

(Levy v. Only Cremations for Pets, Inc., No. G057888 (4th Cir. Nov. 6, 2020)

Pet owners may have standing as a third-party beneficiaries to enforce a contract between their veterinarian and a pet cremation service for the mishandling of their pet's remains and, in turn, recover emotional distress damages.

FACTS/PROCEDURE

Plaintiffs Hillarie and Keith Levy owned two dogs, Winnie and Wesley, who died within one year of each other. Winnie was adopted in 2006 and died of heart failure in 2016. Wesley was adopted in 2005 and died the year after Winnie due to lung disease. After both Winnie and Wesley's deaths, Hillarie took their remains to their veterinarian, who contracted for cremation services with defendant, Only Cremation for Pets, Inc. Defendant offered private cremations for owners who wanted their pet's ashes returned to them and group cremations in which several pets would be cremated together and have their ashes scattered at sea. Although group cremations were cheaper, Hillarie chose private cremations. After receiving Winnie and Wesley's ashes, Hillarie noticed Wesley's ashes were slightly heavier than Winnie's, even though he was half her size. After speaking with the veterinarian and defendant, Hillarie was able to confirm that the ashes she received were not of Winnie and Wesley. Plaintiffs filed a complaint against defendant asserting contract causes of actions under an implied contract theory and tort causes of action for trespass to chattels and negligence. Since plaintiffs received a refund for the cremation costs, plaintiffs sought to recover emotional distress damages. Defendant filed a demurrer, contending its contract was with the veterinarian, not plaintiffs, and defendant's conduct was not intentional. The trial court sustained defendant's demurrer without leave to amend, and plaintiff appealed.

HOLDING/DISCUSSION

The Court of Appeal for the Fourth District affirmed and reversed in part. With respect to plaintiffs' contract claims, the court rejected plaintiffs' argument that there was an implied contract between defendant and themselves. Plaintiffs did not allege any facts that they were aware of any conduct by defendant which implied an offer to perform a private cremation, so plaintiffs could not establish the basic element that they had knowledge of the offer. However, the court found plaintiffs could amend their complaint to bring a contract cause of action as third-party beneficiaries. A third-party beneficiary may have standing to enforce a contract when a contract was made expressly for the benefit of that third person. To establish their standing as third-party beneficiaries, plaintiffs must plead facts demonstrating the veterinarian was acting with the purpose of benefiting them when it contracted with defendant and the defendant knew of the veterinarian's intent. If these two facts are pled, plaintiffs could establish standing their bring contract claims and, in turn, seek emotional distress damages. Although damages for mental suffering are generally not recoverable for breaches of contract, an exception applies when "the breach is of such kind that serious emotional disturbance would be particularly likely to result." The sole purpose of a private cremation is to provide a grieving owner with emotional tranquility after the death of a beloved pet. There is no economic benefit to a private cremation; plaintiffs incurred the additional cost solely for the emotional benefit. Defendant also advertised the emotional benefits of a private cremation. Therefore, the court held emotional distress damages were available to plaintiffs if plaintiffs could establish standing to bring their claims.