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Citizens for Balanced Use v. Maurier

Carolyn A. Sime

University of Montana School of Law, carolynsime@gmail.com

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Citizens for Balanced Use v. Maurier, 2013 MT 166, 370 Mont. 410, 303 P.3d 794.

Carolyn A. Sime

I. ABSTRACT

The Montana Supreme Court held that the district court erred as a matter of law and abused its discretion when it granted a preliminary injunction preventing Montana Department of Fish, Wildlife & Parks (DFWP) from subsequently transferring some Yellowstone quarantined bison from Ft. Peck tribal lands to Ft. Belknap tribal lands. DFWP did not violate the DFWP-specific statute barring it from transferring bison to “public and private lands” without landowner consent, a management plan, and public hearings because tribal lands are neither public nor private lands. Tribal lands are in a special class, and the United States and Tribes retain jurisdiction. Furthermore, DFWP did not violate the law because the Legislature had expressly granted the state authority to transfer bison to Tribes elsewhere in the Montana Code. The Court reversed the district court and vacated the preliminary injunction.

II. INTRODUCTION

In *Citizens for Balanced Use v. Maurier*,¹ the Montana Supreme Court vacated a district court’s preliminary injunction that barred DFWP from transferring Yellowstone quarantined bison from Ft. Peck tribal lands to Ft. Belknap tribal lands.² Plaintiff and Appellees Citizens for Balanced Use (“CBU”) challenged DFWP’s compliance with Mont. Code Ann. §§ 87-1-216-217, arguing that since DFWP’s initial bison transfer from the Yellowstone area to Ft. Peck tribal lands violated the statutes, subsequent transfers to Ft. Belknap would be similarly unlawful.³ CBU sought and obtained an injunction prohibiting movement of any Yellowstone bison,

¹ 2013 MT 166, 370 Mont. 410, 370 P.3d 794.

² *Id.* at ¶ 32.

³ *Id.* at ¶¶ 8, 12.

including those initially released on the Ft. Peck Reservation, until DFWP complied with the law.⁴ DFWP and Intervenor Defenders of Wildlife and National Wildlife Federation appealed.

To decide if the district court correctly ordered a preliminary injunction, the Court first analyzed whether Mont. Code Ann. § 87-1-216(4) applied to tribal lands and governed transfers from Ft. Peck to Ft. Belknap.⁵ The Court held the statute did not apply to tribal lands because reservation and tribal lands were neither public nor private lands.⁶ Therefore, the district court wrongfully issued the preliminary injunction, which the Court reversed and vacated.⁷

III. FACTUAL AND PROCEDURAL BACKGROUND

The State of Montana, represented by DFWP and Montana Department of Livestock (“MDOL”), is a member of the Interagency Bison Management Plan.⁸ Bison which seasonally migrate into Montana from Yellowstone National Park pose challenges.⁹

A quarantine program to isolate and study the disease brucellosis in genetically-pure Yellowstone bison began with 100 calves in 2004.¹⁰ The goal was “to create a brucellosis-free herd that could be relocated out of the Yellowstone area as an alternative to commercial slaughter” and other controls.¹¹ Study animals repeatedly tested negative, as did their offspring born in the quarantine facility.¹² In the final phase, about 60 bison would be relocated to offsite

⁴ *Id.* at ¶ 8.

⁵ *Citizens for Balanced Use*, ¶ 12 (citing Mont. Code Ann. § 87-1-216(4) (2011) providing that “the department may not release, transplant, or allow wild buffalo or bison on any private or public land in Montana that has not been authorized for that use by the private or public owner”).

⁶ *Id.* at ¶ 19.

⁷ *Id.* at ¶¶ 31-32.

⁸ *Id.* at ¶ 2.

⁹ *Id.* at ¶ 3. *See* n.1 stating brucellosis infects some Yellowstone Park bison. Brucellosis is of concern because it is a serious disease that can affect humans and domestic livestock. Bison can spread the disease back to cattle. Montana achieved its brucellosis-free designation in 1985 after decades of effort and expense. The designation allows cattle producers to ship cattle without testing them first.

¹⁰ *Citizens for Balanced Use*, ¶ 3.

¹¹ *Id.*

¹² *Id.*

pastures for another five years of continued quarantine and testing.¹³ In December 2011, DFWP decided to transfer the animals to the Ft. Peck Reservation.¹⁴ DFWP and Ft. Peck Tribal authorities completed a Memorandum of Understanding on March 16, 2012.¹⁵ The Tribe would continue brucellosis testing and manage the animals and DFWP would later transfer half of them to the Ft. Belknap Reservation.¹⁶ Most bison were transported to Ft. Peck on March 19, but a few more animals arrived on March 22.¹⁷

CBU obtained a temporary restraining order against the Ft. Peck transfer on March 22, but all the animals had already arrived.¹⁸ Nonetheless, the order enjoined transferring bison from Ft. Peck to Ft. Belknap.¹⁹ The district court issued a preliminary injunction on May 8, which prohibited DFWP from: (1) entering agreements with any Tribal entity or public or private landowner to transplant Yellowstone bison; (2) transferring any bison from the Yellowstone brucellosis quarantine facilities; and (3) transferring any bison from Ft. Peck to Ft. Belknap.²⁰ The district court concluded Mont. Code Ann. § 87-1-216(4) barred DFWP from transferring Yellowstone bison to tribal lands because the plain meaning encompassed tribal lands and the statute was not ambiguous.²¹ The State of Montana, through DFWP, appealed the district court's preliminary injunction order.

IV. ANALYSIS

On appeal, the Court had to decide whether the district court properly entered the preliminary injunction. After analyzing whether Mont. Code Ann. § 87-1-216 governed

¹³ *Id.* at ¶ 4.

¹⁴ *Citizens for Balanced Use*, ¶ 4.

¹⁵ *Id.* at ¶ 5.

¹⁶ *Id.* at ¶ 7.

¹⁷ *Id.* at ¶¶ 5, 7-8.

¹⁸ *Id.* at ¶ 6.

¹⁹ *Id.* at ¶ 8.

²⁰ *Id.*

²¹ *Id.* at ¶¶ 8, 16.

subsequent bison transfers from the Ft. Peck Reservation to the Ft. Belknap Reservation, the Court decided the statute did not apply to bison transfers to tribal lands.²² The Court concluded the district court improperly entered the preliminary injunction and vacated it.²³

The Court reviews a district court's grant of a preliminary injunction for a manifest abuse of discretion which is "obvious, evident, or unmistakable" and for correctness.²⁴ As an extraordinary remedy, a preliminary injunction should be cautiously granted and based in sound judicial discretion.²⁵ The court sits in equity when considering a preliminary injunction, and the applicant must show a *prima facie* case that irreparable injury will be suffered before the case is fully litigated.²⁶ Here, the Court found three main grounds for the injunction's infirmity.

First, the district court incorrectly concluded the phrase "private or public land" in Mont. Code Ann. § 87-1-216(4) included tribal lands.²⁷ The Court held that, as a matter of law, the statute should not be construed to include tribal lands because reservations and tribal lands belong in a special class, being neither public nor private property.²⁸ Public lands include Congressional land grants or state-owned lands acquired by gift, grant, devise, or exchange, whereas private property is owned by individuals.²⁹ The Montana Constitution confers a special status: "all land owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States."³⁰ Statutory schemes should not be

²² *Citizens for Balanced Use*, ¶¶ 12, 16.

²³ *Id.* at ¶¶ 31-32.

²⁴ *Id.* at ¶ 11.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at ¶ 16.

²⁸ *Citizens for Balanced Use*, ¶¶ 18-19 (quoting *Big Spring v. Conway*, 2011 MT 109, ¶30, 360 Mont. 370, 255 P.3d 121 "the United States and the Tribes retain jurisdiction over 'Indian Country'").

²⁹ *Id.* at ¶ 18.

³⁰ *Id.* at ¶ 19 (quoting Mont. Const. art. X, § 11).

interpreted to impliedly include Tribes and tribal lands without “the clearest of reasons to do so.”³¹

The Montana Legislature did not intend that the phrase “private or public land in Montana” in Mont. Code Ann. § 87-1-216 encompass tribal lands, and it did not intend to prohibit transferring quarantined Yellowstone bison to Ft. Peck and Ft. Belknap.³² That statute does not specifically mention tribal lands whereas the Legislature expressly referred to Tribes or tribal lands elsewhere in the code when it intended to do so.³³ Moreover, the Legislature granted MDOL express authority under Mont. Code Ann. § 81-2-120(1)(d)(ii) to transfer bison to Tribes who participate in disease control programs.³⁴

Second, the district court abused its discretion by not fully considering and balancing the equity interests of all involved, particularly the state.³⁵ As a matter of public policy, the Court found DFWP’s quarantine and relocation program to be a “reasoned and viable” alternative, in addition to the existing approaches of hazing, confinement, and commercial slaughter.³⁶ The district court “failed to weigh the equities of the interest of the State of Montana” to constructively address the challenges posed by migrating bison.³⁷

Moreover, the State’s stated policy established that disease-free Yellowstone bison can be transferred to Tribes who agree to have them.³⁸ The Court noted that “recovery of and reconnection to the wild genetic strain of Yellowstone bison represent important goals for the Tribes.”³⁹ The district court acknowledged the Tribes’ interests, but the Montana Supreme Court

³¹ *Citizens for Balanced Use*, ¶ 18.

³² *Id.* at ¶ 20.

³³ *Id.* at ¶¶ 16-17; *See* ¶ 17 for additional express statutory references to Tribes.

³⁴ *Id.* at ¶ 16.

³⁵ *Id.* at ¶ 28.

³⁶ *Id.* at ¶ 26.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at ¶ 27.

elaborated further: “This interest is long-held and deeply rooted in the history, beliefs, and traditions of the Tribes.”⁴⁰ Prior to granting the preliminary injunction, the district court should have weighed the equities of all interests, not just the plaintiffs.⁴¹ The Court held that the district court erroneously relied on Mont. Code Ann. § 27-19-201(2) to issue a preliminary injunction.⁴²

Third, the district court erroneously relied on Mont. Code Ann. § 27-19-201(3) to conclude its judgment would be rendered ineffectual in the absence of an injunction.⁴³ The Court reasoned that any concern about an ineffectual judgment due to ongoing violations of plaintiffs’ rights was predicated on a conclusion that Mont. Code Ann. § 87-1-216 barred DFWP’s transfer of quarantined Yellowstone bison to tribal lands.⁴⁴ The Court held to the contrary: Section 87-1-216 did not apply to DFWP’s bison transfer and that Mont. Code Ann. § 81-2-120 already expressly allowed transferring bison to Tribes as long as disease control measures were in place (as here, where the animals originated as disease-free quarantine study subjects).⁴⁵ Section 81-2-120 Mont. Code Ann. imposes fewer requirements on MDOL prior to transferring bison to Tribes, implying that any irreparable harm alleged under Mont. Code Ann. § 87-1-216 would be no worse than under Mont. Code Ann. § 81-2-120.⁴⁶

V. CONCLUSION

In vacating the district court’s preliminary injunction, the Montana Supreme Court clarified that the State of Montana through DFWP can transfer Yellowstone area quarantined

⁴⁰ *Citizens for Balanced Use*, ¶ 27.

⁴¹ *Id.* at ¶ 28.

⁴² *Id.* (citing Mont. Code Ann. § 27-19-201(2) providing that an injunction order may be granted “when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant”).

⁴³ *Id.* at ¶¶ 29-31 (citing Mont. Code Ann. § 27-19-201(3) providing that an injunction order may be granted “when it appears during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual”).

⁴⁴ *Id.* at ¶ 30.

⁴⁵ *Id.*

⁴⁶ *Id.* at ¶¶ 16, 30.

bison to Tribes because the Legislature expressly granted that authority and because tribal lands are neither public nor private lands under Mont. Code Ann. § 87-1-216(4). Having sufficient grounds to find that the district court wrongfully issued a preliminary injunction as a matter of law and abused its discretion, the Court did not reach any other issues raised by the parties.⁴⁷

Whether the entity transferring the bison is DFWP or MDOL mattered less to the Court in so far as the Legislature had clearly articulated State policy permitting the transfer of disease-free Yellowstone bison to Tribes.⁴⁸ *Citizens for Balanced Use v. Maurier* eliminated a potential contradictory interpretation of the Montana Code and upheld one alternative to commercial slaughter and other control measures for this iconic species when disease-prone Yellowstone National Park bison migrate into Montana seasonally. In so doing, the case clears one obstacle from the paths of other Tribes who may similarly desire to restore disease free, genetically-pure Yellowstone bison to their respective reservations.

⁴⁷ *Citizens for Balanced Use*, ¶ 31.

⁴⁸ *Id.* at ¶ 26.