

**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION SIX**

BETTY LONG, et al.,

*Plaintiffs and
Respondents,*

v.

CITY OF EXETER, et al.,

*Defendants and
Appellants.*

Case No.: B316324

San Luis Obispo County
Superior Court Case No.
17CV-0529

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY OF SAN LUIS
OBISPO

Hon. Barry T. LaBarbera, Judge

**APPLICATION FOR PERMISSION TO FILE AMICI
CURIAE BRIEF IN SUPPORT OF APPELLANTS**

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Pursuant to California Rules of Court, rule 8.200(c), the League of California Cities (Cal Cities) and the California State Association of Counties (CSAC) (collectively “Amici”) apply for permission to file the attached brief in support of appellants.¹

Cal Cities is an association of 477 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the state. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or national significance. The Committee has identified this case as having such significance.

CSAC is a non-profit corporation. CSAC’s membership consists of the 58 California counties. CSAC sponsors a litigation Coordination Program, which is administered by the County

¹ No party or counsel for a party in the pending appeal authored the proposed Amici brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than Amici, its members or its counsel in the pending appeal.

Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

Amici are deeply sympathetic to the tragic facts in this case. However, amici are also concerned about the broader implications this case may have for public entity liability and the potential for this case to result in an unwarranted and unworkable extension of the duties public entities owe to the general public in connection with the sale of public entity property.

The trial court in this case allowed the plaintiffs to proceed against employees of the City of Exeter on a theory that they negligently failed to warn the purchaser of a City owned police dog – a City police officer leaving to work for another public entity who was the dog's handler and boarder – about how to handle and control the same dog he was trained and well aware of how to handle and control.

As Amici explain in their brief, apart from the direct implications to this case, the duty theory employed in this case has far broader ramifications. Amici urge the court to be mindful of those broader ramifications when issuing its opinion in this case.

Dated: September 7, 2023 Dean Gazzo Roistacher LLP

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Document received by the CA 2nd District Court of Appeal.

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INTRODUCTION

Neo was a police dog owned by the City of Exeter.

After Alex Geiger joined the City's police department in 2014, he was accepted into the department's canine unit and he and Neo became partners in September 2015. Prior to being teamed up with Neo, the City inspected Geiger's property finding it sufficient to properly house Neo. Geiger was provided a kennel and other essentials necessary to house and care for Neo. Geiger signed off on instructions directing that Neo be kenneled if Geiger was not present, and to avoid Neo interacting with other animals.

After a month-long bonding period where Neo lived with Geiger, the two began and completed training for patrol and narcotics detection. Because a police dog is trained to singularly respond to her handler, bonding between the dog and handler is critical. Geiger and Neo worked together for about a year, 36-48 hours every week. No one knew more about Neo than Geiger.

On August 17, 2016, Geiger resigned from the City's police department after obtaining a position as a police officer with the City of Grover Beach Police Department.

Concerned about what would happen to Neo when he left, Geiger inquired and was told it would be unlikely Neo could be paired with another handler. Geiger realized Neo's two options were to go with him or be euthanized. But Grover Beach did not have a canine program.

No one wanted to see Neo put down, so the City sold Neo to Geiger on August 28, 2016. Neo thus "retired" from police work and went to live with Geiger.

Tragically, in December 2016, Neo escaped from Geiger's fenced yard and attacked two people, causing serious injuries to one and ultimately death to the other.

The trial court allowed the plaintiffs to proceed against the City (vicariously) on a failure to warn theory of liability; that is, City employees (Chief Bush and Sergeant Inglehart) failed to warn Geiger of the potential dangers Neo posed not to Geiger, but to the public generally if Neo was not properly housed and supervised - things Geiger already knew.

After finding both Bush and Inglehart negligent, the jury returned a monetary verdict against them for which the City must satisfy.

Amici agree with the City’s duty arguments and do not reiterate those arguments here.

Amici focus here on the broader negative policy implications of failing to exempt from Civil Code section 1714’s general duty of care a duty to warn under the facts of this case, and how imposing a duty to warn here has consequences beyond this case.² See *Kuciemba v. Victory Woodworks, Inc.* (2023) 14 Cal. 5th 993, 1016 [“Duty, under the common law, is essentially an expression of policy that the plaintiff’s interests are entitled to legal protection against the defendant’s conduct. The requirement of a legal duty is frequently invoked to limit generally the otherwise potentially infinite liability which would follow from every negligent act.”], simplified.); *id.* at pp. 1021-1022 [*Roland*’s second category of duty analysis factors “embraces the public policy concerns of moral blame, preventing future harm, burden, and insurance availability.”].

² A duty analysis focuses on whether public policy reasons warrant finding a defendant is relieved of the general duty to exercise reasonable care section 1714 imposes. (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1143 [“[I]n the absence of a statutory provision establishing an exception to the general rule of Civil Code section 1714, courts should create one only where ‘clearly supported by public policy.’”].)

DISCUSSION

A. *History of Canines In Policing And The Important Role They Play In Law Enforcement*

“Dogs, unlike any other animal species, are so connected with humans they have become an integral part of human society. As many as 38,000 years ago, and perhaps earlier, ancient wolves and ancient man began to co-exist and cooperate, a partnership that many thousands of years later, remains as strong as ever. Scientists are beginning to believe humans and dogs, in many ways domesticated each other by exerting evolutionary influence on the development of one another.” (Ann L. Schiavone, ARTICLE: K-9 CATCH-22: THE IMPOSSIBLE DILEMMA OF USING POLICE DOGS ON APPREHENSION OF SUSPECTS, 80 U. Pitt. L. Rev. 613, 620 (Spring 2019), footnotes omitted.)

“Whether it was the first wolves who would hang around the campfire for a scrap of food or the first humans who followed the wolf pack to a hunt, the human-dog relationship was symbiotic and mutually beneficial. Early dogs and early humans helped each other in obtaining resources, protecting one another, and providing companionship. As communities and civilizations

grew and developed, the dog took on more roles in human society. While the earliest human-dog relationship likely centered on hunting, it could not have been long before dogs were employed as a means of protection, and then, more formally, in war against other humans.” (*Schiavone*, 80 U. Pitt. L. Rev. at p. 620, footnotes omitted).

“While war dogs were common in antiquity through today, dogs in policing are a relatively new phenomenon.” (*Schiavone*, 80 U. Pitt. L. Rev. at p. 621.) First appearing in Belgium in the late 1800s, police dogs made their way across the Atlantic to the United States in the early 1900s eventually finding their way into widespread use throughout the Country. (*Ibid.*) There are no accurate counts of police dogs existing today, but there were an estimated 50,000 in 2010 and one source puts the current number at over 200,000. (*Ibid.*; <https://www.zippia.com/k9-police-officer-jobs/demographics>.)

Police dogs provide a great benefit to law enforcement, and correspondingly to society. With a superior sense of smell, police dogs locate drugs and bombs where humans cannot.³ Police dogs

³ See <https://intime.com/industries/police/benefits-k9-program-police-departments/>;

are involved in tracking and search and rescue.⁴ Police dogs also serve as protection for law enforcement and the public through a “less lethal” form of force.⁵ (See *Rios v. City of Fresno*, No. CV-F-05-644 OWW/SMS, 2006 U.S. Dist. LEXIS 85642, at *31 (E.D. Cal. Nov. 14, 2006) [identifying police dogs as a less lethal force option].)

B. Likely Impacts of Extending Liability For Injuries Caused By Police Dogs To Public Entities Even After The Entity Divests Ownership Of The Dog

Like humans, police dogs cannot work forever and must retire at some point due to age or even injury. What happens to these dogs – which are owned by the public entity – when they retire?

Given the necessary singular bond developed between the dog and her handler, general adoption is not a feasible option.

<https://www.policemag.com/blogs/patrol/blog/15315653/a-k-9-unit-has-benefits-for-police-departments-and-communities-alike>

⁴ *Ibid.*

⁵ *Ibid.*

What likely happens most of the time is the handler adopts the dog. But either way, the dog is no longer owned by or under the control of the public entity as she lives out the rest of her life.

And what happens when the dog's handler decides to end his employment with the public entity but the dog is not ready to retire? Because police dogs generally cannot be reassigned to a new handler, adoption by the handler is the more preferred and humane option (including to avoid euthanasia). Indeed, that is what occurred in this case.

When the attack occurred, the City no longer owned or controlled Neo and the City no longer employed or had any control over Geiger. Plaintiffs thus pursued an entirely novel theory of liability based on asserted failures by City employees to warn Geiger about things he already knew as Neo's handler.

The theory of liability allowed by the trial court exposes public entities to potential infinite and expansive liability. In this case, the liability is tempered only by the dog's life span (and not by how many years have passed between the dog's adoption and the incident).

And potential liability exists even if warnings are provided because nothing exists telling public entities what warnings are

required. The record reveals no guidelines or standards on the issue, or even consistent practices.⁶ So even if warnings are given, public entities may not be able to avoid a trial at which the issue becomes whether a particular jury believes whether the warnings given were sufficient.⁷

As a result, the public entity is exposed to liability for what the dog does for the rest of its life despite having no control over the dog and, as in this case, no control over the person adopting the dog.⁸ Although the incident and Neo's sale to Geiger were fairly close in time, the same theory of liability would apply if the incident occurred 10 years after the sale because a claim for injuries would not have accrued until the injuries occurred. And

⁶ Although POST standards exist for virtually every aspect of policing, none exist on this issue.

⁷ Because there are no standards, policies, or even uniform practices governing warnings to be given upon the adoption of a police dog, the "standard of care" is subject to the differing opinions of paid experts.

⁸ Geiger was no longer employed by the City when the incident occurred. But even if the City still employed him, the City would have no control over what Geiger did with Neo at Geiger's house when Geiger was not working.

as this case demonstrates, the potential liability to public entities, and ultimately the public fisc, could be significant.

The result is that public entities will have to rethink whether to allow the adoption of police dogs upon their retirement, or on the retirement of the handler. Given the alternative of euthanizing a healthy dog is dreadful, public entities will have to rethink whether to have canine programs at all. Neither destroying healthy animals nor disbanding canine programs serves the public interest.

C. The Liability Theory Here Can Apply To Any Property A Public Entity Sells Or Gives Away

Though people may disagree with the characterization, animals are personal property under California law. (*Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1606 [“Dogs are considered personal property.”]; *Scharer v. San Luis Rey Equine Hosp.* (2012) 204 Cal.App.4th 421, 427 [“[A]nimals are a form of personal property under California law.”].)

Thus, recognition of the duty imposed in this case is the recognition of a duty on public entities to provide any number of potential warnings when divesting ownership of personal property, or even real property.

One might not think that public entities sell a lot of property, but they do. And they sell all kinds of things, often at auction. There is an entire website dedicated to selling government property, <https://www.govdeals.com/index.cfm>. For example, the State sells things from office supplies, to vehicles, to heavy equipment.⁹ One can buy land, cars, equipment, or personal property from Los Angeles County.¹⁰ Same with Orange County.¹¹

Requiring public entities to provide warnings of all potential dangers of property upon divesting ownership – which is the implication of recognizing a duty in this case – is incredibly burdensome even if feasible.

⁹ The Department of General Services auction website is found at: <https://www.dgs.ca.gov/OFAM/Services/Page-Content/Office-of-Fleet-and-Asset-Management-Services-List-Folder/Attend-Public-Auctions-of-Surplus-Personal-Property> (last accessed, ____.); see <https://www.govdeals.com/index.cfm?clientOnly=10198&redirecting> (last accessed, August 26, 2023) [list of auction items].

¹⁰ <https://lacounty.gov/business/doing-business-with-lacounty/auctions-and-surplus-property/>.

¹¹ <https://lacounty.gov/business/doing-business-with-lacounty/auctions-and-surplus-property/>.

CONCLUSION

Duty is not an unlimited concept and the duty imposed in this case stretches beyond acceptable, or even workable, boundaries. (See *Wylie v. Gresch* (1987) 191 Cal.App.3d 412, 425 [“Teresa Wylie was the victim of a tragic event, the blame for which may lie with the owners of a vicious animal who were unwilling or unable to control it, and with any of a number of other people. The law, however, does not include the Gresches among them, and we decline to stretch the limits of legal duty in order to do so.”].)

Dated: September 7, 2023 Dean Gazzo Roistacher LLP

By: /s/ Lee H. Roistacher
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State Association of Counties

CERTIFICATE OF WORD COUNT

Cal. Rules of Court, rule 8.204(c)

The text of this Amici Curiae Brief consists of 1,915 words as counted by the Microsoft Word word-processing program used to generate this brief.

Dated: September 7, 2023 Dean Gazzo Roistacher LLP

By: /s/ Lee H. Roistacher
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Cities (League) and the
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Document received by the CA 2nd District Court of Appeal.

DECLARATION OF SERVICE

I, Maria E. Kilcrease, declare as follows:

That I am and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned mailing occurred. my business address is 440 Stevens Avenue, Suite 100, Solana Beach, California 92075 and my electronic address is mkilcrease@deangazzo.com..

On September 7, 2023, I caused to be served:

APPLICATION FOR PERMISSION TO FILE AMICI CURIAE BRIEF IN SUPPORT OF APPELLANTS; AMICI CURIAE BRIEF IN SUPPORT OF APPELLANTS

on the following person(s) at the following address(es), in the manner indicated below:

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 X BY UNITED STATES MAIL: I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

 X BY E-MAIL/ELECTRONIC TRANSMISSION: Via TrueFiling.com. Based on a court order or an agreement of the parties to accept service by email or electronic transmission, I caused the documents to be

sent to the persons at the e-mail addresses shown above.

I certify under penalty of perjury that the foregoing is true and correct, and this declaration of service was executed on September 7, 2023, at Solana Beach, California.

By: Maria E. Kilcrease
Maria E. Kilcrease