

PET CUSTODY: PROPERTY OR BEST INTEREST ANALYSIS?

Resources

For a good overview of the law on pet custody, see Brett R. Turner, *EQUITABLE DISTRIBUTION OF PROPERTY*, § 6.109 (4th Ed. Westlaw). Turner notes that, while most states still consider pets to be personal property, some states have moved to a best interest approach to determine pet custody. *See, e.g., ALASKA STAT. 25.24.160(a)(5)* (court in divorce may provide “for the ownership or joint ownership of the animal, taking into consideration the well-being of the animal”). He also discusses that courts’ biggest concern appears to be that deciding pet custody on a best interest, rather than property basis, will lead to ongoing enforcement, monitoring, and modification similar to child custody. For example, a Florida court stated: “Our courts are overwhelmed with the supervision of custody, visitation, and support matters related to the protection of our children. We cannot undertake the same responsibility as to animals.” [Bennett v. Bennett, 655 So.2d 109, 110 \(Fla. Dist. Ct. App. 1995\)](#). However, a court may take into consideration the parties’ sentimental attachment to an animal. *Harby v. Harby*, 331 So. 3d 814 (Fla. 2d. Dist. Ct. 2021) (affirming award of dogs to husband who cared for them and with whom the children lived more of the time). And some courts will award custody based on the animal’s welfare and the litigants’ emotional attachment but will not provide for visitation. The Vermont Supreme Court held that pets are property but that courts may also consider the welfare of the animal and the parties’ emotional attachment to the animal in making the determination. *Hament v. Baker*, 97 A. 3d 461 (Vt. 2014) (even though court may consider the welfare of the pet in determining ownership, “the court had [no] authority to impose an enforceable visitation order for the dog”); *see also LaRiviere v. Shea*, 307 A. 3d 238, 245 (Vt. 2023).

Articles

Timothy L. Arcaro, *Should Family Pets Receive Special Consideration in Divorce?*, 91 FLA. BAR J. 22, 23 (2017)

See Margherita Downey & Sherry Andrews, [Pets Should Receive Special Consideration in F.S. Ch. 61, Dissolution and F.S. Ch. 741, Domestic Violence, 94 Fla. B.J. 38, 39 \(Mar./Apr. 2020\)](#) (good review of states that go beyond a property analysis)

L. Morgan Eason, *A Bone to Pick: Applying a “Best Interest of the Family” Standard in Pet Custody Disputes*, 62 S.D. L. REV. 79, 79 (2017)

Emily Gelmann, *See Spot. See Spot Run. See Spot Every Other Weekend? More Than Just Animals: The Evolution of Pet Custody Cases*, 49 MD. BAR. J. 36, 38 (2016)

Rebecca J. Huss, *Separation, Custody, and Estate Planning Issues Relating to Companion Animals*, 74 U. COLO. L. REV. 181, 192 (2003)

Sara Mickovic, *Fur-Ever Homes After Divorce: The Future of Pet Custody*, 28 ANIMAL L. 47 (2022)

Jared Sanders, *Who Gets the Pet in the Divorce? Examining A Standard For the New York Legislature To Adopt*, 37 Touro L. Rev. 499 (2021)

Schyler P. Simmons, *What Is the Next Step for Companion Pets in the Legal System? The Answer May Lie with the Historical Development of the Legal Rights for Minors*, 1 TEX. A&M L. REV. 253, 256 (2013)

Margherita Downey & Sherry Andrews, [Pets Should Receive Special Consideration in F.S. Ch. 61, Dissolution and F.S. Ch. 741, Domestic Violence, 94 Fla. B.J. 38, 39 \(Mar./Apr. 2020\)](#)