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SC Court of Appeals

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA

In The 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

BRIEF OF APPELLANT

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

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STATEMENT OF THE CASE

On August, 31, 2020, Michele Graham submitted an amended complaint to Charleston County Circuit Court alleging negligence against Mark and Adrienne Ciaburri for their pit-bull mix fatally attacking Michele Graham's twelve year-old Yorkshire Terrier, Gigi. The complaint seeks monetary damages and a permanent injunction declaring the pit-bull mix as dangerous and the imposition of appropriate orders regarding the handling of the pit-bull mix. The responding officers involved in the initial investigation of this incident and the Mount Pleasant Police Department were also named in the lawsuit.

On September 2, 2020, Michele Graham filed an Amended Motion for Temporary Injunction to request that the Court quarantine the pit-bull mix until a final determination is made regarding its dangerous status. On September 24, 2020, the temporary injunction hearing was held, and the motion was denied. The Court filed the Form 4 Order on September 30, 2020, which simply stated, "Plaintiff's Motion for Temporary Injunction is DENIED."

On December 11, 2020, the Motion for Summary Judgment of opposing counsel, Edward Corvey, was heard and denied. The Court filed the Form 4 Order on December 22, 2020 denying Edward Corvey's Motion and granting the Ciaburri's attorney's fees for the preliminary injunction hearing on September 24, 2020.The responding officers and the Mount Pleasant Police Department were dismissed as defendants in the lawsuit.

On December 29, 2020, Michele Graham filed a Motion to Reconsider Order Granting Attorney's Fees As to the Preliminary Injunction Hearing and a Request for Findings of Fact and Conclusions of Law regarding the denial of the temporary injunction motion. On January 28, 2021, Michele Graham filed a Motion to Recuse the Honorable Bentley Price. The Court heard the Motion to Reconsider and the Motion to Recuse on February 10, 2021 and denied both motions. The Court filed the Form 4 Order on February 16, 2021 and submitted its Findings of Fact on March 22, 2021. The Court's findings stated the following:

> 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.

On March 29, 2021, Michele Graham filed a Motion for an Order Granting Relief from Judgment and an Order Granting a New Trial Pursuant to SCRCP 60(b)(2). An oral hearing was not requested for this motion. The Court denied the Motion on April 22, 2021 and filed a Form 4 stating the following:

> 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.

On April 29, 2021, Michele Graham served the Notice of Appeal on Mark and Adrienne Ciaburri.

STANDARD OF REVIEW

Newly Discovered Evidence & Granting a New Trial

The Reliability in Expert Testimony Standards Act states that the State shall apply an abuse of discretion standard in determining whether the court properly admitted or excluded particular expert evidence. In this case, the abuse of discretion standard applies in determining whether the Court was correct in not considering the contents of the expert witness testimony as newly discovered evidence.

Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. Coleman v. Dunlap, 306 S.C. 491, 494, 413 S.E. 2d 15, 17 (1992). Therefore, the standard of review is determining whether there was an abuse of discretion.

ARGUMENTS

I. THE COURT'S REFUSAL TO RECOGNIZE THE CONTENTS OF THE EXPERT WITNESS TESTIMONY AS NEWLY DISCOVERED EVIDENCE IS MANIFESTLY ARBITRARY, UNREASONABLE AND UNFAIR AND CONSTITUTES AN ABUSE OF DISCRETION.

The Plaintiff's *Amended Complaint*, *Amended Motion for Temporary Injunction,* and the *Plaintiff's Brief in Response to Defendants' Opposition to Temporary Injunction* consists of facts, videos, photographs and audio exhibits in support of the notion that the Ciaburri's pit-bull mix lunged onto the property to attack Gigi and the necessity of a temporary injunction. (R. p. 19-24; R. p. 33-36; R. p. 38-40; R. p. 90-97; R. p. 44-54; R. p.98-107). Additionally, Michele

Graham and Michael Graham testified under oath that they witnessed Mark Ciaburri on the property.

Judge Bentley Price denied the temporary injunction motion on September 30, 2020 with a Form 4 that states, "Plaintiff's Temporary Injunction Motion is DENIED." (R. p. 1). SCRCP 52 states: "…in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action." The judge's failure to provide the grounds for the denial prevented an interlocutory appeal, a Rule 59 motion and a Reconsideration motion on this order.

In response to the Plaintiff's Request for *Findings of Fact and Conclusions of Law,* the Court stated that no evidence or testimony was given that the defendant violated section 90.29(B)(3) of the ordinance or that the defendants' pit-bull has a behavior that constitutes a reasonable risk of injuring another human or animal. (R. p. 10). This explanation indicates that the judge did not extract any information from what was submitted or testified to in court that he believed warranted immediate action.

Rule 60(b), SCRCP, reads:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:…(2) 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 absence of the required findings of fact and conclusions of law in the Form 4 denying the temporary injunction prohibited a timely motion under Rule 59(b). Without first knowing the Court's reason for denying the temporary injunction, it is not possible to present a proper basis for a new trial. The Court's findings were filed on March 22, 2021 – 173 days after the denial ruling. Michele Graham submitted the Request for Findings of Fact to: (1) understand the reason for the temporary injunction denial, (2) understand the legal basis upon which Judge

Price granted the Ciaburri's unfiled motion for attorney's fees and (3) understand how Judge Price categorized or re-categorized the temporary injunction motion.

Rule 60 of the South Carolina Rules of Civil Procedure is substantially the same as the Federal Rule, and as such, the federal courts have found that evidence is not newly discovered evidence for the purposes of Rule 60(b)(2) where the evidence was (1) known to the party at the time of trial and (2) in the party's possession. Lans v. Gateway 2000, Inc., 110 F.Supp.2d 1 (D.D.C. 2000).

1. *Known to the Party at the Time of Trial*

Michele Graham made a Rule 60(b)(2) motion based on an expert witness report which was written and made available on December 2, 2020. The analysis contained in the expert witness report was not known to Michele Graham at the time of trial. (R. p. 64).

2. *In the Possession of the Party*

It has been held that evidence in the possession of the party before judgment was rendered is not newly discovered evidence that affords relief. American Ceteacean Socy v. Smart. 673 F. Supp. 1102, 1106 (D.D.C. 1987) (Richy, J.). The expert witness report did not exist prior to the trial. The document came into existence on December 2, 2020.

The Exercise of Due Diligence

Rule 60(b)(2) allows the court to grant a new trial only if the newly discovered evidence could not have been discovered by due diligence prior to trial. Black's Law Dictionary defines due diligence as "the diligence reasonably expected from and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation." *Black's Law Dictionary* 553 (10th ed. 2014).

The due diligence exercised by Michele Graham prior to the trial was reasonable, considering the facts of the case. Michele Graham consulted with the practitioners at Veterinary Specialty Care who provided immediate treatment to Gigi and requested an analysis of her wounds and a determination as to the *type* of attack or circumstances that would cause those injuries. The practitioners were unable to provide findings. The practitioners at another local specialty hospital could not provide findings. The specialized expertise needed to provide such findings exists in the area of veterinary forensics. Veterinary forensics is a field in which medical expertise is used to gather and analyze evidence applicable in civil and criminal cases. While the area of veterinary forensics is a growing field, the veterinary forensic scientists community is relatively small, with the International Veterinary Forensic Sciences Association consisting of roughly 130+ members across sixteen countries. (www.ivfsa.org/about.) Michele Graham was unable to make contact with a qualified veterinary forensics expert until November 16, 2020.

It is reasonable and prudent to request the medical opinion and analysis directly from the hospitals that provided treatment to Gigi. In requesting this information from the treating veterinarians, Michele Graham satisfies the due diligence requirement.

A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable or unfair. Means v. Gates, 348 S.C. 161, 166, 559 S.E. 2d 921. 923 (Ct. App. 2001). The trial court did not explain why it does not consider the testimony from the expert witness as newly discovered, so the appellant is left to wonder. The absence of reason indicates an arbitrary decision.

II. THE TESTIMONY OF JAMES CROSBY, A COURT-RECOGNIZED EXPERT IN CANINE AGGRESSION AND DANGEROUS DOG INVESTIGATIONS, CONTAINS SPECIFIC, NEWLY DISCOVERED INFORMATION THAT WAS

NOT READILY AVAILABLE DURING THE TEMPORARY INJUNCTION HEARING AND WOULD LIKELY CHANGE THE RULING. THUS, THE TESTIMONY QUALIFIES AS NEWLY-DISCOVERED EVIDENCE, AND A NEW TRIAL IS WARRANTED.

The trial court denied a new trial because it did not consider the expert's testimony as newly discovered evidence. Expert James Crosby writes:

> 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 8th and 9th 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…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.
>
> The idea that such behavior by [the pit mix] is somehow "normal" is untenable. Dogs do not normally directly engage with and immediately administer a kill-bite to a smaller dog…the behavior of [the pit mix] is problematic and indicative of at least a serious need for training…[the pit mix] 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.
>
> The allegation that [the pit mix] was on a leash and thereby properly contained is, in this case, an irrelevant. [The pit mix] was able to fully grasp the small dog by the thorax, delivering crushing. This does not, in my professional experience or opinion, meet the standard of care for "control" of a dog.
>
> **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 pit mix] dangerously encroached on the Graham property and engaged with the small dog Gigi. [The pit pix's] engagement resulted in life-threatening, and ultimately fatal injuries to Gigi which are consistent with such an attack.**
>
> **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 [his pit mix] violated the following provisions of Chapter 90 of the Municipal Code:**
>
> [See 90.01 Definitions, Animal Nuisance, Vicious Animal; 90.29 Nuisance Animals; 90.30 Dangerous and Vicious Animals Prohibited]
>
> **Thus, in conclusion, [the pit mix] should have been, and should be, declared DANGEROUS under the provisions of Mount Pleasant Municipal Code, and**

> **remedial action to so declare [the pit mix] DANGEROUS should immediately proceed.** (R.p.158-160).

The content of the expert's research and scientific analysis is new information that was not available at the time of the trial. These findings are highly relevant, and if presented in court, will alter the ruling. Judge Price's refusal to consider this information as new evidence is against justice and an abuse of discretion. Further, Judge Price has indicated that, despite the Plaintiff filing a Temporary Injunction Motion, his denial of the temporary injunction also meant the denial of the Plaintiff's permanent injunction – reiterating to the Plaintiff that no action will be taken against the dog, not even an evaluation.

A. THE COURT HAS CONSISTENTLY DEMONSTRATED AN ABUSE OF DISCRETION IN RULINGS.

In considering whether the judge abused his discretion in denying the granting of a new trial, the Appellant urges this court to examine the record and the rulings of Judge Price in this case, beginning with the initial denial of the temporary injunction.

It is well settled that, in whether a temporary injunction should issue, the merits of the case are not to be considered, except in so far as they may enable the court to determine whether a prima facie showing has been made. When a prima facie showing has been made entitling Plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits. Alderman & Sons Co. v. Wilson, 69 S.C. 156 S.E. 85.

Injunctive relief is a matter that rests in the sound discretion of the judge to whom application is made and, as stated in Alston v. Board of Health, 93 S.C. 553, 77 S.E 727. "While a judge, at chambers, cannot finally decide anything as to the merits, he can and ought to look into the merits, whether they present issues of law or fact, and consider them to the extent necessary to enable him to exercise his discretion wisely."

Five photographs were attached as exhibits to the *Plaintiff's Amended Motion for Temporary Injunction*, and fourteen exhibits consisting of photographs, video and audio were attached to the *Plaintiff's Response to Defendants' Opposition to Temporary Injunction.* These papers and the attached exhibits are the prima facie showing of the Ciaburri's pit-bull mix having acted in a way that makes it a dangerous animal according to Chapter 90 of the Town of Mount Pleasant Ordinance. (R. p. 90-97; R. p. 98-107). The Ciaburri defendants made no rebuttal to the papers or to the exhibits.

The Judge's Form 4 filed on September 30, 2020 indicates that the attached exhibits were ignored, as no explanation was provided for the motion denial. The Court did not even discuss its assessment of the provided exhibits. (R. p. 1).

B. THE COURT CREATED AN ENVIRONMENT THAT DOES NOT REFLECT JUDICIAL FAIRNESS AND IMPARTIALITY.

On December 11, 2020, the motions scheduled for hearing were the Ciaburri defendants' Motion for Summary Judgment, the Town of Mount Pleasant's motion to be dismissed as defendants and the *Plaintiff's Motion for Sanctions for Filing a False / Misleading Affidavit*. Although the Ciaburri's *Motion for Sanctions and Atty's Fees Pursuant to SCRCP 65(f)(2)* had not been filed or scheduled on the docket, Judge Price heard and granted the motion (R. p. 4). The Plaintiff was not given the opportunity to present an oral argument in opposition.

The Plaintiff filed a motion to reconsider the court's granting of the Ciaburri's motion for attorney's fees, setting forth five reasons as to why the hearing of the Ciaburri's motion and the ruling was improper. The reasons were as follows: *(1) The Plaintiff Filed a Motion for a Temporary Injunction, Not a Writ of Mandamus, (2) The Plaintiff's Motion for Temporary Injunction was Reasonable and Justified, (3) Illiberal Construction of Document, (4) 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 and (5) Lack of Notice of Hearing / Denial of Due Process. (R. p. 56-61; R. p. 109, 129, 140). The reconsideration motion was denied, with the Form 4 stating: "Plaintiff's Motion to Reconsider as to the attorney's fees is denied and court will make a determination as to amount if any at the appropriate time." (R. p. 7).

During the hearing of the recusal motion, Judge Price stated that he initially "had no problem" with recusing himself. However, it appeared that when opposing counsel, Ted Corvey, asked about how the Plaintiff's reconsideration motion would be handled, Judge Price decided against recusing himself. Judge Price opens the hearing with the following:

> **Court:** All right. So, for the record, we received a notion 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 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 wanted to certainly afford her that opportunity. (R. p. 80, lines 3-19)

According to Canon 3 of the South Carolina Code of Judicial Conduct, actual wrongdoing is not the standard. Instead, it is the *appearance* of impropriety. Judge Price is well aware of this standard, as shown by numbers 6-8 in his sworn statement to the Judicial Merit Selection Commission, labeled as Exhibit 15, dated 11/14/18 and publicly available on

www.scstatehouse.gov. The Plaintiff's Motion to Recuse set forth reasons and specific examples of Judge Price's appearance of impropriety (R. p. 67-71). Judge Price's refusal to recuse himself was stated in a Form 4 filed on February 16, 2021 and did not even correctly address the issues in the Motion to Recuse (R. p. 7). This refusal to recuse was a clear abuse of discretion.

Lastly, throughout the course of this case Judge Price has demonstrated unfamiliarity with the record, specifically the Plaintiff's filings. It appears as though Judge Price did not bother looking at any evidence and simply ruled to try to dispose of the case from his court. Additionally, Judge Price ruled on a Motion for Attorney's Fees without any reasonable justification for doing so. The following transcript excerpt from the December 11th hearing highlights this.

> **The Court:** Since I've already ruled on the Motion for Injunctive Relief, wouldn't it be better suited for you, because you're only asking for the jurisdictional amount of less than $7,500, to refile back in Magistrate Court?
>
> **Ms. Graham:** So, you have already ruled on the full injunctive relief? I thought that hearing was simply for temporary injunction and that the permanent injunction would be decided at –
>
> The Court: No, ma'am.
>
> …
>
> **The Court:** I granted the injunctive – I mean I, I denied the injunctive relief at least to find the dog was vicious, and obviously to have it quarantined, and then later on I read something about they want it euthanized. But no, I've ruled on that injunctive hearing.
>
> And so, if you want to refile this in Magistrate's Court, you have every right to do that. You can withdraw this in Circuit Court and file it there. It's a lot faster and Magistrate's Court than it will be here.
>
> **Ms. Graham:** I wasn't aware of that, Judge. I wasn't aware that you ruled on the permanent injunction. It gives me ---

The Court: I don't – one – it – that's not how it – that's not how the procedure – it would procedurally work. They asked – you asked for an injunction and I denied it. So, there's nothing else further for me to rule on. I mean the fact that you label it temporary or permanent doesn't really matter.

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

Ms. Graham: Right.

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

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

Ms. Graham: Okay

The Court: All right.

Ms. Graham: Well, that, that, Judge, I didn't know. The temporary I thought was, was a separate issue and then the –

The Court: Well no.

Ms. Graham: --- the entire case was ---

The Court: No. So, you're welcome to do with it what you want now because the injunction's been ruled upon, and it's been denied. So, you – if you want to refile this is Magistrate Court, Judge Turner will be happy to allow you to do that. He was just saying if you wanted injunctive relief, you had to come to me. You did, I denied it. And so now you can go back down there if that's what you'd like to do. It's certainly up to you.

Mr. Corvey: …I guess just, just, you know my motion for attorney's fees with regard to the injunction and she was continued ---

The Court: Put, put that in the notes because I keep forgetting that, and that is a matter that's under advisement, and I don't normally keep things under advisement. I kept it until this hearing date today to

make my determination whether, in fact, I was gonna impose that. So, put it in the notes so I don't forget. All right. I'll take that under advisement as well. You'll have my answer by the end of the day. All right.

…

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

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

Ms. Graham: All right. Thank you.

…

Mr. Corvey: Do you need a copy of my Motion for Attorney's fees, Your Honor?

The Court: I have it and I forgot that I had it. So I apologize.

(R. p. 73, lines 23-25; R. p.74, lines 1-25; R. p. 75, lines 1-25; R. p. 76, lines 1-4; R. p. 77, lines 19-25; R. p. 78, lines 1-4; R. p. 78, lines 11-20; R. p. 78, lines 24-25; R. p. 79, lines 1-2).

Another example demonstrating Judge Price's unfamiliarity with the record and the Plaintiff's filings was on full display during the February 10th proceedings:

The Court: …what I said was your confusion at the end of the hearing came over the difference between a permanent injunction which we had already heard, which was the injunction, and if my understanding is correct, that if – you were thinking that it was a TRO and that you were to have another hearing on the injunction, and I was trying to explain to you that that's not how this case proceeded.

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

…

Let me explain to you in just a little bit further kind of where everything is. You know, the relief that you're seeking has already been ruled upon. All right. So what – if you're seeking for me to determine that the dog is a dangerous animal under the Mount Pleasant ordinance, and to have the dog seized and evaluated, I have denied that. All right. So, that, that has gone – that has moved on.

…

Ms. Graham: --- when you were speaking about the, permanent injunction that was ruled on. Can we back up a little bit on that?

The Court: Yes, ma'am, happy to help.

Ms. Graham: So, the permanent injunction, that is ruled at the end of the case, right, once all the facts are presented and all of the evidence are examined?

…

The Court: …where I think the confusion came in was this. In a normal course of filing these, what ends up happening in the beginning is that the – you would have filed a pro se motion for what's called a TRO or a temporary restraining order, and it's usually an emergency. So, you would have come in and said, Your Honor, I think that if this dog stays out there, this could be something very, very bad. It could be awful, I need a, a – an immediate restraining order against this, this, the – this in – these individuals concerning this dog. And what would have happened is, if I granted that temporary restraining order, you then would have served the opposing party with a notice within 10 days that a hearing would be heard on a permanent injunction.

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

The Court: …So, what you filed was an injunction, and rightfully so. That's fine…but you were asking me to take the dog, during the pendency of this case. Have it, have it kept in Mount Pleasant and have it evaluated

> to determine whether, in fact, it is vicious under the Mount Pleasant ordinance. I have denied that. So, the case now moved forward.
>
> …
>
> **Ms. Graham:** But also backing up a little bit. When I, when I filed that, I got a notice from the Court stating , you know, this is – you have an upcoming hearing for TRO, and then it said also temporary injunction, and they were saying to me that it was the same thin, that they were very similar. So, it was a separate thing that I filed.
>
> So, the, the permanent injunction request was, I guess, incorporated into my complaint, and then I filed a separate temporary injunction or TRO.
>
> **The Court:** All right. Well, let's do this. Let me go back and look at the filings, and if I need to get everybody back together, I'll, I'll give – I'll get a chronological events of what transpired, and if there's another hearing that needs to transpire, I'll be happy to grant that. But let me see what has been filed, and what it's being called, and how it's been coined, and how it's been filed in the system. And, again, if you're afforded the opportunity to have another hearing, I'll give it to you. Is that fair enough?
>
> (R. p. 81, lines 11-24; R. p. 82, lines 8-17; R. p. 83, lines 9-15; R. p. 83, lines 21-25; R. p. 84, lines 1-16; R. p. 84, lines 17-25; R. p. 85, line 1; R. p. 85, lines 9-25; R. p. 86, lines 1-3)

Michele Graham filed for a temporary order and incorporated a request for a permanent order in the Amended Complaint, and the Court seemed confused and reluctant to interpret the pleading correctly. (R. p. 149; R. p. 27-28). The US Supreme Court holds that Pro se litigants' court submissions are to be construed liberally and held to less stringent standards than submissions of lawyers. If the court can reasonably read the submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements. Boag v. MacDougall, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982); Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285,

50 L.Ed.2d 251 (1976)(quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)); Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); McDowell v. Delaware State Police, 88 F.3d 188, 189 (3rd Cir. 1996); United States v. Day, 969 F.2d 39, 42 (3rd Cir. 1992)(holding pro se petition cannot be held to same standard as pleadings drafted by attorneys); Then v. I.N.S., 58 F.Supp.2d 422, 429 (D.N.J. 1999). The courts provide pro se parties wide latitude when construing their pleadings and papers. When interpreting pro se papers, the Court should use common sense to determine what relief the party desires. S.E.C. v. Elliott, 953 F.2d 1560, 1582 (11th Cir. 1992). See also, United States v. Miller, 197 F.3d 644, 648 (3rd Cir. 1999) (Court has special obligation to construe pro se litigants' pleadings liberally); Poling v. K.Hovnanian Enterprises, 99 F.Supp.2d 502, 506-07 (D.N.J. 2000).

CONCLUSION

The Court has consistently created an environment that undermined the principles of judicial fairness. Making rulings that are unreasonable, given the evidence before him and in the court record; misplacing the Plaintiff's *Request for Findings of Fact and Conclusions of Law* (R. p. 87, lines 17-25; R. p. 88, lines 1-25; R. p. 89, lines 1-5); hearing a motion that was not properly before the court; making a ruling without any legal basis; and disregarding the Judicial Canons on recusal are all indicative of a lack of impartial consideration and abuses of discretion. The denial of Michele Graham's Rule 60(b)(2) motion is the latest example of this court abusing its discretion. Not only is the Appellant entitled to a new trial, the danger that the pit-bull mix poses to the neighborhood still exists. Furthermore, the likelihood that another fatal incident will happen again is high, due to the owners refusing to exercise proper control.

For these reasons, the Appellant respectfully requests this Court to reverse Judge Price's denial of Michele Graham's Rule 60(b)(2) motion and remand for a new trial.

Respectfully submitted,

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November 08, 2021