

VERMONT SUPERIOR COURT
Washington Unit
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CIVIL DIVISION
Case No. 23-CV-00786

Barbara Sliger v. Central Vermont Humane Society et al

ENTRY REGARDING MOTION

Title: Motion for Preliminary Injunction (Motion: 1)
Filer: Barbara Sliger
Filed Date: February 23, 2023

The motion is GRANTED.

Plaintiff Barbara Sliger seeks a preliminary injunction to direct the return of her dog Nina from Defendant Central Vermont Humane Society. Defendant opposes this request. The Court conducted a preliminary injunction hearing on March 1, 2023 and received testimony from Plaintiff as well as from Erica Holm, Co-Executive Director of the Central Vermont Humane Society. Based on the evidence, the present issue revolves around three central concepts. First, there is a question about title and the right that Defendant has to undo an animal adoption, 8 years after it occurs. Second, there is a question of what rights the Defendant has under a private agreement drafted by Plaintiff's counsel and signed by both parties on January 18, 2023. Third, there is the question of whether the Defendant, who received Nina from a third-party, properly received the animal and has a legal right to retain possession of her.

These issues are further complicated by the nuanced nature of pet ownership. As the Vermont Supreme Court has noted, "nonhuman animals occupy a unique legal status in that they have traditionally been regarded as property but are nonetheless 'different from other property.'" *State v. Shepard*, 2017 VT 39, ¶ 17 (quoting *Hament v. Baker*, 2014 VT 39, ¶ 8). Put plainly, "pets are different from other property. They are alive and form emotional attachments with their owners that run in both directions. Their long and intimate association with people gives rise to special concerns for their well-being and humane treatment." *Hament*, 2014 VT 29, at ¶ 8. This special status cuts two ways. The Court has consistently recognized that the determination of pet ownership is not to

be treated the same as inanimate objects. Id. at ¶ 9. That means recognizing the emotional attachment owners have, but it also means that ownership is also “governed by concerns for animal welfare.” Id. In this case, there are several humane and compelling considerations governing Nina’s fate. They involve the substantial attachment that Plaintiff has evinced and the care she has taken in her ownership, but they also involve the Humane Society’s concerns for animal welfare that include not just the care, nutrition, and affection, but also the management and oversight of the animal when it is outside the home.

Background

Based on the evidence and testimony from the March 1, 2023 hearing, the following facts do not appear to be in dispute. Plaintiff adopted Nina eight years ago when the dog was eight months. Since then, Plaintiff and Nina have lived together on Judson Road in Montpelier. From Plaintiff’s testimony, she has taken very good care for Nina with regular vet visits and check-ups, healthy meals, including organic vegetables and barley. Plaintiff has never left Nina outside over night or for extended periods of time. She has not left Nina home alone for extended periods of time and has either taken Nina with her or provided for care with another dog-friendly family. Nothing about Plaintiff’s care of Nina indicates either neglect, abuse, or any maltreatment. To the contrary, Plaintiff evinces deep affection for her pet and companion that are hallmarks of the best of owner-pet relationships.

The one exception to this solid record of care has been Plaintiff’s control of Nina outside of the house. Prior to January 18, 2023, Plaintiff admits that she let Nina out of the house to run around and had not fence or other mechanism to keep Nina from leaving the property and roaming at large. While Plaintiff minimized these instances, there were enough of them that they came to the attention of neighbors and eventually to the Central Vermont Humane Society. Allowing a dog to roam free is a violation of Montpelier City Ordinance Section 8-207. While Plaintiff’s allowance of her dog to run and play with others may have been tolerated, it appears that things changed in late 2022 when Plaintiff adopted a new puppy as a companion to Nina. This new puppy required constant attention and supervision, including being let outside nearly every hour of the day as part of his house-training. But more relevant to the claims, it appears that the puppy may have inspired Nina to more liberal departures from Plaintiff’s premises. This culminated in the neighbors taking

both the puppy and Nina, who had come to their house, to the humane society out of a concern that Plaintiff was not caring for the dogs.

Plaintiff learned that her dogs had been taken to the Central Vermont Humane Society, and she retained counsel to help her gain her dogs back. The result of these negotiations ended with an Agreement that the parties have both stipulated to and which has been filed as Plaintiff's exhibit 2. This Agreement, which the Court will analyze in more detail below, memorialized that Plaintiff would give the puppy back to the Humane Society and be refunded her adoption fees. It also stated that the Humane Society would return Nina to Plaintiff with the express understanding that Plaintiff would contain Nina on Plaintiff's property and keep her leashed at all times off the property, except for designated off-leash locations. Nina was no longer allowed to run at large. It required compliance with all Montpelier animal and nuisance ordinances and state animal care statutes (explicitly listing 13 V.S.A. § 365). Finally, it required Plaintiff to bring Nina back inside as soon as Nina indicated a desire to come inside and to prevent Nina from experiencing any physical stress or discomfort while outside. The Agreement also contained an enforcement clause that reads:

If, by clear and convincing evidence, it can be proved that [Plaintiff] violates these conditions of care, Nina reverts back to the Society, which may institute enforcement proceedings under Title 13.

After signing this Agreement, the Humane Society returned Nina to Plaintiff. Plaintiff has testified that she contacted fence installers for the spring and started to keep Nina hooked up to a leashed run to prevent her from running at large.

On February 13, 2023, Plaintiff took Nina to Hubbard Park to run and play. Plaintiff states that she got out of her car and opened the door for Nina to go out while Plaintiff put on spikes because of the icy conditions. While she was doing this, Nina ran away from the dog area toward the new shelter where a black truck had been parked.¹ This truck was driven by a couple who was familiar with Plaintiff and Nina and had previously cared for Nina when Plaintiff was out of town. This couple also had a dog with whom Nina was familiar and friendly. The couple recorded Nina running and forwarded the video to the Humane Society. The couple then took Nina into the truck,

¹ Plaintiff admitted that she will let Nina travel between her house and the car as well as the car and final destination unleashed. While this may result in Nina running temporarily outside of Plaintiff's immediate control, Plaintiff stated that Nina has always returned and complied with her directions.

drove past Plaintiff, and delivered her to the Humane Society. The Humane Society's Executive Director determined, based on the video and statements of the couple, that Plaintiff had violated the Agreement and decided to take back Nina. The Humane Society has subsequently adopted Nina to the same couple who brought her from Hubbard Park.

The Humane Society has not instituted and does not intend to institute civil forfeiture proceedings under 13 V.S.A. § 354. Instead, the Humane Society claims a private title and contractual right to re-possess Nina under the terms of the original adoption agreement and the January 18, 2023 Agreement. The Humane Society admits that it has never taken such steps against a dog owner in recent times, and the current Executive Director, who has been in her position for 8 years, has never taken such action during her tenure.

Plaintiff wants her dog back. The Humane Society is concerned about the welfare of Nina and the on-going concern about Plaintiff's ability to control and keep control of Nina.

Legal Analysis

As a Motion for Preliminary Injunction, Plaintiff seeks an “extraordinary remedy,” which is “never awarded as of right.” *Taylor v. Town of Cabot*, 2017 VT 92, ¶ 19 (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 55 U.S. 7, 24 (2008)). There are four factors to determining whether a Plaintiff is entitled to a preliminary injunction, and Plaintiff bears the burden of establishing all four of the relevant factors under Vermont law: “(1) the threat of irreparable harm to the movant; (2) the potential harm to the other parties; (3) the likelihood of success on the merits; and (4) the public interest.” *Taylor*, 2017 VT 92, at ¶ 19 (citing *In re J.G.*, 160 Vt. 250, 255 n.2 (1993)); see also V.R.C.P. 65.

I. The First, Second and Fourth Elements of a Preliminary Injunction

In this case, the first, second, and fourth element are strongly interrelated. As noted above, animal ownership has long been tied to and conditioned by animal welfare. *Shepard*, 2017 VT 39 at ¶ 17. But an owner's interest in a pet is primarily emotional, rather than financial. *Morgan v. Kroupa*, 167 Vt. 99, 103 (1997). A pet's “value derives from the animal's relationship with its human companions.” *Id.* Therefore, the loss of a pet is likely to be irreparable to its owner as the companionship and time lost cannot be recovered or be reimbursed. Yet, this interest, like the Humane Society's and the public's interest in animal welfare, is not absolute. It is best viewed as an

analog continuum as opposed to a binary opposition of interests. A pet owner's interest in companionship is subject to the public interest in animal welfare. No matter how much an owner may love a pet, their responsibility to treat the pet in an objectively safe and compassionate manner can trump both the emotional attachment as well as the interest in title. See *Shepard*, 2017 VT 39, at ¶ 17; *Morgan* 167 Vt. at 104 (using the term “substantial compliance”). Given these overlapping interests, the real analysis lies with the third prong of this matter and the specific facts of this case.

II. Likelihood of Success on the Merits: The Initial Seizure

It is undisputed that Plaintiff had good title to Nina up to February 13, 2023. Plaintiff had adopted Nina, raised her and cared for her over the last 8 years. Apart from the Humane Society's claim to a reversionary interest through the original adoption agreement and the subsequent January 18th agreement, no one had better claim of title to Nina, than Plaintiff. As the facts show, the Humane Society did not act against Plaintiff or attempt to remove Nina from Plaintiff. Instead, a set of third-party private actors took it upon themselves to take Nina without title and deliver her to the Humane Society. These individuals were not acting as agents of the Humane Society, nor were they acting with any authority. The evidence shows that Nina ran up to them, and it is not unreasonable to conclude that she did so because she was familiar with them and recognized a friendly scent. At that point, these individuals did not have the authority to seize Nina, anymore than a person passing by a house has the right to come and take an item of property—even if that property is subject to re-possession by another. To rule otherwise would be an endorsement of vigilantism and lawless process justified by the end result.

Even if the individuals assumed that Nina was loose and lost, the law states that title does not automatically flip to the finder. *Morgan*, 167 Vt. at 105. As the Court in *Morgan* notes, even if animal possession is limited and a person who finds a lost or abandoned pet can eventually claim title, the finding party must still exercise due diligence to locate its owner. *Id.* In this case, the evidence shows that these individuals knew exactly who owned Nina, and they even saw Plaintiff at the park, but they chose not to return Nina to Plaintiff. Instead, they took her without right to another claimant. Since these individuals were not agents or deputies of the Humane Society, this action was without a claim to title or right to seize and cannot form the basis of a legitimate seizure of private property.

III. Likelihood of Success on the Merits: The Humane Society's Right to Reversion

While the initial seizure of Nina may have been improper and without right, the Court must go to the next step of analyzing whether the Humane Society's claim to Nina is self-effectuating and trumps Plaintiff's title such that no matter how the Humane Society took possession, its claim is superior to Plaintiff's.² To that end, the Court must examine the basis for the Humane Society's claim to title.

There are two important threshold determinations to this analysis. First, the Humane Society has stated that its only claim of title arises from the two private agreements that it executed between itself and Plaintiff. The first document, the original adoption agreement, has not been produced into evidence. While both parties have admitted to its existence there has been no testimony as to the exact language or terms of this agreement—only the general understanding of the parties. This is not sufficient to establish the terms of this original agreement. As the Best Evidence Rule requires, to prove the contents of a writing, a party must produce the original. V.R.E. 1002; *In re Estate of Maggio*, 2012 VT 99, ¶¶ 12–16. In this case, the Humane Society seeks to establish two things: (1) that it has a reversionary ownership interest in Nina premises on her welfare; and (2) that this right is self-effectuating. Without the original adoption agreement, however, Defendants' characterizations of that agreement are insufficient as a matter of law to establish proof of these terms, and Defendant's position is left without sufficient evidentiary support. This leaves the Court and the Parties with the January 18th Agreement as the sole piece of evidence of the parties' intent and provides the only terms controlling the parties' relationship in this area.³

Second, the Court has reviewed several relevant cases, statutes, and ordinances dealing with animal welfare, and there appears to be a distinction embedded in each that differentiates between

² In such a case, Plaintiff might have a claim against the third-party for conversion, but it would not have a superior claim to regain title from the Humane Society.

³ Plaintiff stated that she did not sign the January 18th Agreement willingly but signed subject to duress, coercion, and undue influence. The evidence does not support this claim. Plaintiff's attorney drafted and advised her to sign the January 18th Agreement. Plaintiff does not indicate that she did not understand the terms or was suffering from a limitation that would have prevented her from understanding the terms. There is no evidence that any undue influence was exerted or that she lacked free will. *See, e.g., Landmark Trust (USA), Inc. v. Goodhue*, 172 Vt. 515, 524–26 (2001) (describing the legal standards of duress, coercion, and undue influence). Instead, Plaintiff's testimony is indicative of regret, rather than legal grounds to undo a binding agreement.

neglect, cruelty, and maltreatment on one hand and more minor transgressions on the other. While the Court will not divide these into mortal and venial offenses, there is a meaningful distinction. For example, in *Shepard*, the Supreme Court draws a distinction between warrant-driven welfare checks (seeking a blood test to establish starvation issues) and exigent circumstances requiring immediate intervention (animal control officer observes a dog left unattended on a porch on “an exceptionally cold day” and “emaciated and unable to stand [with] no food or water in sight.”). *Shepard*, 2017 VT 39, ¶¶ 18–20. Similarly, the Montpelier animal ordinance provide one set of penalties for dogs running at large (formal warning for first offense up to \$500 for four or more offenses) and another for dangerous dogs (\$450 for first offense up to euthanasia for two or more instances). Montpelier Ordinances §§ 8-208, 8-214–8-216. Vermont Statutes also recognize cruelty to animals under 12 V.S.A. § 352 as different than the sheltering and leashing of animals under 13 V.S.A. § 365—even if the same penalties apply. These distinctions indicate, at the very least, a recognition of degree and severity. It is one type of wrong to starve or abuse a pet. It is another to fail to leash or control a pet.

With these issues in mind, the Court looks to the parties’ agreement. First there is the issue of whether Plaintiff breached the parties’ agreement. The Humane Society cites to the language under Paragraph 1 that requires Plaintiff not to allow Nina to be off-leash and not permitted to run at large. The standard of proof for this element is “clear and convincing evidence” as stated in Paragraph 4 of the Agreement. “Clear and convincing evidence is a very demanding standard requiring somewhat less than evidence beyond a reasonable doubt, but more than a preponderance of the evidence.” *In re ET*, 2004 VT 111, ¶ 12. This requires the party asserting the fact to show that it was “highly probable.” *Id.* In this case, the evidence shows that Plaintiff and Nina were in Hubbard Park, which allows dog owners to have their dogs off-leash. *City of Montpelier, Canine Code of Conduct* at <https://www.montpelier-vt.org/215/Canine-Code-of-Conduct> (last visited Mar. 2, 2023). Plaintiff testified that she had Nina under control and was with her in a dog walking area when Nina inexplicably ran off. One conclusion that could be drawn from these events is the possibility that Plaintiff lacked control of Nina, and that she was running free and at large, but the testimony goes on that familiar acquaintances of Plaintiff and Nina had just entered Hubbard Park and were just ahead of Plaintiff and Nina at the so-called new shelter. It is equally plausible that Nina, recognizing familiar people went over to greet them, strode around (for 5 to 10 seconds) and would have returned to Plaintiff if the acquaintances had not brought her into their car. Each has a

certain plausibility, but neither emerges from the fog of testimony as highly plausible. On this language alone, Plaintiff has the better argument, and the Defendant cannot point to clear and convincing evidence in support of its asserted right of reversion.

In addition to this reasoning, the issue of control invites a more subjective analysis. Unlike an animal demonstrating or evince clear signs of neglect and abuse, the issue of control may be a matter of degree. If Nina ran to the new shelter and immediately ran back to Plaintiff, it could be argued that Plaintiff maintained control. If Nina was momentarily distracted by a familiar person, a squirrel, or other distraction, but was quickly brought to heel, the same conclusion of control would follow. If someone interrupted this process and put Nina in a truck, then it would be difficult to prove control one way or another. There is no evidence that Nina's behavior was dangerous, threatening, or disruptive, which are often, as the Montpelier Animal Ordinance illustrate, the primary concerns of off-leashed animals. Because Hubbard Park's roads have a speed limit of 15 miles per hour, the concern of traffic hitting an unleashed dog is significantly lessened as well. See *City of Montpelier, Hubbard Park Rules*, at <https://www.montpelier-vt.org/252/Park-Rules> (last visited Mar. 2, 2023). Based on these additional issues, the Court cannot find that the actions recited by the parties in evidence establish clear and convincing evidence of any breach of the parties' Agreement.

There is other language in the Agreement that raises a significant question. In Paragraph 4 after the "clear and convincing" phrase is the language "**it can be proved that [Plaintiff] violates these conditions of care.**" (Emphasis added.) Defendant argues that this language is self-effectuating and permits the Humane Society to maintain custody of Nina pending the outcome of this action, but the phrasing in this clause does not entirely support Defendant's position. The use of the past participle "can be proved" suggests that it is to be proven to someone by another. Since the clause does not identify anyone, there are three options. The first is tautological and solipsistic. The Humane Society complies clear and convincing evidence, shows it to itself, and then judges whether the case is proven. This is the interpretation advanced by Defendant, but not only is the concept awkward, but it offers the most tortured interpretation of this phrase. The second option is that another party presents the evidence, and the Defendant is still the adjudicator. The third option is that the Defendant is the one who arranges and presents the evidence, and a third-party is the adjudicator. Each of these options leaves open the question of either who arranges and presents the evidence or who judges. Plaintiff argues that the clause that follows this phrase invoking title 13

support the third version and make the courts the adjudicator through the 13 V.S.A. § 354 process. This is a compelling proposition from the Court's perspective, but even this interpretation does not bring total clarity to the phrase as it ignores the provision that appears to require possession of Nina automatically revert back to the Human Society.

At the hearing, both parties spoke to the drafting of this agreement and the source of ambiguity. Given the potentially ambiguous language, the Court can take consideration of these circumstances. *Isbrandtsen v. North Branch Corp.*, 150 Vt. 575, 578 (1988). From this testimony, the Court finds that the paragraph at issues represented an inartful merger of three concepts. The first was the inclusion of Title 13, which provides for a public process of civil forfeiture to remove an animal from an individual. The Humane Society wanted to include this section to ensure this process was not foreclosed by the Agreement. The second was a re-affirmation of the Humane Society's understanding that it holds certain private reversionary rights to take back an animal that is being abused, neglected, or subject to cruelty. That is a process that would sit outside of the Title 13 civil forfeiture process and would exist by virtue of contract. The third element was Plaintiff and Plaintiff's counsel's contribution, and this was some effort at creating an objective standard for enforcement.

In light of these circumstances, the Court concludes that Paragraph 4 preserves the right to a civil forfeiture process. It also preserves a private right to claim reversionary interests in Nina in the case of clear and convincing evidence of neglect or abuse as stated in the Agreement, and it also provides some type of objective standard. Due to the muddled nature of this section, however, the Court finds that the provision is neither self-effectuating, nor establishes a clearly identifiable process to determine possession. In the absence of such, the parties are left, as Defendant noted, with the civil division of the Superior Court to adjudicate and render a decision. As noted above, the Court does not find, based on the evidence currently before the Court, sufficient evidence to sustain a determination that Plaintiff breached the terms of the parties' Agreement. For this reason, in addition to the reasons stated above, the Court finds that Plaintiff is likely to prevail on the merits of her claim.

ORDER

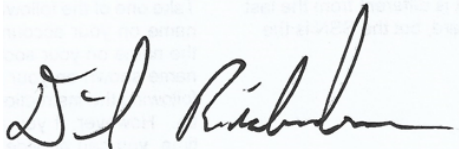
Based on the foregoing analysis, the Court finds that Plaintiff has sustained her burden in this matter and is entitled to have Nina returned to her custody. Plaintiff's Motion for a Preliminary

Injunction is **Granted**. Defendant shall return Nina to Plaintiff immediately. The return may include taking Nina directly to Plaintiff's residence or arranging for Plaintiff to pick Nina up from the Humane Society. This should be done as quickly as possible.

The Court will give Defendant 21 days from the date of this Order to file an answer and/or counterclaims to Plaintiff's complaint if it wishes to pursue the termination of Plaintiff's ownership under the terms of the Agreement.

The Parties remain bound by the terms and provisions of the January 18, 2023 Agreement, which is and remains a valid and governing agreement between the parties and governs Plaintiff's right to continue her ownership of Nina.

Electronically signed on 3/2/2023 6:35 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background. The signature is fluid and cursive.

Daniel Richardson
Superior Court Judge