

IN THE COURT OF CLAIMS OF OHIO

SHELLY HOLT

Plaintiff

v.

THE OHIO STATE UNIVERSITY
VETERINARY MEDICAL CENTER

Defendant

Case No. 2025-00368JD

Judge Lisa L. Sadler
Magistrate Adam Z. Morris

DECISION

{¶1} On March 20, 2026, defendant, The Ohio State University Veterinary Medical Center (OSUVMC), filed a motion for summary judgment pursuant to Civ.R. 56(C). Plaintiff did not file a response in opposition. For the reasons set forth below, defendant's motion is GRANTED.

Factual Background

{¶2} This case arises from plaintiff's allegations that OSUVMC's performance of a cesarean section (c-section) on plaintiff's dog, Ellie, to help deliver Ellie's puppies fell below the applicable standard of care, which resulted in both physical harm to the dogs and financial harm to plaintiff.

{¶3} In the court's July 2, 2025 entry of partial dismissal, the court dismissed plaintiff's claims for lack of informed consent and negligent infliction of emotional distress pursuant to Civ.R. 12(B)(6). Accordingly, the claims remaining for trial are plaintiff's claims for veterinary negligence/malpractice and common-law negligence relating to plaintiff's financial harm claim. *Id.*

{¶4} Defendant moved for summary judgment arguing that it is entitled to judgment as a matter of law on plaintiff's claims, or in the alternative, to transfer plaintiff's case to this court's administrative docket. In support, defendant filed: (1) the deposition of

Shelly Holt; (2) an Affidavit of Mariana Fernandez, DVM; and (3) Dr. Fernandez's expert opinion letter, incorporated by reference to Dr. Fernandez's affidavit as Exhibit A.¹

{¶5} Plaintiff did not file a response in opposition, including any Civ.R. 56 evidence for this court's consideration.

{¶6} The relevant pleadings and evidence submitted, viewed in a light most favorable to plaintiff, show the following:

{¶7} In February 2024, plaintiff's son brought his male dog over to plaintiff's home while her dog Ellie was in heat. (Deposition of Shelly Holt, p. 23:1-5). As Ellie had not been spayed, plaintiff advised her son that they needed to exercise caution and closely supervise the dogs to prevent Ellie from becoming pregnant, as she had no intention of breeding her. (*Id.* at 23:1-10; 24:1-5). However, the parties briefly lost sight of the dogs, and during that time copulation occurred between the dogs, resulting in Ellie unintentionally becoming pregnant. (*Id.* at 23:12-24).

{¶8} On April 22, 2024, Ellie went into labor and struggled for hours before pushing out the head of one of the puppies. (*Id.* at 27:5-21). As Ellie continued to struggle, plaintiff made the decision to bring Ellie to OSUVMC to assist with the birth of the puppies. (*Id.* at 28:3-17). However, during the drive, Ellie delivered her first puppy, which was not breathing, prompting plaintiff to panic and turn around to return home in an attempt to resuscitate the puppy. (*Id.* at 29:9-23). Unfortunately, despite plaintiff's efforts, Ellie's first puppy passed, and plaintiff decided it was necessary to restart the trip once again to OSUVMC to prevent any further complications. (*Id.* at 30: 1-13). On the way to OSUVMC, plaintiff called the facility and informed them that she was bringing Ellie in as Ellie was in active labor and in distress and plaintiff did not have the experience to help with the birth of the puppies. (*Id.* at 30:20-32:19).

{¶9} When plaintiff brought Ellie into OSUVMC, Ellie was taken back for an assessment. (*Id.* at 34:24-35: 2). Thereafter, staff informed plaintiff that they could find one strong heartbeat, one faint heartbeat, but no other heartbeat was detected, despite plaintiff informing staff that she knew Ellie still had three puppies in her belly. (*Id.* at 36:7-

¹ Although the expert opinion letter is not expressly designated as Exhibit A, the court finds that it can reasonably ascertain that the unmarked document constitutes the expert opinion letter based upon the labeling of the remaining submissions and the limited number of documents provided for consideration.

15). Staff initially gave plaintiff the option to either continue to observe Ellie or to perform a c-section. (*Id.* at 36:16-24). Out of fear of losing more puppies, plaintiff decided to proceed with the c-section. (*Id.* at 36:1-13). Plaintiff was fully informed of the potential risks and complications of a c-section. (*Id.* at 40:17-41:21). After completion of the c-section, plaintiff was informed that Ellie and her puppies were safely delivered. (*Id.* at 44:21-45:4).

{¶10} Dr. Mariana Fernandez, DVM, is a “veterinarian specializing in small animal surgery with extensive experience in the treatment of small animals and the performance of surgical procedures, including cesarean section.” (Affidavit of Mariana Fernandez, DVM, ¶ 1, 5, Ex. A, p. 1). Dr. Fernandez is familiar with the standard of care for veterinarians who perform c-sections on canines and is also the veterinarian who personally performed Ellie’s c-section. (*Id.* at ¶ 2-3, 5, Ex. A, p. 1). According to Dr. Fernandez, “[a]s Ellie was being induced for surgery, one of the puppies was delivered vaginally. An abdominal ultrasound was repeated via the Emergency Service and no fetal heart rates were noted, concerning for fetal distress; therefore, the cesarean section was performed.” (*Id.* at ¶ 5, Ex. A, p. 1). Dr. Fernandez maintains that the c-section was “appropriate due to the fetal distress of the remaining puppies and was performed consistent with standard veterinary surgical practices.” (*Id.*).

{¶11} On or about April 22, 2024, plaintiff, Ellie, and the puppies arrived home at plaintiff’s house. (*Id.* at 55:8-12). Plaintiff placed Ellie and the puppies in a Pack n’ Play in the living room. (*Id.* at 55:15-21). On April 23, 2024, Ellie began experiencing diarrhea. (*Id.* at 59:4-17). Plaintiff initially called her normal veterinarian in order to receive medication for Ellie’s diarrhea, however, it became severe enough that plaintiff took Ellie to MedVet a couple of days later, where the medical team at MedVet thought that Ellie may also have aspirational pneumonia. (*Id.* at 61:7-63:7). Plaintiff contacted OSUVMC and transported Ellie there for treatment of aspiration pneumonia; however, plaintiff left Ellie’s puppies at home, as Ellie was unable to care for them while receiving treatment. (*Id.* at 65: 8-19).

{¶12} In addition, plaintiff did not know how to properly tube feed the puppies. (*Id.* at 65:19-66:2). As a result, plaintiff requested that her friend Cindy assist with tube-feeding and monitoring the puppies so that plaintiff could focus on Ellie, and Cindy

thereafter assumed care of and fed the puppies. (*Id.* at 66:3-16). Ultimately, the puppies also developed diarrhea, and plaintiff thereafter took the puppies to OSUVMC as well to be treated. (*Id.* at 69:13-71:9). In the end, Ellie and her puppies fully recovered, and plaintiff returned home with them, at which time OSUVMC provided plaintiff with instructions on how to tube-feed the puppies. (*Id.* at 74:4-12).

{¶13} In Dr. Fernandez’s report, she explains that aspirational pneumonia “is a known complication of undergoing any [anesthetic] event. While anesthesia providers reduce the risk of aspiration pneumonia by using an endotracheal tube to protect the airway and—should regurgitation occur—suction, it is not 100% preventable despite best efforts. Because it is a known risk, aspiration pneumonia was one of the potential complications specifically identified in the informed consent document that Mrs. Holt signed prior to Ellie’s cesarean section.” (Dr. Fernandez Aff., ¶ 5, Ex. A, p. 2). Dr. Fernandez holds the opinion that Ellie’s aspirational pneumonia was not the result of “a deviation of the standard of care of any OSUVMC provider.” (*Id.*). Moreover, Dr. Fernandez explains that “aspiration pneumonia is a known risk for bottle fed puppies. Since Ellie’s puppies were being tube and then bottle fed, it is more likely than not that this is how they developed aspiration pneumonia.” (*Id.*).

{¶14} As it relates to the diarrhea, Dr. Fernandez states that the c-section was not the cause of the diarrhea and that the diarrhea was “most likely not caused by exposure to an infectious source elsewhere at OSUVMC” as “OSUVMC maintains its facilities in a reasonably clean manner and follows industry standards and guidelines reducing exposure to pathogens.” (*Id.*). Moreover, Dr. Fernandez further supports her conclusions by explaining that:

Because Ellie’s diarrhea resolved through the administration of probiotics and supportive care, it is unlikely that it was caused by an infection she got while a patient at OSUVMC. If the diarrhea was caused by an infection, it should not have resolved without the administration of an appropriate treatment (e.g., a dewormer like pyrantel or drontal plus). In general, diarrhea can result from an anesthetic event, the administration of carprofen, diet, and even the stress of birth itself. Moreover, as Ellie’s diarrhea developed after she and her puppies were released from

OSUVMC, it is also possible that they were exposed to a gastrointestinal virus in the Plaintiff's home and the other animals present there.

(Id.).

{¶15} As it relates to the puppies, Dr. Fernandez states that it is her opinion that the puppies did not contract diarrhea at OSUVMC. *(Id.)*. As Dr. Fernandez explains:

The most common transmissible viral cause of diarrhea is parvovirus which the puppies tested negative for. Other causes of diarrhea include parasites such as hookworms, whipworms, and Giardia. In my review of the records, I did not see any results of fecal tests supporting that this was the case. The puppies did get dewormed with pyrantel which is standard practice as it is not uncommon for puppies to have GI parasites. Neonate puppies can get roundworms or hookworms from the mother from nursing or through placenta. Other causes of diarrhea in neonates could involve being changed to the milk replacement. To my understanding, when Ellie began having diarrhea, they were transitioned to milk replacement which can explain the onset of diarrhea. It is also important to note that neonates often have soft/mucoid stools that could potentially be perceived as diarrhea.

(Id.).

{¶16} According to plaintiff, neither the staff at MedVet nor plaintiff's normal vet ever insinuated or stated that Ellie and her puppies contracted diarrhea or aspirational pneumonia from OSUVMC or that staff at OSUVMC could have done something differently as to prevent either diarrhea or aspirational pneumonia. (Holt Dep. at 88:19-23; 90:16-21). In the end, Ellie and her puppies that OSUVMC cared for survived and fully recovered, and when asked how the puppies were doing, plaintiff explained that the puppies are "perfect." *(Id.* at 19:2-19).

Standard of Review

{¶17} Motions for summary judgment are reviewed under the standard set forth in Civ.R. 56(C):

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits,

transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

“[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim.” *Dresher v. Burt*, 75 Ohio St. 3d 280, 292 (1996). To meet this initial burden, the moving party must be able to point to evidentiary materials of the type listed in Civ.R. 56(C). *Id.* at 292-293. “The moving party, however, cannot discharge its initial burden under this rule with a conclusory assertion that the nonmoving party has no evidence to prove its case; the moving party must specifically point to evidence of a type listed in Civ.R. 56(C), affirmatively demonstrating that the nonmoving party has no evidence to support the nonmoving party's claims.” *Mercer v. Wal-Mart Stores, Inc.*, 2013-Ohio-5607, ¶ 11 (10th Dist.), citing *Dresher* at 293; *Vahila v. Hall*, 77 Ohio St.3d 421, 429 (1997).

{¶18} If the moving party meets its initial burden, the nonmoving party bears a reciprocal burden outlined in Civ.R. 56(E):

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

“When a motion for summary judgment is made and supported as provided in Civ.R. 56, the nonmoving party may not rest on the mere allegations of his pleading, but his response, by affidavit or as otherwise provided in Civ.R. 56, must set forth specific facts showing that there is a genuine triable issue.” *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449 (1996).

Law & Analysis

{¶19} In its motion for summary judgment, defendant argues that it did not breach the applicable standard of care and plaintiff cannot recover any damages because the value of the dogs remained unchanged. In the alternative, defendant requests that the court issue an order transferring this case to the administrative docket.

{¶20} “[I]n order to establish negligence by a veterinarian, it must be shown that the injury complained of was caused by the doing of a particular thing that a veterinarian of ordinary skill, care and diligence would not have done under like or similar circumstances, or by the failure or omission to do some particular thing that such a veterinarian would have done under like or similar circumstances.” *Turner v. Sinha*, 65 Ohio App. 3d 30, 35 (12th Dist. 1989), citing *Littleton v. Good Samaritan Hosp. & Health Ctr.*, 39 Ohio St.3d 86, 93 (1988).

{¶21} Ohio courts, including the Tenth District Court of Appeals in a recent decision, “have held that the elements of a veterinary negligence claim – i.e., a duty to perform according to appropriate standards of veterinary medicine, a breach of that duty, damages resulting from the breach, and proximate causation of the damages by the breach – are analogous to those for a professional negligence claim against other medical professionals.” *Galoski v. Medvet Assocs., LLC*, 2026-Ohio-892, ¶ 12 (10th Dist.); see also *Kaiser v. Helbig*, 2021-Ohio-887, ¶ 9 (3rd Dist.); *Cerimele v. Van Buren*, 2013-Ohio-1277, ¶ 25 (7th Dist.); *Lauderbaugh v. Gellasch*, 2008-Ohio-6500, ¶ 7 (8th Dist.); *Ullmann v. Duffus*, 2005-Ohio-6060, ¶ 14 (10th Dist.); *Peltier v. McCartan*, 2005-Ohio-3901, ¶ 9 (3d Dist.); *Sinha*, 65 Ohio App.3d at 35. Although proximate cause may sometimes be difficult to define, Ohio courts have held that “proximate cause is generally established where an original act is wrongful or negligent and, in a natural and continuous sequence,

produces a result that would not have taken place without the act.” *Whiting v. State Dept. of Mental Health*, 141 Ohio App. 3d 198, 202 (10th Dist. 2001).

{¶22} Further, when it comes to the necessity of expert testimony, “[i]n a veterinary malpractice action, ‘[p]roof of the recognized standards [of the medical community] must necessarily be provided through expert testimony.’” *Van Buren*, 2013-Ohio-1277 at ¶ 17, quoting *Bruni v. Tatsumi*, 46 Ohio St.2d 127, 131-132 (1976). “Additionally, the issue of ‘whether the [defendant] has proceeded in the treatment of a patient with the requisite standard of care and skill must ordinarily be determined from the testimony of medical experts.’” *Id.*, quoting *Tatsumi* at 130; *see also Duffus*, 2005-Ohio-6060 at ¶ 15, 18 (“expert testimony is necessary to establish professional negligence.”).

{¶23} Upon review, OSUVMC submitted expert opinions from the veterinarian who performed Ellie’s c-section at its facility, which establishes that OSUVMC did not deviate from the applicable standard of care and, thus, demonstrates the absence of a genuine issue of material fact as to whether OSUVMC engaged in veterinary malpractice. (See *Dr. Fernandez Aff.*, ¶ 5, Ex. A). Therefore, defendant met its initial burden under Civ.R. 56(C). However, plaintiff failed to proffer any expert testimony establishing that OSUVMC, or its veterinarians, deviated from the applicable standard of care when treating Ellie or her puppies, and therefore failed to demonstrate the existence of a genuine issue of material fact as to whether OSUVMC engaged in veterinary malpractice.

{¶24} Although plaintiff submitted an affidavit of merit letter along with her complaint, plaintiff failed to file any response to defendant’s motion for summary judgment and did not properly submit any evidentiary materials for the court’s consideration to refute Dr. Fernandez’s opinion that defendant’s conduct complied with the applicable standard of care in veterinary medicine. *Gabriel v. Ohio State Univ. Med. Ctr.*, 2015-Ohio-2661, ¶ 23 (10th Dist.) (“The proper procedure for introducing evidentiary matter of a type not listed in Civ.R. 56(C) is to incorporate the material by reference into a properly framed affidavit . . . The rule of law applies with equal weight to expert medical reports.”); *Cunningham v. Children’s Hosp.*, 2005-Ohio-4284, ¶ 15 (10th Dist.) (“an expert’s letter not incorporated into a properly framed affidavit lacks any evidentiary value and that the trial court properly disregarded it in deciding a motion for summary judgment.”).

{¶25} In the absence of competent expert evidence supporting plaintiff's claim of veterinary malpractice, plaintiff has failed to demonstrate the existence of a genuine issue of material fact to meet her reciprocal burden under Civ.R. 56(E). *Duffus*, 2005-Ohio-6060 at ¶ 15 ("In the absence of an opposing affidavit of a qualified expert for the plaintiff, a defendant-physician's affidavit attesting to his compliance with the applicable standard of care presents a legally sufficient basis upon which a court may enter summary judgment in a medical malpractice action."); see also *Van Buren*, 2013-Ohio-1277 at ¶ 17 ("Without proper expert testimony, Appellant could not create a genuine issue of material fact."). Accordingly, OSUVMC is entitled to judgment as a matter of law on plaintiff's claim of veterinary malpractice.

{¶26} Finally, with respect to plaintiff's remaining claim for common-law negligence premised upon alleged financial harm, the court finds that, in the absence of a properly presented underlying claim for veterinary malpractice, plaintiff cannot recover damages for such financial harm arising from any purported veterinary malpractice concerning Ellie or her puppies, as any claim for monetary damages is derivative of, and contingent upon, a showing that defendant proximately caused the damages alleged to have resulted from the asserted veterinary malpractice. *Keaton v. Gordon Biersch Brewery Rest. Group*, 2006-Ohio-2438, ¶ 19 (10th Dist.) ("without evidence of proximate cause, there can be no liability."). Accordingly, OSUVMC is entitled to judgment as a matter of law on plaintiff's claim for common-law negligence premised upon alleged financial harm.

Conclusion

{¶27} Based upon the foregoing, the court concludes that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law on plaintiff's claims for veterinary negligence/malpractice related to injuries to her dogs and common-law negligence relating to her financial harm. Therefore, defendant's motion for summary judgment is GRANTED. Judgment is hereby rendered in favor of defendant.

LISA L. SADLER
Judge

IN THE COURT OF CLAIMS OF OHIO

SHELLY HOLT

Plaintiff

v.

THE OHIO STATE UNIVERSITY
VETERINARY MEDICAL CENTER

Defendant

Case No. 2025-00368JD

Judge Lisa L. Sadler
Magistrate Adam Z. Morris

JUDGMENT ENTRY

{¶28} For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED. Judgment is hereby rendered in favor of defendant. All previously scheduled events are VACATED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

LISA L. SADLER
Judge