

IN THE SUPREME COURT OF OHIO

STATE ex rel. DIRECTOR, OHIO)	CASE NO. 2016-0729
DEPARTMENT OF AGRICULTURE)	
)	
Relator,)	
)	
v.)	
)	
THE HONORABLE FRANK G.)	
FORCHIONE)	
)	
Respondent)	

EMERGENCY MOTION TO INTERVENE IN ORIGINAL ACTION FOR WRIT OF PROHIBITION BY INTERVENORS, CYNTHIA HUNTSMAN AND STUMP HILL FARM, INC.

Intervenors, Cynthia Huntsman and Stump Hill Farm, Inc. (“Huntsman”), by and through counsel, pursuant to Rule 24(A)(2) of the Ohio Rules of Civil Procedure, respectfully move this Court to intervene as of right in the above-captioned proceeding as an additional Respondent. In the alternative, Huntsman moves the Court, pursuant to Rule 24(B)(2) of the Ohio Rules of Civil Procedure, for its permission to intervene in the above-captioned proceeding as an additional Respondent.

Huntsman requests that this Court grant her motion pursuant to S.Ct.Prac.R. 4.01(C) as soon as practicable. Immediacy is needed because this Court entered an Order today that Respondent is to respond by 9:00 a.m. Friday, May 13, 2016. Intervenors wish to also file a response by the deadline.

By way of background, on Wednesday May 4, 2016, Relator, the Director of the Ohio Department of Agriculture, issued a transfer order under R.C. §935.20 to seize certain animals

from the property of Huntsman. It should be noted that Relator had already issued a quarantine order under the same code section for the same animals. After Huntsman duly filed for a notice of hearing with respect to this quarantine order, Relator set this matter for a hearing on August 22, 2016.

Without any justifiable reason, Relator sought a search warrant from the Honorable Frank G. Forchione of the Stark County Court of Common Pleas on May 4, 2016. There has been no evidence submitted by Relator that the animals are in danger or pose a danger to society. When Relator sought the search warrant, counsel for Relator failed to mention the pending quarantine order, failed to mention the hearing in August, and failed to mention that the undersigned counsel had been involved in this matter for two years.

It should also be noted that a Stark County Assistant Prosecutor was present at the search warrant request, facilitated Relator obtaining the warrant, and coordinated the seizure of the animals with local law enforcement.

Within a few hours, Huntsman's counsel filed a motion for preliminary and permanent injunction and sought an immediate review hearing on May 12, 2016. After the hearing, Judge Forchione quashed the search warrant and ordered the return of the seized animals. In his Order, Judge Forchione found the seizure to be "unnecessary" and "putative" in nature. He also found that the seizure allowed Relator to gain an unfair advantage in the pending quarantine litigation. A copy of the Judge's Order is attached hereto as Exhibit "A."

On May 10, 2016, Relator filed a Complaint for Writ of Prohibition and requested that this Court prevent Judge Forchione from exercising his jurisdiction over the seized property. Huntsman seeks to intervene in the Prohibition action.

Ohio Civil Rule 24(B)(2) states:

when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

State ex rel. Dispatch Printing Co. v. Columbus, 90 Ohio St.3d 39. Furthermore, the applicant's interest in the action must be one that is "legally protectable." *Id.*, citing *In re Schmidt* (1986), 25 Ohio St.3d 331.

This Court stated that Civ.R. 24(A)(2) should be liberally construed to permit intervention. *Department of Administrative Services, Office of Collective Bargaining v. State Employment Relations Bd.* (1990), 54 Ohio St.3d 48. See also *Rumpke Sanitary Landfill, Inc. v. State of Ohio* (2010), 128 Ohio St.3d 41.

Huntsman owns the seized animals; they are unequivocally her personal property. There can be no dispute that she has an interest related to the property. Ohio has "always considered the right of property to be a fundamental right." *Norwood v. Horney*, 853 N.E.2d 1115, 110 Ohio St.3d 353, citing *inter alia Reece v. Kyle* (1892), 49 Ohio St. 475. There can be no doubt that "the bundle of venerable rights associated with property is strongly protected in the Ohio Constitution and must be trod upon lightly, no matter how great the weight of other forces." *Id.* at ¶38.

If Huntsman is not allowed to intervene, she will be deprived of her ability to protect her property rights against the improper search warrant. This Court's decision with respect to Relator's Writ of Prohibition will effectively determine the issues that were before Judge Forchione on May 5, 2016. At that hearing, Huntsman sought to quash the search warrant and have the seized animals returned. If this Court grants the Writ, then Judge Forchione's Order to return the seized property will be moot. Huntsman will have no recourse to challenge the search warrant. Any appeal would be fruitless as the Fifth District would naturally defer to this Court's decision that the animals cannot be ordered returned by the common pleas court.

Finally, Huntsman's interests will not be adequately protected. The Stark County Prosecutor's office will be assigned the task of representing Judge Forchione. This presents a conflict for the office because as it was involved in obtaining the search warrant. In fact, a Stark County Assistant Prosecutor attended the May 4, 2016 hearing and sat at Relator's table during the proceedings.

Furthermore, the seizure of these animals will affect their health and well-being. They will not be fed their USDA approved diets, and they will miss their home. Huntsman wants these animals returned to her as soon as practicable. The county prosecutor's office may not share the same sense of urgency with Huntsman.

Also, Huntsman has access to the animals' veterinarians who will submit affidavit's that these animals do not pose a threat to the public or themselves.

This Court has permitted intervention in several cases (one just last month) involving Writs of Prohibition. See e.g. *State ex rel. N.G. v. Cuyahoga County Court Of Common Pleas*, 2016-Ohio-1519; *State ex rel. LTV Steel Co. v. Gwin* (1992), 64 Ohio St.3d 245; *Department of Administrative Services, Office of Collective Bargaining v. State Employment Relations Bd.* (1990), 54 Ohio St.3d 48; and *State ex rel. DeWine v. Burge* (2011), 128 Ohio St.3d 1230.

In the alternative, Huntsman seeks this Court's permission to intervene under Civ. R. 24(B)(2). A court may allow intervention when "an applicant's claim or defense and the main action have a question of law or fact in common." Here, Huntsman sought the return of her seized animals from Judge Forchione, and this Writ of Prohibition action seeks to determine whether Judge Forchione can order the return of the seized animals. As such, both the underlying action in Stark County as well as the Prohibition action have the same questions of law at issue.

Based upon the requirements of Civil Rule 24 as well as the liberal construction afforded such motions, Huntsman is either entitled to intervene as a matter of right or should be permitted to intervene.

WHEREFORE, Cynthia Huntsman and Stump Hill Farm, Inc. respectfully move this Court for an Emergency Order allowing them to intervene in the instant action and to file a response to Relator's Motion by the Friday, May 13, 2016 deadline.

Respectfully submitted,

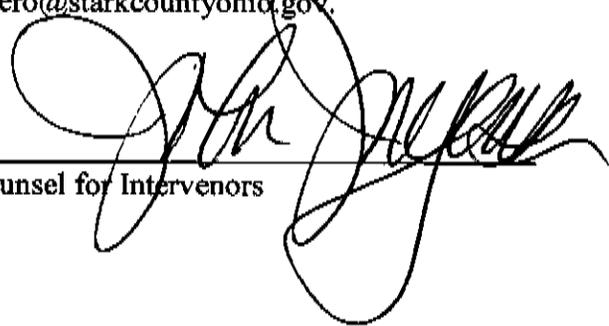
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was sent by email this 11th day of May, 2009, to the following: Peter.Reed@OhioAttorneyGeneral.gov; Eric.Murphy@ohioattorneygeneral.gov; JDFerrero@starkcountyohio.gov.


Counsel for Intervenors

NO. 2777-16-1-277
FILED
MAY 05 2016
LOUIS A. GIAYASIS
STARK COUNTY OHIO
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO**

IN RE:)	ORDER NO. 2016-092 2014 MI 138
)	
CYNTHIA HUNTSMAN)	JUDGE FRANK FORCHIONE
TRANSFER OF DANGEROUS WILD)	
ANIMALS)	<u>ORDER</u>
)	
)	
)	
)	

Now comes the Court in consideration of the Motion for Temporary Restraining Order and Preliminary Injunction filed on May 4, 2016 on behalf of Cynthia Huntsman, Transfer of Dangerous Wild Animals. The Court set a hearing for Thursday, May 5, 2016, which all parties attended.

The standards for injunctive relief under Ohio Civ.R. 65, as well as Ohio law, permits the issuance of a temporary restraining order and preliminary injunction if the following criteria are met: 1) the movant has substantial likelihood of succeeding on the merits; 2) the movant will suffer a reparable injury if the injunction is not issued; and, 3) the injunctive relief would unjustifiably harm third parties, or whether the public interest would be served issuing a relief.

After hearing oral arguments, this Court grants Huntsman's Motion for Temporary Restraining Order and sets this matter for a preliminary injunction hearing. There are two sides to the coin of "due process." Huntsman has provided sufficient evidence that she is likely to succeed on the merits since she has a duly issued permit from the State of Ohio for her animals. Although the State of Ohio disagrees with the interpretation of the validity of this permit, this issue will be mediated by the parties on August 22, 2016. This permits the Court to ponder the real question - why did the State want to take the animals in the first place? The animals have been placed in quarantine on Huntsman's property since March of 2016. There have been no allegations that the animals have been mistreated, are an escape threat, or pose

any danger to the general public.

Furthermore, Huntsman will suffer irreparable harm if the injunction is not granted. The moving of these animals can cause them unnecessary distress. Ms. Huntsman provides special care for them. The animals are often visited by schools, nursing homes, and other organizations. In addition, Huntsman has convinced the Court that removing the animals will destroy the farm and permanently damage her reputation within the Stark County community.

Finally, no third parties would be harmed if the injunction or a restraining order were to be granted. The animals do not pose a threat to anyone, nor are they themselves in any danger. Huntsman stated to the Court that the Department of Agriculture ("DOA") has recently conducted an inspection and has not found any infractions or found her to be in noncompliance, which would pose any threat or danger to the community.

The public interest would be served by issuing relief. Private individuals have a fundamental right to be safe from government overreaching or unnecessary taking of their property. These animals are being put through unnecessary distress, especially when a hearing that should resolve this issue will be taking place in August of 2016. The Court, further, has concerns that the confiscation allows the State to gain an unfair advantage in this litigation. Huntsman's claim that the State's only purpose is punitive in nature appears to have some merit. Furthermore, the law favors the status quo during pending litigation. These animals are personal property and Huntsman is entitled to due process before they are removed from her premises.

Accordingly, Huntsman is granted a temporary restraining order requiring the DOA to return the animals seized on May 4, 2016 and leave them in Huntsman's possession until the conclusion of any pending litigation. Huntsman would like the animals returned immediately; however, the DOA has provided medical testimony that indicates that there should be a two week delay in returning the animals back to Huntsman. The Court is going to err on the side of protecting the animals and will permit the DOA fourteen (14) days in which to return the animals.

A preliminary injunction hearing has been set for Thursday, May 19 2016 at 9:00 a.m.