

DO NOT REMOVE
FROM FILE



In the Supreme Court of Appeals of West Virginia

HARLEE BEASLEY,
Defendant Below, PETITIONER,

vs.

No. 21-0475

MARK A. SORSAIA, Prosecuting
Attorney of Putnam County,
Plaintiff Below, Respondent.

FILE COPY

Petitioner's Appeal Brief

David O. Moye (WV Bar Id. 7900)
Attorney at Law
Post Office Box 26
Winfield, WV 25213
david@moye-law-office.com
Telephone: (304) 586-1251

Table of Contents

<u>TABLE OF AUTHORITIES.....</u>	<u>II</u>
<u>I. ASSIGNMENT OF ERROR.....</u>	<u>1</u>
<u>II. STATEMENT OF THE CASE</u>	<u>1</u>
A. BEASLEY V. PUTNAM ANIMAL RELIEF SHELTER, CASE NUMBER 20-C-107	2
B. STATE V. BEASLEY, MAGISTRATE COURT CRIMINAL CASE 20-M-1547.....	3
C. SORSAIA V. HUNT, PETITION FOR WRIT OF PROHIBITION, CASE 21-C-50	5
<u>III. SUMMARY OF ARGUMENT.....</u>	<u>6</u>
<u>IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION.....</u>	<u>6</u>
<u>V. STANDARD OF REVIEW.....</u>	<u>7</u>
<u>VI. ARGUMENT.....</u>	<u>7</u>
A. AMBIGUITY: TWO MEANINGS OF W.VA. CODE 68-1-9(F)	7
B. THE CIRCUIT COURT’S CONSTRUCTION OF THE STATUTE	9
C. CONSIDERATIONS IN STATUTORY INTERPRETATION LAW	10
1. APPROACHING STATUTORY INTERPRETATION.....	11
2. STATUTORY INTERPRETATION APPLIED TO W.VA. CODE 61-8-19(F).....	13
D. CONSTRUCTION THAT RECONCILES THE GENERAL SYSTEM OF LAW	15
<u>VI. CONCLUSION</u>	<u>17</u>

TABLE OF AUTHORITIES

Cases

<i>Buda v. Town of Masontown</i> , 217 W.Va. 284, 617 S.E.2d 831 (2005).....	13, 16
<i>Chrystal R.M. v. Charlie A.L.</i> , 194 W.Va. 138, 459 S.E.2d 415 (1995).....	7
<i>Davis Memorial Hosp. v. West Virginia State Tax Com’r</i> , 222 W.Va. 677, 671 S.E.2d 682 (2008)	11
<i>Davis Memorial Hosp. v. West Virginia State Tax Com’r</i> , 222 W.Va. 677, 671 S.E.2d 682 (2008)	13
<i>Farley v. Buckalew</i> , 186 W.Va. 693, 414 S.E.2d 454 (1992)	12
<i>Hereford v. Meek</i> , 132 W.Va. 373, 386, 52 S.E.2d 740, 747 (1949).....	12
<i>Meadows v. Wal-Mart Stores, Inc.</i> , 207 W.Va. 203, 530 S.E.2d 676 (1999)	12
<i>Ohio County Comm’n v. Manchin</i> , 171 W.Va. 552, 301 S.E.2d 183 (1983).....	13
<i>Sizemore v. State Farm Gen. Ins. Co.</i> , 505 S.E.2d 654, 659 (W. Va. 1998);	12
<i>Smith v. State Workmen’s Compensation Commissioner</i> , 159 W.Va. 108, 219 S.E.2d 361 (1975).....	11
<i>State v. Snyder</i> , 64 W.Va. 659, 63 S.E. 385 (1908).....	13, 16

Statutes

Code 68-1-9(f).....	7
Virginia Code 7-10-9(b).	1
W.Va. Code 19-10B-2(d)	3, 8
W.Va. Code 61-8-19	3, 4, 5, 15
W.Va. Code 61-8-19 (f).....	4
W.Va. Code 61-8-19(a)(1)(A).....	15
W.Va. Code 61-8-19(a)(1)(H).....	15
W.Va. Code 61-8-19(f).....	passim
W.Va. Code 68-1-9(f),	10, 11, 13
W.Va. Code 7-10-4(b).....	2
W.Va. Code 7-10-4(h)	2, 4
W.Va. Code 7-10-9.....	2, 17
W.Va. Code 7-10-9(h).....	3, 6, 17

I. ASSIGNMENT OF ERROR

The Circuit Court failed to apply the correct principles of statutory construction and therefore misinterpreted the exclusion for livestock contained in W.Va. Code 61-8-19(f).

II. STATEMENT OF THE CASE

The facts of this matter are undisputed, having been alleged and admitted by the parties in their pleadings in the Putnam County Circuit Court.¹

On February 25, 2020, the Putnam County Sheriff's Department executed a search and seizure warrant on a farm occupied by Petitioner Harlee Beasley in Liberty, Putnam County, West Virginia. [App. 009]

The State, in her Petition for Writ of Prohibition [App. 009], claimed the search warrant was issued pursuant to W.Va. Code 61-8-19 in search of evidence of abused or neglected animals. Putnam County Humane Officer, Shawn Martin seized five horses and a donkey² which belonged to Petitioner³ Beasley. Officer Martin left a "Notice of Seizure of Animals" [App. 001] for Petitioner Beasley which advised that she could request a civil hearing pursuant to W.Va. Code 7-10-4(b)⁴ regarding whether the animals were properly seized. The Putnam

1. The State alleged 16 paragraphs of facts in her Petition for Writ of Prohibition [App. 009]. Petitioner Beasley in her, "Response to Writ of Prohibition," [App. 016] paragraph I, admitted the facts alleged by the State. The State also "conceded" in its argument in the circuit court that the seized animals are "livestock." [App. 024]

2 According to the Notice of Seizure of Animals [App. 001] left by the Putnam County Humane Officer, there actually were other animals seized, including two pigs and "JB," which is unspecified. Oddly, the pigs, or "swine," also are livestock pursuant to Code 19-10B-2(d). However, there is no mention in the record of those animals.

3 Throughout this brief, the Petitioner/Respondent below shall be referred to as "Petitioner" for the sake of uniformity.

4. In paragraph 5 of her Petition for Writ of Prohibition, the State alleges that Officer Martin "erroneously" advised Petitioner Beasley that she could request a hearing pursuant to West Virginia Code 7-10-9(b). [App. 019] However, that code section clearly provides for such a hearing:

(b) The owner or persons in possession, if his or her identity and residence are known, of any animal seized pursuant to subsection (a) of this section shall be provided written

County Magistrate Court assigned the matter Case Number 20-C-107, titled "Beasley v. Putnam Animal Relief Center."

A. Beasley V. Putnam Animal Relief Shelter, Case Number 20-C-107

On the same date the horses and donkey were seized, February 5, 2020, Petitioner Beasley went to the Putnam County Courthouse and filed a request for a hearing [App. 002], pursuant to W.Va. Code 7-10-4(b).

On August 14, 2020, a hearing on the seizure was held by Putnam County Magistrate Jean Anne Luikart. Petitioner Beasley, by counsel, David O. Moye, Esq., moved to dismiss case Number 20-C-107 [App. 003], arguing that W.Va. Code 7-10-4(h) excludes "livestock," and therefore the Magistrate Court had no jurisdiction to hear the matter. W.Va. Code 7-10-9, titled, "Custody and care of animals abandoned, neglected or cruelly treated; hearing; bonds; liability for costs; liens; *exclusions*," provides in subsection (h):

(h) The provisions of this section do not apply to farm livestock, as defined in subsection (d), section two, article ten-b, chapter nineteen of this code; poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock; poultry, gaming fowl, wildlife or game farm production and

notice of the seizure, his or her liability for the cost and care of the animal seized as provided in this section ***and the right to request a hearing in writing before a magistrate in the county where the animal was seized.*** The magistrate court shall schedule any hearing requested within ten working days of the receipt of the request. The failure of an owner or person in possession to request a hearing within five working days of the seizure is prima facie evidence of the abandonment of the animal. At the hearing, if requested, the magistrate shall determine by a preponderance of the evidence if the animal was abandoned, neglected or deprived of necessary sustenance, shelter, medical care or reasonable protection from fatal freezing or heat exhaustion or otherwise treated or used cruelly as set forth in this section. W.Va. Code 7-10-4(b) ***emphasis supplied.***

The State apparently intended the search warrant to serve as the basis for collecting evidence to support subsequent criminal charges, to be brought pursuant to W.Va. Code 61-8-19. However, when the Humane Officer issued the Notice of Seizure, he included information concerning the civil statute, W.Va. Code 7-10-4.

management; nor to the humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131, et seq., and the regulations promulgated thereunder. (*Emphasis supplied*)

The parties agreed that the horses and a donkey are “livestock” [App. 009] as that term is defined in W.Va. Code 19-10B-2(d), which specifies, “Livestock means cattle, horses, swine, sheep, goats or any other animal of the bovine, equine, porcine, ovine or caprine specie, and domestic poultry.”⁵

After reviewing the statute in question, counsel for the Putnam Animal Relief Center, Larry Frye, Esq., did not object to the dismissal, agreeing that W.Va. Code 7-10-9(h) excluded livestock. Therefore, Magistrate Luikart dismissed the case. [App. 003]

B. State v. Beasley, Magistrate Court Criminal Case 20-M-1547

Despite the dismissal of the civil case, the State continued to pursue the matter, and on August 20, 2020, a criminal complaint was filed against Beasley charging six counts of “Cruelty to Animals.” The State claimed the violations of W.Va. Code 61-8-19 applied to the date the animals were originally seized, February 25, 2020. [App. 004] The criminal case was assigned to Putnam County Magistrate Linda Hunt, and eventually set for trial on March 25, 2021.

W.Va. Code 61-8-19, in subparagraph (f), contains nearly identical language to W.Va. Code 7-10-9(h), the latter of which is the exemption under which the civil case

⁵ A Donkey, or *Equus asinus*, also called burro, is domestic ass belonging to the horse family, Equidae, and descended from the African wild ass (*Equus africanus*). Therefore, a horse is an *equine* animal, as is a donkey. <https://www.britannica.com/animal/donkey>.

against Ms. Beasley was dismissed.⁶ Both statutes contain a subsection which provides an exclusion for livestock. W.Va. Code 61-8-19 is titled, "Cruelty to animals; penalties; *exclusion*" (emphasis supplied). In language nearly identical to W.Va. Code 7-10-9(h) [*Supra*, the civil code section exempting "livestock" from that statute], W.Va. Code 61-8-19 (f) provides:

(f) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131, et seq., and the regulations promulgated thereunder, as both statutes and regulations are in effect on the effective date of this section.

At trial on March 25th, before the State's first witness was sworn, Petitioner Beasley's counsel moved the Court to dismiss the case, arguing that W.Va. Code 61-8-19(f) exempts "farm livestock" from the provisions of W.Va. Code 61-8-19. [App. 006]

The State objected to the dismissal and argued that the exemption under subdivision (f) only applied to "farm livestock . . . kept and maintained according to usual and accepted standards of livestock" The State said it intended to prove that the six seized animals were not maintained under acceptable livestock standards, and, therefore, the seized animals were not exempted from the statute.

⁶ Foreshadowing the Petitioner's argument in a later section of this brief, it should be noted that the Court described the language exempting livestock contained in W.Va. Code 61-8-19(f) as "basically verbatim" to the language of the exemption for livestock contained in W.Va. Code 7-10-4(h), *supra*. [App. 030, 031] The State agreed, describing the language of the two code sections as "almost ... identical." [App. 030]

After considering counsel's argument, Putnam County Magistrate Linda Hunt ordered the case dismissed, agreeing with the Petitioner's contention that the horses and donkey are livestock exempt pursuant to subsection (f) of the West Virginia Cruelty to Animals Act, W.Va. Code 61-8-19. [App. 006] The magistrate granted the State's motion for a Stay of Execution so that it could apply for a Writ to the Putnam County Circuit Court.

C. Sorsaia v. Hunt, Petition for Writ of Prohibition, Case 21-C-50

The State filed a Writ of Prohibition on April 13, 2021, asking the Circuit Court to prevent Magistrate Hunt from dismissing the case. [App. 009] A hearing was held on the matter on May 7, 2020 before the Honorable Joseph K. Reeder.

Conceding that the horses and donkey are livestock [App. 024], the State once again advanced its interpretation of the statute, arguing that the livestock were not exempt from W.Va. Code 61-8-19 because subsection (f) operated to exempt livestock only if they are given the standard of care usually provided to livestock. [App. 025]

The Petitioner again argued that the exemption contained in W.Va. Code 61-8-19(f) excluded livestock from the statute without condition, and that the State had misinterpreted the exemption to not apply unless the livestock were maintained to a "normal" standard of care.

After hearing the parties, the Circuit Court, the Honorable Joseph K. Reeder, agreed with the State and granted the Writ of Prohibition, setting aside the Magistrate Court's order dismissing the criminal case. [App. 020]

It is from this Order the Petitioner now appeals.

III. SUMMARY OF ARGUMENT

The Circuit Court incorrectly applied statutory construction principles to determine a meaning for W.Va. Code 61-8-19(f) that incorrectly operated to make conditional the exclusion for livestock. The Court's interpretation of W.Va. Code 61-8-19(f), would remove the statutory exclusion if livestock were not kept in accordance for the usual standards for livestock. The Petitioner argues that grammatical construction, as well as considering Legislative intent in the light of the body of law in which W.Va. Code 61-8-19(f) exists, creates a clear exemption for livestock that is not conditional upon the standards to which it is maintained. The Petitioner believes the language contained in W.Va. Code 7-10-9(h), which creates a similar exclusion for livestock, should be used as a guide to interpret W.Va. Code 61-8-19(f) so that the "usual accepted standards of livestock" modifies "wildlife kept in private or licensed game farms."

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner believes that the record and briefs in this case will provide the Court with all necessary information needed to decide the issue, which involves an interpretation of statute. Therefore, oral argument under Rev. R.A.P. 18(a) is not necessary unless the Court determines that other issues arising upon the record should be addressed. If the Court determines that oral argument is necessary, this case is appropriate for a Rule 19 argument and disposition by memorandum decision.

V. STANDARD OF REVIEW

Because this appeal involves a question involving an interpretation of statute, the Supreme Court of Appeals applies a *de novo* standard of review. Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995).

VI. ARGUMENT

At issue is the interpretation of W.Va. Code 68-1-9(f), the “Cruelty to Animals” statute, and the application of subsection (f), which sets out an exception for livestock. W.Va. Code 68-1-9(f) provides:

(f) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131, et seq., and the regulations promulgated thereunder, as both statutes and regulations are in effect on the effective date of this section.

In the Putnam Circuit Court, the State conceded that the horses and donkey are “farm livestock,” [App. 024] as defined by the statute.

(d) “Livestock” means cattle, horses, swine, sheep, goats or any other animal of the bovine, equine, porcine, ovine or caprine specie, and domestic poultry.

W.Va. Code 19-10B-2(d)

A. Ambiguity: Two Meanings of W.Va. Code 68-1-9(f)

The parties' differing interpretations of W.Va. Code 61-8-19(f) can be summarized from the argument before Judge Reeder.

The State contends that the livestock are exempt from W.Va. Code 61-8-19, but that subsection (f) would not apply unless the livestock are maintained by the standard of care meeting the usual and accepted standards for livestock. [App. 025, 026]

The Petitioner argued that the exemption contained in W.Va. Code 61-8-19(f) excluded livestock from the statute, with no conditions or qualifying prerequisites. The Petitioner argued that the State misinterpreted the exemption to apply only if the livestock were maintained to an accepted standard of care, and otherwise, the exemption would not apply. [App. 026-028]

Interestingly, both the State and Petitioner's counsel argued, without specifically identifying the principles by name, that statutory construction should be used to attempt to decipher W.Va. Code 61-8-19(f). Petitioner's counsel argued that the placement of the punctuation and determining "what modifies what," clarifies that livestock, as well as other animals maintained in the same manner, are exempt from the statute. [App. 026] The Petitioner also argued that in examining the statute's language, the commas punctuating the statute could be read as the word "or," and that language following "or" could be read as what is exempted from the statute. [App. 027, 029]

The State argued that the repetition of terms in the statute was to emphasize the manner of care by which the animals and fowl mentioned in the statute should be maintained. [App. 027]

The Circuit Court used an even different statutory analysis to reach a conclusion of the statute's meaning.

B. The Circuit Court's Construction of the Statute

In the hearing before the Circuit Court, the parties again argued their interpretations of W.Va. Code 61-8-19(f). [Transcript, App. 022 to 052]

During its colloquy with counsel, the Circuit Court acknowledged the uncertainty over the correct interpretation of W.Va. Code 61-8-19(f), stating the statute is not "super well written" [App. 041].

However, The Court said the only way it could get the exemption to "make sense" was to construe subsection (f) to be that the phrase, "if kept and maintained in accordance to usual and accepted standards of livestock," as modifying all of the different provisions of the statute." [App. 029]

The Court specifically found in its Order from the hearing "that subsection (f) of W.Va. Code 61-8-19 exempts farm livestock only "if kept and maintained according to usual and accepted standards of livestock". [App. 020]

The Court declared that, in order to make sense, this provision must refer back to subjects other than "gaming fowl or wildlife kept in private or licensed game farms," such as farm livestock and poultry. [Id.]

As the Circuit Court explained, it construed the "accepted standards" clause as relating to all clauses of the statute, which the Petitioner concedes could be acknowledged as one of the accepted statutory construction methods.

Therefore, it can be fairly said, that since the Court did not include a redrafted W.Va.

Code 68-1-9(f), under the Court's analysis the statute could now be interpreted as:

(f) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training

or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management,

nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131, et seq., and the regulations promulgated thereunder, as both statutes and regulations are in effect on the effective date of this section.

However, this interpretation seems strained and actually only gives an exemption to "lawful acts of hunting, fishing, trapping or animal training."

The farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms would receive an exemption only "if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management."

C. Considerations in Statutory Interpretation Law

Just because the parties disagree about the meaning of W.Va. Code 68-1-9(f) that doesn't mean a statute should be interpreted. Ambiguity appears to be a prime prerequisite in determining whether the statute ambiguous enough to require statutory interpretation.

The Petitioner urges that W.Va. Code 68-1-9(f) needs to be interpreted to be clearly understood, because the ambiguity of the statute, circumscribed by the parties' differing opinions of its meaning, renders it completely abstruse. This, added to the Circuit Court's observation

that the statute is not “super well written” [App. 041], seems to be an indicator that interpretation of the statute is needed.

1. Approaching Statutory Interpretation

The Court has, in opinions on many cases, made it abundantly clear that statutory interpretation is not undertaken without regard for the Legislative purpose, or intent, for which it is enacted. When the Court begins examination of a statute, it is guided by rules which self-profess their importance as a “primary object” and “cardinal rule” of statutory construction:

The primary object in construing a statute is to ascertain and give effect to the intent of the Legislature.

Syllabus point 3, *Davis Memorial Hosp. v. West Virginia State Tax Com’r*, 222 W.Va. 677, 671 S.E.2d 682 (2008); Syllabus point 1, *Smith v. State Workmen’s Compensation Commissioner*, 159 W.Va. 108, 219 S.E.2d 361 (1975).

A cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute.

Syllabus point 3, *Meadows v. Wal-Mart Stores, Inc.*, 207 W.Va. 203, 530 S.E.2d 676 (1999).

The Court’s examination of a statute is governed by the intent of the Legislature even when resolving apparent ambiguities:

A statute is open to construction only where the language used requires interpretation because of ambiguity which renders it susceptible of two or more constructions or of such doubtful or obscure meaning that reasonable minds might be uncertain or disagree as to its meaning.

Sizemore v. State Farm Gen. Ins. Co., 505 S.E.2d 654, 659 (W. Va. 1998); *Hereford v. Meek*, 132 W.Va. 373, 386, 52 S.E.2d 740, 747 (1949).

In fact, the Court has further stated that, “A statute that is ambiguous must be construed before it can be applied.” Syl. pt. 1, *Farley v. Buckalew*, 186 W.Va. 693, 414 S.E.2d 454 (1992).

These cases from which these syllabus points are taken establish what can respectfully be described as a “primer,” or small collection of opinions to be used when undertaking the interpretation of an ambiguous statute. In summary, the reviewing Court must understand and give effect to what was the Legislature’s intention in enacting the statute. Second, the Court must give significance and effect to every section, clause, word or part of the statute. Third, the Court should determine if the statute is ambiguous or is susceptible of two or more constructions.

Sometimes, a statute is so ambiguous that the Court must interpret it before being able to determine legislative intent.

Judicial interpretation of a statute is warranted only if the statute is ambiguous and the initial step in such interpretive inquiry is to ascertain the legislative intent.

Syllabus Point 1, *Ohio County Comm’n v. Manchin*, 171 W.Va. 552, 301 S.E.2d 183 (1983)

Finally, the Supreme Court of Appeals has set forth a number of opinions establishing guidelines for interpreting statutes; there are too many to list here. The Petitioner urges that the key to interpreting W.Va. Code 68-1-9(f) is to consider the Legislative intent in light of the body of law in which it exists. In other words, the Court may examine other statutes or provisions contained in similar statutes, or in the context of the general law:

A statute should be so read and applied as to make it accord with the spirit, purposes, and objects of the general system of law of which it is intended to form a part; it being presumed that the legislators who drafted and passed it were familiar with all existing law applicable to the subject-matter, whether constitutional, statutory, or common, and intended the statute to harmonize completely with the same and aid in the effectuation of the general purpose and design thereof, if its terms are consistent therewith. Syllabus Point 5, *State v. Snyder*, 64 W.Va. 659, 63 S.E. 385 (1908). Syllabus point 3, *Buda v. Town of Masontown*, 217 W.Va. 284, 617 S.E.2d 831 (2005).

Syllabus point 4, *Davis Memorial Hosp. v. West Virginia State Tax Com’r*, 222 W.Va. 677, 671 S.E.2d 682 (2008).

2. Statutory Interpretation Applied to W.Va. Code 61-8-19(f)

The Circuit Court agrees with the State that W.Va. Code 61-8-19(f) should be construed to maintain legislative intent by reading the statute as exempting farm livestock only if kept and maintained according to “usual and accepted standards for livestock,” and by relating that clause to every other clause in the statute. Recall the Court’s ruling:

After consideration thereof, the Court FOUND that subsection (f) of W.Va. Code §61-8-19 exempts farm livestock only "if kept and maintained according to usual and accepted standards of livestock". The Court declared that, in order to make sense, this provision must refer back to subjects other than "gaming fowl or wildlife kept in private or licensed game farms," such as farm livestock and poultry. [App. 020]

However, if the Legislature meant to create a conditional exception for livestock, why, as Petitioner’s counsel argued to the Circuit Court, did it need to create an exception at all? Any animal kept and maintained to the usual manner of other animals of their type would never come under inquiry by the State, no more than would a motorist studiously maintain the speed limit on a state highway. Petitioner’s counsel was on point when he told the Circuit Court, “... why would the legislature place Subsection F in there with that language? If it was cruelty or neglect to animals, why would they give an exemption and then turn around and say, ‘If kept by thereasonable standards?’ There wouldn't be a need for that exemption.” [App. 032]

The Court’s response, that the requirement of care, “just adds another step, I guess, in terms of what they have to prove,” [App. 032] doesn’t seem to provide an answer, since W.Va. Code 61-8-19(f) contains no elements of the charge--which are contained in the top portion of the statute, in paragraphs (a)(1)(A) through (a)(1)(I): (a)(1) It is unlawful for any person to intentionally, knowingly or recklessly,

(A) Mistreat an animal in cruel manner;

- (B) Abandon an animal;
- (C) Withhold;
 - (i) Proper sustenance, including food or water;
 - (ii) Shelter that protects from the elements of weather; or
 - (iii) Medical treatment, necessary to sustain normal health and fitness or to end the suffering of any animal;
- (D) Abandon an animal to die;
- (E) Leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result;
- (F) Ride an animal when it is physically unfit;
- (G) Bait or harass an animal for the purpose of making it perform for a person's amusement;
- (H) Cruelly chain or tether an animal; or
- (I) Use, train or possess a domesticated animal for the purpose of seizing, detaining or mistreating any other domesticated animal.

Those criminal elements of W.Va. Code 61-8-19 are meant to define and fairly apprise the potential defendant of what acts will violate the statute. Some of these acts are vague. For example, the act of “chaining or tethering” an animal is punished if it is done “cruelly,” pursuant to W.Va. Code 61-8-19(a)(1)(H). Likewise, it is not enough to merely mistreat an animal, the mistreatment must occur in a “cruel manner,” under W.Va. Code 61-8-19(a)(1)(A).

When Petitioner's counsel argued that the commas punctuating the statute could be read as “ors,” and that language following “or” could be read as what is exempted, counsel was attempting to argue for grammatical construction of the statute. [App. 027, 029] Under Petitioner's interpretation, W.Va. Code 61-8-19(f) would now read:

- (f) The provisions of this section do not apply to lawful acts of hunting,
fishing, trapping OR
animal training OR
farm livestock, poultry, gaming fowl OR

wildlife kept in private or licensed game farms IF kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife

or game farm production and management,

nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131, et seq., and the regulations promulgated thereunder, as both statutes and regulations are in effect on the effective date of this section.

Petitioner's counsel's statutory construction, involving the interpretation of punctuation and a determination "of what modifies what," produces a result where livestock are clearly exempted, and the "usual accepted standards of livestock" modifies "wildlife kept in private or licensed game farms." In addition, wildlife must be maintained according to usual and accepted standards of "livestock, poultry, gaming fowl or wildlife." See, W.Va. Code 61-8-19(f).

D. Construction that Reconciles the General System of Law

As indicated previously, statutory interpretation can rely upon the examination of other statutes, particularly those which contain a body of law with similar purpose.

A statute should be so read and applied as to make it accord with the spirit, purposes, and objects of the general system of law of which it is intended to form a part; it being presumed that the legislators who drafted and passed it were familiar with all existing law applicable to the subject-matter, whether constitutional, statutory, or common, and intended the statute to harmonize completely with the same and aid in the effectuation of the general purpose and design thereof, if its terms are consistent therewith.

Syllabus Point 5, *State v. Snyder*, 64 W.Va. 659, 63 S.E. 385 (1908); Syllabus point 3, *Buda v. Town of Masontown*, 217 W.Va. 284, 617 S.E.2d 831 (2005).

In this case, the statute introduced in the civil Magistrate hearing leaps forward for examination. W.Va. Code 7-10-9, titled, "Custody and care of animals abandoned, neglected or cruelly treated; hearing; bonds; liability for costs; liens; *exclusions*," provides in subsection (h):

(h) The provisions of this section do not apply to farm livestock, as defined in subsection (d), section two, article ten-b, chapter nineteen of this code; poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock; poultry, gaming fowl, wildlife or game farm production and management; nor to the humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131, et seq., and the regulations promulgated thereunder. (Emphasis supplied)

It is appropriate to look at the language of W.Va. Code 7-10-9 because it is in a similar scheme of law designed to protect mistreated animals. In addition, W.Va. Code 7-10-9 contains, in subsection (h), an exclusion for livestock with similar language to the subject of this appeal, W.Va. Code 61-8-19(f). However, closer examination of subsection (h) reveals the Legislature has inserted semi-colons throughout the subsection. If the statute is read utilizing the semicolons as the intended breaks between provisions of the statute, W.Va. Code 7-10-9(h) would read as follows:

(h) The provisions of this section do not apply to farm livestock, as defined in subsection (d), section two, article ten-b, chapter nineteen of this code;

poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock;

poultry, gaming fowl, wildlife or game farm production and management;

nor to the humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131, et seq., and the regulations promulgated thereunder.

Because of the use of semicolons, there now is no doubt about “what modifies what.” The horses and donkey (as well as the missing pigs) are now clearly excluded from the statute by the unmodified “*The provisions of this section do not apply to farm livestock.*” Poultry, gaming fowl or wildlife kept in private or licensed game farms also are excluded if maintained to the

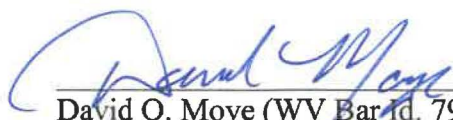
usual and accepted standards of livestock. The provisions of subsection(h) also exclude poultry, gaming fowl, wildlife or game farm production and management. This construction of subsection(h) allows it to be read and applied as to make it accord with the spirit, purposes, and objects of the general system of law of which it is intended to form a part. [Syllabus Point 5, *State v. Snyder*] It is clearly written to avoid ambiguity. The same result could be accomplished by substituting semicolons for the “or” in W.Va. Code 61-8-19(f), and by adding a “nor” after the new semicolon inserted in the second line after “farm livestock.” Ambiguity would be eliminated from W.Va. Code 61-8-19(f), and the revised subsection (f) would now read:

(f) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping, animal training or farm livestock; nor to poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock; nor to poultry, gaming fowl or wildlife or game farm production and management; nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131, et seq., and the regulations promulgated thereunder, as both statutes and regulations are in effect on the effective date of this section.

VI. CONCLUSION

The Petitioner prays that the Supreme Court of Appeals will apply principles of statutory construction to resolve ambiguity in W.Va. Code 61-8-19(f). The Petitioner further prays that this Honorable Court will reverse the order of the Circuit Court of Putnam County, and uphold the decision of the Magistrate Court dismissing this manner. The Petitioner further prays that her animals, which were seized by the State, be returned to her.

Harlee Beasley
By Counsel



David O. Moyer (WV Bar Id. 7900)

Attorney at Law

Post Office Box 26

Winfield, WV 25213

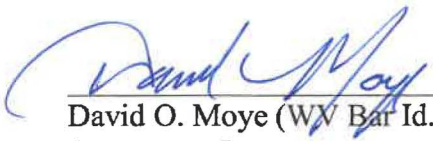
david@moyer-law-office.com

Telephone: (304) 586-1251

CERTIFICATE OF SERVICE

I, David O. Moye, counsel for Harlee Beasley, hereby certify that on September 30, 2021, true and accurate copies of the foregoing Appellant's Appeal Brief were served on the persons listed below in the following manner:

Scott E. Johnson (WVSB No. 6335)
Assistant Attorney General
Office of the Attorney General
Appellate Division
1900 Kanawha Boulevard East
Bldg. 6, Suite 406
Charleston, WV 25305
Telephone: (304) 558-5830
Facsimile: (304) 558-5833
Email: Scott.E.Johnson@wvago.gov
Counsel for Respondent



David O. Moye (WV Bar Id. 7900)
Attorney at Law
Post Office Box 26
Winfield, WV 25213
david@moye-law-office.com
Telephone: (304) 586-1251
Counsel for the Petitioner