

IN THE
INDIANA SUPREME COURT
CAUSE NO. _____

COURT OF APPEALS CAUSE NO. 49A04-1707-MI-01662

MELODIE LIDDLE,)	
)	
Plaintiff-Appellant,)	Appeal from Marion Superior Court D02
)	
v.)	
)	
CAMERON F. CLARK, IN)	Trial Court Case No.
HIS OFFICIAL CAPACITY)	49D02-1306-MI-016812
OF THE INDIANA)	
DEPARTMENT OF)	
NATURAL RESOURCES,)	The Honorable Timothy Oakes, Judge
ET AL.,)	
)	
Defendant-Appellees.)	

**REPLY BRIEF IN SUPPORT
OF PETITION SEEKING TRANSFER**

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ARGUMENT

It is undisputed that the mixed-breed dog is irreplaceable personal property yet the Court of Appeals distinguished its analogues in *Mitchell*¹ and *Campins*² because the dog was animate and the property in those cases was not. The distinction departs significantly from precedent and established law governing pet-related transactions.³ The ruling over-reaches the valuation issue and rests on the tenuous distinction between animate and inanimate personal property. Whether property is animate is a debatable conclusion that will prove as elusive in future cases as it is obvious in the one at hand. As technology evolves new types of “personal property”, disputes about its valuation will follow and the distinction established here only adds complexity where clarity is needed.⁴

Campins, *Mitchell* and *Lachenman*⁵ establish a two-part test to measure economic loss for irreplaceable personal property that applies to animate and inanimate property equally and without distinction. In those cases, the courts first determined whether the property had a real market or arms-length transaction that could implement the principle of just compensation.

¹ *Mitchell v. Mitchell*, 685 N.E.2d 1083 (Ind. Ct. App. 1997).

² *Campins v. Capels*, 461 N.E.2d 712 (Ind. App. 1984).

³ Veterinary insurance for pets is property insurance and has nothing in common with human health insurance. See, <https://www.investopedia.com/articles/personal-finance/031815/how-does-pet-insurance-work.asp> (accessed 9/19/18). The proliferation of veterinary policies coincides with judicial recognition of veterinary costs as mitigation damages for dogs and cats. See, *Lachenman v. Stice*, 838 N.E. 2d 451, 468 (Ind. Ct. App. 2005).

⁴ Since the law has recognized cryopreserved embryos as personal property, a conversion claim against an *in vitro* fertilization service could expose the distinction as highly problematic. See, e.g., *Davis v. Davis*, 842 S.W.2d 588 (Tenn. 1992).

⁵ *Lachenman*, 838 N.E. 2d 451.

When the court found no possible market for the property could have existed in *Mitchell* and, the only market, scrap-metal merchants, existed because of the tortious conduct that caused the damage in *Campins*, the court recognized not all value can be measured by an arms-length transaction. In both cases, “subordinate rules for the measure of damages when [fair market value for personal property] run counter to the paramount rule of fair and just compensation, the former must yield to the principle underlying all such rules.”⁶

Proving the absence of a “market” for the mementos and photos of the plaintiff’s deceased father in *Mitchell* posed little difficulty. The man never was a public figure or held a role vesting his persona with value to anyone beyond his immediate family. In *Liddle*, the trial court ruled market value applied, initially, without any supporting evidence. Subsequently, the stipulated second-hand market was as illusory as it was well-intended. There is no evidence a potential buyer existed because there is no such person. The elderly, mixed-breed dog was a discarded pet whose life would have ended in an animal shelter were it not for Liddle’s charity. An animal shelter like a soup-kitchen, is a taxpayer-funded public service or private charity. Charity and government services are far afield from a second-hand market; the law exempts both from profit-making, taxes, and market-related duties.

In *Campins* and *Mitchell*, the court recognized not all economic loss can be measured by buyer’s value. Seller’s value can be an objective standard, it simply lacks “mathematical exactitude”.⁷ The *Campins* court rejected the scrap metal market as fools’ gold that invites the

⁶ *Campins*, 461 N.E.2d at 720 (citing *Aufderheide v. Fulk*, 112 N.E. 399, 400 (Ind. App. 1916).

⁷ *Mitchell*, 685 N.E.2d at 1088.

same vagaries, over/under-valuation or manifest unfairness the market standard is designed to guard against.

The courts found the objective standard for measuring the rings in *Campins* and the photos in *Mitchell* in the relationship between the property and its owner. The test is the reasonable person standard, whether the property is “generally capable of generating sentimental feelings, not just emotions peculiar to the owner.”⁸ A reasonable person could find value in the relationship between Capels and his Championship rings because they were iconic symbols of national recognition of Indiana’s auto-racing heritage. The photos/mementos in *Mitchell* had no similar cultural significance but the father-daughter relationship did. That relationship has deeply-rooted cultural and legal recognition making it a standard a reasonable fact-finder could use to ascertain value, albeit lacking “mathematical exactitude”.

Here, as in *Campins* and *Mitchell*, the relationship/bond between property and owner has well-established cultural and legal recognition. Indiana courts recognize family pet dogs as emblematic of loyalty and valued for companionship.⁹ Indiana’s Anti-cruelty statute recognizes the relationship between dog/cat and owner as unique by imposing the most stringent duties of care that do not extend to other animals the statute protects.¹⁰ Owners may devise dogs/cats by

⁸ *Campins*, 461 N.E.2d at 722 (emphasis added).

⁹ *Seidner v. Dill*, 206 N.E.2d 636, 640 (Ind. Ct. App. 1965) (citations omitted).

¹⁰ Ind. Code 35-46-3-0.5(4) “Definitions”. “Neglect” subsections (D) and (E) establish the duties owed to dogs and cats, and distinguish them from duties owed to other “domestic animals” specified in subsections (A) through (C).

Will or use a pet-trust to fund their care after the settlor passes away.¹¹ The statute authorizing pet-trusts stands as legal recognition of the relationship between dog/cat and owner.

Lachenman dictum, that a family pet cannot have purely sentimental value, does not apply here. That case was decided before 2007 when the legislature amended the current protections to the Anti-cruelty statute for dogs and cats. Furthermore, the dictum cannot be divorced from the facts and issues of the case. There, plaintiff sought economic and non-economic damages but elected to measure economic loss by her dog's breeding promise, a commodity of established value limited to purebred pets. Accordingly, the notion that "A family dog may well have sentimental value, but it is not an item of almost purely sentimental value such as an heirloom" was tied to the *Lachenman* facts, predates the legislative developments, and permits the relationship between dog and owner to be the linchpin measuring economic loss.

Respectfully submitted,

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¹¹ Ind. Code 30-4-2-18 et. seq.

CERTIFICATE OF WORD COUNT

I hereby verify, pursuant to Rule 44(E) of the Indiana Rules of Appellate Procedure, that this Reply contains no more than one thousand (1,000) words, including footnotes and excluding the parts of the brief exempted by Rule 44(C) of the Indiana Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September, 2018, the foregoing document was electronically filed and electronically served upon the following.

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