

IN THE SUPREME COURT OF IOWA

PAMELA SELLNER; TOM SELLNER;
CRICKET HOLLOW ZOO INC.; AND
PAMELA J. SELLNER TOM J.
SELLNER, AN IOWA GENERAL
PARTNERSHIP, d/b/a CRICKET
HOLLOW ZOO,

Petitioners,

v.

IOWA DISTRICT COURT FOR
DUBUQUE COUNTY,

Respondent.

Supreme Court No. 21-1947

Delaware County No. EQCV008505

**RESISTANCE TO
APPLICATION FOR WRIT OF
CERTIORARI/
DISCRETIONARY REVIEW**

INTRODUCTION

This is a case not only of Petitioners' willful and egregious disregard of a court order, but also of their shocking indifference to the health, safety, and welfare of animals subject to that order. On November 24, 2019, the District Court—in a ruling later affirmed on appeal—found that the Sellners had created and maintained a public nuisance in keeping hundreds of animals at their roadside zoo in neglectful and inhumane conditions ("November 24 Injunction Order"). It thus entered an injunction (among other things) divesting the Sellners of ownership of certain animals at their roadside zoo in Manchester, and ordering the animals' removal and placement in wildlife sanctuaries.

Five days after this Court denied the Sellners' request for a stay pending appeal, rescuers went to the Sellners' zoo on December 9, 2019 to execute the District Court's order. When they arrived, however, they saw trucks carrying cages and found many animals missing—birds, a fennec fox, bears, a camel, coyotes, and many more. A rescuer posted outside the zoo the previous night had seen trucks coming and going from the zoo. It was immediately apparent that the cages of a significant number of the animals subject to the November 24 Injunction Order were empty. Later it became clear that some of those animals were hidden off zoo premises. Others were dead.

Weather conditions prevented rescuers from removing all the animals present on December 9. When they returned three days later to carry out the District Court's order and finish the rescue, they found to their surprise some animals previously missing had returned. These animals had infections and parasites. They showed signs of malnutrition. Some of the animals successfully removed later had to be euthanized. It is irrefutable that animals covered under the November 24 Injunction Order died from the Sellners' mistreatment. And more than 60 were never located and thus could not be placed in sanctuaries, despite the November 24 Injunction Order.

Tracey Kuehl, Lisa Kuehl, Pamela Jones, and Haley Anderson, parties before the District Court ("the Resisting Parties"), *see* Iowa R. App. 6.107(5) accordingly

sought to hold the Sellners in contempt. The District Court held a four-day evidentiary hearing in January 2021. During these extensive proceedings, the District Court heard testimony from over a dozen witnesses, received dozens of exhibits, and accepted over 50 pages of post-hearing briefing.

Along with much other evidence, the Resisting Parties presented testimony from five rescuers—including a veterinarian—who saw unmistakable signs that animals missing on December 9 had been at the zoo within hours or days before the rescue began, and who observed that animals absent that day had returned on December 12. The Resisting Parties also submitted photographs and videos irrefutably showing empty animal enclosures where animals had been as recently as a month and a half before the rescue. They submitted uncontradicted Facebook, Craigslist, and www.exoticanimalsforsale.net sales posts for animals covered by the November 24 Injunction Order that Sellners put up *after* receiving the District Court's Order, as well as documents showing conclusively that the Sellners had arranged for the animals to be transferred out of Iowa after entry of the November 24 Injunction Order.

In contrast, the Sellners presented just a handful of handwritten documents that the District Court noted seemed created solely for the benefit of the contempt hearing and the testimony of three witnesses, one of whom the District Court found

committed perjury during the contempt hearing and all of whom it deemed “less than credible.”

In September 2021, after the Court of Appeals upheld the November 24 Injunction Order and this Court denied further review, the District Court issued a detailed, 13-page, single-spaced Order Re Application for Rule to Show Cause (“Contempt Order”), finding beyond a reasonable doubt that the Sellners willfully violated the court’s November 24 Injunction Order. The District Court found that the Sellners had deliberately, and “with much planning,” used “deception” to “hide the animals,” even “enlist[ing] others in the attempts to thwart the judicial process.” Finding that the Sellners committed two separate acts of contempt on December 9 and December 12, 2019, the District Court imposed a \$70,000 fine or, alternatively, ordered that the Sellners be jailed for 140 days. The Sellners have not yet paid any of that fine, have not spent any time in jail, and have not taken the chance provided by the District Court to purge themselves of contempt.

But in keeping with their practice of appealing every finding against them, the Sellners now challenge the Contempt Order, raising completely meritless arguments. The Sellners conceded, both at the contempt hearing and now, that the November 24 Injunction Order divested them of ownership in exotic animals and wildlife at their zoo and that the Resisting Parties were ordered to remove those animals. They conceded that they prevented removal of nearly 100 animals on December 9, 2019,

because they were missing or hidden outside the zoo property when rescuers arrived. They conceded that many—but not all—of those animals reappeared between December 9 and December 12, when rescuers returned to finish the rescue. And they conceded that their misconduct resulted in the deaths of at least two bears, one fennec fox, three groundhogs, and numerous other animals. The Contempt Order is correct.

In its Contempt Order, the District Court rejected Plaintiffs’ claims that the Resisting Parties lacked standing and found that Plaintiffs’ testimony about what happened after the November 24 Injunction was not credible. In the end, the District Court’s Contempt Order is supported by substantial evidence, it correctly interpreted and applied the law, and it is not an abuse of discretion in imposing punishment. The Sellners’ petition should be denied.

BACKGROUND

The relevant background is contained in the District Court’s Contempt Order, which the Resisting Parties adopt and incorporate here. A true and correct copy of the Court’s order is attached as Exhibit A. Relevant background is also contained in the District Court’s December 12, 2021 Order Re Motion for Reconsideration Pursuant to IRCP 1.904 (“Reconsideration Order”), which the Resisting Parties adopt and incorporate here. A true and correct copy of the Court’s order is attached as Exhibit B.

Additional background about the injunction proceedings underlying the contempt actions is contained in the Court of Appeals’ opinion in *Kuehl v. Sellner*, 965 N.W.2d 926 (Table), 2021 WL 3392813 (Iowa Ct. App. 2021). There, the Court of Appeals unanimously affirmed the District Court’s entry of a declaratory judgment and injunction prohibiting the Sellners from “confining animals in inhumane and unsafe conditions,” “obtaining other wild or exotic animals,” divesting the Sellners of “ownership and possessory rights” in the animals and ordering seizure of animals at the Sellners’ roadside menagerie. *Id.* at *1. As the District Court later found, however, the Plaintiffs willfully thwarted those efforts, (Exh. A. at 3), resulting in the contempt sanctions they now challenge.

REASONS FOR DENYING THE PETITION

The petition seeks a writ of certiorari on four contentions. None has merit. First, the District Court correctly found that the Resisting Parties had standing to pursue contempt charges. Second, substantial evidence supports the District Court’s finding that the Sellners violated the November 24 Injunction Order beyond a reasonable doubt. Third, the District Court correctly found that the Sellners committed two separate acts of contempt on December 9 and December 12, 2019. Fourth, the punishment imposed on the Sellners by the District Court was well within its wide discretion. This Court should exercise its discretion and deny the petition.

I. This Court has discretion to deny the petition, and it should do so here.

Under Iowa law, no right to appeal a contempt order exists, but the “proceeding may, in a proper case, be reviewed by certiorari.” *Opat v. Ludeking*, 666 N.W.2d 597, 606 (Iowa 2003) (citation omitted); see Iowa Code § 665.11. “[The Court’s] power to review lower court actions by issuing writs of certiorari is discretionary.” *Crowell v. State Pub. Def.*, 845 N.W.2d 676, 682 (Iowa 2014).¹ “In an action of *certiorari*, the object of which is to annul the action of an inferior tribunal, board, or officer, it is peculiarly the duty of the court to scrutinize the petition and interfere only in a case properly made; and even then it is said that the court may exercise a certain measure of discretion, and in general should exercise its power sparingly.” *Woodworth v. Gibbs*, 16 N.W. 287, 288 (Iowa 1883) (internal citations omitted).

“A writ of certiorari lies where a lower board, tribunal, or court has exceeded its jurisdiction or otherwise has acted illegally. For this reason, this court ‘may examine only the jurisdiction of the district court and the legality of its actions.’” *State Pub. Def. v. Iowa Dist. Ct. for Black Hawk Cty.*, 633 N.W.2d 280, 282 (Iowa

¹ The only question at this stage is whether to grant certiorari. See Iowa R. App. P. 6.107(3); *Crowell*, 845 N.W.2d at 682. The Court should not. But if it were to grant it on any issue, the Resisting Parties request full briefing before submission of the question whether to sustain or annul the writ. See Iowa R. App. P. 6.107(4); *Crowell*, 845 N.W.2d at 682.

2001) (quoting *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 678 (Iowa 1998)) (internal citations omitted). “Illegality exists when the court’s findings lack substantial evidentiary support, or when the court has not properly applied the law.” *Christensen*, 578 N.W.2d at 678.

For the reasons below, the Contempt Order correctly applied the law and is supported by substantial evidence. This Court should exercise its discretion to deny the petition.

II. Certiorari should be denied because the District Court correctly found that the Resisting Parties had standing to pursue contempt charges against the Sellners.

This Court reviews the District Court’s conclusion that the Resisting Parties had standing to pursue contempt charges for errors at law. *See Den Hartog v. City of Waterloo*, 891 N.W.2d 430, 435 (Iowa 2017); *Godfrey v. State*, 752 N.W.2d 413, 417 (Iowa 2008).

A. The Sellners do not challenge the standing test applied by the District Court.

The Sellners concede that the District Court applied the correct standing test. (Pet. at 3 ¶ 3). Under that two-prong inquiry, the “‘complaining party must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected.’” *Alons v. Iowa Dist. Ct. for Woodbury Cty.*, 698 N.W.2d 858, 864 (Iowa 2005) (citations omitted). The District Court recognized that this Court “has slightly altered” that test, explaining that a party advancing a claim must have a “special,”

rather than merely general, interest in the action and must be injured in fact. (Exh. A at 2). Applying that standard, the District Court found that the Resisting Parties had standing to seek contempt charges against the Sellners. (*Id.* at 3). That was correct.

B. The Resisting Parties had a specific legal interest in ensuring compliance with the November 24 Injunction Order.

As the District Court observed, Iowa courts “have inherent power to enforce decrees rendered by them, and, when injunctive decrees are violated, they have undoubted power to enforce obedience thereto by contempt proceedings.” *State v. Prouty*, 115 Iowa 657, ___, 84 N.W. 670, 673 (1900). In the injunction proceedings underlying the contempt action brought by the Resisting Parties, the District Court found that the Sellners had “created and maintained” a public nuisance “on their property relating to the operation of a zoo and exhibits of exotic animals.” (Exh. A at 1, 2). It thus entered an injunction divesting the Sellners of ownership in specific animals and ordering them removed and placed in wildlife sanctuaries. (*Id.*). Under the District Court’s injunction, the Resisting Parties “were empowered with duties and obligations” to arrange the animals’ removal. (*Id.* at 3). Yet the Sellners “precluded” the Resisting Parties from complying with those obligations by taking “deliberate action in contradiction” of the District Court’s injunction and removing the animals from the premises before rescuers could arrive. (*Id.* at 3–4); *see also Kuehl*, 2021 WL 3392813, at *1–2. For those reasons, the District Court ruled that the Resisting Parties had a specific legal interest in ensuring compliance with the

November 24 Injunction Order through contempt sufficient to satisfy the first prong of the standing inquiry. (Exh. A at 3).

That is consistent with Iowa law. Although the Iowa Supreme Court has never directly addressed what standing to pursue contempt requires, no Iowa court has ever found the party for whose benefit a judgment was rendered lacked standing to pursue contempt. Indeed, Iowa courts routinely implicitly find that one party has standing to pursue contempt against another party to the underlying action. *See, e.g., Sharkey v. Iowa Dist. Court for Dubuque Cty.*, 461 N.W.2d 320, 321 (Iowa 1990) (one party sought contempt against the other for failing to abate public nuisance by the date ordered); *Orkin Exterminating Co. (Arwell Div.) v. Burnett*, 160 N.W.2d 427, 428 (Iowa 1968) (one party sought contempt against the other for violating an injunction); *In re Marriage of Jones*, 815 N.W.2d 410 (Iowa Ct. App. 2012) (one party sought contempt against the other for failure to abide by a visitation order). In line with those cases, the District Court correctly found the Resisting Parties met the interest requirement of standing.

C. The Resisting Parties suffered injury in repeatedly observing the animals living in inadequate and inhumane conditions.

The District Court also correctly found that the Resisting Parties had an “interest in the health, welfare and safety of the animals” sufficient to satisfy the standing test’s injury prong. (Exh. A at 3). Iowa case law is clear that public nuisance, the underlying justification for court-ordered relief, “does not necessarily

involve interference with the use and enjoyment of land” and need not interfere with economic interests. *Freeman v. Grain Processing Corp.*, 848 N.W.2d 58, 67 n.3 (Iowa 2014); *see, also, e.g., Guzman v. Des Moines Hotel Partners, Ltd. P'ship.*, 489 N.W.2d 7, 10 (Iowa 1992) (pointing out a public nuisance involves interference with “rights of a community at large” whereas a private nuisance is “based on a disturbance of rights in land”); 3 Iowa Practice Series § 47.5. And courts have consistently recognized that individuals—like the Resisting Parties—have a legally cognizable aesthetic interest in observing animals in humane conditions that may be injured upon observing them in inhumane conditions. *See, e.g., Animal Legal Defense Fund v. Glickman*, 154 F.3d 426, 432–33 (D.C. Cir. 1998) (*en banc*) (*cert denied*); *Humane Society v. Hodel*, 840 F.2d 45, 52–53 (D.C. Cir. 1988). Even the United States Supreme Court “has repeatedly made clear . . . injury to an aesthetic interest in the observation of animals is sufficient” for standing. *Glickman*, 154 F.3d at 432; *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562–63, 112 S. Ct. 2130, 2137 (1992) (acknowledging “the desire to . . . observe an animal species, even for purely aesthetic purposes, is **undeniably** a cognizable interest for purpose of standing” (emphasis added)). That many share an aesthetic interest “does not make it less cognizable, ‘less distinct and palpable.’” *Glickman*, 154 F.3d at 432 (citation omitted).

A claim of aesthetic injury caused by observing animals living in “allegedly inadequate conditions of captivity” is thus sufficient to establish standing to pursue a public nuisance claim—and therefore contempt charges for violation of a nuisance abatement order. *See Animal Legal Defense Fund v. Lucas*, No. 2:10-cv-00040-PLD, 2019 WL 5068531, at *3–5 (W.D. Pa. October 9, 2019) (finding a claim of aesthetic injury caused by observing animals living in “allegedly inadequate conditions of captivity” is sufficient to establish standing to pursue a public nuisance claim); *Collins v. Tri-State Zoological Park of W. Maryland, Inc.*, 514 F. Supp. 3d 773, 780 (D. Md. 2021). This is especially true where, as here, the remedy awarded in the November 24 Injunction Order directed the Resisting Parties to rescue animals and transport them to zoos or sanctuaries.

As the District Court found, the Resisting Parties were initially paying customers of the Sellners’ zoo, and “[s]eeing the harm that was befalling the animals cre[a]ted emotional distress and anxiety” in the Resisting Parties. (Exh. A at 3). And when the Resisting Parties returned to carry out their obligations under the injunction “only coming to find the animals were mostly not present,” the absence of the animals they believed they would be rescuing “caused a resurgence of that feeling of emotional distress and anxiety.” The record amply supported these findings.

As the District Court heard and observed during the contempt hearing, Resisting Party Tracey Kuehl testified that she was significantly and adversely

affected by the knowledge that many of the animals she developed an interest and concern for were missing, possibly dead, and would likely never experience humane conditions at sanctuaries and rescues. (Tr. Vol. III, 171:20–190:10, Jan. 8, 2021). Tracey testified that the relief she experienced after her six years of intense worry for the animals at the zoo devolved into shock and anxiety upon learning of the ill fate of approximately one hundred missing animals. (*Id.*). Tracey testified that her injury and concern was further exacerbated by the fact that the animals the Resisting Parties were supposed to rescue had been missing for more than one year, and evidence suggests that some starved to death or died due to transportation stress, while others were transported to subpar or entirely unknown facilities. (*Id.*). When Tracey saw video and photographs from the rescue—the rows of empty cages evincing all the animals that were missing—she felt as though she had to relive her entire experience again. (*Id.*). As a direct result of the Sellners’ actions, Tracey was unable to experience closure or breathe any easier. (*Id.*). Her aesthetic injuries continued all the way through the contempt proceedings and were significantly exacerbated by the Sellners violations of the District Court’s November 24 Injunction Order. (*Id.*).

The District Court correctly found that the Resisting Parties had standing. The petition should be denied.

III. Certiorari should be denied because the District Court correctly found that the Sellners willfully violated the November 24 Injunction Order beyond a reasonable doubt.

The Sellners do not mention the applicable standard here, but it is well settled. “When a finding of contempt is challenged on appeal, review is not de novo; rather, the court examines the evidence to ensure that proper proof—substantial evidence—supports the judgment of contempt.” *Ervin v. Iowa Dist. Ct. for Webster Cty.*, 495 N.W.2d 742, 744 (Iowa 1993); *see also In re Marriage of Vanosdel*, 791 N.W.2d 430 (Iowa Ct. App. 2010) (“Contempt judgments must be reviewed to ensure substantial evidence supports the judgment of contempt.”). “[S]ubstantial evidence can be described as such evidence as could convince a rational trier of fact that the alleged contemner is guilty of contempt beyond a reasonable doubt.” *Erwin*, 495 N.W.2d at 744–45. In deciding whether substantial evidence exists, this Court must “construe the district court’s findings broadly and liberally,” and it may not “weigh[] the evidence or the credibility of the witnesses.” *Hendricks v. Great Plains Supply Co.*, 609 N.W.2d 486, 490 (Iowa 2000). “The factual findings of the district court are binding upon [this Court] if supported by substantial evidence.” *Zimmermann v. Iowa Dist. Ct. for Benton Cty.*, 480 N.W.2d 70, 74 (Iowa 1992).

A. The Sellners have waived any contention they violated the November 24 Injunction Order.

As the District Court recognized, a contempt finding demands proof that the contemner violated a court order and did so willfully. (Exh. A at 4 (citing *Ary v.*

Iowa Dist. Ct. for Benton Cty., 735 N.W.2d 621, 624 (Iowa 2007)). But the Sellners' certiorari petition challenges only the sufficiency of the evidence supporting the District Court's finding that they willfully disobeyed its November 24 Injunction Order. (Pet. at 13). As a result, they concede for purposes of review that they violated the November 24 Injunction Order. *See Sorci v. Iowa Dist. Ct. for Polk Cty.*, 671 N.W.2d 482, 490 (Iowa 2003) (holding that preservation rules apply to certiorari proceedings); *see also City of Canton, Ohio v. Harris*, 489 U.S. 378, 384 (1989) (“[T]he decision to grant certiorari represents a commitment of scarce judicial resources with a view to deciding the merits . . . of the questions presented in the petition.” (citation omitted)); *cf. Aluminum Co. of Am. v. Musal*, 622 N.W.2d 476, 479 (Iowa 2001) (“Issues not raised in the appellate briefs cannot be considered by the reviewing court.”).

B. Substantial evidence supports the District Court's finding that the Sellners willfully violated the November 24 Injunction Order.

When, as here, a violation is undisputed, the burden shifts to the contemner to produce evidence suggesting she did not willfully violate the order. *See Ervin*, 495 N.W.2d at 745. While the ultimate burden to prove willfulness rests with the party seeking a contempt conviction, the contemner has the burden of production regarding any defenses. *See id.* In this case, this Court's only task “is to determine whether the record supports the trial court's determination that the evidence shows

beyond a reasonable doubt that [the Sellners'] violation of the court order was willful.” *Id.* at 745. Ample evidence supports the District Court’s finding of willfulness. *See Tim O’Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996) (observing that the question on substantial-evidence review is “whether the evidence supports the findings actually made”).

The District Court’s Contempt Order—issued after a four-day evidentiary hearing and extensive post-trial briefing—is replete with factual findings and credibility determinations supporting its ruling that the Sellners willfully violated the November 24 Injunction Order. (Exh. A at 4–11); *see Perkins v. Madison Cty. Livestock & Fair Ass’n*, 613 N.W.2d 264, 267 (Iowa 2000) (“[W]e are especially deferential to the district court’s assessment of witness credibility.”). Although the Sellners accuse the District Court of “go[ing] out of its way to discount all [their] evidence and testimony,” (Pet. at 8 ¶ 5), it in truth appropriately found the Sellners’ testimony about what happened after entry of the November 24 Injunction Order “less than credible,” (Exh. A at 8).

To illustrate, the Sellners cite the testimony of Deb Virchow, which they apparently view as their most credible evidence. (Pet. at 9 ¶ 7). But, following expert evidence concluding Deb Virchow’s signature was forged on key documents, the District Court found that Virchow “committed forgery and therefore her testimony is deemed perjury before this Court.” (Exh. A at 9). Another witness for the Sellners

contradicted his own argument after “indicat[ing] he knew there was a court order” before removing several bears. The Sellners’ other witnesses proved no more believable or consistent, and the District Court found that the Sellners’ testimony itself “was not accurate in many regards and was lacking in credibility”—specifically pointing to the inaccurate and provably falsified records that the Sellners entered into evidence at the contempt hearing but apparently did not exist at the time of the rescue when they were served a Subpoena Duces Tecum. (*Id.*).

In short, the Sellners and their witnesses continuously contradicted themselves, each other, and the reliable rebuttal evidence the Resisting Parties produced (including Mr. Sellner being unable or unwilling to identify two individuals with in a photograph that was taken while he spent an entire day with them); they lacked even a modicum of credibility. In the end, the District Court thoroughly detailed the evidence presented during the four-day hearing, assessed the credibility of the testimony and exhibits, and found that the Resisting Parties’ evidence was entitled to belief. Having had the chance to observe the evidence firsthand, the District Court’s well-supported findings should not be disturbed. *See Tim O’Neill Chevrolet*, 551 N.W.2d at 614 (“The trier of fact—here, the district court—has the prerogative to determine which evidence is entitled to belief. The district court has a better opportunity than we do to evaluate the credibility of

witnesses. So we think factual disputes depending heavily on such credibility are best resolved by the district court.” (internal citation omitted)).

The record provides substantial evidence for a rational trier of fact to find the Sellners willfully violated the November 24 Injunction Order. For that reason, the petition should be denied.

IV. Certiorari should be denied because the District Court correctly found that the Sellners committed two separate acts of contempt.

The Sellners are correct that a contemner may be punished only once for a single continuous act of contempt; they, however, engaged in two separate acts of contempt. *See Palmer Coll. of Chiropractic v. Iowa Dist. Ct. for Scott Cty.*, 412 N.W.2d 617, 622 (Iowa 1987). In contending otherwise, the Sellners ignore the District Court’s Reconsideration Order and claim the District Court’s punishment “is more akin to giving the Appellants a daily fine until compliance than it is two separate contemptuous actions.” (Pls.’ Pet. at 14). That is incorrect. A contemner may be punished for each “new and separate violation.” *Palmer Coll.*, 412 N.W.2d at 622. And here, the District Court correctly ruled that the Sellners committed two separate contemptuous acts. (Exh. B at 2).

As the District Court found, the Sellners’ misconduct required the Resisting Parties (and their agents) to appear at the Sellners’ property on two separate dates to execute the District Court’s order. (Exh. A at 1). When rescuers first arrived at the property on December 9, 2019, the District Court found, they saw “numerous trucks

and persons not affiliated with the rescue,” the trucks carrying “many cages.” (*Id.* at 1). Although the District Court had ordered the Resisting Parties to remove animals subject to its November 24 Injunction Order, the rescuers discovered that “numerous animals were missing.” (*Id.*). Even so, the rescuers “conducted a thorough inventory of what was rescued and what yet needed to be rescued,” including ensuring “the cages were checked twice.” (*Id.*). After a second removal day was established, the rescuers returned on December 12, finding this time that “some of the animals that had been missing on the first day” had reappeared in cages on the Sellners’ property. (*Id.* at 1). But others never reappeared: it is undisputed that the Sellners in all prevented 61 animals from being removed from the zoo.

Although the Contempt Order plainly found that the Sellners committed two separate contemptuous acts, it was ambiguous whether the Sellners were being punished for each animal not present at the zoo on December 9 and again on December 12. (*Id.* at 11). But after the Sellners moved for reconsideration, the District Court clarified its ruling. In doing so, the District Court specified that the Sellners committed two separate and punishable acts of contempt, first in removing the animals on December 9 and second in returning some of the same animals on December 12. (Exh. B at 1–2); *see* Iowa R. Civ. P. 1.904(2) (prescribing that a court’s “findings and conclusions may be reconsidered, enlarged, or amended and the judgment or decree modified accordingly or a different judgment or decree

substituted”); *see also Dolly Invs., LLC v. MMG Sioux City, LLC*, No. 21-0014, 2021 WL 5919052, at *2 (Iowa Ct. App. Dec. 15, 2021) (affirming amended ruling issued on motion to reconsider).

In its Reconsideration Order, the District Court concluded that the Sellners had committed contempt on December 9, 2019, by “thwarting the efforts of [the Resisting Parties] and the volunteers in completing the removal of the animals as they were tasked.” (*Id.* at 1). The District Court found that the Sellners also had committed a second contemptuous act on December 12, when some of the animals missing on the first day had “reappeared.” (*Id.*). Drawing inferences from the available direct and circumstantial evidence, the District Court reasoned that the Sellners’ “intention was to retain what was not taken and further thwart the rescue efforts.” (*Id.*). The District Court’s findings are correct.

Returning those animals after thwarting removal efforts by the Resisting Parties on December 9, 2019, is plainly an act of contempt new and separate from removing them in the first place. As the District Court found, the Sellners returned these animals before the second rescue on December 12 “for the purpose of giving the animals to others to whom they had been promised by Ms. Sellner.” (Exh. A at 10). In other words, the Sellners, believing their deception had prevented retrieval, committed the separate act of returning the animals to the premises after December 9, 2019, so they could deliberately place them further beyond the reach of mandated

enforcement efforts. This, the District Court found, was in “direct violation of the court order.” (*Id.*). That is a correct application of the law. *See Palmer Coll.*, 412 N.W.2d at 622. The petition should be denied.

V. Certiorari should be denied because the District Court’s punishment was not excessive and the Sellners have spurned chances to purge themselves of contempt.

“A contemner’s sentence is reviewed for an abuse of discretion.” *Ary*, 735 N.W.2d at 624. The Court “will not disturb the punishment imposed” by the District Court unless the Court finds an abuse of discretion. *Id.* Iowa Code section 665.4(2) authorizes a district court to impose a fine of up to \$500 or imprisonment in a county jail of up to six months, or both, as punishment for contempt. “Under [Iowa Code section 665.4(2)], . . . the trial court is given a wide range of discretion as to the penalty to be imposed and only where there has been a clear abuse of that discretion, should this court interfere.” *Jones v. Levis*, 35 N.W.2d 891, 894 (Iowa 1949). The District Court did not abuse its discretion here.

The penalty imposed by the District Court was well within the statutory limits. The court, in fact, had discretion to impose both a fine *and* a jail sentence under Iowa Code section 665.4(2). Even so, the District Court’s punishment of a \$500 fine for each of the Sellners’ 140 separate contemptuous acts, *or in the alternative*, a jail sentence of 140 days (less than the 6-month sentence permitted under the law), was well within its wide discretion.

Besides not imposing the full punishment authorized by statute, the District Court also gave the Sellners the chance to purge themselves of contempt—multiple chances, in fact. *See Christensen*, 578 N.W.2d at 680 (“A court which has found that imprisonment is a proper sanction for past acts of contempt may withhold commitment conditioned on compliance with prescribed conditions.” (cleaned up)); *Palmer Coll.*, 412 N.W.2d at 622 (“[W]e commend the trial court’s provision which allows [the contemner] to purge itself of contempt.”). First, the District Court explained that it would reduce the Sellners’ potential jail time and fine if they returned a missing lioness to a suitable rescue agency. (Exh. A at 12). Second, the District Court informed the Sellners it would again reduce the fine and potential jail time if they returned “any other animals” identified in its Contempt Order within 30 days. (*Id.*). Despite those options to reduce their fines and jail time, the Sellners have not returned a single animal subject to the Contempt Order. They have effectively acquiesced in the very punishment they now challenge.

Under the circumstances, the District Court did not abuse its discretion. The petition should be denied.

CONCLUSION

For the reasons stated, the Court should deny the petition.

Dated: January 31, 2022

/s/ Brandon R. Underwood

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Certificate of Service

The undersigned certifies that the foregoing document was electronically served with the Clerk of the Supreme Court on January 31, 2022, using the Electronic Document Management System, which will serve a notice of electronic filing on all registered counsel of record.

/s/ Olivia Lucas