



Damages Recoverable for the Death of a Companion Animal?

BY RANDY TURNER AND LISA TURNER

A careless kennel, a negligent veterinarian, or a vindictive neighbor killed your client's beloved family dog or cat and the client wants to sue the tortfeasor. What damages may be recovered? In 1891, the Texas Supreme Court held in *Heiligmann v. Rose* that when a dog is killed, "[t]he value of the dog may 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."¹ Significantly, the Court did not address the question of what the proper measure of damages would be where a dog has little or no market value, but whose primary value is in sentiment. The court also did not discuss whether, or under what circumstances, a dog owner may recover damages for the sentimental or intrinsic value of a dog or other pet.

Intrinsic or Sentimental Value Damages

Although the usual measure of damages when personal property is destroyed is the property's market value, the Texas Supreme Court announced in 1963 that special rules apply where the property has little or no market value but has sentimental value.² In *Brown v. Frontier Theatres, Inc.*, a suit was filed for damages regarding items of personal property destroyed in a fire.³ The court held:

It is a matter of common knowledge that items such as these generally have no market value which would adequately compensate their owner for their loss or destruction. Such property is not susceptible of supply and reproduction in kind, and their greater value is in sentiment and not in the market place. In such cases the most fundamental rule of damages that every wrongful injury or loss to persons or property should be adequately and reasonably compensated requires the allowance of damages in compensation for the reasonable special value of such articles to their owner taking into consideration the feelings of the owner for such property.⁴

In 1984, in *Porras v. Craig*, the Court allowed the recovery of "intrinsic value" damages where the plaintiff's trees were cut down.⁵ Although the market value of the land had actually increased after the loss, the Court expressly adopted what it called the "intrinsic value rule" and held that "[i]f a defendant's cutting down shade or ornamental trees does not reduce the market value of the property, courts are authorized to award damages for the intrinsic value of the trees."⁶

The intrinsic value rule was reiterated by the Court again in 1997 in *City of Tyler v. Likes* when it held that "special rules apply in a suit to recover for the loss of property that is primarily of sentimental value."⁷ In *Likes*, the Court stated that "[i]n some cases, however, the damaged property consists of 'articles of small value' that 'have their primary value in sentiment.'"⁸ Such property can only be adequately valued subjectively; yet, the owner should still be compensated.⁹ The Court said:

We reaffirm today that damages measured by diminution in value are an adequate and appropriate remedy for negligent harm to real or personal property. ... The proper measure of Likes's damages ... is (1) the loss in market value of her property caused by the defendant's negligence and (2) for those items of small or no market value that 'have their primary value in sentiment,' *Brown v. Frontier Theatres*, 369 S.W.2d at 305, the loss in value to her.¹⁰

In the intrinsic value cases — *Brown*, *Porras*, and *Likes* — that were decided long after *Heiligmann*, the Court obviously did not intend to limit the recovery of intrinsic value damages to the loss of the specific types of property involved in those particular cases (watches, wedding veils, shoes, lace collars, pistols, letter boxes, family photographs, keepsakes, and trees). Likewise, there is no language anywhere in those cases suggest-

ing that the Court intended for intrinsic value damages to be recoverable for loss of some types of real and personal property but not others. In fact, the specific types of property had nothing to do with the court's reasoning in those cases. The Court's clear intent was to compensate an owner for the loss of *any* type of "real or personal property" having "small or no market value that has its primary value in sentiment."¹¹ The notion that the Texas Supreme Court somehow intended to exclude pets from the intrinsic value rule in these later cases appears nowhere in those opinions. It wouldn't make any sense to allow sentimental value damages when a photograph of the family dog is destroyed but not when the dog itself is destroyed. These cases clearly implicitly overruled or modified *Heiligmann* in those situations where a person's dog has little or no market value but whose primary value is in sentiment.

Society's Attitudes toward Pets have Changed

There is no rational basis for the theory that the Texas Supreme Court intended to allow intrinsic or sentimental value damages for all inanimate objects — including trees — but not for dogs. Such a theory ignores the dramatic change in our society's view of pets over the past 120 years. Arguably no items of personal property have more sentimental value for people today than their pets. According to a 2009 poll, "half (50%) of American pet owners consider their pets to be as much a part of the family as any person in the household."¹² A study conducted after Hurricane Katrina found that "over 50% of pet owners are willing to risk their lives to save a non-human family member."¹³ During the hurricane, many pet owners were hesitant to evacuate their homes without their pets.¹⁴ The study concluded that, "it comes down to core value, (people are) seeing pets as *more* than just sentimental property, so they want to make sure that all their family is evacuated, not just select members."¹⁵ Additionally, victims of domestic abuse often put their pets' well-being ahead of their own and sometimes hesitate to leave a violent relationship because they fear for their pet's safety.¹⁶

The intrinsic or sentimental value of pets has even been recognized by the Texas Legislature and the U.S. Congress. The Texas Property Code allows people to establish "pet trusts" to provide for the care of their companion animals.¹⁷ The Pets Evacuation and Transportation Standards Act (PETS) requires states seeking Federal Emergency Management Agency assistance to provide for pets in their plans for evacuating residents facing disasters.¹⁸ The Texas Family Code was amended this past legislative session to allow pets and companion animals to be included in protective orders.¹⁹

When the Court announced that property owners are entitled to recover intrinsic or sentimental value damages when their property is destroyed, it was well aware that society's attitudes toward pets had profoundly changed since its 19th century *Heiligmann* decision.²⁰ There is no reason to believe that the Court intended to exempt pets from the intrinsic or sentimental value rule.

Courts of Appeals Decisions

Courts of appeals have applied the intrinsic value rule in several cases involving inanimate objects.²¹ However, they have not applied the intrinsic value rule to dogs and have instead followed the antiquated *Heiligmann* holding.²² Those courts apparently assumed that the Texas Supreme Court intended for its intrinsic value rule to apply to all types of sentimental property having little or no market value — except dogs.

We can only speculate as to how those courts would rule if a cat, horse, or other non-canine companion animal having little or no market value is destroyed. Would they apply *Heiligmann* even though that case dealt only with dogs rather than pets in general? Or would they follow the intrinsic or sentimental value rule that applies to all tangible property having little or no market value? It would make no sense to have a different rule for cats than dogs.

In a concurring opinion, Justice Eric Andell of the 1st Court of Appeals in Houston said the intrinsic value rule *does* apply to dogs, even under the *Heiligmann* holding.²³ Justice Andell wrote:

Losing a beloved pet is not the same as losing an inanimate object, however cherished it may be. Even an heirloom of great sentimental value, if lost, does not constitute a loss comparable to that of a living being. This distinction applies even though the deceased living being is a nonhuman. (The defendant) contends that under existing Texas case law, if an animal has a market value, then that market value *alone* constitutes the proper measure of damages for the killing of the animal. No Texas Supreme Court case cited by either party, nor any that I have found, has held precisely on this point. I would disagree with *Redmon* and with any other appellate cases that are restrictive on this issue and hold that (the plaintiffs) could recover *either* the market value *or* the special *or* intrinsic value of their beloved pets.²⁴

Conclusion

Until the Texas Supreme Court addresses the applicability of the intrinsic or sentimental value rule specifically to pets, it appears that at least some courts will continue to apply the 120-year-old *Heiligmann* holding. In the meantime, a good argument can be made that *Heiligmann* was modified or partially overruled where an animal that is killed had little or no market value but whose primary value was in sentiment.

Notes

1. *Heiligmann v. Rose*, 81 Tex. 222, 226, 16 S.W. 931 (Tex. 1891).
2. See *Brown v. Frontier Theatres, Inc.*, 369 S.W.2d 299 (Tex. 1963).
3. The property lost in the fire consisted of Mrs. Brown's two slumber spreads; wedding veil, shoes, and point lace collar; key-wound heirloom watch; two emerald rings; one .36-Colt pistol and holster; one English letter box, and one cameo pin. *Id.* at 304.
4. *Id.* at 305 (citations omitted).
5. See *Pornas v. Craig*, 675 S.W.2d 503, 504 (Tex. 1984).
6. *Id.* The Texas Supreme Court appears to use the terms "sentimental value" and

"intrinsic value" interchangeably. Other Texas appellate courts have done the same. "Intrinsic value is an inherent value not established by market forces; it is a personal or sentimental value." *Star Houston, Inc. v. Kundak*, 843 S.W.2d 294, 298 (Tex. App. — Houston [14th Dist.] 1992, no writ); see also *Bueckner v. Hamel*, 886 S.W.2d 368, 373 (Tex. App. — Houston [1st Dist.] 1994, writ denied) (Andell, J. concurring); *Withrow v. Armstrong*, 2006 WL 3317714, at *6 (Tex. App. — Waco Nov. 16, 2006, pet. denied).

7. *City of Tyler v. Likes*, 962 S.W.2d 489, 497 (Tex. 1997).
8. The damaged property included personal records, family correspondence, family photographs, and keepsakes. *Id.* at 493.
9. *Id.* at 497 (citations omitted).
10. *Id.*
11. *Id.*
12. Petside Team, *New Poll Reveals Americans Often Treat Pets Like Humans*, Petside.com (Jun. 23, 2009, 8:10 AM), http://www.petside.com/the-sidewalk/ap_pets_poll.php.
13. Majority Willing to Risk Their Lives to Save Pets, Says Study, *The Huffington Post*, (Feb. 25, 2010, updated April 27, 2010), http://www.huffingtonpost.com/2010/02/25/majority-willing-to-risk_n_477589.html.
14. *Id.*
15. *Id.* (emphasis added).
16. Mary Yerkes, *Family Pets: Victims of Domestic Violence*, Suite101.com, (Sept. 8, 2008), <http://www.suite101.com/content/battered-pets-and-domestic-violence-a68199>.
17. See Tex. Prop. Code Ann. §112.037 (Vernon 2006).
18. See Pets Evacuation and Transportation Standards Act of 2006, Pub. L. No. 109-308 (Oct. 6, 2006), 42 U.S.C.A., sections 5121 note, 5170b, 5196).
19. See Tex. Fam. Code Ann. §85.012 (West Supp. 2012).
20. Several profound changes in society occurred after *Heiligmann* was decided: Marconi invented the radio, the Wright brothers flew their "flying machine" at Kitty Hawk, antibiotics were discovered, women were given the right to vote, and cruelty to animals became a crime.
21. See, e.g., *Bond v. A. H. Belo Corp.*, 602 S.W.2d 105, 106 (Tex. App. — Dallas 1980, writ ref'd n.r.c.); *Garey Constr. Co. v. Thompson*, 697 S.W.2d 865, 866 (Tex. App. — Austin 1985, no writ); *Withrow v. Armstrong*, 2006 WL 3317714, at *9-10 (Tex. App. — Waco 2006); *Gluck v. Hadlock*, No. 02-09-00411-CV, 2011 Tex. App. Lexis 2011, at *11-12 (Tex. App. — Fort Worth, Mar. 17, 2011, no pet.) (mem. op.).
22. See *Petco Animal Supplies, Inc. v. Schuster*, 144 S.W.3d 554, 557 (Tex. App. — Austin 2004, no pet.); *Zeid v. Pearce*, 953 S.W.2d 368 (Tex. App. — El Paso 1997, no writ); *Young's Bus Lines, Inc. v. Redmon*, 43 S.W.2d 266, 267 (Tex. Civ. App. — Beaumont 1931, writ ref'd).
23. See *Bueckner v. Hamel*, 886 S.W.2d 368, 375 (Tex. App. — Houston [1st Dist.] 1994, writ denied) (Andell, J., concurring).
24. *Id.* at 378.



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