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S. J. D.

DOCKET NO.: HHD CV-20-6128326-S : SUPERIOR COURT
 :
 NEIL JAMES HORNISH : JUDICIAL DISTRICT OF
 : HARTFORD
 :
 v. :
 :
 TOWN OF SUFFIELD : DECEMBER 17, 2021

MEMORANDUM OF DECISION

Plaintiff Neil James Hornish invokes the court’s equitable powers and applies for a mandatory injunction requiring that his dog, Dexter, be released to his custody, or, in the alternative, that he and his wife, Annie Hornish, be permitted regular visitation. Dexter has been held by the Town of Suffield at a private veterinary hospital since November 6, 2019, because Dexter mauled and killed a 95-year old women, Janet D’Aleo. Dexter is being held by Suffield pending the outcome of an administrative proceeding before the Connecticut Department of Agriculture in which the Hornishes are appealing an order by Suffield’s Animal Control Officer that Dexter be euthanized.

The court declines to order the requested relief because the Hornishes have not demonstrated the “compelling circumstances” necessary to support the “extraordinary” and “drastic” remedy of a mandatory injunction. There is no evidence that Dexter is being harmed or mistreated beyond the fact of his relative isolation and a mandatory injunction would put the court in the undesirable role of supervising the at times tense relationship between the Hornishes, Suffield, and a private veterinary hospital. Moreover, an equitable balancing of the interests involved in this case does not favor the Hornishes. The court cannot ignore that Dexter killed a 95-year old women. Suffield’s decision to hold Dexter and that he should continue to have limited contact with people and other dogs has a firm

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basis and furthers Suffield's important interest in protecting the public from a potentially dangerous animal. Second, despite the opportunity to acknowledge the severity of Dexter's conduct, the Hornishes have repeatedly sought to downplay Dexter's responsibility for Ms. D'Aleo's death. The court has profound reservations about the Hornishes' suitability to care for Dexter in a manner that protects the interests of the public at large and any person or animal that may come into contact with Dexter.

The court's reasoning is set forth in more detail below.

FACTS

The court held a virtual hearing on the Hornishes' application for temporary injunction on July 14-15, 2021 and on August 18, 2021. The parties submitted post trial briefs on September 10, 2021. The court heard testimony from four witnesses: Suffield Animal Control Officer (ACO) Ryan Sileg, Mr. Hornish, Dr. Mohan Sachdev, a Doctor of Veterinary Medicine and owner of River Valley Animal Center where Dexter is being held, and Marie Joyner, an expert on dog behavior and the effects that long term confinement can have on dogs. Ms. Joyner is not a veterinarian and did not make any veterinary diagnoses of Dexter. Annie Hornish did not testify at the injunction hearing. The court reviewed 17 exhibits admitted into evidence. As the trier of fact, the court must weigh the evidence and determine the credibility of witnesses. *Connecticut Light & Power Co. v. Proctor*, 324 Conn. 245, 259, 152 A.3d 470 (2016). "[I]t is the exclusive province of the trier of fact to weigh the conflicting evidence, determine the credibility of witnesses and determine whether to accept some, all or none of a witness' testimony. . . ."

(Emphasis omitted.) *Palkimas v. Fernandez*, 159 Conn. App. 129, 133, 122 A.3d 704 (2015). With these principles in mind, the court makes the following factual findings.

Neil and Annie Hornish live in a single-family home on Thrall Avenue in Suffield. Since June of 2019, the Hornishes have owned Dexter, at the time of the hearing, a 5-year old, male, unneutered, pit bulldog. Agnes Wosko is Annie Hornish's mother. Ms. Wosko uses a motorized wheelchair to get around and, at the time relevant to this case, was staying at the Hornish's home.

Janet D'Aleo was 95. Ms. D'Aleo used a walker to help her get around. At the time relevant to this matter, Ms. D'Aleo was assisted by her live-in home health aide, Elizabeth Nichols. Ms. D'Aleo and Ms. Wosko are longtime friends.

On November 6, 2019, Ms. D'Aleo visited Ms. Wosko at the Hornishes' Thrall Avenue home.¹ Upon arriving at the Hornishes' front door, Ms. D'Aleo and Ms. Nichols noticed that Dexter was barking at Ms. D'Aleo and Ms. Nichols. Ms. Wosko opened the front door for Ms. D'Aleo and Ms. Nichols and they proceeded inside. As Ms. D'Aleo was walking down the front hallway, Dexter "nipped" Ms. D'Aleo on her backside. Ms. D'Aleo and Ms. Nichols asked Ms. Wosko to restrain Dexter. Ms. Wosko put Dexter in another room.

After Dexter was put in another room, Ms. Nichols briefly left the house to park the car that she and Ms. D'Aleo had arrived in. When Ms. Nichols came back to the

¹ The court's recitation of the facts surrounding Dexter's attack on Ms. D'Aleo is taken from the December 21, 2020 Final Decision and October 20, 2020 Proposed Final Decision from the Department of Agriculture administrative proceeding, which was entered into evidence as a full exhibit. See Def. Ex. 1. The court has reviewed the Final Decision and Proposed Final Decision and credits the facts set forth therein.

Hornishes' house, she saw that Dexter had been able to free himself and that he was barking and running up the front hall toward Ms. Nichols. Ms. Nichols slammed the front door to prevent Dexter from either escaping the house or attacking Ms. Nichols. Through a window next to the front door, Ms. Nichols then observed Dexter wheel around and begin to attack Ms. D'Aleo who was standing in the front hall with her walker. Seeing Ms. D'Aleo being attacked by Dexter, Ms. Nichols opened the front door. Ms. Nichols grabbed a metal stool that was nearby and hit Dexter several times in an attempt to get Dexter to stop attacking Ms. D'Aleo. Dexter did not stop attacking Ms. D'Aleo. Ms. Nichols ran outside to get help. Just then, Ms. Nichols saw Annie Hornish drive up to the house. Ms. Nichols immediately told Ms. Hornish what was happening. Ms. Hornish ran inside and was able to restrain Dexter. Mr. Hornish was not present for and did not observe any of the events related to Dexter's attack on Ms. D'Aleo.

The injuries caused by Dexter to Ms. D'Aleo were fatal. Ms. D'Aleo had extensive wounds from dog bites on her legs and hip. As concluded in the Proposed Final Decision based on ACO Selig's testimony at the administrative hearing, see Def's. Ex. 1, Proposed Final Dec. at 18-19, "there was a severe amount of flesh, skin, and muscle missing from [Ms. D'Aleo's] body" and Ms. D'Aleo's "legs were missing flesh 360 degrees around." The wounds were deep enough to expose the bones in Ms. D'Aleo's legs and there was a large amount of blood on the floor. Ms. D'Aleo was missing a toe. Ms. D'Aleo was wearing an emergency call device which activated when Dexter pushed her to the ground. On the audio recording from that device, Ms. D'Aleo can be heard screaming during the attack. Police who investigated the attack determined that neither Ms. D'Aleo, nor Ms.

Nichols provoked Dexter's attack. As part of its investigation of the attack, Suffield verified that Dexter had been involved in three prior biting incidents in Norwich when he was under another owner's care.

On November 6, 2019, ACO Selig issued a quarantine order for Dexter and Dexter was taken to River Valley Animal Center in Suffield. On November 14, 2019, ACO Selig, on behalf of the Town of Suffield, issued an order pursuant to General Statutes § 22-358 (c) that Dexter be euthanized in light of the severity of the attack on Ms. D'Aleo and Dexter's prior bite incidents. The Hornishes timely appealed Suffield's disposal order, but, after a full administrative hearing before the Department of Agriculture, Suffield's order was upheld on December 20, 2020. The Hornishes have appealed to the Superior Court. See *Hornish v. Suffield*, Superior Court, judicial district of Hartford, Docket No. CV-21-6137958-S (September 30, 2021, *Noble, J.*).

During the administrative hearing before the Department of Agriculture, Ms. Hornish argued that the attack on Ms. D'Aleo was not Dexter's fault. See Pl.'s Ex. 1, Proposed Final Dec. at 24. Ms. Hornish speculated that Dexter may have been provoked by either Ms. D'Aleo or Ms. Nichols. *Id.* Ms. Hornish speculated that Dexter may have been startled by Ms. D'Aleo's walker, or provoked by Ms. Nichols when she hit Dexter with the metal stool.² *Id.* According to Ms. Hornish's sworn statement to police, Ms.

² In the exercise of common sense, human experience and reasonable inference, it is not clear to the court why, if Dexter was provoked by Ms. Nichols hitting him with the metal stool, Dexter attacked Ms. D'Aleo, rather than his supposed attacker, Ms. Nichols. Similarly, in the exercise of common sense, human experience and reasonable inference, if a dog can be provoked into the kind of attack suffered by Ms. D'Aleo by the presence of, or because the dog is startled by, the walker of a 95 year-old woman, there is raised in the

Hornish went so far as to suggest that “[Ms. D’Aleo] had fresh wounds or open wounds [from an earlier doctor’s appointment], that possibly the injuries were not from the dog attack because she had fresh wounds, and because [Ms. D’Aleo is] older, that her skin could have tore easier.” Id. at 10. The police found no evidence for this theory. Id. at 9-10. Given the grievous wounds to Ms. D’Aleo, the hearing officer at the Department of Agriculture rejected Ms. Hornish’s theory as without basis.³ See Pl. Ex. 1, Final Dec. at 3.

Similarly, at the injunction hearing before this court, Mr. Hornish (who was not present the day of the attack) testified: “[I]t has never been proven which if any of the wounds were caused by a bite, which had been caused by a scratch or the metal step stool that had [Ms. D’Aleo’s] blood on it. . . . I’ll . . . agree . . . that there was a good chance that Dexter did bite after being provoked by being hit with a metal stool. . . .” Mr. Hornish further testified that, “our contention is that Dexter was provoked. . . . [E]ven if Dexter caused Ms. D’Aleo to trip and fall, that would have been the cause of death.” After the court emphasized to Mr. Hornish that his view on this issue was important to the court’s

court’s mind a very serious issue of public safety. For clarity, the court does not credit any of Ms. Hornish’s speculations.

³ It was also noted by both the police and the hearing officer at the administrative proceeding that the written statement given by Ms. Wasco (Ms. Hornish’s mother) on the day of the attack differed significantly from a second statement – written by Ms. Hornish on her mother’s behalf – made a day after the attack. See Pl’s Ex. 1, Proposed Final Dec. at 7-11. Ms. Wasco’s initial statement states that Dexter bit and attacked Ms. D’Aleo. Id. at 7. Ms. Wasco’s second statement omits any reference to Dexter biting Ms. D’Aleo. Id. at 8. The Hornishes did not allow Ms. Wasco to clarify her statements. Id. at 8-9. Ms. Hornish testified at the administrative hearing that her mother suffers from cognitive issues and short-term memory loss. Id. at 19, 22.

analysis, Mr. Hornish testified “my wife and my belief [is] that if the dog did bite and any injuries were sustained, it was definitely due to a provocation.”

Since November of 2019, Dexter has been held at River Valley Animal Center. River Valley is a licensed, privately owned, veterinary hospital. General Statutes § 22-336 allows a municipality to contract with a licensed veterinary hospital in lieu of operating its own dog pound. Suffield has contracted with River Valley for this purpose pursuant to § 22-336. River Valley is not licensed as a commercial dog kennel.

Since November of 2019, Dexter has been held in a kennel, or room, at River Valley. The room meets applicable Department of Agriculture standards for dogs being held by a town. More specifically, based on the court’s observation of the pictures submitted at trial, Dexter’s room is approximately 5-6 feet wide and approximately 8-9 feet long. The kennel has a window with a view to an outside field and fenced in courtyard and another window with a view into the hospital. The kennel has a raised dog bed and various blankets and toys inside. The kennel is heated and air conditioned and in good repair. Directly adjacent to the kennel is a separate room of approximately the same size that Dexter can use to relieve himself and that Dexter has access to on his own through a small door. Outside this second room is a fenced-in, outside courtyard of approximately 25-30 square yards which is used to exercise Dexter.

ACO Selig testified at the injunction hearing that since Dexter has been held by Suffield, he has visited Dexter approximately once a day to exercise Dexter and give him some social interaction. ACO Selig testified that he throws a ball to Dexter and lets him run around the courtyard nearly every working day for anywhere from fifteen minutes to

an hour. ACO Selig testified that he occasionally comes in to exercise Dexter on his days off, but it is not common that he does so. The court notes that there was some factual dispute as to the frequency of ACO Selig's visits to Dexter at the injunction hearing because not all of ACO Selig's visits are noted on ACO Selig's reports of his daily activities. ACO Selig testified that he does not always make note of his visits to Dexter because he is attending to other higher priority law enforcement matters, or simply because he neglects to make the appropriate record note. Dr. Sachdev corroborated ACO Selig's testimony, stating that he, Dr. Sachdev, had observed ACO Selig coming to play with Dexter nearly every day. In its role as fact finder, the court credits ACO Selig's testimony and concludes that ACO Selig visits and plays with Dexter as described in ACO Selig's testimony.

ACO Selig testified that Dexter generally does not seem to be depressed, or have a "down" disposition based on his general experience dealing with dogs, including his own dogs. Dexter wags his tail and seems happy when ACO Selig visits. ACO Selig testified that, due to safety concerns, he is the only person that interacts directly with Dexter⁴ and that he does so without a muzzle or other restraints being placed on Dexter. ACO Selig testified that he is trained to deal with, and defend himself against, aggressive dogs. ACO Selig carries a "bite stick," or baton, a Taser, and his service handgun when visiting with Dexter (all of which are part of ACO Selig's standard uniform). Nevertheless, ACO Selig testified that Dexter has not been aggressive toward him. By contrast, Dr. Sachdev

⁴ Dexter can see into a hallway of the veterinary hospital and can generally see hospital personnel going about their duties. Nevertheless, River Valley personnel are instructed not to have direct contact with Dexter.

testified that he has witnessed aggressive behavior (growling, baring of teeth) on the part of Dexter, though, Dr. Sachdev admitted, his interactions with Dexter have been relatively limited.

Dexter is generally healthy and in good physical condition. He is not underweight. He has received appropriate vaccinations and medical care as necessary. More specifically, since being taken into custody by Suffield, Dexter has received four medical exams at River Valley. One examination was related to the administrative hearing before the Department of Agriculture. Two examinations were related to injuries sustained by Dexter while at River Valley. One injury was a minor cut on his foot that was treated without difficulty. The other injury was more serious and occurred because Dexter, unbeknownst to River Valley staff, was able to get his nose under the sliding door that leads to the courtyard, lift the door, and get outside. Dexter spent a cold January night in an unheated portion of his kennel. As a result, Dexter contracted an infection. Dexter was treated and has recovered. Additionally, the sliding door has been fixed so that Dexter cannot get his nose under the door and “jimmy” it up again.

Since his initial confinement in November of 2019, Dexter has been examined twice by Marie Joyner, an expert in dog behavior and the effects that long term confinement can have on dogs. Ms. Joyner is not a veterinarian and has no training in veterinary medicine. Ms. Joyner was hired by the Hornishes. The Hornishes also donate to “Our Companions,” an animal rescue organization that employs Ms. Joyner. Ms. Joyner

examined Dexter in February of 2020 and again in June of 2021.⁵ During Dexter's initial exam (after approximately three months in confinement), Ms. Joyner observed that Dexter was in generally good spirits and physical condition. He was friendly and nonaggressive. Dexter did not startle when Ms. Joyner approached him wearing a rain poncho, Dexter could be pushed away from his food without incident, and he merely pulled with enthusiasm when put on a leash. During Ms. Joyner's second evaluation (after some twenty months in confinement), Ms. Joyner observed that Dexter was still nonaggressive, but, in Ms. Joyner's view, subdued, with low energy and spirit. Ms. Joyner observed that Dexter still interacted with her without difficulty, but that he did not want to go back to his kennel at the end of the examination and that he reacted with enthusiasm when presented with a "fake dog" that Dexter had not wanted to interact with during his prior examination. Ms. Joyner interpreted Dexter's behavior as meaning that he was starved for interaction with other dogs. Ms. Joyner opined that Dexter needed more physical exercise and social interaction with people and other dogs. The court credits Ms. Joyner's observations and assessments of Dexter's behavior as set forth above.⁶

⁵ The Hornishes were required to execute a hold harmless agreement with Suffield before Ms. Joyner was permitted to examine and interact with Dexter.

⁶ On the day of Ms. Joyner's June 2021 visit, Ms. Joyner observed that Dexter's second room and outside enclosure had several feces that had not been removed or cleaned up. See Pl. Ex's. 2, 6. The Hornishes cite this as evidence of neglect of Dexter. The court is not convinced. Aside from the day of Ms. Joyner's visit, there was no evidence presented at the hearing as to what may be the cleaning schedule of Dexter's enclosure, or that Dexter's surroundings were frequently dirty. In an exercise of reasonable inference, common sense, and human experience, the court also concludes that if Dexter's surroundings were frequently dirty or unsanitary, Dexter would not have appeared in the physically healthy and clean condition that all parties agree he presents. The Hornishes

Since Suffield began holding Dexter on November 6, 2019, the Hornishes have been able to visit Dexter periodically. Initially, Dexter was in a rabies quarantine and thus the first time the Hornishes were able to visit Dexter was on November 14, 2019. During the fall and early winter of 2019, Mr. Hornish testified that Suffield only gave the Hornishes permission to visit Dexter on a “sporadic” basis. Nevertheless, by the end of December 2019, Suffield had agreed to allow the Hornishes to visit regularly with Dexter for a total of one hour each week. The Hornishes were able to bring Dexter toys, blankets, food (the Hornishes feed Dexter steak), a radio, and other comfort items. The Hornishes were not permitted direct physical contact with Dexter. They are permitted only to see Dexter and interact with him through the window in his kennel. The onset of the pandemic in March of 2020 temporarily ended the Hornishes’ visitation until June of 2020. Mr. Hornish agreed that Suffield allowed the Hornishes to make up 10 hours of lost visitation time after River Valley reopened in June of 2020. This one hour a week visitation arrangement continued until January of 2021. At that time, the Suffield Board of Finance was considering a raise in ACO Selig’s salary as part of the town’s annual budget process. Ms. Hornish became aware of the proposed raise. Although it is unclear exactly what was said, ACO Selig testified that Ms. Hornish said to him, in effect, that ACO Selig was being financially rewarded for ordering that Dexter be euthanized, and that, if Suffield’s leadership changed in the next municipal elections, ACO Selig’s job would be in jeopardy. When ACO Selig reported Ms. Hornish’s comments to the Suffield Board of Selectman,

contend that Dexter is suffering mentally as a result of his confinement, but there was no evidence presented that Dexter is suffering physically.

the Board voted to terminate the Hornishes' visitation with Dexter. Since January of 2021, the Hornishes have not been able to visit with Dexter. Mr. Hornish filed an Application for Temporary Injunction on June 1, 2021. See Doc. No. 100.31.

DISCUSSION

a. *Injunctive relief*

In certain circumstances, “a trial court has the authority to issue a mandatory injunction in advance of the final adjudication of the rights of the parties” See *Stamford v. Kovac*, 228 Conn. 95, 100, 634 A.2d 897 (1993) (considering the question of whether a trial court has the authority to issue such an injunction and answering the question in the affirmative). Nevertheless, a mandatory injunction must meet stringent standards. See *Kent Literary Club of Wesleyan University at Middletown v. Wesleyan University*, 338 Conn. 189, 238, 257 A.3d 874 (2021). “Unlike a prohibitory injunction—an order of the court that merely maintains the status quo by restraining a party from the commission of some act—a mandatory injunction is a court order that commands a party to perform some affirmative act. . . . Relief by way of mandatory injunction is an extraordinary remedy granted in the sound discretion of the court [but] only under compelling circumstances.” (Citation omitted.) *Id.*, 238-39; see also *Cheryl Terry Enterprises, Ltd. v. Hartford*, 270 Conn. 619, 650, 854 A.2d 1066 (2004) (“[m]andatory injunctions are . . . disfavored as a harsh remedy and are used only with caution and in compelling circumstances.” [Internal quotation marks omitted.]), overruled by *Tremont Public Advisors, LLC v. Connecticut Resources Recovery Authority*, 270 Conn. 619, 854 A.2d 1066 (2019); *Herbert v. Smyth*, 155 Conn. 78, 85, 230 A.2d 235 (1967) (holding that

“[r]elief by way of mandatory injunction is an extraordinary remedy and should only be granted under compelling circumstances.”). “Mandatory injunctions are deemed to be ‘drastic’ remedies . . . because, among other things, they may place the trial court in the undesirable position of having to monitor, construe, and police the parties’ private conduct, relationship, and contractual dealings on an ongoing basis.” (Citation omitted.) *Kent Literary Club of Wesleyan University at Middletown v. Wesleyan University*, supra, 338 Conn. 239.

More generally, “[t]he granting of injunctive relief is within the trial court’s discretion. In exercising this discretion, the court must balance the competing interests of the parties . . . and [t]he relief granted must be compatible with the equities of the case.” (Citations omitted; internal quotation marks omitted). *Dukes v. Durante*, 192 Conn. 207, 225, 471 A.2d 1368 (1984); see also *Renaissance Management Co. v. Connecticut Housing Finance Authority*, 281 Conn. 227, 230, 915 A.2d 290 (2007) (holding that “[a] party bears a heavy burden of showing that a mandatory injunction should be granted.”). “[T]he trial court may consider and balance the injury complained of with that which will result from interference by injunction.” (Internal quotation marks omitted). *Kent Literary Club of Wesleyan University v. Wesleyan University*, supra, 338 Conn. 238; see also *Moore v. Serafin*, 163 Conn. 1, 6-7, 301 A.2d 238 (1972) (holding that “[w]here the granting of the injunction would cause damage to the defendant greatly disproportionate to the injury of which the plaintiff complains, it may be held inequitable to grant a mandatory injunction . . .”).

Applying these legal principles to the facts as found above, the court cannot conclude that this case presents the compelling circumstances justifying the extraordinary remedy of a mandatory injunction. There is no evidence that Dexter is being physically harmed or mistreated. Indeed, the facts demonstrate that Dexter is well cared for, given the circumstances. Dexter's medical and immediate care needs (e.g., food, shelter) are being met. ACO Selig visits and plays with Dexter on a nearly daily basis and Dexter's kennel and surroundings meet applicable state requirements.⁷ Even Ms. Joyner does not assert that Dexter is suffering in any physical way, or even that is Dexter exhibiting any manifestations of significant psychological trauma. Ms. Joyner only states that Dexter seems down, "lacks spirit," and would benefit from more exercise and social interaction with people and other dogs. After more than two years of being held by Suffield at River Valley, the court does not doubt that this is true. But the court cannot ignore that Dexter's relative isolation has a firm basis. Dexter killed a woman. The injuries sustained by Ms. D'Aleo can only be described as horrific. Moreover, Dexter was involved in three other biting incidents prior to his attack on Ms. D'Aleo. The court concludes that Suffield is

⁷ The Hornishes' post trial brief offers General Statutes § 53-247 as a possible standard of care in the treatment of Dexter. General Statutes § 53-247 is a criminal statute and therefore is inapplicable to this matter. Nevertheless, to the extent that *State v. Hearl*, 182 Conn. App. 237, 254, 190 A.3d 42, cert. denied, 330 Conn. 903, 192 A.3d 425 (2018) establishes a standard of care that might be applicable to the seizure and restraint of a dog under General Statutes § 22-358 (c), the court holds that Suffield and River Valley have met that standard based on the facts found by the court as set forth in this memorandum of decision. See *State v. Hearl*, supra, 182 Conn. App. 254 ("Proper care means that degree of care that a person of ordinary intelligence would provide to an animal to maintain its well-being under any reasonable standard. . . ." [Internal quotation marks omitted.]).

wholly justified in isolating Dexter from people and other dogs to ensure that Dexter does not cause additional injuries to other people or animals.

Second, if the court were to order that Dexter be released to the custody of the Hornishes, or that the Hornishes be allowed to visit Dexter on some regular basis, the court would then be thrust into the role of supervising and managing the relationship between the Hornishes, Suffield, and River Valley. If the court were to allow the Hornishes to take Dexter home, the court would have to manage and approve of the conditions under which Dexter could be safely cared for. It is likely that the court would have to approve who might be able to visit the Hornishes' home and under what conditions. The court would certainly have to review and approve the enclosure that the Hornishes propose to construct in order to keep Dexter properly and safely separated from other persons and animals. To the extent the Hornishes would be permitted visitation at River Valley, the court would likely be thrust into approving a limitation of liability agreement that either Suffield or River Valley (a private business) might reasonably require if the Hornishes were to have regular contact with Dexter. The record also indicates that there is a certain level of animosity between the parties. Therefore, the court concludes it is likely that there would be unforeseen disputes as to Dexter's day-to-day care and that the court would inevitably be called on to resolve those disputes. Such a circumstance would put this court in exactly the same "undesirable position" warned against by our Supreme Court in *Kent Literary Club*.

Finally, the court cannot conclude that granting the relief requested by the Hornishes is compatible with the equities involved in this case. Suffield is attempting to

fulfil its responsibility to protect the public at large from a dog that has shown himself to be dangerous. Even under the version of events advocated by the Hornishes (which this court does not credit), Dexter was provoked to kill Ms. D'Aleo because he was startled by her walker or because he was being hit by another person. To allow the Hornishes to take Dexter home would do severe harm to Suffield's important interest and responsibility to protect people and animals from potentially being harmed by Dexter. Similarly, Suffield's decision to terminate the Hornishes' visitation with Dexter resulted from Ms. Hornishes' own conduct and Suffield's decision that its employees should not have their employment threatened in the manner suggested by Ms. Hornish. While the court is sympathetic to the argument that Suffield might have taken a more charitable, or forgiving view of Ms. Hornish's actions, the court cannot conclude that Suffield's decision to terminate visitation is so egregious as to create the "compelling" and "extraordinary" circumstances necessary to support the harsh remedy of an affirmative order from this court that visitation be restarted. Moreover, this court must make clear that it has deep reservations that the Hornishes are well suited to care for Dexter in a manner that protects the public and other people and animals. The Hornishes have refused to take responsibility for Dexter's actions, or acknowledge the severity of his conduct. Indeed, the Hornishes have repeatedly sought to downplay Dexter's conduct and to place blame for Ms. D'Aleo's death elsewhere. The factual record in this matter renders such justifications, in the court's view, disingenuous at best. The court does not have adequate confidence that, if given the responsibility to care for Dexter, the Hornishes would exercise that responsibility in a manner that properly protects public safety.

b. Additional arguments raised by the Hornishes

The Hornishes filed an Application for Temporary Injunction, see Doc. No. 100.31, that generally alleges the circumstances surrounding Suffield's detention of Dexter, the administrative proceeding before the Department of Agriculture, and the Hornishes' inability to visit Dexter. As relief, the Hornishes request an injunction ordering that Dexter be released to the Hornishes' custody. Mr. Hornish filed the Application pro se, but subsequently retained counsel. An amended Application was not filed.

At the injunction hearing and in their post-trial brief, the Hornishes raise arguments related to the fact that River Valley is not licensed as a commercial kennel, as well as claims based on both substantive and procedural due process under the 14th Amendment. The court declines to consider these arguments.

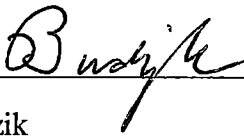
The claims of a party are cabined by their complaint. Here, there are no allegations in the Application for Temporary Injunction with respect to River Valley's lack of a commercial kennel license. Moreover, it is not clear to the court that the Hornishes would have standing to raise such issues even if they were alleged,⁸ that the court would have jurisdiction to consider license issues without the Hornishes first exhausting their administrative remedies before the Department of Agriculture, or that the court could fashion any effective relief beyond requiring that River Valley obtain the appropriate license. Section 22-336 expressly allows Suffield to contract with a licensed veterinary hospital like River Valley in lieu of operating its own dog pound. The Hornishes have presented no argument that § 22-336 includes an unstated requirement that the chosen

⁸ And properly briefed.

veterinary hospital also must be a licensed commercial kennel. Similarly, nowhere does the Application allege violations of procedural or substantive due process under the 14th Amendment. Even if such issues were raised by the Application, the court would apply the reasoning of Judge Huddleston as set forth in *Kiyak v. Connecticut Department of Agriculture*, Superior Court, judicial district of New Britain, Docket No. CV-18-6042188-S, (August 5, 2019, *Huddleston, J.*), and deny relief.

CONCLUSION

For all the reasons set forth above, the court declines to issue the mandatory injunctive relief as requested by Mr. Hornish.

 , J.

Budzik

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Docket Number: HHD CV20-6128326

Case Name: Hornish v. Suffield

Memorandum of Decision dated: 12/17/2021

File Sealed: Yes No X

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 List Type: No List Type
 Trial List Claim:
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P-01 MR. NEIL JAMES HORNISH		Plaintiff
Attorney: THOMPSON GOULD PAGE (407748) File Date: 05/24/2021 1 LINDEN PLACE SUITE 108 HARTFORD, CT 061061748		
D-01 TOWN OF SUFFIELD		Defendant
Attorney: BLACKBURN & DONNELLY LLC (413638) File Date: 06/08/2020 2 CONCORDE WAY BLDG 3C PO BOX 608 WINDSOR LOCKS, CT 060963216		

Viewing Documents on Civil, Housing and Small Claims Cases:

If there is an in front of the docket number at the top of this page, then the file is electronic (paperless).

- Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over the internet.* For more information on what you can view in all cases, view the [Electronic Access to Court Documents Quick Card](#).
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