

RECORD ON APPEAL
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2020-CP-10-3397

Appellate Case No: 2021-000450

Michele Graham

Appellant

v.

Mark Ciaburri
Adrienne T. Ciaburri

Respondents

RECORD ON APPEAL

Michele Graham
1661 Babington Way
Mount Pleasant, SC 29464
843-532-7252
Appellant

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham
PLAINTIFF(S)

Mark Ciaburri et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion for Temporary Injunction is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/29/2020 .

Mount Pleasant Patrol Officer Town of
Michele Graham for Michele Graham
Michele Graham for Michele Graham
Mount Pleasant Animal Control Officer Town of

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al

Case Number: 2020CP1003397

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-09-29 12:05:56 page 3 of 3

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STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

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CASE NO. 2020CP1003397

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IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The Town of Mount Pleasant's Motion to Dismiss is granted as to The Town of Mount Pleasant Police Department, Christa Hoffman, Heather Cumbee and Shelby Walker. The only remaining Defendants in this action shall be Mark Ciaburri and Adrienne Thompson Ciaburri.

Defendant Mark Ciaburri's Motion for Summary Judgment is denied.

Defendant Mark Ciaburri's Motion for Attorneys fees is granted as to the Preliminary Injunction hearing heard before this Court on September 24, 2020. Defense counsel shall submit an affidavit of fees from the September 24, 2020 hearing. The Court will consider these fees and award the appropriate amount at such time.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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Mount Pleasant Patrol Officer Town of
Michele Graham for Michele Graham
Michele Graham for Michele Graham
Mount Pleasant Animal Control Officer Town of

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Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al

Case Number: 2020CP1003397

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-12-21 15:13:17 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham
PLAINTIFF(S)

Mark Ciaburri et al
DEFENDANT(S)

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IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion to Recuse is denied. Ms. Graham's concern that the Court's frustration with pro se litigants was directed towards her is misguided. The fact that the Court expressed concern about the Plaintiff not understanding the rules is understandable as she is not an attorney, but does not detract from the fact that the Court is still obliged to treat a pro se plaintiff in accordance with the same rules as an attorney. Also, the mere fact that a judge is friends with an attorney on social media is also not grounds for recusal.

Plaintiff's Motion to Reconsider as to the attorneys fees is denied and Court will make a determination as to amount if any at the appropriate time.

ORDER INFORMATION

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☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/16/2021 .

Michele Graham for Michele Graham
Michele Graham for Michele Graham

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Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al
Case Number: 2020CP1003397
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2021-02-16 14:24:47 page 3 of 3

Michele Graham
PLAINTIFF(S)

Mark Ciaburri et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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☐ Other

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IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This order is in response to the Plaintiff's request for finding of fact filed on December 29, 2020.

Based on the testimony given at the hearing held on September 24, 2020, no testimony was given that Defendant had violated section 90.29(B)(3) of the Town of Mount Pleasant Laws and Ordinances.

Plaintiff did not present evidence that defendant, "maintain[s] an animal that habitually or repeatedly chases, snaps at, bites, or attacks pedestrians, bicycles, or vehicles, or other animals, or any animal whose behavior constitutes a reasonable risk of injuring a human or other animal."

ORDER INFORMATION

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☐ See Page 2 for additional information.

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Michele Graham for Michele Graham
Michele Graham for Michele Graham

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Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al

Case Number: 2020CP1003397

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2021-03-22 13:53:45 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham
PLAINTIFF(S)

Mark Ciaburri et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court as Plaintiff's Motion for Order Granting Relief from Judgment/Order and an Order Granting a New Trial Pursuant to SCRPC 60(b)(2) filed on March 29, 2021. The Plaintiff expressed to the Court via email and on the motion coversheet that she did not request a hearing on this motion.

Rule 60(b)(2) of the South Carolina Rules of Civil Procedure states, "On motion and upon such terms as are just, the court may relieve a party...from final judgment, order, or proceeding for the following reasons...newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)."

The Court does not consider the affidavit or testimony of the expert witness to be newly discovered evidence. Therefore, the Plaintiff's motion is denied.

ORDER INFORMATION

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☐ See Page 2 for additional information.

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Michele Graham for Michele Graham
Michele Graham for Michele Graham

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Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al
Case Number: 2020CP1003397
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2021-04-22 12:24:53 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;
CHRISTA HOFFMAN, in her official
capacity as a Town of Mount Pleasant
animal control officer;
HEATHER CUMBEE, in her official
capacity as a Town of Mount Pleasant
animal control officer;
SHELBY WALKER, in her official capacity
as a Town of Mount Pleasant patrol officer
TOWN OF MOUNT PLEASANT POLICE
DEPARTMENT

Defendants

CIVIL ACTION
FILE NO. 2020CP1003397

FILED
2020 AUG 31 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT

AMENDED COMPLAINT

Plaintiff Michele Graham brings this action against Defendants Mark Ciaburri, Adrienne Thompson Ciaburri, Animal Control Officer Christa Hoffman, Animal Control Officer Heather Cumbee, Pfc. Shelby Walker and the Town of Mount Pleasant Police Department based on the allegations set forth below.

PARTIES

1.

Plaintiff is a resident of 1661 Babington Way in Mount Pleasant, South Carolina (Charleston County) and the owner of the 12-year-old Yorkshire Terrier that was fatally attacked by a Pit-bull mix on May 27, 2020.

2.

Defendant Christa Hoffman, hereinafter referred to as “Defendant Officer Hoffman,” is an animal control officer for the Town of Mount Pleasant and assigned the duty of enforcing the Town of Mount Pleasant Ordinances Regarding Animals.

3.

Defendant Heather Cumbee, hereinafter referred to as “Defendant Officer Cumbee,” is an animal control officer for the Town of Mount Pleasant and assigned the duty of enforcing the Town of Mount Pleasant Ordinances Regarding Animals.

4.

Defendant Shelby Walker, hereinafter referred to as “Defendant Pfc. Shelby Walker,” is a patrol officer for the Town of Mount Pleasant and is responsible for enforcing the Town of Mount Pleasant Ordinances.

5.

Defendant Mark Ciaburri is the owner of the Pit-bull mix that fatally attacked the 12-year-old Yorkshire Terrier on May 27, 2020. Defendant Mark Ciaburri resides in Mount Pleasant, South Carolina (Charleston County).

6.

Defendant Adrienne Thompson Ciaburri is the co-owner of the Pit-bull mix that fatally attacked the 12-year-old Yorkshire Terrier on May 27, 2020. Defendant Adrienne Thompson Ciaburri resides in Mount Pleasant, South Carolina (Charleston County).

7.

The Town of Mount Pleasant Police Department is the police department for the Town of Mount Pleasant, South Carolina. The Town of Mount Pleasant Animal Control operates within the Town of Mount Pleasant Police Department.

JURISDICTION AND VENUE

8.

This Court has subject-matter jurisdiction over the claims in this action and jurisdiction over the Defendants named herein. The venue is proper in this Court because at least one of the Defendants resides in Mount Pleasant, South Carolina (Charleston County) and the acts and omissions that are the subject of this action occurred in Mount Pleasant, South Carolina (Charleston County).

PROCEDURAL BACKGROUND

9.

On July 1, 2020, Plaintiff Michele Graham filed a complaint against Defendants Mark and Adrienne Ciaburri in the Charleston County Small Claims Court for monetary damages arising from the fatal attack of the Plaintiffs' 12-year-old Yorkshire Terrier by the Defendants' Pit-bull mix. On August 25, 2020, Plaintiff Michele Graham dismissed the case in Charleston

County Small Claims Court, in order to pursue monetary damages and injunctive relief in the Charleston County Court of Common Pleas.

FACTS

10.

On May 27, 2020 at approximately 20:45, Plaintiff Michele Graham let the aforementioned 12-year-old Yorkshire Terrier out to relieve herself in the front lawn of her residence at 1661 Babington Way, Mount Pleasant, SC 29464 in the Wando Lakes subdivision.

11.

For brevity, the 12-year-old Yorkshire Terrier will be referred to hereinafter as “Gigi.”

12.

While standing at the full-view storm door to observe Gigi, the Plaintiff’s father turned away to speak with the others in the household. After looking away for < 1 minute, the Plaintiff’s father opened the full-view storm door to bring in Gigi. When the Plaintiff’s father opened the full-view storm door, the Plaintiff’s father witnessed Defendant Mark Ciaburri on the property holding his Pit-bull mix down. Defendant Mark Ciaburri then stated to the Plaintiff’s father, “Your dog is hurt.”

13.

Plaintiff Michele Graham, Gigi’s primary owner and caretaker, retrieved Gigi from the front lawn. Gigi was lying on her stomach and facing the 1661 Babington Way residence.

14.

Plaintiff Michele Graham immediately took Gigi to the emergency veterinary hospital located at 985 Johnnie Dodds Blvd., Mount Pleasant, SC 29464. While Plaintiff Michele Graham drove to the veterinary hospital, the Plaintiff's mother contacted Mount Pleasant police.

15.

When the Plaintiff's mother called the police, Defendant Mark Ciaburri left the scene and returned without his Pit-bull mix. Defendant Mark Ciaburri also returned to the scene with scraped knees.

16.

When the police arrived, the entire scene was captured on body-worn cameras. Defendant Mark Ciaburri appears on bodycam footage telling his version of the incident to the first officer on the scene. In Defendant Mark Ciaburri's first version, he states that Gigi "darted out" into the street and his dog "got it." Defendant Mark Ciaburri then states that he tried his best to "catch" his dog.

17.

Blood was present in various places in the front lawn, and seven droplets of blood were located on the curb. There was no blood anywhere on the street / roadway.

18.

When the second officer, Defendant Pfc. Shelby Walker, arrives Defendant Mark Ciaburri tells the same story; but Defendant Mark Ciaburri later adds that Gigi started

“attacking” his Pit-bull mix. In a subsequent statement to Defendant Pfc. Shelby Walker, Defendant Mark Ciaburri denies that Gigi attacked his Pit-bull mix.

19.

The incident report written by Defendant Pfc. Shelby Walker documenting this incident was inadequate, false and misleading. After a review by the Internal Affairs Bureau and a supervising sergeant, it was determined that Defendant Pfc. Shelby Walker’s handling of this incident was replete with misconduct and bias. As a result, Defendant Pfc. Shelby Walker was placed on a 90-day Professional Improvement Plan beginning June 30, 2020.

20.

Defendants Officer Hoffman and Officer Cumbee used Defendant Pfc. Shelby Walker’s incident report as a reference when conducting their investigation of the fatal May 27, 2020 attack against Gigi.

21.

Because of this Pit-bull attack, Gigi suffered broken ribs, fail chest and severe pulmonary bruising. As documented in her veterinary clinical summary, even with the most aggressive treatment, Gigi’s chance of survival was < 10%. Gigi died the following day, May 28, 2020.

22.

On May 28, 2020 at approximately 10 am, Defendant Officer Hoffman and Defendant Officer Cumbee spoke with Defendants Mark and Adrienne Ciaburri at their home at 1757 Nantahala Blvd., Mount Pleasant, South Carolina. The interaction, which is captured on body-worn camera, shows Defendant Mark Ciaburri telling his version of events. Defendant Mark

Ciaburri states that there are always two Yorkshire Terriers playing in the front yard at 1661 Babington Way and that his Pit-bull mix “almost got” one of the Yorkshire Terriers several times, but that he was able to pull his Pit-bull mix away. Defendant Mark Ciaburri then states, “This time he [his Pit-bull mix] got away [from him].” Defendant Mark Ciaburri then goes on to say, “Next thing I know, my little dog [his Pit-bull mix] is going after this dog [Gigi]...this time my dog got ’em.”

23.

After speaking with Defendant Mark Ciaburri, Defendant Officer Hoffman, wrote a supplemental report that stated the following, “We cannot charge Mark with animal at large, public nuisance, or vicious animal because the dog was on a leash and there [sic] dog left the property and was at large.”

24.

On June 2, 2020, Plaintiff Michele Graham contacted Defendant Officer Hoffman to inquire about the status of the case. The approximately 15-minute conversation was recorded and captured Defendant Officer Hoffman stating that she had completed her investigation and decided that she would not take any action against Defendant Mark Ciaburri or the Pit-bull mix. In this recording, Defendant Officer Hoffman admits to not looking at any factual evidence. Plaintiff Michele Graham forwarded this audio to Town of Mount Pleasant officials:

25.

On the morning of June 3, 2020 Defendants Officer Hoffman and Officer Cumbee began what appeared to be an investigation. Defendants Officer Hoffman and Officer Cumbee walked through the Wando Lakes subdivision and spoke with two neighbors located to right and left of

1661 Babington Way and four neighbors located directly across the street. Defendants Officer Hoffman and Officer Cumbee asked the neighbors if they had cameras and inquired about the behavior of the Yorkshire Terriers at 1661 Babington Way.

26.

When the Plaintiff's father noticed Defendants Officer Hoffman and Officer Cumbee outside taking photos of the 1661 Babington Way residence, he initiated contact to determine their identities. During this contact, Defendants Officer Hoffman and Officer Cumbee also spoke with the Plaintiff and her mother. Plaintiff Michele Graham and her father demonstrated to Defendants Officer Hoffman and Officer Cumbee where on the property the Plaintiff's father witnessed Defendant Mark Ciaburri, from where in the front lawn Plaintiff Michele Graham retrieved Gigi and the locations of blood on the night of the attack.

27.

Although the entire interaction between Defendant Officer Hoffman, Defendant Officer Cumbee, Plaintiff Michele Graham, the Plaintiff's parents and the six aforementioned neighbors was captured on body-worn camera, Defendant Officer Hoffman wrote a grossly inaccurate supplemental report that is refuted by the camera footage.

28.

On June 17, 2020, a detective interviewed Defendant Mark Ciaburri at the Town of Mount Pleasant police headquarters. In this video-recorded interview, Defendant Mark Ciaburri states that he was walking his Pit-bull mix alongside the 1661 Babington Way residence. Defendant Mark Ciaburri states that the residence was to his immediate left and he was walking his Pit-bull mix with a leash in his left hand and his mobile phone in his right hand. According to

Defendant Mark Ciaburri, he was walking and looking at his phone when he suddenly felt a tug on the leash. According to Defendant Mark Ciaburri, he looked back and saw his Pit-bull mix grabbing Gigi.

29.

The detective also interviewed Defendant Mark Ciaburri's neighbors. The detective's report contains information that confirms Defendant Mark Ciaburri's and the neighbors' awareness of the aggressive nature of Defendants Mark and Adrienne Ciaburri's Pit-bull mix.

30.

The criminal investigation into Defendant Mark Ciaburri's actions on the night of May 27, 2020 was administratively closed, due to a lack of evidence proving that his actions were undoubtedly criminal in nature.

**FOR A FIRST CAUSE OF ACTION
(DEFENDANTS MARK AND ADRIENNE THOMPSON CIABURRI)**

Negligence

31.

Plaintiffs incorporate the allegations of the paragraphs above into this cause of action.

32.

A. Duty of Care: As the owner of the Pit-bull mix, Defendant Mark Ciaburri had a duty to exercise reasonable care in order to prevent his Pit-bull mix from causing injury in predictable ways. On May 28, 2020, Defendant Mark Ciaburri stated to Defendants Officer Hoffman and Officer Cumbee, "My dog has almost got that dog several times."

During this conversation on May 28, 2020, Defendant Mark Ciaburri referred to his Pit-bull mix as a “hunter.” Defendants Mark Ciaburri and Adrienne Ciaburri have stated that their Pit-bull mix kills opossums in their backyard. Defendant Mark Ciaburri is fully aware of his dog’s aggressive tendencies and high prey drive. Defendant Mark Ciaburri is also fully aware of the presence of Yorkshire Terriers off-leash in the front lawn at 1661 Babington Way, since he has claimed to walk his Pit-bull mix on the same route (passing the 1661 Babington Way residence) every day for 10 years. Defendant Mark Ciaburri confirmed his knowledge of Yorkshire Terriers in the front lawn several times, specifically during the May 28, 2020 conversation with Defendants Officer Hoffman and Officer Cumbee. Defendant Mark Ciaburri stated, “Their [the Plaintiff and her parents] dogs hang out in their front yard not on leashes all the time. This goes back years.”

Defendant Mark Ciaburri knew that his Pit-bull mix would injure or kill one of the Yorkshire Terriers at 1661 Babington Way if it had the opportunity. Therefore, Defendant Mark Ciaburri owed a duty to the Plaintiff to prevent this by taking reasonable precautions (i.e. walking on the opposite side of the street, muzzling his Pit-bull mix, walking his Pit-bull mix on a tight leash when approaching the 1661 Babington Way residence, or simply choosing an alternate route).

B. Breach of Duty of Care: Given Defendant Mark Ciaburri’s knowledge of his dog’s aggressive nature, his knowledge of the fact that Yorkshire Terriers are always in the front lawn at 1661 Babington Way and his knowledge of the fact that his Pit-bull mix “almost got” one of the Yorkshire Terriers previously, walking his un-muzzled Pit-bull mix along the edge of the 1661 Babington Way property – with the Pit-bull mix having access to the lawn where Yorkshire Terriers are present – is unreasonable and grossly

negligent. Furthermore, Defendant Mark Ciaburri's statements about trying to "catch" his dog and that he finally "caught" his dog indicates that he did not have his Pit-bull mix under reasonable control given the circumstances. A leash is a restraining device that aids in the control and direction of an animal. A dog that is properly restrained on a leash by a vigilant owner would not have the ability to maul another animal. Additionally, a dog that is properly restrained by a leash would not need to be "caught." To gain greater control of a leashed dog, the leash is simply pulled.

C. Defendant Mark Ciaburri's breach of duty of care was the proximate cause of Gigi's death: On May 28, 2020, Defendant Mark Ciaburri stated to Defendants Officer Hoffman and Officer Cumbee, "This time, he [his Pit-bull mix] got away [from him]...This time my dog got 'em." These statements from Defendant Mark Ciaburri make it clear that his Pit-bull mix "got away" from him and "got" Gigi. In the same conversation, Defendant Mark Ciaburri also stated, "Next thing I know, my little dog [the Pit-bull mix] is going after this dog [Gigi]." The Defendants' Pit-bull mix *went after* Gigi. Gigi was attacked and killed by the Defendants' Pit-bull mix because Defendant Mark Ciaburri took no reasonable precautions to prevent this foreseeable incident from occurring. Defendant Mark Ciaburri stated to Defendants Officer Hoffman and Officer Cumbee, "I'm surprised this hasn't happened before." This statement makes it clear that Defendant Mark Ciaburri expected this to occur. Therefore, this incident was foreseeable for Defendant Mark Ciaburri.

PRAYER FOR RELIEF

33.

For the causes of action set forth in paragraphs 31-32C, the Plaintiff respectfully request relief from this Court as follows:

Injunctive Relief:

A. For Defendants Mark and Adrienne Thompson Ciaburri's aforementioned Pit-bull mix to be declared dangerous and vicious per definition set forth in § 90.29(B)(3) and § 90.01 of the Town of Mount Pleasant Code of Ordinance.

1. Defendants Mark and Adrienne Ciaburri's Pit-bull mix meets the definitions of a dangerous and vicious animal as set forth in the definitions provided in § 90.29(B)(3) and § 90.01 of the Town of Mount Pleasant's Code of Ordinances.
2. The cause of the aforementioned fatal attack against Gigi is due to the vicious and dangerous nature of Defendants Mark and Adrienne Ciaburri's Pit-bull mix and Defendant Mark Ciaburri's failure to exercise his duty of care as the owner of said Pit-bull-mix.

B. For Defendants Mark and Adrienne Ciaburri's Pit-bull mix to be ordered seized by the officers acting on behalf of the Town of Mount Pleasant Animal Control and humanely euthanized per § 90.30 of the Town of Mount Pleasant Ordinance Regarding Animals.

1. The Town of Mount Pleasant Animal Control Officers have a duty to enforce the Town's Code of Ordinances Regarding Animals. This duty

includes seizing animals that are dangerous and vicious per definition set forth in § 90.29(B)(3) and § 90.01 of the Town of Mount Pleasant's Code of Ordinances.

2. Defendants Officer Hoffman and Officer Cumbee did not uphold this duty, nor did Defendants Officer Hoffman and Officer Cumbee thoroughly and accurately investigate this fatal dog attack case. Because of their inadequate investigation and subsequent inaction, the dangerous and vicious Pit-bull mix owned by Defendants Mark and Adrienne Ciaburri continues to pose a safety risk to residents and small animals living in the Wando Lakes subdivision and the Town of Mount Pleasant.
3. Town of Mount Pleasant Police Department officers have a duty to enforce town ordinances and properly and professionally investigate matters thoroughly and without bias.
4. Defendant Pfc. Shelby Walker failed to perform her duty accurately and according to Town of Mount Pleasant Police Department standards. Defendant Pfc. Shelby Walker's inaccurate and inadequate reporting of this fatal dog attack incident deprived Defendants Officer Hoffman and Officer Cumbee of the full scope of information necessary to conduct an appropriate initial investigation and fulfil their duties as animal control officers.

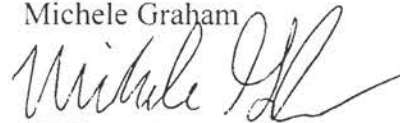
Prayer for Relief: Defendants Mark and Adrienne Ciaburri

Plaintiff requests that this Court order Defendants Mark and Adrienne Ciaburri to:

- A. Reimburse the Plaintiff for the veterinary medical expenses incurred as a result of the May 27, 2020 Pit-bull mix attack against Gigi - \$2,684.98
- B. Reimburse the Plaintiff for the cost to replace the Yorkshire Terrier - \$1,500.00
- C. Reimburse the Plaintiff for the costs of legal fees and all expenses related to bringing this civil action.
- D. Pay punitive damages in an amount that this Court deems just and proper.

Respectfully Submitted,

Michele Graham



Michele Graham
1661 Babington Way
Mount Pleasant, SC 29464
843-532-7252
PLAINTIFF

Dated: 8/31/2020

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MICHELE GRAHAM

Plaintiffs,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;
CHRISTA HOFFMAN, in her official
capacity as a Town of Mount Pleasant
animal control officer;
HEATHER CUMBEE, in her official
capacity as a Town of Mount Pleasant
animal control officer;
SHELBY WALKER, in her official capacity
as a Town of Mount Pleasant patrol officer;
TOWN OF MOUNT PLEASANT POLICE
DEPARTMENT

Defendants

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION
FILE NO. 2020CP1003397

FILED
2020 SEP -2 AM 11:57
JULIE A. ANDERSON
CLERK OF COURT
RY

AMENDED

NOTICE OF MOTION AND MOTION FOR TEMPORARY INJUNCTION

TO: MARK CIABURRI
ADRIENNE THOMPSON CIABURRI
CHRISTA HOFFMAN
HEATHER CUMBEE
SHELBY WALKER
TOWN OF MOUNT PLEASANT POLICE DEPARTMENT

PLEASE TAKE NOTICE THAT Plaintiff Michele Graham moves for a temporary injunction requiring the seizure and impoundment of the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri of 1757 Nantahala Blvd., Mount Pleasant, South Carolina 29464 during the pendency of this case.

INTRODUCTION

Chapter 90: The Town of Mount Pleasant Code of Ordinances Regarding Animals

The Town of Mount Pleasant has enacted a code of ordinances that govern the operations of the Town. Chapter 90 of the Town's ordinances regulates the care and control of animals within the Town.

The ordinance defines *animal* as "any nonhuman living creature whether wild or domesticated."

The ordinance defines *vicious animal* as:

(1.) An animal: (a) with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or to otherwise endanger the safety of humans or domestic pets; or (b) which attacks, bites, or otherwise injures a human being or other domestic animal without provocation; or (c) which is trained or used to fight or attack humans.

The ordinance defines *control* or *under restraint* as:

An animal shall be deemed under control or restraint if it is on the premises of its owner or keeper or is accompanied by its owner or keeper and under the physical control of such owner or keeper by means of a leash not more than eight feet in length or other similar restraining device, or under the active control of the owner or trainer while hunting or being trained while on property of the owner or another's property with the property owner's permission.

The Town of Mount Pleasant ordinance uses § 90.29(B)(3) to describe a dangerous animal. § 90.29(B)(3) states:

(B) It shall be unlawful for any person to own, keep, possess or maintain an animal in such a manner as to constitute a public nuisance. By way of example and not of limitation, the following acts or actions by an owner or possessor of an animal are declared to be a public nuisance and are therefore unlawful: (3) Maintaining an animal that habitually or repeatedly chases, snaps at, bites or attacks pedestrians, bicycles or vehicles or other animals, or any animal whose behavior constitutes a reasonable risk of injuring a human or other animal.”

§ 90.30 of the Town of Mount Pleasant ordinance states that dangerous and vicious animals are prohibited. § 90.30 states:

(A) It shall be unlawful for any person to own or in any way, harbor or keep any animal which is dangerous as described in § 90.29(B)(3) above, or that is vicious as defined in this chapter. This shall not apply to any animal that attacks any person or animal unlawfully upon its owner’s or keeper’s premises.

(B) Any person who owns an animal that has been declared dangerous or vicious by the Animal Control Officer shall have the right to appeal this decision to the Town Administrator and to request a hearing by submitting a written request to the office of the Town Administrator within five working days after the Animal Control Officer's determination that the animal is dangerous or vicious. The Town Administrator or his/her designee shall conduct a hearing to determine if the Animal Control Officer's determination that the animal is dangerous or vicious is correct or incorrect. If the animal is judged not to be dangerous or vicious, it shall be returned to the owner. If the Town Administrator or his/her designee determines the animal to be dangerous or vicious, then the animal shall be disposed of in a humane manner.

§ 90.85 of the Town of Mount Pleasant ordinance states the following:

There shall be one or more persons designated by the Chief of Police as Animal Control Officer or Animal Control Officers in addition to

any town police officer whose duty it shall be to supervise and enforce the provisions of this chapter and all other applicable laws concerning animals and he or she shall have the power and full authority to accomplish the same.

The ordinance provides that the usage of *shall*, indicates that the act referred to is mandatory. Therefore, it is the ministerial duty of the animal control officer to enforce and comply with the provisions set forth in the Town of Mount Pleasant ordinance regarding animals. This duty includes complying with § 90.30, prohibiting dangerous and vicious animals.

FACTUAL AND PROCEDURAL BACKGROUND

Defendants Mark Ciaburri and Adrienne Ciaburri are the owners of the male Pit-bull mix that attacked and killed a 12-year-old female Yorkshire Terrier, named Gigi, on May 27, 2020.

Gigi was relieving herself on the front lawn near the mailbox at the time of the Pit-bull mix attack. The location of Gigi at the time of the attack is evidenced by the significant amounts of blood in the front lawn and the absence of any blood in the roadway.¹ Furthermore, the Plaintiff and her father were observing Gigi relieving herself on the property near the mailbox before looking away for < 1 minute. When the Plaintiff's father turned his attention back to Gigi and opened the full-view storm door < 1 minute later, Gigi was still on the property – not far from her original location prior to the attack. The Plaintiff's father also witnessed Defendant Mark Ciaburri on the property at this time. Upon information and reasonable belief, Mark Ciaburri's Pit-bull mix lunged onto the 1661 Babington Way lawn and grabbed Gigi. Because of this attack, Gigi suffered broken ribs, flail chest and severe pulmonary bruising.² The nature of

¹ Defendant Mark Ciaburri also confirms Gigi's location in the midst of questioning when he states to Defendant Officer Hoffman, "Maybe it [Gigi] was by the mailbox or something. It [Gigi] was in the front."

² Flail chest is when a segment of the chest wall separates from the rest of the thoracic cage. The injuries were so severe that even with the most aggressive treatment, Gigi's chance of survival was < 10%.

Gigi's wounds and the circumstances indicate that this was a surprise, unprovoked attack against Gigi.³

The Plaintiff's mother called the Mount Pleasant Police, and two officers responded to the scene. Defendant Mark Ciaburri spoke with the first officer and stated that Gigi "darted out" into the street and his dog "got it." Moments later, Defendant Mark Ciaburri spoke with the second officer, Defendant Pfc. Shelby Walker. In this bodycam-captured interaction, Defendant Mark Ciaburri later states to Defendant Pfc. Shelby Walker that Gigi attacked his Pit-bull mix and that his Pit-bull mix thought it was an opossum. Defendant Pfc. Shelby Walker does not ask Defendant Mark Ciaburri to demonstrate where or how the incident occurred, and neither of the two responding officers observed Defendant Mark Ciaburri's Pit-bull mix that night.⁴

After speaking with Defendant Mark Ciaburri, Defendant Pfc. Shelby Walker dismissed the first officer and took over the scene on her own. Defendant Pfc. Shelby Walker was unfamiliar with the Town's ordinances regarding animals, specifically the permissibility of animals to be unleashed while on the owner or keeper's property. As a result, Defendant Pfc. Shelby Walker treated the significant amounts of blood in the front lawn as unworthy of serious consideration. Additionally, the incident report written by Defendant Pfc. Shelby Walker was

³ In the video-recorded interview with a Town of Mount Pleasant detective on June 17, Defendant Mark Ciaburri states that, "[Before and during the attack] there was no sound [from Gigi or his Pit-bull mix]...there was no struggle...My dog had it." There were no bites or wounds to Gigi's face, ears or neck – only deep thoracic punctures intended to kill (See Exhibit 1). Defendant Mark Ciaburri also states that the attack occurred in "a matter of seconds."

⁴ After the attack, Mark fled the scene and returned without his Pit-bull mix. He also returned to the scene with scraped knees. He presented his scraped knees as "evidence" that the Pit-bull mix attack occurred in the street.

false, misleading and lacked the vital information necessary to assist the Town of Mount Pleasant animal control officers in conducting an accurate assessment of the incident.⁵

Defendants Officer Hoffman and Officer Cumbee spoke with Defendants Mark Ciaburri and Adrienne Ciaburri at their residence at 1757 Nantahala Blvd. on the morning of May 28, 2020. After speaking with Defendant Mark Ciaburri, Defendants Officer Hoffman and Officer Cumbee decided not to seize the Pit-bull mix on the basis that it was on a leash. The supplemental incident report written by Defendant Officer Hoffman states the following, “We cannot charge Mark with animal at large, public nuisance, or vicious animal because the dog was on a leash and there [sic] dog left the property and was at large.” This is an error by Defendant Officer Hoffman; an animal is not exempt from a dangerous or vicious designation simply by virtue of the presence of a leash. Chapter 90 of the Town Ordinance makes no such exemptions. Concerning a dangerous or vicious declaration, the presence of a leash is immaterial. Provided that Gigi was not unlawfully on the property of Defendants Mark Ciaburri and Adrienne Ciaburri, her location is also irrelevant. Additionally, Defendant Officer Hoffman made the decision against seizing the Pit-bull mix without looking at any evidence and without knowing all of the facts.⁶ In a June 2, 2020 phone call, Defendant Officer Hoffman spoke with Plaintiff Michele Graham on a recorded line and admitted to not looking at any evidence. Defendant Officer Hoffman suggested that the Plaintiff present evidence and bring a seizure request to a

⁵ After a review by the Internal Affairs Bureau and a supervising sergeant, it was determined that Pfc. Shelby Walker’s handling of this incident was unprofessional and biased. As a result, she was placed on a 90-day Professional Improvement Plan. A “revised” incident report was later issued, but the report remained inaccurate and without vital information.

⁶ Defendant Officer Hoffman admits on body-camera footage that after reading the false and misleading incident report written by Defendant Pfc. Shelby Walker, she and her lieutenant arrived at a conclusion. Defendant Officer Hoffman arrived at a conclusion before conducting any investigation. Defendant Officer Hoffman also had no knowledge of Gigi’s condition or the nature and extent of her injuries.

civil court judge. Plaintiff Michele Graham forwarded the phone call to Town of Mount Pleasant officials.

Following the recorded phone call with Plaintiff Michele Graham, Defendant Officer Hoffman viewed pieces of photographic evidence depicting blood in the front lawn.⁷ On June 3, 2020, Defendants Officer Hoffman and Officer Cumbee walked through the Wando Lakes subdivision and spoke with six neighbors of 1661 Babington Way. Defendants Officer Hoffman and Officer Cumbee also spoke with the Plaintiff and her parents. The interactions between Defendant Officer Hoffman, Defendant Officer Cumbee, the Plaintiff, the Plaintiff's parents and the six neighbors were captured on body-worn cameras. However, the supplemental incident report written by Defendant Officer Hoffman documenting these interactions is grossly inaccurate and misleading. Defendant Officer Hoffman concluded the supplemental report with the following, "...based on speaking with everyone today. I was still unable to decyfer [sic] who was the party at fault."

On June 17, 2020, a detective interviewed Defendant Mark Ciaburri at the Mount Pleasant police headquarters.⁸ The detective also interviewed Defendant Mark Ciaburri's neighbors. The town solicitor declined to pursue criminal charges against Defendant Mark Ciaburri.⁹

Due to the mishandling of this incident by Defendant Pfc. Shelby Walker and the

⁷ Videos show the location of blood in relation to the 1661 Babington Way home.

⁸ The extent of Gigi's injuries were so great and her condition so grave that it is inconceivable how a Pit-bull mix that was supposedly properly restrained by a leash could inflict such extensive damage, unless the owner of the Pit-bull mix permitted it. Therefore, a criminal investigation was launched.

⁹ When Plaintiff Michele Graham spoke with the town solicitor, the solicitor referenced the case by reading the incorrect incident report written by Defendant Pfc. Shelby Walker. Additionally, the solicitor acknowledged not seeing any body camera footage of the responding officers and the animal control officers or seeing any photographic evidence.

subsequent inaction from Defendants Officer Hoffman and Officer Cumbee, Plaintiff Michele Graham filed a Summons and Complaint against the Defendants in the Charleston County Court of Common Pleas. The Plaintiff now seeks a temporary injunction for the relief sought herein to remain in effect until there has been a final adjudication on the merits of this case.

PARTIES

Plaintiff is a resident of 1661 Babington Way in Mount Pleasant, South Carolina (Charleston County) and the owner of the 12-year-old Yorkshire Terrier that was fatally attacked by the Pitbull-mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri on May 27, 2020.

Defendant Christa Hoffman, referred to as “Defendant Officer Hoffman,” is an animal control officer for the Town of Mount Pleasant and assigned the duty of enforcing the Town of Mount Pleasant Ordinances Regarding Animals.

Defendant Heather Cumbee, referred to as “Defendant Officer Cumbee,” is an animal control officer for the Town of Mount Pleasant and assigned the duty of enforcing the Town of Mount Pleasant Ordinances Regarding Animals.

Defendant Shelby Walker, hereinafter referred to as “Defendant Pfc. Shelby Walker,” is a patrol officer for the Town of Mount Pleasant and is responsible for enforcing the Town of Mount Pleasant Ordinances.

Defendant Mark Ciaburri is the owner of the Pit-bull mix that fatally attacked the 12-year-old Yorkshire Terrier on May 27, 2020. Defendant Mark Ciaburri resides in Mount Pleasant, South Carolina (Charleston County).

Defendant Adrienne Thompson Ciaburri is the co-owner of the Pit-bull mix that fatally attacked the 12-year-old Yorkshire Terrier on May 27, 2020. Defendant Adrienne Thompson Ciaburri resides in Mount Pleasant, South Carolina (Charleston County).

The Town of Mount Pleasant Police Department is the police department for the Town of Mount Pleasant, South Carolina. The Town of Mount Pleasant Animal Control operates within the Town of Mount Pleasant Police Department.

GROUNDS FOR TEMPORARY INJUNCTION

The following sections A - C show that (1) the Plaintiff would suffer irreparable harm if the injunction is not granted; (2) the Plaintiff will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.

A. IRREPARABLE HARM WILL RESULT IF AN INJUNCTION IS NOT GRANTED.

The Plaintiff has suffered and would continue to suffer irreparable harm if the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri is allowed continued access to the public. The Plaintiff's neighborhood is full of small children, small and friendly domestic animals and docile wildlife.¹⁰ Neighbors have expressed fear of Defendants Mark Ciaburri and Adrienne Ciaburri's Pit-bull mix, as well as doubts concerning their ability and willingness to take the proper precautions when walking their Pit-bull mix. Defendants Mark and Adrienne Ciaburri are fully aware of their Pit-bull mix's aggressive nature and its propensity to go after

¹⁰ Defendants Mark Ciaburri and Adrienne Ciaburri stated on bodycam footage several times that their Pit-bull mix frequently kills wildlife.

and kill other animals, yet their Pit-bull mix was off the owners' premises, un-muzzled and managed to kill a 10-pound Yorkshire Terrier while supposedly restrained by a leash.

The continued presence of this Pit-bull mix presents a constant threat to the safety of the neighborhood and the public. Granting this temporary injunction avoids additional irreparable injury to the Plaintiff and her other Yorkshire Terrier, as well as the public at large.

B. PLAINTIFF HAS SHOWN A LIKELIHOOD OF SUCCESS ON THE MERITS

The acts of the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri deem it vicious and dangerous per definition set forth in the Town of Mount Pleasant Ordinances Regarding Animals. This and other facts will be established at the trial of this case.

Throughout Defendant Mark Ciaburri's conversations with the animal control officers and law enforcement, Defendant Mark Ciaburri made several statements that indicate that his Pit-bull mix went after Gigi. In fact, Defendant Mark Ciaburri explicitly states to Defendants Officer Hoffman and Officer Cumbee, "This time he [his Pit-bull mix] got away [from him] ... Next thing I know, my little dog [his Pit-bull mix] is going after this dog [Gigi]...this time my dog got 'em." These and several other statements, which were captured on body-worn cameras, will be shown in court. Additionally, photos and videos of the placement of blood in the front lawn and the absence of any blood in the roadway will be shown (See Exhibits 2A, 2B and 3B).

The Plaintiff is entitled to the issuance of an injunction based upon the likelihood of proving that the act committed by the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri was unjustified and vicious in nature.

C. PLAINTIFF LACKS AN ADEQUATE REMEDY AT LAW

A temporary injunction is needed in this case because Defendants Officer Hoffman and Officer Cumbee have refused to perform their necessary duty as animal control officers for the Town of Mount Pleasant. After Gigi's fatal attack, the Pit-bull mix was never examined or evaluated by the Defendant Officers, nor were Defendant Mark Ciaburri's statements ever scrutinized. In fact, Defendant Officer Hoffman stated on body-cam footage that in her previous role as an animal control officer for an adjoining county, she often declined to determine an at-fault party despite having the ability to do so. Defendant Officer Hoffman stated that she did this to avoid "backlash."

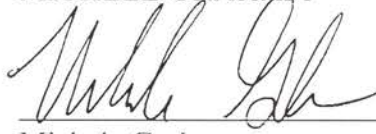
It is the role of the animal control officer to (1) determine if an animal meets the definition of a dangerous or vicious animal and (2) apply the law accordingly. Defendants Officer Hoffman and Officer Cumbee have decided to do neither. Instead, Defendant Officer Hoffman urged the Plaintiff to seek the relief requested herein through civil remedies. Therefore, an injunction is the only appropriate relief.

RELIEF REQUESTED

Plaintiff requests that this Court consider the facts and exhibits provided herein as sufficient probable cause to believe that the Pit-bull mix owned by Defendants Mark and Adrienne Ciaburri is dangerous and vicious as defined in Chapter 90 of the Town of Mount Pleasant Code of Ordinances. Plaintiff respectfully requests that this Court issue a temporary injunction requiring the seizure and impoundment of the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri during the pendency of this case and until a final judicial decision regarding the designation of said Pit-bull mix as dangerous or vicious has been made.

Respectfully submitted,

MICHELE GRAHAM

A handwritten signature in cursive script, appearing to read 'Michele Graham', written over a horizontal line.

Michele Graham

Plaintiff

1661 Babington Way

Mount Pleasant, South Carolina 29464

843-532-7252

September 1, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;
CHRISTA HOFFMAN, in her official
capacity as a Town of Mount Pleasant
animal control officer;
HEATHER CUMBEE, in her official
capacity as a Town of Mount Pleasant
animal control officer;
SHELBY WALKER, in her official capacity
as a Town of Mount Pleasant patrol officer
TOWN OF MOUNT PLEASANT POLICE
DEPARTMENT

Defendants

CIVIL ACTION
FILE NO. 2020CP1003397

FILED
2020 SEP 18 PM 1:39
JULIE J. ARMSTRONG
CLERK OF COURT

**PLAINTIFF'S BRIEF IN RESPONSE TO DEFENDANTS' OPPOSITION TO
TEMPORARY INJUNCTION**

INTRODUCTION

Plaintiff Michele Graham is forced to request injunctive relief from this Court, because despite their claims to the contrary, the Mount Pleasant Defendants did not conduct a thorough investigation into the fatal attack that occurred against Gigi on May 27, 2020. In fact, it was not until the Plaintiff forwarded to the Town's officials the audio of the recorded phone call with Defendant Hoffman explicitly admitting to looking at zero evidence did Defendant Hoffman and Defendant Cumbee begin what appeared to be an "investigation" into this matter. At the time of

this phone call, June 2, 2020, Defendant Hoffman claimed to have conducted and completed her investigation.

The evidence, some of which are presented herein, are more than sufficient for any reasonable person to conclude that Defendants Mark and Adrienne Ciaburri's Pit-bull mix lunged onto the 1661 Babington Way property and grabbed Gigi. While the evidence proves that Gigi was on the property at the time of the attack, for the purpose of a dangerous or vicious dog declaration, Gigi's location is irrelevant. For the purpose of a vicious dog declaration per Mount Pleasant Ordinance, the definitions are:

(1) An animal:

(a) With a known propensity, tendency, or disposition to attack unprovoked, to cause injury to, or to otherwise endanger the safety of humans or domestic pets; or

(b) Which attacks, bites or otherwise injures a human being or other domestic animal without provocation; or

(c) Which is trained or used to fight or to attack humans.

(2) This definition shall not apply to a dog owned or used by a governmental entity.

A dangerous dog per Mount Pleasant ordinance is:

(3) ... an animal that habitually or repeatedly chases, snaps at, bites, or attacks pedestrians, bicycles, or vehicles, or other animals, or any animal whose behavior constitutes a reasonable risk of injuring a human or other animal.

(1)(a), (b) and (3) applies to the Defendants' Mark and Adrienne Ciaburri's Pit-bull mix, based on the evidence contained herein and the video evidence to be presented in Court. It is important to take notice that the only exemption from a vicious or dangerous declaration is a dog owned or used by a governmental entity. Nowhere in these definitions is an exemption provided for a dog on a leash. Additionally, nowhere in these definitions does it state that the injury to an animal must occur on the owner or keeper's property in order for the offending animal to be declared dangerous or vicious.

The Mount Pleasant Defendants have refused to acknowledge key material facts in this case. Instead, the Mount Defendants have used false and misleading statements to defend their mishandling and misjudgment of this case.

KEY BACKGROUND INFORMATION AND EVIDENCE

The initial mishandling of this incident by Defendant Officer Walker set into motion the creation of a distorted account of the incident that occurred on May 27, 2020.

Officer Walker arrived on the scene as Officer Runck, a Town of Mount Pleasant police officer, was attempting to speak with the Plaintiff's parents. Officer Runck's bodycam footage shows Defendant Mark Ciaburri telling his version of events (see Exhibit 1). When Defendant Mark Ciaburri finishes speaking, Officer Runck attempts to speak with the Plaintiff's parents, however, Defendant Mark Ciaburri continues to interrupt. It was at this point that Defendant Walker arrives on the scene and pulls Defendant Mark away to speak with him (Exhibit 1).

**It is important to note that when Plaintiff Michele Graham grabbed Gigi from the front lawn, Defendant Mark Ciaburri was on the property restraining his dog tightly, and he stated to the Plaintiff, "She wasn't on a leash, man." Plaintiff Michele Graham did not respond to or acknowledge Defendant Mark Ciaburri. The Plaintiff rushed Gigi to the emergency hospital without saying anything to anyone. Prior to the arrival of Officer Runck and Defendant Walker and prior to Defendant Mark Ciaburri fleeing, the following interactions took place:*

[Interaction Involving Plaintiff's Father and Defendant Mark Ciaburri...while Tammy Graham was following and trying to convince the Plaintiff to let her drive the Plaintiff and Gigi to the emergency vet]

Plaintiff's father to Mark: "What happened?"

Defendant Mark to Plaintiff's father: "Your dog wasn't on a leash and attacked my dog in the street. I had to practically pull her off of my dog."

Plaintiff's father: "Oh, really? So a camera will show this?" *

Mark: *Stuttering* *Confused* "Yeah, uh huh" *Shrugs* "She shoulda been on a leash" *Shrugs Again* "She shoulda been on a leash, sorry" *Shrug*

**The Plaintiff's father mentioned a [hypothetical] camera to Defendant Mark Ciaburri to highlight his guilt. At the mention of a camera, he immediately became nervous and started stuttering. Defendant Hoffman's report reads as if the Grahams had cameras, but it didn't capture the incident. Officer Runck's incident report makes it clear from the start that there was no camera anywhere on the property.*

[Interaction Involving the Plaintiff's Mother, Father and Defendant Mark...after the Plaintiff's mother walked away from the Plaintiff's car, she joined the Plaintiff's father on the front lawn and confronted Defendant Mark Ciaburri. At this point, the Plaintiff had driven off and was on the way to the emergency vet]

Plaintiff's mother: "What happened?"

Defendant Mark to Plaintiff's mother: *Believing that a surveillance camera caught the incident* "Your dog ran towards me and my dog attacked your dog"

Plaintiff's mother: "WHAT?!"

Defendant Mark: "My dog attacked your dog because it came towards me"

Plaintiff's mother: "And you allowed that?!"

Defendant Mark: *Shrugs* "Hey" *Shrugs* "She wasn't on a leash"

Plaintiff's mother: "No, look at this blood here [on our property]. Your dog went after her. You were on my property. I'm calling the police."

Throughout Defendant Mark Ciaburri's statements to the responding officers, he claims that Gigi "darted out" into the street. It was not until Defendant Walker stated to Defendant Mark Ciaburri that a report will "probably" be written and that animal control will follow up to check for updated shot records, that Defendant Mark Ciaburri changed his narrative to Gigi attacking his Pit-bull mix. He continued stating that Gigi attacked his Pit-bull mix and said "Please!" as if pleading with Defendant Walker to include or not to include certain facts in the report.

Defendant Mark Ciaburri told Defendant Walker that the Plaintiff's parents were taking pictures and stating to him that "there's blood here [on the property]." Defendant Walker states to Defendant Mark Ciaburri that she is also the owner of two Pit-bulls and that she "understands." Defendant Walker goes on to state that she is a dog lover and that she does not want anything to happen to Defendant Mark Ciaburri's dog. Defendant Walker also states to Defendant Mark Ciaburri, "I don't need you to worry." After taking Defendant Mark Ciaburri's information, Defendant Walker sends him on his way without any further questions or clarifications. Defendant Walker then walks over to the Plaintiff's parents and tells the Plaintiff's mother that she knows Defendant Mark Ciaburri's story to be true. When Defendant Walker asks the Plaintiff's mother if Gigi was on a leash, the Plaintiff's mother replies, "But it's in my yard" to which Defendant Walker responds, "It doesn't matter, ma'am." Defendant Walker then writes a false, misleading and inadequate report that omits key information. In Defendant Walker's report, there is no mention of the blood present in several areas in the front lawn; and there is no mention of the absence of blood anywhere in the roadway; however, Defendant Walker did make sure to include that Defendant Mark Ciaburri had scraped knees. Even more outrageous is the fact that Defendant Walker listed the Plaintiff as the suspect and Mark Ciaburri as the victim in her incident report. Officer Runck's report and bodycam footage never surfaced during the course of Defendant Hoffman's "investigation." The only report used by Defendant Hoffman was the false and inadequate report written by Defendant Walker.

Because Defendant Walker's report omitted key facts, it was impossible for Defendant Hoffman to make an accurate assessment of the incident (see Exhibit 2). Before any "investigation" or genuine fact-finding took place, emails within the Mount Pleasant Police Department show that those who Defendant Hoffman considers her "superiors" already came to

a conclusion as to what happened (See Exhibit 2). Their conclusion was based solely on Defendant Walker's false and inadequate report. When Defendants Hoffman and Cumbee spoke with Defendants Mark and Adrienne Ciaburri on the morning of May 28, 2020, the entire interaction is captured on body camera (See Exhibit 3). Throughout the entire interaction, Defendants Officer Hoffman and Officer Cumbee display obvious partiality to Defendants Mark and Adrienne Ciaburri.

The entire interaction is provided as Exhibit 3. Below are references and statements from this interaction:

Defendants Mark and Adrienne Ciaburri state to Defendants Hoffman and Cumbee that the neighbors have been complaining about the dogs from 1661 Babington Way on the neighborhood forum.

19:27 (Hoffman to A. Ciaburri) – “If you can go on Nextdoor [the neighborhood forum] and get some of the posts about their dogs and just send it to me in an email, just so we can have reference points.”

Mark replies, “You can go ask all the neighbors,” to which Defendant Hoffman replies, “Oh, no, I believe it.” (19:35)

19:42 (Hoffman to A. Ciaburri about the forum) – “Just so we can prove it has been an ongoing issue.”

21:51 (Hoffman) – “From a professional standpoint, as far as animal control goes, there's nothing. There's nothing here, you know what I mean?”

22:36 (Hoffman) – “It was noted in the report [Defendant Walker's report] that you were actively bleeding...and we [Hoffman and her lieutenant] came to the same conclusion [that Defendant Mark Ciaburri's story is true].

24:02 (Hoffman) – “I mean, it [this case] seems pretty cut and dry.”

Defendant Hoffman explains to Defendants Mark and Adrienne Ciaburri that it is highly unlikely, but it is possible that she may write both parties citations and both parties will go in front of a judge to determine the party in the wrong.

24:42 (Hoffman regarding writing both parties citations) – “I did present this to my lieutenant and he said, ‘You know, that's way more hassle than it's worth. It's a fairly cut case.’”

24:54 (M. Ciaburri) – “This is ridiculous.”
(Hoffman in response) – “No, it really is.”

When asked by Defendant Hoffman if Defendant Mark Ciaburri had a case number, Defendant Mark Ciaburri stated that he did not. Defendant Mark Ciaburri stated that the officer took is information and told him to “go ahead and go home, because she [Defendant Walker] knew. The cop knew.” – 25:13

28:38 (Cumbee) – “If a little animal came running up to me with my dogs, probably the same thing would occur.”

(Hoffman in response) – “100%, especially an Akita.”

32:05 (Hoffman) – “Regardless, just because it’s a big dog and a little dog, the finger’s automatically ... (go to the big dog, Cumbee in completing the sentence).

32:22 (M. Ciaburri) – “There’s no case. There’s no case. There’s no case
(Hoffman in response) – “Right.”

32:37 (Hoffman) – “We have to 100% make sure that there is no case.”

In making sure that there “is no case,” Defendant Officer Hoffman did nothing. After speaking with Defendants Mark and Adrienne Ciaburri, Defendant Hoffman wrote a supplemental report on May 28, 2020, and that was the end of her “investigation.” The Plaintiff was never contacted or advised of anything. It was not until the Plaintiff contacted Defendant Hoffman on June 2, 2020 that the Plaintiff was informed that no action would be taken against the Pit-bull mix. The recorded phone call is included as Exhibit 4. This phone call was sent to several Town officials.

While the Mount Pleasant Defendants claim that the decision to not charge Defendant Mark Ciaburri with vicious animal and seize the Pit-bull mix was made after a thorough investigation, this is false. Defendant Walker and other Town police officers went to Defendant Mark Ciaburri’s home at 2:06 PM on May 28, 2020 – approximately 13 hours after Gigi’s attack. The entire interaction is provided as Exhibit 5. Below are references and statements from this interaction:

0:00:18 (Walker) – “So, we’re not coming after you. There’s no criminal charges.”

2:15 (Walker) – “From our [Mount Pleasant Police Department and animal control] end, there are no criminal charges. We’re not coming after your dog. You are fine.”

8:30 (Walker) – “Like I said, we’re done. There’s nothing on our end that’s going to happen to you guys.”

9:18 (Walker) – “They [the Plaintiff and her parents] want us to do something to you guys...but lieutenants and up have already said no, so nothing’s gonna happen to you guys. My lieutenant told me directly to tell you nothing’s gonna happen to you guys. So, you guys don’t have to worry about us.”

Based on Defendant Walker’s false and inadequate report and obvious partiality, the decision was made to not seize the Pit-bull mix or charge Defendant Mark Ciaburri with vicious animal per Town ordinance. This decision was made on May 28, 2020 without knowing all of the facts or looking at any evidence whatsoever.

On June 3, 2020 – the day after the recorded phone call was forwarded to Town officials – Defendant Hoffman and Cumbee walked through the neighborhood to speak with neighbors and to “get a layout of the property.” In speaking with the neighbor referenced on Page 4, Footnote 3 of the Mount Pleasant Defendants’ *Memorandum in Opposition to Injunctive Relief*, Defendant Hoffman states to the neighbor, “So, that’s what we’re trying to determine – where the incident took place.” It is important to reference the last sentence in the Mount Pleasant Defendants’ Exhibit A. In the last sentence, Defendant Hoffman states, “...we can not charge Mark with animal at large, public nuisance, or vicious animal because the dog was on a leash **and there [sic] dog left the property.**” Defendant Hoffman wrote in her supplemental report on May 28, 2020 that Gigi left the property, but on June 3, 2020, Defendant Hoffman stated that she was trying to determine where the incident took place.

Through the recorded phone call, the Plaintiff exposed the fact that Defendant Hoffman conducted no investigation. This exposure prompted Defendants Hoffman and Cumbee to do a little more on June 3, 2020 to make it appear as if they were investigating. To avoid having to admit that the decision to not seize the Pit-bull mix and charge Defendant Mark Ciaburri with vicious animal per Mount Pleasant ordinance was incorrect and based on incomplete and erroneous information, Defendant Hoffman continued the course by writing a false and

misleading supplemental report on June 3, 2020. One blatantly misleading statement is, "...he [the Plaintiff's father] went to the front door looked out and observed Mr. Mark sitting on top of his dog petey inbetween the road and the mailbox." This is an intentionally distorted way of saying, "On the property."

After hearing the recorded phone call and looking at the photographic and video evidence, the Town Administrator contacted the Mount Pleasant police department to have a detective speak with Defendant Mark Ciaburri. The detective interviewed Defendant Mark Ciaburri at the Mount Pleasant Police Headquarters on June 17, 2020. The full interview is included as Exhibit 6. The detective's report is included as Exhibit 7.

Defendant Mark Ciaburri's statements in the interview provide additional details that further prove that the Pit-bull mix lunged onto the property and grabbed Gigi.

Explanation:

In the bodycam-captured interaction with the second responding officer, Defendant Mark Ciaburri states, "I maybe got to the curb" (at 6:17 in Exhibit 1. See Exhibit 4B in the Plaintiff's *Amended Motion Exhibit List* to reference this location). Defendant Mark Ciaburri also says that the seven droplets of blood on the curb were "probably from [his] knees." By his own admission, Defendant Mark Ciaburri places himself inches away from the 1661 Babington Way property line. This is confirmation that Defendant Mark Ciaburri was walking his Pit-bull mix along the edge of the 1661 Babington Way property. Defendant Mark Ciaburri also confirms this in an interview with a Mount Pleasant detective when stating that he was not exactly in the middle of the street; he confirms that he was

“closer to the mailbox”.¹ Defendant Mark Ciaburri also confirms that Gigi was near the mailbox (29:21, Exhibit 3). The leash that Defendant Mark Ciaburri used that night is extremely long (See Exhibit 8); and it is confirmed, based on Defendant Mark Ciaburri’s statements, that his Pit-bull mix was not on a tight leash. Defendant Mark Ciaburri states and demonstrates in a recorded interview with a Mount Pleasant detective that he “felt a tug [on the leash]” and “looked back” at his dog. The fact that Defendant Mark Ciaburri looked back indicates that his Pit-bull mix was not walking closely next to him. Instead, his Pit-bull mix was several feet away. To look at a dog on a tight leash, one simply needs to look downward.

The measured curb-to-curb width is 25 feet. If Defendant Mark Ciaburri was exactly in the middle of the street, there would be 12.5 feet of street space on either side of him. However, Defendant Mark Ciaburri was not in the middle of the street; Defendant Mark Ciaburri acknowledges that he was by the curb and closer to the mailbox. Defendant Mark Ciaburri also acknowledges that he had the leash in his left hand. Therefore, the Pit-bull mix was able to extend into the front lawn (See Exhibit 10 and accompanied explanation on page 5 and 6 of Exhibit List). Based on the photographic evidence of the blood in the front lawn and the absence of any blood in the roadway, this is exactly what happened. This conclusion is the only reasonable inference that can be drawn from the evidence. The Defendants’ Pit-bull mix lunged onto the 1661 Babington Way lawn and grabbed Gigi.

¹ This is to be expected; it is unreasonable to walk a dog in the middle of the street, especially at night.

ARGUMENT

As stated in the defendants' motion in opposition, "The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to the Plaintiff." The status quo in this case is one of a procedural nature. If all of the factual evidence was presented, and if Defendant Hoffmant actually conducted a genuine investigation, the Pit-bull mix would have been declared vicious per ordinance and seized. § 90.30(B) of the Town of Mount Pleasant ordinance reads as follows:

(B) Any person who owns an animal that has been declared dangerous or vicious by the Animal Control Officer shall have the right to appeal this decision to the Town Administrator and to request a hearing by submitting a written request to the office of the Town Administrator within five working days after the Animal Control Officer's determination that the animal is dangerous or vicious. **The Town Administrator or his/her designee shall conduct a hearing to determine if the Animal Control Officer's determination that the animal is dangerous or vicious is correct or incorrect. If the animal is judged not to be dangerous or vicious, it shall be returned to the owner.** If the Town Administrator or his/her designee determines the animal to be dangerous or vicious, then the animal shall be disposed of in a humane manner.

§ 90.30(B) is the status quo. After a dangerous or vicious declaration has been made by the *animal control officer* – the only officer given explicit authority to make such a declaration – the offending animal is seized and a hearing is held to determine if the judgement is correct. The Plaintiff is forced to turn to this Court to preserve the procedural status quo, because the animal control officers who are responsible for upholding it have stubbornly refused to do so. This refusal is not based on a lack of evidence, but rather a lack of willingness.

CONCLUSION

The Plaintiff has not only proven that the Mount Pleasant Defendants did not correctly carry out their duties, but that officials within the Pleasant Police Department have blatantly lied, showed partiality and stubbornly ignored pertinent facts relating to this incident. The omission of such facts drastically skews the view and ultimately the outcome of this case. No thorough investigation ever took place by Defendants Hoffman or Cumbee. Instead, the “investigation” was one-sided, incomplete and severely biased.

One-sided: Defendant Walker’s report contains no reference to any blood in the front lawn (Exhibit 14). Defendant Hoffman never acknowledges or writes in any of her reports the fact the Plaintiff’s father witnessed Defendant Mark Ciaburri in the front lawn. In a quest to support Defendant Mark Ciaburri, Defendant Hoffman speaks to the Plaintiff’s neighbors to inquire about the behavior of the dogs from 1661 Babington Way; at no point does Defendant Hoffman speak with any of Defendant Mark Ciaburri’s neighbors to inquire about aggressive behavior.

Incomplete: Every piece of relevant evidence was missing from the initial investigation. When evidence was exposed, it was ignored. Defendant Hoffman never knew the extent of Gigi’s injuries. Defendant Hoffman never came to the 1661 Babington Way residence until June 3, 2020. In none of Defendant Hoffman’s reports does it state that the Plaintiff’s father witnessed Defendant Mark Ciaburri on the property, despite having been told this numerous times.

Biased: Defendants Walker, Hoffman and Cumbee automatically believed Defendant Mark Ciaburri’s account of the events without considering any significant facts. The

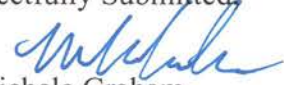
Mount Pleasant Defendants assert that Defendant Mark Ciaburri's scraped knees "corroborated his story," yet blood in the yard in the exact area that Defendant Mark Ciaburri was seen holding his Pit-bull mix down somehow doesn't reach the level of sufficient evidence for the Mount Pleasant Defendants.

While it is proven herein that the Pit-bull mix lunged onto the 1661 Babington Way property and grabbed Gigi, for a dangerous and vicious declaration, it does not matter if Gigi was on or off the property at the time of the attack; what matters is which dog displayed aggressive behavior. The Mount Pleasant Defendants have used statements from the Plaintiff's neighbors to bolster claims that Gigi was off of the property at the time of the attack; therefore, it is also appropriate that the neighbors' statements are used to support the fact the Gigi was not an aggressive dog. None of the neighbors stated that the dogs from 1661 Babington Way are aggressive. Instead, it was stated that they are friendly. Neighbors have, however, stated that the Defendants' Pit-bull mix is aggressive (See Exhibit 7, paragraphs 2 and 3). Affidavits from Defendant Mark Ciaburri's neighbors can be obtained if absolutely necessary, as well as affidavits from a neighbor who personally experienced Defendant Mark Ciaburri's Pit-bull mix lunge at him. For the sake of maintaining peaceful neighborhood relations, it is preferred that this Court consider all evidence that is presented in these proceedings as sufficient probable cause to declare the Pit-bull mix as vicious and dangerous per Mount Pleasant ordinance.

The Plaintiff respectfully requests that this Court consider the necessity of protecting public safety and order that the Pit-bull mix is impounded and evaluated during the pendency of this case.

Dated: 9/18/2020

Respectfully Submitted,



/s/ Michele Graham

Michele Graham

Plaintiff

1661 Babington Way

Mount Pleasant, SC 29464

843-532-7252

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;

Defendants

CIVIL ACTION
FILE NO. 2020CP1003397

2020 DEC 29 AM 8:49
JULIE J. AMSTRONG
CLERK OF COURT

FILED

**PLAINTIFF'S MOTION FOR COURT TO RECONSIDER ORDER GRANTING
ATTORNEY'S FEES AS TO THE PRELIMINARY INJUNCTION HEARING**

Plaintiff moves pursuant to Rule 59(e) SCRCP for this Court to reconsider its December 22, 2020 order granting Defendant Mark Ciaburri's motion for attorney's fees as to the Preliminary Injunction hearing heard before the court on September 24, 2020.

BACKGROUND

On May 27, 2020, Mark Ciaburri's Pit-bull mix fatally attacked the Plaintiff's 12-year old Yorkshire Terrier on the 1661 Babington Way property without provocation. The animal control officer for the Town of Mount Pleasant conducted no genuine investigation into the nature of this attack, did not examine any evidence and declined to uphold Chapter 90 of the Town ordinance regarding animals in this case. Instead, the animal control officer suggested that the Plaintiff seek her requested relief – a dangerous dog declaration and seizure of the dog -- through civil proceedings.

On August 31, 2020, the Plaintiff filed an amended complaint seeking monetary damages and injunctive relief. On September 2, 2020, Plaintiff filed an amended Motion for Temporary Injunction requesting that the Court order the seizure and impoundment of the Defendants' Pit-bull mix during the pendency of this case. The purpose of the Plaintiff's Motion for Temporary Injunction was to preserve the procedural status quo, as the seizure of the Defendants' dog is what *should have* occurred at the time of the attack.

Prior to the hearing, Defendants' counsel approached the Plaintiff in the court hallway in front of her parents and suggested that she proceed with a Writ of Mandamus, rather than a temporary injunction and stated, "...because that is what I think you meant to do." The Plaintiff stated that she intended to file a temporary injunction motion. The Plaintiff proceeded with a temporary injunction motion at the hearing.

At the close of the temporary injunction hearing on September 24, 2020, Defendants' counsel handed the Plaintiff an unfiled *Motion for Sanctions and Award of Attorney's Fees and Costs Pursuant to SCRCF 65(f)(2)* and a copy of his fees and costs, attached as Exhibit 1. Defendants' counsel stated that he had also handed a copy of this motion to the judge. The motion is dated September 24, 2020 and written before any ruling, finding of fact or conclusions of law were provided.

On September 30, 2020, the Court denied the Plaintiff's Motion for Temporary Injunction, attached as Exhibit 2.

After the entry of denial of temporary injunction, Defendants' counsel emailed the law clerk of Judge Bentley Price asking if the Judge ruled on his motion for fees, attached as Exhibit 3. The clerk's response is attached as Exhibit 4. As requested, the Plaintiff sent her written

opposition to the motion, attached as Exhibit 5. Defense counsel then emailed a copy of the Motion, a Memorandum in Support of the Motion and his affidavit of fees; this email is attached as Exhibit 6. The clerk's response is attached as Exhibits 7 and 8. Defense counsel was informed that the Judge would consider attorney's fees after the ruling on dispositive motions and that he would need to file the motion if he wanted it heard.

The Defendants' Motion for Summary Judgment was heard on December 11, 2020 and denied. In the order dated December 22, 2020, the Judge granted the Defendants' Motion for Attorney's Fees as to the Preliminary Injunction hearing on September 24, 2020. The order is attached as Exhibit 9.

GROUNDS

1. THE PLAINTIFF FILED A MOTION FOR TEMPORARY INJUNCTION

As stated in the Plaintiff's opposition to the Defendants' Motion for Fees, the Plaintiff filed a Motion for Temporary Injunction. The Plaintiff asked the Court for an order requiring the potentially dangerous Pit-bull mix owned by the Defendants to be impounded until the final merits of the case are heard. The Plaintiff petitioned the court to look at the submitted evidence, listen to testimony and determine if the actions of the Defendants' dog warranted temporary court intervention. During the Plaintiff's closing statement, the Plaintiff requested that the court at least order an evaluation of the dog.

2. AN AWARD OF ATTORNEY'S FEES IS UNWARRANTED AND UNJUST

The award of attorney's fees is unwarranted and unjust because the Plaintiff's Motion for Temporary Injunction was reasonable and justified. The several pieces of video and photographic evidence submitted to this court, as well as testimony from Mr. Graham who

witnessed Mark Ciaburri in the front lawn holding down his dog, makes it clear that the Defendants' Pit-bull mix attacked Gigi in the front lawn. Moreover, the expert witness report, which is in the court record and provided to the Judge during the Defendants' summary judgment hearing states that based on the review of the submitted evidence – the same evidence provided to the Court in support of the Plaintiff's Motion for Temporary Injunction – that the defendants' dog should have been declared dangerous. Court-recognized expert, James "Jim" Crosby writes in his report:

Thus, in conclusion, Petey should have been, and should be, declared DANGEROUS under the provisions of Mount Pleasant Municipal Code, and remedial action to so declare the dog Petey DANGEROUS should immediately proceed.

Remedial proceedings to declare the dog dangerous would include a seizure, temporary impoundment or confinement until the full merits of the case are heard. Similarly, had the animal control officer properly declared the Defendants' dog as dangerous, the animal would have been seized and impounded. At that time, the owners would have had an opportunity to defend against the dangerous dog declaration during an administrative or municipal hearing.

The animal control officer is the officer who has the authority to declare a dog as potentially dangerous and initiate municipal court proceedings for animal-related ordinance violations within the Town of Mount Pleasant. The Plaintiff's motion for temporary injunction, response brief and submitted evidence illustrate that the animal control officer did not conduct any serious inquiry into this incident. Therefore, the Plaintiff petitioned this Court to be the trier of fact and determine, based on the evidence, if temporary action should be taken. Granting attorney's fees to the Defendants only serves to unjustly penalize the Plaintiff for pursuing justified legal actions.

3. THE COURT ERRED IN CONSIDERING THE PLAINTIFF'S MOTION AS A WRIT OF MANDAMUS; ILLIBERAL CONSTRUCTION OF DOCUMENT

Document[s] filed pro se [are to] to be liberally construed." Erickson v. Pardus, 551 U.S. 89, 94 (2007). At its core, the Plaintiff's motion for Temporary Injunction sought the confinement of a potentially dangerous pit-bull mix. The Plaintiff's motion is asking the Court to issue an order that would essentially prevent the owner from taking the dog out in public during the pendency of this case. The Court should have liberally construed the Plaintiff's motion to include ordering the Defendants to confine their animal, even if the Court did not think the government should seize it. Instead, the Court mistakenly construed the Plaintiff's motion as one that was *only* seeking Mandamus against the government officials.

By granting the Defendants' Motion for Attorney's Fees, it appears that the Court erred in considering the Plaintiff's motion as a Writ of Mandamus and in considering the owners of the Pit-bull mix as the "prevailing party." The Plaintiff's Amended Motion for Temporary Injunction concludes with the following:

Plaintiff requests that this Court consider the facts and exhibits provided herein as sufficient probable cause to believe that the Pit-bull mix owned by Defendants Mark and Adrienne Ciaburri is dangerous and vicious as defined in Chapter 90 of the Town of Mount Pleasant Code of Ordinances. Plaintiff respectfully requests that this Court issue a temporary injunction requiring the seizure and impoundment of the Pit-bull mix owned by Defendants Mark Ciaburri and Adrienne Ciaburri during the pendency of this case and until a final judicial decision regarding the designation of said Pit-bull mix as dangerous or vicious has been made.

4. DEFENDANTS NOT A "PREVAILING PARTY."

To the extent that the Court did not err in considering the Plaintiff's motion as a Writ of Mandamus, the Ciaburri Defendants would not be considered the prevailing party. The

prevailing party would have been the government official to whom the Writ of Mandamus was directed. Therefore, Rule 65(f)(2) is not applicable to the Ciaburri Defendants.

Defendants' Memorandum in Support of Award of Attorney's Fees pursuant to SCRCF 65(f)(2) urging the Court to re-characterize the Plaintiff's motion for Temporary Injunction as a Writ of Mandamus is an attempt to unjustifiably shift their attorney's fees onto the Plaintiff through a non-applicable statute.

5. LACK OF NOTICE; DENIED DUE PROCESS

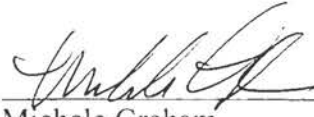
The Plaintiff received no notice of a hearing date for the Defendants' motion. Therefore, the Plaintiff had no time to properly object. As stated by the Judge's law clerk in the attached exhibit, if the Defendants wanted the motion heard the motion needed to be filed with the clerk; there was no motion for fees in the system. Accordingly, there was no date set for the hearing of the Defendants' motion. Awarding fees on a motion without any notice deprived the Plaintiff of due process.

CONCLUSION

The Plaintiff is seeking legal redress against Mark Ciaburri for allowing his dog to viciously attack her 12-year old Yorkshire Terrier. All of the Plaintiff's submissions support these legal actions, and all of the Plaintiff's actions throughout the course of this litigation have been in accordance with procedural rules. There is no applicable statute that allows the Ciaburri Defendants to be awarded *any* attorney's fees in this action. *All* of the Ciaburri Defendants' legal fees and costs are the responsibility of the Ciaburri Defendants.

For the reasons stated above, the Plaintiff requests that this Court reconsider its order granting attorney's fees to the Defendants, and enter a new order withdrawing the same.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read 'Michele Graham', written over a horizontal line.

Michele Graham

Plaintiff

1661 Babington Way

Mount Pleasant, SC 29464

843-532-7252

Date: 12-28-2020

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI

Defendants

CIVIL ACTION
FILE NO. 2020CP1003397

2021 MAR 29 AM 8:44
JULIE J. AMSTUTZ
CLERK OF COURT
OR

FILED

**PLAINTIFF'S NOTICE AND MOTION FOR ORDER GRANTING RELIEF FROM
JUDGMENT / ORDER AND AN ORDER GRANTING A NEW TRIAL PURSUANT TO
SCRCP 60(b)(2).**

TO: DEFENDANTS MARK AND ADRIENNE CIABURRI

PLEASE TAKE NOTICE that Plaintiff Michele Graham will move before the Honorable Bentley Price at a date and time determined by the Court for an order granting relief from the judgment / order entered on September 30, 2020 and for an order granting a new trial pursuant to SCRCP 60(b)(2).



Michele Graham
Plaintiff
1661 Babington Way
Mount Pleasant, SC 29464
843-532-7252
Michele.graham0318@gmail.com

Dated: 3-29-2021

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI

Defendants

CIVIL ACTION
FILE NO. 2020CP1003397

2021 MAR 29 AM 8:44
JULIE J. ANASTASIO
CLERK OF COURT

FILED

**PLAINTIFF'S MOTION FOR ORDER GRANTING RELIEF FROM JUDGMENT /
ORDER AND AN ORDER GRANTING A NEW TRIAL PURSUANT TO SCRPC
60(b)(2).**

Plaintiff Michele Graham submits this motion for relief from the judgment / order filed by the Court on September 30, 2020 pursuant to SCRPC 60(b)(2). The Plaintiff also requests that this Court grant a new trial on the matter relating to the Plaintiff's request for temporary injunction based on newly discovered evidence.

BACKGROUND

The Defendant's pit-bull mix fatally attacked the Plaintiff's 12-year-old Yorkshire Terrier on May 27, 2020. The Plaintiff petitioned this Court for a temporary injunction ordering the impoundment / confinement of the Defendants' dog during the pendency of this case, until a final determination is made regarding its dangerous status.

On September 30, 2020, the Court issued an order denying the temporary injunction. The Court's findings filed on March 22, 2021 indicate that the reason for the denial was due to the absence of testimony / evidence presented at the hearing that the Defendant violated section 90.29(B)(3) of the Town of Mount Pleasant Laws and Ordinances.

GROUND FOR RELIEF AND NEW TRIAL

The Plaintiff obtained a report from a court-recognized expert in canine aggression and dangerous dog investigations, and the expert – Mr. James “Jim” Crosby – is ready and willing to testify to his findings that the Defendant did violate section 90.29(B)(3) of the Town ordinance. The full expert witness report is filed into the record as an exhibit for the Court to reference.

SCRPC 60(b)(2) considers newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b) as grounds for a new trial under Rule 60. The Plaintiff obtained this report on December 4, 2020 – beyond the 10-day window to move for a new trial under rule 59(b).

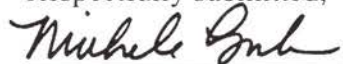
South Carolina courts hold that in order to obtain a new trial under Rule 60(b)(2), the movant must establish that the newly discovered evidence: 1.) Will probably change the result if a new trial is granted, 2.) Has been discovered since the trial, 3.) Could not have been discovered before the trial, 4.) Is material to the issue and 5.) Not merely cumulative or impeaching. *South Carolina Civil Procedure* 484 (citing *Johnston v. Belk-McKnight Co.*, 188 S.C. 149, 198 S.E. 395).

Plaintiff Michele Graham's expert witness report qualifies as newly discovered evidence. The report and the knowledge of Mr. Crosby's willingness to testify were discovered ten weeks

after the September 24, 2020 trial. Moreover, the Plaintiff's newly discovered evidence satisfies each of the five elements necessary for obtaining a new trial.

- 1. The outcome will likely change based on the report and testimony of Mr. Crosby.** This testimony and report would eliminate the Court's reason for denying the temporary injunction.
- 2. This evidence was discovered since the trial on September 24, 2020.** The report is dated December 2, 2020 and the Plaintiff became aware of its existence on December 4, 2020.
- 3. This evidence could not have been discovered before the trial,** because it was not available.
- 4. The evidence is material to the issue.** Mr. Crosby's report and testimony are in line with the primary subject matter – the Defendants' dog's behavior constitutes a reasonable risk of injuring a human or other animal.
- 5. The evidence is not merely cumulative or impeaching.** Mr. Crosby's thorough report sets forth his credentials and qualifications as a recognized expert in the field of dangerous dog investigations, and the report presents his findings in support of remedial proceedings imposing necessary restrictions on the Defendants' dog.

For the foregoing reasons, the Plaintiff respectfully requests that this court enter an order granting a new trial on the Plaintiff's temporary injunction.

Respectfully submitted,

Michele Graham, *Plaintiff*
1661 Babington Way
Mount Pleasant, SC 29464
843-532-7252

Dated: 3-29-2021

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI

Defendants

CIVIL ACTION
FILE NO. 2020CP1003397

FILED
2021 JAN 28 PM 3:49
CLERK OF COURT
SOUTH CAROLINA

PLAINTIFF MICHELE GRAHAM'S MOTION TO RECUSE THE HON. BENTLEY PRICE AND PLAINTIFF'S INCORPORATED MEMORANDUM IN SUPPORT

Plaintiff Michele Graham files this Motion and incorporated Memorandum to recuse the Honorable Bentley Price from proceedings related to the above-captioned case. The Plaintiff makes this submission based on the rules set forth in the South Carolina Code of Judicial Conduct. The reasons for this motion to recuse Judge Price are:

1. The conduct of Judge Price during the Plaintiff's temporary injunction hearing and at the Defendants' summary judgment hearing gives the clear impression that the Plaintiff will not receive fair and impartial consideration during any proceeding in which Judge Price is presiding.
2. Social media friendships (exhibits attached) between Judge Price, Judge Price's spouse and defense counsel, Ted Corvey, give the appearance of partiality and impropriety. This connection, combined with the conduct of Judge Price and Ted Corvey during this case gives the impression that defense counsel is in a special position to influence the Judge.

Canon 3 of the South Carolina Code of Judicial Conduct states, “A judge shall perform the duties of judicial office impartially and diligently.” Canon 3(B)(5) states:

A judge shall perform duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based on race, sex, religion, national origin, disability or age...

During the Plaintiff’s temporary injunction hearing, a remark was made by Judge Price that alluded to being frustrated with pro se litigants. Since the Plaintiff has not yet obtained a transcript of the temporary injunction proceedings from September 24, 2020, the Plaintiff cannot provide the exact quote without the verbatim transcript. While a remark expressing frustration with pro se litigants may not, by itself, require recusal, it was a remark that created doubt that the merits of the Plaintiff’s case would be given fair and impartial consideration.

During the Ciaburri Defendants’ Motion for Summary Judgment hearing, the Plaintiff was informed by Judge Price that she could take her case back to magistrate court since the injunctive relief was denied. This comment and the tone and demeanor in which it was communicated to the Plaintiff suggested that this Court simply did not want to deal with this case. When the Plaintiff clarified that it was the *temporary injunction* that was denied and that there still remained a permanent injunction [to be decided at the end of the case, after all evidence is examined], the Plaintiff was informed by Judge Price that it had been denied. When asked to clarify, Judge Price dismissively replied, “I read something about euthanasia.” The Plaintiff’s motion for temporary injunction *did not* request that the Defendants’ dog be euthanized. The Plaintiff’s motion requested that the Court consider the submitted evidence as probable cause that the Defendants’ dog meets the definition of a dangerous animal as defined in Chapter 90 of the Town of Mount Pleasant ordinance and issue an order requiring the

confinement of the dog during the pendency of this case. However, defense counsel misrepresented the Plaintiff's temporary injunction motion to the Court as a writ of mandamus seeking the euthanasia of the Defendants' dog (See the third page of Exhibit 1 of *Plaintiff's Motion for Court to Reconsider Order Granting Attorney's Fees As to the Preliminary Injunction Hearing*). The Judge's reply indicates that the Plaintiff's motion did not receive fair and impartial consideration. Instead, it indicates that the Court read and considered defense counsel's unfiled papers to decide its course of action.

While appellate courts will accord "great weight to the trial judge's assurances of his own impartiality, [they will] find a judge's impartiality might reasonably be questioned when his factual findings are not supported by the record." *Ellis v. Procter & Gamble Dist. Co.*, 315 S.C. 285, 433 S.E.2d at 857 (1993). Judge Price's September 24, 2020 order simply denying temporary relief without stating any grounds or findings of fact illustrates an abuse of discretion and further indication of judicial bias. Since the Defendants' dog has a propensity to bite and kill other animals, it would have been a reasonable and prudent thing to at least order the animal confined to its property or elsewhere until a final determination is made regarding the dangerous dog declaration. Not only are Judge Price's rulings not consistent with the pleadings (the Plaintiff's motion sought temporary confinement, not a writ of mandamus seeking euthanasia), the Judge has not even put the findings of fact and conclusions of law in writing in accordance with SCRCF 52 and 58.

The Plaintiff finds it necessary to make it clear that this motion is not predicated solely on a ruling, but rather a combination of statements and behaviors that communicate to the Plaintiff that she is not receiving genuinely fair and impartial consideration from Judge Price. Whether this lack of fair and impartial consideration is due to a general bias against pro se litigants,

partiality to Ted Corvey or both, the opportunity for Michele Graham to receive fair treatment from Judge Price is reasonably called into question.

Canon 3(B)(7) states, “A judge shall accord to every person who has a legal interest in a proceeding or that person’s lawyer, the right to be heard according to law...” Judge Price ruled on the Defendants’ Motion for Sanctions Pursuant to SCRCP 65(f)(2) when: 1.) The motion was never before the court and 2.) The Defendants’ motion was inapplicable to the proceeding for which sanctions were requested. The ruling is included in a Form 4 dated December 22, 2020 following the Court’s denial of the Ciaburri Defendants’ motion for summary judgment. The Plaintiff had no opportunity to properly object to this motion, since it was never filed and no notice was given regarding when this motion was scheduled to be heard.

Canon 3(E)(1) states, “A judge shall disqualify himself in a proceeding in which the Judge’s impartiality might reasonably be questioned...” Canon 2 states, “A judge shall avoid impropriety in all of the judge’s activities.” The social media friendships between defense counsel and Judge Price and Judge Price’s spouse leads a reasonable person to believe that their connection goes beyond the surface of social media and that this friendship may impair the Judge’s ability to be impartial.

“It is not enough for a party seeking disqualification to simply allege bias. The party must show some evidence of bias or prejudice.” *Roper v. Dynamique Concepts, Inc.*, 316 S.C. 131, 447 S.E.2d 218 (Ct.App.1994). The behavior of Ted Corvey throughout this case has not gone unnoticed by the Plaintiff. Ted Corvey’s behavior communicates to the Plaintiff that he is in a special position to influence the Judge beyond what is expected by virtue of being an attorney. At the end of the Plaintiff’s temporary injunction hearing, defense counsel handed the Plaintiff an unfiled *Motion for Sanctions and Award of Attorney’s Fees and Costs Pursuant to SCRCP*

65(f)(2)¹. Defense counsel stated to the Plaintiff that he had “just handed the motion to the Judge.” Defense counsel handed this paper to the Judge before any ruling or determination had been made on the Plaintiff’s temporary injunction. On October 2, 2020, after the electronic indexing of Form 4, defense counsel emailed Judge Price’s law clerk asking if the Judge had ruled on his motion for attorney’s fees, since it had not been included in the Form 4. Defense counsel *expected* that Judge Price would rule on an unfiled paper without the Plaintiff even having an opportunity to object. This expectation and the Judge’s subsequent ruling on the unfiled paper is confirmation that this Court views the Plaintiff with little or no regard or consideration and that there is obvious partiality shown for Ted Corvey.

In conclusion, the Plaintiff has respect for the Court and faith in the principles of a fair and impartial judicial system. Therefore, to ensure judicial neutrality, it is necessary that all proceedings in this case be heard before a judge without any appearance of impropriety or partiality.

For these reasons and such others that may be advanced at any hearing on this motion, the Plaintiff requests that Judge Bentley Price promptly recuse himself from this case. The Plaintiff also requests that this Court first rule on this motion to recuse before addressing any other business between the litigants.

¹ See Exhibit 1 of *Plaintiff’s Motion to Reconsider Order Granting Attorney’s Fees as to the Preliminary Injunction Hearing*.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michele Graham", written over a horizontal line.

Michele Graham

Plaintiff

1661 Babington Way

Mount Pleasant, SC 29464

843-532-7252

Dated: 1-28-2021

1 dangerous, and vicious, and seized.

2 That could not be done in Magistrate Court. Judge
3 Turner was the presiding judge there.

4 I filed here to have an injunction done against Mount
5 Pleasant to have the dog taken away. Judge Turner, when we
6 were doing our pretrial conference over the phone, it was --
7 he mentioned that oh, well, you have this case pending in
8 Circuit Court. Did you do that because you wanted
9 injunctive relief. We can't offer that here. You can
10 proceed here in this Court or we can move it to Circuit
11 Court. Everything.

12 THE COURT: That seems fair, but let me ask---

13 MS. GRAHAM: Right. And that's what I did.

14 THE COURT: All right. That seems---

15 MS. GRAHAM: So---

16 THE COURT: ---completely---

17 MS. GRAHAM: ---that was that.

18 THE COURT: No, that's completely logical and fair.

19 MS. GRAHAM: Right.

20 THE COURT: However, let me ask you this now, Ms.
21 Graham.

22 MS. GRAHAM: Sure.

23 THE COURT: Since I've already ruled on the Motion for
24 Injunctive Relief, wouldn't it be better suited for you,
25 because you're only asking for the jurisdictional amount of

1 less than \$7,500, to refile back in Magistrate Court?

2 MS. GRAHAM: So, you have already ruled on the full
3 injunctive relief?

4 I thought that hearing was simply for temporary
5 injunction and that the permanent injunction would be
6 decided at---

7 THE COURT: No, ma'am, it was an in---

8 MS. GRAHAM: ---this hearing.

9 THE COURT: I, I, I granted the injunctive -- I mean I,
10 I denied the injunctive relief at least to find the dog was
11 vicious, and obviously to have it quarantined, and then
12 later on I read something about they want it euthanized.
13 But no, I've ruled on that injunctive hearing.

14 And so, if you want to refile this in Magistrate's
15 Court, you have every right to do that. You can withdraw
16 this in Circuit Court and file it there. It's a lot faster
17 in Magistrate's Court than it will be here.

18 MS. GRAHAM: I wasn't aware of that, Judge. I wasn't
19 aware that you ruled on the permanent injunction. It gives
20 me---

21 THE COURT: I don't -- one -- it -- that's not how
22 it -- that's not how the procedure -- it would procedurally
23 work. They asked -- you asked for an injunction and I
24 denied it. So, there's nothing else further for me to rule
25 on. I mean the fact that you label it temporary or

1 permanent doesn't -- that doesn't really matter.

2 what you would do is you'd ask for a TRO, which is a
3 temporary restraining order.

4 MS. GRAHAM: Right.

5 THE COURT: Right.

6 And if I granted that, the other party would have 10
7 days to come forward and say hold on, this is why I don't
8 believe the injunction is necessary. But that's not what
9 happened. Because I denied it, there's no other further
10 hearings or, or decisions that need to be made.

11 It's a procedure -- procedurally the same thing
12 happened, but I've, I've, I've denied it. So, there's no
13 other -- nothing else for anybody to have a permanent one
14 when I denied the, the, the temporary one.

15 MS. GRAHAM: Okay.

16 THE COURT: All right.

17 MS. GRAHAM: Well, that, that, Judge, I didn't know.
18 The temporary I thought was, was a separate issue and then
19 the---

20 THE COURT: Well no.

21 MS. GRAHAM: ---entire case was --.

22 THE COURT: No. So you're welcome to do with it what
23 you want now because the injunction's been ruled upon, and
24 it's been denied. So, you -- if you want to refile this in
25 Magistrate Court, Judge Turner will be happy to allow you to

1 do that. He was just saying if you wanted injunctive
2 relief, you had to come to me. You did. I denied it. And
3 so now you can go back down there if that's what you'd like
4 to do. It's certainly up to you.

5 MS. GRAHAM: So, can we continue -- can we proceed
6 with---

7 THE COURT: well, you don't have to make a decision
8 today. I mean this is all, this is all your decision. I
9 mean you're the Plaintiff. So, it's, it's your decision.
10 But I'm just -- I'm not giving you legal advice. I just
11 wanted to let you know I did---

12 MS. GRAHAM: Sure.

13 THE COURT: ---not realize that the damages that were
14 being sought were \$4,100. I wouldn't have jurisdiction over
15 this case to begin with unless you were alleging that it was
16 \$7,500 or greater, \$7,501---

17 MS. GRAHAM: Sure.

18 THE COURT: ---or greater, which would come to here.
19 But if you're alleging \$4,000 in damages, I don't have
20 jurisdiction.

21 MS. GRAHAM: well, it's, it's more than 4,000, but it
22 is, it is less than 75.

23 THE COURT: All right.

24 MS. GRAHAM: So---

25 THE COURT: I think you'd be better suited doing it in

1 Magistrate's Court then.

2 MS. GRAHAM: We're then going back to Magistrate's
3 Court though.

4 THE COURT: But, for the record, let me just help you
5 out with this, Ms. Graham, and you make your determination
6 from here.

7 For the record, I'm granting Mr. Butler's Motion to
8 Dismiss. I agree that the Mount Pleasant Police Department
9 and all agencies, and them in their personal capacity, shall
10 be dismissed from this case.

11 As to the Ciaburris, I'm gonna take it under advisement
12 as -- and to, and to look at some of the other issues into
13 the record to determine whether, in fact, there's a
14 scintilla of evidence to allow this case to move forward as
15 to the negligence cause of action against the Ciaburris, and
16 the Ciaburris only, and, therefore, your Motion for
17 Sanctions against the Town of Mount Pleasant is moot.

18 All right. Anything further for today?

19 MR. CORVEY: Yes, Judge. I guess just, just, you know,
20 my motion for attorney's fees with regard to the injunction
21 and since she was continued---

22 THE COURT: Put, put that in the notes because I keep
23 forgetting that, and that is a matter that's under
24 advisement, and I don't normally keep things under
25 advisement. I kept it until this hearing date today to make

1 my determination whether, in fact, I was gonna impose that.
2 So put it in the notes so I don't forget.

3 All right. I'll take that under consideration as well.
4 You'll have my answer by the end of the day.

5 All right.

6 MR. BUTLER: Your Honor, a Form---

7 MS. GRAHAM: Your Honor?

8 MR. BUTLER: A Form 4 for me is fine.

9 THE COURT: No problem.

10 MR. BUTLER: Thank you.

11 MS. GRAHAM: Can I understand what evidence you have
12 looked at in this, in this case because I'm, I'm a little
13 bit confused as to your ruling here?

14 THE COURT: Okay. You can submit a proposed order if
15 you'd like me to take a look at it. But Mr. Butler's
16 indicated he wants a Form 4. And so I'll be happy to put it
17 in a Form 4, and I'll put my reasoning and rationale in
18 there as well.

19 okay?

20 MS. GRAHAM: All right. Thank you.

21 THE COURT: All right. You're more than welcome.

22 All right. Anything further?

23 MR. BUTLER: Thank you, Judge.

24 MR. CORVEY: Do you need a copy of my Motion for
25 Attorney's fees, Your Honor?

1 THE COURT: I have it and I forgot that I had it. So I
2 apologize.

3 MR. CORVEY: No, no problem.

4 THE COURT: I'll take a look at it. So, I'll -- it's
5 in the notes.

6

7 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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P R O C E E D I N G S

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THE COURT: All right. So, for the record, we received a motion it looks like January 28th at around 3:49 was when it was filed. I don't -- not sure if that's the day or time that we received it. But is, is Ms. Graham's Motion to Recuse, and she filed her Memorandum in Support. And, in doing so, my law clerk contacted me. I was out that day and I said that I didn't have a problem with doing that, and I believe my law clerk took that as a response back, and he apparently emailed out.

And then Mr. Corvey had some questions about how I would rule on a Motion to Reconsider, if I was going to do that, and I ultimately thought to myself well, why am I gonna recuse myself.

I've done nothing wrong, and I told Amy to set a hearing because I know that Ms. Graham had requested a hearing, and I certainly wanted to afford her that opportunity.

So, just for the record, that's where we are now and this is Ms. Graham's motion.

So, I'll be happy to hear from you.

MS. GRAHAM: Okay. Thank you, Judge.

I, I filed the Motion to Recuse because it's become apparent that I'm not receiving full, fair, and impartial

1 I am offended by it, but it's not necessarily my
2 offense to take. But I, I would like to be heard on, on her
3 Motion to Reconsider if that's what we're arguing at this
4 point.

5 THE COURT: well, let's go through, through the first
6 thing.

7 All right. So, Ms. Graham, I want you to understand
8 that, by some of my comments, I'll -- I, I want to explain
9 those to you. And if they're not satisfactory in nature,
10 then I'll be happy to explain further.

11 I remember, I remember the remark, and what I said was
12 your confusion at the end of the hearing came over the
13 difference between a permanent injunction, which we had
14 already heard, which was the injunction, and if my
15 understanding is correct, that if -- you were thinking that
16 it was a TRO and that you were to have another hearing on
17 the injunction, and I was trying to explain to you that
18 that's not how this case proceeded.

19 And so, I don't recall saying anything apart from this
20 is the confusion that comes about when you represent
21 yourself pro se, and what I mean by that is an attorney
22 would understand that rule and would not be confused by it
23 because that's what they do in the normal course of
24 business, and that's what they do everyday.

25 So, that was the comment that I made, and that's what I

1 So, the fact that I'm friends with somebody on Facebook
2 is certainly not a grounds for recusal, and I've known
3 Mr. Corvey for many, many years. I've known a thousand
4 lawyers in this town for many, many years. That's certainly
5 not, not a basis for a recusal.

6 So, I hope that explains or addresses some of your
7 concerns about what transpired at the previous hearing.

8 Let me explain to you in just a little bit further kind
9 of where everything is.

10 You know, the relief that you're seeking has already
11 been ruled upon.

12 All right. So what -- if you're seeking for me to
13 determine that the dog is a dangerous animal under the Mount
14 Pleasant ordinance, and to have the dog seized and
15 evaluated, I have denied that.

16 All right. So, that, that has gone -- that has moved
17 on.

18 All right. I don't believe -- I can't recall if you
19 filed a motion to reconsider that or not. But that's where
20 we are as to that. Maybe that's what we did last time with
21 the Motion to Reconsider.

22 But whatever relief that you seek moving forward, I
23 have left Mr. Ciaburri in the case. I dismissed Mount
24 Pleasant and the officers, but he is still a viable
25 defendant, and you have every right to, to proceed with your

1 THE COURT: Then it would be. So let me hear from her
2 first, all right, just to be fair.

3 All right. Ms. Graham, I'll be happy to hear from you
4 concerning the motion---

5 MS. GRAHAM: Well, I, I do have a quick -- so I do have
6 a question about the, the previous motion that we just went
7 over---

8 THE COURT: Okay.

9 MS. GRAHAM: ---when you were speaking about the, the
10 permanent injunction that was ruled on.

11 Can we back up a little bit on that?

12 THE COURT: Yes, ma'am, happy to help.

13 MS. GRAHAM: So, the permanent injunction, that is
14 ruled at the end of the case, right, once all the facts are
15 presented and all of the evidence are examined?

16 THE COURT: Whatever your thought---

17 MS. GRAHAM: Isn't that on a temporary injunction?

18 THE COURT: No, you filed an injunction. And so, if
19 I'm not -- the reason I, I call it a permanent injunction,
20 and it may not be permanent, you may be right to that
21 extent, what the -- where I think the confusion came in was
22 this.

23 In a normal course of filing these, what ends up
24 happening in the beginning is that the -- you would have
25 filed a pro se motion for what's called a TRO or a

1 temporary, a temporary restraining order, and it's usually
2 an emergency. So you would have come in and you would of
3 said, Your Honor, I think that, if this dog stays out there,
4 this could be something very, very bad. It could be awful,
5 I need a, a -- an immediate restraining order against this,
6 this, the -- this in -- these individuals concerning this
7 dog. And what would of happened is, if I granted that
8 temporary restraining order, you then would have served the
9 opposing party with a notice within 10 days that a hearing
10 would be heard on a permanent injunction.

11 So, the TRO is done ex parte, meaning the other side is
12 not there, not aware of it. I -- if I grant the TRO, it
13 stops whatever was actually transpiring or occurring, but
14 then gives the other, other opportunity -- the other side
15 the opportunity to argue why it should not just continue on
16 into the future.

17 Okay. So, what you filed was an injunction, and
18 rightfully so. That's fine. I mean Mr. Corvey called it
19 something else. But I think, in, in the end, you filed an
20 injunction and you wanted me to injunct the, I don't know
21 really what you would be injuncting to do, but you were
22 asking me to take the dog, during the pendency of this case,
23 have it, have it kept in Mount Pleasant, and have it
24 evaluated to determine whether, in fact, it is vicious under
25 the, the Mount Pleasant ordinance. I have denied that. So,

1 the case now moves forward.

2 what other causes of action do you have in your
3 Complaint against the Ciaburris?

4 I assume it's for the price---

5 MS. GRAHAM: I have---

6 THE COURT: ---of the dog, correct?

7 MS. GRAHAM: Right.

8 So, it's, it's the veterinary expenses and the price of
9 the dog, yes. But also backing up a little bit.

10 When I, when I filed that, I got a notice from the
11 Court stating, you know, this is -- you have an upcoming
12 hearing for TRO, and then it said also temporary injunction,
13 and they were saying to me that it was the same thing, that
14 they were very similar. So, it was a separate thing that I
15 had filed.

16 So, the, the permanent injunction request was, I guess,
17 incorporated into my Complaint, and then I filed a separate
18 temporary injunction or TRO.

19 THE COURT: All right. Well, let's do this. Let me go
20 back and look at the filings, and if I need to get everybody
21 back together, I'll, I'll give -- I'll get a chronological
22 events of what transpired, and if there's another hearing
23 that needs to transpire, I'll be happy to grant that. But
24 let me see what has been filed, and what it's being called,
25 and how it's been coined, and how it's been filed in the

1 system. And, again, if you're afforded the opportunity to
2 have another hearing, I'll give it to you.

3 Is that fair enough?

4 MS. GRAHAM: Yes, Judge. I, I would really appreciate
5 that because you're---

6 THE COURT: All right. Well, give me---

7 MS. GRAHAM: That would work.

8 THE COURT: Give me time to look at that.

9 MS. GRAHAM: Okay.

10 THE COURT: All right. Mr. Corvey.

11 No, it's your motion. I'm sorry.

12 Ms. Graham, it's your Motion to Reconsider the awarding
13 of attorney's fees. You already argued it just a couple
14 minutes ago.

15 Do you want to add anything else onto that or no?

16 MS. GRAHAM: I need -- well, so, I -- you know, I was
17 just gonna say, with the Motion to Reconsider, you know,
18 this -- you know, his, his motion or his request for fees,
19 it's already been in front of Judge Turner. Judge Turner,
20 you know, heard what he had to say and he quickly shut it
21 down. You know, he told him no, you know.

22 So, you know, awarding attorney's fees, you know,
23 seems, to me, to me, just doesn't make any sense. There's
24 just no legal basis for it. You know, he's asking for
25 sanctions, you know, for what exactly.

1 at any evidence. Didn't look at anything. If you want
2 anything done, if you want the dog seized, and you want
3 restrictions imposed on the dog, you know, a muzzle or
4 something like that, then you would need to seek that
5 through civil means.

6 That's exactly what I'm doing. Nothing was done on --
7 for the -- on, on the part of Town of Mount Pleasant with
8 figuring out what actually happened in this case. Nothing.

9 So, I brought this case to this Court for the judge to
10 be the trier of the fact, to look at everything, to look at
11 the evidence, and for the judge to say yeah, you know what,
12 this dog, the actions that this dog displayed, and reading
13 the ordinance, which is pretty simple, yes, this dog meets
14 the definition of a dangerous animal. Therefore,
15 restrictions need to be applied or, therefore, this needs to
16 happen. You know, this is the Court for that.

17 So, just, just, again, Judge, I -- and I don't think
18 you stated this, but did you give a reason for your denial
19 for my temporary injunction?

20 THE COURT: Did we -- I don't remember if we did a
21 formal order or a Form 4.

22 Did -- Mr. Corvey, do you remember if Mr. Butler
23 submitted an order?

24 MR. CORVEY: He did not, Your Honor. You, you denied
25 the injunctive motion on a Form 4.

1 THE COURT: Okay. It's on a Form 4.

2 I, I -- you can, you can file a motion for
3 clarification if you'd like, but basically all that's asking
4 me to do is just to put out -- I, I would just put my
5 reasonings down on another Form 4. But I'm happy to do that
6 if you would like, but you just have to---

7 MS. GRAHAM: Right, I did.

8 I filed -- I filed a motion or I filed the request for
9 findings of fact and conclusions of law. I filed that I, I
10 think shortly after -- I think January 28th also. I, I
11 can't remember. But I filed that.

12 THE COURT: Okay. Well, you need to send a copy of
13 that to my clerk because if you file it with---

14 MS. GRAHAM: I did.

15 THE COURT: I haven't seen it then.

16 Have you seen it, Amy?

17 THE LAW CLERK: It was filed on the 28th you said, Ms.
18 Graham?

19 MS. GRAHAM: You know what?

20 I don't, I don't have that document---

21 THE COURT: Amy, I think it was in the same email with
22 the Motion to Reconsider --

23 MS. GRAHAM: Right.

24 THE COURT: -- as an attachment.

25 THE LAW CLERK: Let me look.

1 (Pause.)

2 THE LAW CLERK: Yeah, I, I found it.

3 THE COURT: Okay. Then just print it out to me -- for
4 me, Amy. I'll take a look at it.

5 THE LAW CLERK: Okay.

6 MS. GRAHAM: Okay. And this is not about me
7 disagreeing with Mount Pleasant or anything like that.
8 There's nothing for me to disagree with them on.

9 They didn't do anything. They didn't -- there was,
10 there was no findings on their part.

11 So that's why I'm in this Court for the Court to do
12 that, you know, and what I filed was a temporary injunction.

13 So, I mean just to kind of go back to that, Judge, I
14 would like for you to do like you said, go back, look
15 through the record, and see if it was filed, and see that
16 yes, it was a temporary injunction that I was asking for.
17 It's the TRO that you were referencing.

18 And I would appreciate another hearing because, again,
19 you know, I have an expert witness willing to testify. The
20 animal control officer also needs to be brought into Court
21 and questioned so you can see everything, all of the
22 evidence, and then make, make a determination from there.

23 THE COURT: All right. All right. I'll take all this
24 in -- under consideration. I'll do the things that I said
25 that I was going to do.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;
CHRISTA HOFFMAN, in her official
capacity as a Town of Mount Pleasant
animal control officer;
HEATHER CUMBEE, in her official
capacity as a Town of Mount Pleasant
animal control officer;
SHELBY WALKER, in her official capacity
as a Town of Mount Pleasant patrol officer
TOWN OF MOUNT PLEASANT POLICE
DEPARTMENT

Defendants

CIVIL ACTION
FILE NO. **2020CP1003397**

AMENDED
MOTION EXHIBIT LIST

Plaintiff submits exhibits 1 – 4B to be used in consideration for this motion.

MOTION EXHIBIT LIST

EXHIBIT	DESCRIPTION
	Image of Gigi shortly after death. <i>Due to the graphic nature of Gigi's wounds, the Plaintiff did not remove the bandage applied by the emergency clinicians.</i> Gigi's wounds do not indicate that a face-to-face attack occurred.
2A-B	Photos depicting blood in the front lawn and the location.
3A	Daylight view of the front lawn of 1661 Babington Way as viewed through the full-view storm door. The image indicates the location of Gigi prior to the attack.
3B	Daylight view of key areas in the front lawn of 1661 Babington Way. This image indicates the areas where blood was found and where Plaintiff Michele Graham retrieved Gigi after the attack.
4A-B	Location of blood on the curb, along with a still photograph taken from the body-camera footage of the first officer on the scene. The still photograph illustrates where on the curb these droplets were located. Defendant Mark Ciaburri is pictured on the right. At this point in the footage, Defendant Mark Ciaburri states that the blood droplets on the curb are "probably from [his] knees."

MICHELE GRAHAM

Michele Graham
Plaintiff
1661 Babington Way
Mount Pleasant, SC 28464
843-532-7252

September 1, 2020

EXHIBIT 1



EXHIBIT 2A



One of several photos of blood in the yard. This image of blood and tissue is shown alongside a photograph pointing to its location.

EXHIBIT 2B



One of several photos of blood in the front lawn. This image of blood is shown alongside a photograph pointing to its location. Photo taken with a flashlight and smartphone. Videos taken show the location of this blood in relation to the 1661 Babington Way house. This blood is

located in the same general area where the Plaintiff's father witnessed Defendant Mark Ciaburri holding his Pit-bull mix down.



Same general area of blood – trail going toward the electric box. Video shows the location of blood.

Same general area of blood – trail going toward the electric box. Video shows the location of blood.

EXHIBIT 3A



EXHIBIT 3B



Exhibit 4A.



Location of blood droplets on the curb.

Exhibit 4B.



Still photograph taken from the body-camera footage of the first Officer on the scene. This image illustrates where on the curb these droplets were located. Defendant Mark Ciaburri is pictured on the right.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

**IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT**

MICHELE GRAHAM

Plaintiff,

v.

CIVIL ACTION
FILE NO. **2020CP1003397**

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;
CHRISTA HOFFMAN, in her official
capacity as a Town of Mount Pleasant
animal control officer;
HEATHER CUMBEE, in her official
capacity as a Town of Mount Pleasant
animal control officer;
SHELBY WALKER, in her official capacity
as a Town of Mount Pleasant patrol officer
TOWN OF MOUNT PLEASANT POLICE
DEPARTMENT

Defendants

EXHIBIT LIST

Plaintiff submits the list of exhibits contained herein to be used in consideration
for the ruling of the Plaintiff's Motion for Temporary Injunction.

EXHIBITS

EXHIBIT	DESCRIPTION
1	Defendant Mark Ciaburri's interactions with the responding officers. 02:10 – Defendant Mark Ciaburri claims that he walks the same route every day. At the 03:00 mark, you can clearly see his hands. In the video interrogation, Defendant Mark Ciaburri confirms that he took his dog home and immediately returned to the scene. He didn't wash his hands or do anything, according to Defendant Mark Ciaburri. He also stated to the detective that he was bloody. There is no blood on Defendant Mark Ciaburri. 04:37 – The officer asks if their dog (Gigi) is okay. Defendant Mark Ciaburri states, "I don't know. I really don't. My dog kills opossums in my backyard." <i>This confirms that Gigi was as the Plaintiff stated – on her stomach and not moving. If Gigi "ran back into the grass" as Defendant Mark Ciaburri later states, Defendant Mark Ciaburri would have indicated this when asked about Gigi's condition. Defendant Mark Ciaburri knew what his Pit-bull mix was capable of, and as far as he could tell, Gigi might have been dead.</i> 05:58 – Defendant Mark Ciaburri begins to claim that Gigi attacked his Pit-bull mix. 06:06 – "I did the best I could to catch him." 06:17 – "I may've ... maybe got to the curb." At this time, as Defendant Mark Ciaburri stands in front of the second officer, lights from the police car shine on him. Defendant Mark Ciaburri's hands and clothing are highlighted. No blood present.

1 (continued)	07:37 – “He [the Defendants’ Pit-bull mix] thought it was an opossum.”
2	Emails from within the Mount Pleasant Police Department
3	Bodycam-captured interaction between the Defendants and the Town of Mount Pleasant animal control officers. 05:31 – “They had their dog not on a leash in their front yard like they always do...” 05:48 – “Their dogs hang out in the front yard not on a leash all the time. This goes back years.” 18:38 – “My dog has almost got that dog several times. Luckily, it’s been in the daylight and I’ve been able to get him.” 18:44 – “This time it [his Pit-bull mix] got away.” 18:44 – “Next thing I know, my little dog [his Pit-bull mix] is going after this dog [Gigi]. 20:55 – “Their dogs have been playing out in the front yard for years.” 21:07 – “This time my dog got ‘em.” 27:17 – “I’ve never addressed them.” 32:28 – “Their dog was on their property and attacked my dog in the street.”

4	Recorded phone call between the Plaintiff and Defendant Hoffman.
5	Body camera footage of the interaction between Defendant Walker and Defendants Mark and Adrienne Ciaburri on May 28, 2020 at 2:06 PM
6	Defendant Mark Ciaburri's video-recorded interview with a Mount Pleasant detective.
7	The report written by the Mount Pleasant Detective that interviewed Defendant Mark Ciaburri and his neighbors. In reference to the Pit-bull mix's aggressive nature: Paragraph 2: "I then began speaking with the neighbors of Mr. Ciaburri. I met with the neighbor to the left of the residence who stated that he knows that the dog is aggressive toward other animals and has been told by Mr. Ciaburri that if a cat were to enter the yard that his dog would kill it." Paragraph 3: "I then spoke with the neighbor across the street from Mr. Ciaburri who stated that he takes the dog everywhere he goes and that she did witness the dog run towards another dog but Mr. Ciaburri was able to get control of the dog before it left the yard."
8	Photo depicting the length of the leash used by Defendant Mark Ciaburri on the night of the incident. This is a still photo taken from Exhibit 3. Defendant Adrienne Ciaburri is holding what appears to be 8-12 inches of length (not visible in this still photograph but clearly visible at 17:49 in Exhibit 3).

8 (continued)	Defendant Mark Ciaburri is standing at the bottom of the front steps holding a loose leash, and the Pit-bull mix manages to jump on the animal control officer while the officer is standing on the front porch off to the side. Notice the extreme length.
9	Photograph illustrating a measurement of 18 inches and 12 inches with respect to the distance from a dog. In Exhibit 6, Defendant Mark Ciaburri states to the detective that Gigi was 18 inches away. Defendant Mark Ciaburri: “18 inches. It’s right there.” Defendant Mark Ciaburri later states that Gigi was probably a foot away. Defendant Mark Ciaburri: “We’re in the middle of the street. It pulled me back...The dog [Gigi] was probably a foot away, my dog goes another...” • If a dog is face-to-face with another dog, a distance of 12 or 18 inches is sufficient to avoid physical contact. • If a dog is face-to-face with another dog and if contact does occur, wounds are expected to be at the face/head, neck, ears. • Although it was dark and Defendant Mark Ciaburri claims to be unable to see, he was able to determine the distance between the two dogs. Therefore, he did see Gigi; and he could have prevented contact.
10	A still photograph taken from Defendant Mark Ciaburri’s video-recorded interview with the detective, along with two photographs of the front lawn and the street as

10 (continued)	seen through Defendant Mark Ciaburri's perspective. Even presenting this exhibit in the most favorable light for Defendant Mark Ciaburri, there is still only one reasonable conclusion that can be inferred. Even if we assume that Defendant Mark Ciaburri was walking "closer to the mailbox" and not exactly in the middle of the street, and even if we assume that the leash Defendant Mark Ciaburri used that night was shorter than the one pictured in Exhibit 8, Defendant Mark Ciaburri admits that he was holding the leash in his left hand and he felt a "tug" to his immediate left. He admits that Gigi was at least a foot (12 inches) away from his dog, and he also admits "my dog goes another." This combination of information does not place Gigi in the middle of the street. This combination of information doesn't even place Gigi <i>in</i> the street. This combination of information, however, does place the Defendants' Pit-bull mix in the front lawn. This combination of information also proves that Defendant Mark Ciaburri did, in fact, see Gigi. Defendant Mark Ciaburri saw Gigi 12-18 inches away, and his Pit-bull mix (while supposedly leashed) "goes another." The only reasonable inference that can be drawn from this combination of information is that not only did Defendant Mark Ciaburri see Gigi, he also did not prevent his dog from moving forward and grabbing Gigi. Based on Defendant Mark Ciaburri's previous statements, seeing a Yorkshire in the lawn was expected.
11	Video of the Plaintiff's parents' Yorkshire Terrier doing the same routine of relieving

11 (continued)	himself. Both dogs relieved themselves in the same general area and return back to the door. The Yorkshire Terrier in this video is 15 years old and deaf.
	Video demonstrating how a dog kills an opossum. The dog goes for the thoracic region. There is no struggle and no barking from the dog. These are exactly the wounds Gigi sustained - - severe thoracic injuries that proved fatal. Given that the Defendants' Pit-bull mix kills opossums in his backyard, one can reasonably conclude that this is the same type of attack that occurred against Gigi.
13	Bodycam-captured interactions between the Plaintiff's neighbors and the Plaintiff's parents. This is evidence that discredits the animal control officer who was in charge of investigating this incident and the report written by this officer, as well as her affidavit. This, along with the recorded phone call, is also evidence of the fact that an initial investigation was not conducted. Reports written by this officer are false and cannot be relied upon for evidence or to validate any of the Defendants' claims or assertions.
14	Blood in the front lawn. Reference 2B in Plaintiff's <i>Amended Motion Exhibit List</i>. This blood is located in the same general area where Defendant Mark Ciaburri was seen holding his Pit-bull mix down (reference Exhibit 13 at 13:19).

EXHIBITS

EXHIBIT 8:

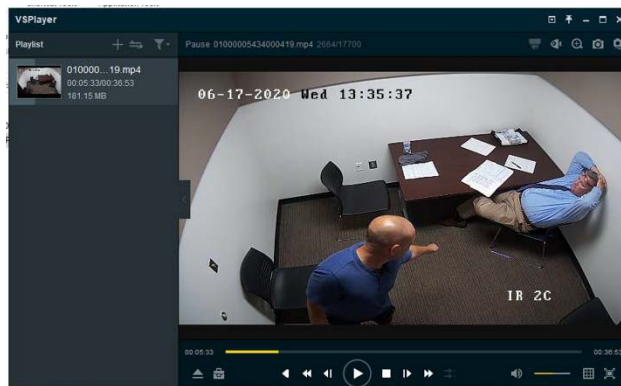


The maximum length allowed by Mount Pleasant Ordinance is 8ft.

EXHIBIT 9:



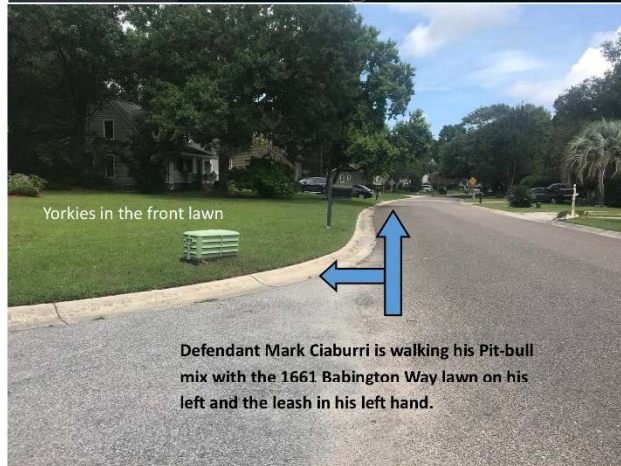
EXHIBIT 10:



Defendant Mark Ciaburri is demonstrating to the detective how the leash was tugged. While doing this gesture, he says, "I felt a tug *this way*." Therefore, the tug came from his immediate left side. The image below illustrates that a tug to his immediate left would have placed his Pit-bull mix in the front lawn.

A tug to Defendant Mark Ciaburri's immediate left does not place Gigi in the middle of the street. A tug to Defendant Ciaburri's immediate left means that his Pit-bull lunged (resulting in the tug) and grabbed Gigi.

Knowing that little Yorkshire Terriers are always in the front lawn playing, walking a Pit-bull mix with known aggression alongside the edge of the property is reckless and points to malicious intent.



Dated: 9/18/2020

Respectfully Submitted,

/s/ Michele Graham
Michele Graham
Plaintiff
1661 Babington Way
Mount Pleasant, SC 29464
843-532-7252

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
MICHELLE GRAHAM, MICHAEL
GRAHAM, and TAMMY GRAHAM,

Plaintiffs,

vs.

MARK CIABURRI, ADRIENNE
CIABURRI, CRISTA HOFFMAN,
HEATHER CUMBEE, and SHELBY
WALKER,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2020-CP-10-03397

) **MOTION FOR SANCTIONS AND**
) **AWARD OF ATTORNEY'S FEES AND**
) **COSTS PURSUANT TO SCRPC 65(f)(2)**

PLEASE TAKE NOTICE that the Defendants, Mark & Adriene Ciaburri, by and through the undersigned counsel will move before the Honorable Bentley Price at the appropriate time during a hearing for the above captioned matter for an Order Awarding Attorney's Fees and Costs to be paid by the Plaintiff, Michele Graham.

This Motion is based on the pleadings in this matter, the affidavits filed herewith, the arguments of counsel, arguments of the parties, applicable testimony, and on such laws and facts as are appropriate and applicable. Counsel submits that Plaintiffs have failed to meet their burden for issuance of a writ of mandamus pursuant to South Carolina Rule of Civil Procedure 65(f)(1) and applicable case law. Accordingly, Defendants respectfully requests this Court to grant this motion and file an order requiring Plaintiff's to pay Defendant's Attorney's Fees and Costs that have been incurred in defending against Plaintiff's claims pursuant to South Carolina Rule of Civil Procedure 65(f)(2)

[Remainder of Page Left Intentionally Blank, Signature Block Follows on Next Page]

Respectfully submitted,

/s/ Edward Corvey

KIDD CORVEY & SIMPSON, LLC

Edward "Ted" R. Corvey, III, Esq.

914 Folly Road, Suite B

Charleston, South Carolina 29412

S.C. Bar Number: 101454

ted@kcslawfirm.com

(843) 642-8792

ATTORNEY FOR DEFENDANTS

September 24, 2020

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
MICHELE GRAHAM, MICHAEL
GRAHAM, and TAMMY GRAHAM,

Plaintiffs,

vs.

MARK CIABURRI, ADRIENNE
CIABURRI, CRISTA HOFFMAN,
HEATHER CUMBEE, and SHELBY
WALKER,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2020-CP-10-03397

) **AFFIDAVIT OF ATTORNEY IN**
) **SUPPORT OF AWARD OF FEES AND**
) **COSTS**

PERSONALLY APPEARED before me: Edward "Ted" R. Corvey, III, Esquire, who
being duly sworn deposes and says:

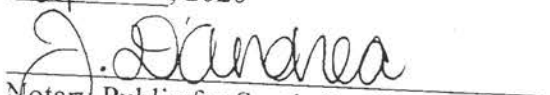
1. I am an attorney for the Defendants, Mark & Adrienne Ciaburri, in the above captioned matter.
2. This case is an action brought by the Plaintiff, Michele Graham, alleging negligence on behalf of Defendants, and she seeks damages and an injunction/writ of mandamus requesting the Court to order that Defendant's dog be euthanized pursuant to Town of Mount Pleasant ordinances.
3. That "Exhibit A" to this Affidavit, which is a listing of my firm's billing in this matter, as well as costs incurred with all available invoices and raw billing, and reflects the attorney's fees actually incurred through the date of this Affidavit amount to \$8,734.00 in connection with this action. The hourly rate charged was \$250.00. This Affidavit does not include any fees associated with appearing in Court on September 24, 2020.

4. Accordingly, Defendants request that this Court award them and submit an Order requiring Plaintiff to pay their Attorney's Fees and Costs associated with this action, to include any fees and costs not yet billed as of the drafting of this affidavit.



Edward "Ted" R. Corvey, III

SWORN to before me this 24th day of
Sept., 2020



Notary Public for South Carolina
My Commission Expires: 07/29/29

Exhibit A

ITEM	STAFF	DATE	HRS.	RATE	TOTAL	BILLED BY
o Communicate (other outside counsel) Emails and phone call with counsel for ERPP regarding developments regarding exhibits for the hearing.						
		9/24/2020	0.4	\$250.00	\$100.00	ERC
o Plan and prepare for Final preparation for hearing - review of thing, research, formulation of arguments, and drafting of motions.						
		9/24/2020	2.4	\$250.00	\$600.00	ERC
o Communicate (other external) Communication with process server regarding issuance and service of subpoenas for witnesses for the hearing.						
		9/24/2020	0.2	\$250.00	\$50.00	ERC
o Draft/revise Draft of an affidavit in support for interrogatories.						
		9/23/2020	0.3	\$250.00	\$75.00	ERC
o Draft/revise Draft of questions for ERPP witnesses to provide to their counsel in advance of hearing.						
		9/23/2020	0.5	\$250.00	\$125.00	ERC

ITEM	STATUS	DATE	HRS.	RATE	TOTAL	BILLED BY
Communicate (other outside counsel)						
Call with attorneys for APPO demanding remaining hearing and other to address common issues and cases generally.		9/23/2020	0.4	\$250.00	\$100.00	ERC
Meeting						
Meetings with clients in advance of hearing.		9/23/2020	2	\$250.00	\$500.00	ERC
Plan and prepare for initial preparation for hearing - review of exhibits and case law.						
		9/23/2020	1.3	\$250.00	\$325.00	ERC
Communicate (other external)						
Call with the neighbor of clients regarding her experiences with Plaintiff's dogs, generally what is known about Plaintiff's dogs through the neighborhood, and her personal observation of Defendant's dogs.		9/22/2020	0.5	\$250.00	\$125.00	ERC
Review/analyze						
Review of Plaintiff's motion for summary judgment - a review of Plaintiff's motion, and review of evidence provided by Plaintiff's motion to be granted by the court.		9/22/2020	3.6	\$250.00	\$900.00	ERC

ITEM	STATUS	DATE	HRS.	RATE	TOTAL	BILLED BY
Communicate (with client) Call with clients updating them regarding the latest plaintiff filings.		9/22/2020	0.3	\$250.00	\$75.00	ERC
Communicate (with client) Call with clients about the case, their concerns, and upcoming hearing Thursday.		9/21/2020	0.9	\$250.00	\$225.00	ERC
Communicate (other outside counsel) Call and email with Attys for Mount Pleasant Defendants discussing hearing Thursday.		9/21/2020	0.6	\$250.00	\$150.00	ERC
Communicate (other external) Call and email, and follow up emails exchanged with Plaintiff requesting that she refrain from contacting clients. She acknowledged via email that she would serve any necessary documents to me.		9/21/2020	0.2	\$250.00	\$50.00	ERC
Draft/revise Follow up letter to PPPD on outstanding RFP requests.		9/18/2020	0.3	\$250.00	\$75.00	ERC

ITEM	STATUS	DATE	HRS.	RATE	TOTAL	BILLED BY
Communicate (other external) Emails with judge and judge Price to let's arrange the hearing next week and what decision we can be heard.						
		9/17/2020	0.3	\$250.00	\$75.00	ERC
Communicate (with client) Call with clients and updates.						
		9/16/2020	0.4	\$250.00	\$100.00	ERC
Communicate (other outside counsel) Follow up call with James Hainsford attorney for Mount Pleasant Officers regarding case and specifically Mr. Pleasant officers going to the client house to request insurance info.						
		9/16/2020	0.4	\$250.00	\$100.00	ERC
Communicate (other outside counsel) Call with Ira Grossman Town of Mt. Pleasant attorney regarding his involvement in the criminal investigation.						
		9/16/2020	0.3	\$250.00	\$75.00	ERC
Communicate (other outside counsel) Call with James Hainsford Atty. for Mount Pleasant Officers.						
		9/15/2020	0.5	\$250.00	\$125.00	ERC

ITEM	STATUS	DATE	HRG	RATE	TOTAL	BILLED BY
Research Research into Summary Judgment motion and Memo in Opposition of Ms. Chaburn's Statement.		9/15/2020	2.1	\$250.00	\$525.00	ERC
Draft/revise Drafting of Summary Judgment motion.		9/15/2020	2.3	\$250.00	\$575.00	ERC
Draft/revise Fixing issues to perfect filing with clerk's office with Amended Complaint and Exhibits.		9/14/2020	0.2	\$0.00	\$0.00	ERC
Communicate (with client) Call with clients regarding Ms. Graham's letter to them and discussing upcoming filings.		9/11/2020	0.3	\$250.00	\$75.00	ERC
Draft/revise Final drafting of common pleas Answer and Counter Claim.		9/10/2020	0.8	\$250.00	\$200.00	ERC
Review/analyze Review of Ms. Graham's amended common pleas Complaint and Answer for an objection.		9/9/2020	0.3	\$250.00	\$75.00	ERC

ITEM	STATUS	DATE	HRS.	RATE	TOTAL	BILLED BY
Draft/revise Review of motion and counterclaim for response to Mr. Graham's motion for a case	PAID 1-676	9/2/2020	1.1	\$250.00	\$275.00	ERC
Review/analyze Review of client email response to their observations of inconsistencies from Graham filings.	PAID 1-676	9/1/2020	0.2	\$250.00	\$50.00	ERC
Communicate (with client) Via for clients advising that we would need to respond in full as opposed to just filing the motion to dismiss	PAID 1-676	8/31/2020	0.1	\$250.00	\$25.00	ERC
Research Research into appropriate motions/response to Mr. Graham's remaining civil action	PAID 1-676	8/27/2020	0.6	\$250.00	\$150.00	ERC
Draft/revise Initial draft work of motion to dismiss Graham's plea filing	PAID 1-676	8/26/2020	0.3	\$250.00	\$75.00	ERC
Appear for/attend Phone hearing with the magistrate and Mr. Graham on what the magistrate filing was and on client's oral arguments to SCRP	PAID 1-676	8/25/2020	0.3	\$250.00	\$75.00	ERC

ITEM	STATUS	DATE	HRS.	RATE	TOTAL	BILLED BY
Communicate (with client) Call with clients to discuss case being assigned at magistrate level and discussing plan of action with shut partner and Graham's common pleas.	PAID 1-676	8/25/2020	0.2	\$250.00	\$50.00	ERC
Review/analyze Review of Ms. Graham's motion with magistrate court. Prep in advance of phone hearing.	PAID 1-676	8/24/2020	0.8	\$250.00	\$200.00	ERC
Review/analyze Review of Ms. Graham's latest filings.	PAID 1-676	8/21/2020	0.4	\$250.00	\$100.00	ERC
Meeting Meeting with clients to discuss case moving forward following Ms. Graham's latest filings.	PAID 1-676	8/20/2020	0.9	\$250.00	\$225.00	ERC
Draft/revise Received court order/affidavit from client as demand letter about settlement and preparation for motion.	PAID 1-627	8/3/2020	0.2	\$250.00	\$50.00	ERC
Draft/revise Final drafting of the upcoming habeas corpus for service and demand that the group for claims transfer draft to clients for their review and approval.	PAID 1-627	8/2/2020	1.1	\$250.00	\$275.00	ERC

ITEM	STATUS	DATE ↓	HRS.	RATE	TOTAL	BILLED BY
Communicate (with client) Call with clients to discuss case. Court dismissed a magistrate level and in person play of action each still pending civil claims in common pleas.	PAID 1676	8/25/2020	0.2	\$250.00	\$50.00	ERC
Review/analyze Review of Ms. Graham's motion with magistrate court. Prep in advance of phone hearing.	PAID 1676	8/24/2020	0.8	\$250.00	\$200.00	ERC
Review/analyze Review of Ms. Graham's latest filings.	PAID 1676	8/21/2020	0.4	\$250.00	\$100.00	ERC
Meeting Meeting with clients to discuss case moving forward following Ms. Graham's latest filings.	PAID 1676	8/20/2020	0.9	\$250.00	\$225.00	ERC
Draft/revise Received confirmation/consent from client. Independent letter draft. Social skills and preparation for meeting.	PAID 1627	8/3/2020	0.2	\$250.00	\$50.00	ERC
Draft/revise Final drafting of the letter to Michelle Graham for service and stated that she dropped her claims. Emailed draft to clients for their review and comments.	PAID 1627	8/2/2020	1.1	\$250.00	\$275.00	ERC

ITEM	STATUS	DATE	HRS.	RATE	TOTAL	BILLED BY
Draft/revise Initial drafting of cover letter for serving and drafting to give claims to the auto claims	PAID 1627	7/31/2020	0.3	\$250.00	\$75.00	ERC
Draft/revise Reviewing and adding of the initial draft of answers and counterclaim for client review and discussion.	PAID 1627	7/28/2020	0.3	\$250.00	\$75.00	ERC
Communicate (with client) Call with clients to review the answer and counterclaims and discuss process moving forward	PAID 1627	7/28/2020	0.4	\$250.00	\$100.00	ERC
Communicate (with client) Call to client to update on progress and delays on my end. Follow up email with the initial draft of answer and requests for additional documentation from clients.	PAID 1627	7/27/2020	0.1	\$250.00	\$25.00	ERC
Draft/revise Revising draft of initial answers and counterclaim.	PAID 1627	7/27/2020	2.9	\$250.00	\$725.00	ERC

ITEM	STATUS	DATE	HRS.	DATE	TOTAL	BILLED BY
Draft/revise FOIA request letters to NYPD and Central Dispatch for any all information related to police involvement in this matter.	PAID 1627	7/24/2020	0.3	\$250.00	\$75.00	ERC
Draft/revise Initial drafting of answer and content claims in this matter.	PAID 1627	7/24/2020	0.6	\$250.00	\$150.00	ERC
Communicate (with client) Call with client checking in on status and also advising that she wanted me to obtain the body camera footage associated with the police investigation. I explained I would prepare a FOIA request and at her request not review the footage, but rather leave at least the initial review to clients.	PAID 1627	7/23/2020	0.1	\$250.00	\$25.00	ERC
Review/analyze Review of client information and answers.	PAID 1627	7/22/2020	0.6	\$250.00	\$150.00	ERC
			33.60		\$8,350.00 USD	

EXHIBIT 2

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham
PLAINTIFF(S)

Mark Ciaburri et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion for Temporary Injunction is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/29/2020 .

Mount Pleasant Patrol Officer Town of
Michele Graham for Michele Graham
Michele Graham for Michele Graham
Mount Pleasant Animal Control Officer Town of

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Charleston Common Pleas

Case Caption: Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al
Case Number: 2020CP1003397
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-09-29 12:05:56 page 3 of 3

EXHIBIT 3

Graham v. Ciaburri Et. Al.

Ted Corvey <ted@kcslawfirm.com>

Fri, Oct 2, 2020 at 12:47 PM

To: "Price, Bentley Law Clerk (Aimee Intagliata)" <bpricelc@sccourts.org>

Cc: Michele Graham <michele.graham0318@gmail.com>, Drew Butler <DButler@richardsonplowden.com>, James Haarsgaard <JHaarsgaard@richardsonplowden.com>

Ms. Intagliata,

My apologies. My colleague brought to my attention that Judge Price has already ruled. I must have missed the efilng notice. It appears from the Filed Form 4 order that the ruling did not include any determination on my motion for attorney's fees. If there is anything additional the Court would like me to submit on that pending motion (proposed order or otherwise) please do not hesitate to let me know.

Hope everyone has a great weekend.

Best,
Ted

[Quoted text hidden]

--

Edward "Ted" R. Corvey, III, Managing Partner

Tel: 843-642-8792 | Fax: 843-642-8793

Ted@KCSlawfirm.com

914 Folly Road, Suite B

Charleston, South Carolina 29412

KIDD CORVEY & SIMPSON, LLC
ATTORNEYS AT LAW

EXHIBIT 4



Michele Graham <michele.graham0318@gmail.com>

Graham v. Ciaburri Et. Al.

Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Fri, Oct 2, 2020 at 1:57 PM

To: Ted Corvey <ted@kcsllawfirm.com>

Cc: Michele Graham <michele.graham0318@gmail.com>, Drew Butler <DButler@richardsonplowden.com>, James Haarsgaard <JHaarsgaard@richardsonplowden.com>, "Price, Bentley Secretary (Tamara Walters)" <bpricesc@sccourts.org>

Good afternoon Mr. Corvey,

Sorry for leaving your motion for fees out of the Form 4. I will have to discuss this with Judge Price and determine what his ruling is. Please send any memorandum or other supportive material you think appropriate.

Ms. Graham, please send any memorandum or other supportive material you think appropriate.

If you'd like your memorandum or materials to be part of the official record, please e-file it. Otherwise, emailing me a Word or PDF copy is fine.

Thank you both and have a nice weekend,

Aimee Intagliata

Law Clerk to the Honorable Bentley Price

The Circuit Court of South Carolina

Ninth Judicial Circuit

100 Broad Street

Charleston, SC 29403

From: Ted Corvey <ted@kcsllawfirm.com>

Sent: Friday, October 2, 2020 12:48 PM

To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Cc: Michele Graham <michele.graham0318@gmail.com>; Drew Butler <DButler@richardsonplowden.com>; James Haarsgaard <JHaarsgaard@richardsonplowden.com>

Subject: Re: Graham v. Ciaburri Et. Al.

EXHIBIT 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

MICHELE GRAHAM

Plaintiff,

v.

MARK CIABURRI;
ADRIENNE THOMPSON CIABURRI;
CHRISTA HOFFMAN, in her official
capacity as a Town of Mount Pleasant
animal control officer;
HEATHER CUMBEE, in her official
capacity as a Town of Mount Pleasant
animal control officer;
SHELBY WALKER, in her official capacity
as a Town of Mount Pleasant patrol officer
TOWN OF MOUNT PLEASANT POLICE
DEPARTMENT

Defendants

CIVIL ACTION
FILE NO. 2020CP1003397

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SANCTIONS AND
ATTORNEY'S FEES AND COSTS**

Plaintiff Michele Graham submits this brief in opposition to the Defendants' Motion for Sanctions and an award of attorney's fees and respectfully requests that the Defendants' Motion be denied.

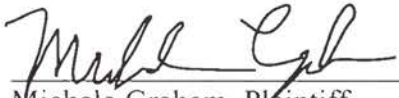
The Defendants' Motion describes the Plaintiff's Motion for Temporary Injunction as one for a writ of mandamus, which it is not; and the movant cites no case law for the proposition that a motion for a temporary injunction is in fact a "remedial writ" as contemplated by Rule 65.

The South Carolina Rule of Civil Procedure 65(f)(2) states that fees shall be awarded “where proper.” The language “where proper” makes an award for attorney’s fees discretionary, not required. The Defendants’ Motion is conclusory and asserts no facts as to why attorney’s fees should be proper in this particular circumstance.

The Plaintiff’s Motion for Temporary Injunction was made in good faith and one to which the Plaintiff was entitled to make. To award attorney’s fees serves to penalize the Plaintiff for exercising that right.

For the reasons provided herein, the Plaintiff respectfully requests that the Court exercises its discretion and deny the Defendants’ Motion.

Respectfully submitted,



Michele Graham, Plaintiff
1661 Babington Way
Mount Pleasant, SC 29464
843-532-7252

Dated: 10/5/2020

EXHIBIT 6

Graham v. Ciaburri Et. Al.

Ted Corvey <ted@kcsllawfirm.com>

Mon, Oct 5, 2020 at 10:10 PM

To: Michele Graham <michele.graham0318@gmail.com>

Cc: "Price, Bentley Law Clerk (Aimee Intagliata)" <bpricelc@sccourts.org>, Drew Butler <DButler@richardsonplowden.com>, James Haarsgaard <JHaarsgaard@richardsonplowden.com>, "Price, Bentley Secretary (Tamara Walters)" <bpricesc@sccourts.org>

Ms. Intaglia,

Attached is the following from my clients: 1. Memo in Support of Award of Attorney's Fees; 2. Motion for Attorney's Fees; 3. Amended Affidavit in Support of Award of Attorney's Fees.

Should you need anything further, or if Judge Price would like the parties to submit draft order's please do not hesitate to let me know.

Best,
Ted

[Quoted text hidden]

--

Edward "Ted" R. Corvey, III, Managing Partner

Tel: 843-642-8792 | Fax: 843-642-8793

Ted@KCSllawfirm.com

914 Folly Road, Suite B

Charleston, South Carolina 29412



KIDD CORVEY & SIMPSON, LLC

ATTORNEYS AT LAW

3 attachments**Ciaburri - Memo in Support of Grant of Attorneys Fees.pdf**

183K

**Ciaburri - Motion for Attorney's Fees and Costs SCRPC 65.pdf**

127K

**Ciaburri - Amended Affidavit in Support of Award of Attorney's Fees.pdf**

3326K

EXHIBIT 7

Graham v. Ciaburri Et. Al.

Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Tue, Oct 6, 2020 at 1:05 PM

To: Ted Corvey <ted@kcslawfirm.com>, Michele Graham <michele.graham0318@gmail.com>

Cc: Drew Butler <DButler@richardsonplowden.com>, James Haarsgaard <JHaarsgaard@richardsonplowden.com>, "Price, Bentley Secretary (Tamara Walters)" <bpricesc@sccourts.org>, "Lisa E. Chapman" <LChapman@charlestoncounty.org>

Good afternoon all,

Judge Price is continuing the Defendant's Motion for Fees and feels it would be prudent to address this motion when the more dispositive motions are ruled on.

Thank you,

[Quoted text hidden]

[Quoted text hidden]

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[Redacted signature]

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[Redacted signature]

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

# EXHIBIT 8

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**Graham v. Ciaburri Et. Al.**

---

**Price, Bentley Law Clerk (Aimee Intagliata)** <bpricelc@sccourts.org>

Tue, Oct 6, 2020 at 2:44 PM

To: Ted Corvey &lt;ted@kcslawfirm.com&gt;, Michele Graham &lt;michele.graham0318@gmail.com&gt;

Cc: Drew Butler &lt;DButler@richardsonplowden.com&gt;, James Haarsgaard &lt;JHaarsgaard@richardsonplowden.com&gt;, "Price, Bentley Secretary (Tamara Walters)" &lt;bpricesc@sccourts.org&gt;, "Lisa E. Chapman" &lt;LChapman@charlestoncounty.org&gt;

All,

If you'd like this motion to be heard, you will have to file it with the Clerk's office. They do not have any Motion for Fees on file and cannot create a motion in the system.

Please let me know if you have any questions.

Thanks,

Aimee Intagliata

Law Clerk to the Honorable Bentley Price

The Circuit Court of South Carolina

Ninth Judicial Circuit

100 Broad Street

Charleston, SC 29403

**From:** Price, Bentley Law Clerk (Aimee Intagliata)**Sent:** Tuesday, October 6, 2020 1:05 PM**To:** 'Ted Corvey' <ted@kcslawfirm.com>; Michele Graham <michele.graham0318@gmail.com>**Cc:** Drew Butler <DButler@richardsonplowden.com>; James Haarsgaard <JHaarsgaard@richardsonplowden.com>; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>; 'Lisa E. Chapman' <LChapman@charlestoncounty.org>**Subject:** RE: Graham v. Ciaburri Et. Al.

Good afternoon all,

# EXHIBIT 9

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Charleston  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1003397

Michele Graham  
PLAINTIFF(S)

Mark Ciaburri et al  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The Town of Mount Pleasant's Motion to Dismiss is granted as to The Town of Mount Pleasant Police Department, Christa Hoffman, Heather Cumbee and Shelby Walker. The only remaining Defendants in this action shall be Mark Ciaburri and Adrienne Thompson Ciaburri.

Defendant Mark Ciaburri's Motion for Summary Judgment is denied.

Defendant Mark Ciaburri's Motion for Attorneys fees is granted as to the Preliminary Injunction hearing heard before this Court on September 24, 2020. Defense counsel shall submit an affidavit of fees from the September 24, 2020 hearing. The Court will consider these fees and award the appropriate amount at such time.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/21/2020 .

Mount Pleasant Patrol Officer Town of  
Michele Graham for Michele Graham  
Michele Graham for Michele Graham  
Mount Pleasant Animal Control Officer Town of

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Charleston Common Pleas

**Case Caption:** Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al  
**Case Number:** 2020CP1003397  
**Type:** Order/Electronic Form 4

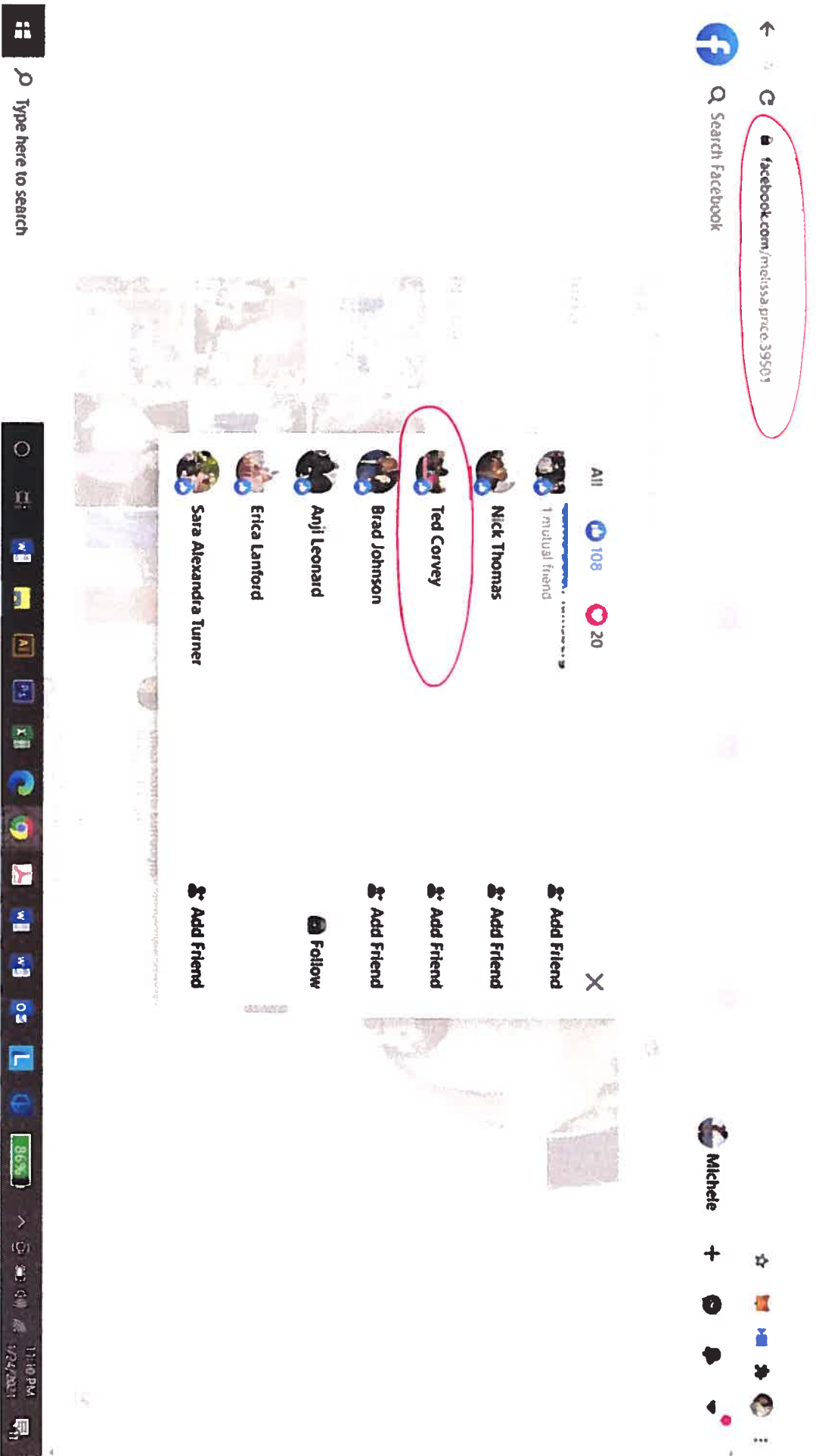
IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-12-21 15:13:17 page 3 of 3

ELECTRONICALLY FILED - 2020 Dec 22 11:38 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003397

# Exhibit 1



Facebook friendship between Melissa Donaldson Price (Judge Price's spouse) and Ted Corvey (Defense counsel).

Exh t 2





Michele Graham  
661 Babington Way

Mount Pleasant, SC 29464

## NOTICE OF MOTION SCHEDULING

August 28, 2020

**Motion "MOFREE - Motion For Temporary Restraining Order" for Case: 2020CP1003397 - Michele Graham , plaintiff, et al VS Mark Ciaburri , defendant, et al has been added to the following Motions Roster:**

**404 - JUDGE PRICE WEEK OF SEPTEMBER 21, 2020**

**This hearing of this motion has been scheduled for 9/21/2020 at 9:30 AM.**

Motion(s) in the above captioned case will be handled during THE WEEK OF September 21, 2020 by the Honorable Judge Bentley Price. UNLESS a WebEx hearing is requested, the motion (s) will be ruled on based upon your submitted briefs. Your briefs are due by 5PM on Friday, September 18, 2020. Please send your briefs to Judge Price's Law Clerk at the following:

[bpricelc@sccourts.org](mailto:bpricelc@sccourts.org)

IF you are requesting a hearing please be advised that the hearing will be handled via WebEx. The Link for the hearing will be provided by Judge Price's Law Clerk after you email her with your request for a hearing. Please advise if an Interpreter is needed.

Continuance requests must be received no later than Wednesday, September 16, 2020.

### Mail Notice To:

Michele Graham  
1661 Babington Way  
Mount Pleasant, SC 29464

### Court Info:

Common Pleas  
Charleston County Judicial Center  
100 Broad Street - Suite 106  
Charleston, SC 29401-9401

**If you have any questions regarding the scheduling of this motion, please contact the courts at:**

**(843)958-5000**

Respectfully,

**James W. Crosby M.S.**  
**Canine Aggression Consulting LLC.**  
1435 Oak Haven Rd. \* Jacksonville, Florida 32207 \* 904-476-7655 \*

2 December 2020

To Whom it May Concern:

RE: Dog-dog incident resulting in the death of a Yorkie-type dog, property of Michele Graham of Mount Pleasant, South Carolina. This incident occurred 27 May 2020 within the jurisdiction of Mount Pleasant, South Carolina.

I, James W. Crosby, am an adult over the age of 18 years and would be competent to testify if called as a witness in this case. I have been retained regarding the case of a dog on dog, offensively aggressive incident that resulted in the death of a small Yorkie-type pet dog known as Gigi. The dog responsible for the injuries to Gigi is a Labrador-type dog belonging to Mark Ciaburri.

To summarize my qualifications regarding forming opinions about this case: I am a court-recognized expert on dog behavior, dog aggression, and dog bite investigation in a variety of municipalities, states, and in the United States District Court, based on my extensive experience and training. I am a Certified Behavior Consultant-Canine-Knowledge Assessed. I have been working with aggressive and dangerous dogs for over fifteen years. I actively provide training for police departments and animal control agencies regarding dangerous dogs, dog aggression, use of force in canine encounters and the investigation of serious and fatal dog attacks on human victims. Agencies that I have instructed have included the Florida Animal Control Association, the Alabama Animal Control Association, the Colorado Association of Animal Control Officers, the National Animal Control Association, the Alberta Animal Control and Bylaw Officers' Association, the London Metropolitan Police and their Status Dog Unit, and other public and private conferences. I have directly investigated over 30 human fatalities by dogs with on-scene investigations, several of which have resulted in successful criminal prosecution. I have personally investigated fatal dog attacks on human victims in the United States, the United Kingdom, and the Commonwealth of Australia. When unable to respond personally I have consulted on investigation of human fatalities in the United States, the United Kingdom, and India wherein I have rendered opinions. As a result of these investigations I have performed hands-on direct behavioral evaluations of over (50) dogs that have killed human victims. My sworn reports and testimony have been accepted as expert materials in many states and Federal District Courts in the United States, in the Queensland (Australia) Civil and Administrative Tribunal, and in the Crown Court of the United Kingdom.

As to training received regarding animal behavior, I have attended many seminars and training sessions addressing canine behavior. These are listed in the attached CV and include, but are not limited to, advanced canine behavior training, obedience instructor training, dog behavior evaluation, Forensic Animal Behavior Analysis, Bite Prevention for Law Enforcement Officers, and course work taken through the University of Florida on Animal Crime Scenes/Clandestine Grave Investigation and Bite Mark Analysis.

I received my master's degree in Veterinary Forensics from the College of Veterinary Medicine,

# James W. Crosby M.S.

## Canine Aggression Consulting LLC.

1435 Oak Haven Rd. \* Jacksonville, Florida 32207 \* 904-476-7655 \*

the University of Florida. In fulfillment of that degree I completed graduate coursework in Forensic Animal Behavior Analysis, Interpersonal Violence and Animal Abuse, Veterinary Forensic Pathology, Veterinary Forensic Osteology, Animal Law, Scientific and Legal Principles of Evidence, and Forensic Crime Scene Analysis. I have taught canine behavior and assessing behavior problems and aggression across the United States, England, Italy, Poland and Canada.

I am an accepted candidate for the degree of Doctor of Philosophy within the Graduate School of the University of Florida College of Veterinary Medicine. To date I have not only continued my research, but have taken graduate coursework in Skeletal Trauma Analysis, Shelter Behavior and Animal Welfare, Veterinary Forensic Radiology and Imaging, and Working Dogs in Forensic Science (the science and behavior of scent usage in canines).

I am a Certified Animal Control Officer in the State of Florida and I served as the Animal Control Division Manager for Bay County, Florida, from February 2008 to September 2010. During my tenure at Bay County Animal Control my duties included daily shelter management, assuring the safe handling and humane treatment of animals in the care of Bay County Animal Control, investigating complaints of animal neglect and cruelty, overseeing and assisting in animal rescue and capture, response to calls to investigate reported aggressive dogs, and to assist police in animal related calls, and performing investigations and making findings of fact regarding the declaration of Dangerous Dogs under Florida Statute. During that service I did, as part of my duties, declare approximately 71 dogs as legally “Dangerous” in accord with Florida Statute. My training and experience also include certification, training and experience in humane euthanasia of animals and the legal restrictions on methods and reasons for such euthanasia. Due to my experience and duties and the small nature of this agency, I was directly involved with oversight and knowledge of the major complaints and directly interacted with my officers to develop enforcement and education strategies that served to resolve problems, enforce the County Code and State laws, and protect the public from animal-related threats.

I served full-time as Division Management Consultant, acting as Chief, for Jacksonville (FL) Animal Care and Protective Services from March 2016 through December 31, 2016. As such it was my responsibility to oversee all aspects of a major Animal Services agency and the accompanying shelter, including but not limited to the duties previously reported in regard to the Bay County Animal Control Division. These duties included oversight and management of the Veterinary Clinic, Adoptions, Animal Control, animal ordinance enforcement and citation issue, the Foster program, and other functions. Under the provisions of Jacksonville Municipal Ordinance served as designated Hearing Officer for Dangerous Dog cases and did find several dogs legally “Dangerous” under the provisions of Florida Statutes and local Code. I was also, while in an on-site capacity, responsible for the oversight of particular problem areas and sources of repeated complaints and was an integral part of designing and developing both education and enforcement-based solutions to repeated problems. I, due to my experience and duties, was responsible to have oversight and knowledge of the major complaints and directly interacted with my subordinate supervisors to develop enforcement and education strategies that served to resolve problems, enforce the Municipal Codes and State laws, and protect the public. I still function on

# James W. Crosby M.S.

## Canine Aggression Consulting LLC.

1435 Oak Haven Rd. \* Jacksonville, Florida 32207 \* 904-476-7655 \*

an as-needed basis as Division Management Consultant for the City of Jacksonville, FL.

Both Jacksonville ACPS and Bay County Animal Control are member organizations of the Florida Animal Control Officers' Association. I have taught portions of the Florida Animal Control Association curriculum for the certification of Animal Control Officers' including perception of threat and use of legal force in animal cases. I was a member of the Board of Directors of the Florida Animal Control Association and, as such, was privy to the discussions regarding establishment of Standards regarding the curriculum. I continue to provide training to members of the Florida Animal Control Association and other agencies. I am a Charter Member of the International Veterinary Forensic Science Association. I am a member of the Board of Directors for the Certification Council for Professional Dog Trainers (CCPDT). I am a member of the National Animal Care and Control Association and serve on the Training Advisory Board for that organization.

I served as a Police Officer with the Jacksonville Sheriff's Office from 1977 to 1999, performing twenty-two years of active service. During that period, I served as a Patrolman, a Sergeant, and a Lieutenant. My duties as a Patrolman included patrol duties, emergency response, arrests, ordinance violation citation issue, traffic citation issue, and investigations.

As a Sergeant, my duties involved day to day on-scene supervision of call response, major calls and investigations, allegations of misconduct, critical incident response and accountability, and investigating complaints regarding use of force by my officers. Some of these investigations did result in administering or recommending disciplinary action against officers for violating Departmental guidelines and proper procedures for said use of force. I was also extensively trained in the use and regulations of less- and non-lethal force options, including various chemical deterrent materials. These included the use of MACE, CS and CN type tear gasses, and oleoresin capsicum spray, and foggers. I further supervised the enforcement of and issue of citations, both civil and criminal, for State traffic laws and for Municipal Code violations.

As a Lieutenant, my immediate span of control as a Watch Commander ranged up to four (4) Sergeants and forty (40) officers, plus officers in training, at any one time. I served on the Firearms Review Board for the Jacksonville Sheriff's Office, the designated Board that determined whether a discharge of firearms case was justified and reasonable under Florida Statute and Department guidelines. I oversaw the actions and supervisory behaviors of the Sergeants under my command to ensure that they and their officers were following proper policy, procedure, and legal enforcement criteria. In oversight of the Supervisors and Officers I was responsible to ascertain where potential problem areas were, the possible contributing factors to criminal problems and safety risks to the public, and address and oversee response to specific issues. I supervised the overall enforcement of State law and Municipal Code by officers under my command, including the issuance of traffic related and Municipal code related citations and criminal arrests, and was responsible to ensure that Code and Statutes were enforced fairly, properly, and when appropriate. I was responsible for the initial and/or full investigation of Officers under my command when accused to have used unnecessary or unlawful force, up to and

# James W. Crosby M.S.

## Canine Aggression Consulting LLC.

1435 Oak Haven Rd. \* Jacksonville, Florida 32207 \* 904-476-7655 \*

including deadly force. I was also responsible for supervising the Officers under my command for proper deployment of non- or less-lethal force, according to Statute and Department Policy. I have attached a CV to this report detailing my work experience.

As both a Sergeant and a Lieutenant I was trained and designated as a Field Training Officer Supervisor and had day to day responsibility to oversee the training of new officers and new supervisors in Department procedures, job tasks, and supervisory issues including the use of force and investigating cases thereof.

### LIST OF PUBLICATIONS AUTHORED BY JAMES W. CROSBY

Public Service announcements broadcast on WKGC Radio, Panama City, Florida, as part of a recurring program giving pet advice from 2008 through 2009.

Master's Thesis Research (Publication August 2016) "The Use of Specific Evidence in the Investigation of Human Dog Bite Related Fatalities".

Chapter "Investigation of Human Dog Bite Related Fatalities" in Dog Bites: A Multidisciplinary Approach, Carri Westgarth PhD and Daniel Mills, PhD, editors, The University of Lincoln Press, Lincoln, Lincolnshire, England, 2017.

Chapter "Anatomy and Morphology of Dog Bites", in Dog Bites: A Multidisciplinary Approach, Carri Westgarth PhD and Daniel Mills, PhD, editors, The University of Lincoln Press, Lincoln, Lincolnshire, England, 2017.

Blog "Canine Aggression Blog", [canineaggression.blogspot.com](http://canineaggression.blogspot.com)

Crosby, James W., and Chelsea Rider. 2017. *Changing the Narrative: Improving Law Enforcement and Dog Encounters to Reduce Lethal Incidents and Improve Community Relations with Pet Owners: Literature Review*. Washington, DC: Office of Community Oriented Policing Services.

"Law Enforcement Dog Encounters Training", a full instruction course on safe interactions between police officers and domestic dogs, supported by the National Sheriffs' Association and the National Law Enforcement Center on Animal Abuse, approved and published by the Department of Justice-Office of Community Oriented Policing Services (COPS).

"Law Enforcement Dog Encounters Training-Toolkit", a toolkit of policies, Review of Literature, resources, and other pertinent data regarding police encounters with domestic dogs, published by the United States Department of Justice/Office of Community Policing Services, November 2019.

"Dangerous Dog Investigations" in Humane Animal Control: Effective Enforcement, Shelter

# James W. Crosby M.S.

## Canine Aggression Consulting LLC.

1435 Oak Haven Rd. \* Jacksonville, Florida 32207 \* 904-476-7655 \*

Management, Local Government Support and Community Engagement, Best Friends Animal Society Publications, Kanab, Utah, 2018.

“Efficacy of the “Fake Dog” test in evaluating possible rehabilitation in a group of documented fighting dogs”, presentation, Animal Behavior Society 2020 Conference, online, July 20, 2020.

COURT CASES JAMES W. CROSBY HAS TESTIFIED IN OR PROVIDED EXPERT OPINION IN DURING THE PAST FOUR (4) YEARS:

2016

R v McGarrity & Dickson [2016] North Tyneside MC, (unreported)  
UK Magistrates’ Court                      Defendant      Dog bite

Bradley Ray Beck Jr. vs Ryan Smith, Spokane County Sheriff’s Department et al.  
Federal                      Plaintiff              Police Shooting

State of Florida v. Javon Dade      Florida                      Circuit (criminal)              Defendant              Fatal      dog  
attack

Faivre v. Murphy (LA).                      Louisiana              Circuit                      Plaintiff              Dog bite

Jessica Marquez v. Officer Michael Robinson (Pleasant Hill, CA PD) California              Federal  
Plaintiff                      Police Shooting

Bryan and Katherine Thomas v. Ric Bradshaw as Sheriff of Palm Beach County, FL  
Florida                      Federal                      Plaintiff                      Police Shooting

2017

Bonnie Lee v. Kern County Probation Department              Federal                      Plaintiff                      Police  
Shooting

Steven Cunningham v. United Parcel Service, et al.              Circuit                      Plaintiff                      Dog Bite

Almendarez v. the City of Hollywood (FL) et al.              Federal                      Plaintiff                      Police  
Shooting

Ksenia Benz v. Andrew Kaupert et al.      Maryland                      Circuit                      Defendant              Dog Bite

2018

# James W. Crosby M.S.

## Canine Aggression Consulting LLC.

1435 Oak Haven Rd. \* Jacksonville, Florida 32207 \* 904-476-7655 \*

|                                                                                                                      |              |                                                                         |
|----------------------------------------------------------------------------------------------------------------------|--------------|-------------------------------------------------------------------------|
| Walker v. North Las Vegas Police Dept.<br>Plaintiff                      Police Shooting                             | Nevada       | Federal                                                                 |
| Wheeler v. City Of Henderson Police Department<br>Plaintiff                      Police Shooting                     | Nevada       | Federal                                                                 |
| Paul Szvoren and Vianna Stewart v. Ohana Animal Rescue and Maricopa County, Maricopa County Animal Care      Arizona | Superior     | Plaintiff                      Dog Bite                                 |
| Aliado v. Souza and Souza      Hawai'i                                                                               | Circuit      | Plaintiff                      Fatal dog attack                         |
| State of Colorado v. John Doe at large subject (Fremont County Sheriff's Office, Cañon City, Colorado)      Colorado | Superior     | Plaintiff (prosecution)      Criminal Homicide                          |
| 2019                                                                                                                 |              |                                                                         |
| Bradshaw v. Moreton Bay Regional Council [2018] QCATA 140      Queensland, Australia                                 |              | Dog Bite                                                                |
| Villalpando v. Don Bell D/B/A Pencils ETC., et al      Texas                                                         | Civil/County | Plaintiff      Dog Attack                                               |
| James v. Maricopa County Animal Services      Arizona                                                                | Federal      | Defendant      Dog Bite                                                 |
| Travis County Texas v. Guzman      Texas                                                                             | Circuit      | Plaintiff (State Prosecutor)      Criminal Deadly Conduct-Dangerous Dog |
| City of Aurora vs. Tracy Prim      Colorado                                                                          | Municipal    | Defendant      Keeping Dangerous Dog                                    |
| State of Texas v. Peter Scott Lucas      Texas                                                                       | Circuit      | Defendant      (Public Defender)      Negligent Homicide                |
| Zorich v. Zavorka and St. Louis County Police Missouri                                                               | Federal      | Plaintiff      Police Shooting                                          |
| Medieros v. Albert Duperre, Chief of Police of the City of Fall River      District Court                            | Plaintiff    | Dangerous Dog      Massachusetts                                        |

# James W. Crosby M.S.

## Canine Aggression Consulting LLC.

1435 Oak Haven Rd. \* Jacksonville, Florida 32207 \* 904-476-7655 \*

Azurdia v. City of New York Police Department      New York      Federal      Plaintiff  
Police Shooting

Wilk v. the City of Concord Animal Services      New York      Municipal      Defendant  
Dangerous Dog

McAfee v. Town of Marlborough Massachusetts      Massachusetts      County  
Defendant      Dangerous Dog

Barbara Schneider, as custodian of the estate of Klonda Richey, v. Mark Kumpf, Montgomery  
Animal Service Center      Ohio      Federal      Plaintiff      Fatal Dog  
Attack

Alvarez v. City of Philadelphia Animal Care and Control Team      Pennsylvania      Circuit  
Defendant      Dog Bite

2020

State of Georgia vs. Samuel Brown and Angel Brown      Georgia      Circuit  
Prosecution      Fatal Dog Attack (Criminal Homicide)

Karen May v. The Town of Abington, MA      Massachusetts      Municipal      Defense  
Dangerous Dog

Friedel vs. Park Place Community      Florida      Circuit      Defendant      Dangerous  
Dog/Civil Eviction

Boring v. City of Worthington, Dubuque Regional Humane Society      Iowa      District  
Cruelty

Vaseleros-Stevenson v. Calvert County, Maryland      Maryland      Federal      Plaintiff  
Police Shooting

Marie v. Aldritch and Deryckx      Washington      Superior      Plaintiff      Dog bite.

Ressler v. Heisel Florida      Circuit      Plaintiff      Dangerous Dog/Dog Bite

Paradise Island Property vs. George      Circuit      Plaintiff      Dangerous  
Dog/Civil Eviction

City of Denver Colorado v. Seth King      Colorado      Superior      Defendant      Dangerous  
Dog/Dog Bite

# James W. Crosby M.S.

## Canine Aggression Consulting LLC.

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Melissa Mitchell vs. Town of Norfolk    Massachusetts    Municipal    Defendant  
Dangerous Dog

These cases include cases in which I have appeared both for and against the owners of dogs. This list may expand as currently outstanding cases may be resolved prior to the closure of this case.

### MATERIALS REVIEWED:

Report of ACO Hoffman, dated 5/27/2020

Body camera from incident labeled EXHIBIT 14.MOV

Body-worn camera footage from 5/28/2020, Animal Control follow-up

Video interview with Mark Ciaburri

Narrative from Michele Graham

Color photographs of the scene provided by Michele Graham

Chapter 90, Mount Pleasant Municipal Code

Clinical summary of treatment, dog Gigi, Veterinary Specialty Clinic, Charleston, SC

### FACTS IN THIS CASE:

- a) The dog in question, a Yorkie-type pet dog known as Gigi, was in her home on 27 May 2020. At approximately 9PM, Michele Graham and her father, Michael Graham, let Gigi out into her front yard to use the bathroom. Gigi went to the area around the mailbox to relieve herself. Ms. Graham dealt with a momentary matter in her home while her father was staying at the door to observe Gigi.
- b) Mark Ciaburri was walking his dog Petey past the Graham property.
- c) Ciaburri's dog engaged with the Graham's dog and grasped her in his mouth, shaking and holding the small dog. Ciaburri reported that he had to pry Gigi from his dog's mouth.
- d) Ms. Graham has supplied photographs of the scene. Visible on the grassy area, within and upon the Graham property, are dark reddish-black stains consistent, in my experience and training, with blood.
- e) Gigi was taken to the veterinarian by Ms. Graham. Intake information listed in the documents from the Veterinary Specialty Care clinic of Charleston show the following:
  - a. General appearance: shocky, 7/9 BCS, 0/4 pain scale.
  - b. Eyes and ears normal.
  - c. Punctures to the left and right thorax, flail chest (fracture and luxation of left 8<sup>th</sup> and 9<sup>th</sup> ribs) left sided, with significant contusion and subcutaneous emphysema.
- f) By the following day conditions had changed. Gigi was non-ambulatory and recumbent, showing tachycardia and thread pulses, tachypneic and severely dyspneic in oxygen. The dog quickly desaturated her oxygen level when removed from oxygen support indicating

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increasing pulmonary difficulty. Gigi had suffered “significant penetrating trauma, respiratory compromise, flail chest, pulmonary contusions, and a concern for sepsis.” Gigi was rated as having a poor to grave prognosis. Gigi later died as a result of this incident.

### OPINIONS:

- 1) The dog Gigi was a spayed female small dog, Yorkie type, and was a valued member of the Graham family. Gigi was about 12 years of age.
- 2) Gigi was severely injured in the encounter with the dog Petey, a much larger, Labrador-mix type male dog.
- 3) The injuries to Gigi, as described by the veterinary personnel, were in my professional experience completely consistent with an offensive, active engagement by a larger dog. The fractures and luxation of the ribs at the level of the 8<sup>th</sup> and 9<sup>th</sup> rib are consistent with a full-dentition engagement, grasping the dog for the purpose of crushing and shaking the small dog. This action is a significant part of, and symptomatic of, a dog that is following the canine predatory motor sequence, a well-recognized pattern of typical canine behavior. As Coppinger (2001) states: “The canids have several kill-bites. One common variation is the head shake.” (p. 207). This incident showed the head-shake bite pattern clearly, combined with crushing force to the thorax.
- 4) The idea that such behavior by Petey is somehow “normal” is untenable. Dogs do not normally directly engage with and immediately administer a kill-bite to a smaller dog. Dr. Karen Overall stated (2001) “Most aggressive dogs are clinically behaviorally abnormal; the abnormality is usually progressive and is influenced by the social environment, so the signs noted by the client and clinician have been changing.” Therefore, the behavior by Petey is problematic and indicative of at least a serious need for training to interrupt his current behavior pattern. Petey should also be managed for the displayed, uncontrolled aggressive engagement with a dog so small as to be a negligible threat, especially when said dog is on its own property. Such management should include competent supervision by the owner and, since that did not occur here, the presence of a muzzle whenever off his own property and subject to exposure to smaller, prey-sized dogs. Petey should not be permitted to enter, attend, or participate in activities in a public or private dog park.
- 5) The allegation that the large dog Petey was on a leash and thereby properly contained is, in this case, an irrelevant. The dog Petey was able to fully grasp the small dog by the thorax, delivering a crushing injury accompanied by puncture of the thoracic wall (as evidenced by the documented penetrating trauma and subcutaneous emphysema). This does not, in my professional experience or opinion, meet the standard of care for “control” of a dog. In response, as mentioned above, permanent requirement of muzzling when off property and prohibition from dog park participation should be imposed.

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- 6) The apparent blood stains documented in the photographs are consistent, in my experience and training, with the bleeding I would expect in a case such as this. The location of the largest concentration of patent blood is, in my experience, most likely the location of the primary attack.
- 7) The location of the major blood marks is well within the apparent property limits of the Graham residential property. As such, in my experience and training as an Animal Control Officer, and in my experience as the commanding official in two separate municipal Animal Control agencies, Gig would not meet any standard of being at large. In fact, Gigi was fully within both legal definition of, and common-sense appreciation of, being lawfully and properly on her own property.
- 8) Thus, in my professional opinion, based on extensive training, practice, analysis of dog bite injuries, and to a scientific degree of certainty, this was an offensively aggressive incident, wherein the dog Petey dangerously encroached on the Graham property and engaged with the small dog Gigi. Petey's engagement resulted in life-threatening, and ultimately fatal, injuries to Gigi which are consistent with such an attack.
- 9) After review of Mount Pleasant Municipal code, it is my professional opinion, based on my experience and training as a police officer and as an animal code enforcement officer that Mr. Ciaburri and Petey violated the following provisions of Chapter 90 of the Municipal Code:

### 90.01: Definitions.

**ANIMAL NUISANCE.** The actions of an animal constitute a nuisance when an animal disturbs the rights of, threatens the safety of, or damages a member of the general public, or interferes with the ordinary use and enjoyment of his or her property. **Specifically, an animal nuisance is created when an animal:**

1. (1) Runs uncontrolled;
2. (2) Damages property other than that of the owner or harborer;
3. (3) Molests or disturbs persons or vehicles or other animals by chasing, barking, or biting;

**VICIOUS ANIMAL.** As follows. (1) An animal:

4. (a) With a known propensity, tendency, or disposition to attack unprovoked, to cause injury to, or to otherwise endanger the safety of humans or domestic pets; or
5. (b)
6. (c) (2)
7. Which attacks, bites or otherwise injures a human being or other domestic animal without provocation;...

### 90.29 NUISANCE ANIMALS.

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(B) It shall be unlawful for any person to own, keep, possess, or maintain an animal in such a manner so as to constitute a public nuisance. By way of example and not of limitation, the following acts or actions by an owner or possessor of an animal are declared to be a public nuisance and are therefore unlawful:

(3) Maintaining an animal that habitually or repeatedly chases, snaps at, bites, or attacks pedestrians, bicycles, or vehicles, or other animals, or any animal whose behavior constitutes a reasonable risk of injuring a human or other animal.

## § 90.30 DANGEROUS AND VICIOUS ANIMALS PROHIBITED.

(A) It shall be unlawful for any person to own or in any way maintain, harbor or keep any animal which is dangerous as described in § 90.29 (B)(3) above, or that is vicious as defined in this chapter. This shall not apply to any animal that attacks any person or animal unlawfully upon its owner's or keeper's premises.

Thus, in conclusion, Petey should have been, and should be, declared DANGEROUS under the provisions of Mount Pleasant Municipal Code, and remedial action to so declare the dog Petey DANGEROUS should immediately proceed.

I respectfully and explicitly reserve the right to add to, amend, expand, change, or clarify my opinions in this case as more information is gathered and provided.

Respectfully submitted,



James W. Crosby, M.S., CBCC-KA

## REFERENCES:

Coppinger, Raymond and Coppinger, Lorna (2001) *Dogs: A Startling New Understanding of Canine Origin, Behavior & Evolution* Scribner, New York, 2001.

Overall, Karen (2001) *Dog Bites to Humans: demography, epidemiology, injury and risk*, Journal of the American Veterinary Medical Association, Vol 218, p. 1923-1934

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Mounty Pleasant Municipal Code, Chapter 900: Animals, Sections as cited above, effective (90.30) 10-12-1993.

**RECEIVED**

**Nov 08 2021**

**SC Court of Appeals**

Certification of Appellant

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

November 8, 2021

A handwritten signature in black ink, appearing to read "Michele Graham", written over a horizontal line.

Michele Graham  
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843-532-7252  
Appellant