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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2023-UP-020 (S.C. Ct. App. filed Jan. 18, 2023)

Bridgett Fowler Petitioner,

v.

FedEx Ground Package System, Inc. and James K. Ard
d/b/a JMK Logistics Corporation Respondents.

PETITION FOR A WRIT OF CERTIORARI

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April 21, 2023

INDEX

Certificate of Counsel1

Questions Presented1

Statement of the Case.....1

Legal Argument3

 A. The Court of Appeals Failed To Recognize That This Case Presents A Novel Issue
 Of Law, And Therefore, The Trial Court’s Reliance On *State v. Langford* And
 Bales v. Judelsohn Was Misplaced And Inappropriate3

 B. The Court Of Appeals Failed To Acknowledge Its Opportunity To Declare The
 Law On The Recovery Of Emotional Damages For The Death Of A Pet Resulting
 From Another’s Negligent, Willful, Wanton And Reckless Conduct In The
 Legislature’s Absence5

Conclusion7

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on March 23, 2023.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in finding that the trial court properly relied on *State v. Langford*, 55 S.C. 322, 33 S.E. 370 (1899), a 124-year-old criminal case, and *Bales v. Judelsohn*, No. 2005-UP-509, 2005 S.C. App. Unpub. LEXIS 527, at *1 (S.C. Ct. App. Aug. 30, 2005), an unpublished appellate opinion, in ruling that a pet owner may not recover emotional damages resulting from the death of its companion animal due to another's negligent and reckless conduct?
2. Did the Court of Appeals err in determining that changes in public policy considerations regarding the status of companion animals did not warrant intervention by the Court?

STATEMENT OF THE CASE

Petitioner resides in Loris, South Carolina, with her husband, a retired Horry County Police Officer, and her sons. (See R. p. 7, 2d Am. Compl. ¶ 6.) Petitioner and her family were the loving owners of an AKC-registered Brittany Spaniel named Honey Bunny. (R. p. 8, 2d Am. Compl. ¶ 7.) Honey Bunny was a source of joy and comfort for the entire family but especially for Petitioner, who had undergone significant back surgery and relished Honey Bunny's companionship during her recovery. (R. p. 8, 2d Am. Compl. ¶ 8.)

In January 2018, a FedEx driver, acting within the scope of his employment for Respondents, struck and caused significant damage to one of Petitioner's parked vehicles while attempting to reverse out of Petitioner's circular driveway after delivering a package. (R. p. 8, 2d Am. Compl. ¶¶ 9–12.) The driver left Petitioner's property without informing Petitioner or Petitioner's family about the accident. (R. p. 8, 2d Am. Compl. ¶ 12.) When Petitioner discovered the damage, she investigated how it occurred and days later, the FedEx driver admitted to hitting her vehicle and apologized. (R. p. 8, 2d. Am. Compl. ¶ 12; R. p. 50, Transcript 8:19–21.)

On March 22, 2018, the same FedEx driver again pulled into Petitioner's driveway, this

time traveling at an excessive speed and driving recklessly. (R. p. 9, 2d Am. Compl. ¶¶ 14–15.) Honey Bunny and another of Petitioner’s dogs heard the truck pull into the driveway, rose up from their naps on the front porch, and started down the driveway to greet the visitor. (R. p. 9, 2d Am. Compl. ¶ 16.) Petitioner watched the horrific events that occurred next from her living room window. (R. p. 9, 2d Am. Compl. ¶ 17.)

Without making any attempt to slow down as he approached Petitioner’s home and pets, the FedEx driver plowed into Honey Bunny, brutally killing her as Petitioner watched. (R. p. 9, 2d Am. Compl. ¶ 18.) Petitioner and her son, who also witnessed Honey Bunny’s brutal death, ran to Honey Bunny’s side and wept. (R. p. 9, 2d Am. Compl. ¶ 18.) The driver stepped down from his truck, unapologetically stated that he had not seen the dog, returned to his truck, and drove away without delivering any packages as Petitioner and her son wept over Honey Bunny’s dead and mangled body in the driveway. (R. p. 9, 2d Am. Compl. ¶¶ 18–20.) To help cope with her emotional distress, anxiety, and other symptoms since witnessing Honey Bunny’s death, Petitioner has taken medication. (R. pp. 9–10, 2d Am. Compl. ¶ 21.)

Petitioner brought this action on November 1, 2018, in the Horry County Court of Common Pleas, asserting claims of negligence, gross negligence, willful, wanton and reckless conduct against FedEx Corporation. (Compl. ¶¶ 20–27.) Petitioner filed an amended Complaint correctly naming FedEx Ground Package System, Inc., as Defendant on December 31, 2018. (Am. Compl.) Thereafter, Petitioner filed a Second Amended Complaint joining James K. Ard d/b/a JMK Logistics Corporation as a Defendant on March 4, 2019. (R. pp. 7–12, 2d Am. Compl.) Respondents each filed an Answer to the Second Amended Complaint. (R. pp. 13–23.)

On August 1, 2019, Respondents filed a Motion for Summary Judgment on the limited issue of recovery for mental anguish, emotional distress, and anxiety. (R. pp. 24–36.) Petitioner filed a memorandum of law in opposition to Respondents’ Motion for Summary Judgment. (R. pp. 37–42.) The Respondents’ Motion was heard on September 11, 2019, by the Honorable

Benjamin H. Culbertson, and counsel for each party appeared. (R. p. 43, Transcript 1.) The Circuit Court granted Respondents' Motion for Partial Summary Judgment and issued a written Order on September 23, 2019. (R. pp. 2–5, Order 1–4.) Petitioner served a Notice of Appeal on Respondents and filed the same with the Circuit Court and the Court of Appeals on October 11, 2019. (R. pp. 59–60, Notice of Appeal 1.) The Court of Appeals decided Petitioner's appeal without oral argument on January 18, 2023. Petitioner timely petitioned for rehearing, which the Court of Appeals denied on March 23, 2023.

LEGAL ARGUMENT

A. The Court Of Appeals Failed To Recognize That This Case Presents A Novel Issue Of Law, And Therefore, The Trial Court's Reliance On *State v. Langford* And *Bales v. Judelsohn* Was Misplaced and Inappropriate.

In its ruling, the Court of Appeals found that the trial court properly relied on a 124-year-old criminal case, *State v. Langford*, 55 S.C. 322, 33 S.E. 370 (1899), and an unpublished appellate opinion, *Bales v. Judelsohn*, No. 2005-UP-509, 2005 S.C. App. Unpub. LEXIS 527, at *1 (S.C. Ct. App. Aug. 30, 2005), in reaching its decision. The trial court's reliance on *State v. Langford* to decide the issue on appeal in this case is misplaced. *Langford* considered whether a pet could be considered property for purposes of criminal larceny; it in no way considered whether noneconomic damages for pain and suffering are recoverable in a civil case for the loss of a companion animal resulting from another's willful, reckless, and grossly negligent conduct. Rather, the South Carolina Supreme Court determined in *Langford* that dogs could be classified as personal property, which can be stolen, as opposed to valueless creatures, which could not be stolen. *Langford*, 55 S.C. at 322, 33 S.E. at 372. Most significantly for purposes of the present case, the *Langford* case did not address whether emotional damages are recoverable in a civil action in connection with the death of a pet. In fact, the *Bales* opinion implicitly recognized that the *Langford* decision did not address the damages available for the death of a pet in a civil case. See *Bales*, No. 2005-UP-509, 2005 S.C. App. Unpub. LEXIS 527, at *1, *2 (S.C. Ct. App. Aug.

30, 2005) (“We have not found any jurisprudence in South Carolina that addresses damages resulting from an injury to a pet.”). The Court of Appeals erred in deciding that the *Langford* case was applicable precedent to the matters at issue in this case.

The Court of Appeals further erred in finding that the *Bales* opinion was properly relied upon by the trial court as persuasive authority because the opinion has no precedential value and no published case relied upon by the trial court addressed the issues presented in this appeal. In finding the trial court “properly examined the law in arriving at its conclusion,” the Court of Appeals cited *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018) for the premise that it was reasonable for the trial court to rely on an unpublished opinion “whose reasoning it found persuasive . . . when the trial court relied on other published cases . . .” *Fowler*, No. 2023-UP-020 at 2 (S.C. Ct. App. Jan. 18, 2023) (unpublished). In the instant case, however, the trial court did not have other published cases that examined whether or not a pet owner may recover noneconomic damages arising from the death of a pet in a civil case. The only other published case relied upon by the trial court was *Langford*, as discussed *supra*. The trial court’s reliance on *Langford* and *Bales* to reach its decision, then, was incorrect. The Court failed to make this distinction in its unpublished opinion affirming the trial court’s opinion.

Further, the *Bales* decision was based on the law established in “a limited number of cases decided throughout the United States” as of 2005. The *Bales* opinion cited and relied primarily on a New York case from 1908 that limited a cat owner’s recovery to economic damages stemming from the loss of the cat. *Bales*, No. 2005-UP-509, 2005 S.C. App. Unpub. LEXIS 527 at *1 (citing *Buchanan v. Stout*, 108 N.Y.S. 38 (N.Y. App. Div. 1908)). Notably, the *Bales* opinion did acknowledge a 1979 decision by the Louisiana Court of Appeals that held that a pet owner could recover damages for mental anguish. *See id.* at *2 (citing *Peloquin v. Calcasieu Parish Police Jury*, 367 So. 2d 1246, 1251 (La. Ct. App. 1979)). Several other cases have been decided

throughout the United States that starkly contrast the decision reached in *Bales*, which were not taken into account. *See, e.g., Moreno v. Hughes*, 157 F. Supp. 3d 687 (E.D. Mich. 2016) (holding plaintiffs can recover emotional distress damages from defendant after defendant shot dog); *La Porte v. Associated Indeps., Inc.*, 163 So. 2d 267, 269 (Fla. 1964) (“[T]he affection of a master for his dog is a very real thing and . . . destruction of the pet provides an element of damage for which the owner should recover, irrespective of the value of the animal”); *Knowles Animal Hosp., Inc. v. Wills*, 360 So. 2d 37 (Fla. Dist. Ct. App. 1978) (allowing plaintiff-owners of dog to recover for their mental pain and suffering after defendant caused injury to dog); *Campbell v. Animal Quarantine Station et al.*, 632 P.2d 1066 (Haw. 1981) (holding plaintiffs can recover for mental distress suffered through loss of family dog due to defendants’ negligence); *Burgess v. Taylor*, 44 S.W.3d 806 (Ky. Ct. App. 2001) (holding that the subject matter being a pet does not preclude an award for emotional distress); *Bueckner v. Hamel*, 886 S.W.2d 368, 374 (Tex. App. 1994) (Andell, J., concurring) (“People who love and care for animals should not be forced to accept as compensation for their loss the amount that the animal would bring in the market.”); *Womack v. Rardon*, 135 P.3d 542 (Wash. Ct. App. 2006) (upholding award for emotional distress after malicious injury to cat); 510 ILL. COMP. STAT. 70/16.3 (West 2002, as amended) (permitting awards for “emotional distress suffered by the owner”); TENN. CODE ANN. § 44-17-403(a)(1) (West 2004) (providing recovery for noneconomic damages for the death of a pet caused by the intentional or negligent act of another). Given the number of cases cited by Petitioner that reach conclusions contrary to those relied on and made by the trial court, the Court of Appeals erred in upholding the trial court’s reliance on such limited precedent.

B. The Court Of Appeals Failed To Acknowledge Its Opportunity To Declare The Law On The Recovery Of Emotional Damages For The Death Of A Pet Resulting From Another’s Negligent, Willful, Wanton And Reckless Conduct In The Legislature’s Absence.

In affirming the trial court’s decision, the Court of Appeals stated that public policy “do[es] not warrant intervention by this court in the absence of legislative action.” *Fowler*, No. 2023-UP-

020 at 2 (S.C. Ct. App. Jan. 18, 2023) (unpublished). In support of its decision, the Court of Appeals cited *Taghivand v. Rite Aid Corp.*, 411 S.C. 240, 244, 768 S.E.2d 385, 387 (2015), for the proposition that the courts declare public policy “only in the absence of legislative declaration.” *Fowler*, No. 2023-UP-020 at 3 (S.C. Ct. App. Jan. 18, 2023) (unpublished). What the Court of Appeals failed to recognize, however, is that the State Legislature’s silence on the availability of noneconomic damages recoverable to a pet owner in cases arising out of the death of their pet due to another’s wanton, reckless, and grossly negligent behavior makes the issue ripe for court determination. The damages available to pet owners in negligence actions have been created and limited by the courts, and therefore, it is well within the Court’s prerogative to define and expand these limits. The Court of Appeals’ unpublished decision in this case is a missed opportunity to establish definitively the law in South Carolina regarding the recovery of noneconomic damages in cases of egregious acts of negligence that result in the untimely death of a companion animal.

Further, the Court of Appeals states in its unpublished opinion that “the circuit court’s decision is in line with national trends considering damages awarded in cases involving the death of a pet” *Fowler*, No. 2023-UP-020 at 2 (S.C. Ct. App. Jan. 18, 2023) (unpublished). As discussed, *supra*, the circuit court’s decision is based on limited national precedent and does not account for the numerous cases cited by Petitioner that reach opposite conclusions. Indeed, the cases cited by Petitioner represent a collective shift in the status of companion animals in modern society. Moreover, the South Carolina Legislature recently recognized that other “emotional support animals” provide companionship, reassurance, and emotional support to their owners. S.C. Code Ann. § 47-3-920(6) (Supp. 2019).

This Court has noted that “[p]ublic policy . . . is a dynamic not static concept, and what was valid in the past is not necessarily a valid policy today.” *Simmons v. Tuomey Reg’l Med. Ctr.*, 341 S.C. 32, 41, 533 S.E.2d 312, 317 (2000) (quoting *Fitzer v. Greater Greenville S.C. Young Men’s Christian Ass’n*, 277 S.C. 1, 3–4, 282 S.E.2d 230, 231 (1981), *superseded by statute*, S.C.

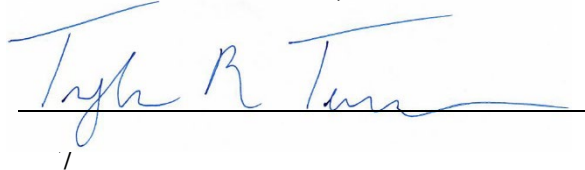
Code Ann. § 33-55-200, as recognized in *McLeod v. Starnes*, 396 S.C. 647, 723 S.E.2d 198 (2012)). Public policy in South Carolina supports fully compensating plaintiffs for injuries, including emotional injuries, and encouraging persons to exercise reasonable care to prevent unnecessary injury to persons and their animals. The Court of Appeals' decision fails to recognize that allowing a pet owner to recover emotional damages associated with the death or injury of her pet resulting from another's negligent or reckless acts or omissions will further this public policy by incentivizing entities and individuals to exercise reasonable care around others' animals to avoid a larger judgment of liability. Existing law in South Carolina, with its *de minimis* damages award for the market price of a pet, does little to deter egregiously negligent or reckless acts or omissions and ignores the owner's pain and suffering, leaving her only minimally rehabilitated. As now explicitly acknowledged by South Carolina's Legislature, animals can provide companionship, reassurance, and emotional support to their owners. S.C. Code Ann. § 47-3-920(6) (Supp. 2019). Consequently, a pet owner should be fairly compensated for the loss of companionship, reassurance, and emotional support that results from the death of a pet caused by a defendant's bad acts. In upholding the circuit court's decision in an unpublished opinion, the Court of Appeals missed the opportunity to establish law to more adequately compensate pet owners upon the untimely loss of a companion animal due to another's negligent or reckless acts or omissions, which is within its purview in the Legislature's silence and reflects the evolved status pets hold as companions to humans in modern society.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests this Court to grant Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

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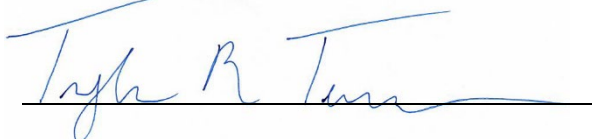
PROOF OF SERVICE

We hereby certify that we have served the Respondents, FedEx Ground Package System, Inc. and James K. Ard d/b/a JMK Logistics Corporation, the Petitioner’s Petition for a Writ of Certiorari in the above-captioned matter by electronic mail on April 21, 2023 to the below-named parties at their e-mail addresses of record:

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