IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SHAWN MINSHALL, LISA VICTORIA MINSHALL, and LAUREN VICTORIA MINSHALL,	§	
Plaintiffs,	§	
vs.	§	
	§	CIVIL ACTION NO. 4:15-CV-00764
HARTMAN EQUINE REPRODUCTION CENTER, P.A.,	§	
Defendant.	§	

PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT

On March 7, 2017, after a trial of this case, an 8-person jury rendered a unanimous verdict in favor of for Shawn, Lisa, and Lauren Minshall ("Plaintiffs") for their negligence claim against Hartman Equine Reproduction Center, P.A. ("Defendant").[1] No party objected to the jury's answers to questions in the charge. After conferring, counsel for Plaintiffs and counsel for Defendant were able to agree on the form of portions of a proposed final judgment. However, Plaintiffs believe only two issues remain where no agreement could be reached: (1) the proper measure of damages for Plaintiffs' negligence claim; and (2) whether attorneys' fees are appropriate.

The proper measure of damages for negligence is the damages proximately resulting from Defendant's negligence. Further, Texas Civil Practice and Remedies Code Ann. § 38.001(6) statutorily authorizes "reasonable attorney's fees from an individual or corporation, in addition to the amount of a valid claim and costs, if the claim is for . . . killed or injured stock." TEX. CIV.

[1] [Doc. 131] (Jury Verdict).

PRAC. & REM. CODE ANN § 38.001(6). Accordingly, Plaintiffs request that the Court sign the proposed judgment, attached as Exhibit 1, for the reasons stated below.

First, Plaintiffs and Defendant disagree what damages under Texas law are available for the party who prevails on a negligence cause of action. Defendant will likely argue that, for Plaintiffs' negligence claim, the jury was instructed only to consider the difference in fair market value of Otto as a healthy horse and Otto as HERDA-affected. Regardless of any instruction, however, in its unanimous verdict, the jury awarded money for additional categories of compensatory damages in response to Question 14. *See* [Doc. 131] at pg. 9.

Defendant did not object to any inconsistency in the jury charge and jury instructions at any time before the jury was discharged. The jury unequivocally found that Defendant's negligence **proximately caused** Plaintiffs' damages (Question 7) and that the following sums "would fairly and reasonably compensate Plaintiffs for their damages, if any, that were a . . . **proximate cuase** [sic] of the occurrence in question[:]"

- $30,000 for the difference in value Otto would have had if he had not been HERDA-affected;
- $28,408 for the reasonable and necessary expenses related to foaling, raising, boarding, and training Otto in the past;
- $75,000 for the reasonable and necessary expenses, in reasonable probability, the Plaintiffs will incur related to caring for Otto in the future;
- $30,000 for lost profits, in reasonable probability, Plaintiffs will sustain in the future. (Question 14.) [2]

[2] [Doc. 131] at pg. 9. (emphasis added).

To the extent that there is an inconsistency with the jury instructions and the jury charge, Defendant has waived its right to object to that inconsistency after the jury was discharged. *See, e.g., Stancill v. McKenzie*, 497 F.2d 529, 534-35 (5th Cir. 1974) ("By failing to object to the form of the verdict and answers at the time they were announced to the jury, both parties waived inconsistencies under Rule 49(b).") (citation omitted).

Moreover, notwithstanding the jury instruction on negligence, compensatory damages for economic losses proximately caused by a party's negligence are available to the prevailing party as a matter of law in Texas. *See, e.g., Nobility Homes of Texas, Inc. v. Shivers*, 557 S.W.2d 77, 78 (Tex. 1977) (compensation for economic losses available to consumer who prevails on theory of common law negligence); *Arguello v. Gutzman*, 838 S.W.2d 583, 593 (Tex. App.—San Antonio 1992, no writ) (grant of summary judgment reversed, in part, because fact issue existed "whether appellee's negligence caused the uncontradicted consequential damages suffered by the appellants. . . ."); *Greater Houston Trans. Co. v. Phillips*, 801 S.W.2d 523, 527 (Tex. 1990) ("The common law doctrine of negligence consists of three elements: 1) a legal duty owed by one person to another; 2) a breach of that duty; and 3) **damages proximately resulting from the breach**.") (emphasis added). Because the jury found Plaintiffs suffered damages of $163,408 and further found those damages proximately resulted from Defendant's negligence, Plaintiff is entitled to recover those damages, reduced in proportion to Defendant's fault, as a matter of law.

Plaintiffs are also statutorily entitled to attorneys' fees under the plain language of Civil Practice and Remedies Code Section 38.001(6). Section 38.001(6) states that "[a] person may recover reasonable attorney's fees from an individual or corporation,[3] in addition to the amount

[3] Professional Associations, such as Defendant, are a form of Texas corporation. *See Neely v. Wilson*, 418 S.W.3d 52, (Tex. 2013); *Mandell v. Mandell*, 310 S.W.3d 531 (Tex. App.—Fort Worth 2010, pet. denied); *Zimmerman v. Farias*, 14-12-00531-CV, 2013 WL 5026248, at *1 (Tex. App.—Houston [14th Dist.] Sept. 12, 2013, no pet.) ("Farias is the sole shareholder of the Professional Association, which is a Texas corporation.").

of a valid claim[4] and costs, if the claim is for . . . killed or injured stock. . . ." TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(6). While the case law regarding this provision is sparse, the one case Plaintiffs are aware of involving Article 2226, Vernon's Ann. Civ. St., the predecessor to Section 38.001(6), is instructive. In that case, the American Quarter Horse Association ("AQHA") refused to register the horse "Naturally High" as a quarter horse due to excessive white markings. *Hatley v. Am. Quarter Horse Ass'n*, 552 F.2d 646, 648 (5th Cir. 1977). Plaintiff claimed antitrust violations and a lack of due process for failure to provide a hearing on Naturally High's status prior to the AQHA determining he was not eligible for registration. *Id*. at 648-49. As the "injury" to Plaintiff was entirely economic in nature, in denying plaintiff's claim for attorney fees, the 5th Circuit noted that it did "not believe that Naturally High can be considered as 'stock killed or injured' within the meaning of the statute. *Id*. at 658.[5]

Unlike in *Hatley*, as a result of Defendant's negligence, Otto suffered a genetic disease that has caused and will continue to cause cognizable physical injuries to Otto throughout his natural life. The damages Plaintiffs suffered and continue to suffer result from an injured animal that will require frequent maintenance, accommodations, and veterinary care above and beyond that of a healthy horse. Otto is "injured" within the meaning of Section 38.001(6). Because Plaintiffs are persons, who prevailed in their valid claim against Defendant, a corporation, resulting from the disease and injuries to Otto, Plaintiffs are entitled to their reasonable

[4] While Chapter 38 of the Civil Practice and Remedies Code does not define "claim," Texas appellate courts construe the word as synonymous as "cause of action." "'[C]laim' is defined as 'the assertion of an existing right; any right to payment or to an equitable remedy.' BLACK'S LAW DICTIONARY 240 (7th ed. 1999). The Restatement (Second) of Judgments agrees with this definition, noting that the term 'claim' and its older cognate 'cause of action' are references to units of litigation. RESTATEMENT (SECOND) OF JUDGMENTS ch. 3, topic 2, tit. D (1982)." *Vacek Group v. Clark*, 95 S.W.3d 439, 446 (Tex. App.—Houston [1st Dist.] 2002, no pet.) (emphasis added).

[5] Section 38.005 states that "[t]his chapter shall be liberally construed to promote its underlying purposes." TEX. CIV. PRAC. & REM. CODE ANN. § 38.005.

attorneys' fees. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(6). Attached as Exhibit 2 is the Affidavit of Nathan D. Pearman in Support of Attorneys' Fees.

For these reasons, Plaintiffs request the Court sign the Final Judgment attached as Exhibit 1 and for such other and further relief in law or equity that they may show themselves justly entitled.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Counsel has complied with the meet and confer requirement in LOCAL RULE CV-7(h). Defendant opposes Plaintiffs' motion. After a previous email exchange regarding the proposed final judgment, on March 28, 2017, Drew Thomas, counsel for Plaintiffs, left a voicemail message for Caleena Svatek, counsel for Defendant, regarding outstanding issues previously discussed where no agreement could be reached due to an irreconcilable difference of opinion regarding Texas law on negligence and attorneys' fees. Caleena Svatek confirmed Defendant was opposed to Plaintiffs' motion via email correspondence on March 30, 2017. The discussions have ended in an impasse, leaving an open issue for the Court to resolve.

/s/ Drew M. Thomas
DREW M. THOMAS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by email in compliance with the Federal Rules of Civil Procedure on March 30, 2017 on counsel for Defendant.

/s/ Drew M. Thomas
DREW M. THOMAS