

Who Gets the Pet in a Divorce?

Disputes and questions regarding pet custody in a divorce or separation are on the rise. This is a natural outcome, as increasingly couples value pets almost like children. Lasting solutions to such custody issues serve all parties, including the animal, and attorneys with knowledge of certain relevant issues are growing more valuable.

Valuation

The first thing to remember is that—cuddly and lovable as many pets are to their owners—animals still are legally property. Thus, in a pure division of assets, the animal must have an assigned value, which typically is limited to its “fair market value.” This also takes into account any special talents or value the animal possesses. Valuation also, under the right circumstances, may include an animal’s “intrinsic value,” which attempts to take into account the special, often times difficult-to-quantify, value that an animal may have to a particular party. However, it is important to recognize that the very high end of “intrinsic value” awards, for example, granted in a select few veterinary malpractice cases have not exceeded \$30,000. (*Roemer v. Gray*, Case No. 45-09514 (King County District Court, Washington (2005)); (*Bluestone v. Berstrom*, Case No. 00CC00796, Orange County Superior Court, California (2004)). A more recent case found that certain property, such as an animal, can have “special subjective value” to one party that can require specific performance of another party’s promise to that party to relinquish possession of the animal upon termination of the parties’ relationship. (*Houseman v. Dare*, 966 A.2d 24 (N.J. Super. Ct. App. Div. 2009)).

Whose Interest Trumps?

Clearly someone who comes into a relationship as owner of an animal-at-issue in a later custody dispute has a strong argument for permanent custody. Likewise, someone who paid for the animal with earnings or assets not considered joint property is in a position of strength. But often the animal was obtained with joint assets. One factor that might tip the scales in a party’s favor is whether that party spent the most time caring for the animal and attending to the animal’s needs. Another factor to consider is whether either party used private funds to cover costs associated with the animal. Obviously any evidence that one party mistreated an animal will work strongly in the opposing party’s favor.

Animals’ interests also are increasingly being taken into account in this equation, although typically not within the formal parameters seen in a “best interests” test involving a child. Still, in 2002, the Alaska Supreme Court upheld the awarding of a Labrador to the husband because it was found that the dog was not safe in proximity to the wife’s dogs. (*Juelfs v. Gough*, 41 P.3d 593 (Alaska, 2002)). In a New York case, a court awarded custody of “Lovey,” a ten-year old cat, based upon Lovey’s limited life expectancy and the fact he had “lived, prospered, loved and been loved for the past four

years” at the residence-at-issue. (*Raymond v. Lachmann*, 695 N.Y.S.2d 308 (N.Y App. Div. 1999)). In one oft-cited divorce case involving a San Diego doctor and his wife, in which the parties purportedly spent up to \$150,000 on their custody dispute, a court took into account a canine bonding study and a “Day in the Life” video about the dog-at-issue. Other courts have required examinations by behaviorists or veterinarians to aid in the determination. As with human siblings, the potential separation of animals that have lived together can bring scrutiny.

Joint Custody

Some couples attempt to formalize a joint-custody agreement. Clearly, there is nothing that typically bars separating couples from maintaining joint ownership of property. However, because the property involved is an animal, complications can abound. Many courts handling divorce, or similar, actions are very hesitant to broach the idea of possible future enforcement of a custody or visitation order involving property, animal-property or not. Thus, a couple may attempt to draw up a custody or visitation agreement outside the legal action related to the termination of their relationship. This at least provides potential contract law-based remedies.

However, the reality is that, in most cases, it arguably is best for the animal to have a permanent residence with consistent caretaking. Most animal adoption specialists agree. Furthermore, it takes two very mature individuals to ensure the long-term workability of a joint-custody agreement involving an animal, especially in the known absence of any societal enforcement mechanisms regularly employed in such matters. However, I also am aware of joint custody arrangements that have worked, due chiefly, it appeared, to the caliber of the individuals involved and how the termination of their relationship unfolded.