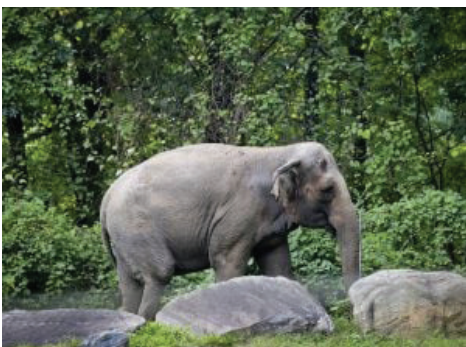


Lawyer Tells New York's Highest Court Elephant Isn't 'Happy' in Bronx Zoo

BY BRIAN LEE

Elephants' cognitive processes are on par with humans to such an extent that an Asian tusker named Happy should be released from the Bronx Zoo, under the state's unlawful imprisonment statute for people, an animal rights attorney argued to the state's highest court Wednesday.

Twelve months ago, the New York Court of Appeals became the first high court in an English-speaking



Bronx Zoo elephant "Happy" strolls inside the zoo's Asia Habitat in New York.

Photo: Beбето Matthews/AP

jurisdiction anywhere in the world to agree to hear such an appeal, according to the appellant, The Nonhuman Rights Project, a civil

rights organization whose mission is to work through litigation, legislation and education to secure fundamental rights for animals.

The organization, which states that its unique litigation challenges "archaic, unjust, millennia-old legal status quo that sees all non-human animals as legal 'things' with no rights," was represented by its consulting attorney, Monica Miller.

Miller cited five world-renowned elephant experts, who say elephants share many cognitive abilities with humans, including self-awareness, empathy, awareness of death, intentional communication, learning and memory.

Her citations included a Marc Bekoff article in a 2012 *Psychology Today*, which indicates elephants are known for their mental aptitude and deep emotional capabilities that are strikingly similar to human cognition, and a Ferris Jabr piece that states elephants are even smarter than previously realized, with distinct emotions, societies and lives, and an ability to form associations that foster the welfare of each member.



Photo Brian Lee/ALM

Monica L. Miller of Novato, California, consulting attorney for the Nonhuman Rights Project, speaks at a press conference on May 18, 2022 in Albany New York. Miller is seeking to have an Asian elephant that's been in the Bronx Zoo since 1977 released to an animal sanctuary, under New York's unlawful imprisonment statute.

A judgment for the organization would be viewed as a groundbreaking advance for animal rights in New York.

But the panel of seven judges appeared to exhibit skepticism.

Associate Judge Jenny Rivera asked if Miller's application meant that she couldn't keep a dog.

"Dogs can memorize words," Rivera said, "and I think most people who have dogs or any kind of domesticated pet of that way would say that they feel a special connec-

tion and a bond; they're like their family."

Miller said evidence about dogs' brains isn't available in the same way it is for elephants.

After making her oral argument, Miller told animal rights supporters who converged on the hearing, for which an overflow room was needed, "It has been a tremendous honor to argue for Happy's right to liberty today, not just for Happy but for all elephants."

Miller continued: "With your support, we made the strongest case possible for her freedom and responded to the judge's questions with all the rigor Happy deserves, pointing to centuries of precedent and the robust diverse support that are on the side of granting her release from unlawful imprisonment at the Bronx Zoo."

It was the organization's first success to reach the New York high court after four attempts in eight years, including failed bids to have the court consider the release of chimpanzees from the zoo.

Miller said Happy is in an environment that is unnatural and harmful to her and she can't be released into the wild, given the nature of the custody she's been under since 2006. Releasing her to an animal sanctuary that's close to her natural environment is the best scenario.

The respondent, James J. Breheny, executive vice president for the Wildlife Conservation Society and director of the Bronx Zoo,

was represented by Kenneth A. Manning of Buffalo.

Manning said Happy has been kept apart from other elephants in an enclosure of about an acre in the zoo for the past 16 years for safety reasons.

He told the judges that Happy is kept away from another elephant because they don't get along.

Manning said there were three affidavits from a chief veterinarian, curator and the zoo's director attesting personal knowledge of Happy's conditions in the zoo.

The attorney said it was "significant in this case that the so-called experts" had never seen Happy in the zoo.

"They didn't ask to examine or look at her, nor submit a court order during discovery," he said. "They submitted affidavits that were used in another case in Connecticut, cookie-cutter.

New York's statute against unlawful imprisonment states a person illegally imprisoned or otherwise restrained in his liberty, or one acting on his behalf, may petition for a writ of habeas corpus.

The Supreme Court dismissed the petition against Happy, saying the elephant is an intelligent being with advanced analytic abilities akin to human beings, but it was bound by case law that established that animals are not persons' entitled to rights and protections afforded by the writ of habeas corpus.

The Appellate Division, First Department affirmed the decision,

stating a writ of habeas corpus is limited to human beings.

The Nonhuman Rights Project previously sought a writ of habeas corpus on behalf of a chimpanzee named Tommy.

The Appellate Division, Third Department denied the petition, holding that a chimpanzee was not a person entitled to the protection of habeas corpus relief.

Citing the lack of precedent, the court said that "legal personhood has consistently been defined in terms of both rights and duties" and, "unlike human beings, chimpanzees cannot bear any legal duties, submit to societal responsibilities or be held legally accountable for their actions."

The Nonhuman Rights Project then brought new habeas corpus proceedings on behalf of Tommy and a second chimp named Kiko, again without success.

The Appellate Division, First Department said it found no legal support or precedent for concluding that the "human-like characteristics" of chimpanzees render them persons for purposes of state law.

It went on to say chimps lack the capacity or ability to bear legal duties, or to be held legally accountable for their actions.

Happy, 51, has been a fixture at the Bronx Zoo since 1977.