STATE OF MICHIGAN

COURT OF APPEALS

In re FORFEITURE OF WOLF-DOGS.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WOLF-DOGS,

Defendant,

and

PEARSONS HOWLING TIMBERS, BRENDA A. PEARSON, and JAMES T. PEARSON,

Defendants-Appellants.

UNPUBLISHED
March 14, 2024

No. 361923
Muskegon Circuit Court
LC No. 2021-003159-CF

Before: PATEL, P.J., and RICK and FEENEY, JJ.

PER CURIAM.

In this forfeiture action involving wolf-dog hybrids, defendants, Pearsons Howling Timbers, Brenda A. Pearson, and James T. Pearson, appeal by right the trial court's order of forfeiture. We affirm.

I. FACTUAL BACKGROUND

James and Brenda Pearson operated Howling Timbers in Muskegon County with the help of volunteers. Among many other animals on the property, defendants had 47 wolf-dogs. There was evidence that Howling Timbers conducted tours of its facilities in which guests observed the wolf-dogs and, on occasion, interacted with them. Howling Timbers came to the attention of the Michigan Department of Natural Resources (DNR) after Baby Doe, Brenda Pearson's two-year-old granddaughter, was bit by a wolf-dog in July 2020. Thereafter, a DNR officer began

investigating Howling Timbers. The officer testified that during her investigation, she discovered evidence that the Pearsons and Howling Timbers had violated the Wolf-Dog Cross Act, MCL 287.1001 *et seq*.

In August 2021, plaintiff sued defendants for violating the Wolf-Dog Cross Act and asked the trial court to order defendants to forfeit all the wolf-dogs that they owned. On the basis of the alleged violations of the Wolf-Dog Cross Act, plaintiff alleged that the wolf-dogs were subject to forfeiture. In response, defendants moved for summary disposition under MCR 2.116(C)(4). They argued that the trial court did not have subject-matter jurisdiction to consider forfeiture under the Wolf-Dog Cross Act because Howling Timbers was registered as an animal shelter, and so the Wolf-Dog Cross Act did not apply. The trial court held a preliminary hearing to discuss how to proceed, given that the property at issue involved live animals that needed care. The parties discussed the legal issues, which included the defense raised in the motion for summary disposition, and suggested that they might be able to agree on appropriate monitoring for the animals in the interim. The trial court set a deadline of September 30, 2021, for the parties to raise any legal issues before proceeding to the forfeiture hearing.

Defendants amended their motion in October 2021 and requested dismissal under MCR 2.116(C)(4), (C)(8), and (C)(10). Defendants argued that the wolf-dogs were owned by an entity that was registered as an animal protection shelter, and noted that the Wolf-Dog Cross Act did not apply to such shelters. Defendants acknowledged that the Department of Agriculture and Rural Development (the Department) notified them that their registration had been terminated in 2018, but they maintained that that revocation was invalid because it did not comply with the Administrative Procedures Act, see MCL 24.201 *et seq*., as required under MCL 287.339b(1). Under the primary jurisdiction doctrine, defendants stated, the trial court was obligated to relinquish jurisdiction to the Department for appropriate proceedings.

Defendants next argued that plaintiff—as a prosecutor—could not seek forfeiture of the wolf-dogs without first bringing criminal charges under MCL 287.1015 and obtaining a conviction. They further maintained that the failure to report any incidents involving wolf-dogs attacking people could only result in forfeiture if the prosecutor brought charges under the Dangerous Animals Act, MCL 287.321 *et seq*. Finally, defendants noted that the prosecutor had brought charges against Brenda Pearson under that statute, and they requested a stay of the forfeiture proceedings pending resolution of that criminal case in order to protect Brenda's right to defend herself.

In response, plaintiff argued that it had established grounds to hold a forfeiture proceeding under the Wolf-Dog Cross Act. Plaintiff argued that Howling Timbers was never properly registered as an animal protection shelter because, by definition, such shelters could only house companion animals, a category that does not include wolf-dogs. Moreover, it was undisputed that the Department notified defendants that the registration had been revoked in 2018. In any event, the Wolf-Dog Cross Act specifically allowed "any person" to seek forfeiture of wolf-dogs for a violation of the act without regard to whether the owner was a registered animal protection shelter under MCL 287.1016. Plaintiff further argued that the trial court had jurisdiction of the forfeiture proceeding; that it was not required to obtain a conviction before seeking forfeiture; that the act was not impermissibly vague; and that a failure to report a bite was a violation of the Wolf-Dog Cross Act, which could subject the wolf-dogs to forfeiture without the need to seek forfeiture under

the Dangerous Animals Act. Finally, plaintiff asserted that defendants had not established grounds for a stay.

After a hearing on the matter, the trial court denied defendants' motion for summary disposition. The first of nine hearing dates in the forfeiture proceeding began in October 2021. Pollyanne McKillop, a Department official, testified that when she took over her position in 2012, Howling Timbers had already obtained a registration as an animal shelter. She went with the Department's inspection team for an inspection at Howling Timbers in March 2018, after receiving some indications that Howling Timbers was not adopting out animals as an animal shelter is required to do. During that visit, she discussed the problem with Brenda Pearson, and Brenda surrendered her registration. Defendants' lawyer cross-examined her extensively about whether Brenda voluntarily surrendered the registration. In response, McKillop stated that she sent a letter to Brenda indicating that the registration had been terminated. She agreed that an associated report instead documented that Brenda surrendered the registration. The letter and report were admitted into evidence. The trial court also admitted an e-mail from Brenda to the Department in which she wrote that she was led to believe that she did not need a license to have wolf-dogs, but had since learned otherwise.

The testimony and evidence in this case indicated that many of the wolf-dogs had health issues. Auston Gross, who volunteered on the property, reported observing numerous injuries to the wolf-dogs over time, including cysts, tumors, leg cuts, heat stroke, and ear issues. She stated that she had only ever seen a veterinarian on the property when one came to help with microchipping the wolf-dogs. Many of the wolf-dogs were not spayed or neutered, resulting in accidental breeding between the animals in Spring 2020. It was unclear whether the puppies were the product of a breeding between littermates.

Record evidence also indicated that the wolf-dogs were housed in unsecured enclosures. Only one enclosure, belonging to a wolf-dog named Bear, had a lock. The others were secured with carabiner clips. Christian Merck, another volunteer, testified that he was fired for suggesting that the enclosures should be locked. Further testimony indicated that at least one wolf-dog escaped the property and was roaming the area. Jeff Decormier, who lived near Howling Timbers, testified that he had seen images of a wolf-dog on one of his trail cameras. Decormier reported to the Pearsons that he had seen one of their wolf-dogs, but James Pearson denied that it was one of his animals. Decormier eventually shot and killed the wolf-dog on his property after attempting to scare the dog away from his livestock.

Evidence was also presented regarding various injuries sustained by individuals who interacted with the wolf-dogs. Dr. Philip Nowicki testified that he was an orthopedic pediatric surgeon, and was on trauma call when Brenda Pearson's granddaughter, two-year-old Baby Doe, was brought into the hospital on July 23, 2020. Baby Doe's arm had been amputated above the elbow by a wolf-dog bite. Dr. Nowicki described the wound as "a mangled arm and wound through the elbow joint. A portion of the cartilage was . . . torn off. Muscle and skin [were] flapping." The trial court admitted the medical records and images that documented Baby Doe's injuries. Two volunteers, Mariah Crandell and Jamie Charvat, were also injured on the property. Crandell was bit on the calf by a wolf-dog, and Charvat was bit on both arms, as well as on her head and leg. Relevant to this appeal, Helen DeVos Children's Hospital reported the bite involving Baby Doe to Kent County's Public Health Department, but none of the incidents involving injuries

sustained by volunteers were reported to the Muskegon County Health Department, as required under the Wolf-Dog Cross Act.

DNR officer Anna Cullen inspected the Pearsons' property after Baby Doe's arm was bitten off by a wolf-dog. She was asked about a Facebook post from Howling Timbers' Facebook account. The author of the post, who, from context, appears to have been Brenda, stated in the post that her granddaughter was trying to pet a wolf-dog through a fence and "got her arm stuck in the fence at the elbow and lost her arm." Brenda goes on to write that she went back into the pen to retrieve Baby Doe's arm and "was bitten . . . probably due to them [the wolf-dogs] being stressed from all the chaos." Officer Cullen attested that the bite Brenda sustained while going in the pen was also not reported to the Muskegon County Health Department.

Regarding the investigation of the property, Officer Cullen stated that the wolf-dog enclosures were not secured with locks that could prevent human access. There were holes in the fencing, exposed wires in enclosures, enclosures with missing dig barriers, and enclosures that did not comply with the minimum space requirements. Howling Timbers did not meet the requirement that enclosures be double-fenced; even though there was a perimeter fence around the individual animal enclosures, once one went through the perimeter fence, each of the unlocked wolf-dog enclosures was readily accessible. Officer Cullen also noted that the perimeter fence was never locked when she visited. She explained that the individual enclosures were secured with a carabiner, which could be easily removed.

Officer Cullen notified the Pearsons about the violations and provided documentation as to how they could bring the property into compliance with the Wolf-Dog Cross Act. During the forfeiture hearing, Officer Cullen testified that she had been informed by the Department that Howling Timbers did not have a current registration. She agreed that if Howling Timbers were a registered animal protection shelter, the fencing and lock requirements stated under the Wolf-Dog Cross Act would not apply. She further noted, however, that even a registered animal protection shelter could not breed wolf-dogs and would still be required to report bites under the Wolf-Dog Cross Act.

Officer Cullen and Dr. Laurie Wright, a local veterinarian, visited the property again under the authority of a search warrant on July 22, 2021. Dr. Wright opined that housing and sanitation were not acceptable. She testified that the central food preparation room next to the garage had produce in various stages of decay, meat that was past its due date, and rodent droppings on the countertop. She stated that tainted food could lead to health issues for the animals. Dr. Wright further testified that Howling Timbers had no veterinarian records for the wolf-dogs, no feeding schedule, and no feeding protocols. She also felt that there were insufficient shelters within each enclosure for the animals, and she testified about the need for access to water. Most of the wolf-dogs had signs of fly-strike.[1]

During the investigation, Officer Cullen discovered a small wolf-dog named Shondra in a kennel inside a garage. Officer Cullen testified that the garage smelled like rotting flesh. Shondra

[1] "Fly-strike" is defined as an "infestation with fly maggots." *Merriam-Webster's Collegiate Dictionary* (11th ed).

was barely responsive and had a bloody bandage around her neck. Gross testified that Brenda told her that one of the wolf-dogs, Nero, had bitten Shondra. Officer Cullen returned to the property the next day with another search warrant authorizing her to seize Shondra and take her for veterinarian care. James told Officer Cullen that he had just cleaned the wound and that it was healing. Nevertheless, the officer took Shondra to Dr. Rebecca Vincent-Sturdivant, a veterinarian. Dr. Vincent-Sturdivant stated that Shondra had extensive wounds around her neck, a puncture wound on her elbow, smaller paired wounds on her flank, a pressure necrosis wound on her left hock, ankle, and left elbow, and three broken teeth. The neck wound was irritated from drainage, and the wound had become necrotic. Shondra was ultimately euthanized, as her injuries were too severe for surgery to be successful.

Plaintiff rested at the close of the Officer Cullen's testimony. Howling Timbers and the Pearsons moved for involuntary dismissal on the next trial date. Relevant to this appeal, they reiterated their beliefs that they were entitled to a stay pending the resolution of the criminal case and that forfeiture could not be had absent a criminal conviction. The trial court denied the motion. The trial court also allowed plaintiff to amend the complaint to correct a typo in the prayer for relief that misidentified the statute under which plaintiff sought relief.

The Pearsons defended against the forfeiture by presenting evidence that Howling Timbers was well run and that the wolf-dogs were happy and safely housed. Volunteer testimony in favor of the Pearsons indicated that the wolf-dogs were healthy and had ready access to water and kibble. They were also fed meat, which was primarily donated. According to volunteer Roger Norton, the wolf-dogs were never fed spoiled meat, and that Howling Timbers did not need a feeding system or schedule because they got so much donated meat that they cycled through it very fast. Norton further testified that until Shondra, he had never seen any injured wolf-dogs. He also felt that Shondra's injuries were light puncture wounds. He had seen worse injuries on domestic dogs. He cleaned her pen in the garage. She had bedding and food, and according to Norton, she seemed fine. He related that the Pearsons were in the process of getting veterinary care for Shondra when she was seized.

Regarding the state of the enclosures, Norton testified that none of the wolf-dogs had escaped, but agreed that most of the enclosures had been closed with carabiners. He further testified that the Pearsons opposed illegal wolf-dog breeding. He stated that the birth of the puppies was an accident related to problems sedating the wolf-dogs for spaying and neutering. According to Norton, most of the allegations of abuse or neglect of the wolf-dogs could be attributed to Gross, whom the Pearsons had left in charge for a few months when Brenda's mother was sick. None of the problems occurred when the Pearsons were on the property to supervise. Four more volunteers testified generally about how well the wolf-dogs were treated and housed and stated that they had no concerns with the operation. One volunteer agreed that she was unaware that Howling Timbers held tours and further agreed that she had never met a staff veterinarian in three years of volunteering.

Brenda Pearson's son, Daniel Scraver, testified that Brenda is his mother and that Baby Doe is his daughter. He stated that he never agreed to waive Baby Doe's physician-patient privilege, and that Brenda reported the bite to someone at the hospital. Kaitlyn Johnson, one of the Pearsons' granddaughters, testified that the Pearsons never used old meat to feed the animals and that the perimeter fence was always locked unless a volunteer was inside. She further stated

that most of the bites and other incidents occurred when the Pearsons had put someone else in charge of the property. She was not aware of any intentional wolf-dog breeding on the property. She was aware that Howling Timbers had had a veterinarian before the current vet. That veterinarian—whom she referred to as Dr. Bader—stated that he could not see the animals after the DNR executed the search warrant because they were illegally possessed. Thereafter, a veterinarian known only as "Dr. Sandy" took over.

Dr. Sandra Strandberg, also known as "Dr. Sandy," testified that Howling Timbers contacted her in December 2020 after the DNR insisted that Howling Timbers microchip the wolf-dogs. She knew of Dr. Bader. Dr. Strandberg stated that she provided regular care for Howling Timbers since then. She had no concerns about the animals' care. She disagreed that any of the wolf-dogs were in poor condition.

Defendants elected not to testify on their own behalf and rested. After the close of testimony, the court delivered its oral ruling. The trial court first found that Brenda only relinquished the registration for Howling Timbers after a Departmental official convinced her that she no longer needed the registration. On the basis of that finding, the trial court determined that Howling Timbers was still registered as an animal shelter. Because an animal shelter does not have to comply with §§ 4, 5, and 6 under the Wolf-Dog Cross Act, see MCL 287.1022(1)(a), the trial court stated that it would not be considering the evidence that Howling Timbers failed to comply with those sections.

The trial court noted, however, that all persons must comply with the Wolf-Dog Cross Act's other provisions. It then addressed MCL 287.1003(1)(b), which prohibited breeding wolf-dogs. The trial court determined that the statute does not require the owner to place two animals together with the goal that they would breed. The court found that it was undisputed that two wolf-dogs bred a litter of pups, which amounted to a violation.

The trial court then turned to MCL 287.1010(1), which required the owner or person in temporary possession of a wolf-dog to report to the local health department within 24 hours any incident involving a wolf-dog who potentially exposed a person to rabies through any penetration of the skin by teeth or by any scratch that caused penetration of the skin, among other means. The trial court found that Howling Timbers and the Pearsons failed to report four separate bite incidents involving their wolf-dogs.

After finding that Howling Timbers and the Pearsons violated the Wolf-Dog Cross Act, the trial court ordered all the wolf-dogs to be forfeited under MCL 287.1016, and that the wolf-dogs involved in the biting incidents should be euthanized. The other wolf-dogs would be transferred to a sanctuary, if available and approved by the trial court. The trial court ordered the remainder of the wolf-dogs to also be euthanized should the Pearsons be unable to find suitable placements for them. An order to this effect was entered on May 2, 2022. This appeal followed.

II. ANALYSIS

A. PROCEDURAL ERRORS

Defendants first argue that the trial court erred when it denied their request to stay the civil forfeiture proceeding to allow for discovery and the normal operation of civil procedure. They

further argue that the trial court's failure to follow civil procedure denied them a fair hearing and amounted to a violation of due process. We disagree.

This Court reviews de novo constitutional questions such as whether the trial court complied with the requirements of minimum due process. *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 277; 831 NW2d 204 (2013). This Court also reviews de novo whether the trial court properly interpreted and applied the court rules. *Brecht v Hendry*, 297 Mich App 732, 736; 825 NW2d 110 (2012). This Court reviews a trial court's discretionary decisions—such as whether to adjourn the hearing or enter a scheduling order—for an abuse of discretion. See *Pugno v Blue Harvest Farms LLC*, 326 Mich App 1, 27; 930 NW2d 393 (2018). A trial court abuses its discretion when it selects an outcome that falls outside the range of principled outcomes. *Id*.

We first address plaintiff's claim that defendants' lawyer waived any objection to beginning the proceeding in October 2021 by agreeing to proceed at an earlier hearing. Our Supreme Court has defined waiver to be the voluntary relinquishment of a known right. See *Quality Prods and Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 374; 666 NW2d 251 (2003). In September 2021, the trial court held a hearing to consider how to proceed with the forfeiture given that the property at issue involved live wolf-dogs. Specifically, the court inquired about whether arrangements had been made to keep the animals safely pending resolution of the forfeiture proceeding. Counsel for defendants asked the trial court to postpone the forfeiture proceeding until after the preliminary examination in Brenda's related criminal case, which was scheduled for the end of September. She suggested that the whole matter might be resolved by then.

The record indicates that defendants' counsel did not agree to any fixed start date for the proceeding and did not agree that the proceeding should commence before further discovery. Rather, she asked the trial court to adjourn the hearing until after the preliminary examination, in the hope that she might be able to reach an "agreeable enforcement, monitoring, you know, sort of a . . . global resolution." Accordingly, she did not voluntarily relinquish the right to request an adjournment or to engage in ordinary civil procedure. See *id*.

However, even though defendants did not waive this claim of error, they did abandon it on appeal. As our Supreme Court has stated:

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [*Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Defendants do not support their argument with any meaningful analysis. They do not discuss that they received all the evidence that plaintiff had before the first day of the hearing. They do not discuss the fact that the proceeding itself lasted nine days over the course of several months. They do not discuss the fact that plaintiff did not rest its case until December 2021, and they do not discuss the fact that they had an additional three months after that to present their proofs. Instead,

they merely claim that they were denied discovery without identifying any evidence that they were unable to present. They do not even discuss whether and how the failure to adjourn the proceeding and provide for more formal discovery prejudiced them. Accordingly, they have utterly abandoned this claim of error. See *id*.

Even if defendants had not abandoned this claim of error on appeal, they still have not identified any error that warrants relief. Defendants assert that their case proceeded with such speed that it amounted to a summary proceeding similar to that which occurred in *In re Forfeiture of 301 Cass Street*, 194 Mich App 381; 487 NW2d 795 (1992). In that case, the trial court entered an order to show cause regarding the forfeiture of real and personal property, and held a one-day summary proceeding the day after the answer to the petition was due. *Id*. at 383. Because the proceeding was held summarily, the defendant had no time to prepare for the hearing and did not have any discovery provided to him. The trial court also did not allow the defendant to assert an affirmative defense at the hearing. *Id*.

This case is strikingly different. Typically, parties must have at least 28 days of notice before trial. See MCR 2.501(C). The trial court in this case noticed the first hearing date on September 28, 2021, which provided defendants with 20 days of notice rather than 28 days. However, the trial court had the authority to expedite the proceeding on its own initiative, see MCR 2.501(B)(1), and clearly chose to do so. The court stated as much at the preliminary hearing, noting that time was of the essence because the forfeiture involved live wolf-dogs that were being kept in conditions that demonstrated that they may pose a hazard to the community.

Although the trial court had not yet set the proceeding's first date as of the hearing held on September 2, 2021, the court made it clear at that hearing that it planned to proceed quickly and that all the legal issues had to be resolved by September 30, 2021. The September hearing was akin to a scheduling conference, and the trial court's remarks provided guidance similar to a scheduling order. See MCR 2.401(B) (stating that the court should "consider any matters that will facilitate the fair and expeditious disposition of the case"). Consequently, the trial court gave defendants substantially more notice in this case than was provided to the defendant in *In re Forfeiture of 301 Cass Street*. Further, even though the court did not enter a scheduling order, it considered how to expedite the proceeding by ordering the parties to address the legal issues by the end of the month. On this record, the trial court did not abuse its discretion. See *Pugno*, 326 Mich App at 27-28.

Additionally, unlike *In re Forfeiture of 301 Cass Street*, defendants here were provided with ample discovery. Indeed, at one point during the proceedings, defendants complained that there was too much material to go through before the first day of the hearing. They also complained that they would have preferred a more formal—and presumably drawn out—discovery process. The need for more time to prepare might constitute good cause for adjourning, but defendants did not offer any solution to the problem posed by the current placement of the wolf-dogs and did not establish that the inability to sift through all the materials before the first hearing date would prevent them from adequately cross-examining the first witnesses. The trial court was not required to compel the parties to provide a list of exhibits, see MCR 2.401(H)(2)(i), and the record shows that the issues involving the forfeiture were limited. Plaintiff turned over copies of all possible exhibits related to the issues to be determined in the forfeiture proceeding. Moreover, as plaintiff noted at the first hearing, this case involved whether defendants violated the Wolf-Dog

Cross Act in certain specific ways—such as failing to report bites—which did not involve particularly complex proofs. On this record, defendants have failed to establish good cause for postponing the first day of the proceeding to allow further discovery. See *Pugno*, 326 Mich App at 28 (noting that the party requesting an adjournment must establish good cause and stating that a trial court may properly deny a motion to adjourn when it will not cause an injustice to the movant).

Defendants have also not shown that the trial court's decision prejudiced them. See MCR 2.613(A). Here, the trial court held a lengthy evidentiary hearing, not a summary proceeding on its own motion. Although defendants' counsel only had a few weeks to process the materials provided in discovery before the first date, the trial court held the nine-day forfeiture proceeding over the course of several months. The trial court additionally allowed defendants to recall witnesses and reexamine them. It further did not prevent defendants from presenting any defense or conducting any discovery they wished during those months. The record showed that defendants had a full and fair opportunity to challenge every aspect of plaintiff's case for forfeiture.

In sum, the trial court's decision to expedite the first day of the proceeding was reasonable on the facts of this case and did not amount to an abuse of discretion. See *Pugno*, 326 Mich App at 27-28. The record additionally showed that defendants had notice and an opportunity to be heard at a meaningful time and in a meaningful manner over the nine days of hearings covering several months. See *Bonner v Brighton*, 495 Mich 209, 235; 848 NW2d 380 (2014). Therefore, the trial court did not deprive defendants of due process. *Id*. Finally, defendants have not shown that any error in expediting the first day of the proceeding and refusing to allow more formal discovery prejudiced them. Indeed, the evidence that defendants violated the Wolf-Dog Cross Act by failing to report all the wolf-dog attacks that resulted in injuries to persons was overwhelming and unrebutted despite the fact that defendants had months to prepare a defense. Accordingly, any error in failing to delay the start of the forfeiture proceeding could not have prejudiced defendants. See MCR 2.613(A).

B. STAY OF PROCEEDINGS

Defendants next argue that the trial court's failure to stay the proceedings prevented them from testifying on their own behalf out of fear that their testimony might be used against them. We disagree.

This Court reviews de novo constitutional issues such as whether a particular decision violated due process. See *Elba Twp*, 493 Mich at 277. This Court also reviews de novo whether the trial court properly interpreted and applied the relevant statutes. *Brecht*, 297 Mich App at 736. This Court reviews a trial court's discretionary decisions such as whether to adjourn trial for an abuse of discretion. See *Pugno*, 326 Mich App at 27.

Defendants argue that the trial court had to stay the forfeiture proceeding until after the completion of Brenda's criminal trial in order to protect their right to testify in defense of the forfeiture action. This Court has recognized that a forfeiture proceeding involving actions that might also be criminal can place a person in the untenable position of having to choose between exercising their Fifth Amendment right not to be compelled to testify, or testifying to establish a defense to the forfeiture. See *In re Forfeiture of $111,144*, 191 Mich App 524, 532-533; 478

NW2d 718 (1991). This Court has found that lower courts must accommodate the right against self-incrimination in forfeiture actions. *Id*. at 533. One way to accommodate the claimants' rights involves staying the forfeiture proceeding until after the completion of any criminal proceeding. *Id*. However, a lower court may alternatively accommodate the claimants' rights by providing the claimants with immunity. *Id*.

Here, plaintiff offered to provide defendants with use immunity, which the trial court agreed was appropriate. It thus refused to stay trial pending resolution of the criminal proceeding. Use immunity does not bar prosecution for an offense to which the grant of immunity relates, but it does prevent the prosecution from using a witness's testimony as evidence in a related criminal proceeding. *People v Schmidt*, 183 Mich App 817, 826; 455 NW2d 430 (1990). The grant of use immunity alleviated the concern regarding defendants' Fifth Amendment rights because, as the trial court correctly noted, defendants could testify in the forfeiture hearing without fear that their testimony would be used against them. Defendants' argument lacks merit.

Defendants also argue that holding a civil forfeiture hearing under the Wolf-Dog Cross Act before a criminal proceeding under the same act is inherently absurd. Defendants' argument depends on their belief that plaintiff, as a prosecutor, could not bring a civil forfeiture action against defendants and was instead required to bring its forfeiture action in a criminal complaint. However, this does not accurately reflect the applicable law. The Wolf-Dog Cross Act provides that a person who violates the act is guilty of a misdemeanor. See MCL 287.1015(1). The act further provides that a person may be punished by imprisonment, community service, and the loss of privilege to own any animal. MCL 287.1015(1)(a) through (c). The Legislature stated that a prosecutor who has charged someone with a misdemeanor violation under MCL 287.1015 "may" file a petition with the same court "requesting an order for civil forfeiture of all the wolf-dog crosses owned by the person violating this act." MCL 287.1016(2). The use of the term "may" indicates that a prosecutor is *permitted* to seek—but is not *required* to seek—civil forfeiture in conjunction with a criminal complaint. See *In re Forfeiture of Bail Bond*, 496 Mich 320; 852 NW2d 747 (2014) (stating that the word "may" normally has a permissive—not mandatory—meaning).

The Legislature did not, however, limit the prosecutor to seeking forfeiture by first bringing criminal charges. Instead, the Legislature stated that if a person who owns or possesses a wolf-dog violates the Wolf-Dog Cross Act, "that wolf-dog cross and any other wolf-dog crosses owned by that person *are subject to civil forfeiture*." MCL 287.1016(1) (emphasis added). The Legislature further stated that "*[a]ny* person may file with a court having jurisdiction a complaint alleging that a person is violating this act and requesting the court to order the civil forfeiture of all the wolf-dog crosses owned by that person." MCL 287.1016(3) (emphasis added). Thus, the Legislature made a clear distinction in the act between criminal and civil forfeiture. A prosecutor may petition for a civil forfeiture as part of a criminal charge, but *any* person may bring a separate civil forfeiture claim. Accordingly, the plain language of the statutory scheme shows that the Legislature intended that any person, which necessarily includes a prosecutor, may seek civil forfeiture under MCL 287.1016(3) without reference to whether a prosecutor has brought criminal

charges. Accordingly, the prosecutor had the option of bringing the forfeiture action as part of the criminal proceeding or as part of a separate civil proceeding.[2]

Defendants also indirectly argue that forfeiture should apply to the individual wolf-dogs associated with a particular violation. The Legislature did not require individual forfeiture actions for each wolf-dog premised on an incident involving that wolf-dog. Instead, the Legislature focused its regulatory authority on the acts and omissions of owners and possessors of wolf-dog crosses in general. It is the owner's or possessor's violation of the act that subjects the wolf-dogs to forfeiture. The Legislature plainly stated its intent that an owner who has violated the act should forfeit *all* of their wolf-dogs. See MCL 287.1016(1); MCL 287.1016(3).

Defendants also read MCL 287.1020 as establishing that there must be a criminal charge in order to allow a civil forfeiture, notwithstanding the language of MCL 287.1016(1) and MCL 287.1016(3). Under MCL 287.1020(1), the Legislature established when a wolf-dog that was "seized" before trial must be returned to its owner:

> A law enforcement officer shall return a seized wolf-dog cross to the owner of the wolf-dog cross within 7 days after the occurrence of any of the following:
>
> (a) The failure to issue a warrant against the owner or person temporarily in possession of the wolf-dog cross for committing a misdemeanor under [MCL 287.1015] or to file a complaint under [MCL 287.1016(3)] within 10 days after the wolf-dog cross is seized.
>
> (b) The dismissal of charges against the owner or person temporarily in possession of the wolf-dog cross under [MCL 287.1015] or of a complaint under [MCL 287.1016(3)], as applicable.
>
> (c) The court's determination that an order for the wolf-dog cross to be forfeited shall not be entered.

[2] Defendants have noted that Howling Timbers was not charged with a crime. As discussed, the prosecutor could bring a civil forfeiture claim under MCL 287.1016(3) without first having to file criminal charges. Defendants also imply that Gross, one of the volunteers on the property, was actually responsible for the violations. It is well settled that under common-law agency principles, "the agent stands in the shoes of the principal." *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004); See also *Altobelli v Hartmann*, 499 Mich 284, 297-298; 884 NW2d 537 (2016) ("[T]he acts of officers and agents of a corporation, within the scope of their employment, are the acts of the corporation[.]" (quotation marks and citation omitted)). Brenda and James Pearson managed the day-to-day operations of Howling Timbers and authorized Gross to act on Howling Timbers' behalf. There was no evidence that Gross acted outside the scope of her employment. Therefore, the acts and omissions by the Pearsons and their volunteers were the acts and omissions of Howling Timbers.

(d) The acquittal of the owner or person temporarily in possession of the wolf-dog cross of any charges under [MCL 287.1015].

(e) Entry of a court order under this act for the return of the wolf-dog cross.

This case did not involve the seizure and holding of living wolf-dogs pending the forfeiture proceeding. Accordingly, by its own terms, MCL 287.1020(1) did not apply. Additionally, the context of the various provisions in MCL 287.1020(1) for triggering a return of seized animals demonstrates that the Legislature treated forfeitures under MCL 287.1015 and MCL 287.1016 as distinct methods of forfeiture, which provided for the return of the animals only upon the resolution of either procedure in the owner's favor. Nothing within this section can be construed to require that animals forfeited in a separate civil proceeding under MCL 287.1016(3) must be returned to the owner if the owner should be acquitted of charges brought in a different action under MCL 287.1015. Therefore, MCL 287.1020 does not support the proposition that defendants would be entitled to the return of forfeited animals if Brenda was acquitted of all criminal charges. For the foregoing reasons, defendants' claims lack merit.

C. FORFEITURE OF WOLF-DOGS

Defendants next contend that the trial court's decision to order them to forfeit all their wolf-dogs amounted to an excessive fine in violation of the Eighth Amendment to the Constitution of the United States. This claim of error has been waived.

In civil cases, Michigan follows "the 'raise or waive' rule of appellate review." *Walters v Nadell*, 481 Mich App 377, 387; 751 NW2d 431 (2008). Generally, to preserve an issue for appellate review, the party asserting error must demonstrate that the issue was raised in the trial court. *Glasker-Davis v Auvenshine*, 333 Mich App 222, 227; 964 NW2d 809 (2020). Moreover, the party asserting error must show that the same basis for the error claimed on appeal was brought to the trial court's attention. *Samuel D Begola Servs, Inc v Wild Bros*, 210 Mich App 636, 642; 534 NW2d 217 (1995). The failure to raise an issue in the trial court waives that issue for appellate review. See *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 359090); slip op at 3.

Defendants argue that they preserved this claim of error by raising it in their motion for reconsideration of the trial court's order of forfeiture, which the trial court denied. A party cannot preserve an issue for appellate review by raising it for the first time in a motion for reconsideration. See *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 519; 773 NW2d 758 (2009). Therefore, this issue has not been preserved for appellate review, see *Glasker-Davis*, 333 Mich App at 227, and defendants waived the claim of error, see *Tolas Oil & Gas Exploration Co*, ___ Mich App at ___; slip op at 3.

D. BREEDING OF WOLF-DOGS

Defendants next argue that the trial court clearly erred when it found that they violated the Wolf-Dog Cross Act by breeding wolf-dogs. We disagree.

This Court reviews de novo whether the trial court properly interpreted and applied the relevant statutes. *Brecht*, 297 Mich App at 736. This Court reviews a trial court's factual findings after a bench trial for clear error. See *Chelsea Investment Group, LLC v City of Chelsea*, 288 Mich App 239, 250; 792 NW2d 781 (2010). A finding is clearly erroneous when this Court is left with the definite and firm conviction that an error has been made. *Id*. at 251.

Defendants argue that the trial court erred by interpreting MCL 287.1003 to impose strict liability on the owners of wolf-dogs who bear an accidental litter. They maintain that the proper interpretation of the statute requires proof that the owner kept the wolf-dogs in order to breed them and took some action to cause them to breed. Our reading of the statute indicates that this is not so. The Legislature provided that a person shall not "do" certain acts under MCL 287.1003(1), including "[b]reed a wolf-dog cross." MCL 287.1003(1)(b). The verb to "breed" has several common meanings, which are each related to the production of offspring: "to produce (offspring) by hatching or gestation"; "beget"; and "to propagate (plants or animals) sexually and [usually] under controlled conditions." *Merriam-Webster's Collegiate Dictionary* (11th ed). Notably, the Legislature did not state that it was a violation of the Wolf-Dog Cross Act to *intentionally* breed wolf-dogs. Although the statute does not require proof of intent, it is not a strict-liability offense. Giving the statute its ordinary understanding, a person violates the prohibition against breeding wolf-dogs if he or she takes some action with the knowledge that breeding would occur. See, e.g., *People v Magnant*, 508 Mich 151; 973 NW2d 60 (2021) (holding that the criminal intent for a regulatory violation includes the intent to do the act with knowledge of the facts that make the conduct illegal).

In this case, there was evidence that the wolf-dog who gave birth to the pups was a member of a group of wolf-dogs that had not all been spayed or neutered and that defendants nevertheless housed them in the same enclosure. There was evidence that the animals had been housed at Howling Timbers for more than one year before the birth of the pups in Spring 2020. Finally, there was evidence that the gestation period for wolf-dogs was 63 days. Accordingly, the trial court could properly find that the wolf-dog became pregnant while in captivity at Howling Timbers. Additionally, testimony from volunteers showed that everyone knew that not all members of that group were spayed and neutered. From that testimony, the trial court could find that the Pearsons knew that the animals had not been spayed or neutered. The evidence showed that the Pearsons deliberately housed the unaltered animals together in the same enclosure. From that, the trial court could reasonably find that they violated the act by choosing to house unaltered wolf-dogs in the same enclosure, which would almost certainly lead to breeding between the animals. On this record, the trial court's finding that the pups were bred while at Howling Timbers was not clearly erroneous. See *Chelsea Investment Group*, 288 Mich App at 251.

E. PHYSICIAN-PATIENT PRIVILEGE

Defendants finally argue that the trial court should not have allowed Dr. Nowicki to testify about Baby Doe's injuries and should not have admitted her medical records because Baby Doe's parents did not waive her physician-patient privilege.

This Court reviews de novo whether the trial court properly applied the rules of evidence. *Mitchell v Kalamazoo Anesthesiology, PC*, 321 Mich App 144, 154; 908 NW2d 319 (2017). This Court also reviews de novo whether the trial court properly applied the relevant statutes. See

Brecht, 297 Mich App at 736. This Court reviews for an abuse of discretion a trial court's decision to admit evidence. *Mitchell*, 321 Mich App at 154. A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Id*. at 154-155.

Michigan's physician-patient privilege is statutory. See MCL 600.2157. This Court has held that the physician-patient privilege applies until waived by the person who holds the privilege, unless disclosed as otherwise provided by law. See *Meier v Awaad*, 299 Mich App 655, 666-673; 832 NW2d 251 (2013). This Court has also held that the requirements of MCL 750.411(1) constitute an exception to the application of the physician-patient privilege, and that a physician may testify at trial consistent with MCL 750.411(1) notwithstanding the existence of the physician-patient privilege. See *People v Traylor*, 145 Mich App 148, 151-152; 377 NW2d 371 (1985).

MCL 750.411(2) requires a physician to report to the police whenever a person comes into his or her charge or care while suffering from a wound or injury that was "inflicted in the manner described" under MCL 750.411(1). That provision states that a physician must report an injury that was inflicted by "means of a knife, gun, pistol, or other deadly weapon, or by other means of violence." MCL 750.411(1). The injury that Baby Doe suffered as a result of a violent wolf-dog attack arguably satisfied the requirement stated under MCL 750.411(2). As such, Dr. Nowicki could testify about the injuries that Baby Doe suffered notwithstanding MCL 600.2157. See *Traylor*, 145 Mich App at 151-152; MCL 750.411(4).

Even assuming that it was error to allow Dr. Nowicki to testify about the extent of Baby Doe's injuries and error to admit her medical records, it was undisputed that Baby Doe was attacked by a wolf-dog owned by Howling Timbers. Indeed, Baby Doe's own father testified that she had been bitten by a wolf-dog that was owned by Howling Timbers. As such, any error in the admission of this testimony and evidence was harmless. See MCR 2.613(A).

III. CONCLUSION

For the reasons discussed herein, defendants have not identified any errors warranting relief.

Affirmed.

/s/ Sima G. Patel
/s/ Michelle M. Rick
/s/ Kathleen A. Feeney