

<p>DAISHA CHILDRESS</p> <p>v.</p> <p>CHAD EDWARD SNYDER, JENNIFER SUZANNE SNYDER AND LEGACY BOXER RESCUE, INC.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>IN THE COUNTY COURT AT LAW</p> <p>COURT NO. TWO</p> <p>TARRANT COUNTY, TEXAS</p>
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PLAINTIFF’S THIRD AMENDED PETITION

TO THE HONORABLE COURT:

Daisha Childress, Plaintiff, files this third amended petition complaining of Chad Edward Snyder and Jennifer Suzanne Snyder (hereinafter called “the Snyders”) and Legacy Boxer Rescue, Inc. (hereinafter called “LBR”) and in support of this petition will show the following:

Discovery Control Plan

1. Plaintiff intends for discovery to be conducted under a Level 3 Discovery Control Plan pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

Parties

2. Plaintiff is an individual residing in Hood County, Texas. The last three digits of her Texas driver’s license number are 219 and the last three digits of her Social Security Number are 650.

- 3. Defendant, Chad Edward Snyder, has appeared and answered herein.
- 4. Defendant, Jennifer Suzanne Snyder has appeared and answered herein.
- 5. Defendant, Legacy Boxer Rescue, Inc., has appeared and answered herein

Jurisdiction and Venue

6. Pursuant to TEX. CIV. PRAC. & REM. CODE § 15.001(a)(3) venue is proper in Tarrant County, Texas because Legacy Boxer Rescue, Inc.’s principal office is in Tarrant County. The relief sought in this case is within the jurisdiction of this Court.

Facts of the case

7. Daisha Childress and her family own a boxer dog named “Tig.” Tig has been a

a loved and pampered four-legged member of the Childress family since the day he was brought home on June 6, 2015. He sleeps on their beds, relaxes on the furniture and stays indoors 24/7 except when he is let outside into the fenced yard to use the bathroom or when the family goes on walks or take trips in the car. The Childress family have always fed Tig a healthful diet, played with him and made sure all his health needs were met. He has received regular veterinary care and has always been current on his vaccinations and heartworm prevention. At Christmas, Tig has his own Christmas stocking. In May of 2016, Daisha Childress gave birth to a baby girl. She and Tig fell in love with each other. He watched her sleep, slept with her, and if she ever made a peep while she was asleep, Tig immediately rushed to her side to see if she was ok. She loves Tig as much as he loves her.

8. In April of 2018 while Plaintiff and her family were packing up their belongings to move to another residence, Daisha Childress put Tig outside in the fenced yard. Not long after she put him out, she noticed Tig was not there. He had somehow escaped from the yard. Daisha Childress and her husband panicked and immediately began driving around the area in Somervell County where they lived, looking for Tig. The Childress family spent the next several months desperately searching for Tig driving around, posting lost-dog notices on the internet and social media, calling veterinarians and animal shelters in the area, and recruiting friends to help them in their search. Right after he went missing Daisha Childress called the Glen Rose Animal Shelter and asked if a Boxer had been brought in. She was told no. She left her name and telephone number with the shelter and asked them to please call her if they took in a Boxer. She never received a call. Tig was not microchipped because he lived indoors and when he went outside, he was either in a fenced yard or with the family. Of course, in hindsight, the family wishes Tig had been microchipped and they will microchip him when they get him back.

9. Unbeknownst to the Childress family, the City of Glen Rose animal shelter had taken possession of Tig on April 22, 2018, not long after he went missing. Glen Rose kept Tig for 12 days, then delivered him to a person named Debbie Melson who “fostered” him for three days. On May 7, 2018, Melson drove Tig to the Hood County Animal Shelter. On May 17, 2018, Hood County gave Tig to Defendant, Legacy Boxer Rescue (LBR), a corporation that claims to be a “merchant” that sells dogs. LBR kept Tig in various foster homes until July 3, 2018 when it adopted him to the Snyder defendants.

10. In 2019 the Childress family learned that the Snyders have Tig. Daisha Childress

pleaded with them to return Tig or to at least allow the Childress family to, “love on him one more time.” The Snyders refused to respond to her pleas. The Childress family is devastated and heartbroken that Tig is gone from their lives and that the Snyders will not return him or even allow them to see him one last time. Daisha Childress brings this lawsuit to get him back.

11. Legacy Boxer Rescue, Inc. claims that it is a “merchant” that sells dogs and that the Childress family is not entitled to get Tig back because, under the Uniform Commercial Code, Tig is “goods” and he was “sold” to the Snyders who are “buyers in the ordinary course of business.” (See Defendants’ Motion for Summary Judgment, Pages 13-14.)¹ Plaintiff urges the Court to deny LBR’s request to deem dog adoptions from non-profit animal rescue organizations as “sales” of “goods” because this would have a devastating effect on animal adoptions in Texas. Non-profit organizations are required to collect sales taxes and remit them to the Texas Comptroller anytime they sell “goods” (such as t-shirts, coffee mugs, and other fundraising items.) If the court deems dog adoptions to be “sales of goods,” as LBR is requesting, it will cause rescue groups all over Texas to owe the Texas Comptroller enormous sums of money for uncollected and unremitted back sales taxes and require them to collect sales taxes in the future every time they adopt out an animal. This would likely force some rescue groups to shut down. Taxing animal adoptions would also reduce the number of adoptions of homeless and abandoned animals. In the end, it would result in more killing of innocent animals in animal shelters.

Request for Declaratory Judgment

12. The Supreme Court of Texas has held that pet dogs are “property in the eyes of the law” and a “special form of property.” *Strickland v. Medlen*, 397 S.W.3d 184, 185, 192 (Tex.2013). “A forfeiture of rights of property is not favored by the courts, and laws will be construed to prevent rather than to cause such a forfeiture.” *Id.*, citing *Kirby Lake Dev., Ltd. v. Clear Lake City Water Auth.*, 320 S.W.3d 829, 842 (Tex.2010). The Supreme Court has held that “[t]his rule is surely applicable (to a pet dog impounded by a shelter,) as ‘a beloved companion dog is not a fungible, inanimate object like, say, a toaster.’” *Lira v. Greater Houston German Shepard Dog Rescue, Inc.*, 488 S.W.3d 300, 304 (Tex. 2016), citing *Strickland*, 397 S.W.3d at 185-86.

13. Citing these cases, the Texas Supreme Court has held that the owner of a dog that is impounded by an animal shelter does not forfeit ownership just because there is an ordinance

¹ Legitimate non-profit animal rescue organizations do not “sell” animals to “buyers.” They adopt them out and accept either donations or adoption fees.

that allows the shelter to euthanize or adopt out an animal. *Id.*

14. The applicable City of Glen Rose ordinance does not expressly provide that an owner is divested of ownership of an impounded animal. *See* Glen Rose, Texas Code of Ordinances Art. 2.03.² Instead, it is nearly identical to the ordinance in the *Lira* case and simply states that an impounded animal may be euthanized or adopted. *Id.* Thus, according to the holding in *Lira*, Tig was still owned by Plaintiff when he was released from the Glen Rose Animal Shelter to the private citizen.

15. Hood County's ordinance provides that "an animal that has been impounded for running at large" becomes the property of the Hood County Animal Control and may be adopted out. *See* Hood County Animal Restraint and Rabies Control Order §5 (2006.) According to the clear and unambiguous language of the ordinance, the only animals that the city acquires ownership of are those that are "impounded for running at large." The ordinance does not address or apply to animals that are delivered or surrendered to the shelter or, for that matter, any other animals that come into the shelter's possession.³ The Hood County shelter did not impound Tig for running at large. Rather, he was delivered to the shelter by a private citizen who had been fostering him at her home for three days. Thus, according to the holding in *Lira*, the Hood County ordinance did not divest Daisha Childress of ownership of her beloved Tig. He was still owned by her when Hood County transferred him to Legacy Boxer Rescue and when that organization delivered him to the Snyders. According to the holdings of Texas Supreme Court, he is still owned by Daisha Childress today.

16. Daisha Childress brings this action under the Uniform Declaratory Judgments Act asking the Court to declare that she is the lawful owner of Tig, aka Bowen, and that she is entitled to immediately and permanently possess him.

Conversion

17. The Snyder defendants' refusal to return Tig to the Childress family constitutes conversion under Texas law. Daisha Childress brings this conversion claim against them and

² After this lawsuit was filed, the City of Glen Rose amended the ordinance to give the city ownership of impounded animals. This was done because, under the ordinance at issue here, the owner was not divested of ownership and, according to the *Lira* case, the city could not transfer ownership of its impounded animals.

³ There can be no other interpretation of the ordinance given the Supreme Court's pronouncement that the law "abhors a forfeiture of property" and an ordinance pertaining to impounded dogs "will be construed to prevent rather than to cause such a forfeiture." *Lira*, 488 S.W3d at 303; *Tex. Rice Land Partner, Ltd v. Denbury Green Pipeline-Texas, LLC*, 363 S.W.3d 192, 204 n. 34 (Tex. 2012).

requests the Court to order them to return Tig to his family.

Request for Injunction

18. Daisha Childress says that she will suffer imminent and irreparable harm or injury if a temporary injunction is not issued in this case and that she has no adequate remedy at law. Daisha Childress requests that, after notice and hearing, this Court issue a temporary injunction enjoining and ordering Defendants not to transfer possession of Tig to another person or remove him from the Court's jurisdiction during the pendency of this suit. Upon final trial, Daisha Childress requests that the Court issue a permanent injunction enjoining and ordering Defendants to deliver Tig to her.

Prayer

19. Daisha Childress prays for a judgment declaring that she owns Tig and is entitled to immediately and permanently possess him. Plaintiff further prays that this matter be set for hearing at the earliest possible date and that, after such hearing, the Court grant a temporary injunction as described herein and that, upon final trial of this cause, the Court enter a permanent injunction as requested herein. Daisha Childress is not seeking any money damages. She prays that she be awarded reasonable and necessary attorney's fees, court costs and such other relief, at law or in equity, to which she may be justly entitled.

Respectfully submitted,

/s/ Randall E. Turner

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

In accordance with Rule 21a of the Texas Rules of Civil Procedure, I hereby certify that on May 13, 2019 a true and correct copy of the above and foregoing document was served electronically through the electronic filing manager to the email addresses of all attorneys of record and pro se parties whose email addresses are on file with the electronic filing manager.

/s/ Randall E. Turner