



WEEKLY LAW RESUME™

Issue By: Mark Hazelwood

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Torts - Owner of Injured Pet With Little Market Value Can Recover Reasonable Damages

Kevin Kimes v. Charles Grosser, et al.

Court of Appeal, First District (May 31, 2011)

Pets are considered property of their owners. This case deals with the issue of whether damages can be awarded for a wrongful injury to a pet animal with little or no market value.

Plaintiff Kevin Kimes' pet cat Pumkin was shot with a pellet gun, while perched on a fence between Kimes' property and the property of Defendant Charles Grosser. Kimes incurred \$6,000 in emergency surgery to save Pumkin's life. However, the surgery left Pumkin partially paralyzed. Kimes then spent an additional \$30,000 in expenses caring for Pumkin because of the injury. Kimes filed suit against Grosser, alleging that Grosser's family willfully shot Pumkin. Kimes sought to recover the amounts paid for Pumkin's care as a result of the shooting, and punitive damages.

As the case proceeded to trial, Grosser filed motions in limine to exclude evidence of Kimes' expenses caring for Pumkin on the theory that any liability was limited to the amount by which the shooting reduced Pumkin's fair market value. The trial court granted the motions in limine. As a result, Kimes declined to proceed with the trial and a judgment of dismissal was entered. Kimes then appealed. The First District Court of Appeal reversed.

In granting the motions in limine, the trial court concluded that pursuant to CACI Jury Instruction 3903J, an owner of personal property is entitled to recover the lesser of the diminution in market value caused

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by the injury, or the reasonable cost of repairing the property. Further, the trial court agreed that Kimes could not be compensated for Pumkin's sentimental or emotional value. The Court of Appeal ruled that Jury Instruction 3903J had no application to this case.

The Court instead determined that in a case where property has no market value (but may have some other value), the general rule limiting recovery to the loss of value may not apply. If that were the case, recovery for property with no market value would invariably be precluded. In such cases, the Court reasoned that the property's value must be ascertained in some other rational way. The Court further held that Civil Code section 3333 applies to this type of case. Section 3333 sets forth that the measure of damages is the amount which will compensate for all detriment proximately caused. Here, Kines sought to present evidence of costs incurred for Pumkin's medical care and treatment. The Court held this was a rational way of demonstrating a measure of damages apart from the cat's market value. While it was for the jury to decide if such an amount was reasonable, the motions in limine should have been denied. The judgment of dismissal was therefore reversed.

COMMENT

In a decision that all pet owners will applaud, the Court of Appeal held that the traditional method of determining the value of personal property does not always apply. In cases where property has a certain value to an owner, but not a market value, evidence may be presented to establish the reasonable value of the property.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/A128296.PDF](http://www.courtinfo.ca.gov/opinions/documents/A128296.pdf)

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