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Re: *Gittman-Crowther v. Kent County Society for the
Prevention of Cruelty to Animals*
C.A. No. 8216-VCN
Date Submitted: April 16, 2013

Dear Counsel:

Petitioners Julia M. Gittman-Crowther (“Julia”) and Curtis J. Crowther (“Curtis”) (collectively, the “Petitioners”) seek to compel Respondent Kent County Society for the Prevention of Cruelty to Animals (the “SPCA”) to comply with Delaware’s Shelter Standards Law.¹ They request a permanent injunction addressing a wide range of actions subject to the Shelter Standards Law, including strict compliance with its euthanasia requirements, abandoning “temperament”

¹ 3 *Del. C.* ch. 80.

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tests used to determine whether the animal is “aggressive” or “unadoptable” and thus eligible for euthanasia, precluding euthanasia when the SPCA has available space, affording other animal shelters and rescue groups adequate advance notice that an animal is available for transfer as an alternative to euthanasia, and placing a monitor at the SPCA, at its expense, to assure compliance with the Shelter Standards Law.

The SPCA has moved to dismiss this action because, except for the euthanasia process governed by 3 *Del. C.* § 8004(d), there is no private right of action and the Petitioners lack standing to pursue their claims. The SPCA also contests this Court’s subject matter jurisdiction. It argues that a declaratory judgment, available as a remedy at law in the Superior Court, would be adequate under the circumstances. Finally, the SPCA asserts that the Complaint does not state a claim upon which relief may be granted under 3 *Del. C.* § 8004(d).

I. BACKGROUND²

The Petitioners, residents of New Castle County, Delaware, have three dogs and four cats. On December 8, 2012, a dog now known as “Maggie,” befriended the Petitioners’ son and a friend as they were walking in their development. Maggie was given food, water, and a place to rest. The Petitioners called the SPCA, which serves as the animal control agent for New Castle County. An SPCA animal control officer explained the procedures for dealing with stray dogs, including the option of keeping the dog. The Petitioners filled out a field intake form, which included a reference number which they were told could be used to track the dog.

Maggie was introduced to Petitioners’ dogs. One of the dogs, perhaps scared of Maggie, reacted with barking and growling. Maggie got along well with the other dogs. Nonetheless, the Petitioners, worried about aggression from one of their own dogs, decided to turn Maggie, who had been happy and friendly with them, over to the SPCA. They were disappointed that they could not keep Maggie.

² The facts are drawn from the Verified Complaint for Permanent Injunctive Relief Mandating Compliance with 3 *Del. C.* § 8004 and Stopping the Unlawful Killing of Animals in the Custody and Care of a Delaware Animal Shelter (the “Complaint” or “Compl.”).

Two days later, on December 10, 2012, Julia called the SPCA to check on Maggie. Although she used the tracking number from the field intake form, that reference did not work. Eventually, after describing Maggie, Julia was told that Maggie “was there and was ok.” Julia, after informing the SPCA representative that she and Curtis were the ones who had found Maggie, expressed a renewed interest in adopting her. Julia was told that Maggie would be evaluated for a few days and then put into the general dog population, that “rescue groups” take dogs frequently from the shelter, that dogs surrendered to the SPCA become the property of the SPCA, and that if dogs were transferred to other shelters, the SPCA’s policy would protect the dogs’ destinations as confidential.

The Petitioners, over the next few days, checked the SPCA’s website and found Maggie who could be identified by a “pet finder I.D.” but not through the field intake form tracking number.

On December 20, 2012, Curtis contacted the SPCA by email; he asked about the status of Maggie and when she would be ready for adoption.³ The SPCA responded that Maggie had not yet been evaluated. Curtis again contacted the

³ Compl. Ex. A.

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SPCA on December 25, 2012. He inquired about Maggie's status after noting that she was not on the SPCA's "hold" or "adoptable" lists. The next day, the SPCA asked whether Curtis was "interested in adopting the dog."⁴ A few minutes later, Curtis replied that he was interested in adopting Maggie and that he wanted to introduce Maggie to his dogs again "in the hopes" that they could "add her . . . to [their] family."⁵ No response was received. Julia telephoned the SPCA a few hours later and was told that Maggie had been tested and that she was "aggressive" with other dogs. Curtis then sent a lengthy email to the SPCA in which he expressed skepticism about the conclusion that Maggie was aggressive with other dogs.⁶ He reiterated their concerns about not receiving information about the dog if she had been transferred to another shelter or if she had been euthanized. Curtis went to the SPCA facility on December 26, 2012 and saw three empty runs.

⁴ Compl. Ex. D.

⁵ Compl. Ex. E.

⁶ Compl. Ex. F.

After a few phone calls that produced little information other than that Maggie was still alive, Curtis, on December 28, 2012, received an email from the SPCA which, in part, read:

Once an animal is surrender[ed] to our facility by the finder, owner, etc. we are then legally responsible for the animal. We do everything in our power to make sure that the animal can be placed for adoption. They go through a holding period, then evaluation to determine placement. Unfortunately, this dog did not pass evaluation and is only available for a rescue agency. If something were to happen where we adopted this animal out and it bit a person and/or another animal we would be liable.⁷

From their experience with Maggie and the SPCA, the Petitioners have come to believe that the SPCA's "evaluation" is an "unreliable exercise" developed as a pretext for euthanasia, that the SPCA fabricated the evaluation results showing that Maggie was "aggressive" when, in their experience, she had not acted in that fashion, and that the SPCA refuses to disclose what happens to an animal in order to establish a veil of secrecy behind which it can hide its illegal killing of animals. Finally, and understandably, the Petitioners concluded that the SPCA euthanized Maggie on or about December 26, 2012.

⁷ Compl. Ex. G.

II. ANALYSIS

At the threshold of litigation, a party must demonstrate a right “to invoke the jurisdiction of a court to enforce a claim or to redress a grievance.”⁸ Standing, as this concept is labeled, answers the question of who has the right to bring an action; it does not inform an analysis of the substantive merits.⁹

Although standing is a jurisdictional prerequisite in the federal courts because of Article III’s “Case or Controversy” requirement, “state courts apply the concept of standing as a matter of self-restraint to avoid the rendering of advisory opinions at the behest of parties who are ‘mere intermeddlers.’”¹⁰ There is no meaningful distinction between standing under federal law and standing under Delaware law.¹¹

⁸ *Dover Historical Soc’y v. City of Dover Planning Comm’n*, 838 A.2d 1103, 1110 (Del. 2003); see also *Stuart Kingston, Inc. v. Robinson*, 596 A.2d 1378, 1382 (Del. 1991).

⁹ The SPCA’s argument that this Court lacks subject matter jurisdiction because a declaratory judgment would suffice is rejected. Injunctive relief of the nature sought by the Petitioners falls within the core of this Court’s historical equity jurisdiction, and the Declaratory Judgment Act, 10 *Del. C.* ch. 65, does not, in this instance, deprive this Court of its traditional jurisdiction. See Donald J. Wolfe, Jr. & Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery*, § 2.03[b][2](ii)(5), at 2-69 to 2-71 (2013).

¹⁰ *Dover Historical Soc’y*, 838 A.2d at 1111 (quoting *Stuart Kingston*, 596 A.2d at 1382).

¹¹ *Oceanport Indus., Inc. v. Wilm. Stevedores, Inc.*, 636 A.2d 892, 904 (Del. 1994).

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A plaintiff, to demonstrate standing, must satisfy three elements:

First, the plaintiff must have suffered an “injury in fact”-an invasion of a legally protected interest which is (a) concrete and particularized, and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court. Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”¹²

Not long ago the question of Petitioners’ standing would have been relatively easy to resolve. Until July 23, 2010, the Shelter Standards Law provided that “[a]ny person may maintain a civil action to enjoin the continuation of a violation. If the acts sought to be enjoined are determined by the courts to violate this chapter, a permanent injunction against such acts shall be granted.”¹³ Thus, a member of the general population, without any specific personal grievance, could invoke judicial assistance to assure a shelter’s compliance with the law. The General Assembly, however, amended that provision to limit the statutory authorization of “any person” only to “maintain a civil action to enjoin the

¹² *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations omitted).

¹³ 3 *Del. C.* § 8005(c), *repealed by* 77 *Del. Laws* ch. 418 § 3 (2010).

continuance of the violation of § 8004(d) of this title. If the acts sought to be enjoined are determined by the courts to violate § 8004(d) of this title, a permanent injunction against such acts shall be granted.”¹⁴ Thus, unless the Petitioners seek to enforce Section 8004(d), they have no claim to statutorily conferred standing.

“Euthanasia method and procedure” is the legislative heading for Section 8004(d). Regulations are to address “acceptable methods of euthanasia in animal shelters and regarding sanitation and ventilation of euthanasia areas.”¹⁵ Animal shelters are required to “have a current policy and procedure manual regarding euthanasia.”¹⁶ Other aspects of Section 8004(d) involve who may perform euthanasia, support for the animal when being euthanized by injection, the presence of trained staff, and the use of sodium pentobarbital. The Complaint does not challenge the SPCA’s actions (or deficiencies) with respect to the matters listed in Section 8004(d). Perhaps the Petitioners would have standing under Section 8006(b) to pursue a claim under Section 8004(d), but, despite references to Section 8004(d) in the Complaint, they have not alleged any violation of

¹⁴ 3 *Del. C.* § 8006(b).

¹⁵ 3 *Del. C.* § 8004(d)(1).

¹⁶ 3 *Del. C.* § 8004(d)(2).

Section 8004(d).¹⁷ Thus, the Petitioners may not rely upon Section 8006(b) as a source of standing.

At least some of the claims which Petitioners are pursuing would have been authorized for judicial consideration under the earlier version of the Shelter Standards Law. Those claims, however, now do not fall within the scope of Section 8004(d). While the legislative change confirmed that the General Assembly was not conferring standing on everyone,¹⁸ it did not expressly preclude anyone from seeking to enforce compliance with the Shelter Standards Law. Thus, “[i]n the absence of a specific statutory grant of review,” the Court must turn to the standing analysis prescribed in *Dover Historical Society*.¹⁹

¹⁷ For this reason, the Complaint fails to state a claim upon which relief may be granted under Section 8004(d); to the extent that Petitioners base this action on Section 8004(d), it is dismissed under Court of Chancery Rule 12(b)(6).

The Petitioners seek a permanent injunction against “the continuation of the violations of § 8004(d) by the [SPCA].” Compl. ¶ 15. The Petitioners, however, did not allege facts in the Complaint that evidenced violation of Section 8004(d). Factual allegations that might have described violations of other parts of the Shelter Standards Law do not support a claim based on Section 8004(d).

¹⁸ The restrictive amendment does support the argument that the General Assembly did not believe it appropriate to authorize general enforcement of the Shelter Standards Law by the broad populace.

¹⁹ See *O’Neill v. Town of Middletown*, 2006 WL 4804652, at *29 (Del. Ch. Jan. 18, 2006).

Dogs can be loyal friends; their loss can lead to deep sorrow. Yet, they are personal property.²⁰ The Petitioners did not own Maggie. They had not kept her after Maggie found them; instead, they turned her over to the SPCA. They did not apply to adopt her. When asked if they were “interested in adopting” her, they responded affirmatively. They expressed an “interest” in adopting; it was not a definitive statement that they would apply to adopt. Indeed, the email in which they expressed their interest was qualified by an acknowledgement that another effort to introduce Maggie to their dogs was necessary.

In order to satisfy the first element of the standing test, the Petitioners “must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.”²¹ An indefinite statement of interest (not intent) to adopt does not create a “legally protected interest.” The process of acquiring a dog, as with many human endeavors, occurs on a continuum—running from first thoughts of a dog through making the dog one’s personal property. It is not necessary to locate the

²⁰ *Naples v. Miller*, 2009 WL 1163504, at *2 (Del. Super. Apr. 30, 2009).

²¹ *Dover Historical Soc’y*, 838 A.2d at 1110 (quoting *Society Hill Tower Owners’ Ass’n v. Rendell*, 210 F.3d 168, 175-76 (3d Cir. 2000)).

point on that continuum where the “legally protected interest” is created. The Complaint, when read in the light most favorable to the Petitioners, does not allege a reasonably conceivable legally protected interest in Maggie.²² The Petitioners had an interest in bringing Maggie into their home, but that is not a legally protected interest. It is not concrete; it is too uncertain. Maggie was under the control of the SPCA. Merely telling the SPCA that one is “interested” in a dog does not alter the dog’s status. The apparent death of Maggie affected the Petitioners in a “personal and individual way,”²³ because it affected their hopes or what they were thinking about doing. Their desire to acquire Maggie (after seeing if their dogs would accept her), however, had not matured to the point where a court can protect their aspiration.²⁴ Without that “legally protected interest” in

²² See *Central Mortg. Co. v. Morgan Stanley Mortg. Capital Hldgs. LLC*, 27 A.3d 531, 537 (Del. 2011).

²³ *Lujan*, 504 U.S. at 560 n.1.

²⁴ If someone else had acted more promptly and adopted Maggie, it is difficult to see how the Petitioners would have had any rights with regard to Maggie.

It is, of course, possible to have an equitable interest in personal property, but the Petitioners have not established that they had an equitable interest in Maggie.

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Maggie, the Petitioners’ concern amounts to “a generalized grievance shared by the population at large,” and that “cannot be a basis for standing.”²⁵

Because the Petitioners have not satisfied the “legally protected interest” element of standing, they have not met their pleading burden to invoke the Court’s jurisdiction.²⁶

III. CONCLUSION

For the foregoing reasons, this action must be dismissed.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap

cc: Register in Chancery-K

²⁵ *Duke Power v. Carolina Envtl. Study Gp.*, 438 U.S. 59, 80 (1978).

²⁶ It is not clear, other than with respect to allegations involving Section 8004(d), whether there is a private right of action under the Shelter Standards Law. *See, e.g., Cort v. Ash*, 422 U.S. 66, 78 (1975); *Schuster v. Derocili*, 775 A.2d 1029, 1036 n.42 (Del. 2001). In light of the Court’s conclusion that the Petitioners lack standing to pursue the claims asserted under the Shelter Standards Law, the Court need not address whether the current version of that statute creates a private right of action.