IN THE COURT OF APPEALS OF IOWA

EDWARD BRINKERT,

Plaintiff-Appellant,

vs.

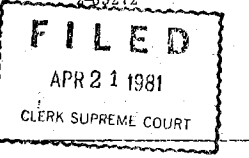
STEVEN MEAD,

Defendant-Appellee.

Filed April 21, 1981

1-072

2-65272



Appeal from O'Brien District Court. James H. Andreasen, Judge.

Plaintiff appeals from the dismissal of his petition in this veterinarian malpractice case. AFFIRMED.

Dennis Cmelik, Hartley, Ia., for plaintiff-appellant.

Robert B. Deck, of Deck & Deck, Sioux City, Ia., for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff, Edward Brinkert, appeals from the dismissal of his petition in this veterinarian malpractice case. We affirm.

This action was brought against Steven Mead following the death of a horse owned by plaintiff and treated by Mead two and three days prior to the horse's death. The trial court found Mead had been negligent in his second treatment by injection of a certain drug, but concluded the plaintiff had failed to establish Mead's negligence was a proximate cause of death. Trial court dismissed the petition, and plaintiff filed timely notice of appeal. Our review is on error assigned. Iowa R. App. P.4.

Plaintiff asserts that trial court erred in its conclusion as to the proximate cause of death. He alleges the conclusion is not supported by the record. Plaintiff does not assert the trial court applied erroneous law to the facts, but rather the trial court failed to recognize evidence to support the causation standard applied.

The trial court considered the following to reach its conclusion: 1) the one-half hour metabolism rate of the injected drug compared with the horse's death occurring some 38 hours after the last injection, 2) the inadequate necropsy report and lack of a cause of death determination, and 3) horse's health problems prior to and continuing after initial treatment, which treatment the court found not to be negligent.

The issue of proximate cause is generally a matter for the fact finder. Iowa App. P. 14(f)(10). The trial court concluded the plaintiff had failed to establish proximate cause as a matter of law. The issue thus fell to the fact finder to determine. The evidence was conflicting on the question of causation. As it is the function of the fact finder to determine the weight and credibility of the evidence, we do not invade that province on our review of an action at law. Manson State Bank v. Diamond, 227 N.W.2d 195 (Iowa 1975). Therefore, we affirm the trial court's decision.

AFFIRMED.