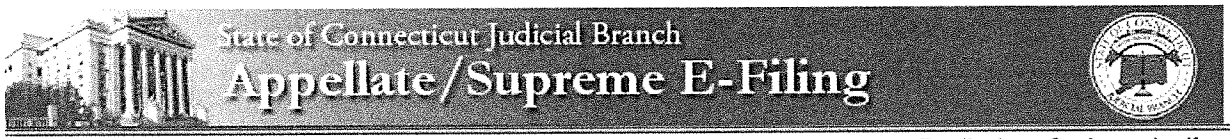

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A.C. 41464	:	SUPREME COURT
In the matter of a Petition for a Common Law Writ of Habeas Corpus,	:	
NONHUMAN RIGHTS PROJECT, INC., on behalf of BEULAH, MINNIE, and KAREN, Plaintiff-Appellant,	:	STATE OF CONNECTICUT
v.	:	
R.W. COMMERFORD & SONS, INC. a/k/a COMMERFORD ZOO, and WILLIAM R. COMMERFORD, as President of R.W. COMMERFORD & SONS, INC., Defendants-Appellees.	:	November 28, 2018

MOTION TO TRANSFER

Pursuant to Connecticut Practice Book §§ 65-2 and 66-2, Plaintiff, the Nonhuman Rights Project, Inc. ("NhRP"), moves this Court to transfer its pending appeal before the Appellate Court to the Supreme Court on the ground that the appeal involves novel issues of first impression that are of widespread legal and social significance that go beyond the circumstances of the present case, as explained below. This appeal concerns pure questions of law regarding the fundamental and time-honored writ of habeas corpus. No facts are in dispute. Immediate review by this Court is warranted, as the Trial Court's ruling has sweeping consequences for habeas corpus petitioners throughout the State.

I. Brief History

The NhRP filed a Verified Petition for a Common Law Writ of Habeas Corpus ("Petition") seeking a good faith extension or modification of the Connecticut common law of habeas corpus on behalf of three autonomous beings, Beulah, Minnie, and Karen, elephants who are being illegally detained by Defendants, R.W. Commerford & Sons, Inc. (a/k/a

Commerford Zoo), a Connecticut corporation, and its President. The NhRP seeks recognition of the elephants' personhood for the sole purpose of according them the common law right to bodily liberty protected by habeas corpus and securing their immediate release from illegal detention.

The NhRP filed the Petition on November 13, 2017. On December 26, 2017, the Trial Court refused to issue the writ under Practice Book § 23-24 (a)(1) on the ground the NhRP lacked standing and, in the alternative, under § 23-24 (a)(2), that the Petition was "wholly frivolous on its face as a matter of law." ("Decision" at 1). On January 16, 2018, the NhRP filed a Motion to Reargue or, in the Alternative, to Amend the Petition, which was denied on February 27, 2018. ("Second Decision"). On March 16, 2018, the NhRP filed a timely appeal of both decisions. On April 18, 2018, the NhRP filed a Motion for Articulation. On May 23, 2018, the Trial Court denied the motion as to all but request number ten. On June 5, 2018, the NhRP filed a Motion for Review of the Trial Court's response to the Motion for Articulation. On July 25, 2018, the Appellate Court granted review but denied the relief requested.

II. Specific Facts

The NhRP is a nonprofit civil rights legal organization with a mission "to change the common law status of at least some nonhuman animals from mere 'things,' which lack the capacity to possess any legal rights, to 'persons,' who possess such fundamental rights as bodily integrity and bodily liberty, and those other legal rights to which evolving standards of morality, scientific discovery, and human experience entitle them." Karen is a female African elephant in her mid-thirties. Captured from the wild around 1983, defendants have owned Karen since 1984. Beulah is a female Asian elephant in her mid-forties. Captured from the

wild in 1967 in Myanmar, Defendants have owned her since 1973. Minnie is a female Asian elephant who Defendants have owned since at least 1989.

Practice Book § 23-24 provides, in relevant part, that the "judicial authority shall issue the writ unless it appears that: (1) the court lacks jurisdiction; [or] (2) the petition is wholly frivolous on its face . . ." On December 26, 2017, the Trial Court dismissed the Petition under §§ (1) and, in the alternative, (2). (Decision at 1).

III. Legal Grounds

A. The Trial Court's unwarranted constriction of habeas corpus standing conflicts with this Court's precedents, presents an important question of first impression, and has wide-ranging negative implications for the use of habeas corpus by both humans and nonhuman animals.

Habeas corpus is the "Great Writ" that protects "persons" from unlawful detention, whether public or private. *Lozada v. Warden*, 223 Conn. 834, 840 (1992). "Indeed, there is nothing more critical than the denial of liberty, even if the liberty interest is one day in jail." *Gonzalez v. Comm'r of Corr.*, 308 Conn. 463, 483-84 (2013). Generally, "every presumption favoring jurisdiction should be indulged," *Amodio v. Amodio*, 247 Conn. 724, 727-28 (1999), and "[t]here is a judicial bias in favor of jurisdiction in petitions for writs of habeas corpus." *Mock v. Warden*, 48 Conn. Supp. 470, 476 (2003).

Neither General Statutes § 52-466(a)(2) nor Practice Book § 23-40(a) limits *who* may bring a habeas corpus petition on behalf of another[1] and this Court has long permitted strangers to do so. In *Jackson v. Bulloch*, 12 Conn. 38 (1837), the famed black abolitionist, James Mars, successfully sought common law habeas corpus on behalf of a slave to whom he was a stranger. *Jackson* remains controlling and, like § 52-466, is consistent with

[1] *See generally Rodd v. Norwich State Hosp.*, 5 Conn. Supp. 360, 360 (1937); *Moye v. Warden*, 2009 WL 3839292, *2 n.1 (Conn. Super.).

centuries of habeas corpus law that recognizes the supreme importance of bodily liberty and permits anyone to bring a habeas corpus action on behalf of another.[2] Thus, the Trial Court should have concluded that the NhRP has standing to bring the Petition on behalf of Beulah, Minnie, and Karen instead of concluding that the NhRP was required to, and did not, demonstrate a "significant relationship" with the elephants.

This Court has never held that a habeas corpus petitioner must demonstrate a "significant relationship" with the detainee. Nor, contrary to the statement of the Trial Court, has it adopted the *Whitmore v. Arkansas*, 495 U.S. 149, 163-164 (1990) *dicta* that a petitioner must allege a "significant relationship" with a detainee. (Decision at 7). The Trial Court cited *State v. Ross*, 272 Conn. 577, 597 (2005) for the proposition that *Whitmore*'s "next friend" standard was adopted by this Court. (Decision at 7). But *Ross* merely adopted the first prong of the two-prong *Whitmore* test, requiring that the real party in interest lack the ability to sue, and not the *Whitmore dicta* that "it has been further suggested that a 'next friend' must have some significant relationship with the real party in interest," with *Whitmore* saying nothing further on that issue. *Id.* at 163-64 (citing only *Davis v. Austin*, 492 F. Supp. 273, 275-276 (N.D. Ga. 1980)). The *Whitmore dicta* remains a controversial requirement for *federal* habeas corpus standing which many federal courts do not recognize. *See, e.g., Sam M. v. Carcieri*, 608 F.3d 77, 90-91 (1st Cir. 2010); *Padilla v. Rumsfeld*, 352 F.3d 695, 703

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[2] *E.g., Somerset v. Stewart*, 98 Eng. Rep. 499, 510 (K.B. 1772) (unrelated third parties sought common law writ on behalf of slave) (*Somerset* said to be settled Connecticut law in *Jackson*, 12 Conn. at 53); *Lemmon v. People*, 20 N.Y. 562, 562, 599-600 (1860) (stranger abolitionist received writ on behalf of detained slaves); *State ex rel. v. Malone*, 35 Tenn. 699, 705 (1856) ("It is not ... necessary that either the petition for the writ, or the affidavit, should be by the party in detention . . . "); *Commonwealth v. Aves*, 35 Mass. 193, 193, 206 (1836) (stranger received writ on behalf of child slave) (*Aves* was cited with approval in *Jackson*, 12 Conn. at 42).

n.7 (2d Cir. 2003), *rev'd and remanded on other grounds*, 542 U.S. 426 (2004); *Coal. of Clergy v. Bush*, 310 F.3d 1153, 1165-66 (9th Cir. 2002) (Barzon, J., concurring); *ACLU Found. v. Mattis*, 286 F. Supp. 3d 53, 57 (D.D.C. 2017). Even in *Hamdi v. Rumsfeld*, 294 F.3d 598, 604 n.3 (4th Cir. 2002), upon which the Trial Court relied (Decision at 7), the Fourth Circuit admonished that "we reserve the case of someone who possesses no significant relationships at all."

This Court should grant the motion to transfer to make it immediately clear that a "significant relationship" is not required.[3] Significantly, New York courts have affirmatively recognized the NhRP's standing to seek the writ on behalf of chimpanzees. *See Stanley*, 16 N.Y.S. 3d 898; CPLR 7002(a)(allowing "one acting on his behalf" to bring suit, which merely codifies the common law of habeas corpus standing that New York, English, and Connecticut cases have long employed).[4] In the six habeas corpus cases the NhRP filed on behalf of nonhuman animals in New York, no court found that the NhRP lacked standing.[5]

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[3] The courts cited by the Trial Court including *Hamdi*, that have adopted the "significant-relationship" *dicta* agree one is not necessary: (1) where the real party has no "significant relationships," (2) in "desperate circumstances," or (3) in "extreme cases." *See Bush*, 310 F.3d at 1162; *Mattis*, 286 F. Supp. 3d at 59.

[4] *See People v. McLeod*, 3 Hill 635 fn. j sec.7 (N.Y. Sup. Ct. 1842) ("The common law right was clear for any *friend* of the prisoner as well as *agent* to make the application.").

[5] *See, e.g., Nonhuman Rights Project, Inc. ex rel. Tommy v. Lavery*, 152 A.D.3d 73, 75 n.1 (1st Dept. 2017) ("petitioner [NhRP] undisputedly has standing pursuant to CPLR 7002(a), which authorizes anyone to seek habeas relief on behalf of a detainee."), *leave to appeal den.*, 31 N.Y. 3d 1054 (2018).; *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148, 150-53 (3d Dept. 2014), *leave to appeal den.*, 26 N.Y.3d 902 (2015).

B. The Trial Court's interpretation of "frivolous" presents an important issue of first impression with wide-ranging negative implications for the use of habeas corpus for both humans and nonhuman animals.

Who is a "person" is arguably the most important issue that can come before this Court. Personhood determines who counts, who lives, who dies, who is enslaved, and who is free. *See* Note, *What We Talk About When We Talk About Persons: The Language of a Legal Fiction*, 114 Harv. L. Rev. 1745, 146 (2001). "Person" has never been a synonym for "human being" but rather designates law's most fundamental category by identifying those entities capable of possessing a legal right. The determination of common law personhood for the purpose of habeas corpus is based on public policy, not biology. *See Byrn v. New York City Health & Hosps. Corp.*, 31 N.Y.2d 194, 201-02 (1972); *Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*, 31 N.Y. 3d 1054 (2018) (Fahey, J., concurring); *People v. Graves*, 78 N.Y.S. 3d 613, 617 (4th Dept. 2018) (quoting *Byrn,* 31 N.Y. 2d at 201). *See generally Craig v. Driscoll*, 262 Conn. 312, 330 n.15 (2003).

This appeal seeks to resolve, for the first time in the Connecticut appellate courts, the proper meaning of the term "frivolous" as used in Practice Book § 23-24 (a)(2). Prompt resolution of the issue is imperative because the Trial Court's erroneous interpretation could result in the dismissal of meritorious habeas corpus petitions merely because they present novel claims, curtailing bodily liberty for those wrongfully detained. Given its obvious significance to habeas corpus petitioners throughout the State, this Court should review the decision in the first instance.

Frivolousness under Practice Book § 23-24 (a)(2) means a "*possibility* of victory," not "probable" or even "[m]eritorious." *Henry E.S., Sr. v. Hamilton*, 2008 WL 1001969, *5 (Conn. Super.). The frivolousness test for purposes of a habeas court's denial of certification to appeal is the *disjunctive* three-criteria test derived from *Lozada v. Deeds*, 498 U.S. 430, 432

(1991). *Vanwhy v. Comm'r of Corr*, 121 Conn. App. 1, 6 (2010). Under *Lozada*, a habeas case is not "frivolous" if: (i) "the issues are debatable among jurists of reason," (ii) "a court could resolve the issues [in a different manner]," *or* (iii) "the questions are adequate to deserve encouragement to proceed further." *Id. See Simms v. Warden*, 230 Conn. 608, 616 (1994) (habeas appeal "that satisfies one of the *Lozada* criteria is not frivolous."); ("we review the petitioner's substantive claims for the purpose of ascertaining whether those claims satisfy one or more of the three criteria identified in [*Lozada*]").

The first criterion is readily met. The NhRP's habeas petition raised an issue of first impression: whether an elephant should be recognized as a "person" for purposes of the common law right to bodily liberty secured by habeas corpus. Connecticut courts have made clear that cases of first impression are *per se* not frivolous under *Lozada*. *See Torres v. Comm'r of Corr.*, 175 Conn. App. 460, 468 (2017) ("issues of first impression .... meet one or more of the three criteria"); *id.* at 468-69; *State v. Obas*, 147 Conn. App. 465, 475 (2014) ("Two issues of law . . . both debatable among jurists of reason and, both deserving encouragement to proceed further."); *See also Bates v. Comm'r of Corr*, 86 Conn. App. 777, 781 (2005) ("an issue of first impression. . . presents an issue that is debatable among jurists of reason.").

Moreover, numerous courts have recognized that habeas corpus may be used on behalf of individuals not recognized as legal persons to secure their bodily liberty. (Petition at ¶¶ 26-30) (Part One A 12-13).[6] In *Somerset*, 98 Eng. Rep. 499, Lord Mansfield issued the writ on behalf of a detained slave. In *Arabas v. Ivers*, 1 Root 92 (Conn. Super. 1784), the court issued a writ of habeas corpus upon the petition of a slave who claimed he was being

[6] "Part One A" refers to the appendix filed with Plaintiff's appeal brief.

unlawfully detained. At least four courts have issued writs of habeas corpus (or their equivalents) on behalf of nonhuman animals, two in New York, *The Nonhuman Rights Project, Inc. ex rel. Hercules & Leo v. Stanley*, 16 N.Y.S.3d 898, 908, 917 (N.Y. Sup. Ct. 2015), *The Nonhuman Rights Project, Inc. on behalf of Happy v. Wildlife Conservation Society, et al.*, Index No.: 2018-45164 (Bannister, J., N.Y. Sup. Ct., Orleans County, Nov. 16, 2018), and two in Argentina. In 2016, an Argentine court granted a habeas writ on behalf of a chimpanzee, declared she was a "non-human legal person" with "nonhuman rights," and ordered her immediate release from a zoo and transfer to a sanctuary.[7] The only relevant opinion from an American high court judge is Judge Fahey's concurrence in *Tommy*, *supra,* which expressed agreement with the NhRP's arguments that chimpanzees were likely "persons" and certainly not "things." *Tommy*, 31 N.Y.3d at 1059 (Fahey, J., concurring). "While it may be arguable that a chimpanzee is not a 'person,' there is no doubt that it is not merely a thing."). New York's Appellate Division, Fourth Judicial Department then declared it is now "common knowledge that personhood can and sometimes does attach to nonhuman entities like . . . animals." *Graves*, 163 A.D.3d at 21 (citations omitted). The Indian Supreme Court has held that nonhuman animals have both statutory and constitutional rights.[8] On July 26, 2017, the Civil Chamber of the Colombia Court of Justice

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[7] *In re Cecilia*, Third Court of Guarantees, Mendoza, Argentina, File No. P-72.254/15 at 22-24, available at: https://bit.ly/2OPYdem (certified translation available at: https://bit.ly/2PfQJWq).

[8] *Animal Welfare Board v. Nagaraja,* 6 SCALE 468 (2014), available at: https://indiankanoon.org/doc/39696860/. *See also Bhatt v. Union of India* (Uttarakhand High Court, 2018), available at: https://bit.ly/2EW8UML (recognizing rights for all nonhuman animals in Indian state of Uttarakhand).

granted a writ of habeas corpus to Chucho, an imprisoned bear.[9] While that decision was overturned,[10] the appeal is ongoing, and on January 22, 2018, a Magistrate of the Constitutional Court, Antonio José Lizarazo Ocampo, asked the Colombia Constitutional Court to select the case for final review of the denial of the writ based on Article 51 of the Rules of Procedure of the Constitutional Court, because of the importance of the issues presented.[11] On January 26, 2018, the Constitutional Court accepted it.[12]

As to the second *Lozada* criterion, not only *could* a court resolve the issues in a different manner, they *have*, as set forth above and in the Petition. (Petition at ¶¶ 14-19) (Part One A 6-7).

The Petition easily meets the third criterion, as "(t)he issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching." *Tommy,* 31 N.Y. 3d. at 1059. (Fahey, J., concurring), especially where the subjects "are autonomous, intelligent creatures." *Id.* Courts "have to recognize [this] complexity and confront it." *Id.* The NhRP's cases have generated extensive discussion in almost one hundred law review articles, multiple academic books, science journals, and a variety of legal industry publications. (Petition at ¶ 21) (Part One A 7-12).

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[9] Auto AHC4806-2017, of July 26, 2017, Court of Justice (Civil Chamber): https://www.nonhumanrights.org/content/uploads/Chucho-decision.pdf (translation available at: https://bit.ly/2TmQ0Sz).

[10] Sentence STL12651-2017, of August 16, 2017, Supreme Court of Justice (Labor Chamber), *see*: https://www.semana.com/nacion/articulo/niega-corte-suprema-habeas-corpus-al-oso-de-anteojos-chucho/536929.

[11] "Insistencia de selección de la Tutela T-6.480.577 formulada por la Fundación Botánica y Zoológica de Barranquilla contra la Sala de Casación Civil de la Corte Supreme de Justicia," Jan. 22, 2018.

[12] "Sala de Selección Número Uno," at 7, Colombian Constitutional Court, Jan. 26, 2018.

The Trial Court conflated a "novel" case with a "frivolous" case. But the novelty of the NhRP's claim makes it a meritorious candidate for a hearing. *See, e.g.*, *Little v. Comm'r of Corr.*, 177 Conn. App. 337, 349 (2017); *Rodriguez v. Comm'r of Corr.*, 131 Conn. App. 336, 347 (2011) ("Because such a question has not yet been addressed by any appellate court . . . we conclude that the . . . claim raised ... deserve(s) encouragement to proceed further"), *aff'd*, 312 Conn. 345 (2014); *Small v. Comm'r of Corr.*, 98 Conn. App. 389, 391-2 (2006).

Finally, four compelling *amicus curiae* briefs have been filed in the Appellate Court in support of extending habeas corpus to elephants: (1) Professor Laurence Tribe (Harvard Law School); (2) Connecticut legal ethics expert Mark Dubois; (3) habeas experts Justin Marceau (Univ. of Denver Sturm College of Law), Samuel Wiseman (Florida State Univ. College of Law), and Brandon Garrett (Duke University School of Law); (4) 12 North American moral philosophers. *See Tommy*, 31 N.Y. 3d at 1057-58 (Fahey, J., concurring) (finding persuasive the amicus briefs of Tribe, Marceau, and Wiseman and noting with approval "the amici philosophers with expertise in animal ethics. . .").

For all of these reasons, Plaintiff respectfully submits that this motion should be granted.

PLAINTIFF
NONHUMAN RIGHTS PROJECT, INC.

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APPENDIX

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DOCKET NO. LLI-CV-17-5009822-S NONHUMAN RIGHTS PROJECT, INC. EX REL. BEULAH, MINNIE, & KAREN V. R.W. COMMERFORD & SONS, INC.	SUPERIOR COURT JUDICIAL DISTRUCT OF LITCHFIELD AT TORRINGTON DECEMBER 26, 2017

MEMORANDUM OF DECISION

PETITION FOR WRIT OF HABEAS CORPUS (NO. 101)

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. The issue is whether the court should grant the petition for writ of habeas corpus because the elephants are "persons" entitled to liberty and equality for the purposes of habeas corpus. The court denies the petition on the ground that the court lacks subject matter jurisdiction and the petition is wholly frivolous on its face in legal terms.

The petitioner filed this petition; Docket Entry no. 101; on November 13, 2017, along with a supporting memorandum of law; Docket Entry no. 102; and thirteen exhibits consisting of expert affidavits and related material.[1] The petitioner's "mission is to change the common law status of at least some nonhuman animals from mere things, which lack the capacity to possess

[1] The petitioner's exhibits include: (1) affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D.; (2) CD of exhibits to affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D.; (3) affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D.; (4) CD of exhibits to affidavit of Lucy Bates, Ph.D. and Richard Byrne, Ph.D.; (5) affidavit of Joyce Poole, Ph.D.; (6) CD of exhibits to affidavit of Joyce Poole, Ph.D.; (7) affidavit of Karen McComb, Ph.D.; (8) CD of exhibits to affidavit of Karen McComb, Ph.D.; (9) affidavit of Cynthia Moss; (10) CD of exhibits to affidavit of Cynthia Moss; (11) affidavit of Ed Stewart; and (12) CD of exhibits to affidavit of Ed Stewart.

12/26/17 Copy of memo mailed to Atty. David B. Zabel, Cohen & Wolf PC, 1115 Broad St., Bridgeport CT 06604; Atty. Steven M. Wise, 5195 NW 112th Terr. Coral Springs, FL 33076; Dept of Judicial Decisions, 231 Capitol Ave., Hrtfd. CT 06106. pz 105

any legal rights, to persons, who possess such fundamental rights as bodily integrity and bodily liberty, and those other legal rights to which evolving standards of morality, scientific discovery, and human experience entitle them. The [petitioner] does not seek to reform animal welfare legislation." Pet. Writ Habeas Corpus, ¶ 1, Docket Entry no. 101. "While this Petition challenges neither the conditions of their confinement nor Respondents' treatment of the elephants; but rather the fact of their detention itself, the deplorable conditions of Beulah's, Minnie's, and Karen's confinement underscore the need for immediate relief and the degree to which their bodily liberty and autonomy are impaired." Pet. Writ Habeas Corpus, ¶ 51, Docket Entry no. 101. "The Expert Affidavits submitted in support of this Petition set forth the facts that demonstrate that elephants such as Beulah, Minnie, and Karen are autonomous beings who live extraordinarily complex emotional, social, and intellectual lives and who possess those complex cognitive abilities sufficient for common law personhood and the common law right to bodily liberty protected by the common law of habeas corpus, as a matter of common law liberty, equality, or both." Pet. Writ Habeas Corpus, ¶ 10, Docket Entry no. 101.

I

DISCUSSION

The petition was filed pursuant to Practice Book § 23-24 and General Statutes § 52-466. See Pet. Writ Habeas Corpus, ¶ 7, Docket Entry no. 101. Practice Book § 23-24 provides: "(a) The judicial authority shall promptly[2] review any petition for a writ of habeas corpus to

[2] Although "promptly" is not defined for the purposes of Practice Book § 23-24, General Statutes § 52-470 (a) provides: "The court or judge hearing any habeas corpus shall proceed in a summary way to determine the facts and issues of the case, by hearing the testimony and arguments in the case, and shall inquire fully into the cause of imprisonment and thereupon dispose of the case as law and justice require." "The proceeding is 'summary' in the sense that it should be heard promptly, without continuances . . . but the use of the word also implies that the proceeding should be short, concise and conducted in a prompt and simple manner, without the

determine whether the writ should issue. The judicial authority shall issue the writ unless it appears that: (1) the court lacks jurisdiction; (2) the petition is wholly frivolous on its face; or (3) the relief sought is not available. (b) The judicial authority shall notify the petitioner if it declines to issue the writ pursuant to this rule."

PRACTICE BOOK § 23-24 (a) (1)

"THE COURT LACKS JURISDICTION"

"Subject matter jurisdiction for adjudicating habeas petitions is conferred on the Superior Court by General Statutes § 52-466, which gives it the authority to hear those petitions that allege illegal confinement or deprivation of liberty." (Internal quotation marks omitted.) *Small* v. *Commissioner of Correction*, 144 Conn. App. 749, 753, 75 A.3d 35 (2013). Section 52-466 provides in relevant part: "(a) (1) An application for a writ of habeas corpus, other than an application pursuant to subdivision (2) of this subsection, shall be made to the superior court, or to a judge thereof, for the judicial district in which the person whose custody is in question is claimed to be illegally confined or deprived of such person's liberty. (2) An application for a writ of habeas corpus claiming illegal confinement or deprivation of liberty, made by or on behalf of an inmate or prisoner confined in a correctional facility as a result of a conviction of a crime, shall be made to the superior court, or to a judge thereof, for the judicial district of Tolland."

The petitioner claims that the elephants are illegally confined in Goshen, Connecticut, which lies within the judicial district of this court, Litchfield. The petitioner therefore, has

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aid of a jury, or in other respects out of the regular course of the common law." *State* v. *Phidd*, 42 Conn. App. 17, 31, 681 A.2d 310 (1996) (discussing § 52-470 [a]), cert. denied, 238 Conn. 907, 679 A.2d 2 (1996), cert. denied, 520 U.S. 1108, 117 S. Ct. 1115, 137 L. Ed. 2d 315 (1997). Black's Law Dictionary (9th Ed. 2009) defines a summary proceeding as: "A nonjury proceeding that settles a controversy or disposes of a case in a relatively prompt and simple manner."

complied with § 52-466 (a) (1) in the sense that it requires application to be made in the superior court for the judicial district in which the person who's custody is in question is claimed to be illegally confined. Had the petition been "made . . . on behalf of an inmate . . . as a result of a conviction of a crime," the petitioner would have been required to make its application "to the superior court . . . for the judicial district of Tolland"; see § 52-466 (a) (2); the point being that the petitioner cannot rely on § 52-466 (a) (2).

Although for persons confined as a result of a criminal conviction, § 52-466 (a) (2) provides that an application for a writ of habeas corpus may be "made by or on behalf of an inmate," § 52-466 (a) (1) does *not* provide language regarding a petition being made "on behalf of" the person whose noncriminal custody is in question. In this sense, § 52-466 (a) (1) is inapposite to what the petitioner claims to be an equivalent statute in the state of New York, N.Y. C.P.L.R. 7002 (a), which governs by whom a petition for a writ of habeas corpus may be brought in that state, and provides: "A person illegally imprisoned *or otherwise restrained* in his liberty within the state, *or one acting on his behalf* . . . may petition without notice for a writ of habeas corpus to inquire into the cause of such detention and for deliverance." (Emphasis added.) Unlike § 52-466, N.Y. C.P.L.R. 7002 (a) does not distinguish between a person whose confinement is a result of a criminal conviction, and one whose confinement is not. In *Nonhuman Rights Project, Inc. ex rel. Hercules & Leo* v. *Stanley*, 49 Misc. 3d 746, 755-56, 16 N.Y.S.3d 898 (N.Y. Sup. Ct. 2015), the New York trial court relied on this provision in determining that the petitioner had standing to seek a writ on behalf of two chimpanzees. "As [N.Y. C.P.L.R. 7002 (a)] places no restriction on who may bring a petition for habeas on behalf of the person restrained, and absent any authority for the proposition that the statutory phrase

'one acting on his behalf' is modified by a requirement for obtaining standing by a third party, petitioner has met its burden of demonstrating that it has standing." Id.

Although § 52-466 (a) (1) does not contain language regarding a petition made "on behalf of" someone else, this does not mean that one cannot make such a petition thereunder. On the contrary, "[i]t is well settled in Connecticut law that a petition for a writ of habeas corpus is a proper procedural vehicle with which to challenge the custody of a child." *Weidenbacher* v. *Duclos*, 234 Conn. 51, 60, 661 A.2d 988 (1995). The court must, however, first "determine whether the person seeking the equitable remedy of habeas corpus has standing to initiate the action. Standing focuses on whether a party is the proper party to request adjudication of the issues, rather than on the substantive rights of the aggrieved parties. . . . It is a basic principle of law that a plaintiff must have standing for the court to have jurisdiction. Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented. . . . These two objectives are ordinarily held to have been met when a complainant makes a colorable claim of direct injury he has suffered or is likely to suffer, in an individual or representative capacity. Such a personal stake in the outcome of the controversy . . . provides the requisite assurance of concrete adverseness and diligent advocacy." (Citations omitted; internal quotation marks omitted.) *Weidenbacher* v. *Duclos*, supra, 234 Conn. 61-62.

"This court, recognizing that courts must be ever mindful of what is in the best interests of a child and of who should be allowed to intrude in the life of a child, has placed limits on the class of persons who have standing to bring a habeas petition for custody. In *Doe* v. *Doe*, [163 Conn. 340, 345, 307 A.2d 166 (1972)], the court held that a person must allege parenthood or legal guardianship of a child born out of wedlock in order to have standing. In *Nye* v. *Marcus*, 198 Conn. 138, 143-44, 502 A.2d 869 (1985), where foster parents sought custody of their foster child, the court reiterated that 'only parents or legal guardians of a child have standing to seek habeas corpus relief,' and explained that 'parents' could include either biological or adoptive parents, but not foster parents." *Weidenbacher* v. *Duclos*, supra, 234 Conn. 62-63. In response to *Nye*, our legislature enacted subsection (f) to § 52-466, which provides: "A foster parent or an approved adoptive parent shall have standing to make application for a writ of habeas corpus regarding the custody of a child currently or recently in his care for a continuous period of not less than ninety days in the case of a child under three years of age at the time of such application and not less than one hundred eighty days in the case of any other child." See *Weidenbacher* v. *Duclos*, supra, 63 n.18. The petitioner in the present case naturally does not allege that it is a parent of any sort to the elephants. On the contrary, were the court to determine that the elephants are "persons," it is *the respondents* who are more akin to parents of Beulah, Minnie, and Karen. Of course, as there are avenues other than habeas for a stranger to ensure the removal of a child from an abusive home; see General Statutes § 17a-101g (governing removal of child from home due to abuse or neglect); there are also in the case of animal cruelty. See General Statutes §§ 22-329a (governing removal of animal from home for animal cruelty) and 53-247 (criminalizing animal cruelty, including "harass[ing] or worr[ying] any animal for the purpose of making it perform for amusement, diversion or exhibition").

Outside the context of child custody, a petitioner deemed to be a "next friend" of a detainee has standing to bring a petition for writ of habeas on the detainee's behalf. See *State* v. *Ross*, 272 Conn. 577, 597, 863 A.2d 654 (2005) (death penalty). "It is clear . . . that a person who seeks next friend status by the very nature of the proceeding will have no specific personal and legal interest in the matter." Id. "A next friend does not himself become a party to the habeas corpus action in which he participates, but simply pursues the cause on behalf of the detained person, who remains the real party in interest. Most important for present purposes, next friend standing is by no means granted automatically to whomever seeks to pursue an action on behalf of another. Decisions applying the habeas corpus statute have adhered to at least two firmly rooted prerequisites for next friend standing. First, a next friend must provide an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on his own behalf to prosecute the action. . . . Second, the next friend must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate . . . and it has been further suggested that a next friend must have some significant relationship with the real party in interest." (Citations omitted; internal quotation marks omitted.) *Whitmore* v. *Arkansas*, 495 U.S. 149, 163-64, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990); see also *State* v. *Ross*, supra, 272 Conn. 599-611 (adopting *Whitmore*).

"It suffices . . . to conclude that no preexisting relationship whatever is insufficient." (Footnote omitted.) *Hamdi* v. *Rumsfeld*, 294 F.3d 598, 604 (4th Cir. 2002). "To begin with, this conclusion is truest to the language of *Whitmore* itself. The first prong of the next friend standing inquiry disposed of that case because the purported next friend had failed to show that the prisoner was unable to proceed on his own behalf. . . . Nevertheless, the Court thought it important to begin by stating that there are '*at least two* firmly rooted prerequisites for "next

friend" standing,' . . . thereby suggesting that there may be more. And after specifying the first two requirements, the Court went out of its way to observe that 'it has been further suggested that a "next friend" must have some significant relationship with the real party in interest.' . . . *Whitmore* is thus most faithfully understood as requiring a would-be next friend to have a significant relationship with the real party in interest."[3] (Citations omitted; emphasis in original.) *Hamdi* v. *Rumsfeld*, supra, 604. See also *Massie ex rel. Kroll* v. *Woodford*, 244 F.3d 1192, 1194 (9th Cir. 2001) (reading *Whitmore* as requiring that "the next friend ha[ve] some significant relationship with, and [be] truly dedicated to the best interests of, the petitioner"); id., 1199 n. 3; *T.W.* v. *Brophy*, 124 F.3d 893, 897 (7th Cir. 1997) ("[i]t follows, as the Court suggested in the *Whitmore* case, that not just anyone who expresses an interest in the subject matter of a suit is eligible to be the plaintiff's next friend - that he 'must have some significant relationship with the real party in interest'"); *Amerson* v. *Iowa*, 59 F.3d 92, 93 n. 3 (8th Cir. 1995) (under *Whitmore*, "next friend has burden to establish why real party in interest cannot prosecute habeas petition, that 'next friend' is 'truly dedicated' to best interests of person on whose behalf she litigates, and that she has some significant relationship with real party in interest").

In *Hamdi*, the detainee "was captured as an alleged enemy combatant during military operations in Afghanistan." *Hamdi* v. *Rumsfeld*, supra, 294 F.3d 600. In response, a public defender and a concerned citizen, both individually filed habeas petitions on the detainee's

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[3] The court in *Hamdi* indicated that the situation might be different in the case of a detainee that has no significant relationships. *Hamdi* v. *Rumsfeld*, supra, 294 F.3d 606 ("We do not have here the situation of someone who has no significant relationships. If we did, this might be a different case.") The petitioner here makes no such allegation, and thus, the court shall not make the allegation for it. See *Moye* v. *Commissioner of Correction*, 316 Conn. 779, 789, 114 A.3d 925 (2015) ("a habeas petitioner is limited to the allegations in his petition"). The petitioner, instead, cited a number of cases for the broad proposition that a stranger has standing to bring a petition for writ of habeas corpus on behalf of another before this court; see Pet. Writ Habeas Corpus, ¶ 48, Docket Entry no. 101; which, after examination, proved to be an inaccurate understanding of those cases.

behalf. Id., 601. The court concluded that both petitioners lacked standing to pursue their petitions because neither had any preexisting relationship with the detainee. Id., 606 ("However well-intentioned [the concerned citizen]'s actions may be, his rationale for filing a habeas petition on [the detainee]'s behalf is not consonant with [the constitutional requirement of standing]. The Supreme Court [has] emphasized . . . that the 'generalized interest of all citizens in constitutional governance' does not confer . . . standing.")

"The burden is on the next friend clearly to establish the propriety of his status and thereby justify the jurisdiction of the court." (Internal quotation marks omitted.) *Whitmore* v. *Arkansas*, supra, 495 U.S. 164. The elephants, naturally, lack the competence and accessibility to bring an action for habeas on their own behalf. What is at issue here is whether the petitioner is "truly dedicated to the best interests of the [elephants]"; *State* v. *Ross*, supra, 272 Conn. 599; and whether it has "some significant relationship with the [elephants]." Id. Because the petitioner has failed to allege that it possesses *any* relationship with the elephants, the petitioner lacks standing. Thus the court need not reflect over the second prong. For the foregoing reasons, the court dismisses the petition for writ of habeas.

PRACTICE BOOK § 23-24 (a) (2)

"THE PETITION IS WHOLLY FRIVOLOUS ON ITS FACE"

Setting aside that the petitioner lacks standing to bring this petition on behalf of the elephants, § 52-466 (a) (1) provides for an application to "be made to the superior court . . . for the judicial district in which the *person* whose custody is in question is claimed to be illegally confined or deprived of such *person*'s liberty." (Emphasis added.) Section 52-466 (a) (1). This

language indicates that in order to invoke the writ of habeas corpus, an elephant must be considered, in the eyes of the law, a "person" for such purposes.[4]

"[T]he writ of habeas corpus [has] evolved as a remedy available to effect discharge from any confinement contrary to the [c]onstitution or fundamental law . . . . [I]n order to invoke successfully the jurisdiction of the habeas court, a petitioner must allege an interest sufficient to give rise to habeas relief. . . . In order to . . . qualify as a constitutionally protected liberty, [however] the interest must be one that is *assured* either by statute, judicial decree, or regulation. (Citations omitted; emphasis in original; internal quotation marks omitted.) *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 if the petitioner here had standing, resolution in its favor would require this court to determine that the asserted liberty interests in its petition are assured by statute, constitution, or common law, i.e., that an elephant is a person for the purposes of this land's laws that protect the liberty and equality interests of its persons.

"A habeas appeal . . . is not . . . frivolous . . . if the appellant can show: that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further." (Citation omitted; internal quotation marks omitted.) *Fernandez* v. *Commissioner of Correction*, 125 Conn. App. 220, 223-24, 7 A.3d 432 (2010), cert. denied, 300 Conn. 924, 15 A.3d 630 (2011). There, "[i]n his petition for a writ of habeas corpus, the petitioner alleged that he is a 'foreign national,' who is being treated as a 'slave' and a 'prisoner of war' in that he is being held at the 'plantation of MacDougall–Walker' in violation of his constitutional rights and 'Geneva Convention Treaties,

[4] The petitioner agrees that "[o]nly a 'person' may invoke a common law writ of habeas corpus and the inclusion of elephants as 'persons' for that purpose is for this Court to decide." (Pet. Writ Habeas Corpus, ¶ 22, Docket Entry no. 101).

Convention Against Torture, European Convention on Human Rights and U.S. Human Rights Acts.' He asserted that his status as a 'slave' and 'prisoner of war' constitutes both a deprivation of due process and cruel and unusual punishment, and that he is being improperly held as an 'enemy combatant' as a result of 'Post Sept[ember] 11' policies of the government. Because the record amply reveals that the petitioner is not a 'prisoner of war' and is not 'enslaved' but, rather, is incarcerated as a result of convictions for crimes of which he was found guilty, we conclude that the court did not abuse its discretion in determining that the petition was frivolous and declining to issue a writ of habeas corpus." Id., 224 (petitioner had been convicted of five counts for sales of narcotics).

In *Henry E.S., Sr.* v. *Hamilton*, Superior Court, judicial district of Stamford-Norwalk, Docket No. F02-CP-07-003237-A (February 28, 2008, *Maronich, J.*), Judge Maronich discussed the meaning of "wholly frivolous" under Practice Book § 23-24 (a) (2)[5] relative to the requirement for habeas in family matters, which requires that the petition be "meritorious." See Practice Book § 25-41 (a) (2).[6] "Meritorious is defined as 'meriting esteem or reward . . . meriting a legal victory; having legal worth.' Black's Law Dictionary (8th Ed. 2004). Conversely, a frivolous claim is defined as being '[a] claim that has no legal basis or merit . . . .' Black's Law Dictionary (8th Ed. 2004). One must conclude that the Practice Book § 25-41 (a) (2) provision that the petition be 'meritorious' is the higher standard. The requirement of § 23-

[5] Practice Book § 23-24 (a) (2) provides in relevant part: "The judicial authority shall issue the writ unless it appears that . . . the petition is wholly frivolous on its face . . . ."

[6] Practice Book § 25-41 provides: "(a) The judicial authority shall promptly review any petition for a writ of habeas corpus to determine whether the writ should issue. The judicial authority shall issue the writ if it appears that: (1) the court has jurisdiction; (2) the petition is meritorious; and (3) another proceeding is not more appropriate. (b) The judicial authority shall notify the petitioner if it declines to issue the writ pursuant to this section."

24 (a) (2) is that of a possibility of victory, while the requirement of § 25-41 (a) (2) is that of a probability of victory." *Henry E.S., Sr.* v. *Hamilton*, supra.

Habeas corpus has been called "the great writ of liberty." *Lozada* v. *Warden*, 223 Conn. 834, 840, 613 A.2d 818 (1992). Does the petitioner's theory that an elephant is a legal person entitled to those same liberties extended to you and I have a possibility or probability of victory? The petitioner is unable to point to any authority which has held so, but instead relies on basic *human* rights of freedom and equality, and points to expert averments of similarities between elephants and human beings as evidence that this court must forge new law. Based on the law as it stands today, this court cannot so find.

II

CONCLUSION

For the foregoing reasons, the court dismisses the petition for writ of habeas, and points the petitioner to this state's laws prohibiting cruelty to animals; see §§ 22-329a and 53-247; as a potential alternative method of ensuring the well-being of any animal.

SO ORDERED.

BY THE COURT,

Bentivegna, J.

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

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. Wise, 5195 NW 112th Terr., Coral Springs, FL 33076. P.L.

109.75

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 amendments[1] 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.

DOCKET NO. LLI-CV-17-5009822-S NONHUMAN RIGHTS PROJECT, INC. EX REL. BEULAH, MINNIE, & KAREN V. R.W. COMMERFORD & SONS, INC.	SUPERIOR COURT JUDICIAL DISTRUCT OF LITCHFIELD AT TORRINGTON MAY 23, 2018

MEMORANDUM OF DECISION RE: MOTION FOR ARTICULATION

Pursuant to Practice Book § 66-5,[1] the petitioner, Nonhuman Rights Project, Inc., filed a motion for articulation with the Appellate Court on April 18, 2018. The petitioner seeks articulation of the trial court's December 26, 2017 and February 27, 2018 decisions, denying its petition for a writ of habeas corpus on behalf of three elephants, Beulah, Minnie, and Karen, and denying its motion to reargue and request for leave to amend the petition, respectively.

"[A]n articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification. . . . [P]roper utilization of the motion for articulation serves to dispel any . . . ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby sharpening the issues on appeal. . . . In other words, an articulation elaborates upon, or explains, a matter that the trial court decided. A motion for articulation may not . . . be used to modify or to alter the substantive terms of a prior judgment . . . ." (Citations omitted; internal quotation marks omitted.) *State* v. *Walker*, 319 Conn. 668, 680, 126 A.3d 1087 (2015). "An articulation may be necessary where the trial court fails completely to state any basis for its decision . . . or where the basis, although stated, is unclear."

[1] Practice Book § 66-5 provides in relevant part that "[a] motion seeking corrections in the transcript or the trial court record or seeking an articulation or further articulation of the discussion of the trial court shall be called a motion for rectification or a motion for articulation, whichever is applicable. Any motion filed pursuant to this section shall state with particularity the relief sought and shall be filed with the appellate clerk."

5/23/18 Copy of memo of decision mailed to:
Cohen & Wolf PC, P.O. Box 1821, Bridgeport, CT 06601; Reporter of Judicial Decisions, Supreme Court Bldg, 231 Capitol Ave., Hartford, CT 06106; Atty. Steven Wise, 5195 NW 112th Terr, Coral Springs, FL 33076. P.L. #111

(Internal quotation marks omitted.) *Nicefaro* v. *New Haven*, 116 Conn. App. 610, 617, 976 A.2d 75, cert. denied, 293 Conn. 937, 981 A.2d 1079 (2009). "An articulation is not an opportunity for a trial court to substitute a new decision nor to change the reasoning or basis of a prior decision." *Koper* v. *Koper*, 17 Conn. App. 480, 484, 553 A.2d 1162 (1989).

The petitioner's motion raises sixteen separate requests for articulation. Upon review, the court grants the motion as to request number ten to clarify the basis of its determination that the petition is wholly frivolous on its face in legal terms.

Request number ten provides: "If the *Lozada* [v. *Deeds*, 498 U.S. 430, 111 S. Ct. 860, 112 L. Ed. 2d 956 (1991),] standard for determining frivolousness set forth in *Fernandez* [v. *Commissioner of Correction*, 125 Conn. App. 220, 7 A.3d 432 (2010), cert. denied, 300 Conn. 924, 15 A.3d 630 (2011),] applies to Practice Book § 23-24 (a) (2),[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 *Lozada*"; (footnote added; footnote omitted); "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 [petitioner] seeks in this case on behalf of other nonhuman animals"; and "c. Why the arguments presented in the petition and supporting memorandum of law are not adequate to deserve encouragement to proceed further."

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[2] Practice Book § 23-24 (a) (2) provides that "(a) [t]he judicial authority shall promptly review any petition for a writ of habeas corpus to determine whether the writ should issue. The judicial authority shall issue the writ unless it appears that . . . (2) the petition is wholly frivolous on its face . . . ."

As to request number ten, the court's articulation is as follows: A writ of habeas corpus "is granted only in the exercise of sound judicial discretion." *Wojculewicz* v. *Cummings*, 143 Conn. 624, 627, 124 A.2d 886 (1956). In civil matters, Practice Book § 23-24 (a) (2) provides the Superior Court with the authority to deny the issuance of a writ of habeas corpus if it appears that the petition is wholly frivolous on its face. In family matters, Practice Book § 25-41[3] allows the Superior Court to deny the issuance of such a writ if the petition is not meritorious. The standard used to determine whether a petition for a writ of habeas corpus is frivolous is set forth in *Fernandez*, and the standard used to determine whether such a writ is meritorious is discussed in *Henry E. S.* v. *Hamilton*, Superior Court, judicial district of Stamford-Norwalk, Docket No. F02-CP-07-003237-A (February 28, 2008, *Maronich, J.*).

Under either standard, the court found the nonbinding legal[4] and nonlegal authority cited by the petitioner to be unpersuasive. Accordingly, the court expressly concluded that the petitioner was unable to point to any authority demonstrating a possibility or probability of victory for its theory that an elephant is a legal person for the purpose of issuing a writ of habeas corpus. In other words, the court determined that the petitioner failed to show that the issues presented are debatable among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are adequate to deserve encouragement to proceed further and failed to show that the petition merits a legal victory.

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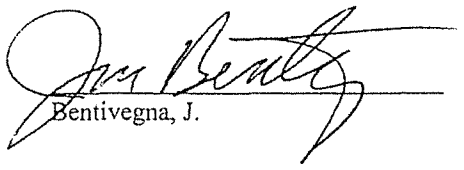
[3] Practice Book § 25-41 provides in relevant part that "(a) [t]he judicial authority shall promptly review any petition for a writ of habeas corpus to determine whether the writ should issue. The judicial authority shall issue the writ if it appears that: (1) the court has jurisdiction; (2) the petition is meritorious; and (3) another proceeding is not more appropriate."

[4] The four decisions referenced in request number ten include international decisions.

As to the remaining requests, namely, numbers one through nine and eleven through sixteen, the court denies the motion because they are unambiguously addressed by the court's December 26, 2017 and February 27, 2018 memoranda of decision.

SO ORDERED.

BY THE COURT,



Bentivegna, J.

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.

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