
CASE NO 13-9876

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

GRANDLANDS CIRCUS, INC.,

Appellant/Cross-Respondent,

v.

HOBBS COUNTY ANIMAL SAFETY DEPARTMENT,

Appellee/Respondent,

CHRIS SAMUELSON & MARA'S HOPE WILDLIFE SANCTUARY,

Appellee.

Appeal from the Superior Court of Hobbs County

APPELLEE'S BRIEF IN SUPPORT OF APPEAL FOR PERMISSIVE INTERVENTION

January 17, 2014

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2014 National Animal Law Moot Court Competition

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. Did the Superior Court abuse its discretion in denying the motion to intervene by Chris Samuelson or Mara's Hope Wildlife Sanctuary?
- II. Did the Superior Court abuse its discretion in denying the motion for preliminary injunction filed by the Circus under the provisions of California law?
- III. Are there alternatives by which the Superior Court's decision might be upheld under Hobbs County Municipal Code § 63.14, Subdivisions A(i) and A(ii); and Cal. Penal Code § 596.5?

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This case involves whether the Superior Court of Hobbs County in the state of California abused its discretion in denying a motion for injunctive relief by Plaintiff-Appellant, Grandlands Circus, Inc. ("the Circus") seeking issuance of a permit for a temporary Performing Animal Permit until a trial on the merits could be completed with Respondent-Appellee, Hobbs County Animal Safety Department ("the Department") or whether the Superior Court again abused its discretion when it denied the motions to intervene by Appellee Chris Samuelson ("Samuelson") and Appellee Mara's Hope Wildlife Sanctuary ("Mara's Hope"). Judge Ellis M. Heiberg of the Superior Court found the Circus properly stated its request with respect for injunctive relief in the mandamus action and has opportunity to address potential harm with respect to that action in April 2014, denying preliminary mandatory injunction finding the Circus is not likely to succeed on the merits. R. at 16. With respect to Appellees Samuelson and Mara's Hope, Judge Heiberg denied both parties' motions to intervene on the basis that the parties did not meet the conditions as required under California Code of Civil Procedure § 387. R. at 9.

II. COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

The Circus filed an action against the Department in the Superior Court of Hobbs County in the state of California following revocation of the 12-month Performing Animal Permit issued to

the Circus by the Department seeking money damages, reissuance of the permit, and/or a writ of mandamus. The Circus argued revocation of the permit caused the Circus great financial burden, performances could not be rescheduled due to permit revocation, permit revocation was arbitrary and capricious in nature and the permit was revoked without adequate cause. R. at 11.

Samuelson and Mara's Hope separately filed motions for leave to intervene on the basis to protect circus animals under the mission of education and outreach by the sanctuary. R. at 8. Following a hearing regarding notice for potential permit revocation by the Department, the motion for preliminary injunction by the Circus was denied. Following consideration of the Motion to intervene of each Samuelson and Mara's Hope, both motions were denied in full by the Superior Court for several reasons including, but not limited to lack of standing by the parties and their intervention would serve only to bring tangential moral and ethical issues to the forefront. Mara's Hope and Samuelson have appealed the decision of the Superior Court on the basis of abuse of discretion.

STATEMENT OF FACTS

Grandlands Circus, Inc. uses a combination of human and animal performances and performs shows throughout the United States during the year. R. at 3. In Hobbs County, the Circus receives an annual 12-month Performing Animal Permit from the Department each June prior to performances that generally occur in September and April. R. at 3-4. The September 2013 performance ran for 17 days and two shows occurred each day for approximately 90 minutes each show. R. at 4. The animals used in each show were lions, tigers, elephants, and horses. R. at 3. During the September run in Hobbs County, net revenue earned was approximately \$95,200. R. at 4.

Mara's Hope is a privately-funded sanctuary located in Hobbs County that rescues animals discarded by private owners, zoos, or the entertainment industry that also accepts animals from abusive situations or those where public safety has been a concern. R. at 4. Mara's Hope has not previously housed elephants, but has housed African lions, mountain lions, ostriches, black bears, and horses. R. at 4. As a mission, Mara's Hope seeks to "educate the public about the harms of keeping wild and exotic animals in captivity, and to advocate for the protection of wildlife in the United States and elsewhere." R. at 4. Samuelson is a resident of Hobbs County and is the Director of Education and Outreach for Mara's Hope. R. at 4.

On September 24, 2013, Samuelson filed an administrative complaint with the Department in his name and of Mara's Hope alleging violation by the Circus of Hobbs County Ordinance § 63.14, demanding revocation of the Circus' 12-month Performing Animal Permit. R. at 5. An evidentiary hearing was held on September 27, 2013 and following hearing, on October 7, 2013, the Permit was revoked. R at 8. Following revocation, the Circus filed suit against the Department, Samuelson, and Mara's Hope. R. at 8. Samuelson and Mara's Hope filed Motions to Intervene. R. at 8. The Superior Court of Hobbs County denied the Circus' Motion for Preliminary Injunction against the Department and denied the Motions of Samuelson and Mara's Hope to Intervene.

STANDARD OF REVIEW

The standard of review on appeal from a lower court is an abuse of discretion standard. "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason and when two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*In Re Marriage of Connolly*, supra, 23 Cal.3d 590, 153 Cal.Rptr. 423, 591 P.2d 911; *Nestle v. City of Santa Monica*

(1972) 6 Cal.3d 920, 925, 101 Cal.Rptr. 568, 496 P.2d 480.) *Shamblin v. Brattain*, 749 P.2d 339, 341 (Cal. 1988).

A superior court's order denying intervention, similar to the one in this instance will be reviewed under the deferential abuse of discretion standard. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) Under this standard of review, a reviewing court should not vacate the superior court's discretion unless it has resulted in a miscarriage of justice. *Id.* Under this standard of review, an essential element is that the court's order must clearly appear to effect injustice. *Id.* Further, discretion is considered to have been abused when a court in its decision, exceeds the bounds of reason in the consideration of all of the circumstances placed before it. (*City & Cnty. of San Francisco v. State*, (2005) 128 Cal. App. 4th 1030, 1036-37.) The party seeking review of the superior court's decision has the burden of establishing an abuse of discretion. To meet this burden the party must demonstrate a clear case of abuse, and demonstrate that there has been a miscarriage of justice. If the party fails to demonstrate these factors, a reviewing court will not overturn the superior court's opinion and divest the trial court of its discretionary power. *Id.*

SUMMARY OF THE ARGUMENT

The Superior Court abused its discretion in respect to not allowing Mara's Hope and Samuelson to intervene on the basis that as animal advocates; each has a direct interest in the subject matter of the case at hand. The Appellees have a vested interest in intervening in this matter both from an animal advocacy standpoint and a reputational standpoint. Because the Appellees have the right to sue the Circus on the same grounds individually, the Court should allow the intervening motion rather than create separate cases. With respect to the Circus Motion for Preliminary Mandatory Injunction, the Superior Court did not abuse its discretion and rightfully denied the motion of the Circus.

ARGUMENT

I. THE SUPERIOR COURT ABUSED ITS DISCRETION IN DENYING THE MOTIONS OF MARA'S HOPE WILDLIFE SANCTUARY AND CHRIS SAMUELSON TO INTERVENE WITH RESPECT TO THE PARTIES' INTEREST IN THE SUBJECT MATTER OF THE CASE.

California Code of Civil Procedure § 387, subdivision (a), provides, "Upon timely application, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding." When applying § 387a, the superior court has been found to have broad discretion in the determination of whether to permit or deny intervention. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 736.) The court's discretion to permit a nonparty to intervene considers the following: 1) whether the nonparty has a direct and immediate interest in the action; 2) whether the intervention will enlarge the issues in the litigation; and 3) whether the reasons for allowing the intervention outweigh any interests in opposing intervention by the parties presently in the action. (*Western Heritage Ins. Co. v. Superior Court* (2011), 199 Cal.App.4th 1196.)

A. *The Appellees, Mara's Hope Wildlife Sanctuary's and Chris Samuelson's, Direct Interest Stems from Their Pecuniary and Reputational Interest in the Outcome of the Litigation, and Would Not Be Adequately Represented if Denied Permissive Intervention.*

In California, the source of a party's right to intervene in an action is statutory. (*Timberidge Enterprises, Inc. v. City of Santa Rosa*, 86 Cal. App. 3d 873, 881.) This right to intervene is codified within the Code of Civil Procedure § 387 which holds that a party in order to avail themselves of their right as a potential intervener must have, and establish an interest in the matter being litigated, or in the success of one of the parties to the action, or an interest against both of them. *Id.* This interest must be direct, and not consequential, and it must be an interest in which it is proper to be determined in the action in which the intervention is sought. *Id.* The interest of the potential intervener which entitles a party to intervene in a suit between other

parties must be in the matter in litigation, and of a direct and immediate nature that the intervener will either gain or lose by the judgment of the Court. *Id.* Historically, a substantial possibility that the interest will be affected by the courts ruling has been found to be sufficient to grant a right to intervene. *Id.* The intent in allowing permissive intervention of a third party is to protect the interest of the third party whose interest may be adversely affected by the judgment of the ongoing dispute. *Id.*

Although the interest of the third party seeking intervention is typically pecuniary, the need for that interest to be pecuniary is not a mandatory element. (*People ex rel. Public Util. Com. v. Ryerson*, 241 Cal.App.2d 115, 119.) An interest in litigation regarding the validity of a statute, and its proper interpretation has also been found sufficient to grant a right for intervention. *Id.* Here, Samuelson and Mara's Hope have established such a right in that the Appellees have a direct interest in the matter in contention. This interest stems from the ongoing litigation between the Department and the Circus, and is of a direct nature that affects both the parties' pecuniary interest and reputational interest unlike that found in *Fireman's Fund Ins. Co. v. Gerlach*, (1976) 56 Cal. App. 3d 299, 302, where the Superior Court found that the appellant had a consequential interest, rather than a direct interest, and denied the appellant's motion to intervene. The court, in denying the appellant's intervention in *Fireman's*, relied upon the rule stated in *Isaacs v. Jones*, (1898) 121 Cal. 257, 261, which states that for a party to avail themselves of the right of intervention given by § 387 of the Code of Civil Procedure, the applicant must have a direct interest. The interest must be direct and not consequential, and it must be an interest which would be properly determined in the action in which the intervention is sought. *Id.* The pecuniary and reputational interest of Samuelson and Mara's Hope as animal advocates is one in which would be appropriate to be determined in the action sought, and both Appellees have a

direct interest in the matter in litigation regarding the Department's enforcement of § 63.14 of the Hobbs County Municipal Code and in the success of the Department in this matter.

The interests of Samuelson and Mara's Hope are of a direct nature stemming from the Appellees' interests as animal advocates and merits permissive intervention. Here, like *US Ecology, Inc. v. State of California*, (2001) 92 Cal. App. 4th 113, 111, where the environmental organization set forth evidence demonstrating direct interest in environmental and safety concerns relating to the proposed site, Samuelson and Mara's Hope have established that direct interest in the enforcement of § 63.14 of the Hobbs County Municipal Code. The Appellees' interest in the enforcement of § 63.14 stems from their interests in the sanctuary housing of 25-50 exotic animals that come from the entertainment business and in remaining compliant with the sanctuary's mission statement which states that the sanctuary: "endeavor[s] to educate the public about the harms of keeping wild an exotic animals in captivity, and to advocate for protection of wildlife in the United States and elsewhere". R. at 5. The parties' interest is apparent because the animals in the litigation are exotic in nature and have had their health compromised as a result of their role within the entertainment business which is the Appellees' specific area of interest and advocacy.

The Appellees' direct interests in the litigation are of a nature that if denied permissive intervention would adversely affect the organization's pecuniary and reputational interests. Much like the intervener in *US Ecology*, Cal. App. 4th at 689, which provided evidence to support its motion to intervene and adequately demonstrated the appellant's direct interest in the matter, the Appellees have provided evidentiary information demonstrating their direct interests, stating both their mission in running the animal sanctuary and the amount of funds that is directly attributable to donor's support of education and outreach. R. at 5. Forty percent (40%) of the

Appellees' financial donations stem from the donors who subscribe to the education and outreach newsletter. If the Appellees are not permitted to intervene in this matter, funding for their outreach is likely to be lost and both parties will likely suffer reputational harm. The potential loss of funding and reputational harm was found by *US Ecology*, Cal. App. 4th at 689, to support a finding of the appellant having a direct interest in the litigation where the appellant demonstrated an interest in the underlying litigation that extended beyond preserving the current borders of the Park, and the appellant's environmental organization was formed for and existed to conserve lands like those involved in the dispute in their natural state and had so represented itself to members and donors. Here, as in *US Ecology*, Mara's Hope was founded with the intent of educating others of the harms of keeping wild animals in captivity. The interest of the Sanctuary and Samuelson in this mission extends beyond the litigation at hand. Like the appellant in *US Ecology*, Mara's Hope similarly has held itself out to donors in such a way as to establish the reputation of being an organization that is an animal advocate. As such, if the Appellees are prevented from intervening, they would suffer a direct reputational impact that would translate into loss of future support and contributions. (*Simpson Redwood Co. v. State of California* (1987) 196 Cal. App. 3d 1192, 1201.) As a result, the court should find an abuse of discretion that furthers a miscarriage of justice, and rule in favor of allowing intervention, since it has been demonstrated that the Appellees have not only a direct interest that if denied would cause the Appellees to suffer pecuniary and reputational harm as a result of the Superior Court's denial of permissive intervention.

Samuelson and Mara's Hope have direct pecuniary interest in the litigation between the Department and the Circus due in part to the way in which the animal sanctuary is funded. In *Simpson Redwood*, 196 Cal. App. 3d at 1192, the court found that the organization had a

sufficiently direct interest sufficient to meet the requirements for intervention under the Code of Civil Procedure § 387. The organization, in making this claim, presented evidence demonstrating that its interests extended beyond the area in contention and were broadly focused on environmental and safety concerns relating to the area. *Id.* These interests were found to be sufficient when the organization had represented itself to its members and financial contributors as an organization that existed for the purpose of protecting lands. As a result of this representation, the court found that the organization had a cognizable direct interest in avoiding the loss of reputation, and consequent loss of future support and contributions that might result from an adverse judgment if the organization was not permitted to intervene. *Id.* Mara's Hope similarly has provided information demonstrating that they have held themselves out to society as an animal advocate.

The direct interests of the Appellees in their reputational and pecuniary interests in litigation are of a nature that if denied permissive intervention would not be adequately represented and would adversely affect the organization's pecuniary and reputational interests. Here, like *US Ecology, Inc.*, 92 Cal. App. 4th at 111, where it was found that an environmental organization had a direct interest and reasonable basis to intervene when the court found that the proposed development of a disposal facility on the site would directly affect the organization, its pecuniary and reputational interest, and the organization's interests would not be adequately represented by the named defendants. *Id.* Here similarly, the interests of the Samuelson and Mara's Hope would not be adequately represented by the Department. The Department's interest is in the enforcement of § 63.14. This interest is administrative in nature and seeks to ensure that those seeking performing animal permits are in compliance, and if the actor is in noncompliance the Department seeks to revoke the permit and fine the actor seeking the permit whereas the interest

of the Appellees lies in advocating for and ensuring the animals' safety and well-being as well as in educating the public about the potential harms of keeping wild and exotic animals in captivity. The courts have found that when the interests of the Appellees will not be adequately represented by the parties in litigation there is a reasonable basis for permissive intervention and a finding of the appellee to have a direct interest. *Id.* Accordingly, not only have the Appellees demonstrated that they have a reputational and pecuniary interest that is direct in nature, but that this interest would not be adequately represented if the Appellees were denied intervention.

B. The Appellees Have a Direct Interest In the Health of the Animal Performers that Will Not Be Adequately Addressed Without the Inclusion of the Appellees In Litigation.

The Circus has left the performing animals tethered in an abusive manner and has not provided adequate space to them. The relevant report regarding condition of the Circus' elephants comes from West Edmon, Texas, dated June 21, 2011, and states that the five elephants appear stiff upon unloading with a diminished range of motion. (Exhibit 1). It further states upon examination the animals have been tethered for approximately thirty hours, and the animals are kept tethered in the same transport cars where they have 350 feet or less per animal when not performing or being warmed up or cooled down. This is a condition that if left unremedied is abusive and harms the animal performers. The standard of how to treat such animals is set forth in the American Zoo and Aquarium Association's Standards for elephant management and care. Section 5.5.1, of the American Zoo and Aquarium Association's Standards requires that elephants not be restrained for prolonged periods of time. (Exhibit 1). A prolonged period of time is defined, as the majority of the 24-hour period unless necessary for treatment or transport. This standard has clearly been abused by the Circus as evidenced by the health of the animals in contention. (Exhibit 1). Further, the report in Exhibit 1, also states that the animals have been given only approximately 350 square feet of room per elephant. Section

1.4, of the American Zoo and Aquarium Association's Standards for elephant management and care requires a bare minimum of 400 square feet per animal in order to adequately provide for the animals health and well-being; therefore the Circus clearly violates the minimum standard. As a result of the Circus' mistreatment of the animals, the Appellees have a direct interest that warrants permissive intervention in the enforcement of § 63.14 of the Hobbs Municipal Code, to ensure that the animal's health and transport conditions are adequately remedied.

The abuse of the Circus in the transport and housing of the animals creates direct interest and warrants a permissive intervention by the Appellees in the litigation. The Circus has offered to not perform the three oldest elephants while in Hobbs County. R. at 12. This offer is similar to circumstances found within *Simpson Redwood Co.*, 196 Cal. App. 3d at 1201, since this offer creates incentives in which the Department is less likely to defend its claims as vehemently as it should. In *Simpson Redwood Co.*, 196 Cal. App. 3d at 1201, the court found that since the complaint alleged damages and created incentives for the state to defend the claim less vigorously due to concern of the damage claims advanced by the plaintiff, the appellants had a direct interest in being involved within the litigation, which in light of the facts presented the court found persuasive the appellant's argument that if they were denied intervention their interest would not be adequately represented, and granted the appellant's motion permitting intervention. Here, similarly, the fact that the Circus has offered to the Department the option of the Circus not having the three oldest animals perform while in Hobbs County. This offer creates an incentive for the Department to seek enforcement less vigorously. The incentive to not pursue enforcement of §63.14 provided by the Circus' offer has provided the Appellees a direct interest in ensuring that the animals' health and transportation is adequately remedied. This incentive to seek enforcement less vigorously creates the likelihood that the Department would inadequately

represent the Appellees' interest in remedying the Circus' mistreatment of the abused animals. The Circus' current actions have left all five animals in a stressed state, stiff and unsteady, suffering from nail cracks due to stress from traveling and inadequate spacing for housing and traveling. (Exhibit 1). As a result of this abusive conduct all five of the animals have been placed on analgesics to reduce the pain that is associated with lameness, nail cracks, discomfort and swelling. The incentive that was provided to the Department not to pursue the full enforcement of § 63.14 and to allow the circus to maintain its current abusive treatment and not to perform the three oldest elephants in Hobbs County would result in the interests of the Appellees in remedying the animals conditions left unaddressed and unrepresented if pursued.

Accordingly, the Appellees do not have an interest only in seeking to prevent the three oldest animals from performing as the Department might, but rather the Appellees also possess an interest in the enforcement § 63.14, and obtaining ethical treatment of all the performing animals, ensuring that the Circus has provided adequate transport, housing and requiring the Circus to observe proper practices. As such, the Appellees have become vested with a direct interest similar to that found in *Simpson Redwood Co.*, 196 Cal. App. 3d at 1201, where their interest would not be adequately represented if the Appellees were not permitted to intervene. This direct interest is in advocating for the ethical treatment of the animals and the enforcement of § 63.14 enforced preventing the Circus from performing in Hobbs County until the adverse conditions facing the performers has been adequately remedied.

The Appellees' interests are like those found in *Fireman's Fund Ins. Co.*, 56 Cal. App. 3d at 302, in which the appellant's interests were dependent upon a party in the ongoing litigations success. *Fireman's Fund Ins. Co.*, 56 Cal. App. 3d at 302, inquired into the nature of the potential intervener and determined the interest in question was greater than that of a simple

creditor. The court first found that creditors' only possibility of satisfying its judgment against the Defendant was dependent upon plaintiff's success in the lawsuit. *Id.* The court found that by allowing an intervention in this instance it would not impede the party's ability to conduct the lawsuit on their own terms. Similarly here, the Appellees are dependent upon the Department in the ongoing litigation to revoke the Circus' 12-month Performing Animal Permit and enforce §63.14. Further, the granting of permissive intervention would not frustrate the original parties' capacity to conduct the lawsuit on their own terms. *Id.* Rather, the Appellees seek to join the lawsuit as a way of protecting the animals they are advocates for and see to the enforcement of §63.14, since the Appellees' direct interest would not be adequately addressed without the inclusion of the Appellees in litigation, and the Appellees would lose or gain based upon the courts' discretion.

C. The Appellees' Interest Is Such that They Will Lose Or Gain By the Judgment Of the Court.

The Appellees have a direct interest in the Department's enforcement action and will lose or gain by the judgment of the court. Like, *Simpson Redwood Co.*, 196 Cal. App. 3d at 1192, where the appellant environmental organization was found to have a direct interest in defending the current party in litigation's action, and expressed concerns that certain factors indicated that the actor would defend the ongoing claims less vigorously due to concerns of indemnification and damage claims. The court found such an argument persuasive and over the defendant's objection, the court granted the motion allowing intervention, since the appellant would lose or gain depending upon the judgment of the court. The appellant environmental organization in *Simpson Redwood Co.* 196 Cal. App. 3d at 1192, stood to lose the ability to protect their direct interest in protecting the environment, loss of reputation, and consequent loss of future support

and contributions, that might have resulted from an adverse judgment. *Id.* Here, Samuelson and Mara's Hope, similarly stand to lose or gain by the courts judgment. The Superior Court, when denying the Appellees' Motion for Intervention caused the Appellees to lose the ability to pursue their direct interest in defending the Department's action, which directly resulted in the Appellees' loss of ability to defend their direct interests in their pecuniary and reputational interests. Lastly, the Appellees have lost the ability to seek to have the Circus' 12-month Performing Animal Permit revocation enforced by the Department, until the animals have been adequately cared for and the Circus has obtained adequate transit that provides the animals with the required amount of space per § 63.14.

As a direct result of the Superior Court's ruling, Samuelson, and consequently Mara's Hope, have lost their ability to defend their direct interest in the litigation affecting the rights and the safety of the performing elephants of the Circus. The Court has previously found that an appellee similar to Mara's Hope had a direct interest in a legal dispute and was permitted to intervene. The appellee was permitted to intervene, because its members had a direct interest in litigation affecting reassignment of children to different district schools. (*City & Cnty. of San Francisco*, 128 Cal. App. 4th at 1038). Similarly, here too, Samuelson, in his personal role and as a representative of Mara's Hope when acting as Director of Education and Outreach at Mara's Hope Wildlife Sanctuary should be allowed to intervene due to his personal and capacity role's direct interest in litigation affecting the elephants' health. Samuelson's interest stems from being both a resident of Hobbs and an Animal Advocate for Mara's Hope within Hobbs. The Hobbs County Municipal Codes are enacted to ensure that Hobbs citizens and their interests are protected. Here, without allowing the intervention of Samuelson and Mara's Hope, there is a large possibility that the Department will not adequately protect their interests.

D. No New Issues Will Be Presented as a Result of the Intervention by the Appellees.

Samuelson and Mara's Hope have established that both parties possess a sufficiently direct and immediate interest in the action between the Circus and the Department to justify permissive intervention. Under the abuse of discretion standard intervention as governed by § 387a, a party is allowed to intervene when the party seeking to intervene has established a direct, immediate interest in the action and the intervention would not enlarge the issues in the ongoing litigation. The issues in litigation are not enlarged by Samuelson and Mara's Hope when the issues drawn upon by the Appellees remain the same. In *Timberidge Enterprises, Inc.*, 86 Cal. App. 3d at 882, the appellate court found that the issues of plaintiffs' action were not enlarged, by allowing the appellant's intervention since the issues drawn upon by the appellant in the complaint and the defendant's answer to the complaint remained the same. Similarly, allowing Samuelson and Mara's Hope to intervene would not enlarge the issues in question and the answers by the parties would not need to be changed and intervention would not unduly delay the lawsuit. Here, like *Simpson Redwood Co.*, 196 Cal. App. 3d at 1192, where the court found that permitting intervention would not unduly delay the lawsuit, or cause a multiplicity of suits contrary to the policies of § 387b when the appellant's claim at issue depended on essentially the same facts as those involved in current parties' claims of adverse possession, and if denied intervention the appellant would be forced to bring its own action against the party. Here, similarly, Samuelson and Mara's Hope's claims do not differ in the issues that are in contention and bring essentially the same argument as the Department. The Appellees seek to enforce § 63.14 in the same manner of the Department. Both Appellees and the Department seek revocation of the 12-month Performing Animal License and for the Circus to be penalized for their mistreatment of animals. Samuelson and Mara's Hope also seek to ensure that the animal

performers' health is ensured and that the animals are no longer mistreated by being forced to travel in inadequate containers.

Further, the issues that the Appellees wish to address are not new and require no new information to be presented. Exhibit 1 clearly provides evidence necessary to make a determination that the animals were kept in an unsatisfactory manner that was in noncompliance with the American Zoo and Aquarium Associations Standards for Elephant management and Care and as a result the animals were harmed. As such, allowing the Appellees permissive intervention would not add new issues to be addressed, and if Samuelson and Mara's Hope are denied permissive right to intervene, they will be forced to bring their own lawsuit against the Circus regarding the same issues and facts, even if the court were to find like *Simpson Redwood Co.*, 196 Cal. App. 3d at 1192, that the appellant intended to introduce new causes of action, the nature of such new matters would not delay the litigation, change the position of the parties, or require introduction of additional evidence. Accordingly, we urge the court to allow intervention and find an abuse of discretion, since the resolution of the issues will center upon essentially the same facts as those involved in the Department's claim and allowing intervention will not prolong, confuse or disrupt the present lawsuit.

Samuelson and Mara's Hope's intervention would not enlarge the issues in question. Unlike, *Kuperstein v. Superior Court (1988)* 204 Cal. App. 3d 598, 600, where the Appellate Court found that the trial court had abused its discretion when it allowed intervention which widened the scope of the lawsuit to include issues necessary to the intervener. The intervener in *Kuperstein*, 204 Cal. App. 3d at 598, argued that the issues presented in the complaint and in the complaint in intervention were identical, that the intervener had a direct interest due to the uniformity of issues, and intervention would not have enlarged the issues and new issues would

not be brought up in trial. The appellate court however, found that although there are common questions of fact and law regarding where the where the accident occurred, what contributed to the accident, etc. the insured and intervener insurer had a differing interest in the resolution of the facts, and sought to resolve the facts in different ways. When in *Kuperstein*, 204 Cal. App. 3d 598, the intervener insurer's interest was in having no connection between the aquarium and Convoy Street, while the insured's interest was just the opposite, and the appellate court found if they were to allow intervention, that more issues would need to be determined, and the parties would seek different resolutions. This, however, cannot be said for the present case. Both Appellees and the Department have an interest in the ethical treatment of animals. The Department seeks to enforce § 63.14 and revoke the Circus' permit until the animals are provided with adequate space for transport, housing, and are in better health. Samuelson and Mara's Hope likewise seek to enforcement of § 63.14 in order to protect the animals' health and well-being by provision of better transportation condition, better veterinary care, and better housing structure. The parties' interests in remedies as such are similar and weigh in favor of the court permitting the Appellees to intervene.

E. The Purposes Served In Allowing the Non-Party To Intervene Will Outweigh the Original Party's Interest In Conducting Its Own Lawsuit On Its Own Terms.

Samuelson and Mara's Hope's interest will outweigh the original party's interest in maintaining the law suit between the current parties. The appellants' interest meets the character of interest test established in *Fireman's Fund Ins. Fireman's Fund Ins. Co.*, 56 Cal. App. 3d at 299. This test has been established as the test to be used in determining the type of interest an appellant must have in order to be allowed to intervene. The court in *Fireman's Fund Ins. Co.*, 56 Cal. App. 3d at 302, has stated that although the Code of Civil Procedure § 387 should be liberally construed to permit intervention. The rule should not be as loose as to permit joinder in

a way that interferes with the rights of existing parties to conduct their litigation separately rather than to join with others. *Id.* However, this test cannot be so strict as to require the potential intervener, to be an indispensable party. *Id.* Because, to require the intervener to be an indispensable party would exclude all but those that court could not proceed without. *Id.* Intervention accordingly should be determined by a test falling within these extremes, so that not only indispensable parties, but other parties with adequate interests, may be permitted to intervene. *Id.* Whether intervention should be permitted within a particular case is best determined by considering the specific facts of that case, and the decision left to the sound discretion of the court. *Id.*

In considering the specific facts of the litigation at hand, Samuelson's and Mara's Hope's intervention will outweigh the original parties' interest in conducting the suit on its own terms. Samuelson and Mara's Hope have sufficiently demonstrated that their interest is of an immediate and direct interest capable of justifying the parties' intervention as governed by § 387a. As well as that the parties' permissive intervention will not enlarge the issues in the litigation. Lastly, in contemplation here, in order to support a finding that the Superior Court abused their discretion in denying the parties right to intervene, the parties must demonstrate that the reasons for allowing the parties to intervene will outweigh any opposition by the parties presently included in the suit. (*Gray v. Begley* (2010) 182 Cal. App. 4th 1509, 1521.)

Samuelson's and Mara's Hope's interest outweighs the Circus's interest in maintaining the lawsuit between its current parties. Like, *People ex rel. Rominger v. Cnty. of Trinity* (1983) , 147 Cal. App. 3d 655, 665, where the court found that the original parties' interest in litigating the issue on their own terms did not outweigh the interest of the environmental group in intervening in the matter. When the court found that although the County was concerned with protecting its

residents, the interest of the city was mainly concerned with defending its jurisdiction to enact ordinances whereas the interests of the members in the environmental group were as direct beneficiaries of the ordinances, and stemmed from their concern for their own health and well-being. Here, Samuelson and Mara's Hope are direct beneficiaries of Hobbs County Municipal Code § 63.14. The Appellees directly benefit from the enforcement of this provision by having their interests in the health and welfare of animals within Hobbs County being consistently monitored, protected, and enforced by the Department. This interest, like that of the environmental group found in *People ex rel. Rominger*¹⁴⁷ Cal. App. 3d at 655, is of a compelling nature and the Appellees, as its beneficiaries should be permitted to intervene. Here, like *People ex rel. Rominger*, 147 Cal. App. 3d at 655, where the court held that the matter at hand was not simply a matter between two private parties litigating a private matter, but rather is two parties regarding ordinances designed to protect the public's health and security. The matter in contention here is being litigated is analogous to that found in *People ex rel. Rominger*, 147 Cal. App. 3d at 665 in that the matter is between a public agency and another party regarding the enforcement of ordinances enacted to protect the public and their interests. In accordance with *People ex rel. Rominger*, any argument that the parties should be permitted to litigate without the interference of the people whose interests that the ordinances were designed to protect is an unacceptable and would be an abuse of the court's discretion

Permissive intervention as sought by the appellants is proper when the interests served by intervention outweigh the original party's interest in conducting its own lawsuit on its own terms after analyzing determinative factors. The court in *People ex rel. Rominger*, 147 Cal. App. 3d at 665 came to the conclusion intervention was proper after analyzing determinative factors in the litigation. One such telling factor in the determination was that, if the party was not allowed to

intervene its interests would most likely not have been adequately served by the State's sole participation in the suit, since the state sought to protect its fee interest in the property, which may have been enforced only through pecuniary measures. Here, as discussed in greater detail above, Samuelson and Mara's Hope's interests would not be adequately served by the Department. The Department seeks primarily to enforce § 63.14 through revoking the permit which affects the Circus's pecuniary interests whereas the Appellees seek to have the animals health and welfare ensured through the enforcement of §63.14. This would require that the animals be provided adequate housing, and transportation, in addition to a prevention of performance until the inadequate conditions are cured. The Appellees face a similar circumstance to that found *Simpson Redwood Co.* 196 Cal. App. 3d at 1201, in that the Department may choose to settle the matter by revoking the permit and not requiring the Circus to remedy the inadequate housing and transportation of the animals. This is similar to what the court in *People ex rel. Rominger*, 147 Cal. App. 3d at 665 found worthy of permissive intervention when the State as an actor might choose to settle for a monetary consideration, but the appellant's interest is distinguishable and seeks a different remedy that warrants intervention which is indicated when factors such as remedy and interests are found to be different and would not be adequately represented by the party currently in litigation. This circumstance has been adequately demonstrated above with the Department's interest in the enforcement of the Hobbs Municipal Code whereas, the Appellees interest is the safety of the animals and raising awareness of the harms that wild animals may become subjected to by being kept in captivity. Like the interest of the parties in *People ex rel. Rominger*, 147 Cal. App. 3d at 665, the interests of the appellants are direct and the Appellees seek a remedy different from that the county seeks.

As such this weighs heavily in favor of finding an abuse of discretion and allowing the potential intervener a right to intervene.

Samuelson and Mara's Hope's interest outweighs the current litigants interest in excluding the Appellees, unlike *Noya v. A.W. Coulter Trucking* (2006) 143 Cal. App. 4th 838, 843. In *Noya*, 143 Cal. App. 4th at 838, the court found that the potential intervener's reason for seeking to intervene did not outweigh the interests of the litigating parties in resolving the claims. This determination was made after the potential intervener claimed that the settlement was not final when it filed its motion for intervention, and did not require the court to come to a different conclusion. Here, although the facts are similar in that the issues that the Appellees seek to intervene on are the same and would not require the court to come to a different conclusion. This matter is different in that unlike *Noya*, 143 Cal. App. 4th at 838 where the matter had not been concluded at the time that the appellant had brought the motion to intervene, and the court found that prejudice to the parties during that late period in litigation would be substantial. Allowing intervention at this time would not prejudice the parties. Rather, allowing intervention at this time would protect all current and potential parties' interests. The Appellees have a direct pecuniary and reputational interest in insuring that they advocate for the performing animals in this instance which would not be adequately represented by the Department. If the Appellees are denied the right to intervene they would be forced to bring a separate suit. Rather, than forcing them to bring a separate suit, the court should grant permissive intervention, since the parties issues in contention regard the same subject matter, and would not require the parties to enter new evidence.

Granting the Appellees permissive intervention protects the current parties' interests and prevents a waste of the current parties' resources. The Department has an interest in enforcement

of § 63.14, and advocating for animal safety; the interests are very similar to those that the Appellees seek to protect regarding the health of the animal performers, ensuring that the animals' housing and transportation conditions are adequate. The Circus has an interest in defending against all claims the performing animals' health has been negatively impacted and they have not provided enough room for animal performers in their housing and transport. Here, unlike *Noya*, 143 Cal. App. 4th at 843, where the court found potential intervener's motion to intervene was too late to allow intervention, allowing intervention of Appellees would prevent waste of Court time and resources. By allowing Appellees to intervene in this litigation, the court would prevent the need to file separately and force the Circus repeat the litigation process.

II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE CIRCUS' MOTION FOR PRELIMINARY INJUNCTION BECAUSE THE COURT ADEQUATELY ADDRESSED BOTH FACTORS OF THE JUDICIAL STANDARD FOR ISSUANCE OF AN INJUNCTION.

The law is well settled in the decision to grant a preliminary injunction rests in the discretion of the trial court. *IT Corp. v. County of Imperial*, (1983) 35 Cal. 3d 63, 69, accord *Robbins v. Superior Court* (1985) 38 Cal.3d 199. When making the determination on whether to grant a preliminary injunction, the courts are to evaluate two factors: 1) The likelihood that the Plaintiff will prevail on the merits at trial; and 2) the interim harm that the Plaintiff will likely suffer if the preliminary injunction is denied compared to the harm the defendant is likely to suffer if the injunction is denied. *Id.* at 69-70. If both factors are not met to a reasonable standard, the motion is denied and the plaintiff cannot prevail. (*Best Friends Animal Society v. Macerich Westside Pavilion Property, LLC* (2011) 193 Cal.App.4th 168, *Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402.) Upon considering these determining factors a preliminary mandatory injunction is rarely granted by a trial court, and will be evaluated under a stricter standard of review upon appeal. (*Shoemaker v. County of Los Angeles*, (1995) 37 Cal

App 4th 618, 625.) The “power to issue preliminary injunctions is an extraordinary one and should be exercised with great caution and only where it appears that sufficient cause for hasty action exists” and that careful examination of facts and equities should be considered before an appellate court should overturn the determination of a trial court. (*West. v. Lind*, (Cal. App. 1st Dist. 1960) 9 Cal. Rptr. 288, 290.)

Further, the preliminary injunction hearing is not an adjudication of the plaintiff’s ultimate rights. “ [B]y balancing the respective equities of the parties, [the trial court] concludes that, pending a trial on the merits, the defendant should or ... should not be restrained from exercising the right claimed by him.’ ” (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.) The granting or denying of a preliminary injunction does not constitute an adjudication of the ultimate rights in controversy. (*Robbins v. Superior Court, supra*, 38 Cal.3d at p. 218, 211.) Unless there is clear evidence that an abuse has occurred, the trial court’s decision will not be overturned. (*Continental Baking Co. v. Katz, supra*, (1968) 68 Cal.2d 512, 527.) When a trial court denies a motion for a preliminary injunction, it has made a preliminary determination that the plaintiff will not prevail on the merits and has failed to satisfy the interim harm test. (*Cohen v. Bd. of Supervisors*, (Cal. 1985) 707 P.2d 840, 844-45.) On appeal, the court must determine whether the trial court abused its discretion in both factors; if the court finds the trial court abused its discretion in only one of the factors, it may affirm the decision of the trial court. *Id.*

In determination of the interim harm, the court must consider such things as, but not limited to, the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. (*Abrams v. St. John's Hospital & Health Center* (1994) 25 Cal.App.4th 628, 636.) The court must also consider the comparative harm to the defendants.

(Right Site Coalition v. Los Angeles Unified School Dist. (2008) 160 Cal.App.4th 336, 338.) If the plaintiffs are ultimately highly likely to prevail, the less harm they must prove for an injunction if the injunction is not granted. Conversely, if the court feels that the likelihood of interim harm is sufficiently high for the Plaintiff, then the likelihood that the Plaintiff will prevail on the merits at trial is not as needed for the motion to be granted. (*Id.* at pp. 338–339, 72 Cal.Rptr.3d 678. Quoted in *Take Me Home Rescue v. Luri*, (Cal. App. 2d Dist. 2012) 146 Cal. Rptr. 3d 461, 467, as modified (Sept. 14, 2012).)

A. The Superior Court Adequately Considered the Likelihood the Plaintiff Would Not Prevail on the Merits at Trial.

In general, the Circus does not dispute the findings of the Court in the evidentiary hearing with respect to the 2011 West Edmond report, lack of medical reporting, and space allowed to the elephants during transport. Where no challenge is made to dispute a factual finding, the appellate court must only determine whether the department's actions were so arbitrary and capricious as to amount to an abuse of discretion as to warrant reversal of departmental action. (*Redding Medical Center v. Bonta* (Cal. App. 2d Dist. 1999) 89 Cal. Rptr. 2d 348, 353.) Here, the Superior Court examines each of the several alleged violations by the Circus and discusses treatment by the Department with respect to potential seriousness of the offense and likelihood of the Circus to prevail on the merits. The Circus challenges the specific findings of the Court and of the West Edmond report, but not general findings. After careful consideration of specific alleged violations, the Court finds the Circus is not likely to prevail on the merits. R. at 15.

B. The Superior Court Adequately Considered the Interim Harm the Plaintiff Will Likely Suffer if the Injunction is Denied Compared to the Harm the Defendant is Likely to Suffer if the Injunction is Granted.

Because the Department is charged with maintaining the safety and welfare of the public of Hobbs County and the animals of Hobbs County, balancing the equities with the entire populace

of a county with that of a business can be challenging. While the Court recognized a loss of revenue was likely to occur to the Circus, the Circus failed to give a specific number, failed to offer any concession other than to remove the three elderly elephants and provide the missing medical records. The Court saw the need of the Department to enforce the codes as a greater policy need and obligation than the economic harm that would occur to the Circus as a result of the denial of the Motion for Intervention. R. at 16. Regardless, the Court felt that the Circus would not prevail at the merits and the potential for harm was greater to the Department if the injunction was granted, thus the injunction was denied.

III. ADEQUATE ALTERNATIVES EXIST BY WHICH THE SUPERIOR COURT'S DECISION MIGHT BE UPHELD UNDER HOBBS COUNTY MUNICIPAL CODE § 63.14, SUBDIVISIONS A(i) AND A(ii); AND CALIFORNIA PENAL CODE § 596.5.

California courts use an objective standard to define animal abuse, animal suffering, and what adequate shelter, space, and sustenance mean for animals. (*People v. Speegle* (1997) 53 Cal.App.4th 1405.) As a result, the Department has a great deal of latitude in how it can define the interpretation of the Hobbs County Municipal Code § 63.14. (*Vaughn v. Board of Police Commissioners* (1943) 59 Cal.App.2d 771, 775.) Because of the information found in the Exhibit 1, where the elephants were found to be tied for too long, in too small of containers, the Department could request an independent inspection of the Circus by an independent agency such as the American Zoological Association to evaluate the general veterinary condition of the elephants. Under 7 U.S.C.A. § 2143, the USDA has the power to regulate the transport and safety of animals for exhibition. Further, if under 9 C.F.R. § 3.128, the Department, Mara's Hope, or Samuelson could show the Circus is not providing adequate space for the elephants such that it is prevent adequate rest or access to sustenance, then the Superior Court's ruling with respect to California Penal Code § 596.5 can likely be overruled. With respect to § 63.14 of the

Hobbs County Municipal Code, the Circus has simply not complied with Subsections A(i-iii) currently. Unless material compliance is met in time for the trial on the merits, the Department will likely not be inclined to change their ruling with respect to the nature of the finding of violation with respect to revocation of the permit.

CONCLUSION

The review of the Superior Courts' decision under the abuse of discretion standard will find adequate abuse of the courts' discretion resulting in the miscarriage of justice, when the Appellees have established the essential elements necessary to establish a right to permissive intervention. The Appellees have established: 1) they have a direct interest in the matter being litigated; 2) the matter would not be adequately represented by the current parties; 3) the Appellees' interest in litigating the matter outweighs that of the current parties in being able to litigate the matter on their own terms; 4) and the Superior Court's order would create injustice through the denial of permissive intervention when the standards have been met by those seeking to intervene. Accordingly, the Appellees ask the Court of Appeals to find that the discretion of the Superior Court to have been abused, when its discretion, as demonstrated above has exceeded the bounds of reason in the consideration of all of the information placed before it by the appellant, and grant the Appellees permissive intervention. (*City & Cnty. of San Francisco v. State*, 128 Cal. App. 4th at 1036-37.)

Respectfully Submitted,

National Animal Law Competition
Moot Court Team #12

Date: January 17, 2014