

[PUBLISH]

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 18-14808

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JACQUELYN JOHNSTON,

Plaintiff-Appellee,

*versus*

GARY S. BORDERS,  
individually and in his official capacity as Sheriff of Lake County,  
Florida,  
JENNIFER FERGUSON,

Defendants-Appellants.

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 6:15-cv-00936-PGB-DCI

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Opinion of the Court

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No. 19-13269

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JACQUELYN JOHNSTON,

Plaintiff-Appellee-Cross Appellant

*versus*

GARY S. BORDERS,  
individually and in his official capacity as  
Sheriff of Lake County, Florida,  
JENNIFER FERGUSON,

Defendants-Appellants-Cross Appellees.

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 6:15-cv-00936-PGB-DCI

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Before JORDAN, NEWSOM, and TJOFLAT, Circuit Judges.

PER CURIAM:

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These appeals involve two conceptually different causes of action against separate defendants. These claims were pled together and tried to a jury empaneled for each claim. In one claim, the plaintiff, an at-will employee of a sheriff's office, sued the sheriff, alleging that he made false and stigmatizing statements in terminating her employment that deprived her of a liberty interest in her reputation without affording her a post-termination hearing to clear her name in violation of the Due Process Clause of the Fourteenth Amendment. In the other claim, the plaintiff alleged that a sheriff's office co-employee, whom she supervised, defamed her in violation of state tort law. The jury found for the plaintiff on both claims.

The defendants appeal the judgments entered pursuant to the jury's verdicts in No. 18-14808. In No. 19-13269, the sheriff appeals the judgment awarding the plaintiff an attorney's fee on the claim brought against him. Having considered the parties' briefs and with the benefit of oral argument, we affirm the judgments in No. 18-14808 and vacate and remand for further proceedings the judgment for attorney's fee in No. 19-13269.

### I.

In October 2014, Gary S. Borders, Sheriff of Lake County, Florida (the "Sheriff"), took control of the Lake County Animal Shelter from the Board of County Commissioners amidst public

outcry over high euthanasia rates.<sup>1</sup> The Sheriff intended eventually to run the shelter as a “no-kill” or “low-kill” shelter. The terms are interchangeable, but “no-kill” is a misnomer—it simply refers to any shelter that maintains a euthanasia rate of no more than 10 percent for at least a year. The Sheriff’s plan to achieve “no-kill” status was simple: the shelter would not euthanize animals merely to create space for other animals.

On October 1, 2014, the Sheriff hired Jacquelyn Johnston as Director of Animal Services. Before being hired, she was interviewed by the Sheriff and Major Wayne Longo—who oversaw the animal services division of the Sheriff’s Office. Both Major Longo and the Sheriff told Johnston that the shelter’s euthanasia practices had been under “public scrutiny” and that the goal was to reduce euthanasia rates. The Sheriff also told Johnston that he “wanted to make sure that all adoptable pets had the opportunity to be adopted,” and that he “was interested in moving toward no-kill.” At the same time, the Sheriff let Johnston know that he “understood that there would still be issues regarding public safety in cases of dangerous [] or aggressive dogs . . . [or animals] that came in very injured or ill.”

On her first day of work, Johnston met with her immediate supervisors—Major Longo and Captain Todd Luce—who told her to review the governing policies that the Sheriff’s Office had

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<sup>1</sup> Under the Florida Constitution, Article VIII, § 1(d), the Sheriff is an officer of Lake County.

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inherited from Lake County. Among the policies Johnston reviewed was one governing when animals would be eligible for euthanasia. The gist was that euthanasia was permitted only for animals that were not adoptable, and animals would generally be considered adoptable unless they were dangerous, sick, or injured. Even for unadoptable animals, euthanasia was not permitted unless alternatives—such as returning the animal to its owner or transferring the animal to a rescue facility—would be unavailable.

Major Longo and Captain Luce also introduced Johnston to Jennifer Ferguson, who would be Johnston's immediate supervisor. Because Ferguson had been working at the shelter for five months and was acting interim director before Johnston was hired, Major Longo and Captain Luce told Johnston that she would be a useful resource in learning shelter policies and practices.

After a staff meeting on October 9, 2014, Ferguson told Johnston that the shelter had received two dogs that were being kept outside because there was no room for them in the shelter. Johnston asked Ferguson whether she had contacted any rescue facilities or foster homes to house the dogs, and Ferguson replied that she had, but that they were "all full."

Johnston then did a "walkthrough" of the shelter to see whether she could find space for the dogs. The shelter was divided into two areas—the "adoption area," which was open to the public, and the "isolation area," which was not. An animal's location in either the adoption or isolation areas did not indicate whether the animal was fit for adoption. Each animal had a "kennel card" with

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