

NY High Court Says Asian Elephant 'Happy' Isn't Illegally Confined at Bronx Zoo

By Brian Lee

Human laws cannot be applied to a petition for an Asian elephant to be released from the Bronx Zoo, New York's highest court ruled Tuesday on a 5-2 vote.

The opinion, which is seen as a blow to the animal rights movement, held that a writ of habeas corpus protecting the liberty right of human beings from unlawful confinement had no applicability to an elephant who's resided at the Bronx Zoo for more than 40 years.

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.

Named for one of the characters from "Snow White and the Seven Dwarfs," Happy, 51, has been a fixture at the Bronx Zoo since 1977.

Written by Chief Judge Janet DiFiore, the opinion is consistent with court rulings that have determined that rights and responsibilities associated with legal personhood cannot be bestowed on animals.

Nonhuman Rights Project consulting attorney Monica Miller of Novato, California, had sought

habeas corpus relief on behalf of Happy, to secure her transfer to an elephant sanctuary.

The majority opinion notes that elephants' intelligence wasn't in dispute, and that they're deserving of proper care and compassion.

But two lower courts properly granted the motion to dismiss the petition for a writ of habeas corpus, the high court ruled.

Judges Rowan Wilson and Jenny Rivera dissented.

The respondent, James J. Breheny, executive vice president for the Wildlife Conservation Society and director of the Bronx Zoo, was represented by Kenneth Manning, a partner in Phillips Lytle of Buffalo.

In an email, Manning referred comment his client, who did not respond to an email Tuesday.

Miller did not return a message.

Miller had argued that elephants' cognitive processes are on par with humans to such an extent that Happy should be released from the zoo under the state's unlawful imprisonment statute for people.

Miller cited five world-renowned elephant experts, who say elephants share many cognitive abilities with humans, including self-awareness, empathy, aware-

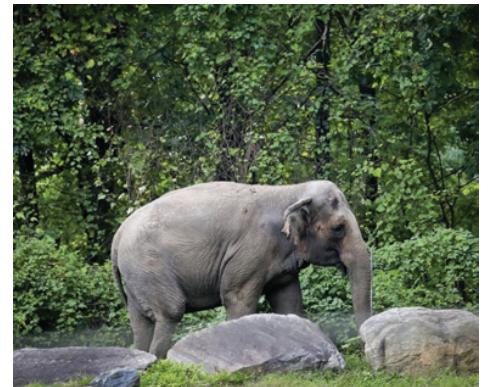


Photo: Beбето Matthews/AP

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

ness of death, intentional communication, learning and memory.

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 conservation society contended the animal is well-treated at the zoo, while NRP's demand was based on a philosophy and does not consider Happy's behavior, history, personality, age and special needs.

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.

The zoo's chief veterinarian submitted an affidavit detailing the zoo's efforts to ensure Happy's physical and psychological well-being and health. Removing Happy from her long-term home would cause her "substantial stress" and "create a serious risk to her long-term health," the affidavit read.

Breheeny said Happy has a history of not interacting well with other elephants. She's housed in an enclosure adjoining an elephant named Patty to interact with her through sound, smell and touch.

Breheeny pointed out—and an elephant sanctuary conceded—that unrelated elephants living together in captivity may have acrimonious relationships, and so a transfer couldn't guarantee Happy increased interaction with other elephants.

Miller contested, asserting that elephants such as Happy may be able to form positive social relationships in a sanctuary.

Wilson's dissent notes that the majority of judges cited legislation that provides numerous rights to animals, including the right not to be tortured, killed unjustifiably, abandoned or neglected; to have medical providers report suspected cases of abuse; the right of domestic animals to have trusts made in their behalf enforced by courts; and the right to have their best interests considered when their owners are divorcing.

"Notably, those rights parallel rights granted to children who, like animals, are not able to enforce those rights themselves, and may not even understand that they possess them," Wilson wrote.

Karen Copeland, an animal rights attorney in New York City, said Wilson's strong dissent could bode well for a path forward, and she commended the NRP for advancing the case as far as it did.

"It's disappointing," Copeland said of the majority opinion. "I can't totally call it a setback for animals, although it would have been nice had they won because it'd gotten so far, and I believe ultimately people will recognize that nonhuman animals do have greater rights, certainly than they're given here."

The New York Court of Appeals decision was seen as a blow for animal rights, but one attorney said the dissents could bode well for a path forward to protecting their welfare.

In 2021, the New York Court of Appeals became the first high court in an English-speaking jurisdiction anywhere in the world to agree to hear such an appeal, according to NRP, a civil rights organization whose mission is to work through litigation, legislation and education to secure fundamental rights for animals.

But Tamara Bedic, president of the New York City chapter of the National Lawyers Guild, called the decision a blow for animal rights in New York and "a sad day," though she said she wasn't completely surprised by the ruling.

Bedic, who chairs the chapter's animal rights committee, called for the abolishment of zoos and for courts to recognize the rights of animals.

"This whole argument about whether or not these animals should be recognized in law and in courtrooms has been lost when we taught the first primate sign language, which was years ago," Bedic said. "The fact that we're still stuck on this is just ridiculous and just shows you how pernicious zoos in fact are."

The Wildlife Conservation Society's Bronx Zoo has said that NRP, in filing the appeal, blatantly exploited Happy to advance its agenda and showed no concern for the individual animal.

NRP states that its unique litigation challenges "archaic, unjust, millennia-old legal status quo that sees all nonhuman animals as legal 'things' with no rights."

A trial 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.

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.