THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case No. 2024-001363

Sarah Rock, Appellant,

v.

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

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant respectfully petitions the Court for a rehearing of its Opinion No. 6137, filed on February 11, 2026 (the "Opinion"), based upon the following points overlooked or misapprehended by the Court.

I. The Opinion Does Not Address and Overlooks the Issue of Whether South Carolina Law Applies the Standard Rule of Recoverable Damages for Lost or Damaged Personal Property to Dogs or Applies a Different Rule of Recoverable Damages Due to the Difference Between Pet Dogs and Other, Inanimate Forms of Personal Property.

The Opinion primarily relies on "South Carolina's classification of pets as personal property" and "our supreme court [having] recognized pet dogs as personal property in deciding whether a person's dog could be the subject of larceny" in *State v. Langford*, 55 S.C. 322, 33 S.E. 370 (1899). While *Langford* recognizes pet dogs are personal property that can be the basis for a

larceny charge, the *Langford* decision goes no further. Neither *Langford* nor any other precedential South Carolina decision cited by the Opinion or the parties addresses the damages recoverable from the loss of a pet dog. The issue before the Court is whether South Carolina common law applies the standard measure of damages for damage to or loss of personal property—the market value of the property or the special value to the owner if unique, irreplaceable property—to pet dogs or whether South Carolina common law permits the recovery of emotional distress damages for the loss of a pet dog given the difference between a pet dog and other, inanimate forms of personal property. That remains an open question in South Carolina common law and one that the Opinion does not answer or address. For the reasons set forth previously in Appellant's briefing and at oral arguments, Appellant submits that South Carolina common law would and should apply a different rule of recoverable damages for the tortious loss of or damage to a pet dog.

II. The Opinion Misapprehends and Does Not Carry Out the Court's Duty in Determining and Developing South Carolina Common Law.

While stating that the Court is "sympathetic to [Appellant's] position," the Opinion holds that the Court "must defer to the legislature to create such a remedy." This is a misapprehension of South Carolina law and a failure to carry out the Court's duty to develop the common law. South Carolina courts have "the right *and duty* to develop the common law of South Carolina to better serve an ever-changing society as a whole." *State v. Horne*, 282 S.C. 444, 447, 319 S.E.2d 703, 704 (1984) (emphasis added). Contrary to the Opinion's conclusion that the Court "must defer" to the General Assembly, the purview of South Carolina courts over the common law is so substantial that courts can change part of the common law even when the General Assembly has statutorily recognized that portion of the common law. *See, e.g.*, *Stone v. Thompson*, 428 S.C. 79, 85, 833 S.E.2d 266, 269 (2019) ("As discussed—and perhaps intuitively—common-law

marriage's origins lie in the common law, and consequently, it may be removed by common-law mandate, regardless of tacit recognition by our legislature."); *Marcum v. Bowden*, 372 S.C. 452, 458, 643 S.E.2d 85, 85 (2007) ("It is within this Court's purview to change the common law."); *Singleton v. State*, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993) ("It has always been the purview of a court to change the common law . . . ."); *Russo v. Sutton*, 310 S.C. 200, 204, 422 S.E.2d 750, 753 (1992) ("Criminal conversation and alienation of affections are of common law origin. Their common law origin exists despite any subsequent recognition of the torts by our legislature. Thus, both criminal conversation and alienation of affections may be removed from the common law by common law mandate."). South Carolina courts can and do expand or alter the common law—including the common law as to the existence or scope of tort claims—when necessary to serve the needs of the people of South Carolina. *See, e.g.*, *Stone*, 428 S.C. at 85–86, 833 S.E.2d at 269 (changing common-law marriage due to a societal "shift" where "society no longer conditions acceptance upon marital status or legitimacy of children" and "non-marital cohabitation is exceedingly common and continues to increase among Americans of all age groups"); *Marcum*, 372 S.C. at 460, 643 S.E.2d at 89 (extending the common law to "impose liability on adult social hosts who knowingly and intentionally serve [alcohol to] underage guests" due to the Court's "responsibility to adapt the common law to the realities of the modern world"); *Russo*, 310 S.C. at 204, 422 S.E.2d at 753 (eliminating the common law causes of action for criminal conversation and alienation of affection as "rooted in antiquated perceptions that wives are chattel of their husbands" and as having "outlived any usefulness they may have possessed in regard to preventing the dissolution of marriages"); *Hossenlopp v. Cannon*, 285 S.C. 367, 371, 329 S.E.2d 438, 441 (1985) ("The dog-bite law is of common law origin. It may be changed by common law mandate. The time has come when our rule must give way to the more commonly accepted rule of law

indicated in other states by both case law and by statute."). Exercising its right and duty to determine and develop South Carolina's common law, the Court should have determined whether the common law must develop to address the role of pet dogs in South Carolina today. The General Assembly certainly could step in at any time to statutorily determine the law in relation to tortious harm to pet dogs, but the Court has the right and duty in the first instance to determine and develop the common law in relation to pet dogs.

III. The Opinion Erroneously Concludes the "Minority View" Would Not Apply to Appellant's Claims on the Basis There Has Been No Allegation of Intentional Conduct.

The Opinion concludes that "there are no claims that the harm to Rock's dogs was the result of intentional conduct, so even this minority view would not apply to Rock's claims." This conclusion is contrary to what the Opinion calls the "minority view" and decisions from other jurisdictions. The Opinion cites *Richardson v. Fairbanks North Star Borough*, 705 P.2d 454 (Alaska 1985) in support of the conclusion that the "minority view" would not apply here, but the quoted language from that decision explicitly permits recovery for emotional distress damages for the "intentional *or reckless* killing of a pet animal." 705 P.2d at 456 (emphasis added). Thus, *Richardson*'s statement of the minority view explicitly permits recovery of emotional distress damages for more than just "intentional conduct." Similarly, the Opinion cites *Freeden v. Stride*, 525 P.2d 166 (Or. 1974) in support, but *Freeden* contains no limitation of that "minority view" to intentional harms and as quoted by the Opinion, states that emotional distress "is a proper element of damages where evidence of genuine emotional damage is supplied by *aggravated conduct* on the part of the defendant. 525 P.2d at 168 (emphasis added). The Opinion also relies on *La Porte v. Associated Independents, Inc.*, 163 So. 2d 267 (Fla. 1964), but that decision does not hold that emotional distress damages can only be recovered in instances of intentional harm and rather, discusses conduct that "demonstrated an extreme indifference to the rights of the petitioner." 163

So. 2d at 268. Additionally, Appellant cited several decisions in her briefing that do not require any showing of intentional conduct to permit recovery of emotional distress damages for the tortious loss of or damage to a pet dog. *See, e.g.*, *Campbell v. Animal Quarantine Station*, 632 P.2d 1066 (Haw. 1981); *Linceum v. Smith*, 287 So. 2d 625 (La. Ct. App. 1973). Moreover, Appellant alleges that Appellees were more than just negligent here, alleging Appellees were "negligent, careless, reckless, and grossly negligent." (R. 233 ¶40 & 234 ¶52) Accordingly, Appellant would be entitled to proceed on her claim for emotional distress damages under the "minority view" were the Court to determine South Carolina common law must develop to permit the recovery of emotional distress damages for the loss of or damage to a pet dog.

CONCLUSION

For the reasons set forth herein, Appellant respectfully requests a rehearing of this appeal.

Respectfully submitted,

s/Elliotte Quinn
F. Elliotte Quinn IV
Michael J. Jordan
The Steinberg Law Firm, LLC
3955 Faber Place Dr., Ste. 300
N Charleston, SC 29405
(843) 720-2800
equinn@steinberglawfirm.com
mjordan@steinberglawfirm.com

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
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CERTIFICATE OF SERVICE

The undersigned certifies on February 26, 2026, he caused a copy of the foregoing Petition for Rehearing to be served on all parties of record by e-mail as follows:

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

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

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

s/Elliotte Quinn
F. Elliotte Quinn IV
The Steinberg Law Firm, LLC
3955 Faber Place Dr., Ste. 300
N. Charleston, SC 29405
(843) 720-2800

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SC Court of Appeals

3955 Faber Place Dr., Ste. 300, N. Charleston, SC 29405 | P.O. Box 70909, N. Charleston, SC 29415 | (843) 720-2800 | www.steinberglawfirm.com

February 26, 2025

VIA U.S. MAIL AND EMAIL

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

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

Dear Hon. Jenny Abbott Kitchings,

Please find enclosed a Petition for Rehearing in the above-referenced appeal. Thank you for your assistance, and please do not hesitate to contact me should you have any questions.

Regards,

s/Elliotte Quinn

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

Enclosures:

1. Petition for Rehearing

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

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

David S. Cobb

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

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