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SC Court of Appeals

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October 10, 2024

VIA U.S. MAIL AND EMAIL

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: *Rock v. Dog Daze of Charleston, LLC, et al.*
Appellate Case No. 2024-001363
Receipt of Transcript

Dear Hon. Jenny Abbott Kitchings,

Enclosed are communications with Kevin Dehlinger, the court reporter responsible for preparing the transcript of the hearing at issue in this appeal. Mr. Dehlinger responded to our request for a transcript on September 5, 2024, and provided the transcript on October 3, 2024. We understand Appellant's initial brief is due 30 days following delivery of the transcript, making the deadline for filing Appellant's Initial Brief fall on November 3, 2024. If this is incorrect, please let us know.

Regards,

Elliotte Quinn
equinn@steinberglawfirm.com
843-720-2800

Enclosures:

1. Email correspondence with Kevin Dehlinger
2. Transcript of hearing on Defendants' Motion for Partial Summary Judgment

Cc: (via U.S. mail and e-mail)

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*Attorneys for Respondents Dog Daze of Charleston, LLC
and Charlie Freeman*

Monica Correa

From: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>
Sent: Thursday, September 5, 2024 11:25 AM
To: Elliotte Quinn; Monica Correa
Cc: Transcripts
Subject: Rock v Dog Daze Transcript

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Thank you,



Kevin Dehlinger
Director of Operations

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Monica Correa

From: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>
Sent: Thursday, October 3, 2024 10:46 AM
To: Elliotte Quinn; Monica Correa
Subject: RE: Rock v Dog Daze Transcript
Attachments: Sarah Rock vs Dog Daze of Charleston, LLC_ Charlie Freeman 4-16-24 Transcript.pdf; Invoice 104390.pdf

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Elliotte,

Attached are the transcript and invoice for the above referenced matter. There were some rough spots in the audio. If you have any questions after the review of the transcript or would like for us to take another listen to specific areas, please let us know. We would be happy to revisit any concerns. Thank you.



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From: Elliotte Quinn <equinn@steinberglawfirm.com>
Sent: Thursday, September 5, 2024 11:27 AM
To: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>; Monica Correa <mcorrea@steinberglawfirm.com>
Cc: Transcripts <transcripts@sccourts.org>
Subject: RE: Rock v Dog Daze Transcript

Kevin,

We authorize and please proceed.

Elliotte Quinn



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Cc: Transcripts <transcripts@sccourts.org>

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Thank you,



Kevin Dehlinger

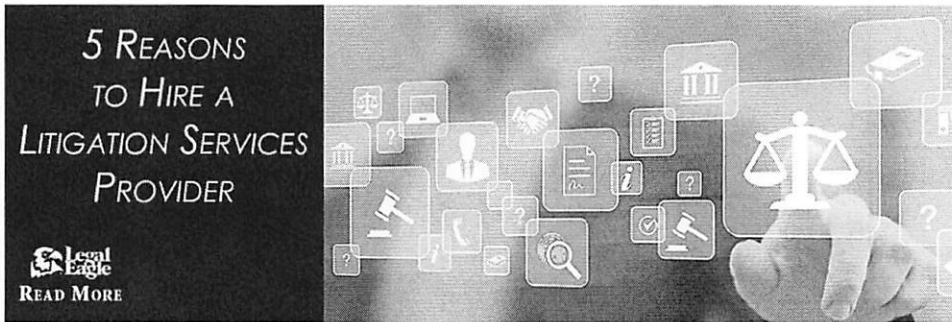
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1 STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT 9
2 COUNTY OF CHARLESTON) COURT C.A NO. 2022-CP-10-05585

3

4 Sarah Rock)

5 Plaintiff,)

6 Versus)

7 Dog Daze of Charleston, LLC;)

8 Charlie Freeman)

9 Defendant.)

10

11 H E A R I N G

12

13 DATE: April 16, 2024

14

15 LOCATION: South Carolina Circuit Court 9

16

17 JUDGE: George M. McFadden

18

19 TRANSCRIBED BY: ERIN REILLY

20

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Certificate of Transcriber 13

EXHIBITS

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

PROCEEDINGS

1
2 THE COURT: I have read the motion last night and
3 I'll hear from you. It's unlikely you'll get it through, you
4 strike from this bench though from there. Okay?

5 MR. COBB: The issue about -- David Cobb on behalf of
6 Dog Daze of Charleston LLC and Mr. Freeman on the Defense. The
7 case and obviously lost [indiscernible] to the Plaintiff for
8 what happened [indiscernible], what happened. The Motion to
9 Consider for whether or not the Plaintiff is making a claim for
10 emotional distress after the Jennifer versus [indiscernible].
11 And there are a couple cases that are cited in the motion that
12 are admittedly unpublished opinions, but there's also reference
13 in the cases that you can look to other things to supplement
14 what is in those unpublished opinions.

15 Clearly, the unpublished opinions said that as a matter of
16 policy in this state, your pet is treated as if it were
17 furniture, chair, child whatever. So, the issue here though is
18 whether or not there's -- the best way I can describe the claim
19 is if a person had an animal and that animal was accompanied by
20 a child and they were somewhere for both the child and the
21 animal were injured and the owner/carrier was not present.

22 The parent could not recover from the injury of the child
23 under the Kinard v. Augusta Sash, because that's the case that
24 sets forth the claim for negligence infliction of emotional

1 distress.

2 And for whatever reason, our courts have said that
3 that is a very limited recovery, that is the elements of very
4 specific where you have to have some bad relationship with the
5 injured person. You have to be in the zone of danger and you
6 have to actually contemporaneously perceive the event.

7 And so, if the owner would not be able to recover for
8 injuries for -- you know, God forbid the death of a child.
9 That same owner, that same parent, that same owner should not
10 under South Carolina law be allowed to recover those damages
11 for the injury or the death to the pet. I think that's very
12 clear, that's the basis of the motion. We understand that this
13 has been a very traumatic situation for Ms. Rock, but the way
14 the law is written now, you know, and the other thing about it
15 is too is that if there is going to be a -- of this case. That
16 this is a case that the appellate courts, if there's going to
17 be one needs to make their ultimate ruling.

18 Because one of the issues that floats out there too
19 is that are you going to have prospective application of the
20 new rule or are you going to have retroactive applications of
21 the new rule? Either, does it apply to this case or does it
22 only apply cases to come back? Those are also issues that have
23 to be decided on appeal, but as the case law stands now under
24 the counter brief Augusta Sash's case, she doesn't need any of
25 these elements to recover if in fact, unfortunately, this is

1 her child. So therefore, it's a pretty easy comparison to say
2 she also cannot claim these -- recover under this cause of
3 action for parents. Thank you.

4 THE COURT: Yes, sir. Can I have a reply --
5 response?

6 MR. QUINN: Your Honor, Elliotte Quin for the
7 Plaintiff here. I want to address a couple of points that Mr.
8 Cobb raised. I know you've indicated that you have looked at
9 the materials. In fact, I have a binder of our memo and I'm
10 happy to bring that up if you would like to. But one thing
11 that I want to make sure that you caught because we had to file
12 it separately as we filed an affidavit in support, but the
13 system won't allow us to file that in exhibit but it is
14 included in that binder.

15 Turning to what Mr. Cobb mentioned I think first, Your
16 Honor, we don't dispute that that's our property, I don't see
17 how they could be anything else. We agree that they're our
18 property, the issue is we can attest what did the law allow
19 going to recover for the death, injury of that property.

20 Your Honor, the child analogy that Mr. Cobb says,
21 it's an interesting analogy but I don't think it's on point.
22 The problem there would be that the child can recover for
23 themselves. If the child is injured, the child can bring a
24 claim whether it's through a guardian or whatever other means
25 but can recover. If my pet is injured, I as the owner I'm the

1 only one that can bring the claim. And Mr. Cobb has indicated
2 that this is just emotional distress.

3 As we lay out in the brief, Your Honor, I'd suggest
4 that the Court across the country have looked at this in two
5 different ways to allow Plaintiffs to recover more than just
6 [indiscernible]. I guess let me start with -- as we lay out in
7 the brief. In South Carolina this law -- the law in this issue
8 is unresolved. We have two unpublished, unprecedential, Court
9 of Appeals opinions and then some older case law from 1899 that
10 only addresses whether a pet is property, doesn't address the
11 value issue.

12 The Court is in other jurisdictions, some have said you
13 can recover for emotional distress. You have either emotional
14 distress cause of action or a recoverable emotional distress
15 damages. Other courts have kind of looked at the flip side of
16 it and said, well, your pet is property and it's not property
17 that can just be replaced by going and getting a new one.

18 My dog Fritz at home is not replaceable by just going
19 and getting a new German Shepherd puppy. They aren't one and
20 the same. Each of them provides me with an emotional
21 attachment, an emotional connection that is unique to that
22 individual. And so, the courts have said, when you have that
23 kind of property, you get the actual value to the owner. What
24 is the value to the owner, including loss of companionship,
25 loss of emotional support, loss of attachment?

1 So, I see that as being the other side of the coin of
2 emotional distress. If I lose the companionship, I lose the
3 emotional support. Evidence of that is my emotional distress
4 due to that loss. So, that's the other way of viewing it, Your
5 Honor. So, in general, Your Honor, it is unresolved law in
6 South Carolina as to what the recoverable damages are.

7 We would suggest and we have provided both court
8 decisions from outside of South Carolina as well as affidavit
9 of a sociologist expert, that the role of pets in society has
10 developed over the past decade or over the past hundreds of
11 years. They're no longer just wild beast in the yard that
12 protect us from robbers.

13 They're now members of our family and our sociologist
14 experts says that is broadly accepted across American society.
15 If the common law is going to track changes in society like
16 it's supposed to, it should track that change. And a pet
17 should be treated as property that has a value that is more
18 like a family bible or family pictures. An heirloom, unique
19 value, not replaceable by a substitute unlike your car or your
20 boat that you could just go buy a new one. Thank you, Your
21 Honor.

22 MR. COBB: If I get -- I want to point from the law -
23 - South Carolina law towards Fifth edition. Professor Harper
24 and Professor Felix, I'll start on Page 43. Dealing with this
25 topic it says, "In contrast where mental trauma does not result

1 from a physical trauma, limits are necessary. Given the
2 variety of situations where mental distress has been caught by
3 negligence. It's hard to state precisely reporting concerning
4 these limits." The third example they used is the Agatha Sash's
5 case where it says third, that's on Page 44.

6 "In order to avoid the problem of disproportionate
7 liability arising cases, where mental trauma results from
8 witnessing an injury or from responding emotionally to a
9 physical injury to a friend or relative. The Courts generally
10 deny recovery for such indirect emotional trauma, except very
11 narrowly limited situations." In South Carolina, such indirect
12 emotional distress only recoverable Number 1, under Kinard
13 versus Augusta Sash & Door, which provides a limited right of
14 bystander recovery for emotional distress from witnessing the
15 death of serious injury of a close relative."

16 It also talks about -- the record talks about lawful
17 consortium, wrongful death, special situations which shall
18 apply. So, it goes back to the point of the Plaintiff is
19 chasing in the Bahamas when the incident happened here in
20 Charleston, so she did not see the event.

21 Under Kinard, she does not recover under a negligent
22 infliction of emotional distress theory if that was allowed,
23 because whether it's her -- you know, it's not -- the case
24 doesn't apply to animals but if it was a human being she can't
25 recover from that theory and that's the only viable theory that

1 she can push for her emotional distress Plaintiff, because she
2 did not get injured herself nor did she perceive the event.

3 Mr. Freeman provided, I'm not sure if it's part of
4 the record that you've been provided, but after this happened,
5 he mainly contacts her. He paid for her to come back to
6 Charleston to pay for [indiscernible]. He provided a full,
7 about \$3,000 in reimbursements to her about 1800 that is for
8 her direct expense. The other \$1,200 is for just general,
9 sorry, this happened kind of thing.

10 So, this is not a situation and where she has been
11 hung out to dry. With regards to what she can claim at trial,
12 she can claim, you know, the value of the animal and that --
13 I'm sure that would be at some point some bone of contention.
14 You know, again, not trying to in anyway be disrespectful to
15 her, but the testimony was both of these animals were rescued
16 animals, she paid I think \$200 for one then \$175 for the other
17 one. But, again, I'm not in any way saying that's bad to these
18 animal, but nevertheless that's extorting them. And the only
19 thing this motion is that she can claim whatever she wants to
20 claim regarding the value of the animals or those types of
21 things just left on that day.

22 It's just simply the issue of and she recovered for
23 her mental trauma from what happened and the case law was very
24 clear both on the unpolished opinions, which were then also
25 supported by -- I mean, the unpublished opinions are spot on.

1 I mean, I don't know if you've had a chance to read the
2 unpolished opinions, but one of them has been from last year,
3 2023. And it's spot on and says, "Unfortunately, the owner of
4 the animal is not allowed to recover for emotional distress or
5 trauma from the death of the animal."

6 That's -- while those were in public, they're based
7 off of a reading of the Kinard v. Augusta Sash case based on
8 the motion for -- thank you.

9 THE COURT: Those unpublished opinions have been
10 here?

11 MR. COBB: They were part of Defendants motion; they
12 were here so I do have it.

13 MR. QUINN: You have them in the record, Your Honor.

14 MR. COBB: It's I -- it's all live, I think it was
15 filed, Your Honor.

16 THE COURT: Okay. Yeah, I was completely
17 [indiscernible] with Plaintiff's statement. I think they have
18 no value but [indiscernible] read anyway [indiscernible] since
19 you mentioned Augusta Sash kind and I want to have the People's
20 case. I was his law clerk soon after that, he was quite proud
21 of that case.

22 MR. COBB: Sure. How long was this?

23 THE COURT: All right. You know, I'm going all
24 [indiscernible] this in a few days. Number 1, I've got a hard
25 duck ahead this week. So, any deep diving I do of any ruling

1 | will be probably next week or over the weekend. So, deep dig
2 | into this. So, be patient as you have been and I appreciate
3 | it. Thanks so much.

4 | MR. QUINN: Thank you, Your Honor.

5 | THE COURT: If I have a further question, I will
6 | email it to both sides, I think.

7 | MR. COBB: Thank you, Judge.

8 | [END OF HEARING]

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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 1st, 2024

ERIN REILLY

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Frederick Elliotte Quinn, Esq

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