

Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals #18

May 18, 2020

S. 6222

By: Senator Martinez

A. 1097

By: M. of A. Glick

Senate Committee: Domestic Animal Welfare

Assembly Committee: Judiciary

Effective Date: Immediately

AN ACT to amend the domestic relations law, in relation to requiring the court to consider the best interest of a companion animal when awarding possession in a divorce or separation proceeding.

LAW & SECTION REFERRED TO: Domestic Relations Law, §236 (B)(5)(d).

THE COMMITTEE ON ANIMALS AND THE LAW SUPPORTS THIS LEGISLATION

This bill would amend the Domestic Relations Law, §236 (B)(5)(d) by renumbering subparagraph 14 as subparagraph 15, and adding a new subparagraph 14. New subparagraph 14 provides that, in awarding the possession of a companion animal during divorce or separation proceedings, the court shall consider the best interest of such animal. "Companion animal" shall have the meaning found in § 350 (5) of the Agriculture and Markets Law, which defines a companion animal as "any dog or cat, and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal. 'Pet' or 'companion animal' shall not include a 'farm animal' as defined in this section."

Section 2 of the bill establishes the effective date, and provides for the new act to become effective immediately.

The bill requires that when a court is awarding possession of a companion animal, it consider the "best interest of such animal." This standard is a better acknowledgment of the place of companion animals in our lives, and a welcome modernization of the idea that animals are property and can be treated as such in court, but a better way of describing the analysis that the court should use is a consideration of which result is "best for all concerned." The Committee on Animals and the Law applauds the sponsors for proposing legislation that codifies a new standard and more modern approach to resolution of disputed possession of a companion animal in a divorce or separation proceeding. It will provide more certain guidelines to New York

judges in this difficult area of the law and will ensure that "there is certainly room to give real consideration to a case involving a treasured pet." *Travis v. Murray*, *infra*.

Although animals are considered "property" under the law, New York has long been a leader in enacting laws providing for the welfare of animals, and giving animals certain rights that specifically protect their lives and their health and ensure that their welfare will be protected under the law. The legislature has offered protections to animals through the enactment of, for example, animal cruelty statutes,¹ laws that allow for pet trusts,² and laws that require schools to provide instruction on the humane treatment of animals and the use of alternatives to animal dissection in schools.³ Notably, there is no parallel body of laws enacted to protect the rights of other forms of "property" such as automobiles or dining room furniture.

When an animal is considered merely property, or "chattel," loss of the animal would traditionally entitle the owner to no more than the market value of the animal. However, there has been an acknowledgment, that animals "occup[y] a special place somewhere in between a person and a personal piece of property."⁴ This leads logically to reconsideration or revision of the old standard used in actions brought under the Domestic Relations Law, in which animals involved in divorce and separation proceedings were treated as mere property. Many courts have begun to employ a more modern when considering animals involved in these actions, applying a "best interest of the animal" or "best interest of all concerned" analysis, and this bill proposes that the more modern approach, already cited in many judicial determinations, be enacted into law.

In 1999, the "best for all concerned" standard first appeared in a decision from the Appellate Division, First Department, in *Raymond v. Lachmann*, 264 A.D.2d 340; 695 NYS2d 308, 309 (1st Dept. 1999), a dispute over "Lovey," a cat. The plaintiff sued for possession, which the trial court granted, on condition that plaintiff reimburse defendant for Lovey's veterinary bills. On appeal, the First Department reversed and granted possession of Lovey to the defendant, stating: "[C]ognizant 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, on the record presented, 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."

There has been additional judicial recognition of the appropriateness of the "best for all concerned" standard when dealing with companion animals since. In 2008, the Appellate

¹ NY Agriculture and Markets Law, § 353, *et seq.*

² NY Estates, Powers and Trusts Law § 7-8.1.

³ NY Education Law § 809.

⁴ *Corso v. Crawford Dog & Cat Hospital, Inc.*, 97 Misc. 2d 530,531; 415 NYS2d 182, 183 (Civil Court Queens County 1979)(Plaintiff was permitted recovery beyond the market value of a deceased pet, with the court declaring that "a pet is not just a thing but occupies a special place somewhere in between a person and a personal piece of property.").

Division, Second Department, stated, "[t]he reach of our laws has been extended to animals in areas which were once reserved only for people" and which "indicate that companion animals are treated differently from other forms of property. Recognizing companion animals as a special category of property is consistent with the laws of the state ..." *Feger v. Warwick Animal Shelter*, 59 A.D.3d 68, 870 N.Y.S.2d 124 [2d Dept. 2008].

This court also cited with approval the "best for all concerned" standard espoused in *Raymond v. Lachmann*, *supra*, stating "the courts have recognized the 'cherished status' accorded to pets in our society in awarding possession of a cat in a custody dispute based in large part on what was in the best interest of the animal."

In 2013, in a thoughtful and often-cited decision from New York County Supreme Court, Judge Matthew F. Cooper granted a hearing in a matrimonial action, using the "best for all concerned" standard, to determine final possession of a two-and-a-half year old dachshund, requiring each party to show that the pet would have "a better chance of living, prospering, loving and being loved in the care of one spouse as opposed to the other." *Travis v. Murray*, 2013 NY Slip Op 23405, 42 Misc.3d 447, 977 N.Y.S.2d 621 (N.Y. Sup. Ct. 2013).

Other courts have undertaken the difficult task of examining which party spends time with the animal and cares for the animal. In *Ramseur v. Askins*, 997 N.Y.S.2d 101 (N.Y. Civ. Ct., Bronx County, 2014), the court attempted to determine who bore the major responsibility for meeting the dog Deva's needs and who spent more time with her on a regular basis, and it ultimately denied the plaintiff's request for possession of the dog, stating, "Plaintiff wanted Deva returned to him not because he wants her as a companion but because he wants to make money from breeding her."

Courts understandably have wrestled with contested animal possession determinations. As the *Travis* court pointed out, the "best interest" analysis, derived from the "best interest of a child" test used in child custody cases, does not lend itself to resolving contested possession of an animal. "The subjective factors that are key to a best interests analysis in child custody – particularly those concerning a child's feelings or perceptions as evidenced by statements, conduct and forensic evaluations – are, for the most part, unascertainable when the subject is an animal rather than a human."⁵

Most recently, in *Finn v. Anderson*, 64 Misc.3d 273, 101 N.Y.S.3d 825 (N.Y. City Ct., Chautauqua Cty, 2019), an action to determine the rightful owner of a cat, the court stated:

Where a "best interests" standard cannot reasonably be applied, and a strict property analysis is neither desirable nor appropriate, New York courts have developed a 'quasi-interests based standard' that 'takes into consideration, and gives paramount importance to, the intangible, highly subjective factors that are called into play when a cherished pet is the property at issue.' ... The standard that has been adopted by some recent court decisions in New York as the "**best for all concerned**" standard. ... analyz[ing] each party's evidence of their benefit

⁵ *Travis*, *supra*, at 459.

from having the animal in their life, and why the animal has a better chance of living, prospering, loving and being loved in their care.

For the reasons set forth in numerous recent cases, the best for all concerned standard - not the best interest of the animal standard, which would require subjective analyses from the standpoint of the animal, - should be codified to give greater certainty to animal owners and to courts when issues related to pet possession must be determined in court.

For the foregoing reasons, the NYSBA's Committee on Animals and the Law **SUPPORTS** the passage and enactment of this legislation, with its language modified to take into account the best interests of all concerned.