

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

Kyleen Ann Waltman,

Plaintiff,

v.

Abbeville County,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No.: 2024-CP-01-_____

SUMMONS

(Jury Trial Requested)

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you and to serve a copy of your Answer on the subscriber at his office, 100 East Pickens Street, P. O. Box 805, Abbeville, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for relief demanded in the Complaint.

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ATTORNEYS FOR PLAINTIFF

ABBEVILLE, SOUTH CAROLINA

FEBRUARY 15, 2024

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Kyleen Ann Waltman,

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COMPLAINT

(Jury Trial Requested)

The Plaintiff complaining of the above-named Defendant alleges as follows:

PARTIES AND JURISDICTION

1. That the Plaintiff Kyleen Ann Waltman is a citizen and resident of the County of Abbeville, State of South Carolina.
2. That Defendant Abbeville County is a political subdivision of the State of South Carolina as established by Article VIII of the Constitution of the State of South Carolina. The Defendant is joined and made a party to this action pursuant to Section 15-78-10 *et. seq.* of the Code of Laws of South Carolina 1976, as amended, commonly known as the “South Carolina Tort Claims Act”.
3. In its capacity as a political subdivision, the County of Abbeville, as part of its official duties, operates Abbeville County Animal Services.
4. That employees of Abbeville County were acting within the course and scope of their employment when they committed tortious acts that were the direct and proximate cause of the Plaintiff’s injuries.

5. That jurisdiction and venue are proper in this Honorable Court pursuant to Section 15-78-100 of the Code of Laws of South Carolina 1976, as amended, because the acts and omissions described herein all occurred in Abbeville County, South Carolina.

FACTUAL ALLEGATIONS

6. On or about March 21, 2022 at approximately 10:30 a.m., Plaintiff Kyleen Ann Waltman was walking on the road near 154 Ball Road, Honea Path, South Carolina. Suddenly and without any provocation whatsoever, she was viciously attacked by three dogs. A man nearby saw the dogs attack Kyleen as he was riding his tractor. He shouted at the dogs and dialed 911. Emergency personnel and law enforcement responded. When they arrived, they discovered Kyleen lying muddied in a ditch. The law enforcement officer observed severe lacerations to the left side of Kyleen's neck and her right arm tricep was missing. She was airlifted to Greenville Hospital. Unfortunately, her injuries were very severe. Both of her arms had to be amputated because of the severity of the injuries.

7. The owner of the dogs was Justin Minor. He lived at 154 Ball Road, Honea Path, South Carolina, with the dogs that attacked Kyleen. He had been living there for about a year and a half. Law enforcement noted that the dogs were roaming freely on the property and the property was open with no fence to secure or keep the dogs from wandering outside the property line.

8. Unbeknownst to Plaintiff, in the weeks and months prior to her attack, other people had made calls to Abbeville County Animal Services about the same dogs.

9. On February 23, 2021, Jeremy Alewine complained about the pit bulls from 154 Ball Road coming into his father's yard located at 126 Ball Road. Abbeville County Animal Services responded by leaving a door hanger at 154 Ball Road. No other investigation or follow-up was done. In a later statement Benjamin Alewine provided to law enforcement, he explained

that he had to carry a stick in his own yard because he felt unsafe with the dogs coming into his yard and growling at him. (This was not discovered by Defendant at the time because they did no investigation or follow-up.)

10. On December 25, 2021, Roy Ashley was visiting 154 Ball Road and was viciously attacked by the dogs. He was bitten in his upper thigh area and taken to the ground by the dogs. He feared for his life. He somehow managed to fight them off and make it back to his car. He sought medical treatment for his wounds at the hospital, and the nurse from the hospital reported the attack to Abbeville County Animal Services.

11. Following the attack on Roy Ashley, Abbeville County Animal Services officer Jessica Bridges responded to 154 Ball Road and spoke with a gentleman and lady at the residence. Both of them denied owning large dogs at the property. Upon information and belief, Abbeville County Animal Services did nothing else to follow up on the report of the vicious attack on Roy Ashley or anything else to prevent these vicious dogs from attacking someone else.

12. The Defendant failed to return to the property to inquire further, failed to send written correspondence, failed to investigate who actually lived at 154 Ball Road, failed to interview neighbors or potential other witnesses, failed to coordinate with the Sheriff's Office for assistance, and failed to follow up with Roy Ashley to ascertain if he had any additional information. The foregoing list is just an example of a number of things that Abbeville County Animal Services could have done in response to the Roy Ashley attack.

13. Upon information and belief, Abbeville County Animal Services' failure to properly investigate the Roy Ashley attack was typical for this department due to poor management, inadequate training, and insufficient staff. A letter to the Abbeville County Director from other Animal Services employees indicated that Jessica Bridges was not a qualified director

for the Department and because of the incompetence and mismanagement of the Animal Shelter, the public was in danger. It noted that Jessica Bridges “has absolutely no managerial or administrative skills” and “does not have the skills and expertise to be a director” and details the ways in which the shelter is being poorly managed. The letter explained that “if procedures were written out and posted in clear view, people would be less likely to have any grounds for a lawsuit if a bite or attack did occur. In fact, if things were organized and set procedures and policies were established, things would run much more smoothly.” The employees detail an occasion where a man was visiting the shelter to adopt a dog and was bitten by a dog who had not been vaccinated for rabies, despite having been at the shelter for several weeks. The employees wrote “this is only the tip of the iceberg. We could go on for a long time with examples of things that have gone on at the shelter and things that are not going on that should be. We are concerned about the welfare of the animals and the public that goes to the shelter if this situation is allowed to continue. These observations are not ours alone. There are at least 15 other people we can bring in to attest to the things we have pointed out and they also have major concerns about how the shelter is being run.”

14. According to its website, the mission of Abbeville County Animal Services is “to help protect public health and safety from dangerous and nuisance animals, educate the public about responsible pet ownership, enforce state and local laws pertaining to the care and treatment of animals, and promote the adoption of homeless, rescued or neglected animals into a safe and responsible environment.”

15. The South Carolina Legislature set out state law regarding the regulation of dogs, South Carolina Code Ann. § 47-3-10 to § 47-3-990, including a section of laws related to the Regulation of Dangerous Animals under South Carolina Code Ann. § 47-3-710, et sec.

16. The South Carolina Legislature also authorized counties and municipalities to “enact ordinances and promulgate regulations for the care and control of dogs, cats, and other animals and to prescribe penalties for violations.” S.C. Code Ann. § 47-3-20.

17. The County of Abbeville adopted its own ordinances to protect citizens from dangerous and vicious dogs. See Chapter 6 of Abbeville County Ordinances entitled “Animals” and in particular Article III, Sec. 6-69 entitled “Dangerous Dogs.” Dangerous dog is defined as “a dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to otherwise endanger the safety of human beings or domestic animals; a dog which attacks a human being or domestic animal without provocation; a dog which has been classified as dangerous by virtue of a hearing and upon determination of the county magistrate.”

18. The County of Abbeville adopted procedures for dealing with dangerous dogs:

Sec. 6-72. Procedures for investigation and classification of dangerous dogs:

(a) An animal control officer, or any law enforcement agency, **shall** investigate any report of a dangerous dog, upon receipt of a written complaint from an individual or any reported incident. (*emphasis added*).

(b) When an animal control officer or law enforcement officer classifies a dog as dangerous, the officer shall notify the dog's owner in person or by certified mail. The notice shall be in writing and shall include a summary of the officer's findings as well as the basis for classification as dangerous.

(c) The officer shall schedule a hearing before the county magistrate to take place not more than 15 days from the date of notice, if possible, during which the officer may present evidence for classification of the dog as dangerous. The owner of the dog shall be permitted to appear at the hearing to contest the classification.

(d) If a dog owner fails to appear at a classification hearing, or neglects to request a scheduling change for the hearing due to personal conflicts, the magistrate may, at their discretion, classify the dog as dangerous and subject the owner to any related conditions or penalties thereof.

(e) The magistrate court may, at their discretion, order the seizure and impoundment of any dog determined to be dangerous, in the interest of public safety.

19. These laws and regulations and the fact that Abbeville County Animal Services administers them, serves to provide a sense of safety to the citizens of Abbeville County. These laws contemplate a particular class of potential victims and identify a particular kind of harm which created a special duty of care under *Rayfield v. S.C. Dept. of Corrections*, 297 S.C. 95, 372 S.E.2d 910 (Ct. App. 1988) and *Bellamy v. Brown*, 305 S.C. 291, 408 S.E.2d 219 (1991).

20. Abbeville County Animal Control Services had both the authority and a duty to properly investigate the prior complaints about the vicious dogs that attacked Kyleen. Had those complaints been properly investigated and addressed pursuant to the procedures outlined above in the County ordinance, her attack would not have happened.

21. Plaintiff is informed and believes that Defendant's failure to investigate and follow its own policies, procedures and the law was grossly negligent and was the proximate cause of Plaintiff's horrific injuries.

22. That as a direct and proximate result of the actions and/or omissions of the Defendant, the Plaintiff suffered great and permanent physical harm and injury, great and permanent mental harm and injury, emotional distress, and a loss of enjoyment of life, all resulting from the attack she suffered, which has and will in the future cause her to spend money

for treatment services. All of which were the direct and proximate cause of the injuries suffered by the Plaintiff herein, said acts being a violation of the laws of the State of South Carolina.

23. That the Plaintiff is informed and believes that she is entitled to judgment against Defendant for damages in the appropriate amount.

First Cause of Action
Gross Negligence under the South Carolina Tort Claims Act

24. The Defendant, both as an agency in general, and through its employees, agents and servants, owed the Plaintiff a duty, both under the common law as well as a separate, special duty, by statute and regulation. That under the South Carolina Tort Claims Act, § 15-78-10 *et seq.* of the Code of Laws of South Carolina 1976, as amended, and the Common Law of South Carolina, Abbeville County is liable for its tortious acts and the tortious acts of its employees and agents performed in the scope of their employment.

25. That Abbeville County and its employees and agents, acting within the scope of their employment, were grossly negligent, and failed to exercise even slight care in:

- a. Failing to properly investigate the prior complaints made about Justin Minor's vicious dogs;
- b. Failing to properly train its employees on how to properly investigate reports of vicious dogs;
- c. Failing to follow state law and county ordinances regarding dangerous dogs;
- d. Failing to properly supervise employees in their investigations and handling of reports regarding dangerous dogs;
- e. Failing to properly staff the Animal Services Department so that reports of dangerous dogs could be properly handled;
- f. Failing to otherwise use due care in protecting the Plaintiff and those in the Ball Road area from the vicious dogs owned by Justin Minor;
- g. In other such particulars as may be shown at trial.

All of which were the direct and proximate cause of the injuries suffered by the Plaintiff herein, said acts being a violation of the Code of Laws of the State of South Carolina and Abbeville County ordinances.

26. The Plaintiff further alleges that each and every failure of the Defendant to protect the Plaintiff was a separate occurrence and delict.

27. That as a direct and proximate result of the actions and/or omissions of the Defendant, the Plaintiff suffered great and permanent physical harm and injury, great and permanent mental harm and injury, emotional distress, and a loss of enjoyment of life, all resulting from the attack she suffered, which has and will in the future cause her to spend money for treatment services.

28. That the Plaintiff is informed and believes that she is entitled to judgment against the Defendant for damages in the appropriate amount.

29. Plaintiff further alleges on information and belief that there should be no limitation on the actual damages awarded by the trier, inasmuch as limitations on such damages imposed by S.C. Code Ann. Section 15-78-120 (2012 Supp.) are a violation of Plaintiff's right to due process of law and equal protection of the laws secured by the Constitutions of the United States and the State of South Carolina. Moreover, any limitation on damages violates the right of the Plaintiff to trial by jury, and its determination of damages under Art. I, Section 14 of the South Carolina Constitution.

Second Cause of Action
Multiple Occurrences

30. As the above-described incidents involve numerous separate acts and/or omissions over different times, pertaining to the failure to properly investigate, follow law, policies and

procedures, and failure to properly staff, train and supervise employees, Plaintiff has alleged multiple “occurrences” pursuant to *Chastain v. Anmed Health Found.*, 388 S.C. 170 (2010) and *Boiter v. SCDOT*, 393 S.C. 123 (2011) for the purpose of calculating the applicable damages caps, if any.

31. The Plaintiff asks that the jury determine the number of occurrences at the time of trial.

WHEREFORE, Plaintiff prays for judgment against Defendant for damages in amounts to be determined by the jury at the trial of this action pursuant to the Seventh Amendment of the United States Constitution and Article 1 Section 14 of the South Carolina Constitution, for the costs and disbursements of this action, and for such other and further relief as this Court may deem just and proper.

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