

D18-27121-CV

CAUSE NO _____

DAVID SHOCKLEY
Plaintiff,

v.

BECK ANIMAL HOSPITAL, INC.;
JARVIS-PARIS-MURPHY COMPANY,
INC.; AND J-P-M CO.
Defendants.

~~IN THE DISTRICT COURT~~
Navarro County - 13th District Court

~~JUDICIAL DISTRICT~~

NAVARRO COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION WITH ATTACHED WRITTEN
DISCOVERY TO DEFENDANTS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW DAVID SHOCKLEY, Plaintiff, and files Plaintiff's Original Petition, complaining of Defendant, BECK ANIMAL HOSPITAL, INC.; JARVIS-PARIS-MURPHY COMPANY, INC.; AND J-P-M CO., and would show unto the Court as follows:

I. SELECTION OF DISCOVERY LEVEL

1.01 This suit is governed by discovery control plan II under Rule 190.3 of the Texas Rules of Civil Procedure.

II. DISCOVERY CONTROL PLAN

2.01 Pursuant to Texas Rules of Civil Procedure Rule 190.3, Plaintiff requests that discovery be conducted in accordance with Discovery Control Plan-Level II.

2.02 As required by Rule 47(b), Texas Rules of Civil Procedure, Plaintiff's counsel states that the damages sought are in an amount within the jurisdictional limits of this Court. As required by Rule 47(c), Texas Rules of Civil Procedure, Plaintiff's counsel states that Plaintiff seeks monetary relief, the maximum of which is over \$1,000,000.00 but the amount of monetary relief actually awarded, however, will ultimately

be determined by a jury. Plaintiff also seeks pre-judgment and post-judgment interest at the highest legal rate.

III. PARTIES

3.01 Plaintiff is an individual residing in Limestone County, Texas.

3.02 Defendant, BECK ANIMAL HOSPITAL, INC., is a Texas corporation with a place of business at 2508 W 2ND AVE CORSICANA, TEXAS 75110. Defendant may be served with process through its registered agent, JOHN BECK, 2508 W 2ND AVE CORSICANA, TEXAS 75110 or wherever he may be found.

3.03 Defendant, JARVIS-PARIS-MURPHY COMPANY, INC., is a Texas corporation with a place of business at 100 N GILMER AVENUE DAWSON, TEXAS 76639. Defendant may be served with process through its registered agent GARY MURPHY at 1ST & GILMER STREET P.O. BOX 460 DAWSON, TEXAS 76639 or wherever he may be found.

3.04 Defendant, J-P-M CO., is a Texas corporation with a place of business at 100 N GILMER AVENUE DAWSON, TEXAS 76639. Defendant may be served with process through its registered agent GARY MURPHY at 1ST & GILMER STREET P.O. BOX 460 DAWSON, TEXAS 76639 or wherever he may be found.

IV. JURISDICTION & VENUE

4.01 The Court has continuing jurisdiction over Defendants, because Defendants are corporations formed under the laws of the state of Texas and/or maintains substantial and continuing contacts with the State of Texas. The Court has jurisdiction over the controversy, because the damages are within the statutory jurisdictional limits of the Court.

4.02 Venue is proper in Navarro County, Texas, because all or a substantial part of the events or omissions giving rise to the claim occurred in Navarro County, pursuant to Tex. Civ. Prac. & Rem. Code Sec. 15.002(1). Further, Navarro County is the county and precinct where Defendants BECK ANIMAL

HOSPITAL INC., JARVIS-PARIS-MURPHY COMPANY, INC., and J-P-M CO., have their principal office in the State pursuant to Tex. Civ. Prac. & Rem. Code Rule 15.002(3).

4.03 As to the Defendants that are entities (partnerships, unincorporated associations, incorporated associations, or other entities), or individuals doing business under an assumed name, Plaintiff brings this suit in said Defendants' partnership, assumed or common name under Rule 28 of the Texas Rules of Civil Procedure. Pursuant to Rule 28 of the Texas Rules of Civil Procedure, Plaintiff reserves the right to substitute the true name of said Defendants at a later time.

4.04 Whenever in this Petition it is alleged that a Defendant did or failed to do any act or thing, it is meant that such Defendant's governing body, directors, officers, agents, servants, employees, and/or representatives did or failed to do such act or thing and that at the time such conduct occurred, it occurred with authorization and/or ratification of such Defendant and/or was done in the normal and routine course and scope of employment or agency of such Defendant's governing body, directors, officers, agents, servants, employees, and/or

V. FACTS

5.01 On or about October 18, 2016, Plaintiff was lawfully on his property in Corsicana, Navarro County, Texas, when he was aggressively and unexpectedly attacked by a cow who ran onto Plaintiff's property. The cow was being kept on a property owned and occupied by Defendant JARVIS-PARIS-MURPHY COMPANY, INC., and J-P-M CO., and was being dropped off by Defendant BECK ANIMAL HOSPITAL INC. The cow kept on attacking Plaintiff and caused him to fall to the ground repeatedly. Plaintiff suffered multiple injuries as a result of this attack.

5.02 Defendant JARVIS-PARIS-MURPHY COMPANY, INC. and, J-P-M CO., had actual and constructive knowledge that the cow was sickly, vicious and dangerous, that the cow had shown vicious tendencies towards humans and other animals. Defendants took no steps to prevent the attack once it was

apparent the attack was likely to occur. It was foreseeable to Defendants that the cow posed a risk to pedestrians on the adjacent public roadways and/or nearby properties, including persons such as Plaintiff.

5.03 Defendant BECK ANIMAL HOSPITAL INC., INC., had actual and constructive knowledge that the cow was sickly, vicious and dangerous, that the cow had shown vicious tendencies towards humans and other animals. Defendants took no steps to prevent the attack once it was apparent the attack was likely to occur. It was foreseeable to Defendants that the cow posed a risk to pedestrians on the adjacent public roadways and/or nearby properties, including persons such as Plaintiff.

5.04 At all times material hereto, Defendant JARVIS-PARIS-MURPHY COMPANY, INC., J-P-M CO., and BECK ANIMAL HOSPITAL INC., were the owners and/or harbors of the cow that caused Plaintiff's injuries. At all times material hereto, Defendants were negligent in their handling of the cow at the time of the occurrence in question. Defendants were strictly liable for the cow that was in their possession and/or that Defendants harbored. Defendants JARVIS-PARIS-MURPHY COMPANY, INC., and J-P-M CO., owns, maintains, occupies, and/or controls the property where the cow resided and has a duty to monitor the premises and to warn about or remedy dangerous and vicious animals and/or conditions on the premises.

VI. NEGLIGENCE OF DEFENDANT JARVIS-PARIS-MURPHY COMPANY, INC., J-P-M CO.

6.01 At the time of the incident, Defendants JARVIS-PARIS-MURPHY COMPANY, INC., and J-P-M CO., were the owners and/or harbor of the cow that severely injured Plaintiff. Additionally, Defendants JARVIS-PARIS-MURPHY COMPANY, INC., and J-P-M CO., owned occupied, maintained and/or controlled the property where cow s in question escaped from. The injuries of the Plaintiff were proximately caused by Defendant's negligent, grossly negligent, careless, and reckless disregard of his duty to Plaintiff, including the following acts and omissions:

- i Failing to exercise reasonable care to prevent the cow from injuring others;

- ii. Allowing a dangerous cow to remain on the premise;
- iii. Failing to adequately control the cow;
- iv. Failure to use an appropriate restraint for the cow;
- v. Failing to provide adequate fencing or restraint for a dangerous cow;
- vi. Failing to properly supervise the cow,
- vii. Defendant failed to prevent the cow from running at large;
- viii. Failing to supervise its agents, servants, and employees to ensure safety during the activity;
- ix. Failing to adequately train its employees to follow policy and procedure; and
- x. Other acts of negligence.

VII. NEGLIGENCE OF DEFENDANT BECK ANIMAL HOSPITAL INC.,

7.01 At the time of the incident, Defendant BECK ANIMAL HOSPITAL INC., was the owner and/or harbor of the cow that severely injured Plaintiff. The injuries of the Plaintiff were proximately caused by Defendant's negligent, grossly negligent, careless, and reckless disregard of its duty to Plaintiff, including the following acts and omissions:

- i. Failing to exercise reasonable care to prevent the cow from injuring others;
- ii. Allowing a dangerous cow to remain on the premise;
- iii. Failing to adequately control the cow;
- iv. Failure to use an appropriate restraint for the cow;
- v. Failing to provide adequate fencing or restraint for a dangerous cow;
- vi. Failing to properly supervise the cow,
- vii. Defendant failed to prevent the cow from running at large;
- viii. Failing to supervise its agents, servants, and employees to ensure safety during the activity;
- ix. Failing to adequately train its employees to follow policy and procedure; and

- x. Other acts of negligence.

7.02 The failures on the part of the Defendants proximately caused Plaintiff to suffer injuries and damages. There was a sufficient probability of a harmful event, such that a reasonable and prudent person would have foreseen that it or some similar event was likely to happen. Defendants had actual knowledge of the unreasonably dangerous condition, or alternatively, had constructive knowledge of the unreasonably dangerous condition (meaning that if he had exercised reasonable diligence, he would have known of the condition). The condition existed for a long enough period of time that it should have been discovered by Defendants, if Defendants had exercised reasonable diligence.

7.03 Defendants did not exercise reasonable care to reduce or eliminate the risk posed by the unreasonably dangerous condition, either by repairing the fence, ensuring the cow was kept in a secure enclosure or properly restrained while the unreasonably dangerous condition existed, warning that the unreasonably dangerous conditions existed, and that cows were kept, maintained, and/or controlled on the property, or taking other actions that would reduce or eliminate the risk. Defendants' failure to reduce or eliminate the risk was a proximate cause of the attack and of Plaintiff's injuries and damages. Each and every, all or singular of the foregoing acts and omissions, on the part of each Defendant, taken separately and/or collectively, constitute a direct and proximate cause of the injuries and damages set forth below.

XIII. GROSS NEGLIGENCE OF DEFENDANTS

8.01 **Defendants were grossly negligent.** Two elements comprise gross negligence. **First**, viewed objectively from the actor's standpoint, the act or omission complained of must depart from the ordinary standard of care to such an extent that it creates an extreme degree of risk of harming others. *Tex.Civ.Prac.& Rem. Code* §41.001(11)(a). **Second**, the actor must have actual, subjective awareness of the risk involved and choose to proceed in conscious indifference to the rights, safety, or welfare of others. *Tex.Civ.Prac.& Rem. Code* §41.001(11)(b). The subjective element means that the actor knew about the peril, but its acts or omissions demonstrate that it didn't care.

8.02 **Objective prong** – Permitting animals to run loose in the roadway and chasing pedestrians presents a risk that is neither remote nor minimal. The hazards of permitting animals to run loose are well known to pose serious risks and dangers that are common knowledge to the ordinary person, including Defendants. **Subjective prong** — Defendants knew the risk allowing the cow to run at large in the roadway but proceeded with conscious indifference. Defendants’ culpable mental state can be proven by reasonable inferences from circumstantial evidence. The surrounding conditions and circumstances at the time Defendants’ acts and/or omission show, without any direct evidence of Defendants’ mental attitude or knowledge, that the act or omission was of such quality or kind as to show that Defendants were consciously indifferent to the rights or welfare of others, including Plaintiff.

IX. NEGLIGENCE PER SE

ORDINANCES GOVERNING ANIMALS IN THE CITY OF CORSICANA, SECTION 2.601, ANIMAL AT LARGE

9.01 A person commits an offense if he fails to keep an animal he owns from being at large.

Sec. 2.601 - Running at Large

A. It shall be unlawful for an owner or harbinger of any pet animal and/or livestock or any other person who has such animal under his or her possession or care, to allow or permit such animal to run at large. B. It is an exception to (A) that: 1. The animal is a police service animal under the supervision of a peace officer in the performance of his or her official duties. 2. The cat is spayed or neutered and in compliance with Article 2.500 (animal registration). 3. The animal is a waterfowl at a municipally owned facility. C. Each animal in violation of this section constitutes a separate offense. D. The animal control officer, LRCA, Animal Services Manager or Shelter Supervisor is authorized to impound such animal(s) running at large or when he/she has received a complaint that the pet animal has caused a nuisance or hazard to the health or welfare of humans or the animal population.

(Ordinance 2632 adopted 8/18/09; Ordinance 2943 adopted 10/9/17)

9.02 At all times material to this cause of action, Defendants had a duty to comply with the standard of conduct set forth in of City of Corsicana Article 1.3900 Chapter 2 Animal Control.¹ Defendants had a duty to prevent this dangerous cow from making an attack, with or without alleged provocation, outside the cow's enclosure and causing bodily injury. Defendants' conduct proximately caused the occurrence in question and the injuries and damages suffered by Plaintiff while he was on his property. At all times material to this cause of action, Plaintiff belonged to the class of persons the statute was enacted to protect.

9.03 Defendants violated City of Corsicana Article 1.3900 Chapter 2 Animal Control by allowing the dangerous cow to be kept in a manner that was annoying, offensive, and disturbing to the others

Article 2.100 - Definitions

"Dangerous animal" shall mean any individual animal or any species, except a dog, that has, without provocation, attacked or bitten any person or other animal, or any individual animal which the police officer or Animal Control Officer has reason to believe has a dangerous disposition.

"Enclosure" A fence with pickets four feet high and not more than six inches apart; a fence with three boards not less than five inches wide and one inch thick or four rails provided the fence is at least four feet high; a fence constructed of a pipe which demonstrates a sufficient strength and height to restrain the animal being contained; or, a chain link fence at least four feet in height. Fencing must be in good repair, sufficient for the breed, and may not include trash (including, but not limited to doors, mattress springs, etc.).

"Harboring" shall mean the act of keeping and caring for an animal or of providing premises to which the animal returns for food, shelter or care for a period of three days or longer.

"Livestock" shall include cows, horses, goats, sheep, swine, mules and all other domesticated animals kept for agricultural purposes (i.e. breeding for sale or slaughter), for pleasure or for aesthetic value.

"Owner" shall mean any person, firm or corporation who has right of property in an animal or who harbors an animal or allows an animal to remain about his premises for a period of three (3) days or longer to exclude veterinary facilities, boarding facilities, the Animal Shelter and rescue groups approved by the Animal Shelter Supervisor and the Animal Services Manager.

Running at Large:

1. On Premises of Owner -

- a. Any animal not confined to the premises of the owner by a secure enclosure of sufficient height, strength, length and/or manner of construction sufficient for the breed to preclude the animal from leaving the premises of the owner.
- b. Any animal which is not physically and continually restrained by some person by means of a leash or a chain of proper strength and length that precludes the animal from making any unsolicited contact with any person, their clothing, their property and/or their premises.
- c. Any animal under the direct supervision and control of the owner on the owner's property shall not be considered running at large.

2. Off Premises of Owner -

- a. Any animal which is not physically and continually restrained by some person by means of a leash or a chain of proper strength and length that precludes the animal from making any unsolicited contact with any person, their clothing, their property and/or their premises
- b. Provided, however, that any animal which is securely confined within a cage, automobile, truck or any other vehicle, and that cannot come into contact with any other person/property other than the owners, shall not be deemed at large.

including the Plaintiff. Defendants had actual knowledge or constructive knowledge that the cow was a threat to others. Defendants also harbored the cow; therefore, Defendants had a duty to keep the cow from running loose by securely confining the cow within an adequate fence or enclosure or restraint. Defendants failed to do so, and this negligence was a proximate cause of Plaintiff's injuries. Each of these acts and omissions, singularly or in combination with others, constituted negligence *per se* which proximately caused the occurrence made the basis of Plaintiff's action and Plaintiff's injuries and damages set forth herein.

X. NEGLIGENCE HANDLING

10.01 Defendants (1) owned, kept or harbored the cow (2) owed a duty to exercise reasonable care to prevent the cow from injuring others (3) breached its duty (4) the breach of duty proximately caused Plaintiff's injury. Defendants had actual knowledge and/or constructive knowledge of the cow's dangerous propensities and vicious nature. Defendants failed to properly secure the cow or failed to restrain the cow by some other method. Defendants violated their duties to Plaintiff in their negligent handling of the cow proximately causing injuries and damages to Plaintiff.

XI. STRICT LIABILITY

11.01 At all times prior to, and at the time of the incident in question, the cow owned, possessed and/or controlled by Defendants had vicious dangerous propensities abnormal to its class and such propensities were the producing cause and proximate cause of the injuries and damages complained of herein. Defendants knew, should have known and/or had reason to know of the vicious propensities of the cow. By reason of the above and foregoing, the Defendants are strictly liable for the injuries and damages to Plaintiff.

XII. PREMISES LIABILITY

12.01 At all times material hereto, Defendants, acting through its administrative personnel, agents and employees, created an unreasonable risk of harm on its premises of which it knew or should have

known, and failed to use reasonable care to correct or warn Plaintiff of the condition. As a proximate result of Defendants' negligence, Plaintiff suffered the serious personal injuries complained of herein.

12.02 Defendants were in control of the premises from which the cow escaped. At the time the injuries occurred, Defendants were the owner of the premises or leasing the premises and had the exclusive right to control the property on which the cow escaped.

12.03 Plaintiff was lawfully on his own premises and the Defendants allowed the cow to trespass onto Plaintiff's property.

12.04 At the time of the occurrence in question, Defendants had a duty to exercise ordinary care to keep the premises in reasonably safe condition, inspect the premises to discover latent defects, and to make safe any defects or give an adequate warning of any dangers.

XIII. CAUSE OF ACTION FOR NEGLIGENT ACTIVITY

13.01 At all times material hereto, Defendants, acting through their administrative personnel, agents and employees, created harm to plaintiff as the contemporaneous result of the activity of handling the cow. Defendants did or failed to do what a person of ordinary prudence in the same or similar circumstances would have not done or done. Plaintiff's injuries were directly related to the activity carried out by the defendants. As a proximate result of Defendants' negligence, Plaintiff suffered the serious personal injuries complained of herein.

13.02. Defendants' conduct, and that of its agents, servants, and employees, acting within the scope of their employment, constituted a breach of the duty of ordinary care owed to Plaintiff. Defendants failed to do what a person of ordinary prudence in the same or similar circumstances would have not done or done. Defendants failed to act as a reasonably prudent premises owner by warning Plaintiff of the condition. Defendants failed to make the dangerous activity reasonably safe by either warning of the danger or by eliminating the dangerous activity. Defendants failed to exercise ordinary care to reduce or eliminate

this risk or warn invitees regarding it. Specifically, Defendants breached their duty in one or more of the following ways:

- i. Failing to exercise reasonable care to prevent the cow from injuring others;
- ii. Allowing a dangerous cow to remain on the premise;
- iii. Failing to adequately control the cow;
- iv. Failure to use an appropriate restraint for the cow;
- v. Failing to provide adequate fencing or restraint for a dangerous cow;
- vi. Failing to properly supervise the cow;
- vii. Defendant failed to prevent the cow from running at large;
- viii. Failing to supervise its agents, servants, and employees to ensure safety during the activity;
- ix. Failing to adequately train its employees to follow policy and procedure; and
- viii. Other acts of negligence.

13.03 Each of these acts and omissions, whether taken singularly or in any combination was a proximate cause of Plaintiff's injuries and damages.

13.04 Additionally, Plaintiff would show that the conduct of Defendants when viewed objectively, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and of which the Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety and welfare of others, specifically including Plaintiff.

XIV. RES IPSA LOQUITUR

14.01 In addition to the foregoing, Plaintiff further asserts that the instrumentality of harm was, at all times, in the exclusive possession and control of Defendants, and that the circumstances and events

which led to DAVID SHOCKLEY's injuries (and the other damages that resulted as a consequence thereof) would not ordinarily have occurred absent Defendants' negligence. Accordingly, Plaintiff pleads that the doctrine of *res ipsa loquitur* is applicable to this case.

XV. DAMAGES

15.01 Plaintiff would show that as a result of the negligence of Defendants, Plaintiff sustained severe and permanent injuries, for which she has undergone surgery. Plaintiff's injuries and damages include:

- a. Physical pain and suffering, past and future;
- b. Mental anguish, past and future;
- c. Reasonable expenses for necessary medical care in the past and future;
- d. Lost wages and/or lost earning capacity in the past and future;
- e. Physical impairment in the past and future; and
- f. Disfigurement in the past and future.

XVI. EXEMPLARY DAMAGES

16.01 Defendants acted with "gross negligence" as defined under Section 41.001(11) of the Texas Civil Practice and Remedies Code. Plaintiff is therefore entitled to exemplary damages as allowed for under Section 41.001 et seq. of the Texas Civil Practice and Remedies Code. Defendants knew of the cow s' dangerous propensities and allowed the cow s with conscious indifference to the rights, safety, or welfare of others to jump the fence, despite the substantial risk of harm to others.

XVII. REQUEST FOR JURY TRIAL

17.01 Plaintiff in the above-entitled and numbered cause requested a jury trial and has tendered the jury fee.

XVIII. REQUEST FOR WRITTEN DISCOVERY

18.01 Pursuant to Texas Rule of Civil Procedure 194.2, Defendants are requested to disclose, within 50 days from the date of the service of this request, all of the information or material described in Rule 194.2(a) - (l) of the Texas Rules of Civil Procedure.

XIX. PRAYER

19.01 **WHEREFORE, PREMISES CONSIDERED**, Plaintiff prays that Defendants be cited to appear and answer herein, that after final trial hereon, she recovers of and from said Defendant actual damages and exemplary damages as mentioned herein, costs of court, pre-judgment and post-judgment interest, and for such other and further relief to which she may show herself justly entitled.

Respectfully submitted,
THE LAW FIRM OF AARON A. HERBERT


BY: _____

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ATTORNEYS FOR PLAINTIFF

CAUSE NO _____

DAVID SHOCKLEY
Plaintiff,

v.

BECK ANIMAL HOSPITAL, INC.;
JARVIS-PARIS-MURPHY COMPANY,
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Defendants.

IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

NAVARRO COUNTY, TEXAS

**PLAINTIFF'S FIRST REQUEST FOR WRITTEN DISCOVERY
TO DEFENDANT BECK ANIMAL HOSPITAL, INC.**

**TO: DEFENDANT, BECK ANIMAL HOSPITAL, INC., at 2508 W 2ND AVE CORSICANA,
TEXAS 75110.**

COMES NOW, David Shockley, Plaintiff in the above styled cause of action and serves PLAINTIFF'S FIRST REQUEST FOR WRITTEN DISCOVERY upon Defendant, BECK ANIMAL HOSPITAL, INC. as allowed by Tex.R.Civ.P. 192 through 197. Defendant must answer each request separately, fully, in writing, and under oath, within fifty (50) days after service.

Respectfully submitted,
THE LAW FIRM OF AARON A. HERBERT

BY: 

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