

DOCKET NO. LLI-CV-17-5009822-S	SUPERIOR COURT
NONHUMAN RIGHTS PROJECT, INC. EX REL. BEULAH, MINNIE, & KAREN	JUDICIAL DISTRICT OF LITCHFIELD
V.	AT TORRINGTON
R.W. COMMERFORD & SONS, INC.	FEBRUARY 27, 2018

2018 FEB 27 PM 3 04
 JUDICIAL DISTRICT OF
 LITCHFIELD
 STATE OF CONNECTICUT

OFFICE OF THE CLERK
 SUPERIOR COURT

MEMORANDUM OF DECISION

MOTION TO REARGUE AND REQUEST FOR LEAVE TO AMEND, NO. 109

The petitioner, Nonhuman Rights Project, Inc., seeks a writ of habeas corpus on behalf of three elephants, Beulah, Minnie, and Karen, which are owned by the respondents, R.W.

Commerford & Sons, Inc. a/k/a Commerford Zoo, and William R. Commerford, as president of R.W. Commerford & Sons, Inc. On December 26, 2017, the court denied the petition on the grounds that (i) the petitioner lacks standing; and (ii) the petition is wholly frivolous on its face in legal terms. (Docket Entry nos. 106-108). The issue is whether the court should grant the petitioner's motion to reargue and request for leave to amend; (Docket Entry no. 109); which it filed along with a supporting memorandum of law; (Docket Entry no. 109.5); on January 16, 2018.

After due consideration, the court denies the motion and request on the grounds that (i) the petitioner fails to put forth any controlling principle of law that runs contrary to the two grounds for which the court denied the petition; and (ii) the petitioner's proposed amendments do not resolve this court's conclusion that – under the law as it stands today – the petition lacks the possibility or probability of victory, meaning it is wholly frivolous on its face in legal terms.

2-27-18 Copy of memorandum of Decision mailed to Atty. David Zabel, Cohen & Wolf PC, PO Box 1821, Bridgeport CT 06601; to Reporter of Judicial Decisions, Supreme Court Building, 231 Capitol Avenue, Hartford, CT 06106; and to Atty. Steven M. Wix, 5195 NW 112th Terr., Coral Springs, FL 33076. P.L.

DISCUSSION

I

MOTION TO REARGUE

“A motion to reargue is not a device to obtain a second bite of the apple or to present additional cases or briefs which could have been presented at the time of the original argument. . . . Rather, reargument is proper when intended to demonstrate to the court that there is some . . . principle of law which would have a controlling effect, and which has been overlooked” (Citation omitted; internal quotation marks omitted.) *Durkin Village Plainville, LLC v. Cunningham*, 97 Conn. App. 640, 656, 905 A.2d 1256 (2006). The petitioner here fails to put forth any controlling principle of law that is in contrast with the two grounds for which the court denied the petition. For this reason, the court denies the plaintiff’s motion to reargue.

II

REQUEST FOR LEAVE TO AMEND

In this court’s memorandum of decision denying the petition, the court concluded that the petitioner lacks standing because it failed to allege that it had a significant relationship with the elephants. The court also noted that such failure *may* be overcome when the confined person has no significant relationships with anyone, but that the petitioner had failed to allege this in its petition as well. The petitioner requests leave to amend to address these flaws.

“While our courts have been liberal in permitting amendments . . . this liberality has limitations. Amendments should be made seasonably. Factors to be considered in passing on a motion to amend are the length of the delay, fairness to the opposing parties and the negligence, if any, of the party offering the amendment. . . . The motion to amend is addressed to the trial court’s discretion which may be exercised to restrain the amendment of pleadings so far as necessary to prevent unreasonable delay of the trial. . . . Whether to allow an amendment is a

matter left to the sound discretion of the trial court.” (Citations omitted; internal quotation marks omitted.) *LaFlamme v. Dallessio*, 65 Conn. App. 1, 7, 781 A.2d 482 (2001), rev’d on other grounds, 261 Conn. 247, 802 A.2d 63 (2002). Our Appellate Court in *LaFlamme* held that the trial court did not abuse its discretion by granting the defendant’s motion for summary judgment without having ruled on the plaintiff’s request for leave to amend. See *id.* (“It was well within the court’s discretion to grant or deny the plaintiff’s request. The court exercised its discretion by first hearing and ruling on the defendant’s motion for summary judgment. Having granted the motion and rendered judgment, the court no longer was compelled to act on the plaintiff’s request. We are not persuaded that the court abused its discretion by acting on the earlier filed motion.”)

Although our Appellate Court has subsequently held that it was an abuse of discretion for a trial court to grant summary judgment without having ruled on a pending request for leave to amend when such amendment would have served to defeat summary judgment; see *Miller v. Fishman*, 102 Conn. App. 286, 293-97, 925 A.2d 441 (2007), cert. denied, 285 Conn. 905, 942 A.2d 414 (2008); the court there distinguished *LaFlamme v. Dallessio*, *supra*, 65 Conn. App. 7, by pointing out that in *LaFlamme*, the granting of summary judgment “did not rest on a failure of the operative complaint that could be remedied through a proper amendment.” *Miller v. Fishman*, *supra*, 292. Here, as in *LaFlamme*, even if the court were to grant the petitioner leave to amend, its proposed amendments¹ do not change the outcome. Denial of the petition did not rest exclusively on the petitioner’s lack of standing, but also on the legal conclusion that the

¹ The petitioner includes as an exhibit to this motion a blacklined proposed amended petition where it appears as though the original petition alleged that the elephants lacked any significant relationships and provided supporting law. (See Pet’r Ex. 3, pp. 13-17, Docket Entry no. 109). It should be noted for the purposes of review that the original petition; (Docket Entry no. 101); did not contain any of the language that is crossed out on these pages.

basis for the petition is not a constitutionally protected liberty, which is required in order to issue a writ of habeas corpus. See *Fuller v. Commissioner of Correction*, 144 Conn. App. 375, 378, 71 A.3d 689, cert. denied, 310 Conn. 946, 80 A.3d 907 (2013). Thus, even were this court to determine that the petitioner's proposed amendments resolve the issue of standing, the resulting amended petition would still lack the possibility or probability of victory, constraining the court to deny it once again. Accordingly, the court denies the petitioner's request for leave to amend.

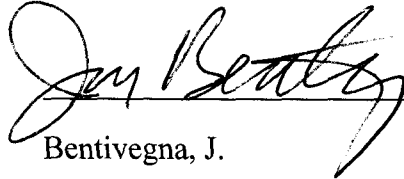
III

CONCLUSION

For the foregoing reasons, the court denies the motion to reargue and request for leave to amend, No. 109.

SO ORDERED.

BY THE COURT,



Bentivegna, J.