

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	:	STATE OF CONNECTICUT
KAREN,	:	
Plaintiff,	:	
v.	:	
	:	
R.W. COMMERFORD & SONS, INC.	:	
a/k/a COMMERFORD ZOO, and	:	September 26, 2019
WILLIAM R. COMMERFORD, as	:	
President of R.W. COMMERFORD &	:	
SONS, INC.,	:	
Defendants.	:	

MOTION FOR TEMPORARY INJUNCTION

Pursuant to Connecticut Practice Book §§ 60-1, 60-2, and 60-3, Plaintiff, the Nonhuman Rights Project, Inc. (“NhRP”), moves this Court for a temporary injunction restraining Defendants from permanently moving Minnie—the sole surviving elephant in this matter—out of the State.

I. Brief history of the case

On November 13, 2017, Plaintiff filed a Verified Petition for a Common Law Writ of Habeas Corpus (“Petition”) seeking a good faith extension or modification of the common law of habeas corpus on behalf of Beulah, Minnie, and Karen, three elephants alleged to be illegally detained by Defendants (collectively, “Commerford”). Plaintiff sought only the recognition of the elephants’ common law right to bodily liberty protected by habeas corpus and their immediate release from illegal detention.

On December 26, 2017, the trial court declined to issue the writ on the ground that Plaintiff lacked third-party standing under P.B. § 23-24(a)(1) as Plaintiff failed to allege it

had a “significant relationship” with the elephants, and on the alternate ground that the Petition was “wholly frivolous” under P.B. § 23-24(a)(2). On August 20, 2019, the Appellate Court affirmed the trial court’s decision only on the ground that Plaintiff lacked standing. On September 12, 2019, the Appellate Court denied Plaintiff’s motion for reconsideration en banc.

II. Specific facts upon which the moving party relies

On September 15, 2019, one of the elephants who is a subject of the Petition, Beulah, died while being forced to perform at the Big E Exposition in Springfield, Massachusetts. Five days later Plaintiff was able to confirm that another elephant who is a subject of the Petition, Karen, died in March 2019 under presently unknown circumstances. Upon information and belief, Commerford intends to permanently and imminently move Minnie, the third and last surviving elephant detained by Defendants, out of the State of Connecticut.

Specifically, Courtney Fern, the Director of Government Relations and Campaigns for the NhRP, was provided with information by a reliable source on September 19, 2019 that, prior to Beulah’s death, Commerford had been finalizing arrangements to permanently relocate Beulah and Minnie to a location outside of Connecticut. She was informed that Commerford had previously owned a fourth elephant who was permanently relocated somewhere in Florida, and Commerford was planning on sending its remaining elephants to that location.

Minnie’s removal from Connecticut would strip this Court of its jurisdiction to grant Plaintiff’s Petition for Certification and consider the merits of Plaintiff’s appeal. In turn Minnie would be irreparably harmed by losing her only opportunity to be freed of her long and

lonely imprisonment, and her only opportunity to be sent to either The Elephant Sanctuary in Tennessee or the Performing Animal Welfare Society near Sacramento, California, where she would be able to live out her years in a place that respects her autonomy, her complex cognitive abilities, and her complex social and psychological needs.

III. Legal grounds upon which the moving party relies

Connecticut General Statutes § 52-471(a) empowers this Court to issue injunctive relief.¹ “The principal purpose of a temporary injunction ‘is to preserve the status quo until the rights of the parties can be finally determined after a hearing on the merits.’” *Clinton v. Middlesex Mutual Assurance Co.*, 37 Conn. App. 269, 270 (1995) (citation omitted). In Connecticut, it is within the sound discretion of the court to “exercise its equitable power to order a temporary injunction pending final determination of the order, upon a proper showing by the movant that if the injunction is not granted she will suffer irreparable harm for which there is no adequate remedy at law.” *Moore v. Ganim*, 233 Conn. 557, 569 n. 25 (1995).

A party seeking injunctive relief must demonstrate that: (1) it has no adequate remedy at law; (2) it will suffer irreparable harm without an injunction; (3) it will likely prevail on the merits; and (4) the balance of equities tips in its favor. *Waterbury Teachers Assn. v. Freedom of Information Commission*, 230 Conn. 441, 446 (1994). In 2014, in a very similar

¹ Although motions for temporary injunctions are generally brought at the superior court level, all the statute requires for a court to issue a temporary injunction is that it be a court of “equitable jurisdiction.” In *Niles v. Williams*, this Court confirmed that it is a court of equity, stating: “The supreme court, as a court of equity, has no jurisdiction of the present suit...” 24 Conn 279, 283 (1855). See also *Equitable Life Assur. Soc. of U.S. v. Slade*, 3 Conn. Supp. 232, 233 (1936) (“It is the policy in this state that all courts shall to the full extent of their jurisdiction administer legal and equitable rights and apply legal and equitable remedies in favor of every party in one and the same suit so that the legal and equitable rights of the party may be enforced and protected in one action.”).

situation, Plaintiff successfully obtained a preliminary injunction² preventing the removal of its chimpanzee client, Tommy, from the State of New York pending the completion of the appeal in *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148 (3d Dept. 2014). The factors New York courts consider in exercising their discretion to issue a preliminary injunction are nearly identical to the factors this Court must consider.³

Each relevant factor supports this Court issuing a temporary injunction.

A. Plaintiff is entitled to a temporary injunction.

1. There is no adequate remedy at law.

If the temporary injunction is denied, Minnie has no adequate remedy at law. “Adequate remedy at law means a remedy vested in the complainant, to which he may, at all times, resort, at his own option, fully and freely, without let or hindrance.” *Stocker v. Waterbury*, 154 Conn. 446, 449 (1967) (Internal quotation marks omitted). “A remedy at law, to exclude equity jurisdiction, must be as complete and beneficial as the relief in equity.” *Berin v. Olson*, 183 Conn. 337, 342 (1981) (Internal quotation marks omitted).

In this case, there is no adequate remedy at law because the only remedy Plaintiff is seeking on behalf of Minnie, as is true in any habeas corpus action, is her immediate release from unlawful detention. There is no remedy at law or otherwise that will be as complete and beneficial to Minnie as her freedom.

² A copy of the order is available at: <https://www.nonhumanrights.org/content/uploads/20.-Decision-and-order-granting-motion-for-preliminary-injunction-1.pdf>.

³ See *Nobu Next Door, LLC v. Fine Arts Housing, Inc.*, 4 N.Y.3d 839, 840 (2005) (“The party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor”).

2. Minnie will be irreparably harmed if the injunction is denied.

“Although an absolute certainty is not required, it must appear that there is a substantial probability that but for the issuance of the injunction, the party seeking it will suffer irreparable harm.” *Aqleh v. Cadlerock Joint Venture II, L.P.*, 299 Conn. 84, 98 (2010). Additionally, “[w]hether harm is ‘to be viewed by a court of equity as ‘irreparable’ or not depends more upon the nature of the right which is injuriously affected than upon the pecuniary measure of the loss suffered.” *New England Eyecare of Waterbury, P.C. v. New England Eyecare, P.C.*, 1991 WL 27919 at *5 (Conn. Super.) (quoting *Robertson v. Lewie*, 77 Conn. 345, 346 (1904)).

If Minnie is permanently removed from the State of Connecticut, she will certainly suffer irreparable harm because her removal will strip this Court of jurisdiction to grant Plaintiff’s Petition for Certification and prevent it from hearing the merits of Plaintiff’s appeal upon which Minnie’s liberty rests. “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). Minnie has been denied her liberty for 10,000 days. Must that denial end only when she dies, as it did with Beulah and Karen?

In Connecticut, jurisdiction in a habeas corpus proceeding requires that the “person” detained is in the custody of someone from the State. *See Hickey v. Comm’r of Correction*, 82 Conn. App. 25, 32 (2004), *cert. granted in part*, 269 Conn. 913, *appeal dismissed*, 274 Conn. 553 (2005) (holding that, as petitioner was incarcerated in Arizona and “not in the custody of the commissioner . . . the court, therefore, lacked jurisdiction to consider his petition for a writ of habeas corpus.”); *see also Mock v. Warden*, 48 Conn. Supp. 470, 477 n.5 (2003) (“If there has been, or will be, an *unconditional* release from custody before

inquiry can be made into the legality of detention, it has been held that there is no habeas corpus jurisdiction.”) (citations omitted; emphasis original).

As set forth above, on September 19, 2019, the NhRP’s Director of Government Relations received information indicating that Commerford had been finalizing plans to permanently relocate Minnie to Florida. Commerford is capable of transporting Minnie out of state as it has a history of constantly trucking Beulah, Minnie, and Karen all over the northeast to exploit them for financial gain. For instance, as recently as July 4, 2019, Minnie was used in a Fourth of July parade in Springfield, PA where she was photographed wearing a banner for the Springfield Republican Party while being ridden down the street by an adult male and child. The last time Commerford transported an elephant out of state, which was as recently as September 2019, she (Beulah) died.

There are no accredited elephant sanctuaries in Florida. In the United States, the Performing Animal Welfare Society and The Elephant Sanctuary in Tennessee are the only elephant sanctuaries accredited by the Global Federation of Animal Sanctuaries.⁴ Minnie’s removal to Florida will only condemn her to exploitation that will end, as it did with Beulah and Karen, with her death. Such great harm is irreparable.

3. Plaintiff will likely prevail on the merits.

Plaintiff’s Petition for Certification seeks review of *Nonhuman Rights Project, Inc. v. R.W. Commerford and Sons, Inc., et al*, 192 Conn. App. 36 (2019) (“*Commerford and Sons*”).

⁴ Both sanctuaries are willing and able to provide lifetime care to Minnie at no cost to Commerford, and yet Commerford has refused to release Minnie into their care.

As detailed in the Petition for Certification, there are fundamental public policy concerns that compel the granting of certification, including: whether an autonomous, self-determining, and otherwise exceedingly cognitively complex being can legally be imprisoned for life; whether a third party may employ The Great Writ of Habeas Corpus to test the legality of her imprisonment; what meaning liberty and equality have in such cases; and the extent to which judicial decisions should be influenced by the rapidly mounting scientific evidence of the complex cognition and autonomy of elephants. See Pet. Cert. at 2, 3-7. Additionally, *Commerford and Sons* is in direct conflict with numerous controlling Connecticut Supreme Court decisions. *Id.* at 2, 7-9.

Therefore, not only is there a strong possibility that this Court will grant Plaintiff's Petition for Certification, the Court will likely resolve the merits of the appeal in Plaintiff's favor and reverse the Appellate Court decision.

4. The balance of equities tips in favor of granting the temporary injunction.

The balance of equities tips in favor of granting Plaintiff a temporary injunction, because "if it appears that to deny or dissolve it may result in great harm to the plaintiff and little to the defendant, the court may well exercise its discretion in favor of granting or continuing it, unless indeed, it is very clear that the plaintiff is without legal right." *Griffin Hosp. v. Comm'n on Hosps. & Health Care*, 196 Conn. 451, 457 (1985) (citing *Olcott v. Pendleton*, 128 Conn. 292, 295 (1941)). Plaintiff merely seeks to preserve the status quo pending completion of the current habeas corpus proceeding or further order of this Court.

As discussed above, Minnie will likely suffer great irreparable harm if Plaintiff's temporary injunction is not granted. Defendants will suffer no such harm from having to wait for a final ruling on the merits, and any potential financial harm they may incur would be

inconsequential to Minnie's potential loss of freedom. See *Fleet Nat. Bank v. Burke*, 45 Conn. Supp. 566, 577 (1998) ("It is not irreparable harm to incur a loss of profits which may be recovered through other business ventures.").

B. Plaintiff should not be required to post a bond.

Although Conn. Gen. Stat. § 52-472 provides that a temporary injunction should not be granted without the posting of a bond by the moving party, the Court has the statutory authority to waive this requirement. See Conn. Gen. Stat. § 52-472 ("a bond need not be required when, for good cause shown, the court or a judge is of the opinion that a temporary injunction ought to issue without bond.") "The purpose of the bond is to indemnify the defendants from any damages which they might sustain if the plaintiff failed to prosecute the action to effect." *Spiniello Construction Co. v. Manchester*, 189 Conn. 539, 546 (1983).⁵

The bond requirement ought to be waived here because Plaintiff fully intends to prosecute this action to its conclusion, as evidenced by the fact that, since 2017, it filed two habeas corpus petitions on behalf of Minnie and continues to aggressively litigate them through their appeals. The NhRP has never abandoned a case brought on behalf of its nonhuman animal clients.

⁵ Courts frequently issue temporary injunction orders without bond. See, e.g., *Maintenance Technologies Internat'l, LLC v. Vega*, 2006 WL 279429 (Conn. Super.) (granting temporary injunction, without bond, to enjoin defendant from employment in violation of non-compete agreement for a period of one year); *Newinno Inc. v. Peregrim Dev., Inc.*, 2004 WL 1098753 at *2 n.3 (Conn. Super.) ("Based on the issues presented and the merits of the controversy, as well as the nature, scope and extent of the injunction issued, the court concludes that good cause exists for the issuance of temporary injunction without bond."); *Webster Bank, N.A. v. Daniel Cahill*, 2009 WL 2231202 (Conn. Super.) (granting preliminary injunctive relief in full without bond against former employee and new employer).

IV. Conclusion

Having shown that each temporary injunction factor weighs in Minnie's favor, Plaintiff respectfully requests that this Court GRANT its motion pending completion of the current proceeding or further order of this Court.

**THE PLAINTIFF,
THE NONHUMAN RIGHTS PROJECT, INC.**

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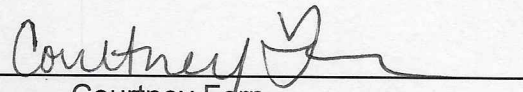
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VERIFICATION

I hereby verify that the facts stated in the foregoing Motion for Temporary Injunction are true and correct to the best of my knowledge, information and belief.

Please see ATTACHED for Notary

Sworn to and subscribed before me
this ____ day of September, 2019.


Courtney Fern

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- ☐ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me

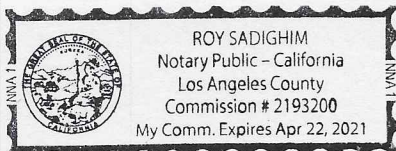
on this 25 day of September, 2019,
 by _____
 Date Month Year

(1) Courtney Fern

(and (2) _____)
 Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature _____
 Signature of Notary Public



Seal
 Place Notary Seal Above

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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 and telephone 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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