

# Case Over Dead Dogs to Proceed After Appeals Court Ruling

Court of Appeals panel allows plaintiff to sue sheriff's deputy for action that led to the euthanization of his pets

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*Plaintiff's attorney Robert McFarland said the decision showed "the judges are very supportive of the rights of dogs" and said he hoped to get dog lovers on the jury. John Disney/Daily Report*

A Georgia Court of Appeals panel has cleared the way for a suit against a sheriff's deputy accused of pressuring a man being treated in a hospital emergency room to sign papers releasing his dogs, a move that led to their being euthanized.

The state Supreme Court last year had ruled against the plaintiff, Mitchell Greenway, but it allowed that Greenway could prevail against the deputy by showing the deputy acted maliciously.

Last week's decision by the Court of Appeals said the plaintiff might be able to meet that standard. The panel cited testimony that the deputy refused to read a release form to Greenway even though Greenway couldn't read it without his glasses, and that the deputy failed to correct

statements by medical personnel that the dogs would go to the Humane Society and Greenway could retrieve them later.

Greenway also is pursuing claims against Northside Hospital in Forsyth and the private contractor who ran Forsyth's Animal Control shelter.

The case dates to January 2007, when, as recounted in an earlier Court of Appeals opinion, Greenway was transported to Northside by ambulance after he reacted badly to a prescribed pain medication patch. A neighbor says he had agreed to take care of Greenway's dogs, a full-blooded yellow Labrador retriever named Misty, and a mixed-blood lab named Dakota.

Greenway testified that when he arrived in the hospital's emergency room, he was confused, and a nurse said he wasn't going to live given his low blood pressure. According to Greenway, a patient advocate whom Greenway had told about his dogs came to Greenway's room later with two or three uniformed deputies.

Greenway recalled that the deputies urged him to sign a form, but no one could find Greenway's glasses, so he couldn't read the type. He recalled saying he wouldn't sign the form unless someone told him what it said, but someone in the room told him that by law they couldn't read it to him. He says a doctor and nurses told him the form allowed the dogs to go to the Humane Society if he died but that he would be able to get his dogs back within seven days if he lived. He testified that although he could read only the large-type words "Owner Release Form" at the top of the document, he signed it.

Later, after he had received his glasses, Greenway read the form he had signed and realized he had released his animals to Forsyth Animal Control and they could be euthanized. He asked a nurse about getting his dogs back, and, after making inquiries, she tearfully informed him his dogs already had been put down. Forsyth Animal Control euthanized the dogs on Jan. 22, 2007, three days after Greenway had signed the release.

Others who interacted with Greenway said they recalled matters differently. A nurse said the sheriff's deputy who arrived in Greenway's room, Terry Roper, told her he worked "with the Humane Society," but she said she thought Animal Control and the Humane Society were the same thing. Roper said Greenway was reluctant to release the animals, but Roper denied that Greenway refused to sign the form.

Judge David Dickinson of Bell-Forsyth Circuit Superior Court granted summary judgment to the defendants, which included then-Forsyth Sheriff Ted Paxton. A Court of Appeals panel of judges Gary Andrews, Sara Doyle and Michael Boggs revived the suit, reversing the trial judge on most points while eliminating the case against the sheriff.

Roper, the deputy, was the only defendant to seek review from the Georgia Supreme Court, which agreed to hear his case. Last year, the high court rejected the Court of Appeals' analysis, with the justices holding that Roper's asking Greenway to sign the release form was the sort of discretionary act for which he would have official immunity.

But the court's opinion by Presiding Justice P. Harris Hines said that the Court of Appeals should consider whether the plaintiff still could avoid dismissal of the case by showing Roper acted with "malice or an intent to injure," another exception to the immunity rule.

In his May 27 opinion for the same Court of Appeals panel that heard the case earlier, Boggs said there was a question of fact on actual malice that would allow the case against Roper to proceed. He pointed to testimony that Roper falsely told Greenway that he worked for the Humane Society and that he told Greenway to "sign the damn form" even though Greenway was "out of it." A jury could infer from the evidence that Roper intended Greenway to suffer the harm of surrendering rights to his dogs when Roper "coerced or defrauded" Greenway into signing the release, Boggs wrote.

Robert McFarland Sr., a Cumming lawyer who represents the plaintiff, said Thursday that he already had called the trial court, asking it to put the case back on the trial calendar. Acknowledging defense counsel likely would disagree, McFarland said the Court of Appeals' ruling that the plaintiff may argue that Roper acted with actual malice opens the door to asking the jury to award punitive damages.

"The judges are very supportive of the rights of dogs, it appeared to me from their decision, and I appreciate that," McFarland added. If the plaintiff can get dog lovers on the jury, he said, "we'll do well."

Cumming lawyer Ken Jarrard, who acts as the Forsyth county attorney and represents Roper, said, "right now we're just formulating our options."

Jarrard disputed McFarland's remarks about punitive damages. "I don't believe there's going to be any basis to assert a claim for punitives," said Jarrard, "and I don't think there's going to be any evidence that a jury could find to support a finding of actual malice."

The case is *Roper v. Greenway*, No. A12A0705.

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