



## Stable Liability: How Expert Witnesses can Make or Break an Equine Lawsuit

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In equine-related lawsuits, parties often hire expert witnesses to testify at trial. Experts are sometimes called upon to testify about a party's compliance (or lack of compliance) with a standard of care. The role of an expert witness is to assist the judge and jury in understanding key issues in a case. For example, an expert can be asked to testify if the equipment used by a riding instructor was properly selected for the horse and rider.

For trial lawyers handling Equine Law cases, among the most difficult tasks is selecting the **right** expert witness for a case. In a well-known equine case from Minnesota, the Court refused to allow a party's proposed equine expert witness to testify. The Minnesota Supreme Court ultimately upheld that judge's ruling and affirmed the striking of that expert from testifying.

In that case, the plaintiff boarded his horse, a great-grandson of Secretariat, at the defendant's stable and planned to train the horse for dressage. While at the boarding stable, the horse became lame. The plaintiff sued the stable, claiming that its staff were too rough in trying to recapture the horse after it escaped from its pasture.

### **PROVING BOARDING STABLE LIABILITY**

As with every case, the plaintiff bears the burden of proof. Here, the plaintiff horse owner was required to prove (1) that the stable was negligent in the horse's care and (2) that the stable's negligence – and not some other reason – caused the boarded horse's lameness condition. The stable argued, among other things, that the case should be dismissed because the plaintiff failed to prove that the stable caused the lameness.

Enter the experts. In an effort to prove his case, the plaintiff produced an affidavit of his expert witness who was ready to prove that the stable's care caused the lameness. That proposed expert, however, had no veterinary training or licensure but, rather, had an M.S. degree in

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geology and a Ph.D. in biology/systematics and ecology (vertebrate paleontology). She also owned a horse with a similar lameness condition. Her affidavit concluded "to a reasonable degree of scientific certainty that the present lameness of [the horse] is traceable to an injury that occurred to the right forelimb [in November 1993]." She concluded that the incident at the stable was "the proximate cause [of the lameness and] the straw that breaks the camel's back." In opposition, the stable produced testimony for four equine veterinarians who believed that the stable's care did not cause the lameness condition.

At this stage, the lawsuit had not yet proceeded to trial. The central issue before the Court, argued by counsel for the parties, was whether the plaintiff sufficiently stated a case using the non-veterinary expert's testimony. These issues proceeded to the state court of appeals and then to the Minnesota Supreme Court.

### **WHOSE EXPERT IS QUALIFIED?**

The Minnesota Supreme Court noted that expert witness testimony would be essential to prove causation, especially if the issues were outside the realm of common knowledge. It stated:

Where a question involves obscure and abstruse medical factors such that the ordinary layman cannot reasonably possess well founded knowledge of the matter and could only indulge in speculation in making a finding, there must be expert testimony, based upon an adequate factual foundation that the thing alleged to have caused the result not only might have caused it but in fact did cause it.

The Court also noted that "[t]he ordinary layperson is not versed in horse lameness or horse anatomy and therefore could not decide whether the ... accident caused [the horse's] current lameness. Expert testimony on causation was required before [the plaintiff] could recover damages ...." Agreeing with the trial court, the Minnesota Supreme Court ruled that the plaintiff's expert was not qualified, and the case should be dismissed because the plaintiff offered no evidence that the boarding stable's actions caused the horse's injuries.

The case was: *Gross v. Victoria Station Farms*, 578 N.W.2d 757 (1998).

### **CONCLUSION**

What may seem to be a simple, straightforward equine case can sometimes become complicated. Issues involving expert witnesses can be especially complicated. A knowledgeable equine law practitioner can try to simplify the issues and secure proper expert witness testimony to help the case (or defense) succeed.