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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2024-001363

Sarah Rock,

Appellant,

v.

Dog Daze of Charleston,
LLC and Charlie Freeman,

Respondents.

INITIAL BRIEF OF APPELLANT

F. Elliott Quinn IV
Michael J. Jordan
The Steinberg Law Firm, LLC
61 Broad Street
Charleston, SC 29401
(843) 720-2800
equinn@steinberglawfirm.com
mjordan@steinberglawfirm.com

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

Table of Authorities	iii
Statement of the Case	2
Statement of Facts	2
Standard of Review	4
Argument	4
I. South Carolina Law Has Not Yet Addressed Whether and Should Provide as a Matter of Common Law that a Dog Owner Can Recover Emotional Distress Damages Caused by the Negligent Killing or Injury of the Owner’s Dog, and the Circuit Court Erred in Holding Otherwise	4
A. South Carolina Law Has Not Yet Addressed the Damages Recoverable When a Pet Dog is Tortiously Harmed	5
B. South Carolina Common Law Supports and Should Permit the Recovery of Emotional Distress Damages.	7
II. Even Were Emotional Distress Damages Not Independently Recoverable, the Circuit Court Erred in Not Permitting Appellant to Proceed on Claims for Emotional Distress Damages as Part of the Loss of the Companionship and Emotional Support Value of Her Dogs	16
Conclusion	19

TABLE OF AUTHORITIES

CASES

Altman v. City of High Point, 330 F.3d 194 (4th Cir. 2003).....13

Anzalone v. Kragness, 826 N.E.2d 472 (Ill. Ct. App. 2005).....17

Bales v. Judelsohn, Op. No. 2005-UP-509, 2005 WL 7084365 (S.C. Ct. App. filed Aug. 30, 2005)6, 7

Brousseau v. Rosenthal, 443 N.Y.S.2d 285 (N.Y. Civ. Ct. 1980).....17

Campbell v. Animal Quarantine Station, 632 P.2d 1066 (Haw. 1981)8

City of Garland v. White, 368 S.W.2d 12 (Tex. Civ. App. 1963).....8

Coleman v. Levkoff, 128 S.C. 487, 122 S.E. 875 (1924)6

Fowler v. Fedex Ground Package Sys., Inc., Op. No. 2023-UP-020, 2023 WL 234557 (S.C. Ct. App. filed Jan. 18, 2023).....5, 7, 10

Freedden v. Stride, 525 P.2d 166 (Or. 1974).....8

Henning v. Nicklow, No. 1:08-cv-180, 2009 WL 2642739 (N.D. Ind. Oct. 30, 2009).....8

Hossenlopp v. Cannon, 285 S.C. 367, 329 S.E.2d 438 (1985).....11

Jankoski v. Preiser Animal Hosp., Ltd., 510 N.E.2d 1084 (Ill App. Ct. 1987)18

Knowles Animal Hosp., Inc. v. Wills, 360 So. 2d 37 (Fla. Dist. Ct. App. 1978)8

Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 443 S.E.2d 392 (1994).....4

Linceum v. Smith, 287 So. 2d 625 (La. Ct. App. 1973)8

Marcum v. Bowden, 372 S.C. 452, 643 S.E.2d 85 (2007)10, 11

Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 616 S.E.2d 722 (Ct. App. 2005)4

Moreno v. Hughes, 157 F. Supp. 3d 687 (E.D. Mich. 2016).....8

Morgan v. Kroupa, 702 A.2d 630 (Vt. 1997)13

Nelson v. Coleman, 249 S.C. 652, 155 S.E.2d 917 (1967).....15, 16

Russo v. Sutton, 310 S.C. 200, 422 S.E.2d 750 (1992).....10, 11

Salley v. Manchester A.R. Co., 54 S.C. 481, 32 S.E. 526 (1899)9

Shaffer v. Honeywell, Inc., 249 N.W.2d 251 (S.D. 1976).....17

Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993)10

S. Express Co. v. Owens, 41 So. 752 (Ala. 1906).....17

<i>State v. Horne</i> , 282 S.C. 444, 319 S.E.2d 703 (1984)	10
<i>State v. Langford</i> , 55 S.C. 322, 33 S.E. 370 (1899).....	6, 9, 10
<i>Stone v. Thompson</i> , 428 SC. 79, 833 S.E.2d 266 (2019)	10

STATUTES

S.C. Code Ann. § 47-3-20.....	12
S.C. Code Ann. § 47-3-55.....	12
S.C. Code Ann. § 47-3-60.....	12
S.C. Code Ann. § 47-3-530.....	12

OTHER AUTHORITIES

Margit Livingston, <i>The Calculus of Animal Valuation: Crafting a Viable Remedy</i> , 82 Neb. L. Rev. 784 (2004).....	9
Sonia S. Waisman & Barbara R. Newell, <i>Recovery of ‘Non-Economic Damages’ for Wrongful Killing or Injury of Companion Animals</i> , 7 Animal L. 45 (2001)	13
Victor E. Schwartz, <i>et al.</i> , Prosser, Wade and Schwartz’s Torts (11th ed. 2005)	17

STATEMENT OF ISSUES

- I. Did the Circuit Court err in granting summary judgment on the basis that South Carolina law does not permit a dog owner to recover emotional distress damages caused by the tortious loss of or harm to a dog?

- II. Did the Circuit Court err in granting summary judgment on the basis that South Carolina law does not permit a dog owner to recover emotional distress damages caused by the tortious loss of or harm to a dog?

STATEMENT OF THE CASE

Appellant filed this action in the Charleston County Court of Common Pleas on December 5, 2022. Respondents moved for partial summary judgment on July 10, 2023. A hearing on Respondents' motion for summary judgment was held before the Honorable Circuit Court Judge George M. McFaddin, Jr. on April 16, 2024. The Circuit Court granted partial summary judgment for Respondents on May 28, 2024. On June 6, 2024, Appellant moved for reconsideration of the Circuit Court's May 28 Order granting summary judgment. The Circuit Court denied Appellant's motion for reconsideration on July 19, 2024. On August 14, 2024, Appellant filed a stipulation as to the damages claimed in this action, stipulating that her claims are limited to those damages for which partial summary judgment was granted for Respondents. On August 16, 2024, Appellant filed her Notice of Appeal.

STATEMENT OF FACTS

Appellant owned two dogs—Xumi and Ruben—which she regularly boarded at the dog boarding facility owned and operated by Respondents Dog Daze of Charleston, LLC and Charlie Freeman. Mem. in Oppn., Ex. A. 40:3–41:20 & Ex. B 8:18–9:18, 24:16–25:5; Compl. ¶¶4–14; Ans. ¶¶5 & 8. Xumi was an approximately twelve pound miniature poodle and Schnauzer mix. Mem. in Oppn., Ex. A 24:14–20; Compl. ¶10. Ruben was an approximately sixteen pound miniature pinscher and Shih Tzu mix. Mem. in Oppn., Ex. A 8:8–10; Compl. ¶10. Xumi and Ruben were incredibly valuable to Appellant and were like her family members, providing her with companionship, emotional support, and affection. Mem. in Oppn., Ex. A 41:21–42:24.

On July 14, 2022, while Xumi and Ruben were boarded at Respondents' facility while Appellant traveled for work, Respondents' German Shepherd dog got into the area where Xumi and Ruben were located, attacked and killed Xumi, and wounded Ruben. Mem. in Oppn., Ex. A

32:9–33:8 & Ds.’ Ex. 9; Ex. B 19:12–20:4 & 38:23–54:20 & P.’s Ex. 2; Compl. ¶¶13–27; Ans. ¶¶10–12. Respondents’ German Shepherd was able to access and attack Xumi and Ruben because Respondents negligently failed to secure the German Shepherd and negligently failed to observe, monitor, and ensure the safe care of Xumi, Ruben, and the German Shepherd. Mem. in Oppn., Ex. B 29:3–30:24, 39:3–43:8; Compl. ¶¶18–22.

The loss of Xumi and injury to Ruben caused Appellant to suffer significant emotional distress, anguish, pain, suffering, depression, anxiety, trauma, loss of companionship, and loss of emotional support.¹ Mem. in Oppn., Ex. A 35:14–39:4; Compl. ¶¶31–37. Appellant filed this action seeking “an award of the actual value of Xumi including her sentimental value and the loss of her companionship,” “an award of the diminution in the actual value of Ruben including his sentimental value and the loss of his companionship,” and “an award for her grief, anxiety, and emotional pain and distress damages.” Compl. ¶¶43–45, 55–57, & 68–70. Appellant stipulated that “the damages she claims in this action are limited to claims for her emotional distress, anguish, suffering, loss of companionship, loss of emotional support, and loss of affection and for the lost emotional support and companionship component of the actual value to [Appellant] of” Xumi and Ruben. Stip. Appellant further stipulated that she “does not claim damages in this action for the amount needed to purchase a new dog . . . , the veterinary bills incurred, the travel expenses incurred, and any other expenses she incurred and paid due to the events of July 14, 2022.” Stip.

¹ In the interest of brevity, the term “emotional distress” is hereinafter used herein to mean all the non-economic damages resulting from the negligent killing of or harm to a pet dog, including emotional distress, anguish, pain, suffering, depression, anxiety, trauma, loss of companionship, and loss of emotional support.

STANDARD OF REVIEW

Summary judgment is only appropriate when 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, SCRPC. “The party moving for summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 729 (Ct. App. 2005). “In determining whether any triable issues of fact exist, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in the light most favorable to the non-moving party.” *Koester v. Carolina Rental Center, Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). “Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues.” *Miller*, 365 S.C. at 220, 616 S.E.2d at 729.

ARGUMENT

I. South Carolina Law Has Not Yet Addressed Whether and Should Provide as a Matter of Common Law that a Dog Owner Can Recover Emotional Distress Damages Caused by the Negligent Killing or Injury of the Owner’s Dog, and the Circuit Court Erred in Holding Otherwise.

The Circuit Court held that “South Carolina law does not support a cause of action for emotional distress for injury to one’s pet.” Order Granting Partial Summ. J. 1. The Circuit Court thereby erred because South Carolina law has not yet addressed the damages recoverable when a pet dog is tortiously harmed and because as a matter of common law, South Carolina law should and would provide that a dog owner can recover for emotional distress caused by tortious harm to the owner’s dog.

In support of the position that South Carolina law does not permit the recovery of emotional distress damages for tortious harm to a dog, the Circuit Court relied on two decisions by South Carolina courts. However, those two decisions do not support that position, and South Carolina

law has not yet addressed the damages a dog owner may recover when a pet dog is tortiously harmed or killed. The common law as it has developed in other jurisdictions, relevant South Carolina law, and the status of dogs in the twenty-first century as companions and family members rather than working animals, all compel the conclusion that South Carolina common law must give legal recognition to the modern status of dogs and provide that dog owners can recover emotional distress damages caused by the tortious harm or killing of a dog.

A. South Carolina Law Has Not Yet Addressed the Damages Recoverable When a Pet Dog is Tortiously Harmed.

The first of the two decisions relied on by the Circuit Court and Respondents is the recent unpublished decision of the Court of Appeals in *Fowler v. Fedex Ground Package System, Inc.*, Op. No. 2023-UP-020, 2023 WL 234557 (S.C. Ct. App. filed Jan. 18, 2023). As stated at the top of the decision provided by Respondents in support of their Motion, the *Fowler* decision is unpublished, “has no precedential value,” and “should not be cited or relied on as precedent in any proceeding except as provided by Rule 268(d)(2), SCACR.” Mot. for Partial Summ. J., Ex. 1. Rule 268(d)(2) of the South Carolina Appellate Court Rules states: “Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.” Under Rule 268(d)(2), Respondents cannot cite *Fowler*, and the Circuit Court erred in considering, much less relying on, *Fowler* as support for its decision.

Even were the *Fowler* decision not an unpublished decision and were proper for consideration in this case, the *Fowler* decision does not address the issue of whether a dog owner can recover emotional distress damages. The *Fowler* decision addressed only whether a plaintiff could recover for “pain and suffering” caused by the death of a pet dog. Moreover, even were *Fowler* proper for consideration here and did address the issue here, *Fowler* failed to address

relevant legal and societal developments, as discussed in detail *infra*, and should not be followed here.

The second decision relied on by the Circuit Court is *State v. Langford*, 55 S.C. 322, 33 S.E. 370 (1899), which does not address any of the issues present in this case. In *Langford*, the issue was whether stealing a dog was larceny. The *Langford* decision first reviewed the old common law rule that a dog had no value and therefore the theft of a dog could not give rise to larceny. The Court rejected that old rule and recognizing the value of dogs to their owners, adopted a common law rule that the theft of a dog is larceny. *Langford* did not address the measure of the value of a dog to its owner or whether the owner of a dog can recover for emotional distress caused by the death or injury of the dog. Rather, *Langford* merely rejected the old position that a dog has no value to its owner and recognized that a dog has value to its owner.

While the Circuit Court did not rely on any other authority in support of its holding that a dog owner cannot recover emotional distress damages, Respondents cited to *Coleman v. Levkoff*, 128 S.C. 487, 122 S.E. 875 (1924), and *Bales v. Judelsohn*, Op. No. 2005-UP-509, 2005 WL 7084365 (S.C. Ct. App. filed Aug. 30, 2005), as supporting that position. Neither decision provides any such support.

The *Coleman* decision concerned damage to an automobile and unremarkably, held that the measure of the damage to the automobile was the diminution in value of the automobile: “the general rule is that the owner of personal property, injured by the negligence of another, is entitled to recover the difference between the market value of the property immediately before the injury and its market value immediately after the injury.” *Coleman*, 128 S.C. at —, 122 S.E. at 876. As discussed *infra*, that measure of damages is inapplicable to a claim for the death of or injury to a

pet dog, but here, the key point is that *Coleman* did not address the value of a pet dog or what the owner of a pet dog can recover when the dog is killed or injured by the negligence of another.

Like *Fowler*, the *Bales* decision is an unpublished decision, has no precedential authority, and was improper for Respondents to cite. More importantly, in the *Bales* decision in 2005, the Court of Appeals acknowledged that it had “not found any jurisprudence in South Carolina that addresses damages resulting from an injury to a pet.” *Bales*, 2005 WL 7084365, ay *1. Notably, that statement of the law in the *Bales* decision, and the Court of Appeals’ statement of the law in *Fowler* that a dog owner cannot recover damages for “pain and suffering” for the negligent death of a pet dog, cannot both be correct. The *Fowler* decision did not cite to any decision issued by any South Carolina court between 2005 when the *Bales* decision was issued and 2023 when the *Fowler* decision was issued. As evidenced by the foregoing discussion of the other decisions relied on by the Circuit Court and Respondents, the *Bales* decision was correct that there is no South Carolina jurisprudence addressing the damages recoverable for the negligent death of or injury to a pet dog.

In short, there is no South Carolina authority on whether a dog owner can recover for emotional distress caused by the negligent injuring or killing of a dog. The Court therefore must look to South Carolina common law and common law from across the United States to ascertain how our State’s common law would address the issue. As set forth in the following section, once the Court undertakes that analysis, it should conclude that South Carolina common law permits a dog owner to recover emotional distress damages.

B. South Carolina Common Law Supports and Should Permit the Recovery of Emotional Distress Damages.

The courts of several states have recognized as a matter of common law that a dog owner can recover noneconomic damages caused by the negligent death of or injury to a pet dog. For

example, where a veterinary hospital negligently injured the plaintiffs' dog, the Florida District Court of Appeal held that a trial court "did not commit error by including for consideration of the jury the element of the mental pain and suffering of the plaintiff-owners of the dog." *Knowles Animal Hosp., Inc. v. Wills*, 360 So. 2d 37, 38 (Fla. Dist. Ct. App. 1978). The Supreme Court of Hawaii held that a plaintiff could recover for mental distress caused by the negligent death of the plaintiff's dog. *Campbell v. Animal Quarantine Station*, 632 P.2d 1066, 1071 (Haw. 1981). Oregon, Louisiana, and Texas courts have similarly held. See *Freedden v. Stride*, 525 P.2d 166, 169 (Or. 1974) (affirming jury verdict of damages for mental anguish caused by veterinarian's conversion of the plaintiff's dog); *City of Garland v. White*, 368 S.W.2d 12, 13–14 (Tex. Civ. App. 1963) (affirming jury award for mental pain and suffering from death of the plaintiff's dog); *Linceum v. Smith*, 287 So. 2d 625 (La. Ct. App. 1973) (affirming jury award for mental anguish caused by conversion of the plaintiff's dog).

Several federal courts have arrived at the same legal conclusion. A federal district court held that as a matter of "federal common law," where officers killed the plaintiffs' dog, the plaintiffs were entitled to recover "emotional distress damages arising from [the defendant's] unlawful seizure of [the plaintiffs'] dog." *Moreno v. Hughes*, 157 F. Supp. 3d 687, 690 (E.D. Mich. 2016); see also *Henning v. Nicklow*, No. 1:08-cv-180, 2009 WL 2642739 (N.D. Ind. Oct. 30, 2009) (arriving at same conclusion based on similar facts). The *Moreno* decision reasoned that if the plaintiffs were not permitted to recover "mental and emotional damages," the plaintiffs would "not be compensated for their 'actual losses.'" *Moreno*, 157 F. Supp. 3d at 690. The *Moreno* decision also relied on the fact that "some states award emotional damages for injury to pets." *Id.*

Decisions from other states arriving at the opposite conclusion—holding that the damages recoverable for the negligent loss of a dog are limited to economic damages—are the continuation of an outdated legal concept of dogs. As the *Langford* decision discusses, English common law originally considered dogs to be wild beasts incapable of being a person’s property. Margit Livingston, *The Calculus of Animal Valuation: Crafting a Viable Remedy*, 82 Neb. L. Rev. 784, 785 (2004). Developments in the relationship between people and dogs and the changed role of dogs in society since the medieval period that gave rise to the old English common law rule, resulted in courts, like the South Carolina Supreme Court in *Langford*, holding that dogs are the property of their owners and have value to their owners. See *Langford*, 55 S.C. at —, 33 S.E. at 371; *Salley v. Manchester & A.R. Co.*, 54 S.C. 481, 32 S.E. 526 (1899) (reversing dismissal of civil action for killing the plaintiff’s dog on basis that dogs are valuable property and can give rise to a civil claim). As *Langford* discussed in terms of whether a thief was immune from prosecution for stealing a dog under the old English common law rule or committed larceny because a dog is valuable property, “[t]he reason for the outlawry of dogs in favor of thieves can hardly be regarded as persuasive at this day and here, and such crude application of the principles of the common law must yield to common sense.” *Langford*, 55 S.C. at —, 33 S.E. at 371.

While the common law evolved to recognize dogs as valuable property, many jurisdictions saw dogs as interchangeable units for which the recoverable value is limited to the cost to purchase a new dog of the same breed and with the same training as the deceased dog. In earlier times, dogs were valued for the services they provided around the home, rather than for their companionship. Livingston, *Animal Valuation*, 82 Neb. L. Rev. at 785. The old English common law considered any dog the equivalent of any other dog because any dog—controlling for breed, health, and training—can perform the same economic services as any other dog. In some jurisdictions that

reasoning has carried forward to the present, but the reasoning is a relic of an outdated societal view of dogs, a view that does not comport with modern's society view of dogs.

As acknowledged by *Langford* and again more recently, South Carolina courts have “the right and duty to develop the common law of South Carolina to better serve an ever-changing society as a whole.” *State v. Horne*, 282 S.C. 444, 447, 319 S.E.2d 703, 704 (1984); *see also Langford*, 55 S.C. at —, 33 S.E. at 371. While the unpublished, non-precedential *Fowler* decision declined the request to develop South Carolina common law in response to societal developments on the basis that “public policy considerations do not warrant intervention by this court in the absence of legislative action,” such a view disregards the role of South Carolina courts in determining and applying the common law. *Fowler*, 2023 WL 234557, at *1. Due to the common law’s nature as a judicially declared and developed system of law, South Carolina courts have the power to declare and change the common law. *See, e.g., Marcum v. Bowden*, 372 S.C. 452, 458, 643 S.E.2d 85, 85 (2007) (“It is within this Court’s purview to change the common law.”); *Singleton v. State*, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993) (“It has always been the purview of a court to change the common law”). Courts purview over the common law is so substantial that courts can change part of the common law even when the General Assembly has recognized that portion of the common law. *See, e.g., Stone v. Thompson*, 428 S.C. 79, 85, 833 S.E.2d 266, 269 (2019) (“As discussed—and perhaps intuitively—common-law marriage’s origins lie in the common law, and consequently, it may be removed by common-law mandate, regardless of tacit recognition by our legislature.”); *Russo v. Sutton*, 310 S.C. 200, 204, 422 S.E.2d 750, 753 (1992) (“Criminal conversation and alienation of affections are of common law origin. Their common law origin exists despite any subsequent recognition of the torts by our legislature. Thus, both criminal conversation and alienation of affections may be removed from the common law by

common law mandate.”). South Carolina courts change the common law “when necessary to serve the needs of the people” and when the common law has become “outdated.” *Stone*, 428 S.C. at 85, 833 S.E.2d at 269 (2019) (“The common law changes when necessary to serve the needs of the people. [Courts] will act when it becomes apparent that the public policy of the State is offended by outdated rules of law.”); *see also Russo*, 310 S.C. at 204, 422 S.E.2d at 753 (1992) (“The common law changes when necessary to serve the needs of the people.”). Following these legal principles, South Carolina courts routinely change the common law when necessary to align the common law with societal developments and serve the needs of South Carolinians. *See, e.g., Stone*, 428 S.C. at 85–86, 833 S.E.2d at 269 (changing the common law of common-law marriage due to a societal “shift” where “society no longer conditions acceptance upon marital status or legitimacy of children” and “non-marital cohabitation is exceedingly common and continues to increase among Americans of all age groups”); *Marcum*, 372 S.C. at 460, 643 S.E.2d at 89 (extending the common law to “impose liability on adult social hosts who knowingly and intentionally serve [alcohol to] underage guests” due to the Court’s “responsibility to adapt the common law to the realities of the modern world”); *Russo*, 310 S.C. 204, 422 S.E.2d 753 (eliminating the common law causes of action for criminal conversation and alienation of affection as “rooted in antiquated perceptions that wives are chattel of their husbands” and as having “outlived any usefulness they may have possessed in regard to preventing the dissolution of marriages”); *Hossenlopp v. Cannon*, 285 S.C. 367, 371, 329 S.E.2d 438, 441 (1985) (“The dog-bite law is of common law origin. It may be changed by common law mandate. The time has come when our rule must give way to the more commonly accepted rule of law indicated in other states by both case law and by statute.”). Accordingly, South Carolina courts should recognize that the evolved, modern societal role of pet dogs, discussed in detail *infra*, necessitates that South

Carolina common law provide that a dog owner can recover emotional distress damages and declare the common law of South Carolina accordingly.

Moreover, South Carolina public policy, as already expressed by the General Assembly, values pet dogs for their emotional support and companionship value, rather than merely as working animals under the older societal view of dogs, and therefore, the Court declaring that the common law permits the recovery of emotional distress damages comports with and advances the State's existing public policy. Chapter 3 of Title 47 of the South Carolina Code of Laws provides for the protection and care of "Dogs and Other Domestic Pets," thereby distinguishing "dogs and other domestic pets" from other animals and giving them greater legal protection. Section 47-3-20 provides that counties and municipalities "may enact ordinances and promulgate regulations for the care and control of dogs," Sections 47-3-55 and 47-3-60 require an animal shelter in possession of a dog to undertake specific efforts to return the dog to the owner and to wait for the owner to claim the dog, thereby legislatively acknowledging the importance of a specific dog to its owner. Section 47-3-530 makes it a crime to kill a dog "when owner [sic] may be identified by means of a collar bearing sufficient information or some other form of positive identification," as distinguished from the killing of a dog without an owner. The General Assembly thereby legislatively acknowledged the importance of a specific dog to its owner due to the relationship between the dog and owner as greater than the value of a presumptively unowned dog.

As widely acknowledged by courts and American society today, dogs are no longer considered interchangeable animals and are primarily, if not exclusively, valued for their emotional and companionship value as quasi-family members. As stated by the United States Court of Appeals for the Fourth Circuit:

Dogs have been aptly labeled 'Man's Best Friend,' and certainly the bond between a dog owner and his pet can be strong and enduring. Many consider dogs to be

their most prized personal possessions, and still others think of dogs solely in terms of an emotional relationship, rather than a property relationship.

Altman v. City of High Point, 330 F.3d 194, 205 (4th Cir. 2003). Similarly, the Supreme Court of Vermont recognized that “[a] pet dog generally has no substantial market value as such,” and “[l]ike most pets, its worth is not primarily financial, but emotional.” *Morgan v. Kroupa*, 702 A.2d 630, 632–33 (Vt. 1997).

That recognition by courts evidences the broad shift in the societal status of dogs in American over the past hundred or so years. As Appellant’s expert Dr. Leslie Irvine, a sociologist who has spent decades studying the relationship between people and pets, observes, “[t]he way people value and regard animals, in general, and pets, in particular, has changed, such that both scholars and members of the public recognize their roles as family members, companions, and best friends.” Aff. of Dr. Irvine ¶12; see also Sonia S. Waisman & Barbara R. Newell, *Recovery of ‘Non-Economic Damages’ for Wrongful Killing or Injury of Companion Animals*, 7 *Animal L.* 45, 57–64 (2001). Survey research indicates that 97% of American pet owners today regard pets as family members and that 50% of Americans today consider pets to be family members equivalent to human family members. Aff. of Dr. Irvine ¶¶13 & 14. In modern American society, “people and pets develop close attachments and rely on each other for the emotional support that characterizes kinship.” Aff. of Dr. Irvine ¶15.

Additionally, given that evolved role in modern society where dogs are valued as companion animals, dogs are no longer viewed as interchangeable, replaceable property. “The bonds between people and pets reflect the characteristics of specific relationships in which each animal is considered a unique individual” and “[a]s with relationships between people, one cannot simply ‘replace’ another.” Aff. of Dr. Irvine ¶16. Today, society acknowledges that “an individual’s bond with a particular animal is unique.” Livingston, *Animal Valuation*, 82 *Neb. L.*

Rev. at 806. The rejection of a replacement value approach to damages for the death of a dog follows naturally from this evolved societal view. When dogs are no longer owned primarily for their economic services and instead are owned for companionship and a psychological bond, one dog cannot replace another.

Moreover, due to the unique, irreplaceable nature of a pet dog, the loss of a dog typically causes the dog owner to suffer “significant grief, distress, sadness, depression, helplessness, anger, and guilt.” *Aff. of Dr. Irvine* ¶17. The loss of a pet dog can be “debilitating and enduring” and can result in “trauma symptoms and other mental health consequences,” especially when the death is sudden and violent. *Aff. of Dr. Irvine* ¶18.

While the common law is to evolve with and comport with society, the modern societal valuing of dogs means that the old common law rule that the damages recoverable for the wrongful death or injury of a dog is limited to the cost of a replacement dog or other economic damages no longer comports with modern society. Fulfilling the right and duty to develop the common law, South Carolina courts should reject the approach of some jurisdictions that adhere to a medieval view of dogs and should follow the common law rule that comports with modern American society by allowing the recovery of emotional distress damages caused by the negligent death of or injury to a dog. Numerous federal and state courts have held that dogs are valued primarily for their emotional and companionship value and that therefore, dog owners can recover emotional distress damages caused by the negligent death of or injury to a dog. The reasoning employed by those federal and state courts comports with dogs’ place in modern American society and applies with equal force in South Carolina, and therefore, South Carolina courts should follow that reasoning in declaring South Carolina’s common law on the issue.

While the foregoing analysis is more than a sufficient basis for South Carolina courts to decide that South Carolina common law permits the recovery of emotional distress damages here, South Carolina common law as to forms of unique, irreplaceable property other than dogs provides additional legal support for allowing recovery of emotional distress damages here. As discussed in detail in the following section, South Carolina law provides that where property is uniquely valuable to the owner—rather than replaceable by a new item of the same type—the owner is entitled to recover the actual value to the owner—the property’s “special value to him”—when the property is negligently destroyed or damaged. *See Nelson v. Coleman Co.*, 249 S.C. 652, 659, 155 S.E.2d 917, 921 (1967). That common law rule accounts for the fact that property that is not interchangeable and is “personal to the owner” has a “special value” to the owner. *See id.* The logical next steps that follow necessarily from that rule are that a dog is a unique, irreplaceable item of property valued primarily for its emotional and companionship value, and the negligent loss of or injury to a dog results in emotional distress damages that the dog owner can recover for due to the unique nature of a dog as property.

In conclusion, because South Carolina law has not yet addressed the issue, because other jurisdictions hold that emotional distress damages are recoverable, because allowing the recovery of emotional distress damages properly develops the common law in accordance with the changed societal role of pet dogs, and because South Carolina law already acknowledges that certain property can have a unique value to an owner thereby permitting the owner to recover damages typically not recoverable for the negligent loss of personal property, the Court should reverse and hold that if Respondents are found liable, Appellant is entitled to recover emotional distress damages caused by the loss of Xumi and Ruben’s injuries.

II. Even Were Emotional Distress Damages Not Independently Recoverable, the Circuit Court Erred in Not Permitting Appellant to Proceed on Claims for Emotional Distress Damages as Part of the Loss of the Companionship and Emotional Support Value of Her Dogs.

Even assuming *arguendo* that South Carolina law does not permit Appellant to recover for her emotional distress damages as a standalone category of recoverable damages, South Carolina law permits Appellant to recover for the loss of the companionship and emotional support of her dogs as a component of the actual value of the dogs as her property, and her emotional distress damages are part of those damages. In other words, even if Appellant cannot independently recover her emotional distress damages, those damages are evidence of, are part of, and can be recovered as part of the actual value of her dogs. The Circuit Court erred in holding that Appellant could not recover emotional distress damages through her claim for the lost value of her dogs and by finding that Appellant's claims for the lost value of her dogs are limited to "the general rule . . . that the measure of damages for injury to personal property is the difference between the market value of the property immediately before and its value immediately after the injury." Order Denying Mot. for Reconsideration 1; Order Granting Partial Summ. J. 1.

South Carolina law recognizes that where property "has no actual market value," the owner is entitled to recover the property's "special value to him." *Nelson*, 249 S.C. at 659, 155 S.E.2d at 921. The Supreme Court of South Carolina explained:

Recovery may be had for the loss or destruction of property even though it has no actual market value, in which case the owner is entitled to recover its actual or reasonable value, or its special value to him. Household goods and wearing apparel in the owner's possession differ from many other items of personal property. They are often more personal to the owner in the sense that another item of equal age, quality, and condition is not interchangeable, in the opinion of the owners generally, with the item damaged or destroyed. In these cases, courts do not limit damages to secondhand market value, but allow the owner to recover either the actual value of the item or its value to the owner excluding any fanciful or sentimental value which the owner may place on the item.

Id. That is the common law rule across jurisdictions, with one of the most widely recognized and authoritative treatises explaining:

Occasionally, chattels have no market value, simply because they are not salable. More often, the market value clearly would not be adequate compensation. In these cases, there may be recovery of the value to the owner, as distinguished from value to others. This is true of family heirlooms and other articles that have a purely personal value to the plaintiff and no one else. It is also true, in general, of clothing, books, pictures, furniture and household goods, which will be worth more to the owner than their value to a second-hand store.

Victor E. Schwartz, *et al.*, Prosser, Wade and Schwartz's Torts 549–50 (11th ed. 2005); *see also*, *e.g.*, *Anzalone v. Kragness*, 826 N.E.2d 472, 477 (Ill. Ct. App. 2005) (“The Restatement and most jurisdictions take a position that in such cases it would be unjust to limit the damages to the fair market value and, instead, use the so-called ‘value to the owner’ . . . as the measure of damages.”); *Shaffer v. Honeywell, Inc.*, 249 N.W.2d 251 (S.D. 1976) (trophies from horse shows); *Brousseau v. Rosenthal*, 443 N.Y.S.2d 285 (N.Y. Civ. Ct. 1980) (dog); *S. Express Co. v. Owens*, 41 So. 752 (Ala. 1906) (unpublished manuscript).

In modern society a pet dog cannot be replaced by a new dog. Dogs are unique, irreplaceable property valued for their companionship and emotional support. As property of that nature, under South Carolina law a dog owner must be permitted to recover the actual value of the dog to that owner—including the loss of companionship and emotional support—when the dog is negligently killed or injured.

Courts outside South Carolina have employed that common law rule of damages to hold that a dog owner is entitled to recover the actual value of the dog to the owner, including the companionship and emotional support value of the dog, rather than just the cost to obtain a new dog. For example, in *Brousseau v. Rosenthal*, 443 N.Y.S.2d 285 (N.Y. Civ. Ct. 1980), the court found the proper measure of damages for the death of a dog “must assess the dog’s actual value to

the owner in order to make the owner whole.” 443 N.Y.S.2d at 286. The court further concluded that an element of the dog’s actual value to the owner was the loss of companionship provided by the dog. *Id.* Similarly, in *Jankoski v. Preiser Animal Hospital, Ltd.*, 510 N.E.2d 1084 (Ill. App. Ct. 1987), the court held that the measure of the recoverable damages for the negligent death of a dog is the “actual value of the object to the owner” and that one element in the actual value of a dog is loss of the dog’s companionship. 510 N.E.2d at 1087.

Accordingly, because Xumi and Ruben were Appellant’s unique, irreplaceable property, of great value to Appellant for the companionship, emotional support, and affection they provided her, Xumi and Ruben were unique property for which Appellant is entitled to recover their actual value to her. Xumi and Ruben were like a family Bible, a grandmother’s wedding dress, or family photographs; all items irreplaceable and of unique value to the owner, but of minimal value to anyone else. Except Xumi and Ruben were even more uniquely valuable than those items because they were living animals that could provide companionship, emotional support, and affection. The value of Xumi and Ruben was that companionship, emotional support, and affection, and those must be included in determining the actual value to Appellant. The emotional distress Appellant suffered from Xumi’s death and Ruben’s injury is part of and evidence of the companionship, emotional support, and affection Xumi and Ruben provided. In other words, Appellant’s emotional distress damages are the inverse of the companionship, emotional support, and affection that Xumi and Ruben provided. Appellant is entitled to recover the lost companionship, emotional support, and affection value of Xumi and Ruben, Appellant’s emotional distress is part of that value, and therefore, Appellant is entitled to present evidence as to and recover for her emotional distress suffered by the loss of Xumi and injuries to Ruben. At minimum, Appellant is entitled to present evidence as to her emotional distress as evidence of the companionship, emotional support,

and affection value of Xumi and Ruben and recover damages for that lost companionship, emotional support, and affection value.

CONCLUSION

For the reasons set forth herein, the Court should reverse.

Respectfully submitted,

s/Elliotte Quinn
F. Elliotte Quinn IV
Michael J. Jordan
The Steinberg Law Firm, LLC
61 Broad Street
Charleston, SC 29401
(843) 720-2800
equinn@steinberglawfirm.com
mjordan@steinberglawfirm.com

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2024-001363

Sarah Rock, Appellant,

v.

Dog Daze of Charleston,
LLC and Charlie Freeman, Respondents.

CERTIFICATE OF SERVICE

The undersigned certifies on December 4, 2024, he caused a copy of the foregoing Appellant's Initial Brief to be served on all parties of record by e-mail as follows:

W. Westbrook Wills III
The Law Office of W. Westbrook Wills III
P.O. Box 822
Folly Beach, SC 29439
wwills@willslaw.com

David S. Cobb
Turner Padget
P.O. Box 22129
Charleston, SC 29413
dcobb@turnerpadget.com

Attorneys for Defendants Dog Daze of
Charleston, LLC and Charlie Freeman

s/Elliotte Quinn
F. Elliotte Quinn IV
The Steinberg Law Firm, LLC
61 Broad Street
Charleston, SC 29401
(843) 720-2800



61 Broad Street | P.O. Box 9 | Charleston | SC | 29401 | (843) 720-2800 Main | (843) 266-1700 fax | www.steinberglawfirm.com

December 4, 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
Motion for Extension of Time to file Initial Brief

Dear Hon. Jenny Abbott Kitchings,

Please find enclosed the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal. Thank you for your assistance, and please do not hesitate to contact me should you have any questions.

Regards,

s/Elliotte Quinn

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

Enclosures:

1. Initial Brief of Appellant
2. Designation of Matter to be Included in the Record on Appeal

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

W. Westbrook Wills III
The Law Office of W. Westbrooks Wills III
P.O. Box 822
Folly Beach, SC 29439
wwills@wwillslaw.com

David S. Cobb
Turner Padget
P.O. Box 22129
Charleston, SC 29413
dcobb@turnerpadget.com

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