

The Role of Domestic Pets in Bankruptcy Proceedings

By Alyssa Myers

Sixty percent of households in the United States contain pets¹. Eighty-four percent of Americans refer to themselves as their pet’s “mom” or “dad”². Thirteen million dog owners qualify their relationship with their dog as being at least as close as that of a best friend³. Yet, the law still treats pets and animals as property akin to an inanimate object.

Some courts in the United States have recently begun to recognize animals as sentient beings capable of reasoning and emotions. The bankruptcy code does not reflect this position and only protects those animals, which are of little monetary value. The code neither adequately appreciates nor protects the bond between humans and their animals, thus not reflecting the policies of contemporary animal law⁴.

This paper will compare the current bankruptcy laws in various states and discuss how the incorporation of animal law will offer more protection to a debtor’s beloved pets. First, the paper will discuss creating an appropriate definition for domestic pets through review of definitions in the Animal Welfare Act and state anti-cruelty statutes. Then, it will propose a standard based on family law cases. Next, the paper will review recent cases in which courts acknowledge the role of animals as more than mere property. Then, it will review when a pet is property of the estate in a bankruptcy proceeding by examining the various exemptions, which may apply to animals. Next, the paper will discuss

¹ Zachary Paterick ET AL. *A Stepping Stone Toward Companion Animal Protection through Compensation*, 22 ANIMAL L. 79, 85 (2015).

² Id.

³ Rod Preece & Lorna Chamberlain, *Animal Welfare & Human Values* 242 (1993).

⁴ 22 ANIMAL L. 79, 80.

circumstances in which gray areas within the law may leave pets vulnerable to sale. Lastly, the paper will examine the concept of reasonable monthly expenses for pet care in chapter 13 proceedings. In conclusion, this paper will propose a solution to properly protect a debtor's companion animals.

1. Defining Domestic Pets

In *Board of Trade v. Johnson*, Justice Taft stated that “while the definition of property is determined by state law, Congress may indicate a policy that requires a broader construction than what is given by state law and in those cases, federal law is not constrained by the state”⁵. When bankruptcy law intersects with property rights, which are regulated by the state law, the federal bankruptcy courts will follow the state law⁶. Bankruptcy law contains some protection for companion animals but the level of protection varies widely from state to state. Chapter 12 bankruptcy rules pertain to farm animals and livestock but there are not clear rules for companion animals as property in chapter 7, 11, and 13 proceedings. The bankruptcy code does not provide a definition for domestic pets or companion animals. While some local rules allow for exemptions up to a particular dollar amount that may include family or domestic pets, the line between a commercial animal and a family pet may not be so clear⁷. In such instances, a definition would be helpful to protect family pets. The broad discretion of the courts as to what constitutes a pet gives a judge the power to potentially exempt a debtor's dog in one case but dispose of a debtor's pet snakes in another case simply because this is not a traditional view of a “pet”⁸. While there is no uniform test, judges often turn to an objective analysis to determine if the animal is a pet. Courts have considered all manner of factors including, whether the

⁵ *Board of Trade v. Johnson*, 264 U.S. 1, 10, 44 S. Ct. 232, (1924).

⁶ *Id.*

⁷ Elizabeth Hornbrook, *Barking Up the Wrong Tree: Pet Care Expenses in Bankruptcy*, 33-4 ABIIJ 56, 56-57 (2014).

⁸ *In re Taylor*, 2008 Bankr. LEXIS 1447, *6-8, 2008 WL 1805384 (Bankr. S.D. Ill. Apr. 18, 2008), (holding pet snakes were not exempt as debtor's “tools of the trade”).

animal lives outside or in the house, what use the animal serves to the debtor, and the manner in which the family treats the animal⁹.

A. Borrowing from Animal Law

The federal Animal Welfare Act (AWA) does not define a pet per se but does include pets in its definition of “animal” as “. . . any live. . . dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal. . . being used as. . . a pet”¹⁰. The definition goes on to specifically exclude livestock¹¹. Furthermore, it may be deduced that the definition is meant to include domestic, companion animals because the Act lists one of its purposes as being to protect pets against inhumane treatment¹².

Some states take the federal Animal Welfare Act a step further by defining pets, companion animals, or domestic animals within the state animal protection statutes. However, the definitions widely vary in how broadly or narrowly the state construes the meaning of “pet”. New York’s definition states:

“Companion animal” or “pet” means any dog or cat, and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal. “Pet” or “companion animal” shall not include a “farm animal” as defined in this section¹³.

Oregon’s definition is:

““Domestic animal” means an animal, other than livestock or equines, that is owned or possessed by a person”¹⁴.

⁹ See generally *In re Gallegos*, 226 B.R. 111, 111-112 1998 Bankr. LEXIS 1481 (Bankr. D. Idaho 1998); *In re Canutt*, 264 F. Supp. 919 (1967).

¹⁰ Animal Welfare Act, 7 U.S.C. § 2132(g).

¹¹ *Id.*

¹² 7 U.S.C. § 2131(1).

¹³ McKinney's Agriculture and Markets Law § 350(5).

¹⁴ O. R. S. § 167.310(4).

Minnesota and Virginia have you unique statutes because the definitions for “companion animal” include feral or stray animals and opposed to only those that are domesticated. Virginia’s definition is:

““Companion animal” means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter”¹⁵.

Minnesota’s definition is:

““Pet or companion animal” includes any animal owned, possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another as a pet or companion, or any stray pet or stray companion animal”¹⁶. Interestingly, most state animal protection laws specifically exclude livestock¹⁷. Still other states, such as Georgia, do not define pets or companion animals at all within the state anti-cruelty statutes¹⁸.

The policy behind the bankruptcy code is to allow the debtor to obtain a “fresh start” for himself and his family. Since many state courts now recognize the special bond between owners and their pets, the policy behind the bankruptcy code and the policy behind animal protection statutes are in conflict if the bankruptcy code does not adequately protect the pets of debtors.

B. Borrowing from Family Law

Family law offers a useful standard in the event that a court needs to determine whether to sell an animal or allow an exemption. In cases where the court is unsure as to whether a debtor will have the financial means to care for an animal properly following the bankruptcy proceeding, the court

¹⁵ Va. Code Ann. § 3.2-6500.

¹⁶ Minn. Stat. § 343.20(6) (2015).

¹⁷ New York law states ““Pet” or “companion animal” shall not include a “farm animal” as defined in this section”. McKinney’s Agriculture and Markets Law § 350(5).

Maryland law states ““Pet” does not include livestock”. Md. Code Ann., § 10-601(n)(2) (2016).

¹⁸ O.C.G.A. § 4-11-1.

should employ the “best interest of the animal” standard. This standard is modeled after family law’s “best interest of the child” standard and has been applied in pet custody disputes heard in family courts.

Placey v. Placey involved a dispute between mother and daughter over the family dog¹⁹. An Alabama appeals court affirmed the family court’s decision awarding ownership of the dog to the mother²⁰. The court reasoned this decision was appropriate because the dog resided at the mother’s single family home for its entire life²¹. Meanwhile, the daughter was mentally ill and living in a hotel room²². The court stated that it was in the dog’s best interest to continue residing in the familiar home with a yard and rather than being confined to a hotel room²³.

The Supreme Court of New York considered the “best interests of the animal” standard as early as 1999 in the case of *Raymond v. Lachmann*²⁴. Here, the court noted that it made its determination while being “cognizant of the cherished status accorded to pets in our society”²⁵. The court awarded custody of the cat, Lovey, to the plaintiff because Lovey was elderly with a limited life expectancy²⁶. The court felt it was in Lovey’s best interest that he should remain in his home “where he has lived, prospered, loved and been loved for the past four years”²⁷.

2. Property or Family Members?

¹⁹ See generally *Placey v. Placey*, 51 So. 3d 374, 2010 Ala. Civ. App. LEXIS 155 (2010).

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

²⁴ See generally *Raymond v. Lachmann*, 264 A.D.2d 340, 695 N.Y.S.2d 308 (1999).

²⁵ *Raymond v. Lachmann*, 264 A.D.2d 340, 341; 695 N.Y.S.2d 308 (1999).

²⁶ Id.

²⁷ Id.



Bankruptcy exemption laws were originally enacted to protect the debtor and his family against being reduced to poverty, thus, preventing the debtor from obtaining a fresh start²⁸. States exemptions were enacted for the purposes of allowing the debtor to maintain a farm²⁹. Domestic animals were initially included in the exemptions to facilitate agriculture³⁰. New Hampshire allows an exemption for a “cow, a yoke of oxen, a horse, and domestic fowls” while Oklahoma allows for “five milk cows and their calves under six months old, 100 chickens, two horses, two bridles and two saddles, one gun, ten hogs, and 20 head of sheep”³¹. As humans evolve to be less “human-centric”, domestic animals are viewed more as family members than as farming implements³². Thus, the elevated role of animals in society should be recognized in the bankruptcy code.

In 2016, two landmark cases in animal law acknowledged the sentimental value and the sentient consciousness of the family pet. In *Barking Hound Vill, LLC v. Monyak*, the Georgia Supreme Court heard a claim for damages resulting from the negligent care of a boarding facility that resulted in the death of the Monyaks’ dog³³. There, the court stated, “The sentimental bond between a human and his or her pet companion can neither be quantified in monetary terms or compensated for under our current law”³⁴. The court further stated that evidence of an animal’s breed, age, training, temperament, and use is admissible in determining the intrinsic value of the animal to the owner³⁵. While the *Barking Hound* court affirmed previous case law that damages could not be awarded based on sentimental value of personal property, the court departed from previous case law by awarding

²⁸ *Bertozzi v. Swisher*, 81 P.2d 1016, 1017 (Cal. Ct. App. 1938).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² 22 ANIMAL L. 79, 82.

³³ *Barking Hound Vill., LLC v. Monyak*, 299 Ga. 144 (2016).

³⁴ *Id.* at 152-153.

³⁵ *Id.*



damages beyond the fair market value of the animal³⁶. The owner was awarded damages for veterinary bills and treatment that was administered in efforts to save the dog³⁷.

In *State v. Newcomb*, an abused dog was seized by law enforcement and administered medical care³⁸. The owner argued unsuccessfully that administering testing and medical treatment to the animal constituted an unreasonable search³⁹. The Supreme Court of Oregon disagreed, stating there was no privacy interest in the dog and that although animals are property they “. . . are nonetheless sentient beings capable of experiencing pain, stress and fear”⁴⁰. In *Newcomb*, the court drew a clear distinction between a living animal and other types of personal property that are inanimate objects, calling the characterization of a dog as mere property, “cold”⁴¹.

As early as 2001, the Wisconsin Supreme Court discussed the characterization of dogs as property in *Rabideau v. City of Racine*⁴². The plaintiff sued for emotional distress after a police officer shot her dog. While the court did not award damages because the plaintiff did not meet the elements of the claim, it did note that the claim was not frivolous and was properly before the court⁴³. The court begin its opinion by stating, “At the outset, we note that we are uncomfortable with the law's cold characterization of a dog, such as Dakota, as mere “property.” Labeling a dog “property” fails to describe the value human beings place upon the companionship that they enjoy with a dog. A companion dog is not a fungible item, equivalent to other items of personal property. A companion dog

³⁶ Id at 146

³⁷ Id at 148.

³⁸ See generally *State v. Newcomb*, 359 Or. 756 (2016).

³⁹ Id.

⁴⁰ Id at 767.

⁴¹ *State v. Newcomb*, 359 Or. 756, 765-766 (2016).

⁴² See generally *Rabideau v. City of Racine*, 243 Wis.2d 486; 627 N.W.2d 795 (2001).

⁴³ Id at 494.



is not a living room sofa or dining room furniture. This term inadequately and inaccurately describes the relationship between a human and a dog⁴⁴.

The current bankruptcy code does not recognize the sentimental value of pets but some state bankruptcy laws recognize the sentimental value of other personal property. For example, Idaho allows for the exemption of “family portraits” and “sentimental property” up to \$750 per item but the total of all personal property exemptions in this category cannot exceed \$7,500⁴⁵. Notably, this miscellaneous category includes pets, as well as, inanimate objects⁴⁶. Illinois law allows for bibles and family pictures⁴⁷. Louisiana offers an exemption for “military accouterments”⁴⁸. Presumably, such exemptions are allowed because while these items are priceless to the debtor, they hold no value to creditors. However, many states allow exemptions for wedding bands. These states include Connecticut, Louisiana, Maine, Mississippi, Missouri, and Iowa, amongst others⁴⁹. Wedding bands, although extraordinarily sentimental, could be sold to satisfy potentially large debts. We do not do this, of course, because it seems unnecessarily cruel, much like selling the pet of a debtor or, similarly, leaving the debtor unable to afford to care for his pet.

3. Animals as Property of the Estate

Under the bankruptcy code, all property interests of the debtor become property of the estate⁵⁰. Board of Trade v. Johnson defined which interests were eligible to become property of the estate⁵¹. There, the debtor owned a seat on the Chicago Board of Trade and the court found that the seat was

⁴⁴ Id at 491-492.

⁴⁵ Idaho Code §11-605 (1).

⁴⁶ Id.

⁴⁷ 735 Ill. Comp. Stat. 5/12-1001 (a).

⁴⁸ La. Rev. Stat. Ann. §13:3881 (A)(4).

⁴⁹ Legal Consumer, <https://www.legalconsumer.com/bankruptcy/laws/> (last visited Dec. 10, 2016).

⁵⁰ 11 U.S.C. § 541 (2012).

⁵¹ Board of Trade v. Johnson, 264 U.S. 1, 8; 44 S. Ct. 232, (1924).



property and it should to the trustee for the purposes of paying creditors⁵². The seat was worth \$10,500 in 1920⁵³. Most designations of property for the purposes of bankruptcy will turn on how valuable the item is to the trustee.

Some limited and very specific interests are excluded from the property of the state in §541(b) but generally anything of value is eligible to pass to the trustee⁵⁴. Because animals remain designated as property in the eyes of the law, any animals owned by the debtor would also become property of the estate⁵⁵. The federal bankruptcy law allows exemptions for pets if the animal is "held primarily for the personal, family, or household use of the debtor or a dependent of the debtor"⁵⁶. The federal exemptions are largely irrelevant, however, because section §522 allows states to opt out of giving debtors the choice of using state or federal exemption⁵⁷. Seventy-five percent of states have chosen to opt out making the laws regarding pets greatly varied from state to state⁵⁸.

States have local rules allowing debtors to exempt some property from the estate and pets are often included in the property eligible for exemption⁵⁹. Some states specifically exempt household pets while others may just allow a limited exemption up to a specific dollar amount⁶⁰. For example, in Georgia, a debtor may exempt an animal that does not exceed a value of \$300⁶¹. In contrast, Alaska's pet exemption gives the debtor up to \$1,350 for his pets⁶². Louisiana offers a flat exemption for all

⁵² Id.

⁵³ Id.

⁵⁴ 11 U.S.C. § 541(b) (2012).

⁵⁵ 11 U.S.C. § 541(b) (2012).

⁵⁶ 11 U.S.C. § 522(d)(3) (2012).

⁵⁷ DAVID EPSTEIN ET AL., *BANKRUPTCY: DEALING WITH FINANCIAL FAILURE FOR INDIVIDUALS AND BUSINESSES* 166 (4th ed. 2015).

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Elizabeth Hornbrook, *Barking Up the Wrong Tree: Pet Care Expenses in Bankruptcy*, 33-4 *ABIJ* 56, 56-57 (2014).

⁶¹ O.C.G.A. § 44-13-1(a)(4).

⁶² Alaska Stat. § 09.38.020 (d).

household pets without stating a limit on the monetary value of the animal⁶³. Oregon allows for a pet exemption and an additional exemption for two months worth of food for the pet⁶⁴. It should be noted that Oregon has one of the most animal-friendly statutory schemes in the United States⁶⁵.

Most states have “wildcard” exemptions that allow a debtor exempt property of his choosing up to a particular dollar amount. These amounts are generally fairly low but vary from state to state. For example, Indiana’s wildcard exemption is \$9,350, while the exemption in Iowa is \$800⁶⁶. Wildcard exemptions are a viable way to exempt pets in the event the state does not have a specific pet exemption or the value of the pet exceeds the allowable exemption. As mentioned above, Georgia’s pet exemption is very minimal at \$300 but Georgia also has a wildcard exemption of \$5,600, which may be applied to the property of the debtor’s choosing⁶⁷. If the state’s law allows debtors to use the federal exemptions, the debtor is entitled to a wildcard exemption of \$1,250 and up to \$11,850 of any unused portion of the debtor’s homestead exemption to be applied as a wildcard⁶⁸. Unfortunately, several states neither allow debtors to use the federal exemptions nor do they provide a state wildcard exemption⁶⁹.

For the most part, commercial animals that can be considered assets are generally not allowable exemptions in chapter 7, 11, or 13 proceedings⁷⁰. Some state laws specifically distinguish between livestock from pet exemptions. Louisiana distinguishes between exemptions for household pets and

⁶³ 33-4 ABIJ 56, 56-57.

⁶⁴ Id.

⁶⁵ State v. Newcomb, 359 Or. 756, 767 (2016).

⁶⁶ Kathleen Michon, *States that have Wildcard Exemptions in Bankruptcy*, Nolo Legal Encyclopedia, <http://www.nolo.com/legal-encyclopedia/chart-states-that-have-wildcard-exemptions-bankruptcy.html> (last updated May 20, 2016).

⁶⁷ Ga. Code Ann. § 44-13-100 (a)(4) & (a)(6).

⁶⁸ Kathleen Michon, *States that have Wildcard Exemptions in Bankruptcy*, Nolo Legal Encyclopedia, <http://www.nolo.com/legal-encyclopedia/chart-states-that-have-wildcard-exemptions-bankruptcy.html> (last updated May 20, 2016).

⁶⁹ Id.

⁷⁰ Epstein at 165.

exemptions for cows and poultry⁷¹. Michigan also distinguishes between an exemption for farm animals and an exemption for household pets⁷². The law further provides an exemption for feed for the farm animals but not for the household pets⁷³. In contrast, Massachusetts has no pet exemption but allows an exemption for “2 cows, 12 sheep, and 2 swine”⁷⁴. Texas is surprisingly generous with its animal exemptions. The statute allows not only for household pets, two horses, twelve head of cattle, sixty head of any other livestock and one hundred twenty fowl, but also food for both the household pets and the livestock⁷⁵.

Sometimes courts are lenient when determining whether an animal is livestock or a pet. An Idaho court denied a trustee’s objection to the debtor’s claim that the family’s horse, Mittens, should be exempted as a household pet⁷⁶. The trustee argued that the exemption was to cover working horses rather than a horse owned for riding and personal use⁷⁷. The court used an objective analysis to determine whether the family treated the horse as a reasonable person would treat a pet⁷⁸. The court reasoned the horse was fed, petted, and enjoyed in the same way as a family dog or cat and that it was incidental that the horse just happened to live outside⁷⁹. The court further went on to note that this particular debtor resided in a rural area, where it is not uncommon for pets to live outside⁸⁰. In

⁷¹ La. Rev. Stat. Ann. § 13:3881 (A)(4).

⁷² Mich. Comp. Laws § 600.5451 (1)(f).

⁷³ Mich. Comp. Laws § 600.5451 (1)(e).

⁷⁴ Mass. Gen. Laws ch. 235, § 34 (4).

⁷⁵ Tex. Prop. Code Ann. § 42.002 (a)(10).

⁷⁶ *In re Gallegos*, 226 B.R. 111, 111-112 1998 Bankr. LEXIS 1481 (Bankr. D. Idaho 1998).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *In re Gallegos*, 226 B.R. 111, 111-112 1998 Bankr. LEXIS 1481 (Bankr. D. Idaho 1998).

contrast, an Oklahoma court found that a horse that was ridden only occasionally but also considered a pet was not exempt⁸¹.

A. When is a Pet not a Pet?

While the family pet is most likely to be exempt from the property of the estate, there are several instances where the law is unclear as to what might happen to pets during a bankruptcy proceeding. A horse is more likely to be sold than the family cat or dog. Whether a companion animal is exempt will ultimately turn on the animal's monetary value to creditors. There are several instances in which a dog would have a considerable commercial value to creditors: trained service dogs, hunting dogs, guard dogs, and pedigreed dogs used for breeding. Some purebred dogs are worth upwards of \$5,000 making them a valuable asset while a dog adopted from a local shelter may have a fair market value of less than fifty dollars, making it more of a liability than an asset⁸².

If the trustee views the pet as a valuable asset that may satisfy debts, the pet may be sold to pay creditors. Alternately, §554 of the bankruptcy code allows any property that is burdensome or of inconsequential value to the estate to be abandoned by the trustee after notice and a hearing⁸³. At the hearing, creditors may also object to the abandonment of the property⁸⁴. The inconvenience of boarding and auctioning the family dog or cat will likely cause the trustee to abandon the animal but other types of pets and pedigreed animals may be more tempting to the trustee. While most trustees will weigh the costs and benefits of taking an animal, an unscrupulous trustee may ransom a particularly valuable animal with the knowledge that more disbursements increase the commission of the trustee. Providing incentive for the trustee to liquidate assets is practical from the standpoint of

⁸¹ *In re Cass*, 104 BR 382, 385 (Bankr. ND OK 1989).

⁸² Outside Online, <https://www.outsideonline.com/1960076/10-most-expensive-dog-breeds#slide-12> (last visited December 10, 2016).

⁸³ Bankr. 11 § 554 (2014).

⁸⁴ *Id.*

making the creditors whole. However, a clear statute to protect animals would insure living things do not become victims of greed during the bankruptcy process.

Dog breeders present a special problem for the bankruptcy courts. A commercial breeder's dogs would likely be considered livestock and thus, would not be eligible for a pet exemption. How each state defines a commercial breeder is determined by the state's animal protections statutes⁸⁵. The laws governing commercial breeders are usually administrative regulations⁸⁶. How a commercial breeder will be defined is not so clear in the laws of bankruptcy. Even a hobby breeder who breeds his pedigreed dog once or twice per year may have an asset that is considered valuable depending on the fair market value of the puppies⁸⁷. Again, the trustee will weigh the inconvenience of boarding and selling the dog against the amount that might be yielded at auction. The bankruptcy code does not provide a distinction between a hobby breeder and a commercial breeder whose dogs are likely livestock.

The AWA and state animal protection statutes offer definitions for commercial breeders and pet dealers. The AWA defines a commercial breeder as a pet "dealer" who any person who ". . . buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal . . . for use as a pet"⁸⁸. State laws on breeding either mirror the AWA or expand it. In Georgia, a "pet dealer" is defined as someone who sells animals that he or she has produced and raised, exceeding 30 animals in a year, and such person is licensed for a business by a local government or has a Georgia sales tax number⁸⁹. In North Carolina, a pet dealer is defined as someone who sells, exchanges, or donates, or offers to sell or

⁸⁵ Rebecca Wisch, *Table of State Commercial Breeders*, MICH. STATE UNIV. COLL. OF LAW ANIMAL LEGAL AND HISTORICAL CTR. (2015), available at <https://www.animallaw.info/topic/table-state-commercial-pet-breeders-laws>.

⁸⁶ *Id.*

⁸⁷ 2-101 Collier on Bankruptcy P 101.21 (16th 2016).

⁸⁸ Animal Welfare Act, 7 U.S.C. § 2132(f).

⁸⁹ Georgia Animal Protection Act, O.C.G.A. § 4-11-2(7).

exchange more than five offspring of a dog or cat per year⁹⁰. In New York, a “pet dealer” engages in the sale or offering more than nine animals per year for profit.⁹¹

Non-traditional and exotic pets present another gray area for the courts. These animals may not align with the legislature’s perception of a pet and thus, may not be included in the statutes or recognized as domestic pets by the court. It is not at all unusual for people to love and care for traditional farm animals, such as pigs and horses, as domestic pets. While these pets may not live in the house, the bond between the human and the animal is not diminished.

The Cass family filed for chapter 7 bankruptcy in Oklahoma and found themselves unable to exempt their four horses⁹². The Cass family put forth evidence that they rode their horses and loved them as pets⁹³. Unfortunately for the Casses, they also competed in horse shows and previously bred their horses, fetching up to \$30,000 for the offspring⁹⁴. The court denied the exemption, calling the horses only incidental pets and not held for “personal, family, or household use”⁹⁵. In somewhat cruel contrast, the court did allow the Casses to exempt their riding saddles valued at \$300⁹⁶.

In 2008, an Illinois court denied the exemption of the debtor’s pet snakes⁹⁷. However, Illinois did not provide any pet exemption at all so the debtor was forced to claim the snakes were “tools of the trade” as he was planning to breed them⁹⁸. The court said if the legislature meant to exempt living animals, they would have included an exemption for pets⁹⁹. Ironically, the Illinois anti-cruelty statute

⁹⁰ NC Gen. Stat. § 19A-23(7).

⁹¹ N.Y. G.B.S. Art. 35D § 752(3) (2014).

⁹² *In re Cass*, 104 BR 382, 384 (Bankr. ND OK 1989).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *In re Cass*, 104 BR 382, 385 (Bankr. ND OK 1989).

⁹⁶ *Id.*

⁹⁷ *In re Taylor*, 2008 Bankr. LEXIS 1447, *6-8, 2008 WL 1805384 (Bankr. S.D. Ill. Apr. 18, 2008).

⁹⁸ *Id.*

⁹⁹ *Id.*

defines companion animals very broadly and could quite possibly be read to include reptiles¹⁰⁰. The statute defines companion animals as “Companion animal means an animal that is commonly considered to be, or is considered by the owner to be, a pet. "Companion animal" includes, but is not limited to, canines, felines, and equines”¹⁰¹.

B. Exemptions for Support of the Pet

While courts may find little to no monetary value in the animal, in chapter 13 cases, the court may object to the monthly costs of maintenance for the animal. A chapter 13 debtor must submit a financial plan to the bankruptcy court, outlining how he will pay his creditors¹⁰². One of the requirements of the plan is that the debtor must dedicate all of his monthly “projected, disposable income” to the plan¹⁰³. The trustee may object to the plan if the trustee determines the debtor’s expenses to be incorrect or unreasonable¹⁰⁴. A debtor’s ability to provide food and medical care for his animal once he obtains an exemption may be a larger hurdle than actually obtaining the exemption itself. Nutrition and medical care are a substantial cost of animal ownership. The American Kennel Club estimates the average lifetime cost of dog ownership to be \$23,410¹⁰⁵. This amount does not include any costs of training nor does it account for costs of chronic medical problems¹⁰⁶.

The amount, which a debtor is allowed to set aside for pet care as a reasonable monthly expense, is left to the discretion of the court but previous cases show that typically, the courts are not

¹⁰⁰ Illinois Humane Care for Animals Act , 510 ILCS 70/2.01(a).

¹⁰¹ Id.

¹⁰² In re Boben, No. 08-17638-NVA *2, (Bankr. Md. Aug. 30, 2010) available at <http://www.mdb.uscourts.gov/sites/default/files/images/opinions/634201517350277177.pdf>.

¹⁰³ Id.

¹⁰⁴ In re Boben, No. 08-17638-NVA *2, (Bankr. Md. Aug. 30, 2010) available at <http://www.mdb.uscourts.gov/sites/default/files/images/opinions/634201517350277177.pdf>.

¹⁰⁵ American Kennel Club, <http://www.akc.org/content/dog-care/articles/cost-to-raise-dog/> (last visited December 10, 2016).

¹⁰⁶ Id.

generous. In cases where the pet is elderly or terminally ill, the added expenses are not likely to be found reasonable. In Nevada, a court denied a debtor's plan that estimated \$175 per month to care for his elderly horses and dogs, calling the amount "excessive"¹⁰⁷. These expenses included feed and medical care but the court stated the creditors should be paid first¹⁰⁸. Similarly, a Pennsylvania court found \$113 to be excessive monthly costs for care of a pet¹⁰⁹. In 2009, a West Virginia court denied \$750 per month to care for the debtor's fifteen dogs¹¹⁰. A Pennsylvania court noted that the elimination of debtor's monthly \$250 expenses to care for dogs and horses could be used to pay unsecured creditors¹¹¹. The court further stated that the dogs provided no service to the debtor¹¹². In Maryland, a court denied \$110 in monthly expenses for the family dog who served as a companion to the debtor's son with a disability¹¹³.

In contrast, another Maryland judge found \$35.42 to be a reasonable monthly expense to care for the debtor's cat, despite an objection from the trustee¹¹⁴. The judge reasoned that a family pet can be considered a dependent akin to a child or an elderly parent¹¹⁵. The court stated an animal should not become "a helpless casualty of a family's financial crisis" and that the bankruptcy process should not prevent a willing debtor from providing a loving home to an animal¹¹⁶. The "best interest of the animal" standard would be equally helpful to the court in determining the reasonableness of monthly expenses allowed to support a pet. A best interest standard would allow the court to consider the

¹⁰⁷ In re Wyant, 217 B.R. 585, 587 (Bankr. D. Neb. 1998).

¹⁰⁸ Id.

¹⁰⁹ In re Wray, 136 B.R. 122, 124 (Bankr. W.D. Pa. 1992).

¹¹⁰ In re Gray, 2009 WL 2475017, *5 (Bankr.N.D.W.Va. 2009).

¹¹¹ In re Howell, 2005 WL 3454698, Bankr. W.D. Penn.

¹¹² Id.

¹¹³ In re Messier, No. 05-40146PM, 2006 WL 5003863, at *1 (Bankr. D. Md. March 9, 2006).

¹¹⁴ See generally In re Boben, No. 08-17638-NVA, (Bankr. Md. Aug. 30, 2010) available at <http://www.mdb.uscourts.gov/sites/default/files/images/opinions/634201517350277177.pdf>.

¹¹⁵ Id at 9.

¹¹⁶ Id at 9.

particular age and medical condition of each animal. As pointed out by the court in *Newcomb*, “the obligation to provide minimum care arises for anyone who has custody or control of an animal” and the failure to do so is neglect¹¹⁷.

Conclusion

The lack of uniformity regarding treatment of animals in the bankruptcy process is unacceptable. Treatment of pets in bankruptcy should reflect the policies behind the Animal Welfare Act and state anti-cruelty statutes. Case law shows that it is the trustees, rather than the courts, that are most likely to object to pet-related exemptions. Generally, courts seem to want to grant pet exemptions but do not want to grant the necessary monthly expenses to support and maintain the pet.

Traditionally, the courts have used an objective analysis to determine whether an animal is a pet. A subjective test would undoubtedly afford more protection to the animals but is, admittedly, more burdensome to the court. Blanket exemptions would alleviate the burdensome analysis from the courts, while respecting and protecting the sacred bond between humans and their pets. Ideally, all states should provide a blanket pet exemption and additional exemption for support of the pet but this is easier said than done. Alternately, the federal code should provide a legal definition for “pets” and a blanket exemption of those pets from becoming property of the estate. Additionally, the code should provide a mandatory minimum exemption to provide for medical care and maintenance of the animal.

Sadly, amendments to the bankruptcy code would not provide the maximum protection to pets due to the opt-out provision of §522. An additional statutory exemption contained within the Animal Welfare Act, similar to the non-bankruptcy federal exemption provided to Social Security recipients, would give pets in bankruptcy proceedings the maximum protection under federal law. These changes would align the policy of the Animal Welfare Act with the bankruptcy code by both insuring the

¹¹⁷ State v. Newcomb, 359 Or. 756, 767 (2016).



humane care and treatment of pets, as well as, facilitating a fresh start for debtors. A state would then have the choice to offer additional exemptions, should it choose to do so, which a debtor may incorporate into their plan as the debtor sees fit. A truly fresh start should allow a debtor to move on without worrying about what will become of his family members- including the four-legged members.

