

Utah high court spikes suit from the owner of Geist, a dog shot by an officer in 2014

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Man whose dog was fatally shot in 2014 had challenged law requiring plaintiffs to pay a fee before suing police officers.



Courtesy Justice for Geist Facebook page Geist

By Pamela Manson The Salt Lake Tribune · July 21, 2017 2:31 pm

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The Utah Supreme Court has upheld the dismissal of a Salt Lake City man's challenge to two laws requiring plaintiffs to post a bond and to pay an "undertaking" of at least \$300 before suing law enforcement officers.

The challenge stemmed from a police officer fatally shooting a dog named Geist three years ago.

Before suing a law enforcement officer, plaintiffs must post a bond covering the estimated attorney fees and court costs needed to defend the officer and pay the "undertaking."

The money is used to cover attorney fees and court costs for an officer who prevails in the suit.

Sean Kendall, Geist's owner, filed suit in January 2015, seeking a declaration that the bond and undertaking statutes violated the "open courts" clause of the Utah Constitution by restricting access to the courts in lawsuits against police officers.

But 3rd District Judge William Barrett ruled in September 2015 that Kendall was able to post the \$300 required by the undertaking statute. In addition, he found that the dog owner could not afford to pay for the bond and therefore was not required to comply with the statute requiring it.

Based on those findings, Barrett concluded that Kendall lacked standing to challenge those provisions of the undertaking and bond statutes; the judge held, in the alternative, that those laws were constitutional. Barrett dismissed the case, and Kendall appealed to the Utah Supreme Court.

In a 5-0 decision handed down Wednesday, the high court affirmed the dismissal — without reaching the merits of Kendall's constitution argument and the ruling on standing.

Writing for the court, Associate Chief Justice Thomas Lee said Kendall had failed to challenge Barrett's analysis on standing in the opening brief of his appeal, "and that is problematic." The justices, he wrote, were left "without a basis for anything other than an affirmation of the district court's dismissal of Kendall's case."

Salt Lake City police Officer Brett Olsen shot Geist on June 18, 2014, during a search for a missing 3-year-old boy. The officer had entered Kendall's fenced backyard in Sugar House and fired his gun when the 100-pound Weimaraner reacted by barking and running toward him.

A review by the city's Police Civilian Review Board said Olsen did not violate department policies. The boy was later found safe, sleeping at home.

In October 2015, Kendall filed a suit in 3rd District Court against Salt Lake City and five of its officers, seeking about \$2 million for the loss of his dog. The case had state and federal claims and was moved to U.S. District Court, where Judge Robert Shelby ruled earlier this year that the shooting was justified.

Kendall appealed that decision to the 10th U.S. Circuit Court of Appeals. The case was sent back to 3rd District Court for litigation on the remaining state law issues, but it is on hold, pending a ruling from the 10th Circuit.

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