

LOVE ME, LOVE MY DOG: Divorce Litigation and the Family Pet

BY MANDY J. MCKELLAR, ESQ.

They say that dog is “Man’s Best Friend.” But what happens when “Fluffy” was obtained during the course of a marriage that has ultimately (ahem) “gone to the dogs?” As a family law attorney, I have been faced with clients willing to give up their entire nest egg to keep “Fluffy” from their evil, soon-to-be ex-spouse.

The universe has changed. We certainly do some amazing things for our beloved pets these days, from buying Burberry raincoats and Louis Vuitton collars to aromatherapy massages and holistic biscuits. Some buy cutesy little dresses, outfits and jewelry for their pets. There are numerous stores in the Las Vegas area alone devoted solely to the business of pampering your pet. Some of us have even hired psychotherapists to assist “Fluffy” with his or her “issues.”

In the movie “Legally Blonde,” an example of how important pets can be in a domestic situation occurs when the main character, Elle Woods, escorts her friend, Paulette Bonafonté, to her ex’s trailer to get back her “precious baby Rufus.” Elle attempts to use her legal knowledge in an effort to get the dog back. Though her references to common law marriage, subject matter jurisdiction and habeas corpus made practicing attorneys cringe, her description of exchanging “Rufus” for the residence wasn’t entirely off-base. The end result of that scene was “you’re keeping the residence, so I’m taking the dog...” Essentially, “Rufus” was worth giving up a residence and, realistically, this is not entirely inaccurate.¹

While this may seem sappy and ridiculous, it does show that our pets mean the world to us. Unfortunately, in accordance with the law, “Fluffy” is just a piece of property – a chattel. Personality.

In accordance with NRS 193.021, “Personal property” includes dogs, all domestic animals and birds. Basically, your beloved pet has as much significance in the eyes of the law as the expensive collar he or she is wearing. According to NRS 123.130 and case law, all property acquired after marriage is presumed community property, which is to be divided equally. Notwithstanding, pet owners see their animals as more than just inanimate objects. Over time, they become members of the family. However, the law demands us to place a monetary value on “Fluffy.”

This leads to a huge problem in divorce litigation, as you can’t split “Fluffy” in half. In addition, how can you possibly place a monetary value on “Fluffy” in order to get an offset? When you think of the unconditional companionship “Fluffy” has given you throughout the years, even throughout your failed marriage, there is no dollar amount that would suffice. To pet owners, that would be akin to placing a dollar amount on a child.

Disputes over family pets are becoming more common, and these disputes are often

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dirtier than custody disputes over children. Perhaps it is because the law places upon us a presumption that the parties involved in litigation are expected to share custody of the kids if neither party is unfit. However, there is no clear-cut way to handle custody of "Fluffy," and both parties are often dumbfounded when they feel they should have a right to access to their family pet after divorce, only to discover they truly have no legal right.

The traditional view that "Fluffy" is just a chattel has recently been challenged across the nation. Lawsuits are being filed challenging the longstanding view of the treatment of pets in divorce proceedings. Many states even have recent case law on this hotly debated topic.

Should there be something mandated which bumps "Fluffy" up beyond the status of being just a piece of property? Should we examine the factors contained in NRS 125.480 as the paramount consideration for the best interest of the pet? Maybe the law is taking steps toward the "best interest of the pet" already. Will we eventually need to order pet support?

While this may sound comical, the reality is that we have all been faced with this issue at one time or another in our careers. There have been thousands of billable hours expended on returning "Fluffy" to our desperate clients, who are willing to negotiate away vast amounts of monetary entitlements in order to keep "Fluffy" in their care. To the client it is obvious; "Fluffy" has value in excess of his or her "fair market value."

Our clients just want "Fluffy" back. Sadly, their spouse always seems to want the dog, too – sometimes only because they know how badly the other side wants the pet. Currently, the court has many options to consider when handling this issue. It takes into consideration such factors as who purchased the animal, whose name is registered as the owner and whether or not a contract was signed for the purchase of the animal. The court may simply decide that the animal is jointly owned and may order that the beloved pet be sold and the proceeds shared. In Nevada, however, the animal is generally ordered to one party or the other, and the party who ultimately retains possession of the animal is forced to take an offset against the marital assets.

In a perfect world, the divorcing couple would put aside emotion, anger and resentment and attempt to come up with a workable solution that has the pet's best interest in mind. However, as many family law attorneys know, this does not always happen. One or both clients may demand possession of the family pet, either to antagonize the other client, or because they can't see themselves living without "Fluffy."

There is no legal authority to order a pet into the custody of one person or another, and no status quo when it comes to visitation in Nevada. It has become increasingly difficult to explain to clients that they must choose between "Fluffy" or the equity in their home. Some have even traded family pets for heirloom jewelry, retirement funds or expensive vehicles.

Other states are beginning to look at this issue differently, and perhaps Nevada is doing so as well. The existing law in Nevada, with regard to domestic violence, sets forth certain unlawful acts which constitute domestic violence against persons, and is

basically used to determine who may obtain a temporary order of protection.² Originally, the statute included destruction of property as a specific factor, which included destruction of domestic animals. In recent legislation, however, a state Senate panel passed a bill allowing the courts to take action against domestic abusers who try to harass their partners by hurting the family pet.³

Basically, the Senate determined that it was all too common for a domestic abuser to terrorize and control family members by torturing and even killing the family pet. After hearing testimony on this issue from Victoria Van Meter,⁴ the Senate Judiciary Committee voted unanimously for Assembly Bill 282 and it went to the Senate for final action.⁵

On March 12, 2007, the Senate enacted the bill, which revised NRS 33.018 (1)(e) to include subsection (7). In addition to stalking, harassing and all the other factors listed under NRS 33.018 (1)(e), the court can now look at abuse of animals as a factor in domestic violence cases. Section (1) of the new bill expands these factors to include purposely injuring or killing an animal as a violation of an order of temporary protection and requires further criminal prosecution.

The compelling change is in section (2), which was expanded to include *prohibiting ownership or possession* of the animal by the adverse party who has injured an animal. In this situation, the court may even order that specific arrangements be made for the possession and care of the animal if the victim reconciles with the adverse party, usually at a local shelter. In other words, if you beat your pet, you cannot have custody of him.

These legislative changes are possible examples of how the law is evolving to ensure animals are not treated as mere pieces of property. If you kick your television, it may be broken, but there is no threat that anyone will take it away from you. If you kick "Fluffy," however, he will be taken away, never to return. Additionally, if you're a domestic violence victim who decides to remain with your abuser, you will never see "Fluffy" again, either.

While this may all seem perplexing, keep in mind that in child custody situations, domestic violence is also a factor to consider under NRS 125.480 (5). There is a direct correlation between the changes to NRS 33.018 and the best interest factors under NRS 125.480(5). In accordance with the law, our beloved pets could slowly be moving from being recognized as just a piece of property to being thrown into a category akin to children.

There has been a large wave of pet custody cases in recent years, and more courts are starting to realize the value of the emotional bond between a human and his pet. A New York appeals court granted custody of a pet cat, "Lovey," as a condition that the plaintiff pay all vet expenses. The plaintiff and defendant in this case were not married, but were former roommates. When they wanted to go their separate ways, the plaintiff sought permanent custody of his "property," i.e. "Lovey."⁶

In the opinion from the New York court, the court's awareness of the emotional bond between human and pet was evident when they stated, "Cognizant of the cherished status

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accorded to pets in our society, the strong emotions engendered by disputes of this nature... given his limited life expectancy, Lovey [will] remain where he has lived, prospered, loved and been loved for the past four years.”⁷

In a similar Virginia case, the court found that the happiness of a cat named “Grady” “took priority” over the property rights in a custody battle between two former roommates, and the court ruled that it was in the “best interest of Grady” to be awarded to the non-owner roommate.⁸

Likewise, the Alaska Supreme Court upheld the award of sole custody of the family’s Labrador Retriever to the husband, because the wife’s other dogs were a threat to the Labrador’s life.⁹ This is similar to Nevada’s recent changes to NRS 33.018, taking into account the harm that an animal may succumb to when placed with one person or the other.

As human relationships become strained, our relationships with our animals only grow stronger, yet another reason why pet ownership is becoming a heated debate in divorce cases. Perhaps we can learn from our pets, as their innocence, survival instincts and unconditional love are all traits that we as humans could improve in ourselves. In the words of Sigmund Freud, “dogs love their friends and bite their enemies, quite unlike people, who are incapable of pure love and always have to mix love and hate.” **NL**

MANDY MCKELLAR, an avid cat lover, is the senior associate at Willick Law Group in Las Vegas. She states the following: “I am guilty of all the above infractions, including purchasing pet jewelry. I have always been an avid animal lover. In my family we have three cats, Cherise, Cedric and Romy. On an even more personal note, as a family law attorney, my precious kitties have a place in my prenuptial agreement ‘just in case’ my husband and I ever have to face the horrible realities of divorce. Cheers!”

- 1 “Legally Blonde” (Marc Platt Productions, 2001) (motion picture).
- 2 NRS 33.018.
- 3 Nev. Assembly Amendment No. 102 to Assembly Bill No. 282 (March 12, 2007).
- 4 Victoria quoted several victims’ statements in domestic abuse

situations where there was cruelty to animals present.

- 5 Joe Mullin, *Domestic Animal Abuse Bill Advances*, <http://www.lvrj.com/news/7270231.html> (May 1, 2007).
- 6 *Raymond v. Lachmann*, 695 N.Y.S. 2d 308 (N.Y. App. Div. 1999).
- 7 *Id.*
- 8 *Zovko v. Gregory*, No. CH 97-544 (Arlington County (Va.) Circuit Court, Oct. 17, 1997).
- 9 *Juelfs v. Gough*, 41 P.2d 593 (Alaska 2002).

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