



Pet Custody by Jodi L. Wyman

What happens when a dog's parents divorce?

For years there have been debates in the Courts about whether the beloved family pet should be treated like one of the children, or like a marital asset. In fact, it appears the trend in society is to treat pets more like children than assets.

In divorce and separation cases, animals are evaluated as if they are not living creatures. For example, cattle, horses or other livestock are listed at their market value and if the parties cannot agree who gets the animal, it has to be sold with the proceeds divided equally.

Obviously, this is not the ideal way of resolving a dispute over the family pet. Not only do most family pets have very little market value, but also there is real affection and sentimental value for family pets and no one wants to see them sold or given away.

It is sometimes preferable to review what arrangement is in the "best interests of the pet". For example, to which family

member is it closest or who can provide the better home and yard. There are even cases where the separating couple will discuss ongoing visitation arrangements for the pet.

Although many disputes over the family pet are brought sincerely because of love for the animal, peoples' motives are not always pure. For example, whichever parent has the beloved family pet could have the better case for custody of the children. Or, for some couples, the family pet becomes just something else to fight over.

In a San Diego Court case, a Pointer Greyhound dog named Gigi was the centre of a two-year custody battle which cost the parties more than \$100,000.00 in legal fees. The husband initially was granted interim custody. An animal expert was then hired to observe the dog with each spouse. The trial even featured a "day in the life" video of Gigi. The Wife was finally granted custody of the dog.

Canada has had its own pet

custody cases. In fact, in 1997 a lawyer in North Vancouver opened an office devoted exclusively to handling pet and animal law. Besides pet custody cases, she also solicited cases involving dog bites, landlord and tenant disputes, or contracts with breeders.

In a recent Saskatchewan case, a divorced couple were arguing over their 11½ year old Husky named Shikydoe. The husband moved to Australia. He left the dog with his former spouse, and even gave the animal a goodbye card. When the husband moved back to Canada, he began exercising weekend access to the Husky. Ultimately, the parties ended up in Court fighting over ownership of the dog. The Judge was sympathetic to the best interests of the dog. He found that Shikydoe had developed a close bond with the other members of his "pack", being the Plaintiff and the Defendant, and the Judge ordered the couple to have joint custody of the dog. They were instructed to alternate one week at a time with the husky.

In a recent Ontario Court case, a couple fought over a pet dog named Tuxedo. The dog had been purchased from a local pound for \$100.00. The wife claimed she purchased Tuxedo as a companion for herself. The husband claimed the dog was a gift to him from his wife. They were each asking for a declaration of ownership of Tuxedo. The Judge in this case had little patience with the idea of making a custody order for pets. The Judge could not believe the parties had spent several thousand dollars on litigation over a dog. “Some may consider them to be children; however they are not children” he said. As it was the wife who purchased the dog, the Judge declared her to be the owner of Tuxedo.

Obviously pet lovers and non-pet lovers will have a completely different opinion on these sorts of cases. It will be interesting to watch how Judges continue to handle these sorts of disputes.