

Ikea monkey wearing diaper and coat not a wild animal but clearly a pet, lawyer argues

Supporters threatened to burn down animal sanctuary, trial hears

THE CANADIAN PRESS June 11, 2013



Darwin the Japanese macaque is the centre of attention on Dec. 9, 2012, as shoppers surround him in an Ikea store's parking lot. Photograph by: Bronwyn Page , THE CANADIAN PRESS

OSHAWA, Ont. — The fate of the Ikea monkey is in the hands of an Ontario judge who will weigh, among other issues in the rather unique case, whether he is a wild animal or a pet mistakenly given away.

Darwin, who was found wandering in an Ikea parking lot wearing a diaper and a little coat, is clearly a domesticated pet, said the lawyer for a woman who calls herself his "mom."

Yasmin Nakhuda is suing Story Book Farm Primate Sanctuary in Sunderland, Ont., where the monkey has been held since animal services scooped him up in December. At the last day of trial in the lawsuit Tuesday, her lawyer argued that laws about wild animals don't apply.

The law that applies in this case is the city of Toronto bylaw under which Toronto animal services seized and "unlawfully" held Darwin, Ted Charney said. An animal services supervisor has testified he knew he had no power to detain the monkey once its owner came to claim it.

But the case doesn't turn on the legality of what happened under the bylaw, the lawyer for the sanctuary argued, because the wild animal legal principle had already been triggered.

It dictates that a person only owns a wild animal as long as they possess it. In other words, as sanctuary lawyer Kevin Toyne said, possession is 10/10ths of this law.

In Darwin's case, the wild animal principle was already in effect before Nakhuda rushed to animal services to try to claim the monkey, Toyne said.

"As soon as Darwin got out of the car that day Ms. Nakhuda lost her possessory interest in him and she no longer owned him," he said. Toyne disagreed with Charney's characterization of Darwin as a domesticated animal to whom the wild animal laws don't apply.

"He's a wild animal simply because he was born as a Japanese snow macaque," Toyne said. "The fact that he may have been dressed in a fancy coat that the media liked, that he was wearing a diaper, and a harness, he had a name — none of those things matter."

Ontario Superior Court Judge Mary Vallee reserved her decision after hearing closing arguments Tuesday, but did not indicate whether she will deliver her ruling orally in court or by issuing a written decision at a later date.

Nakhuda said outside court that she hopes the decision comes quickly, and in her favour, so she can start bonding with Darwin again.

"The bond we had was very, very tight," she said. "Obviously it's probably come down but I do believe that when he sees me he's going to recognize me. It's going to take a lot of time for me to rebuild that bond and I'm hoping that the judge appreciates that I'm waiting here and as soon as she gives her decision I think the happier we all will be."

Tensions have run high in the case since it began. Sanctuary owner Sherri Delaney has testified that supporters of Nakhuda have threatened to kill her and burn the sanctuary down. Court heard Tuesday that Delaney threatened to report Nakhuda, a real estate lawyer, to the law society because she believes Nakhuda was untruthful under oath.

Since she is a lawyer and has been for two decades, Toyne told the judge she should keep that in mind when considering Nakhuda's argument that she didn't understand a form she signed transferring ownership of Darwin to Toronto animal services, who later transferred ownership to the sanctuary.

But the form is not clear, Charney argued, and neither were the animal services officers who purported to explain it to her.

The animal services supervisor testified that he knew they had no power to detain Darwin but he wanted to keep him at least until he could see if the monkey could be held under federal wildlife legislation or public health laws. He told the animal services officer dealing with Nakhuda to try to get her to sign a form surrendering him.

"There is substantial evidence here that she was pressured into signing this form," Charney said. The bylaw officers gave her the impression that she could face other sanctions if she didn't sign it, he said.

"The way it's presented to her is deceptive," Charney said. "It's deceptive because she's not informed that she has the right to have her animal back."

Court heard that even though the monkey is a prohibited animal in Toronto, animal services has no authority under the bylaw to refuse to give it back to its owner. The city is looking at amending this, the supervisor testified.

"She was given the impression that they had the right to keep it, they had the power to keep it," Charney said. "That's deception. That's a tainted transaction and it should be set aside on that basis alone...It's a classic case of abuse of public office."

There is so little case law in Canada on wild animals and property law that one of the few cases that lawyers on either side were able to dig up is from almost 100 years ago.

© Copyright (c)