

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Feb 01 2023
SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2019-001722

Bridgett Fowler Appellant

v.

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

APPELLANT’S PETITION FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Appellant Bridgett Fowler requests rehearing of the Court’s unpublished opinion filed January 18, 2023, affirming the trial court’s grant of summary judgment in favor of FedEx Ground Package System, Inc. (“FedEx”) and James K. Ard d/b/a JMK Logistics Corporation (“JMK”) (collectively “Defendants”) regarding damages for pain and suffering. *See Fowler v. FedEx Ground Package System, Inc.*, Op. No. 2023-UP-020 (S.C. Ct. App. Jan. 18, 2023). Appellant believes the Court has overlooked certain points raised in her appeal.

As an initial matter, the Court’s unpublished opinion fails to recognize that this matter presents a novel issue of law: whether a pet owner may recover emotional damages for the loss of a pet due to the reckless, wanton, and grossly negligent conduct of another. In its ruling, the Court

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court properly relied on a 124-year-old criminal case, *State v. Langford*, 55 S.C. 322, 33 S.E. 370 (1899), and an unpublished appellate opinion, *Bales v. Judelsohn*, No. 2005-UP-509, 2005 S.C. App.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. 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.").

Although the Court found that the *Bales* opinion was properly relied upon by the trial court as persuasive authority, the opinion has no precedential value. In finding the trial court "properly examined the law in arriving at its conclusion," the Court 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" 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; therefore, the trial court's reliance on *Langford* and *Bales* to reach its decision was incorrect. The Court failed to make this distinction in its unpublished opinion affirming the trial court, and therefore, this case should be reheard with those considerations in mind.

Additionally, the Court fails to acknowledge its opportunity to establish the law on this matter in the absence of existing precedential caselaw or acts of Legislature regarding recovery of

noneconomic damages for pet owners. In affirming the trial court’s decision, the Court states that public policy “do[es] not warrant intervention by this court in the absence of legislative action.” In support of its decision, the Court cites *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.” What the Court fails to recognize, however, is that the Court is precisely in the position to state the law regarding the award of noneconomic damages for the loss of a pet. The State Legislature has been silent as to the 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, and it is precisely the Legislature’s silence on this matter that permits this Court to rule on this issue. The damages available to pet owners in negligence actions have been created and limited by the courts, and therefore, it is well within this Court’s prerogative to define and expand these limits. Rather than seizing this opportunity, though, the Court affirmed the trial court’s grant of summary judgment to Defendants in an unpublished opinion that carries no precedential value.

The Supreme Court of South Carolina 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. Moreover, when the reason for a declared public policy no longer exists, [the court] should not hesitate to abolish it and the rules which are supported by the policy.” *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)). In its unpublished opinion, the Court fails to recognize the shift in a companion animal’s status in modern society, which is starkly different than that of companion animals when *Langford* was decided. Indeed, companion animals have been afforded greater legal protection even since this Court decided *Bales*. Moreover, the *Bales* opinion was based on the law established in “a

limited number of cases decided throughout the United States” and did not account for the more recent societal changes toward companion animals or changes in South Carolina legislation acknowledging 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). Recently, our State Legislature 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).

It is axiomatic that the public policy of South Carolina dictates that persons should be made whole for injuries they incur resulting from another’s negligence. Moreover, 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’s decision does not consider 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. Instead, the Court’s unpublished opinion leaves individuals and entities with little incentive to exercise due care around other people’s pets and denies pet owners the opportunity to be adequately compensated for their loss. Indeed, the Court’s decision declines to compensate pet owners for their emotional distress resulting from the loss of a pet due to another’s negligence, which simply ignores the owner’s pain and suffering and leaves her only minimally rehabilitated. To accomplish this key tenet of tort law, emotional damages should be awarded to pet owners for the loss of their pets, especially in cases with facts as egregious as those in Appellant’s case. The Court seems to overlook the consequences of its decision and its practical effect on pet owners; accordingly, the Court should rehear Appellant’s case.

CONCLUSION

The Court's Unpublished Opinion in this case gives little consideration to the applicability of caselaw relied upon by the trial court and the effect of the Court's judgment in furthering public policy and accomplishing a major tenet of tort law: enabling full recovery of injuries arising out of loss by the hands of another. Without remedy, pet owners will be prejudiced in collecting adequate damages resulting from the loss of a pet due to another's wanton, reckless, and grossly negligent conduct. Likewise, entities will not be adequately deterred from behavior that will result in such a loss. For these and all other reasons put forth above by Appellant, the Court should rehear this case.

Respectfully submitted,

TURNER & CAUDELL, LLC

By: _____

Tyler R. Turner, S.C. Bar No. 78447

Mary Allison Caudell, S.C. Bar No. 101187

tturner@turnercaudell.com

macaudell@turnercaudell.com

914 Richland Street, Suite A-101

Columbia, South Carolina 29201

(803) 828-9708

Attorneys for Appellant Bridgett Fowler

Other Counsel of Record:

Dominic Starr, Esq., S.C. Bar No. 66231

dominic.starr@mgclaw.com

(843) 848-6001

Abby Edwards Saunders, Esq., S.C. Bar No. 17234

abby.saunders@mgclaw.com

(843) 848-6031

McAngus Goudelock & Courie

2411 North Oak Street, Suite 401

Myrtle Beach, SC 29577-3173

Attorneys for Respondents

February 1, 2023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Feb 01 2023
SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2019-001722

Bridgett Fowler Appellant

v.

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

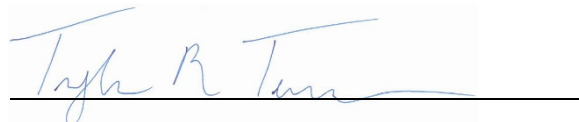
PROOF OF SERVICE

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 Appellant's Petition for Rehearing in the above-captioned matter by electronic mail on February 1, 2023 to the below-named parties at their address of record:

Dominic Starr, Esq., S.C. Bar No. 66231
dominic.starr@mgclaw.com
Abby Edwards Saunders, Esq., S.C. Bar No. 17234
abby.saunders@mgclaw.com
McAngus Goudelock & Courie
2411 North Oak Street, Suite 401
Myrtle Beach, SC 29577-3173

TURNER & CAUDELL, LLC

By: _____



Tyler R. Turner, S.C. Bar No. 78447
Mary Allison Caudell, S.C. Bar No. 101187

tturner@turnercaudell.com
macaudell@turnercaudell.com

914 Richland Street, Suite A-101
Columbia, South Carolina 29201
(803) 828-9708

Attorneys for Appellant Bridgett Fowler

Columbia, South Carolina
February 1, 2023



914 RICHLAND STREET / SUITE A-101
COLUMBIA, SC 29201
T 803.828.9708

TURNERCAUDELL.COM

February 1, 2023

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

Feb 01 2023

SC Court of Appeals

Re: Bridgett Fowler v. FedEx Ground Package System, Inc. and James K. Ard
d/b/a JMK Logistics Corporation
Appellate Case No. 2019-001722

Dear Ms. Kitchings:

Our firm represents Appellant Bridgett Fowler in the above-referenced matter. Enclosed for filing please find Appellant's Petition for Rehearing. By copy of this letter, we are today serving a copy of Appellant's Petition for Rehearing on counsel for Respondent. A check for the required filing fee will be placed in today's mail.

With kind regards, I am

Sincerely yours,

A handwritten signature in blue ink that reads 'Tyler R. Turner'.

Tyler R. Turner

tturner@turnercaudell.com

/slw

Enclosure

c : Dominic Starr, Esq. (w/enclos.)
Abby Sauders, Esq. (w/enclos.)
Mary Allison Caudell, Esq. (w/o enclos.)