

DOCKET NO.: UWY-CV24-5034035-S : SUPERIOR COURT
JORDAN GEFFERT : J. D. OF WATERBURY
VS. : AT WATERBURY
BRANDON MARFYAK : MAY 10, 2024

**SUPERIOR COURT
WATERBURY, J.D.
MAY 10 2024
CLERK'S OFFICE**

MEMORANDUM OF DECISION – REPLEVIN ACTION

The plaintiff, Jordan Geffert (“plaintiff”), initially filed a Prejudgment Remedy action (“PJR”) February 9, 2024 seeking replevin of a dog named “Lucy,” pursuant to General Statutes § 52-515. Lucy is currently being held by the defendant Brandon Marfyak (“defendant”). The court held a two-day hearing on the PJR on April 3 and April 4, 2024. At the conclusion of the hearing, the parties stipulated on the record that the hearing could be converted to a trial on the merits, and that the court would enter a final judgment on the evidence presented during the two-day hearing. The court heard oral argument after conclusion of the evidence on April 4, 2024. The court ordered simultaneous briefs from the plaintiff and the defendant to be submitted on April 26, 2024, which were filed as pleading #107.00 and #108.00, respectively. The plaintiff also filed excerpts from the two-day PJR/trial, as entry #109.00.

PLAINTIFF’S CLAIMED FACTUAL BACKGROUND

The plaintiff and defendant, both hospital nurses, met in 2021, and began dating. In 2022, they moved in together at the condominium, owned by the defendant, located at 245 Cherry Ave., Unit I-13, Watertown, Connecticut. There was no agreement on how living expenses would be paid for or shared, nor any agreement on how expenses with regard to Lucy would be paid for or shared. In April 2022, the parties discussed acquiring a dog. The plaintiff and defendant worked different schedules. The plaintiff was alone in the evening and wanted

a dog to keep her company. The plaintiff located Lucy, through Murphy's Paw Rescue, Inc., ("Murphy's Paw"), an animal rescue and shelter run by Nicole Gallagher. The plaintiff testified that she chose Lucy because no one else had applied for her and she wanted to give her a good life. The plaintiff sent several emails to Murphy's Paw. In one she stated, "My boyfriend and I have settled into a townhouse and are looking to start a family with a dog."

The plaintiff coordinated an appointment to meet Lucy at the home where Lucy was being housed. In anticipation, the plaintiff set aside money for the adoption of Lucy, and purchased bedding, toys and food. The day before the appointment, the plaintiff informed the defendant they would be meeting Lucy. On April 19, 2022, the parties met Lucy and "adopted" her with the execution of a two-page Murphy's Paw Rescue adoption form, signed by both parties. The plaintiff paid the fee for Lucy, and the defendant reimbursed her for half of the adoption expense. The defendant did not reimburse the plaintiff for any other expenses pertaining to Lucy.

The parties lived together until November 2023. While at work on November 14, 2023, the plaintiff discovered that the defendant had been texting another woman. The next day, the plaintiff returned to the condominium to gather a few belongings. She did not know at that time whether the relationship had ended, but she was emotionally distraught. The plaintiff returned a few days later to pick up a few other personal belongings. After a few days, she returned a third time but was unable to enter because the defendant had changed the locks. The defendant testified that he had the locks changed under the advice of counsel. When the plaintiff came back a fourth time, the defendant kept Lucy in a closed upstairs bedroom.

The defendant testified that on repeated occasions, he was asked by multiple people to give Lucy to the plaintiff and he refused. The defendant admitted that while the plaintiff's

belongings were being moved out, the plaintiff's uncle and mother asked the defendant to return Lucy to the plaintiff, but the defendant refused. In a later text message, the plaintiff "begged" the defendant to return Lucy, but the defendant refused. The plaintiff testified that she was afraid to confront the defendant in person because the defendant was larger than her and could be abusive when he drank. The plaintiff testified that she spoke to the police, but they could not help her. The PJR to recover Lucy followed. Further relevant facts below.

PLAINTIFF'S POSITION

The law to be applied in this case is controlled by the replevin statute, General Statutes § 52-515, and *Angrave v. Oates*, 90 Conn. App. 427, 430, 876 A. 1287 (2005).

"[T]his 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. In Connecticut, an action of replevin is purely statutory in nature. General Statutes § 52-515 provides that '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.'" (Citations omitted, emphasis added in brief.)

"In Connecticut, replevin proceedings are governed by statute rather than by the rules that apply to common-law actions of replevin." *Cornelio v. Stamford Hospital*, 246 Conn. 45, 49, 717 A.2d 140 (1998). Inasmuch as the replevin statute was first enacted in 1949, case law prior thereto and pertaining to common law actions for replevin are not controlling.

The plaintiff has the burden to establish: (1) Lucy is a "good or chattel" within the meaning of General Statutes § 52-515; (2) she has a superior general or special property interest in Lucy as compared to the defendant's; (3) she has a right to immediate possession of Lucy; and (4) the defendant wrongfully detained Lucy from her. While people anthropomorphize dogs, our Appellate Court has stated that "[a] claim of replevin does not involve the best

interest of the dog, which is a chattel under General Statutes § 22-350 ('all dogs are deemed to be personal property')." *Angrave* at 430 n.3. The parties did not dispute element one – that Lucy is a good or chattel within the meaning of § 52-515.

As to the element of a superior general or special property interest in Lucy, Connecticut statutes apply to dog "owners" and dog "keepers." Connecticut statutes make a distinction between an "owner" and "keeper" of a dog. The only section applicable solely to an "owner" of a dog is General Statutes § 22-339c(a)(3)(A) pertaining to a certificate of rabies vaccination. General Statutes § 22- 339c(a)(3)(A) mandates that a rabies certificate contain "[t]he name and address of [the dog's] owner," among other things. The statute makes a distinction in subsection (b) between an "owner" and a "keeper," as § 22-339c(b), mandates that the "owner or keeper" of a dog shall keep a copy of the certificate.

The plaintiff's exhibit 3 is Lucy's March 7, 2023 rabies certificate, in the name of the plaintiff, issued eight months before the parties separated. The defendant testified that he knew of the rabies certificate from the time it was issued, he knew it was in the plaintiff's name, and made no effort to have the certificate changed despite his claim now to be Lucy's rightful owner. The plaintiff's rabies certificate in her name is prima facie evidence of her being Lucy's owner, and the burden shifts to the defendant to prove he is the owner. *American Home Mortgage Servicing v. Reilly*, 157 Conn. App. 127, 133 (2015) (holding that the "holder of a note satisfies the plaintiff's burden of demonstrating that it is the owner of the note because under [Conn. Gen. Stats. § 49-17], the holder is presumed to be the owner. . . .")

To counter the plaintiff's rabies certificate, the defendant on April 2, 2024 – the day before the first day of evidence – had Lucy re-vaccinated for rabies at Stone Veterinary Clinic, a new veterinary clinic for Lucy. The March 7, 2023 rabies certificate in the plaintiff's name clearly states

the vaccine type as “vaccine 3 year” and further makes clear the “Expiration Date – 3 years from 03-07-2023.” On the face of the March 7, 2023 rabies certificate, Lucy was not due to be re-vaccinated until March 3, 2026. The defendant is an experienced hospital nurse and should be expected to understand the import of a three-year vaccine. He admitted that Lucy’s vaccine did not expire until March 7, 2026. There was no need to have Lucy re-vaccinated two years early.

As the trier of fact, the court resolves issues of credibility. “[I]t is the trier’s exclusive province to weigh the conflicting evidence, determine the credibility of witnesses and determine whether to accept some, all or none of a witness’ testimony. (Internal quotation marks omitted.)” *Hoffer v. Swan Lake Ass’n, Inc.*, 66 Conn. App. 858, 861, 786 A.2d 436 (2001). The defendant’s testimony that he had Lucy re-vaccinated two years early, the day before trial, and under the “advice” of the new veterinarian, was not credible and not sufficient to rebut the plaintiff’s presumptive ownership established by the March 7, 2023, rabies certificate. The vaccination the day before the hearing was the defendant’s attempt to create evidence to support his claim to Lucy while she was in his possession and control, to the exclusion of the plaintiff. On cross examination, the defendant admitted when he took Lucy to Stone Veterinary Clinic, he knew Lucy’s rabies vaccine was not due.

As to the dog license (plaintiff’s exhibit 4) being in the defendant’s name, it carries little weight. General Statutes § 22-338 (a), entitled “Licensing of dogs,” states an “owner or keeper” of a dog “shall cause such dog to be licensed in the town clerk’s office where such dog is kept” Under § 22-339c(a), “Such [rabies] certificate shall be the official proof of rabies vaccination and shall be submitted to a town clerk” at the time of licensing. The Town of Watertown’s dog license application was offered as Exhibit 14. The plaintiff filled out the application and filled out the check to pay for the license. The defendant signed the check. It was the plaintiff as Lucy’s

owner that caused Lucy to be licensed. Indeed, the dog license application itself does not indicate that the defendant or the plaintiff is an owner or keeper. It is silent as to that issue. However, the plaintiff testified that the March 7, 2023 rabies certificate with the plaintiff's name as the owner was filed with the town, along with the license application. So, according to the rabies certificate required to be filed with the dog license application, the plaintiff owned Lucy.

Murphy's Paw's adoption paper (plaintiff's exhibit 1) lists both parties. Like the Watertown dog license application, the plaintiff filled it out. As our Appellate Court has made clear, dogs are chattel, and phrases like "adoption" are human efforts to anthropomorphize dogs. This is a case about possession of Lucy, not title to Lucy. As made perfectly clear in *Angrave*, a replevin action 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." *Angrave* at 430 n.3.

Because of the Murphy's Paw adoption paperwork, the court asked for law regarding partition actions, noting the similarity of weighing the equitable interests in partitioning real property with weighing the competing equitable interests to the chattel at issue in this case. "A partition action . . . although a creature of statute, is an equitable action" which invokes the court's equity jurisdiction. *Fernandes v. Rodriguez*, 255 Conn. 47, 59, 761 A.2d 1283 (2000).

Just like a partition action, the trial court in *Angrave* considered a "balance of equities." Based upon the evidence in *Angrave*, the trial court stated as follows: "Once one then returns to a balancing of the equities, it is also felt that plaintiff's entitlement is clearly superior. In terms of length of possession, length of care, exclusivity in cost-bearing for care, entry fees, and diagnostic radiology, the balance virtually entirely favors plaintiff." *Angrave v. Oates*, No. CV040352012, 2004 Conn. Super. LEXIS 3002, at *7-8 (Super. Ct. Oct. 8, 2004). ". . . equitable determinations

that depend on the balancing of many factors are committed to the sound discretion of the trial court.” (Internal quotation marks omitted.) *Wendell Corp. Trustee v. Thurston*, 239 Conn. 109, 114, 680 A.2d 1314 (1996). *Allstate Ins. Co. v. Palumbo*, 109 Conn. App. 731, 736, 952 A.2d 1235 (2008) “The determination of what equity requires in a particular case, the balancing of the equities, is a matter for the discretion of the trial court . . .” *Sunset Mortgage v. Agolio*, 109 Conn. App. 198, 203, 952 A.2d 65 (2008) “[T]he trial court may examine all relevant factors to ensure that complete justice is done . . . The determination of what equity requires in a particular case, the balancing of the equities, is a matter for the discretion of the trial court.” (Internal quotation marks omitted.)

The balance of equities favors the plaintiff in every way. At trial, the defendant used the word “primary” to describe how he believed the plaintiff was listed in Embrace Animal Hospital’s records. Primary best describes the plaintiff with regard to all aspects involving Lucy. In contrast, “incidental” best describes the defendant with regard to all aspects involving Lucy. Based upon the balance of equities discussed below, the plaintiff has a right to immediate possession of Lucy.

First, as to the adoption, the plaintiff coordinated every aspect of acquiring Lucy. The plaintiff made initial and follow-up contacts with Nicole Gallagher from Murphy’s Paw. The plaintiff selected Lucy and scheduled the appointment to meet her. She set aside money for the adoption, paid for the adoption, filled out the adoption document, purchased bedding, toys, and food in preparation for Lucy’s arrival and afterward. The defendant only attended with the plaintiff the appointment to meet Lucy, and subsequently reimbursed the plaintiff for half of the adoption. The plaintiff was primary to the adoption, the defendant was merely incidental to it.

Second, as to medical care and food, the plaintiff selected Embrace Animal Hospital, paid for all veterinary care and one emergency room visit. She paid for Lucy’s health insurance from

May 2022 to February 2024, and scheduled and took Lucy to all appointments, including the emergency appointment. The defendant only attended a couple appointments, and only with the plaintiff. The defendant was not listed anywhere in the veterinary records. Lucy's food was on autoship and the plaintiff paid for the food. The defendant did not reimburse the plaintiff for any food or medical costs. The plaintiff was the primary person, if not the sole person, with regard to Lucy's medical care and feeding - the defendant was merely incidental to them.

Third, as to dog training, the plaintiff selected a dog training company, paid for training that cost \$2,658.75, and took Lucy to most of her daily training. The defendant did not reimburse the plaintiff for the training cost. There were four to five training sessions per week for four weeks. Out of those roughly 16-20 sessions, which required a morning drop-off and daily pickup, the defendant only took Lucy "a couple times." The remaining days were taken care of by the plaintiff or her mother. The plaintiff was primary for the dog training, while the defendant was merely incidental.

Fourth, as to licensing, the plaintiff filled out the application, filled out the check, and sent the application with the rabies certificate that was in the plaintiff's name. The defendant only signed the check. The plaintiff testified that she filled out the dog license in the defendant's name because of the regulations of the defendant's condominium, to which she had no ownership interest. Regarding the licensing, the plaintiff was primary, while the defendant was incidental. All of the equitable considerations above favor the plaintiff in terms of adoption, medical care, feeding, training, licensing and vaccinations, payment of expenses and overall care of Lucy. In not one area could the defendant's actions or conduct be considered superior to those of the plaintiff.

As to wrongful detention, General Statutes § 52-515 requires a plaintiff have a general or special property interest " . . . which are wrongfully detained from [her] in any manner"

“Wrongfully” is defined as “in a wrong manner; unjustly; in a manner contrary to the moral law, or to justice.” Black’s Law Dictionary (Sixth Ed. 1990), p. 1613. The defendant suggested at oral argument that a wrongful detainer must involve some tortious act. That is not the law. The statute itself refers to chattel being “wrongfully detained . . . in any manner.” The legislature chose the word “wrongfully” and not “tortiously.” Our Appellate Court in *Angrave* did not use the word “tortiously.” The words are not synonyms and are not interchangeable. To recover in tort, a party must prove the existence of an actionable harm and actual damages resulting therefrom. See Black’s Law Dictionary (Sixth Ed. 1990), p. 1489. Under the replevin statute, a plaintiff does not have to prove damages above detainer of the chattel; detainer of the chattel is the harm, although damages for the detention may also be recovered. § 52-515 states: “The action of replevin may be maintained to recover . . . chattels . . . together with the damages for such wrongful detention.”

The defendant admitted that he would not give Lucy to the plaintiff and held Lucy in a closed room on one occasion while the plaintiff retrieved her belongings. The defendant denied the requests of the plaintiff’s uncle and mother to return Lucy. In one text message, the plaintiff “begged” for the return of Lucy in a text, but her request was ignored. The plaintiff was afraid to confront the defendant and take Lucy because the defendant was larger, and could be abusive and violent when he drank. The police told the plaintiff that they could not help her. In the face of the equities, the defendant’s exercise of dominion and control over Lucy to the exclusion of the plaintiff, his detention of Lucy and repeated refusal to hand her over after repeated demands, were all wrongful.

Lastly, the Defendant comes to the court with unclean hands.

“The doctrine of unclean hands expresses the principle that where a plaintiff seeks equitable relief, he must show that his conduct has been fair, equitable and honest as to the particular controversy in issue. Unless the plaintiff’s conduct is of such a character as to be condemned and pronounced wrongful by honest and fair-minded people, the doctrine of

unclean hands does not apply.” (Citation omitted.) *Bauer v. Waste Management of Connecticut, Inc.*, 239 Conn. 515, 525, 686 A.2d 481 (1996).

The “application of the doctrine of unclean hands rests within the sound discretion of the trial court.” *A & B Auto Salvage, Inc. v. Zoning Board of Appeals*, 189 Conn. 573, 578, 456 A.2d 1187 (1983). The doctrine may be applied in equity and contract actions. *Webster Bank, N.A. v. Banner Spring Corp.*, No. LLICV116004628S, 2012 Conn. Super. LEXIS 1705, at *23-24 (Super. Ct. July 3, 2012).

The defendant asks the court to find in his favor on the balance of equities, and also claims an agreement between the parties stipulated that Lucy would remain with him if the parties broke up (in his words) “for any reason.” Despite many text messages, in evidence, none contained such an agreement. The defendant admitted those were his words, and not the plaintiff’s. The defendant comes before the court with unclean hands. He precipitated the parties’ breakup by his texting another woman. The parties are in the present dispute as a result of the defendant’s conduct. No reasonable person would conclude the defendant’s actions in texting another woman were honest or fair minded when he was in a committed, cohabitating romantic relationship with the plaintiff. The defendant should not benefit from his wrongful conduct by being awarded Lucy.

Notwithstanding unclean hands, to establish an agreement, there must have been a meeting of the minds as to the terms and there must have been consideration. There was not sufficient evidence for either.

“In order for an enforceable contract to exist, the court must find that the parties’ minds had truly met. . . . If there has been a misunderstanding between the parties, or a misapprehension by one or both so that their minds have never met, no contract has been entered into by them and the court will not make for them a contract which they themselves did not make. . . . [A]n agreement must be definite and certain as to its terms and requirements. . . . [N]umerous Connecticut cases require definite agreement on the essential terms of an enforceable agreement. . . . [Furthermore,] [w]hether a term is essential turns on the particular circumstances of each case.”(Citations omitted; internal quotation marks omitted.) *Hawley Avenue Associates, LLC v. Robert D. Russo, M.D. & Associates Radiology, P.C.*, 130 Conn. App. 823, 828-29, 25 A.3d 707 (2011).

“The doctrine of consideration is fundamental in the law of contracts, the general rule being that in the absence of consideration an executory promise is unenforceable.” *State National Bank v. Dick*, 164 Conn. 523, 529, 325 A.2d 235 (1973). The defendant bears the proof of establishing any contract.

The defendant testified there was a text message detailing the alleged agreement, but despite the defendant offering numerous texts messages, none detailed an agreement that Lucy was to remain with the defendant if the parties broke up for any reason. The plaintiff denied such an agreement, and there was insufficient evidence that such an agreement existed, that its terms were certain, that there was a meeting of the minds, or that there was any consideration whatsoever. When asked about a text in which the plaintiff referenced a mutual breakup, the plaintiff said she was arguing to argue and that it was “word vomit.” The texts submitted by the defendant were messages from the plaintiff during the period she was distraught, upset at the cheating, grieving the loss of her relationship with the defendant, and beside herself at being repeatedly denied Lucy, who the plaintiff unquestionably viewed and treated like her child.

The equitable considerations weigh heavily in the plaintiff’s favor. The evidence established that the plaintiff’s property interest in Lucy far outweighed any property interest of the defendant. The defendant repeatedly and wrongfully denied the plaintiff’s requests to return Lucy. The defendant’s unclean hands caused the current situation. He should not benefit at law or equity in the face of his wrongful deeds. The plaintiff prays for a finding in favor on her claim for replevin, and order for immediate return of Lucy to her possession.

DEFENDANT’S CLAIMED FACTUAL BACKGROUND

The defendant met the plaintiff at Waterbury Hospital in 2021, began a dating relationship with the plaintiff in early 2022, and shortly, after the plaintiff moved into defendant’s

condominium located at 245 Cherry Ave, Unit 13. On April 19, 2022, the parties adopted Lucy from Murphy's Paw Rescue, for \$575.00. The Adoption Agreement lists both parties as joint owners and lists the home address for Lucy as the defendant's condominium, which he owns solely. The plaintiff paid the adoption cost but was reimbursed by the defendant from April 19, 2022, until November 14, 2023. The parties and Lucy lived at defendant's condominium. On November 14, 2023, the plaintiff learned of possible infidelity between the defendant and another female, which effectively ended the plaintiff's and defendant's relationship.

On November 15, 2023, the plaintiff went to the condominium and removed some of her belongings with her mother but did not take Lucy. A few days later, the plaintiff returned to remove additional belongings, but did not take Lucy. Sometime later, the plaintiff planned a secret, third trip to the condominium to take Lucy without the defendant knowing. She could not gain access to the house, as the defendant had changed the locks. The defendant did not change the locks in anticipation of the plaintiff coming to take Lucy, as he did not know of her intentions. The plaintiff returned to the defendant's condominium a fourth time with her mother and uncle to remove the remaining belongings and did not take Lucy with her. The defendant offered multiple times for the plaintiff to visit and have access to Lucy, but the plaintiff did not avail herself of that visitation. The plaintiff's conscious decision not to visit Lucy constituted an abandonment of Lucy.

The plaintiff testified that she would bear most of the monetary expenses for Lucy, and took her to veterinary appointments and training sessions. The defendant testified that he also provided care for Lucy but was not as active with veterinary appointments and training. The plaintiff testified that she had to take Lucy to the veterinary appointments because if she didn't, the defendant would not, and would let Lucy die. It should also be noted that, under cross-examination, the plaintiff admitted to lying on her affidavit under oath. Many of the expenses

borne by the plaintiff were not reimbursed by the defendant because there was an agreement between the two that the plaintiff would pay the expenses for Lucy and therefore would not have to pay rent or contribute to the household expenses. The defendant testified that the parties had an agreement under which Lucy would stay at the defendant's residence no matter what. The plaintiff and defendant have rabies vaccination certificates indicating ownership of Lucy.

Since being abandoned by the plaintiff on November 14, 2023, Lucy has been in the exclusive possession of the defendant. The defendant has been taking her to grooming and veterinary appointments, paying for her food and toys, and covering all other expenses associated with ownership of Lucy, including the roof over her head and supplies.

DEFENDANT'S POSITION

Our Appellate Court has provided a framework for courts in deciding replevin actions with pets, in *Angrave v. Oates*, 90 Conn. App. 427, 429, 876 A.2d 1287 (2005). In Connecticut, an action for replevin is governed by General Statutes 552-515, which 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." *Id.* at 430. Furthermore, the court noted: "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.* Because the dog is chattel, or personal property, the court does not engage in a "best interest of the dog" analysis . . . therefore, the court, in deciding a replevin action involving a dog, does not consider what party would be the better owner. *Id.* at fn. 3. Instead, a replevin action is not a title determination. As such, it is a comparison of the superiority or inferiority of the competing rights to possess a chattel.

Angrave involved a show dog named Lady Catherine and the following facts. The plaintiff obtained the approximately 14-month-old dog from defendant, and when the plaintiff took possession of the dog, the registration papers listed plaintiff and defendant as the dog's "owners." The parties agreed that defendant would receive her choice of two pups from the dog's first litter, and the registration papers would be re-executed to plaintiff alone. About two-and-a-quarter years after the plaintiff obtained the dog, she brought it back to the defendant for evaluation and exercise in the face of a hip dysplasia problem. The defendant, unhappy with the dog's condition, refused to return the dog to plaintiff and ultimately had the dog spayed, without plaintiff's knowledge. The court found that the defendant could not bar title to plaintiff by preventing the sole event necessarily precedent. In terms of length of possession, length of care, exclusivity in cost-bearing for care, entry fees, and diagnostic radiology, the balance virtually entirely favored plaintiff, according to the court. Based on the length of possession, length of care, exclusivity in cost-bearing for care, entry fees, diagnostic radiology, and the fact that neither party ever contemplated the dog being returned to the defendant's possession, the court held for the plaintiff.

Although not binding on this court, *Hardy v. Flowers*, 2021 Conn. Super. LEXIS 140, involves a very similar case, where former romantic partners broke up and one filed a replevin action against the other for immediate return of the dog. The parties mutually adopted the dog, Cadia. The defendant's name was the only name on the adoption agreement, the defendant purchased Cadia, and the plaintiff later reimbursed him for one-half the purchase price. Cadia lived together with the parties at the defendant's home in Torrington until the plaintiff decided to move from the abode. After that, the parties orally agreed to share possession of Cadia for several months, until the defendant unilaterally ended the shared possession of Cadia, asserted that he owned her and refused to permit any further visitation with the plaintiff. *Hardy* at 9. The *Hardy*

court held: “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. The court conclude[d], by probable cause, the defendant wrongfully detained Cadia” and ruled for the plaintiff. *Id.* at 11.

Also, factually similar is *Cox v. Stone*, 2014 Conn. Super. LEXIS 1185, where the plaintiff and defendant were in a dating relationship, and the plaintiff purchased the two dogs which he subsequently gave to the defendant’s children. *Id.* at 2. After a few years, they broke up and this action commenced. The defendant then took the dogs to the vet and obtained licenses from the Town of Bristol. The town Warden testified that once, when the dogs were on the loose, he gave a ticket to the defendant because the licenses were in her name and she therefore was the owner of the dog. *Id.* at 3. The defendant visited the plaintiff’s parents’ home three times to retrieve her personal property but did not take the dogs. *Id.* at 5. In denying the plaintiff’s writ of replevin, the *Cox* court concluded that while it was sympathetic to the plaintiff’s interest in the dogs, the plaintiff had failed to prove that he had a general or specific property interest superior to that of the defendant or that the dogs were wrongfully denied. *Id.* at 8.

Brennan v. Michalowski 2015, Conn. Super. LEXIS 1840, is somewhat factually similar, but instead of romantic partners, plaintiff and defendant were roommates who adopted a dog and the action commenced when one roommate moved out. They both contributed to the costs of the dog, Captain; were co-owners and emotionally attached to Captain. However, at one point, the defendant “came to plaintiff’s home, took the dog and notified the plaintiff the defendant had become the sole owner of the dog and that the plaintiff will no longer share in the custody and care of Captain. The defendant also refuses to allow the plaintiff to see the dog.” *Id.* at 1. The *Brennan* court held: “that the plaintiff had a ‘property interest’ in the dog arising from the common

ownership, including possession, which has been wrongfully detained from her as a result of the unilateral action of the defendant.” Id.

Finally, *Burch v. Smith* 2023 Conn. Super. LEXIS 2123, involves a purchaser and breeder of a dog named Wade. The plaintiff was the breeder, the defendant the purchaser. For various reasons, the defendant did not pay the full purchase price for the dog. The seller/plaintiff filed an action for breach of contract and replevin for return of the dog. The court found that because the defendant continued to care for the dog on a day-to-day basis, incurred various expenses for the dog, and provided exclusive care for the dog for the preceding 11 months, the court could not find that the plaintiff had a superior possessory interest and sided with the defendant.

If this court follows the analytical framework established in *Angrave, Hardy, Cox, Brennan* and *Burch*, it must hold in favor of the defendant. *Angrave* makes it clear that a dog is a chattel in the eyes of the law, and that a court should not engage in a “best interest of the dog” analysis. *Angrave* at 429. Moreover, *Angrave* makes it clear that the court’s analysis during a replevin action is not about who has the superior title but who was the superior possessory interest. Id. While certainly it seems that the plaintiff and defendant have 50/50 ownership interest in Lucy based on the Adoption Agreement, a replevin action requires this court to decide who has the superior possessory interest. The defendant submits that the plaintiff has not proven that she has a superior possessory interest as required by *Angrave*, nor has she proven there was an unlawful taking or detention of the chattel and therefore, the court must side with the defendant.

In determining who has the superior possessory interest, the *Angrave* court weighed several variables such as: who bore the costs of the dog, who had longer possession, who the dog was registered to, who cared for the dog longer. The court also looked at any agreement between the parties as to who would have possession of the dog. The *Hardy* court also looked at which

party bore the most expenses, which party's home the dog lived in, and whose name the adoption paperwork was under, et al. Similarly, the *Cox* court looked at who bought the dog, who cared for the dog, town records regarding the dogs and who paid most of the costs. The *Brennan* court heavily weighed the fact that the defendant had recent exclusive possession. *Brennan* at 2.

If this court looks at all of the factors outlined in the cases cited above, every one of them weighs in favor of the defendant. The defendant has had possession of Lucy since her adoption, in his house, registered to him through the Town of Watertown, has a rabies certificate identifying him as the owner, provides and pays for the day-to-day care for Lucy, and has had exclusive possession and exclusively provided financial support for her over the past five-plus months. Although the plaintiff testified that she bore most costs associated and devoted the most time to Lucy during her shared possession with the defendant, she was not contributing to household expenses or rent, which can be chalked up as a wash. The extra time she devoted to veterinary visits and picking Lucy up from more training sessions should not be weighed as heavily as the other factors above. The plaintiff spent a lot of time attempting to convince the court that because she has a rabies certificate that identifies her as the owner, the court must side with her. The rabies certificate is only indicative of the party who brought Lucy to the vet, which is only one small factor in a long list of other criteria this court must take into consideration. Moreover, the defendant's possession of the same documentation severely undercuts this argument. Every single day from the adoption of Lucy until now, Lucy has been in the possession of the defendant. He has never not been in possession of Lucy and Lucy has always lived at his house.

The *Angrave* court reasoned that because the parties never contemplated the dog being returned to the defendant, the defendant engaged in an unlawful taking of the dog. Here, the defendant testified that it was always the intention of the parties for Lucy to remain at his house

but, of course, the plaintiff denies that. The *Hardy* and *Brennan* courts based their holdings for the plaintiff on the defendant's wrong detention and taking of the dog, which highlights the importance of this element. *Hardy* involved a defendant who the court said unilaterally and unjustifiably went to the plaintiff's residence and took the dog, and then claimed it as his own; while *Burch* involved a defendant who refused to allow plaintiff access to the dog. Here, neither party took Lucy or unlawfully detained Lucy. Lucy has remained in the house she was in from the day she was adopted. The defendant has not taken or denied plaintiff access to Lucy. The plaintiff admitted that the defendant offered to arrange visits between the plaintiff and Lucy, and she declined. Because the defendant never unlawfully took or detained Lucy, the fourth element of replevin has not been proven by a preponderance of evidence.

The plaintiff has failed to prove by a preponderance of the evidence that she has a superior possessory interest or that the defendant engaged in any unlawful taking or detention of Lucy. Lucy remained in the defendant's home since her adoption. The defendant has maintained constant possession of Lucy, unlike the plaintiff, who hasn't seen Lucy in more than five months - by her own choosing. For the reasons above, this court should find in favor of the defendant, and continue to have Lucy to stay where she has been living for the past two years; where she is comfortable, happy, and healthy.

LEGAL STANDARD

The law to be applied in this case is controlled by the replevin statute, General Statutes § 52-515, and *Angrave v. Oates*, 90 Conn. App. 427, 430, 876 A. 1287 (2005).

“[T]his 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. In Connecticut, an action of replevin is purely statutory in nature. General Statutes § 52-515 provides that ‘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.” (Citations omitted, emphasis.)

“[I]t is the trier’s exclusive province to weigh the conflicting evidence, determine the credibility of witnesses and determine whether to accept some, all or none of a witness’ testimony. Furthermore, *the question of [i]ntent is [one] of fact . . .*” (Citations omitted; emphasis added; internal quotation marks omitted.)” *Hoffer v. Swan Lake Ass’n., Inc.*, 66 Conn. App. 858, 861, 786 A.2d 436 (2001).

Our General Statutes § 22-339c., Certificate of rabies vaccination, states: “(a) A certificate of rabies vaccination shall be (1) a form approved by the National Association of Public Health Veterinarians, (2) any form approved by the State Veterinarian, or (3) any form that has the following information regarding the vaccinated animal: (A) The *name and address of its owner*; (B) a description of the animal which specifies its species, breed, age, color or markings and sex; (C) the date of the vaccination, the duration of the immunity provided by the vaccination, the producer of the vaccine and the vaccine serial number; (D) the rabies tag number; and (E) the signature and license number of the veterinarian administering the vaccination. Such certificate shall be the official proof of rabies vaccination submitted to a town clerk in accordance with the provisions of section 22-338 or 22-339a.” (Emphasis added.)

LEGAL ARGUMENT

The law to be applied in this case is controlled by the replevin statute, General Statutes § 52-515, and *Angrave v. Oates*, 90 Conn. App. 427, 876 A. 1287 (2005).

“[T]his 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. In Connecticut, an action of replevin is purely statutory in nature. General Statutes § 52-515 provides that ‘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.” (Citations omitted, emphasis added in brief.) *Id.* at 430.

Also of note is the *Angrave* finding that “A claim of *replevin* does not involve the best interest of the dog, which is a chattel under General Statutes § 22–350 (“[a]ll dogs are deemed to be personal property).” (Emphasis added.) *Id.* at 430, fn. 3.

The applicable burden of proof standard for a replevin action is clear: the plaintiff must prove four elements by a fair preponderance of the evidence, a standard of proof of which this court presumes the parties are fully knowledgeable. The plaintiff has the burden to establish the following elements: (1) Lucy is a “good or chattel” within the meaning of General Statutes § Section 52-515; (2) she has a superior general or special property interest in Lucy as compared to the interests of the defendant; (3) she has a right to immediate possession of Lucy; and (4) the defendant wrongfully detained Lucy from her. As noted by the plaintiff, even though people anthropomorphize dogs, our Appellate Court has stated that “[a] claim of replevin does not involve the best interest of the dog, which is a chattel under General Statutes § 22-350 (‘all dogs are deemed to be personal property’).” *Angrave* at 430 n.3. The parties agree on element one: Lucy is a good or chattel within the meaning of § 52-515.

The facts presented by the parties demonstrate one fairly consistent theme, before the parties separated, and after the plaintiff moved from the defendant’s condominium. When “boiled down,” the parties agree on a vast majority of the evidence presented at the hearing, but not as to how those facts should determine the outcome of this case.

The parties agree that they met in 2021, began dating, and in 2022, moved in together at the condominium owned solely by the defendant. According to the plaintiff, there was no agreement on how the living expenses would be shared, nor any agreement on how Lucy’s

expenses would be shared. In April 2022, the parties discussed acquiring a dog, as the plaintiff was alone in the evening and wanted a dog for companionship. The plaintiff located Lucy, through Murphy's Paw, coordinated meeting Lucy where she was being housed, and set aside money for the adoption, bedding, toys and food. On April 19, 2022, the parties met Lucy and adopted her by executing a two-page form, signed by both parties. The plaintiff paid half of the \$575 adoption fee for Lucy. The defendant did not reimburse the plaintiff for any other expenses pertaining to Lucy.

The parties lived together until November 2023. On November 14, 2023, the plaintiff discovered that the defendant had been texting another woman. The next day, the plaintiff returned, gathered a few belongings and did not know if the relationship had ended, but was emotionally distraught. The plaintiff returned a few days later to pick up a few other personal belongings. A few days later, she returned a third time but was unable to enter because the defendant had changed the locks. The defendant testified that he had the locks changed under the advice of counsel. When the plaintiff came back a fourth time, the defendant kept Lucy in a closed upstairs bedroom. The plaintiff testified that she was afraid to confront the defendant in person because the defendant was larger than her and could be abusive when he drank. The defendant did not attempt to rebut her claim that he became abusive after drinking alcoholic beverages.

The defendant confirmed that the adoption agreement lists Lucy's home address as the defendant's condominium. The defendant confirmed the plaintiff learned of possible infidelity between the defendant and another female, which effectively ended their relationship. On November 15, 2023, the plaintiff returned with her mother, removed some of her belongings, returned a few days later for additional belongings, but did not take Lucy. The defendant asserts that the plaintiff planned a secret third trip to take Lucy but could not gain access to the house, as the defendant changed the locks. The defendant asserts that he did not change the locks in