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At Part 84 of the Supreme Court of
the State of New York, held in and
for the County of Kings, at the
Courthouse, located at Civic Center,
Brooklyn, New York on
the 2nd day of February 2021

PRESENT:
HON. CAROLYN E. WADE,

Justice

-----X
TIVUAN COOPER,

Plaintiff,

Index No. 521532/2020

-against-

DECISION and ORDER

PHILIP STOPFORD,

Defendant.

Seq 1

-----X

Recitation, as required by CPLR § 2219 (a), of the papers considered in the review of
plaintiff's order to show cause:

Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	1
Cross-Motion and Affidavits/Affirmations.....	
Answering Affidavits/Affirmations.....	2
Reply Affidavits/Affirmations.....	3
Memorandum of Law.....	

Upon the foregoing cited papers and after oral argument, plaintiff TIVUAN COOPER moves, by an order to show cause, for an Order declaring that he is the rightful owner of a dog, and ordering defendant PHILIP STOPFORD to immediately return the dog to Plaintiff.

Facts

Plaintiff TIVUAN COOPER (“Plaintiff”) and defendant PHILIP STOPFORD (“Defendant”) were in a romantic relationship from October 2018 through May 2020. In February 2019, the couple adopted a dog (“Dilon”). While Plaintiff’s name is listed on the Adoption Contract (Stopford aff, exhibit “A”), Defendant’s signature is found under “Adopter’s Signature” (Stopford aff at ¶5; Cooper aff at ¶7). The Defendant paid the adoption fees of \$515.00 (Cooper aff at ¶7; Stopford aff at ¶13, exhibit “D”). The microchip inserted into Dilon at the time of the adoption was registered in Plaintiff’s name. Once adopted, Dilon was taken to Defendant’s apartment in Bronxville, and the dog has resided with him since that time (Stopford aff at ¶7). Defendant also registered Dilon with the New York City Department of Health and Hygiene, and a Dog License was issued to Defendant as the owner (Stopford aff at ¶6; exhibit “B” and “C”). Both Plaintiff and Defendant claim to have paid for the Dilon’s upkeep costs (Stopford aff at ¶7, ¶11-16; Cooper aff at ¶21). Particularly, Plaintiff submitted bank statements showing his expenses, totaling approximately \$2,403.46, relating to transactions at Petco, Chewy.com, etc. (Cooper aff, exhibit “D”). Defendant similarly provided invoices showing expenditure of \$3,466.26 for 2019 and \$2,474.11 for 2020, totaling \$5940.37 (Stopford aff at ¶13, exhibit “D” and “E”). Defendant also submitted records that he reimbursed Plaintiff’s expenses, in the total amount of \$1,890.00 (Stopford aff at ¶15, exhibit “F” and “G”).

Analysis

To be entitled to a preliminary injunction, the movant must establish (1) a likelihood of success on the merits, (2) irreparable injury absent granting the preliminary injunction, and (3) a balancing of the equities in the movant's favor (*Ruiz v Meloney*, 26 AD3d 485, 485-86 [2d Dept 2006]; *W. T. Grant Co. v Srogi*, 52 NY2d 496, 517 [1981]). The decision to grant or deny a preliminary injunction rests in the sound

discretion of the Supreme Court (see *Doe v Axelrod*, 73 NY2d 748, 750 [1988]; *Ying Fung Moy v Hoho Umeki*, 10 AD3d 604, 604 [2d Dept 2004]).

Traditionally, “pets are treated under New York law as personal property” (*Schrage v Hatzlacha Cab Corp.*, 13 AD3d 150 [1st Dept 2004]). However, “the courts have recognized the ‘cherished status’ accorded to pets in our society in awarding possession of a [pet] in a custody dispute based in large part on what was in the best interest of the animal” (*Feger v Warwick Animal Shelter*, 59 AD3d 68, 72 [2d Dept 2008], citing *Raymond v Lachmann* (264 AD2d 340, 341 [1st Dept 1999])). In *Travis v Murray* (42 Misc 3d 447, 455 [Sup Ct, New York County 2013]), the court determined that the most appropriate standard to apply when deciding with whom a pet should reside is the “best for all concerned” standard found in *Raymond*.

“In accordance with that standard, each side will have the opportunity to prove not only why she will benefit from having [the pet] in her life but why [the pet] has a better chance of living, prospering, loving and being loved in the care of one [party] as opposed to the other” (*id.*, at 460). The factors set out by the *Travis* court include who bore the major responsibility for meeting the pet’s needs (*i.e.* feeding, walking, grooming and taking the pet to the veterinarian) and who spent more time with the pet on a regular basis (see *Travis*, at 460). In addition, in a case where both parties claimed to have professed a strong relationship with the pet and extensive involvement in its care, the court must determine “which party through his or her conduct has the most genuine right of possession” (*Hennet v Allan*, 43 Misc 3d 542, 548 [Sup Ct, New York County 2014]). The *Hennet* court found that “[the] inquiry necessitates a review of the circumstances as to how [the pet] was acquired and cared for, and the actual arrangement between the parties for spending time with [the pet]” (*id.*).

In the instant case, applying the “best for all concerned standard” and the factors set out in *Travis* and *Hennet*, Plaintiff has not established a likelihood of success on the merits to warrant ordering Dilon’s immediate return. Plaintiff has not shown that he is the primary caretaker of Dilon. Significantly, upon the Court’s inquiry during oral argument, it was indicated that Dilon was taken to Defendant’s apartment in

Bronxville after the adoption, not Plaintiff's residence in Brooklyn. The legal ownership of Dilon is also in question, as the adoption contract lists Plaintiff's name; yet, it was signed by Defendant, who paid the adoption fees by credit card. Therefore, Plaintiff has failed to show a likelihood of success on the merits on his claim (see *M & M Envtl. v Myrick*, 2020 N.Y. Slip Op. 34028[U], 7 [N.Y. Sup Ct, New York County 2020]). Plaintiff likewise has not stated, much less established, an irreparable injury absent Dilon's immediate return.

Conclusion

Accordingly, based on the above, plaintiff TIVUAN COOPER's application for an Order declaring that he is the rightful owner of the dog and ordering defendant PHILIP STOPFORD to immediately return the dog to Plaintiff is **DENIED**.

This constitutes the Decision and Order of the court.



HON. CAROLYN E. WADE
SUPREME COURT JUSTICE

Hon. Carolyn E. Wade
Supreme Court Justice

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