

Fighting Over Fido

Custody disputes over pets in divorce cases

by

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Divorce attorneys are used to dealing with custody disputes over children. In order to resolve any divorce proceeding when children are involved the attorney has to address all issues of custody, including but not limited to, which parent will have custody, where the child/children are going to live, child support and visitation. Often times parties are able to reach a settlement regarding how they are going to face sharing their child/children between two households. If they cannot come to such a settlement, then the court will ultimately make the final decision for them. However, a growing issue that divorce attorneys are facing is how to deal with pets in a divorce action. Pet owners view their pets as members of the family and not just property. In fact studies have revealed that more than seventy percent (70%) of pet owners consider their pet to be a member of the family.¹ Because pet owners report that a variety of human emotions such as loyalty, trustworthiness, happiness and jealousy are evidenced in their dogs and cats, they are commonly humanized and are frequently regarded as family members. In addition, many of the pet owners reported that their animal is able to reciprocate their love. Despite these reported feelings and beliefs, courts in many jurisdiction, including Georgia, are silent with respect to the

¹See William C. Root, Man's Best Friend: Property or Family Member? An examination of the Legal Classification of Companion Animals and its Impact on Damages Recoverable for their Wrongful Death or Injury, 47 Vill. L. Rev. 423 (2002) (footnotes omitted).

custody of pets in contested divorce actions. For example the custody statutes in Georgia state in pertinent part the following:

§19-9-1

(a)(1) In all cases in which a divorce is granted, the party not in default shall be entitled to the custody of the minor children of the marriage.

§19-9-3

(a)(1) In all cases in which the custody of any minor child or children is at issue between the parents. . .

(2) The court hearing the issue of custody, in exercise of its sound discretion, may take into consideration all of the circumstances of the case.

Georgia law further defines “joint legal custody” as both parents having equal rights and responsibilities for major decisions concerning the child, including the child’s education, health care, and religious training. “Sole custody” is defined as a person, including, but not limited to a parent, who has been awarded permanent custody of a child by a court order. See O.C.G.A. §19-9-6(2) and (4).

Rather, the law in Georgia considers pets as “property.” Therefore, in a divorce case in Georgia the courts to date have treated the pet as an “asset” and have awarded it to one party or the other depending on the facts and circumstances of the case. Clearly this poses a practical problem when it involves two parties who view their pet as a member of the family and both desire custody and/or visitation with the family pet. In Georgia there are not any reported cases concerning the custody of pets; however, other jurisdictions have addressed the issue.

Some jurisdictions have actually treated the pet at issue as if it was a child rather than property. In Alaska, for example, the Supreme Court in *Juelfs v. Gough*, 41 P.2d 593 (Alaska

2002) upheld the lower court's decision of awarding sole legal custody of the family's Labrador Retriever to the husband because the Labrador Retriever was not safe at Wife's residence due to the other dogs she had living with her. In New York the Appellate Court reversed the lower court's decision that had awarded the parties' cat to the Plaintiff under a straight property analysis. In that case the Appellate Court awarded sole custody of the cat to the Defendant, finding that the cat was a "feeling individual, who had "lived, prospered, loved and been loved" solely by the Defendant. *See Raymond v. Lachmann*, 695 N.Y.S. 2d 308 (N.Y. App. Div. 1999). Additionally, a Virginia court considered the best interests of the parties' cat, a standard usually reserved for custody of children, and awarded custody of the cat to the non-owner roommate. The Court's rationale was that the cat's happiness took priority over the property rights between two former roommates. *See Zovko v. Gregory*, No. CH 97-544(Arlington County (Va.) Circuit Court, October 17, 1997).

A Texas Court on the other hand approved a lower court's order that included a "property division" which provided reasonable visitation with the family dog. *See Arrington v. Arrington*, 613 S.W.2d 565 (Tex. App. 1981). In that case the Court stated that "a dog for all its admirable and unique qualities is not a human being and is not treated in the law as such." The Court further noted that it was hopeful that "both [parties] will continue to enjoy the companionship of [the dog] for years to come within the guidelines set by the trial court," and that a dog was not a commodity that could be bought or sold or decreed, rather it should be shared instead of argued about. *Id.*

Other jurisdictions have refused to enter custody orders with respect to household pets. A Delaware court in *Nuzzaci v. Nuzzaci* 1995 WL 783006 (Del. Fam. Ct. Apr. 19, 1995) refused to sign a stipulated order which provided a visitation arrangement for the parties' golden

retriever. In that case the Court based its decision upon a lack of statutory authority. A Florida Appellate Court, for example, refused to affirm the lower court's order that provided a visitation schedule for the parties' dog. The Court's rationale was that the dog was premarital property, and the Court did not have the authority to grant custody or visitation of personal property. *See Bennett v. Bennett*, 655 So. 2d 109 (Fla. Dist. Ct. App. 1995). Similarly in *DeSanctis v. Pritchard*, the Pennsylvania Supreme Court affirmed the trial court's decision of dismissing a complaint to enforce a settlement agreement that provided for shared possession of the parties' dog. The Court held that the settlement agreement was void, as it attempted to award visitation or shared custody of personal property. 803 A.2d 230 (Pa. Super. 2002).

Although many jurisdictions have been reluctant to apply custody statutes to disputes involving pets in divorce and custody cases, the issue of what to do with the family pet in divorce cases continues to exist. As an attorney, the best approach is to try to enter into a settlement agreement wherein the parties can agree to terms with respect to their pet. Otherwise, until the law changes (at least here in Georgia) the best interests of the pet will not be considered, and the pet will be treated as the parties' personal property.