



Ikea monkey to stay at sanctuary, judge rules



Yasmin Nakhuda, right, is escorted from Ontario Superior Court in Oshawa by her husband Sam Kotosh on Friday, Feb. 1, 2013. (The Canadian Press/Chris Young)

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OSHAWA, Ont. -- Darwin the Ikea monkey will stay at a primate sanctuary for at least the next few months after the woman who describes herself as his mom lost a third bid to get him back.

The primate is at the centre of the hotly contested battle between Yasmin Nakhuda and the Story Book Farm Primate Sanctuary -- not a child custody fight, but rather one over personal property, a judge reminded everyone Friday.

Darwin has been at the sanctuary since he was scooped up by Toronto Animal Services following his adventure around an Ikea parking lot while decked out in a little shearling

coat in mid-December. Nakhuda tried and failed to get him back from animal services that day. She alleges the bylaw officers tricked her into surrendering the monkey.

So she launched a civil action in court to get Darwin back, but as the trial likely won't be heard until the spring, even on an expedited basis, Nakhuda asked the court to let her have Darwin at least until the trial.

Ontario Superior Court Judge Michael Brown denied her interim bid Friday, just as he denied her similar bid in late December.

"I do not believe that any irreparable harm will occur to the plaintiff and her bond with Darwin or Darwin himself, so long as an early trial date can be set," Brown said. The case is expected to come to trial by May.

Nakhuda argued that a long separation until the trial will damage her bond with the little primate.

After Brown read his decision Nakhuda sat motionless for several minutes and emerged from the courthouse nearly an hour later with few words.

"You've just learned that loving is not enough to win a motion," she said while trying in vain to duck a crush of reporters outside the courthouse. "I will keep loving him. I don't know about fighting but I will keep loving him."

She said people wouldn't understand how much she misses Darwin.

Nakhuda's lawyer, Ted Charney, called Friday's decision a "bump in the road," but said his client is distraught over the decision. She has turned down an offer for a supervised visit with Darwin through his enclosure at the sanctuary. Charney said it's because that is what's best for the monkey.

"If Darwin starts to see her then she leaves it's just going to be really, really tough on that little guy," Charney said. "So despite how much she wants to go she just can't go to visit him."

Sanctuary owner Sherri Delaney said she and her staff and volunteers will continue providing Darwin and the other primates with good care.

"I would like everybody to know that Darwin is thriving," she said outside court. "He's doing very well."

The sanctuary alleges Nakhuda is unfit to care for Darwin, raising unproven allegations that she "strangled" the monkey, and didn't change his diapers for several days.

The judge said there is a very high bar a plaintiff must meet on a motion such as this one, and he ruled that Nakhuda did not.

"I am not satisfied that the plaintiff has established that there is a high degree of assurance that she will succeed at trial," Brown said. "That is not to say in any way that she will not be successful at trial. She may very well be."

Lawyers for Nakhuda and the sanctuary argued the motion Friday, and court heard that Nakhuda wrote emails to an American monkey trainer describing her struggles in controlling Darwin's behaviour.

Her husband received "the most vicious bites" but Darwin was also biting her 12-year-old son, she wrote.

The trainer was critical in her response and Nakhuda was upset in her reply, Charney said.

"I have concluded, judging by the tons of mistakes you say I have already made ... that I am truly unfit to be a caregiver for Darwin," Nakhuda wrote. "You are right to say that I am sitting on a time bomb ... I don't believe Darwin can change ... All I can do now is to take Darwin to an animal shelter and I don't even know one here."

Charney suggested his client didn't really mean that. She was despondent over the negative response, he said.