

DISTRICT COURT ARAPAHOE COUNTY, STATE OF COLORADO Arapahoe County Justice Center 7325 South Potomac Street Centennial, Colorado 80112	EFILED Document CO Arapahoe County District Court 18th JD Filing Date: Dec 1 2009 3:31PM MST Filing ID: 28289621 Review Clerk: N/A <b>Court Use Only</b>
<b>Plaintiff:</b> STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL  v.  <b>Defendants:</b> COLORADO HUMANE SOCIETY & S.P.C.A., INC.; MARY C. WARREN, an individual; ROBERT WARREN, an individual; and STEPHENIE L. GARDNER, an individual	<hr/> Case No. 08CV2659   Courtroom: 404
<b>ORDER RE: CUSTODIAN'S COMBINED FOURTH AND FIFTH REPORT</b>	

THIS MATTER comes before the Court on Waverton Group, LLC, as Custodian for the Colorado Humane Society & SPCA's (hereinafter "Custodian")'s Combined Fourth and Fifth Report. The Court being fully advised in the premises finds and orders as follows:

**I. Statement of the Case**

The Custodian filed its Combined Fourth and Fifth Report, which reported that it has been unable to locate all of the financial information, the Colorado Humane Society (hereinafter "CHS") has been experiencing a cash shortage, the shelter experienced a canine distemper outbreak, the Custodian has selected a Board of Advisors, and the Custodian is seeking to appoint a replacement Board of Directors. The Custodian also attached an "Informational Report," which had nothing to report.

Individual Defendant Mary Warren filed an Objection which stated that the Custodian is acting outside its scope of authority in seeking to appoint a permanent Board of Directors and disagreeing with the Custodian's attempt to extend its

judicial immunity to the Board of Advisors. Additionally, Mary Warren objects to the Informational Report, especially the assertion that the Custodian has the authority to make “findings of fact” or “conclusions of law” on the Court’s behalf and that the Custodian’s Reports have the effect of being Court Orders.

The Custodian replied stating that Mrs. Warren does not have a possessory interest in CHS and has been removed from her employment. The Custodian stresses that Mrs. Warren may apply for a position as Executive Director. Furthermore, the Board of Advisors do not have any authority over the Custodian’s decisions, but merely serve in an advisory capacity since the individuals are familiar with the operation of nonprofit animal welfare organizations. Finally, the Informational Report is appropriate, according to the Custodian, since there has been no effort on the part of the Custodian to make findings of fact or conclusions of law on the Court’s behalf.

## **II. Findings and Order**

Mary Warren’s assertion that the Custodian is exceeding the scope of its authority has been rendered moot in light of the July 9, 2009, hearing. At that hearing, the Court held that it was necessary for the Custodian to install a new Board of Directors since CHS could not survive without the appointment of a new Board.

Mary Warren also objects to the Custodian’s intention to grant the Advisors on the Board of Advisors limited judicial immunity. The Custodian counters that the Advisors have no authority over Custodian’s decisions. Mary Warren focuses on the fact that the Order appointing a Custodian does not require the Custodian to install a Board of Advisors. However, the Order does grant the Custodian “limited judicial immunity,” which is also extended to those “who are acting, or have acted, on behalf of the Custodian at the request of the Custodian.” *See* Stipulated Order Appointing Custodian and Issuing Preliminary Injunctive Relief at ¶14. Most importantly, in order for the limited judicial immunity to extend to the Advisors, as agents of the Custodian, the “Custodian should file a notice of agency with this Court.” *Id.* It does not appear from the record that the Custodian filed a notice of agency regarding the Board of Advisors for this limited judicial immunity to extend to them. Since the Custodian Report is meant merely to “report ...the condition of the Custodianship Estate,” it does not seem like the appropriate substitute to a notice of agency since it’s just a report and not a motion. *See Id.* at ¶ 6(d). Therefore, this Court cannot extend the limited judicial immunity to the Board of Advisors without a formal notice of agency filed with the Court.

Finally, Mary Warren's objections over the inclusion of the Informational Report are ineffective at this time since the Custodian has yet to include any information in the Informational Report section. The Informational Report is meant to "allow the custodian to Report litigation matters with conclusions of law and editorial content...without submitting the Informational Report to the Court for approval," and also "asks the Court to adopt the findings of fact from the custodian." *See* Report at ¶ 19. While the Court does find such assertions somewhat troubling, without the inclusion of specific "findings of fact" or "conclusions of law," the Court is unable to determine whether this Section evades the Court's oversight authority. Mary Warren's argument is too abstract at this time without some concrete assertions by the Custodian in the Informational Report.

Thus, the Custodian's Combined Fourth and Fifth Reports is GRANTED subject to the limitations stated above. To the extent that the Court has issued a specific order contrary to anything in the approved reports, the Orders, whether written or oral, will control.

SO ORDERED THIS 1<sup>st</sup> DAY OF DECEMBER 2009.

BY THE COURT:



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Charles M. Pratt  
District Court Judge