



Divorce and Pets: What's in the Best Interests of Robert, Jennifer, Robin . . . Fido?

By David S. Carton, Esq.

In New Jersey divorce cases, a determination of custody and parenting time of unemancipated children is governed by the standard of what is in their "best interests." While at times a vague and fact-dependent concept, it is what practitioner and judges must gauge their decisions and negotiations on.

On the opposite end of the spectrum, the division of property in New Jersey is based on sixteen Equitable Distribution statutory factors. In none of these factors do we have the language "best interests."

Anyone who has ever had a pet knows that he or she is more than a piece of personal property, such as a lamp. It is not chattel. However, the law in New Jersey treats pets as just that.

When pets fall into divorce negotiation, they very often are tied into the children; as in what is good for the pet is what is good for the children. But this is not always accurate. What if the children are not the pet's primary caretaker and the parties are the ones invested in the pet? What if there are no children or the children are emancipated and out of the house?

Otherwise court's look at the title ownership. For example, who's name the pet was purchased or registered in or who pays for the pet's day to day expenses or vet expenses.

There is a movement afoot to change the law in other states.

While those of us in the tri-state area may see Alaska as an outpost of civilization to be seen from the deck of a cruise ship or on "Ice Road Truckers" they are on the cutting edge of this area of law.

Effective January 17, 2017 Alaska became the first state to empower courts to take in to account the "well-being of the animal" in custody disputes involving non-human family members. Effectively, courts in Alaska now are able to consider what is best for the pet in determining custody.

In Illinois, similarly the law has recently changed also as it relates to the well-being of companion animals when determining sole or joint ownership.

While neither law defines the term "companion animal" the laws do exclude service animals so arguably, any animal can be considered a companion. Does this include the peacock that a woman recently tried to bring on an airplane under the auspices that it was a comfort animal is yet to be determined? Will a champion bred racehorse or dog be viewed differently than Squeaky the hamster is also as of yet unknown.



How will courts apply this standard? Are experts needed and what will be the basis for their testimony? Will there be public outcry when the already backlogged courts are dealing with pet issues perhaps to the detriment of custody actions involving children?

All of these are question which will be answered as time passes. As of now, New Jersey does not have a law which changes the way we look at pets. We still view them as property with the “best interests” standard being inapplicable. However, perhaps we will move along the course of Alaska and Illinois in recognizing the true nature and benefit of pets.

David S. Carton is a Certified Matrimonial Law Attorney and a Member of the Firm’s Matrimonial and Family Law Practice Group. He can be reached at dcarton@lawfirm.ms.