
ARTÍCULOS

**TRANS-SPECIES CUSTODY BATTLES AND THE REFRAMING OF
KINSHIP TIES**

**BATALLAS DE CUSTODIA TRANS-ESPECIE Y LA REFORMULACIÓN DE LAZOS DE
FAMILIA**

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Recibido: 11 de octubre de 2018; Aprobado: 9 de agosto de 2019

Cómo citar este artículo / Citation: Brandes, Stanley. 2020. «Trans-species Custody Battles and the Reframing of Kinship Ties». *Disparidades. Revista de Antropología* 75(1): e009. doi: <<https://doi.org/10.3989/dra.2020.009>>.

ABSTRACT: This article contributes to the burgeoning anthropological literature on animal-human relations and trans-species families. Increasingly, household pets in the United States are thought of as family members. In fact, these animals are often treated as actual or surrogate kin, be it spouse, child, or sibling. One consequence of this trend is the emergence of legal battles between separating partners for custody of the dog or cat. Despite formal legal codes, which define household animals as personal property, separating couples nowadays introduce subjective criteria into arguments for or against animal custody. These include, for example, the time each partner spends with the animal, who seems most devoted to the animal, or who occupies a home that would be most advantageous for the animal's well-being. The cases examined in this article show that, while most judges acknowledge the presence of emotion-driven factors in any custody battle, they continue to abide by the definition of companion animals as property. Nonetheless, lawyers nowadays argue that the new trans-species definition of family, together with the enhanced social and affective role of animals, are appropriate for judicial consideration in pet custody lawsuits.

KEYWORDS: Companion animals; Kinship; Domestic disputes; Trans-species families; United States.

RESUMEN: Este artículo es una contribución a la creciente literatura antropológica sobre las relaciones hombre-animales y las familias trans-especie. Cada vez más, las mascotas domésticas en los Estados Unidos se consideran miembros de la familia. De hecho, estos animales a menudo son tratados como parientes reales o sustitutos, ya sea cónyuge, hijo o hermano. Una consecuencia de esta tendencia es la aparición de batallas legales entre parejas que se separan por la custodia del perro o gato. A pesar de los códigos legales formales, que definen a los animales domésticos como propiedad personal, la separación de las parejas en la actualidad introduce criterios subjetivos en argumentos a favor o en contra de la custodia de los animales. Estos incluyen, por ejemplo, el tiempo que cada compañero pasa con el animal, que parece más dedicado al animal, o que ocupa un hogar que sería más ventajoso para el bienestar del animal. Los casos examinados en este artículo muestran que, si bien la mayoría de los jueces reconocen la presencia de factores impulsados por las emociones en cualquier batalla por la custodia, siguen cumpliendo con la definición de animales de compañía como propiedad. Sin embargo, los abogados de hoy en día sostienen que la nueva

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definición de familia trans-especie, junto con el papel social y afectivo mejorado de los animales, son apropiados para la consideración judicial en los juicios de custodia de mascotas.

PALABRAS CLAVE: Animales de compañía; Parentesco; Disputas domésticas; Familias trans-especie; Estados Unidos.

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In 2010 Uwe Mitzscherlich, a postman from Posendorf, Germany, made international headlines by contracting formal matrimony with his cat, Cecilia. Cecilia had just been diagnosed with a fatal illness. Herr Mitzscherlich, who lived with the animal for ten years prior to this marriage, stated that he wanted to tie the knot before she died. “Cecilia is such a trusting creature”, he said. “We cuddle all the time and she has always slept in my bed” (BBC 2010). Herr Mitzscherlich’s nuptial ceremony is only an extreme example of a recent and growing trend in affluent societies around the world, a trend that considers household pets—particularly cats and dogs—to be family members (e.g. Brandes 2012; Descola 2013a, 2013b; Franklin 1999; Knight 2005; Podberscek, Paul and Serpell 2000). Increasingly, many pet owners take their companion animals to be not simply like family members, but rather actual children, siblings, or spouses.

Grief therapy sessions have become common in the urban United States for those people whose pets suffer fatal illnesses or have actually died. From observations I have made, participants at group meetings in the San Francisco Bay Area have referred to their pets openly as ‘member of the family’, ‘my child’, ‘my baby’, and ‘my co-parent’, the latter term in relation to the speaker’s human daughter. People who attend grief therapy sessions also often refer to themselves as ‘father’, ‘dad’, ‘mother’, ‘mommy’, and so forth when recounting their heartfelt loss at the death of a pet. During one grief therapy session that I attended, I observed one participant suggest that pet owners be termed ‘pet parents’, an increasingly common denotation among companion animal advocates. At this point it seems appropriate to mention that many scholars working in the field of animal-human relations consider the term ‘pet’ to be inherently derogatory or, at best, demeaning. Given that the word ‘animal’ itself is equally objectionable to many pet parents and investigators, the common name ‘com-

panion animal’ seems an imperfect alternative. Hence, for the purposes of this study, I have reluctantly decided to adopt the word ‘pet’, the simplest, least cumbersome term available. Moreover, it is the word most frequently used in the court cases I explore here.

The presumed kinship status for pets might even extend beyond the nuclear family. In a New York-based group therapy session focused on pet loss, one middle-aged participant gets irritated when others refer to his deceased cat as his ‘son’. “How many times have I told you?”, he asks forcefully. “White Sox was my nephew, not my son!” The mourner who made this declaration is in many ways atypical. But other grievors present at the therapy session accept this statement seemingly at face value, with no indication of surprise, disdain, or sarcasm. The cat as nephew fits within the boundaries of the trans-species family paradigm.

A recent survey shows that 74 percent of dog owners and 60 percent of cat owners in the United States consider their pet to be a child or family member (Journal of the American Veterinary Medical Association News 2005). The figures are even higher in Australia and Canada, where 88 percent and 83 percent of pet owners respectively describe their pets as integral members of the family (Power 2008: 536). The result is an emerging delineation of a new social group—a group often referred to in the literature as trans-species families or more-than-human kin (Power 2008). As a symptom of this changing status, it is notable that the proverbial doghouse, located in the family back yard and famously portrayed in cartoons, has virtually ceased to exist. Animals now occupy the interior of the family home, frequently even sleeping the same bed as their human caregivers. As a veterinarian in California said, “First they were allowed in the house, then on the furniture, and now they’re under the covers” (*Ibid.*).

This reformulated categorization of social structure coincides with an increasing attribution of cultural characteristics to animals over the past generation. In the United States, owners nowadays give pets human names (Brandes 2012). They also endow them with religious and ethnic identities to a degree entirely unknown in the past (Brandes 2009, 2012). Owners spend increasing amounts of money on pet maintenance. From 2007 to 2014, U.S. pet industry expenditures almost doubled from 34.4 billion dollars to 58.5 billion dollars (American Pet Products Associ-

ation 2015). The percentage of households in the United States owning pets has increased from 56 percent in 1988 (when the first survey was conducted) to 68 percent in 2014 (American Pet Products Association 2015), yet another indication of the central significance of these animals in contemporary society. In *One Nation Under Dog*, Michael Schaffer reports that 83 percent of American pet owners refer to themselves as their animal's 'mommy' or 'daddy' (2009).

As of 2010, eight out of ten dog owners purchased birthday gifts for their animals, as did two out of three cat owners (Gregory 2010). Increasingly, too, pet owners give their companion animals Christmas presents and perform funeral services of one kind or another for them, together with the expectation that they will be reunited with these animals in the afterlife. In an article published in *Family Law Quarterly*, the author points out that English-speakers have recently come to employ the language of family relationships to describe specific relations between human and non-human animals. States author John DeWitt Gregory, "Routinely, we refer to the 'adoption' of pets from shelters or animal rescue facilities and the placement of animals in "foster care" with "foster parents" in accordance with "foster agreements"" (Gregory 2010: 40). It is also common nowadays to hear that dogs get toilet-trained or potty-trained.

Sociologists have discovered that "attachment to pets is greatest in families where there is a small number of significant others—families such as newlyweds, empty-nesters, and childless couples" (Albert and Bulcroft 1988: 545). When faced with separation from their dogs and cats (Brandes 2009), pet owners, it seems, are increasingly unwilling to part with these animals. Pets accompany owners on vacations and are nowadays permitted to travel with them in airplane cabins (despite the objections of passengers who either do suffer or simply profess to suffer from animal allergies). There are numerous reports of pet-owners who refused to part with their dogs and cats when asked to evacuate homes as a result of hurricane Katrina. *Modern Dog* magazine gives a particularly moving account of a man named Dohnn Moret Williams, who went to extreme lengths to save his cocker spaniel, Sebastian. Moret (as he liked to be known) came face to face with a series of rescue operations that explicitly prohibited animal inclusion. "There was no way I was leaving without him", Moret said, "and I figured I would do whatever I had to in

order to keep him with me." So he hid Sebastian in a large black trash basket and smuggled him to safety on helicopter and buses. Once settled temporarily at the Houston Astrodome, Moret pointed to Sebastian and said, "I got no children. This here's my baby" (Coren 2005). Even in death, owners appear unwilling to accept separation from their dogs and cats.

One striking symptom of the strong attachment between people and their pets is the forcefulness with which domestic partners, whether legally married or not, fight for custody over their dogs and cats while in the process of formal separation. When domestic partners separate and enter into legal proceedings for division of assets and income, a couple's companion animals almost always become part of the distribution. Very often—perhaps most often—the partners themselves come to an agreement. One partner might be more willing to take the animal, either because they can better afford to do so or because their life style better allows for care of a pet. If the separating couple has children, they commonly assent to an arrangement whereby animal custody follows the same schedule as that of the sons and daughters. Hence, the law firm Coltrane, Grubbs, Whatley states, "If there are minor children of the marriage, we often counsel our clients to consider having the family pet follow the same custody schedule as the children. Having a beloved companion with them as they navigate a shared custody arrangement is often reassuring for children" (Grubbs 2014). In these sorts of cases, the prevailing criterion is the belief that it would be emotionally damaging for children to be separated from their pets. There are also instances in which separating partners consider that pets themselves should not be separated from one another. I have known people who believe that the emotional wellbeing of animals who have lived together requires that they stay together.

Until the late 1900s, and even to the present time, the standard court decision regarding animal custody has been to treat dogs, cats, and other companion animals as property, equivalent to a piano or an oriental rug. Hence, if one partner is awarded custody of the family dog, the court would provide financial compensation to the other partner based on the original purchase price or the actual contemporaneous dollar value of that animal. Although monetary valuation of companion animals is still the norm in courts throughout the United States, the financial worth of a pet is often more difficult to determine than it might

seem at first. In *Mitchell v. Heinrichs*, a case heard by the Supreme Court of Alaska in July 2001, the decision, based on multiple precedents, reads:

In determining the actual value to the owner, it is reasonable to take into account the services provided by the dog or account for zero market value. Where...there may not be any fair market value for an adult dog, the value to the owner may be based on such things as the cost of replacement, original cost, and cost to reproduce. Thus, an owner may seek reasonable replacement costs—including such items as the cost of purchasing a puppy of the same breed, the cost of immunization, the cost of neutering the pet, and the cost of comparable training. Or an owner may seek to recover the original cost of the dog, including the purchase price and, again, such investments as immunization, neutering, and training. Moreover, as some courts have recognized, it may be appropriate to consider the breeding potential of the animal, and whether the dog was purchased for the purpose of breeding with other purebreds and selling the puppies (*Mitchell v. Heinrichs*, 27 P.3d 309, 313 [Alaska 2001]).

Scholar John DeWitt Gregory (2010) vigorously defends the longstanding legal definition of companion animals as property.

New Jersey attorney Gina Calogero proposes that the law distinguish between two classes of property, fungible and unique. Fungible property includes items such as cars and homes, which can be replaced and for which monetary compensation can be assessed precisely. That which Calogero calls unique property, on the other hand, includes dogs, cats, and other companion animals, who require subjective criteria for proper evaluation of their worth. Like artwork and heirlooms, pets are “possessions that can’t be quantified or replaced with money, and they’re a bit trickier to deal with” (quoted in Bartiromo 2012). Increasingly lawyers and judges either explicitly or implicitly recognize pets as a kind of unique property, a category that allows them the flexibility to consider emotional factors and sentimental value in the distribution of possessions to separating partners.

Perhaps the single most influential lawsuit promoting this point of view took place in New Jersey in 2008-2009. Doreen Houseman and her fiancé Eric Dare shared a house for a number of years. Eric purchased a pug, whom they named Dexter. Dexter lived six years with the couple, until Eric decided to leave Doreen. In the original settlement, Eric Dare was awarded custody of the pug on the grounds that he

had purchased Dexter and paid for all the veterinary bills. Judge John Tomasello declared of Dexter, “It’s a piece of property, even though he’s nice and he’s cute and he’s furry” (Hefler 2009). The judge deemed Dexter to be Eric’s property, yet required monetary compensation to Doreen. Nonetheless, Dexter remained in Doreen’s household—according to Eric, a concession designed to reduce Doreen’s grief at the breakup—while partaking of occasional visits with Eric.

When Doreen left town for a short vacation, she allowed Eric to housesit for Dexter. After Doreen returned Eric refused to return Dexter to her, or even allowed her to see the dog. Doreen sued to regain possession of Dexter. The legal procedure cost each litigant about \$20,000 in attorneys’ fees. In appellate hearings, Doreen testified that she and Eric ‘referred to our dog as our son’ (Hefler 2009). Gina Calogero, her attorney, argued that the judge should have considered the “subjective value” of the pet before awarding custody. In Calogero’s words, “There is no reason for a court of equity to be more wary in resolving competing claims for possession of a pet based on one party’s sincere sentiment for and attachment to it than in resolving competing claims based on one party’s sincere sentiment for an inanimate object based upon a relationship with the donor” (*Houseman v. Dare*, 966 A.2d 24, 27 [N.J. Super. Ct. App. Div. 2009]). In the end, the litigants received joint custody, on a schedule that allowed for alternating five-week stays with each party (*Houseman v. Dare*).

Battles for joint custody of a pet, or for mandated visitation rights, have occasionally turned on the definition of the animal as property. In *DeSanctis v. Pritchard*, a formerly married couple, Anthony DeSanctis and Lynda Pritchard, became involved in a costly dispute over visitation rights. As part of their divorce settlement, Lynda Pritchard had been awarded full custody of their dog, Barney, although Anthony DeSanctis received the right to visit the dog periodically. Later, Lynda moved to a distant locale, thereby in effect denying Anthony the ability to visit with the dog. Anthony brought suit to restore the original arrangement. A 2002 ruling on the case by the Superior Court of Pennsylvania declared,

In seeking ‘shared custody’ and a ‘visitation’ arrangement, Appellant appears to treat Barney, a dog, as a child. Despite the status owners bestow on their pets, Pennsylvania law considers dogs to be personal property... Appellant, however, over-

looks the fact that any terms set forth in the [prior] Agreement are void to the extent that they attempt to award custodial visitation with or shared custody of personal property... As the trial court aptly noted, Appellant is seeking an arrangement analogous, in law, to a visitation schedule for a table or a lamp. This result is clearly not contemplated by the statute (*DeSanctis v. Pritchard*, 803 A.2d 230, 232 [Pa. Super. Ct. 2002]).

On the grounds that Barney was Lynda's personal property, not equivalent legally to the position of a human child, the court declared that she had the right to deny visiting privileges to her former husband.

In 1995, an appellate court in Jacksonville, Florida dealt with the case of a divorced couple, Ronald Bennett and Kathryn Bennett, who engaged in an ongoing dispute over final rights for possession of their dog, Roddy. The original settlement gave Ronald full possession of the animal, and stipulated as well that his former wife should be able to visit with the dog every other weekend and every other Christmas. Kathryn, dissatisfied with this decision, sought a rehearing. That hearing resulted in a mandate to have dog Roddy spend alternate months with each of the former spouses. The appellate court in Florida overturned this decision, stating,

While a dog may be considered by many to be a member of the family, under Florida law, animals are considered to be personal property... There is no authority which provides for a trial court to grant custody or visitation pertaining to personal property... Our [i.e., United States] 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]).

On these grounds, the presiding judge issued an order that Roddy be treated legally as property with the couple earning rights to the dog according to "the dictates of the equitable distribution statute" (*Bennett v. Bennett*, 655 So.2d 109, 111 [Fla. Dist. Ct. App. 1995]).

Both of the above cases involving visitation rights—*DeSanctis v. Pritchard* and *Bennett v. Bennett*—constituted appeals, overturning earlier court rulings that had granted regular visiting privileges to one or the other disputing partner. Clearly, our courts increasingly divide on the rigid definition of pets as personal property. Some courts, in fact, assume a concilia-

tory stance. While fully accepting the property designation for pets, they admit other factors into their final verdicts as well. *Arrington v. Arrington*, an appellate case heard in Fort Worth, Texas, is a case in point. In their previous divorce suit, Ruby Arrington won the battle for custody over Bonnie Lou, their family dog. However, plaintiff Albert Arrington was awarded visitation rights. He appealed the case to acquire joint custody over Bonnie Lou. Albert lost the appeal on the grounds that "the court held that the dog was not a human being but rather personal property" (*Arrington v. Arrington*, 613 S.W.2d 565, *1 [Tex. Civ. App. 1981]). According to the application of this criterion, his former wife's role as custodian was ratified, with Albert enjoying the same visitation privileges as outlined in the original court ruling. The presiding judge in this appeal wrote an exceptionally poignant decision, comparing the roles of dogs and children in disputes of this kind.

Bonnie Lou is a very fortunate little dog with two humans to shower upon her attentions and genuine love frequently not received by human children from their divorced parents. All too often children of broken homes are used by their parents to vent spite on each other or they use them as human ropes in a post divorce tug of war. In trying to hurt each other they often wreak immeasurable damage on the innocent pawns they profess to love. Dogs involved in divorce cases are luckier than children in divorce cases—they do not have to be treated as humans. The office of 'managing conservator' was created for the benefit of human children, not canine... We... hope that both Arringtons will continue to enjoy the companionship of Bonnie Lou for years to come within the guidelines set by the trial court. We are sure there is enough love in that little canine heart to 'go around'. Love is not a commodity that can be bought and sold. It should be shared and not argued about (*Arrington v. Arrington*, 613 S.W.2d 565, 569 [Tex. Civ. App. 1981]).

Perhaps the most revealing, if least obvious, aspect of this decision is the judge's repeated use of the term 'human children'. Although he does not explicitly employ the expression 'canine children', his statement that conservatorships were created 'for the benefit of human children, not canine' implicitly places companion animals in the category of non-human progeny. While retaining the usual legal status of companion animals as property, this judge's articulation of deep love between dogs and their owners nonetheless opens the way to a formal consideration of pets as other than mere personal property.

Many legal scholars argue now for an explicit consideration of pets as constituting something other than property, whether fungible or unique. These animals are often now viewed as living, sentient beings with value that transcends financial calculation. Diane Sullivan and Holly Vietzke are two such advocates. In “An animal is not an ipod”, they note:

Those of us who teach animal law know one pervasive theme that resonates throughout our courses: American society’s convenient classification of animals as property, worth no more than a piece of merchandise—and a low-priced one at that. That treatment inevitably leads to the most basic question of how a society as great as ours can equate life—any life, much less man’s best friend—with a piece of furniture or even the latest iPod. Our animal law textbooks make it all too clear that the law does nothing to genuinely protect animals, nor does it recognize their true value and special place within our homes and within our families. Our legal system just does not recognize the bond between people and their companion animals, and when that bond is severed, it completely fails to compensate their loss (Sullivan and Vietzke 2008: 41-42).

In this introductory passage to an influential article, Sullivan and Vietzke introduce arguments based on humanitarian and emotional grounds in support of treating animals differently from inanimate objects in divorce cases. In their view, both the best interests of the pet and the relationship between the pet and its owners need to be taken into account.

Very few courts to date have taken seriously what custody arrangement would be most beneficial for the dog or cat. In fact, most judges would probably agree with a 1984 decision rendered by the Iowa Court of Appeals, in which the presiding judge stated that “A dog is personal property and while courts should not put a family pet in a position of being abused or uncared for, we do not have to determine the best interests of a pet” (In re Marriage of Stewart, 356 N.W.2d 611, 613 [Iowa Ct. App. 1984]). An exception occurred, however, in a 1999 decision handed down by the Appellate Division of the New York Supreme Court concerning dispute for the custody of an aging cat, which this same-sex couple had shared while co-residing: “Cognizant of the cherished status accorded to pets in our society, the strong emotions engendered by disputes of this nature, and the limited ability of the courts to resolve them satisfactorily..., we think it best for all concerned that, given his limited life expectancy, Lovey, who is now almost ten years old, remain where he has lived, prospered,

loved and been loved for the past four years” (Raymond v. Lachmann, 695 N.Y.S.2d 308, 308-309 [N.Y. App. Div. 1999]).

Because of its almost surreal and unquestionably entertaining character, Lanier v. Lanier has become the most celebrated case in which a disputing couple cites the wellbeing of the pet as the principal rationale for custody. The case took place in the early 1990s in Pulaski, Tennessee. The couple was already divorced. Their dog was a mixed-breed—part Doberman and part Labrador Retriever. The wife argued that the pet was better off in her care “because she had kept that dog away from ‘ill-bred bitches’, and that that she had a Bible class in her home every week, and the dog attended and always sat there and listened attentively to the ladies’ Bible class” (Hamilton 2005: 181). Two witnesses from the Bible class verified that the dog was always present. The wife also argued that she prohibited anyone from drinking alcoholic beverages when the dog was around, thereby protecting the animal from harmful influences (2005: 181). The husband believed that “he should have the dog because he had taught it a lot of tricks, that he never drank any beer in front of the dog because he knew that his wife didn’t want him to, and that the dog had learned how to ride on the back of his motorcycle with him” (2005: 181). The presiding judge granted joint custody “with stipulations that the dog not be forced to wear a helmet while riding on the motorcycle, the dog be allowed to continue to attend Bible study, no alcoholic beverages be consumed in the dog’s presence, and the dog not be allowed to consort with any ‘ill-bred or mongrel-type dogs’” (Britton 2006: 4) (This case was broadcast on an ABC television special entitled *20-20: You’ll Never Get the Dog*, aired 26 February, 1993).

More widely cited than arguments citing the well-being of the pet are those that highlight the relationship between a pet and each of the litigants. According to a report in the Los Angeles Times Magazine, the so-called “calling contest” is fast becoming one way to determine a pet’s regard for its owners. Consider the following account of one such contest:

In a vet’s office in Brentwood [California], Iris sits with her divorce lawyer and Leigh sits in his, both of them waiting in opposite corners of the room for a long-haired Pomeranian named Lemons, the pet they bought together when they were happily married. Today, now split, they’re here to settle who gets Lemons. Iris’s case is that she fed the dog, but Leigh insists he walked it. As with most everything

else in this marital meltdown, the dog has become a bone of contention. As the vet brings Lemons in, both Iris and Leigh spring to life, both of them calling and patting their hands on their knees. ‘Here girl! Come on Lemons!’ The poor creature looks confused for a moment. Then he bounds over to Iris. It’s settled—the dog prefers mom. In a divorce case, this shows a greater emotional bond between Iris and Lemons and such is the force of these calling contests that ultimately, in an out-of-court settlement two months later, Iris will be awarded full custody of the dog. In return, she will compensate Leigh \$1200 (Bhattacharya 2005).

The dispute for possession of Lemons cost Iris and Leigh about \$8,000 each.

Calling contests follow some standard rules. The contest has to take place in an unfamiliar space, usually a veterinary clinic other than the one to which the pet is accustomed. For three days prior to the contest, the pet must reside in a neutral locale, away from the homes of either disputing partner. And, finally, a veterinarian must be present to oversee the contest, and particularly to check the hands of the partners to make sure they contain nothing, such as meat residue, that might lure the animal (Bhattacharya 2005).

Some judges have proven favorably disposed to arguments that seek to prove a superior devotion to the pet on the part of one ex-partner or the other. In *Mitchell v. Mitchell*, a case heard in the Superior Court of New Jersey in 2010, the ex-wife sought custody of the family cat, which had resided in her former husband’s home for some six years. The cat had originally been awarded to the husband in order to keep the animal in the same home as the couple’s son. When the son left for college, his mother argued that the justification for possession of the animal no longer applied and that, in any case, her former husband neglected the cat by not taking the animal for annual veterinary checkups. She also complained that the cat had lost one pound, an apparent indication of neglect. The court decision was not in her favor, as manifest in the judge’s written opinion: “We note that the plaintiff has presented nothing from the veterinarian to demonstrate that the defendant has neglected the cat. The loss of one pound over the course of a one or two-year period does not strike us as harm that would warrant an order returning the cat to her” (*Mitchell v. Mitchell*, No. A-2679-08T2, LEXIS 188 [2010 N.J. Super. Dec. Jan. 27, 2010]).

In *Vargas v. Vargas*, a case heard in Connecticut in 1999, the former husband argued that the family dog Rockefeller should be his, on the grounds that he trained the dog, which, at the time of the trial, was five years old. He did acknowledge, however, that he occasionally spoke in “loud terms” to the dog and was strict with the dog. His wife, as defendant, argued that “she has for all practical purposes raised the dog and trained him and enjoys a good and happy relationship with the dog, Rockefeller”. She also stated that her former husband “has not treated the dog kindly and that if the plaintiff and the dog are together that the dog tries to run away from the plaintiff”. An unidentified witness testified that s/he saw the ex-husband strike the dog and speak loudly to it. The judge awarded custody to the former wife “on the basis of overall circumstances” (*Vargas v. Vargas*, No. 0551061, LEXIS 3326, at *10, *11, *21, *22, *25 [Conn. Super. Ct. Dec. 1, 1999]). Several additional cases of this sort introduce arguments in favor of or opposed to custody on the grounds of how one disputing party or the other treated the animal or the investment in terms of time and emotional support that each party lent to the companion animal. At their discretion, judges might or might not take considerations such as these into account.

The cases that I have examined show that, while most judges acknowledge the presence of subjective, emotion-driven factors in any custody case, by and large they continue to abide by the definition of companion animals as property. In a 1995 decision rendered by the Family Court of Delaware, Judge Jean Crompton outlines the difficulties involved if alternative criteria were to be used in a dispute over visitation rights for a dog named Zach:

While it [the judicial code] goes into great detail as to the factors which this Court must consider prior to determining the best interests of the *child* [emphasis in the original], nowhere does it mention what factors would have to be considered in the best interests of a non-human genus, should the parties not be able to agree on visitation. And, quite truthfully, the prospect of applying the [judicial code] to a Zach, a Tabitha, or even a fish named Wanda for that matter, would be an impossible task. For example, would it be abusive to forget to clean the fish bowl or have Tabitha declawed? If the door were opened on this type of litigation, the Court would next be forced to decide such issues as which dog training school, if any, is better for Zach’s personality type and whether he should be clipped during the summer solstice or allowed to romp ‘au

natural' (Nuzzaci v. Nuzzaci, No. CN94-10771, LEXIS 30, at *4 [1995 Del. Fam. Ct. Dec. April 19, 1995]).

"I do not in any way intend to offend Husband and Wife in the present action", Judge Crompton continues. "While their dilemma is certainly a viable one particularly in a marriage where there have been no children, the fact is that this Court is simply not going to get into the flora or fauna visitation business. The Court only has jurisdiction to award the dog to one spouse or the other" (Nuzzaci v. Nuzzaci, No. CN94-10771, LEXIS 30, at *4, *5 [1995 Del. Fam. Ct. Dec. April 19, 1995]).

The legal disputes over pet custody are typically expensive, time consuming and, by all indications, emotionally draining. At this point they still constitute exceptions to the usual informal agreements between separating partners. They nonetheless constitute just one more symptom among many of the rapidly increasing status to pets—particularly dogs and cats—as full-fledged family members. And, as the story of German postman Uwe Mitzscherlich demonstrates, this kind of trans-species kinship is hardly restricted to the United States. The British web site, marryyourpet.com, not only facilitates matrimony between pets and human guardians, but also chronicles numerous cases, from England, the U.S. and elsewhere, in which people profess that their primary relationship is with their pet.

And the pets are not exclusively furry and four-legged. Consider this testimony, inscribed on marryyourpet.com, written by the custodian of a pet bird:

Joe and I had been in love for two years, and had always wanted to be more than just pet and owner. This website has changed our lives. Our marriage was beautiful and our marriage certificate sits above our headboard. Joe was left to me after my boyfriend savagely broke my heart. As it turns out, Joe was supposed to be mine my entire life. I love everything about him. From the way his little beak pulls at his turquoise feathers of silk, to the way he wakes me up in the morning with golden notes; Joe is everything I've ever wanted in a spouse (marryyourpet.com).

This account exemplifies how a beloved pet can become a life partner for a jilted lover. Or, in the absence of firm evidence, it could well be that the bird contributed to the break-up, an instance similar to many others chronicled in *When Pets Come Between Partners* (Gavriele-Gold 2000).

Domestic disagreements about the treatment, or even presence, of pets are no doubt an inherent feature of family life, at least in the West. What emerges in the historical record as new is the pervasive feeling that household animals do not merely serve as companions or friends, but also actually perform at least part of the complex role that close kin, be they children or spouses, normally do. Hence, with increasing frequency, separating partners are willing to fight like cats and dogs for possession of their beloved companion creatures. In terms of legal decision-making, and with few exceptions, the courts have yet to close the gap between increasingly popular attitudes towards companion animals and the current judicial status of household pets as personal property.

ACKNOWLEDGMENTS

Without financial assistance from the University of California, Berkeley, and the John Simon Guggenheim Foundation, this article might never have reached fruition. My research assistant, Jeffrey Piatt, deserves enormous credit for collecting the legal cases that form the core of the article, as well as for the many insights he has had regarding this material and its offshoots. An anonymous reviewer has also given useful suggestions to improve the article. Laura Nader and Jane Brandes have provided consistent encouragement in the pursuit of the larger pet project of which this piece forms a part. I thank them all heartily.

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