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

ORDER

Before the Court for decision are the separate Motions for Reconsideration filed by Defendant Alex Hodge, in his official capacity as Sheriff of Jones County, Mississippi, and by Defendant The Humane Society of the United States (HSUS), seeking reconsideration of the Order Denying Motions for Summary Judgment entered by this Court on December 27, 2018. Also before the Court are the following Motions filed by the Plaintiffs: Motion for Actual and Punitive Damages for Conversion, Trover, Wrongful Deprivation of Property, and All Ancillary Relief so as to Due (sic) Complete Justice Without a Multiplicity of Cases, Motion for Contempt for Concealing and Disposing of Property, Motion to Compel Production of Property Which is the Subject Matter of This Lawsuit (Plaintiffs' Dogs), and Motion to Grant Summary Judgment to Plaintiffs.

FACTUAL BACKGROUND

The Plaintiffs David and Mary Ellen Senne kept a large number of dogs and cats on their property in the First District of Jones County. In the past, Southern Cross Animal Rescue (SCAR) had transferred dogs and cats and their care to the Sennes. According to the Sennes, some of the dogs and cats were animals that no one wanted and the alternative for these animals was to be killed. The Sennes allege that even though they were overwhelmed with the number of animals to be cared for, they could not turn down an animal, including those "dumped upon them" by SCAR. They spent their own funds to provide for the animals.

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On May 18, 2018, four (4) SCAR volunteers visited the Sennes' property to check on several dogs previously taken to the Sennes by SCAR. They executed Affidavits fifty-two (52) day later on July 9, 2018, wherein they stated that they went to an octagonal-shaped pavilion building on the property of the Sennes on May 18, 2018, where dogs were kept and to a cinder-cement blocked building with a sign "Kitty City" behind the octagonal-shaped building where cats were kept. They further stated in their Affidavits 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, where the cats were kept, they said there were wire cages stacked to the roof with cats in the cages and the strong smell of ammonia and no litter boxes with urine and feces-soaked blankets in the bottom of the cages. One of the volunteers stated that on the morning of their visit "Mary Ellen was very scattered" and she was "wearing a silk moo-moo and slip-on crocs with no undergarments." The affiant said she "had the impression that she had just gotten out of bed." David Senne retired from the military as a Lt. Colonel. He is the recipient of a Purple Heart Medal as the result of his service in the war in Vietnam and apparently at all times relevant in this case, he has suffered from dementia.

The SCAR representatives only mention the dogs and cats housed in the octagonal-shaped pavilion building and the cinder-cement block building ("Kitty City"). They do not mention in their Affidavits inspecting the residence or home of the Sennes or make any reference to the five (5) household dogs of the Sennes.

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 on July 10, 2018, before Chancellor Frank McKenzie. His Affidavit recites that it was made for the purpose of showing that probable cause existed that unlawful animal cruelty was occurring at the Sennes' property at 178 Lyon Ranch Road, Ellisville, Mississippi. 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 animals. . . ."

The Affidavit of Lt. Ward 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 had been placed with the Sennes. He recited that on May 18, 2018, the four (4) SCAR representatives had visited the property and made photographs which "revealed what appeared to be wide-spread crimes involving cruelty to animals. . . ." The Affidavit also recited 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.

Ward stated his opinion that the Sennes 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 & Parks and civilian volunteers from The Humane Society of the United States and Southern Cross Animal Rescue.

Based upon Ward's Affidavit, Chancellor McKenzie executed a Warrant for Search & 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 the Sennes. The Warrant authorized the search of "[a]ll buildings…" and the seizure of "all animals living or deceased."

In the early morning hours of July 11, 2018, with local television station cameras in place, a number of personnel from The Humane Society of the United States and the Jones County Sheriff's Department "descended upon" the property of the Sennes and seized fifty-five (55) dogs

and thirty-four (34) cats, and also seventeen (17) deceased animals, from the property. Included among the seized animals were the five (5) household dogs of the Sennes.

A Notice of Seizure Pursuant to Miss. Code Ann. §97-41-2 was executed by Lt. Ward on July 11, 2018, reflecting the "owners/custodian" as "Mary Ellen Senne/David Senne." The Notice of Seizure advised that the animals were being cared for by The Humane Society of the United States as temporary custodian. The subject of the Notice of Seizure was the five (5) household dogs of the Sennes since the other dogs and cats were apparently voluntarily surrendered by the Sennes. The Notice of Seizure stated that the relinquishment of ownership of the animals would stop costs sufficient to provide for their care while the case was pending and that the estimated bond or cash security deposit for thirty (30) days for the care of the five (5) dogs is **$4,750.**

The Notice provided that failure to request a hearing within five (5) days will result in forfeiture of the animals to the Court. It further provided that if a hearing was requested, the Sennes would have three (3) business days "to post a bond or security with the Court Clerk in an amount sufficient to repay all reasonable costs sufficient to provide for the animals' care." It is right after that notification that the Notice of Seizure sets forth that the estimated bond or cash security deposit for thirty (30) days for the five (5) dogs is $4,750. Thereafter, the Notice stated that "the Court" is ultimately responsible for determining the bond or cash security deposit sufficient to repay all reasonable costs to provide for the animals' care, and that failure to post bond or security deposit within three (3) days shall result in the forfeiture of the animals to the Court.

The Notice of Seizure was signed by Lt. Ward and Mary Ellen Senne. According to the Affidavit of Deputy Clara McKinley, Mr. Senne also signed the Notice even though there appears to be some uncertainty about that from the pleadings. (For example, see page 7 of Defendant Humane Society of the United States' Response to the Necessity of Actual Possession of

Plaintiffs' Property.) At any rate, the medical issues of David Senne were apparently obvious to Lt. Ward on July 16, 2018, (the date Mr. and Mrs. Senne were arrested for aggravated animal cruelty) when he requested that Judge Graham hold a special bond hearing "[d]ue to the medical issues with Mr. David Senne." (See Supplement #3 Narrative created by Lt. Ward on July 18, 2018.) (Exhibit B-2 to Plaintiffs' Reply to Motion for Reconsideration.)

In a video taken the morning of the seizure, Sean Murphy, a friend of the Sennes, is seen and heard in conversation with the apparent spokesperson for The Humane Society. During the video taken by Sean's wife, Sean mentions 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 can be heard telling Mr. Murphy and his wife that there was another option – that the four (4) household dogs (she kept referring to them as 4 instead of 5) 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 the animals except the four (4) 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 for HSUS stated that The Humane Society could take all the ones that Mrs. Senne was comfortable surrendering and they could help them medically and could find them homes. Otherwise, she said, 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 (4) 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 Defendant Hodges' 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**	

Notwithstanding the above assurances from the spokesperson of The Humane Society, those five (5) household dogs of Mr. and Mrs. Senne were taken during the seizure and were never returned to them. The Animal Surrender Form reciting that all animals "removed" from the above listed property with the exception of those five (5) named household dogs was signed by Mary Ellen Senne and the representative of The Humane Society.

The next day, on July 12, 2018, Lt. Ward submitted an inventory of the seizure to the Chancery Court. Then on July 19, 2018 (exactly 8 days after the seizure), without any Notice to the Sennes, the Jones County Prosecutor filed a Motion for Order of Forfeiture and Release of Seized Animals in the Jones County Justice Court. The Motion sought a Court Order declaring the five (5) household dogs seized, but not surrendered by 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 failed to do so. The Defendants have claimed that notice of the Motion to the Sennes and any hearing thereon were not necessary since the Sennes had already forfeited the dogs and had no ownership rights.

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 for the animals and that the Sennes had failed to post the required bond. On the very same day that the Motion was filed, the Jones County Justice Court granted the County's Motion and ruled in its Order of Forfeiture that the five (5) dogs were forfeited to the Justice

Court and that the Jones County Sheriff's Office was authorized to transfer ownership of the forfeited animals to an animal protection organization for humane disposition *i.e.* adoption and rehoming. Further, the Sheriff's office was authorized and directed to deliver to the Plaintiffs a Notice of Forfeiture Pursuant to Miss. Code Ann. §97-41-2 and attach the Justice Court Order to the Notice of Forfeiture.

To the Court's recollection, nowhere in the multitude of documents filed in this case has there been any claim or evidence that the Justice Court's directive of providing a copy of the **Notice of Forfeiture** and the Justice Court Order to the Sennes was ever accomplished (and therefore not prior to the Sennes filing their Complaint in Replevin). However, the Notice of Seizure signed by Mary Ellen Senne on July 11, 2018 set forth the forfeiture of the animals for failure to request a hearing within five (5) days and post the bond or cash security deposit within three (3) days. The Notice of Seizure states that a copy was served to the person listed, but the Court has seen no claim that the Notice was prominently posted as required by the statute. Nonetheless, the attorney for Mr. and Mrs. Senne has maintained throughout that the first notice the Sennes had of the entry of the Order of Forfeiture was when it was attached to the Motions for Summary Judgment in this case.

On August 9, 2018, twenty-nine (29) days after the seizure, the Sennes filed their Complaint in Replevin against Alex Hodge, in his Official Capacity as Sheriff of Jones County, Mississippi, and The Humane Society of the United States. The Sennes claimed ownership of their five (5) domesticated dogs ranging in age from approximately twelve (12) years to approximately twenty (20) years. They alleged an emotional attachment to the five (5) dogs and requested the Court's assistance in restoring their possession of the dogs. They alleged that on July 11, 2018, these dogs were wrongfully taken from them by the Defendants and that the Defendants wrongfully withheld them from the Plaintiffs, their legal and rightful owners.

The Sennes further set out that they were later arrested for aggravated animal cruelty (which incidentally requires proof of acting with malice to intentionally torture, mutilate, maim, burn, starve or disfigure any domesticated dog or cat) and that the actions of the Defendants pursuant to the statutory authority were unconstitutional and the application of the statute violated their rights under the Constitution of the United States and the Constitution of the State of Mississippi. They requested that the Court determine the rights of the parties to the possession of their five (5) domesticated dogs and that until a final hearing the Defendants be directed to maintain their dogs in as good or better condition as when seized from the Plaintiffs. The Plaintiffs did not seek immediate seizure of the dogs which would have required the extra expense of posting of a bond.

In his Answer, Sheriff Hodge alleges, among other things, that the dogs in question were forfeited by a judicial order on July 19, 2018, pursuant to Miss. Code Ann. §97-41-2 and therefore the replevin action was barred. He contends that he was not in possession of the property that the Plaintiffs sought. Sheriff Hodge further alleges that on July 11, 2018, pursuant to a valid Chancery Court Order, the Plaintiffs' premises were searched and numerous animals were legally 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 asserted in its Answers and Defenses that the Jones County Chancery Court had issued a Warrant for Search and Seizure on July 10, 2018; that The Humane Society accompanied the Sheriff's representatives 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 by the Jones

County Justice Court on July 19, 2018, and thereafter the ownership of the dogs was transferred to The Humane Society pursuant to the Court Order.

Both Defendants also claim that the Plaintiffs' claims are barred by §11-37-155, which forbids maintenance of a replevin action in case of seizure of property under execution or attachment when a remedy is given to reclaim of the property by making claim in some mode prescribed by law. This Court has previously addressed in its Order of December 27, 2018 why this section is inapplicable in this case.

Both Sheriff Hodge and The Humane Society have filed Motions for Summary Judgment. In their Reply to the Motions for Summary Judgment and Counter Motion for Summary Judgment, the Sennes 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 home to The Humane Society, which promised to care for the animals and find homes for them, and they would 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 her hopes for the non-household animals and their desire to protect their "household pets" to whom they were bonded.

In his Motion for Summary Judgment, Sheriff Hodge asserts that neither the Plaintiffs nor Jones County have a possessory interest in the dogs, and that ownership of the dogs was transferred to The Humane Society by Order of the Justice Court on July 19, 2018. He further asserts that a legal Search and Seizure Warrant was obtained and that on July 11, 2018 (erroneously referenced in paragraph 21 as July 11, 2017), Lt. Ward gave the Plaintiffs Notice of Seizure pursuant to §97-41-2 and "Plaintiff Mary Ellen Senne signed the Notice as did Lt. Ward." (paragraph 21) He further alleged that Jones County Prosecutor Brad Thompson filed a Motion for Order of Forfeiture and Release of Seized Animals in the Jones County Justice Court seeking an Order to deem the five (5) dogs forfeited since the Plaintiffs had failed to request a hearing

within five (5) days and failed to post bond to cover the veterinary care and boarding costs of the animals within three (3) days pursuant to §97-41-2. As set forth above, the Justice Court granted the County's Motion the same day, and Sheriff Hodge urges that the dogs were therefore forfeited by operation of law to the Justice Court that day and the Sheriff's Department was authorized to transfer ownership to an organization "for humane disposition, i.e. adoption and rehoming."

Sheriff Hodge also asserts 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; and as stated previously, he argues that replevin is not proper since he did not have possession of the dogs or any possessory interest in the dogs after the Order of the Justice Court authorized the transfer of the dogs to an animal protection organization for humane disposition.

Aside from the issue of the constitutionality or not of §97-41-2, there are troubling aspects as to the process by which the Sennes lost their five (5) household dogs:

- No sworn testimony or affidavit of any person who had witnessed the household pets of the Sennes in their residence or home was ever presented to the Court that issued the Search and Seizure Warrant. There was no testimony or sworn statement as to cruel treatment, neglect or abandonment of dogs within the household of the Sennes. The only buildings described in the Affidavits of the SCAR representatives were the octagonal-shaped pavilion and the cinder-cement block building. Therefore, there was no probable cause as to dogs within the home of the Sennes.
- Most any person presented with the Notice of Seizure that was presented to Mary Ellen Senne for her signature on July 11, 2018, in the midst of the search of their property and seizure of the animals would interpret the Notice of Seizure to require the posting of $4,750 to avoid the forfeiture of the dogs. When faced with the authority of numerous Sheriff's Department officials and Humane Society personnel and presented with the Notice of Seizure for her signature on the spot, it is difficult to imagine any other conclusion by Mary Ellen Senne. In a roundabout way, it appears that either the Sheriff's Department or The Humane Society "determined" the bond rather than "the Court." Indeed, the HSUS spokesperson had already told family friend Sean Murphy that posting bond for their care "will be very expensive."
- No notice of the forfeiture motion or hearing was provided to the Sennes, and, to this Court's knowledge, the Notice of Forfeiture and the Justice Court Order were not provided to the Sennes as ordered by the Justice Court.

Sheriff Hodge, in his Memorandum of Authorities in Support of Motion for Reconsideration argues that the video tape recording of The Humane Society's spokesperson with the Sennes' friend does not specify that the animals would not be *removed* from the property, only that the five (5) subject animals did not have to be *surrendered* or "relinquished." He urges that the five (5) subject dogs "were never surrendered by the Plaintiffs," but were instead "seized." He states, "the moving defendants never initiated or made representations that all animals would not be either seized or surrendered from the property." (Page 8 of the Memorandum of Authorities in Support of Motion for Reconsideration.)

Similarly, The Humane Society of the United States in its Motion for Reconsideration argues that the video tape "in Defendant's view does not specify that the animals wouldn't be *removed* from the property, only that the animals did not have to *voluntarily surrendered* or "relinquished" by the plaintiffs. (Page 3 of the HSUS Motion for Reconsideration.)

However, on the video tape the spokesperson for HSUS stated:

> When you don't surrender it will go through the court process, we have also assured her that **we will not touch** the four (4) that she has talked about which I just named.

Additionally, the Animal Surrender Form of HSUS, which was presented to Mrs. Senne for her signature, contained 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**

It occurs to this Court that the inclusion of that specific language in the Animal Surrender Form of HSUS combined with the representation of the HSUS spokesperson that "we will not touch the four (4) that she has just talked about which I just named" would cause most people to

believe that the named dogs would not be taken from the Plaintiffs' property the day of the seizure.

SEARCH AND SEIZURE

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. 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."

As much as this Court is concerned with the constitutionally defective means by which the five (5) household dogs were seized, there is an even more glaring constitutional problem.

PROCEDURAL DUE PROCESS

Procedural due process imposes constrains on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the 5th or 14th Amendment. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 901, 47 L.Ed.2d 18 (1976).

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 that 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* would appear particularly applicable in the case at hand:

> 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, . . .).

However, in *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406 (1974), the United State Supreme Court held that *Sniadach* and *Fuentes* merely stand for the proposition that a hearing must be had before one is finally deprived of his property and do not deal with the need for a predetermination hearing where a full and immediate post-termination hearing is provided. 416 U.S. at 611; 94 S.Ct. at 1902. The usual rule, according to the *Mitchell* Court, has been "[w]here only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate." (*Id.* citing *Phillips v. Commissioner*, 283 U.S. 589, 596-597, 51 S.Ct. 608, 611, 75 L.Ed. 1289 (1931).

In *Mathews v. Eldridge*, *supra*, the U.S. Supreme Court ruled that due process was flexible and called for such procedural protections as the particular situation demanded. 424 U.S. at 334, 96 S.Ct. at 902. According to the Court, "[a]ll that is necessary is that the procedures be tailored, in light of the decision to be made, to 'the capabilities and circumstances of those who are to be heard,'... to ensure that they are given a meaningful opportunity to present their case." 424 U.S. at 349, 96 S.Ct. at 909. The specific dictates of due process, according to *Mathews*, require consideration of three (3) factors:

1. The private interest that will be affected by the official action;
2. The risk of erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and
3. The Government's interest, including the function involved and the physical and administrative burdens that additional or substitute procedures requirements would entail.

424 U.S. at 334-35, 96 S.Ct. at 903.

Procedural due process considers the means by which the deprivation of a property interest was affected. Procedural due process rules are meant to protect persons from the mistaken or unjustified deprivation of life, liberty or property. The right to procedural due

process is "absolute" because of the importance to organized society that procedural due process be observed. See *Bowlby v. City of Aberdeen, Miss.*, 681 F.3d 215, 222-23 (5th Cir. 2012).

Under Miss. Code Ann. §97-41-2, there is no right of a pet owner to a pre-deprivation, meaningful due process hearing in regard to the seizure of their five (5) household dogs. Clearly, the Sennes had a protected property interest in their five (5) dogs which were their personal property. That, of course, is the private interest affected by the seizure of their five (5) household dogs.

Under the second prong of the *Mathews* balancing framework, the risk of erroneous deprivation of the pet owners' interests under §97-41-2 is significant. It could very well be that the deteriorating condition of the dogs alleged to be the result of cruel treatment was instead the result of extreme advanced age of the animals and the emotional inability of the pet owners to have the animals euthanized. It could also be the result of the fact that the animal was in poor physical condition or was suffering from some ailment/disease at the time the animal was dropped off at the owners' property. It is certainly possible for a Judge to find probable cause that an offense has been committed, but later find the person innocent of the criminal charge.

Under §97-41-2, if a dog owner is unable to put up the required bond or security for the care of the dog(s) within three (3) days of any request for a hearing, then the dog is forfeited with no hearing, and the owner has no subsequent recourse for recovery under the statute even if he/she is ultimately found innocent of the underlying charge. It would be meaningless under §97-41-2 for the owner to request a hearing if the owner didn't feel he/she could afford the costs of care or be able to pay the sum within three (3) days. Thus, there is a significant risk of erroneous deprivation, which some sort of pre-deprivation hearing or, at a minimum, a process for payment of the costs of the care of the dog(s) **after** conclusion of the hearing could easily remedy.

Under the third prong of the *Mathews* test, while the government certainly has an interest in preventing abuse and neglect of animals, it would seem that the government would have little

interest in keeping ownership of pets belonging to a pet owner that is actually innocent of cruel treatment or neglect of the animal(s).

In this case, either The Humane Society of the United States or Sheriff Hodge (or someone in his department) set the estimated bond or cash security deposit for the care of the five (5) dogs at **$4,750**. This amount was based upon a thirty-day period of care for the five (5) dogs. The Notice of Seizure Pursuant to Miss. Code Ann. §97-41-2 appears on the letterhead of Jones County Sheriff's Department and was obviously completed by either Lt. Ward, another officer of the Sheriff's Department or someone on behalf of The HSUS. It was presented to Mary Ellen Senne for signature, and, as mentioned, set out the total estimated bond or cash security deposit for thirty (30) days of care for the five seized (5) dogs. Likely unbeknownst to Mary Ellen Senne at the time, Miss. Code Ann. §97-41-2 requires that the Court hold a hearing within fourteen (14) days, of receiving a request for a hearing. But even for fourteen (14) days, utilizing the rates and amounts set in the Notice of Seizure, the bond or cast security deposit would have been set at $2,750.

Even if the amount were only four or five hundred dollars, if the animal owner under §97-41-2 cannot post that amount with the Court Clerk within three (3) days of the animal owner's request for a hearing, then the animal is forfeited to the Court. This Court finds that this procedure and requirement of §97-41-2 is a violation of the "absolute" right to procedural due process of the Sennes and a violation of their 14th Amendment right to procedural due process.

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

In the *Louisville Kennel Club* case, one section of the county code of ordinances allowed authorities to take possession of an animal considered to be a victim of several forms of inhumane treatment. Once an animal was confiscated, the ordinance provided for a hearing before a judge to determine whether probable cause existed for the confiscation. If so, the owner was required to post a $450 bond within twenty-four (24) hours to cover the costs of thirty days' boarding and veterinary care for the animal which remained in the city's possession. The ordinance mandated permanent forfeiture of a seized animal if the judge finds probable cause and the owner fails to timely post the appropriate bond. *Id.* at *9. In its analysis of "procedural due process" in the ordinance, the Court proclaimed:

> 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.

Consequently, the Federal District Court in Kentucky found the part of the ordinance that would permanently deprive a pet owner of his property upon failure to post the bond for the boarding and care of the animal, absent a finding of guilt, is unconstitutional.

This Court finds the decision of the Federal Court in Kentucky to be logical and sound. Accordingly, this Court declares Miss. Code Ann. §97-41-2, or at least that part requiring the posting of a sum of money prior to a due process hearing, to be unconstitutional. The Mississippi Supreme Court has held that an unconstitutional law is absolutely void, mere waste of 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 *Tatro*, the Mississippi Supreme Court cited *Fay v. Noria*, 372 U.S. 391, 408, 83 S.Ct. 822, 832, 9 L.Ed.2d 837, 850-851 (1963):

> An unconstitutional law is void, and is as no law. An offense created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. . . .

According to the U.S. Supreme Court in *Norton v. Shelby County*, 118 U.S. 425, 442, 6 S.Ct. 1121, 1125, 30 L.Ed. 178 (1886):

> An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.

An unconstitutional act is void *ab initio*, having no legal effect, as though it had never been passed. *Alexander v. Cockrell*, 294 F.3d 626, 630 (5th Cir. 2002). No vested rights flow from, or are acquired by, the enactment of an unconstitutional statute. *Stubbs v. Capital Paint & Glass Co.*, 160 Miss. 832, 135 So. 495, 496 (1931).

The Court notes that although the Attorney General of the State of Mississippi was notified of the claim of unconstitutionality of the subject statute and subsequently allowed to intervene in this case, the Attorney General has taken no written position of the constitutionality of the statute by any filing in this case. The Court granted the Attorney General's request for a more definite statement which was provided by the Plaintiffs' attorney on April 24, 2019, and no statement of the position of the Attorney General on question of constitutionality has been filed.

The seizure of the five (5) household dogs of the Sennes is therefore set aside as a void act. The Court further sets aside the Order of Forfeiture, and all acts that have resulted in the displacement of the Plaintiffs' five (5) household dogs.

THE REPLEVIN ACTION

Both Defendants in this case have previously filed Motions for Summary Judgment, contending primarily that the Defendants did not have possession of the five (5) household dogs of the Plaintiffs at the time the Complaint in Replevin was filed by the Plaintiffs on August 9, 2018. Both Defendants have correctly asserted that under Miss. Code Ann. §11-37-101, one of the elements of a replevin action is that the property is in possession of the Defendant. Miss. Code Ann. §11-37-101(d).

Sheriff Hodge further asserts that the Plaintiffs did not have a possessory interest in the five (5) dogs since the Plaintiffs had failed to request a hearing on the forfeiture and failed to post the bond required by §97-41-2. Sheriff Hodge claims that the Jones County Justice Court on July 19, 2018 granted the forfeiture motion, the dogs were forfeited by operation of law to the Justice Court of Jones County on that date, and the Justice Court Order authorized the Jones County Sheriff's Department to transfer ownership to an organization to house and care for the animals.

The Humane Society of the United States, in its Motion for Summary Judgment, asserts that the Plaintiffs' property was searched and their five (5) dogs seized pursuant to a valid search and seizure warrant; that the Plaintiffs voluntarily forfeited all of the animals except their five (5) household dogs; that the Plaintiffs failed to request a hearing and post the required bond or security; the dogs were forfeited to the Justice Court by the Order of the Justice Court on July 19, 2018; and the Court authorized the Sheriff's Office to transfer ownership of the forfeited animals to an animal protection organization. The HSUS further asserts that the Sheriff's Department then transferred ownership of the five (5) dogs to HSUS who in turn transferred ownership to another animal rescue organization to provide veterinary care and to rehome the animals.

In support of their Motion for Summary Judgment, HSUS attached the Affidavit of Sara Varsa who swore that she was the vice-president of the animal rescue team; she had personal knowledge of the seizure and subsequent transfer of the Plaintiffs' animals to the Washington,

D.C. area "on or about July 21, 2018"; and that the animals were transferred "to another animal rescue organization to provide veterinary care and to find the animals permanent homes."

The Plaintiffs, in opposition, state that their five (5) household dogs were seized contrary to the agreement with the Defendants on July 11, 2018, that if Plaintiffs surrendered all the other dogs and cats, they would be allowed to keep their five (5) household dogs, and that this agreement is reflected in the hand-written language on the Animal Surrender Form–HSUS; that the search and seizure warrant was invalid; that the warrant was issued without probable cause as to the five (5) household dogs of the Plaintiffs; that the warrants were issued based on the affidavit of Officer Ward whose affidavit is based entirely on hearsay and without Ward's personal knowledge and without any indication that the four (4) informants from SCAR had given reliable and credible information in the past that had lead to arrests and convictions of offenders; that because the warrant was invalid, the seizure of the five (5) dogs was illegal and of no effect; that the Notice of Seizure was not posted as required by §97-41-2; that §97-41-2 is unconstitutional; and the Order of Forfeiture and Release of Seized Animals was of no effect. In support, the Plaintiffs attached the affidavit of Mary Ellen Senne; the Animal Surrender Form–HSUS; the Notice of Seizure Pursuant to Miss. Code Ann. §97-41-2; the affidavits of the four (4) informants; Motion for Order of Forfeiture and Release of Seized Animals; and Order of Forfeiture and Release of Seized Animals. Later produced by both the Defendants and Plaintiffs was the Pre-Deployment Cooperative Agreement entered into on July 7, 2018 between The Humane Society of the United States and Alex Hodge, Sheriff of Jones County, Mississippi as the "Initiating Organization."

The Pre-Deployment Cooperative Agreement recites that the Jones County Sheriff's Office, as "Initiating Organization," requested the assistance of The HSUS in connection with an animal rescue. The provisions of the Agreement include the following:

1. Placed Animals. The Initiating Organization will transfer responsibility for the care of those Rescued Animals identified on separate documents to be prepared by the parties… to The HSUS. . . . **The Placed Animals shall at all times be considered to be in the custody of the Initiating Organization** and nothing in this Agreement is intended to convey custody or ownership of the Placed Animals to The HSUS.

. . .

3. Tranfers to Other Organizations; Foster Care. . . . The HSUS may not otherwise transfer any of the Placed Animals to the care or custody of any individual (including but not limited to foster care) or other organization **without the Initiating Organization's prior written approval.**

. . .

4. Initiating Organization: Related Issues.

. . .

The HSUS shall:

. . .

c. **Make the Placed Animals available to the Initiating Organization,** or any other federal, state or local authorities with jurisdiction, as such times and places as reasonably requested by the Initiating Organization or other authorities, including but not limited to **in connection with any trials or other proceedings.**

. . .

5. Term. This Agreement shall be **binding upon the parties until the earlier of the following events**:

a. The **mutual written termination** of this Agreement by the parties; or

b. The **HSUS being advised by the Initiating Organization in writing that the Placed Animals are no longer required** in connection with any ongoing investigation or litigation.

(emphasis supplied).

Rule 56(c) of the Mississippi Rules of Civil Procedure provides that summary judgment shall be granted by a court if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact." If there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law and summary judgment should be entered in his favor. *Williamson v. Keith*, 786 So.2d 390, 393 (Miss. 2001). In a motion for summary judgment, "an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits

or as otherwise provide in [Mississippi Rule of Civil Procedure 56], must set forth specific facts showing that there is a genuine issue for trial." *Stanley v. Boyd Tunica, Inc.* 29 So.3d 95, 97 (Miss.Ct.App. 2010) (quoting M.R.C.P. 56(e)). And, "[t]he evidence must be viewed in the light most favorable to the party against whom the motion has been made." *Duckworth v. Warren*, 10 So.3d 433, 436-37 (Miss. 2008)(citing *One South, Inc. v. Hollowell*, 963 So.2d 1156, 1160 (Miss. 2007)).

In regards to a summary judgment motion, "[t]he movant bears the burden of *persuading* the trial judge that: (1) no genuine issue of material fact exists, and (2) on the basis of the facts established, he is entitled to judgment as a matter of law." *Karpinsky v. American National Insurance Company*, 109 So.3d 84, 88 (Miss. 2013)(citing *Palmer v. Biloxi Reg'l Med. Ctr., Inc.*, 564 So.2d 1346, 1355 (Miss. 1990)).

In its original Motion for Summary Judgment and in the Motion herein, HSUS claims that, at the time the Sennes filed their Motion for Replevin, HSUS was not in possession of the five (5) dogs and, in support of such claim, relies upon the affidavit of an individual named Sara Varsa. As detailed above, HSUS, the movant, bears the burden of persuading the Court that it did not have possession, actual or constructive, of the five (5) dogs at the time the Sennes filed their replevin action. *Karpinsky v. American National Insurance Company*, 109 So.3d 84, 88 (Miss. 2013) (citing *Sweet v. TCI MS, Inc.*, 47 So.3d 89, 93 (Miss. 2010)).

As an initial matter, the Court finds that the affidavit of Varsa meets the technical requirements of Rule 56(e) of the Mississippi Rules of Civil Procedure. However, "[n]ot every affidavit presented for a court's consideration is competent summary-judgment evidence… 'conclusory, self-serving affidavits' are not a 'sufficient basis for granting summary judgment.'" *Id.*

In her affidavit, Sara Varsa states that she is employed by HSUS as a "Vice President, Animal Rescue Team," and that she has "personal knowledge of the seizure, and subsequent

transfer" of the five (5) dogs seized from the Sennes property. Affidavit of Sara Varsa, Para. 2, 3. Ms. Varsa additionally states that at some point after the Jones County Justice Court entered its Order of Forfeiture and Release of Seized Animals on July 19, 2018, and "on or about July 21, 2018," the (5) dogs were "transported to Washington, DC area and transferred to another animal rescue organization to provide veterinary care and find the Animals permanent homes." *Id.* at Para. 4. Finally, Ms. Varsa states that after transferring the five (5) dogs to the unspecified "animal rescue organization," HSUS had no further ownership or possessory interest in them. *Id.* at Para. 5.

The Affidavit of Ms. Varsa signed on October 30, 2018, is devoid of specific detail. It seems somewhat curious that Ms. Varsa fails to state what "animal rescue organization" the five (5) dogs were transferred to. While an approximate date of the transport of the five (5) dogs is provided, the Affidavit is not specific as to a date of transfer to the other animal rescue organization. It would seem reasonable that the "Vice President, Animal Rescue Team" of The HSUS with personal knowledge of the facts of this case should know and have records of which organization the five (5) dogs where transferred to, the day the transfer occurred, and the terms and conditions of the transfer. The fact that this more specific information is conspicuously lacking from Ms. Varsa's affidavit concerns the Court that her affidavit is merely self-serving and conclusory and therefore unpersuasive.

In *Sweet v. TCI MS, Inc.*, 47 So.3d 89, 90 (Miss. 2010), the plaintiff brought suit against the defendant, an investment company, after the defendant failed to go through with the purchase of a commercial building. The defendant filed a motion for summary judgment, arguing that it was not required to purchase the building because it had failed to obtain satisfactory financing, a contingency specified in the contract. *Id.* at 91. In support of its motion for summary judgment, the defendant only filed an affidavit from the President of the company, which stated that the defendant had attempted to obtain satisfactory financing but that it had failed to do so. *Id.* at 93.

The Mississippi Supreme Court held that affidavit did not show "when or how [the defendant] attempted to obtain financing, or why [the defendant's] available options were unsatisfactory," and instead found the affidavit to be self-serving and conclusory. *Id.* at 94. Therefore, the Mississippi Supreme Court found that the defendant had not met its burden of persuasion on its motion for summary judgment. *Id.*

The Court finds that the affidavit of Varsa in this case, similar to the affidavit in *Sweet,* lacks several necessary facts and causes the Court to question the specifics and requires some support for the conclusory statements.

From the Pre-Deployment Cooperative Agreement entered into between HSUS and the Jones County Sheriff's Office, it is apparent that Sheriff Hodge and The HSUS agreed that while the Sheriff's Office would transfer responsibility for care of the seized animals to The HSUS, the parties agreed that "custody" would at all times remain in the Jones County Sheriff's Office. It is further apparent that the parties agreed that HSUS could not transfer any of the animals to the care or custody of another organization without the prior written approval of the Sheriff's Office. Further, The HSUS agreed to make the animals available to the Sheriff's Office or any other local authorities as such time as reasonably requested by the Sheriff's Office or authorities including in connection with any trials or other proceedings.

The Agreement is binding upon the parties until the earlier of (a) the mutual written termination of the Agreement by the parties; or (b) HSUS being advised by the Sheriff's Office in writing that the animals were no longer required in connection with any ongoing litigation or investigation.

This Court has not been provided with any prior written approval by the Sheriff's Office authorizing HSUS to transfer any of the animals to the care of another organization. Nor have either of the Defendants provided the Court with any mutual written termination of the

Agreement by the parties, or the advisement in writing by the Sheriff's Office to The HSUS that the dogs were no longer required in connection with any ongoing investigation or litigation.

In light of the fact that the Court has now set aside the Forfeiture Order for having been entered pursuant to an unconstitutional statute and in light of the language of the Pre-Deployment Agreement, it is difficult to determine who has the legal possession (custody), actual or constructive, of the five (5) household dogs. However, based on the above, it is clear that there is a genuine issue as to possession/constructive possession of the five (5) dogs.

It should be noted at this point that the Mississippi Supreme Court has held that an action for replevin may be maintained where the defendant has constructive, rather than actual, possession of the disputed property. See *GMAC v. Fairley*, 359 So.2d 1386, 1388 (Miss. 1978). "Constructive possession" is "possession not actual but assumed to exist, where one claims to hold by virtue of some title, without having the actual occupancy. . ." *Regions Commercial Equipment Finance, LLC v. Performance Aviation, LLC*, 2017 WL 354275 *4 (S.D. Miss. 2017) (citing *Searcy v. Tomlinson Interests, Inc.*, 358 So.2d 373, 375 (Miss. 1978). It is also defined as "[c]ontrol or dominion over a property without actual possession or custody of it." *Regions Commercial Equipment Finance, LLC v. Performance Aviation, LLC*, 2017 WL 354275 *4 (citing *Black's Law Dictionary* 1351 (10th, ed. 2014)). As one case put it: "It is sufficient if a defendant has constructive possession, that is has such control over the property that he may deliver the possession of it if he so desires, as for example, where an agent holds property for his principal." *Bush v. Belenke*, 381 So.2d 315 (Fla. 1980).

For all of the foregoing reasons, the Defendants' Motions for Reconsideration are hereby DENIED.

THE SENNES' MOTION FOR SUMMARY JUDGMENT

In their Motion for Summary Judgment, the Sennes claim that it is an established fact that the Defendants have actual or constructive possession of the five (5) dogs and continue to

withhold possession from the Plaintiffs. The Plaintiffs bear the burden of persuading the Court that there is no genuine issue as to the Defendants being in actual or constructive possession of the subject five (5) dogs on August 9, 2018, when the Sennes filed this action. *Karpinsky v. American National Insurance Co.*, 109 So.3d 84, 88 (Miss. 2013) (citing *Palmer v. Biloxi Regional Medical Center, Inc.*, 564 So.2d 1346, 1355 (Miss. 1990)).

The Sennes filed their Motion to Grant Summary Judgment to Plaintiffs without any accompanying documentation, but relied also on their previously filed Counter-Motion for Summary Judgment. In other filings, the Sennes have urged that the Pre-Deployment Cooperative Agreement proves that the Defendants had actual or constructive possession of the five (5) dogs at the time the replevin action was filed. *See* the excerpts from the Pre-Deployment Cooperative Agreement set forth above.

The Defendants have argued that the Pre-Deployment Cooperative Agreement was only valid for the period of time beginning with the seizure of the Sennes' dogs and ending when the Justice Court entered its Order of Forfeiture and Release of Seized Animals on July 19, 2018 – therefore contending that the Cooperative Agreement was no longer in effect when the Sennes filed their replevin action on August 9, 2018. However, by the very terms of their document, the Cooperative Agreement was binding until the earlier of: (1) the mutual written termination of the Cooperative Agreement by both parties; or (2) The HSUS being advised by the Sheriff's Office in writing that the five (5) dogs were no longer required "in connection with any ongoing investigation or litigation." The Court has not been provided with any evidence that either of these termination events have occurred. But based upon the evidence before it, the Court cannot make the determination that there is no genuine issue as to the Defendants, or either of them, being in either actual or constructive possession of the five (5) dogs on August 9, 2018 when the Complaint in Replevin was filed. Therefore, the Plaintiffs' Motion for Summary Judgment is DENIED.

The Plaintiffs' remaining Motions, insofar as the Plaintiffs seek damages beyond those normally recovered in a replevin action, are DENIED. The Plaintiffs have not sought leave of the Court to amend their Complaint as required under Rule 15 of the Mississippi Rules of Civil Procedure. And, as to Defendant Alex Hodge, Sheriff, the Plaintiffs have not provided the requisite notice of claim as required by §11-46-11 of the Mississippi Tort Claims Act.

The Court reserves ruling on the Plaintiffs' Motion to Compel Production of Property and the Motion for Contempt for Concealing or Disposing of Property.

The Defendants' Motion for In-Camera Status Conference and Motion for Additional Time is DENIED, as is the Motion to Stay.

The attorneys for the parties shall contact the Court Administrator for a date for the trial on the issues of possession, actual or constructive, of the five (5) household dogs of the Sennes on August 9, 2018, the date of the filing of the Complaint in Replevin, and the issue of damages, if any, properly recoverable in a replevin action. Under Miss. Code Ann. §11-37-127, if the plaintiff prevails, the judgment in a replevin action is either for possession of the property or the value of the property, if the property "cannot be found" in addition to "any other damage the plaintiff may have sustained by reason of the wrongful taking or detention of such property by the defendant."

SO ORDERED AND ADJUDGED on this the 16TH day of July, 2019.

Dal Williamson

CIRCUIT COURT JUDGE