

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

CAROL NAPLES)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 08C-01-093 PLA
)	
WILLIAM MILLER and)	
LYNN MILLER, Husband and Wife,)	
)	
Defendants.)	

Submitted: September 14, 2009
Decided: October 6, 2009

Upon Defendants' Motion to Dismiss
JUDGMENT ENTERED

Stephen B. Potter, Esquire, POTTER, CARMINE & ASSOCIATES, P.A.,
Wilmington, Delaware, Attorney for Plaintiff.

Jeffrey A. Young, Esquire, YOUNG & MCNELIS, Dover, Delaware,
Attorney for Defendant.

ABLEMAN, JUDGE

Before the Court is a Motion to Dismiss filed by defendants William and Lynn Miller (“the Millers”) seeking dismissal of this canine injury lawsuit for failure of the plaintiff, Carol Naples (“Ms. Naples”), to prosecute and comply with the rules and Order of the Court.

Plaintiff has filed a somewhat incomprehensible Response in which she states that she is interested in having a final Order entered in the case but also “seeks an opportunity to make a factual record of the actual injuries she has incurred” as a result of Defendants’ three-legged rescue bloodhound getting loose from his yard and attacking Plaintiff’s Yorkshire Terrier. While recognizing that the Court “has entered an order restricting the amount of damages,” Plaintiff nonetheless insists that she should be entitled to make a record of the very damages the Court has ruled to be non-recoverable.

The procedural and factual issues in this case are adequately detailed in the Court’s April 30, 2009 Opinion granting Defendants’ Motion for Partial Summary Judgment and denying Plaintiff’s Motion for Summary Judgment.¹ Briefly, this lawsuit involves a dog fight between Ms. Naples’ dog Peanut and the Millers’ dog Ricky. As a result of injuries that Peanut sustained in that melee, Ms. Naples filed suit seeking damages for past and

¹ See 2009 WL 1163504 (Del. Super. Apr. 30, 2009).

future veterinary bills, emotional distress, and mental anguish, as well as punitive damages. In its Opinion, the Court thoroughly analyzed Ms. Naples' claims and concluded that since the dog is considered an item of personal property under Delaware law, any damages for loss or injury must be measured by market value. Because Peanut had been purchased by Ms. Naples only six weeks before the altercation at a cost of \$400.00, it was established, and the parties conceded, that Peanut's market value was \$400.00. The Court further ruled that Ms. Naples could not recover either damages for mental distress or punitive damages.

In an effort to put an end to this litigation, the costs for which have already far exceeded the maximum amount of recoverable damages, the Millers extended an offer to settle the case for the amount of \$400.00, representing Peanut's undisputed market value. Plaintiff refused, presumably because of her desire to challenge this Court's decision on appeal. Plaintiff also appears to have misconstrued the Court's holding in that she continues to assert the need to make a record of the additional expenses she incurred in connection with the dog fight over and above the \$400.00 market value of the dog.

As best as the Court can discern from Plaintiff's illogical response, she desires to appeal the Court's decision limiting damages to the market

value of the dog, but also desires to make a record of the “other bills” that the Court ruled were not recoverable as a matter of law. Not only does Plaintiff not need to make any record of these expenses, but the Court’s ruling granting partial summary judgment specifically denied Plaintiff the right to do so.

Defendants have mercifully offered a settlement of \$400.00. Since the Court has ruled that \$400.00 is the maximum amount recoverable under Delaware law, there simply are no triable issues, at least at this stage in the proceedings. Defendants’ settlement offer implicitly concedes liability for the purpose of concluding the litigation, so that this case is now ripe for appeal.

Under the circumstances, the Court concludes that the most expedient way to proceed is to enter judgment for Plaintiff in the amount of \$400.00. This final Order will then enable Ms. Naples to appeal to the Delaware Supreme Court, at which time she can raise the issues decided in the Court’s opinion granting partial summary judgment. If the Supreme Court reverses this Court’s decision on partial summary judgment, it will have to remand the case back to Superior Court for trial. In the event that the case is remanded, then, and only then, will it become necessary for Ms. Naples to prove, or “make a record of,” those damages that have thus far been

disallowed. Furthermore, in the event of a remand, the Court will allow the Millers to withdraw their \$400.00 offer of settlement and renew their liability defense.

Therefore, judgment is hereby entered against the defendants, William and Lynn Miller, in the amount of \$400.00.

IT IS SO ORDERED.

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary

cc: Stephen B. Potter, Esquire
Jeffrey A. Young, Esquire