

Case No. 13-9876

In the
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

Case No. CV-2014-TCS-81013 (EMH)

The Honorable Ellis M. Heiberg

BRIEF FOR RESPONDENT

Team No. 21

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

TABLE OF AUTHORITIES.....3

ISSUES PRESENTED.....4

STATEMENT OF THE CASE.....5

STATEMENT OF THE FACTS.....6

SUMMARY OF THE ARGUMENT.....9

ARGUMENT.....13

I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING PERMISSIVE INTERVENTION BECAUSE BOTH PARTIES FULFILL ALL PRONGS OF THE APPLICABLE TEST.....13

 A. Both Samuelson and Sanctuary have a direct and immediate interest in the outcome of this litigation......13

 1. A direct and immediate interest exists because both parties were the original initiators of the action.....13

 2. A direct and immediate interest in the outcome of this litigation exists also because both parties stand to gain or lose financially from the outcome..15

 B. Intervention by Samuelson and Sanctuary will not result in the presentation of new issues.16

 C. The purposes served by allowing the intervention of Samuelson and Sanctuary outweighs the Circus’s interest in conducting its own lawsuit on its own terms. 16

II. THE SUPERIOR COURT OF HOBBS COUNTY DID NOT ABUSE ITS DISCRETION WHEN IT DENIED CIRCUS’S MOTION FOR PRELIMINARY MANDATORY INJUNCTION.....17

 A. Circus is not likely to succeed on the merits, because it violated one or more of the conditions required in section 63.14 of Hobbs County Municipal Code.18

 1. Circus violated section 63.14 A(iii) of Hobbs County Municipal Code by failing to disclose the previous denial of a performing animal permit.....19

2.	Circus violated section 63.14 A(ii) of Hobbs County Municipal Code, rather than section 597t of California Penal Code, by using inappropriate means of transportation.....	20
3.	The trial court’s decision is also supported by Circus’s violations of section 63.14 A(i) of Hobbs County Municipal Code and section 596.5 of California Penal Code.....	22
	a. Circus violated section 63.14 A(i) of Hobbs County Municipal Code by failing to provide medical records for all animals to Department.....	22
	b. Circus was not in compliance with section 596.5 of California Penal Code by engaging in abusive behavior towards an elephant.....	22
B.	<u>Circus is not likely to suffer irreparable harm absent the injunction, because the harm to Department caused by the injunction far outweighs the harm to Circus absent the injunction</u>	23
CONCLUSION.....		24

TABLE OF AUTHORITIES

Cases

Alvarez v. Eden Twp. Hosp. Dist., 191 Cal.App.2d 309 (Cal. Ct. App. 1961).....18, 21
Best Friends Animal Soc’y v. Macerich Westside Pavilion Prop., LLC, 122 Cal.Rptr.3d 277 (Cal. Ct. App. 2011).....17
Fireman’s Fund Ins. Co v. Gerlach, 128 Cal. Rptr. 396 (Cal. Ct. App. 1976).....13
Florida v. Georgia, 58 U.S. 478 (1854).....16
Fretz v. Burke, 247 Cal.App.2d 741 (Cal. Ct. App. 1967).....17, 23
Grandlands Circus, Inc. v. Hobbs Cnty. Animal Safety Dept., No. CV-2014-TCS-81013 (Cal. Super. Ct. 2014).....5-8, 14-16, 19-23
In re Walker’s Estate, 221 Cal.App.2d 792 (Cal. Ct. App. 1963).....18, 21
IT Corp. v. Cnty. of Imperial, 35 Cal.3d 63 (Cal. 1983).....23
People v. Cluff, 87 Cal.App.4th 991 (Cal. Ct. App. 2001).....21
People v. Speegle, 53 Cal.App.4th 1405 (Cal. Ct. App. 1997).....22
People v. Superior Court (Price), 150 Cal.App.3d 486 (Cal. Ct. App. 1984).....19
People ex rel. Dept. of Conservation v. El Dorado Cnty., 116 P.3d 567 (Cal. 1995).....19
People ex rel. Rominger v. Cnty. of Trinity, 195 Cal. Rptr. 186 (Cal. Ct. App. 1983)...13, 15-16
Reliance Ins. Co. v. Superior Court, 100 Cal. Rptr. 2d 807 (Cal. Ct. App. 2000).....13
San Bernardino Cnty. v. Harsh Cal. Corp., 340 P.2d 617 (Cal. 1959).....16
Shoemaker v. Cnty. of L.A., 37 Cal.App.4th 618 (Cal. Ct. App. 1995).....18
Simpson Redwood Co. v. California, 242 Cal. Rptr. 447 (Cal. Ct. App. 1987).....13-15
Slatkin v. White, 102 Cal.App.4th 963 (Cal. Ct. App. 2002).....17
Spanish Speaking Citizens’ Found., Inc. v. Low, 85 Cal.App.4th 1179 (Cal. Ct. App. 2000)...19
Stack v. Stack, 189 Cal.App.2d 357 (Cal. Ct. App. 1961).....21
Timberidge Enterprises, Inc. v. City of Santa Rosa, 150 Cal. Rptr. 606 (Cal. Ct. App. 1978)...15
Voyce v. Superior Court of City & Cnty. of S.F., 127 P.2d 536 (Cal. 1942).....16

Statutes and Codes

CAL. CIV. PROC. CODE § 387.....13
 CAL. PENAL CODE § 596.5.....8, 11-12, 22-24
 CAL. PENAL CODE § 597t.....8, 11, 20-21
 HOBBS CNTY., CAL., CODE § 63.14.....7-8, 11, 18-19, 20, 24
 HOBBS CNTY., CAL., CODE § 63.14 A.....18
 HOBBS CNTY., CAL., CODE § 63.14 A(i).....7-8, 11, 22
 HOBBS CNTY., CAL., CODE § 63.14 A(ii).....7-8, 11, 20-21
 HOBBS CNTY., CAL., CODE § 63.14 A(iii).....7-8, 11, 18-20
 HOBBS CNTY., CAL., CODE § 63.14 B(iv).....18

ISSUES PRESENTED

1. Whether the Superior Court of Hobbs County abused its discretion in denying Chris Samuelson and Mara's Hope Wildlife Sanctuary's Motion for Leave to Intervene.
2. Whether the Superior Court of Hobbs County abused its discretion in denying Grandlands Circus's Motion for Preliminary Mandatory Injunction.

STATEMENT OF THE CASE

Grandlands Circus, Inc. (“Circus”) initiated this action against the Hobbs County Animal Safety Department (“Department”) on October 11, 2013, seeking mandamus relief and monetary damages. Circus then filed a motion for preliminary mandatory injunction to compel Department to re-issue its performing animal permit pending the outcome of the initial action. Department opposed the injunction.

Additionally, Chris Samuelson (“Samuelson”) and Mara’s Hope Wildlife Sanctuary (“Sanctuary”) filed a motion for leave to intervene. Circus opposed the intervention.

The Superior Court of Hobbs County consolidated the motion for preliminary mandatory injunction and the motion for leave to intervene. The court heard both motions on October 28, 2013. Denying both motions, the opinion of the court is reported as *Grandlands Circus, Inc. v. Hobbs Cnty. Animal Safety Dept.*, No. CV-2014-TCS-81013 (Cal. Super. Ct. 2014).

STATEMENT OF FACTS

Circus operates a traveling circus, exhibiting lions, tigers, elephants, and horses. *Grandlands Circus, Inc. v. Hobbs Cnty. Animal Safety Dept.*, No. CV-2014-TCS-81013, at 3 (Cal. Super. Ct. 2014). In 2013, Circus performed in twenty-two cities and counties throughout the United States. *Id.* Circus has performed in Hobbs County for the last seven years. *Id.* at 4. Its most recent performance in Hobbs County was in September 2013; its next scheduled performance is for April 2014. *Id.* at 2.

Circus had also performed in the city of West Edmond, Texas. *Id.* at 5. In 2011, West Edmond Animal Care and Control received a veterinarian's report regarding Circus's elephants. *Id.* The report noted that Circus forced its elephants to perform despite adverse health effects, such as cracked nails, arthritis, and fatigue; that Circus transported its elephants in carriers that were fifty square feet smaller than the recommended size per elephant; and that Circus left its elephants tethered inside the transportation cars for approximately thirty hours. (Exhibit 1). In January 2012, Circus applied for a new annual performing animal permit in West Edmond. *Circus*, No. CV-2014-TCS-81013, at 6. However, after receiving the veterinarian's report, West Edmond Animal Care and Control refused to reissue Circus's permit. *Id.*

Samuelson is a resident of Hobbs County. *Id.* at 4. In 1997, Samuelson co-founded Sanctuary and now serves as an animal caregiver and Director of Education and Outreach. *Id.* Sanctuary, also located in Hobbs County, is a privately-funded organization that rescues and houses animals that have been abandoned by private owners, zoos, the entertainment industry, and facilities that have been closed due to animal abuse or public safety concerns. *Id.* At any given time, Sanctuary houses between twenty-five and fifty animals. *Id.* There are currently no elephants at the facility. *Id.* One of Sanctuary's missions is "to educate the public about the

harms of keeping wild and exotic animals in captivity, and to advocate for protection of wildlife in the United States and elsewhere.” *Id.* Sanctuary’s Education and Outreach Center maintains an e-mail distribution list and publishes a quarterly newsletter containing updates on Sanctuary’s work, both at the facility and in its advocacy efforts. *Id.* at 4-5. Sanctuary receives forty percent of its donations from subscribers to its education and outreach e-mail distribution list. *Id.* at 5.

In April 2012, Samuelson’s assistant, Penny Hall (“Hall”), visited Circus in Hobbs County for the first time. *Id.* After the visit, Hall conveyed to Samuelson that she was concerned about Circus’s animals because they appeared lethargic and malnourished. *Id.* Hall, a former resident of West Edmond, Texas, also told Samuelson that Circus had visited her hometown but no longer performed there. *Id.* Through a Freedom of Information Act Request, Hall obtained a copy of the June 2011 veterinarian’s report that was prepared for West Edmond Animal Care and Control. *Id.* Hall shared the report with Samuelson on September 18, 2013, while Circus was still in Hobbs County. *Id.* Samuelson then confirmed that Circus had applied for, but was denied reissuance, of an annual permit by West Edmond Animal Care and Control. *Id.* at 6.

On behalf of himself and Sanctuary, Samuelson filed an administrative complaint with Department on September 24, 2013. *Id.* The administrative complaint included the veterinarian’s report as Exhibit 1, alleged that Circus was violating section 63.14 of Hobbs County Municipal Code, and demanded that the performing animal permit issued to Circus be revoked. *Id.* at 5-6.

Section 63.14 of Hobbs County Municipal Code vests Department with the “authority to issue permits to any person for the... exhibiting of any wild, exotic, dangerous, or non-domestic animal... within Hobbs County.” HOBBS CNTY., CAL., CODE § 63.14. Section 63.14 establishes disclosure requirements and substantive animal welfare requirements that permit applicants and permit holders must meet. *See* HOBBS CNTY., CAL., CODE § 63.14 A(i)-(iii). Section 63.14 also

requires compliance with sections 596.5 and 597t of California Penal Code. *Circus*, No. CV-2014-TCS-81013, at 6.

Department conducted an evidentiary hearing on September 27, 2013 to determine if it should revoke Circus's permit. *Id.* At the hearing, Circus stipulated that its transportation cars were fifty square feet smaller than the recommended size per elephant. *Id.* at 13-14. Circus also stipulated that it left its elephants tethered inside the transportation cars for extended periods of time. *Id.* Finally, Circus conceded that it had not provided Department with any medical records. *Id.* at 7. Regarding alternative performance venues, Circus admitted that Gall Springs, California is available and willing to host it in April 2014. *Id.* The population of Gall Springs is about half of Hobbs County. *Id.*

On October 7, 2013, Department revoked Circus's permit, finding Circus in violation of section 63.14 of Hobbs County Municipal Code, subdivisions (A)(i)-(iii), and sections 596.5 and 597t of California Penal Code. *Id.*

SUMMARY OF ARGUMENT

A reviewing court analyzes an order denying leave to intervene under the abuse of discretion standard. In determining the outcome of a motion for intervention, the court must determine whether the intervener has established: (1) that it has a direct interest in the outcome of the litigation; (2) that intervention would not enlarge the issues so as to litigate matters not raised by the original parties; and (3) that the reasons for intervention are not outweighed by the rights of the original parties to conduct their lawsuit on their own terms.

The trial court mistakenly analyzed the interest required for intervention under a standard applicable only to standing analysis. Under the correct standard Samuelson and Sanctuary have adequately demonstrated the requisite interest to enter in to the claim. Both Samuelson and Sanctuary have a direct and immediate interest in the outcome of this litigation because these parties initiated the original complaint within Department. Additionally, these parties have an interest in furthering their avowed policy of educating the public about the harms of keeping wild and exotic animals in captivity, and advocating for protection of wildlife in the United States and elsewhere. Samuelson and Sanctuary also have a pecuniary interest in the outcome of this litigation. Forty percent of the Sanctuary's donations come from donors who subscribe to its education and outreach e-mail distribution list. Successful intervention in a case that supports the advocacy efforts of Samuelson as the Director of Education and Outreach at Sanctuary will likely increase funding for Sanctuary. Denying intervention in the same case may result in a loss of funding for Sanctuary. Thus, both Samuelson and Sanctuary have a direct and immediate interest in the outcome of this litigation, because both parties were the original initiators of the action and they stand to gain or lose financially from the outcome.

Intervention by Samuelson and Sanctuary will not result in the presentation of new issues. The matters raised by Department in this case include allegations of abusive behavior by Circus by tethering the elephants for too many hours at a time and requiring them to perform despite adverse health effects. Department is charged with protecting the animals and people within its jurisdiction, which it does by enforcing that the Hobbs County local ordinances pertaining to animals. As residents of Hobbs County, the interests of Samuelson and Sanctuary are aligned with the interest of Department. Department is charged with protecting Samuelson, and as an organization and individual that seek to protect animals, Sanctuary shares the same mission with Department.

The purposes served by allowing the intervention of Samuelson and Sanctuary outweigh Circus's interest in conducting its own lawsuit on its own terms. The purposes of intervention are to protect the interests of those who may be affected by the judgment. Samuelson and Sanctuary demonstrated interests by filing the initial administrative complaint and maintaining pecuniary interest affected by the outcome of this case. The unique interests weigh heavily in favor of allowing intervention. Moreover, since Samuelson and Sanctuary propose to intervene on matters similar to those expressed by Department, the rights of the original parties to conduct their lawsuit on their own terms are virtually unaffected.

Samuelson and Sanctuary have a direct interest in the outcome of this litigation; their intervention will not enlarge the issues; and the reasons for allowing intervention are not "outweighed by the rights of the original parties to conduct their lawsuit on their own terms." Therefore the trial court abused its discretion by applying the wrong legal standard and denying intervention.

The Superior Court of Hobbs County did not abuse its discretion when it denied Circus's motion for preliminary mandatory injunction. In ruling on a motion for preliminary mandatory injunction, the court considered two interrelated factors. The first factor is the likelihood that movant will succeed on the merits of the underlying action, and the second factor is the interim harm that movant will likely suffer absent the injunction.

Circus is not likely to succeed on the merits of the underlying action, because it violated one or more of the conditions required in section 63.14 of Hobbs County Municipal Code. Circus violated section 63.14 A(iii) of Hobbs County Municipal Code by failing to disclose the previous denial of a performing animal permit. Considering the consequences of its reading, and effectuating the intent of the law, the trial court properly equated a revoked permit with a permit that was denied reissuance. In 2012, West Edmond denied reissuance of Circus's permit; Circus failed to disclose this to Department, thereby violating section 63.14 A(iii) of Hobbs County Municipal Code. Circus also violated section 63.14 A(ii) of Hobbs County Municipal Code by using inappropriate means of transportation. Circus stipulated that its transportation cars were fifty square feet smaller than the recommended size per elephant. Although the trial court mistakenly held that Circus had violated section 597t of California Penal Code, this was mere error and does not amount to an abuse of discretion.

Additionally, the trial court's decision is supported by Circus's violations of section 63.14 A(i) of Hobbs County Municipal Code and section 596.5 of California Penal Code. Circus stipulated that it had not provided Department with any medical records, thereby violating section 63.14 A(i) of Hobbs County Municipal Code. Circus also stipulated that its transportation vehicles were too small and that it kept elephants tethered for extended periods of time, thereby

engaging in abusive behavior towards elephants and violating section 596.5 of California Penal Code.

Circus is also not likely to suffer irreparable harm absent the injunction, because the harm is outweighed by the harm likely to be suffered by Department if the injunction were granted. Circus can perform in Gall Springs in April 2014 instead of Hobbs County. Despite the difference in population size, no loss in profits is guaranteed. Circus will also be able to perform elsewhere in the future, as the permit revocation in Hobbs County does not guarantee permit denial or revocation by other governmental entities. The harm suffered by Department outweighs any possible harm to Circus, because any violation that Department allows subjects it to liability by citizen suits. Department has a duty to enforce every violation against every animal, because the legislatures intended the laws to protect every animal.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING PERMISSIVE INTERVENTION BECAUSE BOTH PARTIES FULFILL ALL PRONGS OF THE APPLICABLE TEST.

A reviewing court analyzes an “order denying leave to intervene under the abuse of discretion standard.” *Reliance Ins. Co. v. Superior Court*, 100 Cal. Rptr. 2d 807, 809 (Cal. Ct. App. 2000). Section 387(a) of the California Code of Civil Procedure provides that “[u]pon 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.” CAL. CIV. PROC. CODE § 387. In ruling on a motion for intervention, the court must determine whether the intervener has established: (1) a direct interest in the outcome of the litigation; (2) that the intervention would not enlarge the issues so as to litigate matters not raised by the original parties; and (3) that the reasons for intervention are not “outweighed by the rights of the original parties to conduct their lawsuit on their own terms.” *People ex rel. Rominger v. Cnty. of Trinity*, 195 Cal. Rptr. 186, 189 (Cal. Ct. App. 1983).

A. Both Samuelson and Sanctuary have a direct and immediate interest in the outcome of this litigation.

1. A direct and immediate interest exists because both parties were the original initiators of the action.

An intervener must have “a direct and immediate interest in the litigation,” not merely consequential. *Fireman’s Fund Ins. Co v. Gerlach*, 128 Cal. Rptr. 396, 398 (Cal. Ct. App. 1976). The facts of each case will determine whether “an intervener's interest in litigation is sufficiently direct.” *Simpson Redwood Co. v. California*, 242 Cal. Rptr. 447, 451 (Cal. Ct. App. 1987). An intervener is *not* required to claim a pecuniary interest, nor even “a specific legal or equitable interest in the subject matter of the litigation.” *Id.* Overall, “courts should liberally construe”

section 387 “in favor of intervention.” *Id.* An interest in “perpetuating and furthering avowed policies” is sufficient. *Id.*

The trial court in this case stated that “[n]either Sanctuary nor Samuelson have a personal complaint against the Circus and ... Sanctuary does not house elephants, which are the focal point of the dispute. It appears to this Court that the only ostensible interest of Sanctuary and Samuelson in the litigation ... relates to the practice of animals performing in circuses or related activities generally.” *Circus*, No. CV-2014-TCS-81013, at 9. However, the trial court mistook the demonstration of an interest in the litigation for purposes of intervention with that required to obtain standing. Permissive intervention and standing are two separate legal inquiries, only one of which is pertinent in this case. Under the correct legal standard for intervention, both Samuelson and Sanctuary have a sufficiently direct interest in the outcome of the litigation to justify permissive intervention.

The trial court ignored the special relationship between Samuelson and Sanctuary and the current action. Samuelson and Sanctuary are the parties who filed the administrative complaint with Department which ultimately resulted in the current action. Samuelson, by way of his assistant Hall, obtained the veterinary report that is the basis of Circus’ permit revocation. Samuelson prepared and filed the administrative complaint in both his own name and the name of Sanctuary. Finally, both Samuelson and Sanctuary, as residents of Hobbs Country, have a dedicated interest in joining Department in a complaint they initiated. Samuelson and Sanctuary, therefore, have a direct and immediate interest in the outcome of the litigation.

2. A direct and immediate interest in the outcome of this litigation exists also because both parties stand to gain or lose financially from the outcome.

To establish a direct and immediate interest in the litigation, for purposes of permissive intervention, the intervener must show that he or she “stands to gain or lose” by direct operation of the judgment, even if no specific interest in the transaction at issue exists. *Simpson Redwood Co.*, 242 Cal. Rptr. at 450. It is not necessary that an intervener's interest “be such that he will *inevitably* be affected by the judgment ... It is enough that there be a substantial *probability* that his interests will be so affected.” *Simpson Redwood Co.*, 242 Cal. Rptr. at 451; *see Rominger*, 195 Cal. Rptr. at 190 and *Timberidge Enterprises, Inc. v. City of Santa Rosa*, 150 Cal. Rptr. 606, 611 (Cal. Ct. App. 1978).

The trial court stated “[w]hile an intervenor need not have a pecuniary interest in the outcome of the litigation, allowing Sanctuary and/or Samuelson to intervene in this action would effectively swallow the requisite showing required for permissive intervention by allowing virtually anyone with any interest in animal-related issues to intervene in an action.” *Circus*, No. CV-2014-TCS-81013, at 9. However, both Samuelson and Sanctuary do have a pecuniary interest in the outcome of this litigation.

Samuelson is the co-founder of Sanctuary where he serves as the Director of Education and Outreach. *Id.* at 4. Sanctuary’s Education and Outreach Center allows any interested person to subscribe to an e-mail distribution list. *Id.* Subscribers receive a quarterly newsletter that provides updates on the work that Sanctuary is doing in its advocacy efforts. *Id.* at 5. Forty percent of the Sanctuary’s donations come from donors who subscribe to its education and outreach e-mail distribution list. *Id.* Successful intervention in a case that supports the advocacy efforts of Samuelson as the Director of Education and Outreach at Sanctuary will likely increase funding for Sanctuary. Denying intervention in the same case may result in a loss of funding for

Sanctuary. Thus, both Samuelson and Sanctuary have a direct and immediate interest in the outcome of this litigation because both parties stand to gain or lose financially from the outcome.

B. Intervention by Samuelson and Sanctuary will not result in the presentation of new issues.

The second prong for permissive intervention is that “the interveners may not enlarge the issues so as to litigate matters not raised by the original parties.” *Rominger*, 195 Cal. Rptr. at 189. The matters raised by Department in this case include allegations of abusive behavior by Circus by tethering the elephants for too many hours at a time and requiring them to perform despite adverse health effects. *Circus*, No. CV-2014-TCS-81013, at 11. Department is charged with protecting the animals and people within its jurisdiction, which it does by enforcing the Hobbs County local ordinances pertaining to animals. *Id.* at 15. The interests of Samuelson and Sanctuary are aligned with the interest of Department. As residents of Hobbs County, they are the very individuals Department is charged with protecting, and as an organization and individual that seek to protect animals, they share the same mission with Department. Therefore, intervention by Samuelson and Sanctuary will not result in the presentation of new issues.

C. The purposes served by allowing the intervention of Samuelson and Sanctuary outweigh the Circus’s interest in conducting its own lawsuit on its own terms.

The final prong for permissive intervention states 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.” *Rominger* , 195 Cal. Rptr. at 192. The purposes of intervention are to protect the interests of those who may be affected by the judgment. *See Florida v. Georgia*, 58 U.S. 478, 494-95 (1854); *Voyce v. Superior Court of City & Cnty. of S.F.*, 127 P.2d 536 (Cal. 1942); *San Bernardino Cnty. v. Harsh Cal. Corp.*, 340 P.2d 617, 621 (Cal. 1959). Samuelson and Sanctuary demonstrated interests by filing the initial administrative complaint and maintaining pecuniary interest affected by the outcome of this case. The unique interests weigh heavily in favor of

allowing intervention. Moreover, since Samuelson and Sanctuary propose to intervene on matters similar to those expressed by Department, the rights of the original parties to conduct their lawsuit on their own terms is virtually unaffected. This satisfies the final prong for intervention. The purposes served by allowing the intervention of Samuelson and Sanctuary outweigh Circus's interest in conducting its own lawsuit on its own terms.

Samuelson and Sanctuary have a direct interest in the outcome of this litigation; their intervention will not enlarge the issues; and the reasons for allowing intervention are not outweighed by the rights of the original parties to conduct their lawsuit on their own terms. Therefore the trial court abused its discretion by applying the wrong legal standard and denying intervention.

II. THE SUPERIOR COURT OF HOBBS COUNTY DID NOT ABUSE ITS DISCRETION WHEN IT DENIED CIRCUS'S MOTION FOR PRELIMINARY MANDATORY INJUNCTION.

A preliminary mandatory injunction "is not permitted except in extreme cases where the right thereto is clearly established." *Slatkin v. White*, 102 Cal.App.4th 963, 972 (Cal. Ct. App. 2002). When ruling on a motion for preliminary injunction, the "courts should evaluate two interrelated factors." *Best Friends Animal Soc'y v. Macerich Westside Pavilion Prop., LLC*, 122 Cal.Rptr.3d 277, 281 (Cal. Ct. App. 2011). The first factor is "the likelihood that the plaintiff will prevail on the merits at trial," and the second factor is "the interim harm that the plaintiff is likely to sustain" absent the requested injunction. *Id.*

The grant or denial of a preliminary mandatory injunction by "the trial court is discretionary and will be disturbed on appeal only if abuse of discretion is shown." *Fretz v. Burke*, 247 Cal.App.2d 741, 744 (Cal. Ct. App. 1967). The scope of review for orders on this motion is "an extremely limited one." *Alvarez v. Eden Twp. Hosp. Dist.*, 191 Cal.App.2d 309, 311 (Cal. Ct. App. 1961). To prevail, "appellant must show more than mere error on the part of

the trial court.” *Id.* Appellant must prove that “the court exceed[ed] the bounds of reason, all circumstances before the court being taken into consideration.” *In re Walker’s Estate*, 221 Cal.App.2d 792, 796 (Cal. Ct. App. 1963). Abuse of discretion “must be affirmatively established by the party complaining of the court’s order.” *Id.*

Where a preliminary mandatory injunction, granted by the trial court, “mandates an affirmative act that changes the status quo, [the appellate court shall] scrutinize it even more closely for abuse of discretion.” *Shoemaker v. Cnty. of L.A.*, 37 Cal.App.4th 618, 625 (Cal. Ct. App. 1995). Conversely, where a preliminary mandatory injunction is denied and the status quo is maintained, the appellate court should afford the trial court particular deference.

A. Circus is not likely to succeed on the merits, because it violated one or more of the conditions required in section 63.14 of Hobbs County Municipal Code.

The trial court had several grounds on which it could have found that Circus was unlikely to succeed on the merits. Section 63.14 A of Hobbs County Municipal Code provides that performing animal “[p]ermit applicants and permit holders must meet the following conditions.” HOBBS CNTY., CAL., CODE § 63.14 A. If Circus does not meet any one of the listed conditions, Department “may suspend or revoke any such permit... in the exercise of its reasonable and sound discretion.” HOBBS CNTY., CAL., CODE § 63.14 B(iv). Therefore, if the trial court found that Circus had not met any one of the conditions in section 63.14 A of Hobbs County Municipal Code, it could conclude that Department’s revocation of the permit was justified and thus that Circus was unlikely to succeed on the merits of the underlying action.

1. Circus violated section 63.14 A(iii) of Hobbs County Municipal Code by failing to disclose the previous denial of a performing animal permit.

When interpreting a statute, the reviewing court “must consider the consequences that might flow from a particular construction and should construe the statute so as to promote rather than defeat the statute’s purpose and policy.” *People ex rel. Dept. of Conservation v. El Dorado*

Cnty., 116 P.3d 567, 577 (Cal. 1995); *see also Spanish Speaking Citizens' Found., Inc. v. Low*, 85 Cal.App.4th 1179, 1214 (Cal. Ct. App. 2000). The reviewing court should “effectuate the intent of the law, acting in a reasonable fashion to give the statute a sensible construction in accordance with the purpose of the lawmakers, to promote rather than defeat the policy underlying the legislation.” *People v. Superior Court (Price)*, 150 Cal.App.3d 486, 489 (Cal. Ct. App. 1984).

Section 63.14 of Hobbs County Municipal Code vests in Department the authority and responsibility to issue permits for the exhibition of wild animals. *See HOBBS CNTY., CAL., CODE § 63.14*. Section 63.14 A(iii) of Hobbs County Municipal Code compels “permit applicants and permit holders” to “specify any permits previously held... that have been revoked... and the reasons for such revocation.” *HOBBS CNTY., CAL., CODE § 63.14 A(iii)*. Department, having discretion to issue performing animal permits, must fully comprehend the prior exhibition history of the applicant in order to properly weigh its decision. Thus, the purpose of section 63.14 A(iii) of Hobbs County Municipal Code is disclosure because it operates to alert Department of any prior performing animal permits that have been denied to an applicant and the reasons for the denial. Without this information, Department’s decisions regarding Hobbs County performing animal permits would be misinformed and arbitrary.

The trial court read the statute and equated a revoked permit to a permit that was denied reissuance. *Circus*, No. CV-2014-TCS-81013, at 13. This interpretation effectuates the intent of section 63.14 of Hobbs County Municipal Code and promotes the statute’s purpose and policy. Refusing to reissue a permit has the same effect as revoking a permit; both are formal actions, taken by the responsible governmental entity, that prohibit the exhibition wild animals. Like Hobbs County, the town of West Edmond reconsiders its permits annually. *See Circus*, No. CV-

2014-TCS-81013, at 6. This yearly review is but one opportunity to deny an animal exhibitor a permit. In 2012, West Edmond Animal Care and Control denied reissuance of Circus's permit. *Id.* For Circus, which had visited West Edmond in the past, the denial to reissue its performing animal permit was effectively a revocation. *See Circus*, No. CV-2014-TCS-81013, at 5. Circus did not disclose to Department that West Edmond Animal Care and Control denied reissuance of its permit. *See Circus*, No. CV-2014-TCS-81013, at 13.

Because Circus failed to disclose that its permit was denied reissuance by West Edmond, Circus violated section 63.14 A(iii) of Hobbs County Municipal Code, and the trial court was correct in concluding that Circus was unlikely to succeed on the merits of the underlying action.

2. Circus violated section 63.14 A(ii) of Hobbs County Municipal Code, rather than section 597t of California Penal Code, by using inappropriate means of transportation.

Section 63.14 A(ii) of Hobbs County Municipal Code provides that a “permit [applicant] or permit holder must... [u]tilize appropriate transport vehicles and transfer cages when moving [all animals] to the exhibition location.” HOBBS CNTY., CAL., CODE § 63.14 A(ii). Similarly, section 597t of California Penal Code requires “[e]very person who keeps an animal confined in an enclosed area” to “provide it with an adequate exercise area.” CAL. PENAL CODE § 597t. However, section 597t of California Penal Code does “not apply to an animal which is in transit” or “in a vehicle.” *Id.* The trial court, based on the evidence before it, found that circus had violated section 597t of California Penal Code instead of section 63.14 A(ii) of Hobbs County Municipal Code. *Circus*, No. CV-2014-TCS-81013, at 13-14.

This court has found “no authority distinguishing between [the appellate review standards of] insufficient evidence and abuse of discretion.” *Stack v. Stack*, 189 Cal.App.2d 357, 368 (Cal. Ct. App. 1961). Consequently, this court has held that “a trial court abuses its discretion when

the factual findings critical to its decision find no support in the evidence.” *People v. Cluff*, 87 Cal.App.4th 991, 998 (Cal. Ct. App. 2001). Conversely, when the evidence does support factual findings critical to a trial court’s decision, an abuse of discretion need not be found.

At the evidentiary hearing, Circus stipulated that its transportation cars were fifty square feet smaller than the recommended size per elephant. *Circus*, No. CV-2014-TCS-81013, at 13-14. The court below considered this fact and mistakenly held that Circus had violated section 597t of California Penal Code instead of section 63.14 A(ii) of Hobbs County Municipal Code. *Id.* This confusion is but “mere error” and does not amount to an abuse of discretion. *Alvarez*, 191 Cal.App.2d at 311. Ultimately the trial court was concerned with Circus’s admittedly inappropriate transport vehicles and concluded that Circus had violated the law such that it was unlikely to succeed on the merits of the underlying action. *Circus*, No. CV-2014-TCS-81013, at 13-14. Considering “all the circumstances before [it],” the court’s misapplication of the specific code that Circus had violated did not “exceed the bounds of reason” and does not amount to an abuse of discretion. *Walker’s Estate*, 221 Cal.App.2d at 796.

3. The trial court’s decision is also supported by Circus’s violations of section 63.14 A(i) of Hobbs County Municipal Code and section 596.5 of California Penal Code.
 - a. Circus violated section 63.14 A(i) of Hobbs County Municipal Code by failing to provide medical records for all animals to Department.

Section 63.14 A(i) of Hobbs County Municipal Code requires a “permit [applicant] or permit holder” to “make available medical records and health certificates for all animals.” HOBBS CNTY., CAL., CODE § 63.14 A(i). Circus stipulated that it had not provided Department with any medical records. *Circus*, No. CV-2014-TCS-81013, at 7. The court did not abuse its discretion in

denying Circus's motion for preliminary mandatory injunction because it could have relied on Circus's violation of section 63.14 A(i) of Hobbs County Municipal Code.

- b. Circus was not in compliance with section 596.5 of California Penal Code by engaging in abusive behavior towards an elephant.

Section 596.5 of California Penal Code makes it a crime "for any owner or manager of an elephant to engage in abusive behavior towards the elephant." CAL. PENAL CODE § 596.5. The terms in an animal abuse statute will be determined by the court using "an objective standard of reasonableness" regarding the "provision of sustenance, drink, and shelter, and... the avoidance of infliction of suffering." *People v. Speegle*, 53 Cal.App.4th 1405, 1411 (Cal. Ct. App. 1997). Accordingly, the courts should use an objective standard to interpret the phrase "abusive behavior" as written in section 596.5 of California Penal Code.

The trial court was concerned with the inadequate transportation vehicles and the extended period of time the elephants were kept tethered. *Circus*, No. CV-2014-TCS-81013, at 14. The record also includes information about Circus forcing the elephants to perform despite adverse health effects, including cracked nails, arthritis, and fatigue. (Exhibit 1). The court did not abuse its discretion in denying Circus's motion for preliminary mandatory injunction because it could have interpreted these conditions as "abusive behavior" and relied on Circus's violation of section 596.5 of California Penal Code.

- B. Circus is not likely to suffer irreparable harm absent the injunction, because the harm to Department caused by the injunction far outweighs the harm to Circus absent the injunction.

If a party "shows that it would suffer grave or irreparable harm" absent its requested injunction, "the court must then examine the relative actual harms to the parties." *IT Corp. v. Cnty. of Imperial*, 35 Cal.3d 63, 72 (Cal. 1983). Where "equities must be delicately balanced, each case is to be judged on its own peculiar facts." *Fretz*, 247 Cal.App.2d at 744. Here, the facts

show that the harm to Department caused by granting a preliminary mandatory injunction far outweighs the harm to Circus absent the injunction.

Firstly, the record does not indicate that the harm suffered by Circus is grave or irreparable. Circus argues that because it cannot perform in Hobbs County in April 2014 without a permit it will lose revenue. *Circus*, No. CV-2014-TCS-81013, at 14. The record, however, shows that Circus can perform in Gall Springs during April 2014. *Id* at 7. Although the population of Gall Springs is smaller than Hobbs County, the difference in population suggests but does not prove that Circus will lose profits. *Id*. Moreover, Circus advances no projected monetary loss which the court could consider as a harm. *Id* at 15. Circus also argues that it will lose revenue because it will be required to disclose its permit revocation. *Id* at 3. This argument fails because, if other municipalities are anything like Hobbs County, the requirement is for purposes of disclosure. It does not guarantee the rejection of future permits; it simply notifies other municipalities of prior exhibition history.

Secondly, the trial court correctly recognized that revocation of Circus's permit was the only remedy that effectively addressed each violation. *Id* at 15. Further, the record indicates that Department is subject to citizen complaints for any violation that it leaves unaddressed. *Id*. Here, Circus argues that its violations are *de minimis* because they impact only the few elephants, of all the animals, it exhibits. *Id* at 14. Yet, the statutes Circus violated focus on individual animals. Section 63.14 of Hobbs County Municipal Code requires a performing animal permit for anyone exhibiting "an animal in a circus." HOBBS CNTY., CAL., CODE § 63.14. Likewise, section 596.5 of California Penal Code criminalizes "abusive behavior towards the elephant." PENAL § 596.5. Department, entrusted with enforcing the animal protection statutes, is thus concerned with every individual animal. Since Department is concerned with each animal, any action against an animal

that constitutes a violation demands that Department revoke the relevant permit. This shields Department from citizen suits while also furthering the legislatures' purposes of protecting every individual animal addressed in their laws.

The trial court did not abuse its discretion by denying Circus's motion for preliminary mandatory injunction. Circus is not likely to succeed on the merits of the underlying action, because Department's revocation was justified since Circus violated one or more of the conditions required in section 63.14 of Hobbs County Municipal Code. Circus is also not likely to suffer irreparable harm absent the injunction, because its harm is outweighed by the harm that would be suffered by Department if the trial court granted the injunction.

CONCLUSION

The trial court abused its discretion by applying an incorrect legal standard and denying intervention. Samuelson and Sanctuary have a direct interest in the outcome of this litigation; their intervention will not enlarge the issues; and the reasons for allowing intervention are not outweighed by the rights of the original parties to conduct their lawsuit on their own terms.

Samuelson and Sanctuary request that this Court reverse the decision of the trial court, regarding the motion for leave to intervene.

The trial court did not abuse its discretion by denying Circus's motion for preliminary injunction. Circus is unlikely to succeed on the merits because of its violation of one or more conditions in section 63.14 of Hobbs County Municipal Code, and Circus will not suffer irreparable harm absent the injunction.

Department requests that this court affirm the decision of the trial court, regarding the motion for preliminary mandatory injunction.