

CASE NO 13-9876

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

GRANDLANDS CIRCUS, INC.,

Appellant/Cross-Respondent,

vs.

HOBBS COUNTY ANIMAL SAFETY DEPARTMENT,

Respondent,

CHRIS SAMUELSON & MARA'S HOPE WILDLIFE SANCTUARY,

Appellant

Appeal from the Superior Court of Hobbs County

Brief for the Respondent

Team Number 16

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ISSUES PRESENTED FOR REVIEW

1. Did the trial court abuse its discretion in denying the mandatory and permissive intervention of an individual and an animal-welfare organization in an action to defend a permit revocation when the potential interveners' interests in the litigation only sought to enforce the strictures of a local ordinance?
2. Was the trial court correct to deny the Circus's motion for a preliminary injunction given the court's finding that the Circus was unlikely to succeed on the merits of their claim, and their potential injury was not as great as the potential injury to the Department?

STATEMENT OF THE CASE

Chris Samuelson and Mara's Hope Wildlife Sanctuary ("Mara's Hope") filed an administrative complaint with Hobbs County Animal Safety Department ("the Department") regarding the Grandlands Circus's ("the Circus") performance and exhibition permit. At an evidentiary hearing, Samuelson and Mara's hope presented evidence indicating that the Circus had violated the County Code. The Department then revoked the Circus's permit. The Circus filed suit against the Department, seeking injunctive relief to reinstate the permit, as well as damages from lost performance profits. There were two preliminary motions, which were joined by the trial court. Samuelson and Mara's Hope Wildlife Sanctuary filed a motion to for leave to intervene in the action. The trial court denied their motion. The Circus filed a motion for a preliminary injunction forcing the Department to reinstate the Circus's permit before the trial in May 2014. The Circus had been scheduled to perform in Hobbs County in April 2014. The trial court denied this motion as well.

STATEMENT OF THE FACTS

Grandlands Circus (“Circus” or “the Circus”) has been performing in cities throughout the US since 1962. Mem. Op. at 3. They use a combination of human acrobats and animal performers, including elephants. Mem. Op. at 3.

The Hobbs County Animal Safety Department (“Department” or “the Department”) grants permits for traveling exhibitions and performances of animals in the county. R. at 4. They have granted the Circus a one-year permit for each of the last seven years, most recently in June 2013. Mem. Op. at 3-4.

Mara’s Hope Wildlife Sanctuary (Mara’s Hope) is a wildlife sanctuary in Hobbs County that rescues animals that have been abandoned by zoos and the entertainment industry. Mem. Op. at 4. Chris Samuelson (Samuelson) is the Director of Education and Outreach at Mara’s Hope and holds a Bachelor of Zoology. Mem. Op. at 4. Samuelson and Mara’s Hope became interested in the activities of the Circus after Samuelson’s assistant Penny Hall attended a performance of the Circus in Hobbs County. Mem. Op. at 5. She later told Samuelson that she thought the animals at the Circus seemed tired and thin compared to the animals at Mara’s Hope. Mem. Op. at 5. The Circus used to perform in her hometown of West Edmond, TX. Mem. Op. at 5. Hall asked her brother, who still resided in West Edmond, to find out why the Circus no longer performed there. Mem. Op. at 5. Through a Freedom of Information Act request, her brother obtained a veterinarian’s report that was prepared for West Edmond Animal Care and Control in 2011. Mem. Op. at 5. Samuelson received the report in September 2013. Mem. Op. at 5. He then called West Edmond Animal Care and Control and confirmed that after the completion of the report, they had refused to renew the Circus’s permit for 2012. Mem. Op. at 5-6.

Samuelson filed an administrative complaint with the Department on September 24, 2013, in his and Mara's Hope's names. Mem. Op. at 6. The complaint included the West Edmond veterinary report. Mem. Op. at 5. The Department notified the Circus that there would be an evidentiary hearing on September 27, 2013. Mem. Op. at 6. The purpose of the hearing was to consider, among other things, whether the issues identified in the report were still applicable, whether the Circus was violating the Hobbs County Municipal Code ("Code" or "County Code") or the California Penal Code, whether the Circus could come into compliance to the Department's satisfaction, and whether the Circus's permit should be revoked. Mem. Op. at 6.

At the hearing, the Circus did not refute the veracity of the medical records, the measurements of transportation cars, or the noted duration of time spent tethered and in transportation cars as contained in the West Edmond report. Mem. Op. at 7. The Circus also conceded violating Hobbs County Municipal Code section 63.14 A(i) by not providing any medical records in its most recent permit application. Mem. Op. at 7. The Circus offered not to perform the three oldest elephants in Hobbs County, but did not make any other concessions. Mem. Op. at 7.

On October 7, 2013, the Department decided to revoke the Circus's permit, finding that they had violated Hobbs County Municipal Code § 63.14 A(i)-(iii), as well as California Penal Code sections 596.5 and 597t. Mem. Op. at 7.

SUMMARY OF THE ARGUMENT

The trial court erred in denying Chris Samuelson's and Mara's Hope's motion for mandatory intervention. Intervention serves primarily to grant relief to all parties who may be affected by a judgment. Both Samuelson and Mara's Hope have substantial interests at stake in the

transaction which is the subject of litigation as is required under California Code of Civil Procedure section 387(b). Samuelson, as an individual and resident of Hobbs County, has an interest in the revocation of Circus's permit due to the significant potential for adverse health risks posed by Circus' alleged violations of Hobbs County Municipal Code section 63.14. Mara's hope seeks to prevent the adverse effects on her business that are substantially likely to result from Circus inadequately caring for its animals under the guise of being in accordance with California's animal cruelty statutes. Both Samuelson and Mara's Hope will be impaired in their ability to protect these interests if they are not able to intervene in this action because they may face collateral estoppel arguments from Circus for allegations of the same violations that serve as a defense to the Department's decision. Finally, the Department cannot be said to adequately protect these interests because as a government entity with finite resources, it is more likely to militate against Circus' claims for damages than Circus' request for reinstatement of its permit.

The trial court also abused its discretion in denying Samuelson's and Mara's Hope's motion to permissively intervene. The trial court found that allowing the parties to intervene would essentially swallow the requirements for permissive intervention, and that their respective concerns were not proper for the litigation. The trial court abused its discretion in this regard because it failed to adequately assess the nature of the proposed interveners' interests in that they are the same type of interests that are likely to be affected by Circus' violations of the Hobbs County Municipal Code. In vindicating their interests through defending the Department's decision to revoke Circus' permit, the proposed interveners will also not enlarge the issues which are the subject of the litigation because they only seek to defend the Department's findings of illegality on behalf of Circus. Circus also cannot claim that its interest in the Performing Animal

Permit outweigh the public health and safety concerns that are alleged by Samuelson. Inclusion of Mara's Hope will not prejudice either of the current parties either due to the fact that the organization only seeks to vindicate its rights through the same issues that are currently present in the litigation. Thus, the trial court abused its discretion because the potential interveners have satisfied the requirements of permissive intervention, and not allowing them to participate in the litigation would serve them a great injustice.

The trial court was correct to deny the Circus's motion for a preliminary injunction because the Circus is unlikely to prevail on the merits of their claim and their potential injury is dubious. The ultimate goal of a preliminary injunction is to minimize the harm from an incorrect interim decision. Here, there is no proof that the Circus faces potential injury. Furthermore, California civil procedure says that an injunction may be issued to prevent enforcement of public statutes for the public benefit. It would be plainly wrong to grant an injunction in this situation, where the statute in question is for public good, thus the Circus cannot possibly win on the merits of the case. Finally, the standard of review is abuse of discretion, which is a high burden that the Circus will be unable to meet.

The Circus's claim is that the Department was arbitrary in their enforcement of the Hobbs County Code. They are unlikely to win on this claim. The Department had the power to revoke the permit as long as the proper procedures laid out in Hobbs County Municipal Code section 63.14(B) were followed. The Circus does not challenge the procedural aspect of the revocation. Regardless, the Department properly followed the procedure by giving notice and using its discretion to consider the relevant factors.

As the trial court noted, at least some of the Department's findings were legitimate and justified revocation. The Circus's failure to disclose the previous permit nonrenewal in West

Edmond, which is akin to revocation, was a major violation of section 63.14 A (iii). The Circus continues to violate California Penal Code section 597t by tethering their elephants for extended periods of time and depriving them of adequate access to an exercise area, food, water, and shelter. This is also a serious violation that justifies the Department's decision to revoke the permit. The trial court disagreed with the Department's findings regarding Code section 63.14 (A) (i)-(ii), but this is wrong. The trial court found there was no violation of section (A)(ii) based on their wrongful exclusion of the phrase, "and transfer containers." When considering this portion of the code, clearly the transportation containers used by the Circus fall under (A)(ii)'s scope, and there is a clear violation, which justifies revocation. The trial court also found that while the Circus did violate section (A)(i), that violation did not justify the Department's decision to revoke the permit. However the trial court failed to consider that it was not an abuse of the Department's discretion to consider the violation of section (A)(i) in culmination with the other, more serious violations.

Finally, the trial court found that the Department was wrong to find that the Circus violated California Penal Code section 596.5. The court's finding was based on the West Edmond report, which stated that the two youngest elephants were in adequate condition, and the Circus offered to only perform those elephants in Hobbs County. However this analysis fails to consider that the three older elephants have been performed to the point of lameness, which is in itself abusive. Based on all of the evidence of violations, the Circus will not win on their claim that the Department was arbitrary in their decision to revoke the permit. Thus, the trial court was correct to deny the Circus's motion for a preliminary injunction.

The second consideration for preliminary injunction determinations is balancing potential injuries to the parties if the injunction is or is not granted. The trial court found that the balance

tips in favor of the Department because they are charged with ensuring the safety of humans and animals in the county, and because the Circus did not prove their potential injury. The trial court was correct to find that the balancing of potential injuries tips in the Department's favor.

However, this Court should also consider that preliminary injunctions only serve to prevent threatened injuries and in this situation, there is no threatened injury. The Circus's permit has already been revoked and they presented no evidence of how much money they stand to lose. In other words, they have put forth no evidence that they actually face a threatened injury. Based on this reasoning, as well as the balancing of potential injuries, the Circus should not be granted a preliminary injunction.

Considering the high standard of abusive of discretion, as well as the analysis of the preliminary injunction determination, this Court should affirm the trial court's decision to deny the Circus's motion for a preliminary injunction.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED CHRIS SAMUELSON'S AND MARA'S HOPE'S MOTION TO INTERVENE.

“The purpose of allowing intervention is to promote fairness by involving all parties potentially affected by a judgment.” *Simpson Redwood Co. v. State of California*, 196 Cal.App. 3d 1192, 1199 (1987). The statutory provision which allows intervention in an action in California is California Code of Civil Procedure section 387. Cal. Civ. Proc. Code § 387 (West 2014). This statute allows for two forms of intervention, permissive and mandatory. Cal. Civ. Proc. Code § 387 (West 2014). Section 387 is to be liberally construed so as to permit intervention. *Lindelli v. Town of San Anselmo*, 139 Cal.App.4th 1499, 1505 (2006).

In this case Samuelson and Mara's Hope have satisfied the requirements for mandatory and permissive intervention under California Code of Civil Procedure § 387. In denying the interveners' motion for intervention, the trial court abused its discretion in not even considering the merits of the interveners' claim as to mandatory injunction, and failed to recognize the manifest injustice that would occur in denying them permissive intervention. Thus, this Court should order the trial court to grant the potential interveners' motion for leave to intervene.

A. Chris Samuelson and Mara's Hope are entitled to a right of intervention under California Code of Civil Procedure Section 387(b).

Samuelson and Mara's Hope did not limit their motion for leave to intervene to permissive intervention under California Code of Civil Procedure Section 387(a), they also sought mandatory intervention under section 387(b). Mem. Op. at 8 The trial court, in determining that Samuelson and Mara's Hope did not have a right to intervene under section 387(b), simply stated that "this Court sees no basis for even considering intervention as a matter of right on the facts set forth herein." Mem. Op. at 8. Although the trial court did not provide any analysis as to why it could not find a right to mandatory intervention, section 387(b) states that, if the requirements of mandatory intervention are met, "the court *shall*...permit that person to intervene." Cal. Civ. Proc. § 387(b). Thus, despite disagreement among the appellate courts as to the proper standard of review for mandatory intervention, this Court should apply a de novo standard of review to the trial court's determination on mandatory intervention due to the commanding language of the statute. *Siena Court Homeowners Ass'n v. Garden Valley Corp.*, 164 Cal.App.4th 1416, 1425 (2008) (referencing the varying standards of review). As such, If this Court finds that the requirements for mandatory intervention have been met, it should order the trial court to grant mandatory injunction on behalf of Samuelson and Mara's Hope.

Section 387(b) requires intervention to be granted when,

“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...”

Cal. Civ. Proc. Code § 387(b).

Here, both Samuelson and Mara’s Hope claim an interest *related* to the transaction in question, i.e., the revocation of Circus’ permit. Samuelson and Mara’s hope will also be impeded in protecting that interest if intervention is not granted. Finally, neither of the current parties to the litigation adequately represent that interest.

Transaction may be defined as “[s]omething which has taken place, whereby a cause of action has arisen.” *California Physicians’ Service v. Superior Court*, 102 Cal.App.3d 91, 96 (1980). In this case, the transaction giving rise to a cause of action is the Department’s revocation of Circus’ permit, which lead to this instant suit. Although the trial court found that the sole interest of Samuelson and Mara’s hope relates to the “practice of animals performing in circuses or related activities generally,” it is unclear how the trial court found this interest in relation the revocation of Circus’ permit is insufficient under section 387(b). Cal. Civ. Proc. Code § 387(b). Mem. Op. at 9. The opinion of the trial court also foregoes any analysis of the stated interest provided by Samuelson and Mara’s Hope that they “seek to protect animals” and the interests that stem from such a concern. Mem. Op. at 7, 9. Seeing as how this Court has relieved the parties of limiting their briefs to the arguments upon which the trial court relied, and it is unclear what Samuelson and Mara’s Hope argued to the trial court, it is important to expound these “stemming” interests here. Briefing Order at 2.

1. Chris Samuelson has an interest related to the transaction that is the subject matter of this litigation as an individual.

Samuelson's individual interest in the transaction as a resident of Hobbs County is directly related to the potential health and safety concerns that may arise out of the alleged shortcomings of Circus in regards to its elephants and its Performing Animal Permit application. State of California has recognized such a concern in adopting section 25989.1 of the California Health and Safety Code. Cal. Health & Safety Code § 25989.1 (West . This section requires a travelling circus to notify a city or county within fourteen days of its intended arrival before it may legally perform there. *Id.* The office of the author of the bill stated that the bill itself has two purposes, to protect the public from circuses that inadequately protect the public health and welfare, and the welfare of the animals in question themselves. CA B. An., A.B. 1635 Sen., 7/02/1998. Specifically, the office noted that performance animals have the ability to directly injure human-beings, and have in the past spread tuberculosis to humans. *Id.*

Hobbs County Municipal Code section 63.14 is a logical extension of this notice requirement. The code itself embraces the severity of public health concerns in relation to performing animals by requiring that medical records of all animals be made available as a condition precedent to acquiring a Performing Animal Permit, as well as requiring proof that any elephant on display has tested free of tuberculosis within the past twelve months. Hobbs County Municipal Code Section 63.14(A)(i). Although Circus contends that the records indicate that its elephants receive prompt care for any signs of tuberculosis, such a contention is irrelevant as towards Hobbs County Municipal Code section 63.14(A)(i) which requires proof that the elephants actually be tested for tuberculosis. Mem. Op. at 11; Hobbs County Municipal Code section 63.14(A)(i). Furthermore, the medical records which formed the veterinary opinion were

incomplete, and displayed that Circus' elephants have suffered from tuberculosis in the past. Ex. 1.

Circus's failure to disclose such information in its Performing Animal Permit application, or to provide verification of tuberculosis testing, presents an alarming danger to the residents of Hobbs County, for if Circus is not required to present such information, there is no assurance that the animals in question do not have the potential to cause tuberculosis infections. It is acutely alarming to Samuelson due to the fact that he was in contact with a person who had recently visited the Circus and may have contracted the disease herself. Mem. Op. at 5.

Thus, Samuelson has reason to be concerned that he, as well as the public, will be injured if Circus is allowed to continue performing its potentially dangerous elephants in violation of Hobbs County Municipal Code section 63.14(A)(i). On similar facts, the court in *Ursino v. Superior Court* found that restaurant owners who petitioned a local board of appeals for revocation of a building permit granted to a McDonald's based upon personal, property, and public interests, were indispensable parties under section 389(a) of the California Code of Civil Procedure to an action brought by McDonald's, which sought to prevent the board from hearing the restaurant owners' appeal. 114 Cal.Rptr. 404, 408; Cal. Civ. Proc. Code § 389. The *Ursino* court reasoned that the restaurant owners had a sufficient interest in the outcome of the suit brought by McDonald's because they had alleged potential injury to personal, property, and public interests, and that the restaurant owners' ability to protect these interests would be frustrated if McDonald's was successful in its suit. 114 Cal.Rptr. 404, 409.

The fact that the restaurant owners in *Ursino* were able to bring their appeal to the board if they deemed that personal, property, or public interests would be harmed by the issuance of the permit, or that the court was deciding whether the restaurant owners were indispensable parties

under section 389(a) of the California Code of Civil Procedure, does not detract from the applicability of the *Ursino* court's reasoning in this case. Section 389(a) of the California Code of Civil Procedure tracks nearly exactly the mandatory intervention provision of section 387(b). Cal. Civ. Proc. Code §§ 389(a), 387(b). Also, Samuelson has personal, property, and public interests which he seeks to defend in this case, just like the restaurant owners in *Ursino*. He also filed the complaint to the Department which precipitated this litigation. Mem. Op. at 6. Thus, the facts in *Ursino* and the facts in this case are functionally the same; the party seeking relief from the grant of a permit, which it finds to violate its interests, and attempts to vindicate such interests through a demand that the permit be revoked, is left out of a judicial action which impairs the ability of the party to protect its rights. The fact that the *Ursino* court found it dispositive on the interest inquiry that the restaurant owners had interests similar to Samuelson's should guide this Court's decision.

Thus, Samuelson has a direct interest in the revocation of Circus' permit, which disallows Circus from bringing its potentially dangerous elephants into Hobbs County and placing him, as well as the other residents of Hobbs County, at risk of life and limb. More specifically, Samuelson has an interest in defending the Departments' decision to revoke the permit based upon a violation of Hobbs County Municipal Code section 63.14(A)(i). Mem. Op. at 7. If the trial court is to find that the Department may not revoke the permit despite Circus failing to provide the requisite medical records, Samuelson stands to be placed in danger and unable to protect his interests as well as that of the public. This Court should find that Samuelson has an interest related to the transaction which is the subject matter of this litigation.

2. Mara's Hope has an interest in the transaction that is the subject matter of this litigation as an organization.

Mara's Hope, as an organization that is dedicated to the protection of wild animals, has an interest related to the revocation of Circus's permit because Circus's alleged display of animals who are mistreated in violation of the Hobbs County Municipal Code as well as California Penal Code sections 597t and 596.5 (animal cruelty statutes), improperly restricts Mara's Hope's ability to effectively communicate with the public the appropriate treatment of animals.

Circus's display of such animals, under the auspices of being in compliance with Hobbs County Municipal Code, gives the general public the notion that Circus's treatment of its animals is in compliance with laws that call for the proper treatment of animals. *See* Cal. Penal Code §§ 597t, 596.5. This misleading information directly competes with Mara's Hope's ability to inform the public on the proper treatment of animals, and stands as a barrier to Mara's Hope's ability to maintain its own validity as a source of proper education on such treatment. If Mara's Hope were to lose such validity, it stands to lose the support of its members, and in turn its ability to remain an organization. Mara's Hope's interest in the revocation of Circus's permit is thus to defend the Department's decision and its findings that Circus had violated California Penal Code sections 597t and 596.5.

As with Samuelson, Mara's Hope's interest in protecting its own validity as a source of the proper treatment of animals, and preventing businesses who might deceive the public from unfairly competing against them, is one that is recognized by the State of California. California Business and Professions Code section 17200 creates a cause of action for those who may be injured by the unfair business practices of another, which includes, *inter alia*, unlawful and fraudulent business practices. Cal. Bus. & Prof. Code § 17200. The statute itself is broad,

covering “anything that can properly be called a business practice and that at the same time is forbidden by law.” *Cal-Tech Communications Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal.4th 163, 181 (1999). The fraud prong of the statute only requires a showing “that members of the public are likely to be deceived.” *Podolsky v. First Healthcare Corp.*, 50 Cal.App.4th 632, 649 (1996). Circus’ alleged violations of sections 597t and 596.5 of the California Penal Code and the Hobbs County Municipal in conducting a substantial portion of its business, i.e., transporting and maintaining display animals, places Circus squarely within the class of business practitioners that the California Legislature sought to eliminate.

Mara’s Hope, as being among the class of businesses which may be disadvantaged by such practices, has a direct interest related to the revocation of Circus’ permit. A finding that Circus had violated the law in the care of its animals and, in turn, that Circus’s permit was properly revoked, protects Mara’s Hope’s interest in providing the public with accurate information on the care of animals without intrusion by the unlawful displays by Circus. Such an interest also helps protect the consumers of Hobbs County and those who would otherwise visit Grandlands Circus from being deceived that the care of the animals is in accordance with practices ordained by law. However, it must be noted that Mara’s Hope is not claiming that it presently has a cause of action against Circus. While the current facts of this case may not justify a cause of action on behalf of Mara’s Hope against Circus, this merely provides background as to the interest which the organization claims, which justifies its intervention in this litigation.

3. Both Samuelson and Mara’s Hope will be impaired in protecting their respective interests if they are not granted intervention, and there is a substantial likelihood that the Department will not defend their interests.

As required by California Code of Civil Procedure section 387(b), a party must be “so situated that the disposition of the action may as a practical matter impair or impede that person’s

ability to protect that interest.” Cal. Civ. Proc. Code. § 387(b). In the instant case, both Samuelson and Mara’s Hope will be impaired in protecting their interests if they are not granted intervention. The ultimate disposition of the case will in turn determine whether or not Circus may operate under its permit in April 2014. As to Samuelson, a disposition which allows the Circus to operate without first requiring the medical records and tuberculosis testing as required under Hobbs County Municipal Code section 63.14 provides him with no other recourse in preventing the potentially sick animals from infecting himself or the community, there are no other apparent means by which to prevent the Circus from operating once it receives its permit.

As to Mara’s Hope, a determination that the Circus is entitled to its permit despite the allegation that violations of California Penal Code sections 596.5 and 597t on behalf of Circus have occurred would entirely frustrate the organizations ability to protect itself from the unlawful business practices of Circus. This is due to the very real possibility that both potential interveners would be subject to arguments of collateral estoppel, and in regards to violations of the penal code, double jeopardy, from Circus if they were to bring claims based upon the violations of law which are alleged. Such an impairment would prevent Samuelson and Mara’s Hope from protecting their interests, and thus they have satisfied this requirement of section 387(b). Cal. Civ. Proc. Code. § 387(b).

Also required by section 387(b) of the California Code of Civil Procedure is that no party to the litigation will adequately protect the potential interveners interest. *Id.* There is a strong possibility, that as a government entity with finite resources, the Department will dedicate much of its resources to defending against Circus’ claim for damages which would further deplete these limited funds.

Thus, both Samuelson and Mara's Hope are entitled to a right of intervention under section 387(b) of the California Code of Civil Procedure. Alternatively, however, both potential interveners also contend that the trial court abused its discretion in denying its motion for permissive intervention under section 387(a).

B. The trial court abused its discretion in denying Chris Samuelson's and Mara's Hope's motion for leave to intervene because the trial court's decision clearly effects injustice.

A trial court has discretion to permit intervention under section 387(a) when the proposed intervener establishes that; "(1) the party has a direct and immediate interest in the action; (2) the intervention will not enlarge the issues in the litigation; and (3) the reasons for the intervention outweigh any opposition by the parties presently in the action." *Truck Ins. Exchange v. Superior Court*, 60 Cal.App.4th 342, 346 (1997). The standard of review for an order denying leave to intervene under discretionary intervention statute is abuse of discretion. *Siena Court Homeowners Ass'n v. Green Valley Corp.*, 164 Cal.App.4th 1416, 1429 (2008). For an abuse of discretion to be found, the trial court's decision "must clearly appear to effect injustice." *Denham v. Superior Court*, 86 Cal.Rptr. 65, 72 (1970). The burden in showing that an abuse of discretion has occurred is on the complaining party. *Id.*

1. The trial court abused its discretion in denying Samuelson's motion to intervene because he has a direct and immediate interest in the action, his intervention will not enlarge the issues of the litigation, and any opposition of the parties is insufficient.

For permissive intervention to be granted, section 387(a) requires that "a proposed intervener's interest in the matter in litigation must be direct, not consequential, and that it must be an interest which is proper to be determined in the action in which intervention is sought." *Simpson Redwood Co. v. State of California*, 196 Cal.App.3d 1192, 1201 (1987). This requires that proposed intervener show a substantial *probability* that its interest will be adversely affected.

Id. at 1202. However, “the intervener need neither claim a pecuniary interest nor a specific legal or equitable interest in the subject matter of the litigation.” *Id.* at 1201. Ultimately “[w]hether the intervener's interest is sufficiently direct must be decided on the facts of each case.” *Id.*

In denying Samuelson’s and Hope’s motion to intervene, the trial court determined that the only interest that the proposed interveners have “relates to the practice of animals performing in circuses or related activities generally” and that allowing Samuelson and Mara’s Hope to intervene would “effectively swallow the requisite showing for permissive intervention by allowing anyone with any interest in animal-related issues to intervene in an action.” Mem. Op. at 9. However, as stated earlier, the interest of Chris Samuelson in the litigation is in relation to a concern for his, and the public’s, health and welfare, as it pertains to the activities relative to the Circus’ conduct in how it maintains its elephants.

Furthermore, allowing Samuelson to intervene in this action would not allow just anyone to intervene in an action, Samuelson specifically came into contact with someone who had attended the circus, thus putting him at risk of exposure to tuberculosis. It is the Circus’ alleged failure to provide the required medical records which in turn may allow for human exposure to tuberculosis which would enlarge the class of potential interveners, not any fault of Samuelson. Thus, by not recognizing the gravity of this interest the district court’s decision to not allow intervention to Samuelson clearly effects injustice by robbing the residents of Hobbs County an avenue to protect themselves from such exposure. Samuelson was apparently supposed to be satisfied with the complaint he filed and the resultant decision of the Department, which is now in jeopardy.

Additionally, the trial court appears to be of the opinion that the Department may not revoke a permit when the requisite medical records are not provided under Hobbs County

Municipal Code section 63.14 during the initial permitting process. Mem. Op. at 13. Such a conclusion essentially renders the language of section 63.14 that requires permit applicants and *permit holders* to meet the conditions precedent. Hobbs County Municipal Code § 63.14. Such an interpretation would render this language obsolete, and would result in an invalidation of the protections provided to the residents of Hobbs County found within the section after a permitted entity has received its permit.

A similar situation was in front of the court in *People v. County of Trinity*. 147 Cal.App.3d 655 (1983). In deciding that the trial court had abused its discretion in denying the permissive intervention of an environmental group, the court in *People* reasoned that the fact that members of the group may be exposed to personal harm if an ordinance prohibiting the use of certain herbicides was found to be preempted by the State was sufficient for them to have a direct and immediate interest in the outcome of the litigation. *Id.* at 663. The *People* court also noted that the group and its members would have no other recourse if the ordinance was found to be preempted. *Id.*

Here, the potential attack by the trial court is essentially the same. A decision which does not require Circus to produce documents throughout the life of its permit has the substantial probability of injuring Samuelson and the residents of Hobbs County. Such a determination would clearly effect injustice for Samuelson who would be provided with no other options if the permit is granted back to Circus.

Finally, introducing Samuelson would not expand the issues in litigation. Samuelson only seeks to defend the Department's decision in finding that Circus outside of the prohibitions of its permit. Such issues were already in front of the parties since the filing of the lawsuit. Also, Circus' opposition to the intervention is insufficient. Circus would be hard pressed to argue that

the health and welfare of Samuelson as well as the residents of Hobbs County is outweighed by its desire to conduct the litigation on its own terms.

2. The trial court abused its discretion in denying Mara's Hope's motion to intervene because the organization has satisfied the requirements of section 387(a), and preventing the organization's intervention would result in injustice.

Mara's Hope's has a direct and immediate interest in the outcome of this litigation such that it will lose by direct operation of the judgment. Preventing Mara's Hope from defending itself from the unlawful business practices of Circus in this litigation puts Mara's Hope in direct jeopardy of losing its reputation of providing accurate education on the care and welfare of animals by allowing Circus to deceive the public as to the lawful care of animals under the auspices a Performing Animal Permit.

The loss of such a reputation, and the interest in maintaining it was recognized by the court in *Simpson*. 196 Cal.App.3d 1192. In *Simpson* the court recognized that a conservation organization had an interest in "perpetuation its role and furthering its avowed policies" to intervene so as to prevent the conveyance of a park it had assisted in establishing. *Id.* at 1202. This interest was deemed to be sufficient under permissive intervention due to the fact that the organization may have lost out on future contributions and supporters, as well as control over the land if the land were to be conveyed. *Id.* at 1201-1202.

Mara's Hope's interest in this litigation is thus very much the same as the conservation organizations in *Simpson*. As an animal-welfare organization, Mara's Hope stands to lose contributions and supporters if Circus' is allowed to continue operating under its current permit in Hobbs County as competition to Mara's Claim to provide education and outreach about animal welfare, thus making Mara's Hope's interest in the outcome of the litigation direct and immediate.

Denying Mara's Hope's permissive intervention in this matter would also not expand on the issues before the parties for litigation. All Mara's Hope hopes to do is defend the Department's findings of illegality on behalf of Circus, and prevent Circus from having its permit reinstated. These issues are already before the current parties. Lastly, Circus cannot justify an opposition to Mara's Hope's intervention arguing that such intervention would prejudice Circus' ability to conduct the litigation on its own terms. The addition of Mara's hope will not require Circus, or Department for that matter to change positions, nor will it require the introduction of new evidence. Thus, Circus cannot argue that the introduction of Mara's Hope would so confuse the litigation as to provide a prejudice against either of the current parties.

Denying the intervention of both Samuelson and Mara's Hope, despite that they have satisfied the requirements of permissive intervention and their interests are aligned with protection of the public and the establishment of violations which harm important business principles, this Court should find that the trial court abused its discretion, and direct the trial court to grant the intervention of Samuelson and Mara's Hope.

II. THE TRIAL COURT CORRECTLY DENIED A PRELIMINARY INJUNCTION TO CIRCUS BECAUSE THE CIRCUS IS UNLIKELY TO WIN ON THE MERITS AND THE INJURY TO THE DEPARTMENT IF THE INJUNCTION IS GRANTED IS GREATER THAN THE INJURY TO THE CIRCUS IF THE INJUNCTION IS DENIED.

When deciding whether to grant a preliminary injunction, a trial court is to evaluate, consider, and balance two intertwined factors: whether the proponent is likely to succeed on the merits of the case, and whether the potential injury to the plaintiff if the injunction is not granted is greater than the injury to the defendant if the injunction is granted. *Best Friends Animal Society v. Macerich Westside*, 193 Cal.App.4th 168 (2011). The ultimate goal of an injunction is to minimize the harm that an erroneous interim decision may cause. *IT Corp v. County Imperial*,

35 Cal.3d 63 (1983). Furthermore, there is a rebuttable presumption that harm to the public outweighs harm to an individual. *Id.* Finally, an injunction may not be issued “[t]o prevent the execution of a public statute by officers of the law for the public benefit.” Cal. Civ. Proc. Code § 526(b)(4) (West 2014); *Board of Supervisors v. McMahon*, 219 Cal.App.3d 286, 303 (1990).

The discretion to balance and consider the factors mentioned above belongs solely to the trial court. As such, the trial court’s decision should not be interfered with unless there is clear abuse of discretion. *Huong Que Inc. v. Luu*, 150 Cal.App.4th 400 (2007). “A trial court will be found to have abused its discretion only when it has ‘exceeded the bounds of reason or contravened the uncontradicted evidence.’” *IT Corp.*, 35 Cal.3d 63, 69. The burden is on the appellant to make a clear showing of abuse of discretion. *Socialist Workers Committee v. Brown*, 53 Cal.App.3d 879, 889 (1975). However, insofar as the court’s ruling depends on resolving disputed issues of fact, or on determining the application of legal principles, the trial court decision is subject to a limited de novo review or independent appellate review, respectively. *Huong Que Inc.*, 150 Cal.App.4th 400, 408.

The trial court properly considered whether the Circus was likely to prevail on the merits of their claim. Their claim rests on the allegation that the Department was arbitrary in their application of the Hobbs County Code. The trial court found that the Department had numerous legitimate reasons to revoke the Circus’s permit. This determination involved resolving disputed facts, and as such it is due a limited de novo review. However this court should only reverse the trial court determination if they find the lower court exceeded the bounds of reason. *Id.* This is a high burden, which the Circus will be unable to meet. Furthermore, the trial court considered and balanced the injuries to the parties. This was unnecessary, as it is settled law that injunctions should only issue to prevent threatened injury. *J.F. Parkinson Co v. Building Trades*, 154 Cal.

581 (1908). This improper application of law is subject to independent appellate review and should be reversed. However, even if there is a threatened injury, the balancing of potential injuries weighs in the Department's favor.

A. The Circus is unlikely to win on the merits because the Department did not act arbitrarily in their decision to revoke the Circus's permit.

1. The Hobbs County Ordinance gives the Department discretion to revoke permits that it grants.

Where a permit has been properly obtained, the permittee acquires a vested property right, but that right may be revoked if the permittee fails to comply with reasonable conditions upon which the permit was granted. *O'Hagen v. Board of Zoning Adjustment*, 19 Cal.App.3d 151 (1971). It is proper exercise of police power to revoke a permit after the violation of a valid statute or ordinance. *Vaughn v. Board Police Commissioners of LA*, 59 Cal.App.2d 771 (1943).

The Circus has not challenged the validity of the ordinance, nor have they refuted the evidence presented at the Department hearing. In short, they have given no reason that the Department should not have revoked their permit, other than to say that the ordinance was enforced in an arbitrary way. This is a very weak argument. The Department has the right to revoke any permit it grants as long as it follows the procedure set out in §63.14 (B). The Circus has not challenged the procedure of the revocation either. Absent any procedural issues, the Department has discretion to consider all evidence in relation to the requirements for permittees set out in §63.14 (A).¹

¹ §63.14 (B) does not list specific factors that the Department shall consider when determining whether to revoke a permit. The statute grants the Department reasonable discretion to consider the factors in subdivision A, but does not say they must use those factors exclusively.

2. The Department was acting within its discretion to revoke the permit based on the evidence presented at the administrative hearing.

The trial court found that Circus violated Code Section 63.14 (A)(iii), which, by itself, gives the Department a legitimate reason to revoke their permit. California's Health and Safety Code requires traveling circuses to notify any entity that provides animal services for a city or county in which they intend to perform. Cal. Health & Safety Code § 25989.1. This presence of this requirement in the Health and Safety Code shows that California considers notice of traveling circuses to be important to the public welfare and interest, which is what the Health and Safety code regulates. Hobbs County Code section 63.14 is clearly a continuation of this notice requirement.

In the original administrative complaint, Samuelson and Mara's Hope presented evidence that West Edmond had declined to renew the Circus's permit. Hobbs County Code section 63.14 (A)(iii) requires that people seeking Performing Animal Permits must disclose any permits previously held that were revoked. This provision is important because prior revocation of a permit gives the county notice that there may be reason to investigate the permit seeker before issuing or denying a new permit. Withholding such important information is a very serious violation of the county code. Based on this violation alone, the Department had legitimate reason and authority to revoke the Circus's permit. The Circus had clear notice of this provision and they had sought permits from the Department for the last seven years, which shows that they chose to ignore the provision. It is not unreasonable or arbitrary for the Department to revoke the permit of a business that has willfully ignored a serious provision of the county code.

The court also agreed with the Department that the Circus had violated California Penal Code §597t, as incorporated into Hobbs County Code §63.14. Section 597t prohibits confining

animals in such a way that they are deprived of adequate food, water, shelter, or exercise area. Cal. Penal Code § 597t. Though the Circus is not challenging the constitutionality of §597t, it should be noted that courts have previously held that it is not unconstitutionally vague. *People v. Speegle*, 53 Cal.App.4th 1405 (1997). The West Edmond report stated that animals were tethered for extended time without enough space or an exercise area. At the hearing, the Circus did not deny the veracity of the report, nor did they provide any evidence that they have changed their practices since 2011, when the report was generated. Nor did they make any offers to come into compliance with the statute by providing containers with enough space for the elephants. A violation of section 597t is a misdemeanor. It is not arbitrary for the Department to revoke Circus' permit on this basis. Nor is it an abuse of the trial court's discretion to make this finding.

Because the court found that the Circus has committed these two violations, it cannot be said that the court abused its discretion in finding that the Circus is unlikely to succeed on the merits of their claim. However, there are other grounds upon which to uphold the trial court's decision. Though the court disagreed with the Department regarding the Circus's violations of §63.14 A(i) and A(ii), and §569.5, we believe that the court was wrong. These determinations were based on resolution of disputed facts, thus are subject to de novo review. *Huong Que Inc. v Luu*, 150 Cal.App.4th 400, 408 (2007).

County Code section 63.14 A(ii) holds that permit seekers must utilize appropriate transportation vehicles and transfer cages. The trial court stated that this subsection only applies to transportation vehicles, which is plainly wrong because the provision includes transportation vehicles *and transfer cages*. The inclusion of transfer containers in the code ought to include transportation containers, such as the ones used by the Circus for both transportation and general containment. The West Edmond report clearly shows that the transportation containers used by

the Circus do not meet the space requirements set out by the Association of Zoos and Aquariums. The Department was well within its discretion to use this information in their decision to revoke the Circus's permit since the Circus did not refute the report.

The trial court also found that the Circus violated section 63.14 (A)(i), but held that the violation was curable without the Department revoking the permit. Subsection (A)(i) require permit seekers to provide all medical records of their animals, including tuberculosis screening records for elephants. This important provision protects animal welfare, by requiring the permit seeker to maintain adequate medical treatment, and public interest, by allowing the Department to ensure that traveling animals do not spread infectious diseases. While the trial court may be correct in the sense that the Department could have requested the medical records, it is still reasonable for the Department to consider the Circus's violation of subsection (A)(i) along with the other violations. As a matter of policy, the Court should acknowledge that a single de minimis violation is quite different than a de minimis violation in combination with other serious violations. At the very least, it was not an abuse of the Department's discretion to consider the cumulative nature of the Circus's violations in the determination to revoke their permit.

Finally, the trial court found that the Circus did not violate §596.5 of the California Penal Code, as incorporated into the Hobbs County Code, which prohibits abusive conditions for, as well as discipline of, elephants. This finding was based on the court's interpretation of the West Edmond report. The court found that the report indicated that younger two elephants were in adequate health. However the court seems to ignore that the report found that the oldest three elephants appeared to be stiff and lame. It should not matter whether those three elephants actually perform; the fact that they have performed to the point of lameness is abusive in and of itself. It shows that the Circus's general and long term practices are abusive. Penal Code section

596.5 prohibits the abuse of elephants. This department recognized, and this Court should recognize as well, that it abusive to perform animals to the point of lameness. Violation of section 596.5 is a misdemeanor violation, regardless of whether the Circus is actually prosecuted. To the extent that Hobbs County code incorporates section 596.5, this is a serious violation, not a de minimis violation. As such, it was not arbitrary for the Department to revoke the Circus's permit on this basis.

B. The balancing of injuries weighs in favor of the Department because the injury has already occurred, the Department represents the public interest, and the Circus has not proven their injury.

1. Preliminary injunctive relief is inappropriate because the Circus has not offered proof of any threatened injury.

It is settled law that injunctive relief is only appropriate to protect against threatened injuries. *Vincent Petroleum Corp. v. Culver City*, 43 Cal.App.2d 511 (1941). “An injunction lies only to prevent threatened injury and has no application to wrongs which have been completed, and for which the injured party may obtain redress by an action at law.” *JF Parkinson Co v Building Trades*, 154 Cal. 581, 602 (1908). Even if a wrong has occurred for which a plaintiff may seek redress, an injunction cannot prevent an injury that has already occurred.

The trial court found that there is threatened injury because the Circus is scheduled to perform in Hobbs County before the trial, but will be unable to do so without injunctive relief. This reasoning is wrong. The revocation itself is the true injury. The Circus admits that the revocation will make it difficult for them to find another venue for their April performance because such a revocation will throw up a red flag in any other jurisdiction. This admission shows that the revocation itself was a real injury. The trial court's reasoning seems to rest on the Circus's lost revenue from the April performance, but the Circus has not offered any proof of that they will lose revenue by not performing in April. In other words, they have not proved that

there is a threatened injury. Regardless of the balancing of potential injury, preliminary injunctive relief is improper because there is no threatened injury. However, even if this court finds that there is a threatened injury, a preliminary injunction should not be issued; the Department will face greater injury if the injunction is issued than the Circus will face if the injunction is denied.

2. The Department will be harmed if injunction is granted because it would undermine the Department's responsibility to enforce ordinances.

Statutes and ordinances ought to be upheld and enforced. Indeed, why else would legislative bodies take the time to write laws? It is important for courts to not undermine the officials charged with enforcing those laws. An injunction may not be issued "[t]o prevent the execution of a public statute by officers of the law for the public benefit." Cal. Civ. Proc. Code § 526(b)(4); *Board of Supervisors v. McMahon*, 219 Cal.App.3d 286, 303 (1990). In furtherance of this consideration, courts have held that statutorily proscribed activities are contrary to public benefit.

Where a legislative body has enacted a statutory provision proscribing a certain activity, it has already determined that such activity is contrary to the public interest. Further, where the legislative body has specifically authorized injunctive relief against the violation of such a law, it has already determined (1) that significant public harm will result from the proscribed activity, and (2) that injunctive relief may be the most appropriate way to protect against that harm. *IT Corp. v. County Imperial*, 35 Cal.3d 63, 70 (1983).

It is well settled then, that harms to the public benefit ought to be strongly considered when making injunction determinations. *IT Corp.* also held that "[o]nce a governmental entity establishes that it will probably succeed at trial, a presumption should arise that public harm will

result if an injunction does not issue.” *Id.* In that case, the government was seeking to enjoin a party from violating an ordinance, but it logically follows that this principle would apply to situations where a governmental entity is challenging an injunction as well. This is a rebuttable presumption to be sure, but as *IT Corp.* makes clear, trial courts should strongly favor public benefit when weighing equities.

The Department has an interest in protecting both the people and animals in its jurisdiction. It is clear that since legislative bodies have proscribed certain behavior of people exhibiting animals, these bodies consider those activities to be against public interest. The Department was fairly enforcing this ordinance when they revoked the Circus’s permit. If the Department were ordered to reinstate their permit, it would undermine the Department’s authority to enforce statutes for the public benefit. Furthermore, granting the injunction would open the Department to litigation from citizens for not enforcing the ordinances. The Department has a duty to taxpayers to enforce ordinances. Hypothetically, it seems likely that Samuelson would file suit against the Department and Hobbs County if they refused to revoke the Circus’s permit in the face of the evidence presented at the hearing. As the trial court noted, any person harmed by lax enforcement of the ordinance could file suit. Such lawsuits would waste precious resources, both of the Department and of the judicial system. This court should not grant a preliminary injunction because to do so would be strongly against the public interest as represented by the Department.

3. Circus should be denied an injunction out of equity because they have made no attempts to mitigate their losses.

The balancing of equities is obviously a very fact heavy consideration. As such, this consideration is within the sound discretion of the trial court, and it shall only be overturned when the trial court clearly abuses discretion. *Kendall v. Foulks*, 180 Cal. 171 (1919). “A trial

court will be found to have abused its discretion only when it has ‘exceeded the bounds of reason or contravened the uncontradicted evidence.’” *IT Corp.* 35 Cal.3d 63, 69.

The trial court took note of the fact that the Circus has made no effort to come into compliance with the Hobbs County Code. This is an important consideration because it shows that Circus fundamentally disregards the welfare of the animals they keep. They have made no indication that they will obtain transportation containers that satisfy the recommendations of the AZA. Ex. 2. This is a continuous violation of Hobbs County Code 63.14 A(ii). Nor have they made any indication that they will stop performing their older, lamer elephants. Their offer to not perform these elephants in Hobbs County does not cure this issue. The West Edmond report, which is two years old, stated that these elephants are lame and should not be performed. The Circus did not refute this claim, and they have continued to perform the elephants in the two years since the report was generated. Arguably, this has been a continuous violation of Cal. Penal Code §596.5 as abusive behavior. Because the Circus has not made any attempts to come into compliance with these sections of Hobbs County Code, they should be denied injunctive relief.

The trial court also noted that the Circus has not proven their injury in any way. They claim that they will be unable to perform in April and lose revenue. But as the court stated, the Circus has not put forward any proof of the amount of lost revenue, nor have they put forward any evidence of actually being unable to secure an alternate venue. Without any proof of injury, it would be very difficult for any court to justify granting injunctive relief.

In short, the Circus has not made any attempts to cure the issues that led the Department to revoke their permit, nor have they proven any attempts to mitigate their losses. The trial court found that these facts tip the balance of equities in the Department’s favor. This court should uphold their decision to deny a preliminary injunction.

CONCLUSION

We ask the Court to reverse the decision to deny Samuelson and Mara's Hope's motion for leave to intervene, and to affirm the decision to deny the Circus's motion for a preliminary injunction.