

CAUSE No. 2010-47884

DAISY GARZA,  
Plaintiff

vs.

WYDELL DIXON and WHISKERVILLE  
ANIMAL SANCTUARY, INC.,  
Defendants

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

270<sup>th</sup> JUDICIAL DISTRICT

**ORDER GRANTING TEMPORARY INJUNCTION**

On the 13<sup>th</sup> day of August, 2010, came on to be heard Plaintiff Daisy Garza's ("Garza") Application for Temporary Injunction. Plaintiff Daisy Garza and Defendants Wydell Dixon ("Dixon") and Whiskerville Animal Sanctuary, Inc. ("Whiskerville") appeared. The parties made their opening statements and presented evidence. The hearing was recessed and reconvened on Monday, August 16, 2010, at which time the evidence was concluded and the Court heard closing statements. After considering the evidence received, the pleadings before the Court, and the argument of counsel, the Court finds and concludes that Plaintiff will suffer irreparable harm for which there is no adequate remedy at law and probably prevail on the merits at the trial of this cause. The Court further finds that evidence at trial will probably establish that:

1. Wydell Dixon is President of Whiskerville Animal Sanctuary, Inc.;
2. Garza is the owner of the two dogs, Zeus and Nikko (called Sedgwick and Storm by Defendants), made the subject of this suit;
3. Garza has established ownership of Zeus and Nikko ("the dogs" ) through veterinary records, rabies certificates, photographs, letter of transfer and AKC registration records;
4. Defendants do not contest that Sedgwick and Storm are in fact Zeus and Nikko;
5. Garza is the rightful owner of the dogs and never relinquished ownership of or abandoned Zeus and Nikko;
6. On or about July 2, 2010, Garza's dogs got out of her yard;

**FILED**  
Loren Jackson  
District Clerk

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7. Garza discovered the dogs were missing within a reasonable time and immediately, continually and diligently searched for them by various reasonable means;
8. On or about July 18, 2010, Garza found her dogs posted as available for adoption by Whiskerville on a website;
9. On or about July 18, 2010, Garza immediately contacted Dixon by email and by telephone and requested the return of her pets;
10. At the time Garza first requested the return of her dogs, Dixon and Whiskerville had control of and constructive possession of both dogs;
11. Dixon testified that the dogs were in her charge at the time that Garza first contacted her and requested the return of her pets;
12. On July 12, 2010, Dixon, as representative for Whiskerville, entered into a contractual sleepover agreement with Charles J. Archambeau ("Archambeau") pertaining to Nikko a/k/a Storm. The agreement states that the dog which is the subject of the contract was and would remain the property of Whiskerville until final adoption paperwork was completed. The contract purports to be final and binding;
13. Archambeau and Whiskerville and/or Dixon have not executed final adoption papers pertaining to Nikko a/k/a Storm and have not finalized an adoption of the dog;
14. On July 18, 2010, Zeus a/k/a Sedgwick, although sheltered at a third location, was in the constructive possession of the Defendants and subject to their control;
15. On July 23, 2010, after Garza requested the return of her dogs, Dixon, as a Whiskerville representative, entered into a contractual sleepover agreement with Charles J. Archambeau pertaining to Zeus a/k/a Sedgwick. This contractual agreement also stated that the animal was and would remain the property of Whiskerville until final adoption paperwork was completed. The contract purports to be final and binding;
16. Archambeau and Whiskerville and/or Dixon have not executed any final adoption paperwork pertaining to Zeus a/k/a Sedgwick and have not finalized an adoption of the dog;
17. Whiskerville has no legal authority to act as animal control;
18. Whiskerville has no legal authority to impound a dog;

19. Whiskerville never posted a notice that Sedgwick and Storm a/k/a Zeus and Nikko had been found before posting them for adoption;
20. Garza offered to pay Dixon and Whiskerville's expenses and made numerous demands for the return of the dogs;
21. Dixon never offered to return the dogs to Garza;
22. Dixon told Garza that she would need to go through Whiskerville's adoption process to be approved to get back her dogs. The process would require Garza to file applications, meet various requirements and pay for the adoptions;
23. Garza attempted to comply with these demands in a manner that would not violate the rules of Whiskerville's adoption policies;
24. Dixon testified that she lied in her email to Garza concerning the status of the dogs;
25. Defendants' continued exercise of construction possession and control over the two dogs is contrary to Garza's ownership interests; and
26. Daisy Garza is the rightful owner of the dogs and Defendants should return possession of the dogs, Zeus and Nikko (a/k/a Sedgwick and Storm), to Daisy Garza.

Further, the Court FINDS THAT:

27. A subpoena duces tecum was properly issued and served on Wydell Dixon. That subpoena ordered her to attend the temporary injunction hearing and to bring with her various documents, specifically including "any and all documents, including veterinary records regarding the two dogs made the subject of this suit";
28. Wydell Dixon appeared at the hearing, but did not produce any records or documents evidencing any expenses incurred for the care or shelter of Zeus and Nikko (a/k/a Sedgwick and Storm) during her possession of the dogs;
29. There is insufficient evidence in the record to support a monetary award to Whiskerville or Dixon for any costs or expenses for care or shelter of the dogs; and
30. Daisy Garza has no adequate remedy at law unless the dogs are returned to her until final judgment is rendered in this case.

**ORDERS**

The Court **ORDERS, ADJUDGES AND DECREES** that, in the interest of justice in equity that Daisy Garza's motion for temporary injunction is **GRANTED**.

**The Court ORDERS:**

1. Defendants Wydell Dixon and Whiskerville Animal Sanctuary, Inc. ENJOINED from the further exercise of control or constructive possession over the dogs Zeus and Nikko (a/k/a Sedgwick and Storm);
2. Defendants Wydell Dixon and Whiskerville Animal Sanctuary, Inc. to produce the two subject dogs, Zeus and Nikko (a/k/a Sedgwick and Storm), on the 26<sup>th</sup> day of August, 2010 in the courtroom of the 190<sup>th</sup> District Court located at 201 Caroline, 12<sup>th</sup> Floor, Houston, Texas;
3. Defendants Wydell Dixon and Whiskerville Animal Sanctuary, Inc. to bring the dogs to Court in separate and appropriate crates and the dogs shall remain in the crates while on the courthouse premises; and
4. Wydell Dixon and Whiskerville shall, at that time, return Zeus and Nikko (a/k/a Sedgwick and Storm) to Daisy Garza, who shall retain possession of the dogs until such time as the final judgment is rendered in this case;

The Court ORDERS that if Defendants Wydell Dixon and Whiskerville Animal Sanctuary, Inc. do not produce Zeus and Nikko (a/k/a Sedgwick and Storm) at the above place and time as ordered by this Court, a show cause order will issue for a determination of whether the Defendants should be sanctioned and/or be found in contempt for failing to comply with this Court's order as detailed above.

**THE COURT'S ENFORCEMENT POWERS**

If the Court finds Dixon and/or Whiskerville guilty of contempt, punishment may include a fine of up to \$500.00 and a sentence of confinement for up to six (6) months in jail for each act of contempt of court.

In exercising its inherent powers to prevent interference with its core functions and to ensure enforcement of its lawful judgments and orders, the Court may also take whatever steps necessary to ensure Wydell Dixon and Whiskerville comply with its Orders, including but not limited to ordering

- a) The Sheriff of Harris County to take Wydell Dixon into custody until such time as she complies with the Court's above Order by producing or causing the dogs to be produced to the Court;

- b) Wydell Dixon and Whiskerville to pay reasonable attorney's fees incurred because of their violation of this Court's Order; and
- c) Wydell Dixon and Whiskerville to pay all costs of court for the show cause hearing held in this matter.

If Wydell Dixon fails to appear before this Court at 9:00 a.m. on August 26, 2010, the Court will immediately issue a writ of attachment to ensure her presence before the Court. The costs for executing such a writ of attachment will be assessed against her at that time.

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The Court **FURTHER ORDERS** Defendants Wydell Dixon and Whiskerville Animal Sanctuary, Inc. **ENJOINED AND PROHIBITED** from this day until entry of final judgment in this case from: 1) removing or disposing of the subject dogs, 2) harming the dogs, or 3) attempting to retrieve or relocate the dogs once they are in Daisy Garza's possession.

The Court **ORDERS** Dixon and Whiskerville **ENJOINED AND PROHIBITED** from seeking or altering any ownership records on the dogs. This injunction further **PROHIBITS** Dixon and Whiskerville from making any efforts to place the dogs for adoption or for a foster placement.

The Court **ORDERS** Dixon and Whiskerville to provide Daisy Garza and the Court with oral and written information regarding the whereabouts of the dogs and the identity of the person or entity in possession of the dogs as soon as possible, but no later than 5:00 p.m. on August 19, 2010.

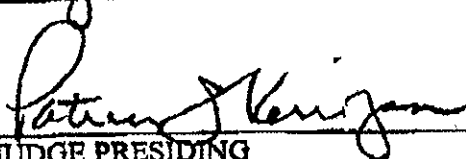
The Court **ORDERS** that the trial on the merits of this case is hereby set on the Court's trial docket for **NOVEMBER 29, 2010** at 9:00 a.m.

The Court **ORDERS** that the \$50.00 bond currently in place for the temporary restraining order shall constitute sufficient bond to carry over at this time.

The Court **ORDERS** the Plaintiff, Daisy Garza, to cause this **ORDER** to be served on Defendants Dixon and Whiskerville. Dixon shall be served by personal service and Defendants' counsel of record shall be served by hand delivery.

SIGNED this 18 day of August, 2010. *at 12<sup>35</sup> pm*

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JUDGE PRESIDING