

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2019-001722

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SC Court of Appeals

Bridgett Fowler .....Appellant

v.

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

FINAL BRIEF OF APPELLANT

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## **I. STATEMENT OF ISSUE ON APPEAL**

Plaintiff Bridgett Fowler (“Appellant”) appeals from the decision of the Horry County Court of Common Pleas granting Defendants’ Motion for Partial Summary Judgment and presents the following legal issue for this Court’s review: under South Carolina law, can a pet owner recover damages for emotional distress, mental anguish, and anxiety in a civil case when the pet owner witnessed her companion animal’s brutal demise by the negligent, grossly negligent, willful, wanton, or reckless act of the Defendants?

## **II. STATEMENT OF THE CASE**

Appellant 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. Appellant filed an amended Complaint correctly naming FedEx Ground Package System, Inc., as Defendant on December 31, 2018. Am. Compl. Thereafter, Appellant 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.) Appellant filed a memorandum of law in opposition to Respondents’ Motion for Summary Judgment. (R. pp. 37–42.) The Defendants’ 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 Defendants’ Motion for Partial Summary Judgment and issued a written Order on September 23, 2019. (R. pp. 2–5, Order 1–4.) Appellant subsequently served a Notice of Appeal on Respondents and filed the same with the Circuit Court and this Court. (R. pp. 59–60, Notice of Appeal 1.)

### **III. STATEMENT OF FACTS**

Plaintiff 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.) Plaintiff 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 Plaintiff, 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 Defendants, struck and caused significant damage to one of Plaintiff's parked vehicles while attempting to reverse out of Plaintiff's circular driveway after delivering a package. (R. p. 8; 2d Am. Compl. ¶¶ 9–12.) The driver left Plaintiff's property without informing Plaintiff or Plaintiff's family about the accident. (R. p. 8; 2d Am. Compl. ¶ 12.) When Plaintiff 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.) Plaintiff submitted quotes to repair her damaged vehicle to Defendant FedEx. (R. p. 9, 2d Am. Compl. ¶ 13.) Almost two years later, Plaintiff has not received full reimbursement from Defendant FedEx to repair her vehicle. (R. p. 9, 2d Am. Compl. ¶ 13.)

On March 22, 2018, the same FedEx driver again pulled into Plaintiff'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 Plaintiff'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.) Plaintiff 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 Plaintiff's home and pets, the FedEx driver plowed into Honey Bunny, brutally killing her as Plaintiff watched. (R. p. 9, 2d Am.

Compl. ¶ 18.) Plaintiff 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 Ms. Fowler 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, Plaintiff has taken medication. (R. pp. 9–10, 2d Am. Compl. ¶ 21.)

#### IV. STANDARD OF REVIEW

The appellate court applies the same standard governing the trial court under Rule 56(c), SCRCP, when reviewing the granting of a summary judgment motion. *Schmidt v. Courtney*, 357 S.C. 310, 316, 592 S.E.2d 326, 330 (Ct. App. 2003) (citing *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 109, 584 S.E.2d 375, 377 (2003)). Summary judgment is appropriate only when, upon viewing all submitted evidence, “there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCP. In reviewing a grant of summary judgment, all evidence and inferences drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Schmidt*, 357 S.C. at 316, 592 S.E.2d at 330 (citing *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003)). “When evidence is susceptible to more than one reasonable inference, the issue should be submitted to the jury.” *Murphy v. Tyndall*, 384 S.C. 50, 54, 681 S.E.2d 28, 30 (Ct. App. 2009) (citing *Vaughan v. Town of Lyman*, 370 S.C. 436, 448, 635 S.E.2d 631, 638 (2006)). In cases where the preponderance of evidence burden of proof applies, the non-moving party must only submit “a mere scintilla of evidence” to survive a motion for summary judgment. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

## V. LEGAL ARGUMENT

### **A. The Circuit Court Erred in Granting Summary Judgment Based On Caselaw That Is Not Determinative Of The Present Issue, Not Published, And Not Consistent With Current Nationwide Trends And South Carolina Legislation Supporting A Pet Owner's Recovery Of Emotional Damages Resulting From A Pet's Death Caused By Defendants' Negligence, Gross Negligence, Willful, Wanton, or Reckless Conduct.**

In granting Defendant's Motion for Summary Judgment on the issue of recovery of emotional damages suffered by a pet owner in a civil case, the Circuit Court erred as a matter of law because it relied on (1) *State v. Langford*, 55 S.C. 322, 33 S.E. 370 (1899), a 120-year-old judicial opinion from a criminal case that does not address the issue on appeal in this case, and (2) *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 opinion with no precedential value decided in 2005 based on the law established in "a limited number of cases decided throughout the United States" that did not account for the current nationwide trend of recognizing a pet owner's ability to recover emotional damages in connection with the loss of a pet or recent changes in South Carolina legislation that acknowledge that animals provide companionship, reassurance, and emotional support to their owners. (R. pp. 3–4, Order 2–3); see S.C. Code Ann. § 47-3-920(6) (Supp. 2019).

In deciding the Defendants' Motion for Summary Judgment in the present case, the Circuit Court relied on a 120-year-old opinion from the Supreme Court of South Carolina, *State v. Langford*, which is not determinative of the present issue. *Langford* was a criminal case that considered whether a dog could be the subject of larceny. 55 S.C. at 322, 33 S.E. at 371. In *Langford*, the Supreme Court decided that dogs could be classified as personal property, which can be stolen, as opposed to valueless creatures, which could not be stolen. *Id.* 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, as subsequently acknowledged by the South Carolina Court of Appeals. See *Bales v. Judelsohn*, 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 Circuit Court also erred by relying on an unpublished opinion from 2005, which held that “South Carolina law does not support a cause of action for emotional distress for injury to one’s pet,” but did not account for (a) the current nationwide trend recognizing a pet owner’s ability to recover emotional damages in connection with the loss of a pet, or (b) recent South Carolina legislation acknowledging that animals provide companionship, reassurance, and emotional support to their owners. *See Bales*, 2005 S.C. App. Unpub. LEXIS 527 at \*1–\*3. The *Bales* opinion has no precedential value, but Appellant addresses it herein in response to the Circuit Court’s reliance on it in its Order Granting Defendant’s Motion for Summary Judgment.

In the *Bales* case, the Court stated that although South Carolina had not addressed the issue, “a limited number of cases decided throughout the United States have considered what damages are recoverable due to injuries to a dog.” *Id.* The Court cited in its opinion and relied on a New York case from 1908 that limited a cat owner’s recovery to economic damages stemming from the loss of the cat in holding that South Carolina law did not support a cause of action for emotional distress for injury to one’s pet. *Id.* (citing *Buchanan v. Stout*, 108 N.Y.S. 38 (N.Y. App. Div. 1908)). The *Bales* opinion noted a 1979 case from Louisiana that held that a pet owner could recover damages for mental anguish, *Peloquin v. Calcasieu Parish Police Jury*, 367 So. 2d 1246, 1251 (La. Ct. App. 1979). However, the *Bales* opinion did not fully address the current nationwide trend of other jurisdictions allowing pet owners to recover damages for emotional distress, mental anguish, and anxiety resulting from the loss of a pet. *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 injury Defendant caused 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).

Additionally, the *Bales* opinion did not account for more recent changes in South Carolina statutory law that explicitly acknowledge that animals provide companionship, reassurance, and emotional support to their owners. South Carolina’s legislature defined the term “Emotional Support Animal” as “an animal intended to provide companionship and reassurance.” S.C. Code Ann. § 47-3-920(6) (Supp. 2019). Although Layla’s Law, S.C. Code Ann. § 47-3-910 et seq., focuses primarily on Guide dogs and Service Animals, our State Legislature has explicitly 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).

Because the Circuit Court based its decision on caselaw that is not determinative to the legal issue at hand, is unpublished with no precedential value, and is not consistent with current nationwide trends and South Carolina legislation supporting a pet owner’s recovery of emotional

damages resulting from the loss of a pet, the Circuit Court erred as a matter of law in granting Defendants' motion for summary judgment. Therefore, the Circuit Court's decision should be reversed and the issue of emotional damages in the present case allowed to proceed to a jury.

**B. The Circuit Court Erred In Granting Summary Judgment Because Public Policy Supports Deterrence Of Future Bad Acts And Fair Compensation For Pet Owners That Suffer Emotional Distress, Mental Anguish, and Anxiety In Connection With The Loss Of A Pet.**

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Allowing a pet owner to recover damages for emotional distress, mental anguish, and anxiety suffered as a result of a pet's death caused by the negligence, gross negligence, willful, wanton, or reckless conduct of a defendant serves two equally important causes: (1) it deters future bad acts against pets by incentivizing entities and individuals to proactively take steps to exercise due care around pets, and (2) it allows a pet owner to be fairly compensated for emotional distress, mental anguish, and anxiety actually suffered from the loss of a pet.

From a public policy standpoint, it is not desirable for entities or individuals in our State to kill people's pets through negligent, grossly negligent, willful, wanton, or reckless acts. However, entities and individuals will not be incentivized to proactively take steps to exercise due care around people's pets if the recovery for the loss of a pet is limited to the pet's fair market value, which is often very low, or in the case of homeless pets adopted from shelters, potentially nothing. Moreover, pet owners will have difficulty finding legal representation in connection with the loss of a pet if recovery is limited to a pet's market value, which means bad conduct that harms pets will often go unchallenged. This Court should find that public policy supports allowing a pet owner to recover emotional damages for the loss of a pet because it will incentivize entities and individuals to exercise due care around pets, thereby deterring future bad acts.

Additionally, this Court should find that a pet owner should be fairly compensated for the emotional distress, mental anguish, and anxiety actually suffered in connection with a pet's death when caused by a defendant's bad acts. A pet's market value is not representative of the emotional


loss a person may suffer upon the death of man's best friend. *La Porte*, 163 So. 2d at 269 (“[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 . . . .”); *Bueckner*, 886 S.W.2d at 374 (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.”). 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.

## VI. CONCLUSION

For the foregoing reasons, the Appellant respectfully requests this Court to reverse the Order of the Circuit Court granting Defendant’s Motion for Summary Judgment.

Respectfully submitted,

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