Pet Custody

By K. Dean Kantaras and Joanna Hotalen

For many pet owners, their pets hold a special place in their hearts and they consider their pets as members of their families. It is not uncommon to hear someone refer to their pet as their "fur baby," or to call themselves a "dog parent." With that in mind, it may come as no surprise that pet ownership is rapidly growing into one of the most contentious areas of dissolution of marriage proceedings, which is why it is so important to understand how the law views pets in the context of divorce in order to answer the question of "Who gets the family pet?"

Pet owners may find it surprising, or even offensive, that Florida law classifies pets as personal property and, as such, are presumptively subject to equitable distribution in divorce. Equitable distribution is the legal process of identifying, valuing, and distributing marital assets and liabilities acquired during the marriage. Marital property generally includes all property acquired through marital efforts during the marriage, including inter-spousal gifts, such as pets.

When determining who receives ownership of the family pet, a judge may consider various factors, such as the fair market value of the pet, which spouse paid for the pet, which spouse takes care of the pet's daily needs, each spouse's ability to care for the pet, and even its replacement value. If there are children involved, a judge may also consider awarding the pet to the custodial parent of the children.

Currently, the controlling law in Florida that addresses the issue of pets in dissolution proceedings is *Bennett v. Bennett*. In *Bennett*, the parties stipulated to all issues in the divorce decree except the issue of which party would receive possession of their dog, Roddy. After a hearing, the trial court awarded possession of Roddy to the husband and awarded the wife visitation with Roddy every other weekend and every other Christmas. The husband appealed, arguing that Roddy was premarital property. The First District Court of Appeal reversed the decision, holding that the trial court lacked the authority to order custody or visitation with personal property, the dog. Although the court acknowledged that the trial court tried to reach a fair resolution, the reality is that family courts in Florida are "overwhelmed with the supervision of custody, visitation and support matters related to the protection of children."

K. Dean Kantaras, Esq.

It is important to note that Florida is far from unique in its characterization of pets as personal property. Many states do not have any form of pet custody laws and recognize pets only as property for purposes of determining who is awarded ownership of the pet. However, pet owners can take solace in that the landscape of the law's treatment of pet custody is beginning to shift in a more positive direction for pet owners. Some states have taken a more progressive approach with respect to pet custody. Alaska, California, and Illinois have pet custody laws in place, and other states are considering them.

Although it is most frequently left to the judge to decide who will have sole ownership of the animal in question, many couples can come to an agreement on pet timesharing and visitation outside of court. If you are able to maintain an amicable relationship with your former or soon-to be former spouse post-dissolution, timesharing with a pet and "co-parenting" a pet may be possible so long as a private agreement is reached outside of the court's purview. Examples of such private agreements are prenuptial or postnuptial agreements, which can include terms such as which spouse will have ownership of the pet, set a visitation schedule for the other spouse, and if any expenses for the pet will be shared. Such agreements are complex and do require legal expertise in order to be drafted properly. If the parties are interested in such an agreement or cannot resolve their dispute out of court, it is best to contact a skilled family law attorney to help the parties find a mutually beneficial solution.

EDITOR'S NOTE: K. Dean Kantaras is the managing partner of K. Dean Kantaras, P.A., a firm handling cases in family law and immigration. Mr. Kantaras is board certified in marital and family law by the Florida Bar. He has been practicing for over 25 years and is "AV" rated by Martindale-Hubbell. Joanna Hotalen, Esq. is an associate attorney at the firm and a member of the Florida Bar. She is a graduate of Barry University, Dwayne O. Andreas School of Law. Their offices are located at 3531 Alternate 19, Palm Harbor, 34683, (727) 781-0000 and 1930 East Bay Drive, Largo, 33771, kantaraslaw.com.