

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)	

**COMBINED RESPONSE TO EMERGENCY MOTION FOR PREEMPTORY OR
ALTERNATIVE WRIT OF PROHIBITION AND MOTION TO DISMISS COMPLAINT
FOR WRIT OF PROHIBITION BY INTERVENORS, CYNTHIA M. HUNTSMAN AND
STUMP HILL FARM, INC.**

Intervenors, Cynthia M. Huntsman and Stump Hill Farm, Inc. (“Huntsman”), by and through counsel, hereby submit their Memorandum in Opposition to Relator, State ex rel. Director, Department of Agriculture’s (“Relator”) Emergency Motion for Preemptory or Alternative Writ of Prohibition and Combined Memorandum in Support of Relator’s Complaint and in Support of Emergency Motion (“Relator’s Motion”). Also, pursuant to S.Ct.Prac.R. 12.04(A)(1), Huntsman moves this Court to dismiss Relator’s Complaint for Writ of Prohibition. The basis for Huntsman’s opposition is that Relator fails two of three prongs that it must establish to be entitled to the extraordinary writ.

It is imperative in this matter to separate the wheat from the chaff. The only issue before this Honorable Court is whether Relator is entitled to a Writ of Prohibition. However, Relator attempts to use the Zanesville-Thompson tragedy of October, 2011 to scare this Court into granting

the Writ. See e.g. Relator's Motion at 3. This case has nothing to do with the quarantine order issued by Relator on or about March 3, 2016, and it has nothing to do with the transfer order issued by Relator on May 4, 2016. This case deals only with whether the Honorable Frank G. Forchione ("Forchione") patently and unambiguously lacks jurisdiction to order the return of the animals seized pursuant to the search warrant he issued on May 4, 2016.

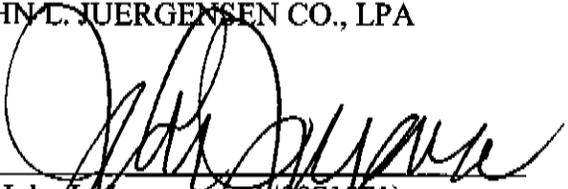
As more fully set forth below, Relator's Complaint for Writ of Prohibition must fail because:

1. Judge Forchione does not lack authority to exercise jurisdiction over Relator;
2. Relator has an adequate remedy at law;
3. Even though Relator has an adequate remedy, Judge Forchione does not patently and unambiguously lack jurisdiction over the seized animals.

Based upon the foregoing, and as more fully set forth below, Relator's Complaint is wholly without merit and should be dismissed.

Respectfully submitted,

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Cynthia Huntsman and Stump Hill Farm, Inc.

A. RELEVANT BACKGROUND¹

Huntsman has operated Stump Hill Farm for over 35 years. See Affidavit of Huntsman at ¶2, attached hereto as **Exhibit “A.”** Stump Hill Farm is a 501(c)(3) non-profit entity that relies on bingo proceeds and donations to stay afloat. *Id.* at ¶3. During that same time, she has housed and cared for over 200 animals that are only now considered dangerous. *Id.* at ¶4. During 35 years, not one single animal has ever harmed anyone. *Id.* at ¶5. In fact, she has hosted countless field trips where school children have visited the farm. *Id.* at ¶6. She treats these animals like her children. *Id.* at ¶7.

Dr. David Soehrlen is one of Huntsman’s veterinarians. He has been a veterinarian for over 42 years. See Affidavit of Dr. David Soehrlen at ¶3, attached hereto as **Exhibit “B.”** For the past 25 years, he has treated Huntsman’s animals. *Id.* at ¶4. He also treated the animals at issue in this case. *Id.* at ¶5. As part of his duties, he is required by the U.S. Department of Agriculture and the Animal Welfare Act to make random inspections of Stump Hill Farm, and he has conducted many of these over the years. *Id.* at ¶10. It is his professional opinion that none of the animals have ever posed a threat to the public nor have these animals ever been in harm’s way. *Id.* at ¶11-12. If anything, Dr. Soehrlen is of the opinion that Relator’s seizure of the animals has caused them physical and emotional harm by disrupting their daily routines and changing their diets. *Id.* at ¶13-15.

Dr. James Dittoe has been a veterinarian for 36 years, and he has been treating these animals for 10 years. See Affidavit of Dr. James Dittoe, attached hereto as **Exhibit “C.”** At the risk of being redundant, he also shares Dr. Soehrlen’s opinions. *Id.*

¹ As a preliminary note, many of the facts contained in this section are irrelevant to this Court’s decision with respect to Relator’s Writ of Prohibition. However, because Relator presents its version of these facts in its Motion, Huntsman feels compelled to correct inaccuracies and to address Relator’s legal analysis.

On September 5, 2012, and in response to an incident in Zanesville where the owner of an exotic animal farm released his animals and then committed suicide, the Ohio legislature enacted the Dangerous Wild Animal Act (“DWA”). R.C. §935 *et seq.* On January 1, 2014, the law went into effect. Ohioans were no longer allowed to “acquire, buy, sell, trade, or transfer possession or ownership of a dangerous wild animal” unless they had a permit for the animals. R.C. §935.02. However, R.C. §935.03 set forth certain exemptions. For example, a wildlife rehabilitation facility was exempt if it had been issued a permit by the division of wildlife under R.C. §1531.08 and if it rehabilitated native dangerous wild animals for reintroduction into the wild. R.C. §935.03(B)(5).

There is no questions that Huntsman was in possession of animals that fell under the prevue of the DWA on January 1, 2014. On that same date, Huntsman was considered a wildlife rehabilitation facility, and she had in effect a permit issued under R.C. §1531.08. The permit states that Huntsman “may possess mammals, a bald eagle, and other non-releasable raptors for educational purposes.” A copy of this permit is attached hereto as **Exhibit “D.”**

For the past two years, Huntsman and Relator have argued over whether or not this permit constitutes is a valid exemption. Huntsman Affidavit at ¶8. Relator’s position is that because the animals that were seized on May 4, 2012 are not listed, then the permit does not provide an exemption. Huntsman has argued that the statute does not state that the animals have to be listed, and that she is allowed to possess “mammals.”² Huntsman Affidavit at ¶9.

Both sides have rational arguments, and these arguments culminated with Relator issuing a quarantine order to Huntsman on or about March 3, 2016 under R.C. §935.20. That order required Huntsman to keep the animals at issue on her property and to care for them. The

² Interestingly, the legislature amended R.C. §935.03(B)(5) in September, 2014 so that only now are the animals to be listed. This provision was not in effect for the time period Huntsman claims she is exempt.

quarantine order is attached to Relator's Complaint. Huntsman subsequently sent Relator a request for hearing, and that hearing is set for August 22, 2016.

Another exemption permitted under R.C. §935.03 is for Huntsman to be in the "process" of being accredited by a private entity known as the Zoological Association of America ("ZAA"). Huntsman has been working towards this accreditation, but she was recently notified that her initial attempt (multiple attempts are allowed) had been declined. Huntsman Affidavit at ¶10. She will try again in 6 months. *Id.* Relator had set a May 2, 2016 deadline for Huntsman to prove that she was accredited. On May 2, 2016, Huntsman notified Relator that she had been denied. Huntsman Affidavit at ¶11. However, Huntsman will continue to work to meet accreditation; she has already spend over \$90,000.00 to meet ZAA compliance. Huntsman Affidavit at ¶12.

On Wednesday, May 4, 2016, Relator issued a transfer order under R.C. §935.20 to seize the animals that are the subject of this case. This seizure involved closing the road to the farm, at least two area SWAT teams, a helicopter, several police officers, and armored vehicles – all at taxpayer expense. The seizure also involved state officials chasing the animals around their cages with tranquilizer guns and frightening them beyond belief. Huntsman Affidavit at ¶13. State officials literally hauled the chimpanzee (who was at the farm because he had been traumatized by prior owners) away kicking and screaming. Huntsman Affidavit at ¶14.

Relator has never explained why these animals did not need to be seized on March 3, 2016 but did on May 4, 2016.

Earlier in the day on May 4, 2016, Relator sought and obtained a search warrant from Judge Forchione to enter the property and seize the animals. After Huntsman's counsel learned of the seizure, he contacted Judge Forchione and requested an immediate review hearing. Judge

Forchione conducted that hearing on May 5, 2016. A copy of the transcript is attached to Relator's Complaint ("Transcript").

After listening to arguments from counsel, hearing from Huntsman, and acknowledging the state's veterinarian's concerns, Judge Forchione quashed the warrant and ordered the seized animals returned no later than May 19, 2016. A copy of the Judge's Order is attached hereto as **Exhibit "E."** The Judge concluded that, had he been informed of the pending quarantine order, the hearing in August, and the involvement of Huntsman's counsel, he probably would not have granted the search warrant. See Transcript at p. 58, l. 16. Furthermore, in his Order, Judge Forchione suggests that the seizure of the animals was punitive in nature and done to gain an unfair advantage in the pending litigation. See Order at 2.

In the end, these animals were not in danger and posed no danger to the public. Huntsman Affidavit at ¶15. If they did, then Relator could have seized them two years ago or back in March when it issued the quarantine order. The quarantine order was in effect, and a hearing was set for August. Huntsman Affidavit at ¶16. The animals were not going anywhere, and they were being properly cared for. Huntsman Affidavit at ¶17. But, rather than wait an additional three months (beyond the 26 months that had already lapsed since the law went into effect), Relator chose to remove the animals from their homes, cause them considerable distress, upset their daily routines, and change their USDA approved diets all at considerable taxpayer expense in a scene reminiscent of a military raid.

B. LAW AND ARGUMENT

1. Writs of Prohibition in General. This Court has determined that a writ of prohibition is "an extraordinary judicial writ issuing out of a court of superior jurisdiction and directed to an inferior

tribunal commanding it to cease abusing or usurping judicial functions.” *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 1998-Ohio-275, 701 N.E.2d 1002. The purpose of a writ of prohibition is to “restrain inferior courts and tribunals from exceeding their jurisdiction.” *Id.*, citing *State ex rel. Barton v. Butler Cty. Bd. of Elections*, 39 Ohio St.3d 291, 530 N.E.2d 871 (1988).

As such, a writ of prohibition is an “extraordinary remedy which is customarily granted with caution and restraint, and is issued only in cases of necessity arising from the inadequacy of other remedies.” *State ex rel. Henry v. Britt*, 67 Ohio St.2d 71, 73, 21 O.O.3d 45, 47, 424 N.E.2d 297, 298-299 (1981); See also *State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas*, 74 Ohio St.3d 536, 540, 660 N.E.2d 458, 461 (1996) (“Prohibition is an extraordinary writ and we do not grant it routinely or easily.”)

This Court has held that for a writ of prohibition to issue, the relator must prove that (1) the lower court is about to exercise judicial authority, (2) the exercise of authority is not authorized by law, and (3) the relator possesses no other adequate remedy in the ordinary course of law if the writ of prohibition is denied. *Suster, supra*, citing *State ex rel. Keenan v. Calabrese*, 69 Ohio St.3d 176, 178, 631 N.E.2d 119, 121 (1994).

Even where a relator has an adequate remedy at law, however, a court may still grant a writ of prohibition. This Court has previously stated that where there is “a patent and unambiguous lack of jurisdiction of the inferior court which clearly places the dispute outside the court's authority,” an adequate remedy at law is immaterial. *State ex rel. Tilford v. Crush*, 39 Ohio St.3d 174, 176, 529 N.E.2d 1245 (1988).

Prohibition tests and determines “solely and only” the subject matter jurisdiction of the lower court. *State ex rel. Sladoje v. Belskis*, 149 Ohio App.3d 190, 2002-Ohio-4505, 776 N.E.2d 557 (10th Dist.) A writ of prohibition does not lie where the court has made a mere error in the

exercise of jurisdiction, i.e., simply reached a legally incorrect result. *Brooks v. Gaul*, 89 Ohio St.3d 202, 203, 2000-Ohio-133, 729 N.E.2d 752. If the court has such jurisdiction, “prohibition is not available to prevent or correct an erroneous decision, nor is it available as a remedy for an abuse of discretion” where a court has “general authority over the underlying case.” *State ex rel. Eaton Corp. v. Lancaster*, 40 Ohio St.3d 404, 534 N.E.2d 46 (1988) and *Dubose v. Court of Common Pleas of Trumbull County*, 64 Ohio St.2d 169, 171, 413 N.E.2d 1205 (1980). Finally, prohibition is not available to prevent an anticipated erroneous judgment. *Sladoje, supra*.

The following are the types of cases where prohibition is granted. In *State ex rel. News Herald v. Ottawa Cty. Court of Common Pleas*, 77 Ohio St.3d 40, 1996-Ohio-354, 671 N.E.2d 5, this Court prevented a lower court from issuing a gag order. Once the hearing was held, relator would have had no adequate remedy at law. In *State ex rel. Connor v. McGough*, 46 Ohio St.3d 188, 546 N.E.2d 407 (1989), the Court issued a writ where the lower court had subject matter jurisdiction but patently and unambiguously lacked personal jurisdiction over the defendant who was a German resident.

In *State ex rel. Triplett v. Ross*, 111 Ohio St.3d 231, 2006-Ohio-4705, 855 N.E.2d 1174, this Court issued a writ of prohibition to prevent a municipal court from ordering attorneys who sought court appointments to complete a declaration specified by the Ohio Patriot Act that they did not provide material assistance to a terrorist organization. This was wholly outside the authority of the court. Finally, in *Ace Diamond & Jewelry Brokers, Inc. v. Sweeney*, 2014-Ohio-5226, 24 N.E.3d 1187 (7th Dist.), the court prohibited a judge from ordering a pawn broker to return stolen property to a victim where the pawn broker was a bona fide purchaser. The judge had no authority to order the return of stolen property from a third-party.

Huntsman will address the factors individually.

2. Whether the Lower Court Is About to Exercise Judicial Authority. There is no question that Judge Forchione has exercised his judicial authority. This is the only part of the writ of prohibition analysis that Relator meets.

3. Whether the Exercise of Authority Is Authorized by Law.

a. Search Warrant. Relator fails the second prong of the prohibition test. First, Relator sought out and obtained a search warrant from Judge Forchione. By doing so, Relator consented to Judge Forchione's inherent jurisdiction and authority to issue search warrants.

Ohio Revised Code §2933.21 states that "a judge of a court of record may, within his jurisdiction, issue warrants to search a house or place . . . (F) For the existence of physical conditions which are or may become hazardous to the public health, safety, or welfare, when governmental inspections of property are authorized or required by law."

Furthermore, R.C §935.19(A)(2) provides that where Relator is denied access to property to enforce the provisions of the DWA, Relator may "apply to a court of competent jurisdiction in the county in which the premises is located for a search warrant authorizing access to the premises for the purposes of this section." (Emphasis added.)

There can be no argument that Judge Forchione had the authority to issue the search warrant in this case. And, if he can issue the warrant, it is axiomatic that he can also quash the same warrant. See generally *State v. Myers*, 97 Ohio St.3d 335, 2002-Ohio-6658, 780 N.E.2d 186 (2002) (upon a motion to quash a search warrant and suppress evidence, this court found that the trial court had broad discretion over the motions at issue).

Furthermore, if property was seized pursuant to the warrant, Judge Forchione has authority to order the return of the same property. *State ex rel. Gains v. Go Girls Cabaret, Inc.*, 187 Ohio

App.3d 356, 2010-Ohio-870, 932 N.E.2d 353 (7th Dist.) is instructive on this issue. In this case, the state filed a nuisance action against the defendant for illegal activity. The normal trial judge was unavailable for the hearing, and so the administrative judge issued a criminal search warrant. Personal property was seized. After 90 days, if the defendant showed that the nuisance was abated, it could seek return of the property. The defendant subsequently sought the return of the property, and the trial judge ordered the return of the property. The Seventh District held that only the administrative judge that initially issued the search warrant had jurisdiction order the return of the seized property.

Relator is in the untenable position of arguing that the very same judge who issued the search warrant from which it seized Huntsman's property cannot subsequently quash the search warrant and order the return of the same property. Again, there would have been no seizure of the animals if Relator had not been permitted on the property. Relator would not have been allowed on the property without the search warrant. And, the search warrant could not have been issued if Judge Forchione did not possess the authority to do so.

Relator argues in its Motion that the issuance of the search warrant was "collateral" to its authority to seize the animals. Except, but for the search warrant, Relator could not have legally entered the property and taken the animals without violating Huntsman's Fourth Amendment rights. Apparently, the State of Ohio believes that the preservation of someone's constitutional rights is collateral to its authority.

b. Injunctive Relief. Again, there can be no dispute that Judge Forchione has the authority to order injunctive relief. Ohio Revised Code §2727.03 provides that a judge of the court of common pleas may order an injunction in any cause pending in his or her court. Furthermore,

injunctive relief is contemplated in the Ohio Civil Rules. Civil Rule 65 sets forth in detail the process by which a movant may seek injunctive relief from, *inter alia*, a court of common pleas.

When Relator sought out Judge Forchione to issue the search warrant under R.C. §935.19, it acceded to his general subject matter jurisdiction which is vested in him by that section as well R.C. §2305.01. From there, Judge Forchione was vested with authority under R.C. §2727.03 as well as Civ.R. 65 to grant injunctive relief.

4. Whether Relator Has an Adequate Remedy at Law. Relator fails with respect to this part of the analysis as well. Judge Forchione set the permanent injunction hearing for May 19, 2016. If he quashes the search warrant and issues the permanent injunction, then all the issues before him will be decided. At that point, the permanent injunction is a final, appealable order, and Relator can appeal to the Fifth District Court of Appeals.

Ohio Revised Code §2505.02(B) provides that “an order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following: (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment.”

The term “substantial right” has been construed to mean a “legal right” that is protected and supported by law. *Armstrong v. Herancourt Brewing Co*, 53 Ohio St. 467, 42 N.E. 425 (1895). 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. For an order to determine the action and prevent a judgment for the party appealing, “it must dispose of the whole merits of the cause . . . and leave nothing for the determination of the court.” *Jolley v. Martin Brothers Box Co*, 158 Ohio St. 416, 49 O.O. 298, 109 N.E.2d 652 (1952).

In *Jackson v. Bartec, Inc.*, Tenth Dist. Franklin No. 10AP-173, 2010 -Ohio- 5558, the court held that the determination of a complaint for permanent injunction is a final appealable order. See also *Columbus Packing Co. v. State ex rel. Schlesinger*, 100 Ohio St. 285, 126 N.E. 291 (1919). (This Court reviewed the grant of a permanent injunction.); *State ex rel. Dewine v. Big Sky Energy, Inc.*, 11th Dist. Ashtabula No. 2012-A-0042, 2013-Ohio-437. (Permanent injunction may be final appealable order if R.C. §2505.02 is complied with.)

Because Judge Forchione has general authority over the underlying search warrant, Relator's Complaint is actually seeking to correct what it believes to be an error in the exercise of jurisdiction. Simply put, it disagrees with Judge Forchione's legal conclusion, and that is an improper use of the writ of prohibition. *Brooks, supra; Lancaster, supra*. In the final analysis, Relator anticipates what it believes to be an erroneous judgment, but it cannot use the writ to correct Judge Forchione. *Sladoje, supra*.

Based on the foregoing, if Judge Forchione quashes the warrant and grants the permanent injunction, then all issues before him will be decided. If Relator then believes that Judge Forchione improperly exercised jurisdiction, it can then appeal his order.

To side step the fact that it can appeal Judge Forchione's Order, Relator claims that the seized animals pose a threat to the public and Relator has no adequate remedy to prevent this danger. Of course, Relator offers no examples of any danger and ignores a 35-year history of immaculate public safety.

5. Whether Judge Forchione Patently and Unambiguously Lacks Jurisdiction. This Court has consistently held that "unless a lower court unambiguously lacks jurisdiction to proceed, a court having jurisdiction over the subject matter and jurisdiction over the parties has the authority

to determine its own jurisdiction, and an adequate remedy at law via appeal exists to challenge any adverse decision.” *Ohio Dept. of Adm. Serv., Office of Collective Bargaining v. State Emp. Relations Bd.*, 54 Ohio St.3d 48, 562 N.E.2d 125 (1990); *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 638 N.E.2d 541 (1994).³

As set forth above, Judge Forchione has subject matter jurisdiction to issue the search warrant; therefore, he can determine his own jurisdiction with respect to the search warrant, the requested injunctive relief, and the animals seized as a result of the search warrant. The very section that Relator used to obtain the search warrant even uses the words “competent jurisdiction” to describe the court’s authority. Between the search warrant statute, R.C. §935.19(A)(2) in the DWA, and the injunction provisions of R.C. §2727.03, it cannot be reasonably argued that Judge Forchione patently and unambiguously lacks jurisdiction over Relator and the seized animals. He is permitted to determine the scope of his jurisdiction, and, if Relator disagrees with the exercise of his jurisdiction, then it can appeal his decision.

As Judge Forchione even ironically noted during the May 5, 2016 hearing, Relator sought him out to obtain a search warrant so it could enter the premises and seize the animals. Then, when the judge found out that Relator omitted material facts to obtain the search warrant and ordered the warrant quashed and the animals returned, Relator argued that he suddenly does not have jurisdiction anymore. See Transcript at p. 66, l. 16.

Relator argues in its Motion that the General Assembly has enacted a “complete and comprehensive scheme” with respect to dangerous wild animals, and so Judge Forchione has no

³ See also *State ex rel. Miller v. Lake County Court of Common Pleas*, 151 Ohio St. 397, 86 N.E.2d 464 (1949), paragraph three of the syllabus; *State ex rel. Tilford v. Crush*, 39 Ohio St.3d 174, 176, 529 N.E.2d 1245 (1988); *State, ex rel. Barbee, v. Allen*, 96 Ohio St. 10, 117 N.E. 13 (1917); *State, ex rel. Eaton Corp. v. Lancaster*, 40 Ohio St.3d 404, 409, 534 N.E.2d 46, 52 (1988); *State, ex rel. Emery-Thompson Machinery & Supply Co., v. Jones*, 96 Ohio St. 506, 118 N.E. 115 (1917).

jurisdiction to order the return of the seized animals. Relator also argues that the General Assembly has vested the Department of Agriculture with exclusive jurisdiction to issue the transfer order, seize the animals, and transport them, and that the only avenue of review is through the administrative process.

First, Huntsman reminds the Court again that Judge Forchione's order has nothing to do with the transfer order; he made no ruling with respect to its validity. Whether Relator can legally enter property and seize property is separate and distinct from the validity of the transfer order. The former involves a Fourth Amendment issue; the latter involves R.C. §935 *et seq.*

Second, Relator's argument fails on its face because the DWA specifically requires Relator to obtain a search warrant from a court of competent jurisdiction when a property owner denies access. The ability to enter the property without permission is dependent upon a court exercising its jurisdiction to issue a search warrant. Relator cannot argue that Judge Forchione patently and unambiguously lacks jurisdiction when a statute requires Relator to use his jurisdiction to obtain a search warrant before it can even enter the property.

Third, this very issue was addressed in a similar case in March, 2015 by Judge Reeve Kelsey in Wood County Court of Common Pleas Case No. 15CV48, *Hetrick v. Ohio Department of Agriculture*. Judge Kelsey thoroughly analyzed the issue of whether or not Relator is vested with exclusive jurisdiction, and Huntsman incorporates as her argument the rationale of Judge Kelsey. A copy of his decision ("Decision") is attached hereto as **Exhibit "F."**

Judge Kelsey noted first that there must be mandatory language in an agency's statutory scheme to confer exclusive jurisdiction. *State ex rel. Taft-O'Connor '98 v. Court of Common Pleas of Franklin County*, 83 Ohio St.3d 487, 700 N.E.2d 1232 (1998). Judge Kelsey concluded that, while the language with respect to investigative powers is mandatory, the language with

respect to the state's quarantine and transfer powers is permissive. See Decision at 9. Judge Kelsey also found that the language with respect to conducting investigations and the exercise of quasi-judicial powers in administering the laws is also permissive. *Id.* Judge Kelsey stated “read as a whole, the statutes governing [Relator] grant it exclusive jurisdiction to investigate violations of the dangerous wild animal laws, but the statutes do *not* grant it exclusive jurisdiction over the transfer of animals subject to the law.” *Id.* at 10. (Emphasis in original.)

Second, Judge Kelsey analyzed the requirement that a statutory scheme be complete and comprehensive in order to confer exclusive jurisdiction on Relator. Specifically, Judge Kelsey takes umbrage with the fact that the entirety of Relator's review process is contained in one short sentence: “A person that is adversely affected by a quarantine or transfer order pertaining to a dangerous wild animal or restricted snake owned or possessed by the person, within thirty days after the order is issued, may request in writing an adjudication in accordance with Chapter 119. of the Revised Code.” R.C. §935.20(D). *Id.* at 12.

In essence, R.C. §935 *et seq.* is “significantly less complete and comprehensive than the ‘rather specific’ procedure imposed” upon other agencies. *Id.* Judge Kelsey concludes by stating:

An agency has exclusive jurisdiction over an area when “a complete and comprehensive statutory” scheme governs its review process. [*Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 151, 573 N.E.2d 655 (1991)]. The court finds that a referral to the procedures in R.C. Chapter 119, without more, is insufficient to create the complete and comprehensive statutory scheme that imbues an agency with exclusive jurisdiction.

Id.

Finally, Judge Kelsey notes that the deprivation of personal property as well as the ability of Relator to impose the costs of transportation, housing, food, and medical care are far more significant than the rights affected in Relator's cited cases. *Id.* at 13. Those rights involved utility rate violations, propriety of campaign ads, and water quality. *Id.* at 12.

Based upon the foregoing analysis, the General Assembly has not vested exclusive jurisdiction over the seizure of the animals at issue in this case.

6. Relator's Motion. Finally, Huntsman will address specific statements and individual arguments contained within Relator's Motion.

Relator falsely characterizes Huntsman's actions throughout its Motion. Relator claims that Huntsman "smuggled" several dangerous wild animals. See Relator's Motion at 6. Furthermore, Relator repeatedly accuses Huntsman of misrepresenting the animals in her possession. *Id.* at 5-7. These accusations are patently false and based on an affidavit of the state's veterinarian who could not possibly have personal knowledge of what is alleged even if they were true. Furthermore, Relator conveniently fails to mention throughout its Motion that, should a hearing officer or a court ultimately determine that Huntsman is exempt from R.C. §935, then all the Relator's characterizations of Huntsman's actions are merely inflammatory.

Relator's Motion is also fraught with plainly misleading assertions. Relator claims that Huntsman's counsel "did not serve the motion [for preliminary injunction] on the Department's counsel." *Id.* at 9. Huntsman's counsel, in fact, emailed the motion to Julie Phillips, attorney for the Ohio Department of Agriculture, with whom he had spoken earlier in the day. On page 12, Relator claims that to return the animals would jeopardize public safety – "this is real-world danger" the Motion claims. Except, Relator fails to support this accusation with any real-world evidence. There is no affidavit testimony; there was nothing argued at the May 5, 2016 hearing; and, there are no accusations in the Motion. Relator does not even assert that Huntsman is violating the administrative code sections that it claims apply to her.

However, there is a 35 year history of zero harm to the public. Relator cannot point to one single incident since 1981 where the public was harmed.

Huntsman also directs this Court's attention to page 17 of Relator's Motion. In first full paragraph, Relator cites to the *Kazmeier, supra*, opinion as though it stands for the proposition that the legislature has declared that the "'broad and complete control' of dangerous wild animals shall be" with the Department of Agriculture. This is wholly misleading. The *Kazmeier, supra*, case deals with the Public Utilities Commission and not the DWA. There is a troubling pattern by Relator of misleading statements and material omissions starting with when it obtained the search warrant from Judge Forchione and continuing through to its Motion.

Finally, even though Relator admits that it is irrelevant, it donates a section of its Motion to dismissing out of hand Huntsman exemptions arguments. Relator makes assumptions about Huntsman's \$1533.08 permit that will ultimately be decided by a hearing officer or a court. While Huntsman appreciates that Relator believes that her argument are "irrelevant and wrong," Relator's assertions are immaterial to its Complaint, and Huntsman will wait for a neutral tribunal to determine their validity.

C. CONCLUSION

This Court has succinctly held that, in order to obtain a writ of prohibition, a relator must establish that an inferior court is exercising jurisdiction, that it is without authority to exercise that jurisdiction, and that it has no adequate remedy at law. A writ can be granted even where there is an adequate remedy if a lower court patently and unambiguously lacks jurisdiction. In the case at hand, Relator fails the second and third part of the analysis. Furthermore, the most Relator can establish is that it disagrees with Judge Forchione's exercise of jurisdiction.

Judge Forchione has statutory authority over this case; he obtained this when Relator sought a search warrant from him. He also has authority to issue search warrants generally and specifically in this case. He also has authority to grant injunctive relief. If Judge Forchione quashes the warrant and issues a permanent injunction, then Relator can appeal this case to the Fifth District Court of Appeals if it believes that he has made an error. This is plainly an adequate remedy at law.

As evidenced by the fact that Relator only analyzes the first factor in its Motion, Relator believes that Judge Forchione patently and unambiguously lacks jurisdiction to order the return of the animals. Its argument is that Judge Forchione has jurisdiction to issue the search warrant, but, if he finds that Relator misled him to obtain the search warrant, he is somehow without jurisdiction to quash the warrant and return the parties to where they were before the warrant was issued.

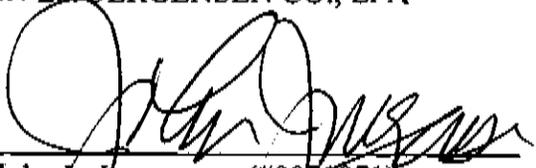
This is the very definition of “sour grapes.” The Relator essentially takes the position that it could say whatever it wanted to get the warrant, and there is nothing the issuing court could do about it after the animals are seized. This cannot be a policy the Court wants to establish.

In the end, Judge Forchione’s Order has no effect on the quarantine order or the transfer order. The former will be litigated in August. And, once Huntsman files a notice of hearing on the latter, it will most likely be set for the same date. If Huntsman shows she is exempt, then both the quarantine order and transfer order are moot. Again, if Relator wants to challenge the quashed search warrant, it can appeal Judge Forchione’s Order. In the meantime, Relator has failed to establish that it is entitled to a Writ of Prohibition. What Relator really wants is for this Court to correct what it believes to be an erroneous decision by Judge Forchione.

WHEREFORE, Cynthia Huntsman and Stump Hill Farm, Inc. respectfully request that this Court dismiss Relator's Complaint for Writ of Prohibition.

Respectfully submitted,

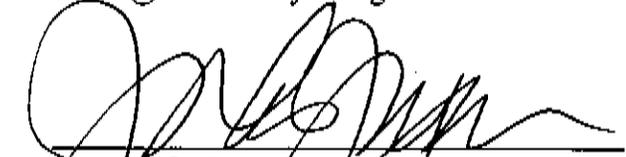
JOHN L. JUERGENSEN CO., LPA

By: 

John L. Juergensen (#0071071)
Washington Square Office Park
6545 Market Avenue North
North Canton, Ohio 44721
Phone: (330) 494-4200
Fax: (330) 494-4201
E-mail: jlj@juergensenlaw.com
Attorney for Intervenors
Cynthia Huntsman and Stump Hill Farm, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was sent by email this 13th day of May, 2016, to the following: Peter.Reed@OhioAttorneyGeneral.gov; Eric.Murphy@ohioattorneygeneral.gov; JDFerrero@starkcountyohio.gov.


Counsel for Intervenors

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)	

AFFIDAVIT OF CYNTHIA M. HUNTSMAN

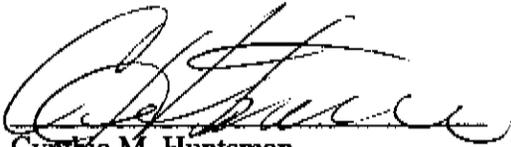
STATE OF OHIO)	
)	ss:
COUNTY OF STARK)	

I, Cynthia M. Huntsman, who being first duly sworn, deposes and states as follows:

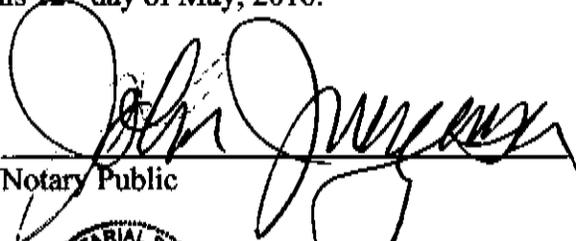
1. I have personal knowledge of the facts contained herein.
2. I have operated Stump Hill Farm for over 35 years.
3. Stump Hill Farm is a 501(c)(3) non-profit entity that relies on bingo proceeds and donations to stay afloat.
4. I have housed and cared for over 200 animals that are now considered dangerous by the state
5. During 35 years, not one single animal has ever harmed anyone.
6. In fact, I have hosted countless field trips where school children have visited the farm without incident.
7. I treat these animals like my children.

8. For the past two years, I have been fighting with the state over whether or not my §1533.08 permit constitutes an exemption.
9. I have maintained that the animals do not have to be listed for me to be exempt.
10. I have been working towards ZAA accreditation, but I was recently notified that my initial attempt had been declined. I will try again in 6 months.
11. On May 2, 2016, I notified the state that I had been denied.
12. I will continue to work to meet accreditation; I have already spent over \$90,000.00 to meet ZAA compliance.
13. State officials chased my animals around their cages with tranquilizer guns and frightened them beyond belief during the seizure.
14. In fact, the state literally hauled my chimpanzee away kicking and screaming. He was at my farm because he had been traumatized by his prior owners.
15. In the end, these animals were not in danger and posed no danger to the public.
16. The quarantine order was in effect and a hearing was set for August.
17. The animals were not going anywhere, and I was properly caring for them.

Further, Affiant sayeth naught.


Cynthia M. Huntsman

Sworn to and subscribed before me this 12th day of May, 2016.


Notary Public



JOHN L. JOERGENSEN
Attorney At Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

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)	

AFFIDAVIT OF DR. DAVID SOEHNLEN

STATE OF OHIO)	
)	ss:
COUNTY OF STARK)	

I, Dr. David Soehnlen, DVM, who being first duly sworn, deposes and states as follows:

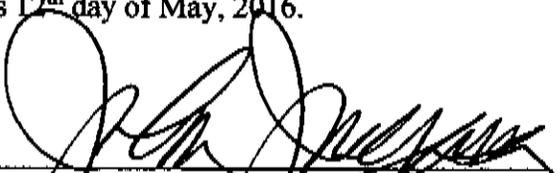
1. I have personal knowledge of the facts contained herein.
2. I am veterinarian with an office at 6315 Beth SW, Navarre, Ohio 44662.
3. I have been a veterinarian for over 42 years.
4. For the past 25 years, I have been one of the veterinarians that has treated the animals owned by Cynthia Huntsman at Stump Hill Farm, Inc.
5. During that time, I have had numerous occasions to treat all the animals that were seized by the Department of Agriculture on May 4, 2016 – including the five tigers, two pumas, two baboons, and the chimpanzee.
6. I have also interacted with these animals in the course of my treatment of them.

7. I can assure the Court that I have far more experience with these animals than the state's veterinarian.
8. I have also brought my children to visit these animals.
9. I have also treated the other animals at Stump Hill Farm, Inc.
10. I am required by the United States Department of Agriculture and the Animal Welfare Act to make random inspections of Stump Hill Farm, and I have conducted many of these over the years.
11. In the course of my experience with these animals and in my professional opinion, none of the animals have ever posed a threat to the public.
12. Furthermore, in the course of my experience with these animals and in my professional opinion, none of the animals were ever in harm's way until they were seized by the Department of Agriculture.
13. In fact, in my opinion, the actions of the Department of Agriculture have been harmful to the animals both emotionally and physically.
14. By taking them from their homes and by disrupting their daily routines, the Department of Agriculture has harmed these animals.
15. Furthermore, they have veterinarian and USDA approved diets in the care of Ms. Huntsman. Upon information and belief, they will not receive their proper food while with the Department of Agriculture.
16. There is no medical reason why these animals should not be returned to Ms. Huntsman.

Further, Affiant sayeth naught.


Dr. David Soehlen

Sworn to and subscribed before me this 12th day of May, 2016.


Notary Public



JOHN L. MURGENSEN
Attorney At Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

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)	

AFFIDAVIT OF DR. JAMES DITTOE

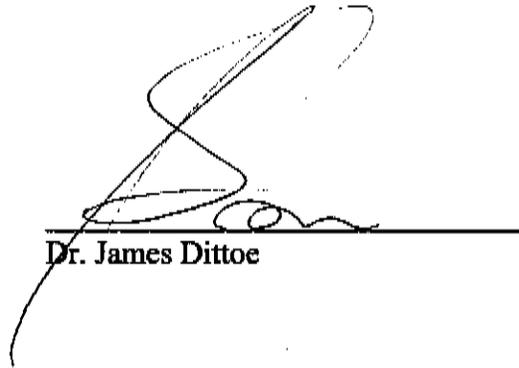
STATE OF OHIO)	
)	ss:
COUNTY OF STARK)	

I, Dr. James Dittoe, DVM, who being first duly sworn, deposes and states as follows:

1. I have personal knowledge of the facts contained herein.
2. I am veterinarian with an office at 6315 Beth SW, Navarre, Ohio 44662.
3. I have been a veterinarian for over 36 years.
4. For the past 10 years, I have been one of the veterinarians that has treated the animals owned by Cynthia Huntsman at Stump Hill Farm, Inc.
5. During that time, I have had numerous occasions to treat all the animals that were seized by the Department of Agriculture on May 4, 2016 – including the five tigers, two pumas, two baboons, and the chimpanzee.
6. I have also interacted with these animals in the course of my treatment of them.

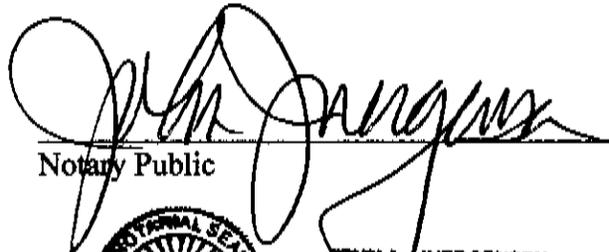
7. I can assure the Court that I have far more experience with these animals than the state's veterinarian.
8. I have also brought my children and grandchildren to visit the animals.
9. I have also treated the other animals at Stump Hill Farm, Inc.
10. In the course of my experience with these animals and in my professional opinion, none of the animals have ever posed a threat to the public.
11. Furthermore, in the course of my experience with these animals and in my professional opinion, none of the animals were ever in harm's way until they were seized by the Department of Agriculture.
12. In fact, in my opinion, the actions of the Department of Agriculture have been harmful to the animals both emotionally and physically.
13. By taking them from their homes and by disrupting their daily routines, the Department of Agriculture has harmed these animals.
14. Furthermore, they have veterinarian and USDA approved diets in the care of Ms. Huntsman. Upon information and belief, they will not receive their proper food while with the Department of Agriculture.
15. There is no medical reason why these animals should not be returned to Ms. Huntsman.

Further, Affiant sayeth naught.



Dr. James Dittoe

Sworn to and subscribed before me this 12th day of May, 2016.



Notary Public



JOHN L. JUERGENSEN
Attorney At Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.



DIVISION OF WILDLIFE

Ohio Department of Natural Resources

WILD ANIMAL PERMIT: 15-25

EDUCATION

CYNDI M. HUNTSMAN
STUMP HILL FARM INC.
6633 KLICK ST.
MASSILLON, OH 44846

EXHIBIT 1

Division of Wildlife Headquarters
2045 Morse Road, Bldg. G
Columbus, Ohio 43229-6693

Chief, Division of Wildlife 1-800-WILDLIFE
Scott Zody

DATE ISSUED

2/27/2012

Revised: 4/28/2014

Others authorized on permit

NO

is hereby granted permission to take, possess, and transport at any time and in any manner specimens of wild animals, subject to the conditions and restrictions listed below or any documents accompanying this permit. This permit, unless revoked earlier by the Chief, Division of Wildlife, is effective from:

3/16/2012 to: 3/15/2016

The Chief of the Division of Wildlife will not issue permits for Dangerous Wild Animal (DWA) species (ORC 935.01 except native DWA, required for specific projects. The permit issued by the Chief does not relieve the permittee of any responsibility to obtain a permit pursuant to R.C. Chapter 935 except as specified for the animals and purposes permitted herein. The permittee must adhere to all additional requirements under R.C. Chapter 935.

THIS PERMIT IS RESTRICTED AS FOLLOWS:

1. Permittee may possess mammals, a bald eagle and other non-releasable raptors for educational purposes.
2. Raptors may only be obtained from licensed rehabilitators.
3. Permittee must maintain migratory bird permits as required by the U.S. Fish and Wildlife Service and must comply with the conditions of the permit.
4. Biosecurity measures must be taken at all times to minimize the potential transmission of diseases of wild animals held in captivity and/or exposure to humans.
5. All cages or enclosures must prevent ingress or egress of wild animals, have appropriate food and water, maintain appropriate temperature and provide protection from the weather. Enclosures must allow the animal to maintain species-specific and/or taxa specific seasonal and biological functions (e.g. bats hibernating).
6. Unless otherwise approved by the Chief (or their representative), wild animals held in captivity may not be released to the wild.
7. An annual report of educational activities must be provided to the Division of Wildlife.

Locations of Collecting:

STUMP HILL FARM INC.

Equipment and method used in collection:

SALVAGE AND DONATION ONLY

Name and number of each species to be collected:

MAY POSSESS A NON-RELEASEABLE FEMALE BALD EAGLE #BE02016. MUST MAINTAIN EAGLE EXHIBITION PERMIT FROM THE U.S. FISH AND WILDLIFE SERVICE(FWS#MB068999-0). NON-RELEASEABLE RAPTORS OBTAINED FROM REHAB FACILITIES FOR EDUCATIONAL DISPLAY AND PROGRAMMING.

RESTRICTIVE DOCUMENTS ACCOMPANYING THIS PERMIT? YES

NO ENDANGERED SPECIES OR AQUATIC NUISANCE SPECIES MAY BE TAKEN WITHOUT WRITTEN PERMISSION FROM THE CHIEF

EXHIBIT E

FILED
MAY 05 2016
LOUIS P. GIAMAVIS
STARK COUNTY OHIO
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

IN RE:)
)
CYNTHIA HUNTSMAN)
TRANSFER OF DANGEROUS WILD)
ANIMALS)
)
)
)
)
)
)

ORDER NO. ~~2016-092~~ 2016 CV 138

JUDGE FRANK FORCHIONE

ORDER

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.

EXHIBIT F

FILED
WOOD COUNTY CLERK
COMMON PLEAS COURT
3-5-15 9:40
2015 MAR -5 AM 9:40

CINDY A. HOFNER

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

Kenneth Hetrick,
Plaintiff,

Case No. 15 CV 48

v.

JUDGE REEVE KELSEY

Ohio Department of Agriculture,
Defendant.

ORDER

This case is before the court on defendant Ohio Department of Agriculture's ("ODA") February 18, 2015, motion to dismiss amended complaint. Plaintiff Kenneth Hetrick filed a response on February 25, 2015. The ODA filed a reply on February 27, 2015. The court will now decide this matter.

The issue before the court is whether the court has subject matter jurisdiction to issue civil and injunctive relief in Mr. Hetrick's favor. Generally, unless it patently and obviously lacks jurisdiction, a court with general jurisdiction over the subject matter of a case is able to determine its own jurisdiction over a particular case. *State ex rel. Rootstown Local School Dist. Bd. of Edn. v. Portage Cty. Court of Common Pleas*, 78 Ohio St.3d 489, 491-492, 678 N.E.2d 1365 (1997); and *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 235, 638 N.E.2d 541 (1994). This court has general jurisdiction to grant injunctive relief. R.C. 2727.03. While questions exist regarding this court's jurisdiction over Mr. Hetrick's specific claims, the court finds that it does not

MAR 05 2015

JOURNALIZED

patently and obviously lack jurisdiction in this case. The court is able, therefore, to determine its jurisdiction over Mr. Hetrick's complaint for injunctive relief.

In determining a motion to dismiss under Civ.R. 12(B)(1), the court must determine whether, "any cause of action cognizable by the forum has been raised in the complaint." *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80, 537 N.E.2d 641 (1989). Unlike other motions to dismiss, in deciding a Civ.R. 12(B)(1) motion, the court may consider matters outside of the complaint without converting the motion to a motion for summary judgment. *Southgate Dev. Corp. v. Columbia Gas Transm. Corp.*, 48 Ohio St.2d 211, 358 N.E.2d 526 (1976), paragraph one of the syllabus. For purposes of a motion to dismiss, the court must liberally construe the complaint in a light most favorable to the plaintiff. The material allegations in the complaint are deemed admitted. *Jenkins v. McKeithen*, 395 U.S. 411, 421, 89 S.Ct. 1843 (1969); and *State ex rel. Alford v. Willoughby Civ. Serv. Comm.*, 58 Ohio St.2d 221, 223, 390 N.E.2d 782 (1979); and *Slife v. Kundtz Properties, Inc.*, 40 Ohio App.2d 179, 182, 318 N.E.2d 557 (8th Dist.1974). A court shall make all reasonable inferences in favor of the nonmoving party. *Stone v. N. Star Steel Co.*, 152 Ohio App.3d 29, 2003-Ohio-1223, 786 N.E.2d 508, ¶ 8 (8th Dist.).

Facts

Mr. Hetrick is the owner of Tiger Ridge Exotics, a wildlife sanctuary located in Stoney Ridge, Wood County, Ohio. Until January 28, 2015, Tiger Ridge housed 13 animals – including six tigers, two lions, a black leopard, a bobcat, a brown bear, a cougar, and a liger – that are considered dangerous wild animals under Ohio

law. On that date, Ohio Department of Agriculture representatives obtained a warrant to enter Mr. Hetrick's property and then seized the 13 exotic animals under an administrative transfer order issued by the ODA's director pursuant to R.C. 935.20. Transfer order, Exhibit D, Attachment 2, to ODA's February 3, 2015 notice of amended exhibit. While the ODA was tranquilizing and removing the animals from Tiger Ridge for transport to the ODA's holding facility in Reynoldsburg, Ohio, Mr. Hetrick's attorney filed the instant case seeking a temporary restraining order preventing the ODA from seizing and moving the animals. The court granted Mr. Hetrick's request and ordered the return of the animals. By the time the temporary restraining order was granted, all the animals had been removed from Mr. Hetrick's property, but several of the transport trucks were still near Tiger Ridge. Despite that, the ODA opted to continue on to the holding facility. To date, none of Mr. Hetrick's animals have been returned.

A discussion of the history and content of Ohio's dangerous wild animal law is necessary to give context to the facts of this case. In 2011, a Zanesville-area man released his collection of 56 exotic animals from their cages before committing suicide. Jarman, Truong, Woods, & Jackson, *Sheriff: 56 Exotic Animals Escaped from Farm near Zanesville; 49 Killed by Authorities*, Columbus Dispatch (Oct. 19, 2011), available at <http://bit.ly/1ztslqV> (accessed Feb. 27, 2015). The loose animals roamed as far as four miles from the owner's property. *Id.* Their recapture required the efforts of several law enforcement agencies and fire departments, the state Division of Wildlife, the county's Emergency Management Agency, and the Columbus Zoo. *Id.* Concerns for the public's safety prompted law enforcement to urge citizens to stay in their homes and caused nearby schools to close. *Id.*

MAR 05 2015

JOURNALIZED

Following this incident, the General Assembly enacted R.C. Chapter 935, which regulates and restricts the possession of “dangerous wild animals.” The new laws went into effect on September 5, 2012, but the chapter’s categorical ban on owning dangerous wild animals did not become effective until January 1, 2014. 2012 Sub.S.B. 310; and R.C. 935.02. Despite the categorical ban, the law makes numerous exceptions that allow owners to retain possession of dangerous wild animals. R.C. 935.03. Under the new statutory scheme, a person who owned a dangerous wild animal on September 5, 2012, was required to register his animal within 60 days of the law’s effective date; a person who possessed a dangerous wild animal on October 1, 2013 – and who wanted to continue to possess the dangerous wild animal after January 1, 2014 – was required to apply to the ODA for one of three types of permits. R.C. 935.101, .05, .07. Rescue facility permits for existing facilities had an application deadline of January 1, 2014. R.C. 935.101(A)(1).

On November 2, 2012, several Ohio dangerous wild animal owners filed suit against the ODA in federal court seeking to enjoin the enforcement of R.C. Chapter 935’s registration and microchip requirements as unconstitutional. See *Wilkins v. Daniels*, 913 F.Supp.2d 517 (S.D.Ohio 2012). That court issued its decision denying the plaintiffs’ motion for a temporary restraining order and preliminary/permanent injunction on December 20, 2012. *Id.* The plaintiffs appealed, but the Court of Appeals for the Sixth Circuit affirmed the District Court’s decision on March 4, 2014, and denied rehearing en banc on April 24, 2014. *Wilkins v. Daniels*, 744 F.3d 409 (6th Cir.2014); and *Wilkins v. Daniels*, 6th Cir. No. 13-3112, 2014 U.S. App. LEXIS 7814 (Apr. 24, 2014).

MAR 05 2015

JOURNALIZED

Following the exhaustion of the constitutional challenges to Ohio's dangerous wild animal laws, Mr. Hetrick filed his application for a rescue facility permit on October 17, 2014. Under its own rules, the ODA had 90 days to either issue or deny Mr. Hetrick's application. Ohio Adm.Code 901:1-4-16(B). The ODA inspected Mr. Hetrick's property in conjunction with the permit application process on November 7, 2014. On January 13, 2015, the ODA sent Mr. Hetrick a letter indicating that it *proposed* to deny his permit application based on violations of R.C. Chapter 935. Denial letter, p. 1, exhibit to Mr. Hetrick's January 28, 2015 complaint. The letter further stated that Mr. Hetrick had the right to administratively appeal the proposed denial within 30 days, and that his failure to appeal would be considered a waiver of any objections to the permit being denied. *Id.*, p. 4. Then, if Mr. Hetrick failed to appeal, the ODA would issue an order denying his permit application. *Id.* The court notes that a thorough reading of R.C. Chapter 935 and Ohio Adm.Code Chapter 901:1-4 does not reveal any laws or regulations that appear to authorize the ODA to issue a "proposed denial" of a permit application.

Regardless, the ODA conducted surveillance of Mr. Hetrick's property at least twice in the week prior to seizing the animals. Search Warrant Affidavit of Ron Cordial, p. 2, exhibit to Mr. Hetrick's January 28, 2015 complaint. ODA investigator, Ron Cordial, saw that wild animals were still located at Tiger Ridge. *Id.* Mr. Cordial claimed that Mr. Hetrick was in violation of R.C. Chapter 935 because Mr. Hetrick did not have a wildlife rescue permit (though his application had not technically been denied), the November 7 inspection had found caging and care violations, and the animals were still on the property. *Id.* at p. 1, 2. The request for a warrant was granted

on January 28, 2015, and ODA employees entered Mr. Hetrick's property and removed his animals later that day.

Mr. Hetrick has owned wild animals since 1976. Affidavit of Kenneth Hetrick, ¶ 2, Exhibit 5 to Mr. Hetrick's February 12, 2015 response to motion to dismiss. The U.S. Department of Agriculture ("USDA") has approved Mr. Hetrick as an exhibitor since 1989. *Id.* at ¶ 3. He complies with the USDA's standards for exotic animals and possesses a USDA permit for his animals. *Id.* at ¶ 4. In the nearly 40 years Mr. Hetrick has owned wild animals, none have ever escaped. *Id.* at ¶ 20. Mr. Hetrick has owned some of the animals that the ODA seized for over 20 years, and Tiger Ridge was the only home they had ever known. January 28, 2015 complaint, p. 3. In addition to their lives being disrupted by the transfer to ODA's holding facility, many of the animals are old, which puts them at risk of health problems by being tranquilized and moved. *Id.* Mr. Hetrick – with financial and volunteer assistance from many people in his community – has worked to meet the housing and care standards imposed by R.C. Chapter 935 and to comply with the dangerous wild animal laws. *See id.* Despite all of this, the ODA opted to administratively seize the animals before finally denying Mr. Hetrick's permit application or allowing Mr. Hetrick to complete the administrative appeal process.

Law and analysis

Subject matter jurisdiction is the court's power to hear and decide a case on its merits, and is a condition precedent to the court's ability to hear a case. *State ex rel. Ohio Democratic Party v. Blackwell*, 111 Ohio St.3d 246, 2006-Ohio-5202, 855

N.E.2d 1188, ¶ 8, quoting *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 11, and *Morrison v. Steiner*, 32 Ohio St.2d 86, 87, 290 N.E.2d 841 (1972), paragraph one of the syllabus. "Jurisdiction of the subject-matter is always fixed and determined by law * * *." *Rogers v. State*, 87 Ohio St. 308, 101 N.E. 143 (1913), paragraph one of the syllabus. Because subject matter jurisdiction goes to the court's power to hear a case, it cannot be waived or conferred by agreement of the parties. *State ex rel. Bond v. Velotta*, 91 Ohio St.3d 418, 419, 746 N.E.2d 1071 (2001); and *Apt v. Apt*, 192 Ohio App.3d 102, 2011-Ohio-380, 947 N.E.2d 1317 (2d Dist.), ¶ 13.

The ODA argues that this court lacks jurisdiction to hear Mr. Hetrick's complaint because the ODA has exclusive jurisdiction over dangerous wild animals until the administrative process is complete, Mr. Hetrick did not raise his constitutional claims at the administrative level first, and the Court of Claims has jurisdiction over tort claims asserted against the state of Ohio. Mr. Hetrick counters that the court has jurisdiction because he is statutorily entitled to have the court determine the validity of his constitutional claims.

1. Exclusive administrative jurisdiction

The ODA's first argument against this court having jurisdiction is that the ODA has exclusive jurisdiction over claims relating to the processes and procedures under R.C. Chapter 935.

When the General Assembly intends to vest an administrative agency with exclusive jurisdiction over particular subject matter, it does so by using appropriate language in the statutes governing that agency. *State ex rel. Banc One Corp. v.*

Walker, 86 Ohio St.3d 169, 171-172, 712 N.E.2d 742 (1999), citing *State ex rel. Taft-O'Connor '98 v. Court of Common Pleas of Franklin Cty.*, 83 Ohio St.3d 487, 488, 700 N.E.2d 1232 (1998). When a complete and comprehensive statutory scheme governs review by an agency, exclusive jurisdiction is vested with the agency. *Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 151, 573 N.E.2d 655 (1991).

The ODA cites several cases in support of its theory that it has exclusive jurisdiction over Mr. Hetrick's complaints regarding the laws in R.C. Chapter 935. These cases are distinguishable on three bases.

A. Mandatory language

The first distinguishing factor is that each agency in the cited cases is granted exclusive jurisdiction over issues relating to its area of expertise by virtue of the mandatory language used in the agency's statutory scheme. *State ex rel. Taft-O'Connor '98 v. Court of Common Pleas of Franklin Cty.*, 83 Ohio St.3d 487, 488, 700 N.E.2d 1232 (1998) (complaints regarding elections law violations *shall* be filed with the Ohio Elections Commission); and *Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 151, 573 N.E.2d 655 (1991) (Public Utilities Commission of Ohio *shall* provide notice of and hold hearings on complaints about utility rates and tariffs); and *State ex rel. Albright v. Court of Common Pleas of Delaware Cty.*, 60 Ohio St.3d 40, 42, 572 N.E.2d 1387 (1991) (annexation petitions *shall* be filed with and decided by the board of county commissioners in the county where the property is located); and *Cincinnati ex rel. Crotty v. Cincinnati*, 50 Ohio St.2d 27, 29-30, 361 N.E.2d 1340 (1977)

(statute governing the Ohio Environmental Protection Agency's Environmental Board of Review specifically grants "exclusive original jurisdiction over any matter which may * * * be brought before it").

The statutes governing dangerous wild animals use mandatory language to vest the ODA's director with power to investigate potential violations of R.C. Chapter 935. R.C. 935.20(A) ("the director of agriculture immediately *shall* cause an investigation to be conducted * * *") (emphasis added). But the same section also uses permissive language to describe the ODA's transfer and quarantine powers. *Id.* ("the director or the director's designee *may* order the animal * * * quarantined or *may* order the transfer of the animal * * *") (emphasis added). Further, the general powers granted to the director and his appointees regarding the conduct of investigations and the exercise of some quasi-judicial powers in administering the laws in R.C. Title 9 are *permissive*, not mandatory. *E.g.* R.C. 901.26 ("The director of agriculture in conducting investigations, inquiries, or hearings, and every person appointed by him, *may* administer oaths, certify to official acts, take depositions * * *") (emphasis added); and R.C. 901.27 ("For the purpose of making any investigation * * *, the director of agriculture *may* appoint * * * an agent whose duty shall be prescribed * * *") (emphasis added).

The relevant statutes in R.C. Title 9 do not contain the same mandatory language as the statutes in the cases that the ODA cites in support of its contention that it has exclusive jurisdiction over this particular subject matter. As noted above, the language used by the General Assembly to vest jurisdiction in an agency is determinative of the agency's jurisdiction. *See State ex rel. Banc One Corp. v. Walker,*

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86 Ohio St.3d 169, 171-172, 712 N.E.2d 742 (1999). Read as a whole, the statutes governing the ODA grant it exclusive jurisdiction to investigate violations of the dangerous wild animal laws, but the statutes do *not* grant it exclusive jurisdiction over the transfer of animals subject to the laws.

Additionally, Mr. Hetrick's request for an injunction is directed at the ODA's transfer power (an area over which the ODA does not have exclusive jurisdiction), not at its investigatory powers. The court's action on Mr. Hetrick's complaint does not interfere with the ODA's investigation of Mr. Hetrick (indeed, the letter sent to Mr. Hetrick on January 13, 2015, proposing to deny his permit application indicates that the ODA had concluded its investigation and made its determination). The ODA could conduct any further investigations that it feels are necessary without seizing the animals, and the court's actions in this case do not circumvent that investigative power.

The ODA asserts that *Banc One's* rationale – that the language used by the General Assembly to vest jurisdiction in an agency is determinative of the agency's jurisdiction – is “utterly irrelevant” to this case because the court in *Banc One* was discussing common law claims, not special statutory proceedings. *Banc One*, 86 Ohio St.3d 169. Though the facts of *Banc One* are different from the facts here, the idea that an agency's power is determined by the language the General Assembly used to create the agency is applicable to all agencies; the court finds no reason to distinguish *Banc One* on this basis.

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B. Completeness and comprehensiveness

The second difference between the ODA's cited cases and this case is that the statutory scheme in R.C. Chapter 935 is not nearly as "complete and comprehensive" as the schemes in the cases that the ODA cites. In *Kazmaier*, for example, the Supreme Court of Ohio remarked, "[t]here is perhaps no field of business subject to greater statutory and governmental control than that of the public utility." *Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 151, 573 N.E.2d 655 (1991), quoting *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 256, 141 N.E.2d 465 (1957). The court also noted that the statutory scheme governing the Public Utilities Commission is a, "broad and comprehensive statutory scheme for regulating the business activities of public utilities," and provides a "rather specific" procedure for customers to challenge utility rates and charges. *Id.* at 150, 151. The other cases involve similarly highly regulated subject matter. See *State ex rel. Taft-O'Connor '98 v. Court of Common Pleas of Franklin Cty.*, 83 Ohio St.3d 487, 700 N.E.2d 1232 (1998) (elections law); and see *Cincinnati ex rel. Crotty v. Cincinnati*, 50 Ohio St.2d 27, 361 N.E.2d 1340 (1977) (environmental protection); and see *Dept. of Job and Family Servs. v. Lifeway for Youth, Inc.*, 173 Ohio App.3d 648, 2007-Ohio-6183, 879 N.E.2d 861 (10th Dist.) (child welfare).

The statutory scheme governing dangerous wild animals does not reach the same level of comprehensiveness or specificity regarding agency review. Though some aspects of the law reach highly regulated territory (the types of animals covered in R.C. 935.01(C) and the requirements for obtaining permits in R.C. 935.05, for example), the parts of the law pertaining to review do not. Under the section governing the

director's authority to seize dangerous wild animals, the entirety of the ODA's review process is contained in one short subsection: "A person that is adversely affected by a quarantine or transfer order * * *, within thirty days after the order is issued, may request in writing an adjudication in accordance with Chapter 119. of the Revised Code." R.C. 935.20(D). This short directive referring to the procedures in R.C. Chapter 119 is significantly less complete and comprehensive than the "rather specific" procedure imposed upon the Public Utilities Commission in reviewing complaints made to it. See *Kazmaier* at 151.

An agency has exclusive jurisdiction over an area when "a complete and comprehensive statutory scheme" governs its review processes. *Id.* The court finds that a referral to the procedures in R.C. Chapter 119, without more, is insufficient to create the complete and comprehensive statutory scheme that imbues an agency with exclusive jurisdiction. Because the ODA does not have a complete and comprehensive scheme of review for its transfer procedures, the court further finds that the ODA does not have exclusive jurisdiction over the issues addressed in Mr. Hetrick's complaint, and this court has jurisdiction to decide his claims.

C. Rights affected

The final difference between the cited cases and this case is the nature of the rights affected. The agencies in the ODA's cited cases made determinations about issues such as utility rate violations, propriety of campaign ads, and water quality. None of those agencies were depriving an individual of his property or imposing significant personal costs on that individual. The dangerous wild animal statutes not only allow the

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ODA to take property that can be of significant financial value, but also allow the agency to charge the owner for any transportation, housing, food, and medical costs associated with the taken property. R.C. 935.20(E); *and see Wilkins v. Daniels*, 913 F.Supp.2d 517, 522 (S.D. Ohio 2012) (noting that one plaintiff's collection of 49 exotic animals was worth approximately \$73,000). Given the nature and worth of the personal property rights affected by R.C. Chapter 935, the court finds that these laws are distinguishable from the ones cited in the ODA's cases.

The ODA makes much of the fact that the director's order and the processes surrounding it are "special statutory proceedings" that are not reviewable by the court before Mr. Hetrick completes the administrative appeal process. But this line of thought is in error. A special proceeding is, "an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity." R.C. 2505.02(A)(2). And an order is reviewable by a higher authority when it is made in a special proceeding and affects a substantial right. R.C. 2505.02(B)(2). The director's order in this case falls squarely within the definition of a final order in R.C. 2505.02(B)(2). The transfer order deprived Mr. Hetrick of his substantial right in his property, and, according to the ODA, it was made in a special proceeding. Thus, the director's transfer order is statutorily reviewable by a higher authority – this court – which grants the court jurisdiction to hear the case.

2. Remedy

Though the court has subject matter jurisdiction to address Mr. Hetrick's complaints, it would be imprudent for it to exercise its jurisdiction at this juncture

because immediate and irreparable harm to Mr. Hetrick has already occurred, and it is against the interests of judicial economy to fight the same legal battle in multiple forums simultaneously.

First, Mr. Hetrick's amended complaint fails to allege the harm necessary for the court to issue or reissue a temporary restraining order. A temporary restraining order is appropriate where the plaintiff demonstrates that immediate and irreparable injury will occur because of the defendant's actions. Civ.R. 65(A). In this case, the immediate and irreparable harm occurred a month ago – when the ODA seized Mr. Hetrick's animals. Initially, the court ordered the animals returned, but the agency refused to return them (ostensibly because it was concerned for the animals' health and safety), and the animals remain at the ODA's holding facility. By the time Mr. Hetrick filed his amended complaint, there was no threat of immediate and irreparable injury to Mr. Hetrick; the injury had already happened. Under the plain language of Civ.R. 65(A), the court cannot issue a temporary restraining order unless the harm will occur in the future. Further, the court does not believe it can simply lift the stay on the January 28 temporary restraining order because that order was based on a different complaint. Circumstances have changed since Mr. Hetrick filed his original complaint, and it would be unfair to reinstate the temporary restraining order based on the original complaint without holding a new hearing and making new findings under Civ.R. 65(A). Considering that there is no threat of immediate future harm to Mr. Hetrick from the ODA's actions and the facts in the amended complaint do not support the issuance of a temporary restraining order, the court presently cannot reinstate the January 28 temporary restraining order or issue a new one.

Additionally, it would be against the interests of judicial economy for the court to exercise its jurisdiction over Mr. Hetrick's complaint now. According to Mr. Hetrick's amended complaint and response to this motion to dismiss, he has instituted appeals with both the ODA and the Court of Common Pleas of Franklin County. If this court proceeds immediately on Mr. Hetrick's claims, there is a very real possibility of inconsistent decisions and judgments coming out of different tribunals. This would do nothing but cause confusion and increase the potential for further litigation. It could also be detrimental to the health and safety of Mr. Hetrick's animals. If different bodies order the animals moved multiple times, the chances of the animals needing to be anesthetized multiple times increases, which puts them at increased risk of health complications or death. Mr. Hetrick's legal battles are best pursued in one forum at a time, so the court declines to exercise its jurisdiction over the amended complaint at this time.

The court empathizes with Mr. Hetrick's plight. But the manner in which he has chosen to pursue his claims makes it impossible for the court to issue a temporary restraining order in his favor or reinstate the prior temporary restraining order, and makes it injudicious for the court to proceed immediately on the claims in Mr. Hetrick's amended complaint. Even though the court has subject matter jurisdiction over Mr. Hetrick's issues, it will not proceed immediately because irreparable harm has already occurred and it is not sensible, judicially speaking, for this court to hear Mr. Hetrick's claims at the present.

Conclusion

After reviewing the applicable law and the parties' filings, the court finds that it has jurisdiction to determine Mr. Hetrick's claims against the ODA because (1) the ODA's statutory scheme does not contain mandatory language that would confer exclusive jurisdiction, (2) its statutory scheme is not sufficiently complete and comprehensive to confer exclusive jurisdiction, and (3) the nature of the rights affected is significant. As the court finds that Mr. Hetrick's complaint does not involve an area over which the ODA has exclusive jurisdiction, this court has jurisdiction to determine the issues.

And even though the court has jurisdiction, it will not proceed immediately with Mr. Hetrick's claims because the amended complaint does not allege the immediate and irreparable harm necessary for the court to issue a temporary restraining order, and the interests of judicial economy dictate that Mr. Hetrick's issues should be resolved in one forum at a time.

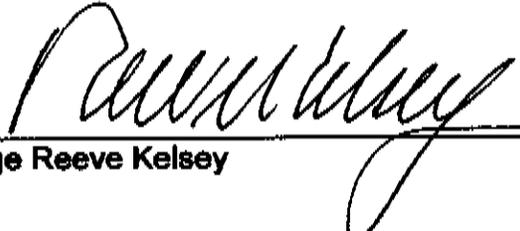
IT IS ORDERED that defendant Ohio Department of Agriculture's motion to dismiss is denied.

IT IS ORDERED that the temporary restraining order filed on January 28, 2015, is vacated.

IT IS ORDERED that a permanent injunction hearing is set for August 18, 2015, at 8:30 a.m.

Date

3/4/15



Judge Reeve Kelsey

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CERTIFICATE

This is to certify that a copy of the foregoing Order was mailed or delivered this date to;

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3-5-15

DATE

Nancy Aursand

Kenneth Hetrick/17

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