

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

NONHUMAN RIGHTS PROJECT, INC., on behalf of Prisoner A (aka Louie), Prisoner B, Prisoner C, Prisoner D, Prisoner E, Prisoner F, and Prisoner G (“DeYoung Prisoners”),

Docket no. 369247
Menominee Circuit Court
LC Case No. No. 23-17621-AH
Hon. Mary B. Barglind

Petitioners-Appellants,
vs.

DEYOUNG FAMILY ZOO, LLC and HAROLD L. DEYOUNG,

Defendants-Appellees.

**BRIEF AMICI CURIAE OF
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STATEMENTS OF INTEREST OF AMICI CURIAE

ATTORNEYS FOR ANIMALS

Attorneys for Animals is an organization of Michigan lawyers, law school graduates, law students, certified legal assistants and others, who believe the legal system is an important tool in protecting animals and bettering their lives.

ANIMAL LAW SECTION, STATE BAR OF MICHIGAN

The Animal Law Section of the State Bar of Michigan provides education, information and analysis about issues concerning the place of animals within the legal system.

PROFESSORS DAVID FAVRE AND ANGIE VEGA

Professors David Favre and Angie Vega are part of the Animal Law Project at the Michigan State University College of Law.

Amici curiae respectfully direct the court's attention to both historical precedent and contemporary legislative and scholarly recognition of the status of nonhuman animals as equivalent to that of other "persons" within the common law.

Pursuant to MCR 7.312(H)(5), counsel for amici curiae states that no counsel for a party authored this brief in whole or in part and that no party made a monetary contribution intended to fund the preparation or submission of the brief.

STATEMENT OF QUESTIONS PRESENTED

I.

IS THERE PRECEDENT FOR TREATING ANIMALS AS “PERSONS” WITHIN THE LEGAL SYSTEM?

Petitioners-Appellants answer "YES."

Respondent-Appellee would answer "NO."

The trial court answered "NO."

Amici curiae answer "YES."

INTRODUCTION AND SUMMARY OF ARGUMENT

This matter presents an issue of first impression in Michigan and, in fact, one that has been addressed to only a limited extent in other jurisdictions.

In the case at hand, the appellants are seven chimpanzees and their human advocates. The petitioners, through their attorneys, sought to invoke the remedy of habeas corpus to seek release from their unlawful detention. Whether the right to petition for habeas relief is available to them is the crux of the matter. The trial court dismissed the case in a single sentence, finding that the petitioners were not “persons.”

Petitioners argue, in the trial court and on appeal, that it is the courts’ responsibility to adapt the common law to evolving changes in society. Amici respectfully direct this Court’s attention to several relevant perspectives on this issue.

First, during a considerable period of jurisprudence, extending even into the twentieth century, animals could be, and often were, treated in the same manner as humans when they violated the law. A decision holding that the petitioner-chimpanzees are “persons,” then, is not without precedent and need not be construed as an entirely-new departure from Western law.

Second, contemporary laws have begun to accord animals some of the rights and privileges available to humans. In particular, all of the states of the United States of America now permit a (human) testator to create an enforceable trust in favor of an animal. This legislative recognition of the special status of animals marks the modern development of providing animals with a form of legal “standing” in court.

Finally, legal theorists have produced a wave of analyses in support of creating legal “personhood” for animals. Elevation of the status of other groups, such as women, children, and

the formerly-enslaved, was once unthinkable, yet it is now inconceivable that such groups lack the ability to seek and vindicate their own rights, the time has arrived to do the same for animals.

Amici curiae respectfully request that this Court reverse the trial court's order.

STATEMENT OF FACTS

Amici curiae adopt the statement of facts appearing in petitioners-appellants' brief on appeal.

ARGUMENT I

PRECEDENT EXISTS FOR TREATING ANIMALS AS “PERSONS” WITHIN THE LEGAL SYSTEM.

(a)

For a substantial part of the last millennium, Western legal systems treated animals no differently from human beings.

In sixteenth-century France, a distinguished jurist, Bartholomew Chassenée, was appointed by the court in the diocese of Antun to represent a group of clients who had been charged with malicious destruction of property, i.e., the local farmers’ barley crop.¹ Advocate Chassenée employed a series of legal maneuvers that would be familiar to a contemporary lawyer. He challenged the adequacy of the summons; he obtained an order for summons by publication; and he pled the hostility of the venire to his clients. Ultimately, however, they lost by default, when they failed to appear in court. The only unusual, to a modern attorney, aspect of the case, was the identity of the clients – a group of rats.² A later historian described the event: “the ingenuity and acumen with which Chassenée conducted the defence, the legal learning which he brought to bear upon the case, and the eloquence of his plea enlisted the public interest and established his fame as a criminal lawyer and forensic orator.”³

Chassenée later became known for another animal trial, in which the defendant was a pig, a tale dramatized for a twentieth century audience by the BBC.⁴ Shortly before his death, in

¹ Evans, Edmund P., *The Criminal Prosecution and Capital Punishment of Animals* (London: William Hineman, 1906) at 18-19; Evans, Edmund P., *Bugs and Beasts Before the Law*, 1884(8) *Atlantic Monthly* 235, 235-236.

² Chassenée’s defense of the rats is retold in multiple sources, most of which reference one of Evans’, *supra*, English-language presentations.

³ Evans, *supra*, at 21.

⁴ *The Hour of the Pig* (1993), released in the United States as *The Advocate*. www.imdb.com/title/tt0107146.

1540, Chassenée agreed with a local judge that, as “even animals should not be adjudged and sentenced without having a proper person appointed to plead their cause,” a group of accused heretics were also entitled to representation.⁵

Far from being an aberration in this history of jurisprudence, trials of animals for offenses against humans have been reported on and discussed at multiple times and places. The Antun rats were only one example. The custom of putting animals on trial “extends at least as far back as ancient Greece.”⁶ Trials ““were conducted with all due process of law.”⁷

“Animal trials were first mentioned during the thirteenth century in northern and eastern France;” they became common practice in the later middle ages, reaching their peak of frequency and greatest geographic scope during the fifteenth, sixteenth and seventeenth centuries⁸

“[A]nimal trials and execution . . . [once] were a regular part of our Western jurisprudential history.”⁹ “[T]he practice of trying and punishing animals was a common occurrence in Europe’s courts.”¹⁰

There are among the official records in the French courts elaborate accounts of ninety-two legal processes against animals extending from 1120 to 1744, when

⁵ Evans, *supra*, at 20 (citation omitted).

⁶ Berman, Paul S., *An Observation and a Strange but True “Tale”: What Might the Historical Trials of Animals Tell Us About the Transformative Potential of Law in American Culture?*, 52 *Hastings L.J.* 123, 159, 145 (2000–2001)

⁷ Jamieson, Philip, *Animal Liability in Early Law*, 19 *Cambrian L Rev* 45, 46 (1988). See also Hyde, Walter Woodburn, *The Prosecution and Punishment of Animals and Lifeless Things in the Middle Ages and Modern Times*, 64(7) *U Penn L Rev & American Law Register* 696 (1916)

⁸ Cohen, Esther. *Law, Folklore and Animal Law*, 110 *Past & Present* 10, 11, 17 (1986)

⁹ Girgen, Jen, *The Historical and Contemporary Prosecution and Punishment of Animals*, 9 *Animal Law* 97, 98 (2003).; Sykes, Katie, *Human Drama, Animal Trials: What the Medieval Animal Trials Can Teach Us about Justice for Animals*, 17 *Animal L* 273 (2010-2011). See also Wikipedia, *Animal Trials*, accessed 4/30/24.

¹⁰ Girgen, *supra* at 106, 115.

the last trial and execution, that of a cow, took place. There are also many records of similar trials in the English court.¹¹

Animal trials have been document in “every European country - Belgium, Denmark, Russia, Germany, Italy, Portugal, Spain, Turkey, England and Scotland-as well as in the United States, Canada and Brazil.”¹² “[L]egal proceedings against animals were by no means confined to France and Switzerland, but occurred in almost every country of Europe. . .¹³ In Russia, a goat was sent to Siberia.¹⁴

“[T]he criminal prosecution and punishment of animals was a practice which survived even into the twentieth century.”¹⁵ A contemporary authority found that “judicial prosecution and punishment of [dangerous] animals was a phenomenon which prevailed almost to within living memory.”¹⁶ “[T]here is abundance of evidence that down to very recent times on the continent of Europe among the most highly developed peoples animals have been considered as responsible beings and so amenable to law. . .”¹⁷ “It is also said that animals are still tried and punished by the mountaineers of Kentucky and Tennessee.”¹⁸ In 1927, a dog in Virginia was

¹¹ Collins, Edmund, *Animals Tried in Court*, 19 *Our Animal Friends* 82, 82 (1891).

¹²Jamieson, *supra*; Srivastava, Anila, *Mean, Dangerous, and Uncontrollable Beasts: Mediaeval Animal Trials*, 40 *Mosaic* 127 (2007).

¹³ Hyde, Walter Woodburn, *The Prosecution and Punishment of Animals and Lifeless Things in the Middle Ages and Modern Times*, 64(7) *U Penn L Rev & American Law Register* 696, 708 (1916).

¹⁴ Hyde, *supra* at 712.

¹⁵ Jamieson, *supra* at 45 (1988)

¹⁶Jamieson, *supra* at 62. See also, generally, Macias, Francis, *Animals on Trial: Formal Legal Proceedings, Criminal Acts, and Torts of Animals*, In *Custodia Legis*, ISSN 2691-6592 (2/9/2016)

¹⁷ Hyde, *supra* at 703.

¹⁸ Hyde, *supra* at 713

“tried and convicted of sheep stealing.”¹⁹ In Switzerland in 1906, a dog was tried for participating in a murder.²⁰

As recently as 1916, animals were reportedly still being tried and punished by the mountaineers of Kentucky and Tennessee. Likewise, in 1924, Pep, a Labrador retriever, was accused of killing Pennsylvania Governor Pinchot’s cat. The dog was tried (without the assistance of counsel) in a proceeding led by the Governor himself. Governor Pichot found Pep responsible for the cat’s death and sentenced the dog to life imprisonment in the Pennsylvania State Penitentiary. Pep died of old age, still incarcerated, six years later. Around the same time, in Indiana, local authorities arrested a chimpanzee for smoking a cigarette in public, in violation of state law. The justice of the peace who presided over the case found the chimp guilty and levied a five-dollar fine against the animal.²¹

The animal defendants in these cases were treated no differently from humans on trial.

“When a domestic animal caused the death of a human being, the beast was treated in all ways possible the same as a human criminal.”²² Their trials “evinced a scrupulous concern for ensuring procedural justice to the nonhuman defendants.”²³ Trials were characterized by “painstaking insistence upon the observance of legal custom and proper judicial procedure.”²⁴ Animals that “came before the judgment seat, were arraigned, tried, and sentenced with all the formality and dignity observed in dealing with human beings.”²⁵ “Some of the lawyers

¹⁹ McNamara, Joseph P., *Curiosities of The Law: Animal Prisoner at the Bar*, 3 Notre Dame Law 30 (1927)

²⁰ McNamara, *supra* at 32.

²¹ Girgen, *supra*, 122; citations omitted.

²² Berman, *supra* at 148; “[C]ourts took these proceedings very seriously and strictly and adhered to the legal customs and formal procedural rules that had been established for human criminal defendants.” Girgen, *supra* at 99.

²³ Berman, *supra* at 151.

²⁴ Cohen, *supra* at 11.

²⁵ Collins, *supra* at 82.

appointed to represent animal defendants were jurists of ability and renown, and they made full use of their learning and strategic acumen in the service of their clients.”²⁶

“[A]nimal and human criminals were sometimes kept in the same prisons.”²⁷ While in pre-trial detention, they were even “entitled to the same amount of money each day for food as was provided for a human being.”²⁸

The strict observance of judicial (not necessarily human) procedure according to the letter of the law carefully exonerated these trials from any appearance of lynching. The animals got their just due.²⁹

The Swiss dog’s trial “was held with the greatest dignity and participants were as serious as those in most important cases that we have on the dockets today.”³⁰

(b)

Contemporary laws recognize the status of animals with some characteristics equivalent to humans’

When the much-reviled hotel heiress Leona Hemsley died in 2007 and left her dog, “Trouble,” \$12 million, there was a public outcry, as well as opposition from Hemsley’s biological family.³¹ While the dog’s “inheritance” was later reduced – to \$2,000,000 – the case is often cited as illustrative of the special status of animals. Had Hemsley’s estate plan been prepared

²⁶ Sykes, *supra* at 283.

²⁷ Girgen, *supra* at 111.

²⁸ Collins, *supra* at 85.

²⁹ Cohen, *supra* at 31.

³⁰ McNamara, *supra* at 34.

³¹ Buckley, Cara, *Cosseted Life and Secret End of a Millionaire Maltese*, New York Times (June 9, 2011).

with reference to § 408 of the Uniform Trust Code 2000 , “Trouble” would have been provided for without complication.³²

All fifty United States have now adopted legislation providing for “pet trusts.”³³ An animal trust “designates a human trustee who has the duty to take care of the money and distribute the money for the benefit of an identified animal.”³⁴ See, e.g., MCL 700.2722.

Legislative reformers have also addressed a related problem for trusts that have animals as beneficiaries-the lack of a "legal person" to enforce the trust. For example, in Arizona, like other states that have adopted the Uniform Probate Code (UPC) model, a pet trust can be enforced by a person either designated in the trust instrument or, if none, appointed by the court. Other states have followed the lead of the Uniform Trust Code drafters and enlarged the category of potential enforcers to include "[a] person having an interest in the welfare of the animal . . . California has the most expansive scheme of all, even allowing a "nonprofit charitable corporation that has as its principal activity the care of animals . . . [to] inspect the animal, the premises where the animal is maintained, or the books and records of the trust."³⁵

What the pet trust legislative changes indicate is that even a formalized legal system can change in response to alterations in underlying social mores. Where leaving money to an animal was once the province of eccentric millionaires³⁶, now any resident of the United States can see that his or her companion animals are provided for without risking a challenge from other potential heirs.

The development in this area of the law illustrates how the law can evolve to reflect shifts in the status of animals.

³² See, generally, Foster, Frances H *Should Pets Inherit*, 63 Fla L Rev 801 (2011).

³³ Favre, David, *The Future of Animal Law* (Elgar Publishing, 2021) at 89.

³⁴ Favre, *supra*, at 89.

³⁵ Foster, *supra* at 836. Footnotes omitted.

³⁶ Vanderberg, Madison, *8 Pets Who Inherited a Fortune*, www.businessinsider.com/richest-pets-in-the-world-2018-11.

(c)

Legal “personhood” for animals is a tenable construct.

i. Federal protection for chimpanzees supports finding that animals have a special status in the legal system.

In 2013, Congress passed PL 113-55. Title III, named the “CHIMP Act Amendments of 2013,” was codified as an amendment to the Public Health Service Act and appears at 42 USC 283m(a). Section (a) provides that the Secretary of Health and Human Services “shall provide for the establishment and operation in accordance with this section of a system to provide for the lifetime care of chimpanzees that have been used, or were bred or purchased for use, in research conducted or supported by” several federal agencies.

The United States District Court for the District of Maryland later held that the act mandated the transfer of all the chimpanzees held by a research facility to a sanctuary. *Humane Society of the United States v Nat’l Inst of Health*, Case no. 21-cv-00121 (D Md, Dec. 13, 2022).³⁷

ii. Court decisions suggest the possibility of animal “personhood.”

In *Tilikum v Sea World Parks & Entertainment, Inc*, 842 F.Supp2d 1259 (SD Cal, 2012), People for the Ethical Treatment of Animals attempted to sue an amusement park on behalf of a whale. While the suit did not succeed in relocating the whale, as one author noted “It is even arguable that by analyzing [the whale’s] right to a private action under the Thirteenth Amendment and his other available legal rights, the court implicitly acknowledged his underlying legal personhood.”³⁸

³⁷ On remand, however, the court declined continuing jurisdiction over the case., *Humane Soc of the United States v Nat’l Inst of Health*, No. 21-cv-00121 (D. Maryland, 12/13/23)

³⁸Boyle, Becky, *Free Tilly: Legal Personhood for Animals and the Intersectionality of the Civil and Animal Rights Movements*, 4 Ind J L & Soc Equality 169, 185 (2016).

After reviewing cases, similar to the present, in which advocacy groups have tried to obtain *habeas* relief for captive animals, Boyle, *supra*, concluded “[a]t the very least, these suits propose that these animals are legal persons for the purpose of a habeas proceeding there is a question regarding their freedom to bodily liberty.”³⁹ She went on, “perhaps nonhuman animals are entitled to legal personhood similar to that of corporations.” *Id.*

iii. Legal theorists find a basis for extending personhood to animals.

Law changes, slowly, but it does change. As one commentator put it, “[t]he use and abuse of animals is tightly woven into our world, which is why people who think seriously about it so often end up calling for broad changes that might seem unwise or even indefensible—at least, at first.”⁴⁰

Laws have evolved to accommodate some of those “broad changes that might seem . . . indefensible . . . at first”:

Inertia should not perpetuate a legal practice. . . Advocates of animal personhood point out that *the law once categorized women, slaves, and children as property*. When society changes, however, the law should change with it. Society has changed to such an extent that some animals are often treated as persons, thus suggesting that the law should conform to society's viewpoint and consider some animals as persons.⁴¹ [Emphasis added.]

When the Constitution was drafted in 1787, the idea of extending the franchise to working men, women and former enslaved persons would have likely have provoked condescending laughter from the Framers. Today, however, the right to vote of any of those groups is not only cognizable but embedded in the Constitution.

³⁹ Boyle, *supra* at 189-190

⁴⁰ Sanneh, Kelefa, *Beastly Matters*, *New Yorker*, May 6, 2024.

⁴¹ Seeps, Christopher D., *Animal Law Evolution: Treating Pets As Persons In Tort And Custody Disputes*, 2010 U Ill L Rev 1339, 1348 (2010)

RELIEF REQUESTED

Amici curiae the Animal Law Section of the State Bar of Michigan and Attorneys for Animals, respectfully ask that this honorable Court REVERSE the December 12, 2023 order of the Menominee Circuit Court, Mary Barglind, J.

_____/s_____

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