

**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

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SC Court of Appeals

Bridgett FowlerAppellant

v.

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

RECORD ON APPEAL

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| STATE OF SOUTH CAROLINA |) | |
| |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF HORRY |) | |
| |) | |
| BRIDGETT FOWLER, |) | |
| |) | Civil Action No. 2018-CP-26-06173 |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | ORDER GRANTING DEFENDANTS' |
| FEDEX GROUND PACKAGE SYSTEM, |) | MOTION FOR PARTIAL SUMMARY |
| INC. AND JAMES K. ARD D/B/A JMK |) | JUDGMENT |
| LOGISTICS CORPORATION, |) | |
| |) | |
| Defendants. |) | |

This motion was heard by me on September 11, 2019 in Horry County. Dominic Starr, Esquire appeared and argued the motion on behalf of the Defendants. Tyler Turner, Esquire appeared and argued in opposition on behalf of the Plaintiff.

FACTS/PROCEDURAL BACKGROUND

Plaintiff filed this lawsuit against Defendants for damages arising out of two separate incidents involving an independently contracted delivery driver for Federal Express at Plaintiff's home. The Complaint alleges that in January, 2018 the delivery driver struck Plaintiff's car causing damage. The Complaint also alleges that in March, 2018 the same delivery driver ran over and killed Plaintiff's dog while driving down Plaintiff's driveway. Plaintiff's Complaint alleges negligence, gross negligence, willful, wanton, and reckless conduct against the Defendants. In addition to seeking recovery for the property damage to Plaintiff's vehicle, Plaintiff's Complaint alleges damages for mental anguish, emotional distress and anxiety related to the death of her dog. Defendants filed Answers denying liability.

On August 1, 2019 Defendants filed this Motion for Partial Summary Judgment asserting that Plaintiff's request for damages related to mental anguish, emotional distress and anxiety must be dismissed as a matter of law. For the reasons set forth below, Defendants' Motion is GRANTED.

CONCLUSIONS OF LAW

I conclude that the law in South Carolina provides that dogs and other pets are considered personal property. In South Carolina, a plaintiff cannot recover emotional or other non-economic damages for the loss of personal property.

Since our Supreme Court's decision in *State v. Langford*, 55 S.C. 322, 33 S.E. 370 (S.C. 1899), pets have been deemed as personal property under the law. It is long established in South Carolina that a plaintiff's right to recover damages for personal property are limited to the market value of that property. See, e.g. South Carolina Damages § II.4.B.

The parties agree that there is no published South Carolina Supreme Court or Appellate Court decision that directly addresses the limitation of damages available to a plaintiff for the loss of a pet. That said, both parties referenced the unpublished decision of *Bales v. Judelsohn*, 2005 S.C. App. Unpub. LEXIS 527 (Ct. App. 2005). The Court recognizes that this unpublished decision does not have precedential value. This Court finds the case, however, is instructive to the case at hand. In *Bales*, the Court of Appeals reduced a jury verdict that was awarded to the plaintiff for actual damages that exceeded the veterinary bills associated with plaintiff's pet's injury. In doing so, the Court of Appeals held, "South Carolina law does not support a cause of action for emotional distress for injury to one's pet." *Id.*

In addition to the current status of case law in South Carolina, both parties agree that there is no statutory provision created by our legislature that allows for recovery of non-

economic damages for the death or injury of a pet. Until either our legislature or our Supreme Court expressly recognizes the right of a pet owner to seek non-economic damages for the death or injury of a pet, this Court must rule as a matter of law that Plaintiff in the present case cannot seek damages for emotional distress, mental anguish, or anxiety at trial.

CONCLUSION

For the reasons set forth above, Defendants' Motion for Partial Summary Judgment as to Plaintiff's claims for damages related to mental anguish, emotional distress and anxiety is hereby GRANTED.

IT IS SO ORDERED.

The Honorable Benjamin H. Culbertson
Fifteenth Judicial Circuit



Horry Common Pleas

Case Caption: Bridgett Fowler VS FedEx Ground Package System Inc , defendant,
et al
Case Number: 2018CP2606173
Type: Order/Summary Judgment

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Bridgett Fowler,)
)
Plaintiff,)

C.A. No. 2018-CP-26-06173

vs.)

SUMMONS

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

TO: DEFENDANTS ABOVE-NAMED

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint on the subscribers at their office, 914 Richland Street, Suite A-101, Columbia, South Carolina, 29201, within thirty (30) days after the service hereof, exclusive of the day of such service. In the event you fail to answer the Complaint in the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint, and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

TURNER & CAUDELL, LLC

By: s/Tyler R. Turner
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Attorneys for Plaintiff

March 4, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Bridgett Fowler,)
)
Plaintiff,)

C.A. No. 2018-CP-26-06173

vs.)

**SECOND AMENDED COMPLAINT
(JURY TRIAL DEMANDED)**

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

Defendants.

Plaintiff, Bridgett Fowler, complaining of the above-named Defendants, would respectfully show unto this Court:

PARTIES AND JURISDICTION

1. Plaintiff Bridgett Fowler is a resident of Horry County, South Carolina.
2. Upon information and belief, Defendant FedEx Ground Package System, Inc. ("FXG") is a corporation organized under the laws of the Commonwealth of Pennsylvania with its principal office located in Coraopolis, Pennsylvania, and Defendant FXG regularly conducts business, including but not limited to package delivery services, in the State of South Carolina.
3. Upon information and belief, Defendant James K. Ard d/b/a JMK Logistics Corporation ("JMK") is a corporation organized under the laws of the State of South Carolina with its principal office located in Florence, South Carolina.
4. The events giving rise to this action occurred in Horry County, South Carolina.
5. Jurisdiction and venue are proper in this court.

FACTS

6. Ms. Fowler resides in her home located off Highway 646 in Loris, South Carolina. Ms. Fowler and her husband Terry have four children.

7. Prior to March 22, 2018, Ms. Fowler and her family owned and lived with a Brittany Spaniel named "Honey Bunny" whom the family cherished. Honey Bunny was approximately one-and-a-half years old at the time of the incident giving rise to this Complaint.

8. Ms. Fowler and Honey Bunny had an especially close bond. In November 2017, Ms. Fowler underwent a significant back surgery. Throughout Ms. Fowler's recovery, Honey Bunny had been a source of comfort and therapy for Ms. Fowler. For example, Honey Bunny spent many hours each day with Ms. Fowler while she recovered and slept by Ms. Fowler's side each night.

9. Upon information and belief, FXG contracted with JMK to fulfill its package delivery and other related services in Horry County, South Carolina. JMK employees are agents of FXG in connection with the services JMK provides pursuant to its contract or other arrangements with FXG.

10. In January 2018, a JMK employee and truck driver, acting as an agent of FXG (the "Driver") pulled his FXG truck into Ms. Fowler's driveway and drove up to the house to unload a package. Upon information and belief, at all times relevant to this Complaint, the Driver was acting within the course and scope of his employment as a package delivery driver for JMK and as an agent for FXG.

11. The portion of Ms. Fowler's driveway closest to her house is a circular loop, and vehicles which properly enter the driveway can drive forward around the loop and exit the driveway without reversing the vehicle.

12. After delivering the package, instead of driving forward around the circular loop, the Driver attempted to reverse out of the driveway. While in reverse, the Driver backed into Ms. Fowler's parked vehicle and caused significant damage to the front panel and front bumper. The Driver left the Fowler's property without informing Ms. Fowler of the accident and the Driver did not apologize for hitting and damaging Ms. Fowler's vehicle until days later.

13. Ms. Fowler informed FXG of the accident and provided FXG with repair estimates for her vehicle, but Ms. Fowler has not received full compensation from FXG in connection with the accident, despite receiving promises from FXG to fully pay for the damage to the vehicle.

14. Soon thereafter, on March 22, 2018, the same Driver once again pulled his FXG truck into Ms. Fowler's driveway.

15. The Driver drove down the long, straight driveway toward Ms. Fowler's house at an excessive rate of speed.

16. Two of Ms. Fowler's beloved dogs, Honey Bunny and Bandit, heard the Driver pull into the driveway, rose up from their naps on Ms. Fowler's front porch, and excitedly ran down the middle of the driveway toward the Driver's truck to greet the visitor.

17. Hearing the dogs get up to greet the visitor, Ms. Fowler directed her attention toward the dogs and watched the dogs run toward the driveway from her living room window. Ms. Fowler's oldest son, Christian, also saw the Driver in the driveway.

18. Inexplicably, the Driver continued speeding down the Fowler's driveway at an excessive speed, never slowed down, and plowed into Honey Bunny, brutally killing her as Ms. Fowler and her son watched. Ms. Fowler and her son immediately ran to Honey Bunny, wept, and were beside themselves as they clung to Honey Bunny's mangled body in the driveway.

19. The driver callously stepped down from the driver's seat, stated that he didn't see the dog, got back in the driver's seat, and pulled his truck out of the driveway, abandoning Ms. Fowler and her son as they wept over Honey Bunny's dead body.

20. The Driver did not leave any package at the Fowlers' residence, and it is unclear why he was driving down Ms. Fowler's driveway at an excessive rate of speed in the first place, especially given that the same Driver struck and damaged the Fowler's vehicle in the driveway just weeks earlier.

21. Since witnessing the brutal death of Honey Bunny, Ms. Fowler has been devastated

and has visited medical professionals and been prescribed medication to help cope with her emotional distress, anxiety, and other symptoms.

FIRST CAUSE OF ACTION AGAINST DEFENDANT
(Negligence, Gross Negligence, Wilful, Wanton, and Reckless Conduct)

22. Plaintiff reiterates and re-alleges the allegations contained in Paragraphs 1 through 21 above as if set forth herein verbatim.

23. The Driver, acting within the course and scope of his employment with Defendant JMK and as an agent of FXG, had a duty to drive with reasonable care when approaching the Plaintiff's home.

24. Defendants had a duty to reasonably train, supervise, and discipline its employees to prevent harm to recipients of packages sent via FedEx and other citizens of the State of South Carolina.

25. The Defendants breached their duties and failed to exercise reasonable care in the acts and omissions that resulted in damage to the Fowler's vehicle and the death of Honey Bunny as demonstrated by the following:

- a. In driving a large FXG delivery truck down the Plaintiff's driveway;
- b. In reversing a large FXG truck in the Plaintiff's driveway without regard for surroundings and striking the Plaintiff's vehicle, causing significant damage to the vehicle;
- c. In driving a large FXG truck in the Plaintiff's driveway at an excessive rate of speed and brutally running over the Plaintiff's Brittany Spaniel, brutally causing its death, soon after inflicting damage to the Plaintiff's vehicle in the Plaintiff's driveway;
- d. In entrusting the Driver to continue driving on Plaintiff's driveway after the first accident;
- e. In failing to appropriately respond to the incidents described herein;

- f. In failing to remain aware of animals and objects within the truck's immediate surroundings while driving down the Plaintiff's driveway;
- g. In driving a large delivery truck in utter and complete disregard for the safety of Plaintiff and her pets and property;
- h. In failing to adequately train and supervise the Driver on the safe operation of the FXG truck;
- i. In failing to adequately discipline the Driver or take other appropriate action to prevent additional damage to the Plaintiff after the Driver damaged Plaintiff's parked vehicle;
- j. In failing to adequately train the Driver on how to appropriately respond to accidents that occur while acting within the scope of his employment.
- k. In failing to implement appropriate policies, procedures, contractual provisions, and other measures to prevent such acts from occurring.

26. The above actions demonstrate the Defendants' negligent, grossly negligent, wilful, wanton, and reckless disregard for the safety of persons and property at Plaintiff's home.

27. As a direct and proximate result of the negligent, grossly negligent, reckless, willful, and wanton conduct of Defendants, as set forth above, the Plaintiff's vehicle was damaged, Honey Bunny was brutally killed in front of the Plaintiff, and the Plaintiff has sustained loss of her beloved family pet and companion, mental anguish, emotional distress, and anxiety, all of which will continue into the future.

28. Plaintiff has suffered actual and consequential damages and is entitled to such damages, in addition to punitive damages, in an amount to be proven at trial.

29. Defendants are liable as principals for all torts committed by its employees and agents in the course and scope of their employment.

WHEREFORE, Plaintiff prays for (1) trial by jury; (2) judgment against Defendants in an

amount of actual, consequential, compensatory, special, and punitive damages to be determined by the jury; (3) for interest on the sum(s) proven to be due; (4) attorney's fees and the costs of this action; and (5) for such other relief as the Court deems just and proper.

Respectfully submitted,

TURNER & CAUDELL, LLC

By: s/ Tyler R. Turner

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Attorneys for Plaintiff

March 4, 2019

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

BRIDGETT FOWLER,)

Plaintiff,)

vs.)

FEDEX GROUND PACKAGE SYSTEM,)
INC. AND JAMES K. ARD D/B/A JMK)
LOGISTICS CORPORATION,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2018-CP-26-06173

**DEFENDANT FEDEX GROUND
PACKAGE SYSTEM, INC.'S ANSWER
TO PLAINTIFF'S SECOND
AMENDED COMPLAINT
(Jury Trial Demanded)**

Defendant, FedEx Ground Package System, Inc. ("FXG"), by and through its undersigned counsel, hereby answers the Second Amended Complaint of the Plaintiff and respectfully shows this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted, denied, or explained is denied.

FOR A SECOND DEFENSE AND BY WAY OF ANSWER

- 2. Admits paragraph 1 on information and belief.
- 3. FXG admits that its principal office is located in Coraopolis, Pennsylvania and that it regularly conducts business, including but not limited to package delivery services, in the State of South Carolina. FXG denies the remaining allegations in paragraph 2.
- 4. Admits paragraph 3 on information and belief.
- 5. Admits paragraphs 4 and 5.

6. FXG is without sufficient information to form a belief as to the allegations contained in paragraphs 6, 7, and 8 and therefore denies the same and demands strict proof thereof.

7. Answering paragraph 9, FXG admits that JMK provided package delivery and other related services in Horry County, South Carolina to FXG pursuant to an operating agreement. JMK employees are not hired, employed, or controlled by FXG. Rather at the time of the incident, the JMK driver was an employee of JMK, a contracted service provider to FXG pursuant to an operating agreement. However, for purposes of this litigation, FXG admits that the JMK driver was operating as its agent at the time of the subject incident. FXG denies any other allegations contained in this paragraph.

8. FXG is without sufficient information to form a belief as to the allegations contained in paragraphs 10, 11, 12 and 13 and therefore denies the same and demands strict proof thereof.

9. Admits paragraph 14.

10. Denies paragraph 15.

11. FXG is without sufficient information to form a belief as to the allegations of paragraphs 16, 17, 18, and 19 and therefore denies the same and demands strict proof thereof.

12. Answering paragraph 20, FXG admits that no package was delivered to Plaintiff's residence on the day of the incident. The remaining allegations of Paragraph 20 are denied.

13. Defendant is without sufficient information to form a belief as to the allegations of paragraph 21 and therefore denies the same and demands strict proof thereof.

**FOR A THIRD DEFENSE AND BY WAY OF ANSWER TO THE FIRST CAUSE
OF ACTION**
(Negligence, Gross Negligence, Willful, Wanton and Reckless Conduct)

14. Answering paragraph 22, FXG reasserts all previous defenses as if set forth verbatim herein.

15. Answering paragraph 23, FXG admits that all drivers have a duty to use reasonable care. The remaining allegations of paragraph 23 are denied.

16. Denies paragraph 24, as FXG drivers are not employees of FXG.

17. Denies paragraph 25, including all subparts thereof.

18. Denies paragraphs 26, 27 and 28.

19. In response to paragraph 29, FXG admits that it is liable as a principal for torts committed by its employees and agents in the course and scope of their employment. FXG, however, specifically denies to the extent that the allegations contained therein imply that FXG employed, controlled, and/or supervised the driver, in any way whatsoever.

FOR A FOURTH DEFENSE

20. FXG would show that any injuries or damages sustained by Plaintiff that Plaintiff alleges were caused by an act or omission of FXG were either caused by an intervening efficient act, omission or event, or could not be avoided and was an unavoidable accident.

FOR A FIFTH DEFENSE

21. FXG pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff in the following particulars:

- a) In failing to take reasonable and prudent control of her dog to avoid the accident;
- b) In failing to act as a reasonable and prudent dog owner would have under the same or similar circumstances; and
- c) Such other particulars as may be identified in the litigation.

Accordingly, FXG alleges the negligence and recklessness of Plaintiff was greater than the negligence, if any, which might be established against FXG, and therefore Plaintiff is barred from any recovery in this action. FXG further alleges any injury and damage sustained by Plaintiff was due to and caused by the negligence and/or willfulness of Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of FXG and, therefore, any amount of recovery awarded to Plaintiff for the injuries and damages alleged in the Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiff.

FOR A SIXTH DEFENSE

22. FXG would show the claim of Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damage issues are tried only after and if liability on the merits of this action has been found will violate FXG's due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law and public policy of the State of South Carolina.

23. FXG would show the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate FXG's due process rights guaranteed by United States Constitution and the South Carolina Constitution, and would violate the common law of the State of South Carolina.

24. FXG alleges the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not:

- (a) Provided with sufficiently clear standards for determining the appropriateness of a punitive damage award or the size of such award;
- (b) Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;
- (c) Instructed that awarding punitive damages on individually discriminatory characteristics of FXG is improper;
- (d) Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with reasonable clarity the actions of FXG upon which an award of punitive damages may be based; and
- (e) Subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness;

would violate FXG's equal protection and due process rights as guaranteed by the United States Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

WHEREFORE, having fully answered the Second Amended Complaint of the Plaintiff, Defendant FXG requests that the Second Amended Complaint be dismissed with prejudice and grant FXG such other relief as the Court deems just and proper.

(Signatures on following page)

MCANGUS GOUDELICK & COURIE, L.L.C.

s/ Dominic A. Starr

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ATTORNEYS FOR DEFENDANT, FEDEX
GROUND PACKAGE SYSTEM, INC.

March 15, 2019

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|---------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA |) | |
| |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF HORRY |) | |
| |) | |
| BRIDGETT FOWLER, |) | Civil Action No. 2018-CP-26-06173 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | DEFENDANT JAMES K. ARD D/B/A |
| |) | JMK LOGISTICS CORPORATION'S |
| FEDEX GROUND PACKAGE SYSTEM, |) | ANSWER TO THE SECOND |
| INC. AND JAMES K. ARD D/B/A JMK |) | AMENDED COMPLAINT |
| LOGISTICS CORPORATION, |) | (Jury Trial Demanded) |
| |) | |
| Defendants. |) | |

Defendant, James K. Ard d/b/a JMK Logistics Corporation (“JMK”), by and through its undersigned counsel, hereby answers the Second Amended Complaint of the Plaintiff and respectfully shows this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Second Amended Complaint not specifically admitted, denied or explained is denied.

FOR A SECOND DEFENSE AND BY WAY OF ANSWER

- 2. Admits paragraphs 1, 2, 3, 4 and 5 on information and belief.
- 3. JMK is without sufficient information to form a belief as to the allegations contained in paragraphs 6, 7 and 8 and therefore denies the same and demands strict proof thereof.
- 4. Answering paragraph 9, JMK admits that it contracts with FXG to provide package delivery services. JMK admits that its driver was operating as an agent of FXG at the time of the subject incident. JMK denies the remaining allegations of paragraph 9.

5. JMK is without sufficient information to form a belief as to the allegations contained in paragraphs 10, 11, 12 and 13 and therefore denies the same and demands strict proof thereof.

6. Admits paragraph 14.

7. Denies paragraph 15.

8. JMK is without sufficient information to form a belief as to the allegations contained in paragraphs 16, 17 and 18 and therefore denies the same and demands strict proof thereof.

9. Denies paragraph 19.

10. Answering paragraph 20, JMK admits that no package was delivered to Plaintiff's residence on the day of the incident. The remaining allegations of paragraph 20 are denied.

11. JMK is without sufficient information to form a belief as to the allegations contained in paragraph 21 and therefore denies the same and demand strict proof thereof.

**FOR A THIRD DEFENSE AND BY WAY OF ANSWER TO THE FIRST CAUSE
OF ACTION**

(Negligence, Gross Negligence, Willful, Wanton, and Reckless Conduct)

12. Answering paragraph 22, JMK reasserts all previous defenses as if set forth verbatim herein.

13. Admits paragraph 23.

14. Answering paragraph 24, JMK asserts that it properly trains, supervises and disciplines its drivers. Any assertions in paragraph 24 to the contrary are denied.

15. Denies paragraph 25, including all subparts thereof.

16. Denies paragraphs 26, 27 and 28.

17. Paragraph 29 is improper insofar as it states a conclusion of law as a statement of fact. Therefore, paragraph 29 is denied.

FOR A FOURTH DEFENSE

18. JMK would show that any injuries or damages sustained by Plaintiff that Plaintiff alleges were caused by an act or omission of JMK were either caused by an intervening efficient act, omission or event, or could not be avoided and was an unavoidable accident.

FOR A FIFTH DEFENSE

19. JMK pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff in the following particulars:

- a) In failing to take reasonable and prudent control of her dog to avoid the accident;
- b) In failing to act as a reasonable and prudent dog owner would have under the same or similar circumstances; and
- c) Such other particulars as may be identified in the litigation.

Accordingly, JMK alleges the negligence and recklessness of Plaintiff was greater than the negligence, if any, which might be established against JMK, and therefore Plaintiff is barred from any recovery in this action. JMK further alleges any injury and damage sustained by Plaintiff was due to and caused by the negligence and/or willfulness of Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of JMK and, therefore, any amount of recovery awarded to Plaintiff for the injuries and damages alleged in the Second Amended Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiff.

FOR A SIXTH DEFENSE

20. JMK would show the claim of Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damage issues are tried only after and if liability on the merits of this action has been found will violate JMK's due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law and public policy of the State of South Carolina.

21. JMK would show the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate JMK's due process rights guaranteed by United States Constitution and the South Carolina Constitution, and would violate the common law of the State of South Carolina.

22. JMK alleges the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not:

- (a) Provided with sufficiently clear standards for determining the appropriateness of a punitive damage award or the size of such award;
- (b) Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;
- (c) Instructed that awarding punitive damages on individually discriminatory characteristics of JMK is improper;
- (d) Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines

with reasonable clarity the actions of JMK upon which an award of punitive damages may be based; and

- (e) Subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness;

would violate JMK's equal protection and due process rights as guaranteed by the United States Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

WHEREFORE, having fully answered the Second Amended Complaint of the Plaintiff, Defendant JMK requests that the Second Amended Complaint be dismissed with prejudice and grant JMK such other relief as the Court deems just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Dominic A. Starr

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ARD D/B/A JMK LOGISTICS CORPORATION

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BRIDGETT FOWLER,

Plaintiff,

vs.

FEDEX GROUND PACKAGE SYSTEM,
INC. AND JAMES K. ARD D/B/A JMK
LOGISTICS CORPORATION,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2018-CP-26-06173

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

TO: PLAINTIFF AND TYLER R. TURNER, ESQUIRE AND MARY ALLISON CAUDELL:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service of this Notice upon you or as soon thereafter as counsel may be heard, the undersigned attorneys for FedEx Ground Package System, Inc. and James K. Ard d/b/a JMK Logistics Corporation, (“Defendants”), will move before the presiding Judge of the Horry County Court of Common Pleas for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting Defendant’s Motion for Summary Judgment as to all causes of action against Defendants on the grounds there is no genuine issue as to any material fact and Defendants are entitled to judgment as a matter of law. Defendants’ Motion is based upon the pleadings, discovery, affidavits, exhibits, deposition transcripts, and other admissible evidence as well as the applicable common law and statutory law.

Pursuant to Rule 11, counsel for Plaintiff was consulted prior to filing the Motion, but no consensus could be reached.

MCANGUS GOUDELICK & COURIE, L.L.C.

s/ Dominic A. Starr

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ATTORNEYS FOR DEFENDANTS, FEDEX
GROUND PACKAGE SYSTEM, INC. AND
JAMES K. ARD D/B/A JMK LOGISTICS
CORPORATION

August 1, 2019

| | | |
|---------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | |
| |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF HORRY |) | |
| |) | |
| BRIDGETT FOWLER, |) | Civil Action No. 2018-CP-26-06173 |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | MEMORANDUM IN SUPPORT OF |
| |) | MOTION FOR SUMMARY |
| FEDEX GROUND PACKAGE SYSTEM, |) | JUDGMENT |
| INC. AND JAMES K. ARD D/B/A JMK |) | |
| LOGISTICS CORPORATION, |) | |
| |) | |
| Defendants. |) | |

Fedex Ground Package System, Inc. and James K. Ard d/b/a JMK Logistics Corporation (“Defendants”), by and through their undersigned counsel, hereby submit this Memorandum of Law in Support of their Motion for Summary Judgment as to Plaintiff’s Complaint against Defendants. Based upon this Memorandum, applicable case law and other documents filed with this Court, Defendants respectfully request this Honorable Court grant Defendants’ Summary Judgment Motion. There are no genuine issues as to any material fact as to Plaintiff’s demand for damages for mental anguish, emotional distress, and anxiety related to the death of her dog. Thus, Defendants are entitled to judgment as a matter of law pursuant to Rule 56 of the South Carolina Rules of Civil Procedure as to these alleged damages.

FACTUAL BACKGROUND

This case arises out of the death of dog named “Honey Bunny.” Plaintiff claims that “in January 2018, a JMK employee and truck driver, acting as an agent of FXG (the “Driver”) pulled his FXG truck into Ms. Fowler’s driveway and drove up to the house to unload a package. Upon information and belief, at all times relevant to this Complaint, the Driver was acting within the course and scope of his employment as a package delivery driver for JMK and as an agent for

FXG.” Amended Complaint at Paragraph 10. “After delivering the package, instead of driving forward around the circular loop, the Driver attempted to reverse out the driveway. While in reverse, the Driver backed into Ms. Fowler’s parked vehicle and caused significant damage to the front panel and front bumper.” Amended Complaint at Paragraph 12. “Soon thereafter, on March 22, 2018, the same Driver once again pulled his FXG truck into Ms. Fowler’s driveway. The Driver drove down the long, straight driveway toward Ms. Fowler’s house at an excessive rate of speed. Two of Ms. Fowler’s beloved dogs, Honey Bunny and Bandit, heard the Driver pull into the driveway, rose up from their naps on Ms. Fowler’s front porch, and excitedly ran down the middle of the driveway toward the Driver’s truck to greet the visitor. Hearing the dogs get up to greet the visitor, Ms. Fowler directed her attention toward the dogs and watched the dogs run toward the driveway from her living room window. Ms. Fowler’s oldest son, Christian, also saw the Driver in the driveway. Inexplicably, the Driver continued speeding down the Fowler’s driveway at an excessive speed, never slowed down, and plowed into Honey Bunny, brutally killing her as Ms. Fowler and her son watched. Ms. Fowler and her son immediately ran to Honey Bunny, wept and were beside themselves and they clung to Honey Bunny’s mangled body in the driveway.” Complaint at Paragraphs 14-18.

Plaintiff alleges Defendants were Negligent and Grossly Negligent. She seeks damages for the damage to her vehicle and for her mental anguish, emotional distress and anxiety related to the death of Honey Bunny.

STANDARD OF REVIEW

Summary Judgment is appropriate where the “pleadings, depositions, answers to interrogatories and admissions on file together with the affidavits if any show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of

law.” Rule 56(c) SCRPC. “By its very terms this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported Motion for Summary Judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 106 S.Ct. 2505, 2509, 477 U.S. 242, 248 (1986). “The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder.” *Singleton v. Sherer*, 377 S.C. 185, 197-98, 659 S.E.2d 196, 202 (Ct. App. 2008). In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in a light most favorable to the non-moving party.” *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). “It is well settled that the non-moving party may not rely on mere allegations to resist summary judgment but must present some evidence in the form of affidavits or otherwise in support of its proposition.” *Bd of Trs. For the Fairfield County School Dist. v. State of South Carolina*, 409 S.C. 119, 126, 761 S.E.2d 241, 245 (2014). A party’s response to the motion “must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial.” *Moody v. McLellan*, 295 S.C. 157, 163, 367 S.E.2d 449, 452 (Ct. App. 1988).

LEGAL ARGUMENT

Dogs are Considered Personal Property Under South Carolina Law

Summary judgment is appropriate in this case. To recover damages for the loss of her pet under a negligence theory, “[P]laintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. *Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (S.C. Ct. App. 2008). Plaintiff’s demand for damages related to mental anguish, emotional distress and anxiety are not permitted under South Carolina law.

Dogs are recognized as personal property in South Carolina. *State v. Langford*, 55 S.C. 322, 33 S.E. 370 (S.C. 1899). [*State v. Langford* is attached hereto as Exhibit A]. In a 2005 unpublished opinion, the South Carolina Court of Appeals, held “[S]outh Carolina law does not support a cause of action for emotional distress for injury to one’s pet.” *Bales v. Judelsohn*, 2005 S.C. App. Unpub. LEXIS 527 (S.C. Ct. of App. 2005) (stating “This opinion has no precedential value. It should not be cited or relied on as precedent in any proceedings except as provided by Rule 239(d)(2), SCACR.”). [*Bales v. Judelsohn* is attached hereto as Exhibit B].

Defendants understand that the *Bales* opinion has no precedential value; however, the case is instructive for the case sub judice. It is undisputed that under South Carolina law, Plaintiff’s dog is personal property. As such, her damages are limited to her dog’s market value. To accept Plaintiff’s arguments and contentions otherwise would overturn the 120 year old case, *State v. Langford*, which recognized dogs as personal property. As such, in viewing the facts in the light most favorable to Plaintiff, there exists no genuine issue of material fact and Defendants are entitled to judgment as a matter of law on Plaintiff’s demand for mental anguish, emotional distress, and anxiety.

CONCLUSION

For the reasons set forth herein and in accordance with Rule 56 of the South Carolina Rules of Civil Procedure, Defendants respectfully request that this Court grant their Motion for Summary Judgment with prejudice and for such other relief as this Court may deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Dominic A. Starr

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ATTORNEYS FOR DEFENDANTS, FEDEX
GROUND PACKAGE SYSTEM, INC. AND
JAMES K. ARD D/B/A JMK LOGISTICS
CORPORATION

August 1, 2019



State v. Langford

Supreme Court of South Carolina

June 17, 1899, Decided

No Number in Original

Reporter

55 S.C. 322 *; 33 S.E. 370 **; 1899 S.C. LEXIS 98 ***

STATE v. LANGFORD.

Prior History: [***1] Before GAGE, J., Newberry, February, 1899. Reversed.

Indictment against George Langford for stealing a dog, and for burglary in breaking and stealing from a dog house. From order quashing the indictment on demurrer of defendant, the State appeals.

Disposition: Judgment reversed. Case remanded.

Core Terms

dog, larceny, chattels, dog house, steal, personal property, intent to steal, first count, burglary

Case Summary

Procedural Posture

The State challenged an order of the Circuit Court in Newberry (South Carolina), which quashed an indictment on defendant's demurrer. Defendant had been charged with stealing a dog and for burglary in breaking and stealing from a dog house.

Overview

An indictment charged defendant with stealing a dog and for burglary in breaking and stealing from a dog house within 200 yards of and appurtenant to a dwelling with intent to steal goods and chattels. Defendant filed a demurrer to the indictment on the ground that larceny could not be committed of a dog, the intent to steal from the dog house necessarily implied the stealing of a dog, and it was not compound larceny to steal from a dog house. The trial court sustained the demurrer and quashed the indictment. The court reversed on appeal. The court first held that a dog could be the subject of a larceny. The court reasoned that because the law taxed dogs as personal property, dogs had to be protected as

such. The court then held that the charge of burglary of the dog house did not necessarily imply the stealing of a dog, but that other items could be stolen. The court held that in indictments for burglary with intent to commit larceny, it was not necessary to specify the particular goods and chattels that a defendant intended to steal. The court did, however, find that the trial court correctly held that a compound larceny was not charged.

Outcome

The court reversed the trial court's judgment and remanded the case.

LexisNexis® Headnotes

Tax Law > ... > Personal Property Taxes > Tangible Personal Property > General Overview

Criminal Law & Procedure > Criminal Offenses > Theft & Related Offenses > General Overview

HN1 [icon] What the law taxes as personal property it will protect as such.

Contracts Law > Personal Property > Choses in Action

Criminal Law & Procedure > ... > Theft & Related Offenses > Larceny & Theft > General Overview

HN2 [icon] **Choses in Action**

Legislation brings dogs as personal property and things of value within the meaning of "chattels" in the State of South Carolina as to simple larceny, 160 Criminal Code

(South Carolina), the term "chattel" including all kinds of property except freehold, or things parcel thereof, and perhaps choses in action.

Criminal Law & Procedure > ... > Burglary & Criminal Trespass > Burglary > Elements

Criminal Law & Procedure > ... > Theft & Related Offenses > Larceny & Theft > General Overview

Criminal Law & Procedure > Criminal Offenses > Theft & Related Offenses > General Overview

Criminal Law & Procedure > ... > Theft & Related Offenses > Burglary & Criminal Trespass > General Overview

Criminal Law & Procedure > ... > Burglary & Criminal Trespass > Burglary > General Overview

Criminal Law & Procedure > ... > Accusatory Instruments > Indictments > General Overview

HN3 [↓] **Elements**

In indictments for burglary with intent to commit larceny, it is not necessary to specify the particular goods and chattels a defendant intended to steal.

Criminal Law & Procedure > ... > Theft & Related Offenses > Larceny & Theft > General Overview

Criminal Law & Procedure > ... > Accusatory Instruments > Indictments > General Overview

HN4 [↓] The sufficiency of each count must be determined by its own allegations, without aid from another count.

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > Concurrent Jurisdiction

Criminal Law & Procedure > ... > Theft & Related Offenses > Larceny & Theft > General Overview

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > General Overview

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Constitutional Law > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > Concurrent Jurisdiction

Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction

HN5 [↓] **Concurrent Jurisdiction**

The Court of General (South Carolina) has concurrent jurisdiction in all cases of larceny triable by magistrate.

Headnotes/Summary

Headnotes

1. LARCENY.--A DOG is the subject of larceny in this State.

2. PLEADINGS--BURGLARY.--IN AN INDICTMENT for burglary with intent to commit larceny, it is not necessary to allege the particular goods and chattels defendant intended to steal.

3. PLEADINGS--INDICTMENT--COMPOUND LARCENY.--A count in an indictment charging larceny from a building, but not alleging that such building is appurtenant to and within 200 yards of the dwelling, does not charge compound larceny, and such deficiency cannot be supplied by these allegations in another count.

4. PLEADINGS--INDICTMENT--COMPOUND LARCENY--PETIT LARCENY--JURISDICTION.--A count in an indictment which does not charge compound larceny, but which does charge petit larceny, should not be quashed, for the Court of General Sessions now has jurisdiction of petit larceny.

Counsel: Messrs. Solicitor T. S. Sease, Eugene S. Blease and Assistant Attorney General U. X. Gunter, for appellant. The latter cites: In indictment for burglary, it is not necessary to specify particular goods stolen: 24 S. C., 116. Old rule that dog was not subject of larceny has been dispelled by eminent Courts: 15 Am. Dec., 355; 86 N.Y. 365; 74 N. W. R., 918. Dogs are made property by statute: Rev. Stat., 224, 228.

Messrs. Johnston & Welch, contra, cite: At common law there could be no larceny of a dog: 14 Rich. 363; 48 Ala., 161; 41 Ark., 479; 79 Ind., 9; 27 Ind., 62; 34 N. H., 523; 4 Park Cr. R., 386; 81 N. C., 527; 26 Ohio St., 400; 8 S. & R., 571; 3 Tex. App., 489; 13 Tex., 55; 100 Mass., 140; 48 Conn., 346. Have we any statute which makes a dog the subject of larceny? 13 S. C., 4; 2 Stat., 478; 12 Stat., 517; 13 Stat., 25; 12 Rich. 251; 21 Stat., 115; 12 Stat., 407; 16 Stat., 631. What is [***2] the meaning of "live stock?" 17 S. W. R., 117; 2 L.R.A., 148; 65 Ia., 336. Statute taxing dogs created no higher property in them than existed under the common law: 54 S. C., 481. Compound larceny is stealing from the dwelling house or from one within two hundred yards and appurtenant to it: 24 S. C., 118; 1 Nott & McC. 283; 45 S. C., 490; 18 S. C., 137. And a count charging compound larceny must so allege: 45 S. C., 488.

Judges: MR. JUSTICE JONES.

Opinion by: JONES

Opinion

[*323] [**371] The opinion of the Court was delivered by

MR. JUSTICE JONES. In this case the State appeals from an order quashing an indictment, containing two counts—one charging burglary of a dog house within 200 yards of and appurtenant to the dwelling of Mary Nichols, with [*324] intent to steal, &c., the goods and chattels of Mary Nichols in the said dog house; the other count charging larceny of a dog of the value of \$ 10 of the proper goods and chattels of Mary Nichols, then and there being found in the said dog house. In sustaining the demurrer to the indictment the Circuit Court held: (1) that larceny cannot be committed of a dog; (2) that the intent to steal goods and chattels, charged in the first count, [***3] necessarily implies the stealing of a dog, because from a dog house, and that the offense of burglary is, therefore, not charged; (3) that it is not compound larceny to steal from a dog house, as alleged in the second count.

1. The first and principal question presented is whether a dog is the subject of larceny. By the old common law, larceny could not be committed of a dog. The reasons assigned for this were the baseness of the nature of such creature; that it was kept for mere whim and pleasure; that being unfit for food, it was of no intrinsic value; that the penalty for the felony of larceny was too

severe to apply for the stealing of so contemptible a creature. By the Statute of 10 George III., ch. 18 (George III. was fond of stag hunting), the taking and carrying away of a dog was made punishable, but not as larceny. Under the reasoning satisfactory at that day, it was larceny to steal a tame hawk, but not larceny to steal a tame dog, although it was larceny to steal the hide of a dead dog. Yet by the common law dogs were held to be such property as would sustain an action of trover for their recovery. Civil remedies were permitted for injury to or loss of dogs, and they would [***4] go to the executors and administrators as property. The reason for the outlawry of dogs in favor of thieves can hardly be regarded as persuasive at this day and here, and such crude application of the principles of the common law must yield to common sense. The fitness of an animal for food is not the only test of its value to mankind; its capacity for useful service in other ways is often the real test of value. Nor is the fact that an animal is kept for the whim and [*325] pleasure of its owner any sort of reason for excluding it from the law of larceny as a thing of no value, for amusement has its valuable uses to man. Neither is it just to say of the dog that its nature is so base as to render it unworthy of protection as absolute property, for Baron Cuvier says the dog is the "completest, the most singular, and the most useful conquest ever made by man." When we are told that the Greeks and Romans employed dogs in war, armed with spiked collars, and that Corinth was saved by war dogs which attacked and checked the enemy until the sleeping garrison were aroused, we better understand Shakespeare's Antony when he said, "Cry havoc, and let slip the dogs of war." We should not [***5] let our contempt for sheep-killing dogs and our dread of hydrophobia do injustice to the noble Newfoundland, that braves the water to rescue the drowning child; to the Esquimaux dog, the burden bearer of the arctic regions; to the sheep dog, that guards the shepherd's flocks and makes sheep raising possible in some countries; to the St. Bernard dog, trained to rescue travelers lost or buried in the snows of the Alps; to the swift and docile greyhound; to the package carrying spaniel; to the sagacious setters and pointers, through whose eager aid our tables are supplied with the game of the season; to the fleet fox hounds, whose music when opening on the fleeing fox is sweet to many ears; to the faithful watch dog, whose honest bark, as Byron says, bays "deep-mouthed welcome as we draw near home;" to the rat-exterminating terrier; to the wakeful fice, which the burglar dreads more than he does the sleeping master; to even the pug, whose very ugliness inspires the adoration of the mistress; to the brag 'possum and coon

dog, for which the owner will fight if imposed upon; and lastly, to the pet dog, the playmate of the American boy, to say nothing of the "yaller dog," that defies legislatures. [***6] Of all animals the dog is most domestic. Its intelligence, docility and devotion make it the servant, the companion and the faithful friend of man. The raising and training of dogs are now pursued by many as a business, large sums of money are invested in [*326] them, and they are bought and sold as other property. In this State, by statute, dogs are and have long been taxed as personal property, according to value and for revenue. As stated in *Salley v. R. R.*, 54 S.C. 481, 32 S.E. 526: **HN1**[↑] "What the law taxes as personal property it will protect as such." This legislation is potent in two ways: (1) If the common law rule, notwithstanding the fallacy of the reasoning upon which it is based, as applied to present conditions, should be held of force in this State, in the absence of modification by statute, then the statute taxing dogs as personal property ad valorem and for revenue is a modification of the common law rule. (2) **HN2**[↑] It brings dogs as personal property and things of value within the meaning of "chattels" in our State as to simple larceny--see 160 Criminal Code, the term "chattel" including all kinds of *property* except freehold, or things parcel thereof, [***7] and perhaps choses in action. In the case of *Ward v. State*, 48 Ala. 161, 17 Am. Rep. 31, holding that there is no such property in dogs as makes them the subject of larceny, the Court was influenced by the absence of any statute modifying the common law, and the fact that [**372] dogs were not taxed as other property in that State. Likewise, in the case of *State v. Doe*, 79 Ind. 9, 41 Am. Rep. 599, the Court, while holding dogs not the subject of larceny, said: "If dogs were taxed in this State (Indiana) as other property for revenue purposes, it would be a strong circumstance to show an intent on the part of the legislature to abrogate the common law rule, and make them the subjects of larceny like any other personal property." In the case of *Mullaly v. People*, 86 N.Y. 365, a strong case in support of the view of this Court, the Court said: "It can scarcely be supposed that the legislature meant to regard dogs as property for purposes of taxation, and yet leave them without protection from thieves." Sustaining our conclusion, among others are the following cases: *State v. Brown*, 9 Baxt. 53, 40 Am. Rep. 81; *Hornsby v. Sampson* (Iowa), 40 L.R.A. 508, [***8] and a very able and exhaustive note on property rights in dogs, beginning at page 503.

[*327] 2. The Circuit Court also erred in holding, "that the intent to steal goods and chattels, charged in the first count, necessarily implies the stealing of a dog,

because from a dog house." The first count did not charge intent to steal a dog, but intent to steal the goods and chattels of the prosecutrix in said dog house. It is not a necessary inference that no chattel other than a dog could be in a dog house, as there might have been other chattels there, such, for example, as collar and chain, block and chain, vessel for food and water, &c., or, indeed, any other chattel the proprietor might see fit to place therein. The first count could, therefore, be sustained as a count for burglary, without reference to the question whether a dog is the subject of larceny. **HN3**[↑] In indictments for burglary with intent to commit larceny, it is not necessary to specify the particular goods and chattels the defendant intended to steal. 3 Enc. Pl. & Prac., 776. It is urged against this that such want or specification would prevent the plea of former acquittal or conviction; but not so, for such plea is available [***9] if the same burglarious breaking and entering is the essential ingredient in both charges.

3. In reference to the second count, we think the Circuit Court correctly held that it failed to charge a compound larceny. In alleging a larceny from "said dog house," this count did not allege that the dog house was appurtenant to and within 200 yards of the dwelling house. This was alleged in the first count, but the rule is that **HN4**[↑] the sufficiency of each count must be determined by its own allegations, without aid from another count. *State v. Johnson*, 45 S.C. 483, 23 S.E. 619. But, nevertheless, it was error to quash the second count, because it was good as a count for simple larceny, and **HN5**[↑] the Court of General Sessions has concurrent jurisdiction in all cases of larceny triable by magistrate. See Constitution, art. 5, sec. 18, applied in reference to larceny of live stock, in the case of *State v. Crosby*, 51 S.C. 247, 28 S.E. 529.

[*328] The judgment of the Circuit Court is reversed, and the case remanded for further proceedings.

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Bales v. Judelsohn

Court of Appeals of South Carolina

June 1, 2005, Submitted; August 30, 2005, Filed

Unpublished Opinion No. 2005-UP-509

Reporter

2005 S.C. App. Unpub. LEXIS 527 *

Frankie Bales and Sandra Bales, Respondents v.
Robert Judelsohn, Appellant.

Notice: THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

Prior History: [*1] Appeal From Charleston County. Thomas L. Hughston, Jr., Circuit Court Judge.

Disposition: APPEAL DISMISSED.

Core Terms

damages, dog, Animals, lost wages, veterinary, MODIFIED, injuries, emotional distress, personal property, bring an action, mental distress, reimbursement, emotional, fight, cat, pet

Counsel: Jay S. Masty, of Goose Creek, for Appellant.
Mark Andrew Redmond, of Charleston, for Respondents.

Judges: HEARN, C.J., BEATTY, and SHORT, J.J., concur.

Opinion

PER CURIAM: Frankie and Sandra Bales brought an action against Robert Judelsohn after Judelsohn's dog injured their dog. The jury found for the Bales. Judelsohn appeals. We affirm as modified.¹

FACTS

¹We decide this case without oral argument pursuant to Rule 215, SCACR.

In September 2000, Judelsohn's dog was involved in a fight with the Bales' dog. Unfortunately, the Bales' dog was injured in the fight and had to be treated for various injuries, incurring a \$1,258.10 veterinary bill. The Bales brought an action seeking damages for reimbursement of the veterinary bill, lost wages, and emotional injuries. The jury found Judelsohn liable for \$5,000 in damages. This appeal followed.

LAW/ANALYSIS

Judelsohn argues the trial court erred by submitting the issues of emotional damages and lost wages to the jury. We agree.

"In an action at law, on appeal of a case tried by a jury, the jurisdiction of this court extends merely to the correction of errors of law, and a factual finding of the jury will not be disturbed unless a review of the [*2] record discloses that there is no evidence which reasonably supports the jury's findings." Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976).

We have not found any jurisprudence in South Carolina that addresses damages resulting from an injury to a pet. However, a limited number of cases decided throughout the United States have considered what damages are recoverable due to injuries to a dog. Typically, the courts have limited the award of damages to the dog's market value in view of the general recognition of dogs as personal property. 4 Am. Jur. 2d Animals §§ 6 and 165 (1995); see State v. Langford, 55 S.C. 322, 33 S.E. 370 (1899).

A New York case, with facts similar to the case sub judice, held that the owner of a cat could not recover for mental distress after seeing it attacked by a dog because the dog's owner was not grossly negligent and did not willfully intend to cause the distress. Buchanan v. Stout, 123 A.D. 648, 108 N.Y.S. 38 (N.Y. App. Div.

1908). Any recovery of damages, the court concluded, would be limited to the pecuniary loss to the owner resulting from the death of her cat. *Id.*; but see *Peloquin v. Calcasieu Parish Police Jury*, 367 So.2d 1246, 1251 (La. Ct. App. 1979) (holding that an owner of a animal may sue for damages for conversion thereof and "damages may include awards for mental anguish, humiliation, etc. as well as special and/or actual damages."); 4 Am. Jur. 2d Animals § 164 at 508 (1995) (stating that "[a]lthough recovery has been denied for claims based [*3] upon sentimental or fanciful value placed on animals, damages for mental distress are a proper item of recovery for death or injury to animals such as ... dogs, provided that the owner presents sufficient evidence of emotional distress.").

Therefore, we hold that South Carolina law does not support a cause of action for emotional distress for injury to one's pet. Furthermore, we hold that a claim for lost wages resulting from injury to an animal is not actionable because a dog is considered personal property under our law. Thus, we modify the trial court's judgment, awarding damages only for reimbursement of veterinary expenses in the amount of \$1,258.10.

AFFIRMED AS MODIFIED.

HEARN, C.J., BEATTY, and SHORT, J.J., concur.

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT

Bridgett Fowler,)
)
 Plaintiff,) C.A. No. 2018-CP-26-06173
)

vs.) **PLAINTIFF’S MEMORANDUM OF LAW**
) **IN OPPOSITION TO DEFENDANTS’**
) **MOTION FOR SUMMARY JUDGMENT**

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

Bridgett Fowler (“Plaintiff”), by and through her undersigned counsel, hereby submits this Memorandum of Law in Opposition to Defendants’ Motion for Summary Judgment pursuant to Rule 56, SCRPC.

I. INTRODUCTION

Plaintiff was the loving owner of a young, AKC-registered Brittany Spaniel, named Honey Bunny. In March 2018, Plaintiff and her son watched in horror as a callous FedEx driver plowed over Honey Bunny, brutally killing the beloved dog in Plaintiff’s driveway two months after the same FedEx driver ran into and caused damage to Plaintiff’s vehicle in Plaintiff’s driveway. Since witnessing Honey Bunny’s brutal demise, Plaintiff has required medication to alleviate her emotional distress. Plaintiff filed this suit in November 2018, claiming negligence, gross negligence, willful, wanton and reckless conduct against Defendants and seeking to recover actual, punitive, and compensatory damages. The law relating to a pet owner’s ability to recover damages for emotional distress, mental anguish, and anxiety upon a pet’s death has been changing in favor of pet owners. As will be evidenced in this Memorandum, genuine issues of material fact exist in this case that should be tried to the jury, and Defendants are not entitled to judgment as a matter of law on the issue of recovery for Plaintiff’s mental anguish, emotional distress, and anxiety.

Therefore, Plaintiff respectfully asks this Honorable Court to deny Defendants' Motion for Summary Judgment.

II. FACTUAL BACKGROUND

Plaintiff resides in Loris, South Carolina, with her husband, a retired Horry County Police Officer, and her sons. *See* Compl. ¶ 5. Plaintiff and her family were the loving owners of an AKC-registered Brittany Spaniel named Honey Bunny. *Id.* ¶ 6. Honey Bunny was a source of joy and comfort for the entire family, but especially for Plaintiff, who had undergone significant back surgery and relished Honey Bunny's companionship during her recovery. *Id.* ¶ 7.

In January 2018, a FedEx driver, acting within the scope of his employment for Defendants, struck and caused significant damage to one of Plaintiff's parked vehicles while attempting to reverse out of Plaintiff's circular driveway after delivering a package. *Id.* ¶¶ 8–10. On March 22, 2018, the same FedEx driver again pulled into Plaintiff's driveway, this time traveling at an excessive speed and driving recklessly. *Id.* ¶¶ 12–13. Honey Bunny and another of Plaintiff's dogs excitedly ran from their place on Plaintiff's front porch down the driveway to greet the visitor. *Id.* ¶ 14. Plaintiff watched the horrific events that occurred next from her living room window. *Id.* ¶ 15.

Without making any attempt to slow down as he approached Plaintiff's home, the FedEx driver plowed into Honey Bunny, brutally killing her as Plaintiff watched. *Id.* ¶ 16. Plaintiff and her son, who also witnessed Honey Bunny's brutal death, ran to Honey Bunny's side and wept. *Id.* The delivery driver unapologetically stated that he had not seen the dog, returned to his truck, and drove away without delivering any packages. *Id.* ¶¶ 17–18. To help cope with her emotional distress, anxiety, and other symptoms since witnessing Honey Bunny's death, Plaintiff has taken medication. *Id.* ¶ 19.

Plaintiff initiated this action on November 1, 2018, against FedEx Corporation and filed an amended complaint correctly naming FedEx Ground Package System, Inc. as the Defendant on

December 31, 2018. *See* Compl., Am. Compl. Thereafter, Plaintiff filed a Second Amended Complaint joining Defendant James K. Ard d/b/a JMK Logistics Corporation. *See* 2d Am. Compl. On August 1, 2019, Defendants filed this Motion for Summary Judgment on the limited issue of recovery for mental anguish, emotional distress, and anxiety.

III. LEGAL STANDARD

Summary judgment is appropriate only when, upon viewing all submitted evidence, “there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC. In considering a motion for summary judgment, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 576, 762 S.E.2d 696, 700 (2014) (citing *Knight v. Austin*, 396 S.C. 518, 521–22, 722 S.E.2d 802, 804 (2012)). “When evidence is susceptible to more than one reasonable inference, the issue should be submitted to the jury.” *Murphy v. Tyndall*, 384 S.C. 50, 54, 681 S.E.2d 28, 30 (Ct. App. 2009) (citing *Vaughan v. Town of Lyman*, 370 S.C. 436, 448, 635 S.E.2d 631, 638 (2006)). In cases where the preponderance of evidence burden of proof applies, the non-moving party must only submit “a mere scintilla of evidence” to survive a motion for summary judgment. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)).

IV. ARGUMENT

Defendant’s motion for summary judgment on the issue of recovery for emotional distress, mental anguish, and anxiety should be denied because developments in the law over the past 120 years indicate that pets have identifiable value beyond simply their fair market value. For example, Section 47-3-970 of the South Carolina Code, which was enacted in 2003, allows owners of guide dogs or service animals to recover for expenses beyond the animal’s fair market value. S.C. CODE ANN. § 47-3-970 (2003, as amended) (allowing recovery for user’s medical expenses and lost wages incurred by the injury or death of a guide dog or service animal). Additionally, the South

Carolina Legislature amended the South Carolina Code of Laws this year to recognize emotional support animals, which it defines as “an animal intended to provide companionship and reassurance,” thereby implicitly recognizing that the loss of an animal can cause its owner emotional harm. *Id.* § 47-3-920(6) (eff. May 16, 2019). Furthermore, South Carolina jurisprudence allows recovery based on the “special value to [the plaintiff]” for personal property with no actual market value. *See* S.C. Jur. *Damages* § 52 (1991).

Likewise, caselaw from several other jurisdictions shows a trend in recognizing the value of a pet’s companionship and awarding damages for a pet owner’s emotional distress, mental anguish, and anxiety resulting from the loss of a pet. *See, e.g., Moreno v. Hughes*, 157 F. Supp. 3d 687 (E.D. Mich. 2016) (holding plaintiffs can recover emotional distress damages from defendant after defendant shot dog); *La Porte v. Associated Indeps., Inc.*, 163 So.2d 267, 269 (Fla. 1964) (“[T]he affection of a master for his dog is a very real thing and . . . destruction of the pet provides an element of damage for which the owner should recover, irrespective of the value of the animal”); *Knowles Animal Hosp., Inc. v. Wills*, 360 So.2d 37 (Fla. Dist. Ct. App. 1978) (allowing Plaintiff owners of dog to recover for their mental pain and suffering after injury Defendant caused to dog); *Campbell v. Animal Quarantine Station et al.*, 632 P.2d 1066 (Haw. 1981) (holding Plaintiffs can recover for mental distress suffered through loss of family dog due to defendants’ negligence); *Burgess v. Taylor*, 44 S.W.3d 806 (Ky. Ct. App. 2001) (holding that the subject matter being a pet does not preclude an award for emotional distress); *Bueckner v. Hamel*, 886 S.W.2d 368, 374 (Tex. App. 1994) (Andell, J., concurring) (“People who love and care for animals should not be forced to accept as compensation for their loss the amount that the animal would bring in the market.”); *Womack v. Rardon*, 135 P.3d 542 (Wash. Ct. App. 2006) (upholding award for emotional distress after malicious injury to cat). Indeed, states have enacted laws that specifically provide for the recovery of noneconomic damages after the loss of a pet. *See* 510 ILL. COMP. STAT. 70/16.3 (West 2002, as amended) (permitting awards for “emotional distress

suffered by the owner”); TENN. CODE ANN. § 44-17-403(a)(1) (West 2004) (providing recovery for noneconomic damages for the death of a pet caused by the intentional or negligent act of another).

The only South Carolina case with precedential value cited by Defendant on the issue of recovery for injury to companion animals is 120 years old, *State v. Langford*, 55 S.C. 322, 33 S.E. 370 (1899), and that case is not consistent with recent acts passed by South Carolina’s Legislature, as described herein, or society’s view of companion animals in 2019. The other case cited by Defendants on this issue holds no precedential value. *See Bales v. Judelsohn*, No. 2005-UP-509, 2005 WL 7084365 (S.C. Ct. App. Aug. 30, 2005). Given developments in our State laws toward companion animals and the recovery of damages for losses of companion animals, as evidenced by the above-cited acts of this State’s Legislature, noneconomic damages are now recoverable for pet owners resulting from the death of companion animals.

Plaintiff did not just lose a beloved pet; she personally witnessed the brutal death of a companion animal that provided comfort to Plaintiff while she recovered from back surgery. *See* Compl. ¶ 7. Consistent with recent developments in South Carolina law, Plaintiff as a matter of law may recover for her emotional distress, mental distress, and anxiety, and to the extent the companion animal is considered personal property, Plaintiff may recover the “special value” of the companion animal to her. When viewed in the light most favorable to the Plaintiff, a genuine issue of material fact exists as to the value of Plaintiff’s emotional distress, mental anguish, and anxiety, which should be submitted to the jury, and Defendant is not entitled to judgment as a matter of law.

V. CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that this Honorable Court deny Defendants’ Motion for Summary Judgment.

Respectfully submitted,

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Attorneys for Plaintiff

August 29, 2019
Columbia, South Carolina

| | | |
|-------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF HORRY |) | 2018-CP-26-06173 |
| BRIDGETT FOWLER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| Vs |) | Transcript of Record |
| |) | |
| FEDEX GROUND PACKAGE |) | SEPTEMBER 11, 2019 |
| SYSTEM, INC. & JAMES K. |) | |
| ARD d/b/a JMK LOGISTICS |) | |
| CORPORATION. |) | |
| |) | |
| Defendants. |) | |
| |) | |

B E F O R E :

The Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S :

Tyler Turner, Esquire
Attorney for Plaintiff

Dominic Starr, Esquire
Attorney for Defendant

Sallie Beth Todd
Official Court Reporter

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I N D E X

(There were no witnesses called during the hearing.)

Certificate of Court Reporter 16

E X H I B I T S

(There were no exhibits marked during the hearing.)

1 **THE COURT:** Alright. The first thing we have is 2018-CP-
2 26-6173, Bridgett Fowler versus FedEx Ground Package System
3 Inc. and James K. Ard d/b/a JMK Logistics Corporation.
4 According to my roster, the matter is before the Court on a
5 Motion for Summary Judgment. Please give the court reporter
6 your name and who you represent.

7 **MR. STARR:** Thank you, Your Honor. Dominic Starr, I
8 represent the defendants in the case.

9 **THE COURT:** Alright.

10 **MR. TURNER:** Your Honor, Tyler Turner. I represent the
11 plaintiff.

12 **THE COURT:** Alright. Mr. Starr, this is your motion?

13 **MR. STARR:** Yes, Your Honor, and for the record it's a
14 Motion for Partial Summary Judgment only, not full summary
15 judgment.

16 **THE COURT:** Okay.

17 **MR. STARR:** And specifically, Your Honor, we are moving
18 for summary judgment to preclude plaintiff from seeking
19 damages in this case related to emotional distress, anxiety
20 and other non-economic damages. And just to give the Court
21 some background in this case, plaintiff filed a lawsuit on
22 behalf of herself for the loss of her dog. The facts of the
23 case are a FedEx driver, an independent contractor driving for
24 FedEx delivering packages, was coming onto the plaintiff's
25 property coming down -- they have a long driveway, a long dirt

1 driveway to their property. And the allegations are as the
2 driver was coming in, he ran over and killed one of
3 plaintiff's pets, one of her dogs. And she filed suit through
4 her attorney and as part of that suit she is seeking non-
5 economic damages, which are not provided for or allowed for
6 under the Law of South Carolina. And that's what we are here
7 for, Your Honor, to address that issue. To go over a couple
8 of the -- a couple of the issues specifically, the law in
9 South Carolina is every old and we've cited in our brief and
10 in fact attached a copy for the Court's ease of reference to
11 our brief. In the case of *State v. Langford* which was issued
12 back in 1899 so it's 120 years since our Supreme Court has
13 specifically addressed this. The *State v Langford* case
14 actually is well-known throughout the country and is cited in
15 numerous other states as, as authority and as reference to
16 other states making the same finding which is that pets in
17 South Carolina are considered to be personal property. And as
18 a result, because they're personal property, if a pet is
19 killed then the owner of that pet has the opportunity to seek
20 damages for that pet which is the market value of the pet, so
21 either the cost of what it would be to buy one of those, in
22 this case it's a Brittany Spaniel dog; or if a dog is injured,
23 a pet is injured then they can seek the cost of the bills for
24 treatment of the dog. But, our Court has never allowed non-
25 economic damages, in particular emotional distress, anxiety,

1 mental anguish are the specific references made in the
2 complaint as part of what damages the plaintiff is seeking in
3 this case. Your Honor, we also provided to the Court and we
4 reference in our brief a Court of Appeals decision from 2005
5 which is not published and does not have any precedential
6 value, but we think it's instructive for this case because
7 it's a fairly recent analysis of an identical situation in
8 that the plaintiff in that case, her dog was injured by being
9 attacked by another dog. And the Court of Appeals confirmed
10 that our state law is still the state law that was established
11 in *State versus Langford*, that pets are personal property and
12 went on to say that a claim for lost wages for an injury to an
13 animal is not actual because a dog is considered personal
14 property under our law and simply do not allow any non-
15 economic damage claims to be awarded or sought from the
16 plaintiff. Your Honor, in opposition to our motion opposing
17 counsel has also filed a brief. That brief cites no South
18 Carolina Law in support of the position that non-economic
19 damages should be allowed, and I think we both are in
20 agreement that there is no such case that expressly says that.
21 He does cite to the Court two separate code sections in
22 support of the position that as times are changing some states
23 are allowing non-economic damages to be considered for the
24 death of a pet. However, the statutes that are cited -- the
25 South Carolina statutes that are cited not only do not support

1 the plaintiff's position in this case, but we think further
2 support our position because it shows that our legislature has
3 addressed this issue, the issue of injury to pets and animals.
4 And also, like our Supreme Court, has chosen not to allow non-
5 economic damages for injuries or death of those pets. And
6 specifically, Your Honor, he cites first code section 47-3-970
7 which allows for restitution to be paid to the owner of a
8 guide dog which is a specifically defined animal in our code
9 which is a dog that leads a blind person. And then also a
10 service animal, which is a dog or other animal that provides
11 assistance to someone who has a physical disability other than
12 blindness. But, in those two circumstances with those two
13 types of dogs, the statute allows a dog -- an owner of one of
14 those dogs to recover items such as cost of getting a new dog
15 if that person is unable to work while they don't have their
16 dog available to them. For example, a blind person if he or
17 she could not go to work until they get a new guide dog, they
18 can seek lost wages. But, even in that statute there are no
19 non-economic damages that are allowable even to the owners of
20 those types of dogs who by statutory definition play a very
21 significant role in that person's life. I think it's also
22 worth noting, Your Honor, that that code section is a criminal
23 restitution statute and it specifically says in section C that
24 it does not affect civil remedies and isn't connected to the
25 civil side of litigation. It simply is restitution to the

1 victim of a crime that leads to the death or injury of one of
2 those dogs can get in addition to the cost of the dog. And
3 then, Your Honor, opposing counsel cites section 47-3-920
4 subsection 6 which was added by our legislature in 2019 to
5 provide a definition for a "emotional support animal", and it
6 just simply defines that term for purposes of our code. But,
7 that is the statute -- I'm sorry, that is a definitional
8 statute. It does not provide any recovery or any types of
9 damages that are available to an owner of such an animal.
10 Neither of these statutes, not any others in South Carolina
11 extend any type of non-economic damages to owners of pets,
12 including these much more specifically purposed animals, like
13 guide dogs, service animals, and emotional support animals.
14 Opposing counsel cites a number of cases from other states. I
15 believe currently there's six or seven other states in the
16 country that now allow emotional or non-economic damages to be
17 requested of a jury involving the death of a pet, those are
18 still the significant minority in the country and it's not the
19 law here. Your Honor, it is certainly possible that one day
20 in the future our legislature or our Supreme Court may extend
21 non-economic damages and allow that to be recoverable to
22 owners of pets, but as of today that has not happened. And
23 because it hasn't happened summary judgment is the appropriate
24 remedy with respect to those claims. It's not an evidentiary
25 issue that should be decided at trial like a Motion in Limine.

1 It's a matter of law that simply states that our law does not
2 allow such a claim to be made and therefore should be allowed
3 to go forward as our case progresses towards trial or other
4 resolution.

5 **THE COURT:** Alright. Thank you. Mr. Turner.

6 **MR. TURNER:** Thank you, Your Honor. Tyler Turner for the
7 plaintiff, Ms. Bridgett Fowler. A little bit of background
8 about the case as it relates to the legal issue at hand. Ms.
9 Fowler lives in Loris, South Carolina with her husband who is
10 a retired Horry County Police Officer, her sons and up until
11 March of 2018, her Brittany Spaniel. In late 2017 Ms. Fowler
12 underwent a significant back surgery that left her immobile
13 for quite a long period of time. And during that period, she
14 spent every day with her Brittany Spaniel as a companion for
15 emotional support as she worked through that, that period in
16 her life. Soon after that surgery in January of 2018 a FedEx
17 driver came onto her property to deliver a package and when he
18 was leaving, he hit her vehicle causing significant damage and
19 left without informing Ms. Fowler of what he had done. Ms.
20 Fowler found the damage, investigated, and eventually he came
21 back and apologized and admitted that he hit the vehicle.
22 Fast forward a few weeks later, the same FedEx delivery driver
23 again pulled into her driveway, as Mr. Starr said, it's a long
24 straight driveway with clear visibility. And when he pulled
25 into the driveway the Brittany Spaniel was sitting on the

1 front porch and Ms. Fowler was in the front room of her house
2 looking out and they both heard him turn in. When he did, the
3 Brittany Spaniel rose up and started trotting down the
4 driveway to meet him, he was a very friendly dog. And
5 inexplicable appeared to Ms. Fowler not to slow down at all,
6 just to speed forward and brutally run over the dog and kill
7 it. Ms. Fowler came out as quickly as she could given her
8 physical condition. Her son, Christian, was on the side of
9 the house as well. They both came out and wept over the dog
10 and the driver got down out of truck, said I'm sorry I didn't
11 see the dog, got back in and just left. He never delivered a
12 package or anything, so it's not even clear why he was there
13 that day. He just came, ran over Ms. Fowler's dog, and left.
14 Witnessing that accident and the loss of the dog since then
15 has caused her significant emotional harm, something any pet
16 owner could understand, and she has brought this action. The
17 issue before the Court today, I agree, is does South Carolina
18 Law allow a pet owner to recover for emotional damages related
19 to the loss of a pet. The defendants in this case rely on the
20 120-year-old case *State versus Langford* and it's an
21 interesting case. It is a significant case. Prior to 1899 it
22 appears that South Carolina treated dogs just sort of like
23 other wild animals and they were considered personal property
24 under common law and that was not a civil case, it was a
25 criminal case. And the significance of it was the Court

1 recognized the dog as property in that case which then lead to
2 potential criminal implications because you can steal
3 property, but you can't steal a wild bird flying around or
4 something like that. What that case did not do is analyze in
5 the context of a civil lawsuit whether emotional damages are
6 available for the loss of a pet. There is a 2005 case, it's
7 an unpublished opinion with no precedential value from the
8 South Carolina Court of Appeals that does address this issue
9 and the Court's finding was very interesting; and the
10 defendant has attached it to his Memorandum of Law. One of
11 the first sentences in there, the Court of Appeals states that
12 we have not found any juris prudence in South Carolina that
13 addresses damages resulting from injury to a pet. So, the
14 Court of Appeals is recognizing in 2005 that the *State versus*
15 *Langford* case does not apply to this issue. They go on and
16 they say, however, a limited number of cases decided
17 throughout the United States considered what damages are
18 recoverable due to injuries to a dog. Typically, the Courts
19 have limited the award of damages to a dog's market value in
20 view of the general definition of dogs as personal property.
21 Therefore, we hold that South Carolina Law does not support
22 cause of action for emotional distress for injury to one's
23 pet. There's three really important points I want to make
24 about this case. The first I've stated is that it's an
25 unpublished opinion. It has no precedential value and there's

1 no other opinion that says that a plaintiff cannot recover
2 emotional damages under South Carolina Law. The second is
3 that the Court's reasoning is really interesting, they base
4 their decision on what the law is in other jurisdictions and
5 in support of that they cite one case from New York where a
6 cat was injured and the New York Court said you can't recover.
7 I've included in my brief cases that support a recent
8 nationwide trend where Courts are beginning to recognize all
9 around the country the recovery of emotional damages for the
10 loss of a pet. I've cited cases from a number of
11 jurisdictions including Florida, Tennessee, Texas, Kentucky,
12 Michigan and others. I think Washington Court of Appeals case
13 cited and referenced the Louisiana case that went the other
14 way. So, there is a nationwide trend in recognizing the
15 recovery of emotional damages for the loss of a pet and the
16 law in other states is what the Court of Appeals based their
17 decision on in that case. The third thing that I think is
18 really most important, and defense counsel made reference to
19 it, is out state legislature this year in active legislation
20 defining an emotional support animal and they did it within
21 the context of distinguishing emotional support animals from
22 service animals. And they talked about why they were doing
23 that in the act. It's Senate Bill 0281, Act 44 of 2019. And
24 the reason that they did that is because there's a lot of
25 confusion I think around the state into what constitutes a

1 service animal and people with service animals have certain
2 rights by where they can bring them into places of business
3 and things of that nature. And so, they wanted to distinguish
4 that from an emotional support animal, which is an animal that
5 provides emotional support for its owner but doesn't
6 necessarily qualify to be a service animal. In defining an
7 emotional support animal in statute they defined it as an
8 animal intended to provide companionship and reassurance and
9 the legislature went on to describe the crime deterrent effect
10 of an animals presence and the provision of emotional support,
11 well-being, comfort and companionship that the pet can provide
12 in the statue. Based on that it appears that our state is
13 recognizing the emotional support, companionship, and comfort
14 that pets can provide to their owners. I think they are
15 recognizing that if we acknowledge that exists, if you take
16 that pet away there's going to be some emotional loss and
17 damage there, especially if it happens under the circumstances
18 like Ms. Fowler has been put in. For those reasons we'd ask
19 the Court for a couple of findings. One, that there is no
20 published opinion with precedential value or statue in South
21 Carolina that limits the recovery of emotional damages to the
22 injury of a pet. And two, that our legislature has explicitly
23 recognized the emotional value that pet provide their owners,
24 including the emotional support, well-being, comfort and
25 companionship. Thereby implicitly recognizing that emotional

1 damages can be suffered from the loss of a pet. We
2 respectfully request the Court to deny the defendant's Motion
3 for Partial Summary Judgment for these reasons. Thank you,
4 Your Honor.

5 **THE COURT:** Anything in reply?

6 **MR. STARR:** Just very briefly, Your Honor. To clarify,
7 and I think this is probably self-explanatory to Your Honor,
8 but what State versus Langford did was classify pets as
9 personal property which they weren't given that classification
10 prior to that. And in fact, most of that opinion goes through
11 a description of the value to people of different types of
12 dogs and the support and value they provide. So, while it
13 doesn't address damages in a civil case, it defines what pets
14 are which is personal property. And then, Your Honor, the
15 damages law in South Carolina provides that for personal
16 property the recovery, the proper recovery is the worth of the
17 personal property, what that is, the market value, repair,
18 replacement, those kinds of things. And that can be found,
19 that's black letter in South Carolina Damages Handbook,
20 section 2, part 4 (b) addresses the fair market value analysis
21 of personal property and other chattel. That's published by
22 the South Carolina Bar, authored by James Ward and Ed
23 Westbrook. I think it's pretty much the guideline on how we
24 analyze what damages are available, where a lot of jury
25 charges come from, etcetera. And so, the issue is that in

1 South Carolina until either our Supreme Court or our
2 legislature changes the law specific to pets, they are treated
3 as personal property and our law is well settled that personal
4 property -- the only recovery that a plaintiff can get for
5 damage or loss of personal property is the replacement cost of
6 that. It's not appropriate for a jury to consider that and
7 later then be reviewed by an Appellate Court. In the Bells v
8 Judelson (sic), again unpublished, but that's exactly what
9 happened. The trial judge allowed the jury to consider non-
10 economic damages. In that case the vet bill was \$1,200. The
11 jury awarded the plaintiff \$5,000 in actual damages. The
12 Appellate Court overturned the verdict and reduced it to
13 \$1,200 saying that there was nothing else that could be
14 recovered pursuant to our law with respect to personal
15 property.

16 **THE COURT:** Alright. Thank you.

17 Alright. Mr. Starr, if I could get you to prepare an
18 order. I'm going to grant the Motion for Partial Summary
19 Judgment. I agree Bells v Judelson (sic) it doesn't have any
20 precedential value but it's all we've got. I think it's an
21 undisputed -- undisputed facts are it was a pet that was
22 killed, pets are property or I think a legal matter, as a
23 matter of law pets are considered property and you cannot
24 recover the non-economic loss for emotional distress or damage
25 for damage to property. They'll tell me if I'm wrong, or else

1 they'll issue another unpublished opinion like Bells v
2 Judelson (sic). We're either going to have two unpublished
3 opinions with no precedential value or they're going to
4 address the issue one way or the other. Okay. Alright.
5 That's all I've got to go on so I'm going to grant the summary
6 judgment. Thank you.

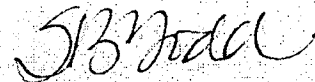
7 **(ADJOURNED)**

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C E R T I F I C A T E

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3 I, the undersigned, Sallie Beth Todd, Official Court
4 Reporter for the State of South Carolina, do hereby certify
5 that the foregoing is a true, accurate and complete transcript
6 of the Transcript of Record of the hearing held in the
7 interest of Bridgett Fowler versus FedEx Ground Package
8 System, Inc. and James K. Ard d/b/a JMK Logistics Corporation,
9 held in the Court of Common Pleas for Horry County, Horry
10 County Courthouse, Conway, South Carolina, on September 11,
11 2019.

12 I do hereby certify that I am neither of kin, counsel,
13 nor interest to any party hereto.
14
15
16

17 

18 _____
Sallie Beth Todd, CVR

19 Official Reporter
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23 December 31, 2019.
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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

Case No.: 2018-CP-26-06173

RECEIVED
OCT 11 2019
SC Court of Appeals

Bridgett Fowler Appellant

v.

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

NOTICE OF APPEAL

The above-named Appellant, by and through her undersigned counsel, hereby appeals the Order of the Honorable Benjamin H. Culbertson dated September 23, 2019. A copy of the Judgment on Appeal is provided herewith. A copy of this Notice is being provided to the Clerk of Court of Horry County Court of Common Pleas and all counsel of record.

Respectfully submitted,

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October 9, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS
BRIDGETT FOWLER,)
Plaintiff,) Civil Action No. 2018-CP-26-06173
v.)
FEDEX GROUND PACKAGE SYSTEM,)
INC. AND JAMES K. ARD D/B/A JMK)
LOGISTICS CORPORATION,)
Defendants.)

RECEIVED
OCT 11 2019
SC Court of Appeals

**ORDER GRANTING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

This motion was heard by me on September 11, 2019 in Horry County. Dominic Starr, Esquire appeared and argued the motion on behalf of the Defendants. Tyler Turner, Esquire appeared and argued in opposition on behalf of the Plaintiff.

FACTS/PROCEDURAL BACKGROUND

Plaintiff filed this lawsuit against Defendants for damages arising out of two separate incidents involving an independently contracted delivery driver for Federal Express at Plaintiff's home. The Complaint alleges that in January, 2018 the delivery driver struck Plaintiff's car causing damage. The Complaint also alleges that in March, 2018 the same delivery driver ran over and killed Plaintiff's dog while driving down Plaintiff's driveway. Plaintiff's Complaint alleges negligence, gross negligence, willful, wanton, and reckless conduct against the Defendants. In addition to seeking recovery for the property damage to Plaintiff's vehicle, Plaintiff's Complaint alleges damages for mental anguish, emotional distress and anxiety related to the death of her dog. Defendants filed Answers denying liability.

ELECTRONICALLY FILED - 2019 Sep 23 11:00 AM - HORRY - COMMON PLEAS - CASE#2018CP2606173

On August 1, 2019 Defendants filed this Motion for Partial Summary Judgment asserting that Plaintiff's request for damages related to mental anguish, emotional distress and anxiety must be dismissed as a matter of law. For the reasons set forth below, Defendants' Motion is GRANTED.

CONCLUSIONS OF LAW

I conclude that the law in South Carolina provides that dogs and other pets are considered personal property. In South Carolina, a plaintiff cannot recover emotional or other non-economic damages for the loss of personal property.

Since our Supreme Court's decision in *State v. Langford*, 55 S.C. 322, 33 S.E. 370 (S.C. 1899), pets have been deemed as personal property under the law. It is long established in South Carolina that a plaintiff's right to recover damages for personal property are limited to the market value of that property. See, e.g. South Carolina Damages § II.4.B.

The parties agree that there is no published South Carolina Supreme Court or Appellate Court decision that directly addresses the limitation of damages available to a plaintiff for the loss of a pet. That said, both parties referenced the unpublished decision of *Bales v. Judelsohn*, 2005 S.C. App. Unpub. LEXIS 527 (Ct. App. 2005). The Court recognizes that this unpublished decision does not have precedential value. This Court finds the case, however, is instructive to the case at hand. In *Bales*, the Court of Appeals reduced a jury verdict that was awarded to the plaintiff for actual damages that exceeded the veterinary bills associated with plaintiff's pet's injury. In doing so, the Court of Appeals held, "South Carolina law does not support a cause of action for emotional distress for injury to one's pet." *Id.*

In addition to the current status of case law in South Carolina, both parties agree that there is no statutory provision created by our legislature that allows for recovery of non-

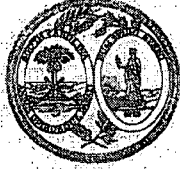
economic damages for the death or injury of a pet. Until either our legislature or our Supreme Court expressly recognizes the right of a pet owner to seek non-economic damages for the death or injury of a pet, this Court must rule as a matter of law that Plaintiff in the present case cannot seek damages for emotional distress, mental anguish, or anxiety at trial.

CONCLUSION

For the reasons set forth above, Defendants' Motion for Partial Summary Judgment as to Plaintiff's claims for damages related to mental anguish, emotional distress and anxiety is hereby GRANTED.

IT IS SO ORDERED.

The Honorable Benjamin H. Culbertson
Fifteenth Judicial Circuit



Horry Common Pleas

Case Caption: Bridgett Fowler VS FedEx Ground Package System Inc , defendant,
et al
Case Number: 2018CP2606173
Type: Order/Summary Judgment

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

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**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

Case No.: 2018-CP-26-06173


Bridgett Fowler Appellant

v.

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

ACCEPTANCE OF SERVICE

I, Dominic Starr, Esq., as attorney for Respondents FedEx Ground Package System, Inc. and James K. Ard d/b/a JMK Logistics Corporation, hereby accepts service of the Notice of Appeal on behalf of Respondents in the above-referenced case, effective October 10th, 2019.


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2411 North Oak Street, Suite 401
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October 10th, 2019

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.: _____

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SC Court of Appeals

Bridgett FowlerAppellant

v.

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

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 Notice of Appeal in the above-captioned matter by electronic mail and U.S. Mail on October 9, 2019 to the below-named parties at their address of record:

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Attorneys for Appellant Bridgett Fowler

Columbia, South Carolina
October 9, 2019

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

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SC Court of Appeals

Bridgett FowlerAppellant

v.

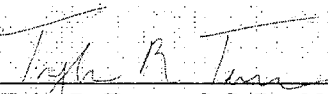
FedEx Ground Package System, Inc. and James K. Ard d/b/a JMK Logistics
Corporation Respondents

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials
proposed to be included by any of the parties and not any other materials.

TURNER & CAUDELL, LLC

By:



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April 28, 2020