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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
In the Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

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Common Pleas Case No. 2022-CP-10-5585

Appellate Case No. 2024-001363

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Sarah Rock, Appellant,

v.

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

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**RESPONDENTS' INITIAL BRIEF**

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## STATEMENT OF ISSUE ON APPEAL

- I. Did the trial court correctly apply South Carolina law when it granted the partial summary judgment motion that dismissed claims for emotional distress alleged by the owner of two dogs against a dog boarding facility and its owner after one dog died and the other dog suffered injury following an incident at the dog boarding facility?

## STATEMENT OF THE CASE

Respondents agree with Appellant's statement of the case.

## STATEMENT OF FACTS

At the outset, Respondents agree with most of Appellant's recitation of the facts. She boarded her two dogs (Xumi and Ruben) with Dog Daze of Charleston, LLC ("Dog Daze") on July 7, 2022 for a work trip to the Bahamas. During the afternoon of July 14, 2022, a Dog Daze employee put Xumi and Ruben in a run and Charlie Freeman's (owner of Dog Daze) German Shepherd dog in a crate in separate area of the Dog Daze facility.. Unfortunately, the German Shepherd dog escaped from his crate, found its way to, and accessed the "small dog" run where it became entangled with Ms. Rock's dogs. Deposition of Charlie Freeman, page 38, line 23 – page 44, line 22 and Exhibit 1 to deposition. Xumi died in the incident and Ruben was injured. Mr. Freeman regrets that the incident occurred.

Mr. Freeman immediately notified Ms. Rock about the incident. He also paid her \$3,000.00 on August 26, 2022. That payment compensated her for her out-of-pocket expenses to fly back from the Bahamas to Charleston, for the cremation bill for Xumi, and for the veterinarian bill for Ruben. These expenses totaled \$1,851.07. The additional \$1,148.93 was paid, in good faith, to cover any different or additional expenses resulting from the occurrence. Ms. Rock accepted the \$3,000.00 payment. Deposition of Plaintiff, page 19, line 7 – page 22, line 24; Exhibits 2-7.

Ms. Rock filed the lawsuit on December 5, 2022 and asserted causes of action for Negligence/Gross Negligence, Bailment, and Breach of Contract. She also claimed damages for:

- (a) “... the loss of Xumi and severe injury to Ruben and the resulting loss of companionship, grief, anxiety, and emotional pain and distress.” Complaint, ¶¶ 41, 53, 70.
- (b) the “sentimental value” of Xumi and “the loss of her companionship.” Complaint, ¶¶ 43, 55, 68.
- (c) “... the diminution in the actual value of Ruben including his sentimental value and loss of his companionship.” Complaint, ¶¶ 44, 56, 69.
- (d) “... an award for her grief, anxiety, and emotional pain and distress damages.” Complaint, ¶¶ 45, 57.
- (e) “post-traumatic stress.” Complaint, ¶ 70.

The trial court granted Dog Daze and Freeman’s partial summary judgment motion to dismiss the emotional distress and pain and suffering claims.

As part of this appeal, Ms. Rock filed a Stipulation that her claims in the trial court are limited to those damages for which that court granted summary judgment to Respondents. August 14, 2024 Stipulation by Plaintiff.

### ARGUMENT

#### **I. RESPECTFULLY, PLAINTIFF CANNOT RECOVER DAMAGES FOR EMOTIONAL DISTRESS OR PAIN AND SUFFERING BASED UPON THE UNFORTUNATE AND UNDERSTANDABLY UPSETTING DEATH OF ONE OF HER DOGS AND FOR THE INJURY TO A SECOND DOG.**

The issues raised by Ms. Rock in this appeal have been decided repeatedly adverse to her position by our courts with jurisdiction in South Carolina. As stated by Judge David Norton recently in Madden v. Petland Summerville, LLC, 2022 WL 2806408 (D.S.C. 2022):

Importantly, in South Carolina, as in many states, “[p]ets are considered personal property. Kirchner v. Kirchner, 2005 WL 7083859, at \*4 (S.C. Ct. App. Mar. 23, 2005); Richardson v. Fla. Cent. & P.R. Co., 33 S.E. 466 (S.C. 1899)....Accordingly, in cases involving injuries to a pet, “courts have limited the award of damages to a dog’s

market value” or the pecuniary loss to the owner for the injuries sustained. Bales v. Judelsohn, 2005 WL 7084365, at \*1 (S.C. Ct. App. Aug. 30, 2005) (citing 4 Am. Jur. 2d Animals §§ 6 and 165 (1995)). For example, in Bales, the South Carolina Court of Appeals held that “South Carolina law does not support a cause of action for emotional distress for injury to one’s pet” and further held “that a claim for lost wages resulting from injury to an animal is not actionable because a dog is considered personal property under our law.” 2005 WL 7084365 at \*1....Although this approach may seem to take an insensitive—or perhaps overly harsh—view of pet ownership, as one court in this state recently observed, “[u]ntil either [the South Carolina legislature] or [ ] Supreme Court expressly recognizes the right of a pet owner to seek non-economic damages for the death or injury of a pet, this Court must rule as a matter of law that Plaintiff in the present case cannot seek damages for emotional distress, mental anguish, or anxiety at trial.” Fowler v. Fedex Ground Package Sys., Inc., 2019 WL 9573828, at \*1 (S.C. Com. Pl. Sep. 23, 2019).”

2022 WL 2806408, at \*5 (emphasis added).

While several of the cases cited by Judge Norton are unpublished opinions, the decisions rely on bedrock law. In Richardson, the South Carolina Supreme Court clearly stated that “[t]here is no longer any room to doubt that a dog is personal property in this state.” 55 S.C. 334. That law has not changed since the Court issued that decision in 1899. See also State v. Langford, 55 S.C. 322, 326, 33 S.E. 370, 371-72 (1899). Further, as noted in Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 555-56, 813 S.E.2d 292, 298-99 (Ct. App. 2018), a trial court’s examination of an unpublished opinion whose reasoning it found persuasive was harmless when the trial court relied on other published cases and the examination was not prejudicial.

Further, the general rule is 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. Duke Power Co. v. Thornton, 303 S.C. 454, 457, 401 S.E.2d 195, 196 (Ct. App. 1991). See also Coleman v. Levkoff, 128

S.C. 487, 490, 122 S.E. 875, 876 (1924) (“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.”)

Denying recovery for emotional distress or pain and suffering damages after injury or death to one’s pet remains consistent with existing state law. As noted by Professors F. Patrick Hubbard and Robert L. Felix in The South Carolina Law of Torts (Fifth Edition):

... [I]n order to avoid the problem of disproportionate liability arising in cases where mental trauma results from witnessing an injury or from responding emotionally to a physical injury to a friend or relative, the courts generally deny recovery for such “indirect” emotional trauma except in very narrowly limited situations. In South Carolina, such indirect emotional distress is only recoverable: (1) under Kinard v. August Sash and Door Co., which provides a limited right of “bystander recovery” for emotional distress from witnessing the death or serious bodily injury of a close relative; (2) for loss of consortium; (3) for wrongful death; and (4) in “special situations [such as defective product, injury to corpses, or interference with burial].”

P. Hubbard & R. Felix, The South Carolina Law of Torts (Fifth Edition), pages 44-45. None of those scenarios exist with this claim. For example, Ms. Rock’s claim would not qualify for recovery under a negligent infliction of emotional distress theory. The elements established in Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 336 S.E.2d 465 (1985) require that (a) the negligence of the defendant must cause death or serious physical injury to another; (b) the plaintiff bystander must be in close proximity to the accident; (c) the plaintiff and the victim must be closely related; (d) the plaintiff must contemporarily perceive the accident; and (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony. In the current facts, the unfortunate incident involving the dogs did not involve injury to any biological relative of Ms. Rock, she was not in close proximity to the incident, and she did not contemporaneously

perceive the incident. Thus, her claims would not meet the Kinard elements.

Furthermore, any action for wrongful death made pursuant to S.C. Code Ann. § 15-51-10 must involve the death of a “person.” None of the other scenarios cited by Professors Hubbard and Felix apply to this claim.

### CONCLUSION

Respectfully, Respondents ask this Court to affirm the trial court.

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**PROOF OF SERVICE**

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The undersigned, certifies that she served a copy of **Respondents' Initial Brief** upon all other counsel of record by emailing a copy to:

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