

NO. 98CI2954

JEFFERSON CIRCUIT COURT

DIVISION FIVE (5)

TRACY SKAGGS, ET AL

PLAINTIFFS

VS.

**OPINION AND ORDER**

WAL-MART STORES EAST, INC., ET AL

DEFENDANTS

\*\*\*\*\*

**Introduction**

The Court has considered whether this case can be presided over by someone who doesn't see anything peculiar about a member of an industrialized, dot.com society sleeping in a bed containing a furry four legged animal that drinks from the toilet. Public Utilities Commission of District of Columbia. v. Pollak, 72 S Ct 813, 822 (1952) (Frankfurter recusal). However, upon reflection the Court has come to the conclusion that while its beliefs may not be in the exact center of the bell curve, neither are they on the fringes.

The Court recently read a news account of a street tough snatching a small dog from a car waiting at a light and throwing the dog into traffic, killing the dog. The article also recounted that citizens in the community had posted a reward for the offender's capture. Muggings and murders of people abound without such spontaneous public involvement.

A short time ago, the Court saw a TV exposé about dogs being kidnaped and used as food in certain ethnic restaurants. This station, which did not hesitate to show human gore, chose to blur the image of a dog being butchered.

The Court compliments the parties on the excellent, informative, and entertaining briefs.

## The Opinion

The Skaggs' family lost their dog "Baby Bear" allegedly due to the negligence of the Defendants.

As a mixed breed pup, Bear had a nominal "fair market value".

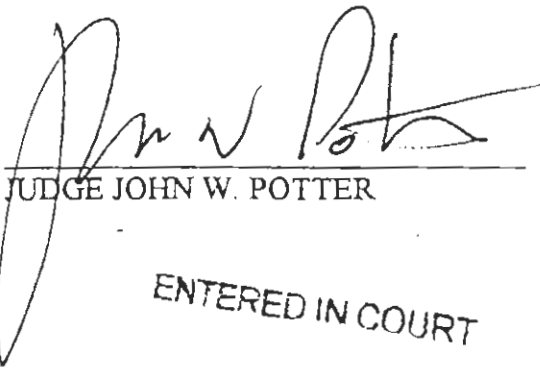
The case is now before the Court on Defendant's Motion for Summary Judgment, which raises the issue whether the Plaintiffs recovery is limited to the dog's fair market value. The Skaggs admit that fair market value is the normal measure of recovery for the loss of personal property, but argue that because of the peculiar nature of the relationship between a dog and its master, some other yardstick should be used.

In the vast majority of cases the utilization of the fair market value standard approximates the goal of damages in tort law, which is to reasonably compensate the injured party. In other unusual situations where utilization of the fair market value approach would lead to a grossly inadequate award, the courts have deviated. A well recognized example of this exception in Kentucky is the measure of recovery for household goods and wearing apparel when fair market value is a great deal less than the actual value to the owner. Columbia Gas of Ky., Inc. vs. Maynard, 532 SW 2d 3, 6 (Ky. 1975). In this situation the courts have allowed the injured party to recover "value to the owner excluding sentimental or fanciful value", in consideration of the owner's intention toward such unique property.

Although there are no cases in Kentucky addressing the measure of recovery for the loss of a companion animal the Court finds that the fair market value standard falls far short of fair compensation for the loss of a companion animal. Therefore, the Court believes such animals should not be so valued but should be valued in the same manner as items of personal clothes and household goods are valued.

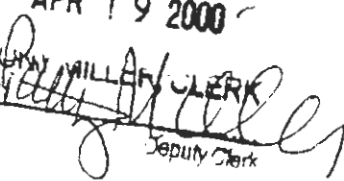
For the above reasons, **IT IS HEREBY ORDERED:**

(1) The Defendant's Motion for Summary Judgment is **DENIED.**



JUDGE JOHN W. POTTER

xc: Katie Marie Brophy, Esq.  
Julian E. Kennamer, Esq.

ENTERED IN COURT  
APR 19 2000  
TONY MILLER CLERK  
By   
Deputy Clerk