

In the
Supreme Court of Ohio

STATE EX REL.	:	
DIRECTOR, OHIO DEPARTMENT OF	:	
AGRICULTURE,	:	
	:	
Relator,	:	
	:	
v.	:	CASE NO. 2016-0729
	:	
THE HONORABLE FRANK G. FORCHIONE,	:	ORIGINAL ACTION FOR WRIT OF
	:	PROHIBITION
	:	
Respondent.	:	
	:	

DIRECTOR’S OPPOSITION TO MOTION TO DISMISS

Huntsman’s motion to dismiss this prohibition action should be denied. She does not seriously dispute this Court’s general rule for prohibition, or contest that the Director did not plead the elements of a prohibition action, but instead mostly raises irrelevant and wrong factual arguments that cannot support a motion to dismiss. Her few legal arguments undermine this Court’s general rule, which protects the legislative choice to assign agencies initial determinations such as protecting the public from dangerous animals, to be followed by judicial review only *after* the agency reaches a final agency action.

Dismissal would be wrong because the prohibition elements are stated—indeed, easily met as a legal matter—here. Huntsman does not contest that “courts have no jurisdiction to hear” “actions for . . . injunction . . . where special statutory proceedings would be bypassed.” *State ex rel. Albright v. Delaware Cnty. Ct. of Common Pleas*, 60 Ohio St. 3d 40, 42 (1991). Here, Huntsman “requested” injunctive relief and the court “granted” injunctive relief. She does not contest the Director’s legal authority to issue a transfer order, or that the statute provides for

special statutory proceedings if she wishes to challenge that order. The lower court had no jurisdiction to grant injunctive relief and bypass those proceedings. At the very least, it lacked jurisdiction because Huntsman never filed a complaint.

Finally, she does not seriously contest that the Director has no alternative remedy, as she admits the Director must comply with the lower court's temporary restraining order before he can appeal. These concessions control, and, as pleaded in the complaint, justify denial of the motion to dismiss and grant of the writ.

ARGUMENT

The Director properly pleaded the elements of a prohibition action, and those pleadings are supported by affidavit. S. Ct. Prac. R. 12.02. Respondent-Intervenor moved to dismiss under Ohio Rules of Civil Procedure 12(B)(6). *See* S. Ct. Prac. R. 12.04(B)(1). To succeed under that standard, "it must appear beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the [initiating party] to the relief sought." *Ohio Bur. Of Workers' Comp. v. McKinley*, 130 Ohio St. 3d 156, 2011-Ohio-4432 ¶ 12. The Director now responds pursuant to Rule 12.04(B)(2). This Court grants prohibition where: (1) a trial court has undoubtedly exercised judicial power; and (2) the court's lack of jurisdiction is patent and unambiguous, and (3) the relator has no adequate remedy at law. *See State ex rel. Ohio Dep't of Mental Health v. Nadel*, 98 Ohio St. 3d 405, 2003-Ohio-1632 ¶ 19. Huntsman does not challenge the first element, and the others are pleaded and met here.

A. The lower court's lack of jurisdiction is patent and unambiguous.

The Director outlined why the lower court lacked jurisdiction in his separate motion for issuance of a peremptory or alternative writ of prohibition. Although this brief responds to

Huntsman's separate Motion to Dismiss, the Director refers the Court to his earlier motion and incorporates its arguments, rather than restating those arguments here.

1. The search warrant did not transfer jurisdiction from the administrative process to the trial court, and its view would undercut virtually all agencies, in violation of the Court's doctrine and the General Assembly's intent.

Huntsman's motion does not contest this Court's general rule that common pleas courts cannot interfere in a subject committed to agency proceedings. Instead, she suggests that an exception be made here because the agency came to the common pleas court for a search warrant. Huntsman Mot. at 9-11. But the Court has never established such an exception, and creating it now would undermine this Court's general rule. The statute's limited grant of jurisdiction to issue a warrant does not somehow let the court bypass the statute's jurisdictional grant to the *Director* or take over topics entrusted to the administrative process.

The search warrant does not make this case any different from this Court's other prohibition cases—the common pleas court still cannot bypass the administrative process. Indeed, even if a party is challenging the basis for a search warrant issued by a court during an administrative investigation, it does so within the administrative process, not in the court. *See, e.g., Loom Lodge 0472 Conneaut v. Ohio Liquor Control Com'n*, 10th Dist. Franklin No. 03AP-339, 2003-Ohio-7235, ¶¶ 10-11; *Ford Aeriwe 2166 v. Liquor Control Com'n*, 3rd Dist. Logan No. 8-96-10, 1996 WL 635437, *1-2 (Oct. 30, 1996). Huntsman is free to challenge the transfer order or the search warrant, but only through the statutorily provided administrative process under R.C. Chapter 119. *See* R.C. 935.20(D).

To suggest that this case *is* different from this Court's other cases because of the search warrant would destroy the whole doctrine of protecting special statutory proceedings. That is, most or all administrative schemes empower agencies to use either a search warrant or

administrative subpoenas to gather facts. Search warrants of course may be obtained only from courts, while administrative subpoenas can require court enforcement. This was true in cases where this Court has granted prohibition. Under Huntsman's theory a case like *Taft-O'Connor*, for example, would have been different if one of the parties had filed a subpoena enforcement action. *State ex. Rel. Taft-O'Connor '98 v. Franklin Cnty. Ct. of Common Pleas*, 83 Ohio St.3d 487 (1998); *see* R.C. 3717.157(D), R.C. 119.09 (providing for a subpoena enforcement action). But a subpoena enforcement action cannot transfer the administrative hearing to the court. In fact, a challenge to even that limited action also must be made within the administrative process. *See Ohio State Dental Bd. v. HealthCare Venture Partners, LLC*, 10th Dist. Franklin, 2014-Ohio-2508 ¶¶ 14-15 (no standing to assert challenge to subpoena enforcement action because they were only a party to the administrative proceeding). Contrary to Huntsman's argument, review of such prehearing investigatory disputes always comes up through the administrative process. *See, e.g., Clayton v. Ohio Bd. of Nursing*, 2016-Ohio-643 (subpoena dispute raised in administrative proceeding, not in collateral court proceeding).

Huntsman's argument undercuts this Court's rule and the General Assembly's intent. If she were right, then parties could routinely refuse to cooperate, forcing the agency to seek a search warrant or subpoena enforcement, and thus transferring jurisdiction to courts of common pleas all across the state. That contradicts this Court's precedent protecting special statutory proceedings. It also undermines the jurisdiction of the administrative process, and the jurisdiction of the court assigned to review the administrative process under R.C. 119.12. Worse yet, it would lead to competing claims of jurisdiction among the courts. For instance, if a search warrant transferred jurisdiction, what would happen if search warrants were issued in more than one county? The Court should not license this rewrite of the statute and its own case law.

2. The lower court lacked jurisdiction because the Dangerous Wild Animals Act gives the Director exclusive jurisdiction to issue the transfer order and makes the administrative process the sole avenue of relief.

Next, Huntsman suggests that this statute is less ““complete and comprehensive”” than the schemes this Court considered in previous cases. Huntsman Mot. at 15 (citation omitted). That is simply not true.

First, Huntsman relies primarily on the distinction between mandatory and permissive language when describing the Director’s power to issue a transfer order. Huntsman Mot. at 14-15; see also Court’s Br. at 3-5. But the Director's duty to investigate is in fact mandatory. R.C. 935.20 (the Director ‘shall . . . investigat[e]’). As part of that mandatory duty, the statute invests the Director with discretion to issue a transfer order, it does not make his authority any less exclusive. At no point does the statute authorize a court to transfer the animals during an investigation, or authorize the Director to delegate his transfer authority to a court. R.C. 935.20(A) & (I).

Second, Huntsman says that the transfer order “depriv[es]” her of “personal property,” suggesting it is not investigatory. Huntsman Mot. at 15. But the statute says the powers are the same. “For purposes of the investigation, the director . . . may order the transfer of the animal.” R.C. 935.20(A). For the same reason, there is no deprivation of property. The argument confuses this temporary investigatory seizure of the animals with the final permanent seizure order that comes later. The transfer order is *temporary*, and serves an *investigative* purpose, keeping the public and the animals safe while the administrative process and the investigation go forward. *Permanent* seizure proceedings begin “after” the administrative process and all appeals, R.C. 935.20(H), and such permanent seizure cases are brought in court.

Most important, the assertion that the entire statutory process is only “one short sentence,” Huntsman Mot. at 15, ignores its cross-reference to Chapter 119. To suggest *this* administrative process lacks comprehensiveness is to attack the Chapter 119 administrative process more broadly. That argument has serious public policy ramifications for nearly all state agencies. It means that *whenever* Chapter 119 proceedings occur, a court of common pleas can bypass those proceedings by issuing injunctive relief. This too flies in the face of what this Court has said previously, and of how lower courts treat these cases in a variety of contexts.

3. The lower court lacked jurisdiction as Huntsman moved for injunctive relief, not to quash the subpoena, and the court of common pleas granted only injunctive relief.

Huntsman says that the temporary restraining order “quashed the warrant.” Mot. at 6. Although the lower court suggested something like this at the hearing, it is not what its order says.

It is wrong factually because the court granted injunctive relief, not a motion to quash. Huntsman asked for injunctive relief. *See* Motion, attached to Complaint as Ex. A-6. She received injunctive relief. *See* TRO, Ex. A-8. At no point in the court’s temporary restraining order does it quash the search warrant. *Id.* And even a motion to challenge the search warrant should have been brought in the administrative hearing, as explained already.

More important, it is wrong as a legal matter because the search warrant only authorized the Director’s personnel to *enter and search* Huntsman’s property to investigate violations of the Dangerous Wild Animals Act, not to “seize” the animals, Huntsman Mot. at 14. As a matter of law, that is all the search warrant *could* do. R.C. 935.19(A)(3). The Director’s *transfer order* authorized the seizure. *See* R.C. 935.20(A); Transfer Order, Ex. A-5. Despite Huntsman’s attempt to have it both ways, Huntsman Mot. at 14, she cannot say that the temporary restraining

order “has nothing to do with the transfer order,” *id.*, and still argue that the lower court’s order requires the return of the animals. Simply quashing the warrant would not result in the return of animals. The implied “fruit of the poisonous tree” argument has no merit. If Huntsman wants the transfer order reversed, she must seek reversal through the administrative process, as she herself seems to admit. *See* Mot. at 18.

What Huntsman really wants is to rewrite the statute to provide a *pre-deprivation* hearing as to transfer orders. The legislature could easily have written the statute that way—and has in other contexts—but given the public safety risks raised by dangerous wild animals, they chose to provide for a *post-deprivation* hearing instead. She cannot substitute her idea of the appropriate statute for the one actually chosen by the General Assembly.

4. The lower court lacked jurisdiction because Huntsman never filed a complaint.

Finally, the lower court lacked jurisdiction because Huntsman did not properly file for injunctive relief. Compl. ¶¶ 37-42. She never filed a complaint to begin the case. Civ. R. 3(A). She never named defendants. *Id.* Pleadings were never served on the Director or the Department of Agriculture, Civ. R. 4.1, and the lower court never issued a summons. Civ. R. 4. Even if the statute authorized the court to act here (and it does not), the lower court still lacked jurisdiction to grant injunctive relief without a complaint.

For each of these reasons, the lower court lacked jurisdiction, and Huntsman’s motion to dismiss should be denied.

B. Huntsman wrongly suggests the Director has an adequate remedy at law by taking an appeal after the May 19 hearing.

Huntsman wrongly suggests the Director has an adequate remedy at law by appealing after the May 19 hearing. Huntsman Mot. at 11-12. But unless the current schedule changes, the

court will not grant a permanent injunction until *after* it requires the Director to return the animals. The May 19 hearing is only for a preliminary injunction, not a permanent injunction as she suggests. *Comp. Huntsman Mot.* at 11-12 *with* Hearing Transcript, Ex. A-7, at 103, lines 3-16; TRO, Ex. A-8, at 1 (setting the matter “for a preliminary injunction hearing”). More importantly, the court’s temporary restraining order requires the Director to return the animals by that date, and thus before he can appeal the outcome of that hearing. Ex. A-8. The Director properly pleaded and established that he has no adequate remedy at law.

C. Ohio law says these animals are per se dangerous, but this and all other merits issues are left to the administrative process.

Huntsman raises several merits arguments that do not go to the jurisdictional question before the Court. Again, she can request an administrative hearing and can have every opportunity to raise these arguments in that forum.

Huntsman reasserts her two arguments for an exemption, but both lack merit. The bald eagle permit, by its express terms, says that the Division of Wildlife “will not issue permits for Dangerous Wild Animals . . . except native [Dangerous Wild Animals].” Permit, Ex. A-1. She does not contend, nor can she, that these animals—tigers, pumas, baboons, and a chimpanzee—are native to Ohio. She also says that she will “reapply” for membership in the Zoological Association of America. *Huntsman Mot.* at 5. She is free to do that, but meanwhile Ohio law requires her to get a permit. R.C. 935.02. But none of that matters here, and again, these issues are for the administrative process.

Huntsman also wrongly argues that the search warrant request did not discuss the pending quarantine order, *Huntsman Mot.* at 5; even if true, this does not create jurisdiction. The supporting affidavit, signed on each page before the court, *did* discuss it. *See* Search Warrant Affidavit, Ex. A-4, at 4-5. More to the point, the Director had no reason to hide it. If it was

relevant to the search warrant at all, it was because it showed that Huntsman has been in open violation of the permit requirement for several months. A quarantine order, like a transfer order, is issued when the Director “has reason to believe” an owner is holding dangerous wild animals without a permit. R.C. 935.20(A). That fact supports probable cause of the violation here—*i.e.*, the failure to get a permit. Further, the quarantine did not impose any additional requirements beyond those contained in R.C. Chapter 935. Ex. A-2. Again, though, this is a collateral factual dispute: it has no bearing on the question of jurisdiction.

Huntsman also insists that these animals “pose[] no danger to the public.” Huntsman Mot. at 6, 17. That statement is facially hard to believe. More important, the General Assembly disagreed after the Zanesville tragedy. These animals—tigers, pumas, baboons, and a chimpanzee—are all categorized as dangerous wild animals and are dangerous per se under R.C. 935.02. The Director does not have to wait until he can show specific examples where “the public was harmed.” Huntsman Mot. at 17. Zanesville too had a history of “zero harm to the public,” *id.*, until it became a disaster.

CONCLUSION

For these reasons, the Director asks the court to deny Huntsman's motion to dismiss.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Director's Opposition to Motion to Dismiss was sent by electronic mail, this 16th day of May, 2016, to the following:

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