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Darwin the Ikea monkey's former 'mom' weeps at trial's end



DARWIN

Family Handout

Yasmin Nakhuda and Darwin.

Hamilton Spectator

The emotional trial to determine custody of Darwin the Ikea monkey came to a dramatic close Tuesday, with the monkey's former "mom" weeping as the lawyer for the primate sanctuary read his closing arguments.

But as Judge Mary Vallee considers her verdict, she will have to decide who has proved rightful ownership of Darwin — considered a piece of property in this case — not who loves him the most or who is best able to care for him.

The Japanese macaque first made international headlines Dec. 9 when he was spotted roaming an Ikea parking lot in a shearling coat. Toronto Animal Services captured him and transferred him to the sanctuary in Sunderland, Ont. the next day.

Darwin's former owner and self-styled "mother" Yasmin Nakhuda launched her lawsuit against the Story Book Farm primate sanctuary less than a week later. After losing two motions to win interim custody of the pet, the trial began in late May.

Over four days, Vallee heard testimony from Nakhuda and her husband, three animal control officers and sanctuary owner Sherri Delaney. The judge is not expected to render a decision until at least next week.

In his closing arguments, lawyer for the sanctuary Kevin Toyne stressed that Darwin is a wild animal and, under a doctrine called *ferae naturae*, can only be owned by the person who possesses him at the time.

"The second Darwin got out of the car, Ms. Nakhuda no longer owned him," he said.

Because of the unusual nature of the case, Toyne relied in part on century-old case law, in particular a case of a fox that wandered off its owner's property and was shot dead by a neighbour. The court ruled in the neighbour's favour, deciding that the owner lost title to the animal when it left his property.

But Nakhuda's lawyer, Ted Charney, argued that Darwin was a domesticated pet, not a wild animal. The infant monkey wore clothing and went everywhere with Nakhuda — to the office, the gym and, of course, on trips to Ikea.

"Darwin didn't leave Ms. Nakhuda and go wandering up to Sunderland and one day show up on Ms. Delaney's farm," said Charney.

"And Darwin didn't look like just any monkey. He was wearing a diaper and a coat. It was clear that somebody owned him."

Toyne insisted that it didn't matter how the monkey was treated by his former owners. As a Japanese macaque, Darwin is a wild animal under the law, he argued.

The judge will also have to decide whether to accept Nakhuda's testimony that she was "tricked" into signing a surrender form by an animal control officer who threatened her with criminal charges and said she couldn't see her pet again until she signed.

She claimed she signed the form under duress, believing it was a document transferring Darwin to a sanctuary for disease testing and that he would be returned to her later.

The officer, David Behan, testified he simply told her it was illegal to own a monkey in Toronto and asked her to sign the form. He acknowledged under cross-examination he did not explicitly explain to Nakhuda that the document transferred ownership of Darwin to animal services.

An animal services supervisor, Carl Bandow, earlier testified the surrender form was "archaic" and acknowledged that there was nothing in Toronto's prohibited animal bylaw to empower officers to seize the monkey.

In his closing arguments, Toyne pointed out that Nakhuda, a real estate lawyer, should understand the meaning of the word "surrender." He alleged Nakhuda was so fed up with Darwin's bad behaviour that she voluntarily gave up the monkey and later regretted the decision.

"She was presented with an opportunity to give up Darwin and she took it," he said.

He also pointed out discrepancies in her stories of how she acquired the monkey. Initially, she called Darwin a "gift," before acknowledging that she paid \$5,000 to buy him from a mysterious Montreal exotic animal seller.

Toyne's closing statements prompted tears from Nakhuda in the courtroom. Speaking to reporters later, she accused Toyne of "pulling a fast one."

"There have been a lot of slimy, unhealthy, hurtful accusations against me and my family," she said.

Earlier in the day, Charney accused sanctuary owner Sherri Delaney and her lawyer of fabricating abuse allegations in order to discredit Nakhuda. The claims, including that the family hit Darwin with a wooden spoon and strangled him, were made in a statement of defence and dropped at the start of the trial.

Charney read an email that Nakhuda sent to a primate trainer, apparently the only evidence for the allegations. In the email, Nakhuda describes "brandishing a spoon" to get Darwin's attention but never hitting him with it.

"A spoon is just a spoon unless you have reason to fear it," Delaney said.

Charney also revealed that Delaney threatened to report Nakhuda to the Law Society of Upper Canada for allegedly lying under oath. As a lawyer, Nakhuda would face serious repercussions for professional misconduct.

The court heard that Delaney has received death threats, including a threat to burn down the sanctuary, from Nakhuda's supporters. She testified Tuesday that none of the threats came directly from Nakhuda.

As Delaney left the courthouse, she said the lawsuit has been hard on her and the sanctuary's volunteers, but Darwin has been thriving. However, she warned that Japanese macaques become aggressive as they age.

"Typically, what we have found in the past is that when you have an animal who was once a pet, they're stuck between the human world and the animal world," she said.

"The frustration hits and the testosterone builds in his system, and it's been our experience that that's never a good thing."

Nakhuda has refused to visit Story Book Farm because she believes it will cause the monkey psychological damage. She has also balked at the sanctuary's demands that she wear gloves and stay outside the enclosure.

Now six months since she was separated from Darwin, Nakhuda is hopeful the bond between them can be repaired. She has placed a conditional offer on a residence in Kawartha Lakes, where it is legal to own a monkey.

"The bond we had was very, very tight. Obviously, it's probably thinned down, but I do believe that when he sees me, he's going to recognize me," she said.

"I'm hoping the judge appreciates that I'm waiting here, and the sooner she gives a decision the happier we'll all be."