

IN THE IOWA DISTRICT COURT FOR DELAWARE COUNTY

<p>TRACEY K. KUEHL; LISA K. KUEHL; PAMELA J. JONES; AND HALEY A. ANDERSON,</p> <p>Plaintiffs,</p> <p>v.</p> <p>PAMELA SELLNER; TOM SELLNER; CRICKET HOLLOW ZOO INC.; AND PAMELA J. SELLNER TOM J. SELLNER, AN IOWA GENERAL PARTNERSHIP, D/B/A CRICKET HOLLOW ZOO,</p> <p>Defendants.</p>	<p>Case No. EQCV008505</p> <p>PLAINTIFFS' APPLICATION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT</p>
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Plaintiffs Tracey Kuehl, Lisa Kuehl, Pamela Jones, and Haley Anderson (“Plaintiffs”) submit this application for the court to set a hearing and enter an order requiring Defendants Pamela Sellner, Tom Sellner, Cricket Hollow Zoo Inc., and Pamela J. Sellner Tom J. Sellner, an Iowa General Partnership d/b/a/ Cricket Hollow Zoo (“Defendants”) to show cause why they should not be held in contempt for their flagrant violations of the Declaratory Judgment and Order of Injunction issued by this court on November 24, 2019 (the “Order”).

Standard for Contempt

Iowa law recognizes willful disobedience of a court order as contempt. Iowa Code § 665.2 (providing that illegal resistance to any order issued by a court of this state constitutes punishable contempt); *Ary v. Iowa Dist. Ct. for Benton Cty.*, 735 N.W.2d 621, 624 (Iowa 2007) (recognizing that Iowa case law customarily defines contempt as willful disobedience). The Iowa Code provides that the punishment for contempt shall be “a fine not exceeding five hundred dollars or imprisonment in a county jail not exceeding six months or [] both such fine and imprisonment.” Iowa Code § 665.4. In addition, the Iowa Code “specifically authorizes a district

court to incarcerate a contemner for an indefinite period to coerce compliance with its order” when an act of contempt consists of “an omission to perform an act which is yet in the power of the person to perform.” *Medina v. Iowa Dist. Ct. for Woodbury Cty.*, 552 N.W.2d 140, 142 (Iowa 1996) (quoting Iowa Code § 665.5). As the Iowa Supreme Court has long recognized, under such circumstances, the contemner carries “the keys of their prison in their own pockets.” *State v. Longstreet*, 407 N.W.2d 591, 593 (Iowa 1987) (internal quotation and citation omitted). Indeed, such indefinite imprisonment “is the functional equivalent of the civil contempt sanction widely recognized at common law” and “has quite properly been exercised for centuries to secure compliance with judicial decrees.” *Id.*

“In Iowa, all actions for contempt are quasi-criminal, even when they arise from civil cases.” *Reis v. Iowa Dist. Court for Polk Cty.*, 787 N.W.2d 61, 68 (Iowa 2010). “A party alleging contempt has the burden to prove the contemner had a duty to obey a court order and willfully failed to perform that duty.” *Ary*, 735 N.W.2d at 624. Given the quasi-criminal nature of contempt proceedings, the party alleging contempt has the burden to prove willfulness. *See id.* Plaintiffs have amassed more than enough evidence to meet that burden here and therefore request that the court set a hearing at which Plaintiffs may present this evidence and order Defendants to show cause as to why they should not be held in contempt.

Statement of Material Facts

In support of this application for this court to set a hearing and enter an order requiring Defendants to show cause as to why they should not be held in contempt of the Order, Plaintiffs state the following:

1. In this action, Plaintiffs sought abatement of the public nuisance caused by Defendants’ ongoing neglect of hundreds of animals located at the Cricket Hollow Zoo, an

unaccredited roadside menagerie located in Manchester, Iowa, on Defendants' property. The uncontroverted, unrebutted evidence admitted at trial demonstrated that Defendants consistently failed to provide sufficient food, sufficient water, and necessary sustenance to the animals languishing at the Cricket Hollow Zoo, and that the conditions there constituted a significant ongoing threat to the public health.

2. On November 24, 2019, this court entered the Order declaring the Cricket Hollow Zoo a public nuisance under Iowa Code section 657.1 and the common law. Ex. A at 16–17. The Order immediately “divested [Defendants] of all ownership interest in the exotic animals and wildlife currently in their possession and/or listed on the inventory of animals provided to the USDA” and enjoined Defendants from ownership of exotic animals and wildlife in the future. *Id.* The Order also directed that exotic animals, animals covered under the Animal Welfare Act, with the exception of any exempted livestock, and other wildlife in the care and custody of the Sellners were “to be removed immediately” and granted Plaintiffs and their agents the right to make arrangements for such removal. *Id.* at 17.

3. On November 27, 2019, Defendants requested a stay of the Order pursuant to Iowa Rule of Appellate Procedure 6.601. *See* Ex. B. On December 4, the Iowa Supreme Court denied the motion for a stay of the Order. *See* Ex. C.

4. At 12:00 p.m. on Sunday, December 8, 2019, Plaintiffs' counsel electronically transmitted a notice of removal to Defendants' counsel indicating that Plaintiffs' agents would arrive at the Cricket Hollow Zoo to remove the animals covered under the Order at approximately 7:00 a.m. the following day, December 9, 2019. *See* Blome Ex. A.

5. Plaintiffs' agent Elizabeth Putsche, who served as coordinator for the animal removal for the Plaintiffs' counsel the Animal Legal Defense Fund, arrived in Manchester,

Iowa at approximately 3:00 p.m. on December 8, 2019, and drove by the Cricket Hollow Zoo. *See* Putsche Decl. ¶¶ 1–3. Several large trucks containing animal cages and traps were parked in Defendants’ driveway. *Id.* ¶ 3; Putsche Ex. A. Defendants Pamela and Tom Sellner were outside conversing with several individuals standing near the trucks. Putsche Decl. ¶ 4; Blome Decl. ¶ 3.

6. Upon learning of the trucks, cages, and animal traps in Defendants’ driveway, Plaintiffs’ counsel contacted the Iowa State Patrol and the Delaware County Sheriff’s Office to request assistance with ensuring compliance with the Order and provided them with copies of the same to law enforcement. Blome Decl. ¶ 4.

7. At approximately 4:00 p.m. on Sunday, December 8, 2019, a Deputy Delaware County Sheriff arrived at the Cricket Hollow Zoo and directed Defendants to refrain from removing animals in violation of the Order. Putsche Decl. ¶ 5. Plaintiffs’ agents monitored activity and outgoing traffic from Defendants’ property until approximately 2:00 a.m. the following morning. *See* Putsche ¶¶ 5–6; Howell Decl. ¶¶ 4–5. Plaintiffs’ agents observed vehicles moving about on the property and departing the property on numerous occasions between approximately 5:15 p.m. and 2:00 a.m. Putsche Decl. ¶ 6; Howell Decl. ¶ 5.

8. On the morning of Monday, December 9, 2019, at approximately 7:00 a.m., Plaintiffs’ agents arrived at Defendants’ zoo fully prepared to identify, load, and remove the hundreds of animals subject to the Order. Howell Decl. ¶ 7. Plaintiffs’ agents included dozens of rescuers from The Wild Animal Sanctuary in Keenesburg, Colorado, Animal Rescue League of Iowa, Blank Park Zoo, the Iowa Farm Sanctuary, the Gabriel Foundation, and Snakes Alive, among others. *Id.* The rescuers were equipped with more than a half dozen animal transport

vehicles and supplies to provide urgent animal husbandry and veterinary care to animals prior to their transport. *Id.*

9. Following the arrival of Plaintiffs' agents on December 9, 2019, at the Cricket Hollow Zoo, Pamela Sellner led Plaintiffs' counsel and lead rescuers on a walk-through of the zoo. Howell Decl. ¶ 8. During the walk-through, it immediately became apparent to Plaintiffs' attorneys Amanda Howell and Kristy Dahl Rogers based on their prior visits to the zoo as well as the photographs and USDA animal inventories admitted at trial that many of the animals covered by the Order were no longer present on site. *Id.* Plaintiffs' counsel observed countless empty cages, enclosures, and aquariums throughout the zoo, all of which had been filled with animals during the expert site visit on October 11, 2019 and on the judicial site visit on October 16, 2019. *Id.* In addition, Plaintiffs' counsel observed that Defendants had released most of their exhibited exotic livestock and exotic ruminants into other fields on their property, including the field adjacent to their dairy barn, making it far more difficult for rescuers to identify, locate, and remove many of the animals subject to the Order. Howell Decl. ¶ 9.

10. Upon observing the empty enclosures throughout the zoo, Plaintiffs' counsel asked Pamela Sellner what happened to the missing animals. Howell Decl. ¶ 10. In response to these questions, Ms. Sellner often deflected or told inconsistent stories that could not all possibly be true. Initially, Ms. Sellner claimed to have sold several of the animals, including the camel and the mountain lions, but she later began claiming that she did not know what happened to the missing animals or that all the missing animals had died. *Id.*

11. In an attempt to get an answer to the question of what happened to the missing animals, Plaintiffs' counsel served a subpoena on Pamela Sellner seeking documentation relating to the disposition of the missing animals later that afternoon, which requested in

particular documents reflecting the “disposition (including death), sale, or transfer of any animal since October 1, 2019.” Howell Decl. ¶ 11; Howell Ex. B. Thereafter, Ms. Sellner indicated that she had no paperwork. Howell Decl. ¶ 11.

12. Pamela Sellner repeatedly interfered with Plaintiffs’ agents’ removal efforts and repeatedly insisted to Plaintiffs’ agents that only animals they were allowed to remove pursuant to the Order were those named on the list appearing at the end of the Order. Howell Decl. ¶ 14; *see also* Ex. A at 18.

13. At approximately 11:00 a.m. on Monday, December 9, 2019, Plaintiffs’ counsel appeared by telephone before the Honorable Judge Monica Zrinyi Wittig while Defendants’ counsel appeared in person to seek clarification regarding the animals covered by the Order. Howell Decl. ¶ 15. During the hearing, Judge Wittig verbally clarified that the Order was not limited to the animals appearing on the list appearing at the end of the Order and instructed counsel regarding which animals were included in the Order. The following day, on December 10, 2019, the court issued a written Order of Clarification further clarifying that the Order extended to all animals on display during the judicial site visit, all animals covered under the Animal Welfare Act, all animals listed on the USDA inventories, and all exotic animals owned by Defendants. Ex. D at 1–2.

14. The December 9 rescue continued until approximately 6:45 p.m. that evening when it became too dark to continue searching for the remaining animals to be rescued in Defendants’ fields, which included several dozen Santa Cruz sheep and goats that had been exhibited at the zoo. Howell Decl. ¶ 20.

15. Ultimately, Plaintiffs’ agents were unable to locate countless animals subject to the Order, including most of the snakes (including various pythons), many amphibians

(including frogs, salamanders, axolotls), many reptiles (including turtles and tortoises), and many waterfowl, five bears, several ponies, and the exotic chickens, macaws, parrots, ferrets, sugar gliders, fennec fox, coati mundi, kinkajous, degu, camel, wolf hybrid, and mountain lions. Howell Decl. ¶¶ 8, 20; Howell Ex. A. Notably, Plaintiffs' agents could not locate most of the animals listed on the last page of the Order, including five brown bears, two mountain lions, one fox, one wolf hybrid, one camel, sugar gliders, ferrets, rabbits, turtles, tortoises, snakes, and the tropical birds. *See* Howell Ex. A. Of the animals listed on the last page of the Order, only two black bears, three coyotes, the non-human primates, and the llamas remained on the zoo property. *See* Howell ¶ 20; Howell Ex. A; *see also* Ex. A at 18.

16. At approximately 8:00 a.m. on Thursday, December 12, 2019, Plaintiffs' counsel electronically transmitted another notice of removal to Defendants' counsel, advising Defendants' counsel that rescuers would return to the site at approximately 8:30 a.m. to remove the remaining animals subject to the Order. *See* Blome Ex. C.

17. Plaintiffs' agents arrived on at approximately 8:45 a.m. on December 12, 2019, to continue removing animals subject to the Order. Norwood Decl. ¶ 2. Upon their arrival, Plaintiffs' agents immediately observed that many animals that had been missing on December 9, 2019, were now in enclosures throughout the zoo. Norwood Decl. ¶ 4. These animals included two Virginia opossums, one coati mundi, eight sugar gliders, two macaws, three cockatiels, ten parakeets, and one crested gecko. *Id.*

18. Plaintiffs' counsel estimates that an additional 87+ animals that resided at the Cricket Hollow Zoo were unable to be rescued because they were missing when Plaintiffs' agents arrived to remove the animals. Howell Decl. ¶ 20; Howell Ex. A. Plaintiffs' counsel bases this estimate on their own visits to the zoo and materials presented at trial, including the

USDA animal inventories and the photographs and reports submitted by their experts, as well as animal inventory from the final USDA inspection of the zoo, which took place on November 5, 2019. Blome Ex. C. Plaintiffs are currently investigating the whereabouts of the remaining missing animals and now request a hearing before this court to present additional evidence that Defendants willfully disobeyed the Order.

Conclusion

As the facts recited above and in the accompanying declarations demonstrate, Defendants willfully violated the Order through at least some combination of following acts: (1) selling and/or transferring ownership of animals subject to the Order after this court divested them of their ownership interest therein, (2) temporarily and/or permanently relocating animals subject to the Order after this court divested them of their ownership interest therein, (3) otherwise interfering with the removal ordered by this court by hiding animals subject to the Order on their property or in other locations, releasing those animals into their fields to hamper their removal, and/or denying or attempting to deny Plaintiffs' agents access to those animals, (4) returning animals covered by the Order to the zoo after Plaintiffs' agents concluded their December 9 removal effort, and (5) refusing to disclose the location of the missing animals or comply with the subpoena requesting documents reflecting the "disposition (including death), sale, or transfer of any animal since October 1, 2019."

In addition to preventing the removal provisions of the Order from being executed as intended by this court, Defendants' actions caused Plaintiffs' agents to incur significant expenses. Plaintiffs' agents incurred additional expense for the staff time, transportation costs, and veterinary care costs expended to plan for, mobilize, and arrive prepared to care for and transport many animals on December 9, 2019, that were no longer at the Cricket Hollow Zoo on

that date. In addition, Plaintiffs' agents incurred additional expenses on December 12, 2019, when they were forced to return to the Cricket Hollow Zoo to recover animals they could not remove on December 9 due to Defendants' willful obstruction. Plaintiffs intend to seek these costs at a later date under the Order awarding them costs incurred in this action.

“Where a finding of contempt is based on disobedience of a court's order, . . . a court may impose punitive sanctions under section 665.4 for past disobedience, impose coercive remedial sanctions under section 665.5 to encourage performance of affirmative acts required by the order, or impose both punitive and coercive remedial sanctions.” *Ickowitz v. Iowa Dist. Ct. for Polk Cty.*, 452 N.W.2d 446, 449 (Iowa 1990). Because Defendants continue to willfully disobey the Order with respect to nearly 100 animals covered thereby, Plaintiffs ask this court to enter a judgment of contempt against them and impose both punitive and coercive sanctions here. First, Plaintiffs ask this court to impose the maximum punitive fine allowed per contempt under Iowa Code section 665.4, or \$500 per missing animal. Second, Plaintiffs ask that this court coercively sanction Defendants by entering a warrant of commitment specifying that Defendants be imprisoned until they identify the location of each missing animal to Plaintiffs' counsel as contemplated by Iowa Code section 665.5. In the event the court declines to order coercive imprisonment, Plaintiffs alternatively request that the court order punitive imprisonment for the maximum time allowed under Iowa Code section 665.4.

Plaintiffs' counsel and Defendants' counsel recently scheduled a hearing before this court on an outstanding question regarding proper interpretation of the Order for the morning of February 7, 2020. At that time, Plaintiffs' counsel informed court administration that Plaintiffs intended to request an additional hearing on another matter and requested that the remainder of February 7, 2020, be reserved for the requested additional hearing if possible. Court

administration agreed to reserve the remainder of the day for the potential additional hearing. Accordingly, Plaintiffs request that the court issue an order requiring Defendants to appear and show cause as to why they should be held in contempt for violating the Order for 1:00 p.m. on February 7, 2020.

Respectfully submitted this 8th day of January, 2020.

/s/ Jessica L. Blome

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Certificate of Service

The undersigned certifies that on January 8, 2020, the foregoing document was electronically filed with the Clerk of Court using the EDMS system, which will send a notice of electronic filing to all counsel of record registered with the EDMS system.

/s/ Sarah McCray _____