

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CAROLYN A. KYZER, EXECUTRIX OF THE ESTATE
OF MARC F. GERTE

Plaintiff,

v.

THE BOROUGH OF NAUGATUCK; PETER BOSCO,
POLICE OFFICER, BOROUGH OF NAUGATUCK, IN
HIS INDIVIDUAL AND OFFICIAL CAPACITY; PAUL
BERTOLA, POLICE OFFICER, BOROUGH OF
NAUGATUCK, IN HIS INDIVIDUAL AND OFFICAL
CAPACITY; ROBERT O'DONNELL, POLICE
OFFICER, BOROUGH OF NAUGATUCK, IN HIS
INDIVIDUAL AND OFFICIAL CAPACITY; BRIAN
NEWMAN, POLICE OFFICER, BOROUGH OF
NAUGATUCK, IN HIS INDIVIDUAL AND OFFICAL
CAPACITY; STEVEN HUNT, POLICE OFFICER,
BOROUGH OF NAUGATUCK, IN HIS INDIVIDUAL
AND OFFICAL CAPACITY; JEAN DOBBIN.

Defendants.

SUBSTITUTED
FIRST AMENDED
COMPLAINT

JURY DEMAND

NOVEMBER 29, 2021

SUBSTITUTED FIRST AMENDED COMPLAINT

COMES NOW, Plaintiff Carolyn A. Kyzer, Executrix of the Estate of Marc F. Gerte and files her Substituted First Amended Complaint against the Borough of Naugatuck (Borough), Naugatuck police officers Peter Bosco, Paul Bertola, Robert O'Donnell, Brian Newman and Steven Hunt in their personal and official capacities, and against Jean Dobbin.

PRELIMINARY STATEMENT

1. It has been said that "individual freedom finds tangible expression in property rights."¹ The Defendants disregarded this venerable principle by jointly acting on September 26, 2016 when, after taking possession of Mr. Gerte's dog, Jamie, Defendants knowingly and unreasonably refused Mr. Gerte's demand for the return of his dog.
2. Following the September 26, 2016 refusal, Defendant Dobbin, acting as the agent of the Defendant Borough, continued to wrongfully hold Mr. Gerte's property in her possession, with the knowledge and support of the other Defendants, thus violating Mr. Gerte's constitutionally protected rights and depriving Plaintiff of his property.
3. On June 18, 2016 Defendant police officer O'Donnell came upon Mr. Gerte in an

¹ *United States v. James Daniel Good Real Property*, 510 U.S. 43, 61 (1993).

incapacitated condition of such severity as to require his immediate hospitalization. At such time, Mr. Gerte's dog was with him, and due to the emergency nature of the situation, the police officers, pursuant to their authority, took possession of Mr. Gerte's property, including his dog, for safekeeping. Mr. Gerte acknowledges such possession, for the limited purpose to temporarily safeguard his property, was lawful.

4. This is an action arising under 42 U.S.C. § 1983, seeking monetary damages for the violation of Mr. Gerte's right to due process under the Fourteenth Amendment to the United States Constitution and for the conversion and statutory theft of Mr. Gerte's property pursuant to Connecticut State law and the pendant jurisdiction of this Court.

JURISDICTION AND VENUE

5. This action arises under the Fourteenth Amendment to the United States Constitution and the Civil Rights Act of 1871, by virtue of 42 U.S.C. §§ 1981, 1983, 1988 and 28 U.S.C. §§ 1331, 1343(a)(3).
6. The supplemental jurisdiction of the District Court is invoked pursuant to 28 U.S.C. §1367 as to the Conversion and Statutory Theft State Claims.
7. Venue is conferred pursuant to 28 U.S.C. § 1391(b), as defendants are located in

Connecticut, and the events giving rise to this action occurred in the District of Connecticut.

JURY DEMAND

8. Pursuant to Fed. R. Civ. P. 38(b), Mr. Gerte demands trial by jury in this action.

PARTIES

9. CAROLYN A. KYZER, as Executrix of the Estate of Marc F. Gerte, is the successor Plaintiff to Marc F. Gerte, who was a resident of Connecticut and owned the dog named Jamie when the alleged incidents giving rise to this action occurred.
10. Defendant BOROUGH OF NAUGATUCK is a municipality as set forth by definition in C.G.S. § 7-148 and is a legal entity for purposes of 42 U.S.C. § 1983. The Borough is authorized by law to maintain departments, which act as their agent and for which it is ultimately responsible. The Borough is responsible for the hiring, control, training and supervision of all of its departments, including but not limited to the Borough's Police Department. The Borough assumes the risks incidental to the maintenance of its departments, and the employment in its departments, as said risks attach to the public consumers of the services provided by the Borough departments.

11. Defendant PETER BOSCO (“Officer Bosco”), during the time of the facts alleged herein, was a police officer, as set forth by definition in C.G.S. §7-294a, employed by the Borough of Naugatuck and is sued in his official and individual capacities.
12. Defendant PAUL BERTOLA (“Officer Bertola”), during the time of the facts alleged herein, was a police officer, as set forth by definition in C.G.S. §7-294a, employed by the Borough of Naugatuck and is sued in his official and individual capacities.
13. Defendant ROBERT O’DONNELL (“Officer O’Donnell”), during the time of the facts alleged herein, was a police officer, as set forth by definition in C.G.S. §7-294a, employed by the Borough of Naugatuck and is sued in his official and individual capacities.
14. Defendant BRIAN NEWMAN (“Officer Newman”), during the time of the facts alleged herein, was a police officer, as set forth by definition in C.G.S. §7-294a, employed by the Borough of Naugatuck and is sued in his official and individual capacities.
15. Defendant STEVEN HUNT (“Officer Hunt”), during the time of the facts alleged herein, was a police officer, as set forth by definition in C.G.S. §7-294a,

employed by the Borough of Naugatuck and is sued in his official and individual capacities.

16. Defendant JEAN DOBBIN, during the time of the facts alleged herein, was a resident of the State of Connecticut and throughout the course of these proceedings complained of herein was acting in concert with and as an agent of the Town and under color of State Law.

FACTS

17. At the time of the incidents alleged herein, Mr. Gerte was the owner of a female Labrador retriever dog named Jamie, who was his constant companion animal.

18. On Saturday, June 18, 2016, Mr. Gerte and Jamie were outside together in the Borough of Naugatuck when Defendant Officer Robert O'Donnell from the Naugatuck Police Department came upon them, determined that Mr. Gerte was incapacitated and required immediate emergency medical assistance, and oversaw the transportation of Mr. Gerte to Waterbury Hospital for treatment.

19. In the course of his duties as a police officer, Officer O'Donnell also took possession of Mr. Gerte's personal property including his dog, Jamie.

20. The municipal defendants, pursuant to a written procedure of the Defendant Borough, thereafter transferred or delivered possession and safeguarding of Mr.

Gerte's property to Defendant Dobbin as an agent of the Borough and acting on behalf of the Borough.

21. Upon release from the hospital, Mr. Gerte contacted the Naugatuck Police Department to retrieve his dog. The officer at the front desk told him this was not a police department matter but an animal control issue.
22. When Mr. Gerte went to the animal control facility to retrieve his dog, he was told no dog with Jamie's likeness was ever brought to the facility and the facility had no information on Jamie's location.
23. Mr. Gerte and his friends thereafter made numerous and continual efforts and inquiries to find and retrieve Jamie. In the course of searching for her, Mr. Gerte spoke to Officer Bosco and Officer O'Donnell, who told him to cease contacting animal control and the police department or he would be arrested.
24. On or about September 26, 2016, one of Mr. Gerte's friends helping him search for Jamie showed Mr. Gerte a picture he believed to be of Jamie on Defendant Jean Dobbins' Facebook profile page.
25. Mr. Gerte immediately went to see Defendant Dobbin at her office to determine if she indeed had his dog and to demand her return, but Dobbin refused to answer the door. Defendant Officer Bertola soon arrived, and Dobbin then for the first

time admitted having Jamie and refused Mr. Gerte's demand to return Jamie to him. Officer Bertola refused Mr. Gerte's demand to take action and assist him in regaining possession of Mr. Gerte's property and refused to return Jamie to plaintiff as well.

26. Defendant Officer Newman was a detective for the police department at this time and defendant Officer Hunt was a captain in the police department, both of whom had supervisory responsibilities over the other police officers herein. Officer Bertola contacted both of them on September 26, 2016 regarding this incident, but they failed and refused to take any steps to return Mr. Gerte's dog to Mr. Gerte or allow Mr. Gerte to file criminal charges or effect an arrest of the people who stole Mr. Gerte's dog.

27. Although Officer Bertola instructed Mr. Gerte to present paperwork for his dog at the police department headquarters the following day and that his dog Jamie would be returned to him, this did not occur. Although Mr. Gerte presented himself the next day with proper paperwork as instructed, the Defendants again refused to return Jamie to Mr. Gerte or accept a criminal complaint against Defendant Dobbin for the theft of Mr. Gerte's property.

VIOLATIONS AND CLAIMS FOR RELIEF

COUNT ONE

Due Process Clause of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983 and 42 U.S.C. § 1981 Against All Defendants

28. Paragraphs 1 through 27, inclusive, are incorporated herein under Count One with the same force and effect as if fully set forth at length herein.

29. Mr. Gerte's dog is property to which he is afforded 14th Amendment Due Process protection.

30. On June 18, 2016, Officer O'Donnell discovered Mr. Gerte in a condition requiring him to be hospitalized. At such time, Mr. Gerte's dog was with him. Due to the exigent nature of the situation, Officer O'Donnell, pursuant to his authority, took possession of Mr. Gerte's dog for safekeeping. Such possession, for the limited purpose of temporarily safeguarding Mr. Gerte's property, was lawful.

31. Pursuant to Naugatuck Police Department established procedures², Officer O'Donnell then placed Jamie in his police cruiser and delivered Mr. Gerte's dog to Defendant Dobbins for safekeeping.

² See Ex. A, Dept. Procedure—dog safekeeping & care

32. No police incident report of the June 18, 2016 incident was written by Officer O'Donnell for four months and until after Mr. Gerte had commenced a replevin action in Connecticut Superior Court to have his dog Jamie returned to him. The report did not indicate Officer O'Donnell had taken possession of the dog Jamie and did not indicate where Mr. Gerte's dog had been taken³. Officer O'Donnell also never provided Mr. Gerte with any notice he had transferred Mr. Gerte's property to Defendant Dobbin.

33. After Mr. Gerte was released from the hospital, the Naugatuck police department did not provide him with any information concerning the location of his dog, and Defendant Dobbin made no effort to inform Mr. Gerte that she had his dog.⁴

34. The municipal Defendants did not vouch for the dog or create any records or written documentation of their actions regarding Mr. Gerte's dog.

35. The municipal Defendants did not require Dobbin to sign a receipt and/or an acknowledgment she had Jamie in her custody or that such custody was totally for the purpose of safekeeping, to be returned to Mr. Gerte upon his return from the hospital when his incapacity had ceased. The municipal Defendants also did

³ See Ex. B, Incident Report 06/18/2016

⁴ See Ex. C, Transcript, 60, Dec. 20, 2016. (Exhibit C contains excerpts of the full transcript.)

not follow-up with Dobbin about her safekeeping role after they gave Mr. Gerte's dog to her.

36. The Defendant Borough never obtained a written acknowledgment accepting the obligation to safeguard the property for the benefit of Mr. Gerte and to return it upon his release, nor did they follow up to determine if she had provided such care and/or returned the property upon Mr. Gerte's release from the hospital.

37. On or about September 26, 2016, Mr. Gerte went to see Defendant Dobbin at her office to determine if she in fact had his dog and to demand her return, but Dobbin refused to answer the door. When Officer Bertola arrived, Defendant Dobbin then refused to return Mr. Gerte's dog to him. Officer Bertola took no action to regain possession of Mr. Gerte's property and refused to return his dog to him as well.

38. Officer Newman, a detective for the police department at the time, and Officer Hunt, captain of the police department, had supervisory responsibilities over the police officers herein. Officer Bertola contacted both Officers Hunt and Newman on September 26, 2016 regarding this incident, but they failed and refused to take any steps to return Mr. Gerte's dog to him.

39. Defendants Bosco, Bertola, O'Donnell, Newman, Hunt, and Borough, acting under the color of state law, violated Mr. Gerte's 14th Amendment rights by enforcing an

alleged policy whereby they knowingly took Mr. Gerte's dog for safekeeping but instead gave away the dog to Defendant Dobbin and thereafter unlawfully failed and refused to return Mr. Gerte's property.

40. Defendant Dobbin acted as the Defendant Borough's agent and willfully participated in taking possession and refusing to return Mr. Gerte's dog throughout the time period of activities giving rise to this complaint.

41. Defendant Dobbin's possession and safekeeping of Jamie are traditionally the exclusive obligations of the police department in possessing and caring for dogs impounded by the Defendant Borough, pursuant to C.G.S. §22-332 and the requirements of C.G.S. §53-247. When police officers take a dog into custody as was done in this matter, C.G.S. §22-332 requires they impound the animal at the pound serving the town where the dog was taken. Instead, Officer O'Donnell gave Mr. Gerte's dog to Defendant Dobbin.

42. This policy violated Mr. Gerte's rights under the 14th Amendment by placing the burden on Mr. Gerte to secure the return of his property during Defendants' daily failure to return Mr. Gerte's property until required by court order.

43. By requiring Mr. Gerte to take affirmative steps, including, *inter alia*, the hiring of an attorney, the commencement and participation in all formal procedural devices

of a replevin action, the preparation of formal legal pleadings, and the payment of filing fees to challenge the unlawful retention of Mr. Gerte's property, Defendants have acted unreasonably and unconstitutionally in violation of the Due Process Clause of the 14th Amendment.

44. Mr. Gerte suffered injury when he was wrongfully deprived of his property by a scheme involving all of the Defendants and sanctioned by Defendant Borough's intentional indifference to Mr. Gerte's rights. He has been damaged by reason of the Borough's violation of his Fourteenth Amendment rights, resulting from the breach of the Defendant Borough's non-delegable duty to safeguard and return property it originally and lawfully possessed for a limited and temporary purpose, when it thereafter refused to return the property to Mr. Gerte.

COUNT TWO

Common Law State Claim of Conversion Against all defendants

45. Paragraphs 1 through 44, inclusive, are incorporated herein under Count Six with the same force and effect as if fully set forth at length herein.

46. On June 18, 2016, Officer O'Donnell discovered Mr. Gerte in a condition requiring

him to be hospitalized. At such time, Mr. Gerte's dog was with him. Due to the exigent nature of the situation, Officer O'Donnell, pursuant to his authority, took possession of Mr. Gerte's dog for safekeeping. Such possession, for the limited purpose of temporarily safeguarding Mr. Gerte's property, was lawful.

47. Pursuant to Naugatuck Police Department established procedures⁵, Officer O'Donnell then placed Jamie in his police cruiser and delivered Mr. Gerte's dog to Defendant Dobbin.

48. On September 26, 2016 after months spent searching for his dog with no replies to his requests for information concerning the location of his dog from the municipal Defendants, Mr. Gerte determined Defendant Dobbin was in possession of Jamie.

49. In the presence of Defendant Bertola, Mr. Gerte immediately demanded Defendant Dobbin return Jamie to him. Defendant Dobbin, for the first time, refused Mr. Gerte's demand. Defendant Officer Bertola refused to regain possession of Mr. Gerte's property, refused to return Mr. Gerte's dog to Mr. Gerte and failed to inquire of Mr. Gerte what his wishes were regarding his dog.

50. On September 26, 2016, and without Mr. Gerte's authorization, Defendant

⁵ See Ex. A, Dept. Procedure—dog safekeeping & care

Dobbin, in concert with the assistance and approval of the municipal Defendants, held the dog despite Mr. Gerte's demands for her return.

51. Defendant Dobbin treated the dog as her own, keeping it in her possession and feeding it. Dobbin subsequently purchased a dog license which she received on September 28, 2016, and which listed Dobbin as the owner of Jamie.

52. Dobbin continued to possess and claim ownership over Mr. Gerte's property until December 23, 2016, when a court order of replevin⁶ established Mr. Gerte was entitled to immediate possession of the dog. Whereupon, a state marshal returned Jamie to Mr. Gerte.

53. Retaining such property and purposely concealing from Mr. Gerte the Defendants' possession of Mr. Gerte's dog was an interference of Mr. Gerte's property rights and a deprivation of Mr. Gerte's rightful ownership. Defendants Borough and Dobbin intended to permanently deprive Mr. Gerte of his property and his exclusive right to the use and enjoyment thereof.

54. As a direct and proximate result of Defendants' foregoing conduct, Mr. Gerte suffered damages.

⁶ See Ex. D, Replevin Mem. of Decision 12222016.

55. Mr. Gerte spent countless time and money frantically searching for Jamie as a result of the Defendants' acts and was also harmed by being deprived of his beloved companion animal and being forced to spend funds to prosecute a legal action in order to regain possession of Jamie.
56. Defendants' conduct constitutes conversion of Mr. Gerte's property and accordingly Mr. Gerte is entitled to damages.

COUNT THREE

State Claim of Statutory Theft Against all defendants

57. Paragraphs 1 through 56, inclusive, are incorporated herein under Count Three with the same force and effect as if fully set forth at length herein.
58. Defendant O'Donnell, acting in his capacity as an employee of the municipal Defendant, with full knowledge that Mr. Gerte's dog belonged to Mr. Gerte, initially took lawful possession of Mr. Gerte's dog on June 18, 2016, in order to safeguard the property.
59. However, on September 26, 2016, Defendant Borough and Defendants Bosco, Bertola, and O'Donnell failed to return Mr. Gerte's safeguarded

property to him after Mr. Gerte made demand for the return of said property.

60. Defendant Borough and Defendants Bosco, Bertola, and O'Donnell continued to obstruct Mr. Gerte's attempts to regain possession of his property until December 23, 2016.

61. In retaining such property, the Defendants intended to permanently deprive Mr. Gerte of his property and his exclusive right to the use and enjoyment thereof, and intended to appropriate such property to themselves.

62. As a direct and proximate result of Defendants foregoing conduct, Mr. Gerte suffered damages. Defendants conduct constitutes statutory theft and Mr. Gerte is, therefore, entitled to treble damages pursuant to C.G.S. §52-564.

PRAYER FOR RELIEF

WHEREFORE, Mr. Gerte suffered damages and seeks the following relief:

- a. On the first cause of action, damages as a result of defendants' violation of Mr. Gerte's due process rights under the Fourteenth Amendment to the U.S. Constitution, in whatever amount, exclusive of costs and interest, that Mr. Gerte is found to be entitled to by a jury;
- b. On the second cause of action, compensatory damages, including but not limited to, for the wrongful conversion and loss of use of Mr. Gerte's

/s/

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CERTIFICATION

This is to certify that on November 29, 2021, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/

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