

ORDER ON EMERGENT APPLICATION

STATE OF NEW JERSEY

v.

KISHA CURTIS

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

DOCKET NO. A-

MOTION NO. M-

BEFORE PART: K

JUDGE(S): CLARKSON S. FISHER,  
JR.

JANE GRALL

EMERGENT APPLICATION

FILED: 6/21/11

BY: ASSOCIATED HUMANE  
SOCIETIES, INC.

ANSWER(S) FILED: 6/23/11

BY: STATE OF NEW JERSEY

BY: CITY OF NEWARK

BY: KISHA CURTIS

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON  
THIS 23d DAY OF JUNE, 2011, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION

FOR

LEAVE TO APPEAL AND EMERGENT  
RELIEF

GRANTED	DENIED	OTHER
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SUPPLEMENTAL:

In order to obtain possession of a dog allegedly abused or abandoned by defendant Kisha Curtis, Associated Humane Societies (AHS) intervened in a criminal prosecution pending in the Law Division, Essex County. In mid-March 2011, the dog was found in critical condition at the bottom of a garbage chute in Newark. Shortly after the animal was rescued and delivered to AHS, it was placed at Garden State Veterinary Specialties (GSVS), an animal hospital AHS deemed equipped to provide the dog with necessary care.

In the pending criminal matter, Curtis is charged with violations of N.J.S.A. 4:22-17, proscribing cruelty to animals, and N.J.S.A. 4:22-20, proscribing abandonment of sick, infirm or

disabled animals.<sup>1</sup> If Curtis is convicted of one of these offenses and the judge finds that the dog's possession by Curtis "poses a risk to the animal's welfare," the judge may adjudge the dog, and any other animal owned or possessed by Curtis, forfeited, and the judge may specify an appropriate disposition for any animal so forfeited. N.J.S.A. 4:22-26.1. Officers and agents of the New Jersey Society for the Prevention of Cruelty to Animals and certified animal control officers may file a petition for such forfeiture "at the time the person is found guilty." Ibid.

On April 26, 2011, at the request of an assistant county prosecutor, the trial court entered an order directing that this dog remain where it was, at GSVS, until the conclusion of the criminal prosecution. The prosecutor sought the order because the dog is evidence the State deems relevant to Curtis's prosecution.

On May 4, 2011, AHS filed a motion to vacate the judge's order. AHS contended that the order was entered without notice to AHS, asserted a possessory interest in the dog, and claimed that GSVS was primarily a medical facility and not equipped to permit the dog to "roam, exercise and become socialized with other healthy animals." Asserting that its "Popcorn Park Zoo" could provide these benefits, AHS sought release of the dog to it.

On May 17, 2011, while AHS's motion was pending, the judge entered an interim order authorizing an AHS employee to visit the dog at GSVS under specified circumstances. On June 10, 2011, the judge vacated the interim order and left the order of April 26, 2011 in place. The judge indicated the order was final for purpose of appeal.

On June 21, 2011, AHS filed a notice of appeal and motion for emergent relief transferring the dog to AHS pending the conclusion of the criminal matter. In essence, the emergent relief AHS requests is summary reversal of an interlocutory order.

Preliminarily, the order AHS urges us to reverse is interlocutory. It preserves evidence in a criminal case "until conclusion of [the] criminal matter or until further order of the [trial] court." By its terms, it is not a final order adjudicating possession of this animal, and the criminal case in which it was entered is ongoing. Accordingly, despite the trial judge's characterization of the order as "final" for purposes of appeal, it is not appealable as of right pursuant to Rule 2:2-3.

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<sup>1</sup> AHS has not provided a copy of any accusation or indictment. The charges are recited in the State's brief.

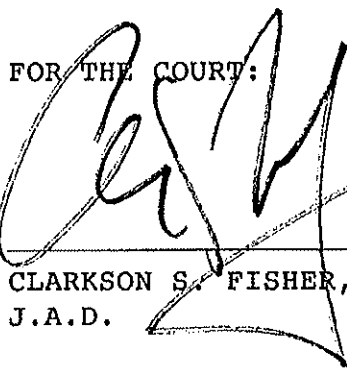
See Leonardis v. Bunnell, 164 N.J. Super. 338 (App. Div. 1978),  
certif. denied, 81 N.J. 265 (1979).

Nonetheless, we have discretion to treat AHS's notice of appeal as if it were an application for leave to file an interlocutory appeal. See R. 2:2-4; R. 2:4-4(b)(2). We have concluded that such review is in "the interest of justice," R. 2:2-4, and that the matter is ripe for summary disposition. R. 2:8-3(b). Having considered the record in light of the arguments advanced by AHS, we grant leave to appeal and affirm substantially for the reasons expressed by Judge Cassini in his June 2, 2011 oral opinion. We add only the following comments.

The prosecutor and, in some instances, the trial court, are responsible for the evidence in a criminal case. See, e.g., R. 3:5-7(e); N.J.S.A. 2C:64-4a; N.J.S.A. 2C:65-1 to -3. Moreover, the record is devoid of evidence even suggesting this dog's health or welfare are at risk in the hospital where its condition has improved. There are affidavits suggesting there may be placements that would better serve the interests of the dog, but short of cases involving animals at risk of harm from conduct prohibited by law, this court has questioned whether there are judicially discoverable and manageable standards for resolving possession from the perspective of the pet's interests. Houseman v. Dare, 405 N.J. Super. 538, 545 (App. Div. 2009). The trial court correctly determined that the Essex County Prosecutor is in lawful possession of the dog until the legal charges against Curtis are resolved and that, as such, the Prosecutor is not wrongfully depriving AHS of any interest it might have in the dog.

Affirmed.

FOR THE COURT:



CLARKSON S. FISHER, JR.  
J.A.D.