NOTARIUS PUBLICUS - SANDEFJORD

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORLEANS

In the Matter of a Proceeding under Article 70 of the CPLR for a Writ of Habeas Corpus,

THE NONHUMAN RIGHTS PROJECT, INC., on behalf of HAPPY,

Petitioner,

-against-

JAMES J. BREHENY, in his official capacity as Executive Vice President and General Director of Zoos and Aquariums of the Wildlife Conservation Society and Director of the Bronx Zoo, and WILDLIFE CONSERVATION SOCIETY,

Respondents.

Index No.: 18-45164

SECOND SUPPLEMENTAL AFFIDAVIT OF JOYCE POOLE, Ph.D.

COUNTRY OF NORWAY)
PROVINCE OF VESTFOLD) ss :
MUNICIPALITY OF SANDEFJORD)

Second Supplemental Affidavit of Joyce Poole

Joyce Poole being duly sworn, deposes and says:

1. I submit this second supplemental affidavit in support of the Petitioner, the Nonhuman Rights Project (hereinafter referred to "NhRP"), in its petition for habeas corpus for the elephant Happy, presently confined by Respondents, James J. Breheny and the Wildlife Conservation Society (hereinafter collectively referred to as the "Bronx Zoo").

2. I have reviewed the affidavits of James J. Breheny, Paul P. Calle and Patrick Thomas in the above-captioned action.

3. As a preamble, I would like to draw attention to the fact that in 2006 the Bronx Zoo announced that once the current elephants die, the zoo will not replace them with other elephants. This decision took place after several elephant deaths at the zoo (Berger 2006).

4. The Wildlife Conservation Society is recognized for its outstanding conservation and research on wild elephants in Africa and Asia and the knowledge gained from the work of their own scientists undoubtedly played a role in the zoos decision to phase out its elephant exhibit. It is worth noting that none of these elephant scientists have contributed affidavits in support of the Bronx Zoo's desire to continue to hold Happy captive rather than to release her to an elephant sanctuary where she would have much larger space to roam and companions.

The affidavit of James Breheny

5. To Breheny's statement (para. 5) that the affidavits NhRP relies upon "only provide generalized, anecdotal discussions of African and Asian elephants as observed in the wild," the affidavits represent, in part, the body of knowledge acquired over 46 years of study of regular group sightings, family censuses, scan and focal samples, that amount to hundreds of thousands of data points on several thousand individually known free-living elephants in Amboseli, Kenya, quite a number of whom have been alive throughout these four and a half decades. In sum, the affidavits are a true representation of an elephant's life. Although incidents were described that exemplify particular cognitive capabilities, the affidavits were hardly anecdotal. My affidavit included over 70 references to scientific research of which 25 were based on the study of these elephants. I was an author of 13 of these papers.

6. In para. 5 James Breheny further states that I claim that, "elephants are generally better suited to the company of other elephants" but he writes that I don't account "for the particular needs, wants, and temperament of any one elephant E.g. Poole Sup, Aff. pp 4-5". I stand by my statement. Elephants are highly social animals and, whether male or female, they are suited to the company of other elephants. Elephants in captivity, including Happy, often do not get on with the elephants their captors select to put them with. Being fenced into areas too small to permit them to select between different companions and when to be with them, they have no autonomy. Elephants need a choice of social partners, and the space to permit them to be with the ones they want, when they want, and to avoid particular individuals, when they want.

7. By bringing up the temperament of "any one elephant," Breheny seems to be suggesting that Happy has a problem getting along with other elephants. The historical information indicates that Happy is not anti-social, *per se*, but that Maxine and Patty once attacked her and that there is a risk that they would do so again. This situation would likely be resolved by offering Happy the chance to form relationships with other elephants in the larger space that a sanctuary affords.

8. In para. 12 Breheny again takes issue with NRP's position stating that it "relies almost entirely on elephants in the wild without taking into consideration Happy's unique characteristics, personality and needs." As an example of her "unique personality," in para. 13 he writes, "Happy has a history of not getting along with other elephants at the Bronx Zoo, which is why she has been housed separately since her companion died."

9. In this contradictory statement, Breheny claims at once that she had a companion (i.e. an elephant she liked) and that she doesn't get on with other elephants. While there is no doubt that elephants have personalities (Lee, 2011), it is hardly fair to say that Happy has a history of not getting on with other elephants. In forty years at the Bronx Zoo she has only been given a choice of four companions with whom she has been forced to share a space that, for an elephant, is equivalent to the size of a house. Two of these companions she liked and lost, and the other two attacked her. This is hardly a basis for drawing a conclusion that Happy has a "history of not getting on with other elephants". It is rather a confirmation of the zoo's inability to meet Happy's basic needs.

10. In para. 6 Breheny states, "none of the affidavits submitted in support of NRP's petition make any reference to Happy, her current state of well being, or her needs as an approximately 47 year-old Asian elephant who has lived for over forty years at the Bronx Zoo." Other than stating, "based on past experience with Happy, the Bronx Zoo knows that she becomes particularly distressed by even short moves within the zoo," in his affidavit Breheny makes no mention of Happy's well-being or her needs. Again, in her 40 year long history at the Bronx Zoo Happy has had the opportunity to socialize with only four elephants and has spent a quarter of this time in solitary confinement.

11. In para. 7 Breheny states, "elephants who have lived at zoos for long periods of time are different from elephants in the wild, and the characteristics of one cannot be compared to the other." Coming from the Director of the Bronx Zoo, this is a shocking acknowledgement of the profound problems that stem from keeping large, social, intelligent, autonomous animals, like Happy, in a space that cannot meet their social and physical needs. It is likely that any differences are due solely and entirely to the nature of their captivity, of being kept without normal social groups and of lacking the ability to enact normal free-will. This will likely be remedied by releasing Happy to a sanctuary that can offer her both companionship and space to roam. While an elephant sanctuary is not the same as the wild, it offers elephants more autonomy and the possibility to choose where to go, what to eat and with whom and when to socialize. There is no scientific basis for arguing that captive and wild elephants are fundamentally different. They have the same biology and needs, but the failure of captivity to meet these needs results in physical and psychological problems in captive elephants. Breheny also appears to be unaware of the extremely positive transformations that have taken place when captive elephants are given the freedom that larger space in sanctuaries or release back to the wild offer.

12. The claims in relation to Happy, that she does not do well with change; that she will not survive the transport; that a transfer to a sanctuary will be too stressful; that she doesn't know how to socialize; that her unique personality is problematic, have been disproven. In fact, elephants with serious physical or psychological problems in zoos have usually become more normal functioning elephants when given more appropriate space in a sanctuary such as PAWS.

13. For example, Maggie was considered to be an anti-social, aggressive elephant and by the time she was moved from the Alaska Zoo to PAWS she was in such poor condition she could barely stand. She is now a thriving, socially active elephant. Indeed she is considered to be PAWS' most social elephant (Ed Stewart, pers. comm.).

14. Ruby was transferred from the LA Zoo to the Knoxville Zoo in Tennessee where she did not successfully integrate with their elephants. When she was moved to PAWS she integrated easily with the other elephants and has become respected leader of her group (Ed Stewart, pers. comm.).

15. Sissy is another classic example. She had been transferred four times and had spent a decade and a half alone before being sent to the Houston Zoo, where she was labeled autistic and antisocial. She was returned to her solitary zoo where she killed a person. She was moved again to El Paso Zoo, where she was beaten because she was a killer elephant. In 2000 she was transferred to The Elephant Sanctuary in Tennessee and within six months of arrival she was calm and cooperative. She became a leader, putting all elephants at ease. In 2000 the USDA had given Sissy only a year to live. Eighteen years later she is still going strong (Scott Blais, pers. comm.).

16. Bunny had been transferred four times and had only known a less than half an acre exhibit when she arrived at The Tennessee Elephant Sanctuary. She was 47 years old and had spent 40 years alone. Within 24 hours of arriving at sanctuary she had integrated into the group (Scott Blais, pers. comm.).

17. Maia and Guida, the first two elephants at Santuário de Elefantes Brasil, had lived together for 40 years. For most of these years Maia was aggressive to Guida, knocking her over, pushing her down and pinning her to the ground. Within 12 hours of arriving at the sanctuary the gates were opened up between them. Since then they have been together and no further aggression has been seen. Two more rescued female Asians are due to arrive this month. The space currently allocated for Maia and Guida is 75 acres, including one area of 40 acres, another of 22 acres and three other smaller areas ranging from 1.5 to 4 acres. This combination of possible spaces allows easy integration of new elephants. The plan is to expand the space for Asian elephants to multiple hundred acres and possibly a thousand or more, depending upon whether males and females can be integrated. Santuário de Elefantes Brasil owns a total of 2800 acres (Scott Blais, pers. comm.).

18. In South Africa, African elephants that have been released from long-term captivity to the wild, after a period of suitable rehabilitation, have all adapted entirely, successfully resuming life as wild elephants despite decades in captivity, and not having lived in the 'wild' since they were juveniles (see Elephant Reintegration Trust – https://www.elephantreintegrationtrust.com/projects).

19. In paras. 23 and 24 Breheny quotes my assertion that sanctuaries are better than traditional zoos and claims that I don't explain why a sanctuary could prevent any

of the harms I enumerate. The reasons are explained in detail in Poole & Granli, 2008 and relate to the orders of magnitude of greater space that is offered in sanctuaries. Such space permits autonomy and allows elephants to develop more healthy social relationships and to engage in a near natural movement, foraging, and repertoire of behavior. When elephants are forced to live in insufficient space for their biological, social and psychological needs to be met, over time, they develop physical and emotional problems.

20. As the above examples illustrate, the problems seen in captive elephants, like Happy, can usually be mitigated with the proper attention and environment. To re-emphasize, there is no basis for arguing that captive and wild elephants are fundamentally different. They have the same biology and needs, but the failure of captivity to meet these needs results in physical and psychological problems.

<u>The Affidavit of Paul P. Calle</u>

21. As a veterinarian, Paul Calle focuses on the regular medical care that is provided to Happy at the Bronx Zoo. He states that the Bronx Zoo "undertakes a multitude of efforts to ensure Happy's continued physical and psychological well-being and health" (para. 6). To support this statement he notes that this includes "visual checks by the care staff several times a day" (para. 7), "regularly but less than daily" a complete blood count, biochemical profile, elephant inflammatory profile and, quarterly, an elephant tuberculosis antibody screening test and trunk wash for tuberculosis culture and PCR (para 8). He furthermore states, "veterinary staff conduct regular health assessment of Happy through body condition evaluations, oral and dental examinations, and foot examinations" and that, "baseline toe x-rays of Happy's feet were completed, and are repeated for comparative analysis on an as-needed basis to address particular areas of concern as they arise." (para. 9).

22. Nowhere in his affidavit does Dr. Calle comment that Happy is found to be healthy. Indeed his statement in Para 9 regarding Happy's feet indicates that her feet are not healthy. My own observations from watching a number of videos is that Happy lifts her feet repeatedly, indicating that she is either trying to take the weight off of them or is engaging in stereotypic behavior. The Quarterly TB tests are more frequent than normally warranted and suggests that Happy is being

monitored closely because she is housed in the same barn as Patty who has been diagnosed with TB.

23. Dr. Calle's only reference to Happy's psychological well-being is that she becomes "very distressed during short moves from one area of the Bronx Zoo to another." (para. 14) This distress is likely evidence of how traumatic it has been for Happy to be shuffled about at the zoo from confined space to confined space.

24. I saw no documentation of the "multitude of efforts" that the zoo makes to ensure her psychological well-being. Indeed, since the psychological well-being of elephants is very much dependent on the ability to socialize appropriately with other elephants and this is dependent on having adequate space, the zoo has failed to meet Happy's psychological requirements.

25. PAWS has been involved in moving more than a dozen elephants over the years without incident. These moves include older females and from places as far away as Alaska and Toronto, Canada. Some of these elephants had lived in their prior facilities for over 40 years. There is no evidence that the inevitable stress of these moves has had a long-term effect on any of the elephants. Santuário de Elefantes Brasil is about to move Rana, a confiscated ex-circus elephant in her 50s, 1,675 miles to their sanctuary.

<u>The affidavit of Patrick Thomas</u>

26. The affidavit of Patrick Thomas is focused on the compliance of the Bronx Zoo with AZA Standards for Elephant Management and Care and the Animal Welfare Act. He states that these are the "two primary sets of standards for the care and management of elephants in AZA-accredited institutions in the United States" and that they "ensure that Happy is provided with excellent care focused on her well-being."

27. I have long promoted the development of elephant sanctuaries and co-founded one of them (Santuário de Elefantes Brasil), because our more than four decades long study of free living elephants shows that the AZA specifications are woefully inadequate for meeting the needs of elephants (Poole & Granli 2008).

28. It is notable that Thomas' affidavit does not touch on a Bronx Zoo's weak point, the very small space available to Happy. There are three possible locations for elephants at the Bronx Zoo (see methods section Plotnik et al 2006):

1) an indoor "holding area" or elephant barn;

2) a barren, cement walled outdoor elephant yard that appears to be approximately 15 m2 or 0.05 of an acre (see Plotnik et al 2006: http://www.pnas.org/content/suppl/2006/10/26/0608062103.DC1#M1;

3) a zoo exhibit, listed on www.zoochat.com as being only 1.15 acres (https://www.zoochat.com/community/threads/aza-elephant-exhibit-sizes.326779/.

29. Since the Bronx Zoo elephants are incompatible, the naturalistic "exhibit" area has to be shared on a rotational basis. At night Happy is usually in a small pen in the barn or in the barren outdoor yard; during most days, weather permitting, she is also in the barren outdoor elephant yard.

30. In para. 27 Thomas writes, "Weather permitting, Happy has regular, year-round access to a large, naturalistic outdoor exhibit in which she may go swimming and engage in other species-typical behavior, and also has regular overnight access to a large outdoor space." Given that the most species typical behavior of elephants relates to foraging (which is done for her) or social interactions, keeping her in a solitary condition means that she actually has the ability to engage in almost no species typical behavior.

31. It is difficult for members of the public, myself included, to obtain much information about Happy's behavior other than viewing very short videos of her captured by people who have ridden on the monorail at the Bronx Zoo. In these videos we see her engaged in only five activities/behaviors: Standing facing the fence/gate, dusting, swinging her trunk in stereotypic behavior, standing with one or two legs lifted off the ground, either to take weight off painful, diseased feet or again engaging in stereotypic behavior, and once, eating grass. Only two, dusting and eating grass, are natural. Alone, in a small space, there is little else for her to do.

<u>References</u>

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Joyce Poole, Ph.D.

Sworn to before me
this ____ day of ____________, 2018

____
Notary Public

I hereby certify that this document bears the signature of Joyce Hatheway Poole and that (he/she) has certified its contents before me as required by Norwegian law.
Sandefjord Probate court, 10 December 2018

Notary Public
L.H. Barvik
Liss Hansen Barvik

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3. Acting in the capacity of:
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   The Notarius publicus of Sandefjord

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5. at Tønsberg 6. the 10.12.2018
7. by the Governor of the counties of Vestfold
8. No 13444 10. Signature
9. Seal/stamp

COUNTY GOVERNOR OF VESTFOLD

Hildegunn Fagerheim

Hildegunn Fagerheim
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