

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C/A NO: 2015-CP-41-00139

Amy Potts,

Plaintiff,

vs.

McCarty Enterprises, LLC, John Miles
McCarty, Audrey S. McCarty a/k/a Audrey J.
McCarty,

Defendants.

RECEIVED
HEARING FOR DAMAGES
(DEFAULT)

AUG 02 2019

SC Court of Appeals

This matter came before this court for a damages hearing following the September 26, 2016 order of Judge Jocelyn Newman holding the defendants in default.¹ Amy Potts (“Plaintiff”) was represented by Frank Potts, Esq., and Candy Kern-Fuller, Esq. appeared on behalf of McCarty Enterprises, LLC, John McCarty, and Audrey McCarty (collectively “Defendants”). All parties waived venue for the hearing, which was held at the Lexington County Courthouse on April 5, 2019.

PROCEDURAL HISTORY

This cases arises from an incident that occurred on March 25, 2015 where Defendant John McCarty shot and killed Plaintiff’s dog on or about the Defendants’ property line at 103 Kalyn Way in Leesville. Plaintiff filed suit against Defendants in June 2015. Following an order issued by Judge William P. Keesley on April 28, 2016 requiring Defendants to file a responsive pleading to the amended complaint within 15 days and respond to discovery requests within 30 days. Defendants failed to comply with the order, and a second hearing was held in Lexington on September 26, 2016. During the second hearing, Defendants were placed in default by order of Judge Jocelyn Newman and instructed that a hearing for damages would be scheduled. However,

¹ Defendants’ motion to reconsider, dated October 17, 2016, was denied on December 20, 2016 by Judge Jocelyn Newman.

before the damages hearing could be scheduled, Defendants appealed the court's ruling. In an unpublished opinion, the Court of Appeals dismissed the appeal on February 22, 2019 and remitted the case to the circuit court for a damages hearing.²

SUMMARY OF TESTIMONY AND EXHIBITS

The parties appeared before this Court in Lexington on April 5, 2019, for a damages hearing. Upon motion of counsel for Defendants, two of Plaintiff's witnesses were sequestered; Plaintiff's expert, Mary Feaster, was not sequestered.

Plaintiff described her Lake Murray neighborhood and that she remained at home throughout the day and had done so for many years. During those times she was generally alone since other neighbors were either at work or normally came only on weekends. During the day, her constant and only companion was Ruby, a six-year-old Australian Shepherd. She described how, after losing her son, Ross, she had been encouraged to fill her life with as many things as possible to give her comfort and pleasure. Ruby was one of those things that brought her enormous pleasure and provided companionship throughout the day. Plaintiff particularly bonded with Ruby when, at 18 months, Ruby had to have major leg surgery which required the insertion of a metal plate and extensive rehabilitation thereafter. Plaintiff and Ruby were practically inseparable thereafter. Plaintiff told Defendants how much she relied upon the comfort and companionship of Ruby and the extent to which she loved and cared for her as a member of her family. Plaintiff introduced eight photographs of Ruby in the house, around the yard, and on the family's boat. Plaintiff's Exh. 1-8.

Plaintiff stated that the entire incident originated from a series of events, beginning with an unfortunate accident in which Plaintiff ran over Defendants' dog while it was chasing Plaintiff's

² *Potts v. McCarty Enterprises, et al*, Op. No. 19-UP-061 (Ct. App. filed February 6, 2019).

car in the neighborhood. Defendants were out of town at the time of the incident, and Plaintiff spoke with their house-sitter. When Defendants returned, Plaintiff attempted to speak with them but Defendants did not wish to speak to Plaintiff.

Plaintiff was subsequently informed that Defendants would be acquiring chickens and rabbits, and that, in order to protect them, Defendants would shoot any other animals that came into their yard. Plaintiff immediately took measures to install an electric fence in her yard and began training Ruby to insure that she would stay within the confines of Plaintiff's yard. Sometime later, Defendants informed Plaintiff that Ruby has been seen in their yard, and that if this continued, they would take measures to protect their animals, including the use of deadly force against Ruby. Plaintiff discovered that the electric collar was not working and ordered a replacement. Plaintiff retrained Ruby with the new collar and presumed, based on her experiences with the new collar during training, that everything was working correctly and that Ruby would stay within Plaintiff's yard.

Defendants approached Plaintiff again several days later, complaining that two other dogs had entered their yard and killed two of Defendants' emus. Defendants asked Plaintiff for any information she had about those dogs, and Plaintiff provided as much information as she had. The next day, Plaintiff let Ruby outside in the morning. Plaintiff heard a gunshot and saw several dogs running from Defendants' yard. After she heard a second gunshot within 30-60 seconds, Plaintiff got dressed and went outside to look for Ruby. A neighbor then called and informed Plaintiff that Ruby had been shot.

After Ruby's death, Plaintiff was inconsolable. She blamed herself for not being able to save Ruby. In fact, her grief was such that she became unable to function normally on a daily basis. Plaintiff described that the grief she felt when over the loss of her dog was similar to the

grief she experienced when she lost her son. Plaintiff stated that she developed deeply conflicted emotions, exacerbating the guilt and grief she was already suffering. Plaintiff was further experiencing great anger and disbelief over the cruel, intentional, and violent actions of a neighbor, unprecedented in her experience. Plaintiff was so concerned about her inability to adjust to Ruby's killing that she sought and obtained professional counseling for over two years, from 2015 until 2017. A printout of all counseling visits made during that time period is Exhibit Nine.³ She testified that the total costs for those counseling visits was \$2,915. Although Plaintiff still experiences emotional conflict, she has been able to assimilate the event in her life in a more normal manner.

Mary Feaster, a registered nurse and licensed counselor with a master's degree in counseling, testified that she has practiced in South Carolina for several decades. She has spent much of that time working with patients who have suffered grief and loss. During the last decade she has been working in association with Pawmetto Lifeline in Columbia counseling people who are having difficulty with grief over the loss of a pet.

Feaster was qualified by the court to render her opinion as to Plaintiff's experiences dealing with her grief following Ruby's death. Feaster spent several hours with Plaintiff and after reviewing her treatment records for over a two-year period, testified that Plaintiff's extreme emotional distress and suffering over the killing of Ruby was not unusual under the circumstances, especially considering the intentional and violent nature of Ruby's death.

Feaster testified that for some, particularly those who have become greatly attached to a pet like Ruby, the loss suffered can feel very similar to the loss of a family member. She cited to

³ Plaintiff's final offering, Exhibit Ten, listed various annual incomes for Plaintiff's home-based business, with a significant drop in income in 2015. Because Plaintiff did not raise claims for lost income or lost profits, this Court need not address the issue further.

a published 2014 study undertaken by the Massachusetts General Hospital Center for Comparative Medicine called *Patterns of Brain Activation when Mothers View Their Own Child and Dog*.⁴ Feaster stated that, through MRI brain studies, it was demonstrated that the mother-child and mother-dog relationships both share aspects of emotional experience and patterns of brain function which denote a similar emotional connection felt by the mother for both child and dog. She concluded that Plaintiff's extreme emotional distress and suffering over the killing of her closer-than-usual pet was not unexpected under the circumstances, especially when coupled with the loss of her son, and the manner in which Plaintiff viewed the killing of her beloved pet by a neighbor.

Two additional witnesses – a neighbor, Susan Allen, and Plaintiff's daughter, Anna Lacke – testified primarily to their knowledge and observation of the severe, long-lasting, and continuing emotional distress suffered by Plaintiff following Ruby's killing. Their testimony confirmed the suffering the Plaintiff endured, particularly during the first two years after Ruby's death. Allen stated that Plaintiff called her immediately after the shooting and she left her home to check on Plaintiff. When Allen arrived, she learned that Ruby had been shot once in Defendants back yard, and again in the front yard as she was running away. Allen recalled that Plaintiff was so affected by the loss of Ruby that many conversations between Allen and Plaintiff circled back to Ruby, regardless of the original topic of the conversation. Anna Lacke was at work on the day of the incident when Plaintiff called her. When she arrived at the scene, she was shown a photograph of Ruby's body, which she observed to be on or about Defendants' property line near a street sign. Lacke recalled that Plaintiff was inconsolable for a lengthy period of time, and Plaintiff's emotion was triggered nearly every time she saw Defendants' residence across the street.

⁴ Luke E. Stoeckel, Lori S. Palley, Randy L. Gollub, Steven M. Niemi, Anne Eden Evins, *Patterns of Brain Activation when Mothers View Their Own Child and Dog: An fMRI Study*, (Oct. 3, 2014) <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0107205>.

DISCUSSION

Defendants failed to timely respond to the amended complaint and a default was entered on September 26, 2016. Therefore, the allegations of the amended complaint are deemed to be admitted. *See State ex rel Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 488, 334 S.E.2d 528, 520 (Ct. App. 1985) (“entry of an order of default is an admission by the defaulting party of the well-pleaded allegations of the complaint”). In all cases concerning the award of damages, it is incumbent upon the fact-finder to determine the amount based upon the preponderance of the evidence presented. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241, 246 S.E.2d 880, 882 (1978).

A plaintiff in a personal injury action is entitled to recover the reasonable value of medical services that are necessitated by the tortfeasor’s wrongdoing. *See, e.g., Haseldon v. Davis*, 353 S.C. 481, 484, 579 S.E.2d 293, 295 (2003). Plaintiff’s counseling services are related to the acts of the Defendants in causing the death of her dog. Plaintiff paid a total of \$2,915. Further, Plaintiff suffered severe emotional distress for a period of over two years and continues to suffer the effects of Defendants’ wrongful acts to the present day. Plaintiff introduced into evidence many photographs of Ruby; however, no monetary value was placed on her life. For the purposes of this action, the court assigns a nominal value of \$5.00 for the dog. Plaintiff is entitled to recover a total award of \$7,500 for compensatory damages which include the costs of counseling, the emotional distress and the nominal amount for the dog, Ruby.

Finally, Plaintiff’s request for punitive damages is governed by the Supreme Court’s decision in *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991) and the factors set forth therein.⁵ Punitive damages must be proven by clear and convincing evidence. *Hale v. Finn*, 388

⁵ “[T]o ensure that a punitive damage award is proper, the trial court [. . .] may consider the following: (1) defendant’s degree of culpability; (2) duration of the conduct; (3) defendant’s awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the

S.C. 79, 91, 694 S.E.2d 51, 58 (Ct. App. 2010)(citing S.C. Code Ann. § 15-33-135). The dog, Ruby, had been trained and socialized to be in the company of humans. Ruby did not know she was in danger among humans and would have been a defenseless target. Ruby was shot, wounded, and trying to flee to the safety of Plaintiff's home. Plaintiff suffered, not only the actual loss of her beloved companion, but lived with the knowledge of the pain, fear, and probable confusion Ruby suffered before her death.

The acts of Defendants are intolerable in a civilized society. Violent private justice for real or imagined wrongs cannot be tolerated. After consideration of the factors in *Gamble*, this Court finds that the plaintiff is entitled to recover from Defendants, jointly and severally, the sum of \$10,000 in punitive damages.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that Plaintiff, Amy Potts, is granted judgment against Defendants McCarty Enterprises LLC, John McCarty and Audrey McCarty, jointly and severally, in the amount of \$7,500 for actual damages, \$10,000 for punitive damages, and appellate court costs of this action in the amount of \$2,968.96,⁶ for a total of \$20,468.96, together with any circuit court costs of this action.

AND IT IS SO ORDERED.

Signature page to follow

award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) [...] 'other factors' deemed appropriate." 305 S.C. 104, 111-112, 406 S.E.2d 350, 354 (1991).

⁶ The specific amount of costs entered is pursuant to an order from the Court of Appeals. See App. Case No. 2017-0198, Order filed Apr. 15, 2019.

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF SALUDA
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015-CP-41-00139

Amy Potts

McCarty Enterprises, LLC, John Miles

PLAINTIFF(S)

McCarty, and Audrey McCarty

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

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 _____
- 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:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

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AUG 02 2019
SC Court of Appeals

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
Amy Potts	McCarty Enterprises, LLC	\$ 20,468.96
Amy Potts	John Miles McCarty	\$ 20,468.96
Amy Potts	Audrey S. McCarty a/k/a Audrey J. McCarty	\$ 20,468.96

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Judge _____ Court _____ Judge Code 2118 Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____



Saluda Common Pleas

Case Caption: Amy Potts VS McCarty Enterprises

Case Number: 2015CP4100139

Type: Order/Damages

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2019-07-01 12:22:22 page 10 of 10