



Washington County Courts
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Oregon Judicial Department
Washington County Circuit Court
Twentieth Judicial District

Opinion Letter

September 17, 2018

Re: Justice vs Gwendolyn Vercher
Case #: 18CV17601

MICHELLE E SMITH; GEORDIE DUCKLER

Dear Counsel:

Defendant filed a Motion to Dismiss the Complaint based on Plaintiff's Lack of Legal Capacity to Sue under ORCP 21 A(4) and for Failure to State Facts Sufficient to Constitute a Claim under ORCP 21A(8). Defendant further requests attorney fees under ORS 20.105.(1). Defendant also raised the issue of legal standing. Plaintiff filed a Response and Defendant then filed a Reply.

A hearing was held on September 14 with all counsel of record present.

This case presents questions of first impression in Oregon and perhaps nationally.

In determining the sufficiency of a Complaint that is the subject of a motion to dismiss pursuant to ORCP 21 A, the court must accept as true all well-pleaded allegations in the Complaint and give the plaintiff, as the nonmoving party, the benefit of all favorable inferences that may be drawn from those allegations. *Espinosa v Evergreen Helicopters, Inc.*, 359 Or 63, 115 (2016)

The court grants with prejudice defendant's motion to dismiss based on a lack of standing for Justice the horse. The court finds that a non-human animal such as Justice lacks the legal status or qualifications necessary for the assertion of legal rights and duties in a court of law. *City of Damascus v. Brown*, 266 Or App 416 (2014). Justice is not the real party in interest. *Smith v Truck Ins. Exch., Inc.*, 242 Or App 202 (2011). There are profound implications of a judicial finding that a horse, or any non-human animal for that matter, is a legal entity that has the legal right to assert a claim in a court of law. Such a finding would likely lead to a flood of lawsuits whereby non-human animals could assert claims we now reserve just for humans and human creations such as business and other entities. Furthermore, non-human animals are incapable of accepting legal responsibilities. Perhaps an appellate court would come to a different conclusion if it wades into this public policy debate involving the evolution of animal rights. Or the Oregon Legislature could balance the public policy implications of the relief sought by Justice and craft legislation that would grant an animal the right to sue in its name for specified damages in specific instances such as a situation like this where the animal has been abused and suffered injury as a result. This court, however, is unable to take that leap.

Defendant's claim for attorney fees is denied as the court finds that there is an objectively reasonable basis for the negligence claim asserted by Justice. *Williams v Salem Women's Clinic*, 245 Or App 476

(2011). The claim is not entirely void of legal or factual support. *Id.* The problem is that there is not an adequate procedural avenue for Justice to utilize that would grant him access to the courthouse door. Counsel for plaintiff has been quite creative in an attempt to surmount this hurdle, and although unsuccessful at the trial court level, this court is not going to punish plaintiff by imposing an award of attorney fees for pushing the envelope. That would not be justice.

The court directs Mr. Duckler to prepare an order reflecting this ruling.

Sincerely,

Signed: 9/17/2018 02:45 PM

A handwritten signature in black ink that reads "John S. Knowles". The signature is written in a cursive style with a large initial "J" and "K".

Circuit Court Judge – Pro Tem, John Knowles

Pro Tem Judge John S. Knowles