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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2024-001363

Sarah Rock, Petitioner,

v.

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

RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON APPEAL

I. Did the Court of Appeals correctly apply South Carolina law that dismissed claims for emotional distress alleged by the owner of two dogs against a dog boarding facility and its owner after one dog died and the other dog suffered injury following an incident at the dog boarding facility?

STATEMENT OF THE CASE

Respondents agree with Appellant's statement of the case.

STATEMENT OF FACTS

At the outset, Respondents agree with most of Appellant's recitation of the facts. She boarded her two dogs (Xumi and Ruben) with Dog Daze of Charleston, LLC ("Dog Daze") on July 7, 2022 for a work trip to the Bahamas. During the afternoon of July 14, 2022, a Dog Daze employee put Xumi and Ruben in a run and Charlie Freeman's (owner of Dog Daze) German Shepherd dog in a crate in separate area of the Dog Daze facility. Unfortunately, the German Shepherd dog escaped from his crate, found its way to, and accessed the "small dog" run where it became entangled with Ms. Rock's dogs. (R. pp. 153-159, 224). Xumi died in the incident and Ruben was injured. Mr. Freeman regrets that the incident occurred.

Mr. Freeman immediately notified Ms. Rock about the incident. He also paid her $3,000.00 on August 26, 2022. That payment compensated her for her out-of-pocket expenses to fly back from the Bahamas to Charleston, for the cremation bill for Xumi, and for the veterinarian bill for Ruben. Those expenses totaled $1,851.07. The additional $1,148.93 was paid, in good faith, to cover any different or additional expenses resulting from the occurrence. Ms. Rock accepted the $3,000.00 payment. (R. pp. 59-62, 104-110).

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

(a) "… the loss of Xumi and severe injury to Ruben and the resulting loss of companionship, grief, anxiety, and emotional pain and distress." (R. pp. 233, 235, 237).

(b) the "sentimental value" of Xumi and "the loss of her companionship." (R. pp. 234, 235, 237)

(c) "… the diminution in the actual value of Ruben including his sentimental value and loss of his companionship." (R. pp. 234, 235, 237).

(d) "… an award for her grief, anxiety, and emotional pain and distress damages." (R. pp. 234, 236).

(e) "post-traumatic stress." (R. p. 237).

The trial court granted Dog Daze and Freeman's partial summary judgment motion to dismiss the emotional distress and pain and suffering claims. The Court of Appeals affirmed that decision.

ARGUMENT

I. RESPECTFULLY, THE COURT OF APPEALS AND THE TRIAL COURT CORRECTLY RULED THAT SOUTH CAROLNA LAW DOES NOT ALLOW MS. ROCK TO RECOVER THE "EMOTIONAL DISTRESS" DAMAGES UNDER THESE UNDERSTANDABLY UPSETTING FACTS.

The Court of Appeals correctly determined that this issue has been decided under South Carolina law because South Carolina law classifies pets as personal property. The issues raised by Ms. Rock in this appeal have been decided repeatedly adverse to her position by our courts with jurisdiction in South Carolina. As stated by Judge David Norton recently in Madden v. Petland Summerville, LLC, 2022 WL 2806408 (D.S.C. 2022):

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

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

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

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

Further, the general rule is that the measure of damages for injury to personal property is the difference between the market value of the property immediately before and its value immediately after the injury. Duke Power Co. v. Thornton, 303 S.C. 454, 457, 401 S.E.2d 195, 196 (Ct. App. 1991). See also Coleman v. Levkoff, 128

S.C. 487, 490, 122 S.E. 875, 876 (1924) ("the general rule is that the owner of personal property, injured by the negligence of another, is entitled to recover the difference between the market value of the property immediately before the injury and its market value immediately after the injury.)"

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

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

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

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

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

II. SOUTH CAROLINA COURT DECISIONS AND THE DECISION OF THE TRIAL COURT IN THIS CASE ARE CONSISTENT WITH THE TRADITIONAL RULE APPLIED BY MOST JURISDICTIONS.

Courts in most states follow the traditional rule that owners are not entitled to recover non-economic losses for sentimental value or loss of consortium or companionship when a pet is killed through negligence. See e.g. Barking Hound Village, LLC v. Monyak, 787 S.E.2d 191 (Ga. 2016); Irwin v. Degtiarov, 8 N.E.3d 296 (Mass. App. Ct. 2014); Strickland v. Medlin, 397 S.W.3d 184 (Tex. 2013); and Kaufman v. Langhofer, 222 P.3d 272 (Az. 2009).

In the Barking Hound Village, LLC decision, the Supreme Court of Georgia stated that damages based on the sentimental value of a pet to the owners were not recoverable. In reaching that decision, the Court also considered but did not adopt similar arguments presented by the Animal Legal Defense Fund ("ALDF") in this current appeal, stating:

> We note that Amicus Briefs have been filed in this case by numerous entities concerned with the care and treatment of animals both in this State and nationwide. These groups include the Georgia Veterinary Medical Association, American Veterinary Medical Association, American Kennel Club, Cat Fanciers' Association, Animal Health Institute, National Animal Interest Alliance, American Pet Products Association, American Animal Hospital Association, Pet Industry Joint Advisory Council, and The Animal Legal Defense Fund. The primary issue addressed by Amici, however, is whether the law in Georgia should allow for the recovery of damages based on a pet's sentimental value to its owner, a position properly rejected by the Court of Appeals in this case and not disputed by either party on Appeal.

787 S.E.2d at 199.

In Kaufman, the Arizona Appellate Court noted that The Animal Defense League of Arizona, The PETA Foundation, and The Animal Protection and Rescue League filed Amicus Briefs asserting their opinions. The Arizona Court, however, ruled that the owner of the pet could not recover emotional distress damages and loss of companionship for a pet negligently injured or killed.

In Strickland, the Texas Supreme Court considered numerous Amicus Briefs from various animal-welfare groups and law professors. Yet, the Court ruled that an owner of a pet could not recover non-economic damages for loss of companionship because pets are considered personal property and loss of companionship is a component of a loss of consortium claim, a type of damage available only for especially close family relationships. The court further noted "[t]he Texas rule falls squarely within the national mainstream, which cuts overwhelmingly against sentimental-damages recovery. As noted earlier, most other states likewise do not allow pet owners to recover emotional-injury damages." 397 S.W.3d at 192 (quoting footnote 57).

Further, the proponents of the theories espoused by Ms. Rock and ALDF should focus their attentions on the South Carolina Legislature for any statutory change to suit their wishes. See Tenn. Code § 44-17-403 (which allows for compensation "for the loss of the reasonably expected society, companionship, love and affection of the pet" with a cap for non-economic damages at $5,000.00). Finally, any new liability, as suggested by Ms. Rock and ALDF, which Respondents argue is not warranted, should have only prospective application. Hupman v. Erskine College, 281 S.C. 43, 314 S.E.2d 314 (1984).

CONCLUSION

Respectfully, Respondents ask this Court to deny the Petition. Ms. Rock and ALDF seek to change existing and established South Carolina law. Yet, as Professors Hubbard and Felix note in their treatise of South Carolina tort law, limits for claims involving emotional distress serve numerous purposes and act to balance the

concerns about proof and liability. P. Hubbard & R. Felix, The South Carolina Law of Torts (Fifth Edition), pages 41-45. Moreover, South Carolina law on this issue comports with the majority of jurisdictions that have considered the claims made by pet owners and various advocacy groups. The majority rule is that a pet owner is not allowed to recover damages for emotional distress for the loss of a pet. Any change to that rule should be left to specific legislative enactments. Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 673 S.E.2d 423 (2009) (holding decisions to modify policy rest exclusively in the legislature).

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Return with the Court on or about May 6, 2026 complies with Rule 242, SCACR.

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