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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
The Honorable Bentley D. Price
Circuit Court Judge
Trial Court Case No: 2020-CP-1003397

Appellate Case No. 2024-000350

Michele Graham,.....Appellant,

v.

Mark Ciaburri
Adrienne T. Ciaburri.....Respondents

AMENDED RECORD ON APPEAL

Michele Graham
1661 Babington Way
Mount Pleasant, SC 29464
843-532-7252
michele.graham0318@gmail.com

Appellant

Corvey Law Firm
815 Savannah Hwy, #201
Charleston, SC 29405
ted@corveylawfirm.com

Attorney for Respondents

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Mark Ciaburri, &
Adrienne Ciaburri,
Defendants

IN THE SMALL CLAIMS COURT
NORTH AREA DISTRICT

CASE NO: 2020CV1011500994

ORDER

FILED IN
CHARLESTON COUNTY

AUG 31 2020

NORTH AREA
SMALL CLAIMS COURT

Upon the Motion to Dismiss by the Defendant, and after a Motion Hearing, this Court finds that pursuant to Rule 12(b) (8) this matter shall be dismissed.

The Motion to Dismiss is hereby GRANTED and the matter is Dismissed.

IT IS SO ORDERED this the 28th day of August, 2020.

James Turner, Judge
North Area Small Claims Court

North Charleston, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham
PLAINTIFF(S)

Mark Ciaburri et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion for Temporary Injunction is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/29/2020 .

Mount Pleasant Patrol Officer Town of
Michele Graham for Michele Graham
Michele Graham for Michele Graham
Mount Pleasant Animal Control Officer Town of

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al

Case Number: 2020CP1003397

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-09-29 12:05:56 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham
PLAINTIFF(S)

Mark Ciaburri et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The Town of Mount Pleasant's Motion to Dismiss is granted as to The Town of Mount Pleasant Police Department, Christa Hoffman, Heather Cumbee and Shelby Walker. The only remaining Defendants in this action shall be Mark Ciaburri and Adrienne Thompson Ciaburri.

Defendant Mark Ciaburri's Motion for Summary Judgment is denied.

Defendant Mark Ciaburri's Motion for Attorneys fees is granted as to the Preliminary Injunction hearing heard before this Court on September 24, 2020. Defense counsel shall submit an affidavit of fees from the September 24, 2020 hearing. The Court will consider these fees and award the appropriate amount at such time.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/21/2020 .

Mount Pleasant Patrol Officer Town of
Michele Graham for Michele Graham
Michele Graham for Michele Graham
Mount Pleasant Animal Control Officer Town of

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al

Case Number: 2020CP1003397

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-12-21 15:13:17 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham
PLAINTIFF(S)

Mark Ciaburri et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This order is in response to the Plaintiff's request for finding of fact filed on December 29, 2020.

Based on the testimony given at the hearing held on September 24, 2020, no testimony was given that Defendant had violated section 90.29(B)(3) of the Town of Mount Pleasant Laws and Ordinances.

Plaintiff did not present evidence that defendant, "maintain[s] an animal that habitually or repeatedly chases, snaps at, bites, or attacks pedestrians, bicycles, or vehicles, or other animals, or any animal whose behavior constitutes a reasonable risk of injuring a human or other animal."

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/22/2021 .

Michele Graham for Michele Graham
Michele Graham for Michele Graham

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al

Case Number: 2020CP1003397

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2021-03-22 13:53:45 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham
PLAINTIFF(S)

Mark Ciaburri et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
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- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court as Plaintiff's Motion for Order Granting Relief from Judgment/Order and an Order Granting a New Trial Pursuant to SCRPC 60(b)(2) filed on March 29, 2021. The Plaintiff expressed to the Court via email and on the motion coversheet that she did not request a hearing on this motion.

Rule 60(b)(2) of the South Carolina Rules of Civil Procedure states, "On motion and upon such terms as are just, the court may relieve a party...from final judgment, order, or proceeding for the following reasons...newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)."

The Court does not consider the affidavit or testimony of the expert witness to be newly discovered evidence. Therefore, the Plaintiff's motion is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/22/2021 .

Michele Graham for Michele Graham
Michele Graham for Michele Graham

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al

Case Number: 2020CP1003397

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2021-04-22 12:24:53 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham
PLAINTIFF(S)

Mark Ciaburri et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's Motion to Dismiss was filed on April 16, 2021 and heard by the court on June 9th, 2021. Upon careful review of the submissions made to the court, Plaintiff's Motion is respectfully hereby DENIED at this time without prejudice.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/31/2021 .

Michele Graham for Michele Graham
Michele Graham for Michele Graham

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al

Case Number: 2020CP1003397

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2021-08-31 10:56:39 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham
PLAINTIFF(S)

Mark Ciaburri et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This Court shall refer all of Plaintiff's causes of action, except for Plaintiff's claim for injunctive relief, to the Magistrate's Court for adjudication. The Circuit Court shall retain jurisdiction over Plaintiff's claim for injunctive relief and such claim is stayed until the remaining causes of action are adjudicated by the Magistrate's Court.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/21/2021 .

Michele Graham for Michele Graham
Michele Graham for Michele Graham

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al

Case Number: 2020CP1003397

Type: Order/Electronic Form 4

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2021-12-21 12:47:07 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham
PLAINTIFF(S)

Mark Ciaburri et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion to Recuse is denied. Ms. Graham's concern that the Court's frustration with pro se litigants was directed towards her is misguided. The fact that the Court expressed concern about the Plaintiff not understanding the rules is understandable as she is not an attorney, but does not detract from the fact that the Court is still obliged to treat a pro se plaintiff in accordance with the same rules as an attorney. Also, the mere fact that a judge is friends with an attorney on social media is also not grounds for recusal.

Plaintiff's Motion to Reconsider as to the attorneys fees is denied and Court will make a determination as to amount if any at the appropriate time.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/16/2021 .

Michele Graham for Michele Graham
Michele Graham for Michele Graham

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al

Case Number: 2020CP1003397

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2021-02-16 14:24:47 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE SMALL CLAIMS COURT
CASE NO: 2022CV1011500197

Michele Graham

Plaintiff

-versus-

Mark and Adrienne Ciaburri

Defendant

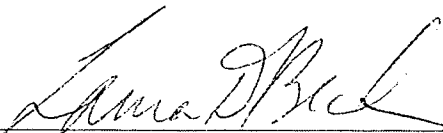
ORDER

FILED IN
CHARLESTON COUNTY

JUN 01 2022

NORTH AREA
SMALL CLAIMS COURT

A MOTION for Attorney's Fees was heard on May 13, 2022, by the Honorable Laura D. Beck. Edward R Corvey, III, counsel for Defendants, and the Plaintiff Pro Se were both present. This Court rules that the Motion for Attorney's Fees is denied at this time. After hearing the procedural history of the case, both in Magistrate's Court, and in the Court of Common Pleas, and with the various Orders signed by and guidance given by other Judges, at this time it would not be in the interest of fairness and justice for Attorney's Fees to be granted to Defendants. Further, following guidance from the Chief Administrative Magistrate, this case shall continue under the most recently assigned case number. The parties are not precluded from raising this or other arguments in the future. At this time, the motion is hereby denied.



Laura D. Beck, Magistrate

Charleston, South Carolina
May 27, 2022

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
MICHELE GRAHAM, MICHAEL	)	
GRAHAM, and TAMMY GRAHAM	)	CASE NO.: 2020-CP-10-03397
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER AWARDING DEFENDANT'S
	)	ATTORNEYS' FEES AND COSTS
MARK CIABURRI, ADRIENNE	)	
CIABURRI, CRISTA HOFFMAN,	)	
HEATHER CUMBEE, and SHELBY	)	
WALKER	)	
	)	
Defendants.	)	

This matter is before the Court arising out of Michele Graham, Michael Graham, and Tammy Graham ("Plaintiffs") seeking "injunctive relief" through Plaintiff's Amended Motion for Temporary Injunction filed with this Court on September 2, 2020. This Court has found Plaintiff was in fact attempting to seek a Writ of Mandamus pursuant to South Carolina Rule of Civil Procedure 65(f)(1) enforcing the government of Mount Pleasant to perform a duty regarding Defendant's dog. Pursuant to SCRCP 65(f)(2), upon prevailing, Defendant's became "...entitled to recover costs in accordance with the practice as it heretofore existed in the courts of this State, including attorneys fees where proper.". The Court has properly denied Plaintiff's writ of mandamus, and therefore Defendants are to be awarded attorneys' fees in the amount of \$9,525.00 as well as any fees and costs not yet billed as of the drafting of this order.

AND IT IS SO ORDERED.

Honorable Judge Bentley Price
Common Pleas Ninth Judicial Circuit

, 2024



Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al

Case Number: 2020CP1003397

Type: Order/Attorney Fees

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2024-02-28 09:40:55 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

)
)
)
)
)
)

2020CV1011500994
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

SUMMONS

Michele Graham
1661 Babington Way
Mount Pleasant, SC 29464
(843) 532-7252

PLAINTIFF(S)

Vs

Mark Ciaburri	Adrienne Thompson Ciaburri
1757 Nantahala Blvd	1757 Nantahala Blvd
Mount Pleasant, SC	Mount Pleasant, SC
29464	29464

DEFENDANT(S)

TO THE DEFENDANT(S) NAMED ABOVE:

YOU ARE SUMMONED and required to answer the allegations of the attached complaint and present any appropriate counterclaims/crossclaims to the attached Complaint within THIRTY days from the first day after receipt of this summons. Your Answer must be received by the:

Small Claims - North
4045 Bridge View Drive
P. O. Box 70235
North Charleston, SC 29405
Phone: (843) 202-6650
Fax: (843) 202-6652

If you fail to answer within the prescribed time, a judgment by default may be rendered against you for the amount or other remedy requested in the attached complaint, plus interest and costs. **If you desire a jury trial, you must request one in writing at least five (5) working days prior to the date set for trial.** If no jury trial is timely requested, the matter will be heard and decided by the Judge.

READ ATTACHED INSTRUCTIONS CAREFULLY

July 2, 2020

2020 CIVIL 50994

Case No:	FILED IN CHARLESTON COUNTY
Filed:	JUL 01 2020
Served:	NORTH AREA SMALL CLAIMS COURT
Default:	
Hearing:	

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE SMALL CLAIMS COURT

Michele Graham

Plaintiff

1661 Babington Way

Street Address

Mount Pleasant, SC 29464

City State Zip

843-532-7252

Phone

Mark Ciaburri

Adrienne Thompson Ciaburri

Defendant

1757 Nantahala Blvd.

Street Address

Mount Pleasant, SC 29464

City State Zip

Phone

I, the plaintiff in this civil action, make the following claim against the defendant:

- 1.) I believe that the defendant is a resident of Mount Pleasant (Charleston Co.).
- 2.) Check a, b, or c to indicate the type of suit and supply documents required.
 - a. () This is a suit on a note; Two (2) copies of note attached. Defendant has defaulted in payment of said note with balance of \$ _____ now due and payable.
 - b. () This is a suit on an account; Two (2) copies of statement attached. Sign as affiant swearing to statement and have your signature notarized.

SWORN and subscribed before me this

_____ day of _____ 20 _____

Attached to this complaint is a statement of account which I swear to be true and correct, with no part of the balance having been paid.

NOTARY PUBLIC, State of South Carolina

My Commission Expires: _____

Affiant=s Signature (Plaintiff)

c. (X) OTHER. This is a claim based on the following facts: (Describe Complaint)

On May 27, 2020, Mark Ciaburri's pit-mix fatally attacked a 12 year-old Yorkshire Terrier, named Gigi, on the property of 1661 Babington Way, Mount Pleasant, SC 29464. At the time of the attack, Gigi was relieving herself in the front lawn. After the attack, the owners retrieved Gigi from the front lawn and witnessed Mark in the front lawn holding down his pit-mix. When the police were called, Mark fled the scene and returned without the pit-mix. Mark stated to police, "My dog kills opossums in our backyard. My dog thought it was an opossum." Gigi's wounds are consistent with a predator-prey type of attack. Mark Ciaburri is responsible for Gigi's veterinary expenses as a result of this attack, the replacement cost of a Yorkshire Terrier puppy, legal fees and expenses incurred from this civil action, and general damages. Photos and medical receipts attached. Videos to be presented.

(attach supplement if necessary)

3.) I believe because of the following information, that I am entitled to, and request a judgment for

\$ 7,500.00 and/or other relief:

\$7,500 is inclusive of veterinary expenses, the replacement cost of a Yorkshire Terrier puppy, court expenses, and general damages.

(Include any costs resulting from this action. (Example: court costs, legal fees, interest)

I STATE UNDER PENALTY OF PERJURY THAT THE ABOVE IS CORRECT AND TRUTHFUL.

July 1, 2020

Date


Signature of Plaintiff or Attorney

FORM C32-5270

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF CHARLESTON	)	COURT OF SMALL CLAIMS
	)	
MICHELE GRAHAM,	)	CASE NO.: 2020-CV-1011500994
	)	
Plaintiff,	)	
	)	
Vs.	)	
	)	
MARK & ADRIENNE CIABURRI,	)	DEFENDANTS' ANSWER
	)	AND COUNTERCLAIMS
	)	(Jury Trial Demanded)
Defendants.	)	
	)	

FILED IN
CHARLESTON COUNTY

JUL 30 2020

NORTH AREA
SMALL CLAIMS COURT

COMES NOW Defendants, Mark & Adrienne Ciaburri (hereinafter "Defendants," "Mark," "Adrienne," or "Ciaburris"), by and through their undersigned attorney, do hereby respond, answer, and counterclaim Plaintiff, Michele Graham's (hereinafter "Plaintiff," or "Graham"), complaint as is contained herein, subject to any and all affirmative defenses, qualifications, motions and any other pleadings as follows:

1. Defendants expressly deny each and every allegation of the Complaint not specifically admitted or otherwise qualified herein.

ANSWER

2. Upon information and belief, Defendants admit that Plaintiff is a resident of the Town of Mount Pleasant, located within Charleston County, South Carolina.

3. Defendants admit that they are residents of the Town of Mount Pleasant, located within Charleston County, South Carolina.

4. Defendants deny the factual allegations contained in sentence one (1) of the Complaint as stated, and further object to Plaintiff's factual categorization.

5. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in sentence two (2) of the Complaint.

6. Defendants deny the factual allegations contained in sentence three (3) of the Complaint as stated.

7. Defendants deny the factual allegations contained in sentence four (4) of the Complaint as stated.

8. Defendants deny the factual allegations contained in sentence five (5) of the Complaint as stated, and further object to Plaintiff's factual categorization.

9. Defendants deny the factual allegations contained in sentence six (6) of the Complaint in fact and as a matter of law.

10. Defendants do not believe a response is necessary to sentences seven (7) and eight (8) contained within the Complaint.

11. Defendant's deny liability for any and all damages alleged by Plaintiff and, thus, deny her prayer for relief.

FOR A FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

12. The Plaintiff's Complaint fails in its entirety to state a claim upon which relief may be granted against Defendants and should properly be dismissed pursuant to SCRCR Rule 12(b)(6).

FOR A SECOND AFFIRMATIVE DEFENSE
(No Proximate Cause)

13. The sole and proximate cause of Plaintiff's alleged injuries and damages was Plaintiff's own conduct, fault, and or negligence. Accordingly, Plaintiff's claims are barred, in whole or in part, as a matter of law.

FOR A THIRD AFFIRMATIVE DEFENSE
(Third Party/Comparative Negligence)

14. Defendants allege that any damages incurred by the Plaintiff, as alleged in her Complaint, if any, were due to and caused by and were the direct and proximate result of acts of

negligence on the part of the Plaintiff or a third party, over whom Defendants had no control, so as to bar the claims of Plaintiff against Defendants.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

15. Defendants allege that some, or all, of Plaintiff's claims are or may be barred by Plaintiff's failure to mitigate her damages.

FOR A FIFTH AFFIRMATIVE DEFENSE
(No Causal Connection)

16. There is no causal connection between the alleged acts or omissions of Defendants and the injuries and damages alleged by Plaintiff.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Adherence to Standard of Care)

17. To the extent the evidence shows, Defendants exercised the degree of care required of them by law at all times relevant to the matters complained of in the Complaint.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Sudden Emergency Doctrine)

18. The sudden emergency doctrine precludes Plaintiff's claims because Defendants made every reasonable effort under the circumstances to avoid the incident, which took place under emergency conditions.

FOR A NINTH AFFIRMATIVE DEFENSE
(Improper Service)

19. Plaintiff has failed to properly serve Defendants and therefore the action should be dismissed pursuant to Rule 12(b)(4) and 12(b)(5) SCRCp.

FOR A TENTH AFFIRMATIVE DEFENSE
(Reservation and Non-Waiver)

20. Defendants reserve any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, as is consistent with the South Carolina Rules of Civil Procedure.

COUNTERCLAIM FACTS

21. During the evening of May 27, 2020, Mark Ciaburri was walking he and his wife's dog, eleven (11) year old lab-mix Petey, around their neighborhood in Mount Pleasant as was his custom.

22. As always, when outside of the Ciaburri's property, Petey was leashed and within Mark's control as required by Town of Mount Pleasant, Charleston County, and South Carolina ordinances and law.

23. As per usual, Mark and Petey were walking in the middle of the roadway so as to minimize any distractions for Petey while on their walk.

24. While in the vicinity of Plaintiff's residence located at, 1661 Babbington Way, Mount Pleasant, South Carolina, 29464, Mark all the sudden observed a small animal in the roadway at what appeared to be the same time Petey noticed the animal which approached them while in the middle of the roadway from an unknown location.

25. Mark later learned that the animal was a pet dog, Gigi, belonging Plaintiff.

26. Before Mark could react, Petey grabbed the aggressively approaching Gigi in his mouth in an effort to defend himself and Mark.

27. Mark quickly responded by getting on the roadway in order to separate Petey and Gigi, suffering injury to himself in the process. It should be noted that police responding to this

incident observed cuts and scrapes to Mark's knees consistent with those which would be inflicted through contact with the roadway.

28. Upon separating Gigi from Petey, Mark began yelling for help as it was evident that Gigi had been injured in the encounter. Eventually, the residents of 1661 Babbington, Plaintiff and her Parents, Michael and Tammy Graham, came outside to investigate Mark's cries for help.

29. Upon making contact with Plaintiff and her parents, Mark indicated to them that Gigi was injured after being off-leash in their yard and approaching he and Petey in the roadway.

30. Following informing Plaintiff and her parents of the incident and making sure Gigi was back in their care, Mark returned to his residence to drop Petey off before returning to the area of the incident to speak with arriving law enforcement.

31. Plaintiff and her parents have provided inconsistent, if not outlandish, statements to law enforcement during the investigation of this incident, with regard to their version of the events that transpired. However, Plaintiff and her parents all at one point or another acknowledged the following: Gigi was let outside without supervision in the front yard of 1661 Babbington Way; Gigi was not on a leash or other restraint device to keep her confined to the yard; none of them witnessed the incident as all three were inside at the time of the incident; and that Gigi was not on their property at the time of the incident.

32. By not having Gigi leashed or within her supervision control, Plaintiff was in direct and unlawful violation of Town of Mount Pleasant Ordinance § 90.01 *et. seq.*; Charleston County Ordinance § 3-1 *et. seq.*; and South Carolina Code Ann. §§ 47-3-10 (3)(a) and 47-3-50.

33. Further investigation by the Mount Pleasant Police Department revealed that the dogs residing at 1661 Babbington Way are routinely left off-leash or otherwise unrestrained and are frequently observed outside of Plaintiff and her parent's property unsupervised. Furthermore,

Plaintiff's mother provided to investigators that her dogs residing have a history of wandering off and getting lost, which would not occur through proper supervision.

34. Mount Pleasant Police Department declined to bring charges or citations for the Ciaburris as Petey was leashed and being properly controlled by Mark at the time of the incident, while Gigi was not leashed, supervised, and left her property at the time of the incident.

35. Plaintiff's claims should have been properly resolved at the conclusion of the law enforcement investigation. However, Plaintiff has continued to unlawfully harass, stalk, defame, and target Defendants for her frustrations regarding this incident.

36. Since this incident, Plaintiff has spread defamatory and inaccurate on social media platforms, including Facebook.

37. Plaintiff has stalked and harassed the Ciaburris while they were at their residence both verbally and through other conduct, such as recording and taking pictures and video of their residence. Such conduct has included Plaintiff screaming inflammatory remarks toward Defendants while they tried to enjoy their own property, and regularly driving by and slowing down in an intimidating manner. Plaintiff was placed on trespass notice from the Defendant's residence as a result of her behavior.

38. Upon information and belief, Defendant's submit that Plaintiff has also attempted to intimidate and harass them through the U.S. Postal Service.

39. On or about June 24, 2020, Plaintiff was issued a warning by the Mount Pleasant Police Department advising her to cease all contact with Defendants or she might be subject to criminal arrest.

40. Plaintiff inappropriately pressured law enforcement to inquire regarding Defendant's home insurance policy, and unsuccessfully tried to initiate an insurance claim regarding this incident.

41. Upon information and belief, Plaintiff is still contacting law enforcement urging them to take retaliatory action against the Defendants, despite all investigations being closed.

42. Defendants have suffered reputational damage in their neighborhood as a result of Plaintiff's actions. Furthermore, they are in fear of Plaintiff and have taken steps to increase the security at their home because of that fear.

43. Upon initiating this action, Plaintiff was made aware that "UNDER PENALTY OF PERJURY THAT THE ABOVE IS CORRECT AND TRUTHFUL," however, despite that clear admonition and warning, Plaintiff has committed a fraud upon this Court by perjuring herself. Among other falsehoods, Plaintiff claims in her complaint that "[a]t the time of the attack, Gigi was relieving herself in the front lawn" despite providing contrary statements to law enforcement.

44. Plaintiff has no lawful purpose or standing to bring this action, besides further harassing the Defendants.

45. Defendants have suffered actual and consequential damages as proximate cause of Plaintiff's actions.

FOR A FIRST COUNTERCLAIM
(Abuse of Process)

46. Defendants incorporate all allegations of the paragraphs above as if repeated herein verbatim.

47. In response to this incident, Plaintiff has demonstrated a pattern of harassment and targeting of Defendants regarding her frustrations, despite her own unlawful conduct of allowing her dog to be outside off of a leash unsupervised being the proximate cause of this incident.

48. Plaintiff has publicly defamed Defendants, harassed them verbally at their home, targeted them for harassment through the mail, has and continues to urge law enforcement to bring unlawful and improper criminal charges, and has initiated fraudulent claims.

49. Plaintiff has been personally warned by law enforcement to cease all contact and harassment directed towards the Defendants, and she has initiated this action as a way to continue her harassment of Defendants.

50. Plaintiff in fact has an improper and unlawful ulterior motive and purpose for bringing this action.

51. Plaintiff's actions have been willful and overt, have been undertaken in the use of process, and are improper as they are aimed at illegitimate collateral objectives.

52. As result of Plaintiff's abuse of civil process with an ulterior motive, Defendants have suffered harm and damages and, thus, are entitled to judgment against Plaintiff for an appropriate award of actual, punitive, and compensatory damages, including attorney's fees and costs, in an amount to be determined by a jury.

FOR SECOND A COUNTERCLAIM
(Harassment and Stalking in Fact / Violation of S.C Code Ann. § 16-3-1700)

53. Defendants incorporate all allegations of the paragraphs above as if repeated herein verbatim.

54. Since this incident, Plaintiff has engaged in a prolonged and constant scheme of harassment and/or stalking directed at Defendants in violation of South Carolina Code Ann. § 16-3-1700 (A – C).

55. Plaintiff's conduct constitutes a pattern of intentional, substantial, and unreasonable intrusions into the private lives of Defendants that serves no legitimate purpose which causes

Defendants and would cause a reasonable person in Defendants' position, to suffer mental or emotional distress.

56. Plaintiff's conduct includes, but is not limited to, the following: visual or physical contact that is initiated, maintained, or repeated after a person has been provided oral or written notice that the contact is unwanted or after Defendants filed an incident report with law enforcement; surveillance of or the maintenance of a presence near Defendants residence; and verbal, written, or electronic that Plaintiff initiated, maintained, and repeated.

57. As result, Defendants are in fear of Plaintiff, and her behavior has a constituted an unreasonable intrusion into Defendants' private lives. Defendants have suffered mental and emotional distress as a result of Plaintiff's actions.

58. Defendants are entitled to Judgment against Plaintiff for an appropriate award of attorney's fees and costs, and an order of protection from this Court pursuant to South Carolina Code Ann. § 16-3-1750 *et. seq.*

(Prayer for Relief and Signature Block Follows on Next Page)

WHEREFORE, Defendants pray for a jury trial on all causes of action so triable, for judgment against Plaintiff in an appropriate amount of actual, punitive damages, and compensatory damages, for the recovery of their costs and attorney's fees for this action, for an issuance of a restraining order against Plaintiff, finding that Plaintiff committed Perjury based upon her Complaint and appropriate consequences related thereto, and for such further and other relief as the Court deems just and proper.

Respectfully submitted,



/s/

KIDD CORVEY & SIMPSON, LLC

Edward "Ted" R. Corvey, III, Esq.

914 Folly Road, Suite B

Charleston, South Carolina 29412

S.C. Bar Number: 101454

ted@kcsllawfirm.com

(843) 642-8792

ATTORNEY FOR DEFENDANTS

July 29, 2020
Charleston, South Carolina

FILED IN
CHARLESTON COUNTY
JUL 30 2020
NORTH AREA
SMALL CLAIMS COURT

STATE OF SOUTH CAROLINA,)
)
COUNTY OF CHARLESTON)
)
MICHELE GRAHAM)
MICHAEL GRAHAM)
TAMMY GRAHAM)

IN THE COURT OF COMMON PLEAS

SUMMONS

Plaintiff,)

vs.)

FILE NO. 2020 - CP-10 - 3397

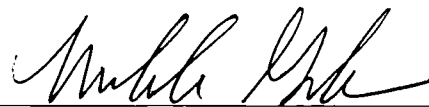
MARK CIABURRI)
ADRIENNE THOMPSON CIABURRI)
CHRISTA HOFFMAN, in her official)
capacity as a Town of Mount Pleasant)
animal control officer)
HEATHER CUMBEE, in her official)
capacity as a Town of Mount Pleasant)
animal control officer)
SHELBY WALKER, in her official capacity)
as a Town of Mount Pleasant patrol officer.)
Defendant.)

FILED
2020 AUG -5 PM 4:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Mount Pleasant, South Carolina



Plaintiff/Attorney for Plaintiff

Dated: August 4, 2020

Address: 1661 Babington Way
Mount Pleasant, South Carolina 29464

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM
MICHAEL GRAHAM
TAMMY GRAHAM

Plaintiffs,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;
CHRISTA HOFFMAN, in her official
capacity as a Town of Mount Pleasant
animal control officer;
HEATHER CUMBEE, in her official
capacity as a Town of Mount Pleasant
animal control officer;
SHELBY WALKER, in her official capacity
as a Town of Mount Pleasant patrol officer

Defendants

CIVIL ACTION

FILE NO. 2020-CP-10-3397

FILED
2020 AUG -5 PM 4:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

COMPLAINT

Plaintiffs Michele Graham, Michael Graham and Tammy Graham bring this action against Defendants Mark Ciaburri, Adrienne Thompson Ciaburri, Animal Control Officer Christa Hoffman, Animal Control Officer Heather Cumbee and Pfc. Shelby Walker, based on the allegations set forth below.

PARTIES

1.

Plaintiffs are residents of 1661 Babington Way in Mount Pleasant, South Carolina (Charleston County) and the owners of the 12-year-old Yorkshire Terrier that was fatally attacked by a Pit-bull mix on May 27, 2020.

2.

Defendant Christa Hoffman, hereinafter referred to as “Defendant Officer Hoffman,” is an animal control officer for the Town of Mount Pleasant and assigned the duty of enforcing the Town of Mount Pleasant Ordinances Regarding Animals.

3.

Defendant Heather Cumbee, hereinafter referred to as “Defendant Officer Cumbee,” is an animal control officer for the Town of Mount Pleasant and assigned the duty of enforcing the Town of Mount Pleasant Ordinances Regarding Animals.

4.

Defendant Shelby Walker, hereinafter referred to as “Defendant Pfc. Shelby Walker,” is a patrol officer for the Town of Mount Pleasant and is responsible for enforcing the Town of Mount Pleasant Ordinances.

5.

Defendant Mark Ciaburri is the owner of the Pit-bull mix that fatally attacked the 12-year-old Yorkshire Terrier on May 27, 2020. Defendant Mark Ciaburri resides in Mount Pleasant, South Carolina (Charleston County).

6.

Defendant Adrienne Thompson Ciaburri is the co-owner of the Pit-bull mix that fatally attacked the 12-year-old Yorkshire Terrier on May 27, 2020. Defendant Adrienne Thompson Ciaburri resides in Mount Pleasant, South Carolina (Charleston County).

JURISDICTION AND VENUE

7.

This Court has subject-matter jurisdiction over the claims in this action and jurisdiction over the Defendants named herein. The venue is proper in this Court because at least one of the Defendants resides in Mount Pleasant, South Carolina (Charleston County) and the acts and omissions that are the subject of this action occurred in Mount Pleasant, South Carolina (Charleston County).

FACTS

8.

On May 27, 2020 at approximately 20:45, Plaintiff Michele Graham let the aforementioned 12-year-old Yorkshire Terrier out to relieve herself in the front lawn of her residence at 1661 Babington Way, Mount Pleasant, SC 29464 in the Wando Lakes subdivision.

9.

For brevity, the 12-year-old Yorkshire Terrier will be referred to hereinafter as “Gigi.”

10.

While standing at the full-view storm door to observe Gigi, Plaintiff Michael Graham turned away to speak with the others in the household. After looking away for < 1 minute, Plaintiff Michael Graham opened the full-view storm door to bring in Gigi. When Plaintiff Michael Graham opened the full-view storm door, Plaintiff Michael Graham saw Defendant Mark Ciaburri standing on the property holding his Pit-bull mix down. Defendant Mark Ciaburri then stated to Plaintiff Michael Graham, “Your dog is hurt.”

11.

Plaintiff Michele Graham, Gigi’s primary owner and caretaker, retrieved Gigi from the front lawn. Gigi was lying on her stomach and facing the 1661 Babington Way residence.

12.

Plaintiff Michele Graham immediately took Gigi to the emergency veterinary hospital located at 985 Johnnie Dodds Blvd., Mount Pleasant, SC 29464. While Plaintiff Michele Graham drove to the veterinary hospital, Plaintiff Tammy Graham contacted Mount Pleasant police.

13.

When Plaintiff Tammy Graham called the police, Defendant Mark Ciaburri left the scene and returned without his Pit-bull mix.

14.

When the police arrived, the entire scene was captured on body-worn cameras. Defendant Mark Ciaburri appears on bodycam footage telling his version of the incident to the first officer

on the scene. In Defendant Mark Ciaburri's first version, he states that Gigi "darted out" into the street and his dog "got it."

15.

Blood was present in various places in the front lawn, and seven droplets of blood were located on the curb. There was no blood anywhere on the street / roadway.

16.

When the second officer, Defendant Pfc. Shelby Walker, arrives Defendant Mark Ciaburri tells the same story; but Defendant Mark Ciaburri later adds that Gigi started "attacking" his Pit-bull mix. In a subsequent statement to Defendant Pfc. Shelby Walker, Defendant Mark Ciaburri denies that Gigi attacked his Pit-bull mix.

17.

The incident report written by Defendant Pfc. Shelby Walker documenting this incident was inadequate, false and misleading. After a review by the Internal Affairs Bureau and a supervising sergeant, it was determined that Defendant Pfc. Shelby Walker's handling of this incident was replete with misconduct and bias. As a result, Defendant Pfc. Shelby Walker was placed on a 90-day Professional Improvement Plan beginning June 30, 2020.

18.

Defendants Officer Hoffman and Officer Cumbee used Defendant Pfc. Shelby Walker's incident report as a reference when conducting their investigation of the fatal May 27, 2020 attack against Gigi.

19.

Because of this Pit-bull attack, Gigi suffered broken ribs, fail chest and severe pulmonary bruising. As documented in her veterinary clinical summary, even with the most aggressive treatment, Gigi's chance of survival was < 10%. Gigi died the following day, May 28, 2020.

20.

On May 28, 2020 at approximately 10 am, Defendant Officer Hoffman and Defendant Officer Cumbee spoke with Defendants Mark and Adrienne Ciaburri at their home at 1757 Nantahala Blvd., Mount Pleasant, South Carolina. The interaction, which is captured on body-worn camera, shows Defendant Mark Ciaburri telling his version of events. Defendant Mark Ciaburri states that there are always two Yorkshire Terriers playing in the front yard at 1661 Babington Way and that his Pit-bull mix "almost got" one of the Yorkshire Terriers several times, but that he was able to pull his Pit-bull mix away. Defendant Mark Ciaburri then states, "This time he [his Pit-bull mix] got away [from him]." Defendant Mark Ciaburri then goes on to say, "Next thing I know, my little dog [his Pit-bull mix] is going after this dog [Gigi]...this time my dog got 'em."

21.

After speaking with Defendant Mark Ciaburri, Defendant Officer Hoffman, wrote a supplemental report that stated the following, "We cannot charge Mark with animal at large, public nuisance, or vicious animal because the dog was on a leash and there [sic] dog left the property and was at large."

22.

On June 2, 2020, Plaintiff Michele Graham contacted Defendant Officer Hoffman to

inquire about the status of the case. The approximately 15-minute conversation was recorded and captured Defendant Officer Hoffman stating that she had completed her investigation and decided that she would not take any action against Defendant Mark Ciaburri or the Pit-bull mix. In this recording, Defendant Officer Hoffman admits to not looking at any factual evidence. Plaintiff Michele Graham forwarded this audio to Town of Mount Pleasant officials.

23.

On the morning of June 3, 2020 Defendants Officer Hoffman and Officer Cumbee began what appeared to be an investigation. Defendants Officer Hoffman and Officer Cumbee walked through the Wando Lakes subdivision and spoke with two neighbors located to right and left of 1661 Babington Way and four neighbors located directly across the street. Defendants Officer Hoffman and Officer Cumbee asked the neighbors if they had cameras and inquired about the behavior of the Yorkshire Terriers at 1661 Babington Way.

24.

When Plaintiff Michael Graham noticed Defendants Officer Hoffman and Officer Cumbee outside taking photos of the 1661 Babington Way residence, he initiated contact to determine their identities. During this contact, Defendants Officer Hoffman and Officer Cumbee also spoke with Plaintiffs Tammy Graham and Michele Graham. Plaintiffs Michael Graham and Michele Graham demonstrated to Defendants Officer Hoffman and Officer Cumbee where on the property Plaintiff Michael Graham witnessed Defendant Mark Ciaburri, from where in the front lawn Plaintiff Michele Graham retrieved Gigi and the locations of blood on the night of the attack.

25.

Although the entire interaction between Defendant Officer Hoffman, Defendant Officer Cumbee, the aforementioned Plaintiffs and the six aforementioned neighbors was captured on body-worn camera, Defendant Officer Hoffman wrote a grossly inaccurate supplemental report that is refuted by the camera footage.

26.

On June 17, 2020, a detective interviewed Defendant Mark Ciaburri at the Town of Mount Pleasant police headquarters. In this video-recorded interview, Defendant Mark Ciaburri states that he was walking his Pit-bull mix alongside the 1661 Babington Way residence. Defendant Mark Ciaburri states that the residence was to his immediate left and he was walking his Pit-bull mix with a leash in his left hand and his mobile phone in his right hand. According to Defendant Mark Ciaburri, he was walking and looking at his phone when he suddenly felt a tug on the leash. According to Defendant Mark Ciaburri, he looked back and saw his Pit-bull mix grabbing Gigi.

27.

The detective also interviewed Defendant Mark Ciaburri's neighbors. The detective's report contains information that confirms Defendant Mark Ciaburri's and the neighbors' awareness of the aggressive nature of Defendants Mark and Adrienne Ciaburri's Pit-bull mix.

28.

The criminal investigation into Defendant Mark Ciaburri's actions on the night of May 27, 2020 was administratively closed, due to a lack of evidence proving that his actions were

undoubtedly criminal in nature.

**FOR A FIRST CAUSE OF ACTION
(DEFENDANTS MARK AND ADRIENNE THOMPSON CIABURRI)**

29.

Plaintiffs incorporate the allegations of the paragraphs above into this cause of action.

30.

As the owner of the Pit-bull mix, Defendant Mark Ciaburri had a duty to exercise reasonable care in order to prevent his Pit-bull mix from causing injury in predictable ways.

31.

Defendants Mark and Adrienne Ciaburri's Pit-bull mix meets the definitions of a dangerous and vicious animal as set forth in the definitions provided in § 90.29(B)(3) and § 90.01 of the Town of Mount Pleasant's Code of Ordinances.

32.

The cause of the aforementioned fatal attack against Gigi is due to the vicious and dangerous nature of Defendants Mark and Adrienne Ciaburri's Pit-bull mix and Defendant Mark Ciaburri's failure to exercise his duty of care as the owner of said Pit-bull-mix.

**FOR A SECOND CAUSE OF ACTION
(DEFENDANTS ANIMAL CONTROL OFFICERS CHRISTA HOFFMAN AND
HEATHER CUMBEE)**

33.

Plaintiffs incorporate the allegations of the paragraphs above into this cause of action.

34.

Town of Mount Pleasant Animal Control Officers have a duty to enforce the Town's Code of Ordinances Regarding Animals. This duty includes seizing animals that are dangerous and vicious per definition set forth in § 90.29(B)(3) and § 90.01 of the Town of Mount Pleasant's Code of Ordinances.

35.

Defendants Officer Hoffman and Officer Cumbee did not uphold this duty, nor did Defendants Officer Hoffman and Officer Cumbee thoroughly and accurately investigate this fatal dog attack case. Because of their inadequate investigation and subsequent inaction, the dangerous and vicious Pit-bull mix owned by Defendants Mark and Adrienne Ciaburri continues to pose a safety risk to residents and small animals living in the Wando Lakes subdivision and the Town of Mount Pleasant.

**FOR A THIRD CAUSE OF ACTION
(DEFENDANT PFC. SHELBY WALKER)**

36.

Plaintiffs incorporate the allegations of the paragraphs above into this cause of action.

37.

Town of Mount Pleasant Police Department officers have a duty to enforce town ordinances and properly and professionally investigate matters thoroughly and without bias.

38.

Defendant Pfc. Shelby Walker failed to perform her duty accurately and according to Town of Mount Pleasant Police Department standards. Defendant Pfc. Shelby Walker's inaccurate and inadequate reporting of this fatal dog attack incident deprived Defendants Officer Hoffman and Officer Cumbee of the full scope of information necessary to conduct an appropriate initial investigation and fulfil their duties as animal control officers.

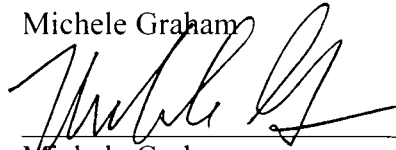
PRAYER FOR RELIEF

39.

For the causes of action set forth in paragraphs 29-38, the Plaintiffs respectfully request relief from this Court as follows:

- A. For Defendants Mark and Adrienne Thompson Ciaburri's aforementioned Pit-bull mix to be declared dangerous and vicious per definition set forth in § 90.29(B)(3) and § 90.01 of the Town of Mount Pleasant Code of Ordinance.
- B. For Defendants Mark and Adrienne Ciaburri's Pit-bull mix to be ordered seized by the officers acting on behalf of the Town of Mount Pleasant Animal Control and humanely euthanized per § 90.30 of the Town of Mount Pleasant Ordinance Regarding Animals.
- C. For such other and further relief that this Court may deem just and proper.

Michele Graham



Michele Graham

1661 Babington Way

Mount Pleasant, SC 29464

843-532-7252

PLAINTIFF

Dated: 8-5-2020

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;
CHRISTA HOFFMAN, in her official
capacity as a Town of Mount Pleasant
animal control officer;
HEATHER CUMBEE, in her official
capacity as a Town of Mount Pleasant
animal control officer;
SHELBY WALKER, in her official capacity
as a Town of Mount Pleasant patrol officer
TOWN OF MOUNT PLEASANT POLICE
DEPARTMENT

Defendants

CIVIL ACTION
FILE NO. 2020CP1003397

FILED
2020 AUG 31 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT

AMENDED COMPLAINT

Plaintiff Michele Graham brings this action against Defendants Mark Ciaburri, Adrienne Thompson Ciaburri, Animal Control Officer Christa Hoffman, Animal Control Officer Heather Cumbee, Pfc. Shelby Walker and the Town of Mount Pleasant Police Department based on the allegations set forth below.

PARTIES

1.

Plaintiff is a resident of 1661 Babington Way in Mount Pleasant, South Carolina (Charleston County) and the owner of the 12-year-old Yorkshire Terrier that was fatally attacked by a Pit-bull mix on May 27, 2020.

2.

Defendant Christa Hoffman, hereinafter referred to as “Defendant Officer Hoffman,” is an animal control officer for the Town of Mount Pleasant and assigned the duty of enforcing the Town of Mount Pleasant Ordinances Regarding Animals.

3.

Defendant Heather Cumbee, hereinafter referred to as “Defendant Officer Cumbee,” is an animal control officer for the Town of Mount Pleasant and assigned the duty of enforcing the Town of Mount Pleasant Ordinances Regarding Animals.

4.

Defendant Shelby Walker, hereinafter referred to as “Defendant Pfc. Shelby Walker,” is a patrol officer for the Town of Mount Pleasant and is responsible for enforcing the Town of Mount Pleasant Ordinances.

5.

Defendant Mark Ciaburri is the owner of the Pit-bull mix that fatally attacked the 12-year-old Yorkshire Terrier on May 27, 2020. Defendant Mark Ciaburri resides in Mount Pleasant, South Carolina (Charleston County).

6.

Defendant Adrienne Thompson Ciaburri is the co-owner of the Pit-bull mix that fatally attacked the 12-year-old Yorkshire Terrier on May 27, 2020. Defendant Adrienne Thompson Ciaburri resides in Mount Pleasant, South Carolina (Charleston County).

7.

The Town of Mount Pleasant Police Department is the police department for the Town of Mount Pleasant, South Carolina. The Town of Mount Pleasant Animal Control operates within the Town of Mount Pleasant Police Department.

JURISDICTION AND VENUE

8.

This Court has subject-matter jurisdiction over the claims in this action and jurisdiction over the Defendants named herein. The venue is proper in this Court because at least one of the Defendants resides in Mount Pleasant, South Carolina (Charleston County) and the acts and omissions that are the subject of this action occurred in Mount Pleasant, South Carolina (Charleston County).

PROCEDURAL BACKGROUND

9.

On July 1, 2020, Plaintiff Michele Graham filed a complaint against Defendants Mark and Adrienne Ciaburri in the Charleston County Small Claims Court for monetary damages arising from the fatal attack of the Plaintiffs' 12-year-old Yorkshire Terrier by the Defendants' Pit-bull mix. On August 25, 2020, Plaintiff Michele Graham dismissed the case in Charleston

County Small Claims Court, in order to pursue monetary damages and injunctive relief in the Charleston County Court of Common Pleas.

FACTS

10.

On May 27, 2020 at approximately 20:45, Plaintiff Michele Graham let the aforementioned 12-year-old Yorkshire Terrier out to relieve herself in the front lawn of her residence at 1661 Babington Way, Mount Pleasant, SC 29464 in the Wando Lakes subdivision.

11.

For brevity, the 12-year-old Yorkshire Terrier will be referred to hereinafter as “Gigi.”

12.

While standing at the full-view storm door to observe Gigi, the Plaintiff’s father turned away to speak with the others in the household. After looking away for < 1 minute, the Plaintiff’s father opened the full-view storm door to bring in Gigi. When the Plaintiff’s father opened the full-view storm door, the Plaintiff’s father witnessed Defendant Mark Ciaburri on the property holding his Pit-bull mix down. Defendant Mark Ciaburri then stated to the Plaintiff’s father, “Your dog is hurt.”

13.

Plaintiff Michele Graham, Gigi’s primary owner and caretaker, retrieved Gigi from the front lawn. Gigi was lying on her stomach and facing the 1661 Babington Way residence.

14.

Plaintiff Michele Graham immediately took Gigi to the emergency veterinary hospital located at 985 Johnnie Dodds Blvd., Mount Pleasant, SC 29464. While Plaintiff Michele Graham drove to the veterinary hospital, the Plaintiff's mother contacted Mount Pleasant police.

15.

When the Plaintiff's mother called the police, Defendant Mark Ciaburri left the scene and returned without his Pit-bull mix. Defendant Mark Ciaburri also returned to the scene with scraped knees.

16.

When the police arrived, the entire scene was captured on body-worn cameras. Defendant Mark Ciaburri appears on bodycam footage telling his version of the incident to the first officer on the scene. In Defendant Mark Ciaburri's first version, he states that Gigi "darted out" into the street and his dog "got it." Defendant Mark Ciaburri then states that he tried his best to "catch" his dog.

17.

Blood was present in various places in the front lawn, and seven droplets of blood were located on the curb. There was no blood anywhere on the street / roadway.

18.

When the second officer, Defendant Pfc. Shelby Walker, arrives Defendant Mark Ciaburri tells the same story; but Defendant Mark Ciaburri later adds that Gigi started

“attacking” his Pit-bull mix. In a subsequent statement to Defendant Pfc. Shelby Walker, Defendant Mark Ciaburri denies that Gigi attacked his Pit-bull mix.

19.

The incident report written by Defendant Pfc. Shelby Walker documenting this incident was inadequate, false and misleading. After a review by the Internal Affairs Bureau and a supervising sergeant, it was determined that Defendant Pfc. Shelby Walker’s handling of this incident was replete with misconduct and bias. As a result, Defendant Pfc. Shelby Walker was placed on a 90-day Professional Improvement Plan beginning June 30, 2020.

20.

Defendants Officer Hoffman and Officer Cumbee used Defendant Pfc. Shelby Walker’s incident report as a reference when conducting their investigation of the fatal May 27, 2020 attack against Gigi.

21.

Because of this Pit-bull attack, Gigi suffered broken ribs, fail chest and severe pulmonary bruising. As documented in her veterinary clinical summary, even with the most aggressive treatment, Gigi’s chance of survival was < 10%. Gigi died the following day, May 28, 2020.

22.

On May 28, 2020 at approximately 10 am, Defendant Officer Hoffman and Defendant Officer Cumbee spoke with Defendants Mark and Adrienne Ciaburri at their home at 1757 Nantahala Blvd., Mount Pleasant, South Carolina. The interaction, which is captured on body-worn camera, shows Defendant Mark Ciaburri telling his version of events. Defendant Mark

Ciaburri states that there are always two Yorkshire Terriers playing in the front yard at 1661 Babington Way and that his Pit-bull mix “almost got” one of the Yorkshire Terriers several times, but that he was able to pull his Pit-bull mix away. Defendant Mark Ciaburri then states, “This time he [his Pit-bull mix] got away [from him].” Defendant Mark Ciaburri then goes on to say, “Next thing I know, my little dog [his Pit-bull mix] is going after this dog [Gigi]...this time my dog got ‘em.”

23.

After speaking with Defendant Mark Ciaburri, Defendant Officer Hoffman, wrote a supplemental report that stated the following, “We cannot charge Mark with animal at large, public nuisance, or vicious animal because the dog was on a leash and there [sic] dog left the property and was at large.”

24.

On June 2, 2020, Plaintiff Michele Graham contacted Defendant Officer Hoffman to inquire about the status of the case. The approximately 15-minute conversation was recorded and captured Defendant Officer Hoffman stating that she had completed her investigation and decided that she would not take any action against Defendant Mark Ciaburri or the Pit-bull mix. In this recording, Defendant Officer Hoffman admits to not looking at any factual evidence. Plaintiff Michele Graham forwarded this audio to Town of Mount Pleasant officials.

25.

On the morning of June 3, 2020 Defendants Officer Hoffman and Officer Cumbee began what appeared to be an investigation. Defendants Officer Hoffman and Officer Cumbee walked through the Wando Lakes subdivision and spoke with two neighbors located to right and left of

1661 Babington Way and four neighbors located directly across the street. Defendants Officer Hoffman and Officer Cumbee asked the neighbors if they had cameras and inquired about the behavior of the Yorkshire Terriers at 1661 Babington Way.

26.

When the Plaintiff's father noticed Defendants Officer Hoffman and Officer Cumbee outside taking photos of the 1661 Babington Way residence, he initiated contact to determine their identities. During this contact, Defendants Officer Hoffman and Officer Cumbee also spoke with the Plaintiff and her mother. Plaintiff Michele Graham and her father demonstrated to Defendants Officer Hoffman and Officer Cumbee where on the property the Plaintiff's father witnessed Defendant Mark Ciaburri, from where in the front lawn Plaintiff Michele Graham retrieved Gigi and the locations of blood on the night of the attack.

27.

Although the entire interaction between Defendant Officer Hoffman, Defendant Officer Cumbee, Plaintiff Michele Graham, the Plaintiff's parents and the six aforementioned neighbors was captured on body-worn camera, Defendant Officer Hoffman wrote a grossly inaccurate supplemental report that is refuted by the camera footage.

28.

On June 17, 2020, a detective interviewed Defendant Mark Ciaburri at the Town of Mount Pleasant police headquarters. In this video-recorded interview, Defendant Mark Ciaburri states that he was walking his Pit-bull mix alongside the 1661 Babington Way residence. Defendant Mark Ciaburri states that the residence was to his immediate left and he was walking his Pit-bull mix with a leash in his left hand and his mobile phone in his right hand. According to

Defendant Mark Ciaburri, he was walking and looking at his phone when he suddenly felt a tug on the leash. According to Defendant Mark Ciaburri, he looked back and saw his Pit-bull mix grabbing Gigi.

29.

The detective also interviewed Defendant Mark Ciaburri's neighbors. The detective's report contains information that confirms Defendant Mark Ciaburri's and the neighbors' awareness of the aggressive nature of Defendants Mark and Adrienne Ciaburri's Pit-bull mix.

30.

The criminal investigation into Defendant Mark Ciaburri's actions on the night of May 27, 2020 was administratively closed, due to a lack of evidence proving that his actions were undoubtedly criminal in nature.

**FOR A FIRST CAUSE OF ACTION
(DEFENDANTS MARK AND ADRIENNE THOMPSON CIABURRI)**

Negligence

31.

Plaintiffs incorporate the allegations of the paragraphs above into this cause of action.

32.

A. Duty of Care: As the owner of the Pit-bull mix, Defendant Mark Ciaburri had a duty to exercise reasonable care in order to prevent his Pit-bull mix from causing injury in predictable ways. On May 28, 2020, Defendant Mark Ciaburri stated to Defendants Officer Hoffman and Officer Cumbee, "My dog has almost got that dog several times."

During this conversation on May 28, 2020, Defendant Mark Ciaburri referred to his Pit-bull mix as a “hunter.” Defendants Mark Ciaburri and Adrienne Ciaburri have stated that their Pit-bull mix kills opossums in their backyard. Defendant Mark Ciaburri is fully aware of his dog’s aggressive tendencies and high prey drive. Defendant Mark Ciaburri is also fully aware of the presence of Yorkshire Terriers off-leash in the front lawn at 1661 Babington Way, since he has claimed to walk his Pit-bull mix on the same route (passing the 1661 Babington Way residence) every day for 10 years. Defendant Mark Ciaburri confirmed his knowledge of Yorkshire Terriers in the front lawn several times, specifically during the May 28, 2020 conversation with Defendants Officer Hoffman and Officer Cumbee. Defendant Mark Ciaburri stated, “Their [the Plaintiff and her parents] dogs hang out in their front yard not on leashes all the time. This goes back years.”

Defendant Mark Ciaburri knew that his Pit-bull mix would injure or kill one of the Yorkshire Terriers at 1661 Babington Way if it had the opportunity. Therefore, Defendant Mark Ciaburri owed a duty to the Plaintiff to prevent this by taking reasonable precautions (i.e. walking on the opposite side of the street, muzzling his Pit-bull mix, walking his Pit-bull mix on a tight leash when approaching the 1661 Babington Way residence, or simply choosing an alternate route).

B. Breach of Duty of Care: Given Defendant Mark Ciaburri’s knowledge of his dog’s aggressive nature, his knowledge of the fact that Yorkshire Terriers are always in the front lawn at 1661 Babington Way and his knowledge of the fact that his Pit-bull mix “almost got” one of the Yorkshire Terriers previously, walking his un-muzzled Pit-bull mix along the edge of the 1661 Babington Way property – with the Pit-bull mix having access to the lawn where Yorkshire Terriers are present – is unreasonable and grossly

negligent. Furthermore, Defendant Mark Ciaburri's statements about trying to "catch" his dog and that he finally "caught" his dog indicates that he did not have his Pit-bull mix under reasonable control given the circumstances. A leash is a restraining device that aids in the control and direction of an animal. A dog that is properly restrained on a leash by a vigilant owner would not have the ability to maul another animal. Additionally, a dog that is properly restrained by a leash would not need to be "caught." To gain greater control of a leashed dog, the leash is simply pulled.

C. Defendant Mark Ciaburri's breach of duty of care was the proximate cause of Gigi's death: On May 28, 2020, Defendant Mark Ciaburri stated to Defendants Officer Hoffman and Officer Cumbee, "This time, he [his Pit-bull mix] got away [from him]...This time my dog got 'em." These statements from Defendant Mark Ciaburri make it clear that his Pit-bull mix "got away" from him and "got" Gigi. In the same conversation, Defendant Mark Ciaburri also stated, "Next thing I know, my little dog [the Pit-bull mix] is going after this dog [Gigi]." The Defendants' Pit-bull mix *went after* Gigi. Gigi was attacked and killed by the Defendants' Pit-bull mix because Defendant Mark Ciaburri took no reasonable precautions to prevent this foreseeable incident from occurring. Defendant Mark Ciaburri stated to Defendants Officer Hoffman and Officer Cumbee, "I'm surprised this hasn't happened before." This statement makes it clear that Defendant Mark Ciaburri expected this to occur. Therefore, this incident was foreseeable for Defendant Mark Ciaburri.

PRAYER FOR RELIEF

33.

For the causes of action set forth in paragraphs 31-32C, the Plaintiff respectfully request relief from this Court as follows:

Injunctive Relief:

A. For Defendants Mark and Adrienne Thompson Ciaburri's aforementioned Pit-bull mix to be declared dangerous and vicious per definition set forth in § 90.29(B)(3) and § 90.01 of the Town of Mount Pleasant Code of Ordinance.

1. Defendants Mark and Adrienne Ciaburri's Pit-bull mix meets the definitions of a dangerous and vicious animal as set forth in the definitions provided in § 90.29(B)(3) and § 90.01 of the Town of Mount Pleasant's Code of Ordinances.
2. The cause of the aforementioned fatal attack against Gigi is due to the vicious and dangerous nature of Defendants Mark and Adrienne Ciaburri's Pit-bull mix and Defendant Mark Ciaburri's failure to exercise his duty of care as the owner of said Pit-bull-mix.

B. For Defendants Mark and Adrienne Ciaburri's Pit-bull mix to be ordered seized by the officers acting on behalf of the Town of Mount Pleasant Animal Control and humanely euthanized per § 90.30 of the Town of Mount Pleasant Ordinance Regarding Animals.

1. The Town of Mount Pleasant Animal Control Officers have a duty to enforce the Town's Code of Ordinances Regarding Animals. This duty

includes seizing animals that are dangerous and vicious per definition set forth in § 90.29(B)(3) and § 90.01 of the Town of Mount Pleasant's Code of Ordinances.

2. Defendants Officer Hoffman and Officer Cumbee did not uphold this duty, nor did Defendants Officer Hoffman and Officer Cumbee thoroughly and accurately investigate this fatal dog attack case. Because of their inadequate investigation and subsequent inaction, the dangerous and vicious Pit-bull mix owned by Defendants Mark and Adrienne Ciaburri continues to pose a safety risk to residents and small animals living in the Wando Lakes subdivision and the Town of Mount Pleasant.
3. Town of Mount Pleasant Police Department officers have a duty to enforce town ordinances and properly and professionally investigate matters thoroughly and without bias.
4. Defendant Pfc. Shelby Walker failed to perform her duty accurately and according to Town of Mount Pleasant Police Department standards. Defendant Pfc. Shelby Walker's inaccurate and inadequate reporting of this fatal dog attack incident deprived Defendants Officer Hoffman and Officer Cumbee of the full scope of information necessary to conduct an appropriate initial investigation and fulfil their duties as animal control officers.

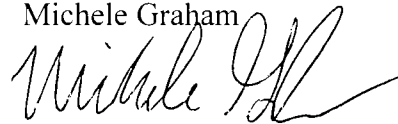
Prayer for Relief: Defendants Mark and Adrienne Ciaburri

Plaintiff requests that this Court order Defendants Mark and Adrienne Ciaburri to:

- A. Reimburse the Plaintiff for the veterinary medical expenses incurred as a result of the May 27, 2020 Pit-bull mix attack against Gigi - \$2,684.98
- B. Reimburse the Plaintiff for the cost to replace the Yorkshire Terrier - \$1,500.00
- C. Reimburse the Plaintiff for the costs of legal fees and all expenses related to bringing this civil action.
- D. Pay punitive damages in an amount that this Court deems just and proper.

Respectfully Submitted,

Michele Graham



Michele Graham
1661 Babington Way
Mount Pleasant, SC 29464
843-532-7252
PLAINTIFF

Dated: 8/31/2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2020-CP-10-03397
MICHELLE GRAHAM, MICHAEL	)	
GRAHAM, and TAMMY GRAHAM,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	DEFENDANTS MARK AND ADRIENNE
	)	CIABURRI'S ANSWER AND
MARK CIABURRI, ADRIENNE	)	COUNTERCLAIMS
CIABURRI, CRISTA HOFFMAN,	)	(Jury Trial Demanded)
HEATHER CUMBEE, and SHELBY	)	
WALKER,	)	
	)	
Defendants.	)	
	)	

COMES NOW Defendants, Mark & Adrienne Ciaburri (hereinafter "Defendants," "Mark," "Adrienne," or "Ciaburris"), by and through their undersigned counsel, do hereby respond, answer, and counterclaim Plaintiffs (hereinafter "Plaintiff"), complaint as is contained herein, subject to any and all affirmative defenses, qualifications, motions and any other pleadings as follows:

1. Defendants expressly deny each and every allegation of the Complaint not specifically admitted or otherwise qualified herein.

ANSWER

2. Upon information and belief, Defendants admit that Plaintiffs are residents of the Town of Mount Pleasant, located within Charleston County, South Carolina, and were owners of a Yorkshire Terrier involved in this incident. However, Defendant's deny the remaining allegations contained in Paragraph One (1) of the Amended Complaint as stated.

3. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Two (2) of the Amended Complaint.

4. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Three (3) of the Amended Complaint.

5. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Four (4) of the Amended Complaint.

6. Defendants admit they are residents of the Town of Mount Pleasant, located within Charleston County, South Carolina, but deny the remaining allegations contained in Paragraphs Five (5) and Six (6) of the Amended Complaint as stated.

7. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Seven (7) of the Amended Complaint.

8. Defendants deny that subject matter jurisdiction is properly before this Court as Plaintiff's prayer for relief calls for amounts below the jurisdictional threshold of this court.

9. Defendants admit that Plaintiffs initiated an action in Charleston County Smalls Claims Court on or about July 1, 2020.¹ During the pendency of her smalls court, Plaintiffs filed a second action involving the same controversy with this Court on or about August 5, 2020.² Defendant's deny that Defendant moved for her small claims court case be dismissed. In fact, and despite Defendant's misrepresentations, on or about August 25, 2020, during a conference with the Small Claims Court Defendant's moved that Plaintiffs' Small Claims Court action be dismissed pursuant to South Carolina Rule of Civil Procedure 12 (b)(8) and their motion was granted by Magistrate Judge James Turner.³

10. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations of Paragraph Ten (10) of the Amended Complaint.

¹ See Exhibit A – Plaintiff's Small Claims Court Complaint.

² See Exhibit B – Plaintiff's Original Complaint filed with this Court on or about August 5, 2020.

³ See Exhibit C – Order Dismissing Plaintiff's Small Claims Court Complaint *Upon Motion of Defendants*.

11. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Eleven (11) of the Amended Complaint.

12. Defendants admit that once he was able to identify the injured dogs owners he informed them the dog was injured, however, Defendants lack a sufficient factual basis of knowledge to either admit or deny the remaining allegations contained in Paragraph Twelve (12) of the Amended Complaint.

13. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Thirteen (13) of the Amended Complaint.

14. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations of Paragraph Fourteen (14) of the Complaint as stated.

15. Defendants lack a sufficient factual basis of knowledge to admit or deny the first sentence of Paragraph Fifteen (15) of the Amended Complaint as stated. However, Defendants admit that Mark Ciaburri left to return his dog to his home before returning to voluntarily talk to and cooperate with responding law enforcement, Defendants further admit that Mark Ciaburri was injured in the incident.

16. Defendants lack a sufficient factual basis of knowledge to admit or deny the allegations contained Paragraph Sixteen (16) of the Amended Complaint as stated. However, Defendants admit that they have told consistent stories to law enforcement on several occasions while fully cooperating with the criminal investigation.

17. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Seventeen (17) of the Amended Complaint.

18. Defendants lack a sufficient factual basis of knowledge to admit or deny the allegations contained Paragraph Eighteen (18) of the Amended Complaint as stated. However,

Defendants admit that they have told consistent stories to law enforcement on several occasions while fully cooperating with the criminal investigation.

19. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Nineteen (19) of the Amended Complaint.

20. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Twenty (20) of the Amended Complaint.

21. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Twenty-One (21) of the Amended Complaint

22. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Twenty-Two (22) of the Amended Complaint as stated. However, as previously asserted, Defendants acknowledge speaking with, providing consistent statements, and cooperating with law enforcement who investigated this incident.

23. Defendants admit the allegations contained in Paragraph Twenty-Three (23) of the Amended Complaint, and fully endorse the conclusion.

24. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Twenty-Four (24) of the Amended Complaint.

25. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Twenty-Five (25) of the Amended Complaint.

26. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Twenty-Six (26) of the Amended Complaint.

27. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Twenty-Seven (27) of the Amended Complaint.

28. Defendants admits interviewing with Mount Pleasant Police Department officers on or about June 17, 2020, and further admits providing an additional factually consistent statement during this interview – as he had to law enforcement on several prior occasions. However, Defendants lack a sufficient factual basis of knowledge to specifically admit or deny the remaining allegations contained in Paragraph Twenty-Eight (28) of the Amended Complaint as stated.

29. Defendants lack a sufficient factual basis of knowledge to either admit or deny the allegations contained in Paragraph Twenty-Nine (29) of the Amended Complaint.

30. Upon information and belief, Defendants admit that the criminal investigation surrounding the underlying incident was closed and did not result in any charges being brought against Defendants. However, Defendants lack a sufficient factual basis to specifically admit or deny the allegations contained in Paragraph Thirty (30) of the Complaint as stated.

FOR A FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

31. The Plaintiffs' Complaint fails in its entirety to state a claim upon which relief may be granted against Defendants and should properly be dismissed pursuant to SCRCR Rule 12(b)(6).

FOR A SECOND AFFIRMATIVE DEFENSE
(No Proximate Cause)

32. The sole and proximate cause of Plaintiffs' alleged injuries and damages was Plaintiff's own conduct, fault, and/or negligence. Accordingly, Plaintiffs' claims are barred, in whole or in part, as a matter of law.

FOR A THIRD AFFIRMATIVE DEFENSE
(Third Party/Comparative Negligence)

33. Defendants allege that any damages incurred by the Plaintiffs, as alleged in her Complaint, if any, were due to and caused by and were the direct and proximate result of acts of

negligence on the part of the Plaintiffs or a third party, over whom Defendants had no control, so as to bar the claims of Plaintiffs against Defendants.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

34. Defendants allege that some, or all, of Plaintiffs' claims are or may be barred by Plaintiff's failure to mitigate thier damages.

FOR A FIFTH AFFIRMATIVE DEFENSE
(No Causal Connection)

35. There is no causal connection between the alleged acts or omissions of Defendants and the injuries and damages alleged by Plaintiffs.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Adherence to Standard of Care)

36. To the extent the evidence shows, Defendants exercised that degree of care required of them by law at all times relevant to the matter's complaints of in Plaintiffs' Amended Complaint.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Sudden Emergency Doctrine)

37. The sudden emergency doctrine precludes Plaintiffs' claims because Defendants made every reasonable effort under the circumstances to avoid the accident, which took place under emergency conditions.

FOR A NINTH AFFIRMATIVE DEFENSE
(Improper Service)

38. Plaintiffs ha failed to properly serve Defendants and therefore the action should be dismissed pursuant to Rule 12(b)(4) and 12(b)(5) SCRCp.

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FOR A TENTH AFFIRMATIVE DEFENSE
(Reservation and Non-Waiver)

39. Defendants reserve any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, as is consistent with the South Carolina Rules of Civil Procedure.

FOR A ELEVENTH AFFIRMATIVE DEFENSE
(Lack of Subject Matter Jurisdiction)

40. Plaintiffs have failed to plead injury or damage within the statutory limits required for cases and controversies to be heard by this Court pursuant to the laws of South Carolina.

COUNTERCLAIM FACTS

41. During the evening of May 27, 2020, Defendant Mark Ciaburri was walking he and his wife's dog, eleven (11) year old lab-mix, Petey, around their neighborhood in Mount Pleasant as was his custom.

42. As always when outside of the Ciaburri's property, Petey was leashed and within Mark's control as required by Mount Pleasant, Charleston County, and South Carolina law.

43. As per usual, Mark and Petey were walking in the middle of the roadway so as to minimize any distractions for Petey while on their walk.

44. While in the vicinity of Plaintiff's residence located at, 1661 Babbington Way, Mount Pleasant, South Carolina, 29464, Mark all the sudden observed a small animal in the roadway at what appeared to be the same time Petey noticed the animal which approached them while in the middle of the roadway from an unknown location.

45. Mark later learned that the animal was a pet dog named Gigi who was owned by the Plaintiffs.

46. Before Mark could react, Petey grabbed the aggressively approaching Gigi in his mouth in an effort to defend he and Mark.

47. Mark quickly responded by getting on the roadway in order to separate Petey and Gigi, suffering injury to himself in the process. It should be noted that police responding to this incident noted the cuts and scrapes to Mark's knees were consistent with those inflicted through contact with the roadway.

48. Upon separating Gigi from Petey, Mark began yelling for help as it was evident that Gigi had been injured in the encounter. Eventually, the residents of 1661 Babbington, Plaintiff Michele Graham and her parents, Michael and Tammy Graham, came outside to investigate Mark's cries for help.

49. Upon making contact with Plaintiff and her parents, Mark indicated to them that Gigi was injured after being off leash in their yard and approaching he and Petey in the roadway.

50. Following informing Plaintiffs of the incident and making sure Gigi was back in their care, Mark returned to his residence to drop Petey off before returning to the area of the incident to speak with arriving law enforcement.

51. Plaintiff Michele Graham has provided inconsistent, if not outlandish statements to law enforcement during the investigation of this incident, with regard to her version of the events that transpired, however, Plaintiffs all at one point or another acknowledged the following: Gigi was let outside without supervision into the front yard of 1661 Babbington Way; Gigi was not on a leash or other restraint device to keep her confined to the yard; none of them witnessed the incident as all three were inside at the time of the incident; and that Gigi was not on their property at the time of the incident.

52. By not having Gigi leashed or within her supervision control, Plaintiff was in direct and unlawful violation of Town of Mount Pleasant Ordinance § 90.01 *et. seq.*; Charleston County Ordinance § 3-1 *et. seq.*; and South Carolina Code Ann. §§ 47-3-10 (3)(a) and 47-3-50.

53. Further investigation by the Mount Pleasant Police Department revealed that the dogs residing at 1661 Babbington Way are routinely left off-leash and otherwise unrestrained, and frequently observed outside of Plaintiffs' property unsupervised. Furthermore, Plaintiff Tammy Graham provided to investigators that her dogs residing on said property have a history of wandering off and getting lost, which one can only assume would not occur through proper supervision.

54. Mount Pleasant Police Department declined to bring charges or citations for the Ciaburris as Petey was leashed and being properly controlled by Mark at the time of the incident, while Gigi was not leashed or supervised, and left her property at the time of the incident.

55. Plaintiff's claims should have been properly resolved at the conclusion of the law enforcement investigation, Plaintiff Michele Graham has continued to unlawfully harass, stalk, defame, and target Defendants for her frustrations regarding this incident.

56. Since this incident, Plaintiff Michele Graham has spread defamatory and inaccurate on social media platforms, including Facebook.⁴

57. Plaintiff Michele Graham has stalked and harassed Defendants while they were at their residence, both verbally and through other conduct, such as recording and taking pictures and video of their residence. Such conduct has included Plaintiff screaming inflammatory remarks towards Defendants while they tried to enjoy their own property, and regularly driving by and

⁴ See Exhibit D – Plaintiff Michele Graham's Facebook Posts regarding Defendants.

slowing down in an intimidating manner. Plaintiff was placed on trespass notice from the Defendant's residence as a result of her behavior.⁵

58. Upon information and belief, Defendants submit that Plaintiff Michele Graham has also attempted to intimidate and harass them through the U.S. Postal Service.⁶

59. On or about June 24, 2020, Plaintiff Michele Graham was issued a warning by the Mount Pleasant Police Department advising her to cease all contact with Defendants or she might be subject to criminal arrest (See Exhibit E).

60. Plaintiff Michele Graham inappropriately pressured law enforcement to inquire regarding Defendants home insurance policy, and unsuccessfully tried to initiate an insurance claim regarding this incident.

61. Upon information and belief, Plaintiff Michele Graham is still contacting law enforcement urging them that retaliatory action be taken against the Defendants, despite all investigations being closed.

62. Defendants have suffered reputational damage in their neighborhood as a result of Plaintiff Michele Graham's actions. Furthermore, they are in fear of Plaintiffs and have taken steps to increase the security at their home because of that fear.

63. Upon initiating her Small Claims Court action, Plaintiff Michele Graham was made aware that "UNDER PENALTY OF PERJURY THAT THE ABOVE IS CORRECT AND TRUTHFUL," however, despite that clear admonition and warning, in filing that action Plaintiff has committed a fraud upon this Court by perjuring herself. Among other falsehoods, Plaintiff claims in her complaint that "[a]t the time of the attack, Gigi was relieving herself in the front lawn" despite providing contrary statements to law enforcement. Plaintiff Michele Graham and

⁵ See Exhibit E – Trespass Notice provided to Plaintiff Michele Graham.

⁶ See Exhibit F – Mail Sent to Defendants home.

her parents, have now perpetuated that fraud on two courts, including this Court, in filing the present action.

64. Plaintiffs have no lawful purpose or standing to bring this action, besides further harassing the Defendants.

65. Defendants have suffered actual and consequential damages as proximate cause of Plaintiff's actions.

FOR A COUNTERCLAIM AND FIRST CAUSE OF ACTION
(Abuse of Process)

66. Defendants incorporate all allegations of the paragraphs above as if repeated herein verbatim.

67. In response to this incident, Plaintiff Michele Graham has demonstrated a pattern conduct of harassment and targeting of Defendants regarding her frustrations, despite her own unlawful conduct (allowing her dog to be outside off of a leash unsupervised) being the proximate cause of this incident.

68. Plaintiff Michele Graham has publicly defamed Defendants, harassed them verbally at their home, targeted them for harassment through the mail, has and continues to urge law enforcement to bring unlawful and improper criminal charges, and has initiated fraudulent claims.

69. Plaintiff Michele Graham has been personally warned by law enforcement to cease all contact and harassment directed at the Defendants, and she has initiated this action as a way to continue her harassment of Defendants.

70. Plaintiffs in fact have an improper and unlawful ulterior motive and purpose for bringing this action.

71. Plaintiff Michele Graham's actions have been willful and overt, have been undertaken in the use of process, and are improper as they are aimed at illegitimate collateral objectives.

72. As result of Plaintiffs' abuse of civil process with an ulterior motive, Defendants have suffered harm and damages and, thus, are entitled to Judgment against Plaintiffs for an appropriate award of actual, punitive, and compensatory damages, including attorney's fees and costs, in an amount to be determined by a jury.

FOR A COUNTERCLAIM AND SECOND CAUSE OF ACTION
(Harassment and Stalking in Fact / Violation of S.C Code Ann. § 16-3-1700)

73. Defendants incorporate all allegations of the paragraphs above as if repeated herein verbatim.

74. Since this incident, Plaintiff Michele Graham has engaged in a prolonged and constant scheme of harassment and/or stalking directed at Defendants in violation of South Carolina Code Ann. § 16-3-1700 (A) – (C).

75. Plaintiff Michele Graham's conduct constitutes a pattern of intentional, substantial, and unreasonable intrusions into the private lives of Defendants that serves no legitimate purpose and would cause a reasonable person in Defendants' position to suffer mental or emotional distress.

76. Plaintiff Michele Graham's conduct includes, but is not limited to, the following: visual or physical contact that is initiated, maintained, or repeated after a person has been provided oral or written notice that the contact is unwanted or after Defendants filed an incident report with law enforcement⁷ surveillance of or the maintenance of a presence near Defendants' residence; and verbal, written, or electronic that Plaintiff initiated, maintained, and repeated.

⁷ See Exhibit G – Filed Incident Report Against Plaintiff Michele Graham.

77. As result, Defendants are in fear of Plaintiff Michele Graham, and her behavior has constituted an unreasonable intrusion into Defendants' private lives. Defendants have suffered mental and emotional distress as a result of Plaintiffs' actions.

78. Defendants are entitled to judgment against Plaintiffs for an appropriate award of attorney's fees and costs, and an order of protection from this Court pursuant to South Carolina Code Ann. § 16-3-1750 *et. seq.*

FOR A COUNTERCLAIM AND THIRD CAUSE OF ACTION
(Defamation)

79. Defendants incorporate all allegations of paragraphs above into this cause of action as if set forth verbatim.

80. Plaintiffs have defamed Defendants, and through their actions in making libelous, slanderous, false, and misleading statements to the others, including neighbors, regarding Defendant. The statements by Plaintiff were, at the time and remain, completely false.

81. Plaintiffs' defamation is slanderous *per se*, slanderous *per quod*, libelous *per se* and libelous *per quod*.

82. Plaintiffs' defamatory statements caused Defendant mental and emotional distress and has injured their reputation among their community.

83. Plaintiffs have acted with actual malice; Plaintiffs have acted with knowledge that the statements they have made to the Mount Pleasant Police Department and others concerning Defendants were materially false and misleading. Further, Plaintiffs' statements were made with reckless disregard of whether their statements were false or not.

84. As a direct and proximate result of Plaintiffs' defamation of Defendants, Defendants suffered harm and damages and, thus, are entitled to judgment against Plaintiffs for an

appropriate amount of actual, special, and punitive damages in an amount to be determined by a jury.

WHEREFORE, Defendants pray Plaintiffs claims be dismissed and they be granted a motion to dismiss hearing with this Court; a jury trial on all causes of action brought by Defendants as counterclaims so triable; for judgment against Plaintiffs in an appropriate amount of actual, punitive damages, and compensatory damages, for the recovery of their costs and attorney's fees for this action and related actions; for an issuance of a restraining order against Plaintiffs; and for such further and other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Edward Corvey

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(843) 642-8792

ATTORNEY FOR DEFENDANTS

September 14, 2020
Charleston, South Carolina

1 Your Honor, this is my Motion to Dismiss all causes of
2 action against those Defendants in full. The Motion to
3 Dismiss only applies to my clients, and would allow the case
4 against the Ciaburris to move forward.

5 THE COURT: All right. I have that here, yes, sir.

6 MR. BUTLER: All right, Your Honor.

7 As Your Honor notes, briefly, on September 2nd, 2020,
8 the Plaintiff filed an Amended Complaint alleging one cause
9 of action and one cause of action only of negligence against
10 Mark and Angela Ciaburri. That cause of action does not
11 name the Town of Mount Pleasant Police Department or the
12 three individual officers as defendants.

13 We are named in the injunctive relief section whereas
14 if Your Honor remembers a few months ago we did have a
15 motion in which my clients were called, and the Complaint,
16 as I understand it, appears to be more like a DJ action if
17 you will asking the Court to order that the Town of Mount
18 Pleasant seize the dog that was involved in this case and
19 determine that it was a violent or vicious animal.

20 A brief recitation of the facts, just for the record,
21 Your Honor.

22 You'll recall that this case relates to the death of
23 a -- the Plaintiff's dog on May 27th, 2020. More
24 specifically, the Plaintiffs have alleged that my
25 codefendant, the Ciaburri's dog, came onto their yard and

1 less than \$7,500, to refile back in Magistrate Court?

2 MS. GRAHAM: So, you have already ruled on the full
3 injunctive relief?

4 I thought that hearing was simply for temporary
5 injunction and that the permanent injunction would be
6 decided at---

7 THE COURT: No, ma'am, it was an in---

8 MS. GRAHAM: ---this hearing.

9 THE COURT: I, I, I granted the injunctive -- I mean I,
10 I denied the injunctive relief at least to find the dog was
11 vicious, and obviously to have it quarantined, and then
12 later on I read something about they want it euthanized.
13 But no, I've ruled on that injunctive hearing.

14 And so, if you want to refile this in Magistrate's
15 Court, you have every right to do that. You can withdraw
16 this in Circuit Court and file it there. It's a lot faster
17 in Magistrate's Court than it will be here.

18 MS. GRAHAM: I wasn't aware of that, Judge. I wasn't
19 aware that you ruled on the permanent injunction. It gives
20 me---

21 THE COURT: I don't -- one -- it -- that's not how
22 it -- that's not how the procedure -- it would procedurally
23 work. They asked -- you asked for an injunction and I
24 denied it. So, there's nothing else further for me to rule
25 on. I mean the fact that you label it temporary or

1 permanent doesn't -- that doesn't really matter.

2 What you would do is you'd ask for a TRO, which is a
3 temporary restraining order.

4 MS. GRAHAM: Right.

5 THE COURT: Right.

6 And if I granted that, the other party would have 10
7 days to come forward and say hold on, this is why I don't
8 believe the injunction is necessary. But that's not what
9 happened. Because I denied it, there's no other further
10 hearings or, or decisions that need to be made.

11 It's a procedure -- procedurally the same thing
12 happened, but I've, I've, I've denied it. So, there's no
13 other -- nothing else for anybody to have a permanent one
14 when I denied the, the, the temporary one.

15 MS. GRAHAM: Okay.

16 THE COURT: All right.

17 MS. GRAHAM: Well, that, that, Judge, I didn't know.
18 The temporary I thought was, was a separate issue and then
19 the---

20 THE COURT: Well no.

21 MS. GRAHAM: ---entire case was --.

22 THE COURT: No. So you're welcome to do with it what
23 you want now because the injunction's been ruled upon, and
24 it's been denied. So, you -- if you want to refile this in
25 Magistrate Court, Judge Turner will be happy to allow you to

1 Magistrate's Court then.

2 MS. GRAHAM: We're then going back to Magistrate's
3 Court though.

4 THE COURT: But, for the record, let me just help you
5 out with this, Ms. Graham, and you make your determination
6 from here.

7 For the record, I'm granting Mr. Butler's Motion to
8 Dismiss. I agree that the Mount Pleasant Police Department
9 and all agencies, and them in their personal capacity, shall
10 be dismissed from this case.

11 As to the Ciaburris, I'm gonna take it under advisement
12 as -- and to, and to look at some of the other issues into
13 the record to determine whether, in fact, there's a
14 scintilla of evidence to allow this case to move forward as
15 to the negligence cause of action against the Ciaburris, and
16 the Ciaburris only, and, therefore, your Motion for
17 sanctions against the Town of Mount Pleasant is moot.

18 All right. Anything further for today?

19 MR. CORVEY: Yes, Judge. I guess just, just, you know,
20 my motion for attorney's fees with regard to the injunction
21 and since she was continued---

22 THE COURT: Put, put that in the notes because I keep
23 forgetting that, and that is a matter that's under
24 advisement. and I don't normally keep things under
25 advisement. I kept it until this hearing date today to make

1 my determination whether, in fact, I was gonna impose that.
2 So put it in the notes so I don't forget.

3 All right. I'll take that under consideration as well.
4 You'll have my answer by the end of the day.

5 All right.

6 MR. BUTLER: Your Honor, a Form---

7 MS. GRAHAM: Your Honor?

8 MR. BUTLER: A Form 4 for me is fine.

9 THE COURT: No problem.

10 MR. BUTLER: Thank you.

11 MS. GRAHAM: Can I understand what evidence you have
12 looked at in this, in this case because I'm, I'm a little
13 bit confused as to your ruling here?

14 THE COURT: Okay. You can submit a proposed order if
15 you'd like me to take a look at it. But Mr. Butler's
16 indicated he wants a Form 4. And so I'll be happy to put it
17 in a Form 4, and I'll put my reasoning and rationale in
18 there as well.

19 okay?

20 MS. GRAHAM: All right. Thank you.

21 THE COURT: All right. You're more than welcome.

22 All right. Anything further?

23 MR. BUTLER: Thank you, Judge.

24 MR. CORVEY: Do you need a copy of my Motion for
25 Attorney's fees, Your Honor?

1 THE COURT: I have it and I forgot that I had it. So I
2 apologize.

3 MR. CORVEY: No, no problem.

4 THE COURT: I'll take a look at it. So, I'll -- it's
5 in the notes.

6
7 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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1 consideration from this Court, and because there's an
2 appearance of impropriety and partiality.

3 The first indication of this was during the temporary
4 injunction hearing on September 24th. There was a remark
5 made that alluded to being frustrated with pro se litigants,
6 and I can't recite exactly what the remark was because I
7 don't have the transcript. But it was a remark that
8 definitely cast a doubt as to whether or not my case would
9 be taken seriously by this Court given my status as a pro se
10 litigant.

11 Secondly, the demeanor that was displayed by the Court
12 on the December 11th hearing was dismissive, and the Court
13 created a very disempowering atmosphere for me as a, as a
14 Plaintiff. It was as if the Court was unfamiliar with or
15 disinterested in the pleadings and what it was that I'm
16 asking for.

17 what I'm seeking from this action is, once all the
18 facts and evidence has been presented and examined, that the
19 Court issue an order declaring that the dog is dangerous as
20 described in the Town of Mount Pleasant ordinance and
21 imposing additional restrictions, if necessary.

22 Also, ordering an evaluation of the dog to determine if
23 the dog is too aggressive to have access to the public. You
24 know, if a dog's first inclination, when it sees another
25 animal, is to grab it and maul it, then that's not a safe

1 animal, and that's exactly what happened here.

2 During the December 11th hearing, he stated I read
3 something about euthanasia in a dismissive tone as sort of
4 an explanation as to why you denied the temporary injunction
5 request. My request for a temporary injunction had nothing
6 to do with -- it was a motion asking the Court to do what
7 Animal Control did not do or what they refused to do, which
8 was look at the obvious evidence and facts and determine,
9 based on that, if there was enough probable cause to say
10 that this dog is dangerous and impose temporary restriction,
11 which would be impounding, confining, or restricting the dog
12 until a final determination is made by the Courts as to the
13 dangerous status.

14 So, the statement that, you know, I read something
15 about euthanasia seems to suggest that, you know, you gave
16 greater consideration to Mr. Corvey's Motion for Sanctions
17 and Fees than my Motion for Temporary Injunction. You know,
18 Mr. Corvey misrepresented what my motion was, you know,
19 claiming that my motion was a writ of Mandamus to have the
20 dog euthanized.

21 That's not what it was, which leads me to my next point
22 of granting his motion in the Form 4 on December 22nd.
23 Though the Form 4 stated that his Motion for Fees was, was
24 granted as to the preliminary injunction hearing on
25 September 24th, and, you know, I struggle to see the legal

1 basis for that, for granting his motion, you know, granting
2 attorney's fees for the honorable (phonetic) dog that mauled
3 mine, that killed mine. I struggle to see how that makes
4 sense, and the fact that the motion was granted without it
5 ever being properly before the Court, you know, indicates to
6 me that, you know, the Court is not giving me fair and
7 impartial treatment, you know.

8 And regarding his motion, you know, having no legal
9 basis, you know if it was a Writ of Mandamus, he would not
10 be the prevailing party. It would be the government
11 official.

12 So, you know, lastly, all these things combined, you
13 know, with also the fact that, you know, Mr. Corvey is
14 friends with you and your spouse on social media, you know,
15 certainly creates the appearance of partiality.

16 So, you know, for that reason, I would respectfully
17 request that another judge hear the -- hear future matters
18 in this case.

19 THE COURT: All right. Thank you very much.

20 Mr. Corvey, would you like to respond to anything or
21 just me and her?

22 MR. CORVEY: Well, Judge, I mean we had a hearing -- I
23 guess -- you know, I don't -- I'm not gonna take a position
24 on the, on the Motion for -- to -- for Recusal and that --
25 that's for the Court.

1 So, the fact that I'm friends with somebody on Facebook
2 is certainly not a grounds for recusal, and I've known
3 Mr. Corvey for many, many years. I've known a thousand
4 lawyers in this town for many, many years. That's certainly
5 not, not a basis for a recusal.

6 So, I hope that explains or addresses some of your
7 concerns about what transpired at the previous hearing.

8 Let me explain to you in just a little bit further kind
9 of where everything is.

10 You know, the relief that you're seeking has already
11 been ruled upon.

12 All right. So what -- if you're seeking for me to
13 determine that the dog is a dangerous animal under the Mount
14 Pleasant ordinance, and to have the dog seized and
15 evaluated, I have denied that.

16 All right. So, that, that has gone -- that has moved
17 on.

18 All right. I don't believe -- I can't recall if you
19 filed a motion to reconsider that or not. But that's where
20 we are as to that. Maybe that's what we did last time with
21 the Motion to Reconsider.

22 But whatever relief that you seek moving forward, I
23 have left Mr. Ciaburri in the case. I dismissed Mount
24 Pleasant and the officers, but he is still a viable
25 defendant, and you have every right to, to proceed with your

1 claim against him.

2 All right. What I said about the attorney's fees is
3 it's somewhat common I will say send me an affidavit of
4 attorney's fees, and I'll take it under consideration.

5 Now, what I award, if anything, is still in my
6 discretion. I may award a dollar. I may award \$5.00 and I
7 may award 500. I don't know. It's just the price of doing
8 litigation.

9 And so sometimes -- I don't want you to get concerned
10 that that's what's gonna transpire here. I asked for an
11 affidavit of attorney's fees, I granted it, and I -- but I
12 have not awarded any amount. Obviously that can be
13 determined at a later date depending upon what, what other
14 hearings that we may have, and it may end up being zero.

15 But, at that point in time, I just need to rule on that
16 motion and so I did. And the fact that I know Mr. Corvey or
17 that we're on, I guess, I think he's Facebook friends with
18 my wife, or me, takes -- makes no bearing on that
19 whatsoever. If that were the case, I wouldn't be able to
20 preside over anybody's case here in Charleston County
21 because I'm friends with most lawyers cause, again, I use to
22 be one.

23 So, I hope that dispels any of your concerns about
24 receiving a fair hearing from me. I certainly would like to
25 think that I'm an extremely fair person. The fact that you

1 THE COURT: Then it would be. So let me hear from her
2 first, all right, just to be fair.

3 All right. Ms. Graham, I'll be happy to hear from you
4 concerning the motion---

5 MS. GRAHAM: Well, I, I do have a quick -- so I do have
6 a question about the, the previous motion that we just went
7 over---

8 THE COURT: Okay.

9 MS. GRAHAM: ---when you were speaking about the, the
10 permanent injunction that was ruled on.

11 Can we back up a little bit on that?

12 THE COURT: Yes, ma'am, happy to help.

13 MS. GRAHAM: So, the permanent injunction, that is
14 ruled at the end of the case, right, once all the facts are
15 presented and all of the evidence are examined?

16 THE COURT: Whatever your thought---

17 MS. GRAHAM: Isn't that on a temporary injunction?

18 THE COURT: No, you filed an injunction. And so, if
19 I'm not -- the reason I, I call it a permanent injunction,
20 and it may not be permanent, you may be right to that
21 extent, what the -- where I think the confusion came in was
22 this.

23 In a normal course of filing these, what ends up
24 happening in the beginning is that the -- you would have
25 filed a pro se motion for what's called a TRO or a

1 temporary, a temporary restraining order, and it's usually
2 an emergency. So you would have come in and you would of
3 said, Your Honor, I think that, if this dog stays out there,
4 this could be something very, very bad. It could be awful,
5 I need a, a -- an immediate restraining order against this,
6 this, the -- this in -- these individuals concerning this
7 dog. And what would of happened is, if I granted that
8 temporary restraining order, you then would have served the
9 opposing party with a notice within 10 days that a hearing
10 would be heard on a permanent injunction.

11 So, the TRO is done ex parte, meaning the other side is
12 not there, not aware of it. I -- if I grant the TRO, it
13 stops whatever was actually transpiring or occurring, but
14 then gives the other, other opportunity -- the other side
15 the opportunity to argue why it should not just continue on
16 into the future.

17 Okay. So, what you filed was an injunction, and
18 rightfully so. That's fine. I mean Mr. Corvey called it
19 something else. But I think, in, in the end, you filed an
20 injunction and you wanted me to injunct the, I don't know
21 really what you would be injuncting to do, but you were
22 asking me to take the dog, during the pendency of this case,
23 have it, have it kept in Mount Pleasant, and have it
24 evaluated to determine whether, in fact, it is vicious under
25 the, the Mount Pleasant ordinance. I have denied that. So,

1 the case now moves forward.

2 What other causes of action do you have in your
3 Complaint against the Ciaburris?

4 I assume it's for the price---

5 MS. GRAHAM: I have---

6 THE COURT: ---of the dog, correct?

7 MS. GRAHAM: Right.

8 So, it's, it's the veterinary expenses and the price of
9 the dog, yes. But also backing up a little bit.

10 When I, when I filed that, I got a notice from the
11 Court stating, you know, this is -- you have an upcoming
12 hearing for TRO, and then it said also temporary injunction,
13 and they were saying to me that it was the same thing, that
14 they were very similar. So, it was a separate thing that I
15 had filed.

16 So, the, the permanent injunction request was, I guess,
17 incorporated into my Complaint, and then I filed a separate
18 temporary injunction or TRO.

19 THE COURT: All right. Well, let's do this. Let me go
20 back and look at the filings, and if I need to get everybody
21 back together, I'll, I'll give -- I'll get a chronological
22 events of what transpired, and if there's another hearing
23 that needs to transpire, I'll be happy to grant that. But
24 let me see what has been filed, and what it's being called,
25 and how it's been coined, and how it's been filed in the

1 system. And, again, if you're afforded the opportunity to
2 have another hearing, I'll give it to you.

3 Is that fair enough?

4 MS. GRAHAM: Yes, Judge. I, I would really appreciate
5 that because you're---

6 THE COURT: All right. Well, give me---

7 MS. GRAHAM: That would work.

8 THE COURT: Give me time to look at that.

9 MS. GRAHAM: Okay.

10 THE COURT: All right. Mr. Corvey.

11 No, it's your motion. I'm sorry.

12 Ms. Graham, it's your Motion to Reconsider the awarding
13 of attorney's fees. You already argued it just a couple
14 minutes ago.

15 Do you want to add anything else onto that or no?

16 MS. GRAHAM: I need -- well, so, I -- you know, I was
17 just gonna say, with the Motion to Reconsider, you know,
18 this -- you know, his, his motion or his request for fees,
19 it's already been in front of Judge Turner. Judge Turner,
20 you know, heard what he had to say and he quickly shut it
21 down. You know, he told him no, you know.

22 So, you know, awarding attorney's fees, you know,
23 seems, to me, to me, just doesn't make any sense. There's
24 just no legal basis for it. You know, he's asking for
25 sanctions, you know, for what exactly.

1 You know, what about my request to have the dog
2 impounded, confined, or evaluated, or restrained is
3 sanctionable?

4 You know, we haven't -- we have an expert witness
5 willing to testify and provide a thorough report. Now that
6 witness -- that report wasn't available at the time of the
7 hearing in September. But the evidence and the facts upon
8 which the report relies hasn't changed.

9 So, you know, I, I just struggle to see, you know, any
10 basis for the granting of any fees. You know, if it was a
11 Writ of Mandamus, then he certainly would not be the
12 prevailing party. You know, it'd be the government
13 official, you know.

14 So, I, I just -- I struggle to see that.

15 THE COURT: All right. Fair enough. I'll take that
16 into consideration.

17 Mr. Corvey.

18 MR. CORVEY: Thank you, Your Honor.

19 I, I -- for the benefit of the record, and just
20 clarity, I do want to go through a little bit of the
21 chronological procedural history that we have here, and, and
22 I, I might misrepresent some of the dates. So, I'll be
23 general with them and to not misspeak.

24 But this event occurred on May 27th of last year.
25 There was an investigation that went into, you know, the end

1 the Mount -- the Town of Mount Pleasant officials to fulfill
2 their duty under that ordinance, that if -- although she's
3 captioned it as an injunctive motion, it could really only
4 be properly and logically thought of as a writ of, of
5 Mandamus.

6 Given that, and I have two different motions for fees
7 prepared in advance, one for, for sanctions under the
8 Frivolous Sanctions Act, and, two, for mandatory fees
9 awardable under Rule 65 through the prevailing party in a
10 writ, and I, I get -- I don't quite understand Ms. Graham's
11 position as to how the Town of Mount Pleasant would of been
12 the prevailing party. She's the master of her own
13 Complaint.

14 So, some of the risks of proceeding forward as a pro se
15 litigant, she decided to make my clients, who are the owners
16 of the animal in question, defendants in her action. Her
17 action was denied and I don't even think it was, you know,
18 properly before the Court. But what could of been properly
19 before the Court, and the only legal like vehicle that I
20 think would of been properly before the Court, as it
21 pertained to this Town of Mount Pleasant issue, is solely
22 whether or not Mount Pleasant officials failed to perform
23 their duties as required by the ordinance, and Your Honor,
24 through a Writ of Mandamus, then could of ordered them to so
25 do so if, if, after the hearing, you saw fit.

1 at any evidence. Didn't look at anything. If you want
2 anything done, if you want the dog seized, and you want
3 restrictions imposed on the dog, you know, a muzzle or
4 something like that, then you would need to seek that
5 through civil means.

6 That's exactly what I'm doing. Nothing was done on --
7 for the -- on, on the part of Town of Mount Pleasant with
8 figuring out what actually happened in this case. Nothing.

9 So, I brought this case to this Court for the judge to
10 be the trier of the fact, to look at everything, to look at
11 the evidence, and for the judge to say yeah, you know what,
12 this dog, the actions that this dog displayed, and reading
13 the ordinance, which is pretty simple, yes, this dog meets
14 the definition of a dangerous animal. Therefore,
15 restrictions need to be applied or, therefore, this needs to
16 happen. You know, this is the Court for that.

17 So, just, just, again, Judge, I -- and I don't think
18 you stated this, but did you give a reason for your denial
19 for my temporary injunction?

20 THE COURT: Did we -- I don't remember if we did a
21 formal order or a Form 4.

22 Did -- Mr. Corvey, do you remember if Mr. Butler
23 submitted an order?

24 MR. CORVEY: He did not, Your Honor. You, you denied
25 the injunctive motion on a Form 4.

1 this action, not the Town of Mount Pleasant anymore.

2 what I'm asking the Court to do is look at the evidence
3 and impose restrictions on the owners of this dog, whether
4 that be hey, if you're gonna walk your dog out in public,
5 the dog needs to wear a muzzle. You need to not have your
6 dog go to dog parks or, or go to this place or that place.
7 Order an evaluation of the dog to see if there is something
8 that needs to change in terms of, you know, behavior
9 modification, something, because what this did dog is 100
10 percent abnormal.

11 Again, I'm not asking the Court to order Mount Pleasant
12 to do anything. I'm asking the Judge to look at the
13 evidence and make a determination as to what needs to happen
14 with this dog when -- with the owners in terms of their
15 handling of him. That -- it, it -- it's, it's, it's really
16 simple, you know, it's -- and it's making -- you know,
17 Mr., Mr. Corvey is trying to confuse the issue and trying to
18 make it seem like it's something it's not.

19 You know, Mount Pleasant did not do anything. They
20 said oh, well, we're not gonna do anything. If you want
21 something done, go to the Courts. That's why---

22 MR. CORVEY: And---

23 MS. GRAHAM: ---why we're here.

24 MR. CORVEY: The fundamental misunderstanding---

25 MS. GRAHAM: That is---

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MICHELE GRAHAM
MICHAEL GRAHAM
TAMMY GRAHAM

Plaintiffs,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;
CHRISTA HOFFMAN, in her official
capacity as a Town of Mount Pleasant
animal control officer;
HEATHER CUMBEE, in her official
capacity as a Town of Mount Pleasant
animal control officer;
SHELBY WALKER, in her official capacity
as a Town of Mount Pleasant patrol officer

Defendants

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION

FILE NO. 2020 CP1003397

FILED
2020 AUG 14 PM 5:02
JULIE J ARMSTRONG
CLERK OF COURT

NOTICE OF MOTION AND MOTION FOR TEMPORARY INJUNCTION

TO: MARK CIABURRI
ADRIENNE THOMPSON CIABURRI
CHRISTA HOFFMAN
HEATHER CUMBEE
SHELBY WALKER

PLEASE TAKE NOTICE THAT Plaintiffs Michele Graham, Michael Graham and
Tammy Graham move for a temporary injunction requiring the seizure and impoundment of the

Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri of 1757 Nantahala Blvd., Mount Pleasant, South Carolina 29464 during the pendency of this case.

INTRODUCTION

Chapter 90: The Town of Mount Pleasant Code of Ordinances Regarding Animals

The Town of Mount Pleasant has enacted a code of ordinances that govern the operations of the Town. Chapter 90 of the Town's ordinances regulates the care and control of animals within the Town.

The ordinance defines *animal* as "any nonhuman living creature whether wild or domesticated."

The ordinance defines *vicious animal* as:

(1.) An animal: (a) with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or to otherwise endanger the safety of humans or domestic pets; or (b) which attacks, bites, or otherwise injures a human being or other domestic animal without provocation; or (c) which is trained or used to fight or attack humans.

The ordinance defines *control* or *under restraint* as:

An animal shall be deemed under control or restraint if it is on the premises of its owner or keeper or is accompanied by its owner or keeper and under the physical control of such owner or keeper by means of a leash not more than eight feet in length or other similar restraining device, or under the active control of the owner or trainer while hunting or being trained while on property of the owner or another's property with the property owner's permission.

The Town of Mount Pleasant ordinance uses § 90.29(B)(3) to describe a dangerous animal. § 90.29(B)(3) states:

(B) It shall be unlawful for any person to own, keep, possess or maintain an animal in such a manner as to constitute a public

nuisance. By way of example and not of limitation, the following acts or actions by an owner or possessor of an animal are declared to be a public nuisance and are therefore unlawful: (3) Maintaining an animal that habitually or repeatedly chases, snaps at, bites or attacks pedestrians, bicycles or vehicles or other animals, or any animal whose behavior constitutes a reasonable risk of injuring a human or other animal."

§ 90.30 of the Town of Mount Pleasant ordinance states that dangerous and vicious animals are prohibited. § 90.30 states:

- (A) It shall be unlawful for any person to own or in any way, harbor or keep any animal which is dangerous as described in § 90.29(B)(3) above, or that is vicious as defined in this chapter. This shall not apply to any animal that attacks any person or animal unlawfully upon its owner's or keeper's premises.
- (B) Any person who owns an animal that has been declared dangerous or vicious by the Animal Control Officer shall have the right to appeal this decision to the Town Administrator and to request a hearing by submitting a written request to the office of the Town Administrator within five working days after the Animal Control Officer's determination that the animal is dangerous or vicious. The Town Administrator or his/her designee shall conduct a hearing to determine if the Animal Control Officer's determination that the animal is dangerous or vicious is correct or incorrect. If the animal is judged not to be dangerous or vicious, it shall be returned to the owner. If the Town Administrator or his/her designee determines the animal to be dangerous or vicious, then the animal shall be disposed of in a humane manner.

§ 90.85 of the Town of Mount Pleasant ordinance states the following:

There shall be one or more persons designated by the Chief of Police as Animal Control Officer or Animal Control Officers in addition to any town police officer whose duty it shall be to supervise and enforce the provisions of this chapter and all other applicable laws concerning animals and he or she shall have the power and full authority to accomplish the same.

The ordinance provides that the usage of *shall*, indicates that the act referred to is mandatory. Therefore, it is the ministerial duty of the animal control officer to enforce and comply with the provisions set forth in the Town of Mount Pleasant ordinance regarding animals. This duty includes complying with § 90.30, prohibiting dangerous and vicious animals.

FACTUAL AND PROCEDURAL BACKGROUND

Defendants Mark Ciaburri and Adrienne Ciaburri are the owners of the male Pit-bull mix that attacked and killed a 12-year-old female Yorkshire Terrier, named Gigi, on May 27, 2020.

Gigi was relieving herself on the front lawn at the time of the Pit-bull mix attack. The location of Gigi at the time of the attack is evidenced by the significant amounts of blood in the front lawn and the absence of any blood in the roadway.¹ Seven droplets of blood were located on the curb – inches away from the property line (See Exhibit 1).² Furthermore, Plaintiffs were observing Gigi relieving herself on the property near the mailbox before looking away for < 1 minute. When the Plaintiffs turned their attention back to Gigi and opened the full-view storm door < 1 minute later, Gigi was still on the property – not far from her original location prior to the attack (See Exhibit 2). Plaintiffs also witnessed Defendant Mark Ciaburri on the property at this time. Upon information and belief, Mark Ciaburri's Pit-bull mix lunged onto the 1661 Babington Way lawn and grabbed Gigi. As a result of this attack, Gigi suffered broken ribs, flail chest and severe pulmonary bruising.³

¹ Defendant Mark Ciaburri also confirms Gigi's location in the midst of questioning when he states to Defendant Officer Hoffman, "Maybe it [Gigi] was by the mailbox or something. It [Gigi] was in the front."

² These seven droplets were from the Pitbull-mix's mouth dripping blood after the attack. Defendant Mark Ciaburri claims on bodycam footage, however, that the droplets of blood on the curb are probably from his knees.

³ Flail chest is when a segment of the chest wall separates from the rest of the thoracic cage. The injuries were so severe that even with the most aggressive treatment, Gigi's chance of survival was < 10%.

The nature of Gigi's wounds and the circumstances indicate that this was a surprise, unprovoked attack against Gigi.⁴

After the attack, the Plaintiffs notified the Mount Pleasant Police, and two officers responded to the scene. Defendant Mark Ciaburri spoke with the first officer and stated that Gigi "darted out" into the street and his dog "got it." Moments later, Defendant Mark Ciaburri spoke with the second officer, Defendant Pfc. Shelby Walker. In this bodycam-captured interaction, Defendant Mark Ciaburri later states to Defendant Pfc. Shelby Walker that Gigi attacked his Pit-bull mix and that his Pit-bull mix thought it was an opossum. Defendant Pfc. Shelby Walker does not ask Defendant Mark Ciaburri to demonstrate where or how the incident occurred, and neither of the two responding officers observed Defendant Mark Ciaburri's Pit-bull mix that night.⁵

After speaking with Defendant Mark Ciaburri, Defendant Pfc. Shelby Walker dismissed the first officer and took over the scene on her own. Defendant Pfc. Shelby Walker was unfamiliar with the Town's ordinances regarding animals, specifically the permissibility of animals to be unleashed while on the owner or keeper's property. As a result, Defendant Pfc. Shelby Walker treated the significant amounts of blood in the front lawn as unworthy of serious consideration. Additionally, the incident report written by Defendant Pfc. Shelby Walker was

⁴ In the video-recorded interview with a Town of Mount Pleasant detective on June 17, Defendant Mark Ciaburri states that, "[Before and during the attack] there was no sound [from Gigi or his Pit-bull mix]." There were no bites or wounds to Gigi's face, ears or neck – only deep thoracic punctures intended to kill. See Exhibit 3. Defendant Mark Ciaburri also states that the attack occurred in "a matter of seconds." In this interview with the detective, Defendant Mark Ciaburri is captured on video demonstrating how the Pit-bull mix attack occurred.

⁵ After the attack, Mark fled the scene and returned without his Pit-bull mix. He also returned to the scene with scraped knees. He presented his scraped knees as "evidence" that the Pit-bull mix attack occurred in the street.

false, misleading and lacked the vital information necessary to assist the Town of Mount Pleasant animal control officers in conducting an accurate assessment of the incident.⁶

Defendants Officer Hoffman and Officer Cumbee spoke with Defendants Mark Ciaburri and Adrienne Ciaburri at their residence at 1757 Nantahala Blvd. on the morning of May 28, 2020. After speaking with Defendant Mark Ciaburri, Defendants Officer Hoffman and Officer Cumbee decided not to seize the Pit-bull mix on the basis that it was on a leash. The supplemental incident report written by Defendant Officer Hoffman states the following, “We cannot charge Mark with animal at large, public nuisance, or vicious animal because the dog was on a leash and there [sic] dog left the property and was at large.” This is an error by Defendant Officer Hoffman; an animal is not exempted from a dangerous or vicious designation simply by virtue of the presence of a leash. Chapter 90 of the Town Ordinance makes no such exemptions. Concerning a dangerous or vicious declaration, the presence or absence of a leash is immaterial; provided that Gigi was not unlawfully on the property of Defendants Mark Ciaburri and Adrienne Ciaburri, her location is also irrelevant. Additionally, Defendant Officer Hoffman made the decision against seizing the Pit-bull mix without looking at any evidence and without knowing all of the facts.⁷ In a June 2, 2020 phone call, Defendant Officer Hoffman spoke with Plaintiff Michele Graham on a recorded line and admitted to not looking at any evidence.

Defendant Officer Hoffman advised the Plaintiffs to present evidence and bring a seizure request

⁶ After a review by the Internal Affairs Bureau and a supervising sergeant, it was determined that Pfc. Shelby Walker’s handling of this incident was unprofessional and biased; numerous inconsistencies were found in her incident report. As a result, she was placed on a 90-day Professional Improvement Plan. A “revised” incident report was later issued, but the report remained inaccurate and without vital information.

⁷ Defendant Officer Hoffman admits on body-camera footage that after reading the false and misleading incident report written by Defendant Pfc. Shelby Walker, she and her lieutenant arrived at a conclusion. Defendant Officer Hoffman arrived at a conclusion before conducting any investigation. Defendant Officer Hoffman also had no knowledge of Gigi’s condition or the nature and extent of her injuries.

to a civil court judge. Plaintiff Michele Graham forwarded the phone call to Town of Mount Pleasant officials.

Following the recorded phone call with Plaintiff Michele Graham, Defendant Officer Hoffman viewed pieces of photographic evidence depicting blood in the front lawn.⁸ On June 3, 2020, Defendants Officer Hoffman and Officer Cumbee walked through the Wando Lakes subdivision and spoke with six neighbors of 1661 Babington Way. Defendants Officer Hoffman and Officer Cumbee also spoke with Plaintiffs Michael Graham, Tammy Graham and Michele Graham. The interactions between Defendant Officer Hoffman, Defendant Officer Cumbee, the aforementioned Plaintiffs and the six neighbors were captured on body-worn cameras. However, the supplemental incident report written by Defendant Officer Hoffman documenting these interactions is grossly inaccurate and misleading. Defendant Officer Hoffman concluded the supplemental report with the following, "...based on speaking with everyone today. I was still unable to decyfer [sic] who was the party at fault."

On June 17, 2020, a detective interviewed Defendant Mark Ciaburri at the Mount Pleasant police headquarters.⁹ The detective also interviewed Defendant Mark Ciaburri's neighbors (See Exhibit 4). The town solicitor declined to pursue criminal charges against Defendant Mark Ciaburri.¹⁰

⁸ Videos show the location of blood in relation to the 1661 Babington Way home. Additional photographs of the roadway were taken to highlight the absence of any blood.

⁹ The extent of Gigi's injuries were so great and her condition so grave that it is inconceivable how a Pit-bull mix that was supposedly properly restrained by a leash could inflict such extensive damage, unless the owner of the Pit-bull mix permitted it. Therefore, a criminal investigation was launched.

¹⁰ When Plaintiff Michele Graham spoke with the town solicitor, the solicitor referenced the case by reading the incorrect incident report written by Defendant Pfc. Shelby Walker. Additionally, the solicitor acknowledged not seeing any body camera footage of the responding officers and the animal control officers or seeing any photographic evidence.

Due to the mishandling of this incident by Defendant Pfc. Shelby Walker and the subsequent inaction from Defendants Officer Hoffman and Officer Cumbee, Plaintiffs filed a Summons and Complaint against the Defendants in the Charleston County Court of Common Pleas. Plaintiffs now seek a temporary injunction for the relief sought herein to remain in effect until there has been a final adjudication on the merits of this case.

PARTIES

Plaintiffs are residents of 1661 Babington Way in Mount Pleasant, South Carolina (Charleston County) and the owners of the 12-year-old Yorkshire Terrier that was fatally attacked by the Pitbull-mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri on May 27, 2020.

Defendant Christa Hoffman, referred to as “Defendant Officer Hoffman,” is an animal control officer for the Town of Mount Pleasant and assigned the duty of enforcing the Town of Mount Pleasant Ordinances Regarding Animals.

Defendant Heather Cumbee, referred to as “Defendant Officer Cumbee,” is an animal control officer for the Town of Mount Pleasant and assigned the duty of enforcing the Town of Mount Pleasant Ordinances Regarding Animals.

Defendant Shelby Walker, hereinafter referred to as “Defendant Pfc. Shelby Walker,” is a patrol officer for the Town of Mount Pleasant and is responsible for enforcing the Town of Mount Pleasant Ordinances.

Defendant Mark Ciaburri is the owner of the Pit-bull mix that fatally attacked the 12-year-old Yorkshire Terrier on May 27, 2020. Defendant Mark Ciaburri resides in Mount Pleasant, South Carolina (Charleston County).

Defendant Adrienne Thompson Ciaburri is the co-owner of the Pit-bull mix that fatally attacked the 12-year-old Yorkshire Terrier on May 27, 2020. Defendant Adrienne Thompson Ciaburri resides in Mount Pleasant, South Carolina (Charleston County).

GROUNDS FOR TEMPORARY INJUNCTION

The following sections A - C show that (1) Plaintiffs would suffer irreparable harm if the injunction is not granted; (2) Plaintiffs will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.

A. IRREPARABLE HARM WILL RESULT IF AN INJUNCTION IS NOT GRANTED.

The Plaintiffs have suffered and would continue to suffer irreparable harm if the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri is allowed continued access to the public. The Plaintiffs' neighborhood is full of small children, small and friendly domestic animals and docile wildlife. Neighbors have expressed fear of Defendants Mark Ciaburri and Adrienne Ciaburri's Pit-bull mix, as well as doubts concerning their ability and willingness to take the proper precautions when walking their Pit-bull mix. Defendants Mark and Adrienne Ciaburri are fully aware of their Pit-bull mix's aggressive nature and its propensity to go after and kill other animals, yet their Pit-bull mix was off the owners' premises, un-muzzled and managed to kill a 10-pound Yorkshire Terrier while supposedly restrained by a leash.¹¹

¹¹ Defendants Mark Ciaburri and Adrienne Ciaburri stated on bodycam footage several times that their Pit-bull mix frequently kills wildlife.

The continued presence of this Pit-bull mix presents a constant threat to the safety of the neighborhood and the public. Granting this temporary injunction avoids additional irreparable injury to the Plaintiffs and their other Yorkshire Terrier, as well as the public at large.

B. PLAINTIFF HAS SHOWN A LIKELIHOOD OF SUCCESS ON THE MERITS

The acts of the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri deem it vicious and dangerous per definition set forth in the Town of Mount Pleasant Ordinances Regarding Animals. This and other facts will be established at the trial of this case.

Throughout Defendant Mark Ciaburri's conversations with the animal control officers and law enforcement, Defendant Mark Ciaburri made several statements that indicate that his Pit-bull mix went after Gigi. In fact, Defendant Mark Ciaburri explicitly states to Defendants Officer Hoffman and Officer Cumbee, "This time he [his Pit-bull mix] got away [from him] ... Next thing I know, my little dog [his Pit-bull mix] is going after this dog [Gigi]...this time my dog got 'em." These and several other statements, which were captured on body-worn cameras, will be shown in court. Additionally, photos and videos of the placement of blood in the front lawn and the absence of any blood in the roadway will be shown.

Plaintiffs are entitled to the issuance of an injunction based upon the likelihood of proving that the act committed by the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri was unjustified and vicious in nature.

C. PLAINTIFF LACKS AN ADEQUATE REMEDY AT LAW

A temporary injunction is needed in this case because Defendants Officer Hoffman and Officer Cumbee have refused to perform their necessary duty as animal control officers for the Town of Mount Pleasant. After Gigi's fatal attack, the Pit-bull mix was never examined or evaluated by the Defendant Officers, nor were Defendant Mark Ciaburri's statements properly scrutinized. In fact, Defendant Officer Hoffman stated on body-cam footage that in her previous role as an animal control officer for an adjoining county, she often declined to determine an at-fault party despite having the ability to do so. Defendant Officer Hoffman stated that she did this to avoid "backlash."

It is the role of the animal control officer to (1) determine if an animal meets the definition of a dangerous or vicious animal and (2) apply the law accordingly. Defendants Officer Hoffman and Officer Cumbee have decided to do neither. Instead, Defendant Officer Hoffman urged the Plaintiffs to seek the relief requested herein through civil remedies. Therefore, an injunction is the only appropriate relief.

RELIEF REQUESTED

Plaintiffs request that this Court consider the facts and exhibits provided herein as sufficient probable cause to believe that the Pit-bull mix owned by Defendants Mark and Adrienne Ciaburri is dangerous and vicious as defined in Chapter 90 of the Town of Mount Pleasant Code of Ordinances. Plaintiffs respectfully request that this Court issue a temporary injunction requiring the seizure and impoundment of the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri during the pendency of this case and until a final judicial decision regarding the designation of said Pit-bull mix as dangerous or vicious has been made.

Respectfully submitted,

MICHELE GRAHAM

A handwritten signature in black ink, appearing to read 'Michele Graham', written over a horizontal line.

Michele Graham

Plaintiff

1661 Babington Way

Mount Pleasant, South Carolina 29464

843-532-7252

August 14, 2020

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM
MICHAEL GRAHAM
TAMMY GRAHAM

Plaintiffs,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;
CHRISTA HOFFMAN, in her official
capacity as a Town of Mount Pleasant
animal control officer;
HEATHER CUMBEE, in her official
capacity as a Town of Mount Pleasant
animal control officer;
SHELBY WALKER, in her official capacity
as a Town of Mount Pleasant patrol officer

Defendants

CIVIL ACTION

FILE NO. 2020 CP 1003397

MOTION EXHIBIT LIST

Plaintiffs submit their list of exhibits, 1-A through 4, contained herein to be used in consideration for this motion.

MOTION EXHIBIT LIST

EXHIBIT	DESCRIPTION
1 – A	Location of blood on the curb, along with a still photograph taken from the body-camera footage of the first officer on the scene. The still photograph illustrates where on the curb these droplets were located. Defendant Mark Ciaburri is pictured on the right.
1 – B	Example photos of blood in the front lawn of 1661 Babington Way. These example photos are shown alongside a photograph pointing to its location.
2 – A	Daylight view of the front lawn of 1661 Babington Way as viewed through the full-view storm door. The image indicates the location of Gigi prior to the attack.
2 – B	Night view of the front lawn of 1661 Babington Way as seen through the full-view storm door. This image indicates where the Plaintiffs observed Gigi that night prior to the attack.
2 – C	Daylight view of key areas in the front lawn of 1661 Babington Way. This image indicates the areas where blood was found and where Plaintiff Michele Graham retrieved Gigi after the attack.
3	Image of Gigi shortly after death. <i>Due to the graphic nature of Gigi's wounds, Plaintiffs did not remove the bandage applied by the emergency clinicians.</i>
4	Report by a Town of Mount Pleasant Detective who conducted an interview with Defendant Mark Ciaburri.

MICHELE GRAHAM



Michele Graham

Plaintiff

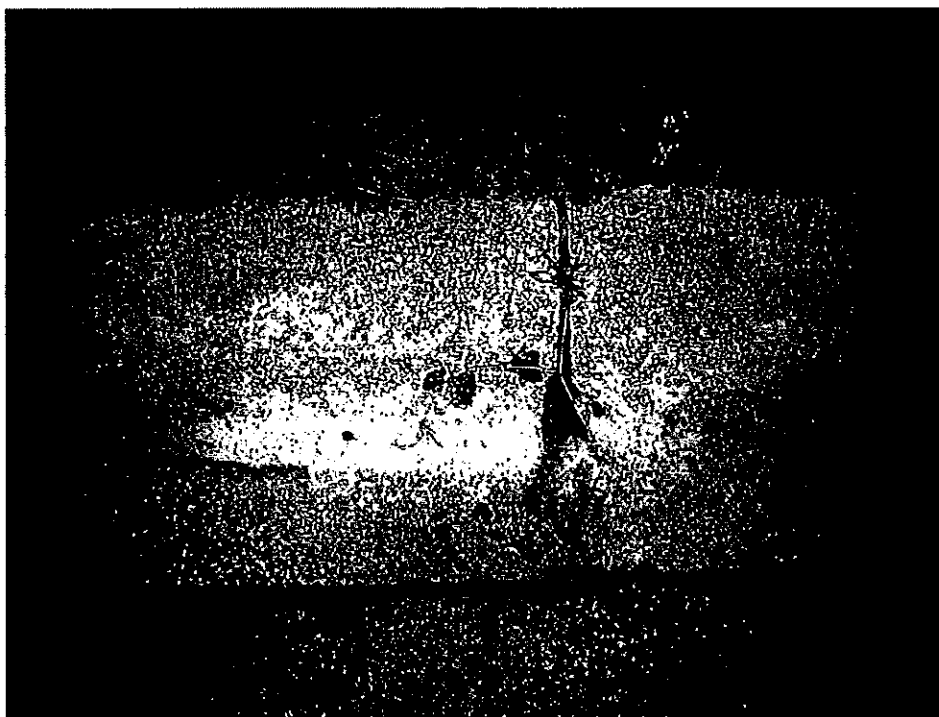
1661 Babington Way

Mount Pleasant, SC 28464

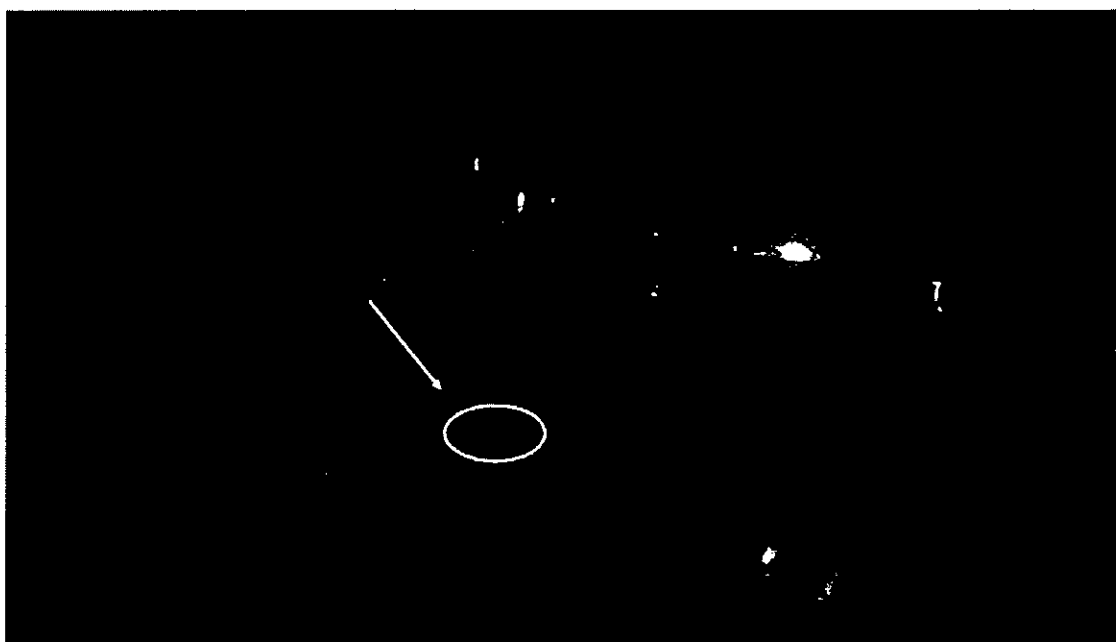
843-532-7252

August 14, 2020

EXHIBIT 1 – A



Location of blood droplets on the curb.

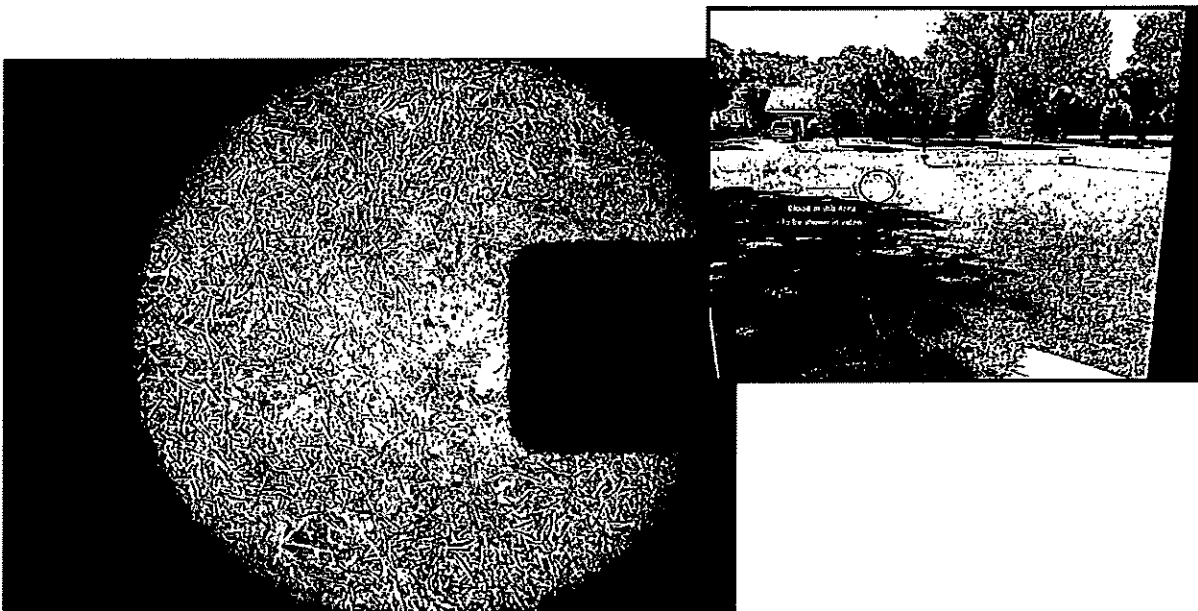


Still photograph taken from the body-camera footage of the first Officer on the scene. This image illustrates where on the curb these droplets were located. Defendant Mark Ciaburri is pictured on the right.

EXHIBIT 1 – B



One of several photos of blood in the yard. This image of blood is shown alongside a photograph pointing to its location.



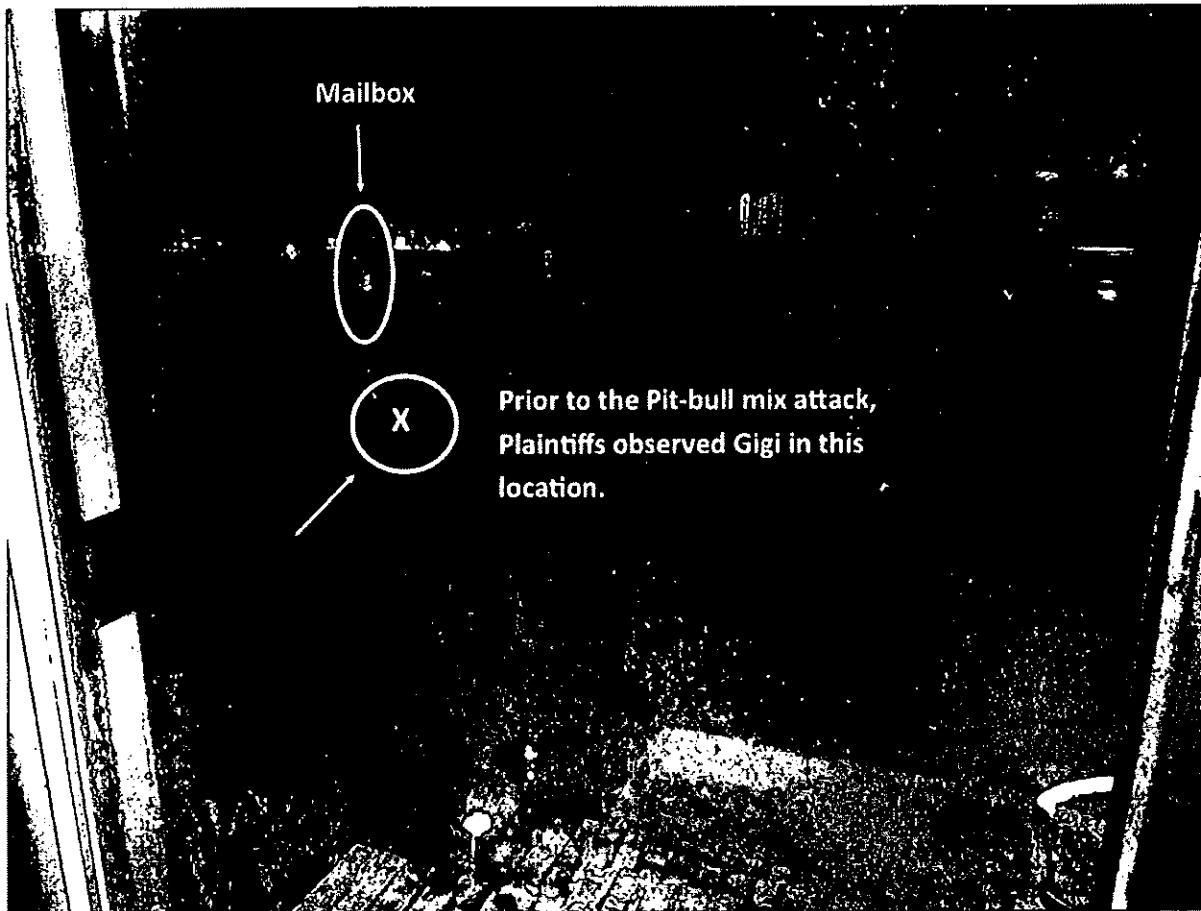
One of several photos of blood in the front lawn. This image of blood is shown alongside a photograph pointing to its location. Photo taken with a flashlight and smartphone. Videos taken show the location of this blood in relation to the 1661 Babington Way house.

EXHIBIT 2 – A



Daylight view of the front lawn through the full-view storm door.

EXHIBIT 2 – B



Night view of the front lawn through the full-view storm door.

EXHIBIT 2 - C



Daylight view of key areas in the front lawn.

EXHIBIT 3



Gigi shortly after death. *The emergency clinicians removed a portion of hair from Gigi's front leg to accommodate the placement of an intravenous needle.*

ADDITIONAL NARRATIVE

Agency Name: Mount Pleasant Police Department	ORI #: SC0100300	Report Date/Time: 05/27/2020 21:00	OCA #: 2020-0004190
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Dog Bite

I met with Michele Graham, the dog owner and her father Mr. Graham, at the residence today to allow them to explain the incident to this detective. They both gave their thoughts to what could have happened to the dog, but should be noted that neither of them witnessed the incident. Mr. Graham stated that when he saw their dog it was closer to the mailbox. Ms. Graham stated that the dog was closer to the electric box, which is just off the curb. Ms. Graham showed this detective several photos of blood that was located in the yard and on the concrete curb. The Grahams believed that Mr. Ciaburri was walking his dog and allowed his dog to enter their yard and attack their dog. This is their belief not based on witnessing. This detective also observed the on scene video when the officer arrived and spoke with the Grahams. Michele Graham's mother stated on video that Mr. Ciaburri's dog was on a leash. Ms. Michele is heard on video stating that her dog likes to walk alongside the property and likes to go to the mailbox to use the bathroom.

I then began speaking with the neighbors of Mr. Ciaburri. I met with the neighbor to the left of the residence, who stated that he knows that the dog is aggressive towards other animals and has been told by Mr. Ciaburri that if a cat were to enter the yard that his dog would kill it.

I then spoke with the neighbor across the street from Mr. Ciaburri, who stated that he takes the dog everywhere he goes and that she did witness the dog run towards another dog but Mr. Ciaburri was able to get control of the dog before it left the yard.

I then spoke with Ms. Graham by telephone, who stated that she sees evidence that is pointing to Mr. Ciaburri's dog was off leash and in her yard. I did remind her that on video that she and her mother both agreed that Mr. Ciaburri's dog was on a leash.

This detective then spoke with the neighbor to the right of Mr. Ciaburri, who stated that they have never seen the dog be aggressive and that she knows the dog goes to different events with Mr. Ciaburri where other dogs interact with each other. I also found that Mr. Ciaburri was on vacation and would not be home for a few days.

I spoke with Mr. Ciaburri on June 15, 2020 on the phone to set up a time for them to meet with this detective. Mr. Ciaburri gave a short statement. He stated that he and his dog were walking down the street, his dog on the leash, and that the small dog entered the street and came at his dog. Mr. Ciaburri stated that his dog grabbed the small dog. Mr. Ciaburri stated that he dropped to his knees and pulled the little dog from his dogs mouth. Mr. Ciaburri stated that his dog never entered the victim's yard. On June 17, 2020 I will meet with Mr. Ciaburri to interview him.

This detective spoke with the Town of Mount Pleasant's attorney, Ira Grossman, and explained the incident to him. Mr. Grossman stated that he was aware of the incident and that he had spoken to Ms. Graham on several different occasions. It was explained based on the evidence there would not be any charges brought against anyone in the incident.

On June 17, 2020, I met with Mr. Ciaburri in reference to the incident. I had Mr. Ciaburri explain the incident as he remembered it. Mr. Ciaburri stated that he was walking his dog like he did every night. Mr. Ciaburri stated that he had his phone in his right hand and the dog leash in the left walking in the road. As he was walking looking ahead he felt the leash tug and looked back at his dog and observed his dog grabbing the smaller dog. Mr. Ciaburri stated that he didn't know where the small dog came from, but when he saw that his dog had the small dog in it's mouth he dropped to his knees and pulled the dog out. Mr. Ciaburri stated that the dog walked into the yard and Ms. Graham came out side and asked if her dog had been bitten. Mr. Ciaburri said yes and Ms. Graham scooped the dog up and left for the vet. Mr. Ciaburri stated that he walked home and put his dog away and walked back to the smaller dogs residence where he met with the police and showed the Grahams his knees where he was bleeding from being on the road. Mr. Ciaburri stated that he never entered the smaller dogs yard with the smaller dog in its hands and that he wanted to make note that the reporting officer must have misunderstood him. This case is being admin. closed based on the evidence there is no proof that the incident was criminal

Exhibit 4

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

MICHELE GRAHAM)

Plaintiff,)

vs.)

MARK CIABURRI;)

ADRIENNE THOMPSON CIABURRI;)

CHRISTA HOFFMAN, in her official capacity
as a Town of Mount Pleasant animal control
officer;)

HEATHER CUMBEE, in her official capacity
as a Town of Mount Pleasant animal control
officer;)

SHELBY WALKER, in her official capacity as
a Town of Mount Pleasant patrol officer)

TOWN OF MOUNT PLEASANT POLICE
DEPARTMENT)

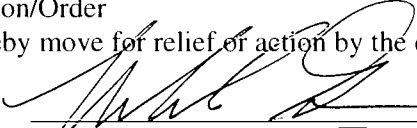
Defendant.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-100-3397

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  _____ Signature of Attorney for ☒ Plaintiff / ☐ Defendant 09-02-2020 Date submitted	
SECTION III: Motion Fee	
☒ PAID – AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MICHELE GRAHAM

Plaintiffs,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;
CHRISTA HOFFMAN, in her official
capacity as a Town of Mount Pleasant
animal control officer;
HEATHER CUMBEE, in her official
capacity as a Town of Mount Pleasant
animal control officer;
SHELBY WALKER, in her official capacity
as a Town of Mount Pleasant patrol officer;
TOWN OF MOUNT PLEASANT POLICE
DEPARTMENT

Defendants

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION
FILE NO. 2020CP1003397

FILED
2020 SEP -2 AM 11:57
JULIE J. ARONSON
CLERK OF COURT
RY

AMENDED

NOTICE OF MOTION AND MOTION FOR TEMPORARY INJUNCTION

TO: **MARK CIABURRI**
ADRIENNE THOMPSON CIABURRI
CHRISTA HOFFMAN
HEATHER CUMBEE
SHELBY WALKER
TOWN OF MOUNT PLEASANT POLICE DEPARTMENT

PLEASE TAKE NOTICE THAT Plaintiff Michele Graham moves for a temporary injunction requiring the seizure and impoundment of the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri of 1757 Nantahala Blvd., Mount Pleasant, South Carolina 29464 during the pendency of this case.

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An animal shall be deemed under control or restraint if it is on the premises of its owner or keeper or is accompanied by its owner or keeper and under the physical control of such owner or keeper by means of a leash not more than eight feet in length or other similar restraining device, or under the active control of the owner or trainer while hunting or being trained while on property of the owner or another's property with the property owner's permission.

The Town of Mount Pleasant ordinance uses § 90.29(B)(3) to describe a dangerous animal. § 90.29(B)(3) states:

(B) It shall be unlawful for any person to own, keep, possess or maintain an animal in such a manner as to constitute a public nuisance. By way of example and not of limitation, the following acts or actions by an owner or possessor of an animal are declared to be a public nuisance and are therefore unlawful: (3) Maintaining an animal that habitually or repeatedly chases, snaps at, bites or attacks pedestrians, bicycles or vehicles or other animals, or any animal whose behavior constitutes a reasonable risk of injuring a human or other animal.”

§ 90.30 of the Town of Mount Pleasant ordinance states that dangerous and vicious animals are prohibited. § 90.30 states:

- (A) It shall be unlawful for any person to own or in any way, harbor or keep any animal which is dangerous as described in § 90.29(B)(3) above, or that is vicious as defined in this chapter. This shall not apply to any animal that attacks any person or animal unlawfully upon its owner’s or keeper’s premises.
- (B) Any person who owns an animal that has been declared dangerous or vicious by the Animal Control Officer shall have the right to appeal this decision to the Town Administrator and to request a hearing by submitting a written request to the office of the Town Administrator within five working days after the Animal Control Officer's determination that the animal is dangerous or vicious. The Town Administrator or his/her designee shall conduct a hearing to determine if the Animal Control Officer's determination that the animal is dangerous or vicious is correct or incorrect. If the animal is judged not to be dangerous or vicious, it shall be returned to the owner. If the Town Administrator or his/her designee determines the animal to be dangerous or vicious, then the animal shall be disposed of in a humane manner.

§ 90.85 of the Town of Mount Pleasant ordinance states the following:

There shall be one or more persons designated by the Chief of Police as Animal Control Officer or Animal Control Officers in addition to

any town police officer whose duty it shall be to supervise and enforce the provisions of this chapter and all other applicable laws concerning animals and he or she shall have the power and full authority to accomplish the same.

The ordinance provides that the usage of *shall*, indicates that the act referred to is mandatory. Therefore, it is the ministerial duty of the animal control officer to enforce and comply with the provisions set forth in the Town of Mount Pleasant ordinance regarding animals. This duty includes complying with § 90.30, prohibiting dangerous and vicious animals.

FACTUAL AND PROCEDURAL BACKGROUND

Defendants Mark Ciaburri and Adrienne Ciaburri are the owners of the male Pit-bull mix that attacked and killed a 12-year-old female Yorkshire Terrier, named Gigi, on May 27, 2020.

Gigi was relieving herself on the front lawn near the mailbox at the time of the Pit-bull mix attack. The location of Gigi at the time of the attack is evidenced by the significant amounts of blood in the front lawn and the absence of any blood in the roadway.¹ Furthermore, the Plaintiff and her father were observing Gigi relieving herself on the property near the mailbox before looking away for < 1 minute. When the Plaintiff's father turned his attention back to Gigi and opened the full-view storm door < 1 minute later, Gigi was still on the property – not far from her original location prior to the attack. The Plaintiff's father also witnessed Defendant Mark Ciaburri on the property at this time. Upon information and reasonable belief, Mark Ciaburri's Pit-bull mix lunged onto the 1661 Babington Way lawn and grabbed Gigi. Because of this attack, Gigi suffered broken ribs, flail chest and severe pulmonary bruising.² The nature of

¹ Defendant Mark Ciaburri also confirms Gigi's location in the midst of questioning when he states to Defendant Officer Hoffman, "Maybe it [Gigi] was by the mailbox or something. It [Gigi] was in the front."

² Flail chest is when a segment of the chest wall separates from the rest of the thoracic cage. The injuries were so severe that even with the most aggressive treatment, Gigi's chance of survival was < 10%.

Gigi's wounds and the circumstances indicate that this was a surprise, unprovoked attack against Gigi.³

The Plaintiff's mother called the Mount Pleasant Police, and two officers responded to the scene. Defendant Mark Ciaburri spoke with the first officer and stated that Gigi "darted out" into the street and his dog "got it." Moments later, Defendant Mark Ciaburri spoke with the second officer, Defendant Pfc. Shelby Walker. In this bodycam-captured interaction, Defendant Mark Ciaburri later states to Defendant Pfc. Shelby Walker that Gigi attacked his Pit-bull mix and that his Pit-bull mix thought it was an opossum. Defendant Pfc. Shelby Walker does not ask Defendant Mark Ciaburri to demonstrate where or how the incident occurred, and neither of the two responding officers observed Defendant Mark Ciaburri's Pit-bull mix that night.⁴

After speaking with Defendant Mark Ciaburri, Defendant Pfc. Shelby Walker dismissed the first officer and took over the scene on her own. Defendant Pfc. Shelby Walker was unfamiliar with the Town's ordinances regarding animals, specifically the permissibility of animals to be unleashed while on the owner or keeper's property. As a result, Defendant Pfc. Shelby Walker treated the significant amounts of blood in the front lawn as unworthy of serious consideration. Additionally, the incident report written by Defendant Pfc. Shelby Walker was

³ In the video-recorded interview with a Town of Mount Pleasant detective on June 17, Defendant Mark Ciaburri states that, "[Before and during the attack] there was no sound [from Gigi or his Pit-bull mix]...there was no struggle...My dog had it." There were no bites or wounds to Gigi's face, ears or neck – only deep thoracic punctures intended to kill (See Exhibit 1). Defendant Mark Ciaburri also states that the attack occurred in "a matter of seconds."

⁴ After the attack, Mark fled the scene and returned without his Pit-bull mix. He also returned to the scene with scraped knees. He presented his scraped knees as "evidence" that the Pit-bull mix attack occurred in the street.

false, misleading and lacked the vital information necessary to assist the Town of Mount Pleasant animal control officers in conducting an accurate assessment of the incident.⁵

Defendants Officer Hoffman and Officer Cumbee spoke with Defendants Mark Ciaburri and Adrienne Ciaburri at their residence at 1757 Nantahala Blvd. on the morning of May 28, 2020. After speaking with Defendant Mark Ciaburri, Defendants Officer Hoffman and Officer Cumbee decided not to seize the Pit-bull mix on the basis that it was on a leash. The supplemental incident report written by Defendant Officer Hoffman states the following, “We cannot charge Mark with animal at large, public nuisance, or vicious animal because the dog was on a leash and there [sic] dog left the property and was at large.” This is an error by Defendant Officer Hoffman; an animal is not exempt from a dangerous or vicious designation simply by virtue of the presence of a leash. Chapter 90 of the Town Ordinance makes no such exemptions. Concerning a dangerous or vicious declaration, the presence of a leash is immaterial. Provided that Gigi was not unlawfully on the property of Defendants Mark Ciaburri and Adrienne Ciaburri, her location is also irrelevant. Additionally, Defendant Officer Hoffman made the decision against seizing the Pit-bull mix without looking at any evidence and without knowing all of the facts.⁶ In a June 2, 2020 phone call, Defendant Officer Hoffman spoke with Plaintiff Michele Graham on a recorded line and admitted to not looking at any evidence. Defendant Officer Hoffman suggested that the Plaintiff present evidence and bring a seizure request to a

⁵ After a review by the Internal Affairs Bureau and a supervising sergeant, it was determined that Pfc. Shelby Walker’s handling of this incident was unprofessional and biased. As a result, she was placed on a 90-day Professional Improvement Plan. A “revised” incident report was later issued, but the report remained inaccurate and without vital information.

⁶ Defendant Officer Hoffman admits on body-camera footage that after reading the false and misleading incident report written by Defendant Pfc. Shelby Walker, she and her lieutenant arrived at a conclusion. Defendant Officer Hoffman arrived at a conclusion before conducting any investigation. Defendant Officer Hoffman also had no knowledge of Gigi’s condition or the nature and extent of her injuries.

civil court judge. Plaintiff Michele Graham forwarded the phone call to Town of Mount Pleasant officials.

Following the recorded phone call with Plaintiff Michele Graham, Defendant Officer Hoffman viewed pieces of photographic evidence depicting blood in the front lawn.⁷ On June 3, 2020, Defendants Officer Hoffman and Officer Cumbee walked through the Wando Lakes subdivision and spoke with six neighbors of 1661 Babington Way. Defendants Officer Hoffman and Officer Cumbee also spoke with the Plaintiff and her parents. The interactions between Defendant Officer Hoffman, Defendant Officer Cumbee, the Plaintiff, the Plaintiff's parents and the six neighbors were captured on body-worn cameras. However, the supplemental incident report written by Defendant Officer Hoffman documenting these interactions is grossly inaccurate and misleading. Defendant Officer Hoffman concluded the supplemental report with the following, "...based on speaking with everyone today. I was still unable to decyfer [sic] who was the party at fault."

On June 17, 2020, a detective interviewed Defendant Mark Ciaburri at the Mount Pleasant police headquarters.⁸ The detective also interviewed Defendant Mark Ciaburri's neighbors. The town solicitor declined to pursue criminal charges against Defendant Mark Ciaburri.⁹

Due to the mishandling of this incident by Defendant Pfc. Shelby Walker and the

⁷ Videos show the location of blood in relation to the 1661 Babington Way home.

⁸ The extent of Gigi's injuries were so great and her condition so grave that it is inconceivable how a Pit-bull mix that was supposedly properly restrained by a leash could inflict such extensive damage, unless the owner of the Pit-bull mix permitted it. Therefore, a criminal investigation was launched.

⁹ When Plaintiff Michele Graham spoke with the town solicitor, the solicitor referenced the case by reading the incorrect incident report written by Defendant Pfc. Shelby Walker. Additionally, the solicitor acknowledged not seeing any body camera footage of the responding officers and the animal control officers or seeing any photographic evidence.

subsequent inaction from Defendants Officer Hoffman and Officer Cumbee, Plaintiff Michele Graham filed a Summons and Complaint against the Defendants in the Charleston County Court of Common Pleas. The Plaintiff now seeks a temporary injunction for the relief sought herein to remain in effect until there has been a final adjudication on the merits of this case.

PARTIES

Plaintiff is a resident of 1661 Babington Way in Mount Pleasant, South Carolina (Charleston County) and the owner of the 12-year-old Yorkshire Terrier that was fatally attacked by the Pitbull-mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri on May 27, 2020.

Defendant Christa Hoffman, referred to as “Defendant Officer Hoffman,” is an animal control officer for the Town of Mount Pleasant and assigned the duty of enforcing the Town of Mount Pleasant Ordinances Regarding Animals.

Defendant Heather Cumbee, referred to as “Defendant Officer Cumbee,” is an animal control officer for the Town of Mount Pleasant and assigned the duty of enforcing the Town of Mount Pleasant Ordinances Regarding Animals.

Defendant Shelby Walker, hereinafter referred to as “Defendant Pfc. Shelby Walker,” is a patrol officer for the Town of Mount Pleasant and is responsible for enforcing the Town of Mount Pleasant Ordinances.

Defendant Mark Ciaburri is the owner of the Pit-bull mix that fatally attacked the 12-year-old Yorkshire Terrier on May 27, 2020. Defendant Mark Ciaburri resides in Mount Pleasant, South Carolina (Charleston County).

Defendant Adrienne Thompson Ciaburri is the co-owner of the Pit-bull mix that fatally attacked the 12-year-old Yorkshire Terrier on May 27, 2020. Defendant Adrienne Thompson Ciaburri resides in Mount Pleasant, South Carolina (Charleston County).

The Town of Mount Pleasant Police Department is the police department for the Town of Mount Pleasant, South Carolina. The Town of Mount Pleasant Animal Control operates within the Town of Mount Pleasant Police Department.

GROUNDS FOR TEMPORARY INJUNCTION

The following sections A - C show that (1) the Plaintiff would suffer irreparable harm if the injunction is not granted; (2) the Plaintiff will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.

A. IRREPARABLE HARM WILL RESULT IF AN INJUNCTION IS NOT GRANTED.

The Plaintiff has suffered and would continue to suffer irreparable harm if the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri is allowed continued access to the public. The Plaintiff's neighborhood is full of small children, small and friendly domestic animals and docile wildlife.¹⁰ Neighbors have expressed fear of Defendants Mark Ciaburri and Adrienne Ciaburri's Pit-bull mix, as well as doubts concerning their ability and willingness to take the proper precautions when walking their Pit-bull mix. Defendants Mark and Adrienne Ciaburri are fully aware of their Pit-bull mix's aggressive nature and its propensity to go after

¹⁰ Defendants Mark Ciaburri and Adrienne Ciaburri stated on bodycam footage several times that their Pit-bull mix frequently kills wildlife.

and kill other animals, yet their Pit-bull mix was off the owners' premises, un-muzzled and managed to kill a 10-pound Yorkshire Terrier while supposedly restrained by a leash.

The continued presence of this Pit-bull mix presents a constant threat to the safety of the neighborhood and the public. Granting this temporary injunction avoids additional irreparable injury to the Plaintiff and her other Yorkshire Terrier, as well as the public at large.

B. PLAINTIFF HAS SHOWN A LIKELIHOOD OF SUCCESS ON THE MERITS

The acts of the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri deem it vicious and dangerous per definition set forth in the Town of Mount Pleasant Ordinances Regarding Animals. This and other facts will be established at the trial of this case.

Throughout Defendant Mark Ciaburri's conversations with the animal control officers and law enforcement, Defendant Mark Ciaburri made several statements that indicate that his Pit-bull mix went after Gigi. In fact, Defendant Mark Ciaburri explicitly states to Defendants Officer Hoffman and Officer Cumbee, "This time he [his Pit-bull mix] got away [from him] ... Next thing I know, my little dog [his Pit-bull mix] is going after this dog [Gigi]...this time my dog got 'em." These and several other statements, which were captured on body-worn cameras, will be shown in court. Additionally, photos and videos of the placement of blood in the front lawn and the absence of any blood in the roadway will be shown (See Exhibits 2A, 2B and 3B).

The Plaintiff is entitled to the issuance of an injunction based upon the likelihood of proving that the act committed by the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri was unjustified and vicious in nature.

C. PLAINTIFF LACKS AN ADEQUATE REMEDY AT LAW

A temporary injunction is needed in this case because Defendants Officer Hoffman and Officer Cumbee have refused to perform their necessary duty as animal control officers for the Town of Mount Pleasant. After Gigi's fatal attack, the Pit-bull mix was never examined or evaluated by the Defendant Officers, nor were Defendant Mark Ciaburri's statements ever scrutinized. In fact, Defendant Officer Hoffman stated on body-cam footage that in her previous role as an animal control officer for an adjoining county, she often declined to determine an at-fault party despite having the ability to do so. Defendant Officer Hoffman stated that she did this to avoid "backlash."

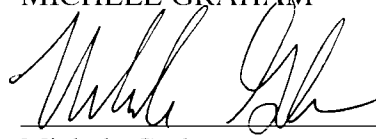
It is the role of the animal control officer to (1) determine if an animal meets the definition of a dangerous or vicious animal and (2) apply the law accordingly. Defendants Officer Hoffman and Officer Cumbee have decided to do neither. Instead, Defendant Officer Hoffman urged the Plaintiff to seek the relief requested herein through civil remedies. Therefore, an injunction is the only appropriate relief.

RELIEF REQUESTED

Plaintiff requests that this Court consider the facts and exhibits provided herein as sufficient probable cause to believe that the Pit-bull mix owned by Defendants Mark and Adrienne Ciaburri is dangerous and vicious as defined in Chapter 90 of the Town of Mount Pleasant Code of Ordinances. Plaintiff respectfully requests that this Court issue a temporary injunction requiring the seizure and impoundment of the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri during the pendency of this case and until a final judicial decision regarding the designation of said Pit-bull mix as dangerous or vicious has been made.

Respectfully submitted,

MICHELE GRAHAM

A handwritten signature in black ink, appearing to read 'Michele Graham', written over a horizontal line.

Michele Graham

Plaintiff

1661 Babington Way

Mount Pleasant, South Carolina 29464

843-532-7252

September 1, 2020

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

**IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT**

MICHELE GRAHAM

Plaintiff,

v.

**MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;
CHRISTA HOFFMAN, in her official
capacity as a Town of Mount Pleasant
animal control officer;
HEATHER CUMBEE, in her official
capacity as a Town of Mount Pleasant
animal control officer;
SHELBY WALKER, in her official capacity
as a Town of Mount Pleasant patrol officer
TOWN OF MOUNT PLEASANT POLICE
DEPARTMENT**

Defendants

**CIVIL ACTION
FILE NO. 2020CP1003397**

**AMENDED
MOTION EXHIBIT LIST**

Plaintiff submits exhibits 1 – 4B to be used in consideration for this motion.

MOTION EXHIBIT LIST

EXHIBIT	DESCRIPTION
1	Image of Gigi shortly after death. <i>Due to the graphic nature of Gigi's wounds, the Plaintiff did not remove the bandage applied by the emergency clinicians.</i> Gigi's wounds do not indicate that a face-to-face attack occurred.
2A-B	Photos depicting blood in the front lawn and the location.
3A	Daylight view of the front lawn of 1661 Babington Way as viewed through the full-view storm door. The image indicates the location of Gigi prior to the attack.
3B	Daylight view of key areas in the front lawn of 1661 Babington Way. This image indicates the areas where blood was found and where Plaintiff Michele Graham retrieved Gigi after the attack.
4A-B	Location of blood on the curb, along with a still photograph taken from the body-camera footage of the first officer on the scene. The still photograph illustrates where on the curb these droplets were located. Defendant Mark Ciaburri is pictured on the right. At this point in the footage, Defendant Mark Ciaburri states that the blood droplets on the curb are "probably from [his] knees."

MICHELE GRAHAM



Michele Graham
Plaintiff
1661 Babington Way
Mount Pleasant, SC 28464
843-532-7252

September 1, 2020

EXHIBIT 1

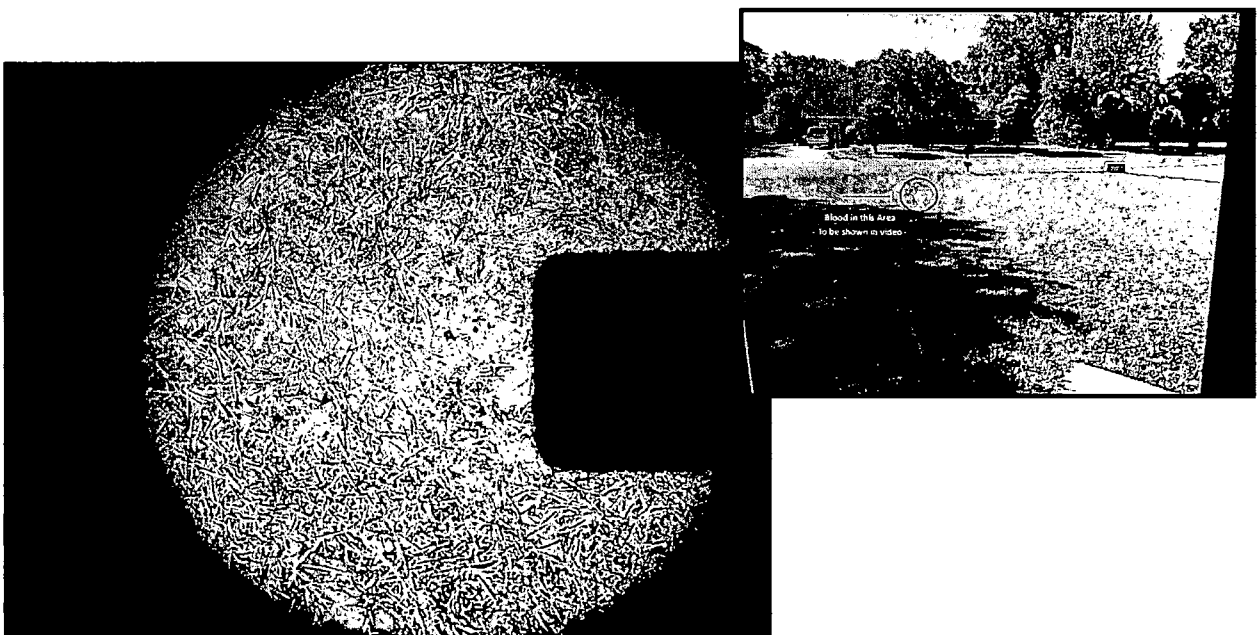


EXHIBIT 2A



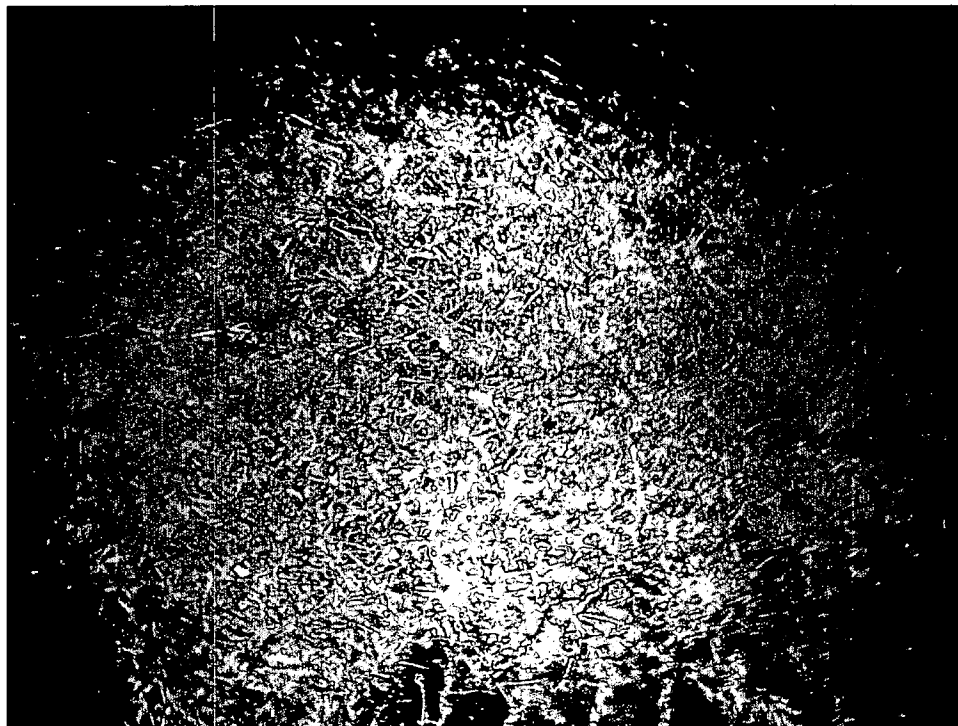
One of several photos of blood in the yard. This image of blood and tissue is shown alongside a photograph pointing to its location.

EXHIBIT 2B



One of several photos of blood in the front lawn. This image of blood is shown alongside a photograph pointing to its location. Photo taken with a flashlight and smartphone. Videos taken show the location of this blood in relation to the 1661 Babington Way house. This blood is

located in the same general area where the Plaintiff's father witnessed Defendant Mark Ciaburri holding his Pit-bull mix down.



Same general area of blood – trail going toward the electric box. Video shows the location of blood.



Same general area of blood – trail going toward the electric box. Video shows the location of blood.

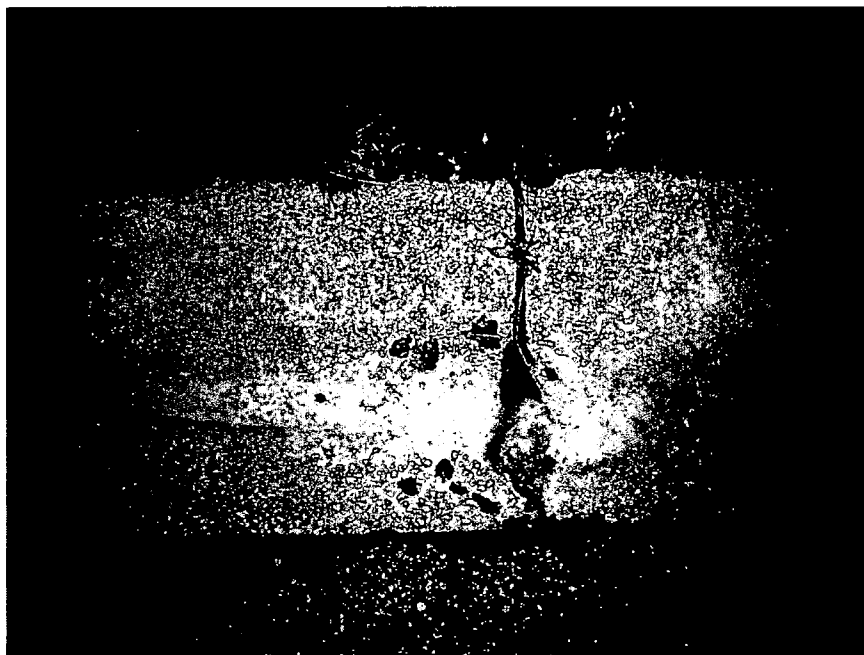
EXHIBIT 3A



EXHIBIT 3B

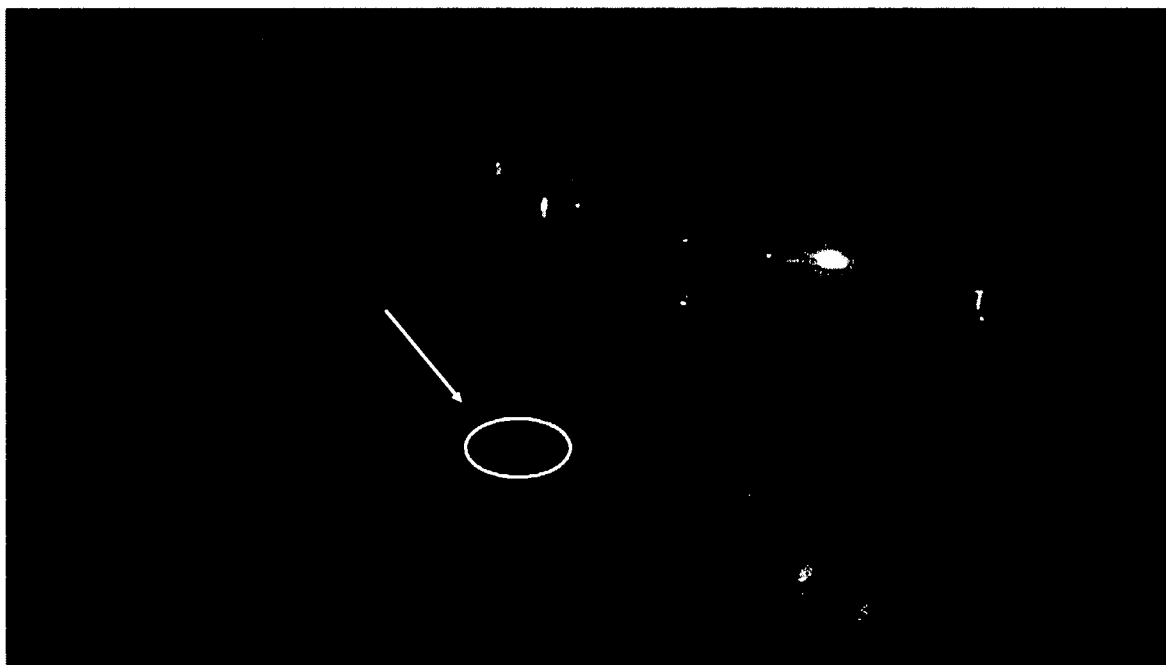


Exhibit 4A.



Location of blood droplets on the curb.

Exhibit 4B.



Still photograph taken from the body-camera footage of the first Officer on the scene. This image illustrates where on the curb these droplets were located. Defendant Mark Ciaburri is pictured on the right.



Michele Graham
1661 Babington Way

Mount Pleasant, SC 29464

NOTICE OF MOTION SCHEDULING

August 28, 2020

Motion "MOFREE - Motion For Temporary Restraining Order" for Case: 2020CP1003397 - Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al has been added to the following Motions Roster:

404 - JUDGE PRICE WEEK OF SEPTEMBER 21, 2020

This hearing of this motion has been scheduled for 9/21/2020 at 9:30 AM.

Motion(s) in the above captioned case will be handled during THE WEEK OF September 21, 2020 by the Honorable Judge Bentley Price. UNLESS a WebEx hearing is requested, the motion (s) will be ruled on based upon your submitted briefs. Your briefs are due by 5PM on Friday, September 18, 2020. Please send your briefs to Judge Price's Law Clerk at the following:

bpricelc@sccourts.org

IF you are requesting a hearing please be advised that the hearing will be handled via WebEx. The Link for the hearing will be provided by Judge Price's Law Clerk after you email her with your request for a hearing. Please advise if an Interpreter is needed.

Continuance requests must be received no later than Wednesday, September 16, 2020.

Mail Notice To:

Michele Graham
1661 Babington Way

Mount Pleasant, SC 29464

Court Info:

Common Pleas
Charleston County Judicial Center
100 Broad Street - Suite 106
Charleston, SC 29401-9401

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(843)958-5000

Respectfully,

e Armstrong
k of Court

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;

Defendants

CIVIL ACTION
FILE NO. **2020CP1003397**

2020 DEC 29 AM 8:49
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

**PLAINTIFF'S MOTION FOR COURT TO RECONSIDER ORDER GRANTING
ATTORNEY'S FEES AS TO THE PRELIMINARY INJUNCTION HEARING**

Plaintiff moves pursuant to Rule 59(e) SCRPC for this Court to reconsider its December 22, 2020 order granting Defendant Mark Ciaburri's motion for attorney's fees as to the Preliminary Injunction hearing heard before the court on September 24, 2020.

BACKGROUND

On May 27, 2020, Mark Ciaburri's Pit-bull mix fatally attacked the Plaintiff's 12-year old Yorkshire Terrier on the 1661 Babington Way property without provocation. The animal control officer for the Town of Mount Pleasant conducted no genuine investigation into the nature of this attack, did not examine any evidence and declined to uphold Chapter 90 of the Town ordinance regarding animals in this case. Instead, the animal control officer suggested that the Plaintiff seek her requested relief – a dangerous dog declaration and seizure of the dog -- through civil proceedings.

On August 31, 2020, the Plaintiff filed an amended complaint seeking monetary damages and injunctive relief. On September 2, 2020, Plaintiff filed an amended Motion for Temporary Injunction requesting that the Court order the seizure and impoundment of the Defendants' Pit-bull mix during the pendency of this case. The purpose of the Plaintiff's Motion for Temporary Injunction was to preserve the procedural status quo, as the seizure of the Defendants' dog is what *should have* occurred at the time of the attack.

Prior to the hearing, Defendants' counsel approached the Plaintiff in the court hallway in front of her parents and suggested that she proceed with a Writ of Mandamus, rather than a temporary injunction and stated, "...because that is what I think you meant to do." The Plaintiff stated that she intended to file a temporary injunction motion. The Plaintiff proceeded with a temporary injunction motion at the hearing.

At the close of the temporary injunction hearing on September 24, 2020, Defendants' counsel handed the Plaintiff an unfiled *Motion for Sanctions and Award of Attorney's Fees and Costs Pursuant to SCRCF 65(f)(2)* and a copy of his fees and costs, attached as Exhibit 1. Defendants' counsel stated that he had also handed a copy of this motion to the judge. The motion is dated September 24, 2020 and written before any ruling, finding of fact or conclusions of law were provided.

On September 30, 2020, the Court denied the Plaintiff's Motion for Temporary Injunction, attached as Exhibit 2.

After the entry of denial of temporary injunction, Defendants' counsel emailed the law clerk of Judge Bentley Price asking if the Judge ruled on his motion for fees, attached as Exhibit 3. The clerk's response is attached as Exhibit 4. As requested, the Plaintiff sent her written

opposition to the motion, attached as Exhibit 5. Defense counsel then emailed a copy of the Motion, a Memorandum in Support of the Motion and his affidavit of fees; this email is attached as Exhibit 6. The clerk's response is attached as Exhibits 7 and 8. Defense counsel was informed that the Judge would consider attorney's fees after the ruling on dispositive motions and that he would need to file the motion if he wanted it heard.

The Defendants' Motion for Summary Judgment was heard on December 11, 2020 and denied. In the order dated December 22, 2020, the Judge granted the Defendants' Motion for Attorney's Fees as to the Preliminary Injunction hearing on September 24, 2020. The order is attached as Exhibit 9.

GROUNDS

1. THE PLAINTIFF FILED A MOTION FOR TEMPORARY INJUNCTION

As stated in the Plaintiff's opposition to the Defendants' Motion for Fees, the Plaintiff filed a Motion for Temporary Injunction. The Plaintiff asked the Court for an order requiring the potentially dangerous Pit-bull mix owned by the Defendants to be impounded until the final merits of the case are heard. The Plaintiff petitioned the court to look at the submitted evidence, listen to testimony and determine if the actions of the Defendants' dog warranted temporary court intervention. During the Plaintiff's closing statement, the Plaintiff requested that the court at least order an evaluation of the dog.

2. AN AWARD OF ATTORNEY'S FEES IS UNWARRANTED AND UNJUST

The award of attorney's fees is unwarranted and unjust because the Plaintiff's Motion for Temporary Injunction was reasonable and justified. The several pieces of video and photographic evidence submitted to this court, as well as testimony from Mr. Graham who

witnessed Mark Ciaburri in the front lawn holding down his dog, makes it clear that the Defendants' Pit-bull mix attacked Gigi in the front lawn. Moreover, the expert witness report, which is in the court record and provided to the Judge during the Defendants' summary judgment hearing states that based on the review of the submitted evidence – the same evidence provided to the Court in support of the Plaintiff's Motion for Temporary Injunction – that the defendants' dog should have been declared dangerous. Court-recognized expert, James "Jim" Crosby writes in his report:

Thus, in conclusion, Petey should have been, and should be, declared DANGEROUS under the provisions of Mount Pleasant Municipal Code, and remedial action to so declare the dog Petey DANGEROUS should immediately proceed.

Remedial proceedings to declare the dog dangerous would include a seizure, temporary impoundment or confinement until the full merits of the case are heard. Similarly, had the animal control officer properly declared the Defendants' dog as dangerous, the animal would have been seized and impounded. At that time, the owners would have had an opportunity to defend against the dangerous dog declaration during an administrative or municipal hearing.

The animal control officer is the officer who has the authority to declare a dog as potentially dangerous and initiate municipal court proceedings for animal-related ordinance violations within the Town of Mount Pleasant. The Plaintiff's motion for temporary injunction, response brief and submitted evidence illustrate that the animal control officer did not conduct any serious inquiry into this incident. Therefore, the Plaintiff petitioned this Court to be the trier of fact and determine, based on the evidence, if temporary action should be taken. Granting attorney's fees to the Defendants only serves to unjustly penalize the Plaintiff for pursuing justified legal actions.

3. THE COURT ERRED IN CONSIDERING THE PLAINTIFF’S MOTION AS A WRIT OF MANDAMUS; ILLIBERAL CONSTRUCTION OF DOCUMENT

Document[s] filed pro se [are to] to be liberally construed." Erickson v. Pardus, 551 U.S. 89, 94 (2007). At its core, the Plaintiff’s motion for Temporary Injunction sought the confinement of a potentially dangerous pit-bull mix. The Plaintiff’s motion is asking the Court to issue an order that would essentially prevent the owner from taking the dog out in public during the pendency of this case. The Court should have liberally construed the Plaintiff’s motion to include ordering the Defendants to confine their animal, even if the Court did not think the government should seize it. Instead, the Court mistakenly construed the Plaintiff’s motion as one that was *only* seeking Mandamus against the government officials.

By granting the Defendants’ Motion for Attorney’s Fees, it appears that the Court erred in considering the Plaintiff’s motion as a Writ of Mandamus and in considering the owners of the Pit-bull mix as the “prevailing party.” The Plaintiff’s Amended Motion for Temporary Injunction concludes with the following:

Plaintiff requests that this Court consider the facts and exhibits provided herein as sufficient probable cause to believe that the Pit-bull mix owned by Defendants Mark and Adrienne Ciaburri is dangerous and vicious as defined in Chapter 90 of the Town of Mount Pleasant Code of Ordinances. Plaintiff respectfully requests that this Court issue a temporary injunction requiring the seizure and impoundment of the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri during the pendency of this case and until a final judicial decision regarding the designation of said Pit-bull mix as dangerous or vicious has been made.

4. DEFENDANTS NOT A “PREVAILING PARTY.”

To the extent that the Court did not err in considering the Plaintiff’s motion as a Writ of Mandamus, the Ciaburri Defendants would not be considered the prevailing party. The

prevailing party would have been the government official to whom the Writ of Mandamus was directed. Therefore, Rule 65(f)(2) is not applicable to the Ciaburri Defendants.

Defendants' Memorandum in Support of Award of Attorney's Fees pursuant to SCRCF 65(f)(2) urging the Court to re-characterize the Plaintiff's motion for Temporary Injunction as a Writ of Mandamus is an attempt to unjustifiably shift their attorney's fees onto the Plaintiff through a non-applicable statute.

5. LACK OF NOTICE; DENIED DUE PROCESS

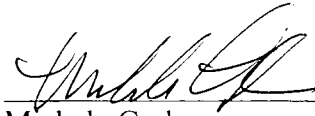
The Plaintiff received no notice of a hearing date for the Defendants' motion. Therefore, the Plaintiff had no time to properly object. As stated by the Judge's law clerk in the attached exhibit, if the Defendants wanted the motion heard the motion needed to be filed with the clerk; there was no motion for fees in the system. Accordingly, there was no date set for the hearing of the Defendants' motion. Awarding fees on a motion without any notice deprived the Plaintiff of due process.

CONCLUSION

The Plaintiff is seeking legal redress against Mark Ciaburri for allowing his dog to viciously attack her 12-year old Yorkshire Terrier. All of the Plaintiff's submissions support these legal actions, and all of the Plaintiff's actions throughout the course of this litigation have been in accordance with procedural rules. There is no applicable statute that allows the Ciaburri Defendants to be awarded *any* attorney's fees in this action. *All* of the Ciaburri Defendants' legal fees and costs are the responsibility of the Ciaburri Defendants.

For the reasons stated above, the Plaintiff requests that this Court reconsider its order granting attorney's fees to the Defendants, and enter a new order withdrawing the same.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Michele Graham', written over a horizontal line.

Michele Graham

Plaintiff

1661 Babington Way

Mount Pleasant, SC 29464

843-532-7252

Date: 12-28-2020

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2020-CP-10-03397
MICHELLE GRAHAM, MICHAEL	)	
GRAHAM, and TAMMY GRAHAM,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	MOTION FOR SANCTIONS AND
	)	AWARD OF ATTORNEY'S FEES AND
MARK CIABURRI, ADRIENNE	)	COSTS PURSUANT TO SCRPC 65(f)(2)
CIABURRI, CRISTA HOFFMAN,	)	
HEATHER CUMBEE, and SHELBY	)	
WALKER,	)	
	)	
Defendants.	)	
	)	

PLEASE TAKE NOTICE that the Defendants, Mark & Adriene Ciaburri, by and through the undersigned counsel will move before the Honorable Bentley Price at the appropriate time during a hearing for the above captioned matter for an Order Awarding Attorney's Fees and Costs to be paid by the Plaintiff, Michele Graham.

This Motion is based on the pleadings in this matter, the affidavits filed herewith, the arguments of counsel, arguments of the parties, applicable testimony, and on such laws and facts as are appropriate and applicable. Counsel submits that Plaintiffs have failed to meet their burden for issuance of a writ of mandamus pursuant to South Carolina Rule of Civil Procedure 65(f)(1) and applicable case law. Accordingly, Defendants respectfully requests this Court to grant this motion and file an order requiring Plaintiff's to pay Defendant's Attorney's Fees and Costs that have been incurred in defending against Plaintiff's claims pursuant to South Carolina Rule of Civil Procedure 65(f)(2)

[Remainder of Page Left Intentionally Blank, Signature Block Follows on Next Page]

Respectfully submitted,

/s/ *Edward Corvey*

KIDD CORVEY & SIMPSON, LLC

Edward “Ted” R. Corvey, III, Esq.

914 Folly Road, Suite B

Charleston, South Carolina 29412

S.C. Bar Number: 101454

ted@kcslawfirm.com

(843) 642-8792

ATTORNEY FOR DEFENDANTS

September 24, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
MICHELE GRAHAM, MICHAEL
GRAHAM, and TAMMY GRAHAM,

Plaintiffs,

vs.

MARK CIABURRI, ADRIENNE
CIABURRI, CRISTA HOFFMAN,
HEATHER CUMBEE, and SHELBY
WALKER,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2020-CP-10-03397

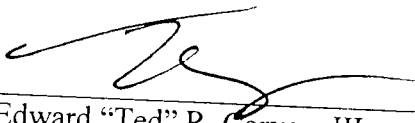
) **AFFIDAVIT OF ATTORNEY IN**
) **SUPPORT OF AWARD OF FEES AND**
) **COSTS**

PERSONALLY APPEARED before me: Edward "Ted" R. Corvey, III, Esquire, who
being duly sworn deposes and says:

1. I am an attorney for the Defendants, Mark & Adrienne Ciaburri, in the above captioned matter.
2. This case is an action brought by the Plaintiff, Michele Graham, alleging negligence on behalf of Defendants, and she seeks damages and an injunction/writ of mandamus requesting the Court to order that Defendant's dog be euthanized pursuant to Town of Mount Pleasant ordinances.
3. That "Exhibit A" to this Affidavit, which is a listing of my firm's billing in this matter, as well as costs incurred with all available invoices and raw billing, and reflects the attorney's fees actually incurred through the date of this Affidavit amount to \$8,734.00 in connection with this action. The hourly rate charged was \$250.00.

This Affidavit does not include any fees associated with appearing in Court on September 24, 2020.

4. Accordingly, Defendants request that this Court award them and submit an Order requiring Plaintiff to pay their Attorney's Fees and Costs associated with this action, to include any fees and costs not yet billed as of the drafting of this affidavit.


Edward "Ted" R. Corvey, III

SWORN to before me this 24th day of
Sept., 2020

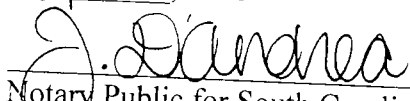

Notary Public for South Carolina
My Commission Expires: 07/29/29

Exhibit A

ITEM	STATUS	DATE	HRS.	RATE	TOTAL	BILLED BY
Communicate (other outside counsel) Emails and phone call with counsel for RPPD regarding developments regarding exhibits for the hearing.						
		9/24/2020	0.4	\$250.00	\$100.00	ERC
Plan and prepare for Final preparation for hearing - review of filing, research, formulation of arguments, and drafting of motions.						
		9/24/2020	2.4	\$250.00	\$600.00	ERC
Communicate (other external) Communication with process server regarding issuance and service of subpoenas for witnesses for the hearing.						
		9/24/2020	0.2	\$250.00	\$50.00	ERC
Draft/revise Draft of an affidavit in support for Defendants.						
		9/23/2020	0.3	\$250.00	\$75.00	ERC
Draft/revise Draft of questions for RPPD witnesses to provide to their counsel in advance of hearing.						
		9/23/2020	0.5	\$250.00	\$125.00	ERC

ITEM	STATUS	DATE	HRS.	RATE	TOTAL	BILLED BY
Communicate (other outside counsel)						
Call with attorneys for MPPD, discussing regarding hearing and plan to address certain issues and cases generally.		9/23/2020	0.4	\$250.00	\$100.00	ERC
Meeting						
Meetings with clients in advance of hearing.		9/23/2020	2	\$250.00	\$500.00	ERC
Plan and prepare for						
Initial preparation for hearing - review of exhibits and case law.		9/23/2020	1.3	\$250.00	\$325.00	ERC
Communicate (other external)						
Call with the neighbor of clients regarding her experiences with Plaintiff's dogs, generally what is known about Plaintiff's dogs through the neighborhood, and her personal observation of Defendant's dogs.		9/22/2020	0.5	\$250.00	\$125.00	ERC
Review/analyze						
Review of Plaintiff's motion for summary judgment, request of judgment of summary judgment, and review of evidence provided by Plaintiff in hearing to establish facts of case.		9/22/2020	3.6	\$250.00	\$900.00	ERC

ITEM	STATUS	DATE ↓	HRS.	RATE	TOTAL	BILLED BY
Communicate (with client) Call with clients updating them regarding the latest plaintiff filings.		9/22/2020	0.3	\$250.00	\$75.00	ERC
Communicate (with client) Call with clients about the case, their concerns, and upcoming hearing Thursday.		9/21/2020	0.9	\$250.00	\$225.00	ERC
Communicate (other outside counsel) Call and email with Atty's for Mount Pleasant Defendants discussing hearing Thursday.		9/21/2020	0.6	\$250.00	\$150.00	ERC
Communicate (other external) Call and voicemail, and follow up emails exchanged with Plaintiff requesting that she refrain from contacting clients. She acknowledged via email that she would serve any necessary documents to me.		9/21/2020	0.2	\$250.00	\$50.00	ERC
Draft/revise Follow up letter to MPPD on outstanding FOIA requests.		9/18/2020	0.3	\$250.00	\$75.00	ERC

ITEM	STATUS	DATE	HRS.	RATE	TOTAL	BILLED BY
Communicate (other external) Finally with judges and Judge Pratt to look regarding the hearing next week and what action would be heard.						
		9/17/2020	0.3	\$250.00	\$75.00	ERC
Communicate (with client) Call with clients and updates.						
		9/16/2020	0.4	\$250.00	\$100.00	ERC
Communicate (other outside counsel) Follow up call with James Hartsford attorney for Mount Pleasant Officers regarding case and specifically Mt. Pleasant officers going to the client's house to request insurance info.						
		9/16/2020	0.4	\$250.00	\$100.00	ERC
Communicate (other outside counsel) Call with Ira Grossman Town of Mt. Pleasant attorney regarding his involvement in the criminal investigation.						
		9/16/2020	0.3	\$250.00	\$75.00	ERC
Communicate (other outside counsel) Call with James Hartsford Att. for Mount Pleasant officers about case.						
		9/15/2020	0.5	\$250.00	\$125.00	ERC

ITEM	STATUS	DATE	HRS	RATE	TOTAL	BILLED BY
Research						
Research into Summary Judgment motion and Memo in Opposition of Mr. Graham's SJ motion.		9/15/2020	2.1	\$250.00	\$525.00	ERC
Draft/revise						
Drafting of Summary Judgment motion.		9/15/2020	2.3	\$250.00	\$575.00	ERC
Draft/revise						
Fixing issues to perfect filing with clerk's office with Amended Complaint and Exhibits		9/14/2020	0.2	\$0.00	\$0.00	ERC
Communicate (with client)						
Call with clients regarding Ms. Graham's letter to them and discussing upcoming filings.		9/11/2020	0.3	\$250.00	\$75.00	ERC
Draft/revise						
Final drafting of common pleas Answer and Counter Claim.		9/10/2020	0.8	\$250.00	\$200.00	ERC
Review/analyze						
Review of Ms. Graham's amended common pleas complaint and motion for an injunction.		9/9/2020	0.3	\$250.00	\$75.00	ERC

ITEM	STATUS	DATE	HRS.	RATE	TOTAL	BILLED BY
Draft/revise Review of motion for counterclaim for response to Mr. Graham's motion please take	PAID 1-676	9/2/2020	1.1	\$250.00	\$275.00	ERC
Review/analyze Review of client email response to their observations of inconsistencies from Graham filings.	PAID 1-676	9/1/2020	0.2	\$250.00	\$50.00	ERC
Communicate (with client) Via for clients advising that we would need to respond in full as opposed to just filing the motion to dismiss	PAID 1-676	8/31/2020	0.1	\$250.00	\$25.00	ERC
Research Research into appropriate motions/response to Miss Graham's remaining civil action	PAID 1-676	8/27/2020	0.6	\$250.00	\$150.00	ERC
Draft/revise Initial draft work of motion to dismiss Graham please filing	PAID 1-676	8/26/2020	0.3	\$250.00	\$75.00	ERC
Appear for/attend Phone hearing with the Magistrate and Mr. Graham on civil claim, court filing. Resisted in dismissal pursuant to SCRP 12B.36.	PAID 1-676	8/25/2020	0.3	\$250.00	\$75.00	ERC

ITEM	STATUS	DATE	HRS.	RATE	TOTAL	BILLED BY
Communicate (with client) Call with clients to discuss case being dismissed at magistrate level and discussing plan of action with still pending civil claims in common pleas.	PAID 1-676	8/25/2020	0.2	\$250.00	\$50.00	ERC
Review/analyze Review of Ms. Graham's motion with magistrate court. Prep in advance of phone hearing.	PAID 1-676	8/24/2020	0.8	\$250.00	\$200.00	ERC
Review/analyze Review of Ms. Graham's latest filings.	PAID 1-676	8/21/2020	0.4	\$250.00	\$100.00	ERC
Meeting Meeting with clients to discuss case moving forward following Ms. Graham's latest filings.	PAID 1-676	8/20/2020	0.9	\$250.00	\$225.00	ERC
Draft/revise Receive confirmation/proofread from client on demand letter draft, send client and preparation for mailing.	PAID 1-627	8/3/2020	0.2	\$250.00	\$50.00	ERC
Draft/revise Final drafting of the letter to Michele Ciaroni for service and demand that she drop her claims. Enabled draft to clients for their review and approval.	PAID 1-627	8/2/2020	1.1	\$250.00	\$275.00	ERC

ITEM	STATUS	DATE ↓	HRS.	RATE	TOTAL	BILLED BY
Communicate (with client) Call with clients to discuss case being dismissed at magistrate level and discussing plan of action with still pending civil claims in common pleas.	PAID 1676	8/25/2020	0.2	\$250.00	\$50.00	ERC
Review/analyze Review of Ms. Graham's motion with magistrate court. Prep in advance of phone hearing.	PAID 1676	8/24/2020	0.8	\$250.00	\$200.00	ERC
Review/analyze Review of Ms. Graham's latest filings.	PAID 1676	8/21/2020	0.4	\$250.00	\$100.00	ERC
Meeting Meeting with clients to discuss case moving forward following Ms. Graham's latest filings.	PAID 1676	8/20/2020	0.9	\$250.00	\$225.00	ERC
Draft/revise Received confirmation/respond from client re-demand letter about Social skills and preparation for meeting.	PAID 1627	8/3/2020	0.2	\$250.00	\$50.00	ERC
Draft/revise Final drafting of the letter to Michele Graham for service and demand that she drop her claims. Emailed draft to clients for their review and comment.	PAID 1627	8/2/2020	1.1	\$250.00	\$275.00	ERC

ITEM	STATUS	DATE	HRS.	RATE	TOTAL	BILLED BY
Draft/revise Initial drafting of cover letter for service and fees and to add claims to file re: Chabutti.	PAID 1627	7/31/2020	0.3	\$250.00	\$75.00	ERC
Draft/revise Reviewing and editing of the initial draft of answers and counterclaims for client review and discussion.	PAID 1627	7/28/2020	0.3	\$250.00	\$75.00	ERC
Communicate (with client) Call with clients to review the answer and counterclaims and discuss process moving forward.	PAID 1627	7/28/2020	0.4	\$250.00	\$100.00	ERC
Communicate (with client) Call to client to update on progress and delays on my end. Follow up email with the initial draft of answer and requests for additional documentation from clients.	PAID 1627	7/27/2020	0.1	\$250.00	\$25.00	ERC
Draft/revise Remaining drafting of initial answers and counterclaims.	PAID 1627	7/27/2020	2.9	\$250.00	\$725.00	ERC

ITEM	STATUS	DATE	HRS.	RATE	TOTAL	BILLED BY
Draft/revise FOIA request letters to NYPD and Central Dispatch for any all information related to police investigation involvement in this matter.	PAID 1627	7/24/2020	0.3	\$250.00	\$75.00	ERC
Draft/revise Initial drafting of answer and counterclaims in this matter.	PAID 1627	7/24/2020	0.6	\$250.00	\$150.00	ERC
Communicate (with client) Call with client checking in on status and also advising that she wanted me to obtain the body camera footage associated with the police investigation. I explained I would prepare a FOIA request and at her request not review the footage, but rather leave at least the initial review to clients.	PAID 1627	7/23/2020	0.1	\$250.00	\$25.00	ERC
Review/analyze Review of client provided documents.	PAID 1627	7/22/2020	0.6	\$250.00	\$150.00	ERC
			33.60		\$8,350.00 USD	

EXHIBIT 2

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham
PLAINTIFF(S)

Mark Ciaburri et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion for Temporary Injunction is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/29/2020 .

Mount Pleasant Patrol Officer Town of
Michele Graham for Michele Graham
Michele Graham for Michele Graham
Mount Pleasant Animal Control Officer Town of

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al
Case Number: 2020CP1003397
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-09-29 12:05:56 page 3 of 3

EXHIBIT 3

Graham v. Ciaburri Et. Al.

Ted Corvey <ted@kcslawfirm.com>

Fri, Oct 2, 2020 at 12:47 PM

To: "Price, Bentley Law Clerk (Aimee Intagliata)" <bpricelc@sccourts.org>

Cc: Michele Graham <michele.graham0318@gmail.com>, Drew Butler <DButler@richardsonplowden.com>, James Haarsgaard <JHaarsgaard@richardsonplowden.com>

Ms. Intagliata,

My apologies. My colleague brought to my attention that Judge Price has already ruled. I must have missed the efilng notice. It appears from the Filed Form 4 order that the ruling did not include any determination on my motion for attorney's fees. If there is anything additional the Court would like me to submit on that pending motion (proposed order or otherwise) please do not hesitate to let me know.

Hope everyone has a great weekend.

Best,
Ted

[Quoted text hidden]

--

Edward "Ted" R. Corvey, III, Managing Partner

Tel: 843-642-8792 | Fax: 843-642-8793

Ted@KCSlawfirm.com

914 Folly Road, Suite B

Charleston, South Carolina 29412

KIDD CORVEY & SIMPSON, LLC
ATTORNEYS AT LAW

EXHIBIT 4



Michele Graham <michele.graham0318@gmail.com>

Graham v. Ciaburri Et. Al.

Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Fri, Oct 2, 2020 at 1:57 PM

To: Ted Corvey <ted@kcsllawfirm.com>

Cc: Michele Graham <michele.graham0318@gmail.com>, Drew Butler <DButler@richardsonplowden.com>, James Haarsgaard <JHaarsgaard@richardsonplowden.com>, "Price, Bentley Secretary (Tamara Walters)" <bpricesc@sccourts.org>

Good afternoon Mr. Corvey,

Sorry for leaving your motion for fees out of the Form 4. I will have to discuss this with Judge Price and determine what his ruling is. Please send any memorandum or other supportive material you think appropriate.

Ms. Graham, please send any memorandum or other supportive material you think appropriate.

If you'd like your memorandum or materials to be part of the official record, please e-file it. Otherwise, emailing me a Word or PDF copy is fine.

Thank you both and have a nice weekend,

Aimee Intagliata

Law Clerk to the Honorable Bentley Price

The Circuit Court of South Carolina

Ninth Judicial Circuit

100 Broad Street

Charleston, SC 29403

From: Ted Corvey <ted@kcsllawfirm.com>

Sent: Friday, October 2, 2020 12:48 PM

To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Cc: Michele Graham <michele.graham0318@gmail.com>; Drew Butler <DButler@richardsonplowden.com>; James Haarsgaard <JHaarsgaard@richardsonplowden.com>

Subject: Re: Graham v. Ciaburri Et. Al.

EXHIBIT 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

**IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT**

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;
CHRISTA HOFFMAN, in her official
capacity as a Town of Mount Pleasant
animal control officer;
HEATHER CUMBEE, in her official
capacity as a Town of Mount Pleasant
animal control officer;
SHELBY WALKER, in her official capacity
as a Town of Mount Pleasant patrol officer
TOWN OF MOUNT PLEASANT POLICE
DEPARTMENT

Defendants

CIVIL ACTION
FILE NO. **2020CP1003397**

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SANCTIONS AND
ATTORNEY'S FEES AND COSTS**

Plaintiff Michele Graham submits this brief in opposition to the Defendants' Motion for Sanctions and an award of attorney's fees and respectfully requests that the Defendants' Motion be denied.

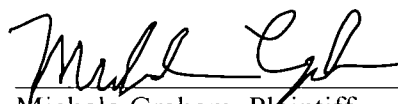
The Defendants' Motion describes the Plaintiff's Motion for Temporary Injunction as one for a writ of mandamus, which it is not; and the movant cites no case law for the proposition that a motion for a temporary injunction is in fact a "remedial writ" as contemplated by Rule 65.

The South Carolina Rule of Civil Procedure 65(f)(2) states that fees shall be awarded “where proper.” The language “where proper” makes an award for attorney’s fees discretionary, not required. The Defendants’ Motion is conclusory and asserts no facts as to why attorney’s fees should be proper in this particular circumstance.

The Plaintiff’s Motion for Temporary Injunction was made in good faith and one to which the Plaintiff was entitled to make. To award attorney’s fees serves to penalize the Plaintiff for exercising that right.

For the reasons provided herein, the Plaintiff respectfully requests that the Court exercises its discretion and deny the Defendants’ Motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michele Graham", is written over a horizontal line.

Michele Graham, Plaintiff
1661 Babington Way
Mount Pleasant, SC 29464
843-532-7252

Dated: 10/5/2020

EXHIBIT 6

Graham v. Ciaburri Et. Al.

Ted Corvey <ted@kcslawfirm.com>

Mon, Oct 5, 2020 at 10:10 PM

To: Michele Graham <michele.graham0318@gmail.com>

Cc: "Price, Bentley Law Clerk (Aimee Intagliata)" <bpricelc@sccourts.org>, Drew Butler <DButler@richardsonplowden.com>, James Haarsgaard <JHaarsgaard@richardsonplowden.com>, "Price, Bentley Secretary (Tamara Walters)" <bpricesc@sccourts.org>

Ms. Intaglia,

Attached is the following from my clients: 1. Memo in Support of Award of Attorney's Fees; 2. Motion for Attorney's Fees; 3. Amended Affidavit in Support of Award of Attorney's Fees.

Should you need anything further, or if Judge Price would like the parties to submit draft order's please do not hesitate to let me know.

Best,
Ted

[Quoted text hidden]

--

Edward "Ted" R. Corvey, III, Managing Partner

Tel: 843-642-8792 | Fax: 843-642-8793

Ted@KCSlawfirm.com

914 Folly Road, Suite B

Charleston, South Carolina 29412



KIDD CORVEY & SIMPSON, LLC

ATTORNEYS AT LAW

3 attachments**Ciaburri - Memo in Support of Grant of Attorneys Fees.pdf**

183K

**Ciaburri - Motion for Attorney's Fees and Costs SCRCP 65.pdf**

127K

**Ciaburri - Amended Affidavit in Support of Award of Attorney's Fees.pdf**

3326K

EXHIBIT 7



Michele Graham <michele.graham0318@gmail.com>

Graham v. Ciaburri Et. Al.

Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Tue, Oct 6, 2020 at 1:05 PM

To: Ted Corvey <ted@kcslawfirm.com>, Michele Graham <michele.graham0318@gmail.com>

Cc: Drew Butler <DButler@richardsonplowden.com>, James Haarsgaard <JHaarsgaard@richardsonplowden.com>, "Price, Bentley Secretary (Tamara Walters)" <bpricesc@sccourts.org>, "Lisa E. Chapman" <LChapman@charlestoncounty.org>

Good afternoon all,

Judge Price is continuing the Defendant's Motion for Fees and feels it would be prudent to address this motion when the more dispositive motions are ruled on.

Thank you,

[Quoted text hidden]

[Quoted text hidden]

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[Redacted signature]

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[Redacted signature]

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

# EXHIBIT 8



Michele Graham <michele.graham0318@gmail.com>

---

## Graham v. Ciaburri Et. Al.

---

**Price, Bentley Law Clerk (Aimee Intagliata)** <bpricelc@sccourts.org>

Tue, Oct 6, 2020 at 2:44 PM

To: Ted Corvey <ted@kcslawfirm.com>, Michele Graham <michele.graham0318@gmail.com>

Cc: Drew Butler <DButler@richardsonplowden.com>, James Haarsgaard <JHaarsgaard@richardsonplowden.com>, "Price, Bentley Secretary (Tamara Walters)" <bpricesc@sccourts.org>, "Lisa E. Chapman" <LChapman@charlestoncounty.org>

All,

If you'd like this motion to be heard, you will have to file it with the Clerk's office. They do not have any Motion for Fees on file and cannot create a motion in the system.

Please let me know if you have any questions.

Thanks,

Aimee Intagliata

Law Clerk to the Honorable Bentley Price

The Circuit Court of South Carolina

Ninth Judicial Circuit

100 Broad Street

Charleston, SC 29403

**From:** Price, Bentley Law Clerk (Aimee Intagliata)

**Sent:** Tuesday, October 6, 2020 1:05 PM

**To:** 'Ted Corvey' <ted@kcslawfirm.com>; Michele Graham <michele.graham0318@gmail.com>

**Cc:** Drew Butler <DButler@richardsonplowden.com>; James Haarsgaard <JHaarsgaard@richardsonplowden.com>; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>; 'Lisa E. Chapman' <LChapman@charlestoncounty.org>

**Subject:** RE: Graham v. Ciaburri Et. Al.

Good afternoon all,

# EXHIBIT 9

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Charleston  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham  
PLAINTIFF(S)

Mark Ciaburri et al  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The Town of Mount Pleasant's Motion to Dismiss is granted as to The Town of Mount Pleasant Police Department, Christa Hoffman, Heather Cumbee and Shelby Walker. The only remaining Defendants in this action shall be Mark Ciaburri and Adrienne Thompson Ciaburri.

Defendant Mark Ciaburri's Motion for Summary Judgment is denied.

Defendant Mark Ciaburri's Motion for Attorneys fees is granted as to the Preliminary Injunction hearing heard before this Court on September 24, 2020. Defense counsel shall submit an affidavit of fees from the September 24, 2020 hearing. The Court will consider these fees and award the appropriate amount at such time.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/21/2020 .

Mount Pleasant Patrol Officer Town of  
Michele Graham for Michele Graham  
Michele Graham for Michele Graham  
Mount Pleasant Animal Control Officer Town of

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Charleston Common Pleas

**Case Caption:** Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al  
**Case Number:** 2020CP1003397  
**Type:** Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Michele Graham, Michael Graham, and  
Tammy Graham,

PLAINTIFFS,

v.

Mark Ciaburri, Adrienne Ciaburri, Christa  
Hoffman, in her official capacity as a Town  
of Mount Pleasant animal control officer,  
Heather Cumbee, in her official capacity as  
a Town of Mount Pleasant animal control  
officer, Shelby Walker, in her official  
capacity as a Town of Mount Pleasant patrol  
officer, and Town of Mount Pleasant Police  
Department,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS  
IN THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-10-3397

**CHRISTA HOFFMAN, HEATHER  
CUMBEE, SHELBY WALKER,  
AND TOWN OF MOUNT  
PLESANT POLICE  
DEPARTMENT'S MOTION TO  
DISMISS IN LIEU OF ANSWER**

YOU WILL PLEASE TAKE NOTICE that Defendants Christa Hoffman, in her official capacity as a Town of Mount Pleasant animal control officer, Heather Cumbee, in her official capacity as a Town of Mount Pleasant animal control officer, Shelby Walker, in her official capacity as a Town of Mount Pleasant patrol officer, and Town of Mount Pleasant Police Department (hereinafter referred to as the "Mount Pleasant Defendants"), by and through their undersigned attorneys, ten (10) days hence, or as soon thereafter as counsel may be heard, will move before the Presiding Circuit Court Judge of the Charleston County Court of Common Pleas, for an Order dismissing them from the above captioned case pursuant to Rule 12(b)(6), S.C.R.Civ.P. The Present Motion is being filed in lieu of an Answer in accordance with the South Carolina Rules of Civil Procedure.

## **FACTS**

The present action involves claims brought by Plaintiffs stemming from an alleged encounter between two dogs which resulted in the death of Plaintiff's Yorkshire Terrier. Plaintiffs allege that Defendant Mark Ciaburri was walking his Pit-bull mix past Plaintiffs' property on the night of May 27, 2020 when the Pit-bull mix encountered Plaintiff's Yorkshire Terrier causing the Yorkshire Terrier fatal injuries. The Mount Pleasant Defendants were involved in the investigation into the encounter. Plaintiff filed an Amended Complaint on September 2, 2020 alleging a single cause of action of negligence on the part of Defendants Mark Ciaburri and Adrienne Thompson Ciaburri and requesting monetary damages from the same. The Amended Complaint further requests injunctive relief in the form of a declaration that the pit-bull mix is a vicious dog under the Town's Ordinances and an order for it to be euthanized. Plaintiffs have also filed a Motion for Temporary Injunction requesting that the Court seize and impound the Pit-bull mix during the pendency of this case.

## **ARGUMENT**

### **I. PLAINTIFFS FAIL TO CITE ANY RECOGNIZED CAUSE OF ACTION AGAINST THE MOUNT PLEASANT DEFENDANTS.**

Plaintiffs' Amended Complaint alleges only the single negligence cause of action against Defendants Mark and Adrienne Thompson Ciaburri. Nowhere within the four corners of the Amended Complaint do Plaintiffs attempt to allege even one recognized cause of action against the Mount Pleasant Defendants. Only in their Prayer for Relief under the subtitle "Injunctive Relief" do Plaintiffs allege that the Mount Pleasant Defendants failed to uphold their duty to enforce the Town's Ordinances regarding animals in support of their request for the Court's Order declaring the pit-bull mix as vicious and that it be euthanized. Not only do Plaintiffs fail to name a specific cause of action against the Mount Pleasant Defendants, they also fail to even cite

elements constituting the same. Rather, it appears that Plaintiffs are essentially requesting a Declaratory Judgment from the Court. Because Plaintiffs allege no recognized causes of action against the Mount Pleasant Defendants, the claims against them must be dismissed.

**II. TO THE EXTENT PLAINTIFF ALLEGES ANY CAUSE OF ACTION IN TORT AGAINST THE MOUNT PLEASANT DEFENDANTS, THESE CLAIMS FAIL AS A MATTER OF LAW UNDER THE SOUTH CAROLINA TORT CLAIMS ACT.**

The South Carolina Tort Claims Act governs all tort claims in South Carolina against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. See Murphy v. Richland Mem'l Hosp., 317 S.C. 560, 455 S.E.2d 688 (1995); Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998); S.C. Code Ann. § 15-78-20(b) (Supp. 2006) (“The remedy provided by [the Tort Claims Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b).”); S.C. Code Ann. § 15-78-70(a) (Supp. 2006) (“[The Tort Claims Act] constitutes the exclusive remedy for any tort committed by an employee of a governmental entity.”). “The provisions of [the Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.” S.C. Code Ann. § 15-78-20(f). In this case, Plaintiffs’ claims against the three (3) individually named Mount Pleasant Defendants, as governmental employees, invoke the provisions and immunities of the South Carolina Tort Claims Act.

Section 15-78-70(a) provides, in relevant part, that “[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable thereof except as expressly provided for in subsection (b).” S.C. Code Ann. § 15-78-70(a) (Supp. 2006). Subsection (b) declares: “Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee’s conduct

was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15-78-70(b) (Supp. 2006); Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003) (The Act is intended to cover those actions committed by an employee within the scope of the employee's official duty); Wade v. Berkeley Cnty., 330 S.C. 311, 498 S.E.2d 684 (Ct. App. 1998) (noting that § 15-78-20(f) limits coverage to employees acting within the scope of official duty).

The Act's definition of an “employee” refers to “any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty.” S.C. Code Ann. § 15-78-30(c) (Supp. 2006). “‘Scope of official duty’ or ‘scope of state employment’ means (1) acting in and about the official business of a governmental entity and (2) performing official duties.” S.C. Code Ann. § 15-78-30(i) (Supp. 2006).

To the extent that Plaintiffs are alleging tort claims against the *individual* Mount Pleasant Defendants, these claims fail as a matter of law. Based on an analysis of the four corners of the Amended Complaint, each individual Mount Pleasant Defendant was acting within the scope of their employment, and Plaintiffs have failed to plead any facts to the contrary. As such, the claims against Defendants Hoffman, Cumbee and Walker must be dismissed.

Furthermore, to the extent that Plaintiffs are alleging tort claims against the Mount Pleasant Police Department, it is well-settled that only “persons” may act under color of state law. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 n. 55 (1978). This Court has repeatedly explained that a police department is “an instrumentality of a municipality—not an independent entity—and thus not a ‘person’”. Hunt v. West Columbia Police Dept., Case No. 3:14–70–MGL-PJG, 2015 WL 4274827, \*2 (D.S.C. July 14, 2015) (holding that the “Defendant West Columbia Police Department is not a ‘person’ amenable to suit”). See also Spellman v. City of Columbia

Police Dep't, Case No. 9:12-2376-TMC-BM, 2012 WL 5409626, \*2 (D.S.C. Sept. 28, 2012) (“Police Department is a group of officers in a building and, as such, is not subject to suit . . . police departments, usually are not considered legal entities subject to suit.”), *adopted by*, Case No. 9:12-2376-TMC-BM, 2012 WL 5408023 (D.S.C. Nov. 6, 2012); Milligan v. D.E.A., Case No. 3:13-2757-TLW-PJG, 2014 WL 897144, \*5 (D.S.C. Mar. 6, 2014) (same, collecting cases) (citing Terrell v. City of Harrisburg Police Dept., 549 F.Supp.2d 671, 686 (M.D. Pa. 2008)) (“It is well-settled that police departments operated by municipalities are not ‘persons’ amenable to suit”).

Here, it appears that the Plaintiffs are attempting to bring state law claims against the Mount Pleasant Police Department. However, the proper party for a claim against the Mount Pleasant Police Department is the Town itself. Because the Town of Mount Pleasant is the proper Defendant for purposes of Plaintiffs’ SCTCA claim against its police department, the undersigned respectfully requests that the Court dismiss the Mount Pleasant Police Department as a named Defendant from this action.

### **CONCLUSION**

Based on the foregoing, Defendants Christa Hoffman, in her official capacity as a Town of Mount Pleasant animal control officer, Heather Cumbee, in her official capacity as a Town of Mount Pleasant animal control officer, Shelby Walker, in her official capacity as a Town of Mount Pleasant patrol officer, and the Mount Pleasant Police Department respectfully request this Court enter an Order dismissing them from the present case and denying all Plaintiffs’ claims for relief.

*Signature on following page.*

Respectfully submitted this the 9<sup>th</sup> day of September, 2020.

**RICHARDSON, PLOWDEN & ROBINSON, P.A.**

s/Drew Hamilton Butler

Drew Hamilton Butler, Esquire

James E. Haarsgaard, Esquire

235 MaGrath Darby Blvd., Suite 100

Mount Pleasant, SC 29464

843-805-6550

[dbutler@richardsonplowden.com](mailto:dbutler@richardsonplowden.com)

[jhaarsgaard@richardsonplowden.com](mailto:jhaarsgaard@richardsonplowden.com)

***Attorneys for the Defendants Christa Hoffman, in  
her official capacity as a Town of Mount Pleasant  
animal control officer, Heather Cumbee, in her  
official capacity as a Town of Mount Pleasant  
animal control officer, Shelby Walker, in her  
official capacity as a Town of Mount Pleasant  
patrol officer, and the Town of Mount Pleasant***

|                            |   |                                      |
|----------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA    | ) | IN THE COURT OF COMMON PLEAS         |
|                            | ) | FOR THE NINTH JUDICIAL CIRCUIT       |
| COUNTY OF CHARLESTON       | ) |                                      |
|                            | ) | CASE NO.: 2020-CP-10-03397           |
| MICHELLE GRAHAM, MICHAEL   | ) |                                      |
| GRAHAM, and TAMMY GRAHAM,  | ) |                                      |
|                            | ) |                                      |
| Plaintiffs,                | ) |                                      |
|                            | ) |                                      |
| vs.                        | ) | <b>DEFENDANTS MARK AND ADRIENNE</b>  |
|                            | ) | <b>CIABURRI'S MOTION FOR SUMMARY</b> |
| MARK CIABURRI, ADRIENNE    | ) | <b>JUDGMENT</b>                      |
| CIABURRI, CRISTA HOFFMAN,  | ) |                                      |
| HEATHER CUMBEE, and SHELBY | ) |                                      |
| WALKER,                    | ) |                                      |
|                            | ) |                                      |
| Defendants.                | ) |                                      |
|                            | ) |                                      |

---

**NOW COMES** the Defendants, Mark and Adrienne Ciaburri, by and through undersigned counsel and hereby move the Court, pursuant to South Carolina Rule of Civil Procedure 56, for an Order granting summary judgment in the above-captioned matter, amongst other requested relief. In the present matter, Summary Judgment is appropriate as Plaintiffs, through their own pleadings, establish themselves and their actions as the sole proximate cause of the injuries for which they seek redress through this action.

Defendants assert that Plaintiffs have failed to set forth facts sufficient to state causes of action against Defendants that alone justifies dismissal of this action pursuant to South Carolina Rule of Civil Procedure 12(b)(6), however, it appears Plaintiffs are attempting to state negligence as a cause of action against Defendants. Under South Carolina law Plaintiffs must prove proximately caused damages. *Hurd v. Williamsburg Cty.*, 363 S.C. 421, 611 S.E.2d 488 (2005); *Rush v. Blanchard*, 310 S.C. 375, 426 S.E.2d 802 (1993). Proximate cause requires both proof of causation in fact and legal cause. *Oliver v. South Carolina Dep't of Hwys. & Pub. Transp.*, 309 S.C. 313, 422 S.E.2d 128 (1992). Causation in fact is proved by establishing the Plaintiffs' injuries

would not have occurred “but for” the Defendants’ negligence. *Id.* at 316, 422 S.E.2d at 130. Legal cause is proved by establishing foreseeability. *Id.* An injury is foreseeable if it is the natural and probable consequent of a breach of duty. *Hurd*, 363 S.C. at 428, 611 S.E.2d at 492.

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011) (citing *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) (citation omitted), Rule 56(c), SCRPC). “When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Id.* To be sure, “[i]n order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence.” *Turner v. Milliman*, 392 S.C. at 122 (citing *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)). However, notwithstanding the “scintilla” standard articulated in *Turner* and *Hancock*, South Carolina courts should properly grant summary judgment as a matter of law when the sole reasonable inference from the evidence is that the non-moving party’s negligence exceeds the moving parties. *See, e.g., Bass v. Gopal*, 384 S.C. 238, 247, 680 S.E.2d 917 (Ct. App. 2009), *aff’d*, 395 S.C. 129, 716 S.E.2d 910 (2011) (affirming the Circuit Court’s grant of summary judgment, which included the conclusion that, as a matter of law, the plaintiff’s negligence exceeded any negligence on the part of defendants); *see also Bloom v. Ravoria*, 399 S.C. 417, 422, 529 S.E.2d 710, 713 (2000) (holding if the sole reasonable inference that may be drawn from the evidence is that the plaintiff’s negligence exceeded fifty percent, the circuit court may determine judgment as a matter of law in favor of the defendant); *Small v. Pioneer Mach, Inc.*, 329 S.C. 448, 464, 494 S.E.2d 835, 843 (Ct. App. 1997)

(“The particular facts and circumstances of each case determine whether the question of proximate cause should be decided by the court or by the jury. ***Only when the evidence is susceptible to only one inference does it become a matter of law for the court.***”) (citations omitted, emphasis added); Leon Green, *Rationale of Proximate Cause* 132 (1927) (“Causal relation is one of fact. It is always for the jury, ***except when the facts are such that they will support only one reasonable inference.***”) (emphasis added).

Here, the inquiry stops at the first prong – proximate cause – given the facts provided by Plaintiffs in their pleadings and corroborated through other sources. Plaintiffs acknowledge in their various pleadings in both magistrate court and this Court the following: on the night in question, they let their dog out in the front yard of their residence at nighttime without restraint or supervision; they did not observe the incident in question; they first observed their dog lying on the curb near the roadway immediately following the incident and not in their yard; their pets frequently leave their property unrestrained and unsupervised; and Defendants’ dog was leashed. *See* Amend. Comp. ¶¶ 10-12; *and see* Amend. Motion for Injunction at 4-8. The same is corroborated by Mount Pleasant Animal Control Officer (“ACO”) Hoffman in her Affidavit filed with this Court. *See generally* Hoffman Affidavit. Based upon the facts provided by Plaintiffs, and corroborated by ACO Hoffman, Plaintiffs have established themselves and their conduct as the sole “but for” superseding act which, as a matter of law, shields Defendants from liability, if any exists. Put simply, but for Plaintiffs negligently allowing their dog, with a known propensity for leaving the bounds of their property, outside at nighttime to relieve itself without restraint or supervision this unfortunate incident would not have occurred. Without basis or support of any kind, Plaintiffs allege a number of “evidentiary facts” which they believe support their position. However, this Court “is not required to single out some one morsel of evidence and attach to it

great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine.” *Lemmons v. Macedonia Water Works, Inc.*, 2020 WL4197377 (Ct. App. 2020) (citing *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984)). Further, when courts evaluate “any evidence, even a scintilla, that is useful to withstand a summary judgment motion must meth the prerequisite of being probative.” *Id.* (citing *Bass*, 384 S.C. 238, 246 n.6, 680 S.E.2d 917, 921 n.6). Here, and even when viewing those factual allegations in the light most favorable to the Plaintiffs, those allegations are not probative, do not stand to mitigate, nor disprove Plaintiffs’ superseding “but for” conduct. Put simply, “but for” Plaintiffs’ negligent conduct in letting their dog, with a know propensity for leaving their property when unsupervised, out to relieve herself at nighttime while unleashed and unsupervised, this unfortunate incident would not have occurred. Accordingly, Plaintiffs’ claims should be properly be dismissed as there is only one reasonable inference which can be drawn from the facts underlying this matter pursuant to well settled South Carolina law.

**WHEREFORE** based upon this motion, the statutory and common law of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings filed with this Court, any and all affidavits and/or memorandum in support of this motion to be filed in advance of any hearing on this motion, Defendants pray this Court grants their motion summary judgement and orders Plaintiffs’ claims be dismissed with prejudice; for an order granting the recovery of their costs and attorney’s fees incurred in defending this action and related actions; and for such further and other relief as this Court deems just and proper.

*[Remainder of Page Left Intentionally Blank, Signature Block Follows on Next Page]*

Respectfully submitted,

/s/ *Edward Corvey*

**KIDD CORVEY & SIMPSON, LLC**

Edward "Ted" R. Corvey, III, Esq.

914 Folly Road, Suite B

Charleston, South Carolina 29412

S.C. Bar Number: 101454

ted@kcslawfirm.com

(843) 642-8792

*ATTORNEY FOR DEFENDANTS*

September 16, 2020

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;  
ADRIENNE THOMPSON CIABURRI;

Defendants

CIVIL ACTION  
FILE NO. 2020CP1003397

2020 DEC 29 AM 8:33  
JULIE J. AMOS, JR.  
CLERK OF COURT

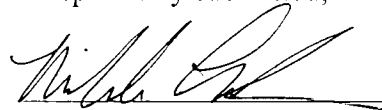
FILED

**REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Plaintiff requests that this Court set forth the findings of fact and conclusions of law which constitute the grounds of its denial of the Plaintiff's Motion for Temporary Injunction in the order filed on September 30, 2020.

The Plaintiff makes this request to understand the reason for the denial, since according to the expert witness report, the Defendants' dog is dangerous and at the very least, the owners should have been required to confine their dog until a final determination on the merits of the case is made.

Respectfully submitted,

  
Michele Graham, Plaintiff  
1661 Babington Way  
Mount Pleasant, SC 29464  
843-532-7252

Dated: 12-28-2020

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;  
ADRIENNE THOMPSON CIABURRI

Defendants

CIVIL ACTION  
FILE NO. 2020CP1003397

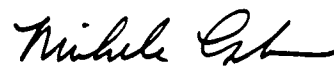
2021 MAR 29 AM 8:44  
JULIE J. ARISTAROU  
CLERK OF COURT  
DR

FILED

**PLAINTIFF'S NOTICE AND MOTION FOR ORDER GRANTING RELIEF FROM  
JUDGMENT / ORDER AND AN ORDER GRANTING A NEW TRIAL PURSUANT TO  
SCRPC 60(b)(2).**

TO: DEFENDANTS MARK AND ADRIENNE CIABURRI

PLEASE TAKE NOTICE that Plaintiff Michele Graham will move before the Honorable Bentley Price at a date and time determined by the Court for an order granting relief from the judgment / order entered on September 30, 2020 and for an order granting a new trial pursuant to SCRPC 60(b)(2).



Michele Graham  
Plaintiff  
1661 Babington Way  
Mount Pleasant, SC 29464  
843-532-7252  
[Michele.graham0318@gmail.com](mailto:Michele.graham0318@gmail.com)

Dated: 3-29-2021

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;  
ADRIENNE THOMPSON CIABURRI

Defendants

CIVIL ACTION  
FILE NO. 2020CP1003397

2021 MAR 29 AM 8:44  
JULIE J. ANTONIO  
CLERK OF COURT

FILED

**PLAINTIFF'S MOTION FOR ORDER GRANTING RELIEF FROM JUDGMENT /  
ORDER AND AN ORDER GRANTING A NEW TRIAL PURSUANT TO SCRPC  
60(b)(2).**

Plaintiff Michele Graham submits this motion for relief from the judgment / order filed by the Court on September 30, 2020 pursuant to SCRPC 60(b)(2). The Plaintiff also requests that this Court grant a new trial on the matter relating to the Plaintiff's request for temporary injunction based on newly discovered evidence.

**BACKGROUND**

The Defendant's pit-bull mix fatally attacked the Plaintiff's 12-year-old Yorkshire Terrier on May 27, 2020. The Plaintiff petitioned this Court for a temporary injunction ordering the impoundment / confinement of the Defendants' dog during the pendency of this case, until a final determination is made regarding its dangerous status.

On September 30, 2020, the Court issued an order denying the temporary injunction. The Court's findings filed on March 22, 2021 indicate that the reason for the denial was due to the absence of testimony / evidence presented at the hearing that the Defendant violated section 90.29(B)(3) of the Town of Mount Pleasant Laws and Ordinances.

#### GROUND FOR RELIEF AND NEW TRIAL

The Plaintiff obtained a report from a court-recognized expert in canine aggression and dangerous dog investigations, and the expert – Mr. James “Jim” Crosby – is ready and willing to testify to his findings that the Defendant did violate section 90.29(B)(3) of the Town ordinance. The full expert witness report is filed into the record as an exhibit for the Court to reference.

SCRC 60(b)(2) considers newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b) as grounds for a new trial under Rule 60. The Plaintiff obtained this report on December 4, 2020 – beyond the 10-day window to move for a new trial under rule 59(b).

South Carolina courts hold that in order to obtain a new trial under Rule 60(b)(2), the movant must establish that the newly discovered evidence: 1.) Will probably change the result if a new trial is granted, 2.) Has been discovered since the trial, 3.) Could not have been discovered before the trial, 4.) Is material to the issue and 5.) Not merely cumulative or impeaching. *South Carolina Civil Procedure* 484 (citing *Johnston v. Belk-McKnight Co.*, 188 S.C. 149, 198 S.E. 395).

Plaintiff Michele Graham's expert witness report qualifies as newly discovered evidence. The report and the knowledge of Mr. Crosby's willingness to testify were discovered ten weeks

after the September 24, 2020 trial. Moreover, the Plaintiff's newly discovered evidence satisfies each of the five elements necessary for obtaining a new trial.

- 1. The outcome will likely change based on the report and testimony of Mr. Crosby.** This testimony and report would eliminate the Court's reason for denying the temporary injunction.
- 2. This evidence was discovered since the trial on September 24, 2020.** The report is dated December 2, 2020 and the Plaintiff became aware of its existence on December 4, 2020.
- 3. This evidence could not have been discovered before the trial,** because it was not available.
- 4. The evidence is material to the issue.** Mr. Crosby's report and testimony are in line with the primary subject matter – the Defendants' dog's behavior constitutes a reasonable risk of injuring a human or other animal.
- 5. The evidence is not merely cumulative or impeaching.** Mr. Crosby's thorough report sets forth his credentials and qualifications as a recognized expert in the field of dangerous dog investigations, and the report presents his findings in support of remedial proceedings imposing necessary restrictions on the Defendants' dog.

For the foregoing reasons, the Plaintiff respectfully requests that this court enter an order granting a new trial on the Plaintiff's temporary injunction.

Respectfully submitted,  
  
Michele Graham, *Plaintiff*  
1661 Babington Way  
Mount Pleasant, SC 29464  
843-532-7252

Dated: 3-29-2021

**NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2020-CP-1003397

Michele Graham

Appellant

v.

Mark Ciaburri

Adrienne T. Ciaburri

Respondents

**NOTICE OF APPEAL**

Michele Graham intends to appeal the order of the Honorable Bentley D. Price dated April 22, 2021. Appellant received notice of entry of this order on April 24, 2021. A copy of the Order is attached to this Notice.



Michele Graham

1661 Babington Way

Mount Pleasant, SC 29464

843-532-7252

Appellant

April 24, 2021

Other Counsel of Record:  
Edward Corvey, III, Esq.  
815 Savannah Hwy, Unit 201  
Charleston, SC 29407  
Attorney for Respondants

2021 APR 26 AM 10:41  
CLERK OF COURT

FILED

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Charleston  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham  
PLAINTIFF(S)

Mark Ciaburri et al  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court as Plaintiff's Motion for Order Granting Relief from Judgment/Order and an Order Granting a New Trial Pursuant to SCRPC 60(b)(2) filed on March 29, 2021. The Plaintiff expressed to the Court via email and on the motion coversheet that she did not request a hearing on this motion.

Rule 60(b)(2) of the South Carolina Rules of Civil Procedure states, "On motion and upon such terms as are just, the court may relieve a party...from final judgment, order, or proceeding for the following reasons...newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)."

The Court does not consider the affidavit or testimony of the expert witness to be newly discovered evidence. Therefore, the Plaintiff's motion is denied.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/22/2021.

Michele Graham for Michele Graham  
Michele Graham for Michele Graham

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Charleston Common Pleas

**Case Caption:** Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al  
**Case Number:** 2020CP1003397  
**Type:** Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2021-04-22 12:24:53 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM

Appellant,

v.

MARK CIABURRI;  
ADRIENNE THOMPSON CIABURRI

Respondents

CIVIL ACTION  
FILE NO. 2020CP1003397

2021 APR 26 AM 10:41  
CLERK OF COURT

**CERTIFICATE OF SERVICE**

I, the undersigned Appellant, hereby certify that I have served a copy of the NOTICE OF APPEAL, by personally emailing and mailing copies of the same on **April 26, 2021** addressed as follows:

***Attorney for the Respondents:***

Edward Corvey, III, Esq.  
815 Savannah Hwy, Unit 201  
Charleston, SC 29407

Ted@CorveyLawFirm.com

  
MICHELE GRAHAM, APPELLANT

|                           |   |                                         |
|---------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS            |
|                           | ) | FOR THE NINTH JUDICIAL CIRCUIT          |
| COUNTY OF CHARLESTON      | ) |                                         |
|                           | ) | CASE NO.: 2020-CP-10-03397              |
| MICHELLE GRAHAM, MICHAEL  | ) |                                         |
| GRAHAM, and TAMMY GRAHAM, | ) |                                         |
|                           | ) |                                         |
| Plaintiffs,               | ) |                                         |
|                           | ) |                                         |
| vs.                       | ) | <b>DEFENDANTS MARK AND ADRIENNE</b>     |
|                           | ) | <b>CIABURRI'S MOTION TO DISMISS FOR</b> |
|                           | ) | <b>LACK OF JURISDICTION</b>             |
| MARK CIABURRI, ADRIENNE   | ) |                                         |
| CIABURRI,                 | ) |                                         |
|                           | ) |                                         |
| Defendants.               | ) |                                         |
|                           | ) |                                         |
|                           | ) |                                         |
|                           | ) |                                         |

---

PLEASE TAKE NOTICE that the Defendants, Mark & Adriene Ciaburri, by and through the undersigned counsel will move before the Court at the appropriate time during a hearing for the above captioned matter to be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b) (1) & (2), and South Carolina Code Ann. § 22-3-10. In addition, Defendants' would request the Court that all pending motions in this matter be scheduled simultaneously pursuant to South Carolina Rule of Civil Procedure 16 (a) (7).

This matter was originally, and properly, filed by Plaintiffs in Charleston County Small Claims Court on July 2, 2020. The Ciaburri Defendants filed their answer to that action on July 30, 2020, asserting several affirmative defenses. During the pendency of Plaintiffs' small claims court action, they filed a subsequent action involving the same subject matter and/or controversy with this Court on August 5, 2020. In addition to a summons and complaint which did not allege any causes against any Defendants, Plaintiff also filed a legally defunct and frivolous petition for an injunction which has since been denied. Given the pendency of concurrent actions involving the same subject matter filed by the Plaintiff in two separate courts, Plaintiffs' small claims court

action was dismissed upon motion of the Ciaburri Defendants pursuant to 12(b)(8), SCRCP, on August 28, 2020.

Following dismissal of the small claims court action, Plaintiffs' filed an Amended Complaint on August 31, 2020, alleging a single cause of action – negligence – against Defendants Mark and Adrienne Ciaburri, and not alleging any cause of action against the remaining newly captioned Defendants Crista Hoffman, Heather Cumbee, and Shelby Walker (hereinafter “Town of Mount Pleasant Defendants”). Plaintiff also filed an amended petition for an injunction with this Court on September 2, 2020. Plaintiffs' petition for an Injunction was heard on September 24, 2020, before the Honorable Bentley Price, which was denied by the Court. Subsequently, the Mount Pleasant Defendants were dismissed from the action upon their motion on December 22, 2020.

The dismissal of the Plaintiffs' injunctive request and dismissal of the Mount Pleasant Defendants leaves Plaintiffs' negligence claim and Defendants' counter claims as the sole issues remaining in this matter. Moreover, Plaintiffs' stated amount in controversy only \$4,185.98 which should appropriately be heard in Small Claims Court. South Carolina Code Ann. § 22-3-10 (2) grants the Magistrate Court civil jurisdiction “*in actions for damages for injury to rights pertaining to the person or personal or real property, if the damages claimed do not exceed seven thousand five hundred dollars.*” (emphasis added). Given Plaintiffs' stated amount of controversy falls well below the jurisdiction threshold in the Court of Common Pleas, this matter should most properly be tried in the Charleston County Small Claims Court, and Defendants submit that Court would be a more appropriate venue jurisdictionally. Moreover, given the delays imposed on the courts of South Carolina by the COVID-19 pandemic the interests of justice and swift resolution would be more properly met by this matter being tried in Small

Claims court where a trial is more likely to be quickly scheduled and completed. Accordingly, Defendants respectfully request that the Court to grant their Motion to Dismiss this case for the reasons articulated herein and those which may be further articulated in any subsequent memorandum or during any hearing regarding this motion which may be scheduled by the Court.

Respectfully submitted,

/s/ *Edward Corvey*

**CORVEY LAW FIRM, LLC**

Edward "Ted" R. Corvey, III, Esq

815 Savannah Highway, Suite 201

Charleston, South Carolina 29407

South Carolina Bar #: 101454

ted@corveylawfirm.com

(843) 625-8600

*ATTORNEY FOR DEFENDANTS*

April 16, 2021  
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;  
ADRIENNE THOMPSON CIABURRI

Defendants

CIVIL ACTION  
FILE NO. 2020CP1003397

BY MM  
JULIE J. ARMSTRONG  
CLERK OF COURT

2021 SEP 10 PM 2:34

FILED

**PLAINTIFF'S MOTION FOR STATUS CONFERENCE**

Plaintiff Michele Graham brings this motion for a status conference pursuant to SCRCP 16(a). This action has a few remaining matters that require the attention of the Chief Administrative Judge.

1. The Defendants filed a Motion for a Protective Order and Request for Discovery Conference on April 16, 2021. A hearing was held on June 9, 2021 and Judge McCoy's August 31, 2021 Order directed the Defendants to address the Motion and request the conference to the Chief Administrative Judge through his office. It is my understanding that this request has not been made by the Defendants.
2. The Plaintiff's Motion for Leave to Depose Mark Ciaburri was granted in Judge Jefferson's January 22, 2021 Order. The deposition via written questions was served on opposing counsel in accordance with SCRCP 31(a). On the day of the scheduled

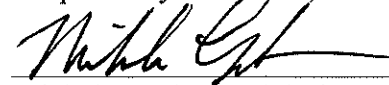
deposition, prior to the start of the examination, opposing counsel terminated the deposition and filed a Motion for Protective Order. The Plaintiff filed an opposition to the Defendants' Protective Order Motion, which includes a copy of the written deposition questions as an exhibit.

3. Throughout the course of this litigation, the Defendants, through their counsel have not adhered to discovery rules. There are several outstanding production requests and unanswered Requests for Admission. The Plaintiff filed an Amended Motion to Deem Admitted on September 2, 2021.

In conclusion, the Plaintiff respectfully requests the following from the Chief Administrative Judge:

- A. Disposition of the Defendants' Motion and an order scheduling Mark Ciaburri's deposition.
- B. Address the Plaintiff's outstanding production requests and enter an order outlining when the requested items must be produced.
- C. Disposition of the Plaintiff's pending Amended Motion to Deem Admitted.

Respectfully submitted,



Michele Graham, Plaintiff  
1661 Babington Way  
Mount Pleasant, SC 29464  
843-532-7252  
Michele.graham0318@gmail.com

Dated: 9/9/21

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
MICHELE GRAHAM, MICHAEL  
GRAHAM, and TAMMY GRAHAM,

Plaintiffs,

vs.

MARK CIABURRI, ADRIENNE  
CIABURRI, CRISTA HOFFMAN,  
HEATHER CUMBEE, and SHELBY  
WALKER,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-10-03397

**AFFIDAVIT OF ATTORNEY IN  
SUPPORT OF AWARD OF FEES AND  
COSTS**

PERSONALLY APPEARED before me: Edward "Ted" R. Corvey, III, Esquire, who  
being duly sworn deposes and says:

1. I am an attorney for the Defendants, Mark & Adrienne Ciaburri, in the above captioned matter.
2. This case is an action brought by the Plaintiff, Michele Graham, alleging negligence on behalf of Defendants, and she seeks damages and an injunction/writ of mandamus requesting the Court to order that Defendant's dog be euthanized pursuant to Town of Mount Pleasant ordinances.
3. That "Exhibit A" to this Affidavit, which is a listing of my firm's billing in this matter, as well as costs incurred with all available invoices and raw billing, and reflects the attorney's fees actually incurred through the date of this Affidavit amount ~~to \$8,734.00~~ <sup>\$9,525.00 (MHC)</sup> in connection with this action. The hourly rate charged was \$250.00.

~~This Affidavit does not include any fees associated with appearing in Court on~~  
~~September 24, 2020.~~ (MHC)

4. Accordingly, Defendants request that this Court award them and submit an Order requiring Plaintiff to pay their Attorney's Fees and Costs associated with this action, to include any fees and costs not yet billed as of the drafting of this affidavit.



Edward "Ted" R. Corvey, III

SWORN to before me this 24<sup>th</sup> day of  
Sept., 2020



Notary Public for South Carolina

My Commission Expires: 07/29/29

# **Exhibit A**

| ITEM                                                                                                                                                                                                        | DATE      | HRS. | RATE     | TOTAL    | BILLED BY |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------|----------|----------|-----------|
| <b>➤ Draft/revise</b><br>Draft of memo in support of award of attorney's fees.                                                                                                                              | 10/5/2020 | 2.8  | \$250.00 | \$700.00 | ERC       |
| <b>➤ Review/analyze</b><br>Review of Plaintiff's memo in opposition to the grant of attorney's fees.                                                                                                        | 10/5/2020 | 0.2  | \$250.00 | \$50.00  | ERC       |
| <b>➤ Communicate (other external)</b><br>Emails with Plaintiff and Court regarding the pending motion for attorney's fees. Indicated to the Court I would provide a brief memo in support of motion Monday. | 10/2/2020 | 0.2  | \$250.00 | \$50.00  | ERC       |
| <b>➤ Communicate (other outside counsel)</b><br>Emails and phone call with counsel for MPPD regarding developments regarding exhibits for the hearing.                                                      | 9/24/2020 | 0.4  | \$250.00 | \$100.00 | ERC       |
| <b>➤ Plan and prepare for</b><br>Final preparation for hearing - review of filing, research, formulation of arguments, and drafting of motions.                                                             | 9/24/2020 | 2.4  | \$250.00 | \$600.00 | ERC       |
| <b>➤ Communicate (other external)</b><br>Communication with process server regarding issuance and service of subpoenas for witnesses for the hearing.                                                       | 9/24/2020 | 0.2  | \$250.00 | \$50.00  | ERC       |

| ITEM                                                                                                                                                              | DATE      | HRS. | RATE     | TOTAL    | BILLED BY |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------|----------|----------|-----------|
| <b>➤ Appear for/attend</b><br>Graham v. Ciaburri et. al. injunction hearing.                                                                                      | 9/24/2020 | 1.5  | \$250.00 | \$375.00 | ERC       |
| <b>➤ Draft/revise</b><br>Draft of an affidavit in support for Defendants.                                                                                         | 9/23/2020 | 0.3  | \$250.00 | \$75.00  | ERC       |
| <b>➤ Draft/revise</b><br>Draft of questions for MPPD witnesses to provide to thier counsel in advance of hearing.                                                 | 9/23/2020 | 0.5  | \$250.00 | \$125.00 | ERC       |
| <b>➤ Communicate (other outside counsel)</b><br>Call with attorneys for MPPD defendants regarding hearing and plan to address certain issues and cases generally. | 9/23/2020 | 0.4  | \$250.00 | \$100.00 | ERC       |
| <b>➤ Meeting</b><br>Meetings with clients in advance of hearing.                                                                                                  | 9/23/2020 | 2    | \$250.00 | \$500.00 | ERC       |
| <b>➤ Plan and prepare for</b><br>Initial preparation for hearing - review of exhibits and case law.                                                               | 9/23/2020 | 1.3  | \$250.00 | \$325.00 | ERC       |

| ITEM                                                                                                                                                                                                                                                 | DATE      | HRS. | RATE     | TOTAL    | BILLED BY |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------|----------|----------|-----------|
| <b>Communicate (other external)</b><br>Call with the neighbor of clients regarding her experiences with Plaintiff's dogs, generally what is known about Plaintiff's dogs through the neighborhood, and her personal observation of Defendant's dogs. | 9/22/2020 | 0.5  | \$250.00 | \$125.00 | ERC       |
| <b>Review/analyze</b><br>Review of Plaintiff's motion for sanctions, memo in support of issuance of an injunction, and review of exhibits provided by Plaintiff including body camera footage and calls.                                             | 9/22/2020 | 3.6  | \$250.00 | \$900.00 | ERC       |
| <b>Communicate (with client)</b><br>Call with clients updating them regarding the latest plaintiff filings.                                                                                                                                          | 9/22/2020 | 0.3  | \$250.00 | \$75.00  | ERC       |
| <b>Communicate (with client)</b><br>Calls with clients about the case, their concerns, and upcoming hearing Thursday.                                                                                                                                | 9/21/2020 | 0.9  | \$250.00 | \$225.00 | ERC       |
| <b>Communicate (other outside counsel)</b><br>Call and email with Atty's for Mount Pleasant Defendants discussing hearing Thursday.                                                                                                                  | 9/21/2020 | 0.6  | \$250.00 | \$150.00 | ERC       |

| ITEM                                                                                                                                                                                                                                         | DATE      | HRS. | RATE     | TOTAL    | BILLED BY |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------|----------|----------|-----------|
| <b>Communicate (other external)</b><br>Call and voicemail, and follow up emails exchanged with Plaintiff requesting that she refrain from contacting clients. She acknowledged via email that she would serve any necessary documents to me. | 9/21/2020 | 0.2  | \$250.00 | \$50.00  | ERC       |
| <b>Draft/revise</b><br>Follow up letter to MPPD on outstanding FOIA requests.                                                                                                                                                                | 9/18/2020 | 0.3  | \$250.00 | \$75.00  | ERC       |
| <b>Communicate (other external)</b><br>Emails with parties and Judge Price's clerk regarding the hearing next week and what motions would be heard.                                                                                          | 9/17/2020 | 0.3  | \$250.00 | \$75.00  | ERC       |
| <b>Communicate (with client)</b><br>Call with clients and updates.                                                                                                                                                                           | 9/16/2020 | 0.4  | \$250.00 | \$100.00 | ERC       |
| <b>Communicate (other outside counsel)</b><br>Follow up call with James Haarsgard attorney for Mount Pleasant Officers regarding case and specifically Mt. Pleasant officers going to the client's house to request insurance info.          | 9/16/2020 | 0.4  | \$250.00 | \$100.00 | ERC       |

| ITEM                                                                                                                                                          | DATE      | HRS. | RATE     | TOTAL    | BILLED BY                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------|----------|----------|---------------------------------------------------------------------------------------|
| <b>➤ Communicate (other outside counsel)</b><br>Call with Ira Grossman Town of Mt. Pleasant attorney regarding his involvement in the criminal investigation. | 9/16/2020 | 0.3  | \$250.00 | \$75.00  |  |
| <b>➤ Communicate (other outside counsel)</b><br>Call with James Haarsgard Atty for Mount Pleasant officers about case.                                        | 9/15/2020 | 0.5  | \$250.00 | \$125.00 |   |
| <b>➤ Research</b><br>Research into Summary Judgment motion and Memo in Opposition of Ms. Graham's SJ motion.                                                  | 9/15/2020 | 2.1  | \$250.00 | \$525.00 |    |
| <b>➤ Draft/revise</b><br>Drafting of Summary Judgement motion.                                                                                                | 9/15/2020 | 2.3  | \$250.00 | \$575.00 |    |
| <b>➤ Draft/revise</b><br>Fixing issues to perfect filing with clerks office with Amended Complaint and Exhibits                                               | 9/14/2020 | 0.2  | \$0.00   | \$0.00   |    |
| <b>➤ Communicate (with client)</b><br>Call with clients regarding Ms. Graham's letter to them and discussing upcoming filings.                                | 9/11/2020 | 0.3  | \$250.00 | \$75.00  |    |

| ITEM                                                                                                                                                 | DATE      | HRS. | RATE     | TOTAL    | BILLED BY |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------|----------|----------|-----------|
| <b>➤ Draft/revise</b><br>Final drafting of common pleas Answer and Counter Claim.                                                                    | 9/10/2020 | 0.8  | \$250.00 | \$200.00 | ERC       |
| <b>➤ Review/analyze</b><br>Review of Ms. Graham's amended common pleas complaint and motion for an injunction.                                       | 9/9/2020  | 0.3  | \$250.00 | \$75.00  | ERC       |
| <b>➤ Draft/revise</b><br>Rework of answer and counterclaim for response to Ms. Graham's common pleas case.                                           | 9/2/2020  | 1.1  | \$250.00 | \$275.00 | ERC       |
| <b>➤ Review/analyze</b><br>Review of client email response to thier observations of inconsistencies from Graham filings.                             | 9/1/2020  | 0.2  | \$250.00 | \$50.00  | ERC       |
| <b>➤ Communicate (with client)</b><br>VM for clients advising that we would need to respond in full as opposed to just filing the motion to dismiss. | 8/31/2020 | 0.1  | \$250.00 | \$25.00  | ERC       |
| <b>➤ Research</b><br>Research into appropriate motions/response to Miss Graham's remaining civil action.                                             | 8/27/2020 | 0.6  | \$250.00 | \$150.00 | ERC       |
| <b>➤ Draft/revise</b><br>Initial draft work of motion to dismiss common pleas filing.                                                                | 8/26/2020 | 0.3  | \$250.00 | \$75.00  | ERC       |

| ITEM                                                                                                                                                                                       | DATE      | HRS. | RATE     | TOTAL    | BILLED BY |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------|----------|----------|-----------|
| <b>➤ Appear for/attend</b><br>Phone hearing with the magistrate and Ms. Graham on small claims court filing. Resulted in dismissal pursuant to SCRCp 12(b)(6).                             | 8/25/2020 | 0.3  | \$250.00 | \$75.00  | ERC       |
| <b>➤ Communicate (with client)</b><br>Call with clients to discuss case being dismissed at magistrate level and discussing plan of action with still pending civil claims in common pleas. | 8/25/2020 | 0.2  | \$250.00 | \$50.00  | ERC       |
| <b>➤ Review/analyze</b><br>Review of Ms. Graham's motion with magistrate court. Prep in advance of phone hearing.                                                                          | 8/24/2020 | 0.8  | \$250.00 | \$200.00 | ERC       |
| <b>➤ Review/analyze</b><br>Review of Ms. Graham's latest filings.                                                                                                                          | 8/21/2020 | 0.4  | \$250.00 | \$100.00 | ERC       |
| <b>➤ Meeting</b><br>Meeting with clients to discuss case moving forward following Ms. Graham's latest filings.                                                                             | 8/20/2020 | 0.9  | \$250.00 | \$225.00 | ERC       |
| <b>➤ Draft/revise</b><br>Received confirmation/go-ahead from client on-demand letter draft. Small edits and preparation for mailing.                                                       | 8/3/2020  | 0.2  | \$250.00 | \$50.00  | ERC       |

| ITEM                                                                                                                                                                                                      | DATE      | HRS. | RATE     | TOTAL    | BILLED BY |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------|----------|----------|-----------|
| <b>➤ Draft/revise</b><br>Final drafting of the letter to Michele Graham for service and demand that she drop her claims. Emailed draft to clients for their review and comment.                           | 8/2/2020  | 1.1  | \$250.00 | \$275.00 | ERC       |
| <b>➤ Draft/revise</b><br>Initial drafting of cover letter for service and demand to end claims to Michele Graham.                                                                                         | 7/31/2020 | 0.3  | \$250.00 | \$75.00  | ERC       |
| <b>➤ Draft/revise</b><br>Reviewing and editing of the initial draft of answers and counterclaims for client review and discussion.                                                                        | 7/28/2020 | 0.3  | \$250.00 | \$75.00  | ERC       |
| <b>➤ Communicate (with client)</b><br>Call with clients to review the answer and counterclaims and discuss process moving forward.                                                                        | 7/28/2020 | 0.4  | \$250.00 | \$100.00 | ERC       |
| <b>➤ Communicate (with client)</b><br>Call to client to update on progress and delays on my end. Follow up email with the initial draft of answer and requests for additional documentation from clients. | 7/27/2020 | 0.1  | \$250.00 | \$25.00  | ERC       |
| <b>➤ Draft/revise</b><br>Remaining drafting of initial answers and counterclaims.                                                                                                                         | 7/27/2020 | 2.9  | \$250.00 | \$725.00 | ERC       |

| ITEM                                                                                                                                                                                                                                                                                                                                         | DATE      | HRS.  | RATE     | TOTAL          | BILLED BY |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|-------|----------|----------------|-----------|
| <b>➤ Draft/revise</b><br>FOIA request letters to MPPD and central dispatch for any all information related to police investigation/involvement in this matter.                                                                                                                                                                               | 7/24/2020 | 0.3   | \$250.00 | \$75.00        | ERC       |
| <b>➤ Draft/revise</b><br>Initial drafting of answer and counterclaims in this matter.                                                                                                                                                                                                                                                        | 7/24/2020 | 0.6   | \$250.00 | \$150.00       | ERC       |
| <b>➤ Communicate (with client)</b><br>Call with client checking in on status and also advising that she wanted me to obtain the body camera footage associated with the police investigation. I explained I would prepare a FOIA request and at her request not reveiw the footage, but rather leave at least the initial reveiw to clients. | 7/23/2020 | 0.1   | \$250.00 | \$25.00        | ERC       |
| <b>➤ Review/analyze</b><br>Review of client provided documents.                                                                                                                                                                                                                                                                              | 7/22/2020 | 0.6   | \$250.00 | \$150.00       | ERC       |
|                                                                                                                                                                                                                                                                                                                                              |           | 38.30 |          | \$9,525.00 USD |           |

## Animal Medical Center of Mt. Pleasant

## Patient Chart

958 Houston Northcutt Blvd.  
Mt. Pleasant, SC 29464  
843-881-5858

Printed: 12-07-23 at 3:01p

### CLIENT INFORMATION

**Name** Mark Ciaburri (499)  
**Address** 1757 Nantahala Blvd  
Mt. Pleasant, SC 29464  
**Phone** 512 589-5155  
**Cell** 512-289-5155  
**Email** athompson@oltc.com

### PATIENT INFORMATION

|                 |                                |                |                   |
|-----------------|--------------------------------|----------------|-------------------|
| <b>Name</b>     | Petey (42320) (Record - 10002) | <b>Species</b> | Canine            |
| <b>Sex</b>      | Male, Neutered                 | <b>Breed</b>   | Retriever/lab/mix |
| <b>Deceased</b> | 10-06-22                       | <b>Age</b>     | D@12y             |
| <b>ID</b>       |                                | <b>Rabies</b>  | 21-03850          |
| <b>Color</b>    | Brown                          | <b>Weight</b>  | 74.20 lbs         |
| <b>Reminded</b> | (none)                         | <b>Codes</b>   | D                 |

| Reminders for: <b>Petey</b>                    | Last done       |
|------------------------------------------------|-----------------|
| 07-28-24 Rabies 3 year                         | 07-29-21        |
| <b>12-04-23 DHPP 3 year Vaccine</b>            | <b>12-04-20</b> |
| <b>06-28-22 Heartworm/Lymes/Ehrlichia/Anap</b> | <b>06-28-21</b> |
| <b>06-28-22 Fecal Dx Profile with Giardia</b>  | <b>06-28-21</b> |
| <b>06-28-22 Leptospirosis Annual Vaccine</b>   | <b>06-28-21</b> |
| <b>12-04-21 Kennel Cough Oral</b>              | <b>12-04-20</b> |
| <b>12-04-21 Annual Exam</b>                    | <b>12-04-20</b> |
| <b>07-28-21 Interceptor Plus WHITE 50 - 10</b> | <b>06-28-21</b> |
| <b>08-28-20 Bravecto CHEW</b>                  | <b>05-28-20</b> |
| <b>06-09-19 Heartgard Lg Single 51-100</b>     | <b>05-10-19</b> |

### Petey's weight history (in lbs)

|          |       |
|----------|-------|
| 09-12-22 | 74.20 |
| 07-29-21 | 73.40 |
| 06-28-21 | 73.80 |
| 12-04-20 | 74.20 |
| 06-09-20 | 73.00 |
| 05-28-20 | 74.60 |
| 05-24-19 | 71.00 |
| 01-02-18 | 69.00 |
| 12-14-17 | 68.00 |
| 09-26-16 | 67.00 |
| 08-08-16 | 65.20 |
| 08-31-15 | 67.00 |
| 05-19-15 | 72.00 |
| 11-08-12 | 58.80 |
| 11-09-11 | 57.00 |

### MEDICAL HISTORY

| Date     | By  | Code   | Description      | Qty (Variance) |
|----------|-----|--------|------------------|----------------|
| 10-03-22 | TML | VI\$IT | Patient check-in |                |

Patient Chart for Petey  
Date: 12-07-23, Time: 3:01p

Client: Mark Ciaburri  
Page: 2

| Date | By | Code | Description | Qty (Variance) |
|------|----|------|-------------|----------------|
|------|----|------|-------------|----------------|

Age: 12y

# SUBJECTIVE SECTION

urinating frequently, restless and not eating  
10-03-22 HOS NURSEELI Your nurse today was Elijah

10-03-22 TML 101 Office Visit & Physical Exam  
217 Urinalysis Complete IH  
IVLSO Requisition 10002-2907816

| Test | Result | Flag | Normal Range | Measure |
|------|--------|------|--------------|---------|
|      |        |      | Low High     |         |

## UA\_Analyzer 10-03-22 11:05a

|        |             |
|--------|-------------|
| Collec | Catheter    |
| Color  | Pale Yellow |
| Clar   | Clear       |
| SG     | 1.010       |
| pH     | 7.0         |
| LEU    | neg         |
| PRO    | TR          |
| GLU    | neg         |
| KET    | neg         |
| UBG    | norm        |
| BIL    | neg         |
| BLD    | 25          |

| Test | Result | Flag | Normal Range | Measure      |
|------|--------|------|--------------|--------------|
|      |        |      | Low High     | Ery/ $\mu$ L |

## SediVue\_Dx 10-03-22 11:08a

|        |               |
|--------|---------------|
| WBC    | 2 /HPF        |
| RBC    | 3 /HPF        |
| BACr   | None detected |
| BACc   | None detected |
| sqEPI  | None detected |
| nsEPI  | 3 - 5 /HPF    |
| HYA    | None detected |
| nhCST  | None detected |
| CRY    | None detected |
| CaOxDi | None detected |
| STR    | None detected |
| BIURAT | None detected |
| BILI   | None detected |

| Test | Result | Flag | Normal Range | Measure |
|------|--------|------|--------------|---------|
|      |        |      | Low High     |         |

## UA\_Analyzer 10-03-22 11:08a

|        |             |
|--------|-------------|
| Collec | Catheter    |
| Color  | Pale Yellow |
| Clar   | Clear       |
| SG     | 1.010       |
| pH     | 7.0         |
| LEU    | neg         |
| PRO    | TR          |
| GLU    | neg         |
| KET    | neg         |
| UBG    | norm        |
| BIL    | neg         |

| Date                               | By          | Code           | Description                                              | Qty (Variance) |                            |
|------------------------------------|-------------|----------------|----------------------------------------------------------|----------------|----------------------------|
| 10-03-22                           | 25<br>TML   | 11111<br>IVLSO | Stat Blood Profile In House<br>Requisition 10002-2907822 | Ery/ $\mu$ L   |                            |
| Test                               | Result      | Flag           | Normal Range                                             |                | Measure                    |
|                                    |             |                | Low                                                      | High           |                            |
| <b>ProCyte_Dx 10-03-22 11:34a</b>  |             |                |                                                          |                |                            |
| RBC                                | 7.86        |                | 5.65                                                     | 8.87           | M/ $\mu$ L                 |
| HCT                                | 53.8        |                | 37.3                                                     | 61.7           | %                          |
| HGB                                | 17.8        |                | 13.1                                                     | 20.5           | g/dL                       |
| MCV                                | 68.4        |                | 61.6                                                     | 73.5           | fL                         |
| MCH                                | 22.6        |                | 21.2                                                     | 25.9           | pg                         |
| MCHC                               | 33.1        |                | 32.0                                                     | 37.9           | g/dL                       |
| RDW                                | 17.1        |                | 13.6                                                     | 21.7           | %                          |
| %RETIC                             | 0.2         |                |                                                          |                | %                          |
| RETIC                              | 11.8        |                | 10.0                                                     | 110.0          | K/ $\mu$ L                 |
| RETIC-HGB                          | 24.5        |                | 22.3                                                     | 29.6           | pg                         |
| WBC                                | 9.56        |                | 5.05                                                     | 16.76          | K/ $\mu$ L                 |
| %NEU                               | 68.6        |                |                                                          |                | %                          |
| %LYM                               | 22.8        |                |                                                          |                | %                          |
| %MONO                              | 5.8         |                |                                                          |                | %                          |
| %EOS                               | 1.0         |                |                                                          |                | %                          |
| %BASO                              | 1.8         |                |                                                          |                | %                          |
| NEU                                | 6.56        |                | 2.95                                                     | 11.64          | K/ $\mu$ L                 |
| LYM                                | 2.18        |                | 1.05                                                     | 5.10           | K/ $\mu$ L                 |
| MONO                               | 0.55        |                | 0.16                                                     | 1.12           | K/ $\mu$ L                 |
| EOS                                | 0.10        |                | 0.06                                                     | 1.23           | K/ $\mu$ L                 |
| <b>BASO</b>                        | <b>0.17</b> | <b>H</b>       | <b>0.00</b>                                              | <b>0.10</b>    | <b>K/<math>\mu</math>L</b> |
| PLT                                | 268         |                | 148                                                      | 484            | K/ $\mu$ L                 |
| MPV                                | 11.1        |                | 8.7                                                      | 13.2           | fL                         |
| PDW                                | 10.2        |                | 9.1                                                      | 19.4           | fL                         |
| PCT                                | 0.30        |                | 0.14                                                     | 0.46           | %                          |
| Test                               | Result      | Flag           | Normal Range                                             |                | Measure                    |
|                                    |             |                | Low                                                      | High           |                            |
| <b>Catalyst_Dx 10-03-22 11:42a</b> |             |                |                                                          |                |                            |
| GLU                                | 110         |                | 70                                                       | 143            | mg/dL                      |
| CREA                               | 0.8         |                | 0.5                                                      | 1.8            | mg/dL                      |
| BUN                                | 13          |                | 7                                                        | 27             | mg/dL                      |
| BUN/CREA                           | 16          |                |                                                          |                |                            |
| PHOS                               | 4.3         |                | 2.5                                                      | 6.8            | mg/dL                      |
| CA                                 | 11.4        |                | 7.9                                                      | 12.0           | mg/dL                      |
| TP                                 | 7.2         |                | 5.2                                                      | 8.2            | g/dL                       |
| <b>ALB</b>                         | <b>3.9</b>  | <b>H</b>       | <b>2.2</b>                                               | <b>3.9</b>     | <b>g/dL</b>                |
| GLOB                               | 3.3         |                | 2.5                                                      | 4.5            | g/dL                       |
| ALB/GLOB                           | 1.2         |                |                                                          |                |                            |
| <b>ALT</b>                         | <b>191</b>  | <b>H</b>       | <b>10</b>                                                | <b>125</b>     | <b>U/L</b>                 |
| <b>ALKP</b>                        | <b>493</b>  | <b>H</b>       | <b>23</b>                                                | <b>212</b>     | <b>U/L</b>                 |
| GGT                                | 4           |                | 0                                                        | 11             | U/L                        |
| TBIL                               | 0.3         |                | 0.0                                                      | 0.9            | mg/dL                      |
| CHOL                               | 281         |                | 110                                                      | 320            | mg/dL                      |
| AMYL                               | 763         |                | 500                                                      | 1500           | U/L                        |
| LIPA                               | 712         |                | 200                                                      | 1800           | U/L                        |
| Na                                 | 157         |                | 144                                                      | 160            | mmol/L                     |
| K                                  | 5.1         |                | 3.5                                                      | 5.8            | mmol/L                     |
| Na/K                               | 31          |                |                                                          |                |                            |
| Cl                                 | 110         |                | 109                                                      | 122            | mmol/L                     |
| Osm Calc                           | 312         |                |                                                          |                | mmol/kg                    |

Patient Chart for Petey  
Date: 12-07-23, Time: 3:01p

Client: Mark Ciaburri

Page: 4

| Date     | By  | Code    | Description                             | Qty (Variance) |
|----------|-----|---------|-----------------------------------------|----------------|
| 10-03-22 | TML | CVCABDU | Collaboration Consulting Abd Ultrasound |                |
|          |     | CVCCHAR | Specialist Veterinary Consulting Fee    |                |
|          |     | 8332    | Courtesy Discount                       |                |
|          |     | VI\$IT  | Patient check-in                        |                |

Euthansia

Age: 12y

#### SUBJECTIVE SECTION

Euthansia

CLAYPAW Clay Paw Print

10-03-22 HOS SEPCRE7 Separate Cremation 51 - 75 pounds  
Doctor's Instructions - Please contact Pet Rest directly at (843) 797-5735 for information on Decorative Urns or any additional Services or Items.

10-03-22 TML 385 Euthanasia

10-03-22 HOS PETREST Pet Rest Pickup and Burial Urn  
Doctor's Instructions - Please contact Pet Rest directly at (843) 797-5735 for information on Decorative Urns or any additional Services or Items.

By: INVCOM Invoice Completed  
TML: Tess Lawhon, DVM

|          |      |                     |   |
|----------|------|---------------------|---|
| 10-03-22 | 6381 | Euthanasia Solution | 9 |
|          | 9903 | Telazol 100mg/ml    |   |
|          | 6381 | Euthanasia Solution | 3 |

(Additional history not shown)

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Michele Graham, Appellant,

v.

Mark Ciaburri and Adrienne T. Ciaburri, Respondents.

Appellate Case No. 2021-000450

---

Appeal From Charleston County  
Bentley Price, Circuit Court Judge

---

Unpublished Opinion No. 2023-UP-098  
Submitted February 1, 2023 – Filed March 15, 2023

---

**AFFIRMED**

---

Michelle Graham, of Mount Pleasant, pro se.

Edward "Ted" Regin Corvey, III, of Corvey Law Firm,  
LLC, of Charleston, for Respondents.

---

**PER CURIAM:** In this action for injunctive relief and damages, Michele Graham appeals a circuit court order denying her motion for relief pursuant to Rule 60(b)(2), SCRCF, from an order refusing to grant a temporary injunction. Graham also argues the presiding circuit court judge who denied her motion should have recused himself because he demonstrated an abuse of discretion in his rulings and

FILED  
2023 APR 14 PM 12:58  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY 006

created an environment that did not reflect judicial fairness and impartiality. We affirm.

In her amended complaint, Graham alleged "Petey," a pit-bull mixed breed dog belonging to Mark and Adrienne Ciaburri, fatally attacked "Gigi," her twelve-year-old Yorkshire terrier, while Gigi was relieving herself in Graham's front yard. Graham requested damages as well as temporary and permanent injunctive relief.

While the matter was pending in the circuit court, Graham moved for a temporary injunction requiring Petey's seizure and impoundment. The circuit court held a hearing on the motion and issued an order denying it. Subsequently, Graham moved to disqualify the circuit court judge who denied her motion for a temporary injunction, alleging he was friends with opposing counsel on social media and treated her in a manner that showed partiality toward the Ciaburris. The judge issued an order in which he declined to recuse himself. Graham then moved for relief from the denial of her motion for a temporary injunction and for an order granting her a new trial pursuant to Rule 60(b)(2), SCRCF. In support of this motion, Graham stated she had obtained a report from a court-recognized expert in canine aggression and dangerous dog investigations who was ready and willing to testify the Ciaburris were in violation of a local ordinance when their dog attacked her dog. The circuit court denied the motion, explaining it did not consider the expert's report to be newly discovered evidence. This appeal followed.

1. Rule 60(b)(2), SCRCF, allows a court to relieve a party from an order because of "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)[,SCRCF]." A party seeking a new trial based on newly discovered evidence must establish, among other things, that the evidence could not have been discovered before the trial. *Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct. App. 2005). "Diligence looks not to what the litigant actually discovered, but what he or she *could* have discovered." *Id.* at 220, 612 S.E.2d at 460 (quoting 12 *Moore's Federal Practice* § 60.42[5] (Matthew Bender 3rd ed.)). "Whether to grant or deny a motion under [Rule] 60(b)[, SCRCF] is within the sound discretion of the judge." *Coleman v. Dunlap*, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). We hold the circuit court acted within its discretion in finding the report prepared by Graham's expert was not newly discovered evidence that would entitle her to relief under Rule 60(b). Although Graham asserts she exercised due diligence by first questioning several local veterinary practitioners about the case, this activity did not prevent her from consulting her expert while conducting her other

investigation. Furthermore, the information that would arguably have changed the ruling on her motion for a temporary injunction was not the report itself, but the expert's professional opinion that Petey had engaged in aggressive behavior that resulted in Gigi's fatal injuries.

2. We reject Graham's arguments that the circuit judge who denied her motion for a temporary injunction abused his discretion in denying the relief she requested and should have recused himself because of prior interactions on social media with opposing counsel and his alleged bias toward a self-represented litigant. *See Davis v. Parkview Apartments*, 409 S.C. 266, 286-87, 762 S.E.2d 535, 546 (2014) (holding a circuit judge presiding over a lawsuit was not required to recuse himself solely because of "mere social relationships" between the judge or his family members and the respondents' counsel of record or their family members); *Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004) ("Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal."); *id.* ("It is not sufficient for a party seeking disqualification to simply allege bias; there party must show evidence of bias or prejudice.").

3. Finally, we hold the circuit court acted within its discretion in denying Graham's motion for a temporary injunction based on its finding that Graham did not present evidence that the Ciaburris violated a local ordinance by maintaining an animal so as to constitute a public nuisance. Graham at most presented only hearsay evidence that Petey had violent tendencies, and she provided no accounts about any specific incidents in which he attacked either humans or other animals other than the incident leading to her lawsuit. *See FOC Lawshe Ltd. P'ship*, 352 S.C. 408, 413, 574 S.E.2d 228, 231 (Ct. App. 2002) ("The decision to grant or deny temporary injunctive relief is within the sound discretion of the trial judge and will not be overturned absent an abuse of discretion."); Town of Mt. Pleasant, S.C., Code § 90.29(B)(3) (prohibiting "[m]aintaining an animal that *habitually or repeatedly* chases, snaps at, bites, or attacks pedestrians, bicycles, or vehicles, or other animals, or any animal whose behavior constitutes a reasonable risk to injuring a human or other animal" (emphasis added)).

**AFFIRMED.**<sup>1</sup>

**WILLIAMS, C.J., GEATHERS, J., and HILL, A.J., concur.**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

April 12, 2023

The Honorable Julie J. Armstrong  
100 Broad St Ste 106  
Charleston SC 29401-2210

### REMITTITUR

Re: Michele Graham v. Mark Ciaburri  
Lower Court Case No. 2020CP1003397  
Appellate Case No. 2021-000450

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read "V. Claire Allen".

CLERK

Enclosure

cc: Edward "Ted" Regin Corvey, III, Esquire  
Michele Graham

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON  
PLEAS

MICHELE GRAHAM

Plaintiff

v.

MARK CIABURRI

ADRIENNE THOMPSON CIABURRI

Defendants

CASE NUMBER:

2020CP1003397

EMAIL EXHIBITS

JULIE J. ADAMS  
CLERK OF COURT

2024 MAR 25 PM 3:35

FILED

EMAIL EXHIBITS 1-13

| Number | Description                                                                                                                                                |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | November 18, 2021 follow-up email from Mr. Corvey to the Court to see if a ruling has been made regarding the amount of fees to be awarded.                |
| 2      | December 2, 2021 email from Mr. Corvey following up again with the Court inquiring about the attorney fees.                                                |
| 3      | December 16, 2021 email from Mr. Corvey following up again with the Court and asking if a hearing should be requested instead of an email.                 |
| 4      | December 20, 2021 reply email from Judge Price's law clerk informing Mr. Corvey that Judge Price would like a hearing on the motion [for attorney's fees]. |
| 5      | December 22, 2021 reply email from Ms. Graham requesting that a court reporter be present at the hearing.                                                  |
| 6      | December 14, 2023 email from Mr. Corvey to the Court requesting a ruling on the amount of fees to be awarded and offering to provide a proposed order.     |
| 7      | December 14, 2023 email reply from Ms. Graham correcting Mr. Corvey's statements and opposing any consideration of fees at this time.                      |

|    |                                                                                                                                                                                      |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8  | December 14, 2023 reply email from Judge Price's law clerk asking if anything is still pending in circuit court and requesting that Mr. Corvey provide an attorney's fees affidavit. |
| 9  | December 14, 2023 reply from Mr. Corvey to the law clerk's question regarding pending matters in circuit court.                                                                      |
| 10 | December 15, 2023 email from Judge Price's secretary asking for clarity on the pending permanent injunction.                                                                         |
| 11 | December 15, 2023 reply from Ms. Graham providing clarity on the pending permanent injunction.                                                                                       |
| 12 | February 15, 2024 email from Mr. Corvey providing the affidavit supporting fees.                                                                                                     |
| 13 | February 16, 2024 reply email from Judge Price's secretary informing Mr. Corvey to e-file the affidavit along with an order                                                          |

*Michelle Graham*

*March 25, 2024*



Exhibit 1

Michele Graham &lt;michele.graham0318@gmail.com&gt;

---

**2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees**

---

**Ted Corvey** <ted@corveylawfirm.com>

Thu, Nov 18, 2021 at 8:08 PM

To: "Price, Bentley Law Clerk (Aimee Intagliata)" &lt;bpricelc@sccourts.org&gt;

Cc: Michele Graham &lt;michele.graham0318@gmail.com&gt;

Ms. Intagliata,

Judge Price ruled to grant attorney's fees following my motion for the same. However, he took under advisement the amount to award. I wanted to follow up to see if a ruling has been made on that aspect of my motion and if there was anything additional I could provide regarding that outstanding aspect of the Court's prior ruling?

I have copied the Plaintiff, Ms. Graham, on this email.

Respectfully,  
Ted

--

**Edward "Ted" R. Corvey, III**

Attorney &amp; Managing Partner

Email: [Ted@CorveyLawFirm.com](mailto:Ted@CorveyLawFirm.com)

Tel: (843) 625-8600 Fax: (843) 625-8601

[www.CorveyLawFirm.com](http://www.CorveyLawFirm.com)

815 Savannah Highway Ste. 201

Charleston, South Carolina 29407

**CORVEY LAW FIRM, LLC**

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**Exhibit 2**

Michele Graham &lt;michele.graham0318@gmail.com&gt;

**2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees****Ted Corvey** <ted@corveylawfirm.com>

Thu, Dec 2, 2021 at 1:54 PM

To: "Price, Bentley Law Clerk (Aimee Intagliata)" &lt;bpricelc@sccourts.org&gt;

Cc: Michele Graham &lt;michele.graham0318@gmail.com&gt;

Ms. Intagliata,

Just following up regarding the below.

Respectfully,  
Ted

On Thu, Nov 18, 2021 at 8:08 PM Ted Corvey &lt;ted@corveylawfirm.com&gt; wrote:

Ms. Intagliata,

Judge Price ruled to grant attorney's fees following my motion for the same. However, he took under advisement the amount to award. I wanted to follow up to see if a ruling has been made on that aspect of my motion and if there was anything additional I could provide regarding that outstanding aspect of the Court's prior ruling?

I have copied the Plaintiff, Ms. Graham, on this email.

Respectfully,  
Ted

--

**Edward "Ted" R. Corvey, III**

Attorney &amp; Managing Partner

Email: [Ted@CorveyLawFirm.com](mailto:Ted@CorveyLawFirm.com)

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Gmail

Exhibit 3

Michele Graham &lt;michele.graham0318@gmail.com&gt;

---

**2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees**

---

**Ted Corvey** <ted@corveylawfirm.com>

Thu, Dec 16, 2021 at 3:04 PM

To: "Price, Bentley Law Clerk (Aimee Intagliata)" &lt;bpricelc@sccourts.org&gt;

Cc: Michele Graham &lt;michele.graham0318@gmail.com&gt;

Ms. Intagliata,

Again, following up on the below. Please advise if it is best and/or if it is Judge Price's preference for me to request a hearing in lieu of email follow up.

Respectfully,  
Ted

On Thu, Dec 2, 2021 at 1:54 PM Ted Corvey <ted@corveylawfirm.com> wrote:

Ms. Intagliata,

Just following up regarding the below.

Respectfully,  
Ted

On Thu, Nov 18, 2021 at 8:08 PM Ted Corvey <ted@corveylawfirm.com> wrote:

Ms. Intagliata,

Judge Price ruled to grant attorney's fees following my motion for the same. However, he took under advisement the amount to award. I wanted to follow up to see if a ruling has been made on that aspect of my motion and if there was anything additional I could provide regarding that outstanding aspect of the Court's prior ruling?

I have copied the Plaintiff, Ms. Graham, on this email.

Respectfully,  
Ted

--

**Edward "Ted" R. Corvey, III**

Attorney &amp; Managing Partner

Email: Ted@CorveyLawFirm.com

Tel: (843) 625-8600 Fax: (843) 625-8601

www.CorveyLawFirm.com

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**CORVEY LAW FIRM, LLC**

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Exhibit 4

Michele Graham &lt;michele.graham0318@gmail.com&gt;

---

**2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees**

---

**Price, Bentley Law Clerk (Aimee Intagliata)** <bpricelc@sccourts.org>

Mon, Dec 20, 2021 at 2:51 PM

To: Ted Corvey &lt;ted@corveylawfirm.com&gt;, Angela Rigney &lt;ARigney@charlestoncounty.org&gt;

Cc: Michele Graham &lt;michele.graham0318@gmail.com&gt;

Good afternoon Mr. Corvey,

Judge Price would like a hearing on this motion. I've added Angela Rigney, the roster coordinator, to this email chain.

Angela, please add this to Judge Price's civil roster for one day during the week of January 31, 2022.

Thank you,

Aimee

**From:** Ted Corvey <ted@corveylawfirm.com>**Sent:** Thursday, December 16, 2021 3:05 PM**To:** Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>**Cc:** Michele Graham <michele.graham0318@gmail.com>**Subject:** Re: 2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees

\*\*\* **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Ms. Intagliata,

Again, following up on the below. Please advise if it is best and/or if it is Judge Price's preference for me to request a hearing in lieu of email follow up.

Respectfully,

Ted

On Thu, Dec 2, 2021 at 1:54 PM Ted Corvey <ted@corveylawfirm.com> wrote:

Ms. Intagliata,

Just following up regarding the below.



Exhibit 5

Michele Graham &lt;michele.graham0318@gmail.com&gt;

---

**2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees**

---

**Michele Graham** <michele.graham0318@gmail.com>

Wed, Dec 22, 2021 at 8:00 AM

To: "Price, Bentley Law Clerk (Aimee Intagliata)" &lt;bpricelc@sccourts.org&gt;

Cc: Ted Corvey &lt;ted@corveylawfirm.com&gt;, Angela Rigney &lt;ARigney@charlestoncounty.org&gt;

Thank you,

I am requesting that a court reporter be present at this hearing.

Michele

**Michele Graham***Customer Service & Founder*

1-800-554-6830, ext. 800

Mobile (US &amp; Canada): 843-608-9153

Mobile (Europe): +39 347 108 8870

WhatsApp: +39 347 108 8870

[www.WholefulPet.com](http://www.WholefulPet.com)

On 20 Dec 2021, at 14:51, Price, Bentley Law Clerk (Aimee Intagliata) &lt;bpricelc@sccourts.org&gt; wrote:

Good afternoon Mr. Corvey,

Judge Price would like a hearing on this motion. I've added Angela Rigney, the roster coordinator, to this email chain.

Angela, please add this to Judge Price's civil roster for one day during the week of January 31, 2022.

Thank you,

Aimee

**From:** Ted Corvey <ted@corveylawfirm.com>**Sent:** Thursday, December 16, 2021 3:05 PM**To:** Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>**Cc:** Michele Graham <michele.graham0318@gmail.com>**Subject:** Re: 2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees



Exhibit 6

Michele Graham <michele.graham0318@gmail.com>

## 2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees

**Ted Corvey** <ted@corveylawfirm.com>

Thu, Dec 14, 2023 at 1:41 PM

To: "Price, Bentley Secretary (Tamara Walters)" <bpricesc@sccourts.org>, "Price, Bentley Law Clerk (Aimee Intagliata)" <bpricelc@sccourts.org>

Cc: Michele Graham <michele.graham0318@gmail.com>

Ms. Walters, Ms. Hill,

I hope this email finds you both well.

Ms. Hill this matter long predates your clerking for Judge Price so my apologies for the long email, but I wanted to follow up on this case as Judge Price ruled in December of 2020 granting my motion for attorney's fees in this matter.

I have attached my previously submitted memo in support of attorney's fees, affidavit and billing information related to the same, and Judge Price's initial order granting my client's attorneys fees in this matter.

Following Judge Price's ruling Ms. Graham filed a motion to reconsider which was argued in front of Judge Price in February 2021. He denied her motion to reconsider. Ms. Graham then appealed to the Court of Appeals who similarly denied her appeal. Since that time Judge Young remanded all matters except for Ms. Graham's motion for a permanent injunction to the magistrate court for resolution and stayed the circuit court proceedings. The magistrate court matter is still pending resolution. As to the remaining permanent injunction, that is matter is now moot as the entire thrust of the injunction Ms. Graham sought the impoundment and euthanasia of my client's dog who has since died rendering the injunctive matter moot. I will be filing this week a motion to dismiss the remaining injunctive motion on the above stated grounds.

Given the above, I think this issue is procedurally postured for a ruling by Judge Price as to the amount of attorney's fees he is granting my clients in this matter. Please do not hesitate should Judge Price need any further information to assist in his ruling. Of course, I will also be happy to provide a proposed order should Judge Price like me to provide one.

Respectfully submitted,  
Ted Corvey

----- Forwarded message -----

From: **Michele Graham** <michele.graham0318@gmail.com>

Date: Wed, Dec 22, 2021 at 8:00 AM

Subject: Re: 2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees

To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Cc: Ted Corvey <ted@corveylawfirm.com>, Angela Rigney <ARigney@charlestoncounty.org>

Thank you,

I am requesting that a court reporter be present at this hearing.

Michele

**Michele Graham**

*Customer Service & Founder*

1-800-554-6830, ext. 800

Mobile (US & Canada): 843-608-9153

Mobile (Europe): +39 347 108 8870

WhatsApp: +39 347 108 8870



Exhibit 7

Michele Graham &lt;michele.graham0318@gmail.com&gt;

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**2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees**

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**Michele Graham** <michele.graham0318@gmail.com>

Thu, Dec 14, 2023 at 2:22 PM

To: Ted Corvey &lt;ted@corveylawfirm.com&gt;

Cc: "Price, Bentley Secretary (Tamara Walters)" &lt;bpricesc@sccourts.org&gt;, "Price, Bentley Law Clerk (Aimee Intagliata)" &lt;bpricelc@sccourts.org&gt;

Ted is incorrect. The denial of the Motion to Reconsider the granting of Atty Fees was never appealed. When asked to clarify his ruling on atty fees, the order states: "The Court will make a determination as to the amount if any at the appropriate time.

Nothing has changed in the case since then. No liability had been determined. Ted is incorrect to claim this is an appropriate time to consider any attorney fees.

See the attached order dated February 16, 2021.

Michele

**Michele Graham**

843-532-7252

On 14 Dec 2023, at 13:41, Ted Corvey <ted@corveylawfirm.com> wrote:

Ms. Walters, Ms. Hill,

I hope this email finds you both well.

Ms. Hill this matter long predates your clerking for Judge Price so my apologies for the long email, but I wanted to follow up on this case as Judge Price ruled in December of 2020 granting my motion for attorney's fees in this matter.

I have attached my previously submitted memo in support of attorney's fees, affidavit and billing information related to the same, and Judge Price's initial order granting my client's attorneys fees in this matter.

Following Judge Price's ruling Ms. Graham filed a motion to reconsider which was argued in front of Judge Price in February 2021. He denied her motion to reconsider. Ms. Graham then appealed to the Court of Appeals who similarly denied her appeal. Since that time Judge Young remanded all matters except for Ms. Graham's motion for a permanent injunction to the magistrate court for resolution and stayed the circuit court proceedings. The magistrate court matter is still pending resolution. As to the remaining permanent injunction, that is matter is now moot as the entire thrust of the injunction Ms. Graham sought the impoundment and euthanasia of my client's dog who has since died rendering the injunctive matter moot. I will be filing this week a motion to dismiss the remaining injunctive motion on the above stated grounds.

Given the above, I think this issue is procedurally postured for a ruling by Judge Price as to the amount of attorney's fees he is granting my clients in this matter. Please do not hesitate should Judge Price need any further information to assist in his ruling. Of course, I will also be happy to provide a proposed order should Judge Price like me to provide one.

Respectfully submitted,  
Ted Corvey



Gmail

Exhibit 8

Michele Graham &lt;michele.graham0318@gmail.com&gt;

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**2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees**

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**Price, Bentley Law Clerk (Morgan Hill)** <bpricelc@sccourts.org>

Thu, Dec 14, 2023 at 3:20 PM

To: Michele Graham &lt;michele.graham0318@gmail.com&gt;, Ted Corvey &lt;ted@corveylawfirm.com&gt;

Cc: "Price, Bentley Secretary (Tamara Walters)" &lt;bpricesc@sccourts.org&gt;

Good afternoon,

Please confirm whether anything is still pending in Circuit Court and provide an attorney's fees affidavit.

Thank you,

**Morgan Hill**

Law Clerk

The Honorable Bentley Price

100 Broad Street, Suite 432

Charleston, South Carolina 29401

Phone: (843) 958-4450

Fax: (843) 958-5095

**From:** Michele Graham <michele.graham0318@gmail.com>**Sent:** Thursday, December 14, 2023 2:23 PM**To:** Ted Corvey <ted@corveylawfirm.com>**Cc:** Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>; Price, Bentley Law Clerk (Morgan Hill) <bpricelc@sccourts.org>**Subject:** Re: 2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Ted is incorrect. The denial of the Motion to Reconsider the granting of Atty Fees was never appealed. When asked to clarify his ruling on atty fees, the order states: "The Court will make a determination as to the amount if any at the appropriate time.

Nothing has changed in the case since then. No liability had been determined. Ted is incorrect to claim this is an appropriate time to consider any attorney fees.

See the attached order dated February 16, 2021.

Michele



Gmail

Exhibit 9

Michele Graham &lt;michele.graham0318@gmail.com&gt;

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**2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees**

---

**Ted Corvey** <ted@corveylawfirm.com>

Thu, Dec 14, 2023 at 3:26 PM

To: "Price, Bentley Law Clerk (Morgan Hill)" &lt;bpricelc@sccourts.org&gt;

Cc: Michele Graham &lt;michele.graham0318@gmail.com&gt;, "Price, Bentley Secretary (Tamara Walters)" &lt;bpricesc@sccourts.org&gt;

Ms. Hill,

My fees affidavit is attached to my earlier email.

Ms. Graham's motion for a permanent injunction seeking my client's dog be euthanized is at this point still pending. However, given that the thrust of that motion is now moot given the passing of my client's dog I will be filing a motion week for that matter to be dismissed. I have asked for Ms. Graham's consent regarding that motion given the mootness and provided her the attached is veterinary paperwork regarding my client's dog's death. Once that matter is resolved nothing will be pending in the Circuit Court. For edification, my motion for fees was related to Ms. Graham's temporary injunction/writ of mandamus request that was heard before Judge Price in October 2020, the claims pending in magistrate court are entirely unrelated.

Respectfully,  
Ted

On Thu, Dec 14, 2023 at 3:20 PM Price, Bentley Law Clerk (Morgan Hill) &lt;bpricelc@sccourts.org&gt; wrote:

Good afternoon,

Please confirm whether anything is still pending in Circuit Court and provide an attorney's fees affidavit.

Thank you,

**Morgan Hill**

Law Clerk  
The Honorable Bentley Price  
100 Broad Street, Suite 432  
Charleston, South Carolina 29401  
Phone: (843) 958-4450  
Fax: (843) 958-5095

**From:** Michele Graham <michele.graham0318@gmail.com>**Sent:** Thursday, December 14, 2023 2:23 PM**To:** Ted Corvey <ted@corveylawfirm.com>**Cc:** Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>; Price, Bentley Law Clerk (Morgan Hill) <bpricelc@sccourts.org>**Subject:** Re: 2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*



Gmail

Exhibit 10

Michele Graham <michele.graham0318@gmail.com>

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## 2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees

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Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Fri, Dec 15, 2023 at 10:47 AM

To: Ted Corvey <ted@corveylawfirm.com>, "Price, Bentley Law Clerk (Morgan Hill)" <bpricelc@sccourts.org>

Cc: Michele Graham <michele.graham0318@gmail.com>, Angela Rigney <ARigney@charlestoncounty.org>

Good morning,

I've copied Angela at the Clerk's Office on this email. The Clerk's records indicate the motion for permanent injunction was withdrawn. Please confirm if a second motion was filed.

Thank you,

Tamara Walters

Administrative Assistant

The Honorable Bentley Price

100 Broad Street, Suite 432

Charleston, South Carolina 29401

Phone: (843) 958-4450

Fax: (843) 958-5095

**From:** Ted Corvey <ted@corveylawfirm.com>

**Sent:** Thursday, December 14, 2023 3:27 PM

**To:** Price, Bentley Law Clerk (Morgan Hill) <bpricelc@sccourts.org>

**Cc:** Michele Graham <michele.graham0318@gmail.com>; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

**Subject:** Re: 2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Ms. Hill,

My fees affidavit is attached to my earlier email.



Gmail

Exhibit 11

Michele Graham &lt;michele.graham0318@gmail.com&gt;

**2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees****Michele Graham** <michele.graham0318@gmail.com>

Fri, Dec 15, 2023 at 11:04 AM

To: "Price, Bentley Secretary (Tamara Walters)" &lt;bpricesc@sccourts.org&gt;

Cc: Ted Corvey &lt;ted@corveylawfirm.com&gt;, "Price, Bentley Law Clerk (Morgan Hill)" &lt;bpricelc@sccourts.org&gt;, Angela Rigney &lt;ARigney@charlestoncounty.org&gt;

A permanent injunction was incorporated into the original complaint as part of my requested relief. A separate motion for permanent injunction was filed unnecessarily and subsequently withdrawn.

On December 21, 2021, Judge Young bifurcated the case, referring the cause of action to Magistrate Court and maintaining my original petition for injunctive relief with the Circuit Court.

It was brought to my attention that the pit-mix was euthanized in October 2022, so that now renders the original currently pending permanent injunction request moot.

Michele

On Fri, Dec 15, 2023 at 10:54 AM Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org> wrote:

Good morning,

I've copied Angela at the Clerk's Office on this email. The Clerk's records indicate the motion for permanent injunction was withdrawn. Please confirm if a second motion was filed.

Thank you,

Tamara Walters

Administrative Assistant

The Honorable Bentley Price

100 Broad Street, Suite 432

Charleston, South Carolina 29401

Phone: (843) 958-4450

Fax: (843) 958-5095

**From:** Ted Corvey <ted@corveylawfirm.com>

**Sent:** Thursday, December 14, 2023 3:27 PM

**To:** Price, Bentley Law Clerk (Morgan Hill) <bpricelc@sccourts.org>

**Cc:** Michele Graham <michele.graham0318@gmail.com>; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

**Subject:** Re: 2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees

**Exhibit 12**

Michele Graham &lt;michele.graham0318@gmail.com&gt;

**2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees**

Ted Corvey &lt;ted@corveylawfirm.com&gt;

Thu, Feb 15, 2024 at 1:04 PM

To: "Price, Bentley Law Clerk (Morgan Hill)" &lt;bpricelc@sccourts.org&gt;, "Price, Bentley Secretary (Tamara Walters)" &lt;bpricesc@sccourts.org&gt;

Cc: Michele Graham &lt;michele.graham0318@gmail.com&gt;

Ms. Hill, Ms. Walters,

Attached is my affidavit supporting attorney's fees. In reviewing these emails it seemed you may have been missing this?

Please let me know if you need anything further regarding this matter.

Respectfully,  
Ted

On Fri, Dec 15, 2023 at 11:04 AM Michele Graham &lt;michele.graham0318@gmail.com&gt; wrote:

A permanent injunction was incorporated into the original complaint as part of my requested relief. A separate motion for permanent injunction was filed unnecessarily and subsequently withdrawn.

On December 21, 2021, Judge Young bifurcated the case, referring the cause of action to Magistrate Court and maintaining my original petition for injunctive relief with the Circuit Court.

It was brought to my attention that the pit-mix was euthanized in October 2022, so that now renders the original currently pending permanent injunction request moot.

Michele

On Fri, Dec 15, 2023 at 10:54 AM Price, Bentley Secretary (Tamara Walters) &lt;bpricesc@sccourts.org&gt; wrote:

Good morning,

I've copied Angela at the Clerk's Office on this email. The Clerk's records indicate the motion for permanent injunction was withdrawn. Please confirm if a second motion was filed.

Thank you,

Tamara Walters

Administrative Assistant

The Honorable Bentley Price

100 Broad Street, Suite 432

Charleston, South Carolina 29401

Phone: (843) 958-4450

Fax: (843) 958-5095



Exhibit 13

Michele Graham <michele.graham0318@gmail.com>

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## 2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees

---

Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Fri, Feb 16, 2024 at 11:51 AM

To: Ted Corvey <ted@corveylawfirm.com>, "Price, Bentley Law Clerk (Morgan Hill)" <bpricelc@sccourts.org>

Cc: Michele Graham <michele.graham0318@gmail.com>

Good morning,

Please e-file the attached affidavit along with an Order.

Thank you,

Tamara Walters

Administrative Assistant

The Honorable Bentley Price

100 Broad Street, Suite 432

Charleston, South Carolina 29401

Phone: (843) 958-4450

Fax: (843) 958-5095

**From:** Ted Corvey <ted@corveylawfirm.com>

**Sent:** Thursday, February 15, 2024 1:04 PM

**To:** Price, Bentley Law Clerk (Morgan Hill) <bpricelc@sccourts.org>; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

**Cc:** Michele Graham <michele.graham0318@gmail.com>

**Subject:** Re: 2020CP1003397 Graham v. Ciaburri - Outstanding Motion for Attorney's Fees

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Ms. Hill, Ms. Walters,

Attached is my affidavit supporting attorney's fees. In reviewing these emails it seemed you may have been missing this?

Please let me know if you need anything further regarding this matter.