

**The Kentucky Bar Association  
Alternative Dispute Resolution Section  
presents:**

**From Hound Dogs to Horses:  
Optimizing the Pet's Well-being in  
Divorce Matters  
CLE Webinar**



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**From Hound Dogs to Horses: Optimizing the Pet’s Well-being in Divorce Matters  
CLE Webinar**

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## **PRESENTER BIOGRAPHY**

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## FROM HOUND DOGS TO HORSES: OPTIMIZING THE PET'S WELL-BEING IN DIVORCE MATTERS

Karis Naft

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The purpose of this information is to provide practical tools for divorce professionals when faced with divorcing parties who have animals. This information will aid you in both avoiding drawn out legal fights about pets and offering sound advice to your clients.

This information will provide you with a basic plan you can take into sessions with your clients to help them focus on the best interests of their pets. These guidelines will allow you to work more effectively through a situation involving pet custody decisions which can be emotionally overwhelming and complicated for people. Even for mediators and lawyers who want to make sure pets end up in a good long term custody situation, they don't necessarily know where to start or what that looks like. My goal is that you can use this information to prevent possible long term legal fights and look after the best interests of the animals themselves.

It is crucial not to humanize pets. While people may love them just like children, animals are not human beings and imagining they are can cause tremendous stress on the animals involved. While the law in Kentucky sees pets as personal property, when a divorcing couple is working within the context of mediation or a non-combative divorce, they can make their own choices about what will happen with their animals. To treat animals fairly means to work from a perspective not as children or possessions, but something unique in-between.

Kentucky courts, and courts across the country, are tasked with doing the best they can right now, in the absence of clear guidance. Courts take various approaches in determining to whom to award custody/possession, including but not limited to:

- Property-based analysis;
- Best interest of the pet analysis; and
- Hybrid analysis<sup>1</sup>

### I. ANIMALS AND EMOTIONS

There is no way to separate emotions from the divorce process. Divorce professionals have seen how emotions can help or hinder the divorce process. While anything of value can be a sensitive issue, pets are especially able to trigger emotional distress for people.

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<sup>1</sup> Nolia G. Batey, Katie M. Brophy, Courtney Howell Freeman, and Hon. Tara Hagerty, Judge, "Pets: Not Property, Not Children Companion Animal Custody/Visitation Issues," *Family Court Practice Pointers in Animal Custody/Visitation Disputes*, Kentucky Bar Association Annual Convention CLE Program, June 23, 2023, *infra* page X.

## **II. PRACTICAL TOOLS TO HELP NAVIGATE THE EMOTIONAL REALITIES OF PETS AND DIVORCE**

### **A. Address Pets Early in the Divorce Process**

1. In your intake/new client form or interview with new clients, ask if they have pets.
2. Because pets can be such an emotional issue, you do not want it to come up as a surprise.
3. It is better to talk about and acknowledge the pet(s) early in the divorce process. This will allow you as a divorce professional to gauge how much of an issue/source of conflict the pets may be in order to deal with it more effectively.
4. The sooner pets are resolved the better. If not dealt with, the pets may be affecting other matters in the divorce negotiations. Almost like an invisible elephant in the room, if one party is particularly attached to the pet, the other party will no doubt be aware of this. The possibility of losing custody of a pet to the former spouse can create issues of power and fear of which the lawyer or mediator may not be aware.
5. The sooner the pets are spoken about in the divorce process, the less likely it will lead to other conflict or potential long term legal battles.

### **B. Shared Custody is not Ideal for Dogs or Cats**

1. Pets are not children. In other words, they do not need to stay in contact with their “parents” (owners) for their entire lives.
2. A common misunderstanding is that shared custody is better for the pets, so that they don’t have to lose contact with someone with whom they have lived. This sort of thinking is what I refer to as humanizing pets (treating them the same as children) and can result in long term stress on the animals.
3. As someone facilitating the divorce process, do not suggest shared custody to your clients. This can be tempting, as the idea of shared custody may alleviate the short-term emotional trauma of one party having to say goodbye to their dog. However, in the long run, shared custody ends up becoming stressful for the animals and tiresome for the people.

### **C. Shared Custody vs Sole Custody for Cats**

For cats, shared custody is incredibly difficult. In my professional opinion, I would describe putting a cat in a shared custody situation as inhumane because of the stress it causes cats.

Cats are territorial animals and will bond more with the space/home they live in than a particular person living there. Except in highly unusual cases, cats will

become disorientated moving regularly between homes. Their instincts will tell them to go to their territory, so even if they know the person they are living with and have come to a new house for a shared custody time, if let outside they will likely run away in an attempt to find their other home. This will obviously cause extreme stress to both the cat and the owner.

When considering which owner should have custody, consider especially if the cat has been used to living confined indoors or if it is used to having access to the outdoors. For a cat that has previously had outside access, it is a very hard transition to live only indoors (if moving to an apartment, for example), whereas, a cat who was living indoors can make a transition to living in a home where they can also be outdoors.

D. Dogs Are More Adaptable to a Shared Custody Schedule, but Only in Certain Circumstances

Overall, shared custody is a more difficult situation for dogs than having one owner. Constantly moving between two homes can result in long term stress for dogs. This stress will show in a variety of ways, specifically anxiety on the day they are moving to the other home, aggressive behavior, becoming destructive (chewing items in the home and ruining gardens when they previously were not), hiding, being unwilling to get into the car, etc.

Stress around shared custody normally takes a few months to show. Initially, dogs are normally excited about moving between homes, but once it becomes a set routine, you will see signs of stress/anxiety from the animals.

Shared custody is not advisable especially for old dogs, puppies, or guard dog breeds/working dog breeds. Guard/working breeds are genetically territorial and likely to exhibit stressed behavior if their territory is constantly changing (moving between homes).

If shared custody is what the parties decide on, suggest longer visits rather than shorter ones. For example, two weeks/two-week schedule. The fewer transitions the better for the dogs.

1. Visitations.

- a. If sole custody is decided on, it is common for the party getting custody to offer the other party to visit the dog.
- b. While it is a kind gesture to offer visits, this sort of agreement needs to be approached with caution.
- c. If there are no children in the picture, allowing for visits means the two parties are agreeing to stay in contact when they might otherwise have no need to communicate. As a mediator/lawyer, it is helpful to point this out to your clients, that by allowing for visits the party with custody is giving their ex permission to stay in touch, know their whereabouts, and remain in touch for many years. This can lead (potentially) to conflict in the years/months to come when

the contact/visits can become tiresome or disruptive and it then becomes challenging to rescind the offer for visits.

- d. For the dog, while reuniting with a former owner is always exciting, after the person leaves the dog has to “say goodbye” each time and for some animals this is harder than not seeing the person at all.

2. Dogs do have a primary bond.

- a. If clients are honest with themselves, they will know to whom their dog is the most bonded.
- b. If both parties want the dog, suggest a compromise or trade. Is there something else one of the parties would take to offset the emotional value of the dog?

E. Long Term Conditions about the Pets

Suggest it be written in the divorce agreement that if the primary owner can no longer keep the dog, or passes away, custody will automatically go to the other party. This is also an important estate planning consideration.

F. Horses

The practical and financial realities of caring for horses requires more involved planning as to custody issues.

The first step is to establish whether the horse is used primarily as a business or as a companion animal. This is important for many reasons, including identifying which laws apply to each context.

When the horse is a companion animal, the same initial approach applies as with a dog. It must be determined who is most bonded with the horse.

- 1. Address the issues of the horse early in the divorce negotiations to prevent the emotions surrounding the horse from getting more complicated and disruptive.
- 2. Is the primary person bonded with the horse able to afford to keep the horse? If not, in the best interest of the horse, will the person who can afford the horse allow the primary person bonded to the horse to keep it while providing the necessary resources?
- 3. Is the threat of losing a beloved horse interfering with other matters in the divorce negotiations?
- 4. If both parties are arguing over the horse, is there a compromise or trade that could be offered in order to allow one of the parties to keep the horse?



In conclusion my hope is that this information is helpful to you and your clients going through divorce when pets are involved. My thanks to everyone at the KBA who made this presentation possible.

**PETS: NOT PROPERTY, NOT CHILDREN  
COMPANION ANIMAL CUSTODY/VISITATION ISSUES**

Nolia G. Batey; Katie M. Brophy; Courtney Howell Freeman; Hon. Tara Hagerty, Judge

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**I. INTRODUCTION**

Despite their elevated status in our families, animals are still legally considered “property” in all 50 states.<sup>1</sup> In Kentucky, dogs and other animals have long been considered personal property.<sup>2</sup> However, unlike a car or a retirement account, dividing companion animals in dissolution proceedings bring with it a host of special considerations. There’s no Qualified Domestic Relations Order to split Fido.

Studies estimate approximately 66 percent of American households have a pet of some kind, which works out to a staggering 86.9 million American homes with pets.<sup>3</sup> These numbers reflect exponential growth: in 1988 only 56 percent of American homes had pets.<sup>4</sup>

Studies also demonstrate a positive correlation between household income and pet ownership. In 2021, for example, an American Veterinary Pet Products Association study found 56 percent of households with an annual income of \$75,000 or more owned pets while only 36 percent of households with an annual income below \$30,000 owned pets.<sup>5</sup>

**II. CUSTODY/POSSESSION IN DOMESTIC VIOLENCE PROCEEDINGS**

In 2022, Kentucky’s domestic violence legislation was amended to expressly include companion animals in domestic violence orders and allow for temporary sole possession.

- A. [KRS 403.720](#) was amended to include violence against a domestic animal when used as coercive conduct in the definition of “domestic violence and abuse”;
- B. [KRS 403.740](#) was amended to allow a judge to award possession of a shared domestic animal to the petitioner;
- C. [KRS 456.010](#) was amended to include violence against an animal when used as coercive conduct in the definition of “dating violence and abuse”; and
- D. [KRS 456.060](#) was amended to allow a judge to award possession of a shared domestic animal to the petitioner.

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<sup>1</sup> Bruce A. Wagman, *et. al.*, *Animal Law: Cases and Materials*. (6th ed. 2019).

<sup>2</sup> See, e.g., *Duff v. Louisville & N.R. Co.*, 292 S.W. 814 (Ky. 1927) (Dog was property even at common law); *Gay v. Commonwealth*, 21 S.W.2d 480 (Ky. 1929) (A dog is “property”); *Henderson v. Louisville Ry. Co.* 68 S.W.644 (Ky. 1902).

<sup>3</sup> American Pet Products Association (2023-2024); American Veterinary Medical Association, 2018 and 2022 *Pet Ownership and Demographics Sourcebook*.

<sup>4</sup> American Pet Products Association (2023-2024).

<sup>5</sup> American Pet Products Association. (2021). *Pet Ownership Statistics*.

### III. CUSTODY/POSSESSION/VISITATION IN MARITAL DISSOLUTION PROCEEDINGS

Custody/possession/visitation disputes arise often in marital dissolution proceedings. Of course, they also arise in proceedings between unmarried individuals, and similar analyses are utilized. Because companion animals are property, the courts in dissolution proceedings are tasked with splitting this joint “asset” but simply cannot do so in a traditional sense. This is because animals are an inherently different type of property.

Kentucky courts, and courts across the country, are tasked with doing the best they can right now, in the absence of clear guidance. Courts take various approaches in determining to whom to award custody/possession, including but not limited to:

- Property-based analysis;
- Best interest of the pet analysis; and
- Hybrid analysis

Consider:

- A. [KRS 258.212](#) prohibits tampering or removal of a “domesticated animal’s” identification including tag, chip, locator, or electronic tracking device.... (Class A misdemeanor).
- B. [KRS 258.245](#) provides all dogs with a valid rabies vaccination and bearing identification “are hereby declared to be personal property and subject of larceny”.
- C. [KRS 258.005](#) defines an “owner” as any person owning, keeping, or harboring a dog, cat, or ferret.
- D. Common Law Property-Based Analysis
  1. Courts look at indicia of ownership:
    - a. Did the pet initially belong to one party before the relationship?
    - b. Was the pet a gift from one party to the other?
    - c. Did the parties have an oral agreement?
    - d. Which party provided daily care/food for the pet?
    - e. Which party ensured and paid for veterinary care for the pet?
    - f. In whose name is the pet registered?
  2. Property to be equitably divided.

Courts using this property-based analysis see pets as property to be equitably divided. In a Florida case, a trial court awarded visitation of a pet to one party in a divorce case. However, the Florida Court of Appeals

reversed the decision, finding no express authority for visitation of personal property once divided. *Bennett vs. Bennett*, 655 So.2d 109 (Fl. Dist. Ct. App. 1995).

Some courts have also relied upon this strict property-based analysis and refused to acknowledge any special relationship or bond with one party over the other. In one such Indiana case, the fact that one party gifted the pet to the other was held dispositive, despite the pet being more bonded to the gifting party. *Akers v. Sellers*, 54 N.E.2d 779 (In. Ct. App. 1944).

3. But aren't pets sentient and inherently different from other property?

Some courts have taken steps to acknowledge "the special subjective value of animals to their caregivers".<sup>6</sup>

One such New Jersey case found that although pets are personal property, the divorcing joint owners each had a special subjective value assigned to the pet. Because of this special subjective value of the property, the court ordered specific performance: each joint owner would have sole possession of the property during certain times of the calendar year. The decision was upheld by the appellate court, although on remand the trial court was instructed to evaluate whether the parties had agreed on a post-separation plan. *Houseman v. Dare*, 966 A.2d 24 (N.J. Super. Ct. App. Div. 2009). The trial court found the parties had no agreement and another appeal followed. The appellate court then affirmed without extensive opinion. *Houseman v. Dare*, 2010 WL 4025584 (N.J. Super. Ct. App. Div. Oct. 15, 2010).

4. Exceptions to the exceptions.

*In re Marriage of Stewart*, 356 N.W.2d 611 (Iowa Ct. App. 1984): a marital dog was awarded to the husband even though he had given the dog to the wife as a gift because the court found awarding the dog to the wife would put the dog in danger. Thus, despite the property/gift analysis, the court found the danger to the dog justified the award.

*In re Marriage of Berger and Ognibene-Berger*, 834 N.W.2d 82 (Iowa Ct. App. 2013): the trial court awarded a 10-year-old dog to the wife because she stayed at home and took the senior dog to the vet. This case referred to the dog as property but with a special subjective value just as in the above-referenced New Jersey *Houseman* case. Thus, despite analyzing the pet under a property-based standard, the court still found a way to factor in the animal's best interests, as well as finding the wife assigned a special subjective value to the pet.

New York courts overwhelmingly favor another property approach. See e.g. *Hennett v. Allan*, 981 N.Y.S.2d 293 (N.Y. Super. Ct., Albany County, 2014), adopting *Feger v. Warwick Animal Shelter*, 870 N.Y.S.2d 124 (N.Y. App. Div. 2008). The *Hennett* case involved a non-married couple arguing over

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<sup>6</sup> Sonia Waisman, et al. *Animal Law in a Nutshell*. (3d. ed. 2020).

a black Labrador Retriever. Dogs are personal property in New York and replevin actions can be used to recover possession of dogs in non-marital dissolution related proceedings. (The Kentucky equivalent of a writ of possession.) Even though one party signed a release related to personal property, the court found that a dog, and in this case a pet, was not the type of personal property anticipated by the release. Instead, this New York court found a pet is a special category of property.

In *Desanctis v. Pritchard*, 803 A.2d 230 (Pa. Super. Ct. 2002), the court held that the suit to enforce an agreement on the dog post-divorce would not be enforced because a dog is personal property.

#### E. Common Law Best-Interest Analysis

Under this approach, the court still recognizes the pet's legal status as property but considers this sentient property's best interests and takes a real world approach similar to custody of children. The court looks at the future of the animal as it relates to the party seeking custody:

1. What is the party's future living arrangement?
2. What is the party's future work arrangement?
3. To whom is the pet most bonded?
4. Are there children involved and is the pet bonded to those children?
5. Who historically ensured the pet received care?
6. Who historically paid for the pet's care?
7. Who is most bonded with the pet?

Additionally, some courts may base the pets' ultimate living situation on the children's best interest. Studies show children with pets may have an easier time than ones who do not when going through their parents' divorce or separation. Studies have shown that pets can have a positive impact on children's mental health and emotional wellbeing. For example, owning a pet has been linked to lower levels of anxiety and depression in children, as well as increased feelings of empathy and social support. During divorce, pets may provide a source of comfort and stability for children who may be feeling anxious or uncertain about their future. Pets can also serve as a source of continuity and familiarity during a time of change and upheaval.<sup>7</sup>

Texas took a conservator appointment approach, *i.e.*, the court appointed and then upheld the wife as the managing conservator of the dog with reasonable visitation

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<sup>7</sup> McNicholas, J., & Collis, G. M. (2000). "Children's representations of pets in their social networks." *Child: Care, Health and Development*, 26(3), 185-201; Purewal, R., Christley, R., Kordas, K., Joinson, C., Meints, K., Gee, N., & Westgarth, C. (2017). "Companion animals and child/adolescent development: A systematic review of the evidence." *International Journal of Environmental Research and Public Health*, 14(3), 234.

to the husband. Here the fact that it was a GIFT was dispositive. The husband gave the dog to the wife as a gift. *Arrington v. Arrington*, 613 S.W.2d 565 (Tx. Civ. App. 1981).

One Tennessee probate court appointed a guardian *ad litem* for the decedent's dog to look at disposition in the dog's best interest to ensure the dog was going to the vet, the dog's living space was appropriate, etc. *In Re Callan, Jr.*, D-2252 (Tenn. Prob. Ct. 2007).

In New York, for an unmarried couple, the court gave an elderly cat to the party who kept the house where the cat had been living, citing the cat's age and life expectancy. *Raymond v. Lachmann*, 695 N.Y.S.2d 308 (N.Y. App. Div. 1999).

**Practice tip:** Due to the uncertainty as to which factors a court will consider, a pre- or post-nuptial agreement may be prudent for couples or others who acquire pets in circumstances which indicate the acquisition is arguably "joint."

#### F. Hybrid Method

This is a catch-all for some combination of best interest and property standards. New York courts use this method frequently as well.

In *Travis v. Murray*, 977 N.Y.S.2d 621 (N.Y. Sup. Ct., N.Y. County, 2013),<sup>8</sup> the court acknowledged animals as property but distinguished companion animals as a "special category of property" for which "a strict property analysis is neither desirable nor appropriate." The court gave each side the opportunity to prove not only why she will benefit from having the animal in her life but why the animal has a better chance of living, prospering, loving and being loved in their care.

#### G. Payment of Pet-Related Expenses

Whether it's the "strict property analysis" or a "best interest" approach, or some hybrid, courts may order support to the custodial party and visitation to the non-custodial one.

Support was allowed in *Raymond v. Lachmann*, 695 N.Y.S.2d 308 (N.Y. App. Div. 1999). The court ordered that the party retaining custody of the jointly held cat must compensate the non-custodial party for past vet expenses.

On the other hand, support was not allowed in *Mitchell v. Snider*, 2016 WL 3191291 (N.Y. City Civ. Ct., N.Y. County, Mar. 18, 2016). The court ordered that the past expenses for a couple's dog were an "expression of mutual love."

Termination of visitation: In 2002, an Alaska court terminated visitation when one party negligently allowed the visiting dog to get into a scuffle with other dogs belonging to the party with visitation rights. *Juelfs v. Gough*, 41 P.3d 593 (Alaska 2002).

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<sup>8</sup> Superseded by statute as stated in *L.B. v. C.C.B.*, 175 N.Y.S.3d 705 (N.Y. Sup. 2022).

In another New York case, the court said don't use the terms "custody" or "visitation", let's just order or award "sole possession" of the dog. *Travis v. Murray*, 977 N.Y.S.2d 621, 631 (N.Y. Sup. Ct., N.Y. County, 2013).

In Kentucky, animal custody cases and related requests for compensation of pet-related expenses are currently appearing before trial courts in dissolution actions, domestic violence proceedings, circuit court writs of possession, and district court small claims cases. On the criminal side, animal custody cases appear based on "criminal" warrants seeking return of a pet.

#### H. Statutory Analysis

In the absence of clear black letter law on how to handle disputes involving companion animals, some state legislatures have recently enacted pet custody statutes. Such action clarifies jurisdiction and the required analysis. A select sampling of such legislation follows.

1. Alaska's pet custody statute expressly provides for parties in a dissolution proceeding to include in their agreements ownership or joint ownership of an animal, taking into consideration the well-being of the animal.

It states, in relevant part:

(e) If the petition is filed by both spouses under [AS 25.24.200\(a\)](#), the petition must state in detail the terms of the agreement between the spouses concerning the custody of children, child support in terms of periodic payments and in terms of health care expenses, visitation, spousal maintenance and tax consequences, if any, and fair and just division of property, including retirement benefits. A petition filed by both spouses under [AS 25.24.200\(a\)](#) may provide for the ownership or joint ownership of an **animal**, taking into consideration the well-being of the **animal**. Agreements on spousal maintenance and property division must fairly allocate the economic effect of dissolution...

[AS §25.24.210](#) (emphasis added)

2. California's [Family Code, Section 2605](#), permits courts in dissolution proceedings, upon request, to enter temporary orders for a pet's care as well as a final determination in reference to a household pet.
3. Maine has now codified its pet custody analysis within its "disposition of property" section within its domestic relations statute. It provides, in relevant part:

10. **Companion animals.** In the disposition of property pursuant to subsection 1, the court, with respect to a companion animal, shall award ownership of the companion animal to only one party after considering all relevant factors, including, but not limited to:

- A. The well-being and basic daily needs of the companion animal;
- B. The amount of time each party has spent with the companion animal during the marriage tending to the companion animal's nutritional, grooming, physical and medical needs;
- C. The ability of a party to continue to own, support and provide adequate care for the companion animal;
- D. The emotional attachment of a party to the companion animal;
- E. The emotional attachment of any child in the household to the companion animal and the benefit to the child of the companion animal's remaining in the primary residence of the child;
- F. Any domestic violence between the parties or in the household of the parties; and
- G. Any history of animal abuse or other unsafe conditions for the companion animal.

For the purposes of this subsection, “companion animal” means an animal kept primarily for companionship rather than as a working animal, service animal or farm animal kept for profit.

[Me. Rev. Stat. tit. 19-A, §953.](#)

- 4. New Hampshire amended its property settlement statute to address ownership of animals and provides judges with an obligation to consider the best interests of the animal at issue.

“Tangible property shall include animals. In such cases, the property settlement shall address the care and ownership of the parties’ animals, taking into consideration the animals’ wellbeing.” [RSA 458:16-a, II-a \(Supp. 2020\).](#)

- 5. New York amended its domestic relations law in 2021 to require a best interest consideration: “(15) in awarding possession of a companion animal, the court shall consider the best interest of such animal.”

#### IV. CONCLUSION

As pets become more central to our lives, they will increasingly become the subject of intense disagreement between parties in family court proceedings. Family courts and state legislatures across the country are currently grappling with the disconnect between



companion animals' legal status as property and their value to their human guardians as family members.