

DOCKET NO. HHD-CV20-5065186 : SUPERIOR COURT
 RACHEL HARDY : J.D. OF HARTFORD
 VS. : AT HARTFORD
 CHRISTOPHER FLOWERS : FEBRUARY 16, 2021

MEMORANDUM OF DECISION
APPLICATION FOR PREJUDGMENT REMEDY

I

BACKGROUND

The plaintiff in this action, Rachel Hardy, seeks the prejudgment remedy of replevin for the immediate return of a dog named Cadia. The defendant is her former romantic partner, Christopher Flowers, with whom she lived when the dog was purchased by “adoption” on March 12, 2016. After hearing the testimony of both parties, who were represented by counsel, and reviewing their post hearing briefs, the court concludes that the application ought to be granted.

The following facts are generally uncontested and are supported by the evidence presented:

- (1) the parties mutually decided to adopt Cadia as a young puppy on March 12, 2016;
- (2) the defendant’s name is the only person on the adoption agreement which, inter alia, prohibits the transfer of Cadia to any other person;
- (3) Cadia was initially purchased with funds from the defendant’s personal checking account, and the plaintiff later reimbursed him for one half of the purchase price;
- (4) upon her adoption, Cadia lived together with the parties at the defendant’s home in Torrington until the plaintiff decided to move from their abode on January 30, 2020;
- (5)

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the parties orally agreed to share possession of Cadia thereafter until June 28, 2020; and (6) the defendant unilaterally ended the shared possession of Cadia, asserted that he owned her and refused to permit any further visitation with the plaintiff.

The plaintiff credibly testified that the sharing arrangement between the parties ended upon the defendant's realization that their committed relationship had ended and that sharing Cadia would not lead to sharing their lives together as a romantic couple. The plaintiff attempted to negotiate a written access agreement and to engage in mediation with the defendant over access to Cadia, to no avail. In listening to the testimony of the parties, the court finds that both are individually committed to Cadia's well-being, have strong bonds with Cadia and both have been emotionally supported and enriched by her presence in their lives.

Although both parties contributed to Cadia's health and well-being, the plaintiff was far more engaged with Cadia's licensing, veterinary care, and recreational activities when compared with the defendant, historically, until their separation just over one year ago. Until then, the plaintiff was nearly exclusively engaged with licensing Cadia in her own name, alone, with local authorities, and in providing veterinary care. Currently, Cadia is dually licensed in two towns. The defendant has continued to license Cadia in Torrington in his own name for the 2020-21 licensing year, where the plaintiff had previously licensed her in her name since the adoption occurred in 2016. The plaintiff has recently licensed Cadia in her new home town of Farmington for this year, where she currently resides as a roommate in a two-bedroom condominium.

Since their breakup in January 2020, the defendant has been caring for Cadia solely, and he appears to be appropriately attending to her licensing and veterinary needs. The defendant has also continuously provided a home for Cadia that they all once shared since her adoption nearly five years ago. Although the parties shared many of the expenses associated with Cadia's care and

feeding, as well as household expenses while they lived together in the defendant's Torrington home, the parties agreed that the plaintiff would be relieved of the mortgage sharing expenses to, instead, enable her to pay off her college student loans.

II

DISCUSSION

The plaintiff in this action seeks a prejudgment remedy of replevin of a dog named Cadia. Her essential claim is that she has a superior right to possession of Cadia as a joint owner. The defendant has brought a counterclaim for possession, which the court takes into consideration in rendering this prejudgment remedy in favor of the plaintiff.

The court will begin with an analysis of the legal standard applicable to prejudgment remedies, generally, and then to the specific remedy of replevin as applied to the facts presented. "A 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. . . . General Statutes § 52-278a (d). A prejudgment remedy is available upon a finding by the court that there is probable cause that a . . . prejudgment remedy sought, taking into account any defenses, counterclaims or set-offs, will be rendered in the matter in favor of the plaintiff. . . . General Statutes § 52-278d (a) (1). . . . Proof of probable cause as a condition of obtaining a prejudgment remedy is not as demanding as proof by a fair preponderance of the evidence. . . . The legal idea of probable cause is 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. . . . Probable cause is a flexible

common sense standard. It does not demand that a belief be correct or more likely true than false. . . . Under this standard, 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. (Citations omitted; internal quotation marks omitted.) *TES Franchising, LLC v. Feldman*, 286 Conn. 132, 136–37, 943 A.2d 406 (2008).

With this procedural context in mind, the court now turns to the remedy of replevin. Historically, joint owners of personal property had no right to the remedy of replevin. In the ancient matter of *Prentice v. Ladd*, 12 Conn. 331, 334 (Conn. 1837), for example, it was held that a one-eighth owner of a ship had no more right to possession as a joint owner of property than for trespass, either at common law or under a then-existing statute. In *Prentice*, the nature of the chattel could be a ship as well as a jointly owned animal. As the court explained, “[i]f two be possessed of chattels personal in common, by divers titles, as of a horse, or ox, or cow, if one takes the whole to himself out of the possession of the other, the other hath no other remedie but to take this from him who hath done him the wrong to occupy in common And Lord Coke, commenting thereon, says: If one tenant in common take all the chattels personal, the other hath no remedie by action, but he may take them again. . . . And so far as we are informed, whenever the question has been made, there has been but one opinion, that one joint owner of a personal chattel cannot maintain replevin against another joint owner, any more than he could maintain trespass.” (Emphasis omitted; citations omitted; internal quotation marks omitted.) *Id.*, 333–34.¹

¹ The court further explained: “The unlawful taking is the gist of the complaint. The question then arises under the statute, as well as at common law, had the defendant a right to take this property? Has one joint owner of a ship a right to take her into his own possession? The defendant in this action does not shelter himself under his writ of attachment, as the plaintiff seems to suppose, but goes back of that, and relies upon his title as a joint and equal owner, and defends himself by that

The problem with this ancient approach to replevin is that there is no satisfactory end to the question of which party holds the superior legal right to a prized possession such as a pet, as in the present matter, still cared for by an alienated couple. Perhaps for this reason, the more modern approach is to focus on the comparative rights of possession that reflect more equitable considerations, rather than entirely on the rights of the parties based upon legal title.²

Today in Connecticut, an action of replevin is purely statutory in nature. See *Angrave v. Oates*, 90 Conn. App. 427, 430, 876 A.2d 1287 (2005). General Statutes § 52-515 provides: “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.” To prevail on a claim for a prejudgment remedy of replevin pursuant to § 52-515, therefore, the plaintiff must establish by probable cause that (1) the property at issue is a good or chattel; (2) the

title. And unless Littleton and Coke are entirely mistaken, his co-tenant has no remedy by action, but he may take them again. And we do not see, that the statute has at all, in this respect, varied the common law.” (Emphasis omitted.) *Prentice*, supra, 12 Conn. 334.

² “[M]odern courts have recognized that pets generally do not fit neatly within traditional property law principles. Am. Jur. 2d, Animals § 4. In a number of jurisdictions, there has been a slow evolution towards the ‘de-chattelization’ of household pets. See, e.g., *Finn v. Anderson*, 64 Misc. 3d 273, 101 N.Y.S. 3d 825 (N.Y. City Ct. 2019). There is increasing acknowledgement that a pet is not just a thing, but occupies a special place somewhere between a person and a piece of personal property. See, e.g., *Corso v. Crawford Dog & Cat Hosp., Inc.*, 97 Misc. 2d 530, 415 N.Y.S. 2d 182 (Civ. Ct. 1979) (overruling prior precedent to the effect that a pet such as a dog is only an item of personal property). Courts have recognized the cherished status accorded to pets in our society, and that companion animals are a special category of property and are afforded many protections under the law. See, e.g., *Hennet v. Allan*, 43 Misc. 3d 542, 981 N.Y.S. 2d 293 (Sup 2014).” Cause of Action for Recovery, Possession, or Custody of Pet or Other Animal, B. Holliday, 93 COA2d 1, § 2 (2020).

plaintiff has a property interest in the subject property; (3) the plaintiff has a right to immediate possession; and (4) the defendant is wrongfully detaining the property.

The court in *Angrave v. Oates*, supra, 90 Conn. App. 427, held that that replevin is not an action sounding in contract involving superior title, but a statutory action over the superior right to possession of property which, in *Angrave*, involved a prized show dog placed in the plaintiff's care for breeding, but was registered in both parties' names. After two years in the plaintiff's possession and care, the dog was found to be unsuitable for breeding due to dysplasia, and, therefore, pursuant to their agreement, the plaintiff was never able to fulfill her contractual obligation to give the defendant two puppies from an anticipated litter. According to the defendant, she has superior title to the dog because the plaintiff did not furnish adequate consideration, as the plaintiff never paid any money to purchase the dog. *Id.*, 430.

In affirming the judgment for the plaintiff in *Angrave*, the Appellate Court noted the following findings made by the trial court: "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. The court was persuaded that the plaintiff had a right to immediate possession of the dog by (1) the period during which the plaintiff had possessed and cared for the dog (which exceeded two years and had constituted the majority of the dog's lifetime) and (2) the plaintiff's exclusive payment for all of the dog's care, entry into shows and medical treatments during that period. The court's determination that the defendant wrongfully had possessed the dog is supported by the finding that the defendant had retained possession of the dog when neither party had ever contemplated that the dog would be returned to the defendant." *Id.*, 430-31.

The court's considerations in *Angrave* favor both parties somewhat in the present matter. Unlike the facts in *Angrave*, the parties here jointly purchased Cadia, favoring the plaintiff, and, until recently, the plaintiff registered Cadia in her own name and ensured her veterinary care, with expenses generally shared by the parties. Although the plaintiff played a primary role in caring for Cadia for the nearly four years the parties lived together in Torrington, favoring her possessory interest at that time, the defendant now cares for her exclusively in a home she has lived in for her entire life. The best interests of Cadia, however, do not appear to be expressly relevant considerations in *Angrave*, as a dog remains a chattel in the eyes of the law, generally, and the best interests of Cadia were not the stated reasons of either party in the present matter in seeking exclusive possession.³

The plaintiff cites a similar superior court decision, in which the wrongful detention of a dog appears to have been a determinative factor in granting a prejudgment remedy of replevin. In *Brennan v. Michalowski*, Superior Court, judicial district of Fairfield, Docket No. CV 15 5030605 S (July 17, 2015, *Rush, J.*), the parties were roommates and jointly purchased the dog, Captain. The parties' relationship later deteriorated and one of them moved out of the shared living space, very similar to the present matter. In *Brennan*, however, the defendant went to the plaintiff's home and unilaterally removed the dog, making the act of wrongful detention of Captain somewhat more egregious than simply denying access, as occurred here. The court in *Brennan* stated 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, split, in an agreeable

³ Although permitting Cadia to remain in the only home she has known may be a compelling consideration, it is not determinative in the court's view, as both parties appear capable of providing her with an appropriate home.

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.* Having found the plaintiff in *Brennan* to have a property interest in the dog arising from common ownership, including possession, the court granted her relief for the wrongful detention of Captain “as a result of the unilateral action of the defendant.” *Id.*

Our Supreme Court has stated that “[t]he 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.” *Mead v. Johnson*, 54 Conn. 317, 7 A. 718, 718-19 (1886). Although replevin is now solely a statutory cause of action, wrongful detention remains an element of the court’s consideration and “[a] court’s finding of the right to immediate possession in a replevin action raises a question of fact.” *Angrave v. Oates*, *supra*, 90 Conn. App. 429.

The court finds as a matter of fact that although Cadia was jointly owned and cared for by the parties, the defendant unilaterally and unjustifiably withheld joint access and possession of Cadia from the plaintiff. Based upon these findings, the court concludes by the standard of probable cause that the defendant has wrongfully detained Cadia. The defendant shall therefore transfer possession of Cadia to the plaintiff within 15 days of this order. The time and place of the transfer shall be mutually and reasonably agreed upon by the parties. Failing an agreement, the plaintiff shall set a reasonable time and place for the initial transfer of access and possession of Cadia, as well as all future transfers going forward, unless otherwise ordered by the court.⁴

⁴ The court’s order does not grant exclusive possession of Cadia to the plaintiff at this time, as the parties remain joint owners of Cadia with the attendant right to reasonable access and possession. The defendant’s actions, though self-interested and unadvisable, were not so egregiously or intentionally detrimental to Cadia that he should be denied reasonable access to her in the future. By this order, however, the court provides the plaintiff with primary possession and control, based

III

CONCLUSION

The plaintiff's application for a prejudgment remedy is granted, as set forth in this decision.

BY THE COURT

Juris No. 422392

Taylor, J.

upon her longstanding commitment to sharing possession of Cadia with the defendant. In light of the adoption agreement, the parties may notify PawSafe Animal Rescue and inform it of this modification of possession, as they retain a contractual right to terminate the agreement and to reclaim Cadia for proper foster care or adoption. See Exhibit 1, ¶ 8.