

Veterinary expert opinions in animal latent defects cases: What is the scope of the expertise? A case study

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Summary

In a case study, two veterinary expert opinions concerning latent physical defects of animals sold were analysed (a pair of “Savannah” cats and a horse). In both cases, the veterinarian was appointed as a court expert, primarily to examine whether a given animal was burdened with a disease and when it occurred. However, the tasks of the veterinary expert were not limited to this. Following the scope of the expert opinion indicated by the court, the authors commented on other related topics. Results of a medical veterinary nature were confronted with normative regulations. It was determined that a veterinary expert in cases concerning the physical defects of animals sold could comment on issues other than solely the animal’s health. The indicated scope of expertis covers, e.g. issues conditioned by the expert’s legal knowledge, other situations within the statutory definition of a latent defect, or issues directly disputed by the court.

Keywords: warranty, civil law, veterinary medicine, expert opinion

Civil courts often appoint veterinarians to provide opinions in disputes concerning the physical latent defects of animals sold (16, 18, 19, 52). Most often, the questions the court asks focus solely on whether a specific physical condition of the animal is healthy or pathological. Additionally, if deviations from the norm are observed – the court asks when they occurred (19, 47).

However, this is not always the case; sometimes, the court’s questions or the material provided to the veterinary expert for assessment allow for identifying other incidental but essential observations. They are often concerned with compliance with the law, document management, and compliance with procedures, but they also include errors in veterinary art or errors in veterinary medical practice (18, 47, 52).

In this study, two original cases were selected, in which the veterinary expert opinion concerned latent defects of animals sold. One of the cases concerned so-called “Savannah” cats, and the other concerned a horse. The veterinarian (the author) was appointed as a court expert in both cases. His duty was primarily

to examine whether a given animal was burdened with a physical defect and when it occurred, and whether the defect or its cause inherent in the animal itself already existed at the time of the conclusion of the contract of sale (the legally relevant moment). However, the tasks of the veterinary expert were not limited to this.

Following the scope of the expert opinion indicated by the court (18, 19, 47, 52), the expert was also to comment on other related topics. In addition, the expert confronted his observations of a medical nature with the applicable normative regulations, which allowed him to take a comprehensive look at each case (18, 47).

The analysed cases were examined following the case-study method. Additionally, the methodology of legal interpretation was used. The occurrence of defects revealed during the assessment and other legal, ethical or factual problems were shown.

Analysing selected cases allows us to answer this article’s key and title research question: Can a veterinary expert in cases concerning the physical defects of animals sold comment on issues other than just the animal’s health?

Case 1

A) Factual situation

The buyer intended to acquire a pair of “Savannah F1” cats. The revealed purpose of the transaction was further breeding. A written preliminary agreement was concluded, and a week later, an oral final contract of sale. This agreement nominally concerned “Savannah F1” cats, which, however, were described in more detail in writing as a pair of unrelated individuals (male and female), designated as “Savannah F1 (*Leptailurus serval* × Savannah F1) aged two months”. The transaction was cross-border within the European Union (Czech Republic – Poland).

The animals were delivered and received by the buyer. This was confirmed in writing by a confirmation of receipt of animals. It was established that the buyer had not checked the cats, and a veterinarian had not examined them. In addition, the seller did not inform the buyer about the breeding method and the needs of the purchased cats. On the day of delivery to the buyer, the male cat was 39 days old, and the female was 48 days old. The animals were vaccinated against feline viral rhinotracheitis, feline calicivirus infection, feline panleukopenia, and feline leukaemia.

After two days, the new owner assessed the male’s condition as pathological and went to the veterinary clinic. A veterinary clinical examination revealed, i.a., pale mucous membranes, tachycardia, lowered general temperature, neurological symptoms such as ataxia, inability to maintain a standing position, and lack of visual tracking. In addition, an ultrasound examination revealed that the gallbladder with a hyperechoic wall (indicating shock) was dilated and balloon-like. Initial suspicions of disease were broad and included infection (FIP/panleukopenia/toxoplasmosis), a post-vaccination reaction, or trauma. Amoxicillin with Clavulanic Acid, a mixture of Butafosfan and Cyanocobalamin, an isotonic, non-colloidal solution containing electrolytes, vitamins, amino acids and dextrose, Ringer’s solution, a nutritional supplement containing essential amino acids, vitamins, minerals and prebiotics, and an antiemetic drug were used.

The animal was then transferred to a 24-hour veterinary clinic, where no new symptoms were found, no further tests were performed, and no diagnosis was made. During the night, the animal’s circulatory and respiratory functions stopped. Resuscitation was unsuccessful, and the animal died. After three days, the (frozen) body was transferred to the Veterinary Pathology Laboratory of the State Institute of Veterinary Hygiene for necropsy, performed three days later. The necropsy determined that the cause of the cat’s death was circulatory and respiratory failure caused by hypertrophic cardiomyopathy (HCM), abnormal structure of the heart muscle walls, and circulatory or inflammatory changes in the lungs.

The female cat’s health was initially good. After about a week, the first neurological symptoms appeared. Initially, hypovitaminosis B was diagnosed, and the animal was given B vitamins by injection. The symptoms worsened, so visits to the veterinary clinic were made daily. Cerebellar ataxia, periodic hypermetria of the thoracic limbs and gait initiation disorders were found. Cerebellar hypoplasia was suspected.

After over a month, the animal underwent further tests (echocardiogram and X-ray of the limbs). An increased left atrium to aorta ratio was found, weak heart contraction (which suggests hypertrophic changes), as well as insufficient saturation of the long bones and vertebrae, and numerous poorly healing femoral fractures, in connection with which metabolic bone disease (MBD) was suspected.

After another month, the orthopaedic examination revealed that the left patella was unstable medially, and the femoral union was axially impaired. Therefore, the diagnosis was made: habitual patellar dislocation of the pelvic limb, grade II.

B) Discussion

a) So-called “Savannah F1” cats are inter-species crossbreeds (bastards) resulting from human activity by crossing a female domestic cat (*Catus domesticus*) with a male undomesticated African cat (*Leptailurus serval*). In the F1 generation, only females are fertile (49, 59).

Due to the controversy in the cat-breeding community regarding the methods used to obtain the first generations of hybrids, most feline organisations do not recognise “Savannah” as a breed.

Important information regarding the health of such cats is that in addition to diseases typical of felines, they are statistically more likely to suffer from (have more significant predispositions to) pyruvate kinase deficiency (PKDef, a genetic disease manifested by hemolytic anaemia), hypertrophic cardiomyopathy leading to circulatory and respiratory failure, nonspecific intestinal inflammation (manifested by diarrhoea, vomiting, weight loss, periodontal disease and inflammation of the oral cavity), as well as hypersensitivity to veterinary medicinal products used in anaesthesiology (e.g. Ketamine).

The “Savannah” hybrids (F1-F3) are considered wild cats and, therefore, should not be kept as pets. This issue is, however, not regulated by the law in Poland.

It should be considered whether the animals delivered in the analysed case were those whose delivery constituted the performance of the contract or animals different from the original subject of the agreement (what is called the *aliud*). The delivery of a completely different animal is a breach of contract, which does not give rise to warranty rights (36). If the contractor agrees and accepts the other animal provided – *aliud pro alio*, the *datio in solutum* (substitutive performance instead of the proper performance) takes place, and the

original obligation expires (58). Although the provisions of warranty do not apply to the original obligation, an animal delivered this way is also subject to the warranty regime, which results directly from the provisions of the Civil Code (58). Such warranty is the proper warranty of the animal being the *aliud*, and not a warranty from the original obligatory relationship (12, 50, 58).

The content of the contract indicates, on the one hand, that the seller has undertaken to deliver to the buyer an unrelated pair of animals designated as “Savannah F1”, and on the other hand, that the requirements regarding the parents of the ordered animals, i.e. a “Savannah F1 hybrid” (one of whose parents should be a male African serval, and the other a female domestic cat) and a male African serval, do not allow the animals to be designated as “Savannah F1”. Therefore, the offspring indicated in the agreement are the second generation (F2). The genotype matches the wild African serval in about 70%.

In this case, it can be concluded with equal probability that the animals delivered to the buyer were *aliud* to the “Savannah F1” or that the parties to the contract misinterpreted the definition of the “Savannah F1”. Regardless, the buyer accepted the two animals delivered to him and was entitled to the statutory warranty for their latent defects.

b) As already indicated, the buyer was not informed by the seller about the breeding method and the needs of the purchased animals. If the buyer was a consumer and bought animals, this would constitute a failure to fulfil the obligations of a professional seller resulting from the Civil Code (3, 23, 28, 41, 58). In the analysed case, however, it must be recognised that the buyer wanted to be a breeder of “Savannah” cats and acted for profit.

c) It was found that the confirmation of receipt of animals is a document confirming the purchase of a species subject to restrictions in the European Union (9, 10). These legal acts do not mention wild African servals and “Savannah” hybrids. There is, therefore, no reason to issue such a document, especially since the way the entries were made (illegible handwriting) does not allow for verification of the information provided. It even makes it impossible to identify the place of origin of the animals. According to the adopted rules of procedure, in the case of the sale of animals, they should be provided with a birth certificate/pedigree/passport containing legible information about the breeder and owner. In this respect, it can be stated that the professional animal seller has not complied with due diligence requirements (58).

d) Another non-compliance with the contract was revealed in the age of the animals, which, according to the agreement, should be at least 60 days. According to current legal regulations (9, 18), it constitutes a physical defect. However, this defect was patent because

the animals’ age was revealed to the buyer. Therefore, there is no warranty applicable.

In addition, it should be noted that in light of veterinary knowledge, young cats should remain with their mother for twelve weeks to learn proper behaviour.

e) Undoubtedly, a disease that led to the death of the male cat was a physical latent defect, both in the new (broad – non-compliance and breach of contract) and old (narrow, limited to diseases) understanding of the term (17, 58).

Hypertrophic cardiomyopathy – indicated as the primary cause of circulatory and respiratory failure resulting in the death of the animal – is indicated by changes in the structure of the heart muscle, found during the post-mortem examination: hypertrophy of the left ventricular wall and interventricular septum. Abnormal structure (thickness) of the heart muscle walls is a manifestation of cardiomyopathy (thickening of the left ventricular wall, which does not result only from abnormal load conditions). Changes in the lung tissue were secondary to circulatory failure caused by cardiomyopathy. The indicated heart defect undoubtedly existed already at the legally relevant moment.

f) Similarly, the female cat was found to be burdened with a physical defect. This latent defect was a congenital disease: cerebellar hypoplasia. It could not have occurred within nine days of the sale and delivery when the first severe symptoms of ataxia were observed (incorrectly diagnosed as hypovitaminosis B1). The cerebellar defect must have existed when the animal was delivered to the buyer (2, 22, 29, 31, 42, 43).

Case 2

A) Factual situation

The first sale of the horse was concluded based on an oral agreement between the parties. When the animal was delivered to the buyer, the horse’s passport was handed over. Subsequently, the fact of the change of the animal’s owner was not reported to the Polish Horse Breeders’ Association, nor were any changes made to the horse’s passport. Only the report of change of equine owner form was completed, but it was not used in any official administrative procedure.

About 1.5 years later, the horse was viewed by the person who wanted to buy it. Several accompanying people (non-professionals, non-veterinarians) participating in the viewing rode it. The viewing was very short and limited. Nothing disturbing caught the buyer’s or witnesses’ attention; the horse showed no alarming symptoms except lameness in the hind limbs. The seller claimed that the horse had never been lame before, and everyone accepted the explanation that it was caused by uneven ground surface. Therefore, this fact did not negatively influence the buyer’s decision.

No pre-contract veterinary clinical examination of the horse was carried out.

The seller declared verbally that the horse was healthy and in writing that it was free from legal defects. The seller conclusively agreed to the use of the animal the buyer indicated (work under the saddle in a riding school) and fitness for such purpose. In addition, the seller directed the course of the horse collection (delivery) in such a way as to limit it in time and prevent the buyer from having closer and longer contact with the animal (presenting the horse only in the box, preventing the horse from being cleaned before being put on the means of transport, talking and directing the conversation to other topics unrelated to the horse being purchased).

Despite everything mentioned, another sales agreement (the second sale of the discussed horse) was concluded. In the written contract, the subject of the agreement was described as having an incorrect passport number and without specifying the gender. The fact of castration and the individual number of the animal (microchip) were not mentioned.

The new owner did not use the horse for almost three weeks after the purchase, and it was only used for the first time for showing around and a test ride. The ride revealed the animal's pain: the horse's irregular gait, stiffness of the hind limbs and, shortening of the stride, and apparent difficulties in returning to a standing position (inability to raise the hindquarters) were clearly visible.

As a result, the horse was subjected to a veterinary examination, which confirmed lameness of the right and left hind limbs and pain in the sacroiliac joint. In connection with this, a veterinary opinion was issued that the horse was not suitable for riding (i.e. for the use intended by the buyer). This examination was not documented in the treatment book.

Further clinical examinations and tests of the horse in motion were carried out after more than four months. The following symptoms were noted: occipital pain, atrophy of the longissimus dorsi muscles, atrophy of the hindquarters, left hip bone tenderness, irregular gait, hindquarters digging, and no lateral spine flexion. The veterinary diagnosis was atlas slippage and pelvic rotation to the right, and the test results were documented in the treatment book.

B) Discussion

a) In the second case analysed, a physical defect of the horse was found: a dysfunction of the sacroiliac joint manifested by stumbling, lameness of the pelvic limbs, and irregular gait. Changes in the sacroiliac joint resulted in the horse being unable to walk correctly in any gait and not suitable for saddle riding (5, 7, 13, 14, 20, 21, 24, 25, 27, 30, 32, 53). This means that the purchased horse did not meet the basic functional requirements. Since neither at the time of sale nor during the subsequent first veterinary examination were any signs of injury detected (e.g. local hair loss, abrasions, wounds), it was presumed that the horse did not suffer

an injury which could hypothetically be the cause of the diagnosed health condition after the sale and delivery to the buyer. It is, therefore, logical to conclude that the defects resulted from the health condition existing on the date of the conclusion of the contract of sale. With a high degree of probability, it can be suspected that at least two weeks before the second purchase of the horse, it was already burdened with the physical defect (1, 4, 6, 37, 38, 44, 45, 48, 51, 60).

The primary causes of health abnormalities resulting from the diagnosed changes in the sacroiliac joint should be sought in distant events such as excessive and sudden stretching of the sacroiliac joint ligaments due to the horse slipping, sudden twisting, or a fall (11, 39, 40). Such an event could have occurred in a pasture, paddock, or enclosure or during a ride with a rider or pulling a carriage, which the owners could not have been aware of. The primary cause of the observed changes could also have been a consequence of errors made by the previous owners of the horse, consisting of excessive overload or too intense effort, using an inappropriate saddle, poor riding skills of the people riding the horse, or even insufficient care for the condition of the hooves and teeth.

b) *Prima facie*, the defects that affected the subject horse did not cause any inconsistency with the content of the written sales agreement concluded by the parties. This assessment results from the written contract, in which the seller stipulated solely that the horse was free from legal defects. The contract does not contain a statement by the seller concerning other defects, including those relating to the health of the horse being sold.

However, it should be noted that before signing the contract, the buyer asked the seller about the horse's health. The seller maintained that the horse was healthy. Similarly, the intended utility of the horse was indicated only orally and inferentially.

In the authors' opinion, considering only the written formal component of the contract would be insufficient in the analysed case. The oral element must also be considered equally valid to identify the parties' true intentions. In this context, the revealed defects of the horse are in glaring contradiction with the oral assurances of the seller.

The conduct of the second seller at the pre-contractual stage and during the contracting process was identified as a severe and multi-faceted violation of the regulations on physical defects. Probably, the physical defect of the animal was deliberately and deceitfully concealed by him. The advancement of the changes in the sacroiliac joint, which led to the condition revealed a few days after the purchase of the horse, could not have escaped the attention of the seller, who had owned the horse for about 1.5 years.

In addition, it should be discussed whether the seller's pre-contractual information obligations were

fulfilled. As in case 1, also in this case the buyer wanted to use the animal for profit (was not a consumer), and therefore, the extended information obligations did not have to be fulfilled by the seller. Of course, this did not release the seller from the obligation of honesty, good faith, and due diligence – which were not fulfilled.

c) European and Polish legal acts in force at the time of the analysed events stated that the only document identifying a horse is a unique lifetime identification document (commonly referred to as a “horse passport”). Other methods of identifying horses, such as a microchip, tattoo, branding, and genetic marker, are only auxiliary methods and do not constitute a basis for identifying a horse within the meaning of the European regulations (8, 56).

The law imposes several formal and legal obligations on horse owners. Among others, there is an obligation to report any change of ownership to the Polish Horse Breeders Association within 7 days from the date of the transfer of this right. This obligation applies to the new and previous horse owners (56). A “horse passport” must be submitted with the application. In addition, the document based on which the ownership right was transferred, or a written declaration of acquisition of the equine, must be submitted. As indicated, none of the listed legal obligations were fulfilled in the analysed case’s first or second sales agreement.

In addition, it is important to indicate that the buyer before finalizing the transaction should check and confirm the information contained in the horse’s passport (in particular the owner’s data and description, including graphics, of the horse) with the actual state and read the chip and compare it with the number indicated in the passport. Moreover, as a rule, the contract of sale should include information about the buyer’s planned use of the horse. These actions were also not completed in the analysed case.

d) In addition to the failure to comply with the formal and legal requirements concerning horse sales contracts, the veterinarians’ incorrect behaviour was also revealed in the analysed case. These acts meet the criteria for malpractice and, simultaneously, a crime (non-compliance with the principles of deontology, non-compliance with the provisions of applicable law and failure to comply with documentation obligations) (19, 46, 55). In particular, it was found that during the first clinical examination of the horse, the veterinarian did not document the medical and veterinary activities undertaken, did not make a diagnosis (or suspicion, or initial diagnosis), limiting himself only to a general indication of the observed symptoms in the issued certificate.

Conclusions

The presented sample cases make it possible to demonstrate that, indeed, veterinary experts in cases concerning physical defects of sold animals sometimes

provide opinions on issues other than the animal’s health status. Moreover, it is legal and right behaviour.

The analysis revealed that the following premises support this statement:

Firstly, the expert is obliged to know the law (18, 47). This is the most important and general observation, not limited to latent defects or veterinary expertise cases.

In this matter, however, the subject of the expert opinion (physical defect of a living creature) and its status in applicable law is closely connected. Moreover, the applicable definition of a physical defect of the sold animal is crucial. In Polish law, the old concept of a physical defect as a disease has been entirely replaced by the idea of breach of contract (17, 58). According to the current legal provisions (58), warranty is a form of liability for non-conformity of the performance compared with the contract. It concerns the entire performance – i.e. something more than just the animal and its health or disease. Non-conformity with the contract on the seller’s part is an open concept, encompassing all possible factual states that are inconsistent with the agreement. This is one of the forms of improper performance of the obligation.

The definition of a physical defect (i.e. defective performance – non-conformity with the contract – improper performance of the obligation) is comprehensive. It covers the overall relationship of the seller’s entire performance to the content of the obligation. This content is shaped by the agreement of the parties, as well as the justified expectations of the buyer, the purpose in which the animal is to be used, and other factors.

Secondly, considering such a broad definition of a physical defect in the Civil Code (58), an equally broad and holistic veterinary expert opinion is highly justified. It is particularly justified for the expert to indicate the seller’s pre-contractual information obligations, the obligation to disclose the defect, the oral elements of the contract, the usability and utility of the animal, the buyer’s expectations, the purpose of the contract, veterinary tests related to the sale, or the completion of procedures.

Thirdly, the nature of the specific case and the questions the court asks the expert are essential. If it was deemed appropriate to ask the expert about specific circumstances, ask specific questions, and subject him/her to assess specific evidence in the case, then he/she must provide an answer unless it exceeds his/her cognizance. A common and affirmed practice is, in addition, to include the last question for the expert in an open form: “If something is important, please indicate these facts and observations resulting from the case material”.

Last but not least, the expert opinion is the only evidence in the case. Like all other evidence, it is subject to free and comprehensive evaluation by the court (15, 18, 26, 33-35, 47), which may, although does not

have to, take into account the expert's observations and conclusions in whole or in part.

All of the above arguments support the above thesis and allow for an unquestionable affirmative answer to the research question.

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