

Custody battles over pets look like a dogfight

QUALITIES OF LIFE

By Jane Porter

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Gaetano Ferro, a New Canaan, Conn., divorce lawyer, remembers a particularly unusual case from about a decade ago. It involved a custody dispute over a springer spaniel.

What Ferro remembers the most are the snickering judges, the ribbing and "hooting and hollering" in the courthouse. And he recalls that the couple finally decided that the dog would spend alternate weeks in Ridgefield, Conn., and Manhattan.

Such a case would be less unusual, and probably less funny, today. Nearly a quarter of divorce lawyers surveyed across the country have noticed an increase in pet-custody cases in the last five years, according to a recent poll of 1,500 members of the American Academy of Matrimonial Lawyers.

There is a shift occurring in our society in which the ... pet is considered more a member of the family ... and therefore becomes sadly a part of the battle when the family disintegrates," said Joyce Tischler, founding director of the Animal Legal Defense Fund, a non-profit organization based in Northern California.

A 2001 survey by the American Animal Hospital Association found that 83 percent of pet owners refer to themselves as their pet's "mom" or "dad."

That relationship is not acknowledged by the courts, where pets are still considered property, no different from the silverware, the plasma TV and the living-room sofa.

"In America, pets are basically chattel," said Monica Harper, a matrimonial lawyer in Hartford. As a result, many judges find fighting over pets a waste of court time, and attorneys counsel their clients to settle such disputes on their own.

The matrimonial lawyers survey found that 90 percent of the pet-custody battles were about dogs. To Ferro, disputing who gets the cat or dog is like shooting a mosquito with an elephant gun. "Fight over the custody of a child," Ferro said. "Don't fight over the custody of a dog."

But for many divorcing couples, the pet is like their child. To help judges consider the well-being of animals involved in such cases, the Animal Legal Defense Fund developed a friend-of-the-court brief five years ago.

The 18-page brief is intended to show judges that "there is an unnamed third party in a custody case," Tischler said. "There is a distinction in the dog or cat's mind--believe it or not--as to who tends to be closer," she said of the relationship between pet and owners. The brief makes clear that the animal's interests should not be left out in such cases.

Generally, pets stay in the home where children primarily live, said Thomas Colin, chair of the Connecticut Bar Association's Family Law Section.

But when the splitting couple does not have children, the issue becomes more complicated. During his first 10 years practicing as a matrimonial lawyer, Colin had never encountered a pet-custody issue. But just last year, he worked on two custody disputes involving dogs. In both cases, the divorcing couples did not have children. "These dogs were so important to these two couples that they stood in the shoes of a child to them," Colin said. "So I treated it that way for them."

When Colin was a student at St. John's University Law School in the early 1990s, pet custody wasn't an issue. Today, universities around the country examine such issues in courses focused entirely on animal law.

"When this first came up, I said, 'This can't be that big of a deal because it's just a pet,'" he said. "But what I learned is, in the lives of these people going through emotional divorces, this is a very real thing, and it should be taken seriously."