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WISCONSIN COURT OF APPEALS
DISTRICT IV

WISCONSIN FEDERATED HUMANE SOCIETIES, INC., DANE COUNTY HUMANE SOCIETY, WISCONSIN HUMANE SOCIETY, FOX VALLEY HUMANE ASSOCIATION, NORTHWOOD ALLIANCE, INC., NATIONAL WOLFWATCHER COALITION, JAYNE BELSKY, MICHAEL BELSKY, and DONNA ONSTOTT,

Plaintiffs-Appellants,

Appeal No. 2013AP000902

v. Case No. 2012CV003188

CATHY STEPP, SECRETARY, WISCONSIN DEPARTMENT OF NATURAL RESOURCES, WISCONSIN DEPARTMENT OF NATURAL RESOURCES, and WISCONSIN NATURAL RESOURCES BOARD,

Defendants-Respondents-Cross-Appellants,

UNITED SPORTSMEN OF WISCONSIN, WISCONSIN BEAR HUNTERS ASSOCIATION, SAFARI CLUB INTERNATIONAL, and U.S. SPORTSMEN'S ALLIANCE FOUNDATION,

Intervenors-Respondents-Cross-Appellants,

ASPCA,

Other Party.

BRIEF OF *AMICUS CURIAE* THE AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

Appeal of the Final Judgment of the Dane County Circuit Court
The Honorable Peter C. Anderson Presiding

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF INTEREST 1

STATEMENT OF THE ISSUES 2

STATEMENT OF FACTS 2

ARGUMENT 3

I. Wisconsin Federated Humane Societies and Its Fellow Animal Welfare Organizations Have Standing to Challenge the DNR's Wolf Hunting Rules Which Are Certain to Result in Fatal Encounters Between Hunting Dogs and Wolves 3

II. The DNR's Wolf Hunting Rules Authorize Violation of Wisconsin's Animal Cruelty and Animal Fighting Laws By Permitting Hunters to Compel Dogs to Engage in Brutal and Bloody Confrontations with Wolves 7

CONCLUSION 10

CERTIFICATE OF SERVICE 12

CERTIFICATE OF COMPLIANCE 13

FORM AND LENGTH CERTIFICATIONS 14

TABLE OF AUTHORITIES

Cases

Fox v. Dep't of Health and Human Svcs., 112 Wis. 2d 514, 334 N.W.2d 532 (1983) 5

State v. Kuenzi, 332 Wis. 2d 297, 796 N.W.2d 222 (Wis. Ct. App. 2011) 9

Wisconsin's Envtl. Decade, Inc. v. Pub. Svc. Comm'n, 69 Wis. 2d 1, 230 N.W.2d 243 (1975) 5

Statutes

2011 Wisconsin Act 169 ..... 1, 6, 9

Wis. Stat. § 173.07 3

Wis. Stat. § 29.001(90) 8

Wis. Stat. § 29.185 8

Wis. Stat. § 951.01 7

Wis. Stat. § 951.015 8

Wis. Stat. § 951.02 ..... 7, 8

Wis. Stat. § 951.025 7

Wis. Stat. § 951.03 7

Wis. Stat. § 951.08 8

Wis. Stat. § 951.09 7

Wis. Stat. § 951.095 7

Wis. Stat. § 951.097 7

Rules

Wis. Admin. Code § NR 10.07(4)(a) 8

STATEMENT OF INTEREST

The American Society for the Prevention of Cruelty to Animals ("ASPCA") is a New York not-for-profit corporation whose mission is "to provide an effective means for the prevention of cruelty to animals throughout the United States." Incorporated in 1866 by a special act of the New York State legislature, the ASPCA is the nation's oldest humane organization and the first to be granted law enforcement authority to investigate and make arrests for animal cruelty and other crimes committed against animals. With more than two million supporters nationwide, the ASPCA carries out its mission by assisting with the investigation and prosecution of crimes against animals throughout the country; advocating for animal welfare laws on the local, state, and federal levels; providing expert support and resources to shelters and animal rescue groups; and educating law enforcement, prosecutors, veterinarians, and the judiciary on proper responses to crimes against animals in their communities. The ASPCA offers this brief to assist the court in understanding the important animal welfare issues raised in this appeal. Specifically, the ASPCA submits that by failing to impose reasonable restrictions on the use of dogs to hunt wolves, the wolf hunting rules promulgated by Defendants-Appellees Wisconsin Department of Natural Resources, *et al.* ("DNR"), pursuant to 2011 Wisconsin Act 169 ("Act 169"), violate the letter and spirit of Wisconsin's animal cruelty and animal fighting laws by allowing the type

of unfettered use of dogs to pursue wolves that is virtually guaranteed to result in the mutilation and death of countless hunting companions and pets.

STATEMENT OF THE ISSUES

I. Whether humane organizations whose core mission is the prevention of cruelty to animals have standing to challenge the DNR's wolf hunting rules, which are virtually certain to result in lethal encounters between dogs and wolves.

II. Whether the DNR's wolf hunting rules authorize violation of Wisconsin's animal cruelty and animal fighting laws by permitting hunters to compel dogs to engage in violent and bloody confrontations with wolves.

STATEMENT OF FACTS

The ASPCA adopts the facts as set forth by Plaintiffs-Appellants Wisconsin Federated Humane Societies, Inc. *et al*. ("Wisconsin Federated Humane Societies").

ARGUMENT

I. Wisconsin Federated Humane Societies and Its Fellow Animal Welfare Organizations Have Standing to Challenge the DNR's Wolf Hunting Rules Which Are Certain to Result in Fatal Encounters Between Hunting Dogs and Wolves.

The Circuit Court correctly held that Wisconsin Federated Humane Societies, Inc., a coalition of more than forty humane organizations located in Wisconsin, along with the Dane County Humane Society, Wisconsin Humane Society, and Fox Valley Humane Association have standing to challenge the DNR's wolf hunting rules.[1] These organizations, like the ASPCA, work to promote the humane treatment of animals, provide direct care to countless abandoned, lost, unwanted, and injured animals, and advocate for these vulnerable and voiceless members of the Wisconsin community. Several of these humane organizations, located within or near wolf harvest zones, also employ government appointed humane officers who have the authority to investigate crimes against animals, request that district attorneys issue subpoenas to compel testimony and obtain documents in such investigations, and request that law enforcement and district attorneys enforce and prosecute violations of the state's animal protection laws. *See* Wis. Stat. § 173.07. [2]

[1] That Northwood Alliance, Inc., National Wolfwatcher Coalition, Jayne Belsky, Michael Belsky, and Donna Onstott likewise have standing to challenge the DNR's wolf hunting rules is fully explained by Wisconsin Federated Humane Societies in their Response Brief.

[2] Member humane societies with certified humane officers on staff include the Humane Society of Marathon County, Eau Claire County Humane Association, the Humane Society of Portage County, Coulee Region Humane Society, and Arnell Memorial Humane Society. *See*

Given their mission and work, Wisconsin Federated Humane Societies and its fellow humane organizations rightly contend that they will suffer direct and substantial injury as a result of the DNR's failure to impose reasonable restrictions on the use of dogs to hunt and train to hunt wolves. The voluminous evidence presented to the Natural Resources Board ("NRB") by some of the foremost experts in the field, including wolf managers, wildlife veterinarians, and wolf and dog behavior experts (many of whom developed their expertise during lengthy and distinguished careers with the DNR), make plain that the current wolf hunting rules will almost certainly lead to gruesome and fatal encounters between animals. The expert affidavits attest to the fact that unlike other species (such as bears and coyotes) that may back down if confronted by hunting dogs, wolves are likely to stand their ground and fight the oncoming pack. R. 5 (Thiel Aff. ¶ 11); R. 14 (Jurewicz Aff. ¶ 21). Capable of inflicting "frequently lethal injuries to dogs, including multiple lacerations, extensive deep tissue bruising, bone fractures, and penetrating wounds to body cavities and evisceration of internal organs," R. 15 (Langenberg Aff. ¶ 10), such wolf attacks will be "swift and furious" with hunting dogs almost always on the losing end of every bloody battle, R. 5 (Thiel Aff. ¶ 13).

The surge of injuries and deaths that will most certainly result from the DNR's current regulatory scheme will doubtless increase the burden placed on

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http://www.wisconsinfederatedhs.org/2013-wfhs-members.html in conjunction with http://datcp.wi.gov/Animals/Humane_Officers/Finding_a_Humane_Officer/index.aspx.

Wisconsin's humane organizations, many of which operate with scant resources and limited budgets to provide critical services to animal victims. Likewise, humane officers will be faced with the daunting challenge of responding to conduct that while authorized by the DNR plainly runs afoul of the animal cruelty and animal fighting laws that they are charged with upholding. No less significant is the extent to which the inevitable bloodshed that will flow from the unfettered use of dogs to pursue wolves will undermine the core mission of these organizations who work tirelessly to advocate for the humane treatment of animals. Such injuries are hardly "remote, indirect and speculative" as the DNR claims. *See* DNR Br. at 75. Rather, they are plainly sufficient to satisfy Wisconsin's liberal standing requirements, *Fox v. Dep't of Health and Human Svcs.*, 112 Wis. 2d 514, 524, 334 N.W.2d 532 (1983) ("This court has consistently held that the law of standing in Wisconsin should not be construed narrowly or restrictively"), and are precisely the types of injuries Wisconsin courts have found to be legally cognizable, *id. at* 525 (stating that physical, economic, aesthetic, conservational, and recreational interests are all accepted by Wisconsin courts as sufficient to confer standing).

Indeed, sound public policy weighs decidedly in favor of finding that these humane organizations have a legally protectable interest sufficient to confer standing to challenge the DNR's rulemaking . *Wisconsin's Envtl. Decade, Inc. v. Pub. Svc. Comm'n*, 69 Wis. 2d 1, 13, 230 N.W.2d 243 (1975) ("Whether interests deserve legal protection depends upon whether they are sufficiently significant and

whether good policy calls for protecting them or for denying them protection"). Individuals and organizations whose core activities include promoting the humane treatment of animals most certainly fall within the zone of interests created by Act 169, which contrary to the DNR's assertion, seeks to protect not only the interests of hunters, but also the interest that Wisconsin residents have in safe and sustainable hunting practices.

Moreover, the fact that Wisconsin's animal cruelty and animal fighting statutes do not create a private cause of action does not, as the DNR erroneously contends, bar humane organizations from the courthouse door. To the contrary, the breadth of Wisconsin's animal protection laws reflect the legislature's recognition that Wisconsin residents have a profound interest in the humane treatment of animals. The fact that the animals meant to be protected by these laws are themselves voiceless only underscores the important role humane organizations must rightly play in representing the interests of these vulnerable victims in matters of substantial public importance such as the one presently before the court. At a minimum, the humane officers charged with enforcing the State's animal protection laws have a legally cognizable interest in the DNR's rulemaking to the extent that it may result in the implementation of a regulatory scheme that permits conduct that violates Wisconsin's animal cruelty and animal fighting provisions.

II. The DNR's Wolf Hunting Rules Authorize Violation of Wisconsin's Animal Cruelty and Animal Fighting Laws By Permitting Hunters to Compel Dogs to Engage in Brutal and Bloody Confrontations with Wolves.

By permitting hunters to compel dogs to engage in brutal confrontations and lethal fights to the death in their pursuit of wolves, the DNR's current regulatory scheme runs afoul of Wisconsin's animal cruelty and animal fighting prohibitions. While state laws differ as to the species covered by their cruelty laws, Wisconsin defines the term "animal" broadly to protect every living warm-blooded creature except a human being, reptile, or amphibian. Wis. Stat. § 951.01(1)(a)-(b).

Wisconsin's principal animal cruelty provision is consistent with the State's strong track record in affording robust legal protection to animals.[3] Section 951.02 of the criminal code provides that "[n]o person may treat any animal, belonging to the person or another, in a cruel manner." "Cruel" is defined as "causing unnecessary and excessive pain or suffering or unjustifiable injury or death." Wis. Stat. § 951.01(2). Notably, section 951.02 does not require proof of intentional conduct to establish a crime, although intentional conduct that involves mutilation, disfigurement, or death elevates the offense to a felony. It is likewise a felony to

[3] Ahead of many of its sister states, Wisconsin has enacted additional protections for "companion animals" including provisions criminalizing dog- and cat-napping, Wis. Stat. § 951.03, imposing penalties for harassing police, fire, and service animals, §§ 951.095, 951.097, and outlawing inhumane methods of euthanasia, § 951.025. The State also prohibits "canned hunts"—an activity considered unsportsmanlike by hunters because it involves shooting animals that are tied, staked, caged, or otherwise confined with no reasonable means of escape. Wis. Stat. § 951.09.

instigate, promote, aid, or abet a fight between dogs, birds or between any other animals (or between an animal and a person). Wis. Stat. § 951.08.

All states exempt certain conduct from their animal cruelty laws. In Wisconsin, these exemptions include normal and accepted veterinary practices, Wis. Stat. § 951.02, slaughter for food, § 951.015(1), and the use of animals in teaching, research, and experimentation, § 951.015(3). Although hunting is not expressly exempted from the coverage of chapter 951, section 951.015(1) states that chapter 951 "may not be interpreted as controverting any law regulating . . . the taking of wild animals, as defined in s. 29.001(90)."[4] The Wisconsin DNR erroneously relies on this provision to argue that its wolf hunting rules do not and cannot run afoul of chapter 951's prohibition on animal cruelty and animal fighting. The DNR's argument is simply wrong. While section 29.185, which governs wolf hunting, permits the use of dogs to "track or trail" wolves,[5] the DNR's regulations authorize the virtually unrestrained use of dogs in wolf hunting.[6] In failing to limit the use of dogs to track or trail activities, the DNR has

[4] Section 29.001(90) defines "wild animal" as "any mammal, bird, fish, or other creature of a wild nature endowed with sensation and the power of voluntary motion."

[5] DNR regulations do not specifically define "track" or "trail." The terms are generally understood to mean to follow and find, but not to confront or physically engage. *See* Merriam-Webster Dictionary. The legislative limitation on the use of dogs to track or trail is consistent and compatible with Wisconsin's animal cruelty and animal fighting prohibitions.

[6] The statute places three limitations on the use of dogs to hunt wolves: (1) a season that extends from the Monday after the end of deer season to the end of February in the following year; (2) limiting the number of dogs to six per hunting event; and (3) requiring that the hunter keep in his or her possession any tag required for the dog. Wis. Stat. § 29.185(6)(c). The only additional restrictions imposed by the DNR are that dogs (1) cannot be used for night hunting and (2) must be tattooed or wear an identifying collar. Wis. Admin. Code § NR 10.07(4)(a).

exceeded its statutory authority under Act 169 and crafted a regulatory scheme that authorizes violation of Wisconsin's animal fighting and cruelty statutes.

That activity characterized as "hunting" can run afoul of the state's cruelty law was firmly established in *State v. Kuenzi*, 332 Wis. 2d 297, 796 N.W.2d 222 (Wis. Ct. App. 2011), where the court reinstated charges against two defendants who used snowmobiles to ram a large group of deer, doing a "burn out" on one and ripping open his abdomen and tying another live deer to a tree where he was left to die. *Id*. at 301-02. In reversing the lower court's ruling, the court rejected defendants' arguments that the animal cruelty statute could not apply to their conduct because the taking of non-captive wildlife is regulated solely by Wis. Stat. ch. 29; therefore, defendants claimed, they could take a wild animal by any means without fear of prosecution so long as the means are not prohibited by chapter 29. *Id*. at 300-01. With respect to the contention that the "hunting" of non-captive wildlife was outside of the reach of the cruelty law, the court held that:

> If the legislature intended a blanket prohibition on applying the cruel mistreatment statute to the taking of wild animals, it could have done so with clear wording, such as this: "This chapter may not be applied to the taking of wild animals." The legislature did not. To the contrary, the "controverting" limitation plainly contemplates that chapter 951 may be applied to the taking of wild animals.

Id. at 313.

Here, the virtually wholesale absence of reasonable restrictions on the use of dogs to hunt wolves will, as the record shows, result in grievous suffering and violent deaths that are not contemplated or authorized by Act 169 and contravene Wisconsin's animal protection laws. Without specific limitations such as those

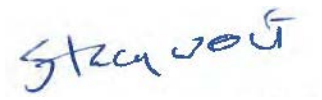
proffered by the distinguished experts who submitted extensive comments during the rulemaking process—limitations such as lead or leash tethering during track or trail activities, exclusion of hunting dogs from known areas of core wolf habitats and during designated times of the year such as mating and breeding seasons, and training and certification of hunters and hounds on leash and lead pursuit—both dogs and wolves are destined for brutal and bloody injuries and deaths. Indeed, wolf depredation reports that document the tragic results of wolf-dog encounters and the concerns expressed by hunters who lost dogs in surprise wolf attacks while hunting other species, confirm that the experts' opinions are neither uncertain nor speculative. In short, the DNR has the legal duty to promulgate new wolf hunting rules that are consistent with Wisconsin's animal protection laws.

CONCLUSION

For the foregoing reasons, the ASPCA respectfully requests that the court affirm the Circuit Court's ruling that Plaintiffs-Appellants Wisconsin Federated Humane Societies, *et al.*, have standing to challenge the DNR's wolf hunting rules; declare that the wolf hunting rules promulgated by the DNR are unlawful; and permanently enjoin the DNR from authorizing the use of dogs to hunt or train to hunt wolves until the DNR promulgates rules that are necessary to implement the limited statutory authorization for the use of dogs to track or trail wolves.

DATED: October 3, 2013

By: Counsel for the American Society for the Prevention of Cruelty to Animals



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CERTIFICATE OF SERVICE

I hereby certify that ten copies of this Brief were transmitted to Federal Express on October 3, 2013 for overnight delivery to the Clerk of the Court of Appeals. I further certify that copies of the Brief were served on counsel of record by first-class mail on October 3, 2013. I further certify that the Brief was correctly addressed and postage prepaid.

Dated: October 3, 2013



Jennifer H. Chin, Esq.

CERTIFICATE OF COMPLIANCE

I hereby certify that I have submitted an electronic copy of this Brief, which complies with the requirements of § 809.19(12). This electronic brief is identical in content and format to the printed form of the Brief filed as of this date. A copy of this certificate has been served with the paper copies of this Brief filed with the court and served on all opposing parties.

Dated: October 3, 2013



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Jennifer H. Chin, Esq.

FORM AND LENGTH CERTIFICATIONS

I hereby certify that this Brief confirms to the rules contained in § 809.19(8)(b) and (d) for a brief produced with a proportional serif font.

The length of this brief is 10 pages and 2,523 words.

Dated: October 3, 2013



Jennifer H. Chin, Esq.

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