


IN THE DISTRICT COURT OF LAWRENCE COUNTY, ALABAMA

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| LAWRENCE COUNTY, EX REL,, |) | |
| Plaintiff, |) | |
| |) | |
| V. |) | Case No.: DV-2017-000015.00 |
| |) | |
| LIEBEL HUGO TOMI, |) | |
| REBISZ FRANCISZKA A LIEBEL, |) | |
| GREAT AMERICAN FAMILY CIRCUS, |) | |
| Defendants. |) | |

FINAL ORDER

The procedural history of this case is as follows. On November 8, 2017 Lawrence County, Ex. Rel. the Animal Control Officer, Kimberly Carpenter, filed a Complaint for Writ of Seizure on one elephant and four miniature ponies. The complaint alleged the elephant was “chained by her legs, unable to move, standing in her own feces without adequate food, water or shelter.” It further alleged the Defendant’s, Hugo Liebel, license out of Florida had been revoked and that he was travelling without proper insurance. On November 8, 2017 a Writ of Seizure was signed. On November 9, 2017 an Order was entered setting the matter for hearing on the same date at 2:00 p.m. Both Defendants were served on November 8, 2017 and were informed by law enforcement of the hearing. Present at the hearing were the Hon. Callie Waldrep; Kimberly Carpenter; Hugo Liebel; Franciszka Liebel and their attorney of record, Hon. Allen Stoner. At the hearing the Affidavit of Kimberly Carpenter was filed in open court without objection of the Defendants. On November 9, 2017 following testimony an Order was entered continuing the Writ of Seizure and granting the animal control officer the authority to make arrangements for housing and care of all of the animals subject to said Writ. On November 13, 2017 the Defendants filed their Submission of Exhibits following hearing consisting of the Yearly Evaluation of African Elephant-Nosey Liebal (sic) Family dated April 12, 2017 with pictures dated the same date. Photographs included the elephant’s barn and shower in Florida. On the same date Hon. Allen Stoner filed a Motion to Withdraw as counsel for the Defendants. Said Motion was granted.

On November 22, 2017 Hon. Billy Underwood filed a Motion to Dismiss for Lack of Jurisdiction and Lack of Jurisdiction Due to the Monetary Subject Matter Value. Said Motion further alleged this cause should be under the United States Department of Agriculture (hereinafter “U.S.D.A.”) guidelines; that said elephant was worth more than \$10,000.00; that a U.S.D.A. administrative law judge should hear the cause and that §3-1-13 of the Code of Alabama only allows animal control to hold animals who are sick or disabled and to care for them until they are deemed able to return to their owners. Said motion also states that the ponies are not mentioned in Ms. Carpenter’s Affidavit. (The Court notes that the ponies are mentioned in the Affidavit). An Affidavit of Hugo Liebel was filed with said motion.

On December 1, 2017 the Defendants filed a Motion to Dismiss as the Plaintiff has not

Put Up a Bond in the amount of \$500,000.00 for the Value of the Animals. Further the motion alleges the animal control officer only has jurisdiction over cats, dogs, weasels and ferrets. On December 4, 2017 a Request for Order Allowing Defendant's Attorney, Owner of Animals and Veterinarian to Inspect the Elephant. Said motion alleged the elephant had lost part of her tusk and was not receiving proper care at her current location and requesting that the above-referenced persons be allowed to attend the inspection. On December 5, 2017 the Defendants filed a Notice to Court that they are treating the Court as "Of Record" and Furnishing a Court Reporter so that any appeals can be filed with a higher appellate court. On December 5, 2017 an Order on Inspection was entered which stated that Dr. Mark Wilson be allowed to inspect the elephant. The animal control officer was ordered to provide the order to The Elephant Sanctuary (hereinafter "TES") which is where the elephant is currently housed.

On December 6, 2017 the Defendants filed a Request for Order allowing Dr. Mark Wilson to be accompanied by Walter Cook and the Defendants' attorney when inspecting the elephant on December 14, 2017. The motion further requested that the owner be allowed to accompany the veterinarian to prevent any nervousness or hostility from the elephant. The motion further requested that Walter Cook of the Tennessee Wildlife Resources Agency also attend the inspection. On December 6, 2017 the Defendants filed a Motion to Dismiss as Charges Complained of Have Already Been Litigated in Florida. Exhibit A to said motion was a letter from Dr. Philip Ensley to Ramiro Isaza of the University of Florida College of Veterinary Medicine wherein Dr. Ensley was questioning an inspection which did not list the "well-documented history of lameness." The response was that the inspection "revealed no clinical evidence of lameness or abnormalities that would interfere with normal function." The elephant was deemed to be in good physical condition, and no husbandry changes, treatments or further diagnostics were recommended as a result of the consultation. Exhibit B was a Zoological Medicine Service Discharge Instructions sheet dated November 7, 2014. It did not list any clinical evidence of lameness. Exhibit C to the motion was an article concerning the People for the Ethical Treatment of Animals (hereinafter "PETA ") filing a suit against the Defendants in this cause.

On December 6, 2017 the Plaintiff filed an Opposition to the Defendants' Motion to Dismiss. The reasons were

- (1) Rule 12 (b) of the Alabama Rules of Civil Procedure (A.R.Civ. P) does not allow that defenses be plead by motion in district court. The defenses must be by answer, and as no answer had been filed nothing was properly before the Court.
- (2) The Animal Welfare Act does not affect the District Court's jurisdiction. Exhibit 1 was the inspection reports on the elephant.
- (3) The alleged value of the elephant from the Defendants' perspective is irrelevant for jurisdictional purposes. For jurisdictional purposes one must look at the amount requested in the complaint or the monetary benefit to be received by the Plaintiff if the relief requested is granted. Exhibit 2 was the Affidavit of Janice Zeitlin of TES. Exhibit 3 was Defendant, Hugo Liebel's, application for Criminal Indigent Status where he listed as his only income \$914.00 in social security benefits and did not list any property of value. Exhibit 4 was a document showing the Defendants' Permit to exhibit the elephant in Florida was denied.

- (4) That the value of the elephant is irrelevant as it is *in rem* jurisdiction as it was a seizure prior to a criminal action. Exhibit 5 was the incident/offense report.

On December 7, 2017 the Plaintiff's filed its Response to the Request for Inspection wherein it alleged

- (1) The Defendant, Hugo Liebel, should not be allowed to attend the inspection as the elephant is a victim of his cruelty;
- (2) The Defendant, Hugo Liebel, poses a safety risk and should not be allowed at TES;
- (3) TES does not need unnecessary personnel at its facility;
- (4) No reason for Walter Cook or the Defendant to attend.
 - a. Exhibit 1 was an unsigned affidavit wherein it was alleged electricity was used as a training technique and that a bull-hook, handle and sledge hammer were used on the elephant.
 - b. Exhibit 2 was a copy of the misdemeanor plea agreement Mr. Liebel entered into on January 6, 2017 for stealing a protestor's sign out of the ground.
 - c. Exhibit 3 was a copy of a Facebook post of Cathalina Liebel explaining how to report abuse/neglect at TES. Mr. Cook was listed as a person to notify of said abuse.

On December 8, 2017 the Defendants filed an Answer to Lawrence County's Illegal Taking of Nosey the Elephant. It alleged the animal control officer can only take dogs, cats and ferrets. It further alleged this cause should be heard in federal court and that the action is not *in rem* as no criminal case has been filed.

On December 12, 2017 the Defendants filed a Notice to Court and Plaintiffs of Individuals Attending the December 14 Inspection. The persons were Dr. Mark Wilson, DVM; Hon. Whitney Fisher (attorney for the Defendants); Dr. Pat Flora (Birmingham Zoo) and Mindy Patterson, CEO of The Calvary Group. The Defendants filed the Agreement Regarding the Inspection to said motion.

On December 14, 2017 the Defendants filed a Request that the Case be Dismissed because the Elephant Sanctuary of Tennessee is Biased and has Obfuscated the Fairness of this Case. On the same date the Defendants filed a Motion to Dismiss as the Court Does not Have \$1,000,000.00 Jurisdiction. The Defendant further filed an Objection to Court Allowing More than One Veterinarian to Testify for the Lawrence County Animal Control Officer Kimberly Carpenter. The Defendants filed an Answer to the horses. The Defendants also filed a Motion to Dismiss because the State did not have a Verified Complaint to Seize the Animals. On December 15, 2017 the Defendants requested that an Independent Third Party be Allowed to Evaluate Nosey the Elephant, and specifically requested the University of Florida.

The first testimony in this cause was taken on November 9, 2017 at 2:00 p.m. for the Court to determine whether the Writ of Seizure signed the previous day would remain in effect. The first witness called by the Plaintiff was Kimberly Carpenter. She testified that she had requested seizure of an elephant and four (4) miniature ponies. She testified the Defendants were not able to provide hay and grain for the elephant. The elephant was tied and kept on the trailer. They had only two (2) bales of hay and small pieces of hay. She estimated 75 pounds of sweet

feed. In her opinion the Defendants' travel arrangements did not seem adequate. The elephant did not have adequate space in which to lie down. The trailer did not have any doors or ventilation. The horses were staked outside and it was approximately 50 degrees. The elephant was removed from the trailer. She had not seen the elephant off the trailer and thought it had been in the trailer all night the night before and all day. She testified the elephant had just enough space to stand in the trailer and was continuously swaying. She personally observed the elephant swaying. Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2 were pictures of the elephant. They were taken on November 8, 2017 between 11:30 a.m. and noon. She testified that the photographs adequately depicted the elephant at that time. Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2 were admitted. She testified that the miniature ponies were taken to private property, but that the county did not have adequate equipment and facilities for the elephant.

On cross examination Hon. Allen Stoner asked Ms. Carpenter how long she had been the animal control officer. She testified a few years. Prior to that time she had experience with her own animals. She testified she received unspecified reports out of Cullman County concerning the elephant. One of the people was an animal rescue person and college instructor in Birmingham. The report was made by telephone. Ms. Carpenter was told that over the weekend the reporter had seen the elephant and the ponies. She was told that the Defendants informed the reporter that they did not have money to buy food for the animals. People were taking food to the elephant. The Defendants' vehicle had mechanical problems. There were no shows scheduled in Lawrence County. The Defendants told her they were headed to Kentucky. The Defendants are Class C exhibitors. Ms. Carpenter testified that she did not make contact with the U.S.D.A. The Defendants offered Defendant's Exhibit 1 which is the Defendant's license which is in effect until January 30, 2017. (The Court notes the Defendants probably intended to offer Defendants' Exhibit 2 which is in effect until January 31, 2018).

Defendant's Exhibit 1 was admitted. It was a U.S.D.A. license under the Class C Exhibitor Animal Welfare Act for Hugo T. Liebel. Expiration was January 30, 2017. Ms. Carpenter testified that she did not know what she was looking at as it did not resemble a business license. When she saw them they were off of Highway 157. The feed she saw was for both the horses and the elephant. She testified it was adequate for the horses. She testified that the trailer looked as if it was for a semi-truck, but was shorter and lower. It was totally enclosed with a door. She did not know whether it had vents. She had a state trooper inspect the weight limit. She testified that when the elephant was removed from the trailer that it was held by a leg iron and that it is required. She testified that she was concerned about the elephant swaying because she knew it was a sign of stress with horses. She was also concerned with the four (4) miniature ponies in one trailer. She testified that Dr. Justin Lee was waiting to do an examination of the elephant. She further testified that he is a U.S.D.A. certified veterinarian in Moulton.

The next witness called was Margaret Whittaker. Ms. Whittaker lives in Galveston, Texas and works as an animal behavioral consultant. She teaches people about elephants. She had not seen this elephant at the time of her testimony. She is not a veterinarian. She works at an AZA (Association of Zoos and Aquariums). She is a director of elephant care at the sanctuary. She has previously testified in court proceedings. She was previously qualified as an expert on elephants. She was shown Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2. She testified that the elephant's shoulders were sagging and she has poor skin condition. She has dead skin covering her body.

She testified that she looks “droopy in the middle.” She testified that the elephant is lacking muscles on her shoulder and hips. She testified that she is overweight, yet saggy. Her temporal area is sunken. She testified that based upon reviewing Plaintiff’s Exhibit 2 that the trailer is too small for the elephant. She testified that trailers must be reinforced for elephants. The elephant does not appear to be able to lie down in the trailer and this can affect her physical and psychological well-being. If she has to stand in her urine and feces it can be detrimental to her health. Female elephants need room to urinate; otherwise, the urine will splash back up and the elephant will have urine scalding on her skin. That can cause erosion of tissue. She testified that based upon the picture she was shown that the elephant appears to have urine scalding.

Ms. Whittaker testified that normally elephants walk many miles a day and that being confined can cause abnormal behavior. It can have a damaging effect on the elephant. The lack of walking can put abnormal pressure on the legs, feet and joints. It can cause foot problems such as arthritis. Further, elephants are highly social animals and being confined can cause isolation. They are used to covering up to fifty (50) miles a day in the wild while seeking food and water.

On cross-examination Ms. Whittaker testified that she lives in Galveston, Texas and is in Lawrence County as she was asked to possibly help with the transport of the elephant. She flew to Alabama. She pays her own fees and her flight cost approximately \$350.00. She does not expect compensation or reimbursement as she does not know who would pay it. She testified that her focus is on all animals. She has been called upon previously to provide opinions in situations such as this. She testified that she has done so between five (5) and ten (10) times. She is typically hired by animal protection groups. She admitted that the two photographs she was shown showed cloudy conditions. She was asked if she knew the elephant slept on the ground. She testified that she did not know where the elephant sleeps. She was concerned about other environmental conditions. She was concerned about the elephant being in the cold, but Mr. Stoner asked if it is cold in Africa. She testified that mammals thermo-regulate their bodies. They get hot during the day and heat loss becomes an issue. She testified that swaying is not a sign that an animal is being abused, but she does worry that further harm will occur if the elephant remains in the current situation. She testified that other aspects of her life are a concern. This elephant is in her mid-thirties. Ms. Whittaker testified that she believes in animal welfare and is familiar with this particular elephant as she is very well-known. Ms. Whittaker teaches workshops in China. She testified that she came to do what is best for the elephant and to make sure the handling is done safely. She does not know the Defendants.

On re-direct Ms. Whittaker testified that she would be willing to handle the elephant and to assist with the transport if the elephant were allowed to be transported. She requested that if this did occur that the Defendants not be present as they could impede the process by giving the elephant commands which could create a dangerous situation. She testified that the situation could be stressful for the elephant.

The next witness was Dr. Philip Ensley. He is retired, but does consulting. He is a zoological veterinarian who did his post-doctoral with the Smithsonian. He had not seen the elephant in Lawrence County, but he had seen her on three (3) prior occasions. He saw her in the summer of 2015 when he was requested to review photographs of the animal. He did a report for PETA. He saw the elephant in Ohio at the Renaissance Fair. He was able to make superficial

observations. He testified that he cannot make judgments with one video or photograph. He testified that the elephant was chained by alternate legs. He testified that an elephant is supposed to be able to cover a lot of ground each day. He further testified that the elephant was standing on an inappropriate surface. This can cause early arthritis and degenerative disk disease. She also has excessive skin folds. When showed Plaintiff's Exhibit 2 he testified that it appeared to be a confined space. He testified that an elephant can expend fifty (50) gallons of urine daily. He testified that the trailer appeared to prevent movement of the limbs. He testified that the elephant would not be able to lie down in the trailer and therefore would not be able to achieve adequate sleep. He testified that elephants do need to be confined well for their safety in travel, but upon arrival should not be tethered in small places any longer than necessary. This injures the elephant physically and psychologically. In 2014 he was of the opinion the elephant already had degenerative joint disease. Dr. Ensley testified that he lives in Westcliffe, Colorado. He testified that the elephant needs a higher level of care.

On cross examination he testified that he is familiar with this elephant. He testified that he receives "considerable emails" due to his past reports on this elephant. He has previously discussed this elephant. He is not a member of any advocacy groups, but has done work for PETA. He testified that PETA does not agree with how this elephant is housed and transported. Dr. Ensley testified that his role was to accompany the elephant to the facility in Tennessee if she were allowed to go and that he viewed this proceeding as an animal rescue.

The Plaintiff rested.

The Defense called Hugo Liebel. Mr. Liebel testified that he is the owner of this elephant. He was in Cullman County, Alabama the weekend prior and that a situation concerning hay had arisen. He was supposed to go to Gadsden, but he needed to get the brakes fixed on the truck that pulls the trailers. He also had four (4) miniature ponies. He was aware that the allegation was that his animals were abused and/or neglected. The allegation was that the elephant was chained by her legs. He testified that he can use electrical wire or chain, but that the elephant must be confined. He testified that the trailer he uses to transport the elephant is 4'x8' and has to be small so that the elephant cannot turn sideways. Mr. Liebel testified that he had to go to Florida, but instructed his wife to keep the heater around the elephant. He testified that the surface he normally has for the elephant is hay and sawdust. He was gone for a day and a half. He testified that he gives the elephant as much hay as she wants. It is usually 25-30 pounds a day. She also eats bananas and apples. He testified that it is a U.S.D.A. requirement that he cannot keep the elephant inside the trailer for long periods of time so he stops periodically when he is travelling to remove her. He testified that he did not have to shelter her in November and that the rain was good for her skin. He testified that the ponies are in an 8'x8' trailer. There are bars between the two trailers. Mr. Liebel identified Defendant's Exhibit 1 and Defendant's Exhibit 2. He testified that they are his licenses from the U.S.D.A. Defendant's Exhibit 2 expires on January 30, 2018. Both were admitted into evidence. Mr. Liebel testified that the Florida Fish and Wildlife alleged that he did not send an itinerary on the elephant and they suspended his license to show in Florida. He testified that he has no other issues. Defendant's Exhibit 3 was admitted. It is a copy of the Defendants' Certificate of Liability Insurance. He testified that he was going to Gadsden. Defendants' Exhibits 4-11 were copies of Inspection Reports from the U.S.D.A. They were admitted. Defendants' Exhibit 4 noted some

accumulation of dead skin. It was dated November 3, 2017 and the Defendants were to have it corrected by December 31, 2017. Defendants' Exhibits 5-11 listed no items as non-compliant.

On cross-examination Mr. Liebel denied that he was asked to leave Cullman County. He testified that his Florida Fish and Wild Life license remained pending. He admitted the elephant had skin issues, but testified that African elephants are constantly building skin.

The next witness was Franciszka Liebel. She testified that she is Hugo Liebel's wife. She does the paperwork for their business. She testified that their liability insurance was currently in force. She testified that their circus provides entertainment such as acrobats, jugglers and animals. They provide elephant and pony rides. She testified that there were issues in Cullman County such as not being able to have a building. She denied any problems with food or shelter of the animals in Cullman County. She testified that people do bring food for the animals. They sell food to the public to use to feed the animals. Ms. Liebel testified that the problem with the license pending in Florida is that they have to provide a route so that inspections can be scheduled. She testified that she sent the information, but the Florida Fish and Wildlife said they did not receive it and with no itinerary the license could not be issued. She testified that the issue with the license had nothing to do with the welfare of the animals.

Ms. Liebel testified that Mr. Liebel has owned the elephant for thirty-three (33) years and that they have been married thirty (30) years. She testified that their whole lives are invested in this elephant, and they have no back-up. She testified that they have had the miniature horses from three (3) to fifteen (15) years. The horses ride in the front trailer. She testified that they have to see veterinarians while they are travelling. They have to learn the requirements of a state before entering it. She denied that she has had any personal contact with the witnesses for the Plaintiff.

On cross-examination Ms. Liebel denied that eleven (11) bales of hay were brought at one time. She testified the elephant is only in the trailer when travelling or emergencies. It used to have a metal frame but now has electric frame. The law requires that the elephant be confined. She was shown Plaintiff's Exhibit 3 which was admitted. It was a letter from the Florida Fish and Wildlife Conservation Commission denying the license in Florida due to lack of an itinerary and false information being provided.

On re-direct examination she testified that Dr. Mark Wilson has been their veterinarian for seven (7) to ten (10) years. She has a folder of his annual check-ups. Defendant's Exhibit 4 was the folder from the veterinarian. She testified as to the elephant's home in Florida which has an overhead shower system. Defendant's Exhibit 4 was admitted. She testified that they were home four (4) months out of the year.

Counsel for the Defendants requested that he be allowed to provide exhibits after the hearing. Defendants' Exhibits 12, 13, 14, 15 and 16 were admitted.

The hearing was concluded and an Order was entered extending the Writ of Seizure and giving the animal control officer the authority to find sufficient housing and treatment for the animals which were the subjects of the Writ.

The final hearing was set for December 15, 2017. At that time all parties and counsel appeared, witnesses were sworn and testimony was presented. Prior to the commencement of testimony counsel for the Defendants, Mr. Underwood, argued several of his Motions to Dismiss. They were denied and testimony was taken.

The first witness called by the Plaintiff was Kimberly Carpenter. She is the animal control officer for Lawrence County, Alabama and has been so for two (2) years. She attended the American Animal Cruelty Investigation School for 4-5 days. She has taken a euthanasia course and is a certified euthanasia technician. She received a call about the elephant on November 8, 2017. It was located at the corner of County Road 246 and Alabama Highway 157 in Lawrence County. It was at a diesel repair shop. She got on the trailer with the elephant and then asked that it be taken off the trailer. She testified that the water bucket had a hole and was leaking. She testified that she saw a bale and a half of hay and 75 pounds of sweet feed. One of the concerns reported to her was the lack of food for the animals. Plaintiff's Trial Exhibit 1 was photographs of the elephant and the inside of the trailer. Plaintiff's Trial Exhibit 1 was admitted. One of the photographs showed the elephant tied or chained with a large amount of feces at her back feet. She did not have any food or water. Ms. Liebel took the elephant off the trailer. Ms. Carpenter testified that the concern about the trailer was that it was used more for housing than transportation. The elephant does not have any room to turn around or lie down. She testified that the trailer did not look tall enough for the elephant. She testified that she handled the petition through the District Attorney's office. She did not remain on the property, but did go back to serve the Writ of Seizure.

On cross-examination Mr. Underwood asked Ms. Carpenter if she mentioned the ponies in her affidavit. He questioned her as to her personal knowledge of the Defendants' license being revoked in Florida. She testified that she received a text from county employees about the elephant. She testified that the horses were carried to a stall, but that the elephant could not be transported. Counsel for the Defendant asked how much an elephant voids a day. He asked if she knew an elephant voids approximately every ninety (90) minutes. He asked if horses and cattle also stand in their feces. He asked how she knew the elephant had not been fed that morning. She testified that she was concerned with the amount of food that was present and available for the animals. Mr. Underwood asked if it would be safe for a 7,000 pound elephant to be allowed to turn around in a trailer while it is going down the road. She testified that it would not. She testified that an electric fence could be put up to keep the elephant contained, as opposed to the chains. Mr. Underwood asked if she knew that electric fences violated U.S.D.A. regulations. She testified that it was her understanding that the elephant had been in the trailer all night and all morning. Counsel for the Defendant asked how many times an elephant would void in a twelve hour period. She testified that she did not know. She did not know if the elephant had been off the trailer eating before she arrived. When asked who she spoke to about the elephant she testified that she spoke to PETA or another animal rights group and talked to an elephant handler that night. Mr. Underwood asked if she knew what TDM was. She testified that it was totally digestible matter. Mr. Underwood asked if she had the right to deal with all animals. The Court was asked to read §3-1-13 Code of Alabama (1975, as amended) and did so.

Mr. Underwood asked what was wrong with the horses. She testified that nothing was

outwardly wrong with them, but typically when she seizes one animal from an owner she seizes all for inspection. She testified that the ponies were of a good weight and did not appear to have sores. She testified that Changing 42, an animal organization in Lawrence County, paid for the horses. She testified that the elephant was being fed through donations from the sanctuary. It was agreed between the parties that the ponies would be returned to the Defendants.

The next witness was Shay Culvertson. She lives in Cullman, Alabama and saw the animals at a Rent A Center in Cullman on Sunday, November 5, 2017. She had a conversation with Mr. Liebel wherein he told her he did not have any hay and she went and purchased hay for them. Mr. Liebel told her the hay got wet. She suggested Tractor Supply and he stated that \$8.00 per bale was more than he could afford. Plaintiff's Trial Exhibit 2 was entered. It is the receipt from Tractor Supply where Ms. Culvertson purchased hay for the elephant.

On cross-examination Ms. Culvertson testified that she did not ask Mr. Liebel for any money back for the hay. Mr. Underwood asked if she knew elephants are not used to eating "good" hay. He asked her about Plaintiff's Trial Exhibit 3. These were photographs of the elephant that she and her husband took. He showed her Defendants' Trial Exhibit 1 which was a picture of the elephant with one of the tusks broken. He asked if it looked like 8-9 inches were missing. She testified that she read it in the newspaper. Defendants' Trial Exhibit 1 was admitted and Plaintiff's Trial Exhibit 3 was admitted.

On re-direct Ms. Culvertson was asked if she talked to Ms. Carpenter and she testified that she did. The Court asked if she had contacted any authorities in Cullman County about the elephant and she testified that she did, but since the elephant had hay at that time they did not do anything.

The next witness called by the Plaintiff was Dr. Lydia Young. Dr. Young works as a full-time veterinarian at TES. She has her Bachelor and Doctorate degrees from the University of Georgia. She did extra study in microbacterial work and did a year in rural Thailand providing emergency and routine healthcare to elephants. She testified that in said residency she saw five (5) to eight (8) new cases each day. She was also able to view a lot of new elephant health problems for a year. She then spent time volunteering with three different zoos in Asia. She is a licensed veterinarian in Tennessee. She needs thirty (30) hours of continuing education each year and has sixty (60) thus far this year. At least one-third of those hours were specific to large herbivores. She has published in case studies and abstracts. She has done abstracts on cold therapy wound in elephants, worked on tissues post-mortem to study viruses on baby elephants and cases on immune-therapy injections. She provided her Curriculum Vitae as Plaintiff's Trial Exhibit 4. It was admitted. She was stipulated as an expert. Her goal is to provide excellent medical care for life for a herd. Every day at her job is different. She sees each elephant daily. She provides any healthcare they need and converses with the director of TES. She lives on the property of TES and is available 24/7. She has a "back-up" when she is away. Dr. Young testified that she was present when the elephant arrived at TES in the early morning of November 10, 2017. Her job was to independently observe the elephant's most pressing needs and meet those needs in a timely manner. The elephant was very calm, alert and curious. She was very interested in new food stuffs. Dr. Young has seen the elephant on a daily basis since that date. Her initial observation was that the elephant's bony structure was weakened. She had

dead skin and deep cracks. She had a foamy discharge in her eyes. Her left leg was swollen and she moved like she was uncomfortable.

Ms. Waldrep first questioned about the skin condition. Dr. Young called it hyperkeratosis which is too many cells present in the skin. Dr. Young testified that this particular elephant has the most dead skin of any elephant she has ever observed. She has dead skin on her legs. Dr. Young had never seen dead skin on an elephant's legs although she has viewed thousands of elephants. She testified that the skin is directly related to overall health and that it is multi-faceted. An elephant must have a good diet, exercise, scratching ability and mudding ability; otherwise, it can develop a bacterial infection.

Ms. Waldrep showed Dr. Young Plaintiff's Trial Exhibit 5. It is a series of photographs of this elephant as compared with another elephant at TES. The other elephant is forty-four (44) years old, or approximately ten (10) years older than the elephant herein. Dr. Young compared the cracks on this elephant and stated that they are deeper than normal. Plaintiff's Trial Exhibit 5 was admitted. This is an indication of an untreated bacterial skin infection. She performed additional diagnostics. She took a sterile aerobic culture of moist discharge and tested it. It was pathogenic in the amount grown. It was resistant to antibiotics tested against it. Plaintiff's Trial Exhibit 6 is the results of the test. Plaintiff's Trial Exhibit 6 was admitted. A bacterial culture was taken from the elephant's left flank which is the front of left hip bone. The "R" indicates resistance and that an antibiotic would not be effective. An "S" indicated susceptibility. She approached the treatment from a multi-factorial perspective. First, they changed the diet. They try to work from the inside out. The elephant receives daily electrolytes. She has free choice access to mud wallows and trees to scratch against. They use a wash specific to elephants.

Dr. Young also noted that the elephant's urine was abnormal and she dribbled urine. They treated the skin topically to test the urinary tract. Plaintiff's Trial Exhibit 7 is a sterile tube filled with the elephant's urine. Dr. Young testified that the urine was not a "clear catch," but was taken from the floor. Plaintiff's Trial Exhibit 7 was admitted with the caveat that it was taken from the floor. To do a clean catch they use a sterile sample cup on the end of a bamboo pole. They were able to get a truly sterile sample. Plaintiff's Trial Exhibit 8 was the results of the free catch specimen. It showed a bacterial urinary tract infection. Plaintiff's Trial Exhibit 8 was admitted. There was a lot of bacteria in the sample. This can result from dehydration if the elephant did not have access to consistent water. The treatment for the urinary tract infection was an over the counter for pain relief and she will be started on an antibiotic. An antibiotic can treat both conditions: the skin and the urinary infection. Within twelve (12) hours of medication for the urinary tract infection the elephant started holding her urine and voiding completely. She now drinks regularly. A urinary tract infection can cause pain, discomfort and a burning sensation. If untreated it can turn into a kidney infection. When asked how long it could take for the elephant's skin to recover Dr. Young testified from months to years. She testified that the elephant needs daily veterinary care to address the systemic and external facets of her skin disease.

Dr. Young testified that the elephant frequently rests two legs at a time. She holds a leg up for up to a minute and a half. She shifts her legs due to lameness and discomfort in multiple limbs and bones. Ms. Waldrep referred Dr. Young to Plaintiff's Trial Exhibit 5. On pages 12-16

it shows the abnormal placement of the legs. On page 16 the other elephant places her weight evenly. On the elephant herein it appears her foot is swollen as the pad is not touching the floor. On page 21 it shows the same problem. Both elephants are standing and bearing weight. This elephant's carpal joint frequently buckles. They ran additional tests. They took seven (7) x-rays of her left hind foot and ankle joint. Plaintiff's Trial Exhibit 9 are the x-rays. They show bony irregularities and osteoarthritis. They show subluxation of the P3 bone several centimeters more than it should be. The toe is too pointed. The x-rays can only evaluate bones. Soft tissue is abnormal to a bony change. She could have a tear of soft tissue. The x-rays were submitted to a zoological radiologist. Plaintiff's Trial Exhibit 9 was admitted. Dr. Young testified that the osteoarthritis process is progressive and systemic. It is an inflammatory condition. They have not been able to image the elephant's entire body at TES. The elephant carries 60% of her weight in her front feet. They expect the front feet to be worse, but not to that extent. At TES they use positive reinforcement for good behavior. They have prioritized asking the elephant to present her left hind foot for an x-ray. The treatment plan is to slow the progression of the disease. They give her the equivalent of aspirin and have noticed an increased level of comfort. They also use cold therapy. They use a daily supplement to promote joint health. They encourage activities to promote her mobility. They have heated rubber floors and soft surfaces at TES. Dr. Young testified that arthritis is the leading cause of death of elephants in captivity in North America. It is a progressive disease that requires lifelong treatment, but it can be managed. They have an elephant who is sixty-nine (69) years old. This elephant could have many more comfortable years if treated properly. Dr. Young stated that "elephants in captivity" includes zoos, performance and sanctuaries. She testified that the concrete floors this elephant has been exposed to has increased the progression of her disease. In her opinion this elephant cannot be nursed well enough to remain healthy if she went back into a circus life.

Dr. Young testified that the elephant had a roundworm infection. It was indicated by a fecal flotation test wherein a gram of feces was placed in a solution and observed under a microscope. It revealed multiple species of roundworms. The specimen was sent to the University of Georgia parasitology department. Plaintiff's Trial Exhibit 10 is a document prepared by Dr. Steven Scott and Dr. Lydia Young. It is an Individualized Health Care Plan for this elephant. Number eight (8) dealt with the elephant chewing on the right side of her mouth. They are using positive reinforcement to train her to allow a dental examination. They use protected contact wherein a human never enters the elephant's space. This reduces the danger to the human and the elephant views it as a positive interaction. Plaintiff's Trial Exhibit 10 was admitted. It separates the medical problems into categories. On page 10 it deals with muscle wasting on the top line of her back. Dr. Young testified that the elephant's bones are very atrophied and withered. On November 29, 2017 a small degree of improvement was noted. She lacks big strong hind-limb muscles.

Dr. Young was shown Plaintiff's Trial Exhibit 3 which was a silhouette and asked to compare it to number 12 of Plaintiff's Trial Exhibit 5. Dr. Young testified that in Plaintiff's Trial Exhibit 3 the elephant's gastrointestinal tract was empty of hay. She testified that it takes food 30-50 hours to pass through an elephant. At TES they use Timothy-blend hay. They test the hay nutrient quality. They do not use coastal hay as it causes colic. African elephants are browsers.

On cross-examination Dr. Young testified that she has been at TES since May 2014. Her

husband does not work for TES, but they live in sanctuary housing. TES exists as a retirement home for elephants and includes hospice care. They have lost six (6) elephants since May 2014. Mr. Underwood showed Dr. Young Plaintiff's Trial Exhibit 3 and asked if the elephant had enough water. He asked if water can affect an elephant's stomach. Dr. Young was asked if the elephant was wrenched inside the trailer for transport. She testified that she did not know. Mr. Underwood asked how much force it would take for the elephant to break her tusk. Dr. Young was asked what the elephant ate while being transported. She testified she did not know. When asked if the elephant had any historical report of aggression she testified that she did. When asked specifically if the elephant injured someone during the transport she testified that she was not aware of any incident and that it was her, Dr. Scott and Dr. Ensley when the elephant arrived. She did not see anyone injured. When asked she confirmed that African elephants have much thicker skin than Asian elephants. Mr. Underwood repeatedly asked about Bermuda hay and she testified that she was not familiar with Bermuda hay. He asked if she knew that it was long and thin like spaghetti. She testified that they use Timothy hay at the TES. It is a species of grass that is referred to as Timothy hay when dried. She testified that alfalfa is high in protein. When asked about TDM she testified that it is total digestible matter and is used to determine what portion of food is utilized by the body. Mr. Underwood asked how much TDM would be in fifty (50) pounds of sweet feed or in Missouri pellets. She testified that pellets and supplements do not fill up as much as hay. She testified that the elephant could have been eating sweet feed. She testified that elephants get nutrients from a pouch in the back of intestinal tracts. Mr. Underwood stated that a cow eats 2-3% of its body weight per day and asked what percentage an elephant eats. She testified that this elephant weighs approximately 7,000 pounds and can eat 600 pounds of forage daily between browse and hay. She did not know how many bales of hay that would be.

Mr. Underwood questioned whether the elephant must be restrained and she testified that it did, but she questioned how high the tether was on her leg. She testified that it could have been several feet lower. When asked about phenylbutazone, or bute, she testified that it is a non-steroidal anti-inflammatory medicine. When asked if it can cause gastric ulceration she testified that it could. Mr. Underwood asked if the gastric ulceration could be life-threatening. She testified that it could. He asked if she had seen an elephant die from hyperkeratosis and she said she had not. When asked she testified that worms do not mean the elephant was mistreated and that she could have acquired them from throwing up dust that had animal feces in it.

Mr. Underwood questioned Dr. Young by going through Plaintiff's Trial Exhibit 5. As to number 3 he asked why the urine could appear chalky. She testified that AZO tablets change the color of urine. She testified that at TES they do not put hands on the elephants. They can take blood if necessary, but try to avoid it. As to number 4 she testified that the muscle wasting was more than a "little bit." He questioned how an elephant that is able to walk can have atrophy. She testified that is due in part to poor nutrition and not being allowed to walk long distances. As to number 6 she testified that the edema noted was unlikely due to wenching. He questioned if number 7, Urine Residue, could be life-threatening and she testified that it was not. He questioned as to number 8, Bilaterally Non-symmetrical mastication. The elephant presented her left hind foot on a fire hose for examination. It is more comfortable for the elephant. She testified that it does affect the quality of the film, but is easier on the elephant. The x-rays were sent to the University of Florida Exotics Program for examination. He asked as to number 9

Ocular drainage. She testified that it does not mean an abnormality with her eye. It is possible it is intermittent and was due to something getting in her eye during transport. She testified that they are giving the elephant Gatorade powder with free choice water. When asked about whether the elephant could have a bond with the Liebels she testified that she could. Mr. Underwood characterized the Liebels and the other animals as the elephant's "tribe."

On re-direct Dr. Young testified that the elephant appeared to be calm.

On re-cross Mr. Underwood asked if she could say the elephant would die of arthritis in the next 20-30 years. She testified that if she returned to her prior conditions she would not improve.

The Plaintiff rested. Plaintiff's Trial Exhibits 1-10 were admitted into evidence.

The defense called Dr. Mark Wilson. Dr. Wilson is a veterinarian and started working in a zoo when he was twelve (12) years old. He does private consulting for individuals who own or maintain elephants. He also works with primates, birds and reptiles. He has viewed this elephant 4-5 times per year for several years. He saw her the day before the trial at TES. He performed the Yearly Evaluation of African Elephant dated April 12, 2017 which was submitted into the record on November 13, 2017 by Hon. Allen Stoner. He testified that he treats the elephant "hands on" and that a good x-ray can be done of the elephant. He was not allowed to touch her at TES as they are a protected contact facility. He testified that if she had a bacterial infection she would not die from it. He testified that her hyperkeratosis can be treated by oil, shampoo and filing down. He testified that it is part of being an African elephant. He testified that he has seen zoo elephants far worse. He testified that he works with the University of Florida which is second in the country for exotic animals. The University of California at Davis is considered the "Godfather of Exotic Animals." He is aware of complaints by PETA and the government about this elephant. He referenced x-rays performed at Peterson and Smith Equine Hospital which show no problem with her feet. When shown Plaintiff's Trial Exhibit 3 Dr. Wilson testified that he could not tell if the elephant had been properly fed. He testified that he has seen the elephant's trailer and that it meets U.S.D.A and Florida Game Commission standards. When asked about the side effects of "bute" he testified that it does cause ulcers. He testified that the elephant's tusk was broken at TES. He reasoned "animals do dumb things sometimes." He testified that it was not a clean break and that it required a good bit of force to do it. He testified that the elephant's attitude is not the same. She is not "mentally there." He testified that she does not appear to be interested in anything going on around her. He testified that elephants have individual personalities. He does not think she needs a veterinarian to take care of her every day. She does not need medical attention every day. He testified that he did notice a draining temporal gland on the side of her broken tusk. He would have x-rayed the broken tusk. She could develop sepsis and needs to be monitored. He testified that tusk work is hard to do and it becomes very difficult. Recovery can be a dangerous procedure. He does not think she has arthritis. He took a video of her walking. He had previously done a walking test of her on grass, sand and asphalt. He also had up to 450 pounds of people riding on her. He testified that she can be treated with analgesics over the next few years and be fine. He testified that he had treated her for a urinary tract infection a few times. It is common in older elephants, usually over forty. He saw no symptoms to indicate an infection. He did testify that if she were to develop a kidney

infection it could be dangerous, but could be treated with antibiotics. In his opinion, hands on is critically important. He is in favor of an antibiotic shot to treat an infection quicker. He testified that this elephant is a working elephant and is on a high protein diet. She has gained 340 pounds since she has been at TES. This is 4.8% of her body weight. He testified that the Defendants took her to a fruit company to weigh her several times a year. She eats Bermuda coastal hay. She does not need rich food because it can cause her diarrhea. He was concerned that more weight would cause more pressure on her feet. Dr. Wilson further testified that some problems occur from an animal eating too well. He testified that elephants do not have cholesterol or high blood pressure. When asked the leading cause of death in elephants in captivity he testified euthanasia.

Dr. Wilson testified that he is concerned that he was told the elephant was wrenched into the trailer for transport to TES. He testified that it would excite the elephant to go onto a strange trailer. Dr. Wilson testified that he was informed they arrived there at 2:42 a.m. and that she would not come off the trailer. Mr. Underwood showed Dr. Wilson Defendant's Trial Exhibit 2. It is the care notes of the elephant from TES and encompasses Plaintiff's Trial Exhibit 6. Mr. Underwood asked about the elephant being taken to the Asian barn upon arrival. Dr. Wilson testified that she should have been in the quarantine barn because TES has concerns with tuberculosis. It is Dr. Wilson's understanding that TES has two facilities for quarantine status. He testified that the elephant stands on sand and grass during the daytime and that chaining her is better than using an electric fence. He testified that the electric fence will shock the elephant, but that she could go through it. He would not be in favor of an electric fence being put up in a strange place. Defendant's Trial Exhibit 2 was admitted. Defendant's Trial Exhibit 3 was admitted by stipulation. It is Lawrence County, Alabama Classification Specification document and was presented by Hon. David Martin, attorney for Lawrence County Commission. Ms. Waldrep stated that the stipulation did not include an admission that Ms. Carpenter received a copy of it.

On cross examination Ms. Waldrep asked about the radiographs on the elephant's feet from May 2015. He testified that they did not include the elbow and they did not do all points of the body. It was an outpatient examination done by Dr. Faith Hughes. Ms. Waldrep asked if Dr. Wilson had concerns about arthritis and lameness. He testified that he is not a specialist in radiology and he is not a certified radiologist. He testified that to his knowledge the elephant is at her heaviest. He was shown his records from April 12, 2017 and that it included question marks in the weight category. Ms. Waldrep asked about the hyperkeratosis all over the elephant's body. He testified that it is not life-threatening. He testified that it can be managed with mineral oil, baby oil and extra virgin olive oil. The oil loosens the skin up to exfoliate with a brush or a pumice stone. He testified that when the elephant is at her home in Florida she has a concrete block barn with a concert floor. Her yard is sand. He testified that tusk breaks are common in elephants. He said some elephants rub their tusks, but this elephant did not. Ms. Waldrep showed Dr. Wilson Plaintiff's Trial Exhibit 11 which was a paper on "Use of Composite Materials as a Component to Tusk Fracture Management in an Asian Elephant (*Elephas Maximus*) and an African Elephant (*Loxodonta Africana*)." The paper stated that tusk fractures are common in captive and free-ranging Asian and African elephants. Plaintiff's Trial Exhibit 11 was admitted.

Dr. Wilson testified that this elephant gets adequate exercise. She eats Bermuda coastal hay. He testified that typically the restraint is on her left hind leg and right front leg. When asked

when he first knew of the elephant's skin condition he testified five (5) to six (6) years ago, but was shown an inspection report from 1998 that references her skin condition. Also, a U.S.D.A. inspection report previously admitted into the record referenced it in 1997. Dr. Wilson was shown Plaintiff's Trial Exhibit 12. The front page was his hand-written notes and the remainder was inspection reports 2010-2011. In his notes he states "her skin care is exceptional and in now (sic) way is detrimental to her health." Plaintiff's Trial Exhibit 12 was admitted. The inspections from Dr. Tami Howard indicated the elephant's skin has cracks and that the current regime is not being effective in a timely manner. Ms. Waldrep asked Dr. Wilson if he had posted to the Defendants' Facebook page that "We must win this case." He testified that he did.

The next witness was Mr. Frank Murray. Mr. Murray testified that he has owned elephants and has had herds as big as twenty-six (26). He started working with elephants in 1967. He was the first person to breed African elephants in the United States. He has known the Defendants for twenty-five (25) years. He has never seen them mistreat this elephant. He is President of Elephant Walk. He provides elephants for movies, Hindu and Buddhist weddings and circuses. He testified that his elephants have dry skin. It is not a problem. He testified that the only way to treat is to physically get the skin off. He uses oil and coconut husks. He testified that dry skin is a husbandry issue and will not kill an elephant. He testified that he has wrenched an elephant before. Some elephants will hand the handler their chain. He testified that "they" attempted to take his elephants, but it never happened.

On cross examination he expanded on the Elephant Walk, Inc. He works fairs, festivals, weddings and other entertainment venues. It is just his family. He now has one (1) elephant. He used to run programs in the Los Angeles Zoo and the New Orleans Zoo. He is taking his elephant to Miami to shoot a commercial. He admitted he contributed \$1,000.00 to the Defendants' Go Fund Me account for legal fees. He used to be a President of the Alliance of Professional Animals and Owners. Dr. Wilson was on the board. He denied that he was arrested for animal cruelty charges. He was arrested on a failure to appear on a charge that was later expunged.

The next witness was Mr. Mickey Grimes. He testified that he saw the elephant loaded and that they put a rope around her back legs and someone was in front of her. It took an hour to get her on the trailer. He witnessed the elephant while the Defendants were getting their vehicle fixed. She was fed and her manure was cleaned every day. She was eating hay and peanuts.

The next witness was Hugo Liebel. He was shown Defendant's Trial Exhibit 4 which was an Inspection Report from the U.S.D.A. dated November 3, 2017 wherein he was to correct the elephant's skin condition by December 31, 2017. He testified that it is a constant fight on the elephant's skin care. He scrubs it. He testified that he had enough feed and water for the elephant. One of his workers "hustles" customers asking them to feed the elephant. He gets veterinarian care for the elephant every month. In June 2017 she was checked by the National Jewish Health. In October 2017 she was checked. He denied he has ever mistreated this animal. He testified that he would probably not take her back on the road.

On cross examination he was shown Plaintiff's Trial Exhibit 13. It was a letter from Polk County Code Enforcement in Florida. The letter was stating the elephant could not be brought

back onto the Adair Road property in Florida as there was no approval for exotic animals and no grandfather determination. Plaintiff's Trial Exhibit 13 was admitted. Mr. Liebel testified that he had not received the letter, but "heard through the grapevine" it was coming. He testified that people are running an agenda against him. He was asked if at times he referred to this elephant as "Tiny" as opposed to "Nosey." He stated he did, but has never lied to authorities. He was asked if he has been cited by the U.S.D.A. over four hundred (400) times.

Defendants' Trial Exhibit 5 and Defendants' Trial Exhibit 6 were admitted.

The Defense rested and the Court took the case under advisement. The Court now makes the following findings:

1. The District Court has jurisdiction in this cause pursuant to §3-1-13 Code of Alabama (1975, as amended). The value of the elephant is not relevant to this proceeding and, in any event, at no point in testimony or evidence was anything presented as to the value of this elephant.
2. Kimberly Carpenter is the animal control officer for Lawrence County, Alabama and is the Plaintiff in this proceeding.
3. Although not filed with the Complaint, Ms. Carpenter executed an Affidavit which was filed in open Court on November 9, 2017.
4. The Defendants are the title owners to the elephant as has been shown by numerous inspection reports and veterinarian reports.
5. The Plaintiff has met its burden to sustain the Writ of Seizure as to the elephant in this cause.
6. Pursuant to an agreement between the parties the miniature ponies were returned to the Defendants on December 16, 2017.

It is therefore **ORDERED, ADJUDGED AND DECREED** as follows:

1. The custody of the elephant, more specifically described as “Nosey” which was seized by the animal control officer of Lawrence County, Alabama on November 8, 2017 shall be vested in said animal control officer, Kimberly Carpenter, in her official capacity. The animal control officer shall make decisions as to the continuing placement and treatment for the elephant.
2. Court costs are hereby **WAIVED**.

DONE this 22nd day of January, 2018.

/s/ ANGELA D TERRY
DISTRICT JUDGE