

IN THE SUPREME COURT OF NORTH CAROLINA

No. 361A97

FILED: 6 FEBRUARY 1998

RICKEY WAYNE MELLON

v.

CATHIE W. PROSSER, Individually, and as a Deputy of the Cleveland County Sheriff's Department; DAN CRAWFORD, Sheriff of Cleveland County; and CLEVELAND COUNTY SHERIFF'S DEPARTMENT

Appeal of right by defendants pursuant to N.C.G.S. § 7A-30(2) of the decision of a divided panel of the Court of Appeals, \_\_\_ N.C. App. \_\_\_, 486 S.E.2d 439 (1997), reversing an order entered on 13 May 1996 by Ferrell, J., in Superior Court, Cleveland County. Heard in the Supreme Court on 16 December 1997.

No brief for plaintiff-appellee.

*Womble Carlyle Sandridge & Rice, by G. Michael Barnhill and W. Clark Goodman, for defendant-appellants.*

PER CURIAM.

That part of the opinion of the majority in the Court of Appeals remanding this action to the Superior Court for joinder of the sheriff's surety as a party is reversed for the reasons set forth in the dissenting opinion of Judge Wynn. In all other respects, the opinion of the majority in the Court of Appeals is affirmed for the reasons stated therein.

AFFIRMED IN PART; REVERSED IN PART.