

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2019-001722

RECEIVED
MAR 06 2020
SC Court of Appeals

Bridgett FowlerAppellant

v.

FedEx Ground Package System, Inc. and James K. Ard d/b/a JMK Logistics
Corporation Respondents

INITIAL REPLY BRIEF OF APPELLANT

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I. ARGUMENT IN REPLY

A. Companion Animals Hold A Distinct And Legally Protected Place In Modern Society That Is Distinguishable From Inanimate Personal Property Such That Owners Should be Duly Compensated for Their Loss.

The status of companion animals in modern society positions them to be valued differently than inanimate personal property. Indeed, the Legislature has taken action to memorialize the fundamental shift in companion animals' status in modern society and the special relationship humans have with companion animals that distinguishes them from inanimate personal property. For instance, the Legislature enacted the Cruelty to Animals Act, § 47-1-10, et seq., which proscribes certain acts and omissions that cause harm to animals. S.C. Code Ann. §§ 47-1-10 to -225 (1976, as amended). Additionally, the Legislature enacted a statute that permits judges hearing domestic abuse cases to issue orders of protection prohibiting the harm of pet animals owned by the victim and his or her family. *Id.* § 20-4-60(C)(8) (1976, as amended) (“When the court has . . . issued an order of protection, it may, in addition . . . prohibit harm or harassment . . . against any pet animal owned, possessed, kept, or held by [persons protected in the order] . . .”). Most recently, the Legislature included a definition of “emotional support animals” as part of Layla’s Law, § 47-3-910, et seq., in order to differentiate emotional support animals from service animals and guide dogs. The Legislature defined emotional support animals as “animals intended to provide companionship and reassurance.” *Id.* § 47-3-920(6).

By enacting these legal protections, the Legislature acknowledges that companion animals hold a distinct and legally protected place in modern society. Similarly, these statutes can be read to indicate that while South Carolina common law may still classify companion animals as personal property, the Legislature recognizes that companion animals hold a greater significance to their owners than typical, inanimate personal property. Contrary to Respondent’s assertions, while the references to Layla’s Law and the additional statutes cited above do not speak directly to the availability of emotional damages to a pet owner in a civil case, these statutes do provide

context evidencing the elevated status of companion animals in modern society and illustrate the Legislature's recognition of companion animals as more than typical personal property. This Court can reasonably deduce from these statutes that a person should be entitled to full compensation, including emotional damages, in a negligence action arising out of the death of their companion animal due to the animal's distinct and legally protected place in modern society.

Further, Layla's Law cannot be read to signal the Legislature's alleged intent to forbid a pet owner from recovering emotional damages in a tort claim arising out of the death of a companion animal. Respondent correctly states that Layla's Law enacts criminal punishment for certain injuries inflicted on service animals and guide dogs. Resp't Br. 9. Specifically, persons who injure or kill, interfere with the use of, or exercise unauthorized control over a guide dog or service animal must pay restitution to the owner of the guide dog or service animal. S.C. Code Ann. § 47-3-970. Restitution, generally and in the context of Layla's Law, is ordered as a part of sentencing to compensate the victim for her economic losses. *See State v. Gulledege*, 326 S.C. 220, 228, 487 S.E.2d 590, 594 (1997) (“[T]he restitution hearing is part of the sentencing proceeding.”); *State v. Morgan*, 417 S.C. 338, 341–42, 790 S.E.2d 27, 29 (Ct. App. 2016) (“When a defendant is convicted of a crime causing pecuniary damages or loss to a victim, section 17-25-322(A) of the South Carolina Code requires that the court hold a hearing to determine the amount of restitution due the victim as a result of the defendant's criminal acts.”). Restitution does not, however, compensate a victim for noneconomic damages, such as emotional distress, anxiety, and mental anguish, which the victim may pursue through a civil action. S.C. Code Ann. § 16-3-1110(B) (“Restitution does not include awards for pain and suffering, wrongful death, emotional distress, or loss of consortium. Restitution orders do not limit any civil claims . . .”).

Respondent's assertion that the Legislature intended to explicitly prohibit a pet owner from recovering noneconomic damages because it did not include noneconomic damages in the restitution statute in Layla's Law is misguided. Resp't Br. 10. Importantly, the Legislature

included in the restitution provision of Layla’s Law that “[t]his article does not affect civil remedies available for conduct punishable under this article.” S.C. Code Ann. § 47-3-970. The inclusion of this provision shows that the Legislature intended victims to have the ability to pursue all available means to achieve full compensation for their losses, including the recovery of available noneconomic damages through tort law. Had the Legislature intended to “explicitly decline[] to allow for a victim to recover any non-economic damages,” the Legislature would have included such a prohibition in the statute. Contrarily, the Legislature included no such prohibition in Layla’s Law or elsewhere in the South Carolina Code prohibiting animal owners from collecting noneconomic damages resulting from the death or injury of their animal. The lack of any prohibition on recovering noneconomic damages within Layla’s law, along with the explicit Legislative statement that Layla’s law does not affect civil remedies available, shows the Legislature’s intent to allow owners of companion animals, guide dogs, and service animals to recover noneconomic damages, including those for emotional distress and anxiety, related to the loss of their animal.

B. This State’s Public Policy Of Fully Compensating Injured Plaintiffs And Incentivizing People To Act With Reasonable Due Care Fully Supports Awarding Emotional Damages To Plaintiff.

Public policy in South Carolina supports fully compensating plaintiffs for injuries, including emotional injuries, and encouraging persons to exercise reasonable care to prevent unnecessary injury to persons and their animals. “Tort law . . . seeks to protect safety interests and is rooted in the concept of protecting society as a whole from physical harm to person or property.” *Sapp v. Motor Ford Co.*, 386 S.C. 143, 147, 687 S.E.2d 47, 49 (2009); *see also Simmons v. Tuomey Reg’l Med. Ctr.*, 341 S.C. 32, 49, 533 S.E.2d 312, 321 (2000) (“ . . . [An] important aspect of tort law [is] the desire to give parties with crucial duties a keen incentive to do everything possible to avoid violating those duties.”); *State v. Tucker*, 273 S.C. 736, 739, 259 S.E.2d 414, 415 (1979) (“The law of negligence and recklessness is the law of the avoidable accident.”) Further, it is

axiomatic that the public policy of South Carolina dictates that persons should be made whole for injuries they incur resulting from another's negligence. See *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375–76 (2005) (“The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he was in before the wrongful injury occurred.”) (citing *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000)); *Barnwell v. Barber-Colman Co.*, 301 S.C. 534, 537, 393 S.E.2d 162, 163 (1989) (“[A]ctual damages are awarded ‘in satisfaction of, or in recompense for, loss or injury sustained’”) (quoting *Bowers v. Charleston & W.C. Ry.*, 210 S.C. 367, 378, 42 S.E.2d 705, 709 (1947)); *Mellen v. Lane*, 377 S.C. 261, 287, 659 S.E.2d 236, 250 (Ct. App. 2008) (“Actual damages are properly called compensatory damages, meaning to compensate, to make the injured party whole, to put him in the same position he was in prior to the damages received insofar as this is monetarily possible.”); *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 312, 594 S.E.2d 867, 874 (Ct. App. 2004) (“The basic measure of actual damages is the amount needed to compensate the plaintiff for the losses proximately caused by the defendant's wrong so that the plaintiff will be in the same position he would have been in if there had been no wrongful injury.”).

Allowing a pet owner to recover emotional damages associated with the death or injury of her pet resulting from another's negligent or reckless acts or omissions will incentivize entities and individuals to exercise reasonable care around others' animals. Respondent asserts that two 120-year-old cases¹ and one unpublished opinion² dictate that the recovery for the loss of a companion animal is limited to the animal's fair market value. Resp't Br. 5, 6. Often, the fair market value of a companion animal is nominal and fails to fully grasp the animal's worth to its owner. By limiting damages for the negligent or reckless death of a pet to the fair market value of an animal, individuals and entities have little incentive to exercise due care to around other

¹ *State v. Langford*, 55 S.C. 322, 33 S.E. 370 (1899); *Richardson v. Florida Cent. & Peninsula R.R. Co.*, 55 S.C. 334, 33 S.E. 466 (1899).

² *Bales v. Judelsohn*, No 2005-UP-509, 2005 WL 7084365 (S.C. Ct. App. Aug. 30, 2005).

people's pets. Rather, greater potential liability encourages individuals and entities to take precautions to ensure that they are exercising due care. *Brown v. Anderson Cty. Hosp. Ass'n*, 268 S.C. 479, 487, 234 S.E.2d 873, 877 (1977), *superseded by statute on other grounds*, S.C. Code Ann. § 33-56-180. To accomplish this key tenet of tort law, emotional damages should be awarded to pet owners for the loss of their pets, especially in cases with facts as egregious as those in Plaintiff's case.

Further, in defining an emotional support animal as an animal intended to provide "companionship and reassurance," the Legislature recognizes that companion animals provide emotional benefits to their owners. When a companion animal is killed due to the negligence of another, the animal's owner can no longer reap the companionship and reassurance that the animal provided and the owner suffers emotional distress. In order to be made whole, the animal's owner must be compensated for the emotional distress caused by the loss of emotional support that her companion animal provided. Indeed, declining to compensate the owner for her emotional distress resulting from the loss of her pet due to another's negligence simply ignores the owner's pain and suffering and leaves her only minimally rehabilitated.

Respondent's argument that the Court should not "insert its own perspective" on this issue, and instead, refer to the Legislature what damages a pet owner may recover in a civil action, Resp't Br. 11, fails to acknowledge that it is precisely the Legislature's decision not to prohibit the recovery of noneconomic damages for the loss of a companion animal that allows the Court to determine this matter. While the Legislature primarily states the public policy of South Carolina by enacting laws, "the courts assume this prerogative . . . in the absence of legislative declaration." *Taghivand v. Rite Aid Corp.*, 411 S.C. 240, 244, 768 S.E.2d 385, 387 (2015) (quoting *Citizens' Bank v. Heyward*, 135 S.C. 190, 204, 133 S.E. 709, 713 (1925)). The Supreme Court of South Carolina has noted that "[p]ublic policy . . . is a dynamic not static concept, and what was valid in the past is not necessarily a valid policy today. Moreover, when the reason for a declared public

policy no longer exists, [the court] should not hesitate to abolish it and the rules which are supported by the policy.” *Simmons v. Tuomey Reg’l Med. Ctr.*, 341 S.C. 32, 41, 533 S.E.2d 312, 317 (2000) (quoting *Fitzer v. Greater Greenville S.C. Young Men’s Christian Ass’n*, 277 S.C. 1, 3–4, 282 S.E.2d 230, 231 (1981), *superseded by statute*, S.C. Code Ann. § 33-55-200, *as recognized in McLeod v. Starnes*, 396 S.C. 647, 723 S.E.2d 198 (2012)).

The Supreme Court of South Carolina held that hospitals owe a nondelegable duty of care to its emergency room patients based on public policy considerations in the absence of declarations from the Legislature on the subject. *Simmons*, 341 S.C. at 50, 533 S.E.2d at 322. In *Simmons*, the Supreme Court began its discussion of public policy considerations by acknowledging that a key aspect of tort law is incentivizing people to exercise due care. *Id.* at 49, 533 S.E.2d at 321. The Court, then, expressly rejected the hospital’s argument that the Legislature should decide whether to impose a nondelegable duty on hospitals because the doctrine at issue was a court-created doctrine that was squarely within the court’s prerogative to alter. *Id.* at 50, 533 S.E.2d at 322. In reaching its holding, one of the primary public policy considerations the Court considered was the “fundamental shift in the role that a hospital plays in our health care system.” *Id.*

Because the Legislature has been silent as to the noneconomic damages recoverable to a pet owner in cases arising out of the death of their pet due to another’s negligence or recklessness, this Court may assume the role of declaring that pet owners may recover emotional damages for the negligent or reckless death of their pet. Much like the doctrine at issue in *Simmons*, the damages available to pet owners in negligence actions have been created and limited by the courts, and therefore, it is well within this Court’s prerogative to define and expand these limits. Additionally, the shift in a companion animal’s status in modern society warrants allowing pet owners to be compensated for their emotional injuries upon the loss of their pet, much like the fundamental shift in a hospital’s role in the health care system warranted the imposition of a

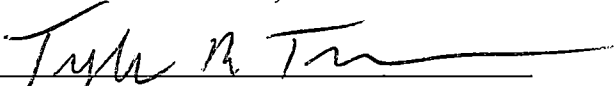
nondelegable duty to patients in *Simmons*. As has been discussed³, companion animals' place in modern society is starkly different than that of companion animals when *State v. Langford* and *Richardson v. Florida Cent & Peninsula R.R. Co.* were decided. Indeed, companion animals have been afforded greater legal protection even since this Court decided *Bales v. Judelsohn*⁴. While limiting damages to the fair market value of companion animals may have been valid at the time *Langford*, *Richardson*, and *Bales* were decided, this limitation is not supported by public policy today, and this Court should not hesitate to abolish this limitation. In conclusion, awarding Plaintiff damages for her emotional injuries sustained upon witnessing the tragic death of her companion animal is supported by this state's public policy of fully compensating injured plaintiffs and discouraging negligent and reckless behavior.

II. CONCLUSION

For the foregoing reasons, the Appellant respectfully requests this Court to reverse the Order of the Circuit Court granting Defendant's Motion for Summary Judgment.

Respectfully submitted,

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March 6, 2020

³ See *supra* Part I.A.

⁴ Section 20-4-60 of the South Carolina Code was amended in 2014 to allow judges to prohibit harm to pets in protection orders in domestic abuse cases. See 2014 Act No. 25 § 1.

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PROOF OF SERVICE

We hereby certify that we have served the Respondents, FedEx Ground Package System, Inc. and James K. Ard d/b/a JMK Logistics Corporation, the Appellant's Initial Reply Brief in the above-captioned matter by electronic mail and U.S. Mail on March 6, 2020 to the below-named parties at their address of record:

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