

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM HORRY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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Unpublished Opinion No. 2023-UP-020 (S.C. Ct.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.

**PETITIONER'S REPLY TO RESPONDENTS'
OPPOSITION FOR A WRIT OF CERTIORARI**

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May 8, 2023

The Petitioner, Bridgett Fowler, by and through her undersigned counsel, respectfully submits this Reply in support of her Petition for Writ of Certiorari.

LEGAL ARGUMENT

A. The Petition Involves Important Issues Related to Recoverable Damages That Are Appropriate For This Court's Consideration and Opinion.

Respondents argue that three cases decided in 1899 definitively determined the issue currently on appeal: whether a pet owner may recover noneconomic damages for the death of a companion animal due to another's grossly negligent and reckless conduct. The cases cited by Respondents, however, do not speak directly to this issue. Rather, *State v. Langford*, 55 S.C. 322, 33 S.E. 370 (1899), and *Salley v. Manchester & Augusta R.R. Co.*, 54 S.C. 481, 32 S.E. 526 (1899), merely establish that dogs do, in fact, have value for which a person can be either charged criminally with larceny for stealing or recover damages for the loss of in a civil action, respectively. The third 1899 case cited by Respondents, *Richardson v. Florida Cent. & Peninsula R.R. Co.*, 55 S.C. 334, 33 S.E. 466 (1899), does not address the issue of damages as the court granted a nonsuit for failure to present evidence of negligence against the railroad company defendant. *Id.* (holding that "the plaintiff had failed to establish any negligence which could render the railroad defendant liable in damages to the plaintiff"). Despite Respondents' arguments to the contrary, these three 124-year-old cases hardly definitively address, let alone, settle the law on damages recoverable to a pet owner for the loss of their pet resulting from another's grossly negligent and reckless conduct.

In the 124 years since these cases were decided, neither this Court nor the South Carolina Court of Appeals have issued a binding opinion on the damages available to a pet owner for the loss of the animal due to another's negligent conduct. Instead, the Court of Appeals has issued two unpublished opinions on the matter: *Bales v. Judelsohn* and the matter presently before this Court. Moreover, the South Carolina Legislature has remained silent on this issue, establishing no statutes that either grant or deny pet owners the ability to recover noneconomic damages in cases such as

Petitioner's. The Legislature has, however, enacted other statutes that signal a recognition that companion animals are distinct from and should receive greater consideration than inanimate personal property. *See, e.g.*, S.C. Code Ann. § 47-3-920(6) (Supp. 2019) (defining an “emotional support animal” as “an animal intended to provide companionship and reassurance”); S.C. Code Ann. § 20-4-60(C)(8) (1976, as amended) (stating that an order of protection issued in a domestic abuse case may also “prohibit harm or harassment . . . against any pet animal owned, possessed, kept or held [by persons protected in the order] . . .”). While it is understandable that the Court generally prefers to act with restraint in reaching decisions that may be within the purview of the Legislature, this particular unresolved issue addresses matters historically decided by the Court, rather than the Legislature. For this reason, it is well within this Honorable Court's discretion to issue an opinion directly addressing this unresolved issue. After 124 years, the issue of whether an owner of a companion animal may recover noneconomic damages resulting from the loss of the animal due to another's grossly negligent and reckless conduct is prime for consideration by this Court.

B. This Court Should Issue The Writ Of Certiorari And Allow The Recovery Of Noneconomic Damages To Better Compensate Those Aggrieved And To More Adequately Deter The Bad Acts Of Others.

Two of the primary goals of tort law are to deter bad acts or omissions to prevent harm from occurring and to adequately compensate an individual when she is harmed. *See Sapp v. Motor Ford Co.*, 386 S.C. 143, 147, 687 S.E.2d 47, 49 (2009) (“Tort law . . . seeks to protect safety interests and is rooted in the concept of protecting society as a whole from physical harm to person or property.”); *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375–76 (2005) (citing *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000)) (“The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he was in before the wrongful injury occurred.”). Permitting the owner of a companion animal to recover only the fair market value of the animal when a companion animal is killed or injured due to the

gross negligence and recklessness of another fails to accomplish either of these important goals. For instance, if the fair market value of a companion animal is based on the purchase price of the animal, then those individuals who adopt animals from municipal animal shelters for a nominal fee—at times, less than Ten Dollars—or those who rescue stray animals, build significant personal bonds with them, and care for them for years would be entitled to essentially no recovery. Certainly, such an unjust result is not supported by the public policy underlying tort law.

Respondents' argument that the threat of noneconomic damages as a means of encouraging others to exercise reasonable care around others' animals is "unsupported by any South Carolina case or statutory provision" fails to recognize the practical effects of tort law and emphasizes Petitioner's argument that this issue is ripe for a published opinion by this Honorable Court to establish the law once and for all. Certainly, a corporation whose business is to drive large vehicles to peoples' homes to deliver a good or service—of which there are numerous such corporations in modern society—would be more inclined to invest in thorough training for its drivers on the need to exercise appropriate caution when approaching an individual's home if the consequences of not doing so were larger than the fair market value of any particular animal. With an increasing use of home-delivery services in modern society, this issue is, perhaps, more relevant today than it has been in the past, with incidents similar to Petitioner's occurring more frequently.¹

Respondents' argument that allowing pet owners to recover noneconomic damages would be too difficult to quantify is without merit. South Carolina courts entrust jurors to determine the appropriate amount of noneconomic damages to be awarded to an injured individual regularly in other civil matters. The burden on a jury to quantify the appropriate amount of damages based on the evidence submitted in Petitioner's case, and others like hers, would be no different than that

¹ Petitioner's counsel has been contacted by several other South Carolina attorneys handling similar cases and that are following this appeal closely. Additionally, the issues in this appeal were the subject of an article published in S.C. LAWYER prior to the Court of Appeals issuing its unpublished opinion. Elle Klein, *A Short Leash: Measuring Damages for Tortious Injury to Companion Animals*, S.C. LAWYER, Nov. 2021, at 23.

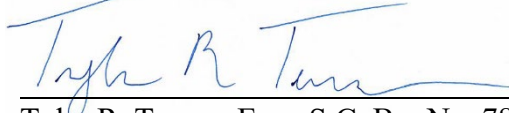
placed on the jury in other cases where noneconomic damages are available. Likewise, Respondents' argument that allowing a pet owner to recover noneconomic damages for the death or injury to an animal because of another's grossly negligent or reckless conduct would cause "the door [to] swing wide-open" to all manner of civil actions requesting noneconomic damages for damage to inanimate personal property, such as furniture and family heirlooms, is nothing more than hyperbole. While judicial economy is certainly a valid consideration, it is unlikely that an opinion favoring Petitioner is likely to so overwhelm the courts that justice cannot be efficiently served. *See* Toby J. Stern, *Federal Judges and Fearing the Floodgates of Litigation*, 6 U. PA. J. CONST. L. 377, 403–04 (2003) (examining the use of "floodgates" arguments in federal cases and discussing that a deluge of litigation rarely comes to fruition when an opinion warns of such occurrence). An opinion in Petitioner's favor is, however, likely to advance the underlying tenets of tort law by (1) incentivizing large corporations to invest in training or other measures for their employees so as to avoid increased potential for liability due to their employees' grossly negligent and reckless acts and omissions and (2) appropriately compensating pet owners for the loss of their companion animals as a result of the grossly negligent and reckless acts and omissions of others. For these important reasons, this Court should grant Petitioner's writ and definitively declare the damages available to a pet owner for the loss of their companion animal resulting from the grossly negligent or reckless acts and omissions of another.

CONCLUSION

For the reasons stated above as well as the arguments and authorities asserted in the original Petition, this Court should grant the Petition, issue a writ of certiorari to the Court of Appeals, and review the issue on appeal.

Respectfully submitted,

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