

Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals #16

June 8, 2021

S. 4248

By: Senator Skoufis

A. 5775

By: M. of A. Glick

Senate: Passed

Assembl: Passed

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. The meaning of "companion animal" shall come from § 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."

The bill requires that when a court is awarding possession of a companion animal, it consider the "best interest of such animal." While animals are property under the law, this change would help to acknowledge the true place of companion animals in our lives. The Committee on Animals and the Law applauds the sponsors for proposing legislation that codifies a new and more modern approach for resolving disputes over the possession of companion animals in divorce or separation proceedings that coincides with the direction in which courts have been moving in recent times. Such codification will offer New York judges better guidelines in this difficult area and will ensure that "there is certainly room to give real consideration to a case involving a treasured pet." *Travis v. Murray, infra.*

New York has long been a leader in the adoption of statutory protections for animals – their lives, their health and their welfare. The legislature has granted protections to animals through the enactment of 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 mandate students being offered alternatives to animal dissection in schools.³ Notably, there is no parallel body of laws enacted to provide heightened protections for 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 judicial acknowledgment, that animals “occup[y] a special place somewhere in between a person and a personal piece of property.”⁴

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.”

Judicial recognition of the “best for all concerned” standard when dealing with companion animals has continued since then. In 2008, the Appellate 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.”

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.”)

A thoughtful and often-cited 2013 decision written by Justice Matthew F. Cooper of the New York County Supreme Court, issued after a hearing in a matrimonial action to determine with whom the two-and-a-half-year-old dachshund would permanently live, used the “best for all concerned” standard. Justice Cooper required 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*, 42 Misc.3d 447, 977 N.Y.S.2d 621 (N.Y. Sup. Ct. 2013).

Other courts have examined 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. Ultimately, it 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

This was addressed 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, in which 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 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 in which companion animal possession has been at issue, the “best for all concerned” standard, as distinguished from a “best interest of the animal” standard that would require a subjective analysis from the standpoint of the animal, should be codified to give greater certainty to animal owners and to courts, when issues related to the custody of companion animals must be determined in court.

⁵ *Travis*, *supra*, at 459.

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 when awarding possession of an animal.