

Ikea monkey: Judge reserves decision in custody case

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RENE JOHNSTON/TORONTO STAR Media swarm Yasmin Nakhuda, as she leaves a hearing about her monkey Darwin, with the famous coat in her hands.

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Yasmin Nakhuda will have to wait one more day to find out if Darwin, the Ikea monkey, will be home for the holidays.

Justice Michael Brown will decide Friday whether to return the monkey to Nakhuda while the defendant in her custody lawsuit gathers more evidence.

Her lawyer, Ted Charney, agreed to an adjournment but only if Darwin is given back to Nakhuda in the meantime. The case is expected to resume in mid-January.

"It's very hard," said Nakhuda, holding back tears and clutching her sons, Misha, 12, and Omar, 16, outside court Thursday. "I don't care about Christmas, I just want him back. I need him to be back with us all the time."

Nakhuda calls the rhesus macaque her “son” and eats, sleeps and showers with it. She launched the lawsuit Dec. 14 in a desperate bid to have Darwin returned to her swiftly.

Toronto Animal Services captured Darwin after he escaped from Nakhuda’s car in a North Toronto Ikea parking lot Dec. 9. She was fined \$240 under the Toronto Municipal Code for keeping a prohibited animal.

She says in her statement of claim she gave Darwin up because an animal control officer threatened her with criminal charges and said she would never see the pet again.

The monkey was transferred to Story Book Farm Primate Sanctuary in Sunderland, Ont. Nakhuda’s lawsuit names the sanctuary and owner Sherri Delaney for “illegally detaining” Darwin.

In seeking an adjournment, the sanctuary’s lawyer, Kevin Toyne, asked for the monkey to remain there in the interim, since the evidence in Nakhuda’s statement of claim has not yet been tested. David Behan, the animal control officer mentioned, has not been cross-examined.

Toyne argued that although there was no evidence of animal cruelty by Nakhuda, the court should consider that possibility seriously. The sanctuary is staffed by primate specialists who can offer superior care, he said. “I think there would actually be improvements to the property,” he said, referring to Darwin.

The comment prompted derisive laughter from the family. After the hearing, Nakhuda held up the faux shearling coat worn by Darwin during his Ikea trip and said, “Does this look like abuse to you?”

The sanctuary has offered to allow Nakhuda to visit the monkey, with certain conditions, including that she wear rubber gloves and be supervised. When the topic of visitations came up in court, she broke down in tears.

She has said she fears Darwin’s bond with her is dwindling. Her lawyer presented the judge with doctor’s letters describing the “enormous amount of anxiety” she and her youngest son, Misha, are experiencing.

“I don’t doubt that everything that has happened has been traumatic,” Toyne said, adding the visitation terms were fair.

“It’s not as though we’re suggesting it could only be done by video conference,” he said. “We just want to ensure everybody’s safety.”

In court documents, Toyne disputes Nakhuda’s “ownership” of the monkey. She has said she received Darwin as a gift from a Montreal breeder in July, but the breeder is not named in her statement of claim and no documents proving ownership are attached.

The sanctuary argues that under case law, wild animals can only be owned by the person who possesses them at the moment, making the sanctuary Darwin’s legal owner.

Toronto’s bylaw on keeping a prohibited animal does not have any provisions allowing an officer to withhold a pet. The sanctuary’s filing does not dispute that point, but argues Nakhuda voluntarily surrendered Darwin.

Her lawyer disagreed. “There’s no rational explanation for her to go running over to pick up her pet that was lost, and leave surrendering him,” Charney said. “Something went very wrong in Animal Services that day.”

Nakhuda has rented a cottage in Kawartha Lakes, the closest township to the GTA that doesn’t prohibit monkey ownership. Spurred by that news, officials there are rushing to enact a bylaw to ban exotic animals.

Her lawyer urged the judge to return Darwin to her during the adjournment so she could move to the township before the bylaw is passed.

“Every day she spends apart from him, the bond is broken a little more,” he said. “If she is not able to secure a residence where she could keep him, that will cause irreparable harm.”

