

DOCKET NO. UWY CV 165018284 : SUPERIOR COURT
 MARC GERTE : J.D. WATERBURY
 V. : AT WATERBURY
 JEAN DOBBIN AND JOSH DOBBIN : DECEMBER 22, 2016

STATE OF CONNECTICUT
 SUPERIOR COURT
 2016 DEC 22 P 3:40
 DISTRICT
 WATERBURY

MEMORANDUM OF DECISION

The plaintiff, Marc Gert originally filed a complaint on October 11, 2016, Docket No. CV 16-5018099, with an application for a temporary restraining order. The defendant filed a motion to dismiss alleging that the matter was improperly filed and there were procedural issues which subjected the action to dismissal. The parties appeared for a hearing on November 30, 2016 at which time the court granted the motion to dismiss with the agreement of the parties that the matter would be re-filed in the proper form and counsel would accept service. This was done and the plaintiff filed the instant complaint dated December 2, 2016 which is a writ for replevin. The replevin complaint was filed and a hearing on the matter was scheduled for December 19, 2016. The court conducted a hearing on December 19, 2016 and December 20, 2016. Each of the parties submitted testimony and evidence to the court. The defendant Josh Dobbin through counsel represented that he had no interest in the dog which is the subject of this action and was not pursuing any ownership or possession.

The complaint of Mr. Gerte alleges that the defendants took possession of his dog, Jamie Lee, and have refused to return the dog to its' rightful owner upon request by Marc Gerte. The defendant does not deny that she has physical possession of the dog but argues that the plaintiff gave the dog to her and asked that she keep it because he has not and cannot take care of the dog.¹

The plaintiff argues that he satisfies all of the elements for a replevin and that the dog known as Jamie Lee should be immediately returned to him.

¹ The writ of replevin does not address the issues of the proper care of the dog. See *Angrave v. Oates*, 90 Conn. App. 427 (2005) Therefore, other than to demonstrate the willingness of the defendant to care for Janie Lee at times when Mr. Gerte is unable to do so there is no relevance to the condition of the dog. It is also worthy of comment that other than the heat and needing water the police officer did not charge the plaintiff with any abuse claims nor did Mrs. Dobbin make any complaints or request assistance for abuse or neglect to the dog which is controlled by statutes.

DISCUSSION

The instant action is a claim of replevin. A claim of replevin is governed by statute rather than the rules of common law actions for replevin. *Cornelio v. Stamford Hospital*, 246 Conn. 45,49, 717 A.2d 140 (1998); *Staub v. Anderson*, 152 Conn. 694, 695, 211 A.2d 691 (1965).

Conn. Gen. Stat. § 52-515 which provides in relevant part: "The action of replevin may be maintained to recover any goods or chattels in which the plaintiff has a general or special property interest with a right to immediate possession and which are wrongfully detained from him. . . ." The plaintiff must establish that: (1) the dog in this case is a "good or chattel" within the meaning of 52-515; (2) that he has a property interest in the dog; (3) that he has a right to immediate possession of the dog; and (4) the defendant has wrongfully detained the dog. *D'Addario v. Abbott*, 128 Conn. 506, 507-08, 24 A.2d 245 (1941). The court heard testimony and received evidence as to the replevin action filed by Mr. Gerte.

"It is well established that in cases tried before courts, trial judges are the sole arbiter of the credibility of witnesses and it is they who determine the weight to be given specific testimony. . . it is the quintessential function of the fact finder to reject or accept certain evidence . . ." (Citations omitted; internal quotation marks omitted.) *In re Antonio M.*, 56 Conn. App. 534, 540, 744 A2d 915 (2000). The trier of fact must evaluate the credibility of both testimonial and documentary evidence. *Coombs v. Phillips*, 5 Conn. App. 626, 627, 501 A.2d 395 (1985) (per curiam). "The fact finding function is vested in the trial court with its unique opportunity to view the evidence presented in a totality of the circumstances, i.e., including its observations of the demeanor and conduct of the witnesses and parties." (Internal quotation marks omitted.) *Cavoli v. DeSimone*, 88 Conn. App. 638, 646, 870 A.2d 1147, cert. denied, 274 Conn. 906 (2005).

The trier of fact must observe the demeanor of witnesses and draw inferences as to the motives underlying their testimony and conduct. *Christie v. Eager*, 129 Conn. 62, 64-65, 26 A.2d 352 (1942). "It is well established that [t]he trier of fact may accept or reject the testimony of any witness. . . The trier

can, as well, decide what-all, none, or some of a witness' testimony to accept or reject." (Citation omitted; internal quotation marks omitted.) *Wilson v. Hryniewicz*, 51 Conn. App. 627, 633, 724 A.2d 531, cert. denied, 248 Conn. 904, 731 A.2d 310 (1999).

In evaluating the credibility of the witnesses, this Court considered their appearance and demeanor on the witness stand, the consistency or inconsistency of their testimony, their memory or lack thereof of certain events, their manner in responding to questions and whether they were candid and forthright or evasive and incomplete, their interest or lack of interest in the case and the consistency or inconsistency of their testimony in relation to other evidence, including exhibits in the case. The testimony and exhibits in this matter have created areas for the court to weigh and decide issues of credibility or reliability as they relate to the exhibits or testimony.

From the credible testimony and evidence presented, the court finds the following facts to be relevant and proven by a fair preponderance of the evidence. The plaintiff, Marc Gerte, purchased the dog described as a Labrador Retriever from Sandra and Eric Patton on or about July 9, 2011. He purchased the dog after losing another dog. He knew the breeders and travelled to pick her out from the litter. He provided veterinarian records for the dog named Jamie Lee for the period of time July 18, 2011 until August 25, 2015. The records clearly list the owner as Marc Gerte. He also provided a health certificate from Dr. Bruce Schatz of Stratford Animal Hospital which lists him as the owner of the canine Jamie age 5.

On June 18, 2016, the plaintiff was intoxicated and the police were called to the area where he was on the ground as a result of his intoxication. His dog, Jamie Lee, was with him at the time. The plaintiff admits that in June of 2016 he suffered from alcoholism.

The testimony of Officer O'Donnell indicated very clearly that when he responded to the call on Bridge Street behind the liquor store to investigate an individual who was on the ground he was faced with a very intoxicated man who was unable to understand the consequences of his actions. In fact, upon inquiry by the court the officer indicated that he acted in accordance with C.G.S. § 17a-503a which

permits the officer to detain an individual and hospitalize a person who is considered gravely disabled either mentally or physically. The statute requires the officer to execute a written request for emergency examination and it then allows a mandatory treatment or examination. The rationale for this statute is to provide assistance for those who are gravely ill or disabled and unable to understand the consequences of his or her action. In doing so the police officer testified that Mr. Gerte did not understand the circumstances or consequences of his condition and actions. Officer O'Donnell testified that he made a determination on June 18, 2016 that Mr. Gerte required medical care pursuant to C.G.S. §17a-503 and he filed the written referral pursuant to the statute.² A review of the police report supports this testimony as to his state of mind. It indicates that when Officer O'Donnell arrived, he could not get the plaintiff to sit up, he was slurring his words, and he could not complete a sentence. As a result of his observations Officer O'Donnell determined that he was gravely disabled, which meant that he was unable to understand the consequences of his actions and was taken by EMS to the hospital. Officer O'Donnell proceeded to take the dog to the condominium complex where the plaintiff had his office and was able to locate Ms. Dobbin. The court does not doubt that Mr. Gerte informed the officer of the help he could obtain from Jean Dobbin to take care of the dog, however, there is no basis to find that Mr. Gerte who was incapable of communicating could have made the decision to give up ownership of his dog. Officer O'Donnell knew of the plaintiff's state of mind and did not follow his analysis of the inability of Mr. Gerte to make any decisions such as giving up ownership of his dog.³ No matter what was told to Jean Dobbin, she failed to confirm with the owner of the dog his intention. She did not personally speak with him either on June 18, 2016 or thereafter when he discovered she had possession of the dog. This was important because she knew from her prior experience with Mr. Gerte in February and March of 2016, when she last took care of his dog, that he adamantly refused to give up his dog. Although the defendant continues to contend that she was given the dog by the plaintiff, she

² The Officer did not have the form for referral as indicated in his testimony but he was adamant that he filled out the required form.

³ Mr. Gerte testified that he had no recollection of speaking with Officer O'Donnell on June 18, 2016.

did not personally speak to the plaintiff about ownership. Her information is solely based upon a statement from the police officer who conveyed what he believed Mr. Gerte wanted to happen to the dog. Because she was well aware of the position of Gerte that he did not want to sell Jamie, she never directly contacted him to obtain any necessary records or a transfer of ownership to verify his alleged transfer of the dog.

It is overwhelmingly questionable that Gerte's request was an indication that he wanted to permanently give the dog away especially in light of the prior situation in February and March of 2016 when he also asked Jean Dobbin to take the dog while he was in treatment.

The plaintiff began to search for his dog once released from the hospital on Saturday June 18, 2016. He called the police department in Naugatuck and they referred him to animal control. He had to wait until the following Monday because there was no one at Animal Control on the weekend. He learned that animal control did not have his dog. He was unable to obtain any information as to where the dog was taken. He did not recall any conversation with the Police Officer.

When he went to the police department and Animal Control after he was released from the hospital, no one could direct him or provide him with information as to where the dog had been taken. The Officer failed to document what he did with the dog in the incident report or any other report with the Police Department in Naugatuck. The efforts of the plaintiff to obtain information from the Naugatuck Police Department were thwarted by the lack of documentation by the department and the failure to follow any policy of the department to take possession of or provide temporary placement of the dog until the plaintiff is able to make a decision based upon sound reasoning. On June 21, 2016 the plaintiff went to get help for his addiction and his friends continued to look for his dog. After July 28 or 29 the plaintiff learned that Jean Dobbin had the dog. He asked for a return of the dog from Ms. Dobbin but she has refused. He attempted to obtain the services of counsel for the return of the dog and was originally unsuccessful. He filed an action as a pro se on October 11, 2016 and this present action with the assistance of counsel on December 2, 2016.

While Ms. Dobbin can be lauded for her generosity in taking care of Jamie Lee in a time of need, she knew at least by the end of July and in August of 2016 that the plaintiff was searching for his dog to be returned. In September 2016 the plaintiff requested that the defendant return his dog. She would not return the dog. The plaintiff seeks to have the dog returned pursuant to the replevin statute. The court finds that the plaintiff has proven that the dog is a "good or chattel" and he has a property interest as evidenced by the bill of sale and the veterinarian records as well as his testimony.⁴ The plaintiff never approved the transfer of ownership to the defendant although he admits she was asked to watch the dog on some occasions. The defendant attempts to prove that she has a right to possession as a result of obtaining a dog license on October 21, 2016 and the visit to the veterinarian but these actions do not prove ownership. The license does not refer to her as the owner nor could it because she does not have a bill of sale or papers about the Jamie Lee's pedigree. In fact, both the license and the veterinarian records submitted to the court demonstrate that the defendant is not the owner because she has included in each an incorrect birth date and age of the dog. Additionally, these records demonstrate that the plaintiff began an attempt to create records after the plaintiff sought the return of his dog. He filed an action without the assistance of counsel for return of his dog on October 11, 2016.

Based upon the testimony and evidence, the plaintiff has clearly demonstrated that he is the rightful owner of the dog, Jamie Lee and that the defendant has wrongfully detained the dog. The plaintiff is entitled to immediate possession of the dog, Jamie Lee.

SO ORDERED.

THE COURT


Brazzel-Massaró, J.

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⁴ A dog is considered a chattel under General Statutes §22-350.