

**FILED**  
**JUN 27 2011**  
COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By: \_\_\_\_\_

**Court of Appeals No. 294765-III**

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**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

**MARY BRYSON BAECHLER, individually and doing business as MAGPIE FARM,**

*Appellant*

**vs.**

**MICHELLE BEAUNAUX, DVM**

**MAPLEWAY VETERINARY CLINIC, T.C.“TONY” SMITH, DVM, and DOES 1-100**

**inclusive**

*Respondent*

**BRIEF OF APPELLANT**

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Mary Baechler

Plaintiff, In Propria Personam

1151 Cook Rd.

Yakima, Wa. 98908

509-961-2792

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## **A. Assignments of Error**

### **Assignments of Error**

**No. 1 The Trial Court erred in entering the Order of October 5, 2010 granting summary judgment because Mary Baechler raised genuine issues of material fact.**

**No. 2 The Trial Court erred in entering the Order of October 5, 2010 granting summary judgment because the Washington Department of Health, Board of Veterinary Governors sanctioned Dr. Smith over this case. The Board of Veterinary Governors met the standard of expert opinion.**

**No. 3 The Trial Court erred in entering the Order of October 5, 2010 granting summary judgment by denying the Motion For Continuance that would have allowed time for depositions of the Respondents.**

**No. 4 The Trial Court erred in entering the Order of October 5, 2010 granting summary judgment by denying the Appellant the right to**

**depositions and discovery, since the Respondents' attorneys had refused all possible dates for depositions.**

**No. 4 The Trial Court erred in entering the Order of October 5, 2010 granting summary judgment by denying the Appellant's claim to the tort of outrage.**

**No. 5 The Trial Court erred in entering the Order of October 5, 2010 granting summary judgment by denying the Appellant the right to damages under the Consumer Protection Act.**

#### **Issues Pertaining to Assignments of Error**

We will address several questions: whether the District Court erred in holding that the Appellant failed to raise a genuine issue of material fact as to Defendants' Motion for Summary Judgment (Assignment of Error 1,2 & 3) The original complaint alleged causes ((Assignment of Error 3), of action for malpractice/negligence (Assignment of Error 2), violation of the Washington State Consumer Protection Act ((Assignment of Error 5), the tort of outrage, ((Assignment of Error 4),) and for emotional distress and punitive damages for the October 9, 2006 death of the Swedish Warmblood mare Madeleine.

**B. Statement of the Case**

Mary Baechler, a non-lawyer, filed a complaint pro se on October 5, 2009 in the Yakima Superior Court (CP1-16). This is a civil action for damages and injunctive relief for alleged causes of action of malpractice/negligence, violation of the Washington State Consumer Protection Act, unfair trade practices, the tort of outrage, and for emotional distress and punitive damages. Appellant asks for review of the decision of the Trial Court on October 5, 2010, granting summary judgment (RP pages 1-34; CP 277-278).

**C. Summary of Argument**

On October 5, 2006, Mary Baechler called Dr. T.C. Smith, DVM, to come to her farm for emergency treatment of her colicking mare Madeleine (CP pages 134-159). Dr. Smith treated Madeleine. Dr. Smith had the mare sleep as a form of colic treatment; upon awakening her 30 minutes later, she showed signs of still being in colic. Dr Smith then decided Madeleine should be immediately euthanized. Appellant Mary Baechler refused and asked for other treatment. Dr. Smith refused to treat the mare for the colic, and told her to call another veterinarian. Upon consulting with Smith's

employer, Dr. Michelle Beaunau, who also refused to come to the farm, Dr. Smith inserted a catheter, and left Mary Baechler to euthanize her own mare. The mare Madeleine had a foal by her side (CP page 125), which was orphaned upon the mare's death. Drs Smith and Beaunau provided no treatment or care for the orphaned foal. Per cell phone records (CP pages 201-202), Dr. Smith's total time on the farm, including preparing the mare to be euthanized, was 1 hour and 37 minutes; the time from arrival until he said he was leaving, was 57 minutes (per cell phone records). This is inadequate time to treat and assess a colic case (CP pages 238-242) and to prepare for an orphan foal.

Dr Smith was employed by Dr. Beaunau and Mapleway Clinic (CP pages 181-199); Dr. Beaunau, Dr. Smith and Mapleway Clinic had previously cared for Mary Baechler's horses, including the mare of this case, Madeleine. Dr. Smith abandoned his patient, and her to-be – orphaned foal. Dr. Beaunau had a relationship to the case as his employer (CP pages 266-276), and also Baechler was a current client and the mare was already a patient of Dr. Beaunau's Mapleway Clinic and Dr. Smith (CP pages 127-131; 181-199). Dr. Beaunau advised Mary Baechler on October 5, 2006, gave advice multiple times, (CP pages 134-159; 201-202; 204-205) gave instructions for the euthanasia, and consulted with

Baechler and gave Mary Baechler the direct advice to administer the euthanasia, without ever seeing the mare.

Sleep as a treatment for colic is completely unknown and is not a recognized treatment for colic. A trial will reveal that normal procedures that are standard of practice for colic were never used. CP pages 118-119; 238-242.

Appellant's attorney Moni Law tried repeatedly to set a date for discovery via deposition and was repeatedly denied by Respondents' attorneys. CP pages 78-88; 177-179; RP pages 12,12

Discovery and a jury trial will allow jurors to decide the particulars of the case; and also if under the Washington State Consumer Protection Act, was there a pattern of prior incidents (CP pages 222-236), complaints and outrageous behavior from Dr. Smith to clients. Did Dr. Beauniaux know of these complaints and should she have protected consumers from her employee, Dr. Smith? We would bring these facts forward at trial.

**D. Argument**

**Summary judgment was improperly granted because Appellant raised genuine issues of material fact as to malpractice, tort of outrage, right to jury trial, and violation of the Consumer Protection Act. Summary judgment was improperly granted because Appellant was not allowed discovery as all possible deposition dates were rejected by counsel for defendants.**

- 1. The Trial Court erred in entering the Order of October 5, 2010 granting summary judgment because Mary Baechler raised genuine issues of material fact. CP pages 78-88; 221-236**

A District Court May Not Resolve Disputed Factual Issues on Summary Judgment if the Nonmoving Party Presents More Than A Scintilla of Evidence.

"In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party ... The test is whether a party would be entitled to a directed verdict on the same facts."  
Connell v. Colwell, 214 Conn. 242, 246-47, 571 A.2d 116 (1990).

Summary judgment is properly granted only if "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). It is not the judge's role to determine "the truth of the matter," *Big Apple BMW, Inc. v. BMW of North America, Inc.*, 974 F.2d 1358, 1363 (3d Cir. 1992) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)), cert. denied, 113 S. Ct. 1262 (1993), in light of all the evidence. Rather, summary judgment must be denied "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Liberty Lobby*, 477 U.S. at 248. CR 38 (a) Right of Jury Trial Preserved.

Under CR 56, all facts and reasonable inferences must be considered in a light most favorable to the nonmoving party, i.e. in Appellant's favor. *Mountain Park Homeowners Ass'n v. Tydings*, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994). Summary judgment is properly granted only when the pleadings, affidavits, depositions, and admissions on file demonstrate that is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. CR 56(c). *Hutchins v. 1001 4<sup>th</sup> Avenue Assocs.*, 116 Wn.2d 217, 220, 802 P.2d 1360 (1991). The burden is on the moving party for summary judgment to demonstrate that there is no

genuine dispute as to any material fact. See, Morris v. McNicol, 83 Wn.2d 491, 494-95, 519 P.2d 7 (1974). The motion should only be granted if from all the evidence a reasonable person could reach only one conclusion. Morris, at 494-95.

Appellant has sworn to issues of material fact in the Summons & Complaint: Reply Brief-Baechlers; Declaration of Mary Baechler; Declaration of Dr. Emily Briggs; Declaration of Moni T. Law with attachments; CR pages 1-16; 134-159; 89-254.

- a. She was a client of Mapleway, Drs Beaunau and Smith (which they deny in response to Complaint) CP pages 134-159; 181-199.
- b. Her horse was a client of Mapleway, Drs Beaunau and Smith (which they deny in their response to Complaint) CP pages 127-131; 181-199).
- c. Mapleway, Drs Beaunau and Smith do not deny that Smith left Mary Baechler with euthanasia material and instructions how to use it.
- d. Baechler has submitted evidence (bills for Madeleine's care by Smith and Mapleway) that Smith was employed by Dr. Beaunau and Mapleway; these bills have both Dr. Smith and/or Dr.

Beauniaux's name, on Mapleway Clinic invoices (which they deny)

CP pages 181-199

- e. Baechler has provided eyewitnesses to Dr. Smith leaving the farm (abandonment of two patients). CP 204-205.
- f. Dr. Emily Briggs statement was not intended as expert witness for the entire case; she was providing a statement of normal standard of veterinary care, which Dr. Smith did not follow. CP 238-242.

The burden of proof in a veterinary malpractice action is always on the Appellant. *Fackler v. Genetzky*, 595 N.W.2d 884, 889-90 (1990) *appeal after remand* 638 N.W.2d 521 (2002).

ANIMAL LAW [Vol. 10:125 page 150, cites:

Veterinarians are also responsible for the negligence of associate veterinarians and others working under their supervision—either actually or apparently—under the doctrine of respondeat superior.

The right of trial by jury as declared by article 1, section 21 of the U.S. Constitution or as given by a statute shall be preserved to the parties inviolate.

U.S. Constitution, 7<sup>th</sup> Amendment, In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

- 2. The Trial Court erred in entering the Order of October 5, 2010 granting summary judgment because the Washington Department of Health, Board of Veterinary Governors sanctioned Dr. Smith over this case. The Board of Veterinary Governors met the standard of expert opinion.**

Dr. Smith's Stipulation to the Washington State Department of Health, (CP pages 221-224), Board of Veterinary Governors, agrees that he would likely be found guilty of malpractice. The findings of the Washington Board of Veterinary Governors, if allowed to be introduced at trial, should meet the standard of expert witnesses. Their opinion would show a difference in material fact: A material fact is one that will make difference in the result of the case. *Hammer v. Lumberman's Mutual Casualty Co.*, 214 Conn. 573, 578, 573 A.2d 699 (1990).

On RP 31,32, Judge McCarthy gives his own opinion of whether Dr. Smith followed protocol; Judge McCarthy states “There is no evidence his diagnosis was wrong...there’s no evidence the horse had a chance”. Respectfully, Judge McCarthy has put himself in the role of expert opinion; he ignored the fact that the Washington Department of Health, Board of Veterinary Governors sanctioned Dr. Smith over this case and that Dr. Smith agreed in the Stipulation that he would probably be convicted of malpractice. The Board of Veterinary Governors meets the standard of expert opinion.

BRADLEY GILMAN, DVM, Appellant, vs. NEVADA STATE BOARD OF VETERINARY MEDICAL EXAMINERS, Respondent.

No. 37974 (2004 Nev. LEXIS 36,\*;120 Nev. 263;89 P.3d 1000;120 Nev. Adv. Rep. 31) This case shows that a Board of Veterinary Governors has authority over disagreeing expert witnesses.

In Jahn v. Equine Services, the Court held “Because the district court's decision to grant summary judgment was based on its improper exclusion of Jahn's proffered expert testimony, we vacate the district court's decision to grant summary judgment”

In *Pruitt v. Box* Texas Court of Appeals 984 S.W.2d 709 Dec. 3, 1998:  
Appellant Pruitt's horse died after a procedure by veterinarian defendant Box to repair a crack in a hoof that involved administering a general anesthesia. The trial court granted the defendant's motion for summary judgment, but in this opinion the Court of Appeals disagrees with that decision. The affidavit of the defendant's expert veterinarian witness did not establish as a matter of law that Appellant has no claim that can be proved at trial. Accordingly, the Court of Appeals sent the case back for further proceedings.

Judge McCarthy says on RP page 32, that there is no evidence of proximal causation. Yet the Washington Board of Veterinary Governors, found regarding this case and Defendant Smith:

**Stipulation** (CP pages 221-224)

- 1.1 The Health Services Consultant of the Veterinary Board of Governors (Board), on designation by the Board, has made the following allegations.
  - A. On June 20, 1983, the State of Washington issued Respondent a credential to practice as a veterinarian. Respondent's credential is currently active.

B. On or about October 9, 2006, Respondent treated Client A's horse for colic, at the owner's farm. During the course of his visit, Respondent determined that he could not cure the horse of her colic, and that she needed to be euthanized.

**Respondent's treatment did not meet the standard of care** because he left the client to administer the euthanasia medicine on her own.

Appellant believes the Board of Governors agreed to the Stipulation because it was presented that Dr. Smith was seriously ill. If allowed a jury trial, the entire findings would come forth as revealed under discovery.

Dr. Smith was penalized by the Board of Veterinary Governors for improper use of euthanasia material and failing to document: In leaving me with euthanasia drugs, and instructing me to use it, he violated Statute 18.92.013:

Dispensing of drugs by registered or licensed personnel.

(1) A veterinarian legally prescribing drugs may delegate to a registered veterinary medication clerk, while under the veterinarian's direct supervision, certain nondiscretionary functions defined by the board and used in the preparing of legend and

nonlegend drugs (except controlled substances as defined in or under chapter 69.50 RCW) associated with the practice of veterinary medicine. A veterinarian legally prescribing drugs may delegate to a licensed veterinary technician, while under the veterinarian's indirect supervision, certain nondiscretionary functions defined by the board and used in the preparing of legend drugs, nonlegend drugs, and controlled substances associated with the practice of veterinary medicine. Upon final approval of the packaged prescription following a direct physical inspection of the packaged prescription for proper formulation, packaging, and labeling by the veterinarian, the veterinarian may delegate the delivery of the prescription to a registered veterinary medication clerk or licensed veterinary technician, while under the veterinarian's indirect supervision.

Madeleine died from injection of euthanasia material, given under the direction of Dr.s Smith and Beaunax. Dr. Beaunax gave the direct advice of "put her to sleep now, it's time". (CP pages 134-159)Madeleine did not die from colic; she died in pain, from lack of treatment and from the controlled euthanasia drug whose intent was only death. Both Smith and Beaunax have proximal cause to the death of the mare.

**3. The Trial Court erred in entering the Order of October 5, 2010 granting summary judgment by denying the Motion For Continuance that would have allowed time for depositions of the defendants**

In RP 32, Judge McCarthy says the reason for denying continuance is “I don’t believe the depositions of Dr. Smith or Dr. Beauniaux are going to develop information that is relevant”. The judge has erred in this ruling because the right to discovery is critical for developing evidence for trial (or summary judgment). CR 26

Rule 30 of the Federal Rules of Civil Procedure allows for this basic right which is necessary to proceed in trial or to develop the questions which will go to expert witnesses: Attorney for Appellant, Moni Law, states on RP page 11, Line 16, that “Plaintiff has been denied the opportunity to take the deposition of either defendant to this day”. RP page 11,12.

**4. The Trial Court erred in entering the Order of October 5, 2010 granting summary judgment by denying the Appellant the right to depositions and discovery, since the Defendants’**

**attorneys had refused all possible dates for depositions (CR  
26(f))**

The Defendants asked for and deposed the Appellant, Mary Baechler, on March 29, 2010, for several hours (CP pages 134-159). The defendants were able to build their case for summary judgment from information found in that deposition; yet Appellant's attorney tried repeatedly to set dates for deposition, and all dates she proposed were rejected. Summary motion was then filed, and no avenue given for a deposition. (Declaration of Moni T. Law; CP 177-179; RP page 11,12.)

**5. The Trial Court erred in entering the Order of October 5, 2010 granting summary judgment by denying the Appellant's claim to the tort of outrage.**

The Tort of Outrage filed in the original Complaint should be decided by jury; if discovery was allowed, I believe it could be proven that Dr. Beaunoux and Dr. Smith were both aware of Smith's prior history of abusing clients verbally. *Restatement (Second) of Torts* section 46 (1965)

Beauniaux has denied having any other complaints for Dr. Smith or herself (CP 96-104) other than my complaint; yet she was sanctioned herself, so this is an issue of material fact. CP pages 222-236.

**6. The Trial Court erred in entering the Order of October 5, 2010 granting summary judgment by denying the Appellant the right to damages under the Consumer Protection Act.**

Under the Washington State Consumer Protection Act, RCW 19.86.090; we believe that if we had been allowed to depose the Respondants, and to continue discovery with clinic employees, we would have been able to prove a pattern of known and intentional harm to consumers, under RCW 19.86.093 (3)(a) Injured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons.

**E. Conclusion**

The district court erred in granting summary judgment for Respondents Smith, Beauniaux and Mapleway Veterinary Clinic. There is more than a scintilla of evidence of genuine issues of material fact, on each aspect of the case. The Board of Veterinary Governor's opinion is material, suffices

as a possible expert witness, and said opinion would be further brought out in a trial and with discovery. Appellant had consulted with a top international expert on colic, who's opinion would be brought forth at trial. This expert was not available in the short time frame of the motion for summary judgment.

The district court also erred in not allowing discovery before concluding for summary judgment.

Several things have kept this case alive for me; that with two vets knowledge and under their joint treatment, my mare was abandoned by a Mapleway vet and left to die in pain. That her to-be orphaned foal was also abandoned by those veterinarians. The fact is, Madeleine did not die from her untreated colic; she died from an injection of euthanasia drug, given by an amateur. She died because that was the only choice these vets left me, euthanasia drugs (a total violation of the veterinary code of ethics and federal drug law). While I was in shock from Dr. Smith's repeated tirades, they both told me no vet would help me. And then Dr. Beaunau lied, under oath, claiming she and Mapleway had no professional relationship to myself as a client, to my horse as an animal in her care, to Dr. Smith as her known employee, and she denied advising me repeatedly

on the night in question, her known client, despite witnesses to those phone calls and phone records showing it was to her phone.

My plea is for justice and a chance for jury trial. These two veterinarians knew they were leaving this mare untreated, in pain, and they abandoned her to only one option, the euthanasia drug they left me. They abandoned not one, but two patients, and Dr. Smith even denied to the Board of Veterinary Governors that there was a foal with the mare. Madeleine died a painful death, with her colic untreated by any known colic therapy. Euthanasia drug is not colic treatment, and euthanasia drugs can only result in death.

The judgment of the district court should be vacated, and the case should be remanded for further proceedings.

Respectfully submitted this 24th day of June, 2011.



Mary Baechler

Plaintiff, In Propria Personam