

High court upholds dismissal of lawsuit from owner of dog shot by police

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Family photo, File

By McKenzie Romero, | Posted - Jul 22nd, 2017 @ 10:55am

SALT LAKE CITY — The Utah Supreme Court this week upheld the dismissal of a challenge to two Utah statutes regarding lawsuits against law enforcement filed by the owner of a dog shot and killed by police in 2014.

Sean Kendall — the owner of the 2-year-old Weimaraner named Geist who was shot and killed while police were searching backyards in Sugar House for a missing child — filed a claim in January 2015 saying he wanted to take up a civil lawsuit against the officers, but that the two laws were keeping him from his constitutionally protected access to the courts.

Kendall challenged Utah's "undertaking statute," which requires a plaintiff taking up a civil case against a government entity to pay a \$300 fee to begin the process.

Kendall also disputed the state's "bond statute," which requires that anyone taking action against law enforcement who were acting in their official capacity pay a court-determined bond anticipated to go toward legal costs and attorney fees if the officer wins.

The claim called the two statutes "an unreasonable and oppressive burden" on those who have been injured by law enforcement, saying they keep those with limited financial resources from access to the courts.

Third District Judge William Barrett ruled in September 2015 that the two statutes were constitutional. The judge also found that Kendall didn't have standing to support the lawsuit, noting that he was "willing and able to post the \$300" undertaking fee, while the bond was waived because he didn't have the means to pay it.

Kendall challenged the judge's decision before the Utah Supreme Court, which ruled Wednesday that Kendall again hadn't proven he had proper standing to bring the case before the court, which "leaves us with no basis for reversal and thus no choice except to affirm," the decision written by Associate Chief Justice Thomas Lee said.

"Kendall's opening brief speaks exclusively to the merits of Kendall's claims, which the district court addressed in the alternative. But there is not a word on standing in the opening brief on appeal, and that is problematic," Lee wrote.

And because Kendall lacked standing, the court did not move on to address his claims that the two statutes are unconstitutional.

In June of 2014, Salt Lake police were looking for a missing 3-year-old boy when officer Brett Olsen, one of the decorated heroes who halted the Trolley Square shooting spree, went into a fenced backyard at 2465 S. 1500 East. There, he was confronted by Geist, shooting and killing the large dog.

The shooting sparked outrage from residents and animal advocates across the nation.

A civilian review board cleared Olsen of any wrongdoing, but Kendall filed a civil rights lawsuit, contending that Olsen and other officers were negligent in their search by failing to thoroughly check the 3-year-old boy's home, where he was later found asleep in the basement.

Salt Lake police and Kendall reportedly negotiated a \$10,000 settlement, which Kendall accepted and then later rejected. He later announced his intent to sue. In February, a federal judge ruled against Kendall's petition. Kendall's appeal to the 10th Circuit Court of Appeals was sent back the state court, where it remains on hold.

