

FILED: 7 OCTOBER 2005

Animals--euthanization of feral cats--"poke" procedure--language disavowed

The decision of the Court of Appeals in this case is affirmed. However, language in the Court of Appeals opinion regarding the "poke" procedure employed by defendant to determine whether a cat is feral or tame is disavowed because the issue of this procedure was neither the basis of plaintiff's claim nor properly before the Court of Appeals.

Appeal by plaintiff pursuant to N.C.G.S. § 7A-30(2), and cross-appeal by defendant, from the decision of a divided panel of the Court of Appeals, 168 N.C. App. 298, 607 S.E.2d 317 (2005), vacating in part and reversing and remanding in part an order entered on 18 August 2003 by Judge Elizabeth A. Heath in District Court, Lenoir County. Heard in the Supreme Court 13 September 2005.

Ward and Smith, P.A., by A. Charles Ellis and Cheryl A. Marteney, for plaintiff-appellant/appellee.

White & Allen, P.A., by David J. Fillippeli, Jr. and Gregory E. Floyd, for defendant-appellee/appellant.

PER CURIAM.

The decision of the Court of Appeals is affirmed. However, inasmuch as the issue of the "poke" procedure was not the basis of plaintiff's claim nor properly before the Court of Appeals, we specifically disavow the language in Section V. Civil Remedy for Protection of Animals in that court's opinion:

Testimony presented at trial tended to show that defendant employs a "poke" procedure to determine whether to impound or immediately euthanize an animal. On remand, the trial court should make findings of fact and conclusions of law regarding whether plaintiff has presented sufficient evidence to show defendant's use of the "poke" test to determine whether a cat is feral or tame and defendant's subsequent immediate

[euthanasia] constitutes "unjustifiable pain, suffering, or death." N.C. Gen. Stat. § 19A-1(2).

Justice for Animals, Inc. v. Lenoir Cty. SPCA, Inc.,
168 N.C. App. 298, 306-07, 607 S.E.2d 317, 322-23 (2005). Thus,
on remand, the trial court is not to consider the "poke"
procedure.

MODIFIED AND AFFIRMED.