

DIVORCE AND PETS

By Claudine Wilkins and Jessica Rock, Founders of Animal Law Source™

DEFINITIONS

Marital property is property acquired during the marriage and is subject to division between the spouses during a divorce. Therefore, if the couple acquired a pet during the marriage, the court will consider it a marital asset to be divided with the rest of the marital property during a divorce.

Separate property is any property obtained before the marriage, as well as gifts and inheritance during marriage, and will not be subject to division. If one spouse acquired a pet prior to marriage or if the pet was a gift to or the inheritance of one spouse during marriage, then it is not subject to division. It is the property of the spouse who acquired the pet or received it as a gift or inheritance. Documentation of when you acquired the pet can be crucial in these cases, not only when it comes to custody of the pet, but to ownership as well.

While most courts will **not** take into consideration the “**best interests**” of the pet, courts do try to be fair to the owners and will determine all of the relevant factors to determine pet custody. Sometimes, the spouse who is not awarded the pet will be awarded the “cash value” of the pet. This dispassionate way to treat an emotionally charged issue such as custody of a beloved pet does not always solve the problem. To avoid this situation, couples are encouraged to come to their own agreements outside of court to determine ahead of time what to do with pets if divorce should occur.

GEORGIA LAW

In every state in the past, pets were considered **property**. Currently, more people than ever before have pets that they consider as part of the family rather than as a possession. As a result, pet custody cases are growing more prevalent throughout America. Although animals are still considered **property** in the eyes of Georgia law, some courts are beginning to recognize that one’s relationship with this particular form of property known as the family cat, dog, bird etc., is very different from one’s relationship with other forms of inert lifeless property.

Georgia, as **an equitable division** state, means that courts will divide the marital property in a fair and equitable manner. However, that does not mean that the court will split all the property equally down the middle. Georgia law still considers pets as “property” so pets are available for division as a marital asset. Therefore, in a Georgia divorce case, the courts to date have awarded the family pet 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 who both desire custody and/or visitation with the family pet. Because these types of cases are growing, judges in some states are more willing to look at other possibilities when it comes to the custody of a pet. In Georgia, there have not been any reported cases concerning pet custody yet; however, other jurisdictions have already addressed the issue.



PETS TREATED LIKE CHILDREN

Changing attitudes toward companion animals are reflected in an increased number of pet custody battles and in the willingness of judges to consider the welfare of the companion animal when determining which party should get custody. Courts are recognizing that while the current legal framework does not coincide with modern public sentiment about pets, the law is changing. In Alaska, the Supreme Court 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. (See Juelfs v. Gough, 41 P.2d 593 (Alaska 2002)). 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)).

DOMESTIC VIOLENCE AND PETS

In years past, pets could **not** be protected in domestic violence restraining orders in any state. Because abusers used pets to threaten victims, and sometimes killed the animals, laws were changed in many states. Thirty-two states and the District of Columbia, (but not Georgia), have laws that allow protection orders to include pets in domestic violence situations. (See www.animallaw.info/ "Domestic Violence and Pets" for a list of states.) Even if your state does not have a specific provision, most state Temporary Restraining Orders (TROs) contain language that gives courts discretion to permit additional orders. For example, a court can order pets to be included in a TRO, just as they can provide for the temporary care of children or possession of property. Bond conditions also can include pets and a TRO can authorize law enforcement to assist with the removal of a pet from a home.

SPECIAL CONSIDERATIONS TO DETERMINE PET CUSTODY

The Georgia Courts have predominately resorted to a strict property law division test to determine who gets the family pet. The Court lumps all the family property together, then decides in a fair and equitable manner, who should get what. However, Courts are realizing that a pure property law test is not always appropriate to resolve a pet custody dispute when both parties have a strong emotional attachment to the pet. Sometimes one party may be using the emotional attachment of the other party as a bargaining chip in order to get a better deal.

As a result, some courts are beginning to consider other factors when deciding who should get the pet. These considerations border on "what is in the best interest of the pet" or the overall "long-term welfare" of the pet. For example, some courts now consider who the pet prefers, if the pet was neglected by one owner, if one's property is more suitable for the pet to live, if one owner can better





afford to properly care for the pet, and if children are involved who are attached to the pet; whose life is better suited to pet ownership; does one party travel a lot, is there enough space in the house, are the finances in order to provide for the pet, etc. It is imperative that the owner wishing to retain ownership of a pet, keep good records such as receipts for veterinary care, licensing records, receipts for grooming, dog training classes, food, and other items purchased for the companion animal to help persuade the judge to decide in their favor.

WHAT TO DO TO PROTECT OWNERSHIP OF YOUR PET

Since most courts are not likely to treat pets as members of the family, you would be better off crafting your own plan for pet custody/visitation and finances before a divorce, or after the divorce getting the court to include your plan in the settlement agreement. However, the court may not be willing to hear an appeal if this agreement is breached. You can also create a prenuptial or postnuptial agreement to stipulate who will get custody of the pet in the event of divorce. If it is too late to do this and you cannot work out a plan, the court will be forced to decide for you.

REFERENCES

www.animalhealthfoundation.net

www.wardlawfirmga.com/

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<http://aldf.org/>

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<http://www.americanbar.org> – animal custody cases

www.animallaw.info/

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<http://lawfam.oxfordjournals.org/content/28/2/177.full>

APPENDIX A - CASE LAW

In re Berger, 834 N.W.2d 82 (Iowa App., 2013)

The district court opined the "biggest issue" regarding the dog was which party would be more available to care for him. In awarding Max to Cira, the district court noted she has been responsible for taking him to the veterinarian and, because she stays at home, would have more time than Joe to provide attention for the dog.

Dubin v. Pelletier (R.I. Super, 2012)

At the heart of this action is a dispute between an owner and handler over which of them is entitled to ownership and possession of a champion show dog—a Norfolk Terrier fondly referred to as "Mr. Big"—now that his show career is over. It should serve as a warning to owners and handlers in the high-stakes



show dog world of the importance of entering into written contracts to delineate the relationship between them during a dog's show career and upon the dog's retirement.

For the reasons set forth in this Decision, as to Plaintiff's Complaint, judgment shall enter for Plaintiff on her claim for declaratory relief to establish her right of ownership of Mr. Big (Count II). This Court declares that Plaintiff is the owner of Mr. Big and that, as owner, she is entitled to regain immediate possession of Mr. Big from Defendant. Having declared that Plaintiff is the owner and has the immediate right to possess Mr. Big, this Court denies Plaintiff's claim for replevin (Count I). Plaintiff's claim of conversion (Count III) is denied and dismissed. Judgment shall enter in favor of Plaintiff in the amount of \$16,000, plus statutory interest, on her claim of unjust enrichment to recoup the stud fees for Mr. Big (Count IV). Plaintiff's claim for injunctive relief (Count V) is denied and dismissed as moot.

Houseman v. Dare, 966 A.2d 24, 405 N.J. Super. 538 (N.J. Super., 2009)

A woman was awarded \$1500 for a dog that her fiancé refused to return to her after breakup of the relationship. The Appeals court ruled that money was inadequate compensation for the pet and concluded that a pet, like a family heirloom, has “special subjective value” that cannot be compensated by money alone.

Desanctis vs Pritchard (Pennsylvania, 2002)

Former husband filed complaint seeking shared custody of the dog he and his wife acquired during their marriage. Pa appeals court held that under the clear and unambiguous terms of the divorce agreement, the dog and his social schedule belonged exclusively to the wife. The husband attempted to argue the dog should be treated similar to a child. The Court, however, stated “In seeking “shared custody” and a “visitation” arrangement, Appellant appears to treat Barney, a dog, as a child. Despite the status owners bestow on their pets, Pennsylvania law considers dogs to be personal property.” (Note – the husband appealed to the Supreme Court of Pennsylvania, but that court refused to hear the appeal. No further legal remedies are available to the husband).

Raymond v. Lachmann 1999 (New York)

New York appeals court granted custody of pet cat.

Bennett vs Bennett 1995 (Florida)

Husband appealed judgment in divorce proceeding which awarded wife visitation with parties' dog. The District Court of Appeal held the dog was personal property subject to equitable distribution and was not subject to award of custody or visitation.

Arrington vs Arrington 1981 (Texas)

Texas appeals court permitted court ordered visitation rights with respect to a family pet following a divorce decree.

Credit to Kaye Klapper