

[J-122-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JOHNNA SEETON,	:	No. 6 MAP 2005
	:	
Appellant	:	
	:	Appeal from the Commonwealth Court
	:	Order at No. 719 MD 2004 Sustaining the
v.	:	Preliminary Objections and Dismissing the
	:	Action on December 22, 2004
	:	
PENNSYLVANIA GAME COMMISSION,	:	
	:	
Appellee	:	ARGUED: October 19, 2005

DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: December 27, 2007

I must respectfully dissent. Appellant lacks legal standing because she does not have a substantial, direct, and immediate interest in this matter. See Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269, 280 (Pa. 1975). The majority, applying the standing exception in In re Application of Biester, 409 A.2d 848 (Pa. 1979), determined appellant has taxpayer standing. Majority Slip Op., at 6-8. I disagree with the majority's application of Biester because appellant does not demand a cessation of spending tax dollars, but rather seeks to compel appellee to spend tax dollars. Our jurisprudence does not contain case law that allows a plaintiff relying on taxpayer standing to force a governmental agency to spend money.

The majority errs by granting mandamus. "Mandamus is an extraordinary writ that will only lie to compel official performance of a ministerial act or mandatory duty

where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other appropriate and adequate remedy.” Jackson v. Vaughn, 777 A.2d 436, 438 (Pa. 2001) (citation omitted). Therefore, mandamus will not lie to compel discretionary acts. Bronson v. Board of Probation and Parole, 421 A.2d 1021, 1023 (Pa. 1980), cert. denied, 450 U.S. 1050 (1981). Here, appellee’s enforcement of the Pennsylvania Game and Wildlife Code (Game Code) is a discretionary and not a ministerial act; therefore, the majority errs by granting mandamus.

The majority does not afford due deference to appellee’s determination that boars are not protected wild animals under the Game Code. An administrative interpretation receives controlling weight unless the interpretation is plainly erroneous or inconsistent with the agency’s regulation. Department of Public Welfare v. Forbes Health System, 422 A.2d 480, 482 (Pa. 1980). Appellant argues the term “wild animals” is defined as all non-domestic mammals; therefore, wild animals and wild mammals are the same. Although the Game Code defines “wild animals” as all non-domestic mammals, it does not formally define the term “wild mammal” or the term “wild.” The boars at Tioga Boar Hunt Preserve (Preserve) are living in a state of captivity; thus, they are not living in a state of nature. The Game Code’s policy declaration regarding actions for damages to game or wildlife provides:

The Commonwealth has sufficient interest in game or wildlife living in a free state to give it standing, through its authorized agents, to recover compensatory and punitive damages in a civil action against any person who kills any game or wildlife or who damages any game or wildlife habitat. The proprietary ownership, jurisdiction and control of game or wildlife living free in nature is vested in the Commonwealth by virtue of the continued expenditure of its funds and its efforts to protect, propagate, manage and preserve the game or wildlife population as a renewable natural resource of this Commonwealth.

34 Pa.C.S. § 2161(a) (emphasis added). Considering the legislative expression of Pennsylvania's inherent interest in preserving "wildlife living free in nature," the Commission's interpretation that the Preserve's boars are not wild animals is not plainly erroneous or inconsistent with the Game Code.