| DOCKET NO: LLI CV 18 5010773S | : | SUPERIOR COURT |
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| NONHUMAN RIGHTS PROJECT, INC., On behalf of BEULAH, MINNIE, and KAREN | : | J.D. OF LITCHFIELD |
| V. | : | AT TORRINGTON |
| R.W. COMMERFORD & SONS, INC. a/k/a COMMERFORD ZOO, and WILLIAM R. COMMERFORD, as President of R.W. COMMERFORD & SONS, INC. | : | FEBRUARY 13, 2019 |

STATE OF CONNECTICUT
JUDICIAL DISTRICT OF LITCHFIELD
2019 FEB 13 PM 2 55
OFFICE OF THE CLERK SUPERIOR COURT

**MEMORANDUM OF DECISION**

**RE: PETITION FOR WRIT OF HABEAS CORPUS**

PROCEDURAL HISTORY

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.[1] 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 petition (#101) was filed on June 8, 2018, along with a supporting memorandum of law (#102) and exhibits consisting of expert affidavits and related material.[2] The petitioner's "mission is to change the common law status of at least some nonhuman animals from

[1] This matter was originally filed in the judicial district of Tolland and transferred to the judicial district of Litchfield on June 15, 2018 (#118.33).

[2] 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; (12) affidavit of Kevin R. Schneider, Esq.; (13) affidavit of Mark Dubois, Esq.

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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. . . . The [petitioner] does not seek to reform animal welfare legislation." (Internal quotation marks omitted.) Pet. Writ Habeas Corpus, ¶ 1 (#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, ¶ 75 (#101).[3] "The Expert Scientific Affidavits demonstrate that Beulah, Minnie, and Karen are autonomous and that their interest in exercising their autonomy is as fundamental to them as it is to us. To deny some autonomous beings all legal rights across the board, merely because they are nonhuman, while granting those same legal rights to all humans, regardless of autonomy, offends common law equality." Pet. Writ Habeas Corpus, ¶ 18 (#101).

On January 4, 2019, the petitioner filed a motion for the court to rule promptly on its petition for habeas corpus (#124). As part of its motion, the petitioner submitted Exhibit A, which was a copy of its November 27, 2018 status conference memorandum. On January 28, 2019, the court heard oral argument on the motion. Within its motion, the petitioner underscores that it 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 immediate release from their illegal detention." Having considered the motion and the oral argument in support thereof, the court dismisses the petition.

[3] The quotations referenced from paragraphs 1 and 75 of the petition are identical to paragraphs 1 and 51 from a previous petition for writ of habeas corpus that was dismissed, which is discussed in more detail below.

## FACTS

The subjects of the petition are three elephants named Beulah, Minnie and Karen who are privately owned by the respondents and are in their custody. The allegations of the 54-page, 137-paragraph petition are that the respondents have unlawfully detained the elephants denying them their liberty.[4] The petitioner had previously filed a petition for writ of habeas corpus entitled, *Nonhuman Rights Project, Inc. ex rel. Beulah, Minnie & Karen* v. *R.W. Commerford & Sons, Inc. et al.*, judicial district of Litchfield, Docket No. LLI-CV-17-5009822, which was dismissed by the court on December 27, 2017, both for lack of subject matter jurisdiction and because it was wholly frivolous on its face in legal terms. That case is now pending on appeal before our Appellate Court (Docket No. AC 41464). The parties and facts set forth in the current petition mirror those set forth in the prior petition. The petitioner is a not-for-profit corporation that has brought the petition to change the common law status of some nonhuman animals from "things" to "persons." The respondents are R.W. Commerford & Sons, Inc., and, William R. Commerford as the president of the corporation. The relief sought is to have a writ issued to the respondents to justify the detention of the elephants and to ultimately have them released from their custody.

## STATEMENT OF LAW

The petitioner has brought its writ of habeas corpus pursuant to Practice Book § 23-21 et seq. and General Statutes § 52-466 seeking the release of the three elephants. Practice Book § 23-24 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 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

[4] The last seven paragraphs of the petition are mistakenly numbered as paragraphs 94-100.

declines to issue the writ pursuant to this rule." As noted above, the writ previously filed by the petitioner was dismissed by the court under Practice Book § 23-24 (a) (1) and (2) for lack of subject matter jurisdiction and for being wholly frivolous on its face. The motion now before this court is based on this section, which calls upon the court to "promptly" review the petition.[5] The petitioner acknowledges the existence of the prior action, which was dismissed by the court and is now on appeal. Although the petitioner argues against any consideration by the court of granting a stay of this matter pending the outcome of the appeal,[6] given the similarities between the two petitions it is incumbent upon the court to examine whether this matter is subject to the provisions of Practice Book § 23-29. That section states in relevant part that "[t]he judicial authority may, at any time, upon its own motion or upon motion of the respondent dismiss the petition, or any count thereof, if it determines that: . . . (3) the petition presents the same ground as a prior petition previously denied and fails to state new facts or to proffer new evidence not reasonably available at the time of the prior petition; . . . (5) any other legally sufficient ground for dismissal of the petition exists."[7]

[5] 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. . . . [B]ut the use of the word also implies that the proceeding should be short, concise and conducted in a prompt and simple manner, without the aid of a jury, or in other respects out of the regular course of the common law." (Citation omitted.) *State* v. *Phidd,* 42 Conn. App. 17, 31, 681 A.2d 310, 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) (discussing § 52-470 (a)). 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."

[6] "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." (Internal quotation marks omitted.) *Lee* v. *Harlow, Adams & Friedman, P.C.*, 116 Conn. App. 289, 311-12, 975 A.2d 715 (2009). "Even in the in the absence of statutory authority, a court may, within it discretion, order stay of proceedings sua sponte." *Graham* v. *XVIVO, LLC,* Superior Court, judicial district of New Britain, Docket No. CV-15-6030021-S (February 9, 2016, *Wiese, J.*) (61 Conn. L. Rptr. 805, 807).

[7] Three other grounds for dismissal are set forth in that section: "(1) the court lacks subject matter jurisdiction; (2) the petition or a count thereof, fails to state a claim upon which habeas corpus relief can be granted; . . . (4) the claims asserted in the petition are moot or premature[.]"

## ANALYSIS

At oral argument and in its motion and supporting exhibits, the petitioner addressed the issue of whether the present action should be stayed pending the outcome of the appeal as to the prior petition. It acknowledged that the parties, the subjects of the petition, the grounds of the petition and the relief sought were the same as the prior petition. Also, that both petitions are in the same judicial district. Although the court has the authority to issue a stay of the proceedings, the current circumstances would appear to justify a dismissal pursuant to Practice Book § 23-29 (3). However, the petitioner argues against such a dismissal in that this second petition is different from the first claiming that it alleges new facts. Specifically, the petitioner references paragraphs 85, 86 and 87 of the petition as setting forth facts not found in the first petition as they arose subsequent to the issuance of the court's December 26, 2017 memorandum of decision in that case. A review of those paragraphs finds that claim to be wholly unsupported.

In paragraph 85, the petitioner references a concurring opinion issued in the matter of *Nonhuman Rights Project, Inc., on Behalf of Tommy* v. *Lavery*, 31 N.Y.3d 1054, 100 N.E. 3d 846, 76 N.Y.S. 3d 507 (2018), arising out of the New York Court of Appeals, which upheld a lower court ruling declining to grant personhood to nonhuman animals for the purposes of habeas corpus. Although Judge Fahey of that court concurred in the outcome, the petitioner characterizes Judge Fahey's opinion as having "admonished" the courts in New York for declining to do so. The petitioner contends that this concurring opinion supports its position relative to the petition now before this court. Despite the petitioner's editorializing as to the character and import of the opinion, as well as its own acknowledgement within paragraph 85 that the decision is not binding on this court, it is unclear how a concurring opinion in an appellate case from a foreign jurisdiction constitutes a new "fact" that was not reasonably available at the time of the prior petition. When

confronted at oral argument by this court that the opinion might properly be suited for placement in a memorandum of law as opposed to standing as a "fact," counsel for petitioner insisted that the decision did constitute a new fact as the opinion was issued after this court's December 26, 2017 memorandum of decision issued on the prior petition. Moreover, in paragraph 85, the petitioner specifically makes multiple references to the concurrence of Judge Fahey not as a fact, but rather as an "opinion" or "legal opinion."

In paragraph 86, the petitioner alleges: "Second, on February 23, 2018, the [petitioner] received the support of the Philosophers' *Amicus Brief* filed in the New York Court of Appeals which Judge Fahey found persuasive on the issue of whether legal rights should be extended to nonhuman animals in the context of common law habeas corpus." (Citation omitted; footnote omitted.)

In paragraph 87, the petitioner further alleges: "Third, after the first petition was denied, the Colombian Supreme Court had also designated its part of the Amazon rainforest as an 'entity subject of rights' in other words, a 'person'." (Footnote omitted.)

Following these three paragraphs, in paragraph 88, the petitioner noted that "[t]he foregoing changes in the *legal* landscape make it plain that the present petition should not be dismissed as successive." (Emphasis added.) Clearly, paragraphs 85, 86 and 87 offer references only to legal proceedings and not to any new factual information that was not available to it at the time of the prior petition. Even as legal proceedings from which it might hope to draw support in favor of its position in this matter, the petitioner has affirmatively acknowledged that such cases from foreign jurisdictions (and in fact, foreign countries) have no binding precedent on this court.

Additionally, at oral argument and in its motion, the petitioner cited as a new "fact" *People v. Graves*, 163 A.3d 16, 78 N.Y.S.3d 613 (2018), claiming that the court's decision in that matter

"became the first appellate court in the United States to acknowledge that legal rights have been extended to nonhuman animals in the United States." It specifically cited to language from the decision that stated "it is common knowledge that personhood can and sometimes does attach to nonhuman entities like corporations or animals." Id., 21. The proposition for which the petitioner claims that case holds or supports is completely inapposite to the issue now before the court. The *Graves* case involved a group of young people, including the defendant, who vandalized a number of cars on the lot of a car dealership. Id., 18-19. One of the ancillary claims raised by the defendant in that case was the identity of the victim. Id., 20. The court noted that the state, in prosecuting the defendant for criminal mischief "never definitely established Bill Cram Chevrolet's precise corporate form" but that it "was not strictly necessary to prove, beyond a reasonable doubt, that [the victim] qualified as an 'appropriate' nonhuman 'person' for purposes of section 10.00 (7)."[8] Id. The case had nothing to do with habeas corpus or an attempt to judicially designate elephants, or any other animal, as "persons" for the purpose of giving them legal rights available to a human being. Not only is this case not a new "fact" as petitioner contends, but its representation to the court as to what the case stands for as a matter of law is a blatant misrepresentation.

A detailed comparison of the two petitions, even accounting for the petitioner's claim of new facts since the court's December 26, 2017 decision on the prior petition, reveals the following: both cases arise out of the same jurisdiction. The petitioner is exactly the same in both. The respondents are exactly the same in both. The subjects of the petition—the three elephants Beulah, Minnie and Karen—are exactly the same. The grounds of the petition and the relief sought—declaring the elephants as persons and having them released from the custody of the respondents

[8] The New York statute referenced by that court defines "person" as follows: "[p]erson means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality." *People* v. *Graves*, supra, 163 A.3d 20.

through a writ of habeas corpus--is exactly the same. There is no real difference between this petition and the one previous to it. In fact, a close reading of paragraph 78 of the current petition reveals the fundamental purpose underlying its submission to the court. "A timely appeal has been taken from the December 26, 2017 and February 28, 2018 orders (filed March 26, 2018) and is pending. (AC41464). Because Beulah, Minnie, and Karen are *currently* being deprived of their bodily liberty, the [petitioner] promptly filed this Petition *to avoid any undue delay in securing their liberty while the appellate process is proceeding on the first petition.* (Emphasis added.) Or, put another way, the petitioner simply does not want to wait for the appellate process to be completed even though it was the one who brought the appeal. It clearly hopes to have another bite at the apple and have a different outcome while waiting for the Appellate Court to render its decision.

Because these two petitions are exactly alike and are brought to adjudicate the same issues, this court has the authority to dismiss the matter pursuant to Practice Book § 23-29 (3).

CONCLUSION

The petitioner's writ for habeas corpus has exactly the same parties, the same subjects, raises the same grounds and issues, offers no new facts, is brought in the same jurisdiction and seeks the same relief as the matter of *Nonhuman Rights Project, Inc. ex rel. Beulah, Minnie & Karen* v. *R.W. Commerford & Sons, Inc. et al.*, judicial district of Litchfield, Docket No. LLI-CV-17-5009822. That matter was dismissed by this court on December 26, 2017, and is now on appeal before the Appellate Court. Therefore, the petition now before the court is dismissed pursuant to

Practice Book § 23-29 (3).[9]

BY THE COURT

Shaban, J.

[9] Even if Practice Book § 23-29 (3) were to be found not to be a proper basis for the dismissal of this matter, the court finds that given the circumstances and facts set forth above, dismissal would also be appropriate under Practice Book § 23-29 (5).