

Ikea monkey to remain in sanctuary for now

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A monkey was seen walking around the parking lot at an Ikea store in North York on Dec. 9, 2012. TWITTER/@broniewyn

A Japanese macaque named Darwin, otherwise known as the Ikea monkey, will stay at a primate sanctuary at least for the next few weeks without a visit from his owner, after she said it would be too traumatic for him.

An Ontario judge Friday dismissed Yasmin Nakhuda's bid to bring Darwin home for the holidays, but ruled that she should be able to visit the tiny monkey.

Nakhuda tried to get the judge to consider a joint custody arrangement, akin to children with divorced parents, whereby Darwin would live at the sanctuary during the week and she would take him home on the weekends.

The sanctuary where Darwin has resided since he was found wandering an Ikea parking lot in a little shearling coat has raised vague allegations of abuse and while they offered Nakhuda supervised visits with Darwin, they opposed the weekend visits. Superior Court Judge Michael Brown said it would be premature to let Nakhuda have even temporary possession of Darwin before all the facts can be aired in court.

Nakhuda sat in court crying as her lawyer told the judge that if she can't visit with Darwin at home, she doesn't want to do it at all. Visiting him behind bars would be too stressful for him, she said through her lawyer. Outside court, Nakhuda was too upset to say much, but her husband urged people to put the case "in a human context."

"Darwin is not a dog, he's not a cat, he's not a lizard. He's 93 per cent human DNA," the husband, who only gave his name as Sam, said, choking up.

"If you go to visit him as a five-year-old child, if you do have a child, how would you feel to see your child behind a cage and be with him outside the cage to say, 'Oh, your mommy and daddy is here...yet you cannot cuddle.'"

That would be too damaging for Darwin, he said.

"I don't know if human beings are capable of understanding this," the husband said. "I don't know if the judge is capable of understanding this."

In his decision, Brown noted the "great affection" both Nakhuda and the sanctuary staff seem to have for Darwin, but reminded everyone that the case is about a monkey, who in law is treated as a piece of property.

"Quite understandably, as with many animals, it is not unusual that such affection, as in this case, is quite profound and real," said Brown, Ontario's central east regional senior justice.

"That being said, it must be remembered that Darwin is not a human being and the rules of our court regarding the custody and access to children do not apply to Darwin."

Nakhuda, who says she has cared for Darwin like a child since she got him in July, filed a motion in court to try to get him back. It is illegal to own a monkey in Toronto, but Nakhuda is arguing that animal control did not have the authority to send Darwin to the Story Book Farm Primate Sanctuary in Sunderland, Ont., only to issue her a ticket and a fine, which they did.

Nakhuda and her family want to move with Darwin to Kawartha Lakes, where owning such an animal isn't specifically prohibited.

The judge agreed to hear full arguments in January on where Darwin should stay until the case can come to a trial, but said Friday that at least until then, the monkey will stay at the sanctuary.

"I say this because on the limited evidence I have before me, Darwin appears to have been well looked after by the defendants since Darwin came into their possession," Brown said.

"I do not think there will be any irreparable harm to Darwin or his bond with Ms. Nakhuda."

Brown stressed that the order is temporary, and he may come to a different conclusion in January. The sanctuary's lawyer had asked for an adjournment so he could gather evidence and talk to witnesses. In court Thursday Kevin Toyne implied he had uncovered allegations of improper care.

Toyne said he was in contact with an American named Lisa Whiteaker who runs a website called monkeypro.com and refers to herself as the "Monkey Whisperer." She had been in regular email contact with Nakhuda and Toyne said he is hoping to get access to those emails. There's "more to come" on the issue of animal cruelty, he said.

Nakhuda's lawyer, Ted Charney, dismissed the implication as "wild speculation."

"Mr. Toyne is entitled to say whatever he wants in court because whatever he says in court is subject to privilege, but I don't know anything about these emails and there's been no evidence whatsoever of abuse," Charney said outside court.

Toyne repeated the allegation outside court Friday.

"If there has been animal abuse in Darwin's past there's certain consequences for that and if there hasn't, there hasn't," he said.

Nakhuda's husband suggested improprieties with the sanctuary's licence. Toyne said outside court that the township in which the sanctuary is located passed a bylaw earlier this year to deal with certain types of animals. The sanctuary is now waiting for its paperwork to be approved, but it has been slow because of administrative issues, Toyne said.

"It's simply a formality and that will be approved sometime in early January," he said. "This is the first time that licences are going to be issued."

The next court hearing is set for Jan. 31, with the next day also set aside in case it runs long.