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Research Brief

TO: Representative Max Gruenberg
FROM: Chuck Burnham, Legislative Analyst
DATE: January 7, 2015
RE: Custody Awards and Protective Orders for Pets
LRS Report 15.142

You asked about custody awards and protective orders for pets. Specifically, you wished to know the legal authority in Alaska that gives courts the power to award custody of pets in divorce proceedings. You further wanted to know which states provide for protective orders for pets in divorce or domestic violence proceedings.

Awarding Custody of Pets in Divorce Proceedings

Our research found no Alaska statute that governs the “custody” or ownership of pets in divorce proceedings.¹ Alaska courts have, however, traditionally considered pets to be property, as do nearly all other legal jurisdictions in the United States. For example, in a 1985 case in which a family sought damages from the Fairbanks-North Star Borough stemming from the municipality improperly euthanizing a dog, the Alaska Supreme Court affirmed the lower court’s denial, finding that

The superior court correctly held that the Richardsons’ subjective estimation of [the dog] Wizzard’s value as a pet was not a valid basis for compensation. Since dogs ***have legal status as items of personal property***, courts generally limit the damage award in cases in which a dog has been wrongfully killed to the animal’s market value at the time of death [emphasis added].²

Because pets are considered property, their award in divorce proceedings is generally conducted in the same manner as other assets. Specifically, Alaska Rule of Civil Procedure 90.1 requires the creation of property division tables that list all assets and liabilities of divorcing parties, while Rule 26.1 delineates the processes for discovery and disclosure of property, including pets. All qualifying property is subject to award by the presiding judge and/or through dissolution agreements filed by the parties.

Despite the status of pets as property, in at least one divorce case Alaska courts have treated animal companions as something more. In *Juelfs v. Gough*, a divorcing couple, Julie and Stephen, submitted a dissolution agreement in 1992 to the Alaska Superior Court, 4th District, in which they agreed to share custody of their dog, Coho. In March, 2000, Julie filed a motion for dissolution of the agreement claiming Stephen had failed to allow sufficient visitation with the dog. Finding that the presence of other dogs in Julie’s home and other factors posed a risk to Coho, the Superior Court awarded “legal and physical custody” of Coho to Stephen and allowed “reasonable visitation rights” to Julie as determined by Stephen. The situation deteriorated, with both parties seeking restraining orders against the other, and Julie again petitioned the court for physical custody of the dog. When the lower court reaffirmed its decision, Julie appealed to the Alaska Supreme Court but failed to have the decision overturned.³ This case is unique in that the

¹ Pets are sometimes referred to as “animal companions” in order to distinguish dogs, cats, and the like from livestock and other farm animals.

² *Richardson and Richardson v. Fairbanks-North Star Borough*, (1985, AK Sup. Ct. File No. S-391; No. 2975; 705 P.2d 454; 1985 Alas. LEXIS 305). We include a copy of the Court’s opinion as Attachment A.

³ We include the Supreme Court’s opinion in *Juelfs v. Gough* (AK Supreme Ct. No. S-9931, No. 5535; 41 P.3d 593; 2002 Alas. LEXIS 20) as Attachment B.

lower court initially awarded visitation rights for what it legally considers to be an item of property. It was among the early examples of a nascent trend in U.S. jurisprudence—a court employing the concept of pets as “living property.”

According to the Animal Legal and Historical Center at Michigan State University Law School, the ubiquity of pets and the fact that many are viewed as members of the household has led a number of jurisdictions to begin viewing custody of animals in a different light. A professor at the Center, David Favre, argues that pets should be viewed as living property, which he defines as “physical, movable living objects—not human—that have an inherent self-interest in their continued well-being and existence.” The Center has compiled a list of cases in which courts went beyond seeing pets strictly as property and began considering the best interests of the animal.⁴ Such cases, including the Alaska case outlined above, have variously resulted in orders of shared custody, visitation, and even an award of monetary support; however, a number of courts have recently considered the status of pets but ultimately determined that their classification as strictly property is valid.⁵

At least three states’ legislatures— Maryland (2011), Michigan (2007), and Wisconsin (2007)—have considered laws to delineate a process in statute by which pets are awarded during divorce proceedings. We include, as Attachment C, copies of those measures.

Inclusion of Pets in Protective Orders

As the attached table shows, at least 27 states have enacted laws allowing courts to include pets in protective orders. Statutes in Arizona and Tennessee offer such protection but also expand the definition of domestic violence to include harm or threatened harm to a pet. Laws in, for example, Illinois, Iowa, Maryland, Minnesota, and Oklahoma, allow courts to award “exclusive care, custody, and control” of a pet to a petitioner. A number of states—Louisiana, Maine, and West Virginia, for example—offer protection for the pets of petitioners and / or those of their children. Oregon statute provides judges authority to “order any relief” considered necessary to protect service animals and animal companions. We include, as Attachment D, the applicable statutes from the 29 states with laws allowing pets to be included in protective orders.

We hope this is helpful. If you have questions or need additional information, please let us know.

⁴ A list and full text of the decisions in such cases is available under the “Related Information” tab at <https://www.animallaw.info/intro/custody-pets-divorce>.

⁵ Tabby T. McLain, “Overview of Pets in Divorce/Custody Issues,” Animal Legal and Historical Center at Michigan State University Law School, 2009. This article and links to further discussion and information on the topic are available at <https://www.animallaw.info/intro/custody-pets-divorce>.

Table 1: State Laws Allowing Pets to be Included in Protective Orders

Arizona	A.R.S. §§ 13-2910 and 13-602	Allows judges to include pets in domestic violence protection orders; amends the definition of domestic violence to include intentionally or knowingly subjecting an animal to cruel mistreatment, neglect, or abandonment resulting in serious physical injury.
Arkansas	Ark. Code § 9-15-205	Upon a finding of domestic abuse at a hearing, the court may direct the care, control, or custody of any pet in the household.
California	Family Code § 6320	Authorizes the court to order that the petitioner be granted the exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or respondent or a minor child residing in either's household; and to order the respondent to stay away from the animal.
Colorado	C.R.S. §§ 13-14-101 and 103 18-6-800.3	Clarifies the definition of property to include animals in the context of protective orders. Defines domestic abuse and abuse of an elderly or at-risk adult as including threats or acts of violence against an animal, or harming or disposing of it, when intended to coerce, control, punish, intimidate, or exact revenge against the petitioner.
Connecticut	G.S.C. §§ 46b-15(b), 46(b)-38(c), and 54-1(k)	Allows the court to issue a protection order that protects any animal owned or kept by the applicant including an order enjoining the respondent from injuring or threatening to injure such animal.
Hawaii	H.R.S. § 586-4	Allows judges to enjoin or restrain either the respondent or the protected person from taking, concealing, removing, threatening, physically abusing, or otherwise disposing of any animal identified to the court as belonging to the household until further court order.
Illinois	725 ILCS § 5/112A-14	Allows the court to include in the protection order exclusive care, custody, or control of animals and ordering the respondent to stay away from the animal.
Iowa	I.C.A. §§ 236.3, 236.4, 236.5	Allows the court to grant petitioners exclusive care, possession, or control of any pets or companion animals in both temporary and permanent orders. The animals can belong to the petitioner, the abuser, or a minor child of the petitioner or the abuser. The court can also order the abuser to stay away from the animals and not take, hide, bother, attack, threaten, or otherwise get rid of the pet or companion animal.
Louisiana	LSA-RS § 46:2135(A)(7) and Child. Code Art. § 1569(A)(7)	Amends statutes and Children's Code to allow judges to include petitioner's or children's pets in protective orders, grant petitioner exclusive control of pets, and enjoin defendant from harming them.
Maine	19-A MRSA §§ 4007(1) and 4011 (2)	Authorizes courts to issue orders of protection to safeguard the well-being of animals of either party or minor children. Violation is treated as contempt.
Maryland	Ann. Code of Md. §§ 4-504.1, 4-505 to 4-506	Authorizes District Court Commissioners, in an interim protective order, or judges, in a temporary or final protective order, to award temporary possession of a pet belonging to either the respondent or the person eligible for relief.

Table 1: State Laws Allowing Pets to be Included in Protective Orders (continued)

Massachusetts	ALM GL ch. 209A, § 11	Allows courts to order defendants to refrain from abusing, threatening, taking, interfering with, transferring, encumbering, concealing, harming or otherwise disposing of any "domesticated animals" in the household. The procedure can apply in any temporary or permanent vacate, stay-away, restraining or no-contact order in any domestic relations, child custody, domestic abuse or abuse prevention proceeding. Also requires courts to notify law enforcement agencies, and for those agencies to take necessary actions, when a warrant has been issued for violation of the protection order when the court believes an "imminent threat of bodily injury" exists to any person or domesticated animal involved in the proceedings.
Minnesota	Minn. Stat. § 518B.01(6)(15)	Court may direct the care, possession, or control of a pet or companion animal owned, possessed, or kept by the petitioner, respondent or a child; and direct the respondent to refrain from physically abusing or injuring any pet or companion animal without legal justification, known to be owned, possessed, kept or held by either party or a minor child as "an indirect means of intentionally threatening the safety of such person."
Nevada	NRS §§ 33.018 and 33.030	Expands the unlawful acts which constitute domestic violence to include knowingly, purposefully or recklessly injuring or killing an animal with the intent to harass the victim. The penalty is a misdemeanor. The court may issue a temporary or extended order to prevent the adverse party from harming or taking possession of an animal owned by the victim or a minor child, and may specify arrangements for the care of such animal.
New Hampshire	N.H. Rev. Stat. §§ 173-B:1, 173:B4, 173:B5	Allows a judge to grant the petitioner of a protective order exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by the victim, the abuser, or a minor child in the household; the law also allows a judge to order the abuser to stay away from the pet in both temporary and final domestic violence protective orders.
New Jersey	N.J. Stat. § 2C:25-26	Allows court to order a pet protection order in respondent's request for emergency relief, or when defendant has been charged with DV, released on bail or personal recognizance, or convicted. Restraining orders can include animals. When a person has abused or threatened to abuse an animal, there is a presumption that possession of the animal shall be awarded to the non-abusive party.
New York	NY FAM CT § 842	Allows a court to order the respondent to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household.
North Carolina	N.C. Gen. Stat. § 50B-3	Allows a domestic violence protective order to "provide for the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household" and to order a party to refrain from "cruelly treating or abusing an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household."

Table 1: State Laws Allowing Pets to be Included in Protective Orders (continued)

Oklahoma	22 OSA §§ 60.2(E) and § 1105(B)	Victims of domestic violence, stalking or harassment may request exclusive control, care, or possession of animals belonging to them, defendant or minor child, and court may forbid defendant from making contact with, taking, threatening, harming or disposing of animal. In issuing a protective order, the court shall consider, among other histories, whether the alleged violent incident involved the abuse of pets.
Oregon	ORS § 107.718	Allows judges to order any relief considered necessary to prevent the neglect and protect the safety of any service or therapy animal, or any animal kept for personal protection or companionship. Animals kept for commercial, business, agricultural, or economic purposes are excluded.
South Carolina	CLSC § 20-4-60	Allows a judge to issue a protective order that prohibits the harm or harassment against any pet animal owned, possessed, kept, or held by the petitioner; any family or household member designated in the order; or the respondent if the petitioner has a demonstrated interest in the pet animal. The law also allows the judge to issue a protective order that provides for temporary possession of the personal property, including pet animals, of the parties and order assistance from law enforcement officers in removing personal property of the petitioner if the respondent's eviction has not been ordered.
Tennessee	Tenn. Code §§ 36-3-601(1) and 606(a)	Expands the definition of domestic abuse to include physical harm or threatened physical harm to a pet of an adult or minor, and allows security of pets to be provided for in protection orders.
Texas	Tex. Family Code § 85.021	Allows the court to prohibit removal, harm, threat, or interference with the care, custody or control of a pet, companion animal, or assistance animal possessed by a person or family member protected by a court order.
Vermont	15 V.S.A. § 1103	Allows a court to include an order relating to the possession, care and control of any animal owned, possessed, leased, kept, or held as a pet by either party or a minor child residing in the household in a domestic violence situation.
Virginia	VA Code §§ 16.1-253, 253.1, 253.4, 279.1, 19.2-152.8 to 10	Grants petitioners possession of any "companion animal," so long as that person is considered the owner. Companion animals do not include farm animals. To be considered an owner, a petitioner must either have a property interest, keep or house, currently care for, or have acted as a custodian of the animal.
Washington	RCW §§ 26.50.060 and 26.50.110	Includes pets among petitioner's personal effects; allows judges to grant petitioner exclusive custody or control of pets belonging to petitioner, respondent or minor, and to prohibit the respondent from coming within a specified distance of specified locations where the pet is regularly found; and prohibits acts of violence, harm, or interference with these animals. Violation is a gross misdemeanor.
West Virginia	WV Code § 48-27-503	Permits protective orders to include animals of petitioner, respondent or minor child.

Notes: There may be other states with applicable laws that we were unable to locate due to variations in wording and construction.
Sources: "Pets in Protection Orders by State," National Link Coalition, August 6, 2012, <http://nationallinkcoalition.org/wp-content/uploads/2013/01/PPO-StateSummary.pdf>.
 Rebecca F. Wisch, "Domestic Violence and Pets: List of States that Include Pets in Protection Orders," Michigan State University College of Law, Animal Legal and Historical Center, 2014, <https://www.animallaw.info/article/domestic-violence-and-pets-list-states-include-pets-protection-orders>.