

DOCKET NO. 1973CV01215

In the matter of a Petition for a
Writ of Habeas Corpus

JOYCE ROWLEY, pro se
on Behalf of RUTH and EMILY,

Petitioner,

v.

CITY OF NEW BEDFORD,
Commonwealth of Massachusetts,
Respondent.

BRISTOL, SS SUPERIOR COURT

FILED

DEC 27 2019

MARC J SANTOS, ESQ.
CLERK/MAGISTRATE

SUPERIOR COURT

JUDICIAL DISTRICT OF
BRISTOL COUNTY

**PETITION FOR
A WRIT OF HABEAS CORPUS**

"Before the body is removed, the surviving elephant may be allowed ample time
to inspect the remains of the deceased..."

--2018 Buttonwood Park Zoo,
Elephant Management Protocol, p.24

Petitioner Joyce Rowley, pro se, acting on behalf of Asian elephants Ruth and Emily,
files this writ of habeas corpus seeking their immediate release from Buttonwood Park Zoo
pursuant to Massachusetts General Law 248 Section 36, Petition to Obtain Personal Liberty.
Rowley seeks that the Court determine that Ruth and Emily are legal persons under the law, and
that they are held against their will unlawfully.

As demonstrated below, both elephants have shown their desire to leave the zoo. They
have been held against their will for decades, without the right to autonomy--no choice of food,
of climate, of partners or living conditions. Their captivity has caused them pain and suffering,
and their living quarters are harmful to their health.

Their stalls are little more than prison cells (Exhibit 1, Photos of the interior of the "barn"

dated March 1, 2019, Ruth in barn,). Ruth and Emily live for at least 16 hours a day every day surrounded by steel bars that prevent them from moving more than two steps by four steps. In the winter time when it is too cold for them to go outside, they are inside for 24 hours each day, sometimes for weeks.

The 33-year-old concrete "barn" roof leaks. The floor is dirt and is removed only occasionally. Elephants defecate up to 150 lbs. of dung and urinate up to 40 gallons daily. Their dung is only removed during the day by keepers; their urine is not removed at all; it seeps into the dirt floor where it festers. It is unlikely that the subsurface drain is still functioning as the weight of two elephants, approximately 15,000 lbs, have compacted the dirt floor. As a result, in the past year, both have visible lesions on their faces, both have infected tusches (tusks), both have experienced infections on their feet.

I. Parties.

A. Petioners: Rowley is a resident and taxpayer of New Bedford and a member of the Buttonwood Zoological Society. Between 2010 and 2014, Rowley visited the zoo on a monthly and weekly basis. In 2014, when Ruth "escaped" the barn during a blizzard and nearly died, Rowley began visiting the elephants at the zoo on a near-daily basis.

She has observed the elephants for hours at a time. Her research on their lives and background, and on the physical, emotional and psychological needs of Asian elephants informed her decision to seek their freedom on their behalf.

Ruth and Emily have been held captive together at the Buttonwood Park Zoo, a City-owned entity, for over 33 years. Both elephants were wild born, and were captured by parties unknown in their native rangeland.

Emily, now 55 years old, is believed to have been captured in Thailand; Ruth's country of

origin is unknown. Both were taken from their families soon after birth. Emily was taken at an estimated 3 years of age and spent one year at Southwick Zoo (formerly Mendon Game Farm). Emily was then sold to the City of New Bedford for \$4,000 in 1967.

Ruth, now 59 years old, arrived at Benson's Animal Farm in 1963, at an estimated 3 years of age. Ruth was first sold to a private entity in 1978 who mistreated her. She was then confiscated in 1986 and transferred to the City zoo.

B. Respondents. The City of New Bedford, a Commonwealth municipality, claims ownership over the elephants based on the sale and transfer described above. Buttonwood Park Zoo is located at 425 Hawthorn Avenue, New Bedford, MA. It claims to have operated since 1894, when a 100-acre parcel was transferred to the City for parkland.

By oath and belief, neither the City nor the zoo is entitled to hold legal persons against their will under any circumstances.

II. Jurisdiction

This Court has jurisdiction over writs of habeas corpus. All parties live within Bristol County, and so this is the correct judicial district for the case to be heard.

Pursuant to Massachusetts g.l. 248 c. 35: "No person shall be deprived of his liberty or held in custody by any person or in any place against his will,...except by due process of law;..."

And, g.l. 348 c. 36:

"Whoever has reason to believe that another person is deprived of his liberty or held in custody in violation of the preceding section may file a petition, on the oath of the petitioner, in the probate court for the county where such person is believed to be detained..."

On oath and affirmation, this writ was filed in the correct jurisdiction.

III. Argument for Legal Personhood

Personhood is an evolving concept, and the definition of who is eligible has changed greatly over the past 56 years since Ruth and Emily arrived in Massachusetts. Rowley points to the following Massachusetts cases that exemplify those shifts and why Ruth and Emily should be conferred legal personhood.

Joseph Saikewicz was a severely developmentally disabled 67-year-old residing at Belchertown State School when he was diagnosed with a terminal case of acute myoblastic moncytic leukemia (*Belchertwon State School v. Joseph Saikewicz*, 373 Mass. 728 (1977)). His mental age was estimated at 2 years 8 months, and his I.Q. was 10. He was nonverbal and had not been able to communicate his pain level with staff, although he was in good health generally at the time the probate court reviewed a request for guardian ad litem appointment. He had no concept of death; in fact he was said to be disoriented outside of his environment and had been living at institutions his entire life. He was a “person incapable of making an informed consent” and was appointed a guardian ad litem.

On issuing its opinion, the Appeals Court first and foremost evaluated “the right of any person, competent or incompetent, to decline potentially life-prolonging treatment.” At no time did they *not* consider him a person due to his mental disabilities.

Less than ten years later, Massachusetts courts decided that a “viable fetus” was within the definition of “person” under vehicular homicide law (*Commonwealth v. Daniel Cass*, 392 Mass. 799, 467 N.E. 2d 1324 (1984)). There, the Supreme Judicial Court of Massachusetts, Barnstable, affirmed on appeal that the death of a fetus due to its viability outside of the womb was homicide. In doing so, it stated, “...in giving terms their ordinary meaning, the word 'person' is synonymous with the term 'human being.' An offspring of human parents cannot reasonably be considered to be other than a human being and therefore a person....”

At the time, this was a landmark case, giving personhood rights an unborn fetus. In so doing, the Court cited numerous cases where definitions had been changed by the courts:

"We think it is clear from long usage that the process of judicial definition of statutory terms is within the expectation of the legislature when it employs undefined terms in criminal statutes."

And:

"...Moreover, we note that when we clarify an evolving or unsettled area of law, we can make our decisions prospective in order to ensure fairness to a defendant (cite omitted)...Our consideration of whether we should apply our decision prospectively satisfies the rationale of the rule of strict construction, which, therefore, need not be applied. We may address and remedy unfairness through prospectivity analysis rather than mechanical application of the rule of strict construction...." (Cass, at 805).

By 1999, the definition of "person" stretched to include corporations. In a Massachusetts Civil Rights Act (MCRA) case, plaintiffs accused a corporation of intimidation, harassment and coercion in violation of their civil rights (*Robert A. Sarvis v. Boston Safe Deposit and Trust*, 47 Mass. Ap. Ct. 86 (1999)). This time, the definition was clearly stated by the legislature that a "person" includes: "...corporations, societies, associations, and partnerships."

Without a doubt, probate, civil and criminal Massachusetts courts' definition of "person" changed with the times to accommodate justice. It is time to consider the rights of beings that are more intelligent than incompetent humans or unborn fetuses, and living, breathing, feeling creatures, not non-human entities such as corporations.

IV. Dispelling the Myths of Elephants

In the past 50 years, as humans have been developing new ideas about what constitutes a person, those who have studied elephants have learned that elephants have more in common with human beings than most species. (Hart, Benjamin, Pinter-Wollman, Noa, *Large Brains and*

Cognition, Where do Elephants Fit In?, Neuroscience and Behavioral Reviews, Vol. 32, Issue 1, p. 86-98, 2008). Among these traits are large brains, long lives, dependent offspring, greatest volume of cerebral cortex, and long-term extensive spatial temporal and social memory. (Id).

They are one of only a handful of species that have self-cognition and, like humans, recognize themselves in a mirror [Joshua M. Plotnik, Frans B.M. deWaal, and Diana Reiss, *Self-recognition in an Asian elephant*, 103 PNAS 17053 (Nov. 7, 2006)]. Self-recognition is a higher order neural activity which is linked to understanding a 'self' as separate from 'others' [Motoaki Sugiura, et al, *Neural Mechanism for Mirrored Self-face Recognition*, Cerebral Cortex, Volume 25, Issue 9, September 2015, Pages 2806–2814, <https://doi.org/10.1093/cercor/bhu077> Published: 25 April 2014].

Elephants grieve [Carl Safina, PBS, "The Depths of Animal Grief, July8, 2015; National Geographic, "Rare video shows elephants "mourning" death, August 31, 2016) . They recognize and differentiate the bones of their own kind from others. They visit the graves of their conspecifics. They are traumatized by witnessing the slaughter of their relatives.

In fact, there are few "human" traits that aren't seen in elephants as well.

But because they are big (the world's largest land mammal), grey, have trunks instead of noses, and walk on four feet instead of two, human understanding of them has relegated them to disposable spectacles for amusement.

V. Ruth and Emily as "legal persons"

A. Both elephants have demonstrated their desire for liberty.

In 2011, Ruth was seen removing a rope tied to the only exit gate of the exhibit, and then trying to pick the lock on the chain that held the gate closed. [Exhibit 2, Ruth with trunk through the gate].

In 2014, as mentioned previously, Ruth "escaped" from the barn during a blizzard. Zoo staf failed to lock the barn door and Ruth pried it open and exited the barn (Exhbit 3, Standard Times report, January 5, 2014). The outside temperature was 7 degrees Fahrenheit, with wind chill factors bringing it down much lower (Exhibit 4, Weather for You archives, January 3, 2014). Hypothermia set in, and she likely became disoriented. When the zoo staff returned in the morning, they found her covered in snow and ice. It took five hours to resuscitate her--bring her back to normal breathing and normal shivering, according to zoo records.

These two incidents exemplify Ruth's ability to distinguish between captivity and liberty, and shows the lengths she will go to for freedom.

Emily also can differentiate between captivity and liberty. In a video taken about on December 18, 2018, she is seen first pulling on and then ramming the gate that exits the exhibit (Exhbit 5, Emily at the gate, <https://youtu.be/9PpudviT3QA>). It has been relocated due to a so-called "expansion" of the exhibit, but still forms the only way out of the exhibit.

Both elephants were present and watched as the exhibit was expanded in 2016. New posts were installed and steel cable pulled through them to prevent the elephants from escaping. At the last post, the cables were secured with steel eyebolts. Any time that Emily is fed near those posts, she can be seen twisting the eyebolts to loosen them. Guests frequently comment that she wants to get out of the exhibit when they see her doing this. In fact, one cable is visibly looser now.

VI. Remedy Sought

Rowley seeks the attached writ be approved and that the City release Ruth and Emily to her custody. Ruth and Emily have committed no crime, treason, felony, nor been convicted of such, civil or criminal process, nor held on mesne process for a civil action (g.l.c. 248 s.1). The City has no right to hold them against their will nor deprive them of their liberty.

Because of the passage of time, Ruth and Emily can no longer be released back to the wild, or what's left of it.

However, there are two warm-climate sanctuaries in this country that are ready and able to accept Ruth and Emily. Both are financially stable, have adequate elephant veterinary care, and the experience to care for elephants.

The Elephant Sanctuary in Tennessee is a 2,700-acre natural reserve of forests, fields, streams and lakes that has been home to over 24 zoo and circus elephants for two decades.¹³ zoos have donated their elephants to this sanctuary. They are financially well-positioned to take more elephants in and have agreed to take both Ruth and Emily.

The Elephant Refuge of North America in Attaapulcus, GA is a new 975-acre reserve designed and set up by one of the original co-founders of the Tennessee sanctuary, Carol Buckley. In addition to her experience with the sanctuary here, she has 20 years experience working with captive elephants in Southeast Asia. ERNA is financially capable and staffed for up to 10 elephants and has offered to take Ruth and Emily.

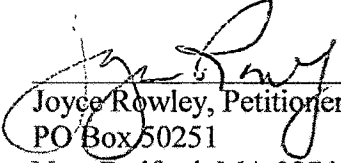
The cost of transport of both elephants to either sanctuary is estimated to be \$80,000, which Rowley would expect the City to provide, given the decades of illegal confinement of both elephants that provided financial benefits to the City.

However, if one or both of the elephants should die prior to this writ being executed, Rowley seeks custody of the remains. The City's plan in the event of a death of an elephant is to necropsy them at the Crapo Hill landfill and inter what's left there. So much for "beloved" elephants at Buttonwood Park Zoo.

In death, their bodies are their own and should not be sold off. Neither tusk nor trunk, head nor tail, nor feet are to be sold off to the highest bidder; no "trophy" shall be made nor

"souvenir" kept.

Respectfully submitted,



Joyce Rowley, Petitioner, pro se
PO Box 50251
New Bedford, MA 02745
Ph: 508-542-8297