

KEEPING CURRENT

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Who gets the dog? Court endorses broader ownership considerations for pets

By James R.G. Cook

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On a day when travelers are learning that [Air Canada has barred emotional support animals](#) from planes, it is worth remembering that in the eyes of the law pets have traditionally been treated as items of property, no more, and subject to the same principles of legal ownership as any inanimate object. This applies whether the animal is livestock, a monkey running loose in a Swedish furniture store, or the family dog. Courts have recently started to broaden the principles of property which apply to pets, and are paying due heed to the reality that a meaningful relationship with the family dog goes beyond who originally bought it.

In *Coates v. Dickson*, [2021 ONSC 992 \(CanLII\)](#), the court dealt with the ownership of two dogs by a couple in the midst of an acrimonious divorce. The couple acquired one dog, Jazz, as a guard dog, after an attempted home invasion. A year later they acquired their second dog, Jetta. At the time of the hearing Jazz was four years old and Jetta was three.

In determining ownership of the dogs, Justice Deena F. Baltman reviewed the traditional principles of pet ownership which turned on who paid for the dog, which allowed for little consideration to actual care and maintenance costs: *King v. Mann*, [2020 ONSC 108](#), at para. [71](#).

Justice Baltman noted that a broader, more contemporary approach had been adopted in many Small Claims Court decisions which assessed the circumstances of the relationship between the parties and their pets. A non-exhaustive list of the principles was summarized by Adjudicator W.A. Richardson in *MacDonald v. Pearl*, [2017 NSSM 5](#), at para. [25](#):

- a. Animals (including dogs) are considered in law to be personal property;
- b. Disputes between people claiming the right to possess an animal are determined on the basis of ownership (or agreements as to ownership), not on the basis of the best interests of the animal;

- c. Ownership of – and hence the right to possess – an animal is a question of law determined on the facts;
- d. Where two persons contest the ownership of an animal, the court will consider such factors as the following:
 - i. Whether the animal was owned or possessed by one of the people before their relationship began;
 - ii. Any express or implied agreement as to ownership, made either at the time the animal was acquired or after;
 - iii. The nature of the relationship between the people contesting ownership at the time the animal was first acquired;
 - iv. Who purchased and/or raised the animal;
 - v. Who exercised care and control of the animal;
 - vi. Who bore the burden of the care and comfort of the animal;
 - vii. Who paid for the expenses related to the animal's upkeep;
 - viii. Whether at any point the animal was gifted by the original owner to the other person;

- ix. What happened to the animal after the relationship between the litigants changed; and
- x. Any other indicia of ownership, or evidence of agreements, relevant to who has or should have ownership of the animal.

Justice Baltman determined that the broader approach to pet ownership was the correct one to follow, as ownership of a pet was an investment that went beyond the mere purchase price. A court should take into account the circumstances of care and maintenance that are an integral part of “owning” a dog.

In the case at hand, the following factors indicated that the spouses had jointly owned the two dogs:

- a. They purchased the two dogs during their marriage as their family dogs;
- b. They each invested financially in the purchase and upkeep of the dogs, including food and veterinary expenses (although they disagreed on the amounts of their respective contributions);
- c. They each made significant contributions of time and energy toward the welfare and upkeep of the dogs (even though they each claimed to be the primary caregiver);
- d. They were each listed in various official documents connected to the dogs (including registrations with the municipal animal services department and Canadian Kennel Club); and,



- e. Both spouses claimed to have suffered mental and emotional stress as a result of the separation and believe that the dogs will be therapeutic to their recovery.

Simply put, in Justice Baltman’s view, the two dogs were “family pets” and the difficult decision was therefore how to deal with ownership in the face of the couple’s separation.

Perhaps to Jetta’s chagrin, each of the spouses said that they preferred Jazz, who was purchased in response to the attempted break-in of their matrimonial home. However, as Jazz appeared to have the protective qualities that were particularly important to the wife, Justice Baltman ruled that Jazz should go to her, while Jetta remained with the husband.

The decision reflects a court’s willingness to assess pet ownership beyond the strict application of property law principles, but without engaging a full “best interests of the pet” analysis more applicable to child custody matters.

Contact us

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