

CASE NO 13-9876

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION 3

GRANDLANDS CIRCUS, INC.,

Appellant,

vs.

HOBBS COUNTY ANIMAL SAFETY DEPARTMENT,

Appellee,

CHRIS SAMUELSON & MARA'S HOPE WILDLIFE SANCTUARY,

Appellee

Appeal from the Superior Court of Hobbs County
Case No. CV-2014-TCS-8103
The Honorable Ellis M. Heiberg

**BRIEF OF APPELLANT
GRANDLANDS CIRCUS, INC.**

Team # 11

STATEMENT OF JURISDICTION

The jurisdiction of this Court rests in the California Code of Civil Procedure § 43 (2013). Under the statute, “the courts of appeal, may affirm, reverse, or modify any judgment or order appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had.” Cal. Civ. Proc. Code § 43 (2013). As the underlying cause of action occurred in California and was tried in the Superior Court of Hobbs County, California the Court of Appeal has jurisdiction to hear this appeal.

STATEMENT OF THE ISSUES

1. Under California Code of Civil Procedure § 387, an interested party may intervene if they show: (1) a direct and immediate interest in the outcome of the litigation; (2) that no new issues will be presented as a result of the intervention; and (3) that the non-party will not outweigh the original party’s interest in conducting its own lawsuit. Is it an abuse of discretion to deny a party’s intervention when it fails to show a direct and immediate interest in the subject of the litigation and will broaden the scope of litigation by bringing in new issues of animal welfare and morality into the case?
2. Under California Law, a party may be granted a preliminary injunction if it shows: “(1) the likelihood that plaintiffs will ultimately prevail and (2) the interim harm plaintiffs will sustain if the preliminary injunction is denied compared to the interim harm defendant will suffer if the injunction is granted pending a final determination of the merits.” Is it an abuse of discretion to deny a party’s motion for preliminary injunction when the party shows they will be successful on the merits because they did not violate the alleged statutes, and will suffer large profit losses?

STATEMENT OF THE CASE

The Hobbs County Animal Safety Department (“Department”) issued the Grandlands Circus, Inc.’s (“Circus”) a 12-month Performing Animal Permit in June 2013. MO¹ 2. Samuelson and Mara’s Hope filed a complaint with the Department on September 24, 2013. The Department held an evidentiary hearing on September 27, 2013. MO 5. On October 7, 2013, the Department revoked the Circus’s 12-month permit. MO 7.

After the Department revoked the Circus’s permit, the Circus filed a complaint in the Superior Court of Hobbs County, California seeking mandatory injunctive relief. MO 9. Samuelson and Mara’s Hope then filed a motion for leave to intervene. *Id.* Judge Ellis M. Heidberg of the Superior Court of Hobbs County entered a judgment denying both the Circus’s motion for preliminary mandatory injunction and Samuelson and Mara’s Hope’s motion for leave to intervene. BO² 2. Both the Circus, and Samuelson and Mara’s Hope have appealed the ruling of the Superior Court, and this Court has granted review on both issues.

STATEMENT OF THE FACTS

The Grandlands Circus was established as a traveling circus in 1962 and today, entertains thousands in twenty-two cities and counties across the country. MO 3. The Circus provides entertainment in the form of human acrobatic performances and animal performances, which showcase lions, tigers, elephants, and horses. *Id.* The Circus has been visiting Hobbs County and performing shows twice a year for the last seven years. MO 4.

The Circus visits Hobbs County, California twice a year for performances in April and September. MO 2. In June, the Hobbs County Animal Safety Department issued the Circus a 12-month Performing Animal Permit. MO 2. The Circus performed in Hobbs County in September

¹ “MO” refers to the Memorandum Opinion.

² “BO” refers to the Briefing Order

without incident. MO 2. However, after a single citizen complaint from a citizen who did not personally attend the circus, the Department revoked the Circus's permit and claimed violations of Hobbs County Municipal Code 63.14 and California Penal Code 596.5 and 597t (2013) as the basis for revocation. MO 10. The Department contends that since West Edmond, Texas did not issue the Circus a new permit due to issues with two elephants, that the failure to be issued a new permit was essentially a revocation of a permit, which the Circus must notify the Department of. MO 13.

The Department has refused to reconsider the revocation of the permit until the following June 2014, which will cause the Circus to miss its second set of performances in Hobbs County in April 2014. MO 2. Because the Circus will be required to cancel its performances and there is not an appropriate substitute location, it will lose a substantial amount of revenue. The only available substitute county offers a significantly smaller population, so ticket sales will be drastically reduced. MO 3.

Shortly after the Circus filed their complaint against the Department, Mara's Hope Wildlife Sanctuary and its co-owner, Chris Samuelson, filed motions to intervene. Mara's Hope Sanctuary has no experience caring for elephants; it neither houses any elephants, nor has it ever housed elephants in the sanctuary. Mara's Hope Sanctuary has not been in discussion with the Circus over the elephants, and there have not been any documents filed regarding removing the elephants from the Circus's ownership.

SUMMARY OF THE ARGUMENT

Under California Code of Civil Procedure § 387, a party with a “direct and immediate” interest in a litigated matter, *Fireman's Fund Ins. Co. v. Gerlach*, 56 Cal. App.3d 299, 303 (1976), an interest in the success of either party, or an interest against both parties may intervene, “[u]pon timely application.” Cal. Civ. Proc. Code § 387 (2013). There are two types of intervention available to an interested party: (1) intervention as a matter of right; and (2) permissive intervention. *Id.*

In the underlying litigation, the Superior Court determined that Samuelson and Mara’s Hope’s motion for leave to intervene should be denied. First, the Superior Court determined that based upon the facts, Samuelson and Mara’s Hope did not have a basis for intervention as a matter of right. Second, the Superior Court determined that permissive intervention would be inappropriate because Samuelson and Mara’s Hope did not have a “direct and immediate interest” and because their intervention would unnecessarily broaden the scope of the litigation to include moral and ethical issues.

Applying an abuse of discretion standard, this Court “may overturn the trial court’s exercise of discretion ‘only upon a clear showing of abuse.’” *Miyamoto v. Department of Motor Vehicles*, 176 Cal. App. 4th 1210, 1218 (2009). Because Samuelson and Mara’s Hope carry “[t]he burden . . . to establish an abuse of discretion,” this Court must hold that Samuelson and Mara’s Hope has not carried its burden, and therefore, this Court must not disturb the Superior Court’s decision. *Blank v. Kirwan*, 39 Cal. 3d 331 (1985).

Conversely, the Superior Court abused its discretion when it denied the Circus’s motion for preliminary injunctive relief for their Animal Performing Permit revocation. The Circus showed that it is highly likely to prevail on the merits and that they will suffer an irreparable

injury if the injunction is not granted. The Superior Court improperly applied the law to the facts presented and erroneously held that the Circus was not likely to prevail on the merits and that they would not suffer an irreparable injury.

The Circus was accused of violating of Hobbs County Municipal Code § 63.14 (A)(iii) and California Penal Code § 597t. However, upon inspection of the facts, the Circus did not violate either provision of the law because the Hobbs County Municipal Code § 63.14 (A)(iii) only requires notification of permit revocations, not denials of permit renewals. Further, the Circus did not violate California Penal Code § 597t because the elephants were housed in vehicles during the alleged violation, and animals housed in vehicles are expressly exempt from the statute.

Further, the Circus will suffer large profit losses due to being unable to perform in Hobbs County. On its last visit, the Circus made \$95,200 in revenue. That revenue and potential for other jurisdictions to revoke its permits due to Hobbs County's revocation creates potentially ruinous profit losses for the Circus.

ARGUMENT

I. The Superior Court Did Not Abuse its Discretion in Denying Samuelson and Mara's Hope's motions for Leave to Intervene.

A. Standard of Review

In the underlying cause of action, Samuelson and Mara's Hope filed a motion for leave to intervene, the Superior Court of Hobbs County appropriately denied the motion, and Samuelson and Mara's Hope appealed the Superior Court's denial of the motion. Samuelson and Mara's Hope contend that "their interests are aligned with the interests of the Department" and that they have an interest in the outcome of the litigation. MO 7.

However, the Superior Court applied the appropriate three-part test and held that intervention by Samuelson and Mara's Hope "would result in broader consideration of the moral and ethical issues relating to performing animals, which . . . is not a necessary or proper consideration in resolving [the] dispute." *Id* at 9. Because "[a] reviewing court may overturn the trial court's exercise of discretion 'only upon a clear showing of abuse,'" this Court should not overturn the Superior Court's denial of the motion for leave to intervene. *Miyamoto*, 176 Cal. App. 4th 1210, 1218 (2009) (internal citation omitted). Mara's Hope and Samuelson bear the burden of proof on appeal. "The burden is on the party complaining to establish an abuse of discretion..." *Blank v. Kirwan*, 39 Cal. 3d 311, 331. (1985).

B. Samuelson and Mara's Hope Cannot Meet the High Threshold for "Abuse of Discretion" Standard of Review.

Under California Code of Civil Procedure § 387, any person with an interest in the litigated matter, in the success of either party, or against both may intervene "[u]pon timely application." Cal. Civ. Proc. Code § 387 (a) (2013). Subsection (b) of § 387 states,

If any provision of law confers an unconditional right to intervene or if the person seeking intervention claims an interest relating to the property or transaction which is the subject of the action and that person is so situated that the disposition of the action may as a practical matter impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by existing parties, the court shall, upon timely application, permit that person to intervene.

Cal. Civ. Proc. Code § 387 (b) (2013). Therefore, there are two types of intervention available to an interested party: (1) intervention as a matter of right; and (2) permissive intervention. *Id*.

Although Samuelson and Mara's Hope did not limit their motion for leave to intervene to permissive intervention, the Superior Court determined that there was no factual basis for intervention as a matter of right. MO 8. Because the Court determined that Samuelson and Mara's Hope's motion was brought under Code of Civil Procedure § 387 (a), such intervention

was at the Superior Court's discretion, and this Court must examine the decision to see if there was an abuse of discretion. *Kuperstein v. Superior Court*, 204 Cal. App. 3d 598, 600 (1988).

When reviewing a decision for abuse of discretion, “[a] reviewing court may overturn the trial court’s exercise of discretion ‘only upon a clear showing of abuse.’” *Miyamoto* at 1218. There exist “various principles describing the abuse of discretion standard.” *Id.* See also *In re Marriage of Connolly* 23 Cal. 3d 590, 598 (1979) (“[I]t is generally accepted that the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered.”); *Blank v. Kirwan* 39 Cal. 3d 311, 331(1985) (Appellate courts should disturb discretionary trial court rulings only upon a showing of “a clear case of abuse” and “a miscarriage of justice.”); *People v. Branch*, 91 Cal. App. 4th 274, 282 (2001) (“We will reverse only if the court's ruling was ‘arbitrary, whimsical, or capricious as a matter of law.’”).

The Court in *Miyamoto* used the analyses of several courts to determine whether the lower court abused its discretion by excluding evidence. *Miyamoto* at 1218. The Court first considered that “[a]buse of discretion has at least two components: a factual component . . . and a legal component.” *Id.* The Court deferred to *Bailey v. Taaffee*, 29 Cal. 422, 424 (1866) for an explanation of the legal component of discretion. *Id.* The *Bailey v. Taaffee* court described the legal component of discretion as “an impartial discretion, guided and controlled in its exercise by fixed legal principles . . . to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.” *Id.* at 422. The Court explained that “[t]he scope of discretion always resides in the particular law being applied,” and “[a]ction that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an ‘abuse’ of discretion.” *Miyamoto* at 1218-19 (internal

citation omitted). “[B]ecause it applied the wrong legal standard when evaluating the foundational requirements of [the applicable law],” the Court determined that the lower court had abused its discretion. *Miyamoto* at 1219.

Here, the Superior Court first used “factual discretion” to determine that there was “no basis for even considering intervention as a matter of right on the facts set forth.” MO 8. After determining that only permissive intervention could be appropriate, the Superior Court properly applied a three-part test to determine whether permissive intervention should be granted to either Samuelson or Mara’s Hope. The test to intervene requires three things: (1) a direct and immediate interest in the outcome of the litigation; (2) that no new issues will be presented as a result of the intervention; and (3) that the purposes served in allowing the non-party to intervene will [not] outweigh the original party’s interest in conducting its own lawsuit on its own terms. *Id* at 9.

The Court in *Timberidge Enterprises, Inc. v. City of Santa Rosa* stated,

it has consistently been judicially held: ‘To avail himself of the right given by this section . . . [the proposed intervener] must have either an interest in the matter in litigation, or in the success of one of the parties to the action, or an interest against both of them. The interest here referred to must be direct and not consequential, and it must be an interest, which is proper to be determined in the action in which the intervention is sought.

Timberidge Enterprises, Inc. v. City of Santa Rosa, 86 Cal. App. 3d 873, 881 (1978).

Similarly, the Court in *Fireman’s Fund Ins. Co. v. Gerlach* stated that

[w]hether in a particular case intervention should be allowed ‘is best determined by a consideration of the facts of that case,’ and the decision is ordinarily left to the sound discretion of the trial court.

Fireman’s Fund Ins. Co. v. Gerlach, 56 Cal. App. 3d 299, 302 (1976). The Court stated that the following factors should be considered when exercising such discretion:

(1) [t]he proposed intervener's 'interest in the matter in litigation . . . must be of such a direct and immediate character that [he] will either gain or lose by the direct legal operation and effect of the judgment;'" (2) "[t]he issues of the action may not be enlarged by the proposed intervention;" and (3) "the intervention must be denied if the reasons therefor[e] 'are outweighed by the rights of the original parties to conduct their lawsuit on their own terms.

Fireman's Fund Ins. Co. at 303.

Here, Samuelson and Mara's Hope filed a motion for leave to intervene contending that "their interests [were] aligned with the interests of the Department, and that they [had] an interest in the outcome of the litigation." MO 7. Samuelson and Mara's Hope base their interest in the outcome of the litigation in their status "as residents of Hobbs County and as an organization and individual that seek to protect animals, including wild animals like those exhibited in the Circus." *Id.*

However, neither Samuelson nor Mara's Hope's "interest in the matter in litigation" is "of such a direct and immediate character that [they] will either gain or lose by direct legal operation and effect of the judgment." *Fireman's Fund Ins. Co.* at 303. Samuelson has never attended any of the Circus's performances and has no particular interest in the issues presented in this litigation or in seeing the Circus's permit revoked. Mara's Hope has never provided sanctuary for elephants and, as the permit revocation was prompted by a report on the condition of the Circus elephants, Mara's Hope also has no requisite interest in the subject matter of the dispute. Further, the litigation does not include relocation or surrender of ownership of the Elephants. While providing animals a home is the main function of their organization, Samuelson and Mara's Hope will not gain any interest in the elephants as a result of the litigation; the elephants will remain the property of the Grandlands Circus regardless of the outcome of this litigation.

Because Samuelson and Mara's Hope's interests are not of a "direct and immediate character that [they] will either gain or lose by direct legal operation and effect of the judgment," the matter in litigation would "be enlarged by the proposed intervention." *Fireman's Fund Ins. Co.* at 303. Appellant Samuelson and Mara's Hope's intervention would only serve to inflate the matter to "a general moral and ethical debate regarding the exhibition of animals in entertainment", which is unnecessary. MO 8. Finally, Samuelson and Mara's Hope's intervention must be denied because allowing the intervention would interfere with the Circus's right to "conduct [its] lawsuit on [its] own terms." *Fireman's Fund Ins. Co.* at 303.

As the Superior Court stated, neither Samuelson nor Appellant Mara's Hope have a separate, personal claim against the Circus. In fact, Samuelson has never attended one of the Circus's performances. Likewise, Mara's Hope does not provide sanctuary for elephants, which are at the heart of the underlying litigation. Samuelson and Mara's Hope filed a motion for leave to intervene solely for the purpose of asserting interests related to the practice of animals performing in circuses or related activities generally. Because such an intervention would broaden the issue of litigation unnecessarily, the Superior Court correctly determined that intervention was not proper, and therefore, did not abuse its discretion by denying the motion for leave to intervene.

II. The Superior Court Erred in Denying the Circus's Motion for Preliminary Injunctive Relief.

A. Standard of Review

In assessing the Superior Court's ruling on a motion for preliminary injunctive relief, this Court reviews the ruling on an abuse of discretion standard. While a trial court enjoys discretion on a number of issues, its discretion is not unlimited. *Miyamoto v. Dep't of Motor Vehicles*, 176

Cal. App. 4th 1210, 1218 (2009). An abuse of discretion is shown when there is no reasonable basis for the trial court's ruling. *Id.*

An appeal from the granting of a preliminary injunction involves a review of the Superior Court's discretion of two factors:

- (1) the likelihood that plaintiffs will ultimately prevail and (2) the interim harm plaintiffs will sustain if the preliminary injunction is denied compared to the interim harm defendant will suffer if the injunction is granted pending a final determination of the merits.

Hunter v. City of Whittier, 209 Cal. App. 3d 588, 595 (Cal. Ct. App. 1989).

Although a ruling on a preliminary injunction is typically reviewed on an abuse of discretion standard,

Where the likelihood of prevailing on the merits factor depends upon a question of law rather than upon evidence to be introduced at a subsequent full trial, the standard of review is not abuse of discretion but whether the superior court correctly interpreted and applied statutory law, which is reviewed de novo.

Efstratis v. First N. Bank, 59 Cal. App. 4th 667, 671-72 (1997).

B. The Superior Court Abused its Discretion When it Denied the Circus's Motion for Preliminary Injunctive Relief.

When considering a motion for preliminary injunctive relief, the Supreme Court has held that courts should consider several factors:

- (1) the likelihood that the movant will be successful on the merits;
- (2) the movant will likely suffer irreparable harm without the injunction;
- (3) the balance of equities is in the movant's favor; and
- (4) that the injunction is within the public's interest.

Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

The Superior Court improperly applied the statutory law to the facts presented. The Circus will be able to show a high likelihood of success on the merits, that they will suffer irreparable harm, and that the injunction favors the public interest.

C. The Superior Court Misapplied the Law When Denying the Circus's Motion for Preliminary Injunctive Relief on The Question of Success on the Merits.

One of the elements a court considers when deciding whether or not to grant an injunction is how likely it is that the movant will be successful at trial on the merits of its claim. *Wind v. Herbert*, 186 Cal. App. 2d 276, 283. (Cal. Ct. App. 1960). The Superior Court improperly held that the Circus was in violation of Hobbs County Municipal Code § 63.14 (A)(iii) and California Penal Code § 597t. The Superior court misapplied the law to this case, and thus the Circus should not have had its permit revoked by the Department.

The Superior Court improperly held that the Circus was in violation of Hobbs County Municipal Code § 63.14 (A)(iii). The Court misapplied the law to the facts of the case. The code section states that the Circus must inform Hobbs County if it has any permits revoked in other areas. The term “revoked” is not defined in the code and therefore should be given its plain and ordinary meaning. *AIU Ins. Co. v. Superior Court*, 51 Cal. 3d 807, 825 (1990). A judge does not get to create a new definition for an undefined term in a code. The dictionary defines revoked as meaning: to cancel, take back, or void.³ The Circus did not have an active, valid permit in West Edmond. The Circus was in the process of applying for a permit in West Edmond, Texas, and its application for a permit was not granted. Therefore, under the plain and ordinary meaning of the

³<https://www.google.com/search?q=define+revocation&aq=f&oq=define+revocation&aqs=chrome.0.57j0l3.3548&sugexp=chrome,mod=19&sourceid=chrome&ie=UTF-8#q=Define+Revoke>

word “revoke”, the Circus did not have a permit in West Edmund that was taken back or voided. Because it did not have an active permit there, there was nothing that was taken back. If the drafters of the code wanted to include denial of permit applications, then the statute should explicitly include such language. Absent explicit language regarding permit denials, the plain meaning of the term “revoke” must be used. *Id.*

The Superior Court also improperly held that the Circus was in violation of California Penal Code § 597t. California Penal Code § 597t states that animals must be given “adequate” exercise area, and if they are tethered, the tether must be hung in a way that the animal will not get hung up or tangled in it. At the conclusion of the statute, there are exceptions provided that state the statute does not apply to animals in transit, in a vehicle, or in the immediate control of a person. Cal. Penal Code § 597t (2013).

The Superior Court improperly concluded that the Circus was in violation of Cal. Penal Code § 597t. The Circus is not in violation of Cal. Penal Code § 597t because it falls under the exceptions explicitly mentioned in the code. The Superior Court maintains that the transportation times are too long and that the tethering in the transport cars constitutes an inadequate area under Cal. Penal Code § 597t. The Circus is not in violation of Cal. Penal Code § 597t because Cal. Penal Code § 597t does not apply to animals in transport or to animals in a vehicle. According to the West Edmond Report, the elephants are housed in the transportation cars. WER 1⁴. Cal. Penal Code § 597t specifically states that the code does not apply to animals in vehicles; therefore, the Superior Court improperly held that the Circus was in violation of Cal. Penal Code § 597t.

⁴ “WER” refers to the West Edmond Report

Further, even if Cal. Penal Code § 597t does apply to the elephants housed in the transportation cars, there is no definition of “adequate” in the Cal. Penal Code § 597t. There is also no specification that the Association of Zoos and Aquariums “AZA” standards would be the standard set to determine violations of Cal. Penal Code § 597t. The Circus is not a member of the AZA and thus has not availed itself to the standards set by the AZA. Further, the AZA governs Zoos and Aquariums, which are large, permanent, million dollar, stationary venues. A traveling Circus could not be expected to strictly conform to the exact specifications of the AZA at all times.

The Department cannot show that it will be successful on the merits. Conversely, the Circus has shown on the facts that it will likely be successful on the merits of its case. Therefore, the permit should not have been revoked, and an injunction in favor of the Circus should have been granted. Mandatory injunctive relief is proper where a revoking agency cannot show a likelihood of success on the merits. *Salsedo v. California Dep't of Parks & Recreation*, 175 Cal. App. 4th 1510, 1522. (2009).

D. The Superior Court Abused its Discretion When it Found that the Circus was Not Going to Suffer an Irreparable injury.

The Superior Court improperly held that the Circus’s injury was less severe than the harm the Department would suffer. The Superior Court erroneously found in favor of the Department by basing the decision on a single citizen complaint and the unfounded assertion that the Circus presents some sort of potential public harm. While the Department is supposed to respond to citizen complaints, there was only a single complaint by a citizen, and the Department did investigate and respond to the complaint. On balance, the Department received one complaint about the Circus, while the Circus has hundreds of attendees when they perform. The Superior

Court reasoned that the Department was tasked with protecting citizens and thus should rule in the Department's favor. However, there is nothing in the record to suggest that any of the elephants or other circus animals pose any safety risk to the public. The basis for the Courts's reasoning that the public is at risk is arbitrary and without a reasonable basis. There is no reasonable basis to form the opinion that the Department would be harmed more than the Circus. The Department's business would carry on as usual whether the permit was revoked or not. Conversely, the Circus will suffer from lost profits, potential loss of other performance venues, and harm to its reputation.

The Superior Court also dismissed the fact that the Circus would suffer potentially ruinous profit losses. Courts have held that loss of profit can be considered an irreparable injury. *The Research Found. of State Univ. of New York v. Mylan Pharm. Inc.*, 723 F. Supp. 2d 638, 658 (D. Del. 2010). The fact that the Circus did not provide an exact dollar amount of lost profit is immaterial. On its last visit to Hobbs County the Circus made \$95,200.00 in revenue. The Court could plainly see from the facts that the Circus would suffer profit loss by not being able to perform in Hobbs County and by potentially having other locations revoke its permits due to the revocation of the Hobbs County permit. The Circus will clearly suffer large financial losses as a result of the loss of its permit, which could result in financial ruin for the Circus.

Further, the Superior Court stated that had the Circus been willing to rectify the violations cited by the Department, the balance of equities would yield a different result. MO 15. The Superior court failed to recognize the Circus's offer to not perform the older elephants, which were the animals at the center of the dispute. The court had no reasonable basis for holding that the Circus was unwilling when it had offered to make concessions to the Department to bolster a fair result.

CONCLUSION

For the foregoing reasons, the Grandlands Circus requests that this Court overturn the Superior Court's denial of its motion for preliminary injunctive relief and issue an injunction in favor of the Circus. The injunction should be granted based on the fact that the Circus made a clear showing that it would be successful on the merits of its case, that the Superior Court misapplied the facts to the case and abused its discretion in denying an injunction, and that without injunctive relief the Circus will potentially suffer financial ruin.

For the aforementioned reasons, the Grandlands Circus also requests that this Court uphold the denial of Samuelson and Mara's Hope's motion for leave to intervene on the basis that they do not meet the burden of proof for permissive intervention. Their involvement will add additional unrelated issues of animal welfare and morality to the litigation, and they do not have a direct or immediate interest in the litigation.

TABLE OF CONTENTS

STATEMENT OF JURISDICTION.....	1
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	2
SUMMARY OF THE ARGUMENT.....	4
ARGUMENT.....	5
I. The Superior Court Did Not Abuse its Discretion in Denying Samuelson and Mara’s Hope’s motions for Leave to Intervene.....	5
A. Standard of Review.....	5
B. Samuelson and Mara’s Hope Cannot Meet the High Threshold for “Abuse of Discretion” Standard of Review.....	6
II. The Superior Court Erred in Denying the Circus’s Motion for Preliminary Injunctive Relief.....	10
A. Standard of Review.....	10
B. The Superior Court Abused its Discretion When it Denied The Circus’s Motion for Preliminary Injunctive Relief.....	11
C. The Superior Court Misapplied the Law When Denying The Circus’s Motion for Preliminary Injunctive Relief on the Question of Success On the Merits.....	12

D. The Superior Court Abused its Discretion When it Found that the Circus Was Not Going to Suffer An Irreparable Injury.....	14
--	----

CONCLUSION.....	16
-----------------	----

TABLE OF AUTHORITIES

CASES

<i>AIU Insurance Co. v. Superior Court</i> , 51 Cal. 3d 807 (1990).....	12, 13
<i>Bailey v. Taaffee</i> , 29 Cal. 422 (1866).....	7
<i>Blank v. Kirwan</i> , 39 Cal. 3d 311 (1985).....	4, 6, 7
<i>Efstratis v. First N. Bank</i> , 59 Cal. App. 4th 667 (1997).....	11
<i>Fireman’s Fund Ins. Co. v. Gerlach</i> , 56 Cal. App. 3d 299 (1976).....	4, 8, 9, 10
<i>Hunter v. City of Whittier</i> , 209 Cal. App. 3d 588 (1989).....	11
<i>In Re Marriage of Connolly</i> , 23 Cal. 3d, 590 (1979).....	7
<i>Kuperstein v. Superior Court</i> , 204 Cal. App. 3d 598 (1988).....	7

<i>Miyamoto v. Dept. of Motor Vehicles</i> , 176 Cal. App. 4th 1210 (2009).....	4, 6, 7, 8, 10, 11
<i>People v. Branch</i> , 91 Cal. App. 4th 274 (2001).....	7
<i>The Research Foundation of State Univ. of New York v. Mylan Pharm. Inc.</i> , 723 F. Supp. 2d 638 (D. Del 2010).....	15
<i>Salsedo v. California Dep't of Parks & Recreation</i> , 175 Cal. App. 4th 1510 (2009).....	14
<i>Timberidge Enterprises, Inc. v. City of Santa Rosa</i> , 86 Cal. App. 3d 873 (1978).....	8
<i>Wind v. Herbert</i> , 186 Cal. App. 2d 276(1960).....	12
<i>Winter v. Natural Resources Defense Council, Inc.</i> 555 U.S. 7 (2008).....	11

STATUTES

California Code of Civil Procedure §43 (2013).....	1
California Code of Civil Procedure §387 (2013).....	1, 4, 6
California Penal Code §596.5 (2013).....	3
California Penal Code §597t (2013).....	3, 5, 12, 13, 14
Hobbs County Municipal Code §63.14.....	3, 5, 12