

S232622

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IN THE SUPREME COURT OF CALIFORNIA

Deputy

AARON LEIDER,

Plaintiff and Appellant,

v.

JOHN LEWIS, et al.,

Defendants and Appellants.

After a Decision by the Court of Appeal, Second Appellate
District, Case No. B244414

REPLY IN SUPPORT OF PETITION FOR REVIEW

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I. INTRODUCTION.

The Answer to Petition For Review (Raising Additional Issues) does neither thing its title promises. It does not answer the issues the City of Los Angeles and John Lewis presented for review, nor does it present any review-worthy issue of its own.¹ In response to the city and Lewis's arguments in support of each of their three issues, the Answer to Petition For Review (hereafter Answer) responds only to subparts of two issues. One is the conflict between the Court of Appeal's majority decision and *Animal Legal Defense Fund v. Regents of the University of California* (2015) 239 Cal.App.4th 1286 (*ALDF*), which Aaron Leider concedes but asserts will disappear as lower courts see that *ALDF* is clearly wrong. Yet Leider fails to explain why this is so or to address *ALDF* beyond his assertion. Leider's other points similarly lack substance.

Leider's three issues presented for review consist of no more than asserting the lower courts abused discretion by refusing to do their jobs and find for him. (Answer, p. 1.) Claims of lower court error are not within the Supreme Court's role of ensuring uniformity of decision and deciding important legal questions. The Supreme Court should grant review of the issues the city and Lewis present and decline to review Leider's.

¹ This brief follows the conventions stated in footnote 1 of the Petition For Review.



II. THE ANSWER TO THE PETITION FOR REVIEW MAKES NO REAL RESPONSE TO THE ISSUES THE CITY AND LEWIS PRESENT FOR REVIEW.

The Petition For Review presents three issues. One, whether Code of Civil Procedure section 526a (section 526a) is an exception to Civil Code section 3369's bar against enforcing the criminal law in courts of equity. Two, whether someone caring for an animal may be guilty of a crime, here a violation of Penal Code section 597t (section 597t), for conduct not addressed in the statute and legal under applicable regulations. Three, whether all issues going to a case's merits are subject to the law of the case doctrine regardless whether they were presented and determined in a prior appeal.

The city and Lewis respond to the Answer's points as follows:

- Before 1977, Civil Code section 3369 (section 3369) provided, "Neither specific nor preventative relief can be granted to ... enforce a penal law, except in a case of nuisance or unfair competition." (*Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 130, fn. 13, superceded by statute on another ground as stated in *Arias v. Superior Court* (2009) 46 Cal.4th 969.) In 1977, the Legislature moved the unfair competition law from the Civil Code to the Business and Professions Code, and added "or as otherwise provided by law" in place of "except in a case of nuisance or unfair competition." (1 Augmented CT 32, 35-36.) Leider has argued that this amendment added section 526a to section 3369's

exceptions and overruled *Nathan H. Schur v. City of Santa Monica* (1956) 47 Cal.2d 11. (See, e.g., Answer, p. 2.) Neither the trial court nor the Court of Appeal, majority or dissent, agreed with him, and the dissent thoughtfully explained why there was no support for his position in the legislative history of the 1977 amendment. (Dis. Opn., pp. 17-22; see also Appellants' Opening Brief, pp. 38-44.) "In light of the case law, the language of the statute, and the legislative history, there is no basis to conclude that by amending section 3369 to replace 'unfair competition' with 'as otherwise provided by law,' the Legislature intended to effect a change in the law[.]" (Dis. Opn., pp. 21-22.) The city and Lewis's failing to mention Leider's losing argument thus means nothing, contrary to his accusations. (Answer, p. 2.)

- The Answer asserts that "no one even requested ... a criminal finding" against any city employee, so the city and Lewis's section 3369 issue is not motivated by genuine concern for the criminal exposure of Zoo personnel. (Answer, p. 3.) But the trial court found "a violation of Penal Code section 597t[.]" and the judgment names Lewis. (6 CT 1363-1364.) Beyond this, the concern with enforcing criminal laws in courts of equity is not limited to the initial action seeking to enjoin a crime, but also with subsequent contempt proceedings to enforce the injunction: "[A]fter imprisonment and fine *for violation of the equity injunction*, [the defendant] may be subjected under the criminal law to similar punishment for the same



acts.” (*People v. Lim* (1941) 18 Cal.2d 872, 880, emphasis added.) The Court of Appeal’s majority decision virtually assures these proceedings by remanding for supervision of the city and Lewis’s compliance with the injunctions, as the dissent points out. (Slip Opinion, p. 28; Dis. Opn., p. 2.) The city and Lewis request review because many other government employees will wrongly face criminal liability under section 526a without it, and because governments across California will face section 526a actions seeking to enforce criminal laws that they should not face.

- Leider concedes *ALDF* and the decision here “are in conflict.” (Answer, p. 3.) The conflict, he asserts, is immaterial because *ALDF* is based on “truly no logic or law[,]” so trial courts will “quickly see [its] defects” which will “eliminate any conflict over time.” (Answer, p. 3.) Or not. Four of the six appellate justices on the two panels were against Leider’s and the majority’s position here, and a compelling dissent treats *ALDF* favorably. (Dis. Opn., pp. 16-17.) Trial courts will hardly disregard *ALDF* out of hand. Indeed, it is hard to imagine a conflict more vexing to lower courts.

- Leider’s only response to the city and Lewis’s second issue, based on the found violations of section 597t, is to assert that the regulation specifying the size and substrate of elephant enclosures, 14 California Code of Regulations section 671.3, violates section 597t and is therefore void. (Answer, p. 5.) He derides the regulation as committee-created, but the



Legislature directed the Fish and Game Commission to promulgate it, as with any other regulation. (Fish & G. Code, §§ 30, 2120.) He next relies on *Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 321, but fails to engage in the necessary analysis by comparing specific statutory and regulatory language to determine whether they conflict. On their face, section 597t (requiring an adequate exercise area) and 14 California Code of Regulations section 671.3, subdivision (a)(10) (requiring 1,500 square feet per elephant) do not conflict. And Leider's own expert testified that less space per elephant than the regulation requires is adequate, and the trial court found that Leider failed to prove how much space an elephant needs. (6 CT 1222.)

* * *

The Answer addresses parts of the first two issues the city and Lewis present for review. Leider does not mention the law of the case issue at all. As discussed below, nor does he properly present his own issues for review.

III. LEIDER FAILS PROPERLY TO SUPPORT ANY ISSUE HE PRESENTS FOR REVIEW.

Since the Courts of Appeal were created in 1905, the Supreme Court has made clear that its function is not to assure that these courts reach the right result in each or any particular case. The court's role instead is "to secure harmony and uniformity in the [Court of Appeal's] decisions, their conformity to the settled rules and principles of law, a uniform rule of

decision throughout the state, a correct and uniform construction of the Constitution, statutes, charters, and in some instances a final decision by the court of last resort of some doubtful or disputed question of law.” (*People v. Davis* (1905) 147 Cal. 346, 348; see also Cal. Rules of Court, rule 8.500(b)(1).)

None of these reasons is present here, because Leider’s true reason for seeking review is “to remedy an injustice in this matter,” which is clear throughout the Answer. (Answer, p. 32.) After its first five pages, the Answer devolves into an approximately 20-page jury argument that does not support the three issues he asks the Supreme Court to review. Leider does not argue that any of his issues presents an important legal question or is necessary to maintain uniformity of decision. He does not separately brief the issues he sets forth on page 1, leaving the reader to guess whether they correspond with particular arguments (it doesn’t appear so).

The court should not expend any of its scarce resources on Leider’s issues, especially where, as here, the Court of Appeal correctly decided his cross-appeal seeking to close the elephant exhibit. (Slip Opinion, pp. 28-32.) It was a garden-variety injunction appeal subject to the most deferential standards of review: “[W]e conclude that substantial evidence supports the trial court’s finding of the absence of abuse or cruelty under the law. At bottom, the scope of injunctive relief was a matter left to the trial court’s discretion. Leider asked the trial court to shut down the exhibit.

Despite the trial court's misgivings about the quality of care the elephants received and the shortcomings in their conditions of captivity, the trial court did not abuse its discretion by deciding the deficiencies it found did not warrant the extreme step of shutting down the exhibit." (Slip Opinion, p. 30.) While Leider is passionate about elephants, that does not mean his cross-appeal presented any important legal questions. It did not.

IV. CONCLUSION.

The Answer does not cogently address the issues the city and Lewis presented for review, and Leider's issues are not within the court's institutional function of deciding important legal issues or ensuring uniformity of decision. The city and Lewis request the Supreme Court to review the issues they present in their Petition For Review and deny review of Leider's issues.

March 22, 2016

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

This brief's text consists of 1,639 words as counted by the Microsoft Word word processing program used to prepare it.

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KATHRYN E. KARCHER



PROOF OF SERVICE

I, KATHRYN E. KARCHER, declare:

I am and was at the time of the service described below a resident of the State of Washington, County of Kitsap, and at least 18 years old. I am not a party to the above-entitled action. My business addresses are 11011 NE Boulder Place, Bainbridge Island, Washington, 98110, and 401 B Street, Suite 2450, San Diego, California, 92101.

On Maech 22, 2016, I served the attached **REPLY IN SUPPORT OF PETITION FOR REVIEW** by placing a true copy thereof in a sealed envelope, addressed as shown below with the postage prepaid, and depositing the envelope in the United States mail at Bainbridge Island, Washington:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 22, 2016.

Kathryn E. Karcher

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