

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MISSOURI PRIMATE FOUNDATION,)
et al.,)
)
Plaintiffs and)
Counterclaim Defendants,)
)
v.)
)
PEOPLE FOR THE ETHICAL)
TREATMENT OF ANIMALS, INC., et al.,)
)
Defendants and)
Counterclaim Plaintiffs.)

Case No. 4:16-cv-02163

COUNTERCLAIM PLAINTIFFS' EX PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO SHOW CAUSE

Counterclaim Plaintiffs, People for the Ethical Treatment of Animals, Inc. and Angela Scott (together, "Plaintiffs"), move for an urgent temporary restraining order to immediately preserve chimpanzee Tonka alive in his current location, for an order requiring Counterclaim Defendant Tonia Haddix ("Haddix") to show cause why she should not be held in contempt of court for her perjurious statements—at several hearings and in sworn affidavits—that Tonka was deceased at the time those statements were made, and related relief. In support of this motion, Plaintiffs state as follows:

1. Plaintiffs are in receipt of a 28-minute audio recording captured on May 22, 2022, in which Haddix acknowledges that Tonka is alive, specifically discussing his purported current health condition and her non-expert veterinarian's supposed insistence that **Haddix euthanize Tonka during a pre-existing appointment tomorrow, June 2, 2022.**

2. Pursuant to Federal Rule of Civil Procedure 45 and this Court's order [ECF No. 352], Plaintiffs issued a subpoena to Orito LLC, a Delaware company, for "[a]ll documents and

electronically stored information reflecting whether the chimpanzee known as Tonka is currently living, and if living, his current health status.” [Goodman Decl. ¶. 2, Ex. A.]

3. In response to that subpoena, Orito LLC produced an audio recording and transcript of that recording. [Goodman Decl. ¶ 3, Exs. B-C.] In pertinent part, the recording includes Haddix discussing Tonka’s purported health condition at length, including that her veterinarian, Dr. Casey Talbot, says Tonka is “in congestive heart failure, again, really bad. And Casey wanted me to put him down the other day, but I just couldn’t do it. So he made an appointment for the 2nd of [June].... I mean, he’s going to make me stand firm on the appointment because he don’t think I’m being fair to Tonka.” She explains that she is apparently tasked with sedating Tonka before Dr. Talbot arrives for a euthanasia injection.

4. According to Haddix, it appears Dr. Talbot insists on euthanasia without doing “a health assessment,” or “lab work.” Further, Dr. Talbot is not an experienced chimpanzee veterinarian. He “has been w[i]th Fair Grove Veterinary Service since graduation from vet school in 2012. Dr. Talbot enjoys both food animal and small animal medicine and surgery with a special interest in beef production medicine.” [Goodman Decl. ¶ 4, Ex. D.]

5. Lest there be any remaining doubt that Haddix is fully aware that she is hiding Tonka in violation of the Court’s orders, she stated, “You realize if he was not a wanted fugitive, do you realize you can make a million dollars off of TikTok off of him?”

6. This critical evidence demonstrates that Tonka is still living, and that Haddix secreted him away and repeatedly lied under oath to prevent his Court-ordered transfer to the Center for Great Apes.

7. At a hearing on July 14, 2021, Haddix stated that “all the chimpanzees are present and ... cared for by me at the Festus facility, except for Tonka who passed away.” [Transcript of Contempt and Transfer Hearing, 26:1-4 (July 14, 2021).]

8. On August 16, 2021, in opposition to Plaintiffs’ contempt motion for her failure to transfer Tonka with the six other remaining chimpanzees, Haddix filed a sworn declaration with the Court in which she states, “On May 30, 2021, Tonka died. On that same date, Jerry Aswegan cremated Tonka’s body. After the cremation, he gave me Tonka’s cremated remains.” [ECF No. 338-2.] That same day, Haddix’s husband, Jerry Aswegan, submitted a sworn declaration describing how he “handle[d] the disposal of Tonka’s body.” [ECF No. 338-3.]

9. On January 5, 2022, the Court held a hearing on Plaintiffs’ contempt motion. At that hearing, Haddix similarly testified in detail about how she supposedly found Tonka deceased, and how she and her husband purportedly disposed of Tonka’s body.

10. At the contempt hearing, Plaintiffs presented uncontroverted evidence that Haddix’s and Aswegan’s tale of Tonka’s cremation was scientifically and physically impossible. The Court denied Plaintiffs’ motion, finding that Plaintiffs did not sufficiently establish that Tonka was then living, but also finding that Haddix failed to prove that Tonka died, and acknowledging that she provided inconsistent stories and appeared to be making up answers to questions under oath. At the conclusion of the hearing, the Court specifically held the matter open should Plaintiffs discover any new evidence showing that Tonka is alive.

11. Plaintiffs have now discovered such evidence. Haddix’s statements in this audio recording from May 22, 2022, demonstrate that Tonka is alive, and therefore that her—and her husband’s—repeated statements under oath to the contrary were patently false.

12. Upon information and belief, Tonka is currently being held on her 20-plus-acre property at 1835 State Rd. TT, Sunrise Beach, MO 65079 (“Property”). He appears to be held in the primary home structure, in light of her statements that she goes “down there” to see him “in the cage.”

13. Haddix’s elaborate lies have substantially jeopardized Tonka’s health. Since the six other chimpanzees were transferred to the Center for Great Apes more than ten months ago, where they receive round-the-clock care from a team of experienced staff and are seen by an expert veterinarian, Tonka has apparently again been confined to a basement cage.

14. Haddix and Aswegan have plainly committed perjury, having offered (1) false testimony (2) that concerns a material matter, the circumstances of which indisputably evidence their (3) willful intent to provide false testimony, rather than confusion, mistake, or faulty memory. *United States v. Bruguier*, 961 F.3d 1031, 1034 (8th Cir. 2020) (citations omitted)

15. This evidence, and particularly the assertions that Tonka is ill and that he may be euthanized tomorrow, support the issuance of a restraining order preserving the status quo of Tonka remaining and receiving care at his current location until Plaintiffs can have a designated experienced veterinarian examine him to determine whether Tonka is ill, and if so, whether he can be safely transported to an accredited facility. Plaintiffs are likely to prevail on their motion due to Haddix’s perjury, that Haddix euthanizing or absconding with Tonka will cause Plaintiffs irreparable injury, Haddix will suffer no harm in preserving the status quo, and preserving the status quo is squarely in the public interest.

16. Finally, Plaintiffs filed this motion *ex parte* due to Haddix’s demonstrated willingness to abscond with him in knowing contempt of court, and the potential that she will euthanize Tonka without any assessment of his well-being by a qualified veterinarian designated

by Plaintiffs. [Goodman Decl. ¶ 5.] For this reason, Plaintiffs request that law enforcement serve any Court order granting this motion on Haddix at the Property, and surveil the property until Plaintiffs' designated veterinarian examines Tonka and, if appropriate, he is removed from the Property.

17. Plaintiffs are amenable to a hearing on this motion by telephone or videoconference.

WHEREFORE, for these reasons, Plaintiffs respectfully request that the Court enter an Order:

- (1) Temporarily restraining and enjoining Haddix, and any agents or other persons or entities under her direct or indirect control, from euthanizing Tonka, taking any steps to end his life, or relocating Tonka from the Property in any manner;
- (2) Requiring that Plaintiffs' designee veterinarian examine Tonka as soon as possible after entry of this Order. To that end:
 - a. If Plaintiffs' designee veterinarian determines, in their sole discretion, that Tonka can be safely relocated, Plaintiffs shall transfer him to an accredited facility of their choosing within 7 days of the examination.
 - b. If Plaintiffs' designee veterinarian determines at the time of the examination that Tonka cannot be safely relocated soon after, Plaintiffs shall promptly submit a notice and report for the Court's further consideration.
- (3) Requiring all parties to cooperate to effectuate the veterinary examination and transfer in a manner that is safe for Tonka and for all persons present. To that end:

- a. Prohibiting Haddix, and any agents or other persons or entities under her direct or indirect control, from interfering with or impeding Plaintiffs' veterinary assessment and transfer.
- b. Requiring Haddix to continue to provide requisite food, water, and other care to Tonka pending his veterinary examination and transfer. However, to mitigate risks in connection with any sedation deemed required for his examination and transfer, Haddix, and any agents or other persons under her direct or indirect control, shall withhold all food from Tonka, including removing all remnants of food material from his enclosure(s), beginning at 8:00 p.m. on the night prior to the veterinary examination and transfer. Haddix shall provide clean, potable water at all times.
- c. Requiring Haddix to allow representatives of PETA and their designees, and their vehicles and equipment, full access to Tonka and entry to his enclosure and to all Property ingress and egress points in order to allow for the effectuation of the transfer.
- d. Haddix, and any agents or other persons under her direct or indirect control, must cooperate with any reasonable requests for information or instructions by PETA or their designee about Tonka and his enclosure(s) that are reasonably necessary to effect a safe transfer.
- e. Haddix, and any agents or other persons under her direct or indirect control, shall not permit any enclosures or cages at the Property to be unlocked other than at the request of representatives of Plaintiffs' designee or a United States Marshal.
Haddix, and any agents or other persons under her direct or indirect control, shall

not otherwise allow any animals to be outside of their shift or holding cages at any time, shall block access to outdoor enclosures and chutes, except upon request of Plaintiffs' designee, and shall ensure that no dogs or any other animals are outside of their respective enclosures or roaming freely while activities are occurring in conjunction with the examination and transfer, including but not limited to any time representatives of PETA or a United States Marshal are on the Property in connection with carrying out the examination and transfer.

- (4) Requiring the United States Marshal Service to serve Haddix with a copy of the Court's order at the Property, and to remain at the Property until the examination and transfer are complete. The purposes of its presence are to (a) provide security, (b) help to ensure safety of all persons, and (c) ensure compliance by all parties with orders of the Court. The United States Marshal Service is authorized to take all measures deemed in its discretion to be necessary to ensure the safety of all involved in the Transfer. This authorization includes but is not limited to:
 - a. Requiring all person(s) at the facility to identify and surrender or sequester any firearms within their possession while the United States Marshal Service is on site.
 - b. Ensuring that other than law enforcement personnel, only Haddix, representatives of PETA and their designees, and counsel to the parties, are permitted on the Property.
 - c. Requesting any other law enforcement personnel, including members of state or county law enforcement, to assist the Marshal.

- (5) Prohibiting Haddix from administering any sedation drug to Tonka until the examination and transfer, except when required in the event of a medical or public safety emergency. In the event Haddix administers or causes a third-party to administer any drug to Tonka between now and the examination and transfer, Haddix shall notify Plaintiffs' counsel within two hours of such administration.
- (6) Requiring Haddix to provide Plaintiffs, within four hours of receiving service of this order, all records of Tonka's care, husbandry, and/or treatment, and a list of all drugs and medications given to Tonka, from May 30, 2021, to present.
- (7) If Tonka should die naturally before Plaintiffs conduct the examination and transfer, requiring Haddix to notify Plaintiffs and the Court within two hours of such death, and to preserve Tonka's body and make it available to Plaintiffs to have a necropsy conducted.
- (8) Prohibiting the recording of video (including via any surveillance cameras at the Property), taking of photographs, or monitoring by unmanned aerial vehicle (i.e., drone) of the examination and transfer.
- (9) Prohibiting Haddix from sharing the date(s) and/or time(s) of the examination and transfer with any non-party.
- (10) Finding that no bond is required because Haddix will not suffer any harm as a result of this injunctive relief;
- (11) Requiring Haddix to show cause why she should not be held in contempt for her perjurious testimony;
- (12) Imposing contempt sanctions as the Court deems appropriate;

- (13) Referring Haddix and Aswegan's perjury to the appropriate federal authorities for criminal prosecution; and
- (14) Requiring Haddix to pay Plaintiffs' costs and attorneys' fees associated with the filing of this motion and their continued efforts to secure Haddix's compliance with the Consent Decree.

Dated: June 1, 2022

Respectfully submitted,

/s/ Jared Goodman
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CERTIFICATE OF SERVICE

I certify that on June 1, 2021, the foregoing was electronically filed ex parte with the Clerk of the Court using the CM/ECF system.

/s/ Jared Goodman