

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: PART 32

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MAUREEN WEBB,

Plaintiff,

DECISION and ORDER

Index No. 761/2008

MSN: 23

-- against --

CHRISTINE PAPASPIRIDAKOS,

Defendant.
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The following papers numbered were read on this motion:

Papers Numbered

Notices of Motion, Affirm., Exhibits.....1

CHARLES J. MARKEY, J.:

The motion by plaintiff Maureen Webb (“Webb”) for a default judgment, in this replevin action, is granted.

The plaintiff has commenced this action, her third lawsuit, in order to recover her dog. Plaintiff has instituted at least three litigations, all in this Court, to recover her pet: *Webb v. Weinstein*, index number 23400/05, *Webb v. Papaspiridakos*, index number 2732/2006, and the instant action under index number 761/2008. These actions concern the ownership of “Precious,” a Jack Russell terrier, originally purchased by the plaintiff and now in the custody of the defendant. The defendant submitted no papers in opposition to the plaintiff’s motion for a default judgment. See plaintiff’s affidavit and Ms. Pare’s affirmation. Defendant Christine Papaspiridakos (“Papaspiridakos”) filed a notice of appearance, on March 17, 2008, and later secured an extension of her time to answer to and including June 30, 2008. Papaspiridakos did not file an answer and is in default.

In this action, Webb has been litigating for four years to recover possession of Precious, born on July 7, 2001, according to the purchase papers. Plaintiff bought the pet whom she named “Precious,” for the sum of \$600.00 from a Brooklyn pet store on September 16, 2001.

For reasons still unclear, and alleged to be “due to Plaintiff’s living situation,” during February, 2005, the plaintiff was constrained to board the dog with the Howard Beach Animal Clinic (“HBAC”) and its veterinarian, Dr. Steven Weinstein (“Weinstein”), in Queens County. While paying HBAC’s bills in full for the boarding, plaintiff Webb, in June 2005, instructed HBAC to begin looking for a “new owner” and good home for her pet provided that she, Webb, gave final approval on the new owner. This condition is reflected in writing, on Precious’s

health records at HBAC. Plaintiff alleges that she would have conditioned her approval of the new owner on visitation rights.

Plaintiff further alleges that HBAC, its employee Lucy Abru, and veterinarian Weinstein transferred the dog to the custody of defendant Papaspiridakos's custody. Weinstein and HBAC, furthermore, allegedly did not secure Webb's consent before the transfer of custody to defendant and allegedly withheld any information from the plaintiff and her counsel concerning the person to whom Precious was given.

As an initial matter, this action for replevin is proper. Although the reported cases for replevin of a pet dog are few, in part because of the legal expense involved in maintaining such an action, the precedents are sufficient to sustain the present action for replevin. *See, e.g., Hotze v. Hotze*, 57 AD2d 85, 89 [4th Dept. 1977]; *C.R.S. v. T.K.S.*, 192 Misc 2d 547, 550 [Sup Ct N.Y. County 2002] [spouses fought for ownership of dog in divorce proceeding; court stated that "the time and money expended litigating this issue could have been used to negotiate and fund a settlement."]; *Central Westchester Humane Society v. Hilleboe*, 202 Misc. 881 [Sup Ct Westchester County 1952] [eloquent language extolling value of pets, especially dogs].

The Court has consulted the papers in the prior action between the parties and observes that, pursuant to a stipulation of discontinuance, all causes of action - - except that of replevin of the dog - - were dismissed with prejudice. Defendant has obviously been aware that this lawsuit has been an on-going affair and did not answer. *Webb v. Papaspiridakos*, under index number 2732/2006, by court order had been consolidated into *Webb v. Weinstein*, index number 23400/05. Justice Martin Ritholtz, in the Compliance Part, on the Court's own initiative, by order dated and entered on April 11, 2007, then dismissed the consolidated action for failure to prosecute. When a case is dismissed for failure to prosecute, by order made of the Court's own motion or initiative, the plaintiff is not barred from instituting another action. *See, DeMarco-McCluskey v. DeMarco*, 2006 WL 481216, 2006 NY Slip Op 50268 [Sup Ct Queens County 2006]. Thus, the maintenance of the present action, under index number 761/2008, seeking replevin, is proper.

One possible impediment and procedural lapse remains. This Court observes that when it saw the "blueback" or the legal back of the present unopposed motion, red flags figuratively jumped out since the plaintiff's attorney, Christine Pare, Esq., sets forth a New Jersey address. Further research by the undersigned confirmed that the plaintiff's counsel, Christine Pare, Esq., is indeed admitted in New York and has been admitted for the past 25 years. Ms. Pare, however, listed only a New Jersey office address on her papers, both at the end of the notice of motion and the blueback. Plaintiff's counsel is thus unfamiliar with Judiciary law section 470 which requires attorneys practicing in New York State to list a New York State address on their papers.

Judiciary law section 470 has been treated so strictly that in the Appellate Division, First Department dismissal of the action, although without prejudice, is required for an attorney omitting a New York address. *See, Kinder Morgan Energy Partners, LP, v. Ace American Ins.*

Co., 51 AD3d 580 [1st Dept. 2008]; *Neal v. Energy Transportation Group, Inc.*, 296 AD2d 339 [1st Dept. 2002]. The Appellate Division, Second Department, fortunately for Webb, is not as strict about this requirement. *See, Elm Management Corp. v. Sprung*, 33 AD3d 753, 754 [2d Dept. 2006]. The Court learned Ms. Pare's address in New York only because it was reflected in Papaspiridakos's notice of appearance, annexed as Exhibit H to the motion. In light of the Second Department's ruling, this Court will not dismiss this action and will not deny plaintiff ownership of the dog because of her counsel's failure to follow Judiciary Law section 470.

The Court is unsettled by the fact that defendant Papaspiridakos, although now acting pro se, has not opposed the present motion for a default judgment after having vigorously contested ownership of Precious over the past few years. The plaintiff, nevertheless, has made a prima facie and uncontested case for her ownership of Precious. The Court orders the delivery of Precious to the plaintiff Webb. Specifically, the Court orders that the plaintiff and her counsel Ms. Pare may seek enforcement of the present order for delivery of the dog to the plaintiff Webb by going to the defendant accompanied by either a Marshall or Sheriff of the City of New York or police officer[s] of the Police Department of the City of New York assigned by the local police precinct of the defendant's residence.

Plaintiff shall serve a copy of this order bearing the County Clerk's dated stamp, together with Notice of Entry, upon the defendant expeditiously.

The foregoing constitutes the decision, order, and opinion of the Court.

Hon. Charles J. Markey
Justice, Supreme Court, Queens County

Dated: Long Island City, New York
June 9, 2009

Appearances:

Plaintiff: Claire Pare, Esq., 208 Beach 124th St. [suite 8], Belle Harbor, NY 11694, [tel. 718-318-0895], and 5 Royal Court Dr., [suite F-9], Spring Lake, NJ 07762 [tel. 917-806-4316]

Defendant pro se: Christine Papaspiridakos, 88-32 89th St., Woodhaven, NY 11421, [tel. 917-496-3403].