

Case No. 2016-0729

In The Supreme Court of Ohio

STATE EX REL. DIRECTOR, OHIO
DEPARTMENT OF AGRICULTURE,

Relator,

v.

THE HONORABLE FRANK G. FORCHIONE,

Respondent.

**Respondent's Opposition to Emergency Motion for
Peremptory or Alternative Writ of Prohibition**

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Opposition to Emergency Motion for Peremptory or Alternative Writ of Prohibition

1. Introduction

The Respondent requests that this Honorable Court deny the Realtor's request for an emergency motion for peremptory or alternative writ of prohibition in Stark County Court of Common Pleas Case 2016-MI-00138, *In re: Cynthia Huntsman Transfer of Dangerous Wild Animals*. In that case, Huntsman requested a preliminary injunction and a temporary restraining order requesting the return of 10 wild animals seized in accordance with a transfer order signed by the Relator. After a hearing, the Respondent granted Huntsman's request for a preliminary injunction and ordered that the animals be returned by May 19, 2016. The Respondent also set a hearing on the motion for temporary restraining order for that same day.

The Relator argues that the Stark County Common Pleas Court lacks jurisdiction to do so because the oversight of dangerous wild animals is committed, at least initially, to special statutory proceedings in the Department of Agriculture. Contrary to the Relator's position, however, Chapter 9 does not vest the Department with exclusive jurisdiction over the transfer of animals.

2. Background

For the last 30 years, Huntsman has owned Stump Hill Farm in Massillon, Stark County, Ohio. The farm takes in abused or unwanted animals and at times, schools, nursing homes, and other groups to visit the animals. Huntsman has a federal license and a

license from the United States Department of Agriculture. (Temporary Restraining Order hearing of May 5, 2016, Transcript at 9–12.)

Ohio Revised Code Section 935, the Ohio Dangerous Wildlife Act, was enacted as a result of an incident that took place in Muskingum County several years ago. Huntsman believes that the permit she currently holds falls under an exception under Section 1533.08 of the Revised Code. A two-year battle has ensued over the interpretation of this permit. If Huntsman's permit is deemed valid, then she is exempted from the Dangerous Wildlife Act. (T. at 10-11.)

In March 2016, Realtor issued a quarantine order according to R. C. 935.20. The parties agreed to abide by the terms. Huntsman was permitted to keep the animals on the property and was required to care for them. No concern was raised about any threat that the animals may pose to the community. (T. at 10-12.) Under R. C. 935.20, Huntsman requested a hearing regarding the quarantine, which was initially scheduled for June 2016. Realtor, however, had a conflict and Huntsman agreed to continue the hearing until August 12, 2016. (T. at 12.)

In addition, near the end of April 2016, the United States Department of Agriculture inspected her farm. There were no serious violations reported. (T. at 17.)

Still, Relator rushed to remove the animals from Huntsman's farm. First, on May 3, 2016, Relator executed a Transfer Order, which rescinded the Quarantine Order. The next day, Relator came to the Stark County Court of Common Pleas to obtain a search warrant in order to enter her property to seize the animals. After a brief meeting in Respondent's

chambers with only the Relator, the Respondent signed the warrant. The Relator executed the warrant immediately, entered the farm and removed the animals.

Huntsman's lawyer contacted the Court to request a hearing. Huntsman's lawyer advised the Court that, in seeking the warrant, the Relator did not fully disclose Huntsman's cooperation, compliance, or the existence of the August hearing. After a hearing on May 5, 2016, the Respondent granted Huntsman's request for a temporary restraining order, ordering the animals be returned by May 19, 2016. The Respondent also set a hearing on Huntsman's request for an injunction hearing for May 19, 2016.

There is no question that Huntsman is the owner of the animals. Relator's argument during the hearing, and his argument to this Court, is, in part, that the animals are a threat to the community and pose a danger to the nearby residents. The hearing did not support the Relator's argument, however. It is clear that Huntsman has taken proper care of the animals over the 30 or so years she has had her farm. Over the years, many members of the community have enjoyed visiting the animals. The Relator even acknowledged that there have not been any violations.

One of the main concerns that the Respondent had is that when the search warrant was signed, Relator failed to reveal all critical and relevant facts.

The Court: ...But here is what I am telling you. Had you come into my office yesterday and said these animals had been under quarantine there and there is a hearing in August, there is a good chance I may not have signed this search warrant. So I mean I was not made aware of all these things, and I find them to be very important.

Relator: All right. I apologize, Your Honor, if you believe that was relevant to the issue of the warrant.

The Court: I think it is more than relevant. This is justice. You are taking, the government has taken property. I mean people have rights. I mean I'm the Judge, I am not a rubber stamp for the government. That is just not going to happen. But you came up to get a search warrant, and I listened to the facts. Nobody told me that she was under quarantine and that there has been no violations. No one told me there was going to be a hearing here in August. Nobody told me she is going to get a letter saying that she is denied being approved by the Zoological Association when they don't even tell her what she did wrong....

3. Law and Analysis

“Subject matter jurisdiction” of a court connotes power to hear and decide a case on its merits. *Morrison v. Steiner*, 32 Ohio St.2d 86, 87, 290 N.E.2d 841 (1972). It 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, at ¶ 11.

“Jurisdiction of the subject-matter is always fixed and determined by law....” *Rogers v. State*, 87 Ohio St. 308, 101 N.E.2d 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, 746 N.E.2d 1071 (2001).

Generally, unless it patently and obviously lacks jurisdiction, a court with general jurisdiction over the subject matter of the case is able to determine its own jurisdiction over a particular case. *State ex rel. Rootstown Local School Dist. Bd. of Ed. v. Portage Cty.*

Court of Common Pleas, 78 Ohio St.3d 489 (1997). According to R. C. 2727.03, a common pleas court has general jurisdiction to grant injunctive relief.

Relator argues that he 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 a 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).

There is no question that agencies are granted exclusive jurisdiction over issues relating to its area of expertise by virtue of the mandatory language used in the agency's statutory scheme. See e.g. *State ex rel. Taft-O'Connor '98*, 83 Ohio St.3d at 488 (complaints regarding election law violations *shall* be filed with the Ohio Elections Committee); *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).

However, the statutes governing dangerous wild animals only use mandatory language to vest the Relator 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....”). The same section uses permissive language to describe the Relator’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 Relator and his appointees regarding the conduct of investigations and the exercise of some quasi-judicial powers in administering the laws in R.C. Chapter 9 are permissive, not mandatory. *E.g.* R. C. 901.26 (“the Director of Agriculture in conducting investigations, inquires, or hearings, and every person appointed by him, *may* administer oaths, certified 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 upon which Relator relies in support of its argument that it has exclusive jurisdiction over the this particular subject matter. As noted, 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.*, 86 Ohio St.3d 169. Read as a whole, the statutes which govern Relator grant exclusive jurisdiction to investigate violations of dangerous wild animal laws, but the statutes do *not* grant it exclusive jurisdiction over the transfer of animals subject to the laws.

Huntsman’s request for an injunction is directed at the Relator’s transfer power—an area over which the Relator does not have exclusive jurisdiction—not at its investigatory powers. The Respondent’s granting of the Preliminary Injunction does not interfere with Relator’s investigation of Huntsman. Relator can conduct any further investigation that it feels is necessary without seizing the animals, and this Court’s actions in this case does not circumvent that power.

In addition, 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 higher regulated territory (the type 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 the review do not. Under the section governing the Relator’s authority to seize dangerous wild animals, the entirety of Relator’s review process is contained in one short subsection: “A person that is adversely affected by a quarantine or transfer order...within 30 days after the order is issued, may request in writing adjudication in accordance with Chapter 119 of the Ohio Revised Code.” R.C. 935.20(D). The short directive referring to the procedures in R.C. Chapter 119 is significantly less complete and comprehensive than, for example, the “rather specific” procedure imposed upon the Public Utilities Commission in reviewing complaints made to it. See *Kazmaier*, 61 Ohio St.3d 151.

An agency has exclusive jurisdiction over an area when a “complete and comprehensive statutory scheme” governs its review process. *Id.* Because the transfer procedures in Revised Code Chapter 935 lacks the same type of “complete and

comprehensive” scheme of review that the General Assembly used for agency actions, Respondent respectfully disagrees that the Relator has exclusive jurisdiction in this area.

Most of the agencies that Relator relies on in support of its contention that Respondent does not have jurisdiction are those which deal with utility rate violations, propriety of campaign ads, and water quality. None of these agencies deprive an individual of their property or impose significant personal costs on that individual. The Dangerous Wild Animals statutes not only allow Relator to take property that can be of significant financial value, but also allow the Relator to charge to the owner for any transportation, housing, food, and medical costs associated with the taken property. R. C. 935.20(E); *see Wilkins v. Daniels*, 913 F.Supp. 2d 517 (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. 935, Respondent believes that these laws are distinguishable from the ones relied on by the Relator.

4. Conclusion

Respondent respectfully submits that it has the jurisdiction to grant injunctive relief in this case. Specifically, it has jurisdiction over the transfer of Huntsman’s animals since it does not interfere with the Relator’s right to investigate Huntsman.

Here, the Respondent exercised its jurisdiction because it believed Huntsman satisfied the necessary requirements for injunctive relief, and also because the Relator failed to inform the Respondent of all the relevant details when requesting the warrant. And despite the Relator’s claim that returning Huntsman’s animals poses a “significant risk to

public safety and to the animals' health," the hearing belied that conclusion. After all, with respect to the animals' health and living conditions, nothing changed from the time of the Quarantine Order, which allowed Huntsman to keep the animals and care for them, to the time of the transfer order. Even the Relator acknowledged that Huntsman had fully complied with the Quarantine Order. Moreover, Huntsman had kept animals of this kind for almost 30 years. Also, the United States Department of Agriculture had recently inspected Huntsman's farm and found no violations. In short, there appeared to be no reason for the Relator to seize the animals before the issue could be finally resolved at the August hearing.

Therefore, the Respondent respectfully requests that this Honorable Court deny the Relator's emergency motion for peremptory or alternative writ of prohibition.

Respectfully submitted,

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Certificate of Service

I certify that I sent a copy of the foregoing motion by regular U.S. Mail and electronic mail on May 13, 2016 to:

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