

A.C. 41464	:	APPELLATE COURT
(DOCKET NO.: <u>LLI-CV-17-5009822-S</u>)	:	
	:	STATE OF CONNECTICUT
In the matter of a Petition for a Common	:	
Law Writ of Habeas Corpus,	:	
	:	
NONHUMAN RIGHTS PROJECT, INC.,	:	
on behalf of BEULAH, MINNIE, and	:	
KAREN,	:	
Plaintiff-Appellant,	:	
v.	:	
	:	
R.W. COMMERFORD & SONS, INC.	:	
a/k/a COMMERFORD ZOO, and	:	
WILLIAM R. COMMERFORD, as	:	
President of R.W. COMMERFORD &	:	
SONS, INC.,	:	
Defendants-Appellees.	:	April 18, 2018

MOTION FOR ARTICULATION

Plaintiff-Appellant the Nonhuman Rights Project, Inc. (“Plaintiff” or “NhRP”) hereby seeks articulation of the December 26, 2017 and February 27, 2018 Orders of the Trial Court (Bentivegna, J.).

I. BRIEF HISTORY

On December 26, 2017, the Trial Court (Bentivegna, J.) issued an Order dismissing Plaintiff’s Verified Petition for a Common Law Writ of Habeas Corpus (“Petition”) on behalf of three elephant detainees. On January 16, 2018, Plaintiff filed a Motion to Reargue, which was dismissed by the Trial Court in a separate Order on February 27, 2018. On March 16, 2018, Plaintiff timely filed its appeal of both decisions.

II. SPECIFIC FACTS

In its December 26, 2017 Order, the Trial Court dismissed the NhRP's Petition under Practice Book § 23-24 (a)(1) on the ground that the NhRP lacked standing under Practice Book § 23-24 (a)(2) or, in the alternative, on the ground the Petition was "wholly frivolous on its face in legal terms." (Decision, at 1). The Trial Court denied Plaintiff's Motion to Reargue in a separate Order on February 27, 2018. Pursuant to Practice Book § 66-5, Plaintiff hereby respectfully requests the articulation of the legal and factual basis for the Orders of the Trial Court noted above as follows:

A. Standing

1. Articulate the Connecticut judicial precedent, rule, statute, or other authority that requires a petitioner filing a petition for a common law writ of habeas corpus on another's behalf to be a formal "next friend" of the detainee.
2. Articulate how such authority may be reconciled with the Connecticut common law cases cited in the Motion to Reargue at pages 9 through 11.
3. Articulate the Connecticut precedent that adopts or otherwise applies the second prong of the *Whitmore v. Arkansas*, 495 U.S. 149, 163-64 (1990) standing test to a Connecticut common law habeas corpus action where the detainee is neither a convicted prisoner nor the subject of a child custody dispute.
4. Articulate the Connecticut judicial precedent, rule, statute, or other authority that requires a "significant relationship" to exist between a

petitioner in a Connecticut common law habeas corpus action and the detainee upon whose behalf the writ is sought.

5. Articulate why elephant detainees do not automatically fall under the exceptions set forth in *Hamdi v. Rumsfeld*, 294 F.3d 598, 604 n.3 (4th Cir. 2002) and cited by this Court to any requirement that a “significant relationship” must exist between a detainee and the petitioner in a Connecticut common law habeas corpus action.
6. Articulate why the Court did not take judicial notice or infer through the Petition that the elephant detainees have no “significant relationships” within the meaning of *Whitmore*.

B. Frivolousness

7. Articulate what “frivolous on its face in legal terms” means.
8. Articulate why the Petition lacked a “*possibility of victory*” (i.e. that it was impossible for the NhRP to prevail).
9. Articulate whether the *Lozoda* standard for determining frivolousness set forth in *Fernandez v. Comm'r of Corr.*, 125 Conn. App. 220, 223-24 (2010), which this Court cited, applies to Practice Book § 23-24 (a)(2), and if so, to what extent, the “possibility of victory” standard enunciated in *Henry E.S., Sr. v. Hamilton*, 2008 WL 1001969 (Conn. Super.) differs from the *Lozoda* standard.
10. If the *Lozoda* standard for determining frivolousness set forth in *Fernandez* applies to Practice Book § 23-24 (a)(2), articulate:

- a. why the legal arguments presented in the Petition and supporting Memorandum of Law are not debatable among jurists of reason, especially in light of the fact that the Petition and Motion to Reargue cited at least four cases in which a writ of habeas corpus or its equivalent were in fact granted on behalf of nonhuman animals, and the fact that cases of first impression in Connecticut *per se* pass frivolousness review under *Lozoda*.¹
 - b. why courts could not possibly resolve the issues presented in the Petition in a different manner, especially in light of the fact that courts have in fact granted the relief the NhRP seeks in this case on behalf of other nonhuman animals.
 - c. why the arguments presented in the Petition and supporting Memorandum of Law are not adequate to deserve encouragement to proceed further.
11. Articulate why the NhRP's equality arguments (Pet. at ¶¶10, 33-34, 55; Mem. at pgs. 13-20), liberty arguments (Pet. at ¶¶ 10, 23, 32, 43, 51, 55; Mem. at pgs. 11-13), autonomy arguments (Pet. at ¶¶ 32, 50, 51, 55, 57, 61, 82, 88, 98; Mem. at 11-14), and pet trust statute C.G.S.A. § 45a-489a argument (Pet. at ¶ 45), either separately or taken together, do not compel the conclusion that the Petition is not frivolous on its face within the meaning of Practice Book § 23-24 (a)(2).

¹ See *Torres v. Commissioner of Correction*, 175 Conn. App. 460, 468 (2017) (noting that “[t]his court has previously concluded that issues of first impression in Connecticut meet one or more of the three criteria”).

12. Articulate why common law principles previously applied to human detainees were deemed irrelevant in a common law case of first impression that seeks to apply those principles to elephant detainees for the purpose of determining whether the Petition is frivolous on its face within the meaning of Practice Book § 23-24(a)(2).
13. Articulate why the present case of first impression that (a) specifically seeks a good faith extension of the common law of habeas corpus to elephant detainees, (b) cites to cases in New York and Argentina in which writs of habeas corpus or their equivalent were issued on behalf of great apes, (c) cites to statutes in New Zealand in which such nonhuman entities as a river and a national park were designated as “persons,” (d) cites to cases in India that hold that a Hindu idol, a mosque, and the Holy Books of the Sikh religion are “persons,” and (e) cites to over 100 published scholarly books and law review articles that specifically discuss the issues raised in the Petition and supporting Memorandum of Law is frivolous on its face within the meaning of Practice Book § 23-24(a)(2).
14. Articulate why the Connecticut “pet trust” statute, C.G.S.A. § 45a-489a, which confers certain rights upon nonhuman animals in Connecticut, including elephants, is not sufficient authority to support the notion that there is a possibility that courts could confer the right to bodily liberty upon the three elephant detainees pursuant to a petition for a common law writ of habeas corpus rather than being frivolous on its face within the meaning of Practice Book § 23-24 (a)(2).

15. Articulate the Connecticut judicial precedent, rule, statute, or other authority that requires a common law habeas corpus petition brought on behalf of a detainee, who is not a prisoner or the subject of a child custody dispute, and who is challenging the lawfulness of the detention itself and not the conditions of her confinement, to allege a violation of a constitutionally protected liberty interest.
16. Articulate why it is impossible for an elephant to ever be a legal person for purposes of securing a common law writ of habeas corpus.

III. LEGAL GROUNDS

This Motion for Articulation is brought pursuant to Practice Book §§ 61-10 and 66-5. “An articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification.” *State v. Wilson*, 199 Conn. 417, 435 (1986). “[P]roper utilization of the motion for articulation serves to dispel any such ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby sharpening the issues on appeal.” *Barnes v. Barnes*, 190 Conn. 491, 494 (1983). *Accord Cable v. Bic Corp.*, 270 Conn. 433, 444-45 (2004); *Alliance Partners, Inc. v. Oxford Health Plans, Inc.*, 263 Conn. 191, 204 (2003); *Miller v. Kirshner*, 225 Conn. 185, 208 (1993).

Although Practice Book § 61-10(b) provides that an appellant no longer forfeits review by failing to seek articulation, it still serves the purpose of enabling the appellant to present an adequate record for review. Plaintiff therefore respectfully submits that its requested articulation of the Trial Court's Orders be provided to facilitate appellate review.

THE PLAINTIFF-APPELLANT,

By /s/ Barbara M. Schellenberg (305749)

Barbara M. Schellenberg

Cohen and Wolf, P.C.

657 Orange Center Road

Orange, CT 06477

Tel: (203) 298-4066

Fax: (203) 337-5526

Juris No. 432240

Email: bschellenberg@cohenandwolf.com

Steven M. Wise (admitted *pro hac vice*)

5195 NW 112th Terrace

Coral Springs, FL 33076

Tel: (954) 648-9864

Fax: n/a

Email: wiseboston@aol.com

CERTIFICATION

I hereby certify that: a copy of the foregoing has been delivered electronically on the date hereof to each other counsel of record and the non-appearing defendants; counsels' and defendants' names, addresses, e-mail addresses, telephone and facsimile numbers are listed below; the foregoing has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and the foregoing complies with all applicable rules of appellate procedure.

David B. Zabel
Cohen and Wolf, P.C.
1115 Broad Street
Bridgeport, CT 06604
Tel: (203) 368-0211
Fax: (203) 394-9901
Email: dzabel@cohenandwolf.com

R.W. Commerford & Sons
48 Torrington Rd.
Goshen, CT 06756
Tel.: (860) 491-3421
Fax: (860) 491-9428
E-mail: commerfordzoo@yahoo.com

William R. Commerford
48 Torrington Rd.
Goshen, CT 06756
Tel.: (860) 491-3421
Fax: (860) 491-9428
E-mail: commerfordzoo@yahoo.com

/s/ Barbara M. Schellenberg (305749)
Barbara M. Schellenberg