

DA 21-0150

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 283N

STATE OF MONTANA,

Petitioner and Appellee,

v.

PAMELA JO POLEJEWSKI,

Respondent and Appellant.

**FILED**

**NOV 02 2021**

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

APPEAL FROM: District Court of the Eighth Judicial District,  
In and For the County of Cascade, Cause No. ADV-20-274  
Honorable Michele R. Levine, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Pamela Jo Polejewski, Self-Represented, Great Falls, Montana

For Appellee:

Jordan Y. Crosby, James R. Zadick, Ugrin Alexander Zadick, P.C.,  
Great Falls, Montana

Joshua A. Racki, Cascade County Attorney, Great Falls, Montana

Submitted on Briefs: October 6, 2021  
Decided: November 2, 2021

Filed:

  
Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Pamela Jo Polejewski appeals the Eighth Judicial District Court's March 26, 2021 order denying her requests for an injunction and reconsideration of constitutional issues related to the forfeiture of her animals pursuant to § 27-1-434, MCA. We affirm.

¶3 One hundred seventy-two animals were removed from Polejewski's property pursuant to a search warrant after officers responding to a May 6, 2020 fire observed cruel living conditions. The county took custody of the animals, and veterinarians directed by the Cascade County Sheriff's Office assessed the animals' health and medical needs. While legal proceedings were pending, some animals passed away and some were euthanized for their well-being upon veterinarian recommendation.

¶4 On May 15, 2020, Polejewski was arrested on four counts of animal cruelty pursuant to § 45-8-211(1)(b) and (1)(c)(iii), MCA, and one count of aggravated animal cruelty pursuant to § 45-8-217(2), MCA.

¶5 On May 18, 2020, the State filed a Petition for Animal Welfare and Cost of Care pursuant to § 27-1-434, MCA. An evidentiary hearing was held on May 26, 2020. At the hearing, Polejewski was represented by counsel but declined to call witnesses or introduce

evidence. Polejewski also did not raise any constitutional arguments at that time. The State presented photographic evidence and testimony from law enforcement, animal shelter staff, and veterinarians showing the conditions of the animals and Polejewski's property, as well as demonstrating the animals' monthly costs of care. On June 4, 2020, the District Court issued an order finding by a preponderance of the evidence that the animals had been subjected to cruelty and that the reasonable monthly cost of their care was \$31,019.60. Pursuant to the statute, the order provided Polejewski was to post a bond for the monthly costs by June 1, 2020.

¶6 Because Polejewski failed to post the \$31,019.60 bond within five days of the order's payment date, the District Court issued an Order of Forfeiture pursuant to § 27-1-434(6)(e), MCA. The Order of Forfeiture was stayed pending Polejewski's first appeal.

¶7 In *State v. Polejewski*, No. DA 20-0306, 2020 MT 287N, 2020 Mont. LEXIS 2484 (*Polejewski I*), this Court affirmed the District Court's June 4, 2020 order, declining review of Polejewski's constitutional arguments because they were first raised on appeal. The State exercised its right to forfeiture and released the animals for adoption.

¶8 One day after the Notice of Filing Remittitur for *Polejewski I* was filed, Polejewski filed a motion for reconsideration and a motion for injunction with the District Court. The District Court held a hearing on the motions on February 18, 2021. Both Polejewski and the State appeared and presented arguments. On March 26, 2021, the court issued its ruling denying Polejewski's motions. The court held Polejewski's constitutional claims were barred by res judicata and that the State had legally exercised its authority to release the

forfeited animals pursuant to this Court's affirmation, rendering her motion for injunction moot. Polejewski appeals.

¶9 Whether a district court correctly applied the doctrine of claim preclusion (*res judicata*) is a question of law this Court reviews *de novo* for correctness. *Reisbeck v. Farmers Ins. Exch.*, 2020 MT 171, ¶ 10, 400 Mont. 345, 467 P.3d 557. When the grant or denial of an injunction is based solely upon conclusions of law, we review the district court's conclusions for correctness. *City of Whitefish v. Bd. of Cty. Comm'rs of Flathead Cty.*, 2008 MT 436, ¶ 7, 347 Mont. 490, 199 P.3d 201.

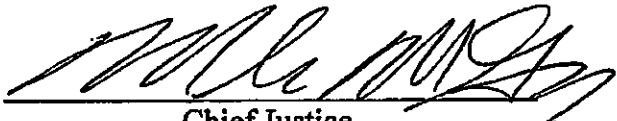
¶10 Claim preclusion bars issues in a second suit between the same parties or their privies that could have been litigated in a prior cause of action when the second suit is based on the same cause of action as the first. *Reisbeck*, ¶ 15. Finality is central to claim preclusion, *Touris v. Flathead County*, 2011 MT 165, ¶ 12, 361 Mont. 172, 258 P.3d 1 (using the term "*res judicata*"), and the doctrine promotes a judicial policy "favoring a definite end to litigation." *Somont Oil Co. v. A & G Drilling, Inc.*, 2008 MT 447, ¶ 8, 348 Mont. 12, 199 P.3d 241. Claim preclusion applies once a final judgment on the merits has been entered in an earlier action. *Reisbeck*, ¶ 15; *Touris*, ¶ 13. When there has been a full opportunity to present an issue, the determination of the court in that proceeding is final as to all those issues raised or which fairly could have been raised. *Somont Oil*, ¶ 11. Claim preclusion bars a claim if in the past and present actions (1) the parties or their privies are the same; (2) the subject matter is the same; (3) the issues are the same and relate to the same subject matter; and (4) the capacities of the parties are the same as to the subject matter and the issues between them. *Reisbeck*, ¶ 15; *Touris*, ¶ 13.

¶11 In *Polejewski I*, this Court held Polejewski waived her constitutional challenges by failing to properly preserve those objections before the district court at the May 26, 2020 hearing. Here, Polejewski again seeks to bring constitutional challenges based on the same cause of action as in *Polejewski I*. The parties, subject matter, issues, and capacities of the parties are identical to *Polejewski I*. The District Court correctly determined Polejewski's claims are barred by claim preclusion.

¶12 As to the injunction, the District Court correctly determined that Polejewski did not timely post the ordered bond and therefore the State was statutorily authorized to release the forfeited animals under § 27-1-434(6)(e), MCA. The District Court was correct that, because the animals had already been legally disposed of, Polejewski's injunction request was moot.

¶13 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court's interpretation and application of the law were correct.

¶14 Affirmed.

  
Chief Justice

We Concur:



Janie Adams

Ed M. Sullivan

Jim Rice  
Justices

CLERK OF DISTRICT COURT  
TINA HEERY

2021 MAR 26 PM 1:40

FILED  
BY K. Maw  
DEPUTY

**MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY**

STATE OF MONTANA,  
Petitioner,

vs.

PAMELA JO POLEJEWSKI,  
Respondent.

No. ADV-20-274

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

**INTRODUCTION**

The State of Montana filed a Petition for Animal Welfare and Cost of Care (the "Petition") under § 27-1-434, MCA. An evidentiary hearing on the Petition was held on May 26, 2020. The District Court concluded that the subject animals had been subjected to cruelty as defined in § 45-8-211, MCA, and granted the Petition. Respondent appealed to the Montana Supreme Court (DA 20-0306). The Supreme Court affirmed the District Court's Findings of Fact, Conclusions of Law and Order entered June 4, 2020, (document # 9 in the Court's file). The Supreme Court refused to rule on the issues raised by Respondent on appeal regarding the constitutionality of § 27-1-434, MCA, because those issues had not been raised at the District Court level. Notice of Filing Remittitur was filed December 3, 2020.

Respondent filed a Motion for Reconsideration and a Motion for Injunction on December 4, 2020. Briefing was concluded and a hearing on the Motions was held on February 18, 2021. Present were the Respondent, and the State was represented by Susan L. Weber, Chief Deputy

County Attorney, all via video. Both parties were given equal time to speak at the hearing and presented their arguments regarding the constitutional issues raised by Respondent.

Based on the evidence in this matter, the briefs, and the arguments presented at hearing, this Court makes the following:

**FINDINGS OF FACT**

1. This Court adopts and incorporates as though fully set forth herein, the District Court's Findings of Fact, Conclusions of Law and Order entered June 4, 2020, (document # 9 in the Court's file).
2. Following the fire at Respondent's property on the night of May 6, 2020, law enforcement officers witnessed the cruel state of the many animals on Respondent's property. Law enforcement obtained a valid search warrant on May 7, 2020. The search warrant was executed over the next several days during which 172 animals were removed from Respondent's property.
3. The search warrant was executed by members of law enforcement from the Cascade County Sheriff's Office who were accompanied by veterinarian, Dr. Kelly Manzer, personnel from the Great Falls Animal Shelter, and Paul Johnson, Department of Livestock Inspector.
4. The animals were assessed and placed at various locations depending on their species and medical needs. County authorities provided nutrition and shelter to the animals.
5. As needed, animals were thereafter examined by veterinarians Dr. Bjornstad and Dr. Gilligan.
6. On May 14, 2020, Respondent was charged with COUNT I: AGGRAVATED ANIMAL CRUELTY, a Felony, in violation of M.C.A. § 45-8-217(2); COUNT II:



CRUELTY TO ANIMALS (1ST OFFENSE), a Misdemeanor, in violation of M.C.A. § 45-8-211(1)(b); COUNT III: CRUELTY TO ANIMALS (2ND OFFENSE), a Felony, in violation of M.C.A. § 45-8-211(1)(c)(iii); COUNT IV: CRUELTY TO ANIMALS (3RD OFFENSE), a Felony, in violation of M.C.A. § 45-8-211(1)(c)(iii); and, COUNT V: CRUELTY TO ANIMALS (4TH OFFENSE), a Felony, in violation of M.C.A. § 45-8-211(1)(c)(iii). Respondent was arrested on those charges on May 15, 2020.

7. The State filed a Petition for Animal Welfare and Cost of Care Hearing on May 18, 2020 under § 27-1-434, MCA. A hearing on the Petition was held May 26, 2020. Testimony and evidence were presented by the State from law enforcement officers, animal shelter staff, and the veterinarians. Respondent and her attorney, Tyler Fries, were present and opposed the Petition at the hearing in May 2020.
8. Through testimony and spreadsheet evidence, the reasonable monthly cost of care for the animals removed from Respondent's property was established to be \$31,019.60 which included food, water, boarding, and veterinary care for over 100 animals.
9. This Court's Order dated June 4, 2020, determined the animals were subjected to cruelty as defined under § 45-8-211, MCA, and granted the State's Petition. The Order did not base its findings on any simple animal underfeeding or dehydration. The Court's findings of animal cruelty were significant and detailed. Some of the animals had to be put to sleep by a veterinarian due to significant injuries or infections.
10. Respondent failed to post a renewable bond of \$31,019.60. Thus, the State notified the Court and provided the Court with plans for the forfeited animals for their

ongoing care. The Court then issued its Order of Forfeiture and Order Closing file (document #11 in the Court's file).

11. The Order of Forfeiture was stayed at Respondent's request, pending appeal.
12. This Court's Order dated June 4, 2020, was affirmed by the Montana Supreme Court.
13. After the affirmation by the Montana Supreme Court and remittitur, the State exercised its right to forfeiture and disposal of the animals to appropriate shelters and homes.
14. Respondent has been afforded the right to be heard at every juncture so far in this process. She has attended every hearing and been afforded the right to make her record at both the District Court and Supreme Court levels. She has filed numerous motions and briefs with exhibits. All of Respondent's motions and briefs have been duly considered, except an excessive overlength brief that was filed without proper leave from the court.
15. Respondent has moved this Court for reconsideration of this Court's June 4, 2020, Order; for an injunction against the County to estop the County from disposing of the animals; and challenging the constitutionality of § 27-1-434, MCA, for the alleged reasons of double jeopardy, vagueness, and violations of her free speech.
16. The State responded to Respondent's motions. Respondent replied. At the hearing on February 18, 2021, Respondent and the State provided arguments in support of their positions.
17. Upon motion of the State at the February 18, 2021, hearing, the Court took judicial notice of the Montana Supreme Court case (DC 20-0306) including the briefs filed and final opinion.

### CONCLUSIONS OF LAW

1. The State's Petition for Animal Welfare and Cost of Care under § 27-1-434, MCA, has been litigated and fully adjudicated through:
  - a. the hearing on May 26, 2020;
  - b. this Court's June 4, 2020 Order; and
  - c. the affirmation of the June 4, 2020, Order by the Montana Supreme Court.
2. The new issues raised in Respondent's Motion for Consideration are barred by the doctrine of *res judicata* from re-litigation of issues already decided. *Olympic Coast Investment Inc. v. Wright*, 325 Mont. 307, 105 P.3d 743 (2005). As such, Respondent's Motion for Reconsideration must be denied.
3. Based on the Montana Supreme Court's affirmation of this Court's June 4, 2020, Order, the State legally exercised its authority to forfeit and dispose of the subject animals. Therefore, Respondent's Motion for Injunction is moot and must be denied.
4. Section 27-1-434, MCA, is clearly intended by the Legislature to be civil in nature and not criminal. Title 27 governs civil liability, remedies, and limitations.
5. The civil remedies provided for in § 27-1-434, MCA, do not amount to criminal punishments when applying the factors found in *Hudson v. United States*, 522 U.S. 93 (1997).
6. The cost of care bond amount of \$31,019.60 is not an affirmative restraint or disability against Respondent because the amount represents the uncontested cost of care for over one hundred animals.

7. The bond bears no similarity to a punitive fine but is more akin to restitution intended to restore and maintain an animal's health. This is evident in the statute's plain language. The statute provides that the bond amount is limited to the sum "necessary for 30 days of the animal's care," that only "actual costs incurred in caring for the animal" may be withdrawn from the bond, and that any remaining funds must be returned at the end of the criminal proceeding. § 27-1-434(6)-(7), MCA.
8. While § 27-1-434, MCA, requires a court to find by a preponderance of the evidence that an animal has been "subjected to cruelty," the focus is on the animal's condition, not the animal owner's mental state.
9. While this case may incidentally deter others from engaging in animal cruelty and neglect, that does not transform the statute into a criminal punishment. Further, the actions underlying cruelty to animals may lead to criminal prosecution but that does not transform the statute, § 27-1-434, MCA, and its civil remedy into a criminal punishment for double jeopardy purposes.
10. The purpose of § 27-1-434, MCA, includes the following goals: 1) to protect animals; 2) to protect animal owners by involving the court early in the case; 3) to ensure that animal owners receive due process and that a neutral judge makes the decisions related to the animals' care and placement; and 4) to protect taxpayers by having the animal owner pay the costs necessary to care for the mistreated animals.
11. The process set forth in § 27-1-434, MCA, rationally serves the above goals and is not intended to punish the animal owner criminally. Indeed, if an animal owner is acquitted of animal cruelty charges, the statute requires full reimbursement to the owner. The costs of care in this case were reasonable and supported by the evidence.

12. No appellate court has held that civil animal forfeiture statutes impose “criminal punishment” for purposes of the double jeopardy analysis. (*State v. Alirez*, 2020 WL 1820019).
13. Under the *Hudson* factors, jeopardy did not attach at this civil proceeding. This Court’s June 4, 2020, Order does not amount to a criminal punishment, and thus, Respondent’s constitutional challenge based on alleged double jeopardy must fail.
14. Section 27-1-434, MCA, does not encourage arbitrary enforcement and is not unconstitutionally vague as it was drafted to avoid subjective, arbitrary enforcement. Protecting property owners’ rights and protecting animal owners from frivolous claims was one of the primary legislative goals. Mont. H. Comm. On Agriculture *Hearing on SB 320*, 66<sup>th</sup> Leg., Reg. Sess. (Apr. 2, 2019), 15:12:20-15:12:45 (testimony of sponsor Senator Daniel Salomon). The bill ensures that complaints would go forward based on the testimony of experts and through the judicial process. In this case, the statutorily required licensed veterinarians and livestock inspector evaluated the animals and gave their testimony only 8 days after the filing of the Petition.
15. Section 27-1-434(1), MCA, provides that, upon seizure of an animal for alleged violation of animal cruelty criminal statutes, “the prosecutor” may petition for a cost of care hearing. There is no provision under this statute that allows an animal owner to file such an “Animal Welfare” petition as Respondent claims she was disallowed from doing in this case and therefore was denied her constitutional right to free speech. She was not and has been heard at every juncture.
16. Courts presume that statutes are constitutional, and Respondent has failed to overcome that presumption by proving beyond a reasonable doubt that § 27-1-434, MCA, is

unconstitutional. *Flathead Joint Board of Control v. State*, 289 Mont. 270, 405 P.3d 88 (2017).

**ORDER**

1. The doctrine of *res judicata* bars the re-litigation of matters settled by this Court's June 4, 2020, Order and Respondent's Motion for Reconsideration is hereby DENIED.
2. The State legally exercised its authority to forfeit and dispose of the subject animals pursuant to the Montana Supreme Court's affirmation of this Court's June 4, 2020, Order. Therefore, Respondent's Motion for Injunction is moot and is hereby DENIED.
3. Section 27-1-434, MCA, is a civil proceeding and therefore double jeopardy did not attach. This Court's June 4, 2020, Order does not amount to a criminal punishment. Thus, Respondent's constitutional challenge based on alleged double jeopardy is hereby DENIED.
4. Section 27-1-434, MCA, does not encourage arbitrary enforcement and is not unconstitutionally vague, and thus Respondent's constitutional challenge based on alleged vagueness is hereby DENIED.
5. Section 27-1-434(1), MCA, provides that, upon seizure of an animal for alleged violation of animal cruelty criminal statutes, "the prosecutor" may petition for a cost of care hearing. As there is no provision under this statute that allows Respondent to file such an "Animal Welfare" petition. Respondent's constitutional challenge, based on alleged violation of her right to free speech, is hereby DENIED.

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6. Respondent has failed to overcome the presumption that statutes are constitutional by proving beyond a reasonable doubt that §27-1-434, MCA, is unconstitutional under any of her theories. Her claims are hereby DENIED.

DATED this 26<sup>th</sup> day of March, 2021.

Michele R. Levine  
MICHELE LEVINE  
DISTRICT COURT JUDGE

c: CA/Susan Weber  
Respondent, 77 Wexford Lane, Great Falls, MT 59404

**CERTIFICATE OF MAILING**  
This is to certify that the foregoing was  
duly served by mail upon counsel of  
record at their address this 26  
day of March, 2021  
TINA HENRY, CLERK OF COURT  
By K. Morris DEPUTY