

Pets & Divorce: Who keeps the Dog?

By Michael Allum

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The coronavirus pandemic has seen a boom in the number of couples welcoming new pets into their homes. According to the Pet Food Manufacturers Association, an estimated 3.2 million UK households have acquired a pet since the start of the pandemic. However, in instances where a relationship breaks down and a couple separates or divorces, who keeps the dog?

Introduction

This issue has garnered media attention in recent years and gained momentum as a result of ‘celebrities’ arguing over arrangements for the family pet, post separation and divorce: Ant MacPartlin (of the famous TV duo Ant and Dec) and his former wife reportedly arrived at a ‘shared custody’ agreement over their chocolate Labrador Hurley.

However, it is not only celebrities who may find themselves faced with this issue. In 2014, the Blue Cross suggested that 1 in 4 divorces involved disputes about pets. Whilst many practitioners would probably say in practice the number is much lower, with the increase in couples buying or adopting new pets it is possible that disputes regarding pets following separation and divorce may also be set to increase.

What is a Pet?

Despite being man’s best friend, dogs and other pets are treated as chattels under English family law. This means that your pet dog is afforded the same status as the fridge freezer, couch, and kitchen table you once shared with your partner.

The treatment of pets and their status in family law is somewhat behind other areas of the law in England and Wales and other jurisdictions. Outside the family law context, the Animal Welfare Act 2006 considers what is deemed to be suitable for a pet (for example, their living environment, making sure that their welfare is protected etc.). Similarly, in California, section 2605 of the Family Code provides that the court may enter an order ‘to require a party to care for the pet animal’ and ‘may assign sole or joint ownership of a pet animal taking into consideration the care of the pet animal’.

Nonetheless the position is as it stands under English law and although there are arguments both for and against greater consideration being given to animals in divorce proceedings (the argument ‘against’ commonly being that it is likely to lead to protracted proceedings and the typical argument ‘for’ being that an animal is a sentient being and therefore should be afforded a greater status in English law than a chattel) it is likely to remain so for the foreseeable future.

What can you do if your relationship breaks down and a dispute arises regarding your pet?

● Negotiate directly with your partner

If you find yourself in a situation where a dispute has arisen between you and your partner regarding your pet, then your first course of action is to try to negotiate directly with your partner (if they are open to doing so). This is by far the most cost-effective course of action.

● Mediation

If you find that it has not been possible to resolve the dispute directly with your partner then you may want to enlist the help of an independent 'third party', or a 'family mediator', with a particular expertise in disputes involving pets.

● Instruct a solicitor

If you and your partner are still unable to resolve your differences through direct negotiations or mediation, then it may be worth instructing a solicitor. You can either do this before attempting mediation or after. Receiving a formal letter from a solicitor setting out your position may prompt your partner to take negotiations more seriously which could, in turn, lead to a resolution.

● Arbitration

If an agreement cannot be reached, then arbitration should be considered as an alternative to court proceedings. This will still produce a binding outcome but through a process which can be much quicker and more streamlined than court proceedings. It is possible to arbitrate over discrete issues.

● Court proceedings

Whilst the court has the power to make orders regarding chattels and to hear relevant arguments as to whom should retain the chattel (the pet in this instance), court proceedings should only be pursued once you are satisfied that you have exhausted all other avenues. This avenue should be a last resort as court proceedings are time consuming, expensive and are very likely to be disproportionately so if a single issue is being pursued by one of the parties.

Divorce cases and pets

Below are examples of the court's approach regarding disputes involving pets:

● **S v S [2008] EWHC 519 (Fam)** In this case, spousal maintenance was awarded to the wife at a level that would allow for her to maintain her three horses. This was appealed by the husband and subsequently dismissed by the court.

● **IX v IY [2018] EWHC 3053 (Fam)** In this case, the husband and wife owned two dogs. The court decided that each party should keep one dog and that any further matters that may arise out of that arrangement should be dealt with outside of court: *"I believe that one dog is currently in France and one dog is in England. That seems to me to be fair. If the parties wish to argue over their access to the other dog, I would suggest that they place the dispute before a mediator or arbitrator, perhaps one with experience of dogs"*.

● **RK v RK [2011] EWHC 3910 (Fam)** In this case the wife made a claim to a painting and one of the family dogs. Mr. Justice Moylan held: *"On the latter issue, I do not consider it appropriate to make any order in respect of one of the dogs because, on the evidence I have heard, they would seem to have been looked after principally by the husband"*.

The Court

When deciding who keeps a family pet the court will consider factors such as who paid for the pet, who has legal ownership of the pet (i.e., to whom it is registered) and who pays for the pet insurance.

Although the court will not take the best interests of the pet into account, it may be possible to present an argument to the

court based on the court's first consideration under s25 (1) MCA 1973 when considering how the parties' assets should be divided, plus the welfare of any children of the family. This may be applicable in circumstances where a child of the family has a particularly close bond with a family pet and any separation from the pet may have a negative impact on that child's welfare.

Pet-Nups

It would be sensible for a couple to consider entering an agreement, a '*pet-nup*', as a pre-emptive measure in the event of separation or divorce. A pet-nup is an agreement between the parties setting out the right of ownership as well as the arrangements for the pets on-going care including who will be responsible for meeting any expenses associated with the pet (for example food, vet bills, insurance payments etc.). It may also cover who will have '*sole care*' of the pet and any arrangements for contact in the event of separation or divorce.

Are Pet-Nups legally binding?

Similar to pre-nups and separation agreements, the law does not presently recognise pet-nups as being legally binding, however like pre-nups and separation agreements the court is likely to take such an agreement into account.

Many people consider their pets as part of the family. Owners can form long relationships with their pets: the average lifespan of a cat is 15 years (plus nine lives) and a pet tortoise can have an average life span of anything between 50 – 100 years, potentially outliving their owners.

It is therefore important that the subject of 'who keeps the dog' is given proper thought and a pet-nup considered before the possible breakdown of a relationship to avoid, or at the very least reduce, any potential disputes arising in the future.

If you would like assistance with preparing a pet-nup or require any further information in respect of this topic, please contact Feriha or Michael at The International Family Law Group LLP:

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