

IDAHO LAW REGARDING THE MEASURE OF DAMAGES FOR ANIMALS NEED NOT BE REVISITED

Amy Lombardo

A recent article by Adam P. Karp, published in *The Advocate*, “The Animal World Takes a Special Place in Society and Our Courtrooms,” argued that the changing demographics of society (where animals often become part of the family) warrant a new approach to economic and non-economic damages awarded for harm to a domestic animal. The article further contended that courts nationwide are making progress to increase damages available to plaintiffs where the value of an animal is at issue and suggested Idaho should do the same.

This article will illustrate the opposing viewpoint: that Idaho law already fully and fairly compensates an animal owner for loss of a pet; including awarding economic damages for the value of an animal, and provides for additional damages in situations where outrageous conduct may warrant it. This article will discuss the current law, why it sufficiently covers the value of animals, and the public policy and legal implications should a change occur.

This is not an issue of whether one is pro-animal or not, but sound public policy and legal precedent dictate that increasing the value of damages in this area of animal law is unnecessary, impractical, and would have unintended consequences.

By compensating for economic loss, Idaho law fully and fairly compensates a pet owner for injury to a pet

Historically, the lives of Idahoans have been inextricably tied to the need and deep respect for domesticated animals. The common activities of ranching, farming, or even crossing the plains to arrive in this land involved obvious reliance upon domestic animals. Idahoans have traditionally considered these animals, including pets, to be critical to our very existence.

Economic damages

Both domesticated pets and domesticated commercial animals were historically deemed to be the personal property of their owners under the law.¹ This makes some sense, as household pets Fifi and Fido and most farm animals cannot file their own lawsuits for damages. The valuation of animals as personal property has survived to present day in the vast major-

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ity of states, including Idaho.² Accordingly, the current measure of damages for an animal in a lawsuit is the replacement value of the animal.³ In Idaho, this has been established statutorily⁴ and by case law.⁵

However, this does not mean that a plaintiff in an animal law matter will always recover only nominal damages. The replacement cost of the animal may include costs related to the purchase of a new animal of the same breed – including immunization, neutering, and comparable training, as well as lost profits of the owner proximately caused by the injury.⁶ It may also include evidence of pedigree, breeding, and whether its offspring would be valuable,⁷ as well as other reasonable and necessary expenses. Thus, Idaho law provides for recovery of economic losses for the value of an animal.

Non-economic damages are not necessary for full compensation

Despite the animal law article argument to the contrary, an Idaho pet owner need not recover for non-economic damages to be fairly compensated. The overwhelming majority of states have found that an animal owner cannot recover for emotional distress for harm to one’s pet, or for loss of companionship.⁸

Like many states, Idaho has severely limited the circumstances wherein a litigant may recover for emotional loss for negligent infliction of emotional distress when no physical injury to the litigant is present.⁹ There are also limited circumstances where a litigant may recover for injury to another person. For example, loss of consortium (or the care, comfort, and society of the deceased) in a wrongful death matter is limited to only one’s heirs, and the monetary amount awarded in the state is limited to \$250,000 (as of

when the statute was passed, the number is adjusted by statute for inflation).¹⁰ Idaho’s common Jury Instruction 9.05 reads, “[d]eath is inevitable. Although the law compensates for the untimeliness of a death caused by another, no damages are allowed for grief or sorrow. There can be no recovery for any pain or suffering of the decedent prior to death.”¹¹

The animal law article suggests a good faith basis exists to argue that the law regarding the measure of damages for a pet in Idaho should be overturned, based upon dicta from the Idaho case *Gill v. Brown*. However, *Gill* only outlines that negligent infliction of emotional distress may be a viable cause of action for loss or injury provided an owner can show objective physical evidence of the distress.¹² The *Gill* court specifically held that it was not persuaded to depart from the general rule that denies recovery for mental anguish suffered by the property owner.¹³ It was only error in that case for the trial court to *sua sponte* order a claim of mental anguish stricken from the complaint in a motion to dismiss when the Complaint alleged that the defendant recklessly shot and killed the plaintiff’s donkey which was both a pet and a pack animal. The *Gill* case established only that if a plaintiff meets the stringent criteria for intentional infliction of emotional distress – requiring extreme and outrageous conduct—would an animal owner be awarded damages for emotional suffering.¹⁴

Criminal penalties and enhanced damages are appropriate for intentional acts

There must be a distinction made between the argument to increase the value of an animal under the law, which would have negative consequences in litigation against veterinarians, and those cases where there is evidence of a grave, inten-

tional injury to an animal, or outrageous behavior by an individual. In Idaho, the legislature passed recent legislation to increase penalties for those who opt to harm an animal. This statute, which the animal law article states is a step in the right direction, addresses the problem of those individuals who would intentionally harm an animal and punishes those who engage in these behaviors, without increasing the legal value of an animal.¹⁵

Idaho courts would be wise to decline to revisit the debate regarding the value of damages for a domestic animal, and to follow the reasoning of courts all over the country which have found that “the claim for emotional distress arising out of the malicious destruction of a pet should not be confused with a claim for the sentimental value of a pet, the latter claim being unrecognized in most jurisdictions.”¹⁶

Public policy implications

If the death or injury of an animal is determined to be an event that is worth more money than the replacement value of the animal, the unintended result will be more litigation for increasingly questionable claims.

For example, in Alabama a plaintiff sued a railroad for striking his dog with a train while the plaintiff was *hunting near a railroad track*.¹⁷ The Alabama Supreme Court affirmed an award based on evidence regarding the dog’s hunting qualities to increase that award.

In my own practice in Virginia, a lawsuit was filed by a plaintiff alleging that a veterinarian made an error in cosmetic surgery performed on his dog. The dog — Rambo — had been subjected to three different surgeries at the request of his owner to ensure that Rambo’s synthetic testicles had been placed and implanted perfectly. When, during the third surgery a complication developed which was allegedly attributable to the amount of scar tissue present at the dog’s incision sites, the dog owner sued. This potential type of claim is currently not worth an exorbitant amount, but had the animal or damage to the animal been valued at considerably more, the case would have necessitated much more time, effort and expense of the parties and the court.

In California, the Fourth District Court found that “permitting plaintiffs to recover emotional distress damages for harm to a pet would likely increase litigation and have a significant impact on the courts’ limited resources.”¹⁸ It opined, “[t]he court is not about to recognize

*The court noted, furthermore, that extending emotional distress damages to owners of companion animals for veterinary malpractice may have an unknown or even a chilling effect on the cost and availability of veterinary care.*²⁰

a tortious cause of action to recover for emotional distress due to the death of a family pet. Such an expansion of the law would place an unnecessary burden on the ever burgeoning case loads of the court in resolving serious tort claims for injuries to individuals.¹⁹ The court noted, furthermore, that extending emotional distress damages to owners of companion animals for veterinary malpractice may have an unknown or even a chilling effect on the cost and availability of veterinary care.²⁰

To simply make the value of an animal worth more upon death, or to allow for non-economic or emotional distress damages in civil lawsuits, would regularly and disproportionately impact veterinarians, and would ultimately shift the burden of higher practice costs to veterinarians. These questionable claims will cause an increase in malpractice insurance premiums for veterinarians, and, as argued by the American Veterinary Medical Law Association and various law review articles,²¹ the state would see a rise in the cost of litigating the cases against veterinarians. This has the potential to make the care and maintenance of everyone’s animals more expensive.

Therefore, it is an incorrect assumption from the animal law article that a higher valuation under the law would benefit animals and their owners. If damages increase, so too does the cost of litigating. Ultimately, the cost of veterinary services would likely increase, and owning a fully-insured and fully cared-for pet may become cost-prohibitive.

Conclusion

There is no pressing need to overturn decades of legal precedent and an Idaho statute to increase the value of an animal under the law. While there are many rare and novel issues presented in the area of animal rights law, to the extent that self-professed animal rights lawyers seek to increase damages or allow damages for

emotional distress for the owner of the animal, I am hopeful that the Idaho courts will not revisit or alter this longstanding and virtually nationwide precedent. Although animals are and have always been revered in the State of Idaho, the sound public policy for Idahoans remains: damages awarded for harm to a domestic animal is the fair market value of that animal.

Endnotes

¹ *United States v. Hatahley*, 257 F.2d 920, 923 (10th Cir. 1958) (remanding for damages only as the district court failed to apply the rule that plaintiffs were entitled to the market value of their horses and burros, but instead relied upon a theory that the animals taken were unique because of their peculiar nature and training, and *could not be replaced*).

² See, e.g., *Parker v. Mise*, 27 Ala. 480 (Ala. 1855) (animals are property and holding that wrongful killing of an animal is subject to nominal damages, with punitive damages for reckless disregard), *Richardson v. Fairbanks N. Star Borough*, 705 P.2d 454 (Alaska 1985) (animals’ market value determined at the time of death and does not include subjective estimations of the animal’s value); *Roman v. Carroll*, 621 P.2d 307 (Az. Ct. App. 1980) (holding that a poodle is personal property pursuant to a state statute and no damages permitted for negligent infliction of emotional distress from witnessing injury to property); *Elliot v. Hurst*, 817 S.W.2d 415, 423 (Ark. 1991) (damages limited to fair market value of animal at the place and time of death).

³ See, *Hurtado v. Land O’Lakes, Inc.*, 153 Idaho 13, 278 P.3d 415, 423 (2012); *Skaggs Drug Ctrs., Inc. v. City of Idaho Falls*, 90 Idaho 1, 10, 407 P.2d 695, 699 (1965).

⁴ Idaho Code provides that “[d]ogs are property; and when the value of any dog is material in any civil or criminal proceeding in this state, the same may be established under the usual rules of evidence relating to values of personal property.” Idaho Code Ann. § 25-2807 (West 2012).

⁵ “[T]he measure of damages when personal property is destroyed by the tortious conduct of another is the fair market value of the property.” *Gill v. Brown*, 107 Idaho 1137, 1138, 695 P.2d 1276, 1277 (Idaho Ct. App. 1985).

⁶ *Hatahley* 257 F.2d at 923-925.

⁷ *Nichols v. Sukaro Kennels*, 555 N.W.2d 689, 692 (Iowa 1996).

⁸ See, e.g., *McMahon v. Craig*, 97 Cal. Rptr. 3d 555, 557-58 (Cal. Ct. App. 2009) (owner cannot recover emotional distress damages after a veterinarian’s negligence as the acts were neither directed at the plaintiff nor done in her presence), *Gluckman v. Am. Airlines, Inc.*, 844 F. Supp. 151 (S.D.N.Y. 1994) (holding that no cause of action existed under New York law to recover for pain and suffering or loss

of companionship.); *Kondaurov v. Kerdasha*, 629 S.E.2d 181 (Va. 2006) (Plaintiff-motorist could not recover damages for emotional or mental anguish suffered because of concern for injuries to her dog who was riding in the vehicle at the time of the accident); *Goodby v. Vetpharm, Inc.*, 947 A.2d 1269, 1274 (Vt. 2009) (cat owners who sued veterinarians and a pharmaceutical company that manufactured a medicine that allegedly killed plaintiff's cats were not permitted to recover on their claim of negligent infliction of emotional distress because they were never the objects of negligent acts of the veterinarians and pharmacy, were never in physical danger themselves, nor in fear of imminent danger. The court declined to adopt a special exception to recover noneconomic damages for the loss of their feline personal property, citing it as a legislative function.); *Mitchell v. Heinrichs*, 27 P.3d 309 (Alaska 2001) (Alaska Supreme Court specifically declined to allow plaintiff to include sentimental value to plaintiff as a component of the actual value); *Kaufman v. Langhofer*, 222 P.3d 272, 273 (Ariz. Ct. App. 2009) (plaintiff not permitted to recover emotional distress or loss of companionship damages since veterinarian's negligence did not directly harm plaintiff. The court also noted it was inappropriate to expand Arizona common law to allow a pet owner to recover emotional distress or loss of companionship damages because that would offer broader compensation for the loss of a pet than for the loss of a human).

⁹ *Gill*, 107 Idaho at 1138, 695 P.2d at 1277.

¹⁰ Idaho Code Ann. § § 5-311, 6-1603 (West 2012).

¹¹ IDJI 9.05 – Damages for Wrongful Death.

¹² The article states, “*Gill* implies the cognizability of negligent infliction of emotional distress provided that objective physical manifestations accompany the emotional disturbance.”

¹³ *Gill*, 107 Idaho at 1138, 695 P.2d at 1277.

¹⁴ This article does not discuss another issue which the animal law article advocates for – damages to

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the animal for its emotional suffering – but based on the wrongful death jury instruction, wherein human is not entitled to pain and suffering prior to death, it follows that Idaho is not likely to award emotional damages for pain and suffering to such a legal entity.

¹⁵ Idaho Code Ann. § § 25-3504, 25-3520A (West 2012). Idaho Code § 25-3504 is also the subject of a pending bill in the legislature which, as of the date of this article submission, seeks to further strengthen the penalties against those who intentionally harm animals by including a definition of torture, among other things.

¹⁶ *Banaszczyk v. Kowalski*, 10 Pa. D. & C.3d 94, 97 (Pa. Com. Pl. 1979).

¹⁷ *Louisville & N.R. Co. v. Watson*, 94 So. 551, 554 (Ala. 1922).

¹⁸ *McMahon v. Craig*, 97 Cal. Rptr. 3d 555, 564 (Cal. Ct. App. 2009).

¹⁹ *Id.*

²⁰ *Id.*

²¹ For a more in depth analysis than space permits here regarding the compelling public policy and practical reasons for not increasing an animal's legal value, and a discussion of resulting harm to veterinarians, owners, and the animals themselves, see

Victor E. Schwartz & Emily J. Laird, *Non-Economic Damages in Pet Litigation: The Serious Need to Preserve a Rational Rule*, 33 Pepp. L. Rev. 227, 229 (2006).

About the Author

Amy A. Lombardo is an Idaho native and a trial attorney at Parsons Behle & Latimer in Boise. She concentrates her practice in the areas of professional liability, products liability, and government relations. She has represented numerous veterinarians in her practice in Virginia and Washington, D.C. and looks forward to the day when her two small boys are old enough to help take care of a pet.



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