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TARRANT COUNTY, TEXAS
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Mary Louise Nicholson
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NO. 2019-001047-2

DAISHA CHILDRESS,	§	IN THE COUNTY COURT
	§	
PLAINTIFF,	§	
	§	
VS.	§	
	§	AT LAW NO. 2
CHAD EDWARD SNYDER, JENNIFER SUZANNE SNYDER, AND LEGACY BOXER RESCUE, INC.	§	
	§	
DEFENDANTS.	§	TARRANT COUNTY, TEXAS

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S REQUEST FOR A TEMPORARY INJUNCTION AND MOTION TO DISMISS FOR WANT OF JURISDICTION

TO THE HONORABLE JUDGE OF SAID COURT:

Come now defendants Chad and Jennifer Snyder and Legacy Boxer Rescue in the above-styled and numbered cause and file Defendants' Objections to Plaintiff's Request for a Temporary Injunction and Motion to Dismiss for Want of Jurisdiction, and would respectfully show the Court the following:

I. OBJECTIONS TO PLAINTIFF'S REQUEST FOR A TEMPORARY INJUNCTION

Plaintiff cannot establish a probable right to relief under the Texas Uniform Declaratory Judgment Act.

1. "To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim." *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002) (citing *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex. 1993); *Sun Oil Co. v. Whitaker*, 424 S.W.2d 216, 218 (Tex. 1968)). Plaintiff's petition wholly

fails to meet each element that would entitle her to injunctive relief. Accordingly, the Court should deny the plaintiff's request for a temporary injunction.

2. Plaintiff seeks declaratory relief under the Texas Uniform Declaratory Judgment Act (TUDJA) in her sole cause of action, specifically that she "is entitled to immediately and permanently possess" Bowen[1] a boxer-breed dog the Snyders adopted from Legacy Boxer Rescue. 2nd Am. Pet. at ¶¶14, 19. In addition to seeking a temporary injunction to prevent the Snyders from transferring possession of Bowen or removing him from the Court's jurisdiction during the pendency of the lawsuit, plaintiff seeks that "[u]pon final trial, . . . the Court issue a permanent injunction enjoining and ordering defendants to deliver [Bowen] to her." *Id.* at ¶ 15.

Plaintiff has couched a conversion claim as a declaratory judgment action, preventing the Court from entering a temporary injunction.

3. The TUDJA is "merely a procedural device for deciding cases already within a court's jurisdiction rather than a legislative enlargement of a court's power." TEX. CIV. PRAC. & REM. CODE § 37.001; *see Lane v. Baxter Healthcare Corp.*, 905 S.W.2d 39, 41 (Tex. App.—Houston [1st Dist.], no writ) (quoting *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993)). The purpose of the TUDJA is to provide parties with an early adjudication of rights *before* they have suffered irreparable damage. *Harkins v. Crews*, 907 S.W.2d 51, 56 (Tex.App.—San Antonio 1995, writ denied). Accordingly, the TUDJA "does not enlarge the jurisdiction of Texas courts." *Id*. (citing *Firemen's Ins. Co. v. Burch*, 442 S.W.2d 331, 333 (Tex. 1968)). Litigants must present a "justiciable, actual, real controversy, and a protectable right, not a future or speculative right" because Texas courts "do not have jurisdiction to render advisory

[1] Plaintiff refers to Bowen as "Tig" in her petition where she asserts that she is the dog's owner. Defendants do not believe plaintiff is or ever was Bowen's owner, and defendants believe plaintiff will be unable to prove ownership should the Court deny defendants' plea to the jurisdiction and proceed to the merits of plaintiff's lawsuit.

opinions." *Id*. (citing *Laborers' Int'l Union of N. Am. v. Blackwell*, 482 S.W.2d 327, 329 (Tex. Civ. App.—Amarillo 1972, no writ). "A controversy is deemed justiciable when interested parties assert adverse claims upon facts which have accrued, and where a legal decision is necessary." *Id.*

4. The Texas Supreme Court has cautioned that "[c]reative pleading does not change the nature of a claim." *United Scaffolding, Inc. v. Levine*, 537 S.W.3d 463, 480 (Tex. 2017) (alteration in original) (quoting *Sampson v. Univ. of Tex. at Austin*, 500 S.W.3d 380, 386 (Tex. 2016)). The supreme court recently made clear that "[t]he gravamen of a claim is its true nature, as opposed to what is simply alleged or artfully pled, allowing courts to determine the rights and liabilities of the involved parties." *B.C. v. Steak N Shake Operations, Inc.*, 512 S.W.3d 276, 283 (Tex. 2017) (citations omitted). And the supreme court has long held that "a litigant's couching its requested relief in terms of declaratory relief does not alter the underlying nature of the suit." *Tex. Parks and Wildlife Dep't v. Sawyer Tr.*, 354 S.W.3d 384, 388 (Tex. 2011) (citing *City of El Paso v. Heinrich*, 284 S.W.3d 366, 370–71 (Tex. 2009); *Tex. Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002)).

5. A declaratory judgment action cannot be used as an affirmative ground of recovery to revise or alter rights or legal remedies. *Republic Ins. Co. v. Davis*, 856 S.W.2d 158, 164 (Tex. 1993) (*citing Emmco Ins. Co. v. Burrows*, 419 S.W.2d 665, 670 (Tex. Civ. App.—Tyler 1967, no writ). Nor can it be used as a mechanism to confer additional substantive rights upon parties. *Lane*, 905 S.W.2d at 41. Critically, a declaratory judgment action is not proper unless the declaration sought will resolve the controversy. TEX. CIV. PRAC. & REM. CODE § 37.008.

6. Finally, a party may not use a declaratory judgment action to determine potential tort liability. *Abor v. Black*, 695 S.W.2d 564, 566–567 (Tex. 1985). That is exactly what plaintiff in this case purports to do.

7. Here, plaintiff has couched her requested relief in the form of a declaratory judgment, but the gravamen of plaintiff's claim sounds in conversion. In Texas,

> [c]onversion is the unauthorized and wrongful assumption and exercise of dominion and control over the personal property of another to the exclusion of, or inconsistent with, the owner's rights. To establish a claim for conversion of personal property, a plaintiff must prove that (1) he owned or had legal possession of the property or entitlement to possession; (2) the defendant unlawfully and without authorization assumed and exercised dominion and control over the property to the exclusion of, or inconsistent with, the plaintiff's rights as an owner; (3) the plaintiff demanded return of the property; and (4) the defendant refused to return the property.

Henson v. Reddin, 358 S.W.3d 428, 434–35 (Tex. App.—Fort Worth 2012, no pet.) (internal citations omitted). Under Texas law, "[p]ets are property in the eyes of the law." *Strickland v. Medlen*, 397 S.W.3d 184, 185 (Tex. 2013).

8. Plaintiff alleges that she and her family own Bowen. *Id.* at ¶ 7. Plaintiff alleges that LBR and the Snyders unlawfully assumed and exercised dominion and control over Bowen. *Id.* at ¶ 13 Plaintiff alleges that she demanded Bowen's return. *Id.* at ¶ 9 And plaintiff alleges that the Snyders refused to return Bowen to her. *Id.*

9. Plaintiff's petition effectively seeks a declaration establishing the first *element* of her conversion claim coupled with injunctive relief. But affording such relief would amount to nothing more than an advisory opinion. *Lane*, 905 S.W.2d at 41. Determining Bowen's ownership, without more, establishes only a "future" or "speculative right" to his possession but does not prove all of the essential elements to plaintiff's conversion claim. *Id.*

10. Accordingly, the plaintiff is not entitled to a temporary injunction because she has not pled facts that establish a viable cause of action or a probable right to the relief sought. *Butnaru*, 84 S.W.3d at 204. Moreover, because the relief sought is merely advisory, the plaintiff's

claim is not justiciable. *Lane*, 905 S.W.2d at 41. Therefore, the Court should ultimately dismiss the plaintiff's suit for want of jurisdiction.

Plaintiff cannot prove she owned Bowen without proving that Glen Rose and Hood County failed to divest her purported title to Bowen.

11. Under the TUDJA, "[i]n any proceeding that involves the validity of a municipal ordinance . . . , the municipality must be made a party and is entitled to be heard . . . ." TEX. CIV. PRAC. & REM. CODE § 37.006(b). The TUDJA "thus contemplates that governmental entities may be—indeed, must be—joined in suits to construe their legislative pronouncements." *Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994). Plaintiff specifically challenges the validity of the City of Glen Rose and Hood County ordinances that divested Plaintiff's claimed ownership interest in Bowen in her petition *See* 2nd Am. Pet. at ¶¶ 12, 13. Therefore, to have a probable right to relief under the TUDJA, the City of Glen Rose and Hood County must be joined to this suit.

12. Plaintiff may argue that her petition does not challenge the validity of the municipal ordinances but rather the legal effect of the ordinances once properly construed. But this argument requires the Court to presume the plaintiff's interpretations of the applicable ordinances (i.e. questions of law) are correct. For instance, plaintiff alleges that "[t]he applicable City of Glen Rose ordinance does not expressly provide that an owner is divested of ownership of an impounded animal." *Id.* at ¶ 12. But Glen Rose City Ordinance 2.01.001 defines an "owner" of an animal as "[a]ny person, firm or corporation who has right of property in an animal or who harbors an animal or allows an animal to remain about his or her premises for a period of 10 days." Glen Rose, Tex., Code of Ordinances ch. 2, § 2.01.001 (2007). The City of Glen Rose "harbored" and "allowed" Bowen to "remain about [its] premises for a period" of 12 days. *See* Defs' Mot. for Summ. J. at Ex. B (affidavit of Tammy Ray, the animal control officer with Glen Rose Animal Control Shelter).

Because the ordinance does not define "person," the Texas Code Construction Act "appl[ies] unless the [ordinance] or context in which the word or phrase is used requires a different definition." TEX. GOV'T CODE § 311.005. The Act defines "Person" as a "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." *Id.* at § 311.005(2). Therefore, based on the ordinance's plain language, the City of Glen Rose became Bowen's owner—divesting plaintiff's alleged ownership interest—after it harbored Bowen for 10 days. Although this ultimately shows that the ordinance divested plaintiff's alleged ownership interest in Bowen, warranting dismissal on the merits of her claim, plaintiff's contrary assertion in her petition establishes she is challenging the ordinance's validity. Accordingly, and because the plaintiff has not joined the City of Glen Rose to this lawsuit, she cannot show a viable cause of action or a probable right to relief. Therefore, the Court should deny plaintiff's request for a temporary injunction.

13. Plaintiff's petition includes a similar analysis and legal conclusion with respect to Hood County's applicable animal control order. *See* 2nd Am. Pet. at ¶ 13. As an initial matter, plaintiff's legal conclusion is based on allegations contradicted by the sworn testimony of animal control officers Tammy Ray (City of Glen Rose) and Kelly McNab (Hood County), which establish that Hood County became Bowen's owner after Glen Rose gave Bowen to Hood County, *not* Friends for Animals. *See* Defs.' Mot. for Summ. J. at Exs. B, C (affidavits of Tammy Ray, the animal control officer with Glen Rose Animal Control Shelter; Kelly McNab, Hood County Animal Control Officer). Regardless, plaintiff's interpretation of Hood County's animal control order requires a similar presumption of truth about a question of law of which she is not entitled.

14. Plaintiff's interpretation of Hood County's animal control order is an effort to read language into the order that does not exist. Plaintiff concludes that because Hood County received

Bowen from a third party, it did not "impound" Bowen for "running at large." *See* 2nd Am. Pet. at ¶ 13. Therefore, the express language in Hood County's order divesting a prior owner's interest in a dog after a 72-hour hold does not apply in this case. *See* 2nd Am. Pet. at ¶ 13. Plaintiff's conclusion requires assuming (1) Glen Rose did not gain ownership of Bowen by operation of its ordinances, and (2) Glen Rose's transfer of Bowen to Hood County changes the definitions of "Impound" and "At Large" under Hood County's order. Assuming the City of Glen Rose did not own Bowen before it gave Bowen to Hood County, plaintiff's interpretation of Hood County's order is baseless.

15. Hood County defines "Impound" as "the apprehending, catching, trapping, netting, tranquilizing, *confining* or, if necessary, the destruction of any animal by the Animal Control Authority." Hood County, Tex., Animal Restraint and Rabies Control Order § II.P. (2006) (emphasis added). Hood County defines "At Large" as "any animal that is off the premises of its owner's real property and not restrained by a competent person." *Id.* § II.E. Hood County's order requires

> [a]n animal that has been impounded for running at large (excluding livestock) will be held for 72 hours, . . . to give the owner time for reclamation. . . . At 72 hours of impoundment, if the animal has not been claimed, it then becomes the property of Hood County Animal Control.

Id. § V.C., D.

16. Plaintiff cannot dispute—and in fact admits in her petition—that Bowen was running at large[2] under Hood County's definition. *See* 2nd Am. Pet. at ¶ 7 ("[Bowen] escaped from [plaintiff's] back yard."). Plaintiff cannot dispute—and in fact admits in her petition—that Bowen was impounded, under Hood County's definition, for running "at large" by the City of

[2] Defendants do not concede that Plaintiff is or ever was Bowen's owner.

Glen Rose. *See* 2nd Am. Pet. at ¶ 8 ("[T]he city of Glen Rose animal shelter had taken possession of [Bowen] not long after he went missing."). Reading the clear and unambiguous language of Hood County's animal control order, Hood County divested any prior ownership interest in Bowen when it took possession of Bowen for more than 72 hours because Bowen was "impounded" for running "at large." Nothing in the order requires that Hood County *initially* impound a dog for a dog in its possession to be subject to the County's animal control order. Plaintiff's faulty interpretation requires impermissibly adding "by Hood County" after "[a]n animal that has been impounded for running at large" to Hood County's order to have the plaintiff's desired legal effect. However, Hood County's Commissioner's Court—not the plaintiff—is tasked with adding language into Hood County's orders.

17. Although the proper construction of Hood County's order establishes that Hood County divested plaintiff's alleged prior ownership, assuming Glen Rose's ordinance did not already do the same, the plaintiff's effort to rewrite Hood County's animal control order shows that her petition, at a minimum, attacks the validity of the order. Accordingly, and because plaintiff has not joined Hood County to this lawsuit, the plaintiff cannot show a viable cause of action or a probable right to relief. Therefore, the Court should deny plaintiff's request for a temporary injunction.

II. DEFENDANTS' PLEA TO THE JURISDICTION AND MOTION TO DISMISS

Plaintiff failed to join the City of Glen Rose and Hood County.

18. Texas courts have long held that failure to join municipalities to an action brought under the TUDJA when the statute requires joinder deprives a court of jurisdiction. *See Comm'rs Court of Harris Cty. v. Peoples Nat'l Util. Co.*, 538 S.W.2d 228, 229 (Tex. Civ. App.—Houston [14th Dist.] 1976, writ ref'd n.r.e.) (holding that the requirement that the provisions now found in

TEX. CIV. PRAC. & REM. CODE § 37.006(b) are mandatory, depriving a court of jurisdiction if not followed); *see also id.* (holding that even if the "proceeding involve[s] the granting of a temporary injunction, rather than a trial on the merits, [it] does not change the jurisdictional nature of [the statute's] requirement"); *Leeper*, 893 S.W.2d at 446 (holding that the TUDJA "thus contemplates that governmental entities may be—indeed, must be—joined in suits to construe their legislative pronouncements").

19. Because Defendants have shown that the City of Glen Rose and Hood County should have been joined to this suit for declaratory relief but have not, *see supra* Part I, the plaintiff has not invoked this Court's jurisdiction and her claim should be dismissed.

Because the plaintiff cannot prove her conversion claim without requiring a factfinder to apportion fault against the City of Glen Rose and Hood County, the Political Question Doctrine deprives the Court of jurisdiction.

20. The Texas Legislature, the City of Glen Rose, and Hood County have plenary power to establish animal control statutes, ordinances, and regulations to secure the safety, health, and welfare of the public. *Vargas v. City of San Antonio*, 650 S.W.2d 177, 179 (Tex. App.—San Antonio 1983, writ dism'd). Because the plaintiff's claim sounds in conversion, an intentional tort, her claim is subject to the Texas Proportionate Responsibility Act. *Arceneaux v. Pinnacle Ent., Inc.*, 523 S.W.3d 746, 748 (Tex. App.—Houston [14th Dist.] 2017, no pet.); *see also* TEX. CIV. PRAC. & REM. CODE §33.002(a)(1). Because plaintiff cannot prove her conversion claim without requiring a factfinder to apportion the fault attributable to the City of Glen Rose and Hood County, this case is nonjusticiable due to the presence of an inextricable political question. *See generally Am. K-9 Detection Servs., LLC v. Freeman*, 556 S.W.3d 246 (Tex. 2018) (adopting the federal political question doctrine). Accordingly, the plaintiff's claim should be dismissed for want of jurisdiction.

III. PRAYER

WHEREFORE, premises considered, Defendants Chad and Jennifer Snyder and Legacy Boxer Rescue, pray that the plaintiff's request for a temporary injunction be denied and her entire action be dismissed for want of jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of March 2019 a true and correct copy of the foregoing document was forwarded to all parties as shown below pursuant to the Texas Rules of Civil Procedure.

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