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# Recovery for Mental Anguish Caused by Malicious Destruction of Pet Dog

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# CASES NOTED

## RECOVERY FOR MENTAL ANGUISH CAUSED BY MALICIOUS DESTRUCTION OF PET DOG

The plaintiff, a customer of the defendant corporation, brought an action for the wilful and malicious killing of her pet dog by the defendant's employee, a garbage collector. The plaintiff witnessed the employee throw a garbage can in the direction of the dog and heard her dog yelp. Upon discovering that her dog had expired from the blow, the plaintiff suffered great mental anguish. The trial court granted recovery of 2,000 dollars compensatory damages and 1,000 dollars punitive damages, and the defendant appealed on the ground that the trial court erred in charging the jury that the plaintiff was entitled to recover for the alleged mental suffering. The second district court of appeals reversed the judgment and remanded the cause for a new trial on the issue of damages.[1] On certiorari to the Supreme Court of Florida, *held*, judgment of the district court of appeals *quashed*, with directions to order the judgment of the trial court reinstated: an owner's mental anguish resulting from the malicious destruction of her dog was a proper element for the jury to consider in assessing damages. *La Porte v. Associated Independents, Inc.*, 163 So.2d 267 (Fla. 1964).

Since the early case of *I de S et ux v. W de S, Y. B.*[2] the courts have recognized the existence of a cause of action for emotional distress[3] unaccompanied by physical impact or contemporaneous physical harm. Notwithstanding their early recognition of a cause of action, the courts have been hesitant in allowing recovery because of the fear of false claims[4] and the difficulty in assessing damages.[5] The language used in *Bosley v. Andrews*[6] exemplifies this attitude of judicial caution:

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1. Associated Independents, Inc. v. La Porte, 158 So.2d 557 (Fla. 2d Dist. 1963).

2. 22 Edw. 3, f. 99, pl. 60 (1348).

3. See RESTATEMENT (SECOND), TORTS, Explanatory Notes § 46, comment *j* at 26 (Tent. Draft No. 1, 1957):

> Emotional distress passes under various names, such as mental suffering, mental anguish, mental or nervous shock, or the like. It includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry and nausea.

4. Spade v. Lynn & Boston R.R., 168 Mass. 285, 47 N.E. 88 (1897); Mitchell v. Rochester Ry., 151 N.Y. 107, 45 N.E. 354 (1896); Huston v. Borough of Freemansburg, 212 Pa. 548, 61 Atl. 1022 (1905).

5. Lynch v. Knight, 9 H.L.C. 577, 598, 11 Eng. Rep. 854, 863 (1861): "Mental pain or anxiety the law cannot value, and does not pretend to redress, when the unlawful act complained of causes that alone. . . ." *E.g.*, Chicago, B. & Q.R.R. v. Gelvin, 238 Fed. 14 (8th Cir. 1916); Alabama Fuel & Iron Co. v. Baladoni, 15 Ala. App. 316, 73 So. 205 (1916); Gatzow v. Buening, 106 Wis. 1, 81 N.W. 1003 (1900).

Some courts have also expressed the view that difficulty of proof and administrative problems should not provide valid obstacles to rendering justice. See State Rubbish Collectors

> To allow recovery for fright, fear, nervous shock, humiliation, mental or emotional distress—with all the disturbances and illnesses which accompany or result therefrom—where there has been no physical injury or impact, would open a *Pandora's box.*[7]

Historically, the courts have looked to the defendant's conduct to determine whether the plaintiff's mental suffering was a foreseeable result of the wrongful act. In extending liability the courts have distinguished between intentional and negligent acts.[8] When the defendant's conduct was merely negligent with respect to the plaintiff, recovery for mental anguish generally has been denied.[9] However, when as the result of the defendant's negligence a plaintiff sustains bodily injuries[10] or impact,[11] even though minor in character,[12] then mental suffering has been held a legitimate element of damages.

Courts have also permitted recovery in other exceptional instances. One such instance is the negligent mishandling of corpses.[13] In addition, a minority of states have allowed redress for the negligent transmission of telegraph messages.[14] In these cases, the defendant's conduct has been

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Ass'n v. Siliznoff, 38 Cal. 2d 330, 240 P.2d 282 (1952); Ferrara v. Galluchio, 5 App. Div. 2d 16, 152 N.E.2d 249, 176 N.Y.S.2d 996 (1958). *But see* Wallace v. Shoreham Hotel Corp., 49 A.2d 81 (D.C. Ct. App. 1946).

6. 393 Pa. 161, 142 A.2d 263 (1958).

7. *Id.* at 168, 142 A.2d at 266 (Emphasis added.).

8. See Bauer, *The Degree of Moral Fault as Affecting Defendant's Liability,* 81 U. PA. L. REV. 586 (1933).

9. Southern Express Co. v. Byers, 240 U.S. 612 (1916); Parmelee v. Ackerman, 252 F.2d 721 (6th Cir. 1958); Crane v. Loftin, 70 So.2d 574 (Fla. 1954); Kuhr Bros., Inc. v. Spahos, 89 Ga. App. 885, 81 S.E.2d 491 (1954); Sullivan v. H. P. Hood & Sons, Inc., 341 Mass. 214, 168 N.E.2d 80 (1960); Van Hoy v. Oklahoma Coca-Cola Bottling Co., 205 Okla. 1135, 235 P.2d 948 (1951); Bosley v. Andrews, 393 Pa. 161, 142 A.2d 263 (1958); Sanford v. Ware, 191 Va. 43, 60 S.E.2d 10 (1950). *But see* Brown v. Broome County, 10 App. Div. 2d 152, 197 N.Y.S.2d 679 (1960); Lanford v. West Oakwood Cemetery Addition, Inc., 233 S.C. 350, 75 S.E.2d 865 (1953).

In Florida, liability has been imposed by statute in two instances for negligently-caused mental anguish: FLA. STAT. § 768.03 (1963) (mental suffering of parents because of wrongful death of child); FLA. STAT. § 363.06 (1963) (telegraph companies liable for negligent delivery).

10. Weston v. National Mfrs. & Stores Corp., 253 Ala. 503, 45 So.2d 459 (1950); Lindley v. Knowlton, 179 Cal. 298, 176 Pac. 440 (1918); Strazza v. McKittrick, 146 Conn. 714, 156 A.2d 149 (1959); Mahnke v. Moore, 197 Md. 61, 77 A.2d 923 (1951); Stewart v. Rudner, 349 Mich. 459, 84 N.W.2d 816 (1957); Colla v. Mandella, 1 Wis. 2d 594, 85 N.W.2d 345 (1957).

11. Crane v. Loftin, 70 So.2d 574 (Fla. 1954); Kramer v. Ricksmeier, 159 Iowa 48, 139 N.W. 1091 (1913); Greenberg v. Stanley, 51 N.J. Super. 90, 143 A.2d 588 (1958).

12. In Zelinsky v. Chimics, 196 Pa. Super. 312, 175 A.2d 351 (1961), a jolt from an automobile was found to be a sufficient impact to permit compensation for the resulting neurosis.

For a complete discussion of the states adhering to the "impact" or "injury" requirements, see Note, 16 U. FLA. L. REV. 540 (1964).

13. Clemm v. Atchison, T. & S.F. Ry. Co., 126 Kan. 181, 268 Pac. 103 (1928); Blanchard v. Brawley, 75 So.2d 891 (La. App. 1954); Klumbach v. Silver Mount Cemetery Ass'n, 242 App. Div. 843, 275 N.Y. Supp. 180 (1934).

14. Western Union Tel. Co. v. Redding, 100 Fla. 495, 129 So. 743 (1930); Mentzer v.

considered very likely to produce genuine mental anguish.[15] Moreover, when the conduct is reckless,[16] the courts, fortified by the *Restatement*,[17] have permitted compensation for emotional distress.[18]

In cases in which an actor has negligently harmed or placed one person in peril, and a third person sustains mental disturbance as a result of his fear for the other's safety, the courts have been reluctant to extend compensation to the injured party.[19] In a recent case, *Amaya v. Home Ice, Fuel & Supply Co.*,[20] the court denied recovery when faced with an action brought by a mother for the fright and shock which she suffered as a result of watching her seventeen month-old child being killed by a negligent motorist. In denying compensation to the third party, the court pointed to the absence of any duty owing to the particular plaintiff. In the few cases in which the third person has been allowed to recover, the wrongful act was either intentional or reckless[21] in nature. Exemplary of

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Western Union Tel. Co., 93 Iowa 752, 62 N.W. 1 (1895); Russ v. Western Union Tel. Co., 222 N.C. 504, 23 S.E.2d 681 (1943); So Relle v. Western Union Tel. Co., 55 Tex. 308 (1881).

See note 9, *supra*, wherein Florida has imposed statutory liability upon telegraph companies for the negligent delivery of telegraph messages.

15. Since the circumstances surrounding "dead body" cases and "telegraph" cases usually involve relatives who are in a mental condition conducive to great emotional distress, the courts have relaxed their usual objections.

16. For a definition of the term "reckless," as contrasted to mere "negligence," see RESTATEMENT, TORTS, § 500, comment *g* at 1296, (1934).

17. RESTATEMENT (SECOND), TORTS, § 46 (Tent. Draft No. 1, 1957).

18. *E.g.*, Boyle v. Chandler, 33 Del. 323, 138 Atl. 273 (1927) (switching of caskets without plaintiff's consent); Blakeley v. Shortal's Estate, 236 Iowa 787, 20 N.W.2d 28 (1945) (deceased committed suicide in neighbor's home); Lindh v. Great Northern Ry. Co., 99 Minn. 408, 109 N.W. 823 (1906) (carrier left casket exposed to elements); Price v. Yellow Pine Paper Mill Co., 240 S.W. 588 (Tex. Civ. App. 1922) (employer's servant exposed mutilated husband to wife).

19. *E.g.*, Preece v. Baur, 143 F. Supp. 804 (D. Idaho 1956) (parents watched house burn with children inside); Angst v. Great Northern Ry., 131 F. Supp. 156 (D. Minn. 1955) (employee's fear of injury to fellow worker in collision); Lessard v. Tarca, 20 Conn. Supp. 295, 133 A.2d 625 (Super. Ct. 1957) (parents watched child burn to death in auto accident); Vinet v. Checker Cab Co., 140 So.2d 252 (La. App. 1962) (father's mental anguish upon seeing daughter's injuries); Resavage v. Davies, 199 Md. 479, 86 A.2d 879 (1952) (mother watched daughter struck by automobile); Berg v. Baum, 224 N.Y.S.2d 974 (Sup. Ct. 1962) (automobile struck child in parents' presence); All v. John Gerber Co., 36 Tenn. App. 134, 252 S.W.2d 138 (1952) (husband's mental anguish at seeing wife's injuries); Waube v. Warrington, 216 Wis. 603, 258 N.W. 497 (1935) (mother watched child killed by automobile). See generally, Annot., 18 A.L.R.2d 220 (1951). *But cf.* Pennick v. Mirro, 189 F. Supp. 947 (E.D. Va. 1960) (plaintiff feared for her own safety).

20. 59 Cal. 2d 295, 29 Cal. Rptr. 33, 379 P.2d 513 (1963).

21. The RESTATEMENT (SECOND), TORTS § 46(2) at 22 (Tent. Draft No. 1, 1957) states:

> Where such conduct is directed at a third person the actor is subject to liability if he intentionally or recklessly causes severe emotional distress to another who is *present* at the time. (Emphasis added.)

With the requisite intentional or reckless conduct, the actor is presumed to know that his acts will, or at least are highly likely to cause severe emotional distress to the plaintiff. The cases generally have limited liability to instances in which the act is committed within the plaintiff's presence, consistent with the *Restatement* position. *E.g.*, Rogers v. Willard, 144 Ark. 587, 223 S.W. 15 (1920) (threat with gun in presence of plaintiff); Jeppsen v. Jensen, 47 Utah 536, 155 Pac. 429 (1916) (threat to kill husband with gun in plaintiff's presence);

these cases is *Hill v. Kimball*,[22] in which the defendant assaulted two other persons in the presence of a husband and wife. As a result of the shock caused by witnessing the assault, the plaintiff-wife suffered a miscarriage. The court held that the physical injuries resulting from the shock were proximately caused by the defendant's *negligent conduct toward the plaintiff*, notwithstanding the fact that the assault upon the others was intentional.

There is a natural tendency of the courts to grant more readily a remedy for an intentional tort. In compensating for mental suffering it is apparent that the courts have adhered to this principle. Justice Snow best expressed the reasons that the judiciary has imposed liability when the conduct may be distinguished by degree of fault:

> In determining how far the law will trace causation and afford a remedy, the facts as to the defendant's intent, his imputable knowledge, or his justifiable ignorance are often taken into account. The moral element is here the factor that has turned close cases one way or the other. . . . [It] is not because the defendant's act was a more immediate cause in one case than in others, but because it has been felt to be just and reasonable that liability should extend to results further removed when certain elements of fault were present.[23]

Therefore, when the defendant's conduct has amounted to a wanton and willful wrong, the traditional objections to the extension of liability for emotional suffering have been overcome. Consonant with this theory, recovery has been allowed when:

(1) the mental anguish could be classified as "parasitic"[24] upon a cause of action for the intentional violation of some other recognized legal right;[25]

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Lambert v. Brewster, 97 W. Va. 124, 125 S.E. 244 (1924) (battery on plaintiff's father, seen from window).

22. 76 Tex. 210, 13 S.W. 59 (1890).

23. Derosier v. New England Tel. & Tel. Co., 81 N.H. 451, 463, 130 Atl. 145, 152 (1925).

24. The term "parasitic" was used originally in 1 STREET, THE FOUNDATIONS OF LEGAL LIABILITY 470 (1906):

> The treatment of any element of damage as a parasitic factor belongs essentially to a transitory stage of legal evolution. A factor which is to-day recognized as parasitic will, forsooth, to-morrow be recognized as an independent basis of liability.

25. The independent causes of action, which time and time again have been recognized as sufficient to allow recovery for mental anguish when accompanied by the requisite maliciousness, wilfulness and wantonness are:

1. *Assault*: Atlanta Hub Co. v. Jones, 47 Ga. 778, 171 S.E. 470 (1933); Kline v. Kline, 158 Ind. 602, 605, 64 N.E. 9, 10 (1902): "There was a touching of the mind, if not of the body."; Holdorf v. Holdorf, 185 Iowa 838, 169 N.W. 737 (1918); Trogden v. Terry, 172 N.C. 540, 90 S.E. 583 (1916); Allen v. Hannaford, 138 Wash. 423, 244 Pac. 700 (1926).

2. *False Imprisonment*: Gadsen General Hosp. v. Hamilton, 212 Ala. 531, 103 So. 553 (1925); Jacques v. Child Dining Hall Co., 244 Mass. 438, 138 N.E. 843 (1923); Fisher v. Rumler, 239 Mich. 224, 214 N.W. 310 (1927); Talcott v. National Exhibition Co., 144 App. Div. 337, 128 N.Y. Supp. 1059 (1911); Sorenson v. Dundas, 50 Wis. 335, 7 N.W. 259 (1880).

(2) the courts recognize an independent cause of action for intentional interference with peace of mind;[26] and

(3) there are punitive damages, enabling the jury to take into account the mental suffering experienced by the plaintiff.[27]

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3. *Seduction*; Anthony v. Norton, 60 Kan. 341, 56 Pac. 529 (1899); Haeissig v. Decker, 139 Minn. 422, 166 N.W. 1085 (1918).

4. *Malicious Prosecution*: Black v. Canadian Pac. Ry., 218 Fed. 239 (D.C.N.Y. 1914); Wheeler v. Hanson, 161 Mass. 370, 37 N.E. 382 (1894); Price v. Minnesota, D. & W. Ry., 130 Minn. 229, 153 N.W. 532 (1915).

5. *Trespass to Land*: Dawsey v. Newton, 244 Ala. 661, 15 So.2d 271 (1943); Lyons v. Smith, 176 Ark. 728, 3 S.W.2d 982 (1928); Valley Dev. Co. v. Weeks, 147 Colo. 591, 364 P.2d 730 (1961) (dictum); Watson v. Dilts, 116 Iowa 249, 89 N.W. 1068 (1902); Oglesby v. Town of Winnfield, 27 So.2d 137 (La. App. 1946); Ford v. Schliessman, 107 Wis. 479, 83 N.W. 761 (1900).

6. *Trespass to Chattels*: Bryson v. Phelps, 23 Ala. App. 346, 125 So. 795 (1930); Klein v. St. Louis Transit Co., 117 Mo. App. 691, 93 S.W. 281 (1906); M. J. Rose Co. v. Lowery, 33 Ohio App. 488, 169 N.E. 716 (1929); McCallister v. Sappingfield, 72 Ore. 422, 144 Pac. 432 (1914); Vogel v. McAuliffe, 18 R.I. 791, 31 Atl. 1 (1895); McClure v. Campbell, 42 Wash. 252, 84 Pac. 825 (1906).

7. *Invasion of Right of Privacy*: Smith v. Doss, 251 Ala. 250, 37 So.2d 118 (1948); Melvin v. Reid, 112 Cal. App. 285, 297 Pac. 91 (1931); Cason v. Baskin, 155 Fla. 198, 20 So.2d 243 (1944); Bremmer v. Journal-Tribune Co., 247 Iowa 817, 76 N.W.2d 762 (1956); Brents v. Morgan, 221 Ky. 765, 299 S.W. 967 (1927); Flake v. Greensboro News Co., 212 N.C. 780, 195 S.E. 55 (1938); Langford v. Vanderbilt Univ., 199 Tenn. 389, 287 S.W.2d 32 (1956).

For a complete discussion of the jurisdictions which recognize recovery for mental anguish because of the invasion of the legally protected interest in privacy, see Prosser, *Privacy*, 48 CALIF. L. REV. 383, 386 (1960).

26. Cohen v. Lion Products Co., 177 F. Supp. 486, 489 (D. Mass. 1959):

> Thus while the tort of intentional infliction of mental distress bears some anology to the ancient tort of assault, an essential difference is that in an assault action plaintiff must prove as an element his apprehension of bodily contact.

*E.g.*, Herman Saks & Son v. Ivey, 26 Ala. App. 240, 157 So. 265 (1934) (threatening letter); Savage v. Boies, 77 Ariz. 355, 272 P.2d 349 (1954) (jokingly told wife that husband was hospitalized); Wright v. Husband, 193 Ark. 347, 99 S.W.2d 583 (1936) (wrongful attachment); State Rubbish Collectors Assoc. v. Siliznoff, *supra* note 6 (threat); Delta Fin. Co. v. Ganakas, 93 Ga. App. 297, 91 S.E.2d 383 (1956) (threat to child); Barnett v. Collection Serv. Co., 214 Iowa 1303, 242 N.W. 25 (1932) (harassment by creditor); Quina v. Robert's, 16 So.2d 558 (La. App. 1944) (debt collection); Johnson v. Sampson, 167 Minn. 203, 208 N.W. 814 (1926) (accusation of misconduct); La Salle Extension Univ. v. Fogarty, 126 Neb. 457, 253 N.W. 424 (1934) (threat of suit by letters for over two years); Mitran v. Williamson, 21 Misc. 2d 106, 197 N.Y.S.2d 689 (1960) (sent plaintiff obscene pictures of self); Samms v. Eccles, 358 P.2d 344 (Utah 1961) (solicitation over the phone to have intercourse).

For a relatively up-to-date discussion of the conduct requisite for a cause of action for intentional interference with peace of mind, see RESTATEMENT (SECOND), TORTS, § 46 (Tent. Draft No. 1, 1957).

27. At least three jurisdictions specifically recognize punitive damages to compensate for wounded feelings and injured dignity. Wise v. Daniel, 221 Mich. 229, 190 N.W. 746 (1922); Fay v. Parker, 53 N.H. 342 (1873); Williams v. Yoe, 19 Tex. Civ. App. 281, 46 S.W. 659 (1898). See *Exemplary Damages in the Law of Torts*, 70 HARV. L. REV. 517, 520-21 (1957); *Punitive Damages*, 46 VA. L. REV. 1036, 1039 (1960).

In Proehl, *Anguish of Mind*, 56 NW. U. L. REV. 477, 501 (1961), the author directs his attention to emphasizing that all "pain and suffering," including mental anguish, should be recognized as punitive in nature. The author further states that: "To recognize this, however, is not to deny that such damages may well serve a useful purpose."

For a discussion of the English view of considering mental anguish as compensable as an element of exemplary damages, see MAYNE & MC GREGOR, DAMAGES, § 212 (12th ed. 1961).

When *property* is injured by the mere "wrongful" act of a defendant, and because of such injury the owner sustains mental suffering, the courts generally have limited the recoverable damages to the market value of the property.[28] On the other hand, in a small class of cases the courts have been virtually unanimous in extending liability to damages for an owner's mental distress when the destruction or wrongful possession of personal property has been accompanied by wanton, malicious or contumely conduct.[29] Even though there was no element of personal danger involved and the mental disturbance complained of arose solely from the plaintiff's distress brought about by the injury to his property interests, the courts have found that the mental anguish was a proximate result of the wrongful act.

Illustrative of the manner in which the courts *limit* liability when the mental anguish or shock is caused by the defendant's negligence is *Aronoff v. Baltimore Transit Co.*[30] In that case, the defendant negligently ran

28. *E.g.*, B. F. Goodrich Co. v. Hughes, 239 Ala. 373, 194 So. 842 (1940) (trespass and conversion of automobile); Valley Dev. Co. v. Weeks, 147 Colo. 591, 364 P.2d 730 (1961) (destruction of vested ditch right); Owsley v. Fowler, *infra* note 30; Klein v. St. Louis Transit Co., *infra* note 30; Murray v. Mace, 41 Neb. 60, 59 N.W. 387 (1894) (destruction of household goods); Wilcox v. Butt's Drug Stores, Inc., *infra* note 30; Buchanan v. Stout, 123 App. Div. 648, 108 N.Y. Supp. 38 (1908) (defendant's dog mangled cat in owner's presence); Phillips v. Cordes Towing Serv., 50 Wash. 2d 545, 313 P.2d 377 (1957) (towing away of car); Anderson v. Sloane, 72 Wisc. 566, 40 N.W. 214 (1888) (wrongful seizure of goods). See 25 C.J.S. *Damages* § 68 (1941).

29. In Sager v. Sisters of Mercy, 81 Colo. 498, 256 Pac. 8 (1927), there was a wrongful taking and destruction of plaintiff's belongings. Here, malice in law was implied by defendant's unwarranted conduct.

Recovery was allowed for the humiliation resulting from the destruction of merchandise caused by a defect in a fire protection system in Davis v. Hall, 21 Ga. App. 265, 94 S.E. 274 (1917).

The court in Brown v. Zorn, 275 S.W. 572 (Mo. App. 1925) allowed compensation for the mental distress resulting in physical injuries due to the defendant's malicious destruction of plaintiff's automobile.

In Vogel v. McAuliffe, 18 R.I. 791, 31 Atl. 1 (1895), damages for mental anguish were held recoverable by a mother for her concern over her sick child as a consequence of the destruction of her furnace.

The recent case of City of Garland v. White, 368 S.W.2d 12 (Tex. Civ. App. 1963) allowed recovery for the mental anguish caused by the intentional destruction of a dog by a police officer. The officer shot the dog, trespassed on plaintiff's property and damaged the house.

When there has been a wrongful seizure or repossession of personal property, compensation has been awarded due to the unjustified and malicious conduct accompanying the act. *E.g.*, Wright v. Husband, 193 Ark. 347, 99 S.W.2d 583 (1936) (wrongful seizure); Ohio Fin. Co., v. Berry, 219 Ind. 94, 37 N.E.2d 2 (1941) (repossession); M. J. Rose Co., v. Lowery, 33 Ohio App. 488, 169 N.E. 716 (1929) (repossessed property while plaintiff was away); Williams v. Yoe, *supra* note 27 (attorney deprived of law books). *But see* Stone v. C.I.T. Corp., 122 Pa. Super. 71, 184 Atl. 674 (1936) (wrongful seizure of automobile must be accompanied by physical injury).

See generally, Annot., 28 A.L.R. 1070 (1953).

30. 197 Md. 528, 80 A.2d 13 (1951). See also Owsley v. Fowler, 31 Ky. L. Rep. 1154, 104 S.W. 762 (1907) (mishandling of furniture); State v. Baltimore Transit Co., 197 Md. 528, 80 A.2d 13 (1951) (automobile accident resulting in pedestrian's death from mental shock); Renner v. Canfield, 36 Minn. 90, 30 N.W. 435 (1886) (intentional killing of

its streetcar into a parked truck, loaded with plate glass, belonging to the plaintiff's decedent. The glass shattered and as a result of the excitement and confusion, the decedent who had viewed the accident, was greatly shocked and frightened. Consequently, he sustained severe nervous upset, precipitating a heart attack from which he died. The court held that the decedent's shock of witnessing the negligent injury to his property was not a probable and natural consequence of the defendant's act. This result is consistent with the denial of recovery for a mother's emotional distress caused by her witnessing the negligently-caused death of her child.[31]

The decision in the instant case clearly affirms earlier Florida decisions permitting the recovery of damages for mental suffering when the fault of the wrongdoer was great.[32] The supreme court predicated its decision on the holding of *Kirksey v. Jernigan*.[33] In *Kirksey*, recovery was allowed for the mental anguish suffered by the decedent's parents as the result of the defendant's unauthorized embalming and refusal to surrender their child's body until a fee for the embalming was paid. The *Kirksey* case established that if the wrongful conduct was such as would warrant the imposition of punitive damages, then mental anguish would be recoverable as an element of damages. Following this test, the court in the instant case found that the defendant's employee exhibited conduct which was "malicious and demonstrated an extreme indifference to the rights of the [plaintiff]."[34] The court further declared that "[T]he restriction of the loss of a pet to its intrinsic value in circumstances such as the ones before us is a principle we cannot accept."[35] In discussing

dog resulting in mental anguish to observer); Klein v. St. Louis Transit Co., 117 Mo. App. 691, 93 S.W. 281 (1906) (negligently ran over dog); Wilcox v. Butt's Drug Stores, Inc., 28 N.M. 502, 35 P.2d 978 (1934) (dispensing of wrong drug resulting in dog's death); Henry v. Southern Ry. Co., 93 S.C. 125, 75 S.E. 1018 (1912) (refuse put into stream killed cattle). *But see* Rasmussen v. Benson, 135 Neb. 232, 280 N.W. 890 (1938) (selling poisonous cattle feed resulting in owner's shock and death).

31. See *Amaya, supra* note 20.

32. Recovery for mental anguish was allowed in Kirksey v. Jernigan, 45 So.2d 188, 189 (Fla. 1950), wherein the court set the requisite standard of conduct necessary to impose liability on the defendant as:

> [W]here the wrongful act is such as . . . reasonably [to] imply malice . . . [or when from] great indifference to the persons, property, or rights of others, such malice will be imputed as would justify the assessment of exemplary or punitive damages.

The Florida Supreme Court, in Crane v. Loftin, 70 So.2d 574 (Fla. 1954), held that mental anguish could not be compensated when it was the result of mere negligence. In *Crane*, the court stated that operating a train in a busy intersection at an excessive rate of speed, causing the plaintiff to fear for her life and abandon her car, did not meet the test of wanton conduct so as to impose liability for mental anguish without physical impact.

33. *Supra* note 32.

34. La Porte v. Associated Independents, Inc., 163 So.2d 267, 268 (Fla. 1964).

35. *Id.* at 269. The court was referring to the general rule in an action seeking damages for the injury or destruction of a dog—*i.e.*, that the basis of recovery may be either the market value, if determinable, or some special or pecuniary value to the owner, ascertainable by reference to the usefulness of the dog to its owner. See Klein v. St. Louis Transit Co.,

the interest of the plaintiff which had been invaded by the defendant's tortious act, the court explained: "[W]e feel that the affection of a master for his dog is a very real thing and provides an element of damage for which the owner should recover. . . ."[36]

In the instant case, the court was very cautious in its approach and failed to pinpoint the theory of liability it had applied. The court could have justified its decision either on the theory of "malicious trespass to personal property" resulting in mental damage to the owner, or of an "intentional interference with peace of mind." From the language of the court, it seems evident that it was concerned with the affectionate relationship between a person and his dog.

In the aftermath of the court's decision, a crucial question still remains unanswered: Will the Florida courts now permit recovery for similar conduct directed at inanimate property or at a person, when no property is involved and mental anguish results? The fact that the court placed great emphasis on the effect of the defendant's conduct on the plaintiff's mental security lends great weight to the proposition that Florida has silently adopted the intentional interference with peace of mind theory as a basis for the recovery of damages for mental suffering without injury or physical impact.

BARRY KUTUN

## PROCEDURE—RENDITION OF JUDGMENT

A decree was entered against the defendant and four days later he filed an appeal. An additional four days elapsed and the plaintiff petitioned for a rehearing. The trial court granted the rehearing and subsequently modified the decree. The plaintiff then moved the district court of appeal to dismiss the appeal on the basis that the appeal had been taken from a final decree which had not been *rendered* and it was therefore not a final decree for the purpose of appeal.[1] This motion was denied. The plaintiff then petitioned the supreme court for a writ of prohibition directing the district court to cease from further entertain-

*supra* note 30; Smith v. Palace Transp. Co., 142 Misc. 93, 253 N.Y. Supp. 87 (1931); Young's Bus Lines, Inc. v. Redmon, 43 S.W.2d 266 (Tex. Civ. App. 1931); Annot., 94 A.L.R. 729 (1935); 3 C.J.S. *Animals* § 234 (1936).

36. *Supra* note 34, at 269.

1. FLA. APP. R. 1.3. The last paragraph speaks on the question of *rendition* of judgments: Rendition of a judgment, decision, order or decree means that it has been reduced to writing, signed and made a matter of record, or if recording is not required then filed. A paper is deemed to be recorded when filed with the clerk and assigned a book and page number. *Where there has been a timely and proper motion or petition for* a new trial, *rehearing* or reconsideration *by the lower court, the* decision, judgment, order or *decree shall not be deemed rendered until such motion or petition is disposed of.* (Emphasis added.)