

DOCKET NO. HHB-CV20-5065186-S : SUPERIOR COURT  
RACHEL HARDY : JUDICIAL DISTRICT OF  
HARTFORD  
v. : AT HARTFORD  
CHRISTOPHER FLOWERS : FEBRUARY 5, 2021

**PLAINTIFF’S POST PREJUDGMENT REMEDY HEARING MEMORANDUM**

NOW COMES the Plaintiff, Rachel Hardy, and hereby submits this Post Prejudgment Remedy Hearing Memorandum.

1. On January 21, 2021, the Court (Taylor, J.) held an evidentiary hearing on the plaintiff’s application for a prejudgment remedy. At the conclusion of the hearing, the Court instructed the parties to file post hearing memoranda by February 5, 2021.

**A. The Prejudgment Remedy and Probable Cause Standard of Proof in a Prejudgment Remedy Application for Replevin**

2. According to the prejudgment remedy statute,

“Prejudgment remedy’ means any remedy or combination of remedies that enables a person by way of attachment, foreign attachment, garnishment or replevin to deprive the defendant in a civil action of, or affect the use, possession or enjoyment by such defendant of, his property prior to final judgment but shall not include a temporary restraining order.”

See Conn. Gen.Stat. § 52-278a. Prejudgment remedies are limited to attachment, foreign attachment, garnishment, and replevin, to deprive the defendant of, or affect the

use, possession, or enjoyment of his property. Furthermore, a prejudgment remedy hearing is

“limited to a determination of whether or not there is probable cause to sustain the validity of the plaintiff's claim. The hearing in probable cause for the issuance of a prejudgment remedy is not contemplated to be a full-scale trial on the merits of the plaintiff's claim.”

*Int'l Harvester Credit Corp. v. Gillis*, 4 Conn. App. 510, 512 (1985). See also *Ledgebrook Condominium Assn., Inc. v. Lusk Corporation*, 172 Conn. 577, 584 (1977).

3. Under Connecticut law, a prejudgment remedy is appropriate if the court, "upon consideration of the facts before it and taking into account any defenses, counterclaims or setoffs, claims of exemption and claims of adequate insurance, finds that the plaintiff has shown probable cause that such a judgment will be rendered in the matter in the plaintiff's favor in the amount of the prejudgment remedy sought[.]" Conn. Gen. Stat. § 52-278d(a). The probable cause standard has been defined as:

[A] bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it... Thus, the plaintiff does not have to prove its case by a preponderance of the evidence, but must show that there is probable cause to sustain the validity of the claim.

*Walpole Woodworkers, Inc. v. Atlas Fencing, Inc.*, 218 F.Supp.2d 247,249 (D.Conn. 2002) (internal quotation marks and citations omitted). "Probable cause is a flexible common-sense standard. It does not demand that a belief be correct or more likely true

than false." *TES Franchising, LLC v. Feldman*, 286 Conn. 132, 137 (2008) (internal quotation omitted).

4. A probable cause hearing for the issuance of a prejudgment remedy is not contemplated to be a full-scale trial on the merits of the plaintiff's claim. *Calfee v. Usman*, 224 Conn. 29, 37 (1992). Rather, the "trial court's function is to determine whether there is probable cause to believe that a judgment will be rendered in favor of the plaintiff in a trial on the merits." *Id.* (internal quotation omitted). The court's role in such a hearing is to determine probable success by weighing probabilities. *Michael Papa Associates v. Julian*, 178 Conn. 446, 447, 423 A.2d 105 (1979). "[T]he court must evaluate not only the plaintiff's claim but also any defenses raised by the defendant." *Haxhi v. Mos*, 25 Conn.App. 16, 20 (1991) (citation omitted). In this process the trial court is vested with broad discretion which is not to be overruled in the absence of clear error. *Augeri v. C.F. Wooding Co.*, 173 Conn. 426, 429, 378 A.2d 538 (1977).

5. The action of replevin specifically recognizes a prejudgment remedy application and the probable cause burden at a hearing on the application. Pursuant to C.G.S. § 52-516, "[a]n action of replevin, to the extent that it includes a prejudgment remedy as defined in section 52-278a, shall not be allowed unless the provisions of sections 52-278a to 52-278f, inclusive, are complied with." Accordingly, the probable cause standard for a prejudgment remedy of replevin, as enunciated in § 52-278d(a) above, is the same as the probable cause standard for a prejudgment remedy of attachment.

**B. Plaintiff Meets Her Burden on the Elements of Replevin**

6. Per C.G.S. § 52-515: “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 in any manner, together with the damages for such wrongful detention.”

7. Per C.G.S. § 22-350 “[a]ll dogs are deemed to be personal property”, and thus chattels. The property in dispute in this matter is the dog named Cadia.

**Plaintiff Has a General Property Interest in Cadia**

8. Plaintiff’s property interest arises from her co-ownership of Cadia. In *Brennan v. Michalowski*, Superior Court, Judicial District of Fairfield, Docket No. CV 15 5030605 S (July 17, 2015), involving a prejudgment remedy hearing for the replevin of a dog, the parties were roommates and purchased the dog together. Their relationship later deteriorated and one of them moved out of the shared living space. The court stated in its decision that “[w]hile there are disputes concerning details of the purchase and many other issues, it is apparent both parties contributed to the cost of the dog and, for an extended period of time, in an agreeable fashion, the expenses including veterinary fees for the dog. It is apparent that both parties are co-owners of the dog and both have become emotionally attached to Captain.” *Id.*(see Exhibit A)

9. In *Angrave v. Oates*, 90 Conn. App.427, 430 (2005), another replevin action involving a dog, the court recognized a co-owner of property as having a property interest and a possessory interest of that property when it stated “the plaintiff had a

possessory interest in the dog, a chattel, as evidenced from the dog's registration naming both the plaintiff and the defendant as her owners". *Id.*

**Testimony and Evidence at the Hearing Clearly Establish the Parties as Co-Owners of Cadia.**

10. The plaintiff and defendant adopted Cadia together in March, 2016. Plaintiff searched for various dogs and adoption agencies, and she ultimately completed the application from PawSafe Animal Rescue. The parties both attended the PawSafe adoption event for Cadia in New York on March 12, 2016. The following day the defendant posted on Facebook that "yesterday Rachel Hardy and I adopted our first fur baby, Cadia". (Pl. Ex. 2). The parties paid for Cadia with one of defendant's checks because he was the one with a checkbook account at that time, and plaintiff paid him in cash for half of the \$425.00 adoption fee. Similarly, Rachel's name is not on the adoption paperwork simply because of the check they used. The defendant did not dispute any of this testimony at the hearing.

11. All but one of the dog licenses are in plaintiff's name because plaintiff always made the annual effort to license Cadia, first with the Town of Torrington and then on June 1, 2020 with the Town of Farmington where plaintiff was living and while the parties were still sharing Cadia's custody and expenses. (Pl. Ex.3). On June 19, 2020, just before the defendant unilaterally terminated the parties' shared custody agreement, defendant obtained a license for Cadia with the Town of Torrington. (Def. Ex. H).

12. Similarly, all but one of the rabies certificates<sup>1</sup> and all of the veterinarian invoices are in plaintiff's name because plaintiff established the relationship with the veterinarian and took Cadia to the veterinarian for the overwhelming majority of Cadia's visits. (Pl. Exs. 4 and 5, Def. Ex. G). This is further evidenced by who paid those invoices at the time of service. The attached graph (see Exhibit B) summarizes the credit card data on each invoice and illustrates plaintiff paid these invoices on ten occasions, defendant paid on two occasions, the parties shared the invoice cost on two occasions and the payer is unknown for two visits because those invoices were paid in cash. Plaintiff took the initiative to enroll Cadia in dog training classes at Petco and paid for the classes which they both attended. The defendant reimbursed her for half of the cost. (Pl. Ex. 6).

13. The parties shared practically all living expenses including those for Cadia's care. Because the defendant was earning more money and the defendant had student loans, they did agree defendant would pay the mortgage on his home and the plaintiff would make payments on her student loans. To help offset this discrepancy, Plaintiff exclusively paid for Cadia's pet insurance through monthly charges on her credit card. (See charges for "PTZ\*24PTWTCH\*" on page 3 of Pl. Ex. 7 and page 3 of Pl. Ex. 8). When plaintiff moved out of defendant's home, defendant agreed to pay her \$1,000.00 for her contributions to home improvements and house items remaining with the defendant. None of the foregoing was disputed at the hearing.

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<sup>1</sup> At some point after the parties separated in February, 2020, the defendant caused the veterinarian to change the client name on its records from the plaintiff to the defendant.

**Plaintiff Has a Superior Right to the Immediate Possession of Cadia Which is Being Wrongfully Detained from Her**

14. In *Angrave*, supra, the court noted that “this is not a contract action and, thus, it is not within the court's power to determine which party has superior *title* to the animal.

Rather, this is a replevin action, which involves a comparison of the superiority and inferiority of competing rights to *possess* the animal. *Id.* at 430.

15. Plaintiff jointly owned, cared for and possessed Cadia for almost four years while the parties lived together in Torrington. At the end of January, 2020 the parties ceased living together and began sharing possession of Cadia on a weekly basis, handing her over to one another each Sunday. On March 3<sup>rd</sup> in an attempt to formalize this verbal agreement, plaintiff presented defendant with a written Pet Custody Agreement. (See Pl. Ex.13). At the hearing, defendant did not dispute any of plaintiff's testimony regarding the written agreement or why she presented it to him.

16. Even though the defendant did not sign that agreement, the parties continued to comply with the verbal agreement, illustrated by phone text messages on May 28<sup>th</sup> and 31<sup>st</sup> when the parties were arranging one of their weekly exchanges of Cadia. (See Pl. Exhibit 14).

17. The parties' freedom to contract, or the ability to agree to whatever terms they devised absent government or otherwise legal interference and restrictions, afforded the parties in this domestic animal matter the right to establish binding provisions concerning the possession of Cadia, which they clearly did.

18. Their agreement also included sharing the costs of Cadia's care, which the parties complied with until June 28, 2020 when the defendant refused to meet the plaintiff and return Cadia to her. The agreement and defendant's sudden refusal to comply is evidenced by the defendant's text message to plaintiff on Sunday, June 28<sup>th</sup> where he states "I'm not meeting you today. Cadia is legally my dog I have all the legal documents." (See Plaintiff's Exhibit 16).

19. The agreement between the parties gave plaintiff the superior right to possession of Cadia to that of the defendant every other week, and likewise to the defendant on alternating weeks. The defendant's breach of the agreement on June 28, 2020 gave plaintiff the superior right to the immediate possession of Cadia at that time and at the time plaintiff brought this action. Defendant's breach continues to the present. Accordingly, plaintiff has satisfied the element of a replevin action that she has an immediate right to possess the property, Cadia.

20. Defendant's unwarranted breach of the parties' agreement also establishes Cadia is being wrongfully detained from the plaintiff. The parties amicably exchanged Cadia every week for several months until defendant learned plaintiff had begun a new romantic relationship. Shortly thereafter, and with no justification, the defendant unilaterally refused to comply with their agreement.

21. Plaintiff became especially reliant on Cadia's companionship towards the end of 2019 as her relationship with Defendant began to waver. After their relationship ended,

Cadia helped Plaintiff to cope with the depression and anxiety she had begun to experience.

22. Plaintiff became increasingly reliant on Cadia's companionship towards the end of 2019 as her relationship with the defendant began to deteriorate. After the parties' relationship ended, the plaintiff began psychotherapy counseling with Dr. Siddika Mulchan to address the depression and anxiety she was experiencing. (Pl. ex. 10). Plaintiff was also prescribed medication to manage her anxiety (Pl. Ex. 11, pg. 2), which increased after Cadia was taken away from her. (Pl. Ex. 11, pg. 1). Cadia's companionship and support assisted the plaintiff in coping with these stressors in her life as well. The defendant's removal of Cadia from plaintiff's life also establishes that Cadia has been wrongfully detained from her, as Cadia had become an important support to the plaintiff in dealing with her medical conditions.

### **Conclusion**

The facts in *Brennan v. Michalowski*, supra, are on all fours with the instant matter. The parties were in a relationship together, acquired a dog together, and when their relationship ended and they moved apart, they continued to share possession, visitation and care of the dog. At one point the defendant unilaterally, and with no justification, decided to breach their agreement and claimed absolute ownership of the dog, refusing to allow any contact with the plaintiff. The court found the defendant had resorted to self-help and ruled the plaintiff had a property interest from common

ownership, including possession which was wrongfully detained by the defendant's actions. Following a prejudgment remedy hearing, the court awarded possession of the dog to the plaintiff.

"The action of replevin is founded in tort. There must be a tortious taking or detention of property. A mere breach of contract is not sufficient. Hence, it is no remedy to enforce a contract or recover damages for its nonperformance " (Citation omitted.) *Mead v. Johnson*, 54 Conn. 317, 7 A. 718, 718-19 (1886)".

In the instant matter, the defendant resorted to self-help as well. The Court posed the question of how it would tip the scale if both parties had seemingly equal rights to possess Cadia. Defendant's wrongful detention of Cadia, pursuant to the rules of replevin, not only satisfy the plaintiff's burden to prove her right to possession at this time, but it also tips the scale. Plaintiff's established medical need of Cadia also helps to tip that scale.

The plaintiff always complied with their agreement and tried everything possible to find a mutual solution to this issue with the defendant. She did not resort to self-help.

Plaintiff has met her burden of probable cause and is entitled to the immediate possession of Cadia.

THE PLAINTIFF,  
RACHEL HARDY

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
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**CERTIFICATION**

This is to certify that a copy of the foregoing has been sent by email transmission to the following counsel of record this 5<sup>th</sup> day of February, 2021:

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\_\_\_\_\_/s/\_\_\_\_\_  
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