

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 2022-CP-10-02642

Mary Ann Ridenour,

Plaintiff,

v.

Brock Owen McGrew and Anastasia  
McGrew,

Defendants.

**ORDER**

Judge: The Honorable Diane S. Goodstein  
Date of Hearing: August 26, 2022  
Plaintiff's Appearances: Mary Ann Ridenour and her attorney, Madeline E. Nelson  
Defendants' Appearances: Brock Owen McGrew and Anastasia McGrew

This matter came to before the Court on August 26, 2022. Present at the hearing were Plaintiff, Mary Ann Ridenour, and her attorney, Madeline E. Nelson, of Bringardner Injury Law Firm, LLC. Defendants, Brock McGrew and Anastasia McGrew (hereinafter referred to collectively as "Defendants"), were also present and proceeded pro se.

Both Defendants were personally served with the Summons and Complaint by process server on June 23, 2022. An Entry of Default was entered by the Charleston County Clerk of Court against Defendants on August 4, 2022. A hearing was scheduled for August 23, 2022, to determine Plaintiff's damages. Defendants were properly given notice of the hearing in accordance with Rules 55 and 5 of the South Carolina Rule of Civil Procedure and appeared at the hearing.

On August 22, 2022, Defendant Brock McGrew filed a handwritten letter seeking relief from default. Under the law, when there has been an entry of default and a hearing has been set, the appropriate procedure is to proceed with the default hearing on damages. On August 23, 2022, pursuant to a request from Defendants, the hearing was continued to August 26, 2022. At the

hearing on August 26, 2022, Plaintiff was present and testified. Defendants were given the opportunity to cross-examine Plaintiff, and Defendant Brock McGrew cross-examined Plaintiff. Defendant Anastasia McGrew had the opportunity to cross-examine Plaintiff but declined.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

As a direct result of the Defendants' negligence, Plaintiff sustained injuries and damages, as discussed below. In making the below findings of fact reference has been made to pertinent portions of the testimony and exhibits introduced into evidence; however, the Court has taken into consideration all of the evidence presented. The Court had the opportunity to evaluate the credibility of the witness, and found Plaintiff's testimony to be most credible.

#### **A. The Defendants' Liability**

Rule 12(a) mandates that "[a] defendant shall serve his answer within 30 days after the service of the complaint upon him..." Rule 12(a) SCRPC. Using the time computation rules set forth in Rule 6(a), Defendants' answers were due on or before July 25, 2022. Here, Defendants are in default as neither filed an Answer or other responsive pleading within thirty-days as required by Rule 12(a) SCRPC. "[B]y suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and have conceded liability." *Austin v. Specialty Transp. Servs., Inc.*, 358 S.G. 298, 31.9 (Ct. App. 2004) (quoting *Roche v. Young Bros.*, 332 S.C, 75, 81 (1998)). As a result, all allegations as pled in Plaintiff's Complaint including causes of action for statutory liability under S.C. Code § 47-3-110 and negligence are deemed admitted, and liability is established. Additionally, it appears to this Court that, by a preponderance of the evidence, the Defendants in default proximately caused the injuries and damages to the Plaintiff as set forth below.

Plaintiff and husband were riding their bicycles down a public street in their neighborhood towards a cul-de-sac, where a neighborhood celebration was wrapping up. They biked towards

home shortly thereafter with the Plaintiff's husband riding slightly ahead of Plaintiff. While biking in the public street in front of Defendants' residence, Plaintiff was attacked by Defendants' large dog that came out of Defendants' property and driveway, and into the street. When the dog reached the public street, the dog bit down onto Plaintiff's thigh. Plaintiff's husband heard her exclamations, and turned around to assist her. Plaintiff struggled to keep her bike upright, and had to struggle to finally get the dog to release its grip on her leg. There were puncture wounds and tears on the Plaintiff's thigh immediately visible from the attack. Anastasia McGrew, who was in pursuit of the fleeing animal came upon the scene of attack. It is clear the Defendants' are owners and/or possessors of the dog.

**B. Damages**

Under South Carolina law, the elements of damages potentially recoverable includes "past and future medical expenses, past and future pain and suffering, past and future loss of income and earning power, disfigurement, [and] loss of enjoyment of life." Schumacher v. Cooper, 850 F.Supp. 438, 453 (D.S.C. 1994) (citing Watson v. Wilkinson Trucking Co., 136 S.E.2d 286, 291 (S.C. 1964)). Mathematical precision in ascertaining damages is not required. Brooks v. United States, 273 F.Supp. 619, 629 (D.S.C. 1967). Instead, the injured party must be awarded damages, proved by the preponderance of the evidence. Drennan v. Southern Railway, 7 S.E. 45 (S.C. 1912).

The evidence in this case demonstrates, by the preponderance of the evidence, that Plaintiff has suffered and will suffer past and future damages; therefore, she is entitled to recover for those damages.

**1. Past Medical Expenses**

Plaintiff seeks to recover expenses for her past medical treatment. At the hearing, Plaintiff submitted her medical bills totaling \$1,031.14 (one thousand thirty-one dollars and fourteen cents) in medical care which exhibit was marked as Exhibit 1 and admitted into evidence. Those

expenses are recoverable, as they consist of services such as emergency medical treatment, primary care physician visits, dermatology visits, and follow up visits. These expenses resulted from Defendants' negligence and were reasonably necessary. See Sossamon v. Nationwide Mut. Ins. Co., 135 S.E.2d 87, 91 (S.C. 1964). Moreover, the Court is satisfied from the credible testimony of Plaintiff that the invoiced amounts were reasonable and necessary. See Haselden v. Davis, 579 S.E.2d 293, 295 (S.C. 2003) (citation omitted).

## **2. Past Lost Income**

Plaintiff seeks to recover past lost income in the amount of \$34,887.09 (thirty-four thousand eight hundred and eighty-seven dollars and nine cents). A plaintiff can recover the reasonable value of lost wages caused by a defendant's negligence. Lost wages are the amount of wages or income lost prior to trial and does not include future losses. If the plaintiff was employed at the time of the incident, the salary or wages being earned at that time is admissible as evidence of lost wages. See 22 Am. Jur. 2D Damages §141 (2008). Plaintiff testified that she is, and was at the time of the incident, a court reporter. Plaintiff testified that her income was affected by those occasions where her ability to work was affected and also the accommodations she has had to make because of the injuries she sustained as a proximate cause of this dog attack. Plaintiff testified that since the attack she does not take depositions at locations where a dog might be present, and as a result, has missed income that would have been generated by taking those jobs. Plaintiff also testified that she does not take depositions that might be lengthy, such as in medical malpractice cases, because of the difficulty she has sitting for extended periods as a result of her injuries. Plaintiff calculated her loss of income to date as \$34,887.09 (thirty-four thousand eight hundred and eighty-seven dollars and nine cents).

## **3. Future Loss of Earning Potential**

Plaintiff further seeks to recover for her loss of earning potential which she estimates going

forward will be in the amount of \$1,000.00 (one thousand dollars) per year until the age of 65, for a total of \$10,000.00 (ten thousand dollars). A plaintiff can recover not only for wages or time lost pre-trial because of the injury or disability, but also for anticipated impairment of future earning capacity. Kapuscshinsky v. United States, 259 F.Supp. 1 (D.S.C. 1966) (citation omitted). Expert testimony is not required to prove loss of earning potential. Plaintiff's own testimony, entered without objection, that "nothing further could be done," is sufficient. Here, Plaintiff testified that the injuries she sustained as a result of the dog attack were permanent, implicated some nerve damage, and she believed there was nothing further that could be done to treat her injury. Therefore, the Court finds, after careful review of the evidence presented, \$10,000.00 (ten thousand dollars) for Plaintiff's future loss of earning potential is reasonable.

**4. Loss of Enjoyment of Life and Permanent Impairment**

Plaintiff seeks compensation for loss of enjoyment of life and permanent impairment. Plaintiff testified that she no longer takes bike rides through her neighborhood with her husband, as she did almost every night before this incident. She further testified she is limited in the gym when performing the same exercises she performed prior to this incident without limitation. Plaintiff's birthday is July 14, 1967, making her 55 years old. Plaintiff has a life expectancy of 28.27 years pursuant to S.C. Code Ann. § 19-1-150. Based on Plaintiff testimony and the entire record, the Court concludes that \$15,000.00 (fifteen thousand dollars) is reasonable compensation for Plaintiff's loss of enjoyment of life and permanent impairment.

**5. Pain, Suffering, and Mental Anguish**

Injured plaintiffs are entitled to recover for mental anguish and permanent emotional scarring. Steeves v. United States, 294 F. Supp. 446, 458 (D.S.C. 1968). Plaintiff testified to the psychological and emotional injuries she suffered, and continues to suffer, as a result of this incident. She testified that she is incredibly afraid of dogs, has a fear of encountering any type of

dog, even her own son's dog, and suffers from emotional distress of the possibility of running into the dog that bit her while in her neighborhood. After a careful review of the entire record, the Court finds \$10,000.00 (ten thousand dollars) for Plaintiff's psychological and emotional injuries reasonable.

Plaintiff seeks compensation for past and future pain and suffering. Plaintiff testified as to her pain and suffering, and Plaintiff's medical records further evidence Plaintiff's pain and suffering. Plaintiff testified that she has endured and continues to endure frequent pain, tingling, burning, and tightness where the dog bit her thigh. Plaintiff also testified she experiences incessant burning and pain in the area of the dog bite. Plaintiff also testified that she has continued mental health symptoms, such as anxiety of being around other dogs in the public. Plaintiff Based on Plaintiff's testimony and the entire record, the Court concludes that \$60,000.00 (sixty thousand dollars) is reasonable compensation for Plaintiff's past and future pain and suffering.

#### **6. Punitive Damages**

Based upon the foregoing findings of fact and the determination by the Court, by clear and convincing evidence, it is appropriate to punish the Defendants' reckless, willful, and wanton conduct and to deter similar future conduct. Therefore, punitive damages are awarded in this matter in the amount of \$5,000.00 (five thousand dollars).

In BMW of North America v. Gore, 517 U.S. 559 (1996), the United States Supreme Court established three "guideposts" by which courts could conduct a due process analysis of a punitive damages award. Those three guideposts are 1) the degree of reprehensibility of the defendant's conduct, 2) the disparity between the actual and potential harm suffered by the Plaintiff and the punitive damages award, and 3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. Gore at 423.

In Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991), the South Carolina Supreme

Court identified eight considerations relevant for determining punitive damages: 1) the defendant's degree of culpability, 2) the duration of the conduct, 3) the defendant's awareness or concealment, 4) the existence of similar past conduct, 5) the likelihood the award will deter the defendant or other from like conduct, 6) whether the award is reasonably related to the harm likely to result from such conduct, 7) the defendant's ability to pay, and 8) any other factors deemed appropriate. The South Carolina Supreme Court has clarified that the Gamble factors are relevant insofar as they add substance to the Gore guideposts. Mitchell v. Fortis Ins. Co., 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009).

The Court specifically find that the Defendants' failure to have the subject dog vaccinated, the Defendants' attempt to hide the subject dog from SCDHEC in the wake of this attack, and the other instances of problems with this dog speak to the first Gore guidepost concerning the Defendants' degree of representability. Defendants conduct prohibited SCDHEC from being able to determine the extent to which the dog in question injured the Plaintiff, and what threat the dog posed to members of the public. Such conduct was in reckless disregard of the Plaintiff's rights and evidences an attempt by the Defendants to conceal critical information regarding the dog.

The "reprehensibility" guidepost has been called "perhaps the most important indicium of the reasonableness of the punitive damages award." Gore at 565. This conduct by the Defendants also speaks to the Gamble considerations of (1) the Defendants' degree of culpability, (2) the duration of the conduct (encompassing harmful conduct after the actual attack), and (3) the Defendants' awareness or concealment. As such, this conduct by the Defendants strongly supports an award of punitive damages.

The Court also considered the second Gore guidepost in this case, looking at the disparity between the actual and potential harm suffered by the Plaintiff and the punitive damages award.

In this case, as explained above, the Court has awarded Plaintiff actual damages in the total amount of \$5,000.00 (five thousand dollars). The photographs of the Plaintiff's injuries not only document the serious nature of her injuries but also show the Court that the potential injuries could have been even more severe. Given the award of punitive damages in this matter is less than half the total amount of actual damages awarded, I find that the second Gore guidepost has been adhered to in awarding the Plaintiff \$5,000.00 (five thousand dollars) in punitive damages.

As to third Gore guidepost of comparable penalty, it is noted the S.C. Code § 47-3-760(C) states a "dangerous animal which attacks a human being or domestic animal may be ordered destroyed when in the court's judgment the dangerous animal represents a continuing threat of serious harm to human beings or domestic animals." Likewise, the owner of a "dangerous animal" which attacks and injures a human being can be found to be in criminal violation of South Carolina law, subjecting themselves to fines up to \$5,000.00 Dollars or imprisoned not more than three (3) years for a first offense. A second offense could carry criminal penalties of up to a \$10,000.00 Dollar fine or up to a five (5) years sentence. S.C. Code § 47-3-760(B)(1&2). However, at the time of this hearing, there is an outstanding motion to set aside default from Defendants. Therefore, it is so ordered that the destruction of the dangerous animal may be heard and addressed at a later time, upon Plaintiff's request, if Defendants' Motion to Set Aside Default is heard and denied.

Having considered the Gore guideposts and the Gamble considerations, the Court finds a punitive damages award of \$5,000.00 (five thousand dollars) to be reasonable.

#### **7. Restraining Orders**

Plaintiff and Plaintiff's counsel also requested a restraining Order against Defendants. Sufficient evidence was presented to warrant the requested restraining orders against the Defendants. Therefore, it is ordered that Defendants may not be within 500 feet of Plaintiff and Plaintiff's husband. Notwithstanding this restriction, Defendants are not to be restricted in their

use of the roadways or sidewalks to go to and from their home should they be required to pass by Plaintiff's home in their vehicle(s) or when walking by. Also, Defendants are not to bring or allow the dog in the vicinity of Plaintiff. As it pertains to Plaintiff's counsel, Defendants are to contact Plaintiff's counsel by e-mail only.

NOW THEREFORE, the Court awards judgment against the Defendants in the amount of \$130,918.23 (one hundred thirty thousand nine hundred and eighteen dollars and twenty-three cents) in actual damages and \$5,000.00 (five thousand dollars) in punitive damages.

AND IT IS SO ORDERED.

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Hon. Diane Goodstein, Presiding Judge  
Court of Common Pleas

Dorchester, South Carolina  
\_\_\_\_\_, 2022



Charleston Common Pleas

**Case Caption:** Mary Ann Ridenour VS Anastasia Mcgrew , defendant, et al

**Case Number:** 2022CP1002642

**Type:** Order/Entry of Default

It is so Ordered!

s/Diane S. Goodstein