

Pet Watch

Mansfield Tanick & Cohen P.A.
Attorneys at Law

Different Dog Decisions Dominate Past Year

Couple Courts Consider Controversial Canine Cases

A quartet of cases decided by the Minnesota Supreme Court and the Court of Appeals were among the highlights of the past year in litigation in this state. The cases addressed a number of controversial issues involving dog ownership.

Two of the decisions came in the same protracted litigation, addressing issues of liability of law enforcement agencies when their dogs inflict injuries. Another case also involved law enforcement dogs, although it concerned the Constitutionality of using the canines, rather than civil liability. The other case limited the scope of the Minnesota strict liability statute for claims by dog professionals who are injured during their work.

Collectively, the decisions that dominated 2005 are worthy of review in the New Year.

Dog Dilemma

The dilemma of the Minnesota "strict liability" statute as it pertains to dogs used for law enforcement purposes was addressed by both the Minnesota Supreme Court and the Court of Appeals in 2005. Rulings came in the same lawsuit, *Hyatt v. Anoka Police Department*, the year began with the Supreme Court overruling a decision by the Court of Appeals, which had upheld dismissal by the Anoka County District Court about a lawsuit brought by a woman who

was seriously injured when a police dog bit her while she was an innocent bystander to the apprehension by a police department, aided by a law enforcement canine, of her husband. The lawsuit was brought under Minn. Stat. § 347.22, which imposed strict liability upon "any" owner of a dog that bites or injures someone.

Overturing the decision of the Appellate Court, the Supreme Court held that the "plain language" of the statute makes the police department potentially liable for the dog bite injury. However, it remanded the case to the Appellate Court for consideration whether the Minnesota statute allowing for "reasonable" force in making an arrest, Minn. Stat. § 609.06, negates the liability of the police for the dog bite. 691 N.W. 2d 814 (Minn. 2005). On reconsideration, the Appellate Court ruled that the statute did not apply because the police officers exercised professional discretion in making the arrest, which immunizes them under the "reasonable force" statute. 700 N.W. 2d 502 (Minn. App. 2005).

Diverse Decisions

Another dog bite victim also was unable to capitalize on the strict liability statute in *Carlson v. Friday*, 694 N.W. 2d 820 (Minn. App. 2005). The case was brought by a dog groomer, who sued a couple that owned a

canine that bit her while she was taking care of the animal.

Following a ruling of the Hennepin County District Court judge, the Court of Appeals held that the statute did not apply because the groomer was harboring the dog at the time of the incident. Thus, she was considered a "secondary owner" and not entitled to sue under the statute.

Another dog decision yielded a somewhat unexpected result in *State v. Carter*, 697 N.W. 2d 99 (Minn. 2005). The Supreme Court held that Article I, Section 7 of the Minnesota State Constitution barred unreasonable searches and seizures proscribed by a drug detection dog, who sniffed drugs in a car trunk during a routine traffic stop. Using the dog constituted unwarranted invasion of privacy in violation of state constitutional provision because of the strong "expectation of privacy" of the vehicle owner and the high "degree of intrusiveness."

The ruling surprised some because it diverged from a decision earlier in the year by the U.S. Supreme Court in *Illinois v. Caballes*, 543 U.S. 405 (2005). In that case, the High Court permitted a dog search by law enforcement authorities under the Fourth Amendment of the U.S. Constitution. The state Supreme Court,

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however, interpreted the parallel provision of the state constitution more broadly to bar the search in *Carter* case.

These two decisions highlight litigations relating to dogs. The past year, 2005, was a

particularly notable one in Minnesota and may portend even more interesting and important cases in the Minnesota courts this year.

Dealing With Dogs



Marshall H. Tanick, of the law firm **Mansfield, Tanick & Cohen, P.A.**, assisted charitable organizations in their missions of helping pets and their owners. Mr. Tanick participated in the *Animal Wise Radio* program sponsored by *Animal Ark*, a tri-cities nonprofit animal shelter. Mr. Tanick (center) joined co-hosts of the program, Mike Fry (right), Executive Director, and Mary Salter (left) at the studio of 950 AM in Eden Prairie for a live broadcast of the show. For more information about *Animal Ark*, visit www.animalark.org



Mr. Tanick (right) attended the annual charity auction of *Helping Paws of Minnesota, Inc.* Joined by this wife, attorney Cathy Gorlin, Mr. Tanick met one of the organization's service dogs furnished to the disabled. For more information about *Helping Paws*, visit www.helpingpaws.org

PET WATCH FACTS

Major dog decisions of 2005

Hyatt v. Anoka Police Department, 691 N.W. 2d 824 (Minn. 2005): State Supreme Court holds that "plain language" of strict liability statute may apply to law enforcement dogs.

Hyatt v. Anoka Police Department, 700 N.W. 2d 502 (Minn. App. 2005): Minnesota Court of Appeals dismisses same dog bite lawsuit because police used "reasonable force" in making arrest.

Carlson v. Friday, 694 N.W. 2d 820 (Minn. App. 2005): Dog groomer not entitled to sue under strict liability statute because she is "secondary owner" while taking care of canine.

State v. Carlson, 697 N.W. 2d 99 (Minn. 2005): Use of drug-sniffing dog prohibited as "unreasonable" search under the Minnesota State Constitution.

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