DOCKET NO. LLI-CV-17-5009822-S NONHUMAN RIGHTS PROJECT, INC. EX REL. BEULAH, MINNIE, & KAREN V. R.W. COMMERFORD & SONS, INC.	SUPERIOR COURT JUDICIAL DISTRUCT OF LITCHFIELD AT TORRINGTON MAY 23, 2018

MEMORANDUM OF DECISION RE: MOTION FOR ARTICULATION

Pursuant to Practice Book § 66-5,[1] the petitioner, Nonhuman Rights Project, Inc., filed a motion for articulation with the Appellate Court on April 18, 2018. The petitioner seeks articulation of the trial court's December 26, 2017 and February 27, 2018 decisions, denying its petition for a writ of habeas corpus on behalf of three elephants, Beulah, Minnie, and Karen, and denying its motion to reargue and request for leave to amend the petition, respectively.

"[A]n articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification. . . . [P]roper utilization of the motion for articulation serves to dispel any . . . ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby sharpening the issues on appeal. . . . In other words, an articulation elaborates upon, or explains, a matter that the trial court decided. A motion for articulation may not . . . be used to modify or to alter the substantive terms of a prior judgment . . . ." (Citations omitted; internal quotation marks omitted.) *State* v. *Walker*, 319 Conn. 668, 680, 126 A.3d 1087 (2015). "An articulation may be necessary where the trial court fails completely to state any basis for its decision . . . or where the basis, although stated, is unclear."

[1] Practice Book § 66-5 provides in relevant part that "[a] motion seeking corrections in the transcript or the trial court record or seeking an articulation or further articulation of the discussion of the trial court shall be called a motion for rectification or a motion for articulation, whichever is applicable. Any motion filed pursuant to this section shall state with particularity the relief sought and shall be filed with the appellate clerk."

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5/23/18 Copy of memo of decision mailed to:
Cohen & Wolf PC, P.O. Box 1821, Bridgeport, CT 06601; Reporter of Judicial Decisions, Supreme Court Bldg, 231 Capitol Ave., Hartford, CT 06106; Atty. Steven Wise,

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(Internal quotation marks omitted.) *Nicefaro* v. *New Haven*, 116 Conn. App. 610, 617, 976 A.2d 75, cert. denied, 293 Conn. 937, 981 A.2d 1079 (2009). "An articulation is not an opportunity for a trial court to substitute a new decision nor to change the reasoning or basis of a prior decision." *Koper* v. *Koper*, 17 Conn. App. 480, 484, 553 A.2d 1162 (1989).

The petitioner's motion raises sixteen separate requests for articulation. Upon review, the court grants the motion as to request number ten to clarify the basis of its determination that the petition is wholly frivolous on its face in legal terms.

Request number ten provides: "If the *Lozada* [v. *Deeds*, 498 U.S. 430, 111 S. Ct. 860, 112 L. Ed. 2d 956 (1991),] standard for determining frivolousness set forth in *Fernandez* [v. *Commissioner of Correction*, 125 Conn. App. 220, 7 A.3d 432 (2010), cert. denied, 300 Conn. 924, 15 A.3d 630 (2011),] applies to Practice Book § 23-24 (a) (2),[2] articulate:

"a. Why the legal arguments presented in the petition and supporting memorandum of law are not debatable among jurists of reason, especially in light of the fact that the petition and motion to reargue cited at least four cases in which a writ of habeas corpus or its equivalent were in fact granted on behalf of nonhuman animals, and the fact that cases of first impression in Connecticut *per se* pass frivolousness review under *Lozada*"; (footnote added; footnote omitted); "b. Why courts could not possibly resolve the issues presented in the petition in a different manner, especially in light of the fact that courts have in fact granted the relief the [petitioner] seeks in this case on behalf of other nonhuman animals"; and "c. Why the arguments presented in the petition and supporting memorandum of law are not adequate to deserve encouragement to proceed further."

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[2] Practice Book § 23-24 (a) (2) provides that "(a) [t]he judicial authority shall promptly review any petition for a writ of habeas corpus to determine whether the writ should issue. The judicial authority shall issue the writ unless it appears that . . . (2) the petition is wholly frivolous on its face . . . ."

As to request number ten, the court's articulation is as follows: A writ of habeas corpus "is granted only in the exercise of sound judicial discretion." *Wojculewicz* v. *Cummings*, 143 Conn. 624, 627, 124 A.2d 886 (1956). In civil matters, Practice Book § 23-24 (a) (2) provides the Superior Court with the authority to deny the issuance of a writ of habeas corpus if it appears that the petition is wholly frivolous on its face. In family matters, Practice Book § 25-41[3] allows the Superior Court to deny the issuance of such a writ if the petition is not meritorious. The standard used to determine whether a petition for a writ of habeas corpus is frivolous is set forth in *Fernandez*, and the standard used to determine whether such a writ is meritorious is discussed in *Henry E. S.* v. *Hamilton*, Superior Court, judicial district of Stamford-Norwalk, Docket No. F02-CP-07-003237-A (February 28, 2008, *Maronich, J.*).

Under either standard, the court found the nonbinding legal[4] and nonlegal authority cited by the petitioner to be unpersuasive. Accordingly, the court expressly concluded that the petitioner was unable to point to any authority demonstrating a possibility or probability of victory for its theory that an elephant is a legal person for the purpose of issuing a writ of habeas corpus. In other words, the court determined that the petitioner failed to show that the issues presented are debatable among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are adequate to deserve encouragement to proceed further and failed to show that the petition merits a legal victory.

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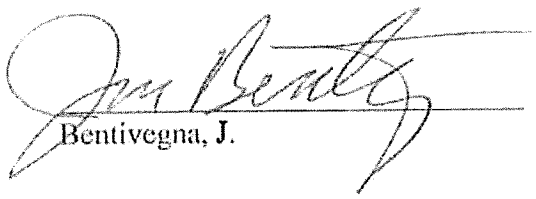
[3] Practice Book § 25-41 provides in relevant part that "(a) [t]he judicial authority shall promptly review any petition for a writ of habeas corpus to determine whether the writ should issue. The judicial authority shall issue the writ if it appears that: (1) the court has jurisdiction; (2) the petition is meritorious; and (3) another proceeding is not more appropriate."

[4] The four decisions referenced in request number ten include international decisions.

As to the remaining requests, namely, numbers one through nine and eleven through sixteen, the court denies the motion because they are unambiguously addressed by the court's December 26, 2017 and February 27, 2018 memoranda of decision.

SO ORDERED.

BY THE COURT,



Bentivegna, J.

AC 41464
Notice sent: May 29, 2018
Cohen and Wolf, PC (Bdpt. & Orange Offices)
Clerk, Litchfield Superior Court,
(LLICV175009822S)