

D.C. Court May Consider Pets' Best Interest in Awarding Ownership in Divorce Proceedings

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Many pet owners treat their pets like children. Now the Superior Court of the District of Columbia may do so as well in divorce or legal separation proceedings, pursuant to a law that recently took effect.

The Animal Care and Control Omnibus Amendment Act, which became effective on April 21, 2023, gives the Superior Court for the District of Columbia the discretion to consider the “best interest” of “pet animals” in deciding which party should have the pet after the divorce or legal separation proceedings have ended. The Court may also decide which party should have the pet during the divorce or legal separation proceedings.

Until the enactment of the new law, pets were treated solely as personal property in divorce and legal separation proceedings, and there was no provision in the District of Columbia Code permitting the court to consider the pets’ best interest. The “best interest” standard until now has been applied solely to child custody cases.

While the statutory provisions pertaining to child custody provide specific factors the Court must consider in child custody cases, the new law does not provide any factors the Court must consider and does not define “best interest,” thereby giving the Court broad discretion to determine how that phrase should be interpreted and applied. The Court might consider a wide array of facts in determining a pet’s best interest, including who cared for the pet and who was most closely bonded with the pet. The Court might also consider evidence that one party mistreated the pet.

The new law gives the Court authority to assign ownership of the pet to one of the parties, or the Court may award “joint ownership” of the pet to both parties. The new code provision does not define “joint ownership,” leaving the Court to interpret and apply that phrase. It is possible that the Court will order the parties to share the pet according to an equal time-sharing arrangement or that one party should have more time with the pet than the other party. The statute does not provide any guidance regarding whether a history of domestic violence between the parties should be considered by the Court in determining whether joint ownership should be awarded. Arguably, to protect victims from further harm, the Court should avoid awarding joint ownership in cases involving domestic violence.

The phrase “pet animal” is defined as “any animal that is community property and kept as a household pet.” The phrase “community property” is not defined anywhere in the District of Columbia Code. The Superior Court for the District of Columbia and the Court of Appeals have historically referred to property acquired during the marriage or domestic partnership as “marital property.” Perhaps the phrase “community property” is intended to also mean property that was acquired during the marriage or domestic partnership.

In disputes regarding ownership of pets between parties who are not married or in a domestic partnership, the “best interest” standard set forth in the new law would not apply. As between nonmarried persons, the Court would view the pets solely as

property and must determine who owns the pet by considering who purchased the pet or adopted the pet without giving consideration to who cared for the pet or any other facts that might pertain to the pet's best interest.

Anyone who wants the Court to consider the best interest of a pet must affirmatively request that relief as part of the divorce or legal proceeding. The new code provisions described above are set forth in D.C. Code §16-910(3).