

Paws, Claws and Divorce Laws:

Reconsidering Pet Custody in Louisiana

By Ryan P. Simoneaux

Editor's Note:

This article received first-place recognition in the Louisiana State Bar Association Family Law Section's Student Writing Contest in 2024.

The LSBA Family Law Section fosters the development of future legal minds through its annual writing contest for law students. This initiative not only encourages academic excellence but also highlights emerging voices in the field of family law. In an era where pets are often considered integral members of the family, Ryan Simoneaux's exploration of how Louisiana courts navigate this issue is both timely and engaging.

We extend our congratulations to Ryan on this well-deserved recognition and thank all the participants for their contributions. We hope our members find Ryan's winning article informative and thought-provoking, as it sheds light on a niche, yet significant, area of family law.



Pets are family. The modern family has opened its arms to dogs, cats and other household pets. Formerly utilized as tools, modern-day pets were domesticated thousands of years ago for all sorts of purposes.¹ Humans used dogs for hunting and guarding, while cats warded off mice from stored crops.² Yet, pets “are a relatively recent [social] invention.”³ Their placement in our homes and hearts has changed throughout the modern era.⁴ Ownership statistics and changes in the law demonstrate how important pets are to the modern family. To start, 66% of American households own a pet,⁵ and 80% of those owners “view their pets as family members”⁶ and spend \$136.8 billion per year on their pets.⁷ Besides the inherent value of pets in the American home and pocketbook, legislative bodies throughout the United States have passed laws that acknowledge the importance of pets.

Louisiana trust law permits pet owners to create a legal trust for the care of their pets.⁸ Aside from private law, pets’ significance abounds in public law. Congress and the Louisiana Legislature enacted laws providing for the planning, evacuation and housing of pets during natural disasters after Hurricane Katrina in 2006.⁹ La. R.S. 29:729 and the federal Pets Evacuation and Transportation Standards (PETS) Act were enacted in response to the overwhelming number of New Orleanians who remained in the city during the disaster because they refused to leave their pets behind.¹⁰ In addition to these laws, there are state and federal laws that criminalize acts of animal cruelty.¹¹ Despite pets’ valued placement in the law, their legal status as official members of the family is not recognized under Louisiana divorce law.

Pets as Property

At present, Louisiana’s divorce laws, unlike other states,¹² provide no workable scheme for determining “pet custody” with the pet’s best interest in mind. Instead, “pet custody” is determined by the law of community property because pets are considered corporeal movables under Louisiana law.¹³ When a commu-



nity-property regime is terminated by a divorce judgment,¹⁴ “the provisions governing co-ownership apply to former community property, unless otherwise provided by law or by juridical act.”¹⁵ Thus, a pet acquired by a married couple under a community-property regime is considered co-owned property upon a judgment of divorce,¹⁶ and either owner may petition the court to grant sole ownership of the pet through a partition proceeding.¹⁷ A judge considers “the nature and source of the asset or liability, the economic condition of each spouse, and any other circumstances that the court deems relevant” when partitioning a divorced couple’s community property.¹⁸ Therefore, Louisiana courts generally do not take into account the pet’s well-being or the owners’ attachment when determining sole ownership of the pet.¹⁹

Best Interest of the Pet

Although Louisiana law, at present, omits the importance of a pet’s well-being during community partition proceedings, there is persuasive authority by which Louisiana district court judges may use when tasked with splitting the fur baby. Extra-jurisdictional authorities,²⁰ not binding in Louisiana, may serve as powerful guides to trial judges who possess wide discretion over community property partition proceedings.²¹

Moore v. Knowler

One guiding source is the Louisiana 4th Circuit Court of Appeal’s decision in *Moore v. Knowler*.²² The case involved a dispute between an ex-boyfriend and girlfriend competing for ownership of their shared dog, Abby.²³ Even though *Moore* involved an unmarried couple, the court’s holding and reasoning are nonetheless instructive. Guided by the Civil Code articles of co-ownership,²⁴ the *Moore* court held that the ex-boyfriend was “the best person to determine the use and management of Abby.”²⁵ After their breakup, the couple shared custody over Abby for “approximately two years.”²⁶ The parties abided by this unwritten agreement until the ex-girlfriend decided to keep the dog for herself.²⁷ According to the court, the use and management of Abby, as co-owned property, was best determined by the parties’ shared agreement to co-possess the dog.²⁸ Because the ex-girlfriend disturbed this agreement by keeping Abby as her own, the court ruled that the ex-boyfriend was entitled to sole ownership of Abby.²⁹ Thus, the ex-girlfriend’s conduct, as a co-owner, was dispositive in determining the sole ownership of Abby.³⁰

Moore v. Knowler serves as persuasive authority for Louisiana courts and suggests that trial judges, during a community partition proceeding, may evaluate the pet owners’ conduct in relation to the pet.³¹



Best Interest of the Pet Laws³²

As of 2024, there are as many as six states that have “pet custody” laws that either require or permit judges to consider certain circumstances before awarding ownership of an animal to an ex-spouse.³³ Among these states, Alaska was the first to pass such a law (2016).³⁴ Alaska and the states that followed responded to the needs and realities of the modern American family by enacting these statutes. Through the enactment of these laws, the controversy of pet ownership after a divorce has become a distinct family law concern.

Despite the progress created by these “best interest of the pet” laws, there is divergence in the approach taken by courts in these jurisdictions.³⁵ To start, some states require a judge to implement the “best interest” standard,³⁶ whereas other states give judges the discretion to apply the standard.³⁷ Second, some laws grant judges the authority to enter an order of joint ownership of the pet,³⁸ while other states prohibit joint ownership.³⁹ A third category of distinction lies between the states that offer a statutory definition of animals that qualify for a “best interest” analysis⁴⁰ and those that resort to jurisprudence to determine whether a particular animal is covered

under the law.⁴¹

Last and most important are the differences in the application of the “best interest” standard. The various laws can be placed on a spectrum with minimal guidelines at one end and comprehensive guidelines at the other. At the lowest ebb are state laws that instill a “best interest” standard in namesake without defining the standard.⁴² On the other end are laws that define the standard within the statutory text or refer to a definition offered in a separate provision of law. California and Maine are states that include statutory guidelines for the application of the “best interest” standard.⁴³

In California, judges “may assign sole or joint ownership of a pet animal taking into consideration the care of the pet animal.”⁴⁴ California’s “pet custody” law defines the care of the animal to include, “but is not limited to, the prevention of acts of harm or cruelty . . . and the provision of food, water, veterinary care, and safe and protected shelter.”⁴⁵ While judges are not limited to these factors, the statutory language places the animal’s health and safety at the forefront of the judge’s decision.⁴⁶

Maine’s law offers a more comprehensive guide for judges who must grant sole ownership of the pet to one

ex-spouse over the other.⁴⁷ The law requires district court judges to consider a minimum of seven relevant factors. While Maine’s law, like California’s, requires an examination into the needs and safety of the pet,⁴⁸ the statute also instructs judges to examine the historical relationship between the pet and its owners,⁴⁹ the owner’s (and their children’s) emotional bonds to the pet,⁵⁰ and the presence of domestic violence in the home, if any.⁵¹ Taking a broad view, Maine’s “pet custody” law is by far the most comprehensive because it requires a full-scale evaluation of the pets’ well-being in addition to the family’s emotional ties to the pet.⁵²

Proposals for Change: Why Louisiana Should Rethink Pet “Custody”

Although many pet owners can successfully and amicably agree to a “custody” arrangement over Fido, judges who receive a request to partition the ownership of a pet animal are left with little guidance. Despite the gaps left in Louisiana state law, Louisiana judges, under the authority of La. R.S. 9:2801, can look to other states’ “pet custody” laws to incorporate a comprehensive inquiry into the best interest of the pet. Such an inquiry would, without a doubt, be relevant in a partition proceeding and would not contravene Louisiana’s civilian principles of law.⁵³

FOOTNOTES

1. See Matthew Wills, *The Invention of Pets*, JSTOR Daily (April 5, 2024), <https://daily.jstor.org/the-invention-of-pets/>. (“In the 18th and 19th centuries, pethood arose in the split between farm animals and home animals.”).

2. Carlos A. Driscoll et al., *In the Light of Evolution III: Two Centuries of Darwin* 89 (John C. Avise & Francisco J. Ayala eds., 2009). See David Zax, *A Brief History of House Cats*, Smithsonian Magazine (April 5, 2024), <https://www.smithsonianmag.com/history/a-brief-history-of-house-cats-158390681/>.

3. *Supra*, note 1.

4. See *id.*; c.f. *Rabideau v. City of Racine*, 627 N.W.2d 795, 799 (Wis. 2001) (“Humans have an enormous capacity to form bonds with dogs, cats, birds and an infinite number of other beings that are non-human.”); *Barrios v. Safeway Ins. Co.*, 2011-1028, p. 7 (La. App. 4 Cir. 3/21/12), 97 So.3d





1019, 1023-24 (“Although a pet is considered corporeal movable property in Louisiana, clearly, pets are not inanimate objects. [We acknowledge] the emotional bond that exists between some pets and their owners and the ‘family’ status awarded some pets by their owners.”).

5. Press Release, American Pet Product Association, Latest Pet Ownership and Spending Data from APPA Reveals Continued Strength of National Pet Industry in the Face of Economic Uncertainty (March 23, 2023), <https://www.americanpetproducts.org>.

6. Melissa Chan, *Pets Are Part of Our Families. Now They’re Part of Our Divorces, Too*, Time.com (April 5, 2025), <https://time.com/5763775/pet-custody-divorce-laws-dogs/> (citing a survey from the American Veterinary Medical Association).

7. *Supra*, note 6.

8. La. R.S. 9:2263.

9. La. R.S. 29:729; Pets Evacuation and Transportation Standards Act of 2006, PL 109–308, Oct. 6, 2006, 120 Stat 1725.

10. See Louisiana SPCA, Hurricane Katrina Animal Rescue Facts, LouisianaSPCA.org (April 5, 2024), <https://www.louisianasPCA.org/about-us/hurricane-katrina/animal-rescue-facts/#/>; American Veterinary Medical Association, *PETS Act (FAQ)*, AVMA.org (April 5, 2024).

11. La. R.S. 14:102 et seq; Preventing Animal Cruelty and Torture Act, Pub. L. No. 116-72FT, 133 Stat. 1151 (2019).

12. See discussion *infra* Part III.b.

13. La. Civ.C. art. 471; Smith v. Univ. Animal Clinic, Inc., 2009-745, p. 1 (La. App. 3 Cir. 2/10/10), 30 So.3d 1154, 1156.

14. La. Civ.C. arts. 159, 2356. The same applies to a judgment declaring a marriage null.

15. La. Civ.C. art. 2369.1.

16. See La. Civ.C. art. 2369.2

17. See La. R.S. 9:2801; La. Civ.C. arts. 2369.8, 811, 812.

18. La. R.S. 9:2801.

19. Compare *id.* with note 34, *infra*.

20. See e.g., note 34, *infra*.

21. See La. R.S. 9:2801. (“The court shall consider the nature and source of the asset or liability, the economic condition of each spouse, and any other circumstances that the court deems relevant.”) (emphasis added).

22. 2016-0776 (La. App. 4 Cir. 3/23/17), 214 So.3d 165, writ denied, 2017-0653 (La. 6/16/17), 220 So.3d 757.

23. *Id.* at p. 1, 214 So.3d at 166.

24. La. Civ.C. art. 802-803.

25. Moore, 2016-0776 at p. 8, 214 So.3d at 171.

26. *Id.* at p. 4, 214 So.3d at 167.

27. *Id.* at p. 8, 214 So.3d at 171.

28. See Moore v. Knowler, 2016-0776, p. 8 (La. App. 4 Cir. 3/23/17), 214 So.3d 171.

29. *Id.*

30. See *id.*

31. See La. Civ.C. art. 2369.1; La. R.S. 9:2801.

32. Although some states use the terms “well-being” or “care” of the animal, this article — when referring to the standard in general — will use the term “best interest of the pet.”

33. The six states include Alaska (Alaska Stat. Ann. § 25.24.160 (2024)); California (Cal. Fam. Code § 2605 (West 2024)); Illinois (750 Ill. Comp. Stat. Ann. 5/503(n) (West 2024)); Maine (Me. Rev. Stat. tit. 19-A, § 953 (West 2024));

New Hampshire (N.H. Rev. Stat. Ann. § 458:16-a (2024)); and New York (N.Y. Dom. Rel. Law § 236 (McKinney 2024)).

34. H.B. 147, 29th Leg., Second Reg. Sess., 2016 Alaska Laws Ch. 60.

35. The jurisdictions referred to here are listed *supra*, note 34.

36. Illinois, Maine, New Hampshire and New York require judges to consider the best interest of the pet. See *supra*, note 34.

37. The laws in Alaska and California are permissive. See *supra*, note 34.

38. Alaska, California and Illinois permit post-divorce joint ownership of pets. See *supra*, note 35.

39. For example, Maine’s law requires an award of ownership “to only one party.” Me. Rev. Stat. tit. 19-A, § 953 (West 2024). As an aside, none of the six “pet custody” laws provide for the visitation of pet animals. See *supra*, note 34.

40. The laws in California, Maine and New York provide statutory definitions of the animals entitled to a “best interest” analysis for the purposes of pet ownership. See *supra*, note 34.

41. In Alaska, Illinois and New Hampshire, judges must refer to related statutory provisions or rely on jurisprudence to determine whether a particular animal is one entitled to statutory protections. See *supra*, note 34.

42. The Alaska, Illinois, New Hampshire and New York statutes all fail to provide statutory guidelines for the application of the “best interest” standard. See *supra*, note 34.

43. See Cal. Fam. Code § 2605 (West 2024); Me. Rev. Stat. tit. 19-A, § 953 (West 2024).

44. Cal. Fam. Code § 2605 (West 2024).

45. *Id.*

46. See *id.*

47. Me. Rev. Stat. tit. 19-A, § 953 (West 2024).

48. § 953(10)(A)-(C), (G).

49. § 953(10)(B).

50. § 953(10)(D)-(E).

51. § 953(10)(F).

52. Compare Me. Rev. Stat. tit. 19-A, § 953 (West 2024) with Cal. Fam. Code § 2605 (West 2024).

53. See La. R.S. 9:2801 (“The court shall consider . . . any other circumstances that the court deems relevant”); La. Civ.C. art. 4.

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