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## IKEA monkey case about property

By Christie Blatchford, Calgary Herald May 31, 2013



*Yasmin Nakhuda, the former owner of Darwin the IKEA monkey, in Oshawa, Ont., on Thursday.  
Photograph by: Peter J. Thompson, Postmedia News , Calgary Herald*

As with countless love stories before it, so has this one come to a sorry end, with elegant lawyers making clever arguments before a judge.

The case of the darling little monkey named Darwin, who captured more than his share of hearts last Dec. 9 when he was caught on camera wearing a faux shearling coat and wandering a Toronto IKEA parking lot after a daring breakout, is being argued as a bloodless matter of, God help us, property law.

"This is not about who loves Darwin the most," lawyer Kevin Toyne, who represents the primate sanctuary where Darwin now resides, told Ontario Superior Court Judge Mary Vallee at the start of the case.

"It is not about who's better able to care for him," Toyne continued. "It's about the law of property."

The Story Book Farm sanctuary, in Sunderland, Ont., and its owner Sherri Delaney, a Durham Regional Police officer, are fighting an attempt by Yasmin Nakhuda to regain custody of the Japanese snow macaque, now little more than a year old.

But for all the intellectual chill emanating from the lawyers, the monkey's owner (though this being a courtroom, her purported ownership was duly parsed and debated) was nonetheless soon in tears at the memory of her "baby boy."

The 43-year-old real estate lawyer was the first witness at the opening day of the judge-alone civil trial Thursday.

In the media whirlwind that followed Darwin's IKEA appearance as sure as night follows day, Nakhuda was easily caricatured in the popular imagination as one of those who anthropomorphizes animals.

But she's smart and self-aware too, and offered a reasonable explanation for how the little monkey wormed his way into her family of husband Samar (Sam) Katoch, two children, two dogs, two parrots and numerous fish and turtles.

"He was part of me, part of my family," she said.

"When I had my two children, I was so busy focusing on building my practice (a lawyer in her native Mauritius, she attended law school in Ontario too and was called to the bar in 1999), I didn't have time to mother them.

"I enjoy mothering, and this was a chance to experience motherhood again.

"I treated him (Darwin) like my son," she said. "It may seem bizarre to some people, but that's how we felt about him."

Her husband was at court, but as a witness himself was unable to hear his wife's evidence and had to remain outside. Nakhuda's 12-year-old son Mikhail was present, however, and several supporters.

On the far side of the courtroom was a large group, perhaps 20-strong, of sanctuary supporters, including Delaney and at least some of her board members.

Ted Charney, the lawyer who represents Nakhuda, told the judge Thursday that at the heart of the case is a legal document called a surrender form.

Nakhuda signed it at a Toronto Animal Services shelter the day after its staff was called to the North York IKEA and scooped up Darwin.

But the questions, Charney said, are was Darwin unlawfully detained? Did shelter staff exert undue influence upon Nakhuda? Is the form invalid? And does it amount to a simple conveyance of property?

Nakhuda herself said she felt she had "no choice but to sign" the form, that the animal control officer told her Darwin couldn't stay there but had to be moved to a sanctuary where he could be tested for disease, and that if he was deemed to be a health hazard, "they could put him down."

Ultimately, she said, weeping, the officer "would not let me see him unless I signed the paper."

She and Katoch first arrived at the shelter shortly after discovering Darwin had broken out of his locked crate and then the car. She was first given a ticket for "keeping a prohibited animal."

Ironically, she never set out to get a monkey, Nakhuda said, but was thinking about getting another parrot, and through a client, was put in touch with a mysterious fellow named Ayaz.

He asked if she might want to see a small monkey he was babysitting. She met that monkey, but, now a little hooked, wanted one that had a higher level of intelligence.

At first, she got Darwin on a test run, and it was no picnic.

She had no experience with monkeys; then not even three months old, he was having nightmares ("I think he was missing his mum," she said) and crying.

She thought, she said, "This is more than I bargained for," and made plans to return Darwin.

Last July 23, she tried to hand over the little monkey to Ayaz.

"He (Darwin) ran back to me," she said, trying not to cry.

"He started hanging on my chest. I was shocked. I didn't realize he had bonded so much."

Nakhuda tried to hand him over, and this time, Darwin grabbed her leg, climbed up and hugged her: She was toast.

" 'You're the new mom,' " she said Ayaz told her. She looked at her husband, who had been reluctant to give Darwin back in the first place, and home they came, monkey in tow.

"Darwin was mine," she said. "I knew it was my responsibility to learn how to raise him. I didn't even know how big Darwin would be!"

Over the next five months, the monkey might as well have been sewn to her.

Nakhuda was with him virtually 24/7. The kids loved him, Mikhail called him "little bro," Sam got up every night to give Darwin a bottle, Omar even left his computer to play with him. Even the dogs loved the monkey, and he them.

She shortened her office hours and took the monkey to work. Darwin went with the couple to barbecues with friends, even once to a wedding. Nakhuda soon was patronizing mostly pet-friendly stores, and on the rare occasion when she and Katoch ventured further afar, Darwin would be left in a locked crate in the car.

On the fateful day they went to IKEA, they weren't planning to be long.

"I explained that to Darwin," she said, because he understands some things, "that we would be in and out." She gave him some treats, locked the crate, put a comforter on it, and then locked the car.

There are other issues in the case - Nakhuda's credibility is being challenged by Toyne on a number of points, and the judge must decide if Darwin is a wild animal, because if he is, with wild animals, "possession is 10/10ths of the law."

Nakhuda v Story Book Farm Primate Sanctuary is about everything but love; if it was, Nakhuda would win, hands down.

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