

## Liability for death of dog is limited

01/16/03

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### *Experts say stakes higher in rights suit*

The death of a beloved family dog may have been a tragedy to the James Smoak family, but Tennessee law considers a lost pet to be like livestock — property.

The family may not be entitled to much money in damages if they sue, legal experts say. But if a federal civil rights violation can be shown, requiring a higher standard of proof, the sky's the limit in terms of damages, attorneys say.

The Smoaks, whose dog was shot by a Cookeville, Tenn., police officer on New Year's Day, have said they are shopping for lawyers.

State damages would probably be minimal, said Jim Bilbo, president-elect of the Tennessee Trial Lawyers Association. He said the pet would be considered legally as property, so the state's liability might be limited to the fair market value for a mixed-breed bulldog.

Dennis Huffer, a legal consultant for the University of Tennessee Municipal Technical Advisory Service, agreed that state law was written to shield Tennessee and its municipalities from excessive lawsuits, limiting the amount of money the government must pay in damages.

State law limits damages to \$300,000 per person for those involved in an accident or death and \$1 million per negligence accident for injuries, Huffer said.

A claim could also be made against Cookeville. Its liability limit as a local government would be \$85,000 for injury or destruction of property in an accident, he said.

"I'm not sure a dog would ever be worth \$85,000," Huffer said.



AP

James Smoak holds the family's pet Cassie, right, and a puppy given to the Smoaks by a pet store in their hometown, Saluda, N.C. A sign made by a family friend hangs in a window of the Smoaks' home. Another family dog, Patton, was shot during a traffic stop.

The family might claim that the killing of the dog created some kind of bodily injury for them, he said. However, the liability limit for Cookeville is \$250,000 for bodily injury or death to a person and \$600,000 for all people involved in an accident. The most the family would be able to receive from Cookeville would be \$600,000, he said.

One problem the family may have in a lawsuit is that liability for a local government is based on the notion of negligence of an employee, Huffer said.

"I don't think the acts of the police officer in shooting the dog will be considered in most cases to be negligent," he said. "It was a purposeful act on his part to defend himself."

The dog shooting has grabbed international headlines and generated a daily barrage of bad publicity for the state.

After spending several days vacationing in Nashville, James Smoak, his wife and stepson headed back home to Saluda, N.C., on New Year's Day. The family was stopped in Putnam County by the Tennessee Highway Patrol, accompanied by Cookeville police officers, after a series of communication blunders led authorities to believe they had been in a robbery in Nashville.

The three family members were ordered out of the car and handcuffed. Patton, one of the family's two dogs in the car, came out of the station wagon and approached Officer Eric Hall, who shot and killed the dog. The incident was videotaped by a THP camera in a patrol car and has been broadcast all over the world.

Hall reported that the dog was about to attack him. Some have said the shooting was unnecessary and that the animal was wagging its tail.

The family has two options, Nashville legal scholar David Raybin said. One would be to file a state claim of negligence. The other would be to file a lawsuit in federal court. The family's attorney might do both, he said.

However, to make a federal case, the family would have to show a higher standard of reckless indifference on the part of the government, that the government was not merely negligent but grossly reckless in its behavior, Raybin said.