

IN THE SUPREME COURT OF IOWA

TRACY K. KUEHL, LISA K KUEHL,	:	:
PAMELA J. JONES, HALEY ANDERSON	:	
Petitioners/Appellee	:	Supreme Court No.
	:	Dubuque County District
v.	:	Court No. EQCV008505
PAMELA SELLNER; TOM SELLNER	:	APPLICATION FOR
CRICKET HOLLOW ZOO INC. Et Al.	:	WRIT OF CERTIORARI/
Respondents/Appellants	:	DESCRTIONARY REVIEW

The Respondents, through the undersigned counsel, hereby submits the following Application for Writ of Certiorari/Discretionary Review; All issues have been raised in District Court:

I. THE TRIAL COURT ERRED BY FINDING THE APPELLEE’S HAD STANDING.

1. The Court had entered an injunction preventing the Appellants from running the farm and owning any exotic animals as defined by the USDA. Furthermore, the Court allowed for the Appellee’s to find appropriate placement for any of the animals covered by the Court’s order. The ruling was upheld by the Court of Appeals. *See Kuehl v. Sellner* , No. 19-1980, 2021 Iowa App. LEXIS 669 (Ct. App. Aug. 4, 2021).
2. On December 9, 2019, the Appellees’ counsel along with a large number of volunteers came to pick up the

animals. here was a significant amount of disagreement as to what animals were covered under the order. This resulted in a number of hearings. The Appellee's claimed that there were a significant number of Animals missing based on a spreadsheet they created. They were unable to secure all the animals on December 9, 2019. They returned on December 12, 2019, some of the animals that were missing on December 9th were now at the Zoo and taken by the Appellee's.

1. The Appellants argued at the time of the hearing that the Appellees did not have standing to bring this action because they had no personal interest in the outcome. The relevant parts to this contempt proceedings:

“IT IS HEREBY ORDERED that the animals that are deemed exotic, especially the ones specifically delineated on the attached list, animals covered under the Animal Welfare Act, with the exception of any exempted as livestock, and other wild life in the care and custody of Tom and Pamela Sellner and/or the Cricket Hollow Zoo are to be removed immediately. All arrangements for the

removal shall be made by the Petitioners or their agents.

The veterinarians presented on behalf of the Petitioners who have been involved in this action are empowered with the ability to make recommendations to the Petitioners or their agents for proper placement of the animals into accredited sanctuaries or zoos.”

3. In order to have standing the party prosecuting the matter must have a "sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." *Alons v. Iowa Dist. Court*, 698 N.W.2d 858, 863 (Iowa 2005). As far as Iowa law is concerned, this means "that a complaining party must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." *Id.* Having a legal interest in the litigation and being injuriously affected are separate requirements for standing. *Id.*
4. “When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue and not whether the controversy is otherwise justiciable, or whether, on the

merits, the plaintiff has a legally protected interest that the defendant's action has invaded.” 59 Am. Jur. 2d Parties § 36, at 442 (2002), *Alons* 698 N.W.2d at 864.

5. Three elements must be found to confer standing:

First, the plaintiff must have suffered an "injury in fact"--an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of--the injury has to be "fairly . . . traceable to the challenged action of the defendant, and not . . . the result of the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Alons*, 698 N.W.2d at 867-68 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351, 364 (1992)). An injury is "particularized" if it affects the plaintiff in a personal and individual way; an abstract injury is not enough. *Id.* at 868.

6. The Appellees gave no injury they personally, suffered other than a generalized worry for animals. They did not show any economic impact on themselves by not being able to place all the animals where they saw fit.
7. The Trial Court found that under the theory of Public Nuisance the parties had an interest. See Order Re Application for Rule to Show Cause Pg 2 of 13.
8. However, no evidence was presented that these animals were in the community anymore or even in the State of Iowa. Any interest they would have had in protecting those animals ended once the animals were removed from the community. The Appellees goal was to shut down and remove ownership of the animals from the Sellners and that goal was accomplished even if the Sellners did remove the animals contrary to the Court's Order. The placement of the animals was a secondary order and not a primary order of the Court.

THEREFORE the Appellants are asking the Court to grant this Application and after further briefing, overrule the Trial

Court's order finding the Appellee's had standing and dismiss the Contempt against the Appellants.

II. THE TRIAL COURT ERRED BY FINDING THE APPELLANT'S VIOLATED THE COURT ORDER BEYOND A REASONABLE DOUBT.

1. The Trial Court found the Appellants guilty of 140 counts of contempt. The Trial Court found specifically that 79 animals missing on December 9, 2021 and that the number lowered to 61 animals on December 12, 2021. This list of animals was compiled by the Appellee's using a number of sources including pictures and USDA paperwork. Some of this paperwork was prior to the start of the lawsuit and a significant amount of time prior to the November 24, 2018 Court Order.
2. The Appellees had the burden of proof that these animals were transferred or sold after the Court Order. They provided evidence of animals they thought would be there but they did not provide any evidence of any transfer or sale after the Court Order. They provided evidence that at sometime before the Court Order that there were animals there and that sometime between when the document or

picture was taken and December 9, 2018, the animals were moved or sold.

3. The list was compiled of animals the Appellants expected and not a list of actual animals that were present on November 24, 2018. Certainly, the Appellees could have requested a preservation order be entered, enjoining the Appellants from transferring or moving animals until such time that the Court ruled on their injunction but no such request was made. Additionally, it was over two weeks before any person from the Appellees arrived at the zoo, despite they were tasked with the requirement of caring for these animals. Additionally, problematic with the Appellees list is animals die and reproduce so it would be difficult to gauge what animals were moved and which ones died.
4. The Appellant testified that some animals were left by the Appellees, some of which died. The scene was described and according to video evidence provided by the Court showed a fairly chaotic scene, with many different volunteers, which leaves a lot of room for human error. The

plaintiffs could not provide evidence to refute the Appellants testimony.

5. The Appellant provided testimony from a number of people who testified that they were owners of the animals or partial owner of the animals. The Trial Court seemed to go out of its way to discount all the evidence and testimony of the Appellant while praising the evidence and testimony of the Appellee.
6. Specifically, Robert Sawmiller testified that the bears and cougars were on loan from him to the Cricket Hollow Zoo. Furthermore, there was paper evidence that was presented at the underlying trial showing that the animals belonged to Mr. Sawmiller. At the time it was presented in Court the Appellants would have had no reason to know they would lose at Trial. Additionally, the Appellees present no evidence to refute the claim that Mr. Sawmiller was the true owner. Mr. Sawmiller also provided USDA documents that showed that he had ownership of the animals but they were currently located at Cricket Hollow Zoo. While the Court divested the Appellants of any ownership interest, it would

not have had the authority to divest ownership interest in a non-party

7. Deb Virchow testified that she received animals prior to the Court Order. There was paperwork that a handwriting expert claimed did not come from Ms. Virchow. However, Ms. Virchow testified that she signed the paperwork outside on the fender of a truck. Additionally, the expert had only one other sample to compare from. In fact many of the animals Ms. Virchow is said to have received were returned.
8. Mr. Manson testified that he was part owner of the snakes and reptiles. Once again the Appellees presented no evidence to refute this claim. He testified that they took the snakes and reptiles and he sold them after the trial. In his mind he felt it was clear the Judge was going to rule against the Appellants. Even if the sale happened after the November 24, 2018 ruling, the Court only had authority to divest the Appellant of their ownership interest. Under the rules of joint ownership the other owner would become the sole owner of the property. There would have been nothing preventing Mr. Munson from taking his property.

9. The fennec fox died so there was no violation of the Court Order and even if the fox had not died it was transferred prior to the Court Order. We know the Fennec Fox was present on the Zoo property on November 5, 2019 and we know the Fennec Fox was not at the Zoo December 9, 2021. That accounts for around 20 days prior to the order and an additional 11 days prior to the relocation of the animals, where the Plaintiffs cannot prove the location of the animals. The Plaintiff's failed to produce any evidence outside of that the Fox was not there on December 9, 2019. They want the Court to make the giant leap from the Fox was there November 5, 2019 but was not there December 9, 2019 therefore, it must have happened after the Court's order. They produced no evidence that the fox was there on November 24, 2019.

10. The Wolf hybrid was sold prior to the Court's order. We know the Wolf was present on the Zoo property on November 5, 2019 and we know the Wolf was not at the Zoo December 9, 2021. That accounts for around 20 days prior to the order and an additional 11 days prior to the relocation of the animals, where the Plaintiffs cannot prove the location of the animals. The Plaintiff's failed to produce any evidence outside of that the Wolf was not there on December 9, 2019.

11. Ms. Sellner testified that she transferred the Wolf to someone who had contacted her after seeing the news

accounts of the underlying trial. She testified she had filled out the proper paperwork but it was washed it along with her coat destroying the paperwork and her ability to contact the buyer. Additionally, she testified she sold the wolf about 11-8-2019. See Exhibit EE. Even if the Court finds Ms. Sellner lacks any credibility, the Plaintiffs cannot prove the Wolf was on the Zoo property on November 24, 2019. They do not have a buyer, evidence of attempt to sell post-order, or evidence of a transfer post-order. The mere fact that the animal was not there on December 9, 2019, does not lead to a reasonable inference that the Animal was in Ms. Sellner's possession on November 24, 2019.

12. The Camel was sold to Greg Woody before the Court entered its order. We know the Camel was present on the Zoo property on November 5, 2019 and we know the Camel was not at the Zoo December 9, 2021. Additionally, we know the Camel was at a live Nativity scene on December 7-8, 2019. Ms. Bean testified that there was a man she did not know dropping off the camel with Tom Sellner. Tom Sellner and Ms. Sellner testified that unidentified man was

Craig Woody. That accounts for around 20 days prior to the order and an additional 11 days prior to the relocation of the animals, where the Plaintiffs cannot prove the location of the animals.

13. Ms. Sellner testified she sold the camel to Craig Woody on or about November 10, 2019. See Exhibit EE. One of the requirements of the sale were that he was required to keep their obligations to live Nativity scenes. Ms. Sellner testified that she did not know exactly where the Camel was being housed, other than it was. This was supported by the Testimony of Ms. Bean that Ms. Sellner reported she had sold the camel but that the buyer would fulfil the obligation. Ms. Sellner testified that Ms. Bean paid her but she had transferred the money to Mr. Woody. The sale is further supported as the Camel was never returned zoo after use by the Bean farm live Nativity. Ms. Bean did not testify that there were different trailers that dropped off and picked up the camel, which would be expected if the Appellants had transferred the camel after the live Nativity. The final piece of evidence presented by the Defendants was exhibit AA

page 2 which is USDA paperwork showing the transfer happening on November 10, 2019. The Appellees pointed out that it was not signed by Mr. Woody. Ms. Sellner explained that Mr. Woody refuses to sign the paperwork and that the signature is not required by the USDA.

THEREFORE, the Appellants request the Court accept this application order further briefing and find that there was insufficient evidence to find that the Appellants have willfully violated the Court Order beyond a reasonable doubt and dismiss the contempt.

III. THE TRIAL COURT ERRED BY FINDING MULTIPLE CONTEMPTS FOR THE SAME ACTION.

1. The Trial Courts doubled the punishment by fining them/jailing them twice for the same animals. See Palmer College of Chiropractic vs Iowa District Court for Scott County, 412 N.W.2d 617, 622 (Iowa 1987).
2. The Courts, November 24, 2018, does not specify a date for the animals to be transferred. It merely stated that the Appellants were stripped of their ownership interest in certain animals and that the Appellees were responsible for their further placement.

3. There was no subsequent order requiring them to return the animals by a certain date until the contempt order of September 28, 2021.
4. This situation is more akin to giving the Appellants a daily fine until compliance than it is two separate contemptuous actions.
5. Furthermore, the testimony was that the Appellees were going to have to return to the property anyways because they were unable to get all the animals on December 9, 2019. Therefore, the animals being returned to zoo on December 12, 2019 would negate any possible contempt.
6. The fact that the animals were not there on two separate dates does not equate to two willful violations of the Court Order since there was no specific dates given. Additionally, the removal of the animals was not a prohibition on the Appellants, it was an affirmative order for the Appellees.
7. Assuming that the Trial Court is correct about there being evidence beyond a reasonable doubt that animals were removed after the Court Order of November 24, 2018, the number of contempt actions should be reduced 61.

8. In actuality the number of contempt actions should be one or two. The actual contempt is not the removal of the animals but the impeding of the Appellees from being able to place the animals.

WHEREFORE the Appellants would request the court grant the application allow for further briefing, find that the Court engaged in double punishment and then reduce the number of contemptuous actions to the appropriate number.

IV. THE TRIAL COURT'S PUNISHMENT WAS EXCESSIVE FOR THE ALLEGED CONTEMPTUOUS ACTIONS

1. The purpose of the injunction was to shut down the zoo and ensure that the Appellants were no longer the owners of animals.

2. Giving the Appellees the task of finding new homes for the animals was merely a vehicle for shutting down the zoo and preventing ownership by the Appellants.

3. The Court gave the highest fine allowed by law for moving animals off of their property, which is the purpose of the original injunction.

4. Especially, since this is the first contempt found on the Appellants the excessive fine of nearly \$70,000.00 or the imposition of 140 days in jail extremely excessive considering the violation appears to be a

technical violation of the order and not a violation of the purpose behind the order.

5. Additionally, the order does not specifically order the Appellants not to remove the animals. The order simply divested the Appellants of ownership interest and tasked the Appellees with placement.

6. The undersigned was appointed and while the Appellants own land they do not own large amounts of cash. A punishment this steep goes beyond the purpose of deterrence and forced compliance and could put the Appellants in Financial ruin.

WHEREFORE the Appellants request the Court grant this application, allow for further briefing, and find the punishment in this case was excessive.

THEREFORE, the Defendant ask that the Appellate Court grant the application and grant the relief requested above.

Respectfully submitted,

/s/Joey T. Hoover

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