

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

Wallace H. Jordan, Jr., Special Referee

Appeal No. 2020-000471

**RECEIVED**

**Apr 22 2020**

**SC Court of Appeals**

Steven Carol Miller ..... Respondent,

v.

Gene Carson Jordan ..... Appellant.

**MOTION FOR LEAVE TO FILE  
MOTION FOR RELIEF FROM JUDGMENT  
PURSUANT TO RULE 60(b), SCRPC**

Pursuant to Rule 240, SCACR, Appellant Gene Carson Jordan (“Appellant” or “Defendant” herein) hereby moves this Court for leave to file a Motion for Relief from the Judgment of Special Referee Wallace H. Jordan, Jr., filed February 12, 2020 (“Judgment”). Appellant seeks relief from the Judgment on multiple grounds.

**PROCEDURAL BACKGROUND**

Plaintiff Steven Carol Miller (“Plaintiff”) filed a Complaint in the Chesterfield County Court of Common Pleas on March 18, 2019. (Exh. A, Complaint). Plaintiff alleged he was attacked by Defendant’s dog, a Rottweiler, in the Town of Chesterfield. Plaintiff suffered “multiple puncture wounds” on his right arm, for which he received medical treatment. (Exh. A, Complaint ¶¶ 4-5). Plaintiff’s Complaint contains four causes of action, the first three consisting

of “Negligence, Gross Negligence, Negligence Per Se,” and the fourth titled, “Animal Injury Liability.” In his first three causes of action, Plaintiff simply alleges that, “[a]s a direct and proximate result of the recklessness, carelessness, negligent, willful, wanton, and unlawful acts of the Defendant in the aforesaid unprovoked attack by Defendant’s dog, the Plaintiff has suffered great physical harm and a severe and painful injury to his person.” Plaintiff alleged Defendant was negligent in failing to restrain and/or supervise the dog in violation of the “Code of Ordinances of the Town of Chesterfield and/or County of Chesterfield.” Plaintiff sought actual and punitive damages. (Exh. A, Complaint ¶¶ 6-8).

Plaintiff’s fourth cause of action, Animal Injury Liability, asserts that South Carolina law imposes a duty on a dog owner to not allow the dog “to harm other human beings. If such harm occurs, the Defendant, as controller of the dog, is strictly liable for a person’s injuries and damages.” (Exh. A, Complaint ¶ 10).

According to Plaintiff, the Complaint was served on Defendant on March 19, 2019; however, Defendant failed to file an Answer or other timely response. Accordingly, Plaintiff sought and was granted Entry of Default, and the matter was referred to Wallace H. Jordan, Jr. as a Special Referee for Chesterfield County for a damages hearing. (Exh. B). Although a filed Proof of Service indicates that notice of the damages hearing was mailed to Defendant on September 13, 2019, (Exh. C), he was not present at the September 16, 2019 damages hearing.

The Special Referee issued a Judgment on February 12, 2020 (“Judgment”), finding Plaintiff “brought evidence and testified as to the damage sustained and the resulting chronic pain associated with the traumatic injuries sustained as a result of an attack on his person by a Rottweiler dog belonging to Defendant Jordan.” The Judgment states that unpaid medical bills

incurred by Plaintiff “are in excess of \$15,000.00.” The Special Referee found that “[t]he willful negligence of Defendant in refusing the [sic] restrain a dog exhibiting such aggressive behavior ... exhibits a complete disregard by the Defendant as to the safety and wellbeing of other persons that the dog might come into contact with roaming streets. Such blatant disregard of the protection of the public from such an aggressive dog warrants a high award of damages to Plaintiff. Accordingly, I find that Plaintiff is entitled to actual and/or compensatory damages in the amount of \$833,000.00.” (Exh. D).

Appellant timely appealed the Judgment to this Court. However, based on the arguments set out below, Appellant seeks leave to file a Rule 60(b), SCRPC motion with the circuit court for relief from the Judgment.

### ARGUMENT

Appellant has identified four compelling reasons why relief from the Judgment is proper under Rule 60(b), SCACR. First, although one result of being in default means that a defendant concedes the allegations in a complaint, *e.g.*, *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012), a complaint still needs to contain all of the elements of a cause of action. The Complaint filed on March 18, 2019 in this case contains three causes of action sounding in negligence and one captioned “Animal Injury Liability.” The damages award in the Judgment is based entirely on negligence and does not reference any “Animal Injury Liability” statute.<sup>1</sup>

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<sup>1</sup> The Judgment states that, “[a]s a direct result of the Defendant’s negligence, Plaintiff sustained serious injuries” and caused Plaintiff to miss work, and that Plaintiff incurred “substantial damages as a result of the acts and/or omissions of the Defendant.” The Judgment further finds that “Defendant’s reckless, abrupt, and total disregard of the laws of the State of South Carolina

However, Plaintiff's negligence causes of action are defective in that they fail to assert or allege any duty owed by Appellant to Respondent. *See* (Exh. A, Complaint ¶¶ 6-8). The first element in a negligence claim that a plaintiff must show is that "the defendant owes a duty of care to the plaintiff." *Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 246, 711 S.E.2d 908, 911 (2011). Without first establishing Defendant owed him a duty, there can be no negligence and Plaintiff's negligence causes of action fail. *See Id.*; *see also Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 189, 691 S.E.2d 170, 173 (Ct. App. 2010) ("[a]bsent a duty, there is no actionable negligence"). Furthermore, the only negligent actions alleged by Plaintiff are based on "the Code of Ordinances of the Town of Chesterfield and/or County of Chesterfield." While a statute can be the source of a duty, neither of those Codes creates a duty that supports Plaintiff's negligence causes of action.

"Where a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party." *Doe v. Marion*, 373 S.C. 390, 397, 645 S.E.2d 245, 248 (2007 (rejecting the plaintiff's argument that a statute imposed a duty on the defendant). In other words, "if a statute does not expressly establish civil liability, a duty will not be implied absent evidence the legislature enacted the statute for the benefit of a private party." *16 Jade Street, LLC v. R. Design Constr. Co., LLC*, 405 S.C. 384, 389, 747 S.E.2d 770, 773 (2013). "Generally, 'a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing civil liability.'" *Kubic v. MERSCORP*

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was the direct and proximate cause of Plaintiff's injuries," including Defendant's "willful negligence" and "blatant disregard." (Exh. D).

*Holdings, Inc.*, 416 S.C. 161, 168, 785 S.E.2d 595, 599 (2016), citing *Whitworth v. Fast Fare Markets, Inc.*, 289 S.C. 418, 420, 388 S.E.2d 155, 156 (1985).

Here, neither the County of Chesterfield Animal Services Ordinance (“County Ordinance”) nor Chesterfield Town Code (“Town Code”) creates a cause of action or provides a duty owed specifically to Plaintiff as opposed to the public at large. The County Ordinance provides, in pertinent part, that “[n]o person shall own, keep, possess, or maintain an animal in such a manner as to constitute a public nuisance.” (Exh. E, County of Chesterfield, Animal Services Ordinance, Section 4(A)). The County Ordinance also provides that “[t]he Animal Services Director shall have the authority to determine if an animal is a dangerous or vicious animal using the criteria set forth in S.C. Code 47-3-710,” and requires an owner of a dangerous animal to be registered with CCAS. (Exh. E, Section 8(A) & (B)).<sup>2</sup>

The relevant portions of the Town Code provide that “[n]o dog of dangerous, vicious or fierce propensities or tendencies ... shall be at large at any time within the limits of the town, and it shall be unlawful for the owner or other person having any such dog in his possession or under his control, or in any manner keeping or harboring any such dog to be at large in the town.” (Exh. F, § 3.213(a)). Furthermore, “[i]f any dog bites or attempts to bite any person while such dog is at large, then such dog shall be conclusively presumed to be a dangerous dog and a dog of dangerous propensities and tendencies.” (Exh. F, § 3.213(b)). Thus, neither the County Ordinance nor the Town Code impose a duty that Defendant owed Plaintiff, as opposed to the public at large.

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<sup>2</sup> A person found to be in violation of any provision of the County Ordinance “shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined and/or imprisoned up to the maximum jurisdictional limits of the magistrate’s court.” (Exh. E, Section 10(A)).

However, the Judgment awarded Plaintiff damages based on the negligence-related causes of action alone. Even accepting the allegations in the Complaint as true, because Plaintiff failed to plead all elements of a negligence cause of action, *i.e.*, that Defendant owed him any duty, his negligence causes of action fail as a matter of law. *Doe v. Wal-Mart*, 393 S.C. at 246, 711 S.E.2d at 911; *Burnett*, 387 S.C. at 189, 691 S.E.2d at 173. As a result, the Judgment's award of money damages constitutes an error law, is mistaken<sup>3</sup> and entitles Defendant to relief from the Judgment.

Second, the damages award constitutes legal error because it is based on Defendant's behavior and not on the amount proven necessary to make Plaintiff whole. While the Judgment indicates that "medical bills incurred by Plaintiff, remain unpaid, [and] are in excess of \$15,000," and that Plaintiff "will continue to incur substantial cost associated with the injuries sustained in the attack," it does not award any damages based on these alleged future costs. Instead, the Judgment recites that the "willful negligence" of Appellant in refusing to restrain the dog at issue "exhibits a complete disregard by the Defendant as to the safety and wellbeing of other persons," and concludes, "[s]uch blatant disregard of the protection of the public from such an aggressive dog warrants a high award of damages to Plaintiff." Based on these findings, the Judgment found Respondent was "entitled to actual and/or compensatory damages in the amount of \$833,000.00." *See* (Exh. D). In other words, the Judgment awarded Respondent over 54 times the amount of the incurred medical expenses based on its findings of Defendant's willful negligence and blatant disregard, but not on any evidence of actual damages that have been or

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<sup>3</sup> Notes to Rule 60(b) indicate that one change from former S.C. Code Ann. § 15-27-130 is that the new Rule allows for "relief from other mistakes" not just a mistake committed by the moving party. Rule 60(b), SCRCF, Notes.

will be incurred by Plaintiff, beyond the approximately \$15,000.00. This is not the proper basis for actual and/or compensatory damages and constitutes an error of law.

“The purpose of actual or compensatory damages is to compensate a party for injuries suffered or losses sustained. The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he or she was in before the wrongful injury occurred.” *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000). “Actual damages are awarded to a litigant in compensation for his actual loss or injury .... 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 there had been no wrongful injury.” *Mellen v. Lane*, 377 S.C. 261, 287, 659 S.E.2d 236, 250 (Ct. App. 2008) (listing elements of the actual damage award, including past and future medical expenses, pain and suffering, emotional distress, and loss of enjoyment of life).

In contrast, “[t]he purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton or malicious conduct in the future,” as well as “to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party.” *Id.*, 339 S.C. at 378-379, 529 S.E.2d at 533. The practice of awarding punitive damages originated in principles of criminal law, ‘to deter the wrongdoer,’” and, as a result, “the process of assessing punitive damages is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.” *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 193-194, 638 S.E.2d 667, 670

(2006).<sup>4</sup> In South Carolina, while actual damages must be proven by a preponderance of the evidence, punitive damages must be proven by clear and convincing evidence, “the highest burden of proof known to the civil law ...” *Mellen*, 377 S.C. at 290, 659 S.E.2d at 251.

The only conclusion that reasonably can be drawn from the Judgment is that \$818,000.00 of the award (\$833,000.00 - \$15,000.00 = \$818,000.00) is based on Defendant’s willful negligence and blatant disregard of the protection of the public” and not on Plaintiff’s injuries.<sup>5</sup> In short, the Special Referee committed an error of law by awarding actual compensatory damages based on the Defendant’s conduct, not on the amount required to make Plaintiff whole. This is legal error and entitles Defendant to relief from a legally erroneous and mistaken Judgment.

Third, in addition to the errors of law described above, the award here is excessive given the allegations in the Complaint. Plaintiff alleges he was bitten on the right arm. Although he alleges his injuries became infected and required hospitalization, presumably that treatment was covered by the approximately \$15,000.00 in unpaid medical bills. Here, the Special Referee awarded over three-quarters of a million dollars based on a dog bite to the arm. In *Renney v.*

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<sup>4</sup> One important element of the Due Process review of a punitive damages award is the disparity between actual and punitive damages. Our Supreme Court agrees with the United States Supreme Court that, “few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.” *Id.* 371 S.C. at 196, 638 S.E.2d at 671, quoting *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 424-425 (2003). Here, the amount awarded for the “willful negligence” and “blatant disregard” attributed to Defendant, amounts to \$818,000.00, and is over 54 times the amount of Plaintiff’s medical bills.

<sup>5</sup> To the extent Plaintiff’s “Animal Injury Liability” cause of action is intended to refer to S.C. Code Ann. § 47-3-110, which imposes strict liability on dog owners, the Judgment does not award damages on the basis of strict liability. Furthermore, punitive damages are not available under a strict liability cause of action unless the statute creating the cause of action provides for them. *Barnwell v. Barber-Colman Co.*, 301 S.C. 534, 536-537, 393 S.E.2d 162, 163 (1989). S.C. Code Ann. § 47-3-110 does not provide for punitive damages.

*Dobbs House, Inc.*, 275 S.C. 562, 274 S.E.2d 290 (1981), a breach of contract case involving unliquidated damages, the Supreme Court reversed a default judgment in the amount of \$200,000, explaining “[t]his case is one more in a series of cases which has given the court great concern. They involve large awards in default claims involving unliquidated damages.” The Supreme Court ruled that, even though the evidence supporting the \$200,000 judgment was not before it, “this award is patently so greatly out-of-proportion to the wrongs alleged in the complaint that this court, as a matter of common law ... should not allow the same to stand .... It is generally recognized that courts should closely scrutinize default judgments to prevent harsh results and drastic action. It is the policy of the law to favor the trial of cases on the merits.” *Id.* Defendant is entitled to relief from such an excessive Judgment.

Fourth and finally, the Special Referee committed legal error by not requiring a transcription of the damages hearing. (Exh. G). As noted above, the Judgment was based on both evidence and testimony presented at the September 16, 2019 hearing. Without a transcript of that hearing, there is no way for a reviewing court to determine whether the award is supported by a preponderance of the evidence. Even in default cases, “[t]he amount of damages must be proved by the preponderance of the evidence.” *Renney*, 275 S.C. at 566, 274 S.E.2d at 292; *see also Solley*, 397 S.C. at 203, 723 S.E.2d at 603 (“[t]he amount of damages in a default action must be proved by the preponderance of the evidence”), *citing Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241-42, 246 S.E.2d 880, 882 (1978) (a default judgment must be supported by competent evidence and “must be in keeping not only with the allegations of the complaint and the prayer for relief, but also with the proof that has been submitted”). In *Renney*, the Supreme Court specifically called to the “attention of the trial bench and bar” that Section 14-

15-30 still applies even where a defendant is in default. 275 S.C. at 568, 274 S.E.2d at 293. Section 14-15-30, Duties of Stenographers, provides, “[e]very stenographer so appointed, under the direction of the presiding judge of his circuit shall take full stenographic notes of all proceedings including the rulings and charge of the court in every trial thereat.” S.C. Code Ann. § 14-15-30. The fact that there was no transcription of the damages hearing means that there is no evidentiary support for the excessive damages award in this case, which must be overturned.

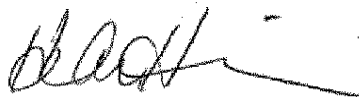
### CONCLUSION

For all the reasons stated herein, Respondent Gene Carson Jordan requests leave to file a Motion for Relief from Judgment with the Circuit Court. Respondent also requests that, while this matter is being resolved by the Circuit Court, all appellate deadlines be stayed.

Respectfully submitted,

MCANGUS GOUDELOCK & COURIE, LLC

April 22, 2020



By: \_\_\_\_\_

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*Attorneys for Appellant Gene Carson Jordan*

ELECTRONICALLY FILED - 2019 Mar 18 3:30 PM - CHESTERFIELD - COMMON PLEAS - CASE#2019CP1300173

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD	)	2019-CP-13-
	)	
Steven Carol Miller,	)	
Plaintiff,	)	
	)	
-vs.-	)	<b>SUMMONS</b>
	)	(Jury Trial Demanded)
Gene Carson Jordan,	)	
Defendant.	)	
_____	)	

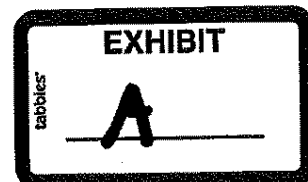
TO THE DEFENDANT NAMED ABOVE:

YOU ARE SUMMONED and required to answer the allegations of the attached Complaint within thirty (30) days beginning upon the first day after you receive service of this Summons. You must serve your Answer to the Complaint upon M.W. Cockrell,III at his office, which is located at 159 Main Street, Chesterfield, SC, 29709, within the timeframe specified above. If you fail to answer the Complaint within the required timeframe, the Plaintiff in this action will apply to the Court for a default judgment seeking the relief demanded in the Complaint and an Order of Default may be rendered against you directing such relief.

Respectfully submitted,

By: /s/ M.W. Cockrell, III  
M. W. Cockrell, III  
Sarah C. Campbell  
Cockrell Law Firm, PC  
159 Main Street  
Chesterfield, South Carolina 29709  
843-623-5911  
mwc@cockrelllawfirm.com  
sec@cockrelllawfirm.com

By: /s/ P. Jason Reynolds  
P. Jason Reynolds  
Samuels Law Firm, LLC  
1320 Richland Street  
Columbia, South Carolina 29201  
803-779-4000  
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD	)	2019-CP-13-
	)	
Steven Carol Miller,	)	
Plaintiff,	)	
	)	
-vs.-	)	<b>COMPLAINT</b>
	)	(Jury Trial Demanded)
Gene Carson Jordan,	)	
Defendant.	)	
_____	)	

NOW COMES the Plaintiff, above named, complaining of the Defendant, herein, and would allege and respectfully show unto this Honorable Court as follows:

1. Plaintiff is a citizen and resident of the County of Chesterfield, State of South Carolina.
2. Defendant is, upon information and belief, a citizen and resident of the County of Chesterfield, State of South Carolina.
3. This Honorable Court has jurisdiction of the parties and the subject matter herein set forth.
4. On or about August 13, 2018, in the County of Chesterfield, State of South Carolina, Plaintiff was traveling on foot in the Town of Chesterfield and was attacked by a Rottweiler belonging to the Defendant when the dog, while being unprovoked, ran over to the Plaintiff, pounced on him, and bit him, leaving multiple puncture wounds on Plaintiff's right arm.
5. Plaintiff was transported by ambulance to the emergency department where he was treated for his injuries. Plaintiff's injuries later became infected and Plaintiff was hospitalized for six days while the infection resulting from the dog bite was treated. Immediately following the attack, the South Carolina Department of Health and Environmental Control investigated the incident and quarantined the offending Rottweiler.

**FOR A FIRST, SECOND, AND THIRD CAUSE OF ACTION  
NEGLIGENCE, GROSS NEGLIGENCE, NEGLIGENCE PER SE**

6. As a direct and proximate result of the recklessness, carelessness, negligent, willful, wanton, and unlawful acts of the Defendant in the aforesaid unprovoked attack by Defendant's dog, the Plaintiff has suffered great physical harm and a severe and painful injury to his person. As a result of this injury, Plaintiff was damaged as follows:

- A. Pre-trial medical expense to Plaintiff;
- B. Post-trial and future medical expense to Plaintiff;
- C. Pre-trial physical pain and suffering, mental pain and suffering, mental anguish and shock;
- D. Post-trial physical pain and suffering, mental pain and suffering, mental anguish and shock;
- E. humiliation and embarrassment;
- F. loss of enjoyment of life.

7. The Defendant was negligent, grossly negligent, wanton, willful, and careless in one or more of the following particulars:

- A. By not restraining the dog in a proper manner as mandated by the Code of Ordinances of the Town of Chesterfield and/or County of Chesterfield;
- B. By failing to restrain and supervise the dog as mandated by the Code of Ordinances of the Town of Chesterfield and/or County of Chesterfield;

8. By reason of the acts of the Defendant as set forth above, the Plaintiff is informed and believes that Plaintiff is entitled to an award of actual damages, together with punitive damages in an appropriate amount, and for attorney's fees and costs of this action.

**FOR A FOURTH CAUSE OF ACTION  
ANIMAL INJURY LIABILITY**

9. The Plaintiff reaffirms and reiterates all the allegations contained herein as if fully repeated and is incorporated herein verbatim.

10. Under South Carolina law, someone who harbors, cares for, and controls a dog, and someone or some entity which controls the use of property where the dog runs at large has a duty not to allow the property's use or a dog staying at or about said property to harm other human beings. If such harm occurs, the Defendant, as controller of the dog, is strictly liable for a person's injuries and damages.

11. The Defendant was negligent, careless, reckless, willful and wanton in that Defendant knew or should have known that:

- A. The dog was not restrained in a proper manner;
- B. the dog should not have been allowed to be unrestrained and unsupervised because the dog was going to harm someone.

12. As a direct and proximate cause and result of the Defendant's aforesaid omissions and acts regarding lack of control of the subject dog, and lack of control over the use and misuse of property by allowing the large, dangerous dog to run at large throughout the property, the Plaintiff has suffered the following personal injuries and damages:

- A. Suffered a severe bite about the arm;
- B. Has suffered and will suffer in the future pain and discomfort;
- C. Has incurred medical expenses for emergency medical treatment and drugs, medical supplies and bandages;
- D. Will require corrective plastic surgery;
- E. Is informed and believes that he will require future medical care and treatment, but will still be left with permanent disfigurement, scarring and damage and will also likely continue to suffer permanent impairment;
- F. That he suffered mental anguish and developed a great fear of dogs and in particular fear of this dog; and
- G. Plaintiff's enjoyment of life has been adversely affected.

13. By reason of the omissions and acts of the Defendant as set forth above, the Plaintiff is informed and believes that Plaintiff is entitled to an award of actual damages, together with punitive damages in an appropriate amount, and for attorney's fees and costs of this action.

WHEREFORE, the Plaintiff prays for judgment against the Defendant, jointly and severally, in actual damages, for punitive damages in an appropriate amount, for attorney's fees and costs of this action, and for such other relief as this Court may deem just and proper.

By: /s/ M.W. Cockrell, III  
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By: /s/ P. Jason Reynolds  
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March 18, 2019  
Chesterfield, South Carolina

ELECTRONICALLY FILED - 2019 May 03 2:28 PM - CHESTERFIELD - COMMON PLEAS - CASE#2019CP1300173

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD	)	Case No.: 2019-CP-13-00173
	)	
Steven Carol Miller,	)	
Plaintiffs,	)	<b>ENTRY OF DEFAULT AND MOTION</b>
vs.	)	<b>FOR ORDER OF REFERENCE</b>
	)	
Gene Carson Jordan	)	
Defendants	)	
_____	)	

**NOW COMES** Plaintiff, Steven Carol Miller, by and through their undersigned attorneys, pursuant to Rule 55(a) of the *South Carolina Rules of Civil Procedure*, and moves the Court for Entry of Default against the Defendant, Gene Carson Jordan.

In support of this Motion, counsel for the Plaintiff shows unto the Court, as evidenced by the Affidavit of Default and restricted delivery certified mail and certificate of service, attached hereto as Exhibit A, that the Defendant, Gene Carson Jordan, was served with the Summons and Complaint on March 20, 2019 and said Defendant has failed to file an Answer or otherwise plead to the claims of the Plaintiff within the time provided for in the *South Carolina Rules of Civil Procedure*, as more fully detailed in the accompanying Affidavit of Default.

Furthermore, pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure* and S.C. Code § 14-11-60 *et. seq.*, Plaintiff moves this Court to Order a hearing be set to determine the damages awarded to Plaintiffs, said damages not being liquidated, and that this matter be referred to Wallace H. Jordan, Jr., Esquire as the Special Referee for Chesterfield County, for the purpose of hearing any and all motions, taking the testimony offered, and reporting his findings of fact and conclusions of law together with any special matters, and with the authority to enter the final ruling herein upon all motions necessary to dispose of this matter.



**COCKRELL LAW FIRM, PC**

/s/ M. W. Cockrell, III  
M. W. Cockrell, III, SC Bar # 69417  
Sarah C. Campbell, SC Bar # 100481  
BARRISTER BUILDING  
*Olde Towne Centre*  
159 Main Street  
Chesterfield, South Carolina 29709  
Phone: 843-623-5911

May 3, 2019  
Chesterfield, South Carolina

and

**SAMUELS LAW FIRM, LLC**

/s/ P. Jason Reynolds  
P. Jason Reynolds  
Samuels Law Firm, LLC  
1320 Richland Street  
Columbia, South Carolina 29201  
Phone: 803-779-4000

May 3, 2019

ATTORNEYS FOR PLAINTIFF

ELECTRONICALLY FILED - 2019 Sep 16 12:45 PM - CHESTERFIELD - COMMON PLEAS - CASE#2019CP1300173

STATE OF SOUTH CAROLINA )  
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 COUNTY OF CHESTERFIELD )  
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 Steven Carol Miller, )  
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 Plaintiff, )  
 )  
 -vs- )  
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 Gene Carson Jordan, )  
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 Defendant, )  
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IN THE COMMON PLEAS COURT  
 FOURTH JUDICIAL CIRCUIT  
 Case No.: 2019-CP-13-00173

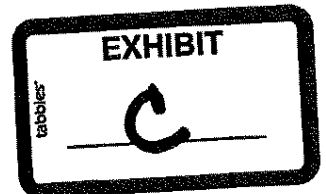
**CERTIFICATE OF SERVICE**

I, the undersigned paralegal of Cockrell Law Firm, PC, do hereby certify that I have served a copy of the foregoing: **Motion for Entry of Default and Order of Reference, Order of Reference, and Notice of Hearing**, in connection with the above-captioned matter by mailing a copy of the same via United States Mail, postage prepaid, to the following address(es):

*Gene Carson Jordan  
 2741 Highway 102  
 Chesterfield, South Carolina 29709*

*Tasha M. Brandon*  
 Tasha M. Brandon

Chesterfield, South Carolina  
 September 13, 2019



ELECTRONICALLY FILED - 2020 Feb 12 10:58 AM - CHESTERFIELD - COMMON PLEAS - CASE#2019CP1300173

STATE OF SOUTH CAROLINA )  
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 COUNTY OF CHESTERFIELD )  
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 Steven Carol Miller, )  
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 Plaintiff, )  
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 v. )  
 )  
 Gene Carson Jordan, )  
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 Defendant. )

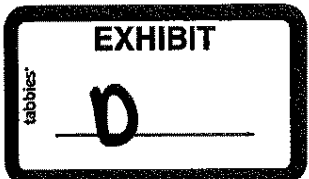
IN THE COURT OF COMMON PLEAS  
 FOURTH JUDICIAL CIRCUIT  
 CASE NO. 2019-CP-13-173

**JUDGMENT**

This matter came before me on September 16, 2019 for a damages hearing. The Defendant, Gene Carson Jordan was property served with notice of today’s hearing but has failed to appear. The Plaintiff, Steven Carol Miller, was present with his attorney, M. W. Cockrell, III of the Chesterfield County Bar. Prior to and at the call of the case, no motions were made by either party.

The action was commenced with the filing of a Summons and Complaint in the Court of Common Pleas of Chesterfield County on March 18, 2019. Plaintiff properly served the Summons and Complaint upon Defendant Jordan via certified mail, restricted delivery, return receipt requested. Defendant Jordan accepted service of the Summons and Complaint on March 20, 2019.

No answer or other pleading was entered by or on behalf of Defendant Jordan. Accordingly, Plaintiff filed a Motion for Entry of Default and Order of Reference on May 3, 2019. On May 6, 2019, the court entered default against Defendant Jordan and an order was issued referring the matter to Wallace H. Jordan, Jr. as Special Referee for Chesterfield County.



The matter is before the Court today to hear and determine the issue of damages owed to Plaintiff.

Plaintiff, Steven Carol Miller, brought evidence and testified as to the damage sustained and the resulting chronic pain associated with the traumatic injuries sustained as a result of an attack on his person by a Rottweiler dog belonging to Defendant Jordan. The Rottweiler belonging to Defendant Jordan aggressively, and without provocation, attacked the Plaintiff. The negligence of Defendant Jordan and his inability and failure to restrain the dog was the direct and proximate cause of the injuries sustained by Plaintiff. As a direct result of the Defendant's negligence, Plaintiff sustained serious injuries that resulted in necessary medical treatment, which caused Plaintiff to be out of work for some time. The Rottweiler dog that attacked Plaintiff was overly aggressive in nature, greatly exceeding the standard of behavior typically exhibited and expected of a dog of such breed. Despite Plaintiff's attempts to avoid the Rottweiler by walking on the opposite side of the roadway, by attempting to instruct the dog to leave him alone and to get away from him, the Rottweiler pursued Plaintiff in an aggressive manner, eventually blocked any means of escape from the escalating situation by Plaintiff, and attacked the Plaintiff, causing puncture wounds and lacerations to the Plaintiff's person. Defendant Jordan knew or should have known that his dog behaved or would behave in an overly aggressive manner and should have taken extra care and precaution to restrain the dog on a leash or inside a fence.


I find from the testimony and evidence presented that Plaintiff did incur substantial damages as a result of the acts and/or omissions of the Defendant. The Plaintiff required emergency medical treatment at McLeod Hospital Cheraw and had to undergo numerous follow up visits with his primary care physician and other health professionals. The medical bills

incurred by Plaintiff, remain unpaid, are in excess of \$15,000.00. I find Defendant's reckless, abrupt, and total disregard of the laws of the State of South Carolina was the direct and proximate cause of Plaintiff's injuries. Plaintiff has lost time at work, has suffered from a total loss of enjoyment of life, and Plaintiff continues to incur substantial debt for necessary medical treatment, all of which he has yet to be compensated for. Further, based on the testimony and evidence presented, the Court finds Plaintiff will continue to incur substantial cost associated with the injuries sustained in the attack. The willful negligence of Defendant in refusing to restrain a dog exhibiting such aggressive behavior, in excess of such behavior one might typically expect from a dog of such a breed exhibits a complete disregard by the Defendant as to the safety and wellbeing of other persons that the dog might come into contact with roaming the streets. Such blatant disregard of the protection of the public from such an aggressive dog warrants a high award of damages to Plaintiff.

Accordingly, I find that Plaintiff is entitled to actual and/or compensatory damages in the amount of \$833,000.00.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Plaintiff be awarded a judgment of actual damages in the amount of \$833,000.00 against Gene Carson Jordan.

**AND IT IS SO ORDERED!**

  
 \_\_\_\_\_  
 Wallace H. Jordan, Jr.  
 Special Referee

Florence, South Carolina  
January 3, 2020

201260000003  
Filed for Record in  
CHESTERFIELD SC  
FAYE SELLERS, CLERK OF COURT  
02-01-2012 At 02:41:47 pm.  
ORDINANCE .00

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHESTERFIELD )

ORDINANCE NO.:11-12-14

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201260000003

**ANIMAL SERVICES ORDINANCE**

**Section 1. Definitions**

Whenever used in this Ordinance, unless a contrary intention is clearly evident, the following terms shall be interpreted as herein defined:

**ABANDONMENT** is the act of giving up possession or control of an animal by its custodian without transferring ownership or control to a responsible person. Abandonment is forsaking, or intending to give up absolutely an animal without securing another owner for it or without providing adequate food, water, shelter, and care for twenty four (24) hours or more.

**ANIMAL** includes all members of the Kingdom Animala (including the classes of mammalian, ayes, reptilian, amphibian, and Pisces) except human beings.

**ANIMAL CONTROL OFFICER (ACO)** includes any person employed by the County of Chesterfield to enforce the Animal Control Ordinances established by the County of Chesterfield and applicable state laws relating to animal control and welfare.

**ANIMAL SHELTER** is a facility funded and operated by the County of Chesterfield to house the county department known as the Chesterfield County Animal Services hereinafter (CCAS). This facility will house animals brought into custody through relinquishment, seizure, or found. The purpose of impoundment is to keep safe the animals, making the animals available for adoption, or, as a last resort, for euthanasia. It shall be open to the public at those times set forth in the Protocols and Procedures or at such other times as may be directed by the County Administrator or his/her designee.

**AT LARGE** describes any animal not on the property or the premises of the owner or guardian and is not under some form of physical control of the owner by means of a leash, cage, carrier, pen, or similar restraining device.

**BOARDING KENNEL** is any establishment available to the general public where dogs or cats are house or trained for compensation by the day, week or a specified or unspecified time period. The term shall not include a kennel where the practice of veterinary medicine is performed if the kennel is covered by the S.C. state law. The terms shall include any boarding facility operated by a licensed doctor of veterinary medicine whether or not this facility is on the same premises as a building or structure but veterinary services are not provided.

**BREEDING KENNEL** is any kennel operated for the purpose of breeding, buying and selling or in any way transferring dogs for non-research purposes.

**CAT** includes any member of the genus and species known as Felis catus (including cougars, bobcats, lions, tigers, or any other cat). Domesticated cats are members of the feline family that are customarily regarded as domesticated, such as house cats, but excluding lions, tigers, cougars and bobcats, among others.



**CHIPPING** is the placement of a microchip under the animals skin for identification of owner and contact information.

**DANGEROUS ANIMAL** has the same meaning as set forth in S.C. Code § 47-3-710, as amended, and is subject to the exceptions set forth in Chapter 3 of Title 47.

**DOG** is the genus and species known as *Canis familiaris*. It includes any domesticated member of the canine family, and excludes non-domesticated canines, such as coyotes, wolves, and wolf-hybrids for the purpose of this document.

**DOMESTIC ANIMAL** is any equine animal or bovine animal, sheep, goat, pig, poultry, bird, fowl, confined hares, rabbits, mink, or any wild or semi-wild animal maintained in captivity.

**FERAL** is any animal that is untamed or wild by nature or any animal that has reverted to a wild state in order to survive.

**FOOD** is nutrition in an amount and quality necessary to sustain flesh in adult animals or permit normal growth in younger animals that have not reached maturity.

**IMPOUNDMENT** occurs when custody is assumed by any of the listed officials and the animal is detained at the Animal Shelter.

1. An ACO;
2. A representative of CCAS;
3. An officer from the Chesterfield County Sheriff's Office;
4. An officer of the police departments representing any of the municipalities/towns in
5. Chesterfield County;
6. An Officer from the South Carolina Highway patrol; or
7. Any other duly commissioned law enforcement officer or state constable.

**INOCULATION AGAINST RABIES** is the injection of an anti-rabic vaccine as approved by the Department of Health and Environmental Control and by the U.S. Department of Agriculture, Veterinary Biologics Division (S.C. Code 47-5-20 (3)).

**NUISANCE** is any animal that disturbs the rights of or threatens the safety of any member of the public, or interferes with their utilization and enjoyment of their property, including, but not limited to, any animal that habitually chases after persons or vehicles, or which habitually causes serious annoyance to a neighboring resident so that it interferes with the reasonable use and enjoyment of property including other domestic pets or livestock.

**OWNER/CUSTODIAN** is any person, partnership, group, corporation, or other legal entity:

1. Having a property right in an animal;
2. Keeping or harboring an animal or having it in his/her/its/their care or acts as its custodian;  
or
3. Permitting an animal to remain on or about any premises occupied or owned by him/her/it/them.

The resident or property owner where an animal is found is presumed the owner of the animal if he/she/it/they harbor the animal in his/her/its/their custody and provide care for it, or if he/she/it/they allow or encourage it to remain on their premises.

**PET** is any animal kept for pleasure rather than utility.

**RESTRAINT** means any animal that is on the premises of its owner or guardian, or accompanied by its owner or guardian and is under the physical control of the owner by a leash or a similar restraining device.

**TETHERING** is the use of a chain, cable, rope, running line, harness or similar device to attach an animal to a stationary object.

**TATTOOING** is the act of marking an animal in permanent ink for identification of owner.

**VETERINARY HOSPITAL** is an establishment maintained and operated by a licensed veterinarian for surgery, diagnosis, and treatment of diseases of animals.

**WATER** is adequate water available to the animal in a clean container or dish of some kind; a 24-hour supply of clean water for that particular animal.

**WILD ANIMALS** are all animals commonly accepted as being "wild" including, but not limited to:

1. Alligators and crocodiles;
2. Bears;
3. Bobcats, tigers, leopards, lions, and panthers;
4. Coyotes, foxes, wolves, including the offspring of one of the foregoing with a domestic dog wherein the proportion of wild animal exceeds one-eighth;
5. Porcupine;
6. Non-human primates;
7. Raccoon;
8. Skunks;
9. Venomous snakes, constrictor snakes;
10. Venomous lizards;
11. Weasels, except ferrets; and
12. Members of the cervidae (deer) family.

## Section 2. Animal Cruelty

A. It will be unlawful for any person to cause physical pain, suffering, or death to any animal, whether by any act, omission, or neglect, such acts constituting cruelty to animals. No person shall beat, cruelly treat, torment, overload, overwork, abuse, or intentionally commit an act of cruelty or torture that causes an animal to suffer serious injury or death or that inflicts or subjects an animal to unreasonable physical pain, suffering, or agony, or fails to provide a constant supply of fresh water and appropriate food stuff.

### B. Prohibited Acts of Cruelty.

Prohibited acts of cruelty include:

1. Overloading, overdriving, overriding, torturing or tormenting, mutilating or disfiguring any animal, including but not limited to all beasts of burden (horses, donkeys, mules, cattle, goats, swine, and sheep).
2. Driving or working an animal that is unfit for labor.
3. Failing to provide proper veterinary attention to an animal that is maimed, diseased, disabled, or infirm in any manner.
4. Leaving an animal confined or unconfined in any place, no matter what time of day, without proper shelter, food, or water or in an unsafe environment. This can include, but is not limited to, leaving a pet in a vehicle without adequate ventilation or in excessive heat or cold,

leaving them chained or tied up with no access to shelter, food, or water, or leaving them in a kennel without access to shelter, food or water.

5. Encouraging animals to fight, attack, or harm each other. This can include but is not limited to dog fighting of any kind, rat baiting, ber fighting, cock fighting and pitting of any animal or reptile against another animal(s) or reptile(s), including rats, bears, cats, wildcats, lions, tigers, bulls, goats, foxes, opossums, raccoons, swine, snakes, alligators, and the like.
6. No owner of an animal shall abandon it.
7. No person shall expose any known poisonous substance, whether mixed with food or not, such that it may be eaten by any animal.
8. No owner shall confine any animal in a motor vehicle or other enclosed containment in such a manner that places it in a potentially life threatening situation. An ACO or other law enforcement officer, who has probable cause to believe this section is being violated and an animal may be in danger shall have the authority to enter such motor vehicle or containment by any reasonable means to protect the health and safety of an animal. These actions may be taken only after making a reasonable effort to locate the owner or other responsible person responsible, and, after doing so, said officer shall not be liable for any damage caused by said entry.
9. Acts or omissions constituting violations of S.C. Code § 16-27-10, et seq., known as "The Animal Fighting and Baiting Act".

#### C. Violations

1. Persons reporting violations of this chapter shall provide identification, which shall remain confidential to the agency receiving the report unless such report provides for the release of the name or subsequent release of the name is formally required by rules of evidentiary hearings or a judge in a court having jurisdiction in the matter.
2. Nothing in this chapter shall be construed to limit any person from bringing a private cause of action against the owner of a pet or animal.
3. Nothing in this chapter shall limit and ACO from also taking immediate action, which includes immediate seizure of the pet or animal, when it is deemed to be in the best interest of the pet or animal.

### Section 3. Tethering of Dogs

- A. Tethering shall not include the use of an appropriate leash to walk a dog.
- B. It shall be unlawful for any person to tether, fasten, chain, tie, restrain or otherwise cause a dog to be fastened, chained, tied or restrained, without limitation to houses, trees, garages, or other stationary or immobile objects by means of a chain, cable, rope, running line, harness or other physical restraint for the purpose of confinement, except in circumstances where all of the following requirements are met:
  1. The tether must be attached to a properly fitting harness or collar and NOT directly to the dog's neck. The tether must be at least 15 feet in length; positioned so that at its greatest length it prevents injury, strangulation or entanglement with any obstruction, man-made or natural or another animal; and employ a swivel on both ends of the tether to minimize tangling.
  2. The tether assembly or attachments shall not exceed one-tenth of the dog's body weight so as to inhibit the free movement of a dog within the area tethered.
  3. A dog is not to be tethered outside during extreme weather including thunderstorms, floods, temperatures.
  4. A tethered dog must have access to adequate shade, shelter, food, and water.

5. The dog must be at least 15 feet from the edge of any public road or sidewalk and not in an area open to teasing or attacks, or where the ground is continuously wet or muddy. The dog must be tethered in a manner that will prevent the animal from leaving any part of the owner's property.
6. The dog must be 6 months of age or older.
7. The dog must be in good health and not injured.
8. If there are multiple dogs, each dog must be tethered separately with sufficient space placed between the dogs to ensure that there is no contact with another tethered animal.

#### **Section 4. Public Nuisance**

A. No person shall own, keep, possess, or maintain an animal in such a manner as to constitute a public nuisance.

#### **Section 5. Impoundment or Seizure**

A. Any pet or animal impounded with a severe, contagious, or life-threatening medical condition may be isolated, treated by a veterinarian, or immediately euthanized after evaluation.

B. Custody and disposition of pets or animals impounded or seized as a result of an alleged violation of this Ordinance shall be pursuant to the procedures set forth in S.C. Code Ann. § 47-1-10, et seq.

#### **Section 6. Redemption of Stray or Abandoned Animal**

A. The owner shall be entitled to resume possession of a stray or abandoned animal that has been impounded within five (5) days of impoundment upon compliance with all requirements as set forth below. If all requirements are not met within the five-day period, the pet or animal shall be deemed abandoned and shall immediately and irrevocably become the property of CCAS to adopt or be humanely euthanized.

B. Identifiable animals or pets, not appearing to be abandoned or feral, shall be held for five days. Thereafter such animal or pet shall become the property of CCAS and may be placed for adoption, moved to an animal rescue, or euthanized.

C. For the purposes of this section, it shall be deemed that, the owner is notified when the ACO or CCAS staff makes telephone contact with the owner, or notification is left on the door of the best known address of the owner. Such notification shall at a minimum identify the animal, advise the owner of how and where to redeem the animal, and indicate that if, within the five-day time period from the date of impoundment, the owner does not pay all redemption fees and redeem the animal, then the animal shall become the property of CCAS.

1. The owner must identify the animal by giving detailed verbal, written, photographic, or other acceptable description of the animal to the ACO or CCAS staff.
2. The owner of any pet that has been impounded under the provisions of this Ordinance, and which has not been found to be dangerous or vicious, shall have the right to redeem such pet at anytime within five (5) days upon payment of the following:
  - (a) Impoundment fine of \$25.00 per animal for first impoundment; \$50.00 per animal for second impoundment; \$100.00 per animal for third and subsequent impoundments.
  - (b) A boarding fee of \$5.00 per day per animal.
  - (c) Veterinary costs and/or medically necessary costs if CCAS incurred any expenses for the medical care of the animal while it was impounded in the custody of the dept.

- (d) Fines and fees collected for impoundment shall be turned over in accordance with established county policies, to the Chesterfield County Treasurer. All funds collected due to impoundment will be used to support the needs of the CCAS.
- (e) Any pet or animal which have been impounded under the provisions of this section three (3) or more times shall be presumed to constitute a nuisance.

## **Section 7. Public Animal Adoption Policies**

**A. General:** Adoptions are not sales of animals and the offer of availability for adoption is not an offer to sell any animal.

1. There will be an adoption fee for any animal adopted from the CCAS in an amount to cover reduced cost spay/neuter, all inoculations, and chipping or tattooing. Any animal adopted from CCAS shall be spayed/neutered and may be chipped/tattooed prior to leaving the shelter. Adoption fees are charged to reimburse the county for its actual average expense for taking custody of, examining, caring for and providing shelter to the animal during the period the animal is offered for adoption.
2. Animals adopted from the CCAS are adopted on an as-is basis with no guarantee, neither written nor implied, as to the temperament, mental, or physical condition of the adopted animal.
3. Each animal should be examined by a veterinarian of the adopter's choice and at the adopter's expense, any findings as to the health of the animal are between the veterinarian and the adopter, and no veterinarian acts as the agent of the county in such matters, nor is anyone authorized by the county to make the veterinarian the agent of the county in such matters.
4. All animals unwanted by their owners may immediately go up for adoption upon relinquishment to the CCAS, if they are deemed generally healthy and of a good disposition. All strays, after their 5-day hold, may also be adopted out if they are healthy and determined to be of good temperament.
5. CCAS reserves the right to refuse adoption to any person/group that CCAS staff deems inappropriate.

### **B. Personal Adoption of Dogs and Puppies**

1. All dogs and puppies considered adoptable may be adopted out to suitable homes.
2. Interested persons must complete and adoption application providing their name, address, phone numbers, and what type of environment the dog will live in (inside/outside, kennel, chain, etc.).
3. A minimum fee of \$100 will be charged for each dog or puppy adopted from CCAS. This cost will include the cost of spaying/neutering, rabies vaccination, DHPP vaccination (distemper, adovirus, parvovirus, and parainfluenza), kennel cough, de-worming with pyrantel. Heartworm test, as well as chipping or tattooing, may be included with the cost to be born by the adopter.

### **C. Personal Adoption of Cats and Kittens**

1. Interested persons must complete and adoption application providing their name, address, phone numbers, what type of environment the cat will live (inside/outside).
2. A fee of \$100.00 will be charged for each cat or kitten adopted from the animal shelter. This cost will include a feline leukemia test (Assure Antigen Test Kit), cost of spay or neuter, de-worming with pyrantel pamoate, rabies vaccination, and RCP-leukemia vaccination (rhinotracheitis, calici, panleukopenia, feline leukemia) and micro chipping if the feline will be outdoors.

**D. Animal Rescue Agency/Groups External to Chesterfield County Adoption Policies**

1. Animal rescue agencies/groups can participate in a reduced fee adoption (the amount of the fee to be set by administrative policy) of animals provided the following requirements are met by the rescue agency/group:
  - (a) Documentation that identifies the rescue agency as a non-profit organization with the South Carolina Secretary of State.
  - (b) The rescue will provide the county with the condition and location of the animal and provide the county with the final disposition of each animal.
  - (c) The name, address and telephone number of the non-profit rescue agency.
  - (d) The address of where the animal(s) will be housed while the rescue agency attempts to find a third-party adopter.
  - (e) A list of names of members of the non-profit rescue agency who are authorized to sign for and pick up animal(s).
  - (f) All animals adopted from CCAS are on "as is" condition and CCAS makes no guarantee, neither written nor implied, as to the health, condition or temperament of any animal.

**Section 8. Dangerous Animals**

A. The Animal Services Director shall have the authority to determine if an animal is a dangerous or vicious animal using the criteria set forth in S.C. Code § 47-3-710, as amended.

B. CCAS must notify the owner/custodian of a dangerous animal in writing that the animal has been determined to be a dangerous animal and must be registered with CCAS as such pursuant to S.C. Code § 47-3-760(E). Pursuant to said state law, the registration application must be accompanied by proof of liability insurance or surety bond of at least \$50,000.00 insuring or securing the owner for personal injuries inflicted by the dangerous animal. Additionally, the owner shall notify CCAS if any changes occur with the following:

- (a) Ownership of the animal;
- (b) Name, address and telephone number of the new owner/custodian;
- (c) Address change of the owner/custodian or any change in the location in which the animal is housed;
- (d) Any change in the status of the animal; or
- (e) Death of the animal.

C. If the animal is outdoors and attended, the animal shall be muzzled, on a leash or under the control of the owner/custodian.

D. If the animal is outdoors and unattended, the animal must be locked in an escape-proof kennel. Minimum standards shall include the following:

- (a) Fencing materials shall not have openings with a diameter of more than two inches; in the case of a wooden fence, the gap shall not be more than two inches.
- (b) Any gates within such pen or structure shall be padlocked and of such design to prevent the entry of children or the escape of an animal.
- (c) The required pen or structure shall have secure sides and a secure top. If the pen or structure has no bottom secured to the sides, the sides shall be imbedded into the ground or concrete.
- (d) The pen or structure shall protect the animal from the elements.
- (e) A universal sign denoting a dangerous animal shall be displayed on all four sides of the pen or structure.

### Section 9. Owner Relinquishment

- A. In the case of an owner relinquishing a pet or animal to CCAS, the owner shall be required to:
1. Complete a relinquishment form, which shall include at least the following information, if available:
    - (a) Name, address and phone number of relinquishing owner
    - (b) Name, age, breed, sex, and spay/neuter status of pet or animal
    - (c) Veterinary records
    - (d) Any behavioral or medical problems of pet or animal
  2. Immediately upon relinquishment procedures, the pet or animal shall become the property of the CCAS and may be placed for adoption or euthanized.

### Section 10: Violations and Penalties

A. Any person who violates the provisions of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined and/or imprisoned up to the maximum jurisdictional limits of the magistrate's court. Each day a violation of any provision of this Ordinance occurs shall constitute a separate offense.

B. Additionally, the court may order a person charged with any violation of this chapter to provide necessary food, water, shelter, and care for any animal that are the basis of the charge without the removal of the animal from their existing location and until the charges against the person are adjudicated. Until a final disposition is rendered, any ACO or any law enforcement officer may be authorized by the court to make regular visits to the place where the animal is being kept to ascertain if the animal is receiving necessary food, water, shelter, and care. Nothing in this section prevent any ACO or law enforcement officer from applying for a warrant under this section to seize any animal being held by the person charged pending adjudication of the charges if it is determined the animal are not receiving the necessary food, water, shelter, or care.

### Section 11: Severance

A. If any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or invalid by the judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, and the Ordinance shall remain in full force and effect.

### Section 12: Repeal

A. Any portions of Chapter 90 of the Chesterfield County Code (Ordinance Number 98-99-06) which are inconsistent with this Ordinance are hereby repealed.

FIRST READING: November 2, 2011

SECOND READING: January 11, 2012

PUBLIC HEARING: February 1, 2012

THIRD READING AND ADOPTED THIS 1st DAY OF FEBURARY, 2012.

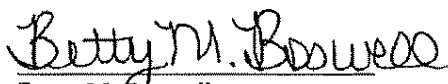
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CHESTERFIELD COUNTY, SC

  
\_\_\_\_\_  
J. Matthews Rivers, Chairman  
Chesterfield County Council

(SEAL)

ATTEST:

  
\_\_\_\_\_  
Betty M. Boswell,  
Clerk to County Council

## CHESTERFIELD TOWN CODE

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## CHAPTER 3. ANIMALS

## ARTICLE I. IN GENERAL

3.101. DEFINITIONS.

In this Chapter, the word "animals" shall mean and include all brute creatures and domestic pets. "Dog" shall include all members of the canine family four months or more of age, including foxes and other canines. All regulations shall apply within the municipal limits.

(1976 SC Code 47-1-10 and 47-5-20) (Dog defined. 1976 SC Code 47-3-10)

3.102. PENALTIES.

Except as otherwise provided herein, the violation of any provision of this Chapter shall be a misdemeanor and, upon conviction thereof, the penalty shall be a fine of not more than five hundred dollars (\$500.00) or imprisonment of not more than thirty (30) days.

(1976 SC Code 5-7-30) (Ord.#101. 9-19-93)

3.103. CRUELTY TO ANIMALS.

It shall be unlawful for any person to inflict unnecessary cruelty upon any animal or to ride, drive or work it when sick or unfit for work, to override, overwork, overload, ride when overworked, torture, torment or to beat or whip cruelly any animal, and it shall be unlawful for any such person owning or having charge of any animal to fail to provide it with proper food, drink, shelter or protection from the weather.

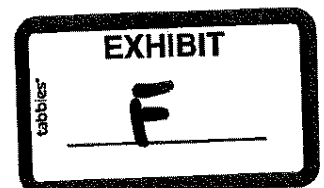
(1976 SC Code 47-1-40)

3.104. DEAD ANIMALS. DISPOSAL.

It shall be unlawful for any person who has possession, ownership or custody of any animal that may die from any natural or other cause to permit such dead animal to remain for a longer period than may be necessary under the circumstances to remove such dead animal, and under no condition longer than twenty-four hours. Any dead animal not so removed within twenty-four hours shall be removed at the expense of the person in whose possession the animal died.

(1976 SC Code 47-1-70 and 47-1-80)

(Editor's Note. In addition to South Carolina statutes, this Chapter derives generally from an ordinance of 6-12-80.)



## CHESTERFIELD TOWN CODE

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**3.105 RESISTING OR HINDERING POLICE AND OTHERS.**

It shall be unlawful for any person to resist, hinder or oppose any police officer or any other person acting under their authority in the performance of any of the duties imposed upon them by this Chapter.

(1976 SC Code 47-13-120)

**3.106 DRIVING AND RACING ANIMALS.**

It shall be unlawful for any person to drive horses or other animals at a dangerous speed or to race horses or other animals on the public streets.

(1976 SC Code 47-1-40 and 47-1-50)

**3.107 DOMESTIC ANIMALS AT LARGE. PROHIBITED.**

It shall be unlawful for the owner or manager of any domestic animal of any description willfully or negligently to permit any such animal to run at large beyond the limits of his own land or the lands leased, occupied or controlled by him. Any owner, manager or person violating the provisions of this section shall be subject to a fine for each offense of not more than twenty-five dollars or to imprisonment for not more than twenty-five days.

(1976 SC Code 47-7-110) #2007-3

**3.108 DISEASED ANIMALS RESTRICTED.**

It shall be unlawful for any person to bring or keep within the town any horse or other animal having the disease known as glanders, farcy or other contagious or infectious disease, or any cow having a disease known as tuberculosis; or to sell any milk, butter or other produce from any cow or other animal affected with such disease or other contagious or infectious disease within the limits of the town.

**3.109 SQUIRRELS.**

It shall be unlawful for any person to kill a squirrel within the corporate limits; provided, however, squirrels which damage property, such as by entering and damaging lofts of houses, may be exterminated upon proof to town officials such damage. Provided, further, that this exception shall not apply to the annoyance of squirrels in yards or eating pecans from trees or from the ground.

**3.110 REMOVAL OF ANIMAL EXCREMENT.**

- (a) The owner or custodian of an animal shall immediately collect, remove and dispose of all excrement deposited by such animal on any public property, street, right of way, sidewalk, public way, playground, or upon private property owned by others. The owner or custodian shall place the excrement in a plastic bag or other suitable container and deposit the collection in an approved waste receptacle.

- (b) Violation of this section is a misdemeanor punishable pursuant to section 7.301.

Ordinance #2011-1

## CHESTERFIELD TOWN CODE

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## ARTICLE II. DOGS

(1976 South Carolina Code, Title 47, Chapter 5)

3.201. DEFINITIONS.

The following words, terms and phrases, when used in this Article, shall have the following meaning:

1. "Person" shall mean and include any person, firm, partnership, association, corporation, company, or organization of any kind.

2. "Private Premises" shall mean and include any dwelling, house, structure, or building designed or used either wholly or in part for private residential or business purposes whether inhabited or temporarily or continuously uninhabited or vacant.

3. "Pet" shall mean all domestic animals, including but not limited to dogs and cats and is intended to mean both male and female. (See Section 3.101 hereof for definition of dogs and animals.)

4. "Owner" shall mean any person, persons, firm, association or corporation owning, keeping, or harboring a domestic animal.

5. "At Large" shall mean off the premises of the owner.

3.202. ANIMAL HOSPITALS AND VETERINARIANS EXCLUDED.

The provisions of this Chapter shall not apply to animal hospitals or kennels which now, or hereafter, may be maintained and operated by licensed veterinarians on locations approved by the County Board of Health.

3.203. NOISY PETS PROHIBITED.

It shall be unlawful for any owner of a pet, or any person who has custody thereof, to allow said pet to make a noise to such an extent as to disturb his neighbor's peace. Such disturbance shall constitute a public nuisance.

3.204. CONDITION OF DOGS AND PENS.

All owners of dogs shall keep dog pens in a sanitary condition. No owner shall be permitted to keep a diseased, mangy, badly sick or injured dog or other pet unless the same shall be under the care of a registered veterinarian.

## CHESTERFIELD TOWN CODE

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3.211. RESERVED.3.212. BITCHES IN HEAT.

It shall be the duty of the owner, or any person having the control of any bitch to securely confine her and keep her concealed from view while she is in heat. It shall be the duty of any policeman, if any such bitch is found running at large or in a public place, to notify the owner thereof or, if no owner can be found, to impound such bitch at the County Pound.

3.213. DANGEROUS, VICIOUS DOGS AT LARGE PROHIBITED.

a. No dog of dangerous, vicious or fierce propensities or tendencies, whether vaccinated against rabies or not, shall be at large at any time within the limits of the town, and it shall be unlawful for the owner or other person having any such dog in his possession or under his control, or in any manner keeping or harboring any such dog to be at large in the town.

b. If any dog bites or attempts to bite any person while such dog is at large, then such dog shall be conclusively presumed to be a dangerous dog and a dog of dangerous propensities and tendencies.

c. If any dog attacks or attempts to attack any other dog or other animal while such dog is at large, or chases or otherwise attempts to catch a person, then such dog shall be conclusively presumed to be a vicious dog and to have vicious propensities and tendencies.

## CHESTERFIELD TOWN CODE

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3.205. RABIES INOCULATION REQUIRED. TAGS REQUIRED.

As required by Section 47-5-60 of the 1976 South Carolina Code, as amended, all dogs within the corporate limits shall be inoculated, wear a collar on which is attached metal tags as proof of said inoculation and owners of said dog shall adhere to all rules and regulations of the County Health Department.

3.206. TAMPERING WITH DOG COLLAR PROHIBITED. TAGS TO BE CURRENT.

It shall be unlawful for any person wrongfully to remove the collar from any dog or to deface the same. Tags shall be for current year.

3.207. DUTY OF OWNER DETECTING RABIES SYMPTOMS.

It shall be the duty of any person owning, or having in his possession, any dog or animal which the person knows, or should have reason to know, has developed any symptoms of rabies to immediately notify the Police Department and County Health Department of such condition and to immediately confine the dog or animal securely in such a manner that there will be no opportunity for it to come into contact with other animals and keep it segregated and confined until notification by either department of proper disposition. The dog, or other animal, shall be kept under observation for a period of two (2) weeks at the owner's expense.

3.208. POLICE AUTHORITY WHEN RABIES SUSPECTED.

The Police Department shall have the power, and it shall be its duty, to prevent the spread of rabies, to order all dogs or other domestic pets locked up, restrained by a leash or muzzled, or shall order all owners or keepers of same to take such preventive measures as the police may deem necessary, or both.

3.209. FAILURE TO COMPLY WITH POLICE ORDERS.

In the event any owner or keeper of any dog or domestic pet shall knowingly fail or refuse to comply with an order of the Police Department, as authorized herein, it shall be the prerogative of the department to seize the dog and take whatever steps it deems appropriate which are not inconsistent with state laws governing the duties of the County Health Department in like situations.

3.210. DUTY OF POLICE DEPARTMENT TO DESTROY RABID ANIMALS.

When the determination has been made that any animal has rabies or exhibits the symptoms of rabies, it shall be the duty of the Police Department to destroy same.

**Helen Hiser**

---

**From:** Trey Cockrell <mwc@cockrelllawfirm.com>  
**Sent:** Monday, March 23, 2020 6:07 PM  
**To:** Doc Morgan; 'Wallace Jordan'; Gail Inzero  
**Cc:** Sarah Campbell; Helen Hiser  
**Subject:** RE: Steven Carol Miller v. Gene Carson Jordan (Claim No.: SC19-0100270)

We did not have a court reporter.

Thanks,

~Trey

M.W. Cockrell, III  
Cockrell & Campbell, P.C.  
159 Main Street  
Chesterfield, South Carolina 29709  
843-623-5911  
[mwc@cockrelllawfirm.com](mailto:mwc@cockrelllawfirm.com)



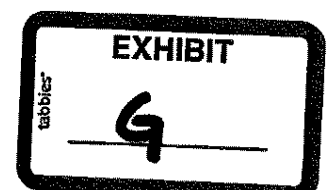
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**From:** Doc Morgan  
**Sent:** Monday, March 23, 2020 5:32 PM  
**To:** 'Wallace Jordan'; Gail Inzero  
**Cc:** Sarah Campbell; Trey Cockrell; Helen Hiser  
**Subject:** RE: Steven Carol Miller v. Gene Carson Jordan (Claim No.: SC19-0100270)

Ok. Thanks

---

---





**Doc Morgan, Attorney**

[dmorgan@mgclaw.com](mailto:dmorgan@mgclaw.com)

55 E. Camperdown Way Suite 300

Greenville, SC 29601

Main:864-239-4000 | Direct:864-239-4028 | Fax:864-242-3199

VCARD | BIO

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---

**From:** Wallace Jordan <jordanlawsc@gmail.com>

**Sent:** Monday, March 23, 2020 4:28 PM

**To:** Gail Inzero <gail.inzero@mgclaw.com>

**Cc:** sec@cockrelllawfirm.com; mwc@cockrelllawfirm.com; Doc Morgan <dmorgan@mgclaw.com>; Helen Hiser <helen.hiser@mgclaw.com>

**Subject:** Re: Steven Carol Miller v. Gene Carson Jordan (Claim No.: SC19-0100270)

to the best of my recollection, there was not a court reporter. Plaintiff's counsel may be able to confirm or provide other information.

Thanks,  
Jay

Kim O. Sawyer, Paralegal

WALLACE H. JORDAN, JR., P.C.

Wallace "Jay" Jordan, Jr., Esquire

626 West Evans Street

Post Office Box 2010

Florence, South Carolina 29503-2010

(843) 662-4474 Telephone

(843) 662-6024 Facsimile

On Mon, Mar 23, 2020 at 2:55 PM Gail Inzero <[gail.inzero@mgclaw.com](mailto:gail.inzero@mgclaw.com)> wrote:

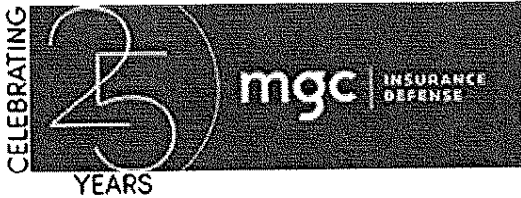
SENT ON BEHALF OF DOC MORGAN, JR.

Mr. Jordan,

I have been retained to represent the Defendant/Appellant in the above-referenced case and we filed a Notice of Appeal on Friday. It is my understanding that you heard the matter and issued an order on February 12, 2020 following a hearing on September 16, 2019. Since we have to order a transcript, I am writing to see if a court reporter was present and took down testimony at the hearing. Would you let me know if a court reporter was present and who the court reporter was at the hearing?

Thank you for your assistance and I look forward to hearing from you.

Doc



**Gail Inzero, Legal Assistant**  
[gail.inzero@mgclaw.com](mailto:gail.inzero@mgclaw.com)  
55 E. Camperdown Way Suite 300  
Greenville, SC 29601  
Main:864-239-4000 | Direct:864-239-6712 | Fax:864-242-3199  
VCARD

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

**Apr 22 2020**

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Wallace H. Jordan, Jr., Special Referee

Appeal No. 2020-000471

Steven Carol Miller..... Respondent,

v.

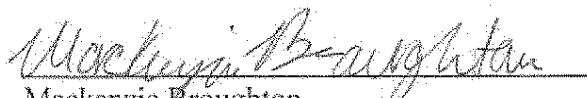
Gene Carson Jordan.....Appellant.

**PROOF OF SERVICE**

I certify that I have served the Motion for Leave to File Motion for Relief from Judgment Pursuant to Rule 60(b), SCRPC, on Steven Carol Miller, by emailing it and depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record,

M.W. Cockrell, III, Esq.  
Cockrell Law Firm, P.C.  
159 Main Street  
Chesterfield, South Carolina 29709  
mwc@cockrelllawfirm.com  
(843) 623-5911

April 22, 2020

  
Mackenzie Broughton  
Legal Assistant to Helen F. Hiser  
McANGUS GOUDELOCK & COURIE LLC  
735 Johnnie Dodds Blvd., Suite 200  
PO Box 650007  
Mount Pleasant, South Carolina 29465  
(843) 576-2900

*Attorneys for Appellant*

**Reply To**

HELEN F. HISER  
Direct Dial: (843) 576-2930  
helen.hiser@mgclaw.com

April 22, 2020

**RECEIVED****Apr 22 2020****SC Court of Appeals****Via Facsimile**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

RE: Steven Carol Miller v. Gene Carson Jordan  
Civil Action No.: 2019-CP-13-00173 (Chesterfield)  
Date of Incident: August 13, 2018  
Carrier Claim No.: SC19-0100270  
MGC File No.: 20760.20002  
Appeal No.: 2020-000471

Dear Ms. Kitchings:

Enclosed please find the original of Appellant's Motion for Leave to File Motion for Relief from Judgment Pursuant to Rule 60(b), SCRCPP, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the enclosed self-addressed, stamped envelope. We are sending our firm's check in the amount of \$50 for filing the motion by U.S. Mail with a copy of this letter.

If you have any questions, please do not hesitate to contact me.

Sincerely,  
McAngus Goudelock & Courie, LLC

Helen F. Hiser

Enclosures

cc: Melville W. Cockrell, III, Esq.



## FAX COVER SHEET

Reply to: Helen F. Hiser

Direct Dial: (843) 576-2930

helen.hiser@mgclaw.com

TO: The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals

FACSIMILE NUMBER: (803) 734-1839

FROM: Mackenzie Broughton  
Direct Dial: (843) 576-2935  
mackenzie.broughton@mgclaw.com

TOTAL # OF PAGES INCLUDING COVER: 42

DATE: 4/22/2020

RE: Steven Carol Miller v. Gene Carson Jordan  
Appeal No.: 2020-000471

COMMENTS:

**RECEIVED**  
**Apr 22 2020**  
**SC Court of Appeals**

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