

Spoliating Tigers

Evidence Preservation in Captive Animal
Endangered Species Act Lawsuits

Three Cases

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC.,

Plaintiff,

v.

Case No: 8:16-cv-2899-T-36AAS

DADE CITY'S WILD THINGS, INC.,
STEARNS ZOOLOGICAL RESCUE &
REHAB CENTER, INC., KATHRYN P.
STEARNS and RANDALL E. STEARNS,

Defendants.

FINAL JUDGMENT AND PERMANENT INJUNCTION

Upon the Court's Amended Order overruling Defendants' Objections, adopting, confirming, and approving the Report and Recommendation of the Magistrate Judge, and granting in part PETA's Motion for Sanctions (Doc. 304), which the Court incorporates herein, and being fully advised in the premises, the Court enters this final judgment and permanent injunction. **IT IS ORDERED AND ADJUDGED** that:

1. A default judgment is hereby entered in favor of Plaintiff People For The Ethical Treatment of Animals, Inc., ("PETA") and against Defendants Kathryn P. Stearns, Randall E. Stearns, Dade City's Wild Things, Inc., and Stearns Zoological Rescue & Rehab Center, Inc. d/b/a Dade City's Wild Things.
2. Defendants Kathryn P. Stearns, Randall E. Stearns, Dade City's Wild Things, Inc., and Stearns Zoological Rescue & Rehab Center, Inc.'s d/b/a Dade City's Wild Things treatment of tigers violates the Endangered Species Act ("ESA") prohibition to take any endangered species set forth in 16 U.S.C. § 1538(a)(1)(B)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC.,)

Petitioner,)

v.)

WILDLIFE IN NEED AND
WILDLIFE IN DEED, INC.,
TIMOTHY L. STARK, AND
MELISA D. STARK,)

Respondents.)

Case No. 4:17-MC-00003-RLY-DML

CONSENT ORDER PRESERVING EVIDENCE AND WITHDRAWING RULE 27 PETITION

Petitioner People for the Ethical Treatment of Animals, Inc. ("PETA"), and Respondents Wildlife In Need and Wildlife In Deed, Inc., Timothy L. Stark, and Melissa D. Stark (collectively, the "*Respondents*") by their respective attorneys, stipulate, consent and agree to the entry of the following Order of the Court, and the Court being advised that the parties are in agreement,

IT IS HEREBY ORDERED THAT:

1. The Respondents shall preserve all tangible and documentary evidence relating to (and including) the tigers, lions, and hybrids thereof in Respondents' possession, custody, and control; and
2. The Verified Petition Pursuant to Fed. R. Civ. P. 27(a) to Perpetuate Evidence [Docket No. 1] is withdrawn.

Dated this 18th day of September, 2017.


RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

Distributed Electronically to Registered Counsel of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

PEOPLE FOR THE ETHICAL TREATMENT)
OF ANIMALS, INC.,)

Petitioner,)

v.)

JEFFREY LOWE,
LAUREN LOWE,
ERIK COWIE,
CHERYL SCOTT,
ERIC YANO,
TIGER KING, LLC,
GREATER WYNNWOOD EXOTIC
ANIMAL PARK, LLC, and
BIG CAT INSTITUTE,)

Respondents.)

Case No. CIV-20-1076-D

ORDER

This matter is before the Court on the Verified Petition to Perpetuate Evidence [Doc. No. 1] filed by Petitioner People for the Ethical Treatment of Animals, Inc. pursuant to Fed. R. Civ. P. 27(a). A hearing on the Petition was held November 30, 2020, at which local counsel for Petitioner and counsel for Respondents Jeffrey Lowe and Lauren Lowe appeared in person, and Petitioner's *pro hac vice* attorneys appeared by telephone. Based on the Petition and supporting Declarations [Doc. Nos. 3 and 21-1], the record in this case, and the arguments of counsel, this Court finds that the Verified Petition meets the requirements of Rule 27(a), and that perpetuating the testimony and evidence described in this Order may prevent a failure or delay of justice.

Evidence Preservation Tools

Pre-filing

- Preservation letter
- Preservation order under Rule 27, during 60-day notice period

Post-filing/Pre-Misconduct

- Preservation order (stipulated or upon motion)
- Preliminary injunctive relief

Post-Misconduct

- Motion for spoliation sanctions
- Inherent authority
- Contempt

PETA, Inc. v. Dade City's Wild Things, et al.



PETA, Inc. v. Dade City's Wild Things, et al.

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC.'S MOTION FOR SANCTIONS AND ORDER TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT

Plaintiff People for the Ethical Treatment of Animals, Inc. ("PETA") moves for sanctions against Dade City's Wild Things, Inc., Stearns Zoological Rescue & Rehab Center, Inc. d/b/a Dade City's Wild Things, Kathryn P. Stearns, and Randall E. Stearns (collectively "DCWT") based on DCWT's willful failure to obey this Court's July 12, 2017 Order (ECF No. 63) and July 14, 2017 Order (ECF No. 69) (collectively "July Orders") and also based on DCWT's bad faith spoliation of the evidence central to this Endangered Species Act ("ESA") citizens-suit.

Specifically, PETA requests: (1) entry of a default judgment against DCWT; (2) dismissal with prejudice of DCWT's counterclaims against PETA; (3) and payment of PETA's reasonable expenses, including attorney's fees and costs, caused by DCWT's failure to obey the July Orders, which resulted in PETA expending considerable sums for a July 20, 2017 Site Inspection for which DCWT refused to grant PETA access. PETA further moves the Court to

PETA, Inc. v. Dade City's Wild Things, et al.

AMENDED ORDER

This cause comes before the Court upon the Amended Report and Recommendation filed by Magistrate Judge Amanda Arnold Sansone (Doc. 282). In the Amended Report and Recommendation, the Magistrate Judge recommends the Court grant, in part, Plaintiff People for the Ethical Treatment of Animals, Inc.'s ("PETA") Motion for Sanctions and Order to Show Cause Why Defendants¹ Should Not Be Held in Contempt (Doc. 76) as follows: (a) enter a default judgment against Defendants; (b) dismiss Defendants' Amended Counterclaims; (c) award PETA its reasonable attorneys' fees and expenses incurred as a result of Defendants' failure to comply with the July discovery orders, from the time of the initial discovery violation through the filing of the March 2018 Report and Recommendation (Doc. 230); and (d) deny PETA's request for an order to show cause why Kathryn Stearns and Randall Stearns should not be held in contempt. The

Fed. R. Civ. P. 37(b)(2)(A)

If a party or a party's officer, director, or managing agent—or a witness designated under [Rule 30\(b\)\(6\)](#) or [31\(a\)\(4\)](#)—fails to obey an order to provide or permit discovery . . . the court where the action is pending may issue further just orders. They may include the following:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;
- (vi) rendering a default judgment against the disobedient party; or
- (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

Spoliation Sanctions

“Sanctions the Court may impose against a defendant for spoliation include, but are not limited to, the following: default judgment, adverse inference or rebuttable presumption instructions to the jury, striking pleadings, and an award of fees and costs incurred by the injured party as a result of the spoliation.”

Swofford v. Eslinger, 671 F. Supp. 2d 1274, 1280
(M.D. Fla. 2009).

Spoliation Sanctions

“A party seeking an adverse inference instruction (or other sanctions) based on the spoliation of evidence must establish the following three elements:

- (1) that the party having control over the evidence had an obligation to preserve it at the time it was destroyed;
- (2) that the records were destroyed with a ‘culpable state of mind’; and
- (3) that the destroyed evidence was ‘relevant’ to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense.

In this circuit, a ‘culpable state of mind’ for purposes of a spoliation inference includes ordinary negligence. When evidence is destroyed in bad faith (*i.e.*, intentionally or willfully), that fact alone is sufficient to demonstrate relevance. By contrast, when the destruction is negligent, relevance must be proven by the party seeking the sanctions.”

Zubulake v. UBS Warburg LLC, 220 F.R.D. 212, 220 (S.D.N.Y. 2003).

PETA, Inc. v. Dade City's Wild Things, et al.



*PETA, Inc. v. Wildlife in Need and
Wildlife in Deed, et al.*



Fed. R. Civ. P. 27(a)

(3) Order and Examination. If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. **The depositions may then be taken under these rules, and the court may issue orders like those authorized by Rules 34 and 35.**

Stipulated Preservation Orders

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

PEOPLE FOR THE ETHICAL)
TREATMENT OF ANIMALS, INC.,)

Petitioner,)

v.)

WILDLIFE IN NEED AND)
WILDLIFE IN DEED, INC.,)
TIMOTHY L. STARK, AND)
MELISA D. STARK,)

Respondents.)

Case No. 4:17-MC-00003-RLY-DML

**CONSENT ORDER PRESERVING EVIDENCE
AND WITHDRAWING RULE 27 PETITION**

Petitioner People for the Ethical Treatment of Animals, Inc. ("*PETA*"), and Respondents Wildlife In Need and Wildlife In Deed, Inc., Timothy L. Stark, and Melisa D. Stark (collectively, the "*Respondents*") by their respective attorneys, stipulate, consent and agree to the entry of the following Order of the Court, and the Court being advised that the parties are in agreement,

IT IS HEREBY ORDERED THAT:

1. The Respondents shall preserve all tangible and documentary evidence relating to (and including) the tigers, lions, and hybrids thereof in Respondents' possession, custody, and control; and

2. The Verified Petition Pursuant to Fed. R. Civ. P. 27(a) to Perpetuate Evidence [Docket No. 1] is withdrawn

Inherent Authority

Case 4:17-cv-00186-RLY-DML Document 338 Filed 05/20/20 Page 1 of 15 PageID #: 7317

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC.,

Plaintiff,

v.

WILDLIFE IN NEED AND
WILDLIFE IN DEED, INC.,
TIMOTHY L. STARK,
MELISA D. STARK, AND
JEFF LOWE,

Defendants.

Case No. 4:17-cv-00186-RLY-DML

**BRIEF IN SUPPORT OF PETA'S EMERGENCY
MOTION FOR PRESERVATION OF BIG CATS**

Plaintiff People for the Ethical Treatment of Animals, Inc. ("**PETA**"), through its counsel, moves the Court under its inherent authority to manage its proceedings and preserve evidence and Fed. R. Civ. P. 37(b)(2)(A) to enter an order setting a prompt hearing date on which it will hear evidence regarding reputable wildlife sanctuaries accredited by the Global Federation of Animal Sanctuaries ("**GFAS**") to preserve the lions, tigers, and hybrids thereof ("**Big Cats**") at issue in this litigation.

PRELIMINARY STATEMENT

Two Big Cats at the Wildlife in Need ("**WIN**") facility—a young female lion, Nera, and an elderly tiger, Jomba—died last week. Evidence produced by Defendants Tim Stark, Melisa Stark, and WIN (collectively, "**WIN Defendants**") shows that at least one of these Big Cats—Nera—likely died because of WIN Defendants' grossly inadequate medical care. Mr. Stark also admits that he does not have a veterinarian willing to physically examine the Big Cats, and that this state of affairs killed Nera.

Inherent Authority

The court “has the inherent authority to manage judicial proceedings and to regulate the conduct of those appearing before it.”

Fair Hous. Ctr. of Cent. Indiana, Inc. v. Smitley,
No. 1:16-CV-880-WTL-DML, 2018 WL 348154,
at *5 (S.D. Ind. Jan. 10, 2018).

*PETA, Inc. v. Wildlife in Need and
Wildlife in Deed, et al.*



PETA, Inc. v. Jeffrey Lowe, et al.



Document Preservation – *PETA v. Lowe*

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

PEOPLE FOR THE ETHICAL TREATMENT)
OF ANIMALS, INC.,)

Petitioner,)

v.)

Case No. CIV-20-1076-D

JEFFREY LOWE,)
LAUREN LOWE,)
ERIK COWIE,)
CHERYL SCOTT,)
ERIC YANO,)
TIGER KING, LLC,)
GREATER WYNNEWOOD EXOTIC)
ANIMAL PARK, LLC, and)
BIG CAT INSTITUTE,)

Respondents.)

ORDER

This matter is before the Court on the Verified Petition to Perpetuate Evidence [Doc. No. 1] filed by Petitioner People for the Ethical Treatment of Animals, Inc. pursuant to Fed. R. Civ. P. 27(a). A hearing on the Petition was held November 30, 2020, at which local counsel for Petitioner and counsel for Respondents Jeffrey Lowe and Lauren Lowe appeared in person, and Petitioner's *pro hac vice* attorneys appeared by telephone. Based on the Petition and supporting Declarations [Doc. Nos. 3 and 21-1], the record in this case, and the arguments of counsel, this Court finds that the Verified Petition meets the requirements of Rule 27(a), and that perpetuating the testimony and evidence described in this Order may prevent a failure or delay of justice.

United States v. Lowe

AO 196 (Rev. 04/10) Application for a Search Warrant

UNITED STATES DISTRICT COURT

for the
Eastern District of Oklahoma

In the Matter of the Search of

*(Briefly describe the property to be searched
or identify the person by name and address)*

THE SUBJECT PREMISES 21619 JIMBO ROAD, 21469
JIMBO ROAD AND 21371 JIMBO ROAD,
THACKERVILLE, OKLAHOMA 73459 AND SEIZURE OF
SPECIFIED ANIMALS IDENTIFIED THEREIN

Case No. _____

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

Tiger King Park (a zoo) and all structures located at 21619 Jimbo Road, 21469 Jimbo Road, and 21371 Jimbo Road, Thackerville, Oklahoma 73459, described with more particularity in Attachment B-1.

located in the Eastern District of Oklahoma, there is now concealed *(identify the person or describe the property to be seized)*:

62 Big Cats and a jaguar, identified in Attachment C-1, as well as other Big Cats, including Big Cats aged 1 year and younger.

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- evidence of a crime;
- contraband, fruits of crime, or other items illegally possessed;
- property designed for use, intended for use, or used in committing a crime;
- a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section 18 U.S.C. sec. 1540(e)(4)(A)	<i>Offense Description</i> The animals to be seized have been taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of [the Endangered Species Act or] any regulation made pursuant thereto," and, thus, are subject to forfeiture.
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The application is based on these facts:

See attached affidavit and supporting material.

- Continued on the attached sheet.
- Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.



Applicant's signature

KEVIN L. SEILER, SPECIAL AGENT

Printed name and title

Sworn to before me and signed in my presence.

Date: _____

Judge's signature

City and state: _____

Printed name and title

Citation of Evidence in *US v. Lowe*

nineteen female Big Cats were still being housed with male Big Cats as of May 6, 2021. In the transcript of testimony provided on January 22, 2021, by Erik Cowie in *PETA v. Lowe*, No. 20-cv-1076 (W.D. Okla.), Mr. Cowie, one of the head animal caregivers at Tiger King Park, acknowledged that there are “active breeders” at Tiger King Park and noted, in a few cases, that particular females, including Lisa Marie are housed with males and are not spayed. He noted that, he maintains a breeding log and, as of the date of the deposition, Simba (a male lion) and Mani (a female lion-tiger hybrid) were actively breeding as were Opie (a male tiger) and Lyla (a female lion). APHIS inspectors also observed a known breeding pair—Jagger (a male tiger) and Stevie (a female tiger)—breeding during the December 15, 2020 inspection.

14. Additionally, on April 30, 2021, I received information conveyed to a USDA Investigative and Enforcement Services investigator that a person with lawful access to a neighboring property that shares a fence with the Lowes’ zoo personally observed “last week” a Big Cat juvenile estimated to be under the age of six months in the Lowes’ zoo with an adult Big Cat. I also received information on April 30, 2021 conveyed to a USDA Office of Inspector General Special Agent that a person with lawful access to the property has recently observed two cubs tan in color with spots and patterned fur on the property. This description is consistent with lion-tiger hybrids. The person described the animal as between the size of a house cat and a medium sized dog, which would put the Big Cats at around 3 to 4 months. The Lowes have not reported the addition of any Big Cat cubs or juveniles to the United States.

15. According to the December 16, 2020 inventory provided by the Lowes to the United States and information provided by Tiger Haven, a Tennessee facility that accepted a litter of Big Cat cubs in mid-December, between November 2019 and November 2020, there were at least 9 litters of Big Cat cubs. Yet, in the last five months, the Lowes have not reported a single litter to the United States.

16. Based on my training and experience and information provided to me by USDA, I understand that Big Cat cubs derive the most profit from Big Cat cubs because members of the public will pay to directly interact with them.

17. On January 23, 2021, Jeffrey Lowe testified that he may have housed four lion juveniles in his house during the summer of 2020. See *PETA v. Lowe*, No. 20-cv-1076 (W.D. Okla.), Jeffrey Lowe’s January 23, 2021 Deposition Transcript. During that deposition, he also testified that he permitted at least one employee to remove some Big Cat cubs from the zoo to

stay overnight at the employee’s home. In light of the number of female Big Cats housed with male Big Cats, including a number of known breeding pairs, Erik Cowie’s and Jeff Lowe’s testimony, and information provided by USDA, it is likely that additional cubs have been born at the PREMISES that have not been observed by USDA and that there soon will be additional cubs born at the PREMISES.

18. Based on Dr. Laurie Gage’s assessment of the condition of the 68 Big Cats and the jaguar, Jeffrey and Lauren Lowe’s failure to provide them with adequate care, I concur that the animals will be at great risk of further harm and harassment in violation of the ESA if they are not seized by the United States. Therefore, the United States requests a search and seizure warrant authorizing the seizure of these Big Cats from the PREMISES.

V. Statutory Basis for Forfeiture

19. Congress enacted the ESA “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such [species].” 16 U.S.C. § 1531(b).

20. The ESA defines the term “person” to include “an individual, corporation, partnership, trust, association, or any other private entity.” 16 U.S.C. § 1532(13). The ESA defines the term “species” to include fish or wildlife that interbreed when mature and the term “fish and wildlife” as any member of the animal kingdom, including mammals, and any “offspring thereof.” 16 U.S.C. §§ 1532(16), 1532(8). The ESA defines an “endangered species” as “any species which is in danger of extinction,” 16 U.S.C. § 1532(6), and a “threatened species” as “any species which is likely to become an endangered species within the foreseeable future,” *id.* § 1532(20).

21. Except as authorized by permit, the ESA makes it unlawful for any person to “take” any “endangered species of fish or wildlife” within the United States. 16 U.S.C. § 1538(a)(1)(B); 50 C.F.R. § 17.21(a), (c)(1). Likewise, except as authorized by permit, the ESA prohibits any person from taking any “threatened species of fish or wildlife” within the United States listed prior to September 26, 2019, unless the U.S. Fish and Wildlife Service has issued a species-specific 4(d) rule. 16 U.S.C. § 1538(a)(1)(G); 50 C.F.R. § 17.31(a), (c). The ESA also makes it unlawful for any person subject to the jurisdiction of the United States to attempt to commit take, to solicit another to commit take, or to cause take to be committed with such endangered or threatened species. 16 U.S.C. § 1538(g); 50 C.F.R. §§ 17.21(a), 17.31(a), (c).

PETA, Inc. v. Jeffrey Lowe, et al.

PETA Moves to Join Federal Lawsuit Against Jeff Lowe

Share

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For Immediate Release:

April 29, 2021

Contact:

David Perle 202-483-7382

Thackerville, Okla. – To help put notorious animal exhibitor and *Tiger King* subject Jeff Lowe out of business forever, PETA has just filed a motion to intervene as a co-plaintiff in the federal government's lawsuit against him, his co-defendants, and Tiger King Park.

The U.S. Department of Justice's (DOJ) lawsuit alleges violations of the Endangered Species Act (ESA) and the federal Animal Welfare Act (AWA), including illegally taking, possessing, and transporting protected animals and placing the health of animals in serious danger. Preliminary rulings in that case have already relied heavily on precedent PETA won in an ESA lawsuit against Lowe's former business partner Tim Stark of *Wildlife in Need*. The DOJ's suit seeks, among other forms of relief, for the defendants to relinquish all federally protected species in their possession. If granted the right to proceed as a co-plaintiff, PETA will work to have all animals under the defendants' control transferred to reputable facilities.

"All animals who have survived Lowe deserve a chance to enjoy more natural lives in a safe and comfortable environment," says PETA Foundation Deputy General Counsel for Captive Animal Law Enforcement Brittany Peet, who appeared on *Tiger King*. "Lowe must never be allowed to exploit animals again."

Lowe has already lost an AWA license revocation lawsuit from the U.S. Department of Agriculture and still faces a federal ESA lawsuit from PETA in the Southern District of Indiana. Last year, PETA and The Wild Animal Sanctuary in Colorado rescued three juvenile lions from his custody.

PETA—whose motto reads, in part, that "animals are not ours to use for entertainment"—opposes speciesism, a human-supremacist worldview. For more information, please visit [PETA.org](https://peta.org) or follow the group on [Twitter](#), [Facebook](#), or [Instagram](#).

Thank you!