

Strange (But True) Cases of Veterinary Law

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(This is one in a continuing series of articles about true cases of animal-related disputes that actually found their way to the courtroom. Read the facts of the case and determine how you would have decided it in the light of the associated issues and arguments, i.e. interpret the “history” and “clinical data” and then see if you agree with the court’s ultimate “diagnosis”. GOOD LUCK!!!)

The case presented here centers around an automobile-pig collision which occurred on a highway in New York State. Specifically, this case is taken from the legal reporter documenting the lawsuit involving Vincent F. Alioto, Jr. (plaintiff and, hereafter, “driver”) and Waclaw Densiuk (defendant/counterclaimant, hereafter, “farmer”)

The driver of the car had sued the farmer for collision related harm suffered when his automobile struck the farmer’s pig which had wandered upon the highway. The farmer, in turn, countersued the driver of the car for the value of the pig. It is upon a related motion by the driver (to have the court deny the counterclaim) that the case specifically turns, i.e. the court here had to decide if the fact that the farmer’s pig was wandering upon the highway was, on its face, clear evidence of negligence (absence of the level of care that a reasonably prudent person would have manifested under a like set of circumstances) by the farmer. Therefore, if you decide the farmer was contributorily negligent to the genesis of the accident via the level of care he manifested with regard to the (apparently unsuccessful) confinement of his pig, you then effectively disallow his counterclaim against the driver to be heard. On the other hand, if you decide the farmer was not contributorily negligent to the genesis of the accident via the level of care he manifested with regard to the (apparently unsuccessful) confinement of his pig, you then effectively allow his counter-

claim against the driver to be decided by a subsequent trial.

The undisputed facts, presented here verbatim from the official court reporter, are as follows:

“...plaintiff was operating his Chevrolet along Sag Harbor turnpike, Bridgehampton, New York. At the place where the accident occurred, the speed limit was fixed at 35 miles per hour and plainly marked. On said date and time prior thereto, the defendant, a resident of said County engaged in farming, was the owner of a certain brood sow which at the said time and place weighed approximately three hundred pounds and was pregnant. She was one of a herd of ninety swine owned by the defendant which the latter maintained in an enclosed pen or pasture five acres in area. The enclosure consisted of a galvanized wire fence which (the) defendant had installed one foot below ground level which he alleges he kept in good repair. It appears that on the date aforesaid, despite the diligent efforts of the defendant to contain the herd within the pasture or pen, this sow escaped from her confinement by swimming under a portion of the fence which had been erected over and through a small pond and by wholly unforeseeable subterranean feat and in this extraordinary manner she did manage to achieve short-lived freedom. Having reached adjoining land, she perambulated to the highway, no doubt, of adventure leaving behind the remaining happy herd, hip high in mud. It was while she was thus strolling along the highway in her delicate condition that the plaintiff’s automobile did violently collide with said sow, hurling her through the air some twenty feet to an untimely demise (emphasis added).

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The plaintiff contends that permitting the deceased upon the highway unattended was, on its face, evidence of negligence on the part of the owner. In sum, that the plaintiff had a legal right to be upon the highway, but the pig did not.

The defendant contends that the plaintiff operated his auto carelessly, recklessly and at an excessive rate of speed, unmindful of the normal and frequent erratic peregrinations of wild and

domestic animals common in this place and area and was thereby negligent in striking and killing his pig for which he seeks recovery."

Determine how you would decide this case and then turn to p. 30 for the court's actual ruling.



"Simon" - Jennifer Kvamme

The Court's Decision (from pg.5)

The court decided in favor of the farmer by essentially holding that the pig's presence on the highway did not, in and of itself, prove the farmer to have been negligent in the manner he had used to confine the animal. In its decision, the court said that there

“are many situations where the hypothetical reasonable man could be expected to anticipate and guard against the conduct of others. Normal experience has given us knowledge of the habits and traits of common animals and the proclivities of pigs in rural areas. While an owner of a domestic animal is chargeable with knowledge of its propensities and must take precaution to prevent it from causing harm or damage to others, it becomes a question of fact herein whether this sow's actions were such that a reasonably prudent owner might anticipate her subterranean feat and stroll along the highways. Too, there is a question of the plaintiff's negligence to be determined. Did he act as a reasonably prudent driver would have acted under the circumstances? Generally, an owner of a domestic animal is not liable for damage done by the animal on a highway in the absence of negligence.”²

Here, if the owner of the pig had it in an enclosed area, and if the fence or barriers were reasonably adequate to restrain the animals, and if there was no notice of the animal straying from the enclosure onto the highway there would not appear to be any negligence.

The law gives operators of motor vehicles the right to be upon public highways, in so doing it does not preclude pigs from a like enjoyment of the public way under certain circumstances” (emphasis added).

Accordingly, the motion (to deny the counterclaim) is denied. The cause is entitled to be heard and decided upon the merits.”¹

(Any following litigation is not recorded,

i.e. any subsequent related cases may have been settled out of court, disallowed due to expiration of associated statutes of limitations, dropped completely, etc.)

1. Alioto V. Denisiuk, 205 N.Y.S2d 570 (NY 1960).
2. Hyland V. Harvey, 286 App.Div. 1137 (NY 1955).



"Gypsy" - Amy Larson