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CINDY A. HOFNER

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

Kenneth Hetrick,
Plaintiff,

Case No. 15 CV 48

v.

JUDGE REEVE KELSEY

Ohio Department of Agriculture,
Defendant.

ORDER

This case is before the court on defendant Ohio Department of Agriculture's ("ODA") February 18, 2015, motion to dismiss amended complaint. Plaintiff Kenneth Hetrick filed a response on February 25, 2015. The ODA filed a reply on February 27, 2015. The court will now decide this matter.

The issue before the court is whether the court has subject matter jurisdiction to issue civil and injunctive relief in Mr. Hetrick's favor. Generally, unless it patently and obviously lacks jurisdiction, a court with general jurisdiction over the subject matter of a case is able to determine its own jurisdiction over a particular case. *State ex rel. Rootstown Local School Dist. Bd. of Edn. v. Portage Cty. Court of Common Pleas*, 78 Ohio St.3d 489, 491-492, 678 N.E.2d 1365 (1997); and *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 235, 638 N.E.2d 541 (1994). This court has general jurisdiction to grant injunctive relief. R.C. 2727.03. While questions exist regarding this court's jurisdiction over Mr. Hetrick's specific claims, the court finds that it does not

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patently and obviously lack jurisdiction in this case. The court is able, therefore, to determine its jurisdiction over Mr. Hetrick's complaint for injunctive relief.

In determining a motion to dismiss under Civ.R. 12(B)(1), the court must determine whether, "any cause of action cognizable by the forum has been raised in the complaint." *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80, 537 N.E.2d 641 (1989). Unlike other motions to dismiss, in deciding a Civ.R. 12(B)(1) motion, the court may consider matters outside of the complaint without converting the motion to a motion for summary judgment. *Southgate Dev. Corp. v. Columbia Gas Transm. Corp.*, 48 Ohio St.2d 211, 358 N.E.2d 526 (1976), paragraph one of the syllabus. For purposes of a motion to dismiss, the court must liberally construe the complaint in a light most favorable to the plaintiff. The material allegations in the complaint are deemed admitted. *Jenkins v. McKeithen*, 395 U.S. 411, 421, 89 S.Ct. 1843 (1969); and *State ex rel. Alford v. Willoughby Civ. Serv. Comm.*, 58 Ohio St.2d 221, 223, 390 N.E.2d 782 (1979); and *Slife v. Kundtz Properties, Inc.*, 40 Ohio App.2d 179, 182, 318 N.E.2d 557 (8th Dist.1974). A court shall make all reasonable inferences in favor of the nonmoving party. *Stone v. N. Star Steel Co.*, 152 Ohio App.3d 29, 2003-Ohio-1223, 786 N.E.2d 508, ¶ 8 (8th Dist.).

Facts

Mr. Hetrick is the owner of Tiger Ridge Exotics, a wildlife sanctuary located in Stoney Ridge, Wood County, Ohio. Until January 28, 2015, Tiger Ridge housed 13 animals – including six tigers, two lions, a black leopard, a bobcat, a brown bear, a cougar, and a liger – that are considered dangerous wild animals under Ohio

law. On that date, Ohio Department of Agriculture representatives obtained a warrant to enter Mr. Hetrick's property and then seized the 13 exotic animals under an administrative transfer order issued by the ODA's director pursuant to R.C. 935.20. Transfer order, Exhibit D, Attachment 2, to ODA's February 3, 2015 notice of amended exhibit. While the ODA was tranquilizing and removing the animals from Tiger Ridge for transport to the ODA's holding facility in Reynoldsburg, Ohio, Mr. Hetrick's attorney filed the instant case seeking a temporary restraining order preventing the ODA from seizing and moving the animals. The court granted Mr. Hetrick's request and ordered the return of the animals. By the time the temporary restraining order was granted, all the animals had been removed from Mr. Hetrick's property, but several of the transport trucks were still near Tiger Ridge. Despite that, the ODA opted to continue on to the holding facility. To date, none of Mr. Hetrick's animals have been returned.

A discussion of the history and content of Ohio's dangerous wild animal law is necessary to give context to the facts of this case. In 2011, a Zanesville-area man released his collection of 56 exotic animals from their cages before committing suicide. Jarman, Truong, Woods, & Jackson, *Sheriff: 56 Exotic Animals Escaped from Farm near Zanesville; 49 Killed by Authorities*, Columbus Dispatch (Oct. 19, 2011), available at <http://bit.ly/1ztSlqV> (accessed Feb. 27, 2015). The loose animals roamed as far as four miles from the owner's property. *Id.* Their recapture required the efforts of several law enforcement agencies and fire departments, the state Division of Wildlife, the county's Emergency Management Agency, and the Columbus Zoo. *Id.* Concerns for the public's safety prompted law enforcement to urge citizens to stay in their homes and caused nearby schools to close. *Id.*

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Following this incident, the General Assembly enacted R.C. Chapter 935, which regulates and restricts the possession of “dangerous wild animals.” The new laws went into effect on September 5, 2012, but the chapter’s categorical ban on owning dangerous wild animals did not become effective until January 1, 2014. 2012 Sub.S.B. 310; and R.C. 935.02. Despite the categorical ban, the law makes numerous exceptions that allow owners to retain possession of dangerous wild animals. R.C. 935.03. Under the new statutory scheme, a person who owned a dangerous wild animal on September 5, 2012, was required to register his animal within 60 days of the law’s effective date; a person who possessed a dangerous wild animal on October 1, 2013 – and who wanted to continue to possess the dangerous wild animal after January 1, 2014 – was required to apply to the ODA for one of three types of permits. R.C. 935.101, .05, .07. Rescue facility permits for existing facilities had an application deadline of January 1, 2014. R.C. 935.101(A)(1).

On November 2, 2012, several Ohio dangerous wild animal owners filed suit against the ODA in federal court seeking to enjoin the enforcement of R.C. Chapter 935’s registration and microchip requirements as unconstitutional. See *Wilkins v. Daniels*, 913 F.Supp.2d 517 (S.D. Ohio 2012). That court issued its decision denying the plaintiffs’ motion for a temporary restraining order and preliminary/permanent injunction on December 20, 2012. *Id.* The plaintiffs appealed, but the Court of Appeals for the Sixth Circuit affirmed the District Court’s decision on March 4, 2014, and denied rehearing en banc on April 24, 2014. *Wilkins v. Daniels*, 744 F.3d 409 (6th Cir.2014); and *Wilkins v. Daniels*, 6th Cir. No. 13-3112, 2014 U.S. App. LEXIS 7814 (Apr. 24, 2014).

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Following the exhaustion of the constitutional challenges to Ohio's dangerous wild animal laws, Mr. Hetrick filed his application for a rescue facility permit on October 17, 2014. Under its own rules, the ODA had 90 days to either issue or deny Mr. Hetrick's application. Ohio Adm.Code 901:1-4-16(B). The ODA inspected Mr. Hetrick's property in conjunction with the permit application process on November 7, 2014. On January 13, 2015, the ODA sent Mr. Hetrick a letter indicating that it *proposed* to deny his permit application based on violations of R.C. Chapter 935. Denial letter, p. 1, exhibit to Mr. Hetrick's January 28, 2015 complaint. The letter further stated that Mr. Hetrick had the right to administratively appeal the proposed denial within 30 days, and that his failure to appeal would be considered a waiver of any objections to the permit being denied. *Id.*, p. 4. Then, if Mr. Hetrick failed to appeal, the ODA would issue an order denying his permit application. *Id.* The court notes that a thorough reading of R.C. Chapter 935 and Ohio Adm.Code Chapter 901:1-4 does not reveal any laws or regulations that appear to authorize the ODA to issue a "proposed denial" of a permit application.

Regardless, the ODA conducted surveillance of Mr. Hetrick's property at least twice in the week prior to seizing the animals. Search Warrant Affidavit of Ron Cordial, p. 2, exhibit to Mr. Hetrick's January 28, 2015 complaint. ODA investigator, Ron Cordial, saw that wild animals were still located at Tiger Ridge. *Id.* Mr. Cordial claimed that Mr. Hetrick was in violation of R.C. Chapter 935 because Mr. Hetrick did not have a wildlife rescue permit (though his application had not technically been denied), the November 7 inspection had found caging and care violations, and the animals were still on the property. *Id.* at p. 1, 2. The request for a warrant was granted

on January 28, 2015, and ODA employees entered Mr. Hetrick's property and removed his animals later that day.

Mr. Hetrick has owned wild animals since 1976. Affidavit of Kenneth Hetrick, ¶ 2, Exhibit 5 to Mr. Hetrick's February 12, 2015 response to motion to dismiss. The U.S. Department of Agriculture ("USDA") has approved Mr. Hetrick as an exhibitor since 1989. *Id.* at ¶ 3. He complies with the USDA's standards for exotic animals and possesses a USDA permit for his animals. *Id.* at ¶ 4. In the nearly 40 years Mr. Hetrick has owned wild animals, none have ever escaped. *Id.* at ¶ 20. Mr. Hetrick has owned some of the animals that the ODA seized for over 20 years, and Tiger Ridge was the only home they had ever known. January 28, 2015 complaint, p. 3. In addition to their lives being disrupted by the transfer to ODA's holding facility, many of the animals are old, which puts them at risk of health problems by being tranquilized and moved. *Id.* Mr. Hetrick – with financial and volunteer assistance from many people in his community – has worked to meet the housing and care standards imposed by R.C. Chapter 935 and to comply with the dangerous wild animal laws. *See id.* Despite all of this, the ODA opted to administratively seize the animals before finally denying Mr. Hetrick's permit application or allowing Mr. Hetrick to complete the administrative appeal process.

Law and analysis

Subject matter jurisdiction is the court's power to hear and decide a case on its merits, and is a condition precedent to the court's ability to hear a case. *State ex rel. Ohio Democratic Party v. Blackwell*, 111 Ohio St.3d 246, 2006-Ohio-5202, 855

N.E.2d 1188, ¶ 8, quoting *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 11, and *Morrison v. Steiner*, 32 Ohio St.2d 86, 87, 290 N.E.2d 841 (1972), paragraph one of the syllabus. "Jurisdiction of the subject-matter is always fixed and determined by law * * *." *Rogers v. State*, 87 Ohio St. 308, 101 N.E. 143 (1913), paragraph one of the syllabus. Because subject matter jurisdiction goes to the court's power to hear a case, it cannot be waived or conferred by agreement of the parties. *State ex rel. Bond v. Velotta*, 91 Ohio St.3d 418, 419, 746 N.E.2d 1071 (2001); and *Apt v. Apt*, 192 Ohio App.3d 102, 2011-Ohio-380, 947 N.E.2d 1317 (2d Dist.), ¶ 13.

The ODA argues that this court lacks jurisdiction to hear Mr. Hetrick's complaint because the ODA has exclusive jurisdiction over dangerous wild animals until the administrative process is complete, Mr. Hetrick did not raise his constitutional claims at the administrative level first, and the Court of Claims has jurisdiction over tort claims asserted against the state of Ohio. Mr. Hetrick counters that the court has jurisdiction because he is statutorily entitled to have the court determine the validity of his constitutional claims.

1. Exclusive administrative jurisdiction

The ODA's first argument against this court having jurisdiction is that the ODA has exclusive jurisdiction over claims relating to the processes and procedures under R.C. Chapter 935.

When the General Assembly intends to vest an administrative agency with exclusive jurisdiction over particular subject matter, it does so by using appropriate language in the statutes governing that agency. *State ex rel. Banc One Corp. v.*

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Walker, 86 Ohio St.3d 169, 171-172, 712 N.E.2d 742 (1999), citing *State ex rel. Taft-O'Connor '98 v. Court of Common Pleas of Franklin Cty.*, 83 Ohio St.3d 487, 488, 700 N.E.2d 1232 (1998). When a complete and comprehensive statutory scheme governs review by an agency, exclusive jurisdiction is vested with the agency. *Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 151, 573 N.E.2d 655 (1991).

The ODA cites several cases in support of its theory that it has exclusive jurisdiction over Mr. Hetrick's complaints regarding the laws in R.C. Chapter 935. These cases are distinguishable on three bases.

A. Mandatory language

The first distinguishing factor is that each agency in the cited cases is granted exclusive jurisdiction over issues relating to its area of expertise by virtue of the mandatory language used in the agency's statutory scheme. *State ex rel. Taft-O'Connor '98 v. Court of Common Pleas of Franklin Cty.*, 83 Ohio St.3d 487, 488, 700 N.E.2d 1232 (1998) (complaints regarding elections law violations *shall* be filed with the Ohio Elections Commission); and *Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 151, 573 N.E.2d 655 (1991) (Public Utilities Commission of Ohio *shall* provide notice of and hold hearings on complaints about utility rates and tariffs); and *State ex rel. Albright v. Court of Common Pleas of Delaware Cty.*, 60 Ohio St.3d 40, 42, 572 N.E.2d 1387 (1991) (annexation petitions *shall* be filed with and decided by the board of county commissioners in the county where the property is located); and *Cincinnati ex rel. Crotty v. Cincinnati*, 50 Ohio St.2d 27, 29-30, 361 N.E.2d 1340 (1977)

(statute governing the Ohio Environmental Protection Agency's Environmental Board of Review specifically grants "exclusive original jurisdiction over any matter which may * * * be brought before it").

The statutes governing dangerous wild animals use mandatory language to vest the ODA's director with power to investigate potential violations of R.C. Chapter 935. R.C. 935.20(A) ("the director of agriculture immediately *shall* cause an investigation to be conducted * * *") (emphasis added). But the same section also uses permissive language to describe the ODA's transfer and quarantine powers. *Id.* ("the director or the director's designee *may* order the animal * * * quarantined or *may* order the transfer of the animal * * *") (emphasis added). Further, the general powers granted to the director and his appointees regarding the conduct of investigations and the exercise of some quasi-judicial powers in administering the laws in R.C. Title 9 are *permissive*, not mandatory. *E.g.* R.C. 901.26 ("The director of agriculture in conducting investigations, inquiries, or hearings, and every person appointed by him, *may* administer oaths, certify to official acts, take depositions * * *") (emphasis added); and R.C. 901.27 ("For the purpose of making any investigation * * *, the director of agriculture *may* appoint * * * an agent whose duty shall be prescribed * * *") (emphasis added).

The relevant statutes in R.C. Title 9 do not contain the same mandatory language as the statutes in the cases that the ODA cites in support of its contention that it has exclusive jurisdiction over this particular subject matter. As noted above, the language used by the General Assembly to vest jurisdiction in an agency is determinative of the agency's jurisdiction. *See State ex rel. Banc One Corp. v. Walker,*

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86 Ohio St.3d 169, 171-172, 712 N.E.2d 742 (1999). Read as a whole, the statutes governing the ODA grant it exclusive jurisdiction to investigate violations of the dangerous wild animal laws, but the statutes do *not* grant it exclusive jurisdiction over the transfer of animals subject to the laws.

Additionally, Mr. Hetrick's request for an injunction is directed at the ODA's transfer power (an area over which the ODA does not have exclusive jurisdiction), not at its investigatory powers. The court's action on Mr. Hetrick's complaint does not interfere with the ODA's investigation of Mr. Hetrick (indeed, the letter sent to Mr. Hetrick on January 13, 2015, proposing to deny his permit application indicates that the ODA had concluded its investigation and made its determination). The ODA could conduct any further investigations that it feels are necessary without seizing the animals, and the court's actions in this case do not circumvent that investigative power.

The ODA asserts that *Banc One's* rationale – that the language used by the General Assembly to vest jurisdiction in an agency is determinative of the agency's jurisdiction – is “utterly irrelevant” to this case because the court in *Banc One* was discussing common law claims, not special statutory proceedings. *Banc One*, 86 Ohio St.3d 169. Though the facts of *Banc One* are different from the facts here, the idea that an agency's power is determined by the language the General Assembly used to create the agency is applicable to all agencies; the court finds no reason to distinguish *Banc One* on this basis.

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B. Completeness and comprehensiveness

The second difference between the ODA's cited cases and this case is that the statutory scheme in R.C. Chapter 935 is not nearly as "complete and comprehensive" as the schemes in the cases that the ODA cites. In *Kazmaier*, for example, the Supreme Court of Ohio remarked, "[t]here is perhaps no field of business subject to greater statutory and governmental control than that of the public utility." *Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 151, 573 N.E.2d 655 (1991), quoting *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 256, 141 N.E.2d 465 (1957). The court also noted that the statutory scheme governing the Public Utilities Commission is a, "broad and comprehensive statutory scheme for regulating the business activities of public utilities," and provides a "rather specific" procedure for customers to challenge utility rates and charges. *Id.* at 150, 151. The other cases involve similarly highly regulated subject matter. See *State ex rel. Taft-O'Connor '98 v. Court of Common Pleas of Franklin Cty.*, 83 Ohio St.3d 487, 700 N.E.2d 1232 (1998) (elections law); and see *Cincinnati ex rel. Crotty v. Cincinnati*, 50 Ohio St.2d 27, 361 N.E.2d 1340 (1977) (environmental protection); and see *Dept. of Job and Family Servs. v. Lifeway for Youth, Inc.*, 173 Ohio App.3d 648, 2007-Ohio-6183, 879 N.E.2d 861 (10th Dist.) (child welfare).

The statutory scheme governing dangerous wild animals does not reach the same level of comprehensiveness or specificity regarding agency review. Though some aspects of the law reach highly regulated territory (the types of animals covered in R.C. 935.01(C) and the requirements for obtaining permits in R.C. 935.05, for example), the parts of the law pertaining to review do not. Under the section governing the

director's authority to seize dangerous wild animals, the entirety of the ODA's review process is contained in one short subsection: "A person that is adversely affected by a quarantine or transfer order * * *, within thirty days after the order is issued, may request in writing an adjudication in accordance with Chapter 119. of the Revised Code." R.C. 935.20(D). This short directive referring to the procedures in R.C. Chapter 119 is significantly less complete and comprehensive than the "rather specific" procedure imposed upon the Public Utilities Commission in reviewing complaints made to it. See *Kazmaier* at 151.

An agency has exclusive jurisdiction over an area when "a complete and comprehensive statutory scheme" governs its review processes. *Id.* The court finds that a referral to the procedures in R.C. Chapter 119, without more, is insufficient to create the complete and comprehensive statutory scheme that imbues an agency with exclusive jurisdiction. Because the ODA does not have a complete and comprehensive scheme of review for its transfer procedures, the court further finds that the ODA does not have exclusive jurisdiction over the issues addressed in Mr. Hetrick's complaint, and this court has jurisdiction to decide his claims.

C. Rights affected

The final difference between the cited cases and this case is the nature of the rights affected. The agencies in the ODA's cited cases made determinations about issues such as utility rate violations, propriety of campaign ads, and water quality. None of those agencies were depriving an individual of his property or imposing significant personal costs on that individual. The dangerous wild animal statutes not only allow the

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ODA to take property that can be of significant financial value, but also allow the agency to charge the owner for any transportation, housing, food, and medical costs associated with the taken property. R.C. 935.20(E); *and see Wilkins v. Daniels*, 913 F.Supp.2d 517, 522 (S.D.Ohio 2012) (noting that one plaintiff's collection of 49 exotic animals was worth approximately \$73,000). Given the nature and worth of the personal property rights affected by R.C. Chapter 935, the court finds that these laws are distinguishable from the ones cited in the ODA's cases.

The ODA makes much of the fact that the director's order and the processes surrounding it are "special statutory proceedings" that are not reviewable by the court before Mr. Hetrick completes the administrative appeal process. But this line of thought is in error. A special proceeding is, "an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity." R.C. 2505.02(A)(2). And an order is reviewable by a higher authority when it is made in a special proceeding and affects a substantial right. R.C. 2505.02(B)(2). The director's order in this case falls squarely within the definition of a final order in R.C. 2505.02(B)(2). The transfer order deprived Mr. Hetrick of his substantial right in his property, and, according to the ODA, it was made in a special proceeding. Thus, the director's transfer order is statutorily reviewable by a higher authority – this court – which grants the court jurisdiction to hear the case.

2. Remedy

Though the court has subject matter jurisdiction to address Mr. Hetrick's complaints, it would be imprudent for it to exercise its jurisdiction at this juncture

because immediate and irreparable harm to Mr. Hetrick has already occurred, and it is against the interests of judicial economy to fight the same legal battle in multiple forums simultaneously.

First, Mr. Hetrick's amended complaint fails to allege the harm necessary for the court to issue or reissue a temporary restraining order. A temporary restraining order is appropriate where the plaintiff demonstrates that immediate and irreparable injury will occur because of the defendant's actions. Civ.R. 65(A). In this case, the immediate and irreparable harm occurred a month ago – when the ODA seized Mr. Hetrick's animals. Initially, the court ordered the animals returned, but the agency refused to return them (ostensibly because it was concerned for the animals' health and safety), and the animals remain at the ODA's holding facility. By the time Mr. Hetrick filed his amended complaint, there was no threat of immediate and irreparable injury to Mr. Hetrick; the injury had already happened. Under the plain language of Civ.R. 65(A), the court cannot issue a temporary restraining order unless the harm will occur in the future. Further, the court does not believe it can simply lift the stay on the January 28 temporary restraining order because that order was based on a different complaint. Circumstances have changed since Mr. Hetrick filed his original complaint, and it would be unfair to reinstate the temporary restraining order based on the original complaint without holding a new hearing and making new findings under Civ.R. 65(A). Considering that there is no threat of immediate future harm to Mr. Hetrick from the ODA's actions and the facts in the amended complaint do not support the issuance of a temporary restraining order, the court presently cannot reinstate the January 28 temporary restraining order or issue a new one.

Additionally, it would be against the interests of judicial economy for the court to exercise its jurisdiction over Mr. Hetrick's complaint now. According to Mr. Hetrick's amended complaint and response to this motion to dismiss, he has instituted appeals with both the ODA and the Court of Common Pleas of Franklin County. If this court proceeds immediately on Mr. Hetrick's claims, there is a very real possibility of inconsistent decisions and judgments coming out of different tribunals. This would do nothing but cause confusion and increase the potential for further litigation. It could also be detrimental to the health and safety of Mr. Hetrick's animals. If different bodies order the animals moved multiple times, the chances of the animals needing to be anesthetized multiple times increases, which puts them at increased risk of health complications or death. Mr. Hetrick's legal battles are best pursued in one forum at a time, so the court declines to exercise its jurisdiction over the amended complaint at this time.

The court empathizes with Mr. Hetrick's plight. But the manner in which he has chosen to pursue his claims makes it impossible for the court to issue a temporary restraining order in his favor or reinstate the prior temporary restraining order, and makes it injudicious for the court to proceed immediately on the claims in Mr. Hetrick's amended complaint. Even though the court has subject matter jurisdiction over Mr. Hetrick's issues, it will not proceed immediately because irreparable harm has already occurred and it is not sensible, judicially speaking, for this court to hear Mr. Hetrick's claims at the present.

Conclusion

After reviewing the applicable law and the parties' filings, the court finds that it has jurisdiction to determine Mr. Hetrick's claims against the ODA because (1) the ODA's statutory scheme does not contain mandatory language that would confer exclusive jurisdiction, (2) its statutory scheme is not sufficiently complete and comprehensive to confer exclusive jurisdiction, and (3) the nature of the rights affected is significant. As the court finds that Mr. Hetrick's complaint does not involve an area over which the ODA has exclusive jurisdiction, this court has jurisdiction to determine the issues.

And even though the court has jurisdiction, it will not proceed immediately with Mr. Hetrick's claims because the amended complaint does not allege the immediate and irreparable harm necessary for the court to issue a temporary restraining order, and the interests of judicial economy dictate that Mr. Hetrick's issues should be resolved in one forum at a time.

IT IS ORDERED that defendant Ohio Department of Agriculture's motion to dismiss is denied.

IT IS ORDERED that the temporary restraining order filed on January 28, 2015, is vacated.

IT IS ORDERED that a permanent injunction hearing is set for August 18, 2015, at 8:30 a.m.

Date

3/4/15

Judge Reeve Kelsey



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CERTIFICATE

This is to certify that a copy of the foregoing Order was mailed or delivered this date to;

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