IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL DISTRICT OF
JONES COUNTY, MISSISSIPPI

DAVID SENNE AND MARY ELLEN SENNE — PLAINTIFFS

VS. — NO: 2018-10-CV8

ALEX HODGE, IN HIS OFFICIAL CAPACITY AS SHERIFF OF JONES COUNTY, MISSISSIPPI, AND THE HUMANE SOCIETY OF THE UNITED STATES — DEFENDANTS

AMENDED ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT

This case originated in the Complaint in Replevin filed on August 9, 2018, by David Senne and Mary Ellen Senne against Alex Hodge, in his official capacity as Sheriff of Jones County, Mississippi, and The Humane Society of the United States. In their replevin suit, the Sennes claimed ownership of five (5) domesticated dogs ranging in age from approximately twelve (12) years to approximately twenty (20) years. The Sennes alleged an emotional attachment to the five (5) dogs and requested the Court's assistance in restoring their possession of the dogs. More specifically, the Sennes alleged that on July 11, 2018, their home and property in the First District of Jones County was "descended upon" by "a horde of law enforcement officers, along with personnel of The Humane Society of the United States, under the direction of Defendant Hodge." They further alleged that the "invasion" was "orchestrated as a publicity stunt by alerting and having present numerous news media" by Defendant Hodge.

The Sennes further allege that they were later arrested for aggravated animal cruelty, "subsequently dressed in convict clothes, their private body cavities searched, handcuffed and paraded before cameras to Justice Court." They allege that the Defendants violated their rights under the Constitution of the United States and the Constitution of the State of Mississippi and that the application of statutory authority "was and is unconstitutional as applied IN THIS CASE."

In their prayer paragraph, the Plaintiffs request the Court to determine the rights of the parties to the possession of their five domesticated dogs and that, until a final hearing, the Court direct any Defendant in possession of their dogs to maintain them in as good or better condition as when seized from the Plaintiffs.

In his Answer Sheriff Hodge alleges, among other things, that the dogs in question were forfeited by a judicial order pursuant to Miss. Code Ann. §97-41-2 and that this action is therefore barred. He further alleges that he is not in possession of the dogs that the Plaintiffs seek and that this action is barred by Miss. Code Ann. §11-37-155.

Sheriff Hodge contends that on July 11, 2018, pursuant to a valid Chancery Court Order, the Plaintiffs' premises were searched and numerous animals were seized.

In its Answers and Defenses, The Humane Society of the United States contends that it is not in possession of the five (5) domesticated dogs of the Plaintiffs and that the Plaintiffs' ownership rights were forfeited by judicial order pursuant to §97-41-2. The Humane Society also asserts that the Plaintiffs' claims are barred by §11-37-155; that the Jones County Chancery Court issued a Warrant for Search and Seizure on July 10, 2018; that The Humane Society accompanied the Jones County Sheriff's representative on July 11, 2018, to execute the Warrant; and that fifty-five (55) dogs and thirty-four (34) cats were "rescued" while seventeen (17) deceased animals were seized from the property. Both Defendants defend by contending that the animals were forfeited to the Jones County Justice Court on July 17, 2018, and thereafter the ownership of the dogs was transferred to The Humane Society pursuant to the Court Order.

Both Sheriff Alex Hodge and The Humane Society have filed Motions for Summary Judgment.

In the past, Southern Cross Animal Rescue (SCAR) had transferred animals and their care to the Sennes. According to the Sennes, some of these were animals that no one wanted and the alternative for these animals was to be killed. According to the Sennes, they were "long time

animal lovers" and even though overwhelmed with the number of animals to be cared for, they could not turn down an animal, including those "dumped upon them" by SCAR. The Sennes spent their own funds to provide for the animals.

David Senne is retired from the military as a Lieutenant Colonel. He is the recipient of a Purple Heart medal as the result of his service in the war in Vietnam and apparently suffers from dementia.

In the Reply to the Motion for Summary Judgment and Countermotion for Summary Judgment filed by the Sennes, they claim that Mrs. Senne was presented with an alternative during the early morning hours of July 11, 2018: they could surrender all the animals outside their actual home to The Humane Society, which promised to care for the animals and find homes for them, and they would then be allowed to keep their five (5) household dogs or else all animals would be removed during the seizure. According to Mrs. Senne, she accepted this offer based upon their hopes for the non-household animals and their desire to protect their "household pets" to whom they were bonded.

In a video taken the morning of the seizure, a friend of the Sennes is seen and heard in conversation with the apparent spokesperson for The Humane Society. During the video, the Sennes' friend Sean Murphy mentioned that Mrs. Senne was "hysterical" that morning after the arrival of everyone involved with the seizure, and he also mentioned the competency issue as to Mr. Senne. The Humane Society spokesperson is heard telling Mr. Murphy and his wife (who made the video) that there was another option – that the four household dogs (she kept referring to them as four instead of five) did not have to be included in the voluntary surrender and that they could be included in whatever other process "the Lieutenant will cover." The spokesperson explained that Mrs. Senne could surrender all animals except the four she felt a moral obligation to. She explained that otherwise all the other animals will be seized and held for judicial process and Mrs. Senne would have to post money for their care and that "will be very expensive."

The spokesperson stated that The Humane Society could take all the ones Mrs. Senne was comfortable surrendering and they could help them medically and find them homes. Otherwise, they will be held in perpetuity through the process.

Near the end of the video, The Humane Society spokesperson tells Mr. Murphy, "we have also assured her that we will not touch the four that she has talked about which I just named to you. She does not have to relinquish those animals if they should so choose."

On the Animal Surrender Form of The Humane Society (HSUS) (attached by the Plaintiffs to their Response to the Defendant Hodge's Motion for Summary Judgment), the following words are hand-written:

All animals removed from the above listed property

with the exception of

1) Miss Poo **4) Precious**

2) Loco **5)Abby**

3) Sister Angel

In conjunction with the Animal Surrender Form, Mary Ellen Senne signed a "Surrender Acknowledgement."

Prior to the seizure, on May 18, 2018, Stacy Thrash, Heather Williams, Savannah Pipkens and Leanne Brewer, SCAR volunteers, visited the Sennes' property to check on several dogs previously taken to the Sennes by SCAR. They claimed by Affidavits executed on July 9, 2018, that they went to an octagonal-shaped pavilion building with garage doors instead of walls where dogs were kept and a cinder/cement block building with a sign "Kitty City" behind the octagonal-shaped building where cats were kept. In their Affidavits, they stated that in the octagonal-shaped building they saw wire cages stacked upon one another with dogs in the cages without food or water with urine and feces on the blankets in the cages. At the cinder/cement block building (referred to as "Kitty City") where the cats were kept, they said there wire cages

stacked to the roof with cats in the cages with a strong ammonia smell and no litter boxes with urine and feces-soaked blankets in the bottom of the cages. One of the five, Heather Williams, stated that "Mary Ellen was very scattered" and she was "wearing a silk moo-moo and slip-on crocs with no undergarments." She said she "had the impression that maybe she had just gotten out of bed." Another affiant, Savannah Pipkens, said it appeared that the dogs "were rarely, if ever, let out of these small crates." And "there was no food or water in any of the kennels."

The five (5) household dogs of the Sennes were not mentioned anywhere in any of the four Affidavits, and it does not appear from the Affidavits that any of the SCAR representatives visited in the home of the Sennes to observe the five (5) pets kept in the home.

Based upon the Affidavits of the SCAR representatives, Lt. David Ward of the Jones County Sheriff's Department executed an Affidavit for a Search Warrant of the Sennes' property at 178 Lyon Ranch Road, Ellisville, Mississippi. The Affidavit recites that his Affidavit was made for the purpose of showing that probable cause existed that unlawful animal cruelty was occurring at that location. The Affidavit sought the authority to seize all living or deceased animals, "inside or outside." Ward's Affidavit requested permission to search "all buildings, structures, barns, houseboats, outbuildings attached or unattached which may house animal. . . ."

The Affidavit further recited that agents of SCAR had conducted an on-site inspection of the Senne property to follow-up and determine the health and well-being of approximately ten (10) animals formerly in the care and custody of SCAR that were placed with the Sennes. He recited that on May 18, 2018, the four SCAR representatives had visited the property and that they had made photographs which "revealed what appeared to be wide spread crimes involving cruelty to animals. . . ." His Affidavit states that following the SCAR representatives' inspection on May 18, 2018, SCAR contacted The Humane Society of the United States which in turn requested the Sheriff's Office's assistance in the investigation.

Deputy Ward stated his professional opinion that Mr. David Senne and Mrs. Mary Ellen Senne were keeping animals in violation of Mississippi law, and that the animals must be seized for their care and protection. He requested that the Sheriff's office be authorized to receive assistance from the Mississippi Department of Wildlife, Fisheries and Parks and civilian volunteers from The Humane Society of the United States and Southern Cross Animal Rescue. Ward's Affidavit was sworn to on July 10, 2018, before Chancellor Frank McKenzie. Thus, no evidence that the five household dogs of the Sennes had been cruelly treated, neglected or abandoned was submitted to either Judge McKenzie at the time the Search Warrant was issued or to Justice Court Judge Graham at the time the Forfeiture Order was entered.

Based upon the Affidavit, Chancellor Frank McKenzie executed a Warrant for Search and Seizure on July 10, 2018, finding probable cause to believe there was evidence of unlawful animal cruelty and authorizing the search of "Residence and Property of DAVID G. SENNE and MARY ELLEN SENNE more specifically described as 178 Lyon Ranch Road, Ellisville, First Judicial District of Jones County, Mississippi." The Warrant authorized the search of "[a]ll building, structures, barns, houseboats, outbuildings attached or unattached which may house animals on terra firma or private bodies of water. . . ." The Warrant further authorized the seizure of all animals living or deceased.

The Notice of Seizure pursuant to Miss. Code Ann. §97-41-2, executed by Deputy Lt. David Ward on July 11, 2018, reflects the "owners/custodian" as "Mary Ellen Senne/David Senne." The Notice of Seizure advised that the seized animals were being cared for by The Humane Society of the United States as temporary custodian. The subject of that Notice of Seizure was the five (5) household dogs of the Sennes since the other dogs and cats were apparently voluntarily surrendered. The Notice stated that relinquishment of ownership of the animals would stop costs sufficient to provide for their care while the case was pending, and further set forth that the bond or cash security deposit for thirty days of care for the five (5) dogs

would be $950.00 per dog for a total of $4,750.00. That amount would have to be posted within three (3) days of the seizure or else the animals would be forfeited to the Court.

The Notice of Seizure stated that they had five (5) days to request a hearing before the Court named in the Search Warrant (which was the Chancery Court) to determine whether they were able to provide adequately for the animals and were fit to have custody of the animals. The Notice of Seizure was signed by Deputy Lt. David Ward and appears to have been signed by Mary Ellen Senne. At the hearing on the Summary Judgment Motions, none of the attorneys could represent to the Court that the Notice was signed by David Senne.

At this point, a few things that appear to be factual should be noted:

1. The video tape of the discussion between Sean Murphy, friend of the Sennes, and the spokesperson for The Humane Society and Major Tedford of the Jones County Sheriff's Department reflect the following statements by The Humane Society spokesperson to Mr. Murphy:

> "Those four don't have to be included on the voluntary surrender. They can be discussed in whatever other process the Lieutenant will cover with her. She can surrender all animals except the four she feels a moral obligation to."
>
> . . .
>
> "When you don't surrender it will go through the court process. We have also assured her that we will not touch the four she has talked about which I just named. She does not have to relinquish those animals if they should so choose."

2. The Animal Surrender Form of HSUS reflects the following language:

> All animals removed from the above listed property
>
> with the exception of
>
> 1) Miss Poo 4) Precious
>
> 2) Loco 5)Abby
>
> 3) Sister Angel

3. Despite the assurance from The Humane Society spokesperson that the household pets of the Sennes would not be seized, and despite the language in the Animal Surrender Form of The Humane Society that the five (5) household pets would not be removed from the

Senne's property, the said five (5) household dogs of the Sennes were in fact seized and were never returned.

4. None of the four SCAR representatives that visited the Senne's property on May 18, 2018, appear to have visited the residence of Mr. and Mrs. Senne where their five (5) household dogs were kept. None of the Affidavits of those individuals in any way addressed the household dogs/pets of Mr. and Mrs. Senne or discussed their condition in any way.

5. While David Senne is listed as "owner/custodian" together with his wife Mary Ellen Senne, to this point there is no verification of his signature on the Notice of Seizure. Also, his present mental infirmity was mentioned to The Humane Society's spokesperson and law enforcement personnel more than once during the seizure.

6. On July 19, 2018, County Prosecuting Attorney Brad Thompson filed a Motion for Order of Forfeiture and Release of Seized Animals regarding the five (5) household dogs of the Sennes in the Jones County Justice Court (not the Chancery Court where the Search Warrant had been issued). On that same day, July 19, 2018, the Justice Court of Jones County granted the Motion – without any notice of a hearing on the Motion given to the Sennes. According to the Sennes, they first learned of the Motion by the County Prosecuting Attorney and the judgment entered by the Justice Court when the Sheriff of Jones County filed his Motion for Summary Judgment in the instant action.

In the Motion for Summary Judgment filed by Sheriff Hodge, he urges that on July 10, 2018, Deputy Lt. Ward executed an Affidavit of underlying facts and circumstances after receiving statements from the SCAR volunteers and obtained a Search and Seizure Warrant from Chancery Court Judge Frank McKenzie for the seizure of all animals at the Senne property. He further contends that the seizure was properly executed on July 11, 2018, and that on the date of the seizure Mary Ellen Senne signed the Notice as did Lt. Ward. The next day, July 12, 2018, Deputy Lt. Ward submitted an inventory of the seizure to the Chancery Court of Jones County.

Then on July 19, 2018, Jones County Prosecutor Brad Thompson filed a Motion for Order of Forfeiture and Release of Seized Animals in the Jones County Justice Court. The Motion sought a Court Order regarding the five (5) animals seized from the household of the Sennes to be deemed forfeited. The Motion asserted that pursuant to Miss. Code Ann. §97-41-2, the Plaintiffs had five (5) days in which to petition the Court for a determination of the Plaintiffs' fitness to adequately care and provide for the well-being of the five (5) dogs and that they had

not done so. The Motion further set forth that under §97-41-2, the Sennes had three (3) days from the date of any request for a hearing to post bond sufficient to cover anticipated veterinary care and boarding costs of the animals and that they had failed to post the required bond. On the same day the Motion was filed, July 19, 2018, the Jones County Justice Court granted the County's Motion and ruled that the five dogs were forfeited to the Justice Court and that the Jones County Sheriff's Department could transfer ownership to an organization to house and care for the dogs.

The Motion for Summary Judgment filed by Sheriff Hodge sets forth that summary judgment can be appropriate in replevin actions, and that summary judgment is appropriate here because Deputy Lt. Ward "gave Plaintiffs written Notice of Seizure Pursuant to §97-41-2" and "Plaintiff Mary Ellen Senne signed the Notice" as did Lt. Ward. The Sheriff further urges that since the Sennes failed to request a hearing and post the required bond, a Forfeiture Order was entered, recognizing the dogs as forfeited to the Court by operation of law.

The Sheriff further argues that even though the information to obtain the Search Warrant was presented to the Chancery Court Judge and an inventory of the seizure was filed the day following the seizure with the Chancery Court Judge, nonetheless, the Jones County Justice Court had jurisdiction to consider the Motion and issue the forfeiture order. This, even though §97-41-2(2) provides that if the owner of the animal requests a hearing, such must be "in the court ordering the animal to be seized."

In support of his Motion, the Sheriff further cites that Miss. Code Ann. §11-37-155 provides:

> The action of replevin shall not be maintainable in any case of the seizure of property under execution or attachment when a remedy is given to claim the property by making claim to it in some mode prescribed by law, but the person must resort to the specific mode prescribed in such case, and shall not resort to the action of replevin.

Sheriff Hodge maintains that because there was a "remedy" provided for the Sennes in the forfeiture proceeding, then pursuant to §11-37-155 the Sennes were required to utilize the "specific mode prescribed" by §97-41-2, namely requesting a hearing and posting the bond in the forfeiture proceeding and that because the Sennes failed to do so, they may not pursue this replevin action.

Lastly, Sheriff Hodge urges that because the Justice Court judgment was not appealed by the Sennes within ten (10) days, they may not now institute a completely separate replevin action. The Sheriff, on the issue of replevin, also sets forth that one of the requirements of a replevin action is that the Defendant have possession of the property, and that replevin is not proper now since the Sheriff does not have possession of the dogs or any possessory interest in the dogs since the Order of the Justice Court authorized the transfer of the ownership of the five (5) household dogs of the Sennes to "an animal protection organization for human disposition *i.e.* adoption or rehoming."

The first issue to be addressed by the Court is whether §11-37-155 prohibits the filing and pursuit of this replevin action. That law, set out above, forbids the maintenance of a replevin action in any case of seizure of property **under execution or attachment** when a remedy is given to reclaim the property by making claim in some mode prescribed by law. So, the first consideration is whether this case involves the seizure of property "under execution or attachment." The Court finds that it does not.

The object of seeking and obtaining a writ of attachment is to give a creditor, upon commencement of a suit, a lien upon real estate of his debtor. It charges the real estate of the debtor with payment of his debts. It constitutes a real lien, which can be made available only upon the recovery of a judgment by the creditor against the debtor. *Saunders v. Columbus Life & General Ins. Co.*, 43 Miss. 583, 1870 WL 6688 (1870). Where no bond is executed as a part

of an attachment proceeding, the attachment is void. *Williams v. Thigpen*, 217 Miss. 683, 64 So.2d 765 (1953).

The Mississippi Supreme Court in *Marantha Faith Center, Inc. v. Colonial Trust Co.*, 904 So.2d 1004, 1010 (Miss. 2004), in Footnote 6 noted:

Generally, attachment distinguished from execution:

> Attachment is a form of execution issued before a judgment, or, as otherwise described, it is in the nature of a preliminary execution to secure satisfaction of the plaintiff's claim. The writs of attachment and execution are essentially different. An attachment is issued for the purpose of seizing property and holding it in order that, if a judgment should be obtained, the property thus seized will be forthcoming to satisfy such judgment, while an execution is a writ issued for the purpose of enforcing a judgment that has been obtained.

This Court has further reviewed statutory provisions for attachment against debtors and execution on judgments and concludes that the seizure of the Sennes' household dogs in this case was not "under execution or attachment." Therefore, §11-37-155 does not prohibit the filing and pursuit of the subject replevin action.

There are a number of troubling aspects to the process by which Mr. and Mrs. Senne lost their five household dogs in this case. No sworn testimony of any person that had witnessed cruel treatment, neglect or abandonment of the five household dogs of the Sennes was ever presented to the magistrate that issued the Search and Seizure Warrant. Therefore, as to those five animals, no probable cause was presented prior to the issuance of the Warrant. Further, as to the procedure outlined by §97-41-2 and the carrying out of that procedure in the manner done so by The Humane Society and the Sheriff, if the Sennes were not able or did not wish to post the bond of $4,750.00 as set by The Humane Society, they would suffer the forfeiture of their five household pets even if no evidence of cruel treatment, neglect or abandonment was presented to the issuing magistrate in support of the request and issuance a Search and Seizure Warrant. Needless to say, there are serious constitutional issues involved with what happened here.

Section 23 of the Constitution of Mississippi reads:

> The people shall be secure in their persons, houses and possessions, from unreasonable search or seizure; and no warrant shall be issued without probable cause, supported by oath or affirmation, **specially designating** the place to be searched and the person or **thing to be seized.**

Miss. Const. of 1890, art. 3, §23(1890) (emphasis supplied). Under this constitutional right, the privacy of the home has been considered sacred in the State of Mississippi, not to be invaded except by clear authority. *Scott v. State*, 266 So.2d 567, 569 (Miss. 1972).

The Warrant Clause of the Fourth Amendment:

> categorically prohibits the issuance of any warrant except 'particularly describing the place to be searched and the persons or things to be seized.' The manifest purpose of this particularity requirement was to prevent general searches. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.

Maryland v. Garrison, 480 U.S. 79, 84, 107 S.Ct. 1013, 1016 (1987).

The Mississippi Supreme Court has found that the Mississippi Constitution extends greater protections of an individual's reasonable expectation of privacy than those enounced under Federal law. *Graves v. State*, 708 So.2d 858, 861 (Miss. 1998). As reiterated in *Graves*, the warrant must be limited to the specific areas for which there is probable cause to search. And, the Mississippi Supreme Court has found that the Mississippi Constitution extends greater protections of an individual's reasonable expectation of privacy than those enounced under the Federal law. *Id.* In *Scott v. State*, 266 So.2d 567, 569-70 (Miss. 1972), the Mississippi Supreme Court held that "the protection afforded by Section 23 of our Constitution should be liberally construed in favor of our citizens and strictly construed against the State."

The United States Supreme Court in *Sniadach v. Family Finance Corp. of Bayview*, 395 U.S. 337, 89 S.Ct. 1820 (1969), held that in analyzing whether a seizure pursuant to a state

statute passed constitutional scrutiny, the question is whether there has been a taking of property without the procedural due process that is required by the Fourteenth Amendment. And that entails the question of what constitutes "the right to be heard." 395 U.S. at 339, 89 S.Ct. at 1821.

Three years after *Sniadach*, the United States Supreme Court in *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983 (1972), held that Florida and Pennsylvania statutes that denied a prior opportunity to be heard before chattels were taken from their possessor deprived the owners of property without due process of law. In *Fuentes*, neither statute provided the owner/possessor an opportunity to challenge the seizure at any kind of **prior** hearing. The Court had to decide the issue of whether these statutory procedures violated the Fourteenth Amendment's guarantee that no state shall deprive any person of property without due process of law. 407 U.S. at 70, 92 S.Ct. at 1989.

In analyzing the Florida statute, the Court noted:

> Thus, at the same moment that the defendant receives the complaint seeking repossession of property through court actions, the property is seized from him. He is provided no prior notice and allowed no opportunity whatever to challenge the issuance of the writ. After the property has been seized, he will eventually have an opportunity for a hearing, as the defendant in the trial of the court action for repossession, which the plaintiff is required to pursue . . .[D]uring that period the defendant may reclaim possession of the property by posting his own security bond in double its value. But if he does not post such a bond, the property is transferred to the party who sought the writ, pending a final judgment in the underlying action for repossession.

407 U.S. at 75, 92 S.Ct. at 1991.

The *Fuentes* Court reaffirmed that the fundamental right to notice, and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner. 407 U.S. at 80, 92 S.Ct. at 1994, citing *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191 (1965). The primary question considered by the *Fuentes* Court was whether the state statutes reviewed were constitutionally defective for failing to provide hearings "at a meaningful time," *i.e.*, whether

procedural due process requires an opportunity for a hearing **before** the state authorizes its agents to seize property in the possession of a person upon the application of another. *Id.* The purpose of this requirement, according to the Court, is to ensure abstract fair play to the individual as well as to protect his use and possession of property from "arbitrary encroachment – to minimize substantively unfair or mistaken depravations of property. . ." 407 U.S. at 81, 92 S.Ct. at 1994.

The following excerpt from *Fuentes* is well worth repeating in this instance:

> The requirement of notice and an opportunity to be heard raises no impenetrable barrier to the taking of a person's possessions. . . For when a person has an opportunity to speak up in his own defense, and when the state must listen to what he has to say, substantively unfair and simply mistaken depravations of property interests can be prevented. It has long been recognized that 'fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . (And) no better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against an opportunity to meet it.' (*Joint Anti-Fascist Refugee Committee v. McGraff*, 341 U.S. 123, 170-172, . . .).
> If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. . . But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. 'This Court has not. . . embraced the general proposition that a wrong may be done if it can be undone.' *Stanley v. Illinois*, 405 U.S. 645, 647, 92 S.Ct. 1208, 1210. . .

Fuentes makes it equally clear that a temporary, non-final deprivation of property is nonetheless is a "deprivation" in terms of the Fourteenth Amendment. 407 U.S. at 85, 92 S.Ct. at 1996, citing *Sniadach.*

In *Fuentes*, the Court did note that the "root requirement" of due process, that an individual be given an opportunity for hearing before the deprivation of property, is subject to an exception for "extraordinary situations where some valid government interest is at stake that

justifies postponing the hearing until after the event." 407 U.S. at 82, 92 S.Ct. at 1195, citing *Boddie v. Connecticut*, 401 U.S. 371, 378-379, 91 S.Ct. at 783.

The Court noted that in only a few limited situations the Court had allowed outright seizure without opportunity for a prior hearing. In each such case, the seizure was directly necessary to secure an important governmental or general public interest and there had been a special need for very prompt action. Those cases involved the summary seizure of property to collect the Internal Revenue of the United States; to meet the needs of a national war effort; to protect against the economic disaster of a bank failure; and to protect the public from contaminated food and misbranded drugs. 407 U.S. at 91, 92 S.Ct. at 2000.

Now, as to the question of whether the seizure of the five household dogs of the Sennes incident to the prosecution of a possible misdemeanor constituted an "extraordinary situation" requiring "very prompt action," the Court notes the following timeline of facts in this case:

May 18, 2018	Visit by the SCAR representatives to the property of the Mr. and Mrs. Senne.
July 9, 2018	The four SCAR representative each sign an Affidavit concerning their visits to the Sennes' property.
July 10, 2018	Deputy Lt. David Ward executes Affidavit for a Search Warrant before Chancellor Frank McKenzie.
July 10, 2018	Chancellor Frank McKenzie executes Warrant for Search and Seizure.

The delay from May 18, 2018, when the SCAR representatives visited the Sennes' property to July 9, 2018, when their statements were reduced to writing (7 ½ weeks later) is a strong indication that this was not such an "extraordinary situation" with "a special need for very prompt action."

In *Louisville Kennel Club, Inc. v. Louisville/Jefferson County Metro Government*, 209 WL 3210690 (W.D. Ky.), the United States District Court for the Western District of Kentucky performed a constitutional analysis of an ordinance which provided that after confiscation of an animal deemed "victimized" and after a probable cause hearing for the confiscation, the owner must post bond for the animal's care and failure to do so results in immediate forfeiture of the animal. The Federal Court noted that where the Judge finds probable cause and the owner fails to timely post the appropriate bond, the seized animal is permanently forfeited. *Id.* at *9. The Court observed:

> The result is that a person whose dog has been confiscated, and against whom there is probable cause that he violated one of the humane treatment requirements, will lose his dog permanently unless he posts bond even if he is ultimately found innocent of the underlying charge. This possibility presents a legitimate due process claim.

Id.

The Court concluded that this portion of the ordinance was unconstitutional. *Id.* at *10.

The Notice of Seizure executed by Deputy Lt. David Ward and Mary Ellen Senne on July 11, 2018, advises that the estimated bond or cash security deposit for the five (5) dogs for thirty (30) days is $4,750.00. The last line of that document, in keeping with §97-41-2 advises, "Failure to post bond or cash security deposit within three (3) days shall result in forfeiture of the animal to the court." It is not known at what point during the day the document was signed by Mary Ellen Senne, but the Court does note that on the video, the family friend, Sean Murphy, advises the HSUS spokesperson and Major Tedford that Mrs. Senne is hysterical in the midst of the seizure process that day.

This Court has serious concerns about the constitutionality of §97-41-2. The Mississippi Supreme Court has held that an unconstitutional law is absolutely void, mere waste paper, and no rights can accrue under it. *Pearl River County v. Lacey Lumber Co.*, 124 Miss. 85, 86 So. 755, 758 (1921). This principal was repeated in *Tatro v. State*, 372 So.2d 283, 284 (Miss. 1979).

In this case, the Court is particularly troubled by:

- The representation by the HSUS spokesperson that the household pets would not be seized. The Animal Surrender Form of HSUS, which one would assume was completed by an HSUS representative, named the five (5) animals that would not be removed from the Sennes' property that day. However, those five animals were in fact seized and were not returned to the Sennes. It is unknown at this point in the case whether these representations were made with knowledge of their falsity or ignorance of the truth.

- The Notice of Seizure advised the Sennes that the estimated bond or cash security deposit for the five (5) dogs was $4,750.00 and that failure to post that bond or cash security deposit within three (3) days would result in forfeiture of the animals to the Court.

- The Affidavit for a Search Warrant executed by Deputy Lt. David Ward never mentions cruel treatment, neglect or abandonment of any of the five (5) dogs kept within the residence of Mr. and Mrs. Senne. His Affidavit was based on the sworn statement of the four (4) SCAR representatives who visited the property of Mr. and Mrs. Senne on May 18, 2018. Their Affidavits reflect their observations in non-residential buildings on the Senne property – an octagonal-shaped pavilion building with garage doors instead of walls where dogs were kept and a cinder/cement block building with a sign "Kitty City" behind the octagonal-shaped building where cats were kept. They never mention any dogs or cats in the home, residence or houseboats of Mr. and Mrs. Senne. Despite this, the Warrant for Search and Seizure broadly describes the places to be searched as "All buildings, structures, barn, houseboats, outbuilding attached or unattached which may house animals, on terra firma or private bodies of water. . . ." The property to be seized was broadly described as "all animals living or deceased, born or unborn, above or below the ground, contained or free roaming, inside or outside."

- Section 97-41-2 does not provide for a pre-seizure hearing as to the five (5) household pets which are the subject of the Complaint in Replevin, and as to these animals, there appeared to be no "special need for very prompt action" as evidenced by the 7 ½ week delay between the onsite inspection by the SCAR representatives and the obtainment and execution of a seizure warrant.

- Section 97-41-2 required the posting of the bond (in this case advised by HSUS to be $4,750.00) within three (3) days of a request for a hearing or the five (5) household dogs would be forfeited to the Court. Such a forfeiture could occur even though there was no probable cause demonstrated as to these five (5) animals and even though the Sennes may ultimately be acquitted of the charges as to those animals.

- The Motion for Order of Forfeiture by the County Prosecuting Attorney and the Order of Forfeiture and Release of Seized Animals by the Justice Court were both filed on the same day (July 19, 2018) without notice of any hearing on the Motion given to the Sennes.

Rule 24(d) of the Mississippi Rules of Civil Procedure provides that in any action for declaratory relief in which an adjudication of the unconstitutionality of any statute of the State of

Mississippi is among the relief requested, the party asserting the unconstitutionality of the statute shall notify the Attorney General of the State of Mississippi to afford him an opportunity to intervene and argue the question of constitutionality. In this case, in their Complaint in Replevin, the Sennes allege that the Defendants violated their rights under the Constitution of the United States and the Constitution of the State of Mississippi. They further assert that the attempted application of statutory authority was unconstitutional and that they are entitled to the immediate possession of their dogs (pets). The Court finds this to be a sufficient notice pleading of the Plaintiffs' request to find the statutory authority pursued in this case to be unconstitutional.

Rule 19(a) of the Mississippi Rules of Civil Procedure provides that a person who is subject to the jurisdiction of the Court shall be joined as a party in the action if in his absence complete relief cannot be accorded among those already parties. The Rule further provides that if he has not been so joined, the Court shall order that he be made a party. The Court finds that the constitutionality of Miss. Code Ann. §97-41-2 as applied in this case is one of the central issues of the litigation. The Court further finds that complete relief cannot be accorded among those already parties in this case without the Attorney General of the State of Mississippi being made a party.

For all of the reasons set forth above, the Court now denies the Motions for Summary Judgment and orders that counsel for the Plaintiffs shall take the necessary steps within thirty (30) days of the date hereof to make the Attorney General of the State of Mississippi a party by proper service of process, that the Attorney General then state his position on the question of constitutionality of §97-41-2 of the Mississippi Code.

This Amended Order is entered to revise the previous Order entered on December 27, 2018, as follows: to correct the word "formally" to "formerly" in the last paragraph on Page 5; to correct the word "is" to "does" in the last line of the third paragraph of Page 10; and to correct the spelling of the first name of Mr. Murphy on Pages 3, 7, and 16 from "Shawn" to "Sean."

SO ORDERED AND ADJUDGED on this the 3rd day of December, 2018.

Hal Williamson

CIRCUIT COURT JUDGE