negligent Infliction of Emotional Distress; and (3) Intentional Infliction of Emotional Distress. In his preliminary objections, Defendant has raised various objections to all three counts, and also challenges the request for punitive damages.

With respect to the claim for destruction of property, Defendant objects to Plaintiff’s request for “compensatory and punitive damages in an amount in excess of Fifty Thousand Dollars”. As Defendant correctly posits, a dog is considered to be personal property under 3 Pa.C.S. Section 459-601(a), and thus the measure of damages is the value of the property prior to its destruction. Daughen v. Fox, 539 A.2d 858 (Pa. Super. 1988). As a dog owner, the Court empathizes with Plaintiff’s allegation that her dog was considered by her as a family member and irreplaceable, and understands that the monetary value of the dog does not serve to satisfy such a claim. The Court is constrained, however, to apply the law as it is written. The request

for damages in excess of \$50,000 will, therefore, be stricken.¹ Further, the claims in paragraphs 14, 15 and 16, that the dog was considered a family member and was thus irreplaceable, that the dog suffered extreme pain and suffering, and that Plaintiff suffered substantial emotional distress, are not relevant to the claim for the fair market value of the dog and will also be stricken.

With respect to the claim for negligent infliction of emotional distress, Defendant objects that Plaintiff cannot meet the elements of such a claim. In this Commonwealth, to state a cause of action for negligent infliction of emotional distress, a plaintiff must demonstrate that she is a bystander who meets the criteria of Sinn v. Burd, 404 A.2d 672 (Pa. 1979), or that the defendant owes her a pre-existing duty of care, either by way of contract or because of a fiduciary duty. Armstrong v. Paoli Memorial Hospital, 633 A.2d 605 (Pa. Super. 1993). As there is no allegation in this case that Defendant owed Plaintiff a fiduciary or contractual duty, Plaintiff must meet the criteria of Sinn v. Burd: she must have witnessed the injury of a close family member. Armstrong, supra. As a dog is considered personal property under the law, Plaintiff cannot seek compensation for negligent infliction of emotional distress in this situation, even though she herself considers the dog a member of her family.

With respect to the claim of intentional infliction of emotional distress, the Court believes it is bound by the prediction of the Third Circuit Court of Appeals that when presented with the issue, the Pennsylvania Supreme Court will adopt Section 46 of the Restatement (2d) of Torts, which provides for recovery where one by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another. Brown v. Muhlenberg Township, 269 F.3d 205 (3d Cir. 2001). Further, the Court finds that the facts alleged in the instant complaint sufficiently set forth such a cause of action: that the defendant shot the dog in Plaintiff's view and in spite of Plaintiff's warning, that Defendant acted intentionally and recklessly in shooting the dog, that Plaintiff suffered severe emotional distress as a result of witnessing the shooting, and that Plaintiff has suffered severe physical manifestations of the emotional distress. While it remains to be seen whether the evidence adduced at trial will support the requisite findings, the allegations are sufficient to survive preliminary objections.

¹ It is assumed that the dog did not have a fair market value in excess of \$50,000. In any event, Plaintiff will be

Finally, with respect to the claim for punitive damages, since punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others, Kirkbride v. Lisbon Contractor's Inc., 555 A.2d 800 (Pa. 1989), and as Plaintiff has alleged such conduct, the claim may be pursued.

ORDER

AND NOW, this 8th day of April 2009, for the foregoing reasons, the preliminary objections are hereby sustained in part and overruled in part. Count II of the Complaint is hereby DISMISSED and paragraphs 14, 15 and 16 of the Complaint are hereby stricken. Within twenty (20) days of this date, Plaintiff shall file an amended Complaint in accordance with the foregoing opinion.

BY THE COURT,

Dudley N. Anderson, Judge

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Ronald Travis, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

permitted to amend this count to seek recovery for the dog's fair market value.