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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS: CIVIL TERM : PART 32

MARGARET HEALY, -----X

Defendants.

-----X
Index No. 21646/11

360 Adams Street Street
Brooklyn, New York
March 6, 2012

B E F O R E : HONORABLE YVONNE LEWIS,
Justice of the Supreme Court

A P P E A R A N C E S:

MICHAEL J. DEVEREAUX & ASSOCIATES, P.C.
Attorneys for the Plaintiff
39 Broadway
New York, New York 10006

BY: THOMAS J. CHAVES, ESQ.

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Attorneys for the Defendant
300 East 42nd Street
New York, New York 10017

BY: STANLEY ALTER, ESQ.

Dell Ashby
Official Court Reporter

PROCEEDINGS

1 THE COURT CLERK: In the matter of Healey versus
2 O'Hanlon, index number 21646 of 2011.

3 State your appearances for the record. Start
4 with plaintiff.

5 MR. CHAVES: Thomas Chaves for the plaintiff.

6 MR. ALTER: Stanley Alter, Alter & Alter, 300
7 East 42nd Street, for the defendant.

8 THE COURT: Again, good morning to both of you.

9 MR. CHAVES: Good morning.

10 MR. ALTER: Good morning.

11 THE COURT: We are scheduled this morning for
12 closing arguments and determination, if the Court can
13 do so, at the close of arguments.

14 I am assuming -- and you'll correct me if I'm
15 wrong -- that you do not wish to submit any writings
16 to the court?

17 MR. ALTER: Not I.

18 MR. CHAVES: Judge, I have to request permission
19 to consult with my client with respect to that issue.

20 THE COURT: Well, that wasn't exactly my
21 question. I didn't make clear exactly what I meant.

22 What I meant was do you have any prepared
23 writings that you want to hand up.

24 MR. CHAVES: No, Judge.

25 THE COURT: I was not offering for you to do a

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1 written submission. We're ready to proceed.

2 MR. CHAVES: Yes, your Honor.

3 THE COURT: You are ready to proceed? I need a
4 moment; I have something I need to make a correction
5 on in the computer before we start which should only
6 take a moment.

7 (Whereupon, there was a pause in the
8 proceedings.)

9 THE COURT: Okay, I'm ready.

10 MR. CHAVES: Judge, before we start, can I say
11 something off the record?

12 THE COURT: Come up.

13 (Whereupon, an off-the-record discussion was
14 held.)

15 THE COURT: You may proceed whenever you are
16 ready.

17 MR. ALTER: Thank you, your Honor.

18 This is the point in this matter which the Court
19 has called upon us to give closing arguments. I wish
20 to remind the Court that the plaintiff came into this
21 proceeding by an Order to Show Cause seeking
22 injunctive relief at the last moment in their
23 application. However, at a conference at the bench,
24 I indicated I would seek visitation of the dog, Lucy,
25 during the pendency of the remaining aspects of this

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lawsuit.

An evidentiary hearing was conducted with regard to that issue. I do not feel that it is a very complicated matter, Judge. There is no dispute that this dog involved was given to Slaney as a gift in December of 2008. It is a mammal that does not cause Slaney to have an allergic reaction. Slaney is otherwise allergic to dogs.

Slaney maintained the dog, fed the dog, et cetera, from the time she received it as a gift, until August of 2009. Unfortunately, in August of 2009, Slaney's mother instituted a lawsuit against her father for divorce. Slaney and her mother fled the marital home. Slaney testified that she was afraid of her father.

In September of 2009, Slaney testified before a justice of the Supreme Court in Nassau county on a request that Slaney be permitted to go to Baltimore to attend a school that has a polo team. Slaney is an accomplished polo player. Her father contested that application and was represented by Mr. Healy, the husband of the plaintiff in this case, seeking to bar Slaney from leaving New York and going to school.

Justice Diamond in Nassau county after hearing Slaney in camera came out and directed that Slaney be

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1 permitted to go to school in Baltimore. That was
2 September of two -- or late August, early September,
3 2009.

4 Slaney left Lucy, and Lady, another dog she had
5 gotten as a gift from her maternal grandfather, at
6 the marital residence believing that her brothers and
7 father would take care of that dog.

8 One month later, as testified by Mr. Scharoff, a
9 request was made for the return of the dogs to
10 Slaney. In response to that request, Mr. Scharoff,
11 co-counsel of Mr. Healy, wrote a letter. It's in
12 evidence. That letter indicated and acknowledged
13 that Slaney owns Lucy. But, the father says, you
14 know what, you can't get Lucy back until Slaney has
15 shown to Mr. O'Hanlon's satisfaction that Slaney can
16 care for the dog.

17 Certainly, Slaney could not care for the dog
18 while away at boarding school. And, certainly,
19 Slaney could not care for the dog living in a small
20 apartment with the mother when she returned from
21 school.

22 There was no contact with Mr. O'Hanlon, her
23 father, for almost a year and a half. She certainly
24 was not going to contact Mr. Healy, who was her
25 adversary in the Supreme Court representing her

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1 father seeking to prevent her from going to
2 Baltimore, and an adversary of her mother. It should
3 be noted that her mother got custody of Slaney by
4 Justice Diamond.

5 We now have a situation where Slaney graduates
6 from the school in Baltimore and learns that the
7 other dog, Lady, died. She then requests the return
8 of the dog. There is no claim, as there couldn't be,
9 that Mrs. Healy was given the dog or entitled to the
10 dog by Mr. O'Hanlon. He had no power of transferring
11 title of the dog to his sister; it was Slaney's dog.
12 So, now what we have is a claim that Slaney abandoned
13 Lucy.

14 The facts show otherwise. As I just indicated,
15 Slaney, as based upon the letter from her father's
16 lawyer, would not be given Lucy until she was capable
17 of showing that Lucy could be cared for by her.
18 Slaney now lives with her mother, out on the island,
19 in a home that has a large area where the dog is free
20 to run, grow, play and be with Slaney. Slaney is not
21 in school this year. She is planning to go to a
22 college, I believe she testified, almost within
23 walking distance of where she lives.

24 To defeat the claim of Slaney's right to be with
25 that dog, we now have Mrs. O'Hanlon -- Mrs. Healy

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1 take the stand and say, well, now this dog is a
2 service dog. I trained this dog to be a service dog
3 and I need the dog.

4 Well, you know, it's very coincidental that she
5 started to train the dog at or about the time she
6 made the claim to exclude Slaney from receiving her
7 dog. She testified that, I believe, it took four to
8 six weeks to train the dog and she got the
9 certificate in January of 2012. This proceeding was
10 started, I believe, in September. That is not an
11 excuse.

12 If your Honor pleases, this court, I believe,
13 has the jurisdiction and power to direct that Slaney
14 have, at the very least, time with the dog,
15 significant time while this action is pending. And
16 why do I say significant time? Because the plaintiff
17 in this case has sought to delay the prosecution of
18 this case with the understanding or with the thought
19 that by exclusive possession, the longer I have the
20 dog, the better off I will be.

21 They ran to the Appellate Division seeking a
22 stay of this proceeding, seeking a stay of this
23 hearing, until the appeal was perfected, knowing they
24 would have approximately nine months to perfect an
25 appeal. Depositions, they don't want to go to

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1 depositions even though in a preliminary conference
2 order they were scheduled.

3 Your Honor, I respectfully submit that the Court
4 exercise it's power and grant Slaney the right to
5 have Lucy at least two weeks out of every month,
6 exclusively, with some arrangements whereby she picks
7 up the dog or the dog is delivered to her. But, she
8 should not be excluded from having her dog which she
9 owns, which was given to her, which she loves, which
10 she trained, and which she cares for.

11 Thank you very much, Judge.

12 MR. CHAVES: Thank you, Judge. I'm going to try
13 to respond to all the points that have been made.

14 As a preliminary matter, jurisdictionally, there
15 is no application pending before the Court that would
16 govern in any fashion properly or which was
17 jurisdictionally made by the defendant --

18 THE COURT: You might want to rephrase that. I
19 know it's your argument, but there is an application
20 before the Court. There is no written application
21 proffered by the defendant.

22 MR. CHAVES: Let me rephrase, Judge. There is
23 no motion -- there is no written motion, no written
24 cross-motion, no written Order to Show Cause, there
25 is nothing in writing for this unique and unusual

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1 request that's been made. It severely prejudices
2 plaintiff the way this has come about because the
3 plaintiff had absolutely no idea until two minutes
4 ago specifically what was being sought. Initially
5 and throughout the term of this proceeding, it was a
6 vague, undescribed, unspecified visitation. We had
7 no way to counter what specifically was being
8 requested because we were never notified what
9 specifically was being requested.

10 Now, even if the insurmountable, jurisdictional
11 problems can somehow be overcome, which we contend is
12 not possible and not conceded, but solely for the
13 sake of argument, if the insurmountable jurisdic-
14 tional problems can be overcome, any award of
15 visitation would be violative or a violation of
16 plaintiff's civil rights not only under the federal
17 law, the Americans for Civil Disabilities Act, but
18 also under the New York Civil Rights Law, Section 40,
19 and New York Executive Law, Section 296. The
20 plaintiff cannot be deprived of her service dog. And
21 her right to the service dog is absolute and preempts
22 any notion of visitation that might apply in
23 connection with this case. There is no such thing in
24 the law as visitation with respect to a person's
25 service dog, because a disabled person cannot be

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1 deprived of their service dog.

2 Now, defendant's counsel has suggested that it's
3 "coincidental" that the application and the process
4 that led to the certification of Lucy as plaintiff's
5 service dog occurred after the institution of this
6 action. That doesn't change anything. But, there is
7 a long process involved and a doctor being involved,
8 a medical doctor that we heard testimony about from
9 the plaintiff, Dr. Underberg, who had to submit an
10 affidavit swearing under penalty of perjury that
11 there was a real and immediate need for Lucy to
12 become Ms. Healy's service dog due to her medical
13 condition related to vertigo.

14 And specifically, if one looks at the brochure
15 that was produced -- and this is a matter of public
16 record -- by the New York State Attorney General,
17 Eric Schneiderman, concerning service animals and
18 public accommodations in the workplace, he
19 specifically makes reference to what is a service
20 animal. And in part it states that a service animal
21 can pull wheelchairs or carry and pick up things for
22 individuals with mobility impairments and assist
23 persons with mobility-bound impairments.

24 We have already heard evidence in this case from
25 the plaintiff that she has a mobility impairment with

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1 respect to vertigo and that is what caused the chain
2 of events leading to Lucy being a service dog. In
3 addition to which, she also testified that Lucy is
4 able to assist her with respect to picking up certain
5 items which may be difficult at times for her to pick
6 up.

7 Respectfully, Judge, our position is that under
8 the federal law that I have already cited, the
9 Americans with Disabilities Act, and the New York
10 State law, it would be a violation of plaintiff's
11 civil rights under these circumstances to be deprived
12 for any amount of time of her service dog.
13 Obviously, in another case where there is a contest
14 with respect to ownership of the service dog and the
15 other side is claiming they are the owner of the
16 service dog, during the pendency of the action it
17 would be highly inappropriate, and unfair, and
18 discriminatory to deprive the person who has the
19 service dog and has been recognized as a disabled
20 person of the use of the service dog.

21 Now, ultimately if the case is decided by a
22 trier of the fact that the plaintiff is not the owner
23 of the dog, that's for another day and that's to be
24 dealt with at another time. Meanwhile, during the
25 pendency, she should not be deprived of this.

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1 Now, moving forward, there is no such thing and
2 there is no legal rationale or authority for
3 visitation of personal property. And as we all know,
4 under New York law, a dog is personal property.
5 Thus, there is absolutely no case law, no authority
6 of any kind, which states that that is even
7 considered allowable.

8 Now, your Honor had indicated that you might
9 consider in connection with this case making what you
10 describe as new law holding that a dog is not just
11 personal property and that it has an elevated status
12 above personal property, and that would necessarily
13 entail an analysis if the dog is not personal
14 property with respect to what the best interests of
15 the dog might be in connection with this. And if
16 that standard is applied, the evidence is
17 overwhelming that there should be no visitation at
18 this time. It goes beyond, way beyond the
19 circumstances that defendant's counsel has described
20 with respect to what actually occurred. We're not
21 here to try a divorce action. That has nothing to do
22 with what we're here to do in this court. And in
23 fact, defendant's counsel had signed a stipulation
24 indicating that matters related to the divorce should
25 be kept in the divorce court, which is where they

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1 belong.

2 We've heard evidence in this case that
3 Ms. O'Hanlon, who at the time I believe was sixteen
4 or seventeen years of age, left in the dead of night
5 with her mother for whatever reason she felt she
6 needed to do so. The dog was left there. Now her
7 position seems to be she cared for the dog before she
8 left in the middle of the night. However, her
9 concept, it seems to me from what I recall of her
10 testimony, is that her two brothers who were older
11 than her and of college age would take care of the
12 dog after she left with the mother, which was at the
13 end of the summer. The problem with that whole
14 argument or statement is that her two older brothers
15 were in college, and they were in college in
16 Cincinnati. So, obviously the idea they could take
17 care of this dog makes no sense.

18 Now, she went to Baltimore to a boarding school.
19 And like every other school, they have vacations,
20 they have breaks, all kinds of time free. During the
21 entire time she was a student at this high school or
22 boarding school for two years, she made no effort
23 whatsoever to have any contact with the dog. None.

24 So, therefore, if one applies the standard of
25 best interests of the dog, there is no way that

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1 anybody rationally could consider it would be in the
2 dog's best interests to be foisted into an
3 environment with people that the dog probably doesn't
4 even remember at this point.

5 The dog was essentially a puppy, eight months of
6 age, when the plaintiff and her mother left for
7 whatever reason. The testimony in this case from the
8 plaintiff is that the dog was not trained in any way,
9 shape or form. Anyone who knows anything about dogs,
10 and I think it's a matter of public record, Judge,
11 knows that a puppy needs to be trained; that a puppy
12 needs to be housebroken; that a puppy needs to be
13 cared for in a hundred different ways.

14 There is no evidence whatsoever that
15 Ms. O'Hanlon ever did any of that because when
16 Ms. Healy was given the dog to care for the dog as a
17 temporary measure, the dog was not housebroken, the
18 dog was not trained, and so forth. Ms. Healy took it
19 upon herself to do the appropriate steps necessary to
20 take care of the dog that Ms. O'Hanlon should have
21 done earlier. And she's not an infant, Judge,
22 respectfully, she's an adult now. And she was very
23 close to being an adult at the time when this whole
24 thing happened. There is no argument that can be
25 made rationally she was not in a position where she

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1 could have trained the dog. Clearly, she could have.

2 And notably absent from any testimony anywhere
3 is the role of the mother in this. Where is the
4 mother? We have heard no testimony about her
5 involvement, lack of involvement, and so forth. She
6 supposedly went to a two-bedroom apartment, then to a
7 very large, probably, McMansion in Manhasset. There
8 is no evidence whatsoever that either of these places
9 is inappropriate for a dog to at least come and
10 visit.

11 At no time other than something through a
12 divorce letter -- a letter that the divorce lawyer
13 wrote that he doesn't even remember writing, there
14 was no contact with respect to the dog.

15 Now, anyone who knows anything about dogs knows
16 that an owner, in general, is very attached to the
17 dog and has a way to be in contact with the dog
18 either through trying to arrange to see the dog,
19 trying to have the dog brought to them for a little
20 visit, things along those lines; it's a very close
21 relationship. In this case, nothing occurred for
22 years. This is not a situation where it was a couple
23 of weeks.

24 We heard testimony from the plaintiff that she
25 took the dog with the understanding she would take

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1 care of the dog for a while and that she would return
2 the dog at the point in time when it was appropriate
3 to do so. She never foresaw and nobody foresaw that
4 there would be a complete abandonment of this
5 property. But, we're not getting to the ultimate
6 issue here, the purpose of today is a limited hearing
7 with respect to visitation. And there is some
8 serious issues with respect to that.

9 Now, once the court, if it does decide that it
10 wants to order some type of visitation, makes the
11 giant step beyond what the law allows, and the giant
12 step beyond what the best interests of the dog are,
13 there is absolutely no evidence that foisting the
14 dog, literally, taking the dog away from it's only
15 known owner that has cared, loved and taken care of
16 this dog for the last two and a half years, in some
17 unspecified location on the eastern inlet of Long
18 Island that is allegedly an appropriate place for the
19 dog but which there is really not much evidence about
20 other than supposedly it's a big area. There is no
21 testimony whatsoever. And Ms. O'Hanlon certainly had
22 an opportunity to do that, to testify before the
23 court and say to the court this is going to be my
24 schedule day to day; this is when I'm going to get
25 up; this is what time I'm going to walk the dog; this

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1 is what time I'm going to feed the dog; I'm going to
2 feed the dog twice a day; walk the dog two, three
3 times a day; I'm going to take the dog at night
4 before I go bed and will put the dog in a crate or
5 the dog is going to be loose in the house. None of
6 that testimony that, in general, any rational dog
7 owner would testify about seeking to have the dog
8 come into their house. None of that was heard.
9 Zero. So, respectfully, Judge, there is absolutely
10 no basis under any theory to have that occur.

11 Now, just a few more minutes. And I sincerely
12 thank the court for allowing me the latitude to go
13 into all the points that I have, and I apologize to
14 the extent that I'm being repetitive.

15 I've already covered the fact there is no
16 recognized right under New York law. I'm going to
17 move forward from that.

18 With respect to the equitable powers of the
19 court, I guess in theory that could occur.

20 With respect to ordering some type of
21 visitation, but as stated, again, that would be a
22 violation of Ms. Healy's civil rights under the
23 Americans with Disabilities Act and corresponding New
24 York law. Moreover, it would not be in the best
25 interests of Lucy.

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1 Now, balancing the equitable considerations
2 concerning visitation, as I've just explained at
3 length, there really isn't any rational basis to
4 think that the dog would somehow be helped in any
5 way, shape or form to be dragged to some unspecified
6 location on the eastern inlet of Long Island. There
7 is absolutely no evidence with respect to that.

8 Now, moving forward, another point that the
9 Court should consider aside from everything else that
10 I've already covered is the fact that Ms. Healy has
11 devoted herself almost one hundred percent to the
12 care, maintenance, upkeep and love of this dog for
13 the past two and a half years. Ms. Healy does not
14 work at this time. She has not worked since the dog
15 came into her life, so to speak.

16 Moreover, her husband, Mr. Healy, is a retired
17 lawyer. And he seems to be criticized constantly in
18 connection with this case, and I'm not sure exactly
19 why, because of whatever he did in the divorce action
20 or didn't do as the "attorney of record," even though
21 I believe defense counsel is aware that he is not a
22 divorce lawyer; that before he retired as a lawyer he
23 worked for a corporate law firm for thirty or forty
24 years. He was not involved with divorce. I think
25 his role in the other case (A) is irrelevant; and (B)

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1 is minimal. So, I think that's a complete
2 non-starter with respect to anything, Judge.

3 Now, another aspect that should be considered in
4 connection with this is that there is no indication
5 whatsoever with respect to what specifically
6 Ms. O'Hanlon is going to do or not do. Now, she went
7 to a very prestigious, private boarding school which
8 focuses on people who are interested in horses. I
9 don't know a lot about this school. It's not a
10 famous school like Phillips Exeter or Choate,
11 Lawrenceville; I don't know a lot about this school.
12 It's fair to say that most of the people that go to
13 this school, though, then do go to college; it's a
14 college preparatory school.

15 She has not explained in any way, shape or form
16 what her plan is. I don't think that Nassau County
17 College is within walking distance of her house. It
18 may be close, but I don't think it's walking
19 distance.

20 Moreover, I believe this location she is living
21 in, supposedly, is in the eastern end of Long Island,
22 in Suffolk County. But, be that as it may, it would
23 be very unfair and prejudicial to Lucy to have to
24 kind of be thrown into something, and very
25 prejudicial and harmful to the plaintiff because she

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1 wouldn't even know exactly how this thing is going to
2 work.

3 If, in fact, Ms. O'Hanlon really sincerely
4 wanted to have this dog, she would have done things
5 over the past two and a half years to at least stay
6 in touch with this dog.

7 There is dog sentient. Being so, although the
8 law considers it property, it's not the kind of
9 property that someone can rent a storage locker for,
10 put it in the storage locker and then come back
11 sometime later and pick up the property. This
12 property needs to be cared for. This property needs
13 to be loved. And actually even though the law
14 doesn't consider a dog more than property, at least
15 with respect to the criminal law it's a crime to kill
16 a dog and it has a special consideration with respect
17 to that that is beyond property. It's also a crime
18 to commit cruelty to any animal.

19 So, the law does recognize in some respects that
20 an animal, a dog, is more than property, per se,
21 because obviously you can't be cruel to property,
22 that I'm aware of.

23 Now, with respect to Lucy's specific needs with
24 respect to her diet and what her current situation
25 is, when she's fed, when she's walked and so forth,

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1 there is no testimony whatsoever from Ms. O'Hanlon
2 with respect to what she would do. Contrast that
3 with Ms. Healy who explained at length what she does
4 everyday with the dog, how her living situation
5 accommodates the dog, because she has an unusual
6 situation of an open, contiguous apartment in a
7 building here in Brooklyn, in addition which she
8 makes it a point everyday to take the dog out on long
9 walks. She was very clear and specific with respect
10 to what she has done.

11 Now, the other and final point, Judge, is that
12 we did hear evidence in this case that Ms. O'Hanlon
13 went to visit a friend, she testified, in Florida who
14 was involved in polo of some kind of other. I don't
15 want to go into a long-standing thing about what polo
16 is or isn't; it's not a sport I know a lot about.
17 However, I do know unlike certain other sports, it's
18 not widely played, it has very specific restrictions
19 in terms of the need of a horse, training of a horse,
20 location to play and so forth. And in order to
21 accommodate her interests in that, it may be
22 necessary for her to travel. And therefore, there is
23 no evidence with respect to who would take care of
24 the dog in her absence.

25 Again, going back to the issue and the notable

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1 absence of testimony of the other defendant,
2 Ms. McCarthy, Ms. O'Hanlon -- the wife of the
3 brother, whatever title you want to give her or name;
4 We've called her Ms. McCarthy for purposes of this
5 case -- we have no idea what she does, what she
6 doesn't do. We have no idea about her schedule.
7 Nothing.

8 So, Judge, if you factor in all the different
9 factors that I have given, equitable and legal, we
10 respectfully request that your Honor deny the
11 application in all respects. Thank you.

12 THE COURT: In keeping with our sidebar
13 conference, you may respond.

14 MR. ALTER: Thank you, Judge. I'll try to be
15 brief.

16 I would like to address one thing before I get
17 into the merits and that's the constant statement
18 that there is a stipulation that none of the divorce
19 proceedings between Mrs. O'Hanlon and Mr. O'Hanlon
20 would be part of this proceeding. I have never
21 signed a stipulation to that effect and I look
22 forward to seeing a copy, sir.

23 Now, moving on, Judge, we now have a claim that
24 there will be a civil rights violation. But, in that
25 statement made by counsel, it might be different if

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1 it were a question of title.

2 If the Court remembers, Ms. Healy went on the
3 stand acknowledging the receipt of the letter of
4 October 15th, which she read, understood, and agreed
5 with. In effect, it was sent or a copy was sent to
6 her husband as co-counsel. And the attempt to
7 minimize Mr. Healy's role as co-counsel is misplaced
8 because Mr. Healy has attended every proceeding in
9 that divorce action, every deposition in that divorce
10 action, issued subpoenas in that divorce action,
11 Judge, is so steep in that matter it is unbelievable.
12 So, the claim that he doesn't know why Mr. Healy is
13 being mentioned, he's being mentioned because
14 Mr. Healy knew that Lucy was owned by Slaney.
15 Mr. Healy knew that Lucy was going to be given to his
16 wife to care for and that title would not pass to
17 her. And in the letter that she acknowledged and
18 agreed to, there is no time limitation placed in that
19 letter for which Mrs. Healy would be caring for this
20 dog.

21 We talk about title. Title hasn't shifted.
22 Title has not shifted in this case. What we have is
23 a claim that I have a service dog, which that service
24 dog, we have to understand Ms. Healy testified that
25 for five years she had this condition. She has had

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1 four other dogs. She has never trained any of the
2 four other dogs to be a service dog but now that this
3 proceeding started, what a wonderful way to throw a
4 roadblock up to prevent Slaney from seeing her dog.
5 It's a sham.

6 If your Honor please, we heard from counsel
7 there is no indication as to how Slaney would care
8 for her dog. The testimony was she cared for her dog
9 for eight months before she left the house. Are they
10 suggesting that Slaney is going to be cruel to this
11 dog? That Slaney is in some way going to mistreat
12 this dog? If she had no interest in this dog, she
13 would not be here fighting for visitation to be with
14 her dog. She would have not requested the return of
15 her dog.

16 The letter by her father, on behalf of her
17 father by her father's lawyer or lawyers, makes it
18 very clear that the only time Slaney is getting this
19 dog back is when her father, her father, deems it
20 that she will be able to care for her dog. That was
21 their plan. Her father who has not spoken to her for
22 two years. And when she requested the dog back from
23 her father, this proceeding was instituted.

24 Your Honor, my counsel, adversary counsel, said
25 some nondescript place in eastern Long Island where

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1 Slaney is going to live. She gave the address. It's
2 on the record.

3 She described the household. She described the
4 area where this dog can go out and play, and not walk
5 around five contiguous apartments within the
6 apartment. I think it's a shame that the godmother
7 of Slaney would take it upon herself to attempt to
8 deprive this young lady of her dog. And I think it's
9 a shame that they resist at this late stage that
10 Slaney have some contact with her dog.

11 And the reason that we bring up the issue of
12 title to the dog is to give the Court a basis to
13 understand that her claim or rights to visitation has
14 merit and that she sought to get this dog back within
15 one month of leaving the household, and her father
16 and lawyers came up with the scheme of depriving her
17 of the dog, the letter of October, I believe, 13,
18 2009.

19 Judge, there is no impediment for this court to
20 grant Slaney the right to be with her dog. This dog
21 is not going to be abused. This dog will be cared
22 for. Slaney has indicated on the stand that she
23 loves animals. And all the roadblocks attempted to
24 be put in the path, I think is just shameless.

25 Thank you, Judge.

CLOSING ARGUMENTS

1 THE COURT: The parties have put a significant
2 amount of evidence before the court. I would like to
3 give an opportunity to counsel and request that I
4 meant to ask, frankly, before I pose rebuttal from --
5 well, rebuttal would be the wrong word, reply
6 comments from the defense given our sidebar
7 conversation. I need to know before I make a final
8 determination -- I would like to have or give counsel
9 the benefit of informing the court of what evidence
10 you believe is in this record that indicates the
11 disability of Mrs. Healy.

12 MR. CHAVES: Can I answer that, Judge? Can I
13 answer that?

14 THE COURT: That's my question.

15 MR. CHAVES: I can try to answer it, Judge.
16 It's a matter of public record --

17 THE COURT: The evidence in the record of her
18 disability.

19 MR. CHAVES: The evidence in the record is that
20 Lucy is qualified as her service dog. So, in other
21 words, that would not have occurred without Dr.
22 Underberg, again, her treating physician, swearing an
23 affidavit submitted to the New York City Department
24 of Health indicating she needed a service dog.
25 Without that medical evidence, someone cannot obtain

CLOSING ARGUMENTS

1 a service dog.

2 Now, we didn't bring Dr. Underberg to testify
3 for purposes of this hearing, but inferentially we
4 know what the process is. It's sort of like saying
5 someone is a lawyer and we know they are a lawyer
6 because they took the bar exam, passed it and were
7 admitted. So, it's the same kind of analogy.

8 In order to become a service dog, you have to
9 have medical evidence supporting there is a need to
10 have a service dog in the first place. There is a
11 long process that occurs with respect to becoming a
12 service dog, for the dog itself. But, before you
13 even get to that, there has to be a need for the dog
14 to become a service dog of a particular person.

15 So, Judge, respectfully, the evidence is the
16 certificate, the letter from the New York Department
17 of Health with respect to Lucy becoming a service dog
18 for the plaintiff, and the license attached thereto.

19 THE COURT: I didn't overlook an affidavit from
20 the doctor?

21 MR. CHAVES: No. There was no affidavit.

22 THE COURT: I misunderstood. I thought I heard
23 you say that.

24 MR. CHAVES: If this were a full-blown trial
25 where there was a need for that type of evidence,

CLOSING ARGUMENTS

1 obviously, we would have called the doctor. But, for
2 this limited purpose, we felt it was not necessary.

3 THE COURT: I understand. No, I understand.

4 Although this proceeding has been characterized
5 as unusual, on the rights of personal property it
6 seems to this Court that is au contraire. I think
7 you would find steep in case law to the extent that
8 it verges on the consideration of a dog, that a dog
9 is considered man's best friend in the United States
10 of America, and that in many ways a dog is not
11 considered -- or, is considered more than personal
12 property inasmuch as there are laws with respect to
13 how this "personal" property can be treated.

14 In this case and as a result of this hearing, it
15 seems to this court several things: That there are
16 probably very strong feelings of love and care both
17 on the part of the defendant and on the part of the
18 plaintiff with respect to Lucy. The Court considered
19 some of the -- well, considered the standard for a
20 preliminary injunction perhaps in reverse in trying
21 to determine whether or not it made sense to have
22 visitation in this case. So, notwithstanding the
23 withdrawal of the motion for preliminary injunction,
24 in order to determine that visitation will be
25 appropriate or inappropriate, the Court needed to

DECISION

1 look at things like what is the likelihood of success
2 on either side in this case.

3 The Court also did look at the testimony of both
4 sides with respect to their feelings about the dog,
5 the opportunity, and the argument made by counsel
6 that this Court has no jurisdiction, one, because
7 there is no written application and, secondly, though
8 arguably slightly different, that the Court cannot
9 remove the dog because this is a service dog.

10 First, I determine that the Court does have
11 jurisdiction because in it's attempt to withdraw the
12 motion for preliminary injunction, the parties are
13 not in control of any oral application that may have
14 been made during the course of this action, and the
15 Court does have oral application and a subsequent
16 hearing with evidence on the question from which to
17 make a determination.

18 As to the best interests of the dog, I don't
19 think there is such a standard yet made. I do not
20 think that we can automatically analogize in the best
21 interests of a child to in the best interests of a
22 dog. And so to the extent that it has not existed
23 prior, I guess this court is making it up.

24 Before I indicate if at all I indicate what that
25 is, I think I quickly need to talk about whether or

DECISION

1 not there is -- whether or not we go to such a
2 standard, and whether or not there is a preliminary
3 consideration before we try and figure out the best
4 interests of the dog, and whether or not it's a
5 standard I'm going to use.

6 This case thus far and on the basis of the
7 hearings just recently had appears to suggest that
8 the court -- well, counsel is suggesting that the
9 court could not have the ability to take this dog
10 from -- or the visitation rights for this dog because
11 Lucy is a service animal. It seems apparent to this
12 court that if Lucy is a service animal in the way
13 that counsel would have this court perceive, that is,
14 an animal that is absolutely necessary to the
15 well-being of Mrs. Healy, there would need to be a
16 show of evidence of her disability.

17 The court takes to -- the court credits the
18 testimony that there have been many dogs in
19 Ms. Healy's life since she became aware of her
20 vertigo, and that as far back as 2005, she was aware
21 of it. There is little or no testimony of any
22 attacks since then. There is no medical evidence of
23 the disability from any medical professional. So,
24 the Court does not believe that the designation by
25 plaintiff and plaintiff's counsel of Lucy as a

DECISION

1 service dog is such that the court must accept it.

2 In light of the ability and the existence of the
3 disease long before Lucy came into the household, in
4 light of the fact there has been no greater need
5 shown for a service dog until such time as this
6 proceeding, this action, was brought forth, the Court
7 does not feel that it must treat Lucy as a service
8 dog.

9 I don't think it is best for this Court to
10 determine what would be the standard for
11 consideration and entitlement in the best interest of
12 the dog because, you see, I, unlike the two parties
13 before me, am not an avid dog lover. I do care about
14 animals, I do, and am very much aware of the
15 attachment that persons and families have made to
16 their dogs and other pets. And as I started with, it
17 seems to me that both parties here are -- have shown,
18 rather, a great deal of attachment and desire to be
19 with a pet that each of them call their own. I see
20 no deterrent in the way of suspected harm either to
21 Ms. Healy or to Lucy in ordering visitation.

22 On the issue of likelihood of success with
23 respect to the final outcome in this action, which I
24 think this court has to make in order to determine
25 that visitation might be the wrong thing, it seems to

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1 me that there is at least a sufficient likelihood of
2 success to warrant the Order of visitation in this
3 case. I believe, also, that the distance between the
4 plaintiff and defendant in this case warrants the
5 consideration of the requested visitation, that is,
6 be significant enough so that attachments in both
7 areas can be maintained and/or developed, and that it
8 would be less of a hardship, if you will, on Lucy if
9 we did a few days a week as opposed to a significant
10 period of time at once.

11 Counsel asked for two weeks out of the month
12 without any specification as to whether or not that
13 be solid or every other week. I would entertain from
14 counsel, prior to the drafting of the Order and at
15 sidebar in a moment, what you desire because I got no
16 request for limitation from the plaintiff. But, this
17 Court does hereby order visitation to be determined
18 after this sidebar I'm about to have with counsel.

19 Come up, please.

20 MR. CHAVES: Would I have an opportunity to
21 consult with my client before the sidebar?

22 THE COURT: Yes.

23 MR. CHAVES: May I do that outside?

24 THE COURT: You may.

25 MR. CHAVES: Thank you, Judge.

DECISION

1 (Whereupon, a recess was taken.)

2 THE COURT: You want to come up here or --

3 MR. CHAVES: No. Judge, I would like to be heard
4 on the record.

5 THE COURT: Make your record.

6 MR. CHAVES: Judge, thank you for giving us the
7 opportunity --

8 THE COURT: Well, the record should reflect
9 because I don't think it does reflect we took a break
10 allowing counsel to consult -- specifically allowing
11 plaintiffs' counsel to consult with his clients,
12 probably, about ten minutes.

13 MR. CHAVES: Thank you, Judge. I just wanted to
14 thank the Court for allowing me the opportunity to
15 consult with my client. And after consultation with
16 the client, I would like to make the following
17 statement: First, I respectfully request that any
18 Order of visitation only start in two weeks, that it
19 not be started before two weeks from whatever date
20 your Honor decides to enter an Order ordering
21 visitation.

22 And we also seek a stay of whatever Order your
23 Honor signs and enters so that we can go to the
24 Appellate Division and make an application for a
25 motion for leave to appeal with respect to that

DECISION

1 issue, which at this point will not be an interim
2 Order, I believe it would be a final Order with
3 respect to visitation and therefore, possibly, would
4 be appealable as a right we would seek. If it's not
5 appealable as a right, we would make a motion in the
6 Appellate Division to have the Appellate Division
7 consider than on an expedited basis.

8 So, those are the two requests that I make
9 initially, Judge, and I would respectfully request
10 for purposes of the record when you do rule, that you
11 rule on those specific requests.

12 Now, with respect to the visitation itself, the
13 plaintiff requests respectfully that she be present
14 and supervise the entire visit by Ms. O'Hanlon. Lucy
15 has bonded closely to Ms. Healy because of the daily
16 contact over the last two and a half years. Lucy is
17 trained and certified as Ms. Healy's service dog. If
18 Ms. Healy is not present, Lucy may try to escape and
19 find her creating the risk that Lucy may escape from
20 Ms. O'Hanlon to find Ms. Healy and become lost,
21 injured or killed on the streets.

22 We respectfully request that visitation must be
23 during normal daylight hours, up to one hour, once
24 per month, and a mutually agreed upon time.

25 THE COURT: One hour, one time a month? I just

DECISION

1 want to understand.

2 MR. CHAVES: One hour, once a month. One hour a
3 month. Up to one hour a month.

4 We respectfully request that the only persons
5 allowed to be present during the visitation with Lucy
6 are Ms. Healy and Ms. O'Hanlon, no other relatives,
7 friends, lawyers or other persons may be present.

8 We also respectfully request that the visitation
9 should be one in the many parks near Ms. Healy, the
10 plaintiff's home. Lucy becomes easily carsick even
11 on short rides.

12 Visitation should not be in Ms. Healy's home.
13 She has a safety and security concern that
14 Ms. O'Hanlon will become familiar with several of the
15 entrances, doormen, security systems and other
16 features in her co-op building. We already had a
17 situation back in September where Ms. o'Hanlon and
18 her mother appeared and that led to this whole
19 confrontation which led to the Order to Show Cause
20 and the recent Order granted by Judge Ash and then
21 withdrawn here.

22 There is also a concern that it be very clear in
23 the Order that whatever visitation is granted, that
24 when the visitation period is over, that the dog go
25 back to Ms. Healy. There is a concern that the

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1 plaintiff has that either Ms. O'Hanlon or her mother,
2 Ms. McCarthy, will abscond with the dog. And
3 obviously, we object strongly to that even being a
4 consideration or a possibility, that the dog -- not
5 only that they take the dog somewhere but they ship
6 the dog. There has already been some testimony in
7 this case that Ms. McCarthy is originally from the
8 country of the Republic of Ireland where many of her
9 family members live, and there is a concern since
10 there has been frequent contact, she travels there
11 frequently and has many relatives there that the dog
12 not be transported to the Republic of Ireland or
13 anywhere else outside of the very strict confines of
14 whatever visitation Order your Honor enters.

15 Thank you.

16 THE COURT: I don't think your request is on the
17 record.

18 MR. ALTER: My request is a two-week consecutive
19 period, alternating weeks. Can I just briefly
20 comment on what was requested by counsel?

21 THE COURT: Ummm --

22 MR. ALTER: Both as to the stay and --

23 THE COURT: Well, as to the stay because that's
24 a different thing, not as to the --

25 MR. ALTER: No, I'm not going into limitations

DECISION

1 and restrictions, that's no visitation.

2 Judge, in regards to the stay to enable counsel
3 to go to the Appellate Division, this is just
4 another -- it was anticipated. It's anticipated that
5 there would be an attempted delay by whatever means
6 will be employed.

7 I request that the Court when it issues an
8 Order, issues that the defendant, Slaney, has
9 immediate visitation with her dog. And if in fact
10 counsel wants to go to the Appellate Division, then
11 he will work and get his appeal up to go to the
12 Appellate Division. This Court should not aid any
13 further delay of this issue.

14 Thank you.

15 THE COURT: The court does not see the request
16 for the stay as a delaying tactic. Perhaps, as a
17 notice tactic to the court. I would expect that an
18 appeal of this court's Order would be taken by one
19 party or the other, notwithstanding which way the
20 Court went.

21 I do not believe that this Order is a final
22 Order of the court and very much like visitation
23 rights in most proceedings I determine during the
24 course, because the dog is not a child. But, it may
25 be.

DECISION

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I will stay the implementation for two weeks, but I will not stay this proceeding pending the application and determination of appeal -- or, determination of appeal.

I want a Short Form Order. It will be entered forthwith, which means that it will be probably effective tomorrow. So, two weeks from tomorrow -- yes, two weeks from tomorrow, this court will have ordered -- effective two weeks from tomorrow, visitation for two weeks on, two weeks off.

The visitation does not have to be supervised. The parties should meet in a place mutually determined by counsel right now, such that it can appear in the Order, to exchange possession of Lucy.

You need to write that up, but the two of you need to determine, which may mean you need to go back to your client and you to your clients, where they should meet. You have about three minutes to do that so --

MR. CHAVES: Thank you, Judge.

THE COURT: You need to think in terms of trying to be equidistant. I'm not talking about one going out to Long Island and I'm not talking about them coming all the way into Brooklyn.

(Whereupon, a recess was taken.)

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1 THE COURT: Do you have an agreement as to a
2 place?

3 MR. CHAVES: Yes and no. I would just like to
4 state for the record, my client, given the reasons
5 already stated, service dog, close relationship and
6 those other issues, respectfully requests that
7 defendant, Slaney O'Hanlon, and the mother, both who
8 are young and able, come in from Brookville, wherever
9 that is in eastern Long Island, to their apartment at
10 Brooklyn Heights and that's where the transfer take
11 place. That's our first request.

12 THE COURT: The last thing I said to all of you
13 is that is not acceptable.

14 MR. CHAVES: I will move on then, Judge. I have
15 confirmed with my clients and conferred with
16 defendant's counsel, and it appears to be a consensus
17 that it can occur at a restaurant known as Mojave
18 Restaurant in Astoria, Queens, which the defendant,
19 Ms. McCarthy, has some type of ownership interest in.
20 And her counsel has indicated that would be amenable.

21 The only thing that hasn't been worked out is
22 when that would take place. In other words, we
23 prefer it take place during the day. We don't want
24 to be inconvenienced of having to go there at night,
25 at a certain date, and a certain time that is

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1 mutually agreed upon.

2 MR. ALTER: Your Honor, there is no problem with
3 regard to having it in the daytime. The visitation
4 can start on a Saturday morning, carry over to the
5 two-weeks period and be returned on a Saturday
6 morning.

7 THE COURT: Well, if it's two weeks, then it
8 would have to be two weeks from Saturday coming, I
9 suppose.

10 MR. ALTER: This is the Order that I prepared as
11 the first visit on whatever agreed date it would take
12 place --

13 THE COURT: It should also indicate time of day
14 that reflects a daylight time that is as close as
15 possible agreeable to both sides. Write that please
16 and thank you.

17 MR. CHAVES: I think we have come up with an
18 Order that is mutually agreeable.

19 (CONTINUED ON NEXT PAGE TO BE WITH
20 CERTIFICATION)

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DECISION

1 THE COURT: Let me wish you all the best on
2 this.

3 MR. ALTER: Thank you, your Honor.

4 MR. CHAVES: Thank you, Judge. Thank you for
5 your courtesy.

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REPORTER'S CERTIFICATION

8

9 I hereby certify that the foregoing is a true and
10 accurate transcript of the within proceedings.

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DELL ASHBY
Official Court Reporter