DOCKET NO. LLI-CV-17-5009822-S	SUPERIOR COURT
NONHUMAN RIGHTS PROJECT, INC. EX REL. BEULAH, MINNIE, & KAREN	JUDICIAL DISTRUCT OF LITCHFIELD
V.	AT TORRINGTON
R.W. COMMERFORD & SONS, INC.	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; Reporter of Judicial Decisions, 231 Capitol Ave., Hfd. CT 06106. PZ

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

[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.

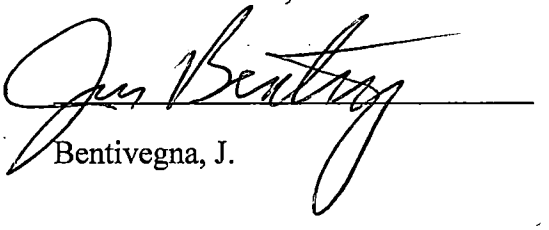
II

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.