

ANIMAL WELFARE AND FAMILY LAW 2022

DSBA HYBRID CLE LIVE AND VIA ZOOM

SPONSORED BY THE DELAWARE STATE BAR ASSOCIATION

THURSDAY, APRIL 21, 2022 | 8:30 A.M. – 4:30 P.M.

6.8 Hours CLE credit with 0.5 in Enhanced Ethics for Delaware Attorneys
6.5 Hours CLE credit with 0.5 in Enhanced Ethics for Pennsylvania Attorneys

ABOUT THE PROGRAM

This cross-sector seminar will address the overlaps between family law and animal welfare, including the links between animal cruelty, domestic violence, and child abuse. We will also discuss importance of pets to children and families in divorce and custody proceedings. In addition, the potential legislation to address these problems and the partnerships that can be made for lasting change. Join members of the judiciary, legislators, specialists and shelter pets!

This seminar was made possible by funding from the U.S. Department of Justice, Office of Justice Programs through the Office for Victims of Crime VOCA Assistance grant # 2019-V2-GX-0039, administered by the Delaware Criminal Justice Council.

Looking to give back to our furry friends? Paw-some! Check out the wishlist for the Brandywine Valley SPCA: Wishlist – Brandywine Valley SPCA (bvspca.org).

Visit <https://www.dsba.org/event/animal-welfare-and-family-law-2022/>
for all the DSBA CLE seminar policies.

Please note that the attached materials are supplied by the speakers and presenters and are current as of the date of this posting.

ANIMAL WELFARE AND FAMILY LAW 2022

CLE SCHEDULE

8:30 a.m. – 8:45 a.m.

Welcome/Overview

The Honorable Jennifer B. Ranji
Family Court of the State of Delaware

8:45 a.m. – 9:45 a.m.

Panel 1

Link Between Animal Cruelty and Other Forms of Violence

Phil Arkow
Coordinator of the National Link Coalition

9:45 a.m. – 10:45 a.m.

Panel 2

Child and Animal Welfare in Family Court Custody, Divorce, and PFA Proceedings

Moderator

The Honorable Jennifer B. Ranji
Family Court of the State of Delaware

Speakers

Dr. Mary Lou Randour
Animal Welfare Institute
The Honorable Danielle Blount
Commissioner, Family Court of the State of Delaware

Staci Pesin Harpell, Esquire
Copeland Taylor Harpell, LLC

Kara M. Swasey, Esquire
Bayard, P.A.

Janine N. Howard-O'Rangers, Esquire
Delaware Volunteer Legal Services

10:45 a.m. – 11:00 a.m. | Break
Visit the information tables and the shelter pets

11:00 a.m. – 12:00 p.m.

Panel 3

Animal Cruelty Perpetrated by Adults and Children

Diane Balkin, Esquire
*Consultant, National Council of Juvenile
and Family Court Judges*

12:00 p.m. – 12:30 p.m.

Panel 4

Partnerships

Dr. Mary Lou Randour
Animal Welfare Institute

Adam Lamb
Brandywine Valley SPCA

Tanner Polce
Brandywine Valley SPCA

Kim Eppehimer
Friendship House

Capital Police Representative
Dog Therapy Program

12:30 p.m. – 1:15 p.m. | Lunch
Visit the information tables and the shelter pets

1:15 p.m. – 2:15 p.m.

Panel 5

Delaware Responses to Animal Cruelty

Moderator

Andrea L. Rocanelli, Esquire
Delaware ADR, LLC

Speakers

Chris Motoyoshi
Delaware Office of Animal Welfare

Mark Tobin
Delaware Office of Animal Welfare

Jenna R. Milecki, Esquire
Delaware Department of Justice

Charles Tate, Esquire
Office of Defense Services

Dr. Jamey Leeanne Rislin
Youth Rehabilitative Services

Dr. Mary Lou Randour
Animal Welfare Institute

Adam Lamb
Brandywine Valley SPCA

Tanner Polce
Brandywine Valley SPCA

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ANIMAL WELFARE AND FAMILY LAW 2022

CLE SCHEDULE

2:15 p.m. – 3:15 p.m.

Panel 6

How Can Our Domestic Violence and Child Welfare Policies and Practices Recognize the Link?

Moderators

The Honorable Jennifer B. Ranji
Family Court of the State of Delaware
Martha-Elin Blomquist, Ph.D.
National Council of Juvenile and Family Court Judges

Speakers

David A. White, Esquire
Office of Disciplinary Counsel
Staci Pesin Harpell, Esquire
Copeland Taylor Harpell, LLC
Kara M. Swasey, Esquire
Bayard, P.A.
Andrea L. Rocanelli, Esquire
Delaware ADR, LLC
Treenee Parker
Division of Family Services
Tania Marie Culley, Esquire
Office of the Child Advocate
Janine N. Howard-O'Rangers, Esquire
Delaware Volunteer Legal Services
Chris Motoyoshi
Delaware Office of Animal Welfare
Mark Tobin
Delaware Office of Animal Welfare
Adam Lamb
Brandywine Valley SPCA
Erica Davis
Coordinator, Family Court of the State of Delaware

3:15 p.m. – 3:30 p.m. | Break

Visit the information tables and the shelter pets

3:30 p.m. – 4:30 p.m.

Panel 7

Legislation for Consideration

Moderators

The Honorable Jennifer B. Ranji
Family Court of the State of Delaware
Thomas P. McGonigle, Esquire
Barnes & Thornburg LLP

Speakers

The Honorable Nicole Poore
Delaware State Senate
The Honorable Stephanie L. Hansen
Delaware State Senate
The Honorable Krista Griffith
Delaware State House of Representatives
The Honorable Debra Heffernan
Delaware State House of Representatives
The Honorable Kyle Evans Gay
Delaware State Senate

Closing Remarks

The Honorable Jennifer B. Ranji
Family Court of the State of Delaware
The Honorable Rosa Figarola
Eleventh Judicial Circuit of Florida

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Welcome/Overview

The Honorable Jennifer B. Ranji
Family Court of the State of Delaware

The Honorable Jennifer Ranji

Judge, Family Court of the State of Delaware

Jennifer Ranji was appointed to serve as a Judge on the Family Court by Governor Jack Markell in 2015. Judge Ranji serves as the Court's domestic violence liaison judge. Prior to being appointed to the Bench, Judge Ranji served as Cabinet Secretary for the Delaware Children's Department, where she led a 1,200 person agency providing services to abused, neglected, and delinquent children.

Judge Ranji served as Policy Advisor to Governor Markell from September 2009 to July 2012. She played a leading role in developing and implementing the Governor's education policy agenda and early childhood initiatives, as well as in the passage of the animal shelter standards law and creation of the Office of Animal Welfare.

Judge Ranji also served as Deputy Legal Counsel in the Office of Governor Thomas Carper, where she was responsible for policy and legislative initiatives in the areas of domestic violence and child welfare. Before joining Governor Carper's Administration, Judge Ranji was Director of Legal Affairs for Family Court and Deputy Director of the Domestic Violence Coordinating Council. Judge Ranji also practiced law with Drinker, Biddle & Reath, LLP, during which she provided *pro bono* representation to domestic violence victims, child abuse victims, and animal welfare agencies.

Judge Ranji received her B.A. from Rutgers University in 1991 and earned her law degree from Widener University School of Law in 1995. She currently chairs the Advisory Board for the Brandywine Valley SPCA. She is a former chair of the Women and the Law Section of the Delaware State Bar Association, the Delaware Child Protection Accountability Commission, and the Children and Domestic Violence Subcommittee of the DVCC, as well as former co-chair of the Delaware Child Death Review Commission.

Panel 1

**Link Between Animal Cruelty and
Other Forms of Violence**

Phil Arkow

Coordinator of the National Link Coalition

About the Trainer...

Phil Arkow

16 Grasshopper Drive, Etowah, NC 28729 USA

Phone 828-595-9750

E-mail: arkowpets@snip.net

www.animaltherapy.net - www.NationalLinkCoalition.org

Internationally acclaimed lecturer, author and educator Phil Arkow is coordinator of the National LINK Coalition – the National Resource Center on The LINK between Animal Abuse and Human Violence – and edits the monthly *LINK-Letter*. He chairs the Latham Foundation's Animal Abuse and Family Violence Prevention Project. He teaches at the University of Florida and Harcum College. He has presented over 250 times in 17 countries, 38 states and 9 Canadian provinces, and has authored over 95 key reference works on human-animal interactions and violence prevention.

He co-founded the National Link Coalition, the National Animal Control Association, and the Colorado and New Jersey humane federations. He has served with the AVMA, the ASPCA, American Humane, the Delta Society, the Animals & Society Institute, the National Sheriffs Association, the National Coalition on Violence Against Animals, the National District Attorneys Association, the Academy on Violence & Abuse, and the American Association of Human-Animal Bond Veterinarians. He received a Lifetime Achievement Award from New Jersey Child Assault Prevention.

Mary Lou Randour, Ph.D.

Dr. Randour, a psychologist, is Senior Advisor, Animals and Family Violence Program, Animal Welfare Institute, Washington, D. C. She received a Ph.D. from the University of Maryland, won a NIMH Postdoctoral Fellowship, and was a Clinical Fellow in Psychology at Cambridge Hospital, Harvard Medical School. She is the author of handbooks such as *A Common Bond: Child Maltreatment and Animals in the Family*, and has published articles in numerous professional journals. Her latest publication, co-authored with Dr. Lynn Addington, "Intentional cruelty vs. neglect: New insights on animal cruelty crimes and implications for policy," is a forthcoming publication for the journal, *Criminal Justice Policy Review*. Dr. Randour also has contributed chapters for edited volumes, such as "The Psychology of Animal Abuse Offenders," co-authored with Dr. Maya Gupta, in *Animal Cruelty: A Multidisciplinary Approach to Understanding*. She is contributing a chapter on mental health professionals and animal maltreatment to the forthcoming edited volume, *Animals as Crime Victims*. In her career, Dr. Randour has worked for a federal research-funding agency and enjoyed a private practice as a psychologist for almost 20 years. She now devotes her knowledge of psychology to advance animal protection and its connection to human welfare. Dr. Randour was instrumental in initiating the proposal to the Federal Bureau of Investigation (FBI) to include animal cruelty as a separate category in the National Incident Based Reporting System. In addition to working with the FBI, she works with the Association of Prosecuting Attorneys, the Battered Women's Justice Project, the National Council for Juvenile and Family Court Judges, the National Animal Care and Control Association, the National Resource Center on Domestic Violence, and the National Sheriff's Association.

Connecting the Dots in Criminal Justice:
Preventing Crimes Against People by Focusing on Animal Abuse

Phil Arkow
Coordinator, National Link Coalition
arkowpets@snip.net
www.NationalLinkCoalition.org

Delaware Animal Welfare and Family Law CLE
Wilmington, Del.
April 21, 2022

Outline for Today

- * Introduction to the Animal Abuse/Interpersonal Violence Link
- * How The Link Helps Resolve Animal Cruelty Case Challenges
- * Seven specific Types of Links
- * Professional and Community Responses to The Link

A Key Point

- * Court officials who understand the Link between crimes against animals and crimes against people are in a better position to prevent future violence and protect their community.

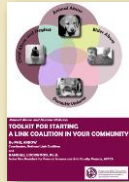
Our Basic Premise:

We can make more progress protecting people and pets by recognizing the intersectionality of species-spanning violence

- Family violence doesn't stop at the human species line.
- We can prevent family violence collaboratively by recognizing animal abuse as a *potential* indicator and predictor crime.
- Holding animal abusers accountable prevents other crimes and changes community attitudes toward violence and safety.
- Measures to prevent, prosecute and punish animal cruelty benefit Man's Best Friend... but also Man (and especially Woman) !

What is the National Link Coalition?

- * National Resource Center.
- * Organized 2008, Portland, Maine.
- * 4,700+ members, 50 states, 55 countries.
- * Informal collaboration addressing linkages, prevention and response to animal abuse, domestic violence, child maltreatment and elder abuse.
- * Policy, programs, awareness, & research (1,600+)
- * LINK-Letter, local coalitions, trainings.
- * By recognizing how human and animal violence intertwined, violence prevention is enhanced and communities are safer.



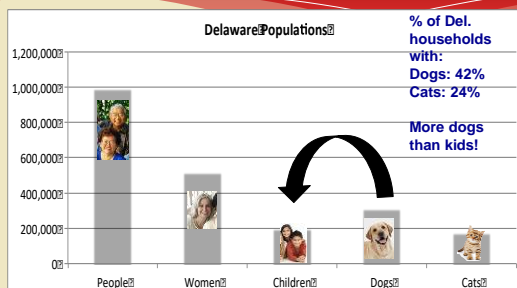
NationalLinkCoalition.org
arkowpets@snip.net

Pets in the American Family

- More homes have pets than children
- More money on pet food than baby food
- More dogs in US than people in most countries in Europe
- More cats than dogs
- *A child in the US today is more likely to grow up with pets than with a father*



And There Are a Lot Of Them!



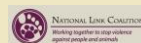
Who Cares for All These Pets?



FAMILIES WITH CHILDREN

67.7% of households with children < 6
74.6% of households with children > 6

Female is the primary caregiver
in 80.7% of pet-owning households



AVMA: U.S. Pet Ownership & Demographics Sourcebook, 2007, 2012

How we view pets has changed dramatically...
... but the public doesn't understand the disconnect



The emotional attachment becomes a point of vulnerability...



AVMA: U.S. Pet Ownership & Demographics Sourcebook, 2012

The "Dark Side" of the Human-Animal Bond

"When animals are abused, people are at risk;

When people are abused, animals are at risk."



Connecting the Dots: The Link between Animal Abuse and Other Forms of Family Violence



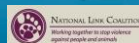
Animal Abuse: It's the Tip of the Iceberg



The LINK Across the Lifespan:
Animal Abuse may precede, follow, or co-occur with crimes against vulnerable children, women and elders

DOMESTIC VIOLENCE

"Recognizing animal abuse as an indicator that something is wrong in a household may be the first step in stopping the cycle of violence."



-- Kimberly J. Adams, ed.,
Kentucky Children's Rights Journal 8(2), Winter 2000

Our Basic Premises

The Animal Abuse/Domestic Violence Inter-Generational Cycle of Violence

Domestic Violence
Batterer



Our Basic Premises

The Animal Abuse/Domestic Violence Inter-Generational Cycle of Violence

Domestic Violence
Batterer



Animal Harmed
or Threatened



Our Basic Premises

The Animal Abuse/Domestic Violence Inter-Generational Cycle of Violence

Domestic Violence
Batterer



Animal Harmed
or Threatened

Survivors
Stay



Our Basic Premises

The Animal Abuse/Domestic Violence Inter-Generational Cycle of Violence

Domestic Violence
Batterer



Animal Harmed
or Threatened

Children Exposed to
Domestic Violence
and Animal Abuse

Survivors
Stay



Our Basic Premises

The Animal Abuse/Domestic Violence Inter-Generational Cycle of Violence



Our Basic Premises:

We Can Make More Progress to Protect Society If We Focus on Animal Abuse's Impact on People and Communities

Dogs and cats can't vote!

Political reality:
A lose/lose...
or a win/win?



"Animal cruelty is more than just a legal issue. It's a community issue. If you improve animal welfare in a community, you improve public safety for everyone."



*~Former Baltimore Mayor
Stephanie Rawlings-Blake*



Not Really a Change... History of Anti-Cruelty Laws

Origins:

- US colonies: 1641
- Property law
- Statement about individual and society
- Morals and decency codes
- **CONSISTENT PREMISE: IMPACT ON HUMAN WELL-BEING**
- **First Link prosecutions: Essex County, Mass. Bay Colonie, 1649**



Why Should Animal Abuse be Taken Seriously?

- * Animal abuse is a crime.
- * Often indicates or predicts other issues.
- * "Boys will be boys"??? It's NOT a normal rite of passage.
- * One of earliest indicators of conduct disorder: age 6-1/2
- * Unaddressed, animal abuse can escalate in severity and incidence against humans.



Why Should Animal Abuse be Taken Seriously?

IPV suspects with histories of pet abuse are significantly more likely to have had previous violent incidents. Victims reported:

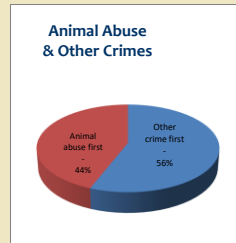
- 80% had had at least one prior unreported IPV incident.
- 76% had been strangled.
- 26% had been forced to have sex with the suspect.
- **80% fear they will be killed by the suspect.**
- **First responders face 2x risk of lethality.**

-- Campbell, Thompson et al, 2018

Reality Check: Does Animal Abuse Always Lead to Interpersonal Violence?

153 cruelty offenders:

- Tracked for 10 years prior & 10 years after
- Matched with control group



Criminal offenses:

Animal abusers: 70%
Non-abusers: 22%

Conclusions:

- May be **Escalation Hypothesis**
- May be **Pattern of General Deviance**
- Animal abuse doesn't always lead to human violence, but we're not surprised when there is a Link.

-- Arnold Arluke & Carter Luke, Northeastern University & Massachusetts SPCA, 1997

Reality Check: “Will Children Who Harm Animals Always Grow Up to be Serial Killers?”

Not all
childhood
abusers
grow up
to be
psychopaths.



Some children
who are bombarded
by violence
seek comfort in
animals or try to
protect them



NATIONAL LINK COALITION
Working together to stop violence
against people and animals

How Are Animal Cruelty, Abuse & Neglect Defined?



State laws vary widely, but the FBI's new typology is a handy way to conceptualize it.

- Simple or gross neglect (animal hoarding)
- Physical abuse (blunt/sharp-force trauma, torture, etc.)
- Organized abuse (animal fighting)
- Animal sexual abuse (Link with child pornography)

(Delaware has the simplest and most comprehensive reporting system – Office of Animal Welfare)

2019 NIBRS statistics:

Total cruelty offenses national: 9,956
Total cruelty offenses Delaware: 1,294 (13%)
(Only TX (pop. 18 MM) and VA (pop. 8MM) slightly higher)
Total all offenses Delaware: 16,615 (Cruelty = 8%)



What is "Cruelty"? (and most reports are neglect)

cruelty the infliction of pain or distress unnecessarily. c. to animals an offence under the Protection of Animals Act or similar legislation. The definition of unnecessary varies between countries and from time to time in the one country. Under the imperius of a great body of community compassion the threshold has been greatly lowered in recent times. Determination of the prevailing standard of cruelty can only be decided by the courts. It is now taken to include, besides physical assault and surgery without anesthesia, deprivation of food, water and shelter. The worst kinds of cruelty are susceptible to the heaviest penalty, under the classification of aggravated cruelty.

(Diane Balkin to review Delaware criminal statutes)

Moral, community, professional, and legal standards may vary widely.

Witness → Owner → DVM → Investigator → Prosecutor → Court

How do you define animal abuse or cruelty?

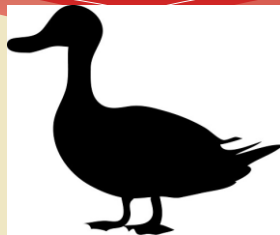
What is **socially** acceptable?



The Link Helps Resolve Ongoing Challenges

Challenge #1: What is an animal? (and why is it important?)

"If it walks like a duck,
and quacks like a duck,
and looks like a duck, is it a..."



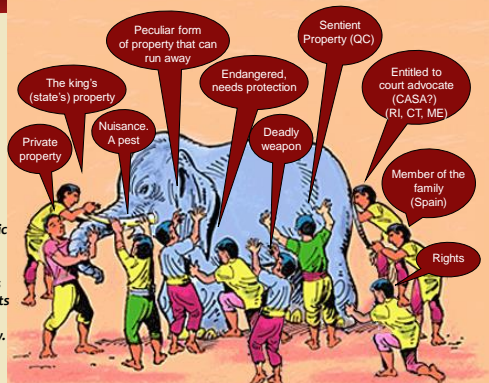
Pet?

Wildlife??

Agricultural food product???

What is an Animal?

In the absence of consensus or animals' having legal standing, most pragmatic course is to re-emphasize animal abuse's adverse impacts on human health & safety.

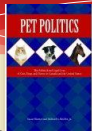


The Link Helps Resolve Ongoing Challenges

Challenge #2: Lack of public consensus

"Pet policy is a unique field of political struggle, a conflict that originates from differing perspectives about whether pets are property or autonomous beings, and clashing norms about the care of animals. The result of the political struggle is difficulty in the enactment of policies and especially in the implementation and enforcement of laws that might improve the welfare of companion animals."

-- Susan Hunter & Richard Brisbin, Jr. (2016): *Pet Politics*. Purdue University Press.



The Link Helps Resolve Ongoing Challenges

Challenge #3: Marginalization of animal care & control

"The philosophy in the animal welfare community is switching to addressing human problems that underlie crises with animals. Animal shelters' service philosophy is evolving to recognize that treating symptoms of animal welfare problems, such as animal homelessness, abuse and neglect, is only a stopgap solution: to be truly effective, underlying causes such as community and family dysfunction and violence must be addressed."

-- PetLynx (2011). 2010 national urban animal report. Edmonton, AB, Canada: Author: Ipsos-Reid.

The Link Helps Resolve Ongoing Challenges

Challenge #4: Lack of court support

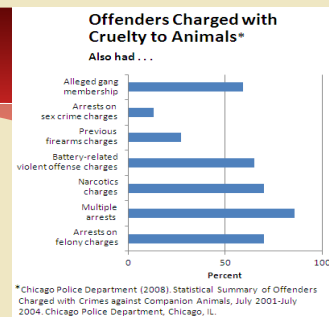
"Given an animal's legal status as property, and the perception of animals as such, animal abuse has traditionally been dealt with in a less than aggressive manner by law enforcement officers, prosecutors and the courts. However, given the growing acceptance of animals as part of the family unit and recent statistical data, animal abuse is now being looked at in a new light as a precursor to human violence."



-- Kimberly J. Adams, ed., *Kentucky Children's Rights Journal* 8(2)

The Link Repositions Animal Abuse As a Crime of Violence

Animal Abuse Links to Other Crimes



Chicago PD 2008 study
-- 332 animal cruelty offenders

As many as 31% of Chicago teens have attended a dog fight

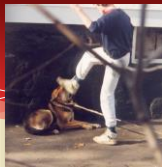
Why are adults cruel to animals?

As many reasons as for interpersonal violence:

Threaten, intimidate or control a person
 Domestic violence/child sexual abuse
 Neighborhood retaliations
 Shock people for amusement

To control the animal
 Retaliation
 Behavior problems
 Prejudice against breed or species

Psychopathology
 Sadism
 Enhance their own sense of aggression
 Sexual gratification



Why Are Children Cruel?

All of the above, plus...

INCREASING CAUSE FOR CONCERN

- Curiosity, exploration
- Peer pressure
- Boredom, depression *Nikolas Cruz*
- Fear of animal
- Coercion by a more powerful person
- To protect the animal from worse abuse
- Re-enacting own experience of being abused
- Regain sense of power after abuse
- Imitating adult actions
- Rehearsal for interpersonal violence



Types of Animal/Human Violence Links



1. **Domestic Violence:** Power & control. "You're next!" No escape (18% - 48%). Emotional extortion.
2. **Child Sexual Abuse:** Emotional extortion. Child chooses between victimization or pet's death.
3. **Adverse Childhood Experience:** Perpetrating or witnessing. Manifests at age 6-1/2.
4. **Bullying:** By bullies and by the bullied.
5. **Animal Hoarding:** Often Linked with elder abuse, seniors' issues.
6. **Animal Fighting:** Linked with other crimes (homicide, trafficking, narcotics, weapons, racketeering, etc.)
7. **Animal Sexual Abuse:** Often Linked with child pornography and other sex crimes.

Aspects of The Link: Child Maltreatment and Animal Abuse

Long, intertwined history:

- First child abuse prosecutions by humane societies.

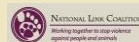


Henry Bergh, Founder
American SPCA (1866)



The
"Little
Mary
Ellen"
Case
(1874)

- Many humane societies protected animals AND children until CAPTA in 1971 established national/state CPS.



Aspects of The Link: Child Maltreatment and Animal Abuse

- 60% of NJ families in DYFS
also had abused or neglected pets

- Animal abuse in 88%
with physical child abuse

- Bite rate 11x greater

- Use of veterinary services similar
to general population



(DeViney, Dickert & Lockwood)



Aspects of The Link: Child Maltreatment and Animal Abuse Time for a New Paradigm: Animal Abuse and Dangerous Animals as "Adverse Childhood Experiences"

- Toxic stress in early childhood:
 - Harms developing brain architecture.
 - Long-term hyper-responsiveness to perceived threats.
 - Lifelong negative physical/mental health.



Barbara W. Boat, Ph.D.
Assoc. Prof., Univ. of Cincinnati Academic Health Center
Ex. Dir. Childhood Trust, Cincinnati Children's Hospital



Aspects of The Link: Domestic Violence and Animal Abuse



"I've loved this dog longer
than any relationship I've
ever had..."

-- "Nicole," in La Crosse, WI
shelter seeking Safe Haven

Abusers target pets to:

- Get revenge
- Control their victims
- Hold families hostage

Abusers target animals:

- Because they can...
- Because they're convenient...
- Because the cops don't care...
- **BECAUSE IT WORKS!!**



Aspects of The Link: Domestic Violence and Animal Abuse

Survey of 2,500 callers to National Domestic Violence Hotline:

- 97% said keeping pets with them important in deciding whether to seek safety.
- 50% would not leave if they couldn't take pets with them.
- 48% feared abuser would harm or kill pets.
- 30% said children had witnessed or been aware of abuse or threats.
- 72% were not aware of pet-friendly shelters.

(Urban Resource Institute & NDVH,
2021)

Aspects of The Link: Domestic Violence and Animal Abuse



71% of pet-owning women in shelter reported their husband or boyfriend killed, harmed or threatened an animal;

32%: their children had hurt or killed animals

(Ascione, 1998)

4 greatest risk factors of becoming an abuser:

- Mental health issues
- Substance abuse
- Low education level
- History of actual or threatened animal abuse

The LINK and Domestic Violence Animal Abuse and the Duluth Model



Isolation: Refusing to allow you to take your pet to your vet. Prohibiting you from socializing your dog with other dogs.

Emotional abuse: Disappearing, giving away or killing pet to take away your source of comfort and unconditional love. Forced participation in animal sexual abuse.

Coercion and Threats: Threatening to harm or kill your pet if you leave or assert any independence.

Legal Abuse: Trying to take possession of a pet for which you have been the primary caretaker. Filing charges of theft if you leave with the pet. Custody battles.

Minimizing, Denying & Blaming: Blaming you or your pet for the cruelty.



Economic Abuse: Refusing to allow you to spend money on pet food and/or vet care (then blaming you).

Intimidation: Harming or killing pet: "Next time it'll be you..." Targeting pets of family/friends who aid her escape.

Using Children: Harming or killing the children's pet to intimidate them. Blaming the "disappearance" of the family pet on you to create a wedge between you and the children.

Animal Abuse – The “Wake-Up Call”

- * Many victims blame themselves for the abuse and are isolated from others who can provide a reality check.
- * Animal cruelty is a wake-up call that the fault lies not within themselves, but in the personality of the abuser.



Aspects of The Link: Elder Abuse and Animal Abuse



Common denominators for agencies working with vulnerable elders:



- Memory loss
- Fixed/low income
- Physical frailness
- Social isolation



Aspects of The Link: Elder Abuse and Animal Abuse

Animal Welfare issues



1. Neglect of pet
2. Self-neglect to care for pet
3. Attachment and pet loss
4. Safety of caseworker, home health aide, homemaker services, or patient
5. Animal abuse as coercion/control
6. Jealousy over service animal
7. Hoarding/collecting animals...

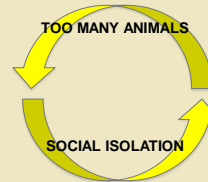


Why do people hoard animals?

"Some people who have difficulty establishing supportive interpersonal relationships or who otherwise have difficulty coping with life stressors find refuge in animals."



Gary Patronek, DVM
Hoarding of Animals
Research Consortium



- Isolation both a cause AND effect of collecting animals.

Who Are Animal Hoarders?

Mental Illness

Overwhelmed hoarder

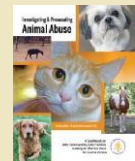
Rescue Hoarder/Breeder-Hoarder

Exploiter Hoarders



Basic Guidelines for Court Officials

- Treat cases like assault or sexual abuse, not crime against property. (FBI considers it a crime against society.)
- Train, in advance, shelters and veterinarians on evidentiary procedures, exigent circumstances, search warrants, and need for team-based coordination.



—Phillips & Lockwood, Investigating & Prosecuting Animal Abuse. NDAA, 2013

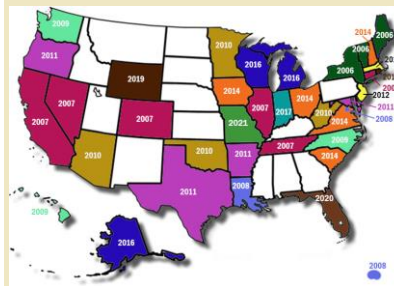
Basic Guidelines for Court Officials

- Work with shelters on disposition of animals: holding as evidence, impound on premises, voluntary surrender, euthanasia (necropsy), requiring bond or lien for cost-of-care.
- Recognize potential for Link connections: be on lookout for multiple crimes and polyvictimization; Animal cruelty on presence of child or domestic/elder abuse can be an aggravating sentencing factor.
- Veterinary forensics can clarify the case.
- Build rapport with children by asking about their pets.
- Set up an animal abuse unit (*56 and counting!*)

—Phillips & Lockwood, Investigating & Prosecuting Animal Abuse, NDAA, 2013



Policy and Practice Responses “Pet Protection Orders” – 36 states & DC & PR



WHERE'S
DELAWARE???

Pet And Women Safety (PAWS) Act (2018)

- PPOs across state lines
- \$2,000,000 for pet-friendly shelters

Policy and Practice Responses “Doggie Witness Protection Programs”

“Safe Havens”

600+ women's
shelters:
Foster referrals



“SAF-T” – Sheltering Animals & Families Together

250+ in US, Canada, Australia, New Zealand, Netherlands

(NONE IN DELAWARE – 9 IN MD, PA & NJ)

www.safprogram.org

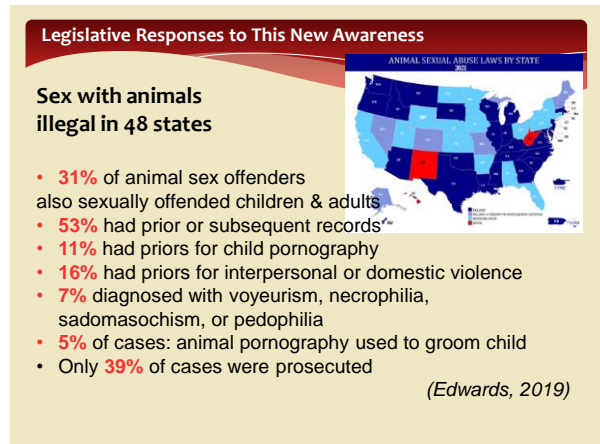


Grants for shelters and individuals

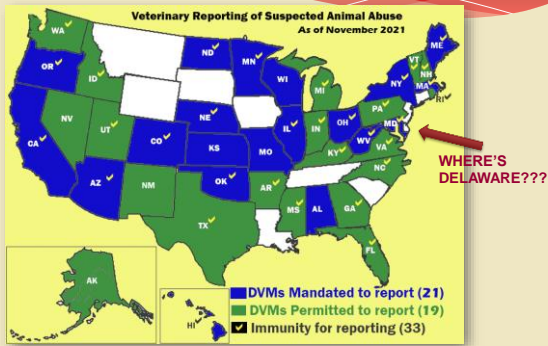
Policy and Practice Responses

Courts may determine animal custody in divorce cases in animals' best interests





Legislative Responses to This New Awareness Veterinary Reporting



Programmatic Responses to This New Awareness

**Courtroom/CAC therapy dogs to help
abused/ sexually assaulted children testify...**

**Coming Soon to a
Delaware Courtroom Near You!**

- * Forensic interview: CACs, prosecutors
- * Build trust and communication with interviewers
- * Reduce stress
- * Help children prepare for court
- * Testifying in court, hearings, depositions, sentencing

Now in 300 jurisdictions, 40 states
(Dover & New Castle County PDs)



Ellie and Jeeter
Resident therapy dogs
King County (WA)
Prosecuting Atty.'s Office
Special Assault Unit

Summary

1. Animal abuse also hurts people.
2. Animal abuse is family violence.
3. Recognizing and responding to animal maltreatment enforces the law and helps families.



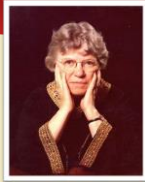
Conclusion

Focusing on The Link in family violence cases consistently:

- Sends powerful message to community (and voters).
- Inspires law enforcement to treat animal welfare cases seriously.
- Prevents future violence and creates safer community.

Conclusion: The Link (1964)

Margaret Mead



"One of the most dangerous things that can happen to a child is to kill or torture an animal and get away with it."

Conclusion: The Link (2021)



Animal abuse is the abused canary in the coal mine.

"The canary in the coal mine of an abusive home may literally be an abused canary. By responding to the injury or death of that canary, we can potentially save many other pets and people."

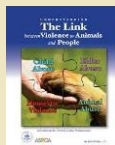
-- Jennifer Woolf,
Forensic DVM

Resources for Court Officials

Available at
NationalLinkCoalition.org/resources/articles-research



NCJFCJ TA Bulletin -- *Animal Cruelty Issues: What Juvenile & Family Court Judges Need to Know*



Allie Phillips -- *Understanding The Link Guidebook for Criminal Justice Professionals*



National Sheriffs Association
Special Issue --
Deputy &
Court Officer

PLUS:
Pulaski County VA Bench Card for Judges
Florida Domestic Violence Bench Book
Animal Cruelty Psychological Assessments
-- and LOTS MORE!

Sign up for our free LINK-LETTER!

Any Questions?



Phil Arkow



www.NationalLinkCoalition.org
arkowpets@snip.net

Criminal Penalties for Exposing Children to Animal Abuse—Laws enacted between 2014 and April, 2022

For laws enacted prior to 2014, see <https://ndaa.org/wp-content/uploads/Criminal-Penalties-for-Exposing-Children-to-Animal-Abuse-1.pdf>

Prepared by Animal Welfare Institute Legal Interns: Alice Huang, Seton Hall University School of Law (2022); Serena Conforti, Wake Forest School of Law Graduate (2020)

HAWAII:

<https://law.justia.com/codes/hawaii/2021/title-37/chapter-711/section-711-1109-8/>

[§ 711-1109.8]. Sexual assault of an animal

(1) A person commits the offense of sexual assault of an animal if the person knowingly:

- (a) Subjects an animal to sexual contact;
- (b) Possesses, sells, transfers, purchases, or otherwise obtains an animal with the intent to subject the animal to sexual contact;
- (c) Organizes, promotes, conducts, or participates as an observer in an act where an animal is subject to sexual contact;
- (d) Causes, coerces, aids, or abets another person to subject an animal to sexual contact;
- (e) Permits sexual contact with an animal to be conducted on any premises under the person's charge or control;
- (f) Advertises, solicits, offers, or accepts the offer of an animal with the intent that it be subjected to sexual contact in the State; or

(g) Creates, distributes, publishes, or transmits, whether for commercial or recreational purposes, a pornographic image or material depicting a person subjecting an animal to sexual contact.

(2) This section shall not apply to the following practices:

(a) Veterinary medicine;

(b) Artificial insemination of animals for the purpose of procreation;

(c) Animal husbandry;

(d) Conformation judging; or

(e) Customary care of an animal by its owner.

(3) Unless otherwise provided by any other law:

(a) Sexual assault of an animal is a misdemeanor for the first offense and a class C felony for the second or subsequent offense; or

(b) If the offense subjected a minor to sexual contact with an animal or was committed in the presence of a minor as defined in section 706-606.4, sexual assault of an animal is a class B felony.

MAINE:

<https://legislature.maine.gov/statutes/17/title17sec1031.html>

Title 17. Crimes. Chapter 42. Animal Welfare. Subchapter I. General Provisions.

§ 1031. Cruelty to animals

1. Cruelty to animals. Except as provided in subsections 1-D and 1-E, a person, including an owner or the owner's agent, is guilty of cruelty to animals if that person intentionally, knowingly or recklessly:

A. Kills or attempts to kill any animal belonging to another person without the consent of the owner or without legal privilege. Violation of this paragraph is a Class D crime;

A-1. Violates paragraph A and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

B. Except for a licensed veterinarian or a person certified under section 1042, kills or attempts to kill an animal by a method that does not cause instantaneous death. Violation of this paragraph is a Class D crime;

B-1. Violates paragraph B and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

C. If that person is a licensed veterinarian or a person certified under section 1042, kills or attempts to kill an animal by a method that does not conform to standards adopted by a national association of licensed veterinarians. Violation of this paragraph is a Class D crime;

C-1. Violates paragraph C and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

D. Injures, overworks, tortures, torments, abandons or cruelly beats or intentionally mutilates an animal; gives drugs, including, but not limited to, a scheduled drug as defined in Title 17-A, section 1101, subsection 11, to an animal with an intent to harm or intoxicate the animal; gives poison or alcohol to an animal; or exposes a poison with intent that it be taken by an animal. The owner or occupant of property is privileged to use reasonable force to eject a trespassing animal. Violation of this paragraph is a Class D crime;

D-1. Violates paragraph D and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

D-2. Abandons an animal in violation of paragraph D and that animal dies as a result. Violation of this paragraph is a Class C crime;

E. Deprives an animal that the person owns or possesses of necessary sustenance, necessary medical attention, proper shelter, protection from the weather or humanely clean conditions. Violation of this paragraph is a Class D crime;

E-1. Violates paragraph E and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

F. Keeps or leaves a domestic animal on an uninhabited or barren island lying off the coast of the State during the month of December, January, February or March without providing necessary sustenance and proper shelter. Violation of this paragraph is a Class D crime;

F-1. Violates paragraph F and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

G. Hunts, traps or sells for the purpose of hunting any animal, except as permitted pursuant to Title 7, chapter 202-A1 and Title 12, Part 132, and excluding humane trapping of animals for population control efforts or animal control under Title 7, Part 9. Violation of this paragraph is a Class D crime;

G-1. Violates paragraph G and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

H. Injects, inserts or causes ingestion of any substance used solely to enhance the performance of an animal by altering the animal's metabolism to that animal's detriment, including but not limited to excessive levels of sodium bicarbonate in equines used for competition. Violation of this paragraph is a Class D crime;

H-1. Violates paragraph H and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

I. Commits bestiality on an animal. For purposes of this paragraph, “commits bestiality” means that a person:

(1) Engages in a sexual act with an animal for the purpose of that person's sexual gratification;

(2) Coerces anyone to engage in a sexual act with an animal;

(3) Engages in a sexual act with an animal in the presence of a minor;

(4) Uses any part of the person's body or an object to sexually stimulate an animal;

- (5) Videotapes a person engaging in a sexual act with an animal; or
- (6) For the purpose of that person's sexual gratification, kills or physically abuses an animal.

For purposes of this paragraph, “sexual act” means any act between a person and an animal involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other. A sexual act may be proved without allegation or proof of penetration.

MASSACHUSETTS:

<https://malegislature.gov/laws/generallaws/partiv/titlei/chapter272/section77>

§ 77. Cruelty to animals; prohibition from work involving contact with animals

(a) For the purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Animal”, a living nonhuman mammal, bird, reptile, amphibian, fish or invertebrate.

“Sexual contact”, (i) any act between a person and an animal that involves contact between the sex organs or anus of one and the mouth, anus or sex organs of the other; (ii) touching or fondling by a person of the sex organs or anus of an animal, either directly or through clothing, without a bona fide veterinary or animal husbandry purpose; (iii) any transfer or transmission of semen by the person upon any part of the animal; or (iv) the insertion, however slight, of any part of a person's body or any object into the vaginal or anal opening of an animal or the insertion of any part of the animal's body into the vaginal or anal opening of the person.

(b) A person who willingly: (i) engages in sexual contact with an animal or advertises, offers, accepts an offer for, sells, transfers, purchases or otherwise obtains an animal with the intent that the animal be used for sexual contact; (ii) organizes, promotes, conducts or knowingly participates in as an observer an act involving sexual contact with an animal; (iii) causes, aids or abets another person to engage in sexual contact with an animal; (iv) knowingly permits sexual contact with an animal to be conducted on any premises under the person's control; (v)

induces or otherwise entices a child younger than 18 years of age or a person with a developmental or intellectual disability, as defined in section 1 of chapter 123B, **to engage in sexual contact with an animal or engages in sexual contact with an animal in the presence of a child younger than 18 years of age or a person with a developmental or intellectual disability**; (vi) forces another person to engage in sexual contact with an animal; or (vii) disseminates photographs, videotapes or other depictions prohibited sexual contact with an animal shall, for a first offense, be punished by imprisonment in the state prison for not more than 7 years or by imprisonment in a jail or house of correction for not more than 2 ½ years, by a fine of not more than \$5,000 or by both such fine and imprisonment and, for a second or subsequent offense, by imprisonment in the state prison for not more than 10 years, by a fine of not more than \$10,000 or by both such fine and imprisonment.

(c) Notwithstanding section 26 of chapter 218 or any other general or special law to the contrary, the district courts and the divisions of the Boston municipal court department shall have original jurisdiction, concurrent with the superior court, of a violation of this section.

(d) Upon a conviction for a violation of this section and in addition to any other penalties as may be provided by law, the defendant shall forfeit the animal whose treatment was the basis of the conviction to the custody of an entity incorporated under the laws of the commonwealth for the prevention of cruelty to animals or for the care and protection of homeless or suffering animals.

Upon a conviction for a violation of this section, the defendant shall not: (i) work in any capacity that requires the person to be in contact with an animal, including a commercial boarding or training establishment, shelter, animal control facility, pet shop, grooming facility, commercial breeder service, veterinary hospital or clinic or animal welfare society or other nonprofit organization incorporated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals; or (ii) harbor, own, possess or exercise control over an animal, reside in a household where any animals are present or engage in an occupation, whether paid or unpaid, or participate in a volunteer position at any establishment where animals are present for any length of time that the court deems reasonable for the protection of all animals; provided, however, that the length of time shall not be less than 5 years after the person's release from custody.

(e) This section shall not apply to lawful and accepted practices that relate to veterinary medicine performed by a licensed veterinarian or a certified veterinary

technician under the guidance of a licensed veterinarian, artificial insemination of animals for the purpose of procreation, accepted animal husbandry practices, including raising, breeding or assisting with the birthing process of animals or any other practice that provides care for animals, or conformation judging.

Credits

Added by St.2018, c. 219, § 23, eff. Nov. 7, 2018.

NORTH CAROLINA: Pending further research

https://www.ncleg.net/enactedlegislation/statutes/html/byarticle/chapter_14/article_26.html

OHIO:

<https://casetext.com/statute/ohio-revised-code/title-9-agriculture-animals-fences/chapter-959-offenses-relating-to-domestic-animals/section-95915-animal-fights>

959.15 ANIMAL FIGHTS

(A) No person shall knowingly do either of the following:

- (1) Engage in cockfighting, bearbaiting, or pitting an animal against another;
- (2) Use, train, or possess any animal for seizing, detaining, or maltreating a domestic animal.

(B) No person shall knowingly do either of the following:

- (1) Be employed at cockfighting, bearbaiting, or pitting an animal against another;
- (2) Do any of the following regarding an event involving cockfighting, bearbaiting, or pitting an animal against another:
 - (a) Wager money or anything else of value on the results of the event;
 - (b) Pay money or give anything else of value in exchange for admission to or being present at the event;

(c) Receive money or anything else of value in exchange for the admission of another person to the event or for another person to be present at the event;

(d) Use, possess, or permit or cause to be present at the event any device or substance intended to enhance an animal's ability to fight or to inflict injury on another animal;

(e) Permit or cause a minor to be present at the event if any person present at or involved with the event is conducting any of the activities described in division (B)(1) or (B)(2)(a), (b), (c), or (d) of this section.

(C) A person who knowingly witnesses cockfighting, bearbaiting, or an event in which one animal is pitted against another when a violation of division (B) of this section is occurring at the cockfighting, bearbaiting, or event is an aider and abettor and has committed a violation of this division.

CREDIT(S)

(2020 H 24, eff. 3-31-21; 2016 S 331, eff. 3-21-17; 1980 S 233, eff. 6-10-80; 1953 H 1; GC 13378)

SOUTH CAROLINA: Pending further research

<https://www.scstatehouse.gov/code/t16c015.php>

WISCONSIN:

<https://docs.legis.wisconsin.gov/statutes/statutes/944/iii/18/2>

944.18. Bestiality

(1) Definitions. In this section:

(a) “Animal” means any creature, either alive or dead, except a human being.

(b) “Obscene material” has the meaning given in s. 944.21(2)(c).

(c) “Photograph or film” means the making of a photograph, motion picture film, video tape, digital image, or any other recording.

(d) “Sexual contact” means any of the following types of contact that is not an accepted veterinary medical practice, an accepted animal husbandry practice that provides care for animals, an accepted practice related to the insemination of

animals for the purpose of procreation, or an accepted practice related to conformation judging:

1. An act between a person and an animal involving physical contact between the sex organ, genitals, or anus of one and the mouth, sex organ, genitals, or anus of the other.
2. Any touching or fondling by a person, either directly or through clothing, of the sex organ, genitals, or anus of an animal or any insertion, however slight, of any part of a person's body or any object into the vaginal or anal opening of an animal.
3. Any insertion, however slight, of any part of an animal's body into the vaginal or anal opening of a person.

(2) Prohibited conduct. No person may knowingly do any of the following:

- (a) Engage in sexual contact with an animal.
- (b) Advertise, offer, accept an offer, sell, transfer, purchase, or otherwise obtain an animal with the intent that it be used for sexual contact in this state.
- (c) Organize, promote, conduct, or participate as an observer of an act involving sexual contact with an animal.
- (d) Permit sexual contact with an animal to be conducted on any premises under his or her ownership or control.
- (e) Photograph or film obscene material depicting a person engaged in sexual contact with an animal.
- (f) Distribute, sell, publish, or transmit obscene material depicting a person engaged in sexual contact with an animal.
- (g) Possess with the intent to distribute, sell, publish, or transmit obscene material depicting a person engaged in sexual contact with an animal.
- (h) Force, coerce, entice, or encourage a child who has not attained the age of 13 years to engage in sexual contact with an animal.
- (i) Engage in sexual contact with an animal in the presence of a child who has not attained the age of 13 years.**

(j) Force, coerce, entice, or encourage a child who has attained the age of 13 years but who has not attained the age of 18 years to engage in sexual contact with an animal.

(k) Engage in sexual contact with an animal in the presence of a child who has attained the age of 13 years but who has not attained the age of 18 years.

(3) Penalties. (a) Any person who violates sub. (2) (a) to (g) is guilty of a Class H felony for the first violation and is guilty of a Class F felony for a 2nd or subsequent violation or if the act results bodily harm or death of an animal. Any person who violates sub. (2)(h) or (i) is guilty of a Class F felony for the first violation and is guilty of a Class D felony for a 2nd or subsequent violation. Any person who violates sub. (2)(j) or (k) is guilty of a Class G felony for the first violation and is guilty of a Class E felony for a 2nd or subsequent violation.

(c) If a person has been convicted under sub. (2), the sentencing court shall order, in addition to any other applicable penalties, all of the following:

1. That the person may not own, possess, reside with, or exercise control over any animal or engage in any occupation, whether paid or unpaid, at any place where animals are kept or cared for, for not less than 5 years or more than 15 years. In computing the time period, time which the person spent in actual confinement serving a criminal sentence shall be excluded.

2. That the person shall submit to a psychological assessment and participate in appropriate counseling at the person's expense.

3. That the person shall pay restitution to a person, including any local humane officer or society or county or municipal pound or a law enforcement officer or conservation warden or his or her designee, for any pecuniary loss suffered by the person as a result of the crime. This requirement applies regardless of whether the person is placed on probation under s. 973.09. If restitution is ordered, the court shall consider the financial resources and future ability of the person to pay and shall determine the method of payment. Upon application of an interested party, the court shall schedule and hold an evidentiary hearing to determine the value of any pecuniary loss, as defined in s. 951.18(4)(a)1., under this subdivision.

(4) Severability. The provisions of this section are severable, as provided in s. 990.001(11).

HISTORICAL AND STATUTORY NOTES

Source:

2019 Act 162, § 14, eff. March 5, 2020.

Summary of cases in which animal abuse was mentioned by the court in determining child custody or the terminating of parental rights

Prepared, in part, by Animal Welfare Institute Legal Interns: Alice Huang, Seton Hall University School of Law (2022); Serena Conforti, Wake Forest School of Law Graduate (2020)

April 16, 2022

Overview

The summaries below are from cases in which animal abuse was mentioned by a court when determining child custody or the termination of parental rights. The mention of animal abuse in these cases typically occurs when the court is determining the best-interests of the child. Animal abuse may be used as evidence for several factors in the determination of a child's best-interest, including the living conditions of the home, physical and psychological wellbeing of the children, or potential for violence by the parents or caregivers. Although an animal may not be a victim of domestic violence, if the reason for the abuse was to distress or coerce an individual with an emotional bond to the animal then the act may be considered domestic violence. These cases highlight how animal abuse may be used as evidence by the courts in their determination of custody or parental rights.

Case Summaries

Caffey v. State, 2022 Tex. App. LEXIS 1045

Police were informed of a strong smell originating from the appellant's yard. Upon arrival, the police smelled what they thought was a human corpse. After knocking on the front door, the officers walked towards the backyard. In the back, they found fifteen kittens and two dogs living in unsanitary conditions, including suffering from mange and covered in feces. The police officers determined the odor was coming from the animals and took photographs. After the second visit, the police officers obtained an animal seizure warrant and 161 cats and fifteen dogs were removed from the property.

The opinion notes that as a result of the seizure of the animals, the appellant was indicted for two counts of endangering a child and ten counts of cruelty to animals. Before this case, the state and appellant had reached a plea bargain which would dismiss one count of endangering a child and five counts of cruelty to animals.

People v. Betsy A. (In re R.A.), 2021 IL App (3d) 210185-U

The state filed petitions for adjudication of neglect for two minors and later a third child. In the petition, there were reports of unsanitary living conditions. This was partly due to the fact that

there were four dogs, two cats, three rabbits, and a ferret residing in the home. One caseworker observed crystalized urine and animal feces throughout the house on numerous visits. In the circuit court, the State had met the burden of unfitness stating, “when you choose your pets over your children, as looks—as has been done in this case, this is the result.”

In determining if the respondent had made reasonable progress towards the return of her children, the court took into consideration the unsanitary and unsafe conditions that resulted in their removal from her care in the first place. The crystalized urine spots, pile of feces, and overflowing trash were used as evidence against respondent’s “reasonable progress.” Pursuant to the Adoption Act, if a parent does not make reasonable progress towards the return of a child during any nine-month period after the adjudication of a neglected or abused minor, the parent is deemed unfit. The court highlighted that the failure to mitigate the presence of animals in the home nor find them alternative homes was a factor preventing the return of the children.

In re Involuntary Termination of A.E.S., 2021 Pa. Super. Unpub. LEXIS 1582

A child was placed into foster care after being brought to the hospital for failure to gain weight. When the mother and grandfather sought to take the child out of the hospital, against medical advice, the Lebanon County Children and Youth Services (“the Agency”) obtained emergency custody. After remaining in foster care for approximate eighteen months, the Agency filed a Petition to Involuntarily Terminate Mother’s and Father’s Parental Rights to Child. In this case, the father appealed the termination of his parental rights.

The caseworker referenced numerous cats, dogs, and turtles that contributed to the unsanitary conditions of the home the father was staying in. During one home visit, the caseworker observed close to 20 to 30 cats in the home and a Pit Bull locked and chained in the upstairs bathroom. Even though the father was not the owner of the home, the court stated that he failed to overcome the obstacles he needed to in order to obtain alternative housing.

In the Interest L.J.H., 2021 Tex. App. Lexis 7719

The trial court issued an order terminating a father’s parental rights to his three children and granted lifetime protective orders in favor of the three children and their respective mothers. One of the mothers described CH, the father, as abusive, including to pets.

The trial court found that CH engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangered their physical or emotional well-being. The court relied on numerous accounts of domestic violence and instances of abusive behavior, including violence against family pets, to support this claim.

In the Int. of M.R.H., 2021 Tex. App. LEXIS 9592

After a bench trial, the parental rights of B.C.H. and L.A.L. were terminated and B.C.H. appealed. Termination of parental rights requires clear and convincing evidence that the parent has “engaged in conduct or knowingly placed the child with person who engaged in conduct which endangers the physical or emotional well-being of the child.” An endangerment finding

often involves physical endangerment, but it is not necessary to show that the parent's conduct was directed at the child or that the child suffered actual injury.

In this case, there were instances of domestic violence as well as animal abuse. L.A.L. testified about an instance where B.C.H. attempted to drown the family cat and punched it in the face. L.A.L. discussed over ten occasions where B.C.H. had engaged in animal abuse. Domestic violence, want of self-control, and propensity for violence may be considered as evidence of endangerment. The testimony regarding the domestic violence and animal abuse that B.C.H. engaged in, demonstrated a propensity for violence that may be considered as evidence of endangerment.

Inman v. Inman_2021 Mich. App. LEXIS 4979

In this case, the plaintiff appealed the ruling of the trial court granting primary physical custody of the parties' minor child. Child Custody in Michigan is governed by the Child Custody Act, which in part, establishes factors to be taken into consideration when determining the best interests of the child.

On appeal, the plaintiff was arguing that several of the factors were in her favor. In particular, the plaintiff believed that 'Moral Fitness' should have weighed more heavily in her favor. The primary reason being an incident in which the defendant killed his dog in the backyard after it had bitten multiple children. The trial court classified the act of shooting the family dog as "barbaric," yet stated that the defendant's actions were a result of a severe lapse of judgement rather than an example of "clear apathy, cruelty, and callousness." The court took into consideration the fact that the dog was a danger to the children and the minor did not witness the shooting. The trial court's ruling was affirmed.

In re. A.H._2021-Ohio-1040

The appellate court evaluated whether the trial court erred in terminating the mother's parental rights. In determining the best interest of the children, the court took into consideration the fact that the mother was on probation for prohibitions concerning companion animals.

This case was opened when one of the minors was going to school with animal urine and feces on her clothing. The mother had 13 dogs and 13 cats. The child had also been bitten by one of the dogs and had to receive treatment at the hospital. Five of the dogs were removed from the home due to poor living conditions. The Guardian Ad Litem (GAL) reported that once the children were removed from the house and put into foster care, the animals remained in the home. The GAL reported that it would be detrimental to the children's health and emotional wellbeing to continue living in those conditions.

The mother had two cases relating to dogs filed against her subsequent to the adjudication of the children. The court took into consideration the fact that the mother was on probation for prohibitions regarding companion animals, including having 20 animals removed from the home, when determining the custody of the minors.

In re. Cortez P._2020 Tenn. App. LEXIS 440

Shortly after birth, the Department of Child Services removed a child from their home. At the time of the removal, the father was incarcerated due to a probation violation. The probation stemmed from a prior aggravated animal cruelty charge, in which the father had placed kittens in a hot oven and killed them. The severity of the cruelty brought up concerns regarding the father's mental health. Due to the father's inability to complete the responsibilities in the permanency plan, his violent history, and mental health issues, the court believed the father posed a risk of substantial harm to the physical or psychological welfare of the child. Therefore, the appellate court upheld the termination of the father's parental rights.

Brown v. Brown, 332 Mich. App. 1, 955 N.W.2d 515 (2020)

In this case of child custody, a father was appealing a decision that gave the mother sole custody of their five children. In the trial court, instances of the father's abusive treatment of family pets were mentioned. There were occasions in which the father threw a family dog against the wall, shot an airsoft pistol at a cat, and kned a dog in the chest.

The appellate court went on to make the point that abusive conduct towards an animal is not per se domestic violence, because a pet cannot be a spouse. The court determined that a pet cannot be considered a victim of domestic violence under either the Domestic Violence Prevention and Treatment Act or the Child Custody Act.

However, the court emphasized the close bonds people form with pets, which can be especially true for children. Harming an animal with whom a child has a significant emotional bond can constitute domestic abuse directed at the child. "Harmful or abusive conduct toward a pet can constitute domestic violence . . . if done for the purpose of distressing or coercing a person emotionally bonded to that pet." Whether harm towards pets is an act of domestic abuse depends on the reasons why the acts of animal abuse occurred as well as the nature of the bond between the child and animal at issue. This form of misconduct is also relevant as it is harmful to the child's well-being.

The appellate court affirmed the trial court's reliance on the father's abusive treatment of family pets to support the finding of proper cause. In determining the best-interest of the children, one of the factors is the moral fitness of the parties involved. The trial court favored the defendant in this respect because of the domestic violence and psychological violence that existed in the plaintiff's home. The Plaintiff's mistreatment of the family pets perpetuated a fearful environment to compel good behavior.

In the Interest of J.L.K., No. 01-19-00884-CV, 2020 Tex. App. LEXIS 2767 (Tex. App. Apr. 2, 2020)

In this case, the court upheld the trial court's decision to terminate the mother's parental rights. The court concluded that past danger to the children supported an inference of future danger, weighing in favor the trial court's "best-interest" finding. The trial court "may order termination of the parent-child relationship if DFPS proves, by clear and convincing evidence, one of the statutorily enumerated predicate findings for termination and that termination of parental rights is in the best interest of the children."

The Texas Legislature has set out several factors to determine whether a child's parent is able to provide a child with a safe environment, including "whether there is a history of abusive or assaultive conduct or substance abuse by the child's family or others who have access to the child's home." In addition, the Texas Supreme Court has set out non-exclusive factors for courts to consider when determining what is in the child's best interest, including the child's current and future physical, emotional needs and the current and future physical danger to the child, and the stability of the home. In 2015, the mother assaulted the father of the children. The mother pled guilty in 2018 to the felony offense of cruelty to a non-livestock animal for killing the father's dog and was on probation for this offense.

The court considered the mother's past history of domestic violence and concluded that mother's children would continue to be in danger due to the mother's instability caused by drug use and domestic violence.

In re K.C., No. 18-1008, 2019 W. Va. LEXIS 153 (Apr. 19, 2019)

The Court affirmed the circuit court's decision to terminate petitioners' parental rights and found no error in the circuit court's decision.

The Department of Health and Human Resources filed abuse and neglect petition against petitioner. Petitioner was on probation for animal cruelty and prohibited from possessing animals. In a previous case, petitioner was involved in a prior abuse and neglect case where law enforcement found twenty-nine animals from the petitioner's home and the children were "hiding in the attic in their underwear." In this case, police found "rabbits being stored in a closet and chickens...being kept in a bathtub." According to Child Protective Services, the home "had a strong odor of ammonia, animal feces, and animal urine." Due to these circumstances, petitioner was charged criminally because of animal cruelty and prohibition from possessing animals.

Petitioner argued the court's decision to deny her motion for an improvement was erroneous, but this Court found no error in the circuit court's denial of petitioner's motion. The circuit court based their decision on the fact the children's removal in this case were nearly identical to the previous removal of the children and that the issues of neglect were never truly resolved. The circuit court decided that granting an improvement period would be futile given the two removal proceedings.

Shirea D. v. Dep't of Child Safety, No. 1 CA-JV 18-0091, 2019 Ariz. App. Unpub. LEXIS 114 (Ct. App. Jan. 29, 2019)

The court affirmed the juvenile court's decision to terminate mother's parental rights. The mother and father were involved in a relationship that involved domestic violence. In 2012, the father beat mother and killed the mother's kitten. Father also consistently punched the family dog. In 2015, father incurred more animal abuse charges for keeping dogs in a hole underneath the mother's home. Mother continued to engage in relationship with father despite father's repeated abusive behavior.

The court found that maintaining the parent-children relationship would harm the child due to a significant risk that the child would be exposed to domestic violence or abuse. The court also found beyond a reasonable doubt that due to mother's emotional vulnerability in addition to the

father's violent history, the child would likely suffer from serious emotional and physical harm. The court terminated mother's parental rights in 2018 due to mother's failure to protect child from abuse and mother's mental health issues. Sufficient evidence supported the determination that termination of parental rights was in the best interests of the child.

In the Interest of I.A., 201 A.3d 885 (Pa. Super. Ct. 2018)

The court affirmed the trial court's orders to suspend father's visitation with his children because supervised visits were not in the best interests of the children.

The trial court found that the father had a concerning number of pets in his home, including seven dogs and multiple lizards. When the court addressed the issue of dogs in his home at a permanency review hearing, the father responded the dogs were not his and he would "[put] a bullet in their heads." The father became increasingly angry in court.

The trial court found that it was not in the children's best interest to have visits with the father due to father's inability to remain calm, refusal to follow a mental health treatment plan, as well as advising children "to punch the family dog in the jaw." This court found that because of father's behavior during the permanency review hearing, the trial court's findings that the father is unable to control his anger and the father's statements and behavior around children negatively impact the children.

San Diego Cty. HHS Agency v. J.P. (In re J.P.), No. D072990, 2018 Cal. App. Unpub. LEXIS 1284 (Feb. 27, 2018)

The court concluded that the juvenile court did not abuse its discretion by refusing to allow the father to have unsupervised visits with child. The mother testified in juvenile court that father had previously kicked and injured their dog when living together.

The juvenile court found that the father had a history of domestic violence, exhibited violence towards animals and continued to express unstable behavior throughout the case even with therapy. These facts support the juvenile court's conclusion that it was in the child's best interests that the father have supervised visits with the child.

People v. T.W. (in re C.W.), 2017 IL App (2d) 161062

On appeal, the mother of C.W. challenged the trial court's determination that it was in her child's best interest to terminate the mother's parental rights.

In 2012, the State filed a neglect petition after the mother remained with the father after he had threatened both the mother and C.W. with a knife. The mother had filed an order of protection but went back to the father afterwards. The father had also been charged with animal cruelty, having killed at least one family dog in front of C.W. However, there were disagreements as to what C.W. had witnessed in terms of the father harming animals.

C.W. stayed with her paternal grandparents and during this time, the visits with her parents were considered "conflict-ridden." On one visit, C.W. was reprimanded by her father for informing the authorities that he drowned animals. In 2014, both parents signed a consent form to give up their parental rights so that C.W. could be adopted by her uncle. However, the form could be

void if C.W. was placed with someone other than her uncle. Due to problems with both the uncle and his girlfriend, C.W. lived in a group home.

In 2016, there was a fitness hearing. The mother noted several instances of animal cruelty in the home, however she argued that C.W. never witnessed any of them. The state showed a police report in which the mother had called to stop the father from drowning a puppy. C.W. also noted two instances of animal cruelty in which she was a witness. Once, when the father tried to drown her puppy in the bathtub and another time when he suffocated a puppy by holding its face into its own feces.

On appeal, the mother accepts the determination that she is an unfit mother, but does not believe it is in C.W.'s best interest to terminate parental rights. In this case, the mother's relationship with the father was seen as detrimental to C.W. The court considered the fact that the mother denied C.W. seeing animal cruelty even though the State provided evidence showing otherwise. Citing several instances of neglect and instability, the court upheld the trial court's determination that it was in C.W.'s best interest to terminate parental rights.

In re I.W., 2016 W. Va. LEXIS 253

The mother appealed the circuit court decision terminating her parental rights to I.W. and K.W. The West Virginia Department of Health and Human Resources ("DHHR") filed an abuse and neglect petition against the parents for their failure to properly supervise the young children.

One of the main concerns raised by the court was the fact that the children were either left unattended or stayed with inappropriate caregivers, including the mother's cousin. According to the mother's testimony, her cousin suffered from bipolar disorder and schizophrenia. The cousin also had a criminal background including a conviction of animal cruelty in which he mutilated an animal. The mother still believed the children to be safe while in the care of her cousin.

The court affirmed the circuit court's finding of imminent danger and the termination of the mother's parental rights without a post-adjudicatory improvement period.

In re Lilian C., No. K09CO14013719A, 2016 WL 5395901 (Conn. Super. Aug. 2, 2016)

The father of Lilian appealed the termination of his parental rights.

When Lilian was 6 months old, the police came to the home due to a reported domestic dispute. The officers found drug paraphernalia as well as a mistreated dog which was later removed by animal control. In 2014, the Department of Children and Families ("DCF") filed a neglect petition alleging that both parents had mental health and substance abuse issues.

From October 2013 to November 2015, Lilian saw her father twice. The court looked at the father's criminal history, mental health issues, and substance abuse problems when determining whether a parent-child relationship would be in Lilian's best interest.

The court upheld termination of the father's parental rights.

In re Z.G., No. B260619, 2015 WL 5883806 (Cal. App. Oct. 8, 2015)

The mother appealed from the orders of the juvenile court terminating her parental rights to the two youngest of her six children. Z.G. and Joseph were removed from the home of their mother due to her relationship with their father who was physically abusive to the children. The four older children were placed in foster care. The mother sought to have all six children returned to her custody in 2013.

In 2014, the police responded to calls about a dog being beaten at mother's house. Mother was in a new relationship with Mr. J. When police arrived, they found Mr. J dragging a three month old beaten puppy who was bleeding excessively. Witnesses stated that Mr. J. had punched the puppy, and the police observed several open wounds on the puppy as well as missing claws. Mr. J. was arrested for felony animal cruelty.

The court denied the mother's petition for a hearing to modify previous orders based on a change of circumstances or new evidence. The court cited the mother's relationship with a man with violent tendencies, similar to those of the children's father. Mr. J.'s own children were also dependents of the juvenile court as a result of his domestic violence. The mother denied knowing about the animal abuse, despite the police report which stated that she justified the boyfriend's treatment of the puppy.

The court stated that, "Mother has a history of protecting the violent men around her at the expense of her own children's safety." Ultimately, the decision to terminate the mother's parental rights were upheld.

In re Chavez, Nos. 316163, 316166, 2014 WL 61222, (Mich. App. Jan. 2, 2014)

The father appealed the termination of his parental rights to his three children. The mother appealed the termination of her rights to two of the children shared with the father. The father obtained custody of the oldest child in 2008. After pleading guilty to domestic violence in 2011, the mother returned home and found the family dog covered in blood. The mother said she believed the neighbors harmed him. However, there was testimony from a doctor that the dog had been brought into her veterinary clinic in 2010 with injuries that were most likely abusive, including burns, bleeding in its eyes, and a swollen head.

During counseling, the mother admitted that the father was prone to beating the dog when he was angry. The counselor had attempted to speak about the animal abuse with the father, but he did not want to discuss it. The counselor testified that the violence towards the dog modeled poor behavior for the oldest child. She also noted that according to the DSM-IV animal abuse is often an indicator of psychopathic and conduct disorders.

On appeal, Chavez and Prater assert that the trial court erred by permitting the counselor to testify about the link between animal abuse and violence. The court did not agree and indicated that the link was relevant evidence in this case, especially as it related to the father's anger management problems.

The trial court's decision to terminate the parental rights was affirmed.

In re A.M., No. C070727, 2013 WL 75064 (Cal. App. Jan. 8, 2013)

The mother of A.M. appealed a decision in which the court terminated her parental rights. On appeal, she contends that the beneficial parental relationship exception should have applied.

Due to the mother's substance abuse problems, she had lost custody of two children. One of her children, Daniel, was placed into foster care, where A.M. later joined. The mother was not taking medication for her mental health issues, relapsed multiple times, and had charges brought against her for animal abuse when an emaciated dog was removed from her care.

In reviewing the mother's argument, the court analyzed whether the benefit of maintaining the relationship with his mother would outweigh the benefits gained from living in a permanent home with adoptive parents. According to the evidence, the mother did not establish a parental role in A.M.'s life. A.M. suffered from anxiety pertaining to the well-being of his mother which indicated an unhealthy parent/child relationship.

The termination of the mother's parental rights was affirmed.

In re V.W., No. 12-0820, 2013 WL 500189 (W.Va. Feb. 11, 2013)

The mother filed an appeal from an order terminating her parental rights.

When the child was born, hospital staff were concerned that neither of the parents had basic parenting skills and appeared to be mentally challenged. Both parents had recently been charged with animal cruelty charges and admitted to the animals defecating throughout the home.

The mother contends that the circuit court erred when her parental rights were terminated without an improvement period. The Court affirms the circuit court's decision stating, "the circuit court was presented with sufficient evidence upon which it could have based findings that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the child's welfare."

In re K.A.W., No. 301470, 2011 WL 3117869 (Mich. App. July 26, 2011)

The mother appeals a court order terminating her parental rights. The termination was based on the failure to prevent physical and sexual abuse from occurring to her three older children. The mother challenges the factual support of the court's decision.

In 2009, the mother's three older children were removed from their home due to the multiple abusive live-in boyfriends the mother had staying in the house for a decade. In addition to physical and sexual abuse of the children, one of the boyfriends was witnessed by the children committing acts of animal cruelty against the family's pets.

The trial court did not err in its decision that there were established grounds for termination by clear and convincing evidence.

Hosier v. Ark. Dep't of Health and Human Serv., No. CA 07-117, WL 1765539, (Ark. Ct. App. June 20, 2007)

The mother's parental rights were terminated and on appeal she argued two things. First, that the mother had been in compliance with a case plan and court orders. She also objected to testimony being used from a permanency planning hearing in making the court's decision.

The mother's two children, C.C. and K.H., were taken into the custody of the Department of Health and Human Services (DHHS) when there was a discovery of sexual abuse in the home. There were also findings of neglect and the appellant was charged with sixty counts of animal abuse as a result of her operations regarding a kennel.

Mother's argument that testimony from a planning hearing was weighed in the court's decision to terminate parental rights was found to be invalid as the trial court had already struck the testimony from the prior hearing and did not rely on it afterwards. In regards to the mother's compliance with the case plan, the court stated, "what matters is whether the completion of the case plan achieved the intended result of making the parent capable of caring for the child." The court determined that the evidence supporting the termination of the mother's parental rights in both of these regards was not clearly erroneous.

In Int. of P.J.M., 926 S.W.2d 223 (Mo. Ct. App. 1996)

The mother and father have seven children and the termination of parental rights was decided for the three youngest children. On appeal, both parents argue against the sufficiency of the evidence to support the termination of their parental rights.

In 1987, the first of the two children were removed from the home as a result of the parents being arrested and charged with the kidnapping and sexual assault of a fourteen year old girl. The Orleans Parish Office of Community Services became involved with the third and fourth children when the father struck the youngest child and both the mother and child went to the emergency room after falling from a car. When the fifth child was born, there was a service file opened regarding him. The oldest child was returned to the mother on the condition that she did not contact the father. She did not follow the order and had premature twins the following year.

Shortly after the twin's birth, the mother reported being physically and sexually assaulted by the father. Instances of past abuse involved being raped, stabbed, and shot by the father. The mother did not make progress in the safe house and there was evidence of the children knowing about the abuse. There was also evidence that the parents had taken part in satanic worship which included sacrificing animals in front of the children. The mother admitted to providing drugs to the eldest child afterwards to make him forget.

The parent's history of drug abuse, mental illness, and criminal records were used as evidence to terminate their parental rights. The court affirmed.

In re S.G.T., 175 Ga. App. 475, 333 S.E.2d 445 (1985)

The father appealed the order of the juvenile court terminating his parental rights to his adopted son. On appeal, the father argued that there was insufficient evidence in regards to 'deprivation and wanton and willful failure to support.'

An investigation revealed that the adopted son, S.G.T., was suffering from emotional and physical abuse at the hands of the father. There was clear and convincing evidence used to support decision to terminate the father's parental rights based on deprivation.

In a concurring opinion, additional instances of abuse were mentioned by the judge which led to the argument that there should also be a finding of parental unfitness. The type of abuse included animal cruelty, in which the father stated that the way to train a dog was to "tie him up and starve him to death and feed him gun powder."

Boarman v. Boarman, 194 W. Va. 118, 459 S.E.2d 395 (1995)

A father appealed the decision of the Circuit Court to provide the mother of his six children with custody. Only the oldest son would remain with the father. On appeal, the father argues that the Guardians ad Litem were biased and that the court focused too much on the mother's current conduct rather than past acts.

When the mother and father divorced, the mother moved to New York with all of the children except for the eldest son. The West Virginia Department of Health and Human Services became involved when there were allegations of child abuse and neglect made by both the mother and father. The father made claims that the mother was verbally abusive, failed to maintain a clean home, and was intoxicated while watching the children. The mother alleged that the father had shot and killed the family's cat, physically abused the male children, and communicated extreme racist views to the children.

The court reviewed the allegations against the mother and although she drank excessively, the circuit court found insufficient evidence to support abuse and neglect or unfitness by the mother. In regards to the father, the circuit court found that the violence, racial comments, and animal cruelty, specifically the shooting of animals, had negative effects on the children.

After reviewing the father's arguments on appeal, the circuit court's decision to grant the mother custody of six of the children was affirmed.

Rutkowski v. Rutkowski, No. CI-06-04529, 2010 Pa. Dist. & Cnty. Dec. LEXIS 1001 (C.P. July 29, 2010)

Both mother and father appealed a custody order. The parties have five children together and the three youngest were the subject of the custody action.

When the parties separated, the mother entered a temporary protection from abuse order against the father. In 2009, a family friend, Carol, had primary physical custody of one of the children, Sydney. Carol described instances of Sydney's aggressive behavior including a time when she kicked Carol and her dog. The court relies on instances Sydney's violent behavior to justify having the two youngest children remain with the father and Sydney stay with the mother, as she required separate and specialized attention.

The court affirmed the custody order.

Schambon v. Com., 821 S.W.2d 804 (Ky. 1991)

The mother and father appeal from charges, including cruelty to animals and criminal abuse, that led to a sentence of eighty-five years in prison.

Officials went to the mother and father's home after complaints of animal cruelty. In the home, animals were living in an unventilated garage, covered in feces and without food or water. The officials noted that there were dead and diseased animals in the residence, including one poodle eating the remains of a Pomeranian. Upon entering the house, the officer saw cages of cats, overflowing litter boxes, and could hear the sounds of additional animals throughout the home. The father was arrested for cruelty to animals.

The animals suffered from matted hair, lice, fleas, infections, mange, and ringworm. While many of the animals were able to be treated, several died at the shelter.

Due to unsanitary conditions, the children were removed from the home and placed into foster care. The parents were investigated for sexual and physical abuse following the actions and statements of the children. One of the children, R.S., who was six years old, described instances of sexual abuse carried out by both parents. R.S. also testified to being sexually abused by strangers in a park that would give his father money.

On appeal, the mother and father claim that joining the offenses deprived them of their due process rights. The court did not sever the animal cruelty offenses from the child abuse charges because, "they were intertwined and the animal cruelty evidence was essential to establish the physical abuse offenses; the same proof was used to prove both charges." The trial court also noted that, "the circumstances of animal cruelty actually led to the criminal abuse and sex charges and that appellants' mistreatment of the animals reflected upon their state of mind when they committed the physical and sexual abuse."

Convicting the mother and father of criminal abuse requiring a showing that the children were subjected to a risk of physical injury in the environment they were living in. The condition of the garage where the animals were kept, feces throughout the house, and dead animals could be used as evidence to show the extent of the unsanitary living conditions. The proof used for the criminal abuse charge could also be used to prove animal cruelty.

The judgement of the trial court was affirmed.

Panel 2

Child and Animal Welfare in Family Court Custody, Divorce, and PFA Proceedings

Moderator

The Honorable Jennifer B. Ranji
Family Court of the State of Delaware

Speakers

Dr. Mary Lou Randour
Animal Welfare Institute

The Honorable Danielle Blount
Commissioner, Family Court of the State of Delaware

Staci Pesin Harpell, Esquire
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Mary Lou Randour, Ph.D.

Dr. Randour, a psychologist, is Senior Advisor, Animals and Family Violence Program, Animal Welfare Institute, Washington, D. C. She received a Ph.D. from the University of Maryland, won a NIMH Postdoctoral Fellowship, and was a Clinical Fellow in Psychology at Cambridge Hospital, Harvard Medical School. She is the author of handbooks such as *A Common Bond: Child Maltreatment and Animals in the Family*, and has published articles in numerous professional journals. Her latest publication, co-authored with Dr. Lynn Addington, "Intentional cruelty vs. neglect: New insights on animal cruelty crimes and implications for policy," is a forthcoming publication for the journal, *Criminal Justice Policy Review*. Dr. Randour also has contributed chapters for edited volumes, such as "The Psychology of Animal Abuse Offenders," co-authored with Dr. Maya Gupta, in *Animal Cruelty: A Multidisciplinary Approach to Understanding*. She is contributing a chapter on mental health professionals and animal maltreatment to the forthcoming edited volume, *Animals as Crime Victims*. In her career, Dr. Randour has worked for a federal research-funding agency and enjoyed a private practice as a psychologist for almost 20 years. She now devotes her knowledge of psychology to advance animal protection and its connection to human welfare. Dr. Randour was instrumental in initiating the proposal to the Federal Bureau of Investigation (FBI) to include animal cruelty as a separate category in the National Incident Based Reporting System. In addition to working with the FBI, she works with the Association of Prosecuting Attorneys, the Battered Women's Justice Project, the National Council for Juvenile and Family Court Judges, the National Animal Care and Control Association, the National Resource Center on Domestic Violence, and the National Sheriff's Association.

Commissioner Blount graduated from York College of the City University of New York. After receiving her law degree from Howard University School of Law in Washington, D.C., she began her legal career as an associate at Fox Rothschild LLP in Wilmington, Delaware where she handled general litigation matters. Thereafter, she pursued a career in the Department of Justice's Criminal and Family Divisions where she prosecuted adults charged with misdemeanor offenses. Commissioner Blount concluded her career with the Department of Justice in the Family Division's Domestic Violence Unit prosecuting criminal misdemeanors and child abuse offenses. Following her employment with the Department of Justice, Commissioner Blount joined the Office of the Governor Jack A. Markell as Deputy Legal Counsel. In that role she provided accurate and thoughtful legal advice to the Governor on matters that arose during the course of governmental affairs. Commissioner Blount was unanimously reappointed by the Delaware State Senate to serve as a Commissioner on January 29, 2020. Currently, she serves as Commissioner of the Family Court in and for New Castle County, Delaware.

Staci P. Harpell
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Ms. Harpell is a partner at Copeland Taylor Harpell, LLC. Ms. Harpell concentrates her practice in the area of family law. Ms. Harpell practices throughout Delaware and in the neighboring counties of Pennsylvania. She gets to know each client individually and works closely with them to protect their rights and families. Ms. Harpell negotiates custody and visitation agreements tailored to the family's needs if possible. But if an agreement can't be reached, Ms. Harpell will fight in court for her client's right to see their child or to protect a child from an ex-spouse that is a danger to the child. Ms. Harpell also assists clients with divorce, proving cohabitation to terminate alimony, child support, PFAs, and third-party visitation. Ms. Harpell has also represented clients on appeal to the Delaware Supreme Court.

Ms. Harpell is a former Chair of the Family Law Section of the Delaware Bar Association. She has provided pro bono legal services through the Office of the Child Advocate and Delaware Volunteer Legal Services. Prior to entering private practice, Ms. Harpell was a judicial law clerk for the Honorable Alan N. Cooper and the Honorable Joelle P. Hitch at the Delaware Family Court.

Kara M. Swasey / Director



Kara M. Swasey is a director at Bayard. She concentrates her practice in the area of family law, including divorce, custody, child support, adoption, guardianship and protection from abuse. She provides litigation support to Bayard's bankruptcy, corporate and commercial law practices. Kara also represents landlords in commercial and residential landlord-tenant matters in Justice of the Peace courts throughout the state of Delaware. Kara is a certified Family Court mediator and is willing and able to assist families resolve their matters outside of Court.

Kara is a member of the Executive Committee of the Melson-Arsht Inn of Court and has twice been nominated by the Melson-Arsht Inn of Court to speak at the new attorney admissions ceremony. She is also a Reporter on the Access to Justice Commission's Subcommittee on Judicial Branch Coordination in Helping Pro Se Litigants. Kara previously served as Chair of the Family Law Section of the Delaware State

Bar Association during the 2013-2014 term and Vice Chair from 2012-2013. She remains active in the DSBA Family Law Section and is currently the secretary of that group. In 2011, Kara completed an intensive professional training program in the art of family law advocacy at the National Institute for Trial Advocacy's Family Law Advocacy Institute.

Since 2014, Kara has been selected by *Super Lawyers* as a Rising Star in Delaware Family Law. Her work also contributed to Bayard's designation as a Metro tier 1 Best Law Firm in Delaware for Family Law by *U.S. News – Best Lawyers* from 2014 through 2020. Kara has been named in Delaware Today magazine's Top Lawyers edition since 2015 as a top Delaware family law attorney. In its 2021 & 2022 Editions, *Best Lawyers®* recognized Kara for her work in Family Law and Family Law Mediation. Kara is AV® Peer Review Rated by Martindale-Hubbell.*

Kara currently serves on the Board of Directors for Delaware Volunteer Legal Services, an organization that provides quality pro bono legal services to indigent Delawareans. She also volunteers for DVLS, the Domestic Violence Advocacy Program, the Limited Legal Assistance Program, the Federal Re-entry Legal Assistance Program, and the Office of the Child Advocate. In October 2017, Kara was recognized by the Delaware State Bar

Association and awarded the Christopher W. White Distinguished Access to Justice Commitment Award for her dedication to pro bono work in the state of Delaware. In December 2017, Kara received the Delaware State Bar Association's Young Lawyers Distinguished Service Award for her leadership and service to the cause of good citizenship. In 2019, Kara was presented the Service to Children Award from the State of Delaware's Office of the Child Advocate for her longstanding commitment to Delaware's children. Kara served as an attorney coach for the St. Mark's High School Mock Trial Team and participated as a scoring judge in the National Mock Trial Championship held in Wilmington, Delaware in May 2008, and served as a scoring judge for the state competition.

Kara joined Bayard in 2007 after earning her J.D. and M.B.A. from Villanova University. She is admitted to practice law in Delaware and Pennsylvania. During law school, Kara was a Research Assistant to Professor Ann Carey Juliano.

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Professional Biography

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Bar Admissions:

Delaware (2008)

Pennsylvania (2008)

Court Admissions:

United States District Court for the District of Delaware

United States Supreme Court

Memberships:

American Bar Association

Delaware State Bar Association (Family Law Section and Employment Law Section)

Melson-Arsht Inn of Court

Pennsylvania Bar Association

Vagabond Family Law Society

Education:

B.S., University of Delaware (2004)

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JANINE N. HOWARD-O'RANGERS, ESQUIRE
Delaware Volunteer Legal Services, Inc.
Widener University School of Law
P. O. Box 7306
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Janine N. Howard-O'Rangers is the Executive Director of Delaware Volunteer Legal Services, Inc. ("DVLS") and a Legal Consultant to the Widener University Delaware Law School Delaware Civil Clinic. Before becoming Executive Director, Ms. Howard-O'Rangers was a staff attorney for DVLS where she represented victims of domestic violence with family law issues and recruited *pro bono* attorneys. She graduated *cum laude* from Temple University in 1992 with a Bachelor's degree in Political Science and *cum laude* from Widener University School of Law in 1995. She was admitted to the Delaware Bar in 1995 and the Pennsylvania Bar in 1997. She is a member of the Family Law Sections of the American Bar Association and the Delaware State Bar Association ("DSBA"). Ms. Howard-O'Rangers is a former Chair of the DSBA Family Law Section. In addition, Ms. Howard-O'Rangers serves on a number of committees that address access to justice and domestic violence issues.

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Lindsay Conte,)	
)	
Appellant,)	
Defendant-Below,)	
)	
v.)	C.A. No. 12A-03-007 JRJ
)	
Michael P. Fossett,)	
)	
Appellee,)	
Plaintiff-Below.)	

Date Submitted: January 22, 2013

Date Decided: March 19, 2013

OPINION

*Appellee, Defendant-Below's Appeal of the
Court of Common Pleas Decision: **REVERSED***

Timothy A. Dillon, Esquire, McCann, Schaible & Wall, LLC, 300 Delaware Avenue, Suite 805, Wilmington, Delaware, 19801. Attorney for Appellant.

Bayard J. Snyder, Snyder & Associates, P.A., 300 Delaware Avenue, #1014, P.O. Box 90, Wilmington, Delaware, 19899. Attorney for Appellee.

Jurden, J.

For many, “happiness is a warm puppy.”¹ To some, a dog is a “minor angel,”² because it can “love unconditionally, forgive immediately, [and is] the truest [friend], willing to do anything that makes us happy.”³ Dennis Hopper (“Dennis”), a miniature daschund, is a dog caught in the collateral damage following the parties’ break-up. Both Plaintiff and Defendant are fighting for sole possession of Dennis; apparently no one “went over the rules.”⁴ For Lindsay Conte (“Conte”), Dennis was a “surprise” gift from her boyfriend; for Michael Fossett (“Fossett”), Dennis was a purchase made for his own benefit, coincidentally while in a relationship. Despite angelic tendencies, the law views a dog as property, often referred to as “it.” Because a dog is property, and does not hold “symbolic importance or value,” the Court of Common Pleas trial verdict awarding Dennis exclusively to Fossett is **REVERSED**.

I. FACTS

In 2007, Conte moved into Fossett’s apartment.⁵ After moving in, Conte repeatedly asked Fossett for a dog.⁶ Fossett continually declined Conte’s entreats based on the apartment’s size and the surrounding neighborhood.⁷ In

¹ Charles M. Schulz, *Happiness Is a Warm Puppy* (1962).

² Jonathan Carroll Frequently Asked Questions, <http://www.jonathancarroll.com/about/faq.html> (last visited Mar. 15, 2013).

³ *Id.*

⁴ *Speed* (Twentieth Century Fox 1994) (Dennis Hopper as Howard Payne).

⁵ Court of Common Pleas Transcript of February 21, 2012 Bench Trial (hereinafter “Tr.”) (Appendix A to Opening Brief of Appellant Lindsay Conte) (Lexis File & ServeXpress Transaction ID (“Trans. ID.”) 44952290) at 47.

⁶ Tr. at 86.

⁷ *Id.* at 60.

approximately February 2009, Conte and Fossett attended a house party, hosted by the owner of a nursing puppy litter.⁸ Fossett testified he became “antisocial,” trading the party for the puppies.⁹ While there, Fossett “really took” to a certain puppy, which he jokingly named, “Hopper.”¹⁰

On March 14, 2009, Fossett gave into Conte’s supplications and purchased “Hopper.”¹¹ Fossett ultimately named the dog “Dennis Hopper.”¹² With Dennis in his arms, Fossett arrived home and presented him to Conte, saying “Surprise!”¹³ For the next year and a half, Fossett and Conte shared pet responsibilities and expenses.¹⁴ At the time, Conte was a full-time student and her financial contributions were limited.¹⁵

Ultimately, in June 2010, the parties’ relationship ended and Conte moved out.¹⁶ Prior to her moving out, an argument occurred regarding Dennis’ placement.¹⁷ Fossett wanted to keep Dennis because “he bought [him] and he’[d] lived his whole life in [Fossett’s] apartment.”¹⁸ Conte claimed ownership over Dennis because it was a gift to her and she bore the majority of care

⁸ *Id.* at 77.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 25-26.

¹² *Id.* at 78.

¹³ *Id.* at 87.

¹⁴ *Id.* at 88.

¹⁵ *Id.* at 60.

¹⁶ *Id.* at 22.

¹⁷ *Id.* at 25.

¹⁸ *Id.* at 22.

responsibilities.¹⁹ Conte eventually left the apartment with Dennis after Fossett conceded the argument by stating “whatever,” and walking away.²⁰

After the break-up, the parties tacitly agreed to a fluid shared-custody agreement.²¹ Fossett claimed Dennis would stay with him for a few consecutive days, and then with Conte for a few consecutive days.²² Conte testified “there were a couple times when we had shared custody, but it wasn’t on an every two day or every other day basis, it was when it was needed or when [Fossett] called and asked to see [Dennis].”²³

This arrangement, however, was short lived. Conte felt uncomfortable when she went back to the apartment, and on a few occasions was upset by Fossett’s behavior.²⁴ On September 19, 2010, Conte decided to stop the visitations,²⁵ keeping Dennis in her exclusive possession.²⁶ Almost nine months later, Fossett filed suit for sole possession of Dennis.

II. PROCEDURAL HISTORY

Fossett filed a replevin action in JP Court on May 9, 2011. On June 22, 2011, the JP Court denied Fossett’s writ, finding that Dennis was personal property jointly owned by Fossett and Conte. Fossett timely appealed to the Court of

¹⁹ *Id.* at 66.

²⁰ *Id.* at 65.

²¹ *Id.* at 23.

²² *Id.*

²³ *Id.* at 63.

²⁴ *Id.* at 61, 62.

²⁵ After some time, Fossett made an attempt to visit Dennis, but the parties were unable to agree on a mutually convenient date and time. *Id.* at 24.

²⁶ *Id.* at 60.

Common Pleas (the “trial court”). On February 21, 2012, after a *de novo* bench trial, the trial court found in favor of Fossett, holding he was entitled to exclusive possession of Dennis.

Specifically, the trial court found that Dennis was a gift from Fossett to himself and Conte, as a couple.²⁷ Additionally, the trial court found that Conte’s continued possession of Dennis, and Fossett’s “whatever” statement, did not equate to Fossett’s relinquishment, rather, “he had no ability to prevent what was happening and was just allowing the dog to be taken from the property.”²⁸ Relying heavily on *Elliott v. Hunter*,²⁹ the trial court discussed that a gift donor may replevy property “when there is an express agreement that the gift is conditional or when the gift is of such symbolic significance or value that the law will imply that it was given in contemplation of marriage.”³⁰ Ruling that Fossett “gave the dog to [himself and Conte] and the gift had symbolic significance to the point where . . . it was given in contemplation of the continuation of the relationship,” the judge awarded possession to Fossett.³¹

On March 14, 2012, three years after Dennis was purchased, Conte appealed to this Court.³² On April 18, 2012, the Court stayed execution of the trial court’s

²⁷ *Id.* at 97.

²⁸ *Id.* at 89.

²⁹ 1967 WL 90379 (Del. Super. June 14, 1967)

³⁰ Tr. at 92 (quoting *Elliott*, 1967 WL 90379 at *1).

³¹ Tr. at 99.

³² Trans. ID. 43009624.

decision.³³ The parties completed briefing on August 9, 2012, and the Court held oral argument on January 22, 2013.

Conte's bone of contention is that the trial court erred, as a matter of law, by extending *Elliott's* "in contemplation of marriage" to "in contemplation of a relationship," thereby giving a dog "symbolic significance." Fossett argues the trial court's decision was based completely on findings of fact, and should therefore be upheld.

III. STANDARD OF REVIEW

The Superior Court has statutory authority to review final decisions from the Court of Common Pleas.³⁴ This Court's role is to "correct errors of law and to review the factual findings of the Court below to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process."³⁵ The trial Court's factual findings supported by the record "will be upheld even if, acting independently, [this Court could reach] a contrary result."³⁶

³³ Trans. ID. 43742032.

³⁴ 11 *Del. C.* § 5301; *see also* DEL. CONST. art. IV, §28. In reviewing appeals from the Court of Common Pleas, this Court sits as an intermediate appellate Court. *Disabatino v. State*, 808 A.2d 1216, 1220 (Del. Super. 2002) (citing *State v. Richards*, 1998 WL 732960, at *1 (Del. Super. May 28, 1998)). Accordingly, its purpose reflects that of the Supreme Court. *Shipkowski v. State*, 1989 WL 89667, at *1 (Del. Super. July 28, 1989).

³⁵ *Disabatino*, 808 A.2d at 1220 (citing *Steelman v. State*, 2000 WL 972663, at *1 (Del. Super. May 30, 2000)).

³⁶ *Hicklin v. Onyx Acceptance Corp.*, 970 A.2d 244, 248 (Del. 2009).

IV. DISCUSSION

Replevin is an action by which a plaintiff seeks recovery of personal property that has been wrongfully taken or withheld from the owner.³⁷ A replevin plaintiff must demonstrate, by a preponderance of the evidence, that he has a right to immediate possession of the property.³⁸ It is a long-standing rule that a replevin action cannot stand when brought by the chattel's joint owner.³⁹

Although the trial court held that the parties, “as a couple,” jointly owned Dennis and, thus, Conte did not take or withhold Dennis unlawfully, the trial court nonetheless ruled that Fossett was entitled to Dennis’ exclusive possession. Again, the trial court based its decision on *Elliott*.⁴⁰ As mentioned, the *Elliott* court explained two circumstances allowing a donor to recover gifted personal property: (1) when there is an express agreement that the gift is conditional; or (2) when the gift is of such “symbolic significance or value” that the law will imply it was given in contemplation of marriage.⁴¹ Neither circumstance exists here.

The trial court correctly found that Fossett did not expressly condition his gift of Dennis, but concluded that Fossett was entitled to recover Dennis because Dennis was gifted to Conte “in contemplation of the couple’s relationship.”⁴² “In

³⁷ *Jarvis v. Elliot*, 2010 WL 761089, at * 4 (Del. Ch. Mar. 5, 2010) (Chandler, C.).

³⁸ *Fred H. Jensen & sons, Inc. v. Coverdale*, 2001 WL 660103, *2 (Del. Super. Apr. 27, 2001) (Vaughn, P.J.).

³⁹ *See Ellis v. Culver*, 1 Del. 76 (Del. Super. 1832); *Fell v. Taylor*, 45 A. 716 (Del. Super. 1900).

⁴⁰ 1967 WL 90379.

⁴¹ *Id.*

⁴² Tr. at 96.

contemplation of marriage” and “in contemplation of a relationship” are two distinct circumstances and *Elliott* does not recognize the latter. *Elliott* recognized implicit conditions for gifts given solely to couples who are engaged to be married.

Even assuming Fossett and Conte were engaged, *Elliott* provides no basis to find an implicit condition on Fossett’s gift. The *Elliott* court refused to recognize an implicit condition, explaining that gifts made in anticipation of marriage:

are not ordinarily expressed to be conditional, and, although there is an engagement to marry, if the marriage fails to occur without the fault of the donee, normally the gift cannot be recovered.⁴³

The trial court erred as a matter of law when it expanded “in contemplation of marriage” to “in contemplation of the relationship,” and held that Fossett’s gift of Dennis to Conte had “symbolic significance.” The Court appreciates the emotional strain this case presents and that it has not been an “easy ride.”⁴⁴ That said, under Delaware law, Dennis has the same legal status as a piece of furniture.⁴⁵ It is “nothing personal,”⁴⁶ but Dennis has no symbolic significance.⁴⁷

⁴³ *Elliott*, 1967 WL 90379, at * 1-2. (Emphasis added).

⁴⁴ *Easy Rider* (Columbia Pictures 1969).

⁴⁵ *See Naples v. Miller*, 2009 WL 1163504, at *2 (Del. Super., April 30, 2009) (“... the law establishes that a dog ... is personal property, not a person. And while a dog may be loved as any other family member, in the eyes of the law a dog is property.”); 7 Del. C. § 1708.

⁴⁶ *Speed* (Twentieth Century Fox 1994) (Dennis Hopper as Howard Payne).

⁴⁷ In holding that Dennis had “symbolic significance,” the trial court treated Dennis like a member of the parties’ family, not like a piece of personal property. *See* Tr. at 98. (“It’s the dog that ... the two of you have together now and it’s basically the three of you ...”).

V. CONCLUSION

The trial court erred as a matter of law in granting Fossett's writ of replevin. As a matter of law, Fossett is not entitled to recover his gift. The decision of the Court of Common Pleas granting Fossett exclusive possession of Dennis is **REVERSED**.

IT IS SO ORDERED.

/s/Jan R. Jurden

Jan R. Jurden, Judge

The Family Court of the State of Delaware

In and For ☒ New Castle County ☐ Kent County ☐ Sussex County

S [REDACTED] M [REDACTED]
Petitioner

v.

D [REDACTED] M [REDACTED] a/k/a D [REDACTED]
Respondent

File No.: CN2 [REDACTED]

Petition No.: [REDACTED]

In Re: Emergency Motion for Interim
Relief

ORDER

Having considered the request of the movant, S [REDACTED] M [REDACTED],

IT IS SO ORDERED, this date: December 17, 2021

That paragraph 15 regarding dog visitation is hereby stricken from the Stipulated Interim Order on Matters Ancillary to Divorce as that provision was incorporated into the Court's Order in error. The Court does not have jurisdiction to Order the visitation of pets. Both parties shall refrain from molesting or disturbing the peace of the other party pursuant to 13 Del.C. §1509(b)(3).

[REDACTED]
Judge/Commissioner

CC: ☒ Petitioner ☒ Petitioner's Attorney _____

☒ Respondent ☒ Respondent's Attorney _____

☐ DAG ☐ PD ☐ Fiscal Services ☐ DCSS ☐ FC.Appointed.Attorneys@delaware.gov

THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

S. [REDACTED] M. [REDACTED] :
Petitioner, : File No.: [REDACTED]
v. :
D. [REDACTED] M. [REDACTED] aka D. [REDACTED] M. [REDACTED] : Pet. No. [REDACTED] (divorce)
Respondent. :

STIPULATED INTERIM ORDER ON MATTERS ANCILLARY TO DIVORCE

WHEREAS the parties were married on July 14, 2001 and separated while residing within the same home on February 16, 2021; and

WHEREAS S. [REDACTED] M. [REDACTED] has had continuing exclusive use and possession of the marital home since September 30, 2021; and

WHEREAS a Petition for Divorce was filed by S. [REDACTED] M. [REDACTED] on October 13, 2021, requesting ancillary jurisdiction over property division, counsel fees and court costs; and

WHEREAS the parties intend by means of this Stipulated Interim Order to compromise and settle certain issues related to their separation and until further agreement or a final ancillary hearing; and

NOW THEREFORE, it is stipulated and agreed by and between the parties as follows:

1. The parties have agreed to dismiss their cross-petitions for protection from abuse, Petition Nos: [REDACTED] Each party is responsible for his or her own attorney's fees and court costs related to those petitions.
2. Respondent, D. [REDACTED] M. [REDACTED] ("Husband") shall stay 100 yards away from Petitioner, S. [REDACTED] M. [REDACTED] ("Wife") person, residence and workplace for a period of one (1) year from the date of this Stipulated Interim Order, except for visitation exchanges of their dog.
3. Husband shall refrain from all communication with Wife, except through his attorney about matters related to this petition or by email.

4. Wife shall have continuing exclusive possession and use of the marital home, located at [REDACTED] Newark, Delaware 19711 for a period of one (1) year from the date of this Stipulated Interim Order.
5. Wife shall have exclusive possession and use of the Jeep, and she is responsible for all payments, insurance, maintenance and repairs for the Jeep.
6. Husband shall have exclusive possession and use of the Dart, and he is responsible for all payments, insurance, maintenance and repairs for the Dart.
7. Wife shall drive the RV from West Virginia to the marital home by November 7, 2021, where the RV will remain parked until sold. Neither party shall move, operate or attempt to move or operate the RV once it is returned to the marital home, except as may be necessary related to its sale, including test drives.
8. The parties agree to promptly sell the RV in an arm's length transaction for its fair market value. Any sale proceeds shall be shared equally by the parties. Any deficiency shall be split evenly between the parties.
9. The parties shall split evenly all payments, insurance, maintenance and repair for the RV from the date Wife returns it to the marital home until its sale.
10. Wife shall provide a current mortgage statement to Husband via counsel by November 7, 2021.
11. Wife shall provide written documentation to Husband via counsel that she has been pre-qualified to refinance the mortgage into her own name for a sum equal to or in excess of the current payoff balance by November 7, 2021.
12. Wife shall refinance the mortgage to remove Husband's name from the note and mortgage within seventy-five (75) days of the final ancillary hearing or, if earlier, upon final agreement of the parties, reduced to writing and filed with the Family Court.
13. If Wife is unable to refinance the mortgage as stated hereinabove at numbered paragraph 12, then the marital home will be promptly listed for sale with a mutually agreeable realtor at a listing price recommended by their realtor.
14. For any period when Wife has exclusive possession of the marital home, she will be responsible for all monthly mortgage payments, utilities, taxes, insurance and maintenance.
15. All pets shall remain in Wife's care and control at the marital home until a final agreement or final ancillary order. Husband shall be entitled to daytime visitation with the parties' dog twice per week between the hours of 10AM and 6PM. Visitation shall occur on the

weekends, if the parties' schedules permit. The parties shall meet in a neutral location for the exchange, unless otherwise agreed. All communication about visitation with the dog shall be done in email.

16. Wife agrees to surrender to Husband her phone and her parents' phones (three phones) by November 7, 2021. Wife is permitted to complete a factory reset on the phones before transfer on November 7th.
17. Each party shall receive \$25,000 as a distribution from the personal injury settlement proceeds without prejudice to any position either may take at the final ancillary hearing. Wife shall wire or transfer \$25,000 to Husband's bank account or to his attorney by November 7, 2021. Wife may also transfer \$25,000 to another bank account in her name for her use. Wife shall maintain the remainder of the proceeds in her bank account and will produce current bank statements upon request by Husband via counsel.
18. Wife shall give Husband any of his clothes that remain in the marital home, a PlayStation and a 42" Samsung television (living room) by November 7, 2021. The parties will coordinate the exchange via email, and it shall occur in a way to limit any in person contact.

Approved by:

/s/ [Redacted]
S [Redacted] M [Redacted] etitioner

/s/ [Redacted]
D [Redacted] M [Redacted] Respondent

IT IS SO ORDERED this 9th day of Dec, 2021.

[Redacted]
COMMISSIONER

cc: parties, counsel

Date Mailed/Emailed: 12/14/21

2003 WL 22476202

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Family Court of Delaware.

In re the MARRIAGE OF T G and W F. G

No. [REDACTED]

|
Sept. 29, 2003.

LETTER DECISION AND ORDER

[REDACTED]

Dear Counsel:

*1 I have read and considered the motion of T G ("Wife"), formerly T G, for interim alimony in the amount of \$1,021 per month, the answer of W F. G ("Husband") in opposition to the motion, and Husband's counterclaim for interim relief. And, for the reasons stated in this letter decision and order, I conclude that Wife's motion should be denied and that Husband's counterclaim should be granted in part and denied in part.

Husband and Wife were married on June 6, 1998, separated on or about January 1, 2003, and divorced on August 7, 2003.

Rent	\$425
Electric	150
Gas	50
Garbage	17
Cable television	55
Telephone	50
Household Items	25
Household maintenance and repairs	6
Groceries	300
Medical and dental expenses	130
Laundry and dry cleaning	25

No children were born during the parties' marriage. Husband, however, has custody of two minor children from a prior marriage.

Wife is thirty-nine years of age, and absent any claim to the contrary, the court assumes, in good health. Until 2001, Wife was employed as a manager at an electrical contracting company in Newark, where, in 2000, she earned \$28,608. Wife quit her position with to open a day care in her home. Wife claims that she grossed \$12,000 per year as a home daycare provider. Wife apparently ceased operating the daycare sometime after the parties separated. And, she claims that she has relocated to the State of Washington and is seeking employment there.¹ Because Wife voluntarily left her employment at and her 2000 W-2 Statement is the only evidence that the court has of her earnings, she will be imputed with gross income of \$28,608 per year for the purpose of her motion.

Wife alleges that her living expenses total \$2,523 per month. A number of Wife's expenses, however, are excessive or wholly discretionary expenses that neither party can afford (at least on an interim basis), including \$60 per month for telephone service, \$40 per month for household items, \$35 per month for laundry and/or dry cleaning, \$50 per month for vacation, and \$94 per month for automobile repairs and maintenance. For the purpose of determining whether Wife is partially dependent on Husband for her support, at least on an interim basis, Wife will be allowed expenses totaling \$2,246 per month, including:

Toys and presents	10
Cosmetics and toiletries	20
Hobbies	10
Hairdresser	60
Newspaper and magazine subscriptions	10
Entertainment and miscellaneous	25
Automobile	
-monthly payment	529
-repairs and maintenance	50
-insurance	89
-gasoline	130
Life insurance	20
Clothing	20
Other: taxes, insurance, and pets	40

With imputed net income of \$1,891 per month and reasonable expenses of \$2,246 per month, Wife has a shortfall of \$355 per month.²

Husband is thirty-nine years of age, and absent any allegation to the contrary, the court assumes, also in good health. Since July 2003, Husband has been employed as an equipment mechanic by During the first 5.2 weeks of his employment, Husband worked substantial overtime and earned an average of \$947 per week. Husband contends that the construction industry in which he works is subject to frequent layoffs and that he will be “lucky” if he is able to work 40 hours per week for the remainder of the year. And, he objects to including overtime pay in his income, because he contends that he has worked overtime due to the “predicament” that Wife left him in and to support his minor children.

*2 Before being hired by, Husband worked for [REDACTED] for approximately five months, averaging 28-38 hours per week, at a pay rate of \$14 per hour. Before the parties separated, Husband was employed as a truck driver.

Mortgage	\$1,080
Electric	130

And, in 2002, he earned \$46,247, including unemployment compensation of \$7,144. Because Husband has been employed by for only three months and he did not work full-time during the first six months of 2003, the court will use his 2002 income (including his unemployment compensation) to assess his ability to meet his and his minor children's needs and contribute to Wife's.³

Husband alleges his and his minor children's living expenses total \$4,303 per month. Like Wife's, however, a number of Husband's expenses are overstated, excessive, or wholly discretionary, including \$70 per month for cable television, \$60 per month for telephone service, \$100 per month for household items, \$900 per month for groceries, \$48 per month for laundry and/or dry cleaning, \$80 per month for toys and presents, \$75 per month for cosmetics and toiletries, and \$100 per month for vacation. For the purpose of determining whether (on at least an interim basis) Husband has the ability to contribute to Wife's needs, he will be allowed expenses totaling \$3,750 per month, including:

Garbage	25
Cable television	55
Telephone	50
Household items	50
Household maintenance and repairs	20
Groceries	600
Medical and dental expenses	50
Daycare	520
Laundry and dry cleaning	25
Toys and presents	50
Cosmetics and toiletries	50
Hobbies	10
Barber and hairdresser	25
Entertainment and miscellaneous	75
Automobile	
-monthly payment	460
-repairs and maintenance	25
-insurance	110
-gasoline	150
Clothing	150
Other: taxes, insurance, and pets	40

With imputed net income of \$3,231 per month and reasonable expenses of \$3,750 per month, Husband has a shortfall of \$519 per month.⁴ As a result, he cannot afford to meet Wife's shortfall of \$355 per month. And, because Husband's shortfall is greater than Wife's, he should not be required to pay her interim alimony.

IT, THEREFORE, IS HEREBY ORDERED that Wife's motion is DENIED, without prejudice to any position that she may assert at a hearing on the parties' ancillary matters.

After-Tax Cash & Support

IT IS HEREBY FURTHER ORDERED that to the extent that Husband requests that Wife timely pay the monthly payment on the automobile in her possession or return the vehicle to him, his counterclaim is GRANTED. To the extent that Husband requests that the court determine custody of the parties' dog, his motion is DENIED.

Last Name: G		2003			
Annual Amounts		Husband	Wife	Total	
1 Salary		39,103	28,608		
2 Self-Employment Income		0	0		
3 Social Security Inc		0	0		
4 Interest and Dividends		0	0		
5 Other Taxable Inc		7,144	0		
6 Tax Exempt Interest		0	0		
7 Other Nontaxable Cash		0	0		
8 Cash Perks		0	0		
9 Other Deductions from Gross		0	0		
10 Support Previous Marriage		0	0		
11 Gross Cash for Spt		46,247	28,608	74,855	
12 Payor's % 61.78%					
Less: Cash Flow Deductions					
13 Federal Income Tax	2,815	2,821			
14 State Income Tax	1,670	911			
15 Social Security Tax	2,991	2,189			
16 Local Income Tax	0	0			
17 Cash Deduction	0	0			
18 Mandatory Pension	0	0			
19 Other Net Deductions	0	0			
20 Total Deductions	7,476	5,921			
21 Cash Before Support	38,771	22,687	61,458	Spt as % of	
22 Payor's % 63.09%				Net Cash Both	
Per Month					
23 Child Support	0	0	0	0%	
24 Alimony	0	0	0	0%	

25 Non-taxable Maintenance	0	0	0	0%
26 Cash After Support	38,771	22,687		
27 Other Cash Item (Addition)	0	0		
28 Voluntary Pension	0	0		
29 Cash to Meet Living Expenses	38,771	22,687	61,458	
30 Monthly Cash	3,231	1,891	5,122	
31 Required Cash-Budget	3,750	2,246	5,996	
32 Cash Over (Under) Budget	(519)	(355)	(874)	
33 % Share Cash	63%	37%	100%	
34 Filing Status	Hd Hsld	Single		
35 Children 17 & Over	0	0		
36 Children Under 17	2	0		
37 Value Child Dep Exemption	1,135	0		
38 Value Under 17 Child Cr	1,200	0		
39 Value of Both	2,335	0		
40 Children Residing with	0	0		
41 Marginal Federal +State Tax %	20.6%	20.6%		
42 Tax Impact-Alimony	0	0	0	

All Citations

Not Reported in A.2d, 2003 WL 22476202

Footnotes

- 1 Husband contends that Wife remains in Delaware.
- 2 See attached After-Tax Cash & Support for G.
- 3 Husband shall, however, provide Wife with a copy of the last pay stub that he receives from during 2003 within seven days of his receipt of the stub.
- 4 See attached After-Tax Cash & Support for G.

1999 WL 1457215

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Family Court of Delaware.

In re the MARRIAGE OF
Lisa D. PATTERSON and
Augustus C. Patterson, III

Nos. CN97-07068, 97-20021, 97-39797.

|
Sept. 17, 1999.

LETTER DECISION AND ORDER

██████████
Dear Counsel:

*1 This is the court's letter decision and order on the ancillary matters of property division, child support arrears, and attorney's fees and costs,¹ following the divorce of Lisa D. Patterson ("Wife") and Augustus C. Patterson, III ("Husband").

Husband and Wife were married on September 5 or 15, 1987,² and separated on March 19, 1997. Husband moved from the parties' former marital residence in July 1997 (pursuant to an order of protection from abuse which was entered against him on July 25, 1997), and the parties were divorced on September 25, 1997. The parties' marriage was each party's first marriage, and neither party has remarried.

During their marriage, the parties had two children, Augustus, IV ("Chuckie"), on October 26, 1990, and Jasmine, on March 14, 1993. By then agreement of the parties and pursuant to interim orders which were entered by the court on February 4 and May 14, 1998, Chuckie resides with Father and Jasmine resides with Mother.

Wife is thirty-seven years of age and in good health. She is employed as a quality assurance analyst by ██████████, where she has been employed since 1985. Excluding overtime and bonuses, Wife grosses \$4,866 per month or the equivalent of \$58,388 per year.

Husband is forty years of age and in good health. He is employed as a mechanic by ██████████, where he has been employed since 1978. Excluding shift differentials, overtime, and bonuses, Husband grosses \$3,775 per month or the equivalent of \$45,065 per year. With shift differentials, overtime, and bonuses, Husband earned \$49,052 in 1998. Until the parties separated in March 1997, Husband also operated Delaware Canine Detection, a dog training school and canine service business. Husband testified that he grossed as much as \$5,000 to \$7,000 per week from Delaware Canine Detection.

The parties' marital assets consist of: (1) the former marital residence at ██████████, Delaware (the "marital residence"), with a stipulated fair market value of \$227,000 and a stipulated principal mortgage balance of \$181,661; (2) checking, savings, and Christmas Club accounts in Wife's individual name with stipulated separation balances (excluding Wife's 1996 bonus of \$2,220) of \$483; (3) a savings account in Husband's individual name with a stipulated separation balance (excluding Husband's 1996 bonus of \$1,976) of \$226; (4) a 1997 Nissan Pathfinder (which Wife drives) with a stipulated NADA value of \$27,250 and a stipulated lien of \$18,037; (5) a 1992 Acura Legend with a stipulated NADA value of \$9,950, and a stipulated lien of \$7,637;³ (6) household furnishings, which the parties agree should be divided by the "two-list" method; (7) a 401(k) plan in Wife's individual name with a stipulated balance of \$3,163.48 as of September 30, 1998; (8) a 401(k) plan in Husband's individual name with a stipulated balance of \$2,835.52 as of November 17, 1998; (9) Wife's pension with ██████████, which the parties agree she should retain; and (10) Husband's pension with ██████████, which the parties agree he should retain.

*2 At issue are the disposition of the parties' marital residence, Wife's alleged dissipation of Husband's dog training and canine service business, the division of the parties' marital debts, the percentage division of their marital property, the amount of back child support and/or child support arrears that Husband owes Wife, and the parties' counterclaims for attorneys' fees and costs. Wife contends that the parties' assets and debts should be divided equally, and that Husband should be required to pay her attorney's fees and costs due to his "intransigence" throughout the litigation of the parties' ancillary matters, including custody of Chuckie and Jasmine. Husband contends that he should be awarded eighty-five percent of the equity in the marital residence,

that Wife should be “surcharged” for the value of dogs and equipment which she disposed of in violation of 13 Del. C. § 1509(a)(1), that with the exception of the parties' residence, their marital estate should be divided equally, and that each party should be responsible for the payment of the marital debts in his or her individual name.

The disposition of the marital residence

In October 1996, Husband and Wife purchased a residence and real property located at [REDACTED] in [REDACTED] (the “marital residence”) with a gift of \$7,500 from Wife's father, \$30,192 in proceeds from the sale of a residence owned by them in Philadelphia, Pennsylvania (the “Philadelphia residence”), and joint savings. The parties paid \$219,000 for the residence (\$185,000 of which they financed) and \$10,307 in settlement costs. Husband claims that because he owned the Philadelphia residence prior to the parties' marriage, and the proceeds from the sale of that residence were the principal source of the funds that the parties used to purchase the marital residence, he should be awarded eighty-five percent of the equity in the latter.

Husband purchased the Philadelphia residence for \$4,200 at a sheriff's sale in 1982, and in January 1991, transferred the residence from his individual name into the parties' joint names. Wife moved into the Philadelphia residence in 1987 (the year during which the parties were married), and both prior to and following the transfer of the residence into the parties' joint names in 1991, she and Husband made substantial improvements to the residence. By way of example and not limitation, Husband and Wife constructed a garage, reconfigured the plumbing, heating, and electrical systems, installed a new roof, insulation, ceiling, Sheetrock, windows, and siding, and remodeled the kitchen. Due at least in part to the renovations that the parties made, Husband and Wife sold the Philadelphia residence for \$60,000 in 1996.

Other than the testimony of his mother and a former neighbor (both of whose recollections were vague), Husband introduced no evidence of the condition or value of the Philadelphia residence at the time that the parties were married. The court therefore has no means by which to apportion the nonmarital and marital portions of and resultant proceeds from the sale of the residence,⁴ even assuming *arguendo* that it were inclined to ignore Husband's transfer of the residence to the parties. As a result, no basis exists

to award Husband seventy percent more of the equity in the marital residence than Wife.

*3 Wife wants Husband to refinance the existing mortgage on and purchase her interest in the residence, or sell the residence to a third party. In that regard, Wife has obtained a buyer for the residence at a purchase price of \$226,000. Husband wishes to purchase Wife's interest in the residence, and submitted a statement from Upland Mortgage Company indicating that he has been “pre-approved” for a mortgage of \$201,000.

Provided that Wife promptly is absolved of all liability for the marital residence, and receives at least as much for interest in the residence as she would receive if it were sold to the buyer whom she has obtained, Husband should be permitted to maintain the residence.⁵ Because the buyer has offered \$226,000 and the parties have stipulated that the principal balance on the mortgage on the residence is \$181,661, the residence will be assigned to Husband at \$44,339.

Wife's alleged dissipation of Husband's dog training business

Husband contends that Wife should be “surcharged” for the value of certain dogs and dog training equipment that remained at the marital residence when he was excluded from the residence. According to Husband, he was compelled to leave seven dogs and all of his dog training equipment at the residence, and he eventually recovered only five of the dogs and some equipment.⁶

Wife testified that pursuant to the court's July 25, 1997 Order of Protection from Abuse, she requested that Husband remove the dogs and dog training equipment from their marital residence. When, according to her he failed to do so, she took the dogs to the Society for the Prevention of Cruelty to Animals (“SPCA”), offered a “tub” to “a guy,” and gave a cage to her sister. Wife admits that the “guy” to whom she had offered the “tub” took “everything,” but she contends that he subsequently returned all of the equipment and that the equipment that Husband has not already removed remains at the residence.

The court finds Wife's testimony regarding the dogs and the equipment less than candid, and at a minimum, believes that she failed to care for the dogs and preserve the equipment following Husband's exclusion from their marital residence. Husband, however, has presented no reliable evidence from

which the court can “surcharge” Wife for the value of the dogs or equipment which is “missing.” Other than the hourly rates that he charged for the services of each dog, Husband presented no evidence of the value of the missing dogs. Similarly, other than purchase prices from “old catalogues” which were not admitted into evidence, Husband presented no evidence of the value of the missing equipment. Thus, while the court will weigh Husband's claim for the loss of some of his business assets against Wife's claim for contribution toward the mortgage on the marital residence, his request that Wife be “surcharged” for the missing dogs and equipment is otherwise denied.

The division of the parties' marital debts

*4 Wife requests that she be afforded credit for debts to First Deposit Credit Card, American General Finance, and Diamond Fuel Oil Company (“Diamond”) which she assumed following the parties' separation, and for payments which she made to Diamond, Delmarva Power, and Comcast Metrophone for household expenses. Husband opposes Wife's claim. Husband contends that he contributed to the parties' household expenses following their separation in March 1997, until July 1997, when he was excluded from the residence, and that he has debts in his individual name which were incurred during the parties' marriage.

Wife's request that she be reimbursed for utility payments totaling \$628 is denied. The checks that Wife wrote to pay those debts were written on the parties' joint checking account on March 11, 1997, eight days prior to their March 19, 1997 separation. Wife's request that she be afforded credit for debts totaling \$6,575 is granted. The parties stipulated to the balances on the several debts at separation in the pretrial order that they filed on November 24, 1998, and regardless of whether the debts are in Wife's individual name, it is undisputed that they were incurred during the parties' marriage. While Husband may very well have debts in his individual name which also were incurred during the marriage, he had the same opportunity to make a claim for credit for those debts that Wife did for the debts in her individual name.

The percentage division of the parties' marital property

When dividing marital property, the court must consider the factors enumerated in [13 Del. C. § 1513\(a\)](#).

The length of the marriage

The parties were married for ten years, a short to moderate period of time by today's standards.

Any prior marriage of the parties

Neither party was previously married.

The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties

Both parties are young, in good health, and gainfully employed. While Wife's base salary is approximately twenty-five percent more than Husband's, he historically has supplemented his salary with shift differentials, overtime, and self-employment income. Neither party has any greater needs than the other, not only because their incomes are comparable, but also because at least on an interim basis, each party has primary residence of one of their two children.

Whether the property award is in lieu of or in addition to alimony

Wife will not be awarded any property in lieu of or in addition to alimony. While Wife sought interim alimony for the purpose of assisting her with the payment of the mortgage on the marital residence, she did not submit a statement of her expenses to support her claim. And, in any event, to the extent that Wife had the “burden” of the mortgage, she had the benefit of residing at the residence while Husband was compelled to seek housing elsewhere.

The opportunity of each party for the future acquisition of income and capital assets

*5 Wife concedes that she has a somewhat greater opportunity than Husband to acquire income and capital assets in the future, due to the disparity in the parties' salaries.

The contribution, or dissipation of each party in the acquisition, preservation, depreciation, or appreciation of the marital property, including the contribution of a party as a homemaker or husband

Both Husband and Wife contributed to the acquisition of their marital property. Both parties worked outside their home throughout their marriage, renovated the residence that Husband owned prior to their marriage and the sale of which enabled them to purchase the marital residence, and cared for their home and their children. While Husband “gave” the parties his premarital residence, Wife’s father gave Wife \$7,500 which she contributed to the purchase of the parties’ marital residence.

The value of the property set apart to each party

Each party will receive marital property valued at \$28,216.50.

The economic circumstances of each party at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the party with whom any children of the marriage live

Husband wishes to retain the marital residence, and will be permitted to do so, provided that he promptly refinances the existing mortgage on and purchases Wife’s interest in the residence.

Whether the property was acquired by gift, except those gifts excluded by subsection (b)(1) of this section

Wife’s father gave Wife \$7,500 to purchase the marital residence.

The debts of the parties

The parties’ marital debts total \$6,575, and have been assigned to Wife since they are in her individual name and/or she has assumed responsibility for paying them since the parties separated.

Tax consequences

Neither party presented any evidence of any tax consequences which will result from the division of property proposed by either of them.

Having considered the factors enumerated in § 1513(a), the court concludes that the parties’ net marital estate should be divided equally. While Wife earns approximately twenty-five percent more than Husband does, and disposed of some of the assets that enabled Husband to supplement his salary with self-employment income, she has been solely responsible for the payment of the mortgage on the marital residence at least since Husband was removed from the residence in July 1997. Likewise, while Husband conveyed his premarital residence to the parties, Wife contributed a gift from her father to the purchase of the marital residence. In short, the parties are similarly situated economically and made comparable contributions to their marital estate.

Husband’s back child support/child support arrears

Wife submitted a certified account statement from the Division of Child Support Enforcement (“DCSE”) which indicates that Husband owed her back child support and child support arrears in the amount of \$3,539 as of March 22, 1999. An updated account statement from DCSE indicates that pursuant to the court’s July 30, 1998 Order, Husband has been paying his back child support and arrears at the rate of \$10 biweekly. As a result, as of September 15, 1999, his back support/arrears obligation totals \$3,409.

*6 Wife requests that Husband be required to pay his obligation in full when he refinances the mortgage on their marital residence (or from his share of the proceeds from the sale of the residence in the event that he does not purchase her interest), while Husband requests that he be permitted to continue to pay the obligation at the rate of \$10 biweekly. Because the parties previously agreed that Husband could pay his obligation at the nominal rate of \$10 biweekly, and he has complied with their agreement, Wife’s request for repayment in full is denied.

The parties’ counterclaims for attorneys’ fees and costs

13 *Del. C. § 1515* in pertinent part provides that “after considering the financial resources of both parties [, the court] may order a party to pay all or part of the cost to the other party of maintaining or defending any proceeding under [Title 13] ...” The Delaware Supreme Court has ruled that the court also may order a party who has been litigious or unreasonable to pay a portion of the other party's fees.⁷ Wife contends that Husband has been “uncooperative and intransigent” throughout the parties' ancillary proceedings, including litigation regarding their children's custodial and visitation arrangements, and that as a result, he should be required to pay her attorney's fees and costs.

Wife's claims for attorney's fees and costs that she incurred in conjunction with the protracted litigation between the parties regarding Chuckie's and Jasmine's custodial arrangements should be addressed in the court's final decision in that action, and not in this decision regarding the division of their marital property. With respect to Wife's claim for fees and costs in conjunction with the division of the parties' marital property and debts, the court notes that the pleadings in the parties' Family Court file (which was only opened in 1997) now exceed one hundred and fifty. Husband (who was then unrepresented) bombarded Wife (and the court) with filings in the fall of 1997, resulting in the entry of orders in December 1997 granting Wife some fees and requiring that Husband observe the Family Court's Civil Rules of Procedure.

Following the entry of the court's December 18, 1997 Order, Husband's litigiousness regarding financial matters declined. Overall, the court therefore does not find that Husband has been any more or less recalcitrant than Wife in resolving the monetary disputes between them. The court will, however, permit Wife to file a motion for those fees and costs that she contends she would not have incurred but for Husband's conduct, in particular those that she incurred during the fall of 1997 and for which she has not already been compensated.

ORDER

1. The parties' marital property and debts shall be divided in accordance with the attached *Pro Forma* Balance Sheet. In order to achieve the division ordered by the court, Husband shall pay Wife \$21,932.50 within forty-five days of this order. Otherwise, the parties' residence shall be sold to the buyer obtained by Wife for \$226,000, or (in the event that he does

not wish to purchase the residence) listed for sale for \$227,000 with a realtor selected by the parties, and the proceeds from the sale shall be divided to achieve an equal division of the parties' assets and debts.

*7 2. Within fifteen days of this order, Wife shall prepare and submit to Husband two lists of the parties' household furnishings, including any furnishings which Husband has removed from their marital residence, but excluding their children's bedroom furnishings,⁸ and Husband's dog training business equipment. Within ten days of his receipt of the lists prepared by Wife, Husband shall select one of the lists and notify Wife of his selection. The items on the list selected by Husband shall be his sole property and the items on the list not selected by him shall be Wife's sole property. In the event that Husband purchases Wife's interest in their marital residence, any exchange of furnishings which is necessary to accomplish this “two-list” division shall occur within forty-five days of this order. In the event that Husband does not purchase Wife's interest, any exchange shall occur following the sale of the residence to a third party.

3. Wife shall be responsible for the debts assigned to her and shall indemnify and hold Husband harmless from any liability for those debts.

4. Husband shall be the sole owner of any dog training business equipment which remains at the marital residence, as well as the cage that Wife gave to her sister. In the event that Husband refinances the mortgage on and purchases Wife's interest in the residence, the equipment shall remain at the residence, pending the transfer of the residence to him. In the event that he does not, Husband shall pick up the equipment (at a time to be agreed upon by the parties through counsel) prior to the transfer of the residence to the buyer obtained by Wife, or in the event that the residence is listed for sale, prior to it being listed.

5. Within fifteen days of this order, Wife may file a motion for the attorney's fees and costs that she contends she incurred solely as a result of Husband's intransigence, supported by an affidavit in compliance with *Family Court Civil Rule 88*. In the event that Wife files such a motion, Husband shall have the time prescribed by *Family Court Civil Rule 7(b)* to file a response.

IT IS SO ORDERED.

Assets	Value	Wife	Husband
--------	-------	------	---------

DE	\$44,339		\$44,339
Bank accounts	483	\$483	
Savings account	226		226
1997 Nissan Pathfinder	9,213 ¹	9,213	
1992 Acura Legend	2,313 ²		2,313
Motorcycle	435		435
Household furnishings	"Two-list"		
401(k)	3,163	3,163	
401(k)	2,836		2,836
Debts			
First Deposit	(4,235)	(4,235)	
American General Finance	(1,423)	(1,423)	
Diamond Fuel Oil	(917)	(917)	
	\$56,433	\$6,284.00	\$50,149.00
	(100%)	+21,932.50	-21,932.50
		\$28,216.50	\$28,216.50
		(50%)	(50%)

All Citations

Not Reported in A.2d, 1999 WL 1457215

Footnotes

- ¹ Although Wife also filed a motion for interim alimony, she did not submit a statement of her expenses in support of her motion, and did not pursue her claim for temporary alimony at the hearing on the parties' ancillary matters because she concedes that she can support herself once she is relieved of the mortgage on the parties' former marital residence.
- ² While Wife alleged September 5 in her petition, the parties stipulated to September 15.
- ³ While Husband alleged that the "appraised value" of the vehicle is \$4,000 in his [Family Court Civil Rule 52\(d\)](#) filing, he submitted no evidence to support his claim.
- ⁴ See *Albanese v. Albanese*, Del.Supr., No. 113, 1995, Walsh, J. (Feb. 8, 1996) (ORDER).

5 See 13 Del. C. § 1513(a)(8).

6 Husband found one of the five dogs dead in the garage of the residence.

7 See *Mays v. Mays*, Del.Supr., No. 364, 1987, Christie, C.J. (Nov. 23, 1988) (ORDER).

8 Pending the issuance of a final custody order, Wife shall have possession of Jasmine's furnishings and Husband shall have possession of Chuckie's.

1 Net of lien.

2 Net of lien.

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1995 WL 783006

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Family Court of Delaware.

Gail A. NUZZACI

v.

Edward A. NUZZACI.

No. CN94-1 [REDACTED]

|

April 19, 1995.

Attorneys and Law Firms

[REDACTED], Wilmington, for Petitioner.

[REDACTED], Newark, for Respondent.

LETTER, DECISION & ORDER

[REDACTED], Associate Judge.

*1 The Court has been asked to sign a Stipulation and Order concerning personal property, signed by both parties and their counsel. The gist of the Stipulation and Order concerns the visitation of a Golden Retriever (hereinafter “Zach”) with Gail A. Nuzacci (hereinafter “Wife”). Because Wife's rental lease agreement does not permit Zach to stay with her more than one weekend per month and one afternoon per week, both Wife and Edward A. Nuzacci (hereinafter “Husband”) have asked the Court to place its blessing on what is described as a “personal property division arrangement”.

The Stipulation and Order is quite detailed as to when Wife shall have visitation and even goes so far as to say that, the specific weeknight to be chosen for visitation is flexible, taking into account the business engagements, vacations, and other social events of the “parents.”

13 Del.C. §1507(f) gives this Court jurisdiction to determine, in addition to decrees of divorce or annulment, other matters where appropriate under the facts and law. Those other matters include prayers for interim relief (13 Del.C. §1509), alimony (13 Del.C. §1512), property disposition (13 Del.C.

§ 1513), resumption of prior name (13 Del.C. §1514), costs and attorneys fees (13 Del.C. §1515), support for a *child* (Subchapter I, Chapter 5) and custody and/or *child* visitation (subchapter II, Chapter 7).

10 Del.C., Chapter 9, §901 defines such terms as “Adult”, “Child”, “Family” and even “Relative”, but no where refers to the terms, “pet”, “animal”, or “dog”. 10 Del.C. §925 (15) bestows equitable powers upon the Court but only where jurisdiction is otherwise conferred.

A close examination of all the above legislation reveals no mention of animal husbandry visitation rights, and I am not wont to broaden the term “husband” in such a manner. It is true that 13 Del.C. §1513 gives the Court the right to dispose of marital property by equitably dividing it, distributing it or assigning it between the parties in such proportions as the Court deems just, after considering eleven relevant factors. The term “marital property” is defined as “all property acquired by either party subsequent to the marriage” with certain exceptions. *Black's Law Dictionary*, 1095 (5th ed. 1979) describes property as being “that which is peculiar or proper to any person; that which belongs exclusively to one.... The term is said to extend to every species of valuable right and interest.” Thus, there is little doubt but that Zach is marital property to be distributed in some fashion by this Court, but I decline to sign an order which is in essence a visitation order in every respect, except as to the biological classification of the “object d'etre.”

Carrying this argument even further, how could the Court possibly be able to make a decision in the event that the parties were unable to come to an agreement as to Zach's visitation? Chapter 5 of Title 13 speaks of the Duty to Support children, spouses, poor persons, and women with child conceived out of wedlock. Nowhere does it mention any duty to support a canine, bovine, ovine or even a guppy. Chapter 6 speaks of the uniform reciprocal enforcement of support, but before this Chapter can be placed into action, there must be a duty of support, which is found in Chapter 5 previously discussed. Chapter 7 speaks of parents and children in regard to such issues as custody and visitation. While it goes into great detail as to the factors which this Court must consider prior to determining the best interest of the *child*, nowhere does it mention what factors would have to be considered in the best interests of a non-human genus, should the parties not be able to agree on visitation. And, quite truthfully, the prospect of applying the seven factors of §722(a) to a Zach, a Tabitha or even a fish called Wanda for that matter, would be an

impossible task. For example, would it be abusive to forget to clean the fish bowl or have Tabitha declawed? If the door were opened on this type of litigation, the Court would next be forced to decide such issues as which dog training school, if any, is better for Zach's personality type and whether he should be clipped during the summer solstice or allowed to romp "au naturel."

*2 I do not in any way intend to offend Husband and Wife in the present action. While their dilemma is certainly a viable one, particularly in a marriage where there have been no children, the fact is that this Court is simply not going to get into the flora or fauna visitation business. The Court only has jurisdiction to award the dog to one spouse or the other.

On the other hand, these parties should be mature enough to realize that Zach means a great deal to each of them and that even though their marriage may not have succeeded, at one point or other they did presumably respect and care about each other. I would hope that they could resolve this issue peacefully and with regard for each other's positions, but if they cannot, the Court is powerless to come to their aid, except to award the entire dog to one spouse or the other.

I am therefore refusing to sign the Stipulation and Order.

IT IS SO ORDERED.

All Citations

Not Reported in A.2d, 1995 WL 783006

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Criminal Penalties for Exposing Children to Animal Abuse—Laws enacted between 2014 and April, 2022

For laws enacted prior to 2014, see <https://ndaa.org/wp-content/uploads/Criminal-Penalties-for-Exposing-Children-to-Animal-Abuse-1.pdf>

Prepared by Animal Welfare Institute Legal Interns: Alice Huang, Seton Hall University School of Law (2022); Serena Conforti, Wake Forest School of Law Graduate (2020)

HAWAII:

<https://law.justia.com/codes/hawaii/2021/title-37/chapter-711/section-711-1109-8/>

[§ 711-1109.8]. Sexual assault of an animal

(1) A person commits the offense of sexual assault of an animal if the person knowingly:

- (a) Subjects an animal to sexual contact;
- (b) Possesses, sells, transfers, purchases, or otherwise obtains an animal with the intent to subject the animal to sexual contact;
- (c) Organizes, promotes, conducts, or participates as an observer in an act where an animal is subject to sexual contact;
- (d) Causes, coerces, aids, or abets another person to subject an animal to sexual contact;
- (e) Permits sexual contact with an animal to be conducted on any premises under the person's charge or control;
- (f) Advertises, solicits, offers, or accepts the offer of an animal with the intent that it be subjected to sexual contact in the State; or

(g) Creates, distributes, publishes, or transmits, whether for commercial or recreational purposes, a pornographic image or material depicting a person subjecting an animal to sexual contact.

(2) This section shall not apply to the following practices:

(a) Veterinary medicine;

(b) Artificial insemination of animals for the purpose of procreation;

(c) Animal husbandry;

(d) Conformation judging; or

(e) Customary care of an animal by its owner.

(3) Unless otherwise provided by any other law:

(a) Sexual assault of an animal is a misdemeanor for the first offense and a class C felony for the second or subsequent offense; or

(b) If the offense subjected a minor to sexual contact with an animal or was committed in the presence of a minor as defined in section 706-606.4, sexual assault of an animal is a class B felony.

MAINE:

<https://legislature.maine.gov/statutes/17/title17sec1031.html>

Title 17. Crimes. Chapter 42. Animal Welfare. Subchapter I. General Provisions.

§ 1031. Cruelty to animals

1. Cruelty to animals. Except as provided in subsections 1-D and 1-E, a person, including an owner or the owner's agent, is guilty of cruelty to animals if that person intentionally, knowingly or recklessly:

A. Kills or attempts to kill any animal belonging to another person without the consent of the owner or without legal privilege. Violation of this paragraph is a Class D crime;

A-1. Violates paragraph A and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

B. Except for a licensed veterinarian or a person certified under section 1042, kills or attempts to kill an animal by a method that does not cause instantaneous death. Violation of this paragraph is a Class D crime;

B-1. Violates paragraph B and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

C. If that person is a licensed veterinarian or a person certified under section 1042, kills or attempts to kill an animal by a method that does not conform to standards adopted by a national association of licensed veterinarians. Violation of this paragraph is a Class D crime;

C-1. Violates paragraph C and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

D. Injures, overworks, tortures, torments, abandons or cruelly beats or intentionally mutilates an animal; gives drugs, including, but not limited to, a scheduled drug as defined in Title 17-A, section 1101, subsection 11, to an animal with an intent to harm or intoxicate the animal; gives poison or alcohol to an animal; or exposes a poison with intent that it be taken by an animal. The owner or occupant of property is privileged to use reasonable force to eject a trespassing animal. Violation of this paragraph is a Class D crime;

D-1. Violates paragraph D and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

D-2. Abandons an animal in violation of paragraph D and that animal dies as a result. Violation of this paragraph is a Class C crime;

E. Deprives an animal that the person owns or possesses of necessary sustenance, necessary medical attention, proper shelter, protection from the weather or humanely clean conditions. Violation of this paragraph is a Class D crime;

E-1. Violates paragraph E and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

F. Keeps or leaves a domestic animal on an uninhabited or barren island lying off the coast of the State during the month of December, January, February or March without providing necessary sustenance and proper shelter. Violation of this paragraph is a Class D crime;

F-1. Violates paragraph F and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

G. Hunts, traps or sells for the purpose of hunting any animal, except as permitted pursuant to Title 7, chapter 202-A1 and Title 12, Part 132, and excluding humane trapping of animals for population control efforts or animal control under Title 7, Part 9. Violation of this paragraph is a Class D crime;

G-1. Violates paragraph G and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

H. Injects, inserts or causes ingestion of any substance used solely to enhance the performance of an animal by altering the animal's metabolism to that animal's detriment, including but not limited to excessive levels of sodium bicarbonate in equines used for competition. Violation of this paragraph is a Class D crime;

H-1. Violates paragraph H and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

I. Commits bestiality on an animal. For purposes of this paragraph, “commits bestiality” means that a person:

(1) Engages in a sexual act with an animal for the purpose of that person's sexual gratification;

(2) Coerces anyone to engage in a sexual act with an animal;

(3) Engages in a sexual act with an animal in the presence of a minor;

(4) Uses any part of the person's body or an object to sexually stimulate an animal;

- (5) Videotapes a person engaging in a sexual act with an animal; or
- (6) For the purpose of that person's sexual gratification, kills or physically abuses an animal.

For purposes of this paragraph, “sexual act” means any act between a person and an animal involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other. A sexual act may be proved without allegation or proof of penetration.

MASSACHUSETTS:

<https://malegislature.gov/laws/generallaws/partiv/titlei/chapter272/section77>

§ 77. Cruelty to animals; prohibition from work involving contact with animals

(a) For the purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Animal”, a living nonhuman mammal, bird, reptile, amphibian, fish or invertebrate.

“Sexual contact”, (i) any act between a person and an animal that involves contact between the sex organs or anus of one and the mouth, anus or sex organs of the other; (ii) touching or fondling by a person of the sex organs or anus of an animal, either directly or through clothing, without a bona fide veterinary or animal husbandry purpose; (iii) any transfer or transmission of semen by the person upon any part of the animal; or (iv) the insertion, however slight, of any part of a person's body or any object into the vaginal or anal opening of an animal or the insertion of any part of the animal's body into the vaginal or anal opening of the person.

(b) A person who willingly: (i) engages in sexual contact with an animal or advertises, offers, accepts an offer for, sells, transfers, purchases or otherwise obtains an animal with the intent that the animal be used for sexual contact; (ii) organizes, promotes, conducts or knowingly participates in as an observer an act involving sexual contact with an animal; (iii) causes, aids or abets another person to engage in sexual contact with an animal; (iv) knowingly permits sexual contact with an animal to be conducted on any premises under the person's control; (v)

induces or otherwise entices a child younger than 18 years of age or a person with a developmental or intellectual disability, as defined in section 1 of chapter 123B, **to engage in sexual contact with an animal or engages in sexual contact with an animal in the presence of a child younger than 18 years of age or a person with a developmental or intellectual disability**; (vi) forces another person to engage in sexual contact with an animal; or (vii) disseminates photographs, videotapes or other depictions prohibited sexual contact with an animal shall, for a first offense, be punished by imprisonment in the state prison for not more than 7 years or by imprisonment in a jail or house of correction for not more than 2 ½ years, by a fine of not more than \$5,000 or by both such fine and imprisonment and, for a second or subsequent offense, by imprisonment in the state prison for not more than 10 years, by a fine of not more than \$10,000 or by both such fine and imprisonment.

(c) Notwithstanding section 26 of chapter 218 or any other general or special law to the contrary, the district courts and the divisions of the Boston municipal court department shall have original jurisdiction, concurrent with the superior court, of a violation of this section.

(d) Upon a conviction for a violation of this section and in addition to any other penalties as may be provided by law, the defendant shall forfeit the animal whose treatment was the basis of the conviction to the custody of an entity incorporated under the laws of the commonwealth for the prevention of cruelty to animals or for the care and protection of homeless or suffering animals.

Upon a conviction for a violation of this section, the defendant shall not: (i) work in any capacity that requires the person to be in contact with an animal, including a commercial boarding or training establishment, shelter, animal control facility, pet shop, grooming facility, commercial breeder service, veterinary hospital or clinic or animal welfare society or other nonprofit organization incorporated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals; or (ii) harbor, own, possess or exercise control over an animal, reside in a household where any animals are present or engage in an occupation, whether paid or unpaid, or participate in a volunteer position at any establishment where animals are present for any length of time that the court deems reasonable for the protection of all animals; provided, however, that the length of time shall not be less than 5 years after the person's release from custody.

(e) This section shall not apply to lawful and accepted practices that relate to veterinary medicine performed by a licensed veterinarian or a certified veterinary

technician under the guidance of a licensed veterinarian, artificial insemination of animals for the purpose of procreation, accepted animal husbandry practices, including raising, breeding or assisting with the birthing process of animals or any other practice that provides care for animals, or conformation judging.

Credits

Added by St.2018, c. 219, § 23, eff. Nov. 7, 2018.

NORTH CAROLINA: Pending further research

https://www.ncleg.net/enactedlegislation/statutes/html/byarticle/chapter_14/article_26.html

OHIO:

<https://casetext.com/statute/ohio-revised-code/title-9-agriculture-animals-fences/chapter-959-offenses-relating-to-domestic-animals/section-95915-animal-fights>

959.15 ANIMAL FIGHTS

(A) No person shall knowingly do either of the following:

- (1) Engage in cockfighting, bearbaiting, or pitting an animal against another;
- (2) Use, train, or possess any animal for seizing, detaining, or maltreating a domestic animal.

(B) No person shall knowingly do either of the following:

- (1) Be employed at cockfighting, bearbaiting, or pitting an animal against another;
- (2) Do any of the following regarding an event involving cockfighting, bearbaiting, or pitting an animal against another:
 - (a) Wager money or anything else of value on the results of the event;
 - (b) Pay money or give anything else of value in exchange for admission to or being present at the event;

(c) Receive money or anything else of value in exchange for the admission of another person to the event or for another person to be present at the event;

(d) Use, possess, or permit or cause to be present at the event any device or substance intended to enhance an animal's ability to fight or to inflict injury on another animal;

(e) Permit or cause a minor to be present at the event if any person present at or involved with the event is conducting any of the activities described in division (B)(1) or (B)(2)(a), (b), (c), or (d) of this section.

(C) A person who knowingly witnesses cockfighting, bearbaiting, or an event in which one animal is pitted against another when a violation of division (B) of this section is occurring at the cockfighting, bearbaiting, or event is an aider and abettor and has committed a violation of this division.

CREDIT(S)

(2020 H 24, eff. 3-31-21; 2016 S 331, eff. 3-21-17; 1980 S 233, eff. 6-10-80; 1953 H 1; GC 13378)

SOUTH CAROLINA: Pending further research

<https://www.scstatehouse.gov/code/t16c015.php>

WISCONSIN:

<https://docs.legis.wisconsin.gov/statutes/statutes/944/iii/18/2>

944.18. Bestiality

(1) Definitions. In this section:

(a) “Animal” means any creature, either alive or dead, except a human being.

(b) “Obscene material” has the meaning given in s. 944.21(2)(c).

(c) “Photograph or film” means the making of a photograph, motion picture film, video tape, digital image, or any other recording.

(d) “Sexual contact” means any of the following types of contact that is not an accepted veterinary medical practice, an accepted animal husbandry practice that provides care for animals, an accepted practice related to the insemination of

animals for the purpose of procreation, or an accepted practice related to conformation judging:

1. An act between a person and an animal involving physical contact between the sex organ, genitals, or anus of one and the mouth, sex organ, genitals, or anus of the other.
2. Any touching or fondling by a person, either directly or through clothing, of the sex organ, genitals, or anus of an animal or any insertion, however slight, of any part of a person's body or any object into the vaginal or anal opening of an animal.
3. Any insertion, however slight, of any part of an animal's body into the vaginal or anal opening of a person.

(2) Prohibited conduct. No person may knowingly do any of the following:

- (a) Engage in sexual contact with an animal.
- (b) Advertise, offer, accept an offer, sell, transfer, purchase, or otherwise obtain an animal with the intent that it be used for sexual contact in this state.
- (c) Organize, promote, conduct, or participate as an observer of an act involving sexual contact with an animal.
- (d) Permit sexual contact with an animal to be conducted on any premises under his or her ownership or control.
- (e) Photograph or film obscene material depicting a person engaged in sexual contact with an animal.
- (f) Distribute, sell, publish, or transmit obscene material depicting a person engaged in sexual contact with an animal.
- (g) Possess with the intent to distribute, sell, publish, or transmit obscene material depicting a person engaged in sexual contact with an animal.
- (h) Force, coerce, entice, or encourage a child who has not attained the age of 13 years to engage in sexual contact with an animal.
- (i) Engage in sexual contact with an animal in the presence of a child who has not attained the age of 13 years.**

(j) Force, coerce, entice, or encourage a child who has attained the age of 13 years but who has not attained the age of 18 years to engage in sexual contact with an animal.

(k) Engage in sexual contact with an animal in the presence of a child who has attained the age of 13 years but who has not attained the age of 18 years.

(3) Penalties. (a) Any person who violates sub. (2) (a) to (g) is guilty of a Class H felony for the first violation and is guilty of a Class F felony for a 2nd or subsequent violation or if the act results bodily harm or death of an animal. Any person who violates sub. (2)(h) or (i) is guilty of a Class F felony for the first violation and is guilty of a Class D felony for a 2nd or subsequent violation. Any person who violates sub. (2)(j) or (k) is guilty of a Class G felony for the first violation and is guilty of a Class E felony for a 2nd or subsequent violation.

(c) If a person has been convicted under sub. (2), the sentencing court shall order, in addition to any other applicable penalties, all of the following:

1. That the person may not own, possess, reside with, or exercise control over any animal or engage in any occupation, whether paid or unpaid, at any place where animals are kept or cared for, for not less than 5 years or more than 15 years. In computing the time period, time which the person spent in actual confinement serving a criminal sentence shall be excluded.

2. That the person shall submit to a psychological assessment and participate in appropriate counseling at the person's expense.

3. That the person shall pay restitution to a person, including any local humane officer or society or county or municipal pound or a law enforcement officer or conservation warden or his or her designee, for any pecuniary loss suffered by the person as a result of the crime. This requirement applies regardless of whether the person is placed on probation under s. 973.09. If restitution is ordered, the court shall consider the financial resources and future ability of the person to pay and shall determine the method of payment. Upon application of an interested party, the court shall schedule and hold an evidentiary hearing to determine the value of any pecuniary loss, as defined in s. 951.18(4)(a)1., under this subdivision.

(4) Severability. The provisions of this section are severable, as provided in s. 990.001(11).

HISTORICAL AND STATUTORY NOTES

Source:

2019 Act 162, § 14, eff. March 5, 2020.

Summary of cases in which animal abuse was mentioned by the court in determining child custody or the terminating of parental rights

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Overview

The summaries below are from cases in which animal abuse was mentioned by a court when determining child custody or the termination of parental rights. The mention of animal abuse in these cases typically occurs when the court is determining the best-interests of the child. Animal abuse may be used as evidence for several factors in the determination of a child's best-interest, including the living conditions of the home, physical and psychological wellbeing of the children, or potential for violence by the parents or caregivers. Although an animal may not be a victim of domestic violence, if the reason for the abuse was to distress or coerce an individual with an emotional bond to the animal then the act may be considered domestic violence. These cases highlight how animal abuse may be used as evidence by the courts in their determination of custody or parental rights.

Case Summaries

Caffey v. State, 2022 Tex. App. LEXIS 1045

Police were informed of a strong smell originating from the appellant's yard. Upon arrival, the police smelled what they thought was a human corpse. After knocking on the front door, the officers walked towards the backyard. In the back, they found fifteen kittens and two dogs living in unsanitary conditions, including suffering from mange and covered in feces. The police officers determined the odor was coming from the animals and took photographs. After the second visit, the police officers obtained an animal seizure warrant and 161 cats and fifteen dogs were removed from the property.

The opinion notes that as a result of the seizure of the animals, the appellant was indicted for two counts of endangering a child and ten counts of cruelty to animals. Before this case, the state and appellant had reached a plea bargain which would dismiss one count of endangering a child and five counts of cruelty to animals.

People v. Betsy A. (In re R.A.), 2021 IL App (3d) 210185-U

The state filed petitions for adjudication of neglect for two minors and later a third child. In the petition, there were reports of unsanitary living conditions. This was partly due to the fact that

there were four dogs, two cats, three rabbits, and a ferret residing in the home. One caseworker observed crystalized urine and animal feces throughout the house on numerous visits. In the circuit court, the State had met the burden of unfitness stating, “when you choose your pets over your children, as looks—as has been done in this case, this is the result.”

In determining if the respondent had made reasonable progress towards the return of her children, the court took into consideration the unsanitary and unsafe conditions that resulted in their removal from her care in the first place. The crystalized urine spots, pile of feces, and overflowing trash were used as evidence against respondent’s “reasonable progress.” Pursuant to the Adoption Act, if a parent does not make reasonable progress towards the return of a child during any nine-month period after the adjudication of a neglected or abused minor, the parent is deemed unfit. The court highlighted that the failure to mitigate the presence of animals in the home nor find them alternative homes was a factor preventing the return of the children.

In re Involuntary Termination of A.E.S., 2021 Pa. Super. Unpub. LEXIS 1582

A child was placed into foster care after being brought to the hospital for failure to gain weight. When the mother and grandfather sought to take the child out of the hospital, against medical advice, the Lebanon County Children and Youth Services (“the Agency”) obtained emergency custody. After remaining in foster care for approximate eighteen months, the Agency filed a Petition to Involuntarily Terminate Mother’s and Father’s Parental Rights to Child. In this case, the father appealed the termination of his parental rights.

The caseworker referenced numerous cats, dogs, and turtles that contributed to the unsanitary conditions of the home the father was staying in. During one home visit, the caseworker observed close to 20 to 30 cats in the home and a Pit Bull locked and chained in the upstairs bathroom. Even though the father was not the owner of the home, the court stated that he failed to overcome the obstacles he needed to in order to obtain alternative housing.

In the Interest L.J.H., 2021 Tex. App. Lexis 7719

The trial court issued an order terminating a father’s parental rights to his three children and granted lifetime protective orders in favor of the three children and their respective mothers. One of the mothers described CH, the father, as abusive, including to pets.

The trial court found that CH engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangered their physical or emotional well-being. The court relied on numerous accounts of domestic violence and instances of abusive behavior, including violence against family pets, to support this claim.

In the Int. of M.R.H., 2021 Tex. App. LEXIS 9592

After a bench trial, the parental rights of B.C.H. and L.A.L. were terminated and B.C.H. appealed. Termination of parental rights requires clear and convincing evidence that the parent has “engaged in conduct or knowingly placed the child with person who engaged in conduct which endangers the physical or emotional well-being of the child.” An endangerment finding

often involves physical endangerment, but it is not necessary to show that the parent's conduct was directed at the child or that the child suffered actual injury.

In this case, there were instances of domestic violence as well as animal abuse. L.A.L. testified about an instance where B.C.H. attempted to drown the family cat and punched it in the face. L.A.L. discussed over ten occasions where B.C.H. had engaged in animal abuse. Domestic violence, want of self-control, and propensity for violence may be considered as evidence of endangerment. The testimony regarding the domestic violence and animal abuse that B.C.H. engaged in, demonstrated a propensity for violence that may be considered as evidence of endangerment.

Inman v. Inman_2021 Mich. App. LEXIS 4979

In this case, the plaintiff appealed the ruling of the trial court granting primary physical custody of the parties' minor child. Child Custody in Michigan is governed by the Child Custody Act, which in part, establishes factors to be taken into consideration when determining the best interests of the child.

On appeal, the plaintiff was arguing that several of the factors were in her favor. In particular, the plaintiff believed that 'Moral Fitness' should have weighed more heavily in her favor. The primary reason being an incident in which the defendant killed his dog in the backyard after it had bitten multiple children. The trial court classified the act of shooting the family dog as "barbaric," yet stated that the defendant's actions were a result of a severe lapse of judgement rather than an example of "clear apathy, cruelty, and callousness." The court took into consideration the fact that the dog was a danger to the children and the minor did not witness the shooting. The trial court's ruling was affirmed.

In re. A.H._2021-Ohio-1040

The appellate court evaluated whether the trial court erred in terminating the mother's parental rights. In determining the best interest of the children, the court took into consideration the fact that the mother was on probation for prohibitions concerning companion animals.

This case was opened when one of the minors was going to school with animal urine and feces on her clothing. The mother had 13 dogs and 13 cats. The child had also been bitten by one of the dogs and had to receive treatment at the hospital. Five of the dogs were removed from the home due to poor living conditions. The Guardian Ad Litem (GAL) reported that once the children were removed from the house and put into foster care, the animals remained in the home. The GAL reported that it would be detrimental to the children's health and emotional wellbeing to continue living in those conditions.

The mother had two cases relating to dogs filed against her subsequent to the adjudication of the children. The court took into consideration the fact that the mother was on probation for prohibitions regarding companion animals, including having 20 animals removed from the home, when determining the custody of the minors.

In re. Cortez P._2020 Tenn. App. LEXIS 440

Shortly after birth, the Department of Child Services removed a child from their home. At the time of the removal, the father was incarcerated due to a probation violation. The probation stemmed from a prior aggravated animal cruelty charge, in which the father had placed kittens in a hot oven and killed them. The severity of the cruelty brought up concerns regarding the father's mental health. Due to the father's inability to complete the responsibilities in the permanency plan, his violent history, and mental health issues, the court believed the father posed a risk of substantial harm to the physical or psychological welfare of the child. Therefore, the appellate court upheld the termination of the father's parental rights.

Brown v. Brown, 332 Mich. App. 1, 955 N.W.2d 515 (2020)

In this case of child custody, a father was appealing a decision that gave the mother sole custody of their five children. In the trial court, instances of the father's abusive treatment of family pets were mentioned. There were occasions in which the father threw a family dog against the wall, shot an airsoft pistol at a cat, and kned a dog in the chest.

The appellate court went on to make the point that abusive conduct towards an animal is not per se domestic violence, because a pet cannot be a spouse. The court determined that a pet cannot be considered a victim of domestic violence under either the Domestic Violence Prevention and Treatment Act or the Child Custody Act.

However, the court emphasized the close bonds people form with pets, which can be especially true for children. Harming an animal with whom a child has a significant emotional bond can constitute domestic abuse directed at the child. "Harmful or abusive conduct toward a pet can constitute domestic violence . . . if done for the purpose of distressing or coercing a person emotionally bonded to that pet." Whether harm towards pets is an act of domestic abuse depends on the reasons why the acts of animal abuse occurred as well as the nature of the bond between the child and animal at issue. This form of misconduct is also relevant as it is harmful to the child's well-being.

The appellate court affirmed the trial court's reliance on the father's abusive treatment of family pets to support the finding of proper cause. In determining the best-interest of the children, one of the factors is the moral fitness of the parties involved. The trial court favored the defendant in this respect because of the domestic violence and psychological violence that existed in the plaintiff's home. The Plaintiff's mistreatment of the family pets perpetuated a fearful environment to compel good behavior.

In the Interest of J.L.K., No. 01-19-00884-CV, 2020 Tex. App. LEXIS 2767 (Tex. App. Apr. 2, 2020)

In this case, the court upheld the trial court's decision to terminate the mother's parental rights. The court concluded that past danger to the children supported an inference of future danger, weighing in favor the trial court's "best-interest" finding. The trial court "may order termination of the parent-child relationship if DFPS proves, by clear and convincing evidence, one of the statutorily enumerated predicate findings for termination and that termination of parental rights is in the best interest of the children."

The Texas Legislature has set out several factors to determine whether a child's parent is able to provide a child with a safe environment, including "whether there is a history of abusive or assaultive conduct or substance abuse by the child's family or others who have access to the child's home." In addition, the Texas Supreme Court has set out non-exclusive factors for courts to consider when determining what is in the child's best interest, including the child's current and future physical, emotional needs and the current and future physical danger to the child, and the stability of the home. In 2015, the mother assaulted the father of the children. The mother pled guilty in 2018 to the felony offense of cruelty to a non-livestock animal for killing the father's dog and was on probation for this offense.

The court considered the mother's past history of domestic violence and concluded that mother's children would continue to be in danger due to the mother's instability caused by drug use and domestic violence.

In re K.C., No. 18-1008, 2019 W. Va. LEXIS 153 (Apr. 19, 2019)

The Court affirmed the circuit court's decision to terminate petitioners' parental rights and found no error in the circuit court's decision.

The Department of Health and Human Resources filed abuse and neglect petition against petitioner. Petitioner was on probation for animal cruelty and prohibited from possessing animals. In a previous case, petitioner was involved in a prior abuse and neglect case where law enforcement found twenty-nine animals from the petitioner's home and the children were "hiding in the attic in their underwear." In this case, police found "rabbits being stored in a closet and chickens...being kept in a bathtub." According to Child Protective Services, the home "had a strong odor of ammonia, animal feces, and animal urine." Due to these circumstances, petitioner was charged criminally because of animal cruelty and prohibition from possessing animals.

Petitioner argued the court's decision to deny her motion for an improvement was erroneous, but this Court found no error in the circuit court's denial of petitioner's motion. The circuit court based their decision on the fact the children's removal in this case were nearly identical to the previous removal of the children and that the issues of neglect were never truly resolved. The circuit court decided that granting an improvement period would be futile given the two removal proceedings.

Shirea D. v. Dep't of Child Safety, No. 1 CA-JV 18-0091, 2019 Ariz. App. Unpub. LEXIS 114 (Ct. App. Jan. 29, 2019)

The court affirmed the juvenile court's decision to terminate mother's parental rights. The mother and father were involved in a relationship that involved domestic violence. In 2012, the father beat mother and killed the mother's kitten. Father also consistently punched the family dog. In 2015, father incurred more animal abuse charges for keeping dogs in a hole underneath the mother's home. Mother continued to engage in relationship with father despite father's repeated abusive behavior.

The court found that maintaining the parent-children relationship would harm the child due to a significant risk that the child would be exposed to domestic violence or abuse. The court also found beyond a reasonable doubt that due to mother's emotional vulnerability in addition to the

father's violent history, the child would likely suffer from serious emotional and physical harm. The court terminated mother's parental rights in 2018 due to mother's failure to protect child from abuse and mother's mental health issues. Sufficient evidence supported the determination that termination of parental rights was in the best interests of the child.

In the Interest of I.A., 201 A.3d 885 (Pa. Super. Ct. 2018)

The court affirmed the trial court's orders to suspend father's visitation with his children because supervised visits were not in the best interests of the children.

The trial court found that the father had a concerning number of pets in his home, including seven dogs and multiple lizards. When the court addressed the issue of dogs in his home at a permanency review hearing, the father responded the dogs were not his and he would "[put] a bullet in their heads." The father became increasingly angry in court.

The trial court found that it was not in the children's best interest to have visits with the father due to father's inability to remain calm, refusal to follow a mental health treatment plan, as well as advising children "to punch the family dog in the jaw." This court found that because of father's behavior during the permanency review hearing, the trial court's findings that the father is unable to control his anger and the father's statements and behavior around children negatively impact the children.

San Diego Cty. HHS Agency v. J.P. (In re J.P.), No. D072990, 2018 Cal. App. Unpub. LEXIS 1284 (Feb. 27, 2018)

The court concluded that the juvenile court did not abuse its discretion by refusing to allow the father to have unsupervised visits with child. The mother testified in juvenile court that father had previously kicked and injured their dog when living together.

The juvenile court found that the father had a history of domestic violence, exhibited violence towards animals and continued to express unstable behavior throughout the case even with therapy. These facts support the juvenile court's conclusion that it was in the child's best interests that the father have supervised visits with the child.

People v. T.W. (in re C.W.), 2017 IL App (2d) 161062

On appeal, the mother of C.W. challenged the trial court's determination that it was in her child's best interest to terminate the mother's parental rights.

In 2012, the State filed a neglect petition after the mother remained with the father after he had threatened both the mother and C.W. with a knife. The mother had filed an order of protection but went back to the father afterwards. The father had also been charged with animal cruelty, having killed at least one family dog in front of C.W. However, there were disagreements as to what C.W. had witnessed in terms of the father harming animals.

C.W. stayed with her paternal grandparents and during this time, the visits with her parents were considered "conflict-ridden." On one visit, C.W. was reprimanded by her father for informing the authorities that he drowned animals. In 2014, both parents signed a consent form to give up their parental rights so that C.W. could be adopted by her uncle. However, the form could be

void if C.W. was placed with someone other than her uncle. Due to problems with both the uncle and his girlfriend, C.W. lived in a group home.

In 2016, there was a fitness hearing. The mother noted several instances of animal cruelty in the home, however she argued that C.W. never witnessed any of them. The state showed a police report in which the mother had called to stop the father from drowning a puppy. C.W. also noted two instances of animal cruelty in which she was a witness. Once, when the father tried to drown her puppy in the bathtub and another time when he suffocated a puppy by holding its face into its own feces.

On appeal, the mother accepts the determination that she is an unfit mother, but does not believe it is in C.W.'s best interest to terminate parental rights. In this case, the mother's relationship with the father was seen as detrimental to C.W. The court considered the fact that the mother denied C.W. seeing animal cruelty even though the State provided evidence showing otherwise. Citing several instances of neglect and instability, the court upheld the trial court's determination that it was in C.W.'s best interest to terminate parental rights.

In re I.W., 2016 W. Va. LEXIS 253

The mother appealed the circuit court decision terminating her parental rights to I.W. and K.W. The West Virginia Department of Health and Human Resources ("DHHR") filed an abuse and neglect petition against the parents for their failure to properly supervise the young children.

One of the main concerns raised by the court was the fact that the children were either left unattended or stayed with inappropriate caregivers, including the mother's cousin. According to the mother's testimony, her cousin suffered from bipolar disorder and schizophrenia. The cousin also had a criminal background including a conviction of animal cruelty in which he mutilated an animal. The mother still believed the children to be safe while in the care of her cousin.

The court affirmed the circuit court's finding of imminent danger and the termination of the mother's parental rights without a post-adjudicatory improvement period.

In re Lilian C., No. K09CO14013719A, 2016 WL 5395901 (Conn. Super. Aug. 2, 2016)

The father of Lilian appealed the termination of his parental rights.

When Lilian was 6 months old, the police came to the home due to a reported domestic dispute. The officers found drug paraphernalia as well as a mistreated dog which was later removed by animal control. In 2014, the Department of Children and Families ("DCF") filed a neglect petition alleging that both parents had mental health and substance abuse issues.

From October 2013 to November 2015, Lilian saw her father twice. The court looked at the father's criminal history, mental health issues, and substance abuse problems when determining whether a parent-child relationship would be in Lilian's best interest.

The court upheld termination of the father's parental rights.

In re Z.G., No. B260619, 2015 WL 5883806 (Cal. App. Oct. 8, 2015)

The mother appealed from the orders of the juvenile court terminating her parental rights to the two youngest of her six children. Z.G. and Joseph were removed from the home of their mother due to her relationship with their father who was physically abusive to the children. The four older children were placed in foster care. The mother sought to have all six children returned to her custody in 2013.

In 2014, the police responded to calls about a dog being beaten at mother's house. Mother was in a new relationship with Mr. J. When police arrived, they found Mr. J dragging a three month old beaten puppy who was bleeding excessively. Witnesses stated that Mr. J. had punched the puppy, and the police observed several open wounds on the puppy as well as missing claws. Mr. J. was arrested for felony animal cruelty.

The court denied the mother's petition for a hearing to modify previous orders based on a change of circumstances or new evidence. The court cited the mother's relationship with a man with violent tendencies, similar to those of the children's father. Mr. J.'s own children were also dependents of the juvenile court as a result of his domestic violence. The mother denied knowing about the animal abuse, despite the police report which stated that she justified the boyfriend's treatment of the puppy.

The court stated that, "Mother has a history of protecting the violent men around her at the expense of her own children's safety." Ultimately, the decision to terminate the mother's parental rights were upheld.

In re Chavez, Nos. 316163, 316166, 2014 WL 61222, (Mich. App. Jan. 2, 2014)

The father appealed the termination of his parental rights to his three children. The mother appealed the termination of her rights to two of the children shared with the father. The father obtained custody of the oldest child in 2008. After pleading guilty to domestic violence in 2011, the mother returned home and found the family dog covered in blood. The mother said she believed the neighbors harmed him. However, there was testimony from a doctor that the dog had been brought into her veterinary clinic in 2010 with injuries that were most likely abusive, including burns, bleeding in its eyes, and a swollen head.

During counseling, the mother admitted that the father was prone to beating the dog when he was angry. The counselor had attempted to speak about the animal abuse with the father, but he did not want to discuss it. The counselor testified that the violence towards the dog modeled poor behavior for the oldest child. She also noted that according to the DSM-IV animal abuse is often an indicator of psychopathic and conduct disorders.

On appeal, Chavez and Prater assert that the trial court erred by permitting the counselor to testify about the link between animal abuse and violence. The court did not agree and indicated that the link was relevant evidence in this case, especially as it related to the father's anger management problems.

The trial court's decision to terminate the parental rights was affirmed.

In re A.M., No. C070727, 2013 WL 75064 (Cal. App. Jan. 8, 2013)

The mother of A.M. appealed a decision in which the court terminated her parental rights. On appeal, she contends that the beneficial parental relationship exception should have applied.

Due to the mother's substance abuse problems, she had lost custody of two children. One of her children, Daniel, was placed into foster care, where A.M. later joined. The mother was not taking medication for her mental health issues, relapsed multiple times, and had charges brought against her for animal abuse when an emaciated dog was removed from her care.

In reviewing the mother's argument, the court analyzed whether the benefit of maintaining the relationship with his mother would outweigh the benefits gained from living in a permanent home with adoptive parents. According to the evidence, the mother did not establish a parental role in A.M.'s life. A.M. suffered from anxiety pertaining to the well-being of his mother which indicated an unhealthy parent/child relationship.

The termination of the mother's parental rights was affirmed.

In re V.W., No. 12-0820, 2013 WL 500189 (W.Va. Feb. 11, 2013)

The mother filed an appeal from an order terminating her parental rights.

When the child was born, hospital staff were concerned that neither of the parents had basic parenting skills and appeared to be mentally challenged. Both parents had recently been charged with animal cruelty charges and admitted to the animals defecating throughout the home.

The mother contends that the circuit court erred when her parental rights were terminated without an improvement period. The Court affirms the circuit court's decision stating, "the circuit court was presented with sufficient evidence upon which it could have based findings that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that termination was necessary for the child's welfare."

In re K.A.W., No. 301470, 2011 WL 3117869 (Mich. App. July 26, 2011)

The mother appeals a court order terminating her parental rights. The termination was based on the failure to prevent physical and sexual abuse from occurring to her three older children. The mother challenges the factual support of the court's decision.

In 2009, the mother's three older children were removed from their home due to the multiple abusive live-in boyfriends the mother had staying in the house for a decade. In addition to physical and sexual abuse of the children, one of the boyfriends was witnessed by the children committing acts of animal cruelty against the family's pets.

The trial court did not err in its decision that there were established grounds for termination by clear and convincing evidence.

Hosier v. Ark. Dep't of Health and Human Serv., No. CA 07-117, WL 1765539, (Ark. Ct. App. June 20, 2007)

The mother's parental rights were terminated and on appeal she argued two things. First, that the mother had been in compliance with a case plan and court orders. She also objected to testimony being used from a permanency planning hearing in making the court's decision.

The mother's two children, C.C. and K.H., were taken into the custody of the Department of Health and Human Services (DHHS) when there was a discovery of sexual abuse in the home. There were also findings of neglect and the appellant was charged with sixty counts of animal abuse as a result of her operations regarding a kennel.

Mother's argument that testimony from a planning hearing was weighed in the court's decision to terminate parental rights was found to be invalid as the trial court had already struck the testimony from the prior hearing and did not rely on it afterwards. In regards to the mother's compliance with the case plan, the court stated, "what matters is whether the completion of the case plan achieved the intended result of making the parent capable of caring for the child." The court determined that the evidence supporting the termination of the mother's parental rights in both of these regards was not clearly erroneous.

In Int. of P.J.M., 926 S.W.2d 223 (Mo. Ct. App. 1996)

The mother and father have seven children and the termination of parental rights was decided for the three youngest children. On appeal, both parents argue against the sufficiency of the evidence to support the termination of their parental rights.

In 1987, the first of the two children were removed from the home as a result of the parents being arrested and charged with the kidnapping and sexual assault of a fourteen year old girl. The Orleans Parish Office of Community Services became involved with the third and fourth children when the father struck the youngest child and both the mother and child went to the emergency room after falling from a car. When the fifth child was born, there was a service file opened regarding him. The oldest child was returned to the mother on the condition that she did not contact the father. She did not follow the order and had premature twins the following year.

Shortly after the twin's birth, the mother reported being physically and sexually assaulted by the father. Instances of past abuse involved being raped, stabbed, and shot by the father. The mother did not make progress in the safe house and there was evidence of the children knowing about the abuse. There was also evidence that the parents had taken part in satanic worship which included sacrificing animals in front of the children. The mother admitted to providing drugs to the eldest child afterwards to make him forget.

The parent's history of drug abuse, mental illness, and criminal records were used as evidence to terminate their parental rights. The court affirmed.

In re S.G.T., 175 Ga. App. 475, 333 S.E.2d 445 (1985)

The father appealed the order of the juvenile court terminating his parental rights to his adopted son. On appeal, the father argued that there was insufficient evidence in regards to 'deprivation and wanton and willful failure to support.'

An investigation revealed that the adopted son, S.G.T., was suffering from emotional and physical abuse at the hands of the father. There was clear and convincing evidence used to support decision to terminate the father's parental rights based on deprivation.

In a concurring opinion, additional instances of abuse were mentioned by the judge which led to the argument that there should also be a finding of parental unfitness. The type of abuse included animal cruelty, in which the father stated that the way to train a dog was to "tie him up and starve him to death and feed him gun powder."

Boarman v. Boarman, 194 W. Va. 118, 459 S.E.2d 395 (1995)

A father appealed the decision of the Circuit Court to provide the mother of his six children with custody. Only the oldest son would remain with the father. On appeal, the father argues that the Guardians ad Litem were biased and that the court focused too much on the mother's current conduct rather than past acts.

When the mother and father divorced, the mother moved to New York with all of the children except for the eldest son. The West Virginia Department of Health and Human Services became involved when there were allegations of child abuse and neglect made by both the mother and father. The father made claims that the mother was verbally abusive, failed to maintain a clean home, and was intoxicated while watching the children. The mother alleged that the father had shot and killed the family's cat, physically abused the male children, and communicated extreme racist views to the children.

The court reviewed the allegations against the mother and although she drank excessively, the circuit court found insufficient evidence to support abuse and neglect or unfitness by the mother. In regards to the father, the circuit court found that the violence, racial comments, and animal cruelty, specifically the shooting of animals, had negative effects on the children.

After reviewing the father's arguments on appeal, the circuit court's decision to grant the mother custody of six of the children was affirmed.

Rutkowski v. Rutkowski, No. CI-06-04529, 2010 Pa. Dist. & Cnty. Dec. LEXIS 1001 (C.P. July 29, 2010)

Both mother and father appealed a custody order. The parties have five children together and the three youngest were the subject of the custody action.

When the parties separated, the mother entered a temporary protection from abuse order against the father. In 2009, a family friend, Carol, had primary physical custody of one of the children, Sydney. Carol described instances of Sydney's aggressive behavior including a time when she kicked Carol and her dog. The court relies on instances Sydney's violent behavior to justify having the two youngest children remain with the father and Sydney stay with the mother, as she required separate and specialized attention.

The court affirmed the custody order.

Schambon v. Com., 821 S.W.2d 804 (Ky. 1991)

The mother and father appeal from charges, including cruelty to animals and criminal abuse, that led to a sentence of eighty-five years in prison.

Officials went to the mother and father's home after complaints of animal cruelty. In the home, animals were living in an unventilated garage, covered in feces and without food or water. The officials noted that there were dead and diseased animals in the residence, including one poodle eating the remains of a Pomeranian. Upon entering the house, the officer saw cages of cats, overflowing litter boxes, and could hear the sounds of additional animals throughout the home. The father was arrested for cruelty to animals.


The animals suffered from matted hair, lice, fleas, infections, mange, and ringworm. While many of the animals were able to be treated, several died at the shelter.

Due to unsanitary conditions, the children were removed from the home and placed into foster care. The parents were investigated for sexual and physical abuse following the actions and statements of the children. One of the children, R.S., who was six years old, described instances of sexual abuse carried out by both parents. R.S. also testified to being sexually abused by strangers in a park that would give his father money.

On appeal, the mother and father claim that joining the offenses deprived them of their due process rights. The court did not sever the animal cruelty offenses from the child abuse charges because, "they were intertwined and the animal cruelty evidence was essential to establish the physical abuse offenses; the same proof was used to prove both charges." The trial court also noted that, "the circumstances of animal cruelty actually led to the criminal abuse and sex charges and that appellants' mistreatment of the animals reflected upon their state of mind when they committed the physical and sexual abuse."

Convicting the mother and father of criminal abuse requiring a showing that the children were subjected to a risk of physical injury in the environment they were living in. The condition of the garage where the animals were kept, feces throughout the house, and dead animals could be used as evidence to show the extent of the unsanitary living conditions. The proof used for the criminal abuse charge could also be used to prove animal cruelty.

The judgement of the trial court was affirmed.

 KeyCite Yellow Flag - Negative Treatment
On Reargument K.W. v. S.W., Del.Fam.Ct., July 16, 2019

2019 WL 2156400

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Family Court of Delaware.

RE: K.W.

v.

S.W.

K.W.

v.

S.W.

K.W.

v.

H.M.W. & S.W.

File No.: CN1 [REDACTED], File No.: CN1 [REDACTED]
|
May 13, 2019

Petition for Modification of Custody Order: B----- W-----
(D.O.B. 12/--/06)

Petition – Rule to Show Cause: B----- W----- (D.O.B.
12/--/06)

Petition for Modification of Third Party Visitation Order:
B----- W----- (D.O.B. 12/--/06)

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LETTER, DECISION AND ORDER

[REDACTED], Judge

*1 Dear [REDACTED] and [REDACTED]:

This is the Court's decision regarding the Petition for Modification of Custody filed by K---- W----- (“Mother”) on May 1, 2018 against S---- W----- (“Father”), the Petition – Rule to Show Cause filed by Mother on May 16, 2018 against Father, and the Petition for Modification of Third Party Visitation filed by Mother on May 2, 2018 against H---- W----- (“Paternal Grandmother”) and Father, all in the interest of the minor child, B----- W----- born December --, 2006 (“Child”). Mother is represented by [REDACTED], Esquire. Father is represented by [REDACTED], Esquire. Paternal Grandmother is self-represented.

Procedural History

In a Custody Stipulation issued by the Court on April 12, 2013, the parties received joint legal custody and shared residential placement of Child with Father having every Monday and Tuesday overnight, Mother having every Wednesday and Thursday overnight and the parties alternating weekends (Friday through Sunday). The parties also agreed to an alternating week contact schedule during Child's summer vacation periods from school. Relevant to this proceeding, the parties also agreed to a provision regarding alcohol consumption. It reads as follows:

6) Alcohol: Father shall not have any alcohol in his home; shall not consume alcohol 24 hours prior to any parenting time and/or during parenting time.

(a) Should Father or Mother be arrested for a DUI, visitation for that parent shall become supervised at the discretion of the other parent pending a modification of the Court Order.

On July 26, 2014, Father was arrested in Maryland for operating his vehicle with Child present while allegedly intoxicated. Father and Child were then taken into custody until Paternal Grandmother retrieved Child from the police station in the middle of the night. Although he was initially charged with eight offenses, he was ultimately only found guilty of Reckless Driving and Driving While Impaired by Alcohol. Following the incident, the parties began a prolonged dispute over the appropriate application of the above provision in paragraph 6(a) as to Father's contact with Child,¹ until the Court issued an Interim Visitation Order on July 7, 2015 that permitted Father to have supervised visitation at the Family Visitation Center one time per week for a period not to exceed 90 minutes.

Several months after Father's July 2014 arrest, Mother filed a Petition to Modify Custody on October 30, 2014 wherein she requested sole legal custody, primary residence and visitation for Father at times established by the agreement of the parties. On October 27, 2015, the Court issued a final Letter, Decision and Order on Mother's Petition, continuing the joint legal custody and shared residential placement arrangement set out in the April 2013 Custody Stipulation but "with conditions." First, Father was ordered for eight weeks to 1) only have unsupervised visits once a week for three hours and 2) be available for up to four random alcohol/drug screenings at Mother's request. After Father successfully completed that provisional period without any positive alcohol/drug tests, the parties resumed having shared residential placement, this time with Mother having every Monday and Tuesday overnight, Father having every Wednesday and Thursday overnight and the parties alternating weekends (Friday through Sunday).² Paragraph 6 of the Order also set out that:

*2 Father is required to continue attending Alcoholics Anonymous three (3) times a week, with documentation of each visit to be given to Mother's attorney every four (4) weeks until further order of the Court. Father is also required to prohibit alcohol in his home.

In support of the requirements that the Court placed on Father with regard to alcohol testing and Father's ongoing engagement with Alcoholics Anonymous, the Court provided a detailed recitation of Father's alcohol abuse and treatment history. The Court also noted that while Father admitted that he had abused alcohol in the past, he testified that he had not been under the influence while speaking to Child in the year prior to the hearing, that he did not let himself or friends drink around Child, that he did not have any alcohol in his home, and that he had not had a drink of alcohol since November 2014. Father's long-time housemate, H----- B----, also testified that there was no alcohol in the home and she had not seen Father consume an alcoholic beverage in a couple of years. Based on Father's and Ms. B----'s testimony, the Court found at that time that "Father does appear to have an [addiction to alcohol](#) that he is actively treating" and that "Father is attempting to remain alcohol free."

On December 2, 2016, Mother filed a Petition – Rule to Show ("RTSC") against Father wherein she alleged that "Father has relapsed and is consuming alcohol while [Child] is in his care" in violation of the Order of October 27, 2015. During a June 7, 2017 final hearing on that petition, Father stipulated, after hearing that Mother was prepared to

present testimony from a private investigator to support her allegations, that he was in contempt of the Court's requirement that he attend Alcoholics Anonymous meeting three times per week. Father's stipulation was memorialized in the Court's Contempt of Court Order of June 8, 2017.

In the current Petition to Modify Custody of May 1, 2018 that is before the Court, Mother requested a change from joint legal custody and shared residential placement to joint legal custody with final decision making to Mother, primary residency to Mother, and liberal visitation for Father. In the Petition – RTSC of May 16, 2018 at issue here Mother alleged, as part of a thirty-one-point Addendum, that Father was keeping alcohol in his home in violation of the Order of October 27, 2015.

Additionally, on October 20, 2015, the Court issued an Order granting Paternal Grandmother third party visitation with Child "every Wednesday from 5 PM to 8 PM with any extension of time to be agreed upon by [Mother] and [Father] on a case-by-case basis." At this time, Father was only having supervised contact with Child once a week at a visitation center for up to 90 minutes. Since then, Father's visitation schedule has returned to shared residential placement. On May 1, 2018, Mother filed a Petition to Modify and/or Terminate Third-Party Visitation and requested that Paternal Grandmother simply exercise visitation when Child is in Father's care.

*3 The Court held days one and two of the consolidated three-day hearing regarding Mother's Petition - RTSC and her Petitions to Modify Custody and Third Party Visitation on October 10 and October 11, 2018. Testimony on those dates was taken from: Mother's custodial evaluator, Dr. [REDACTED]; Mother; and Father's custodial evaluator, Dr. [REDACTED].³ Day three of the hearing was continued from November 26, 2018 to February 8, 2019 at Father's request. On that February date, testimony was taken from: Father's housemate, H----- B----; Father; Paternal Grandmother; Mother's paramour, M----- B----. At the conclusion of the hearing, Mother and Father both provided brief rebuttal testimony. The parties were present along with their counsel Mr. [REDACTED] and Ms. [REDACTED] for all three days. After hearing all the evidence, the Court conducted a separate interview with Child on February 18, 2019.

Background Facts

Mother and Father were married in February 2008, separated in May 2012, and divorced in December 2012. They have no other children in common or by other partners.

Mother splits time between two residences. On school days when Child is in her care, Mother and Child reside in Wilmington, DE in the home of Child's maternal grandparents, D---G----- (DOB 10/27/53) and D----- G----- (DOB 07/15/55) (hereinafter "Maternal Grandparents"). During the weekends when Child is in her care (and weekdays when Child is off from school and in Mother's care) as well as when Child is not in her care, Mother resides in Pottstown, PA in the three-bedroom home of her paramour, Mr. B----- (DOB 08/29/79). Mother is employed at [REDACTED] in Chadds Ford, PA. Her current work schedule is 9:00 AM to 5:30 PM on weekdays. But she testified that she could adjust her shift to 7:00 AM to 3:30 PM on weekdays in order to be home around the time Child gets back from school. Mr. B----- is employed with [REDACTED], a telecommunications company, and he works from home on most days. However, he sometimes has to travel up to two hours for meetings in the field.⁴ Mother and Mr. B----- have been together since about 2012 and are currently in a "committed relationship" according to Mr. B-----. Mother testified that she has been alternating between living with Maternal Grandparents and Mr. B----- for over five years.

Father continues to reside in the former marital home in Wilmington, DE which he has owned for about the last ten years. In addition to Child, Father's housemate Ms. B---- (DOB 12/24/90) and her five-year-old son T---- also live in the home.⁵ Ms. B---- has resided in the home since about 2014. Father is employed at [REDACTED] in West Chester, PA from 7:00 AM to 5:00 PM on weekdays. When Child is not in his care, Father sometimes also works on weekends.

Paternal Grandmother also lives in Wilmington, DE about five miles from Father's residence.

Rule to Show Cause

The purpose of a Petition RTSC seeking to hold someone in civil Contempt of Court is to enforce compliance with

the court's order. The standard for a Petition RTSC is well-established in this Court. "In order to find someone in civil contempt of the Court's Order the Court must first find by clear and convincing evidence that a violation of its Order has taken place."⁶ Specifically, the Court must find that 1) a valid mandate, judgment or order exists; 2) the alleged violator had the ability to abide by the valid mandate, judgment or order; and 3) the alleged violator disobeyed the valid mandate, judgment or order.⁷ The failure to obey the Court's Order must not be a mere technicality but must be done in a "meaningful way."⁸ Because the purpose of levying a civil contempt fine is to coerce compliance with a Court Order, subsequent compliance with the Order may purge the finding of civil contempt.⁹

*4 The only issue before the Court on the RTSC Petition is whether, since June 7, 2017, Father has violated the provision of the Court's Order of October 27, 2015 directing him "to prohibit alcohol in his home." The Court has so narrowed the temporal scope of the issue because on June 7, 2017 the Court had a final hearing scheduled on Mother's prior Petition – RTSC based on allegations that Father had been in violation of the alcohol-related provisions of the same Order between the issuance of the Order and the June 7th hearing date. However, the Court noted on the record that it would permit evidence of Father's alleged violation of this provision from any time after October 27, 2015 in considering the best interests of Child below under the pending Petition to Modify Custody. Additionally, as a preliminary matter, the Court wishes to establish the intended meaning of "in his home." It was not the intent of the Court in October 2015 to include Father's trailer in Cecil County, Maryland within this provision and neither of the parties testified that they understood differently, notwithstanding that previously Father was prohibited from consuming alcohol prior to contact with Child without regard to the location.¹⁰ However, it was the Court's intent to include the entire property of Father's Wilmington, DE home as part of "his home." Additionally, by testifying at this hearing that he believes his driveway is part of the "home,"¹¹ Father demonstrated to the Court that it was his general understanding that "in his home" covers all parts of his property including any vehicles on his property.

The Court finds that a valid mandate, judgment and order exists as the Court found in its October 2015 Order that Father was not to have alcohol "in his home." There is no dispute over the plain language of this provision as to the meaning of "home" or over the Court's intent that this provision covers

both his possession and consumption on his Wilmington, DE property and the possession and consumption by others such as Ms. B---- at Father's home.

The Court also finds that Father had the ability to abide by the valid mandate, judgment or order. There was no evidence that Father could not physically prohibit himself or others from possessing or consuming alcohol on his property.

Finally, the Court finds that there is substantial evidence that Father has disobeyed the valid mandate, judgment or order by failing to “prohibit alcohol in his home” between the dates of June 7, 2017 and February 8, 2019. Mother testified that she came in possession of Ms. B----'s phone in May 2018 after the phone had been temporarily loaned to Child and that she scanned the content on the phone to make sure there was nothing inappropriate for Child to access. In the process, Mother discovered a number of pictures and text messages between Ms. B---- and Father that Mother believes demonstrate that there was alcohol on Father's property in violation of the Court's Order.

In a picture dated July 23, 2017, Father is reclining on the couch in his living room with two open Guinness bottles next to his feet. Mother's Ex. #5.¹² On Saturday, June 17, 2017, Father and Ms. B---- exchanged text messages wherein Father wrote “wood [sic] like beer” to which Ms. B---- responded “[g]ot a bunch still in the garage. I think they don't sell beer here. I don't have any money for beer anyway. I just spent \$ 20 for 2 bottles of stuff.” Mother's Ex. #28. On or about Monday, July 17, 2017, Father and Ms. B---- exchanged text messages wherein Father wrote “I would like it if you cleaned up all beer cans and [s---] before [J---] comes over” to which Ms. B---- responded “I started to this morning. I'm gonna do the floors and stuff when I get home. I'm working til 3.” Mother's Ex. #29. On Thursday, August 10, 2017 (on one of Father's scheduled overnights with Child), Ms. B---- wrote a text message to Father that “I'll put beer in the fridge for you.” Mother's Ex. #30. On Thursday, August 31, 2017 (on one of Father's scheduled overnights with Child), Father and Ms. B---- exchanged text messages wherein Father wrote “[g]et my beer first” and Ms. B---- responded “[a]lready got it it's at the house. I put 5 or 6 in the fridge.” Mother's Ex. #31. On Sunday, September 17, 2017, Ms. B---- wrote a text message to Father that “[a]ll your beer is in the trunk of the car just got to work call me if your brother doesn't pick u up.” Then on Tuesday, September 19, 2017, Ms. B---- wrote a text message to Father that “I'm bringing home subs I made at work. There should be some cold beers in the fridge.” Mother's Ex. #32.

On Friday, October 27, 2017, Father wrote a text message to Ms. B---- that he “[p]ut beer in fridge.” Mother's Ex. #33.

*5 Despite the many text messages and the picture addressed above, Father testified that he has no knowledge of there being any alcohol in his home since 2015 because he understands that he would “get in trouble” if there was. However, Father testified that he typically consumes a six-pack of beer over the course of a weekend while socializing with friends at or around his trailer in Cecil County, Maryland. Ms. B---- testified that she and Father have consumed alcohol since October 2015 but just not “inside the home.” She also testified that they have not stored alcohol in the home since that time but she then testified that “occasionally [Father and Ms. B----] keep [alcohol] in the trunk of my car” without specifying where the car was parked at those times, and also that they keep alcohol at their friends' house for consumption when they go there. She further echoed Father's later testimony that he typically consumes two or three beers per day on Saturdays when they are at his trailer in Cecil County, MD but not in the presence of her son or Child.

Despite the denials of both Father and Ms. B---- that they consume alcohol on his Wilmington, DE property and their testimony that they possess alcohol in Ms. B----'s trunk (at an unknown location) or elsewhere, the Court finds the documentary evidence overcomes their testimonies to the point of being clear and convincing that Father has intentionally violated the Court's Order on multiple occasions. First, Mother's testimony that the July 23, 2017 picture was taken in Father's home is credible, and neither Father nor Ms. B---- presented testimony that the picture was taken somewhere else or on any date other than July 23, 2017. Furthermore, although some of the text messages are admittedly silent as to the specific location, several of them refer to the “house” or “home.” The context of messages indicates that they are referring to the fridge or garage at Father's Wilmington, DE property and not the trailer in Maryland or at a friend's home.

As a result, the Court finds Father in contempt of Court for failing to “prohibit alcohol in his home” pursuant to the Order of October 27, 2015. Mother requests an award of attorney's fees, random alcohol testing at Mother's selection, and a reversion to supervised visitation between Father and Child in the community if Father ever tests positive and until Father has demonstrated a prolonged period of sobriety. Mother also requests that she cover the initial cost of testing but that Father reimburse her the full cost if he tests positive

and for all subsequent testing during the supervised visitation provisional period. The relief requested by Mother will be granted.

Modification of Prior Custody and Third Party Visitation Orders

The custody Order in effect in this matter was issued by the Court on October 27, 2015. Mother did not file her Petition to Modify Custody Order until May 2018. Therefore, pursuant to 13 Del. C. § 729(c)(2), the Court may modify its prior order after considering the following:

- a. Whether any harm is likely to be caused to the child by a modification of its prior order, and, if so, whether that harm is likely to be outweighed by the advantages, if any, to the child of such a modification;
- b. The compliance of each parent with prior orders of the Court concerning custody and visitation and compliance with his or her duties and responsibilities under § 727 of this title including whether either parent has been subjected to sanctions by the Court under § 728(b) of this title since the prior order was entered; and
- c. The factors set forth in § 722 of this title.

A. Any Harm Likely to Child by Modification

As discussed in detail in the best interests analysis below, the potential “harm” to Child would be the necessity of changing schools between sixth and seventh grade as well as a loss of some time with Father during the school year. Although Child appears to have done very well adjusting to her new middle school and it can be assumed she would be resilient and adjust to another school change, to do so would be speculative. This potential harm is outweighed by the benefit to the child of the stability of living in one home during the school week with one established routine.

B. History of Compliance of Parents with Court Orders

*6 As noted above, Father has twice been found in violation of the alcohol provisions in the Court's Order of October 27, 2015. First, in June 2017, the Court issued an Order noting that he had failed to attend Alcoholics Anonymous meetings three times per week as directed. Second, in the present Order, Father has failed to prohibit alcohol in his home as directed. Recognizing Father's history of alcohol abuse, his

current continuing alcohol usage runs contrary to the spirit of the April 12, 2013 stipulated Order, although no violation currently exists because that Order was replaced by the one of October 27, 2015.

C. Best Interest Factors

Pursuant to 13 Del. C. § 2413, regardless of when the Court last issued an Order on third party visitation, the Court may modify a prior third party visitation order “at any time if the best interests of any child subject to the order would be served by modification.” Therefore, in examining the below factors, the Court will consider the best interests of Child with regard to both the Petition to Modify Custody and Petition to Modify Third Party Visitation. The Court has held that some best interest factors may be given more weight than others in the Court's analysis.¹³

(1) The wishes of the child's parent or parents as to her custody and residential arrangements;

As to custody, Mother is seeking joint legal custody with final decision making, primary residency, and permission to relocate with Child to Pottstown, PA. As to Father having visitation during the school year, Mother is seeking every other weekend from Friday after school to Sunday night, with the possibility of a weeknight dinner visit (if it can be arranged so as not to interfere with Child's schoolwork), and shared winter and spring recesses. During the summer, Mother is seeking shared placement on an alternating week schedule and a two-week vacation option for Father. Mother is also requesting that in light of Father's history of alcohol abuse and violation of past provisions regarding alcohol use, that Father be prohibited from drinking alcohol 48 hours prior to any visitation period and during any visitation period with Child. In further support of her requests, Mother believes that Child's performance in school would improve if she had a consistent home during the school week, and that Father's and Mother's struggles in communicating about medical decisions would be alleviated by giving her final decision making authority.

If Child is permitted to relocate with Mother to Pottstown, Mother suggested that Father pick-up Child from Pennsylvania after he gets off work at the start of his weekends and that Mother pick-up Child from Delaware from Father's home on Sundays. Mother also testified that she would encourage regular phone contact between Child and Father, and that she would be open to granting Father extended weekends if Child has a Monday or Friday off from school during one of Father's weekends.

As to third-party visitation, Mother is seeking to terminate Paternal Grandmother's weekly Wednesday night visits from 5:00 to 8:00 PM because Paternal Grandmother is now able to visit with Child throughout Child's residential periods with Father and because Mother welcomes Paternal Grandmother contacting her directly to arrange additional visitation on a case by case basis. Mother further testified that if Father's contact with Child is again restricted going forward due to alcohol use that Mother and Paternal Grandmother can work out a contact schedule between themselves without the need for a Court Order, including the possibility of Mother transporting Child to see Paternal Grandmother for these visits.¹⁴

*7 Father is seeking a continuation of the current arrangement of joint custody and shared residential placement because he believes it provides Child with "the best of both worlds." However, Father requests that the Court require Mother and Father to communicate through a neutral third-party like a parent coordinator rather than directly with each other. Father also supports Paternal Grandmother having continued Court-ordered visitation with Child, independent of his own time with Child.

Therefore, due to Mother's and Father's disagreement over legal custody, primary residency, and third-party visitation, the Court finds this factor to be neutral as to both the Petition to Modify Custody and the Petition to Modify Third-Party Visitation.

(2) The wishes of the child as to her custodian(s) and residential arrangements;

The Court spoke with Child, 12 years old, in private about one week after the conclusion of day three of the consolidated hearing. Child stated that she does not think she would change the shared residential schedule at this point even if she could because she likes it at each place that she resides. However, immediately thereafter she recognized that she did not know whether she would benefit from having the schedule change. Child also stated the following about whether she wants to relocate to Pottstown:

"I know when my mom first told me – I did want to. But I don't because of how many – like – I don't know – like – this is where my whole life is down here."

She provided an additional reason for why she does not want to relocate now as because she and a current friend have already decided they are going to attend the same college and

be "dorm room sisters." Whereas Dr. [REDACTED] testified that he believes that Child is not trying to take a position on whether she wants to move or not in order to avoid hurting anyone's feelings and because she feels she is getting pressure from Father to stay in Wilmington, Dr. Finkelstein testified that he believes that Child does not want to relocate. Although the Court also received an undated letter purportedly written by Child as an admitted exhibit during the consolidated hearings and counsel committed considerable testimony to the letter, the Court declines to give any weight to the opinions reflected in the letter at least in part because the Court always prefers to hear directly from the children when they are of similar age as Child and because two custodial evaluators also testified based on their interviews with Child. Therefore, Child's express preference slightly favors denying Mother's request to modify the custodial arrangement. This factor is inapplicable as to Mother's request to modify the third party visitation arrangement because the Court found it unnecessary to broach that topic with Child.

(3) The interaction and interrelationship of the child with her parents, grandparents, siblings, person cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or person who may significantly affect the child's best interests;

Child's Relationship with Mother

Mother and Child appear to have a typical mother-teen daughter relationship. On the one hand, Child talked about how they go horseback riding and shopping together. On the other hand, Child called Mother "more strict" than Father, and child noted that sometimes she and Mother "get mad" at each other when Mother is trying to help Child with her homework. For her part, Mother testified that she and Child are "very close" and that they have a lot of shared interests, such as horseback riding, walking dogs in the park, going to movies and getting manicures. Mother also described the typical weekday and weekend routines. On weekdays, Mother helps Child with her homework, they have dinner together and then they might play a game or watch a movie before Child gets ready for bed. On weekends together, they do chores in addition to the aforementioned activities. Mr. B---- added that he believes Mother and Child have a "very strong loving relationship."

Child's Relationship with Father

*8 Although Child gave the Court no indication that she has a negative relationship with Father, the parties disagreed

over the quality of that relationship and the extent to which Father and Child interact. Child noted that she likes to go fishing with Father and go to his “beach house” in Maryland together, and that she finds that it is easier for her to talk to Father than Mother. On weekdays, she noted that after Father gets home from work and he is finished exercising, he will sometimes help her with her homework and they will sometimes watch television together. Father described himself as Child’s “caring” and “loving” protector, and testified he would be “completely heart-broken” if his contact with Child was reduced to every other weekend during the school year. Like Child, Father also highlighted fishing and going to the beach as their favorite activities together. In contrast, Mother’s testimony focused on her perception, informed by what Child has told her, that Father only has “minimal” contact with Child on weeknights and that he spends “much less” quality time with Child than Mother does. For example, Mother said that Child often talks about spending time with her friends or T---- or being in her room alone when she is in Father’s care. Dr. [REDACTED] also shared Mother’s concern about the limited time Father sets aside on weeknights to spend with Child between when he gets home from work and when Child goes to bed.

Finally, although these are only isolated incidents, Mother’s concern about Father not giving Child sufficient attention is supported by several of the text messages that Father and Ms. B---- have exchanged since the issuance of the Court’s October 2015 Order. For example, in January, February and March 2016, Father exchanged several messages with Ms. B---- that suggest that he at times has made a habit of stealing away to drink alcohol alone and forsake spending quality time with Child. Mother’s Ex. #12, 15 and 16.¹⁵

Child’s Relationship with Mr. B-----

According to Mr. B-----, he and Child first met in 2012 and Child has been spending regular weekends with him since 2015. Both Mother and Mr. B----- feel that the relationship is strong. Mother went so far as to call them “two peas in a pod” and noted that sometimes Child and Mr. B----- even go on various outings without Mother. Mr. B----- testified that he believes that Child enjoys spending time in his home and that together they enjoy such activities as hitting golf balls, and going out for ice cream. Child also stated that she likes spending time with Mr. B----- such as working on building a barn for her toy Breyer horses.

Child’s Relationship with Maternal Grandparents

Although neither Maternal Grandmother nor Maternal Grandfather were called to testify, Mother reported that she believes that Child and Maternal Grandparents have a “very close” relationship. Maternal Grandparents take Child out to dinner, go shopping with her or to the movies, and help her with her homework, among others. Mother reported that Child has no other maternal relatives because Mother is an only child.

Child’s Relationship with Ms. B---- and her son T----

Child referred to Ms. B---- and T---- as “nice” and mentioned that Ms. B---- sometimes helps Child with her math homework. Ms. B---- added that she feels like T---- and Child have a “sibling relationship,” due to the number of years they have lived together, such that they will sometimes play together around the house or outside despite the large age gap that separates them. Father echoed Ms. B----’s sentiment of the relationship the children share, and described Ms. B---- being a cross between a “big sister” and “another mom” for Child. For example, Ms. B---- cares for Child by picking her up from school at times, helping Child with her homework, making dinner and caring for Child when she is sick. Child and T---- are currently involved in a gymnastics program together in Claymont, DE. Mother and Dr. [REDACTED] both testified that they believe that Ms. B---- assumes a large share of the parenting role as to Child when Child is in Father’s care, whether it be cooking meals for the household or being Child’s primary help with her homework.

Child’s Relationship with Paternal Grandmother and other Paternal Relatives

*9 Child testified that she sees Paternal Grandmother almost every day after school when she is in Father’s care because Paternal Grandmother will often be the one to transport Child to Father’s home and then stay to help Child with her homework. Father described Paternal Grandmother’s relationship with Child as “very strong” and confirmed that Paternal Grandmother sees Child almost every time that Child is in Father’s care.

Paternal Grandmother was initially Child’s primary caregiver when Child was pre-school age and her parents both worked. The relationship has appeared to stay close since then, such that Paternal Grandmother testified that she feels closer to Child than her other three grandchildren who also live nearby. For example, Paternal Grandmother believes that Child can talk to her about topics that Child does not ask other people. Paternal Grandmother admitted that she is seeing Child more

than for the Court-ordered three hours every Wednesday night but also testified that she wants her visitation schedule in Wilmington to stay in place because her night driving ability is limited and would restrict her from going back and forth to see Child in Pottstown on weekday evenings after school.

Father also testified that Child is similar in age with her three paternal cousins, some or all of whom ride the same bus as Child and go to the same school as Child. Paternal Grandmother added that it would be a “heartbreak” to her cousins if Child moved to Pottstown.

Although the Court is concerned about allegations that Father does not engage much with Child on weeknights, this is insufficient alone under this factor to support Mother's request to relocate to Pottstown, PA and become Child's primary caregiver. Child has a very close-knit family network here in Delaware on both her paternal and maternal side. Moving to Pottstown will significantly reduce her contact especially with her cousins and Paternal Grandmother. Dr. Finkelstein also testified generally under this factor that he believes Child reaps a great benefit from having her extended family on both sides in close proximity in Wilmington and that she looks forward to visits in each respective home. Therefore, this factor supports maintaining the existing custodial and residential arrangement between Mother and Father. However, because Father and Paternal Grandmother both agree that Paternal Grandmother is already seeing Child very frequently when Child is in Father's care which effectively renders the fixed schedule in the existing third party visitation Order moot, this factor supports granting Mother's request to modify the Order.

(4) The child's adjustment to her home, school and community;

Child is nearing the conclusion of her sixth grade year at ██████ Middle School in Wilmington, DE. Previously, she attended ██████ Elementary School, in Claymont, DE. Child stated that she likes her current school not because she likes school but primarily because she has met “so many friends” and because her cousins also attend Springer. However, she did admit that she feels good about being on honor roll. Child also enjoyed participating in the drama club and being in the cast of a spring musical at school. During the course of the school year, Child has met her new best friend, who also attends ██████ but previously attended a different elementary school from Child.

Although Child acknowledged that she has friends in Pennsylvania (including the children of the woman who owns the barn where her horse is kept), she feels that she has “way more” friends in Delaware because this is where she has primarily lived her “whole life.” Child also expressed concern that she is not certain if any of her Pennsylvania friends would go to the same school and/or be in the same grade as her. As a result, Child stated typical feelings for a child her age that she “would feel really lonely” if she had to change schools next year because she might not know anyone at her new school.

***10** Mother testified that if Child relocated with Mother to Pottstown that Child would attend seventh grade at Owen J. Roberts Middle School which Mother feels is a better funded school than ██████.¹⁶ Mother also feels that Child will transition well because she has friends in the Pottstown district, if not in her grade or school. Mother also testified that if she is not able to be home when Child gets home from school, that Mr. B----- or some of Mother's friends can help supervise Child or assist her with her homework until Mother arrives.

In support of her belief that Child's academic performance will improve if she resides fully with Mother during the school week, Mother provided lengthy testimony about Child's school performance year-by-year from second grade to present. For example, Mother testified that Child's decline in her progress reports to “Needs Improvement” began during third grade when Father resumed having shared residential placement with Child and maintained at that level through fourth and fifth grade. Mother's Ex. #4. For example, in fifth grade, she was primarily at “Needs Improvement” or “Below Standard” in both Language Arts and Math. Furthermore, Child did not meet the standard for being promoted to sixth grade but was not held back so as not to discourage her. Mother partially blamed Child's results on what Mother believes to be Father's lack of involvement in Child's homework and/or supervision to make sure it gets done. As an example, Mother cited to a March 2018 email wherein she and Father argued about whether Child had an opportunity to redo an assignment in order to secure a higher grade. Mother's Ex. #39.

However, Mother's concern about the alternating weekday schedule and its impact on Child's school performance does not account for Child's positive marks in sixth grade. Child received all A's and B's in her academic courses during the first two marking periods. Mother attributed Child's success to the fact that Child has had an Individualized Education Plan

(“IEP”) in place for ADHD for the entire sixth grade year, whereas it was newly in place toward the end of Child's fifth grade year, and because Child gets to switch between classes every 90 minutes this year.

Mother also believes that Child's transition to Pottstown will be smooth because Child's horse is there and she will be able to see her horse on weekdays and not just every other weekend. Child also spent Mondays and Tuesdays during the summer of 2018 there in addition to every other weekend, and she was able to develop stronger friendships with children in the area. Furthermore, Mother has no plans to change Child's medical providers if Child is allowed to relocate. Dr. [REDACTED] also relied on these facts, and that Mr. B----- can be home to help with Child's homework before Mother gets off work, to support his conclusion that Child would do fine adjusting to life in Pottstown.

Dr. [REDACTED] added under this factor that he believes Child will adjust well to living in Pottstown because Mr. B-----'s home is the least cluttered of the three homes and a child with distractibility issues arising from ADHD benefits from living in an organized environment. Additionally, of the three homes, Dr. [REDACTED] testified that he believes that Father's home is the “least suitable” of the three to meet Child's emotional and academic needs. Dr. [REDACTED] acknowledged that Father's house was cluttered but did not consider that as a factor that influenced his overall decision. Instead, Dr. [REDACTED] considered that Mother has more support in place for caring for Child in Wilmington than in Pottstown and he also questioned how much help Mr. B----- could actually be to Mother on weekdays because he reportedly works long hours, albeit from home.

*11 In contrast to Mother's belief that Child would adjust well to a move to Pottstown, Father expressed concern that Child's paternal relatives all live here as well as Child's maternal grandparents, and that Child's primary residence has always been North Wilmington. Father echoed Child's sentiments that it would be hard for Child to move because she has made friends at [REDACTED] Middle School, her cousins are there, and she is happy there.

Dr. [REDACTED] and Dr. [REDACTED] also disagreed over whether Child could adjust to having one weekday overnight per week with Father such that he could maintain his involvement in Child's school if Child moved. Dr. [REDACTED] felt that the logistical burden of getting Child to and from school would be too much for a child who

has historically struggled in her academic performance. On the other hand, Dr. [REDACTED] focused his testimony on the negative impact it would have on Child's relationship with Father if Father no longer had any weekday involvement in her school.

Therefore, based on this evidence, the Court believes that Child is doing well academically and relationally at her current school. However, the Court cannot conclude one way or the other that she would do just as well at Owen J. Roberts Middle School. Child has been moving between three different homes for the last several years. Permitting her to relocate with Mother to Pottstown will provide her with the residential stability during the school week that she has long been lacking. This residential stability combined with the facts that she has a positive relationship with Mr. B-----, a housing environment in Pottstown conducive for her success, and established friends and her horse in the Pottstown area all serve to balance out the positive aspects of keeping Child in her current school and in closer proximity to her extended family in Delaware. As a result, the Court finds that this factor is neutral as to the custodial and residential arrangement, and is neutral as to Mother's request to modify the third party visitation order.

(5) The mental and physical health of all individuals involved;

There was no evidence presented to suggest that Mother has significant issues with either her physical or mental health. Likewise, Paternal Grandmother testified that she does not drink, smoke, or “do pot” and that she lives “a pretty clean life.”

As to Child, Mother testified that she has been diagnosed with both [epilepsy](#) and ADHD. Child has medication prescribed to address both diagnoses. She began taking medication for [epilepsy](#) in 2011 or 2012. Although she was prescribed medication for ADHD in March 2018, she has not started that medication due to a disagreement between Mother and Father that will be addressed in detail under factor six (6) below.

In addition to raising her concerns about Child's health under this factor, Mother devoted considerable testimony to allegations that Father continues to consume alcohol in his home in violation of the Court's Order. The Court will not repeat the testimony above related to allegations of Father's use since June 2017. However, the Court will address Mother's allegations of instances that occurred between October 2015 and June 2017. Whether Father deceived the

Court or not when he led the Court to believe in October 2015 that he was “attempting to remain alcohol free” remains unclear. However, what is undeniable is that since that time Father has not attempted to remain alcohol free but rather attempted to keep his alcohol consumption free of detection from Mother, Child and this Court. Both before and after June 2017, picture and text evidence reveal that Father continues to drink in his home both at times when Child is in his care and at other times. When Child is in his care, Father appears to store his beer in his basement, garage or in a trunk of a car and then consume the beer in the basement or some other place outside of Child's view. The text messages also indicate that Ms. B---- has been actively assisting Father in hiding his alcohol consumption primarily from Child, but also from Mother and the Court. It is also undisputed that Father regularly drinks alcohol during the times that he is staying at his trailer in Cecil County, Maryland, without regard to whether Child is in his care.

*12 The Court will not refer to each and every one of the voluminous text messages and pictures that Mother placed into evidence on this issue. However, the following will focus on some messages that are representative of the whole that have lead the Court to conclude as it does. On November 9, 2015, Father texted Ms. B---- that he is averse to submitting to blood alcohol tests because “they can tell up to a year with people that drink like me” to which Ms. B---- indicated that she would support Father in trying to avoid getting blood alcohol tests in whatever way she could. Mother's Ex. #8. On Thursday, December 31, 2015, when Child was in Father's care, Father texted Ms. B---- that she “should sneak that hard stuff into the basement just go out with a bag and teller [sic] her that your [sic] checking the cars.” Mother's Ex. #10.¹⁷ On Thursday, January 14, 2016, when Child was in Father's care, Ms. B---- texted Father, “[w]hile I'm upstairs reading with her can u go out to the garage and get me like 2-3 shots.” Mother's Ex. #11. On Thursday, February 18, 2016, Father texted Ms. B---- the following “I am going to have one or two ok” to which she responded “that's fine she is reading him books.” On Wednesday, March 2, 2016, when Child was in Father's care, Father texted Ms. B---- that he was “[d]own in basement drinking” and then asked “Is B----- hear [sic]?” Ms. B---- responded “[n]o lol. Just me and T----.” Mother's Ex. #16. On March 12, 2016, Ms. B---- and Father had the following text exchange:

Ms. B----: Beer and what else?

Father: I don't know smokes.

Ms. B----: Fireball?¹⁸

Father: Shure [sic].

Ms. B----: K. That stuff is still in my trunk so leave room in the driveway ill [sic] bring it in when I get home. Mother's Ex. #17. On May 9, 2016, Ms. B---- wrote to Father “[h]urry uppp [sic] I wanna go to Maryland!!!! I also would like to show you the 6pack of Guinness in the fridge. [three emojis] lol.” Mother's Ex. #20. On Thursday, June 30, 2016 at 3:31 pm, when Child was to be in Father's overnight care, Ms. B---- and Father had the following text exchange, presumably before Ms. B---- went to pick up Child:

Ms. B----: Your beer is still in my trunk.

Father: Get it out make it cold.

Ms. B----: Uh sure I guess. Heading to your moms make sure you take the beer [sic] out of the fridge in the house before we get home. Mother's Ex. #20. On September 21, 2016, Ms. B---- wrote the following two messages to Father over the span of three hours. First she wrote, “I'm gonna go home [...] and clean up the alcohol so when B----- gets home tonight it's not there in sight for her to see. I'll put it in the basement for you.” Then, she wrote, “I moved all the alcohol out of the fridge to downstairs above the washer.” Mother's Ex. #25. Lastly, on December 6, 2016, Ms. B---- wrote the following two messages to Father over the span of two hours. First she wrote, “[a]lso gonna get all the beer out of the house today to [sic].” Then she wrote that she “got the beer in the cooler loaded up in Erin's car she is gonna take it and keep it there for us.” Mother's Ex. #27.

Despite overwhelming documentary evidence to the contrary, Father still maintained the position that he has no knowledge of there being any alcohol in his home since 2015. While Father was not specifically cross examined on how he could reconcile that position with the express language in the text messages, rather than counter Mother's testimony as to whether he has had alcohol in his home in violation of the Order of October 2015, Father sought to deflect focus on this issue by testifying at length about his participation in Alcoholics Anonymous (“AA”) meetings in apparent compliance with the Order and overlooking the Court's prior finding of Contempt of Court for his lying about this issue. For example, he said that overall he is attending the amount of meetings he is supposed to attend per month but the number of meetings he attends per week might vary if he is sick

or has other commitments.¹⁹ Father further admitted that he has reaped some benefit from attending but also that he “would feel better if [he] could go because [he] wanted to go” suggesting that he is going at his current frequency only because he is under a Court obligation to so attend and not because he feels that needs to participate. Father concluded his testimony under this factor by stating that he is trying to not let the potential stress of dealing with this custody matter (and the corresponding strain it has on his finances) negatively impact him and that “I really don't think that as much as the alcohol would be a problem I feel like the stress issue would be more of a problem than alcohol.” Clearly, Father fails to accept his dependence on alcohol as having any negative impact on his relationship with his daughter, or posing any risk to himself or others.

*13 Dr. ██████ expressed concern for both Father's ongoing alcohol use and his anger issues. For example, Dr. ██████ concluded, in part based on the way Father has responded to the prior contempt finding for his failure to attend AA meetings at the required regularity, that Father is not taking his issue with alcohol seriously. Although Dr. ██████ made clear that he was not certain that Father is an alcoholic, Dr. ██████ also found the fact that Father did not self-identify as an alcoholic to be “stunning” based on Father's history. Dr. ██████ also testified that Child described Father as being unresponsive to her and in a stupor when he drinks beer on the weekends. According to Dr. ██████, father admitted to him that he has a problem controlling his anger which sometimes leads to outbursts but also that he was not seeking any anger management counseling. In response, Dr. ██████ testified that it is not beneficial for Child's mental health and overall well-being to be exposed to Father's outbursts such as occurred over Easter weekend in March 2016 when Father blew up at Mother over the phone and Child could be heard in the background. Also noting Father's issues with anger and drinking alcohol around Child, Dr. ██████ testified that Father would benefit from long-term counseling to work through both issues.

Based on this evidence, the Court finds that, after all his time attending AA meetings, Father does not appear to believe that he has an issue with alcohol abuse that would necessitate his attendance at AA meetings nor that these would be any benefit to his curtailing alcohol consumption. Therefore, the Court can no longer conclude that Father is “actively treating” his alcohol addiction as it found in October 2015. Rather, Father is largely only going through the motions of “treating” his alcohol use without really having his heart in it. The

Court further finds it illuminating that Father feels that the threat of encroaching stress is a bigger issue in his life right now than his alcohol consumption. The Court also finds that Father is no longer attempting to “remain alcohol free” as it found in October 2015. Rather, Father and Ms. B---- are actively trying to both keep the alcohol consumption free from detection and find ways to get around the Court's Order. Although Child is now twelve years old, if Father continues to consume alcohol, the specter of his 2014 DUI while Child was in the car remains. For that reason and because the Court is troubled by Father's blatant disregard for the governing Order, the Court finds that this factor strongly favors giving Mother primary residency with Child and reducing the amount of time that Child is in Father's care. As to Paternal Grandmother's visitation, this factor supports her ongoing contact with Child whether by a set schedule or by the agreement of the parties.

(6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title;

Pursuant to 13 Del. C. § 701, even without a Court Order, parents are responsible for the support, care, nurture, welfare, and education of their children. At the time of the issuance of the Court's October 2015 Order, Father was under an obligation to pay Mother \$ 262 per month in child support. However, due to a change of financial circumstances of the parties, since October 23, 2018, Mother has been under a Permanent Modification Support Order whereby she is to pay Father \$ 170 per month. There was no evidence to suggest that Mother is in arrears as to this Order. However, Mother testified that she is concerned, after reviewing Father's bank statements, that he is spending \$ 280 per month on average at liquor stores and other establishments where he can purchase alcohol, all while maintaining at times that he has insufficient funds to contribute to Child's extracurricular activities and medical bills. For example, in November 2016 and again in October 2017, Father responded to Mother's requests that he pay \$ 75 for dance recital costumes, because she was paying for the monthly lessons, by writing that he did not have “sufficient funds” and he did not have “any extra money.” Mother's Ex. #36 and 37.

As to their relative involvement in Child's school, Mother testified that Father has not been as involved in such things as Child's 504 plan and IEP as Mother has, but she also did not testify that he has ever opposed any plans in place to assist Child in school due to her ADHD. Instead, she admitted that Father has wanted to see how Child would do in school with the IEP in place before making a decision on whether Child

should start receiving prescribed medication to address her ADHD.

***14** As to their relative involvement in Child's issues related to her epilepsy and ADHD, Mother testified that Father does not attend all of Child's medical appointments but he maintains a high level of involvement in the decision making related to Child's care as seen by various email strings that were admitted into evidence. For example, contrary to the advice of Child's doctor, Father is still resistant to Child taking medication for ADHD because, according to Mother, he is concerned that doctors are sometimes too quick to prescribe medication and that he is sensitive to starting Child on such medication in light of the current opioid epidemic. As a result, although Child's doctor continues to recommend Child begin medication and Mother supports that recommendation, Child is not taking any prescription medication to address her ADHD.

Furthermore, at the time of Mother's October 2018 testimony, she stated that Father was in support of Child getting braces based on the recommendation of an orthodontist but that he did not want to have to pay 50% of the out of pocket medical expenses pursuant to the child support order that governed at that time because the costs were prohibitive for him. Mother's Ex. #43. Mother disputed Father's position based on her examination of his bank statements from the middle of 2018. At present, the parties are now under a child support order whereby Father is only responsible for 41% of the out of pocket medical expenses. So it is possible that this issue of how to pay for the braces is now moot.

Finally, Mother and Father have historically disagreed over whether Child should begin receiving counseling. Mother testified that medical professionals recommended that Child begin counseling in July 2016, a recommendation which Mother supported and still supports. Mother's Ex. #44. However, Father opposed letting Child begin counseling until he relented in the fall of 2018.

Providing his overall assessment of the parents' compliance with their rights and responsibilities, Dr. [REDACTED] testified that he believes Mother has done the "heavy lifting" as to the day-to-day responsibilities of monitoring Child's academic progress and overseeing her medical appointments, whereas Father has focused his attention on simply providing a roof over Child's head. Furthermore, Dr. [REDACTED] believes that Father has delegated some parenting responsibilities such as monitoring Child's

homework and generally caring for Child on weekday evening to Ms. B----. Dr. [REDACTED] also disagrees with Father's attitude toward medicating Child that if he turned out okay without medicating his ADHD that therefore Child would not benefit from medication to address her ADHD. On the other hand, Dr. [REDACTED] also supported some interventions for Child such as counseling, but attributed Father's opposition not as his failure under this factor but rather as an indication of the very poor and antagonistic communication environment that Mother and Father have created between themselves.

Therefore, the parties clearly disagree about what treatment Child should receive and whether they can afford to provide Child with the treatment that they agree Child should receive. Although the Court understands that Mother is frustrated, the Court also believes that Father's opposition to some of the services seems reasonable and thought through. That said, as previously stated, the Court has real concerns about Father's consumption of alcohol and is troubled by the fact that he might be spending almost \$ 300 per month on it rather than prioritizing his responsibility to care for Child. The Court also agrees with Dr. [REDACTED] that Mother appears to be assuming the leading role in making sure Child's academic and medical needs are met. As to the matter of custody modification, this factor favors granting Mother's petition. This factor is inapplicable as to Paternal Grandmother's visitation schedule.

(7) Evidence of domestic violence as provided for in Chapter 7A of this title; and

***15** Pursuant to 13 Del. C. § 706A, "(a)ny evidence of a past or present act of domestic violence, whether or not committed in the presence of the child, is a relevant factor that must be considered by the court in determining the legal custody and residential arrangements in accordance with the best interests of the child." Mother stated that there have been no incidents of domestic violence between either Mother and Father or Mother and Mr. B----- since October 2015. Father did not testify as to this issue. Therefore, the Court finds this factor to be neutral as to legal custody and residential placement and inapplicable as to Paternal Grandmother's visitation schedule.

(8) The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.

The Court has independently reviewed all the parties' Delaware criminal histories as well as that of Mr. B----, Ms. B---- and Maternal Grandparents. The Court was not able to locate either Mr. B---- or Ms. B---- in the DELJIS online system. Furthermore, Mother and Maternal Grandparents have no criminal records in Delaware other than for speeding tickets. In addition to the convictions in Maryland from 2014 that were a focus of the Court's prior decision on custody in 2015, Father also has an underage possession/consumption of alcohol charge terminated in his favor from 2005 when he was 20 years old. Therefore, the Court finds this factor neutral as to legal custody and residential placement as well as to Paternal Grandmother's visitation.

Other considerations

In addition to the above express factors listed under 13 Del. C. § 722, the Court may consider other relevant factors in determining the legal custody and residential arrangements for Child. As a result, the Court also notes that Mother and Father have demonstrated a very poor communication record since the issuance of the governing Order of October 2015. First, in an undated card from Father to Mother after Father was sanctioned with the cost of Mother's attorney's fees in 2017, Father wrote a very sarcastic note to Mother. Mother's Ex. #2. Dr. ██████ found it to be significant that Father not only had ill feelings about the sanctions but that he took the initiative to purchase a card, write the note to Mother and then actually send it. Second, Mother and Father have a demonstrated ability to send long and argumentative emails about Child's school and medical care that easily devolve into personal attacks lobbed by one or both parties. Mother's Ex. #38 and 39. Third, as discussed under factor six (6), they also apparently find it very difficult to agree on important matters regarding Child's medical care. Fourth, they have a demonstrated inflexibility to permit the other party to have additional time with Child outside the set visitation schedule. For example, Mother testified that Father has historically not let her take Child to dance lessons or help Child get ready for a dance recital if either occurs on Father's time. Mother also refused to let Father see Child on his birthday in 2016 which led Father to respond that he would not let Child see Mother on her birthday. Mother's Ex. #41. Fifth, the parties find it necessary to amplify the significance of relatively minor matters such as evidenced by their decision to litigate the issue of Child getting acrylic nails without Mother's permission. Finally, and chief among the Court's concern under this analysis of their communication history, the expletive-laden monologue that Father launched into during a phone call with Mother

over Easter weekend in March 2016 is especially troubling because Mother said she initially made the call in order to simply talk to Child which suggests that Child may have been within earshot during the call. If the above examples are indicative of the overall health of their co-parenting efforts, then the Court has a real concern that Mother and Father cannot effectively share custodial responsibility of Child without the assistance of a neutral third-party parent coordinator. Whereas Dr. ██████ testified that he believes Mother and Father would benefit from a non-relative neutral parent coordinator to defuse any disagreements before they escalate and that Father would respond more positively to receiving communication about Child from someone other than Mother, Dr. ██████ testified that he does not believe such an arrangement would work. He thinks that not only could they not likely agree on selecting a parent coordinator but they would fire the coordinator if they disagreed with the coordinator's decision on an issue. As a result, Dr. ██████ believes that giving Mother final decision making is the better remedy to this ongoing conflict than appointing a neutral decision maker.

*16 Finally, the Court summarizes the recommendations of Dr. ██████ and Dr. ██████ as to how to resolve this matter. Dr. ██████ believes Mother should be permitted to relocate to Pottstown, PA with Child and receive primary residency, and Father should have every other weekend visitation from Friday to Sunday during the school year and a majority of the residential time with Child during the summer. Dr. ██████ also believes that the parties should have joint legal custody with Mother receiving final decision making on medical and academic decisions, all while encouraging the parties to make good faith efforts to reach agreements between them. In support of his recommendations, Dr. ██████ stated that he believes Mother provides Child with the structure that she needs and better oversight. He further testified that he does not believe that Child's relationship with Father will suffer if she moves because she has a healthy, established attachment. Dr. ██████ believes that it would be best for Child if her parents maintained joint legal custody and Mother did not move. However, if Mother does relocate to Pottstown, PA then he supports Mother having primary residency during the school year, and Father having every other weekend from Friday to Sunday plus every Thursday overnight to encourage Father to remain involved in Child's weekday school routine. In support of his recommendations, Dr. ██████ acknowledged Mother's central role in monitoring Child's academic progress but also that it is important

that Child not feel that Mother is taking her away from Father and that Child continue to have easy access to her relatives in Delaware. Additionally, Dr. [REDACTED] believes that keeping Father involved in Child's school week will help to make Father more aware and agreeable to decisions about Child's education. Dr. [REDACTED] also recommended a parent coordinator, counseling for Child if she moves to Pennsylvania, counseling for Father to address his alcohol use and relations with Mother, continued attendance by Father at AA meetings but not alcohol testing, and that Mother shoulder a larger portion of the transportation burden related to exchanges between Father and Mother.

Conclusion

Based on the evidence presented, the Court will grant the parties joint legal custody with Mother receiving primary residence and final decision making on educational and medical matters for a number of reasons. First, the benefit of this custodial change outweighs the potential harm. Second, Father has twice been found in contempt of the prior custodial Orders of the Court. Third, this custodial change is in the best interest of Child at this time. In support of final decision making to Mother, the Court gives the most weight to factors five (5) and six (6) of 13 Del. C. § 722 and the clear difficulty the parties have in reaching an agreement on anything with regard to Child. Mother has assumed the leading role in making sure Child's academic and medical needs are met. Furthermore, the Court has significant concerns about Father's poor decision making history. He has chosen to lie in the past about how often he has attended AA meetings only to be uncovered by a private investigator. He has also chosen to lie about his consumption and storage of alcohol in his home only to be uncovered by a large volume of text messages. Finally, he has chosen to engage his housemate, Ms. B----, in fostering his subterfuge. In support of primary residence to Mother, the Court gives the most weight to factor five (5). The Court has serious concerns about Father's ongoing consumption of alcohol in his home in blatant violation of the governing Order in this case and Father's failure to recognize the impact it is having on Child. Aside from factor five, which is clearly in Mother's favor, the rest of the factors largely balance themselves out. Although the Court will continue to impose various other restrictions on Father with regard to his alcohol consumption, the Court finds it pointless to continue to require Father to attend AA meetings. Despite previously being found in Contempt of Court regarding his failure to attend sufficient AA meetings and the length of

time with which Father has been attending the meetings, Father maintains the belief that attending the meetings is of little value to him. Therefore, the Court believes that the AA meetings will only become valuable for Father when he chooses to admit his dependence on alcohol, and that requiring Father to abstain from consuming alcohol whenever Child is in his care, and from storing or consuming alcohol on his property are adequate safeguards to protect Child when she is in Father's care.

The Court also finds that it is in the best interest of Child that she continue to have visitation with Paternal Grandmother but that it is no longer necessary for Paternal Grandmother and Child to have a fixed visitation schedule every Wednesday from 5:00 PM to 8:00 PM. In support of this conclusion, the Court gives the most weight to factor three (3) of 13 Del. C. § 722. The Court previously gave Paternal Grandmother the fixed schedule during a time when Father was only permitted supervised visitation at the Family Visitation Center. Father has since regained his unsupervised contact and he is giving Paternal Grandmother more frequent contact than one night per week for three hours.

***17 ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:**

1. **Third Party Visitation:** Mother's Petition for Modification of Third Party Visitation is **GRANTED**, and the Court's Order of October 20, 2015 granting Paternal Grandmother a set third party visitation schedule with Child is **MODIFIED**. Going forward, Paternal Grandmother shall have visitation with Child at such times as Father has scheduled contact and at such other times as mutually agreed between Mother and Paternal Grandmother.
2. **Contempt of Court:** Father is found to be in Contempt of Court for violation of this Court's Order of October 27, 2015 regarding the prohibition of alcohol in his home.
3. Mother's counsel shall, within 20 days, submit an affidavit and supporting documentation regarding the request for attorney's fees. The request shall set out the cost and legal fees incurred for these three consolidated proceedings, a breakdown of that portion counsel believes relates solely to the Rule to Show Cause and counsel's rationale for the breakdown. Father's counsel shall respond within 20 days thereafter. The response shall include a breakdown of the costs and legal fees incurred by Father in these consolidated proceedings.

The Court will thereafter consider what amount if any shall be an appropriate award of counsel fees to Mother.

4. Father may not allow alcohol to be brought onto or stored in any manner on the property which is his primary residence.
5. Father shall not consume alcohol when Child is in his care or within 24 hours prior thereto, regardless of the location.
6. Mother may require Father to submit to random screens for alcohol consumption within 24 hours prior to any initiation of Father's visitation with Child. The manner of testing shall be determined by Mother and the cost of the testing advanced by her. Father shall sign all authorizations necessary for release of his test results to Mother. If the results of any alcohol test of Father are positive, Father shall within 10 days of receipt of the test results reimburse Mother for the cost advanced by her for such test. Father shall thereafter be responsible for the cost of any future alcohol test until such time as Father's test results show three consecutive negative screens. These screenings will be random and the manner of testing at Mother's request at a frequency of no less than one screen every two weeks. If Mother fails to request Father to submit to a screening within two weeks from the prior screen, that missed screen will be treated as a negative screen. Following any screens in which Father tests positive for alcohol, any screens requested by Mother but for which Father fails to timely submit, or if Father is arrested for charges related to alcohol use, including public intoxication and any motor vehicle infractions alleging Father was under the influence, Father's regular visitation with Child shall be suspended and all contact shall thereafter be supervised, by a person of Mother's choosing, one time every other week for up to three hours. At such time as Father shows three consecutive negative screens, he will return to the regular unsupervised visitation schedule as described in the below paragraphs.

***18** 7. Mother and Father shall have joint legal custody of Child, B----- W-----, and share all material information regarding any issue of medical care of Child and provide each other with an opportunity to discuss treatment options. If parents are not able to agree on treatment, Mother shall have final decision-making authority with regard to such medical care. In the case of a medical emergency the parent in whose care Child is at that time

shall immediately notify the other parent of the necessity for emergency medical care, the nature of the emergency, and where and by whom treatment is to be provided so that both parents may be present during the Child's medical care. Mother shall also have final decision-making authority with regard to Child's education.

8. Until the conclusion of the current 2018-2019 school year, the parents shall continue to exercise shared residential placement of Child based on the schedule currently in place with Mother having every Monday and Tuesday overnight, Father having every Wednesday and Thursday overnight and the parties alternating weekends (Friday through Sunday).
9. Effective beginning the Friday after the last week of the current school term, and continuing throughout this summer and each summer thereafter, parents shall alternate on a weekly basis residential placement of Child with exchanges occurring 6:00 PM each Friday. Child shall reside with Father the first week of each summer following the end of the school term, alternating weekly thereafter and ending the last full week prior to the week in which the new school term begins.
10. Throughout the 2019-2020 school year and every school year going forward, Mother shall exercise primary residential placement of Child, which she may do following her relocation to Pottstown, Pennsylvania. Beginning the first weekend after the first full week of the Fall school term, Father shall exercise visitation with Child every other weekend from 6:00 PM Friday until 6:00 PM Sunday, or 6:00 PM Monday if there is a school holiday on the Monday of Father's weekend. Father may also exercise a weeknight dinner visit with Child from 5:00 PM to 8:00 PM once every other week on either the Tuesday following the weekends when Father does not have visitation with Child. If either Father or Child is not available for that Tuesday contact, Father shall be entitled to reschedule that contact for the day before, a Monday, provided that he gives Mother at least one week's notice that he is unavailable on his scheduled Tuesday.
11. Spring and Winter school vacations shall each be shared between the parents on a mutually agreed upon schedule.
12. **Holidays:** Holidays shall be shared on a mutually agreed upon schedule. If the parties cannot reach agreement, regardless of whose day it is supposed to be, Father shall have Child on holidays in Column 1 in

odd-numbered years and holidays in Column 2 in even-numbered years. Mother shall have Child on the holidays

Column 1

Easter or other religious holidays

Fourth of July

Halloween

Christmas Day

With the exception of Christmas and Halloween, Holiday contact shall be from 9:00 AM until 6:00 PM the day of the holiday (unless the holiday falls on your normal residential custody, then there is no change). Halloween contact shall begin at 5:00 PM until 9:00 PM. Christmas Eve contact shall begin at 6:00 PM on December 24th and end at noon on December 25th. Christmas Day contact shall begin at noon on December 25th and end at 6:00 PM on December 26th.

13. ***Mother's Day/Father's Day***: On Mother's Day and Father's Day, regardless of whose day it is supposed to be, the parent whose holiday is being celebrated shall be entitled to spend the day with Child from 9AM until 6PM.

*19 14. Pick-up and drop-off of Child for all exchanges, except on Father's weeknight dinner visits, shall be by the parent receiving Child at that time at the primary home of the sending parent, unless the parents agree otherwise. On Father's weeknight dinner visits, Father shall be responsible for all pick-up and drop-off at Mother's home unless the parents agree on an alternate location. Pickup may be by the parent or a responsible adult designated by such parent.

15. Child shall be permitted reasonable unsupervised access with the non-residential parent by phone or electronic means. The Court reminds the parties that

in Column 1 in even-numbered years and the holidays in Column 2 in odd-numbered years:

Column 2

Memorial Day

Labor Day

Thanksgiving Day

Christmas Eve

each parent is entitled by statute to have reasonable access to his or her child by telephone, mail, and other means of communication and to receive all material information concerning the child.²⁰ Each party shall foster a feeling of affection and respect between the child and the other parent. Moreover, neither party shall do anything that may estrange the child from the other party, injure his or her opinion of the other party, or hamper the free and natural development of his or her love and respect for each party.

16. The nonresidential parent shall be notified of and invited to attend all medical appointments, school conferences and meetings, school performances and Child's recreational activities including practices and contests and performances. Schedules provided by the school or the activity shall be made available to each parent. Each parent shall be listed with Child's school as being entitled to access to educational information as well as the right to pick up Child from school if the residential parent is not available.

17. Parents may modify the visitation schedule by mutual agreement in writing.

IT IS SO ORDERED.

All Citations

Not Reported in Atl. Rptr., 2019 WL 2156400

Footnotes

- 1 On this point, the Court, in its Order of October 20, 2015, ultimately did not find Mother in contempt of Court for interpreting the provision to temporarily allow her to suspend Father's visitation at her discretion.
- 2 If Father had tested positive on any of the screenings or if he was arrested for charges related to alcohol and/or drug use, then Father's contact with Child would have reverted back to the supervised visitation schedule of up to 90 minutes one time per week for a 90-day provisional period.
- 3 Dr. [REDACTED] and Dr. [REDACTED] both completed custody evaluation reports. Jt. Ex. #1 and 2.

- 4 Dr. ██████ reported that Mr. B---- told him that he sometimes works 80-100 hours per week.
5 Except for two nights per month when he is elsewhere, T---- resides exclusively with Ms. B----.
6 *J.T.D. v. B.N.D.*, No. CN07-04006, 2010 WL 2708610, at *4 (Del. Fam. Ct. May 5, 2010) (citing *Feliciano v. Colon*, 697
F. Supp. 26, 34 (D.P.R. 1987)).
7 See *Watson v. Givens*, 758 A.2d 510, 512 (Del. Fam. Ct. 1999).
8 *J.T.D. v. B.N.D.*, 2010 WL 2708610 at *4.
9 *DiSabatino v. Salicete*, 671 A.2d 1344, 1350 (Del. 1996) (citing *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512
U.S. 821, 829 (1994)).
10 Custody Stipulation issued as an Order of the Court on April 12, 2013.
11 At 10:09:24 on February 8, 2019, the Court asked “what do you do stand in the driveway [of your home] and drink
[alcohol]?” To which Father responded, “no, that would be at the home. Why would I stand in the driveway? That doesn't
sound very smart.”
12 Mother testified that she knew the picture was taken in Father's living room because Father still resides in the former
marital home wherein Mother previously resided for three years. She further testified that she believes that the picture
was taken on July 23, 2017 and not downloaded on that date because she found the picture in the camera roll of Ms.
B----'s phone.
13 See *Fisher v. Fisher*, 691 A.2d 619, 623 (Del. 1997) (noting that “[t]he amount of weight given to one factor or combination
of factors will be different in any given proceeding. It is quite possible that the weight of one factor will counterbalance
the combined weight of all other factors and be outcome determinative in some situations.”)
14 Although Paternal Grandmother's wishes do not hold the same weight as the parents in this matter, the Court notes that
Paternal Grandmother testified that if Father's visits are reduced to every other weekend during the school year, that
she might not see Child every one of those weekends because Father often spends weekends at his trailer in Maryland
but Paternal Grandmother does not join them for those getaways. However, she also testified that Father has never
prevented her from having contact with Child.
15 On January 15, 2016, Father wrote “I am going to drink one keep her up there.” On February 18, 2016, Father wrote
“Hey I am going to have one or two ok” to which Ms. B---- responded “Okay that's fine she is reading him books.” On
March 2, 2016, Father wrote “Down in basement drinking. Is B---- hear [sic]” to which Ms. B----responded “No lol. Just
me and T----.” The Court believes the context of the first two emails make it clear that “she” and “her” is in reference
to B---- and “him” is T----.
16 No evidence was presented as to the issue of school funding or comparative quality of educational programs and the
Court draws no conclusion on this issue.
17 The Court is reasonably certain that this and the following references between Father and Ms. B---- to “her” and “she”
are Child and “him” is T----.
18 The Court takes judicial notice that Fireball is a brand of whiskey.
19 Although Father alluded to the fact during his direct examination that he is trying to go to two AA meetings per week,
Mother did not raise the argument (as she did at the June 7, 2017 hearing on a prior Petition – RTSC) again that Father
was still not in compliance with the Court's Order that he attend three times per week.
20 See 13 Del. C. § 727(a):
Whether the parents have joint legal custody or 1 parent has sole legal custody of a child, each parent has the right
to receive, on request, from the other parent, whenever practicable in advance, all material information concerning
the child's progress in school, medical treatment, significant developments in the child's life, and school activities and
conferences, special religious events and other activities in which parents may wish to participate and each parent and
child has a right to reasonable access to the other by telephone or mail. The Court shall not restrict the rights of a child
or a parent under this subsection unless it finds, after a hearing, that the exercise of such rights would endanger a
child's physical health or significantly impair his or her emotional development.

1999 WL 1456944

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Family Court of Delaware.

Mary Alice SNYDER, Petitioner,

v.

Bruce E. SCOTT, Respondent.

No. CV97-08632.

|

July 12, 1999.

Attorneys and Law Firms

██████████, of Wilmington, for Petitioner.

██████████, of Wilmington, for Respondent.

Upon a Petition for Ancillary Relief.

██████████

*1 A hearing was held on May 11, 1999, on the ancillary issues of property division and counsel fees arising out of the divorce of Mary Alice Snyder (Wife) and Bruce E. Scott (Husband). Present in the courtroom were Wife; her attorney, ██████████, Esquire; Husband; his attorney, ██████████, Esquire.

Background Facts

The parties were married on May 20, 1988, separated within the home on May 5, 1997 with a physical separation occurring on June 27, 1997, when Husband was removed pursuant to an *ex parte* Protection from Abuse order followed by a consent PFA order on July 11, 1997. The parties were divorced on March 19, 1998. The parties had no children although they did have two pet poodles which are discussed below.

Wife, age 37, is a vice-president with ██████████. Wife's 1998 W-2 indicated that she earned \$61,053.03 in 1998. She has been employed by ██████████ for eleven years. Husband, also age 37, is an estimator employed by

WRS Inc. earning approximately \$69,000 a year in 1998, and has resided in Florida since February or March, 1999.

Issues in Agreement

The parties agreed as follows:

1. The marital residence at ██████████ shall be listed for sale with the proceeds divided equally.

2. The parties agree that Wife's 1990 Volvo is worth \$5,755 and Husband's Volvo is valued at \$13,649.

3. Husbands ██████████ Stock is valued at \$1,152.00 which Husband shall retain.

4. The 127.32 shares of ██████████ marital stock and the 351.424 shares of CBS stock will be divided equally between the parties.

5. Wife agrees she removed the sum of \$3,427.88 from the parties' joint Wilmington Trust checking account on October 16, 1997 following the parties' separation.

6. Also following the parties' separation, Wife sold ██████████ Stock for \$3,428 gross with a capital gain of \$556 and ██████████ Stock valued at \$4,536 with a gain of \$2,315 purchased through Wife's employee stock purchase plan from July, 1996 through May 31, 1997. The parties agreed that Husband was entitled to one half of the net value of the stock sold.

7. One half of the marital ██████████ stock options shall be allocated to Husband. If it is not possible to transfer the options to Husband directly, Wife will, at Husband's request, exercise his one-half of the options and turn over to Husband any net proceeds after taxes and service charges, if any.

8. Husband shall be assigned one half of the value of Wife's 401(k) plan valued as of the date of the separation plus any interest, dividends and adjustments in value on Husband's share from date of separation to date of distribution. Similarly, Husband shall assign to Wife one half of the value of his 401(k) plan valued at the date of separation plus any interest, dividends and adjustments in value on Wife's share from the date of separation to the date of distribution.

9. Pursuant to a qualified domestic relations order, Wife shall assign to Husband 50% of the marital portion, pursuant to the Cooper Formula, of Wife's accrued interest in her [REDACTED] Pension plus any cost of living increases and full survivor benefits.

*2 10. The parties agreed to an equal division of the net marital estate.

11. The household furnishings shall be divided by agreement of the parties or, if that is not successful on or before August 1, 1999, by the Court's traditional two-list method.

Issues in Dispute

The parties were unable to resolve the following issues:

1. Whether the Court should include in the marital estate Husband's two IRA's with [REDACTED], one valued on March 31, 1998 at \$735.88 and the other valued on March 31, 1998 at \$3540.06?
2. Should the Court include in the marital estate ten bonds which Husband contends that he received from his aunt and which have been cashed in?
3. Should the parties' two poodle dogs be included in the division of the household furnishings?
4. Should Husband be compensated for funds withdrawn by Wife from the parties' Wilmington Trust joint checking account and/or should Husband be responsible for contributing to certain expenses that Wife accrued after the parties' separation and that were paid with those funds?
5. Whether the [REDACTED] stock valued at approximately \$4,165.00, cashed in following the parties' separation by Wife, was marital?
6. Should Wife receive credit for marital payments made on Husband's premarital debt?
7. Should Wife be awarded counsel fees for Husband's failure to settle amicably and produce documentation and should Husband be awarded fees because he claims that Wife refused to negotiate in good faith?

1. *Husband's Two [REDACTED] IRA's.* Wife introduced a statement indicating that Husband had two retirement accounts on March 31, 1998, one valued at \$735.88 and the second at \$3,540.06 for a total of \$4,275.94. Wife did not know the source of the funds that were in that account but Husband testified that he started an IRA in 1984 prior to the parties' marriage that was later rolled over, with Wife's assistance, into a long-term CD earning 7.2%. The document for the second IRA indicates that it was issued on October 17, 1991, with maturity date of October 17, 2000, yielding an annual interest rate of 7.2%. While the Court will accept, without documentation, Husband's testimony that the second retirement plan was premarital, since no explanation was given as to the origin of the first IRA or why the funds would be segregated from his other premarital IRA, the Court will assume that the \$735.88 IRA is marital.

2. *The ten savings bonds from Husband's aunt.* Husband testified that the ten savings bonds were given to him by his Aunt Rose and cashed in before May, 1998. With no evidence to contradict Husband's testimony, the Court will assume that the ten bonds that were cashed in had been given to Father as a gift from his aunt and the Court will not consider them to be marital.

3. *The Parties' Dogs.* Wife contended that she had been the primary caretaker of the parties' two poodle dogs, a 10.5-year old male and a 8.5-year old female, that they have remained with her since Husband left the marital residence in June, 1997, that she is the one who took them to obedience school, and that they have no significant monetary value since they have been neutered. Husband claimed the parties shared responsibilities for the dogs, that the dogs slept in bed with them and that the dogs were "dear" to him. He suggested that the dogs should be treated as other personal property and included in the two-list distribution that will divide the parties' household belongings.

*3 While the dogs are certainly items of personal property belonging to the parties, the Court believes, because dogs often have greater sentimental or attachment value than they do monetary value, that to include them on the two-list could greatly skew the division of the parties' personal belongings. In this case, since the dogs have been with Wife since the parties' separation two years ago and since it may be disruptive to the dogs to remove them from their home in Delaware to Husband's home in Florida, or even to separate them this late in their lives, Wife shall retain the two dogs

but shall pay the sum of \$100 to Husband to assist him in purchasing a new pet.

4. *Payment of Wife's Post-Separation Expenses.* The parties agree that Wife withdrew the sum of \$3,428 from the parties' joint [REDACTED] account on October 16, 1997, following the parties' separation. Husband contends those were marital funds which should be transferred to him since at the time of separation, Wife received a comparable amount out of the account. Wife responds that she used those funds to pay expenses that Husband should share. Specifically, Wife presented a list of expenses that included \$77 to change locks at the onset of the PFA order, health and dental insurance premiums for Husband in the amount of \$183.69, homeowner's premium insurance for the marital residence, a premium for an umbrella insurance policy for both parties, carpet cleaning, veterinary bills for the parties' two dogs, replacement of a household appliance, and repairs to Wife's car. The Court concludes that Wife shall be solely responsible for any homeowner insurance premiums, the carpet cleaning, and the replacement of a household appliance since she remained in the marital residence. Since Wife was awarded the dogs, she shall also be responsible for the veterinary expenses related to the dogs and any expenses related to her vehicle.

Husband shall be responsible for the \$183.69 for his health and dental insurance coverage and for one half of the umbrella policy that totaled \$139, thus Husband's share is \$69.50. Wife claimed she paid \$1,245 for storage of unclaimed items by Husband that he failed to remove from the marital residence, which she put in storage. She claims he knew the items were in storage. Husband denied that Wife ever said anything about putting his belongings in storage. When he tried to return to the marital residence to get the parties' dogs and his personal belongings, Husband claimed Wife called the police and charged him with harassment. Trial on those charges was to be held shortly after the ancillary hearing in this matter. Since the Court was presented with no written documentation that Wife warned Husband his belongings would be put into storage if he failed to remove them, the Court will not make Husband responsible for the storage expenses.

Husband presented evidence which Wife did not refute, that three days prior to Husband's removal from the marital residence, Wife wrote two checks totaling \$4,135.81 payable to "cash" from the parties' joint [REDACTED] checking account. Because she received those funds, the Court will

award the \$3,428 which Wife withdrew in October, 1997 to Husband.

*4 5. [REDACTED] by Wife. Schedule D of Wife's 1998 tax return indicates that Wife acquired on May 31, 1997, stock in [REDACTED] that was later sold in 1998 for the sum of \$4,164.85, on which there was a capital gain of \$1,327. Husband contends that since that stock was acquired prior to the parties' separation on June 27, 1997, that stock should be treated as marital stock. Wife argues that although the stock has an acquisition date of May 31, 1997, the stock was not paid for until sums were withheld from her paycheck beginning July 1, 1997, and continuing to be deducted through May 31, 1998. Thus, Wife argues that although she may have acquired right to the stock on May 31, 1997, the stock was not paid for until after the parties' separated and should not be considered marital. If Wife's assumptions were correct, the Court would agree with Wife's analysis. A review of the prospectus for the [REDACTED] Stock Purchase Plan, however, states on page 2 that:

... each employee ... will be eligible to participate in the Stock Purchase Plan as of the first date of the first "Offering Period" (as that term is defined in the following sentence) commencing at least one month after the employee's first day of employment with the Corporation or a participating subsidiary. The term "Offering Period" means a twelve consecutive month period beginning as of the related "Offering Period Commencement Date," which is June 1 of each year during the plan's term.

On page 3, the prospectus states:

Each participant will be deemed to be granted a right to acquire the number of whole shares of Common Stock for which he or she has subscribed with his or her accumulated payroll deductions at the "purchase price per share" as that term is defined below. Automatically and without any action on his or her part, a participant will be deemed to have exercised all of his or her purchase rights on the last day of the applicable Offering Period (the "Offering Termination Date")....

Thus, it appears, Wife's testimony notwithstanding, that the purchase plan year begins on June 1st and that the employee will be deemed to have exercised all of the purchase rights on the last day of that offer which would be twelve months later on May 31st of the following year. If Wife's version were correct, she would have been deemed to have acquired the stock on June 1, 1997 and not May 31, 1997. Therefore, this

Court concludes that the [REDACTED] Company Stock reflected on Wife's 1998 tax return with an acquisition date of 5-31-97, was actually purchased with deductions from Wife's payroll taken from June 1, 1996 until May 31, 1997, and thus, was purchased prior to the parties' separation. Therefore, that stock which was sold for the sum of \$4,165 less taxes on a gain of \$1,327, will be considered marital.

6. *Credit for Payments on Husband's Premarital Debt.* Wife argues that she should be compensated for payments made during the parties' marriage on Husband's premarital debts. Specifically, the parties spent \$15,000 to repay Husband's student loans, the sum of \$7,922 on Husband's car, and the sum of \$4,632 sent to Husband's mother. This Court generally does not go back and compensate spouses for financial decisions made during the course of the parties' marriage and will not do so in this situation. Furthermore, Husband's car on which payments were made was used by the parties during the parties' marriage and was traded in to purchase the car presently driven by Wife. There is no evidence that Wife objected to sending money to Husband's mother or to paying Husband's student loans during the course of the marriage. Wife conceded that she had student loans of approximately \$1,200 that were repaid during the marriage. The Court could have taken into consideration Wife's contribution in allocating the percentage distribution of the marital assets and debts but since Wife has agreed to a 50%-50% distribution of assets and debts, the Court will not disturb that agreement. Thus, Wife's request for credit or compensation is denied.

*5 7. *Counsel Fees.* Based on their relative financial circumstances, the Court will order each party to be responsible for his or her own counsel fees. If either party feels the other party was unreasonable in conducting the litigation, he or she may submit an application supported with documentation to establish the unreasonableness of the other party's conduct.

Court Rulings

Based on the evidence presented at the hearing, the Court rules as follows:

1. The marital residence at [REDACTED] will be sold and the net proceeds divided equally.
2. Wife shall retain the 1990 Volvo and Husband shall retain the 1995 Volvo.

3. 127.32 shares of [REDACTED] stock and 351.424 shares of CPS stock will be divided equally between the parties.

4. Husband shall retain the WMI stock valued at \$1,152. Wife shall be charged with receiving: (a) the Terex stock valued at \$3,428 less taxes of \$143 on a gain of \$556; (b) [REDACTED] Stock valued at \$4,536 less taxes on a gain of \$2,315; and (c) [REDACTED] Stock valued at \$4,165 less taxes on a gain of \$1,327.¹

5. One half of the marital [REDACTED] stock options should be allocated to Husband. If it is not possible to transfer the options directly to Husband, Wife will, at Husband's request, exercise his one half of the options and turn over to Husband any net proceeds after paying taxes and service charges, if any.

6. Husband shall retain his premarital IRA and the IRA determined to be marital valued at \$736 as of March 31, 1998, of which Wife is assigned one half of the value plus any interest dividends for adjustments and value from March 31, 1998 to date of distribution. In addition, Husband shall assign to Wife one half of his 401(k) plan valued at date of separation plus any interest and adjustments in value in Wife's share from date of separation to date of distribution. Likewise, Wife shall assign to Husband one half of the value of her 401(k) plan valued as of the date of separation plus any interest, dividends and adjustments in value on Husband's share from date of separation to date of distribution. If the parties mutually agree, they may calculate the present value of the marital IRA and the two 401(k) plans and transfer to the appropriate party one half of the difference between the values of Husband's retirement plans and Wife's retirement plan.

7. The household furnishings shall be divided by agreement of the parties, or if that is not successful on or before August 15, 1999, by the Court's traditional two-list method.

8. By a qualified domestic relations order, Wife shall assign to Husband 50% of the marital portion, pursuant to the Cooper Formula, of Wife's accrued interest in her Wilmington Trust pension plus costs of living increases and full survivor benefits.

9. Wife shall transfer to Husband the sum of \$100 to compensate him for the parties' dogs and the sum of \$3,428 to compensate Husband for the funds withdrawn from

the parties' joint [REDACTED] checking account after separation.

*6 10. Husband shall reimburse Wife \$184 for payment she made on his health insurance premiums and \$70 for his half of the umbrella policy premiums.

11. Summing up all the above obligations, as set forth on the balance sheet attached as Exhibit A, Wife owes Husband the sum of \$4,266 which she shall pay from her portion of the proceeds of the sale of the marital residence. In the event there

BALANCE SHEET

Snyder v. Scott

ASSETS	VALUE	HUSBAND	WIFE
House:			
[REDACTED]		To be Sold	50% 50%
Cars:			
1990 Volvo-W	\$5,755		\$5,755
1995 Volvo-H	13,649	\$13,649	
Stock Options: Divided Equally			
Stock:			
WMI		1,152	1,152
Terex		3,285	3,285
[REDACTED]		3,939	3,939
[REDACTED] t		3,823	3,823
Subtotal:		31,603	14,801 16,802
H's 50% Share		15,801	
Less Assets Retained		(14,801)	
Wife owes Husband		1,000	

are insufficient proceeds, she shall then pay Husband that sum within ninety days from the sale of the marital residence.

12. Considering their relative financial circumstances, each party shall pay his or her own attorney's fees. If either party feels that the other was unreasonable in conducting litigation, that party may submit an application for attorney's fees within twenty days.

IT IS SO ORDERED.

Credit to Husband:

Dogs	100
Joint Checking	3,428
less Health Insur.	(184)
Umbrella Policy	(70)
Wife owes Husband	<hr/> 4,266

Pretax Assets:

H's 401(k)	{	
W's 401(k)	{	Value at separation to be divided equally Plus increases in value to date of distribution
H's IRA	{	
W's [REDACTED] Pension	QDRO	50% Multiplier to Husband

All Citations

EXHIBIT A

Not Reported in A.2d, 1999 WL 1456944

Footnotes

1 Although neither party presented evidence of Wife's tax rate, based on her 1998 tax return which was introduced into evidence, the Court calculates that Wife was taxed at the 20% federal rate and 5.8% state rate.

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2003 WL 21435298

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Family Court of Delaware.

T.L.D., Petitioner,

v.

M.C.M., Respondent.

No. CN01-06301.

|
Submitted Nov. 19, 2002.

|
Decided Jan. 28, 2003.

Attorneys and Law Firms

██████████, representing Petitioner.

██████████, representing Respondent.

CROSS-PETITIONS FOR **CUSTODY**

██████████

INTRODUCTION

*1 This is the Court's decision on Cross-Petitions for **Custody**. On January 22, 2001, T.L.D. ("Mother"), then pro se, filed a Petition for **Custody** against M.C.M. ("Father") involving the parties' minor child, C.. On February 7, 2002, Father, then pro se, filed a Cross-Petition for **Custody**. Mother is presently represented by ██████████, Esquire and Father is presently represented by ██████████, Esquire.

Appearing at trial, in addition to the parties and their counsel were E.D. ("Maternal Grandmother"), G.M. ("Maternal Aunt"), L.M. ("Step-Mother") and D.M. ("Paternal Grandmother").

PROCEDURAL HISTORY

On January 22, 2001, Mother filed a Petition for **Custody** averring that the travel distance between her home and Father's was causing C. fatigue. Father filed his response on February 5, 2001 averring that the parties have had shared residential **custody** of C. his entire life and requesting a shared **custody** arrangement with a week on week off schedule for C.. On April 9, 2001 an Interim Consent Form and Order was entered granting Father every other weekend from Friday after work until Monday evening; every Monday night until Tuesday evening; every Wednesday evening until Thursday morning and shared holidays.

On February 1, 2002, Father filed a Petition for Order of Protection from Abuse averring that Mother threatens to deny Father visitation with C. and fights with Father in the presence of C.. However, Father withdrew this petition on February 21, 2002.

On February 7, 2002, Father filed a Petition for **Custody** requesting shared residential **custody** with the current schedule to remain in effect if Mother agrees to cooperate. If Mother fails to cooperate, Father requests primary residential **custody** of C.. Mother filed her response on March 1, 2002 requesting primary residential **custody** of C..

On November 19, 2002, the parties reached an agreement as to holiday visitation, such agreement being entered as an Order that same day.

Currently before the Court are the parties' Cross-Petitions for **Custody**.

TESTIMONY

Mother's Testimony

Mother currently resides in Wilmington with Maternal Grandmother in a three-bedroom home. Maternal Grandmother is a retired nurse and C. adores her. C. has his own room and there is a park behind the home where C. plays.

The parties are presently under a shared residential **custody** arrangement. Father drops C. off at Mother's by 6:30 a.m. following his overnights. C. is up at 5:45 a.m. on these mornings and is exhausted when he gets to Mother's. C. falls back to sleep until he has to leave for school. Mother feeds C. breakfast most mornings. When C. is with Mother, he sleeps until 8:00 a.m. and goes to bed by 8:30 p.m.

C.'s school is approximately five minutes from Mother's home and approximately twenty-five minutes from Father's home. C. is doing well in school. Mother attends field trips and parent-teacher conferences, while Father attends neither. C. has had no disciplinary problems. C. has many friends at school and also in Mother's neighborhood. C. also has cousins that live in the area whom he sees frequently. C. has no friends in Father's neighborhood.

*2 C. is not currently participating in any extra-curricular activities because he is too tired. C. has expressed an interest in playing football next year.

Mother complains that Father failed to get C.'s homework completed approximately five times last year and once this year. C. has also forgotten his book bag when with Father.

Mother admits that she and Father can not communicate. Mother has sent letters to Father regarding C.'s CCD lessons and summer camp, but Father fails to respond to these letters. Father generally sends messages to Mother through C..

C. attended the YMCA Summer Camp this past summer.

C. suffers from [eczema](#) and therefore his skin is very dry and cracked occasionally. Mother applies Vaseline to C. in the mornings, but Father does not comply with this treatment.

C. also has [asthma](#) and Mother makes all of his doctor's appointments and arranges for his treatment. Mother admits that she has a [dog](#) although C. is allergic to [dogs](#). Mother also admits that she smokes, but avers that she only smokes at work and never at home nor in the car. Mother insists that she is willing to quit smoking and get rid of the [dog](#) in order to gain primary residential [custody](#) of C..

Mother keeps Father informed of issues regarding C.. Father, however, signed C. up for T-ball without consulting Mother first. Mother took C. to these games. Mother admits that she also signed C. up for Roller-Hockey without first consulting Father. Mother also allowed C. to get his ear pierced without first consulting Father.

Mother is in good health. She has an Associates Degree in Criminal Justice and is employed at a [REDACTED]. Her hours are Monday through Friday from approximately 7:30 a.m. until 3:30 p.m. Her hours are flexible.

Father has been arrested for Driving Under the Influence. Father has also hit another child and C. had to testify against Father regarding this incident.

Mother admits that C. was injured and needed seventeen stitches. He was treated in the emergency room where Mother was working.

Maternal Grandmother's Testimony

Maternal Grandmother has been retired from nursing since 1997. She takes C. to school in the mornings. She or Mother will pick him up from school in the afternoons. When Mother is with C., they go to the park, movies and the library.

Mother and C. have a very close bond. C. does not want to leave Mother's home when Father comes to pick him up for visitation. C. is tired when he is dropped off by Father in the morning.

C. has very bad [asthma](#) and [eczema](#). Maternal Grandmother admits to having a [dog](#).

C. was injured and required stitches while she was watching him.

Maternal Aunt's Testimony

Maternal Aunt works at [REDACTED] as a Registered Nurse.

C. plays with her children frequently. They play at the park, roller-blade and go to the movies. C. is very sensitive and inquisitive.

Mother and C. have a good relationship. Maternal Aunt admits that she has never seen Father interact with C..

*3 Maternal Aunt smokes, but not in her home or Maternal Grandmother's home.

Father's Testimony

Father lives in Newark, Delaware in a three bedroom home with his new wife, ("Step-Mother") and his six-year old stepson, Brandon. Father and Step-Mother are expecting another

child. C. has his own room. The home is in a development with many children. Mother's family also lives in the area.

Father is in good health.

Father was charged with hitting his step-son, but the charge was dismissed. He was originally charged with offensive touching and a no contact order was issued. During this time, Father stayed with his mother or at Step-Mother's sister's home. C. stayed with Mother. Father did not notify Mother of this charge.

Father is willing to arrange his work schedule so that he can drop C. off directly at school in the morning in order for C. to sleep later. Father is a carpenter and generally works from 7:30 a.m. to 3:30 p.m. His hours are flexible. Father frequently travels to work-sites in Pennsylvania, New Jersey and Maryland.

C.'s school is approximately 25 minutes from his home and five minutes from Mother's home. It takes Father 25 minutes to get to Mother's in the morning to drop off C.. Father picks C. up at approximately 5:00 p.m. and calls if he will be late. Father provides all of the transportation.

Father does not smoke nor does he own any **dogs**. He is concerned about Mother's smoking and her **dog** due to C.'s allergies and **asthma**. Father admits that Step-Mother smokes, but avers that she does not smoke in the home nor in the car.

Father applies cream to C. after his shower to treat C.'s **eczema**. Mother does not keep Father informed about C.'s health problems. Father was able to correctly name C.'s pediatrician and allergist. Father was unable to recall all of C.'s allergies. Father admitted that Step-Mother packed a Reese's Peanut Butter Cup in C.'s lunch despite the fact that C. is allergic to peanuts. Father admits to receiving a letter from Mother informing him of C.'s allergy appointment and listing his allergies. Father has never taken C. to any allergy appointments and has not met his doctor. Father was invited to attend C.'s allergy testing appointment, but he declined the invitation. Father did not follow up with C.'s doctors.

Step-Mother has taken C. to the doctors and brought home sample medications for Mother to give C..

Father enrolled C. in T-Ball without consulting Mother first.

Father plays with C. and they go fishing and out on boats when on vacation. Father also helps C. with his homework and either he or Step-Mother signs C.'s homework sheets. Father has spoken with C.'s teacher and attends parent-teacher conferences and open houses.

Father currently pays \$40 per week in child support to Mother. Father agreed to this amount even though it was higher than the Melson Formula calculation.

Father has a good relationship with Step-Mother. On one occasion Father stayed at his mother's home and took C. with him when he and Step-Mother had an argument.

***4** Father and Mother cannot communicate and Mother often yells at Father in front of C..

Step-Mother's Testimony

Step-Mother is five months pregnant.

Her relationship with C. is good and he is not fearful of her. When he greets her, he gives her hugs and kisses. He is a good child and is very smart. Her son Brandon and C. are very close. They are best friends and inseparable. Brandon is with his father every other weekend for one evening.

Step-Mother has never forced Father to leave their home and they are a strong family unit. They had an argument about a month ago and Father indicated that he needed a break to clear his head. Father went to stay at Paternal Grandmother's and took C. with him.

Father has a very close relationship to C.. They do everything together. They spend some one on one time together. They ride bikes and skateboard. Father is a great father and is involved with C.'s homework. She will occasionally sign C.'s homework sheet.

Father attends all of the school events of which he is made aware. She and Father recently contacted the school directly to request information.

Neither she nor Father force C. to call her "Mommy". C. mostly refers to her as Laurie.

Step-Mother has seen Mother smoke in front of her home.

Step-Mother is concerned about the lack of supervision at Mother's home. About a year and a half ago, she went to pick up C. from Mother's and C. was playing outside with no supervision and Mother lives on a major roadway.

Father works from 7:00 a.m. until 5:00 p.m. He gets home at 6:00 p.m. with C.. He will occasionally work on Saturday.

When with Father, C. gets up just before 6:00 a.m. and grabs a quick breakfast to eat on the way to Mother's. Father and C. leave for Mother's at 6:05 a.m. Father and C. return home at about 6:00 p.m. and dinner is at 6:30 p.m. The family does homework after dinner, showers and they read books before bedtime. C. usually goes to bed by 8:30 p.m. or 9:00 p.m.

Father was charged with offensive touching and a no contact order was put in place. Father stayed at his mother's home with C.. C. was present during the alleged incident, but neither child was questioned at the hearing.

Step-Mother quit smoking before she became pregnant.

Step-Mother does discipline C., but never punishes him. Father punishes C. when he needs to. Step-Mother has never poked C. with a fork because his elbows were on the table. Division of Family Services investigated this charge, but it was determined to be unfounded.

Step-Mother has never attended C.'s parent-teacher conferences, but Father has. Step-Mother knows of C.'s allergies. By mistake, she packed a Reese's Peanut Butter Cup in C.'s lunch. It was part of a pre-packaged lunch that she had purchased for C.. Step-Mother cannot recall the name of C.'s allergist.

Step-Mother does not say anything to C. when he calls her "Mommy".

Paternal Grandmother's Testimony

She is Father's mother. She lives in Newport, Delaware approximately a half hour away from Father. Father and C. are very close.

*5 Paternal Grandmother has witnessed Mother's interaction with Step-Mother. While Step-Mother and Father were visiting C. in the hospital, Mother referred to Step-Mother

as "nobody" and stated that her opinion was inconsequential. Mother was angry and threw something in the room.

Paternal Grandmother and Father had a disagreement over the summer that lasted approximately two weeks. Father did not bring C. to visit her during this time. Paternal Grandmother could not recall if Mother brought C. to visit during this time.

Father and C. stayed with her when the no contact order was issued.

Paternal Grandmother sees C. approximately two or three times a week. She usually picks C. up at the bus stop on Mondays and Wednesdays. She will occasionally help C. with his homework. Father then picks C. up from her house at about 4:30 p.m. or 5:00 p.m.

DISCUSSION

Although an interim order has been entered in this case, there has never been a permanent order issued. Accordingly, the Court must base its decision on the best interest factors of 13 *Del. C. 722*.¹

In determining that joint **custody** of the children is warranted, especially when the parents do not indicate otherwise, the major issue before the Court is the residential arrangements for the children. In deciding such an issue, consideration must be given to all relevant factors, including those set forth in 13 *Del. C. 722(a)* and *722(b)*.

(1) The wishes of the child's parent or parents as to his or her **custody** and residential arrangements;

Mother is seeking primary residential **custody** of C. with standard visitation for Father. Father is requesting shared residential **custody** with the current schedule to remain in effect if Mother agrees to cooperate. If Mother fails to cooperate, Father requests primary residential **custody** of C..

(2) The wishes of the child as to his or her custodian(s) and residential arrangements;

Given C.'s young age, the Court declined to interview him directly. The testimony indicates that C. is happy at both parties' home.

(3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;

C. appears to have a very close relationship with both parties. Mother is attentive to C.'s medical needs and school work. They go to the park and movies. When C. is with Father, they go biking, skateboarding and fishing. Father also helps C. with his homework.

C. also has a close relationship to both his Paternal Grandmother and his Maternal Grandmother. C. resides with Maternal Grandmother when with Mother. Maternal Grandmother will occasionally pick C. up from the bus stop after school.

Paternal Grandmother sees C. approximately two to three times a week. Paternal Grandmother usually picks C. up from the bus stop after school and they return to her home. She occasionally helps C. with his homework before Father picks him up.

*6 There is some dispute as to C.'s relationship with Step-Mother. Although Mother avers that C. is fearful of Step-Mother, there was testimony presented to dispute this contention. Step-Mother testified that she and C. are close and that C. greets her with kisses and hugs.

C. is also close to his step-brother, Brandon. They get along well and are "best friends."

(4) The child's adjustment to his or her home, school and community;

C. has adjusted well to the current schedule. He is doing well in school and has many friends there. He also has many friends in Mother's neighborhood, as well as cousins in the area. While at Father's home, C. plays primarily with his step-brother, Brandon. There are also many children in Father's neighborhood for C. to play with.

C. plays T-Ball and Roller Hockey and has expressed an interest in playing football next year.

Mother's primary concern appears to be C.'s fatigue in the mornings following Father's overnights. Father, however, has agreed to adjust his work schedule to accommodate dropping

C. off directly at school those mornings, in order for C. to sleep in.

(5) The mental and physical health of all individuals involved;

The health of both parties is good, both mentally and physically.

(6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title;

Although Father avers that Mother does not keep him informed of C.'s medical and academic status, Mother has made attempts to do so. Mother has invited Father to attend allergy appointments and written letters to Father informing him of the results of allergy tests. The Court notes that Father failed to take any steps on his own to become informed regarding C.'s health and schooling until recently. Father recently contacted the school requesting that any pertinent information be sent directly to him.

Although communication between the parties is strained currently, they have in the past been able to agree to residential and visitation schedules.

To his credit, Father has agreed to pay child support in excess of the amount calculated by the Melson Formula.

(7) Evidence of domestic violence as provided for in Chapter 7A of this title.

Although Father was charged with offensive touching following an incident involving his step-son and a no contact order was put in place, these charges were later dismissed. Additionally, although the Division of Family Services investigated the complaint against Step-Mother involving C., the report was determined to be unfounded. There was no other testimony nor evidence presented regarding this factor.

In addition to the seven best interest factors discussed above, the Court must consider any other relevant information and evidence in deciding what is in the child's best interest.

The Court is concerned about Mother's complaints that C. is tired when he is returned to her home at 6:30 a.m. following Father's overnights. The Court believes that this situation can be remedied by Father's dropping C. off directly at school those mornings, which Father has agreed to do. The Court

is also concerned about the allegations of various parties smoking in the presence of C. as well as Mother's owning a **dog**, when C. is allergic to **dogs**. Mother, however, has agreed to quit smoking and to remove the **dog** from the home if necessary.

*7 However, the Court's primary concern is the parties' inability to effectively communicate. Although Mother has attempted to keep Father informed of C.'s medical and academic status, it appears that Father has taken little initiative of his own to obtain access to this information.

The Court is also cognizant of the conflict that occurs when one party remarries and a step-parent is brought into the family. The tension created in this case will be greatly reduced by prohibiting C. from referring to Step-Mother as "Mommy."

Based on the foregoing reasons, Mother's Petition for **Custody** is denied. Father's Petition for **Custody** is granted in part. The parties shall share legal **custody** and shall share residential **custody** of C.. The current residential and visitation schedule shall remain in effect, with Father dropping C. off directly at school in the mornings. In the Summer, a week on week off schedule shall be followed.

Both parties shall take the necessary steps to allow Father access to C.'s medical and school records. Both parties shall make individual parent-teacher conference with C.'s teachers and a consultation with C.'s doctors within thirty (30) days from the date of this order. Father shall make the effort to become better informed of C.'s medical needs.

The parties shall encourage C. not to refer to Step-mother as "Mommy."

The parties, as well as anyone else, shall be prohibited from smoking in the presence of C.. A doctor's approval shall be required for both parties for pet ownership.

The parties shall enter communication counseling within thirty (30) days of this Order.

IT IS SO ORDERED.

All Citations

Not Reported in A.2d, 2003 WL 21435298

Footnotes

1 13 Del. C. § 722 provides:

(a) The Court shall determine the legal **custody** and residential arrangements for a child in accordance with the best interests of the child. In determining the best interests of the child, the Court shall consider all relevant factors including: (1) The wishes of the child's parent or parents as to his or her **custody** and residential arrangements; (2) The wishes of the child as to his or her custodian(s) and residential arrangements; (3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests; (4) The child's adjustment to his or her home, school and community; (5) The mental and physical health of all individuals involved; (6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title; and (7) Evidence of domestic violence as provided for in Chapter 7A of this title.

Panel 3

**Animal Cruelty Perpetrated
by Adults and Children**

Diane Balkin, Esquire
*Consultant, National Council of Juvenile
and Family Court Judges*

Diane Balkin

Diane received her bachelor's degree from Tulane University, and her Juris Doctorate from the University of Denver (now Sturm) College of Law. She worked as a chief deputy trial attorney for the Office of the Denver District Attorney for 32 years. She prosecuted all types of felonies and during her tenure, served as the director of the Domestic Violence Unit, Juvenile Court Division and Economic Crime Unit. She also managed all investigations and prosecutions of crimes against animals. Since 2010, Diane has provided nation-wide assistance on any issues related to maltreatment of animals. She served on the Colorado State Board of Veterinary Medicine and is a past president of the International Veterinary Forensic Sciences Association. Diane presently dedicates her time on a local and national level training and consulting on how to successfully investigate, prosecute and fairly resolve animal cruelty cases. Diane has significant expertise in local and national animal-related laws and assists legislators and stakeholders in the drafting and refining of proposed legislation relating to animal protection.

Delaware Code

TITLE 11

Crimes and Criminal Procedure

Delaware Criminal Code

CHAPTER 5. Specific Offenses

Subchapter VII. Offenses Against Public Health, Order and Decency

§ 1325. Cruelty to animals; class A misdemeanor; class F felony.

(a) For the purpose of this section, the following words and phrases shall include, but not be limited to, the meanings respectively ascribed to them as follows:

(1) “Abandonment” includes completely forsaking or deserting an animal originally under one’s custody without making reasonable arrangements for custody of that animal to be assumed by another person.

(2) “Animal” shall not include fish, crustacea or molluska.

(3) “Cruel” includes every act or omission to act whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(4) “Cruel mistreatment” includes any treatment whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(5) “Cruel neglect” includes neglect of an animal, which is under the care and control of the neglecter, whereby pain or suffering is caused to the animal or abandonment of any domesticated animal by its owner or custodian. By way of example, cruel neglect shall also include allowing an animal to live in unsanitary conditions, such as keeping an animal where the animal’s own excrement is not removed from the animal’s living area and/or other living conditions which are injurious to the animal’s health.

(6) “Cruelty to animals” includes mistreatment of any animal or neglect of any animal under the care and control of the neglecter, whereby unnecessary or unjustifiable physical pain or suffering is caused. By way of example, “cruelty to animals” includes the following: unjustifiable beating of an animal; overworking an animal; tormenting an animal; abandonment of an animal; tethering of any dog for 9 consecutive hours or more in any 24-hour period, except on any farm; tethering any dog for any amount of time if the dog is under 4 months of age or is a nursing mother while the offspring are present, except on any farm; and failure to feed properly or give proper shelter or veterinary care to an animal.

(7) "Custody" includes the responsibility for the welfare of an animal subject to one's care and control whether one owns it or not. A person who provides sterilization or care to a free-roaming cat that lacks discernible owner identification is not deemed to have "custody," "care," or "control" of the cat for purposes of this section.

(8) "Farm" means any place that meets the 2017 USDA Federal Census of Agriculture definition of farm: "any place from which \$1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the census year".

(9) "Person" includes any individual, partnership, corporation or association living and/or doing business in the State.

(10) "Proper feed" includes providing each animal with daily food and water of sufficient quality and quantity to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(11) "Proper shelter" includes providing each animal with adequate shelter from the weather elements as required to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(12) "Proper veterinary care" includes providing each animal with veterinary care sufficient to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(13) "Serious injury" shall include any injury to any animal which creates a substantial risk of death, or which causes prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(14) "Tethering" shall include fastening or restraining with a rope, chain, cord, or similar device creating a fixed radius; tethering does not include walking a dog on a leash, regardless of the dog's age.

(b) A person is guilty of cruelty to animals when the person intentionally or recklessly:

(1) Subjects any animal to cruel mistreatment; or

(2) Subjects any animal in the person's custody to cruel neglect; or

(3) Kills or injures any animal belonging to another person without legal privilege or consent of the owner; or

(4) Cruelly or unnecessarily kills or injures any animal. This section does not apply to the killing of any animal normally or commonly raised as food for human consumption, provided that such killing is not cruel. A person acts unnecessarily if the act is not required to terminate an animal's suffering, to protect the life or property of the actor or another person or if other means of disposing of an animal exist which would not impair the health or well-being of that animal; or,

(5) Captures, detains, transports, removes or delivers any animal known to be a pet or owned or unowned companion animal, or any other animal of scientific,

environmental, economic or cultural value, under false pretenses to any public or private animal shelter, veterinary clinic or other facility, or otherwise causes the same through acts of deception or misrepresentation of the circumstances and disposition of any such animal.

(6) Confines an animal unattended in a standing or parked motor vehicle in which the temperature is either so high or so low as to endanger the health or safety of the animal. A law-enforcement officer, animal welfare officer, or firefighter who has probable cause to believe that an animal is confined in a motor vehicle under conditions that are likely to cause suffering, injury, or death to the animal may use reasonable force to remove the animal left in the vehicle in violation of this provision. A person removing an animal under this section shall use reasonable means to contact the owner. If the person is unable to contact the owner, the person may take the animal to an animal shelter and must leave written notice bearing his or her name and office, and the address of the location where the animal can be claimed. This provision shall not apply to the legal transportation of horses, cattle, swine, sheep, poultry, or other agricultural animals in motor vehicles designed to transport such animals. The owner of the vehicle from which the animal is rescued and the owner of the animal rescued are not liable for injuries suffered by the person rescuing the animal.

Paragraphs (b)(1), (2) and (4) of this section are inapplicable to accepted veterinary practices and activities carried on for scientific research.

Cruelty to animals is a class A misdemeanor, unless the person intentionally kills or causes serious injury to any animal in violation of paragraph (b)(4) of this section or unless the animal is killed or seriously injured as a result of any action prohibited by paragraph (b)(5) of this section, in which case it is a class F felony.

(c) Any person convicted of a misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of \$1,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of § 3035F of Title 16.

(d) Any person convicted of a felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent felony violation of this

section shall be prohibited from owning or possessing any animal for 15 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of \$5,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of § 3035F of Title 16.

(e) Any trained and certified animal welfare officer of the Department of Health and Social Service's Office of Animal Welfare or the Department of Agriculture may impound an animal owned or possessed in apparent violation of this section, consistent with § 3035F of Title 16.

(f) This section shall not apply to the lawful hunting or trapping of animals as provided by law.

(g) Notwithstanding any provision to the contrary, for a first offense misdemeanor violation of this section relating to animals left in motor vehicles or the tethering of dogs, a warning shall be issued.

(h) Exclusive jurisdiction of offenses under this section relating to animals left in motor vehicles or the tethering of dogs shall be in the Superior Court.

Subchapter II. Offenses Against the Person

Part D

Sexual Offenses

§ 761. Definitions generally applicable to sexual offenses.

(a) "Cognitive disability" means a developmental disability that substantially impairs an individual's cognitive abilities including, but not limited to, delirium, dementia and other organic brain disorders for which there is an identifiable pathologic condition, as well as nonorganic brain disorders commonly called functional disorders. "Cognitive disability" also includes conditions of mental retardation, severe cerebral palsy, and any other condition found to be closely related to mental retardation because such condition results in the impairment of general intellectual functioning or adaptive behavior similar to that of persons who have been diagnosed with mental retardation, or such condition requires treatment and services similar to those required for persons who have been diagnosed with mental retardation.

(b) "Cunnilingus" means any oral contact with the female genitalia.

(c) "Fellatio" means any oral contact with the male genitalia.

(d) "Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

(f) "Semen" means fluid produced in the male reproductive organs, which may include spermatozoa.

(g) (1) "Sexual contact" means any of the following touching, if the touching, under the circumstances as viewed by a reasonable person, is intended to be sexual in nature:

- a. Any intentional touching by the defendant of the anus, breast, buttocks, or genitalia of another person.
- b. Any intentional touching of another person with the defendant's anus, breast, buttocks, semen, or genitalia.
- c. Intentionally causing or allowing another person to touch the defendant's anus, breast, buttocks, or genitalia.

(2) "Sexual contact" includes touching when covered by clothing.

(h) "Sexual intercourse" means:

(1) Any act of physical union of the genitalia or anus of 1 person with the mouth, anus or genitalia of another person. It occurs upon any penetration, however slight. Ejaculation is not required. This offense encompasses the crimes commonly known as rape and sodomy; or

(2) Any act of cunnilingus or fellatio regardless of whether penetration occurs. Ejaculation is not required.

(i) "Sexual offense" means any offense defined by §§ 763 through 780, 783(4), 783(6), 783A(4), 783A(6), 787(b)(3), 787(b)(4), 1100A, 1108 through 1112B, 1335(a)(6), 1335(a)(7), 1352(2), and 1353(2), and 1361(b) of this title.

(j) "Sexual penetration" means:

(1) The unlawful placement of an object, as defined in subsection (d) of this section, inside the anus or vagina of another person; or

(2) The unlawful placement of the genitalia or any sexual device inside the mouth of another person.

(k) "Without consent" means:

(1) The defendant compelled the victim to submit by any act of coercion as defined in §§ 791 and 792 of this title, or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. It is not required that the victim resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy, but the victim need resist only to the extent that it is reasonably necessary to make the victim's refusal to consent known to the defendant; or

(2) The defendant knew that the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed; or

(3) The defendant knew that the victim suffered from a cognitive disability, mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct or incapable of consenting; or

(4) Where the defendant is a health professional, as defined herein, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. For purposes of this paragraph, "health professional" includes all individuals who are licensed or who hold themselves out to be licensed or who otherwise provide professional physical or mental health services, diagnosis, treatment or counseling and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists; or

(5) The defendant had substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance.

(I) A child who has not yet reached that child's sixteenth birthday is deemed unable to consent to a sexual act with a person more than 4 years older than said child. Children who have not yet reached their twelfth birthday are deemed unable to consent to a sexual act under any circumstances.

§ 775. Bestiality.

A person is guilty of bestiality when the person intentionally engages in any sexual act involving sexual contact, penetration or intercourse with the genitalia of an animal or intentionally causes another person to engage in any such sexual act with an animal for purposes of sexual gratification.

Bestiality is a class D felony.



Animal Cruelty Perpetrated by Adults and Children

Diane Balkin, Esq.
Consultant, National Council of
Juvenile and Family Court
Judges

April 21, 2022



Animal Welfare And Family Law 2022

1

Just like any other crime...except:

- Some people are over-passionate and some are indifferent
- Investigators, prosecutors, and courts are already under-resourced and over-burdened
- Crime scenes (including the body of the animal) are often not documented or processed
- Victim can never tell you what happened
- Extremely high social media and mainstream news visibility

3

Omission and Commission



5



Overview of cruelty to animals

2

The Abuse

From act to omission

From intentional to reckless

4

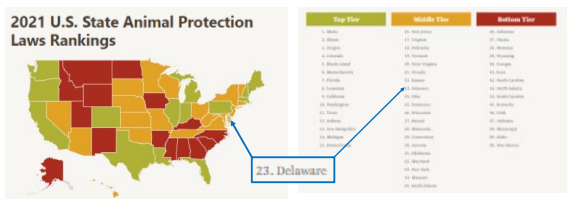
Early Cruelty Laws

- Early 19th century American state laws covered only commercially valuable animals (horses, livestock) and commonly only applied to 3rd parties (not to the owner of the animal)
- First all-encompassing animal cruelty statute in the U.S. was enacted in New York in 1867. Law was drafted by Henry Bergh
[N.Y. Rev. Stat. secs. 375.2 - 375.9 (1867)]
If any person shall over-drive, over-load, torture, torment, deprive of necessary sustenance, or unnecessarily or cruelly beat, or needlessly mutilate or kill, or cause or procure to be to be over-driven, over-loaded, tortured, tormented or deprived of necessary sustenance, or to be unnecessarily or cruelly beaten, or needlessly mutilated, or killed as aforesaid any living creature, every such offender shall, for every such offence, be guilty of a misdemeanor.
- Many states enacted cruelty laws in the 19th century following the New York model

David Favre & Vivien Tsang, *The Development of Anti-Cruelty Laws During the 1800s*, 1993 Det. C.L. Rev. 1 (1993)

6

How to find each State's statutes



<https://aaid.org/project/us-state-rankings/>

Criminal Animal Laws

Protect People
from Animals

Protect Animals
from People

Title 11, Chapter 5, § 1325(b). Cruelty to animals

A person is guilty of cruelty to animals when the person **intentionally** or **recklessly**:

- (1) Subjects any animal to **cruel mistreatment**; or
- (2) Subjects any animal in the person's custody to **cruel neglect**; or
- (3) Kills or injures any animal belonging to another person without legal privilege or consent of the owner; or
- (4) **Cruelly or unnecessarily kills or injures** any animal.

A person acts "**unnecessarily**" if the act is not required to terminate an animal's suffering, to protect the life or property of the actor or another person or if other means of disposing of an animal exist which would not impair the health or well-being of that animal;

- (4 **Felony**) **Intentionally cruelly or unnecessarily kills or causes serious injury to an animal.**

- (6) Confines an animal unattended in a standing or parked motor vehicle in which the temperature is either so high or so low as to endanger the health or safety of the animal.

Definitions § 1325. (a)

(1) "**Abandonment**" includes completely forsaking or deserting an animal originally under one's custody without making reasonable arrangements for custody of that animal to be assumed by another person.

(2) "**Animal**" shall not include fish, crustacea (e.g. shrimp, crab, lobster) or mollusks (e.g. snails, clams, oysters, scallop, octopus).

(3) "**Cruel**" includes every **act or omission** to act whereby unnecessary or unjustifiable **physical pain or suffering** is caused or permitted.

(4) "**Cruel mistreatment**" includes any treatment whereby unnecessary or unjustifiable **physical pain or suffering** is caused or permitted.

(5) "**Cruel neglect**" includes neglect of an animal, which is under the care and control of the neglecter, whereby **pain or suffering** is caused to the animal or abandonment of any domesticated animal by its owner or custodian. By way of example, cruel neglect shall also include allowing an animal to live in unsanitary conditions, such as keeping an animal where the animal's own excrement is not removed from the animal's living area and/or other living conditions which are injurious to the animal's health.

(6) "**Cruelty to animals**" includes mistreatment of any animal or neglect of any animal under the care and control of the neglecter, whereby unnecessary or unjustifiable **physical pain or suffering** is caused. By way of example, "cruelty to animals" includes the following: unjustifiable beating of an animal; overworking an animal; tormenting an animal; abandonment of an animal; tethering of any dog for 9 consecutive hours or more in any 24-hour period, except on any farm; tethering any dog for any amount of time if the dog is under 4 months of age or is a nursing mother while the offspring are present, except on any farm; and failure to feed properly or give proper shelter or veterinary care to an animal.

Definitions § 1325. (a) [cont.]

(7) "**Custody**" includes the responsibility for the welfare of an animal subject to one's care and control whether one owns it or not. A person who provides sterilization or care to a free-roaming cat that lacks discernible owner identification is not deemed to have "custody," "care," or "control" of the cat for purposes of this section.

(8) "**Farm**" means any place that meets the 2017 USDA Federal Census of Agriculture definition of farm: "any place from which \$1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the census year".

(10) "**Proper feed**" includes providing each animal with daily food and water of sufficient quality and quantity to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(11) "**Proper shelter**" includes providing each animal with adequate shelter from the weather elements as required to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(12) "**Proper veterinary care**" includes providing each animal with veterinary care sufficient to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(13) "**Serious injury**" shall include any injury to any animal which creates a substantial risk of death, or which causes prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(14) "**Tethering**" shall include fastening or restraining with a rope, chain, cord, or similar device creating a fixed radius; tethering does not include walking a dog on a leash, regardless of the dog's age.

Title 11, Chapter 5, § 775. Bestiality

A person is guilty of bestiality when the person **intentionally** engages in any sexual act involving **sexual contact, penetration or intercourse** with the genitalia of an animal or **intentionally** causes another person to engage in any such sexual act with an animal for purposes of sexual gratification.

Bestiality is a "**sexual offense**" under Delaware law.

Title 11, Chapter 5, § 761. Definitions (*interpreted*)

- (g) (1) **"Sexual contact"** means any of the following touching, if the touching, under the circumstances as viewed by a reasonable person, is intended to be sexual in nature:
- Any **intentional** touching by the defendant of the genitalia of an animal.
 - Any **intentional** touching of the genitalia of an animal with the defendant's anus, breast, buttocks, semen, or genitalia.
 - Intentionally** causing or allowing another person to touch an animal's genitalia.
- (2) **"Sexual contact"** includes touching when covered by clothing.
- (h) **"Sexual intercourse"** means:
- Any act of physical union of the genitalia or anus of 1 person with the genitalia of an animal. It occurs upon any penetration, however slight. Ejaculation is not required; or
 - Any act of cunnilingus or fellatio with the genitalia of an animal regardless of whether penetration occurs. Ejaculation is not required.
- (i) **"Sexual penetration"** means:
- The unlawful placement of an object ... inside the genitalia of an animal; or
 - The unlawful placement of the genitalia of an animal inside the mouth of another person.
- (d) **"Object"** means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

13

"Truck Surfing"

Recklessly

15

Voiceless Victims

- What happened?
- Causation
 - Was it human caused vs. predator?
 - Was it human caused vs. accidental? (hit by car or by blunt object)
 - Proximate cause of death or injury? (disease/illness or starvation)
- Identification of suspect?
- Was there pain or suffering



17

How do I prove the defendant's **state of mind**?

§ 231. Definitions relating to state of mind.

- (b) **"Intentionally"**. A person acts intentionally with respect to an element of an offense when:
- If the element involves the nature of the person's conduct or a result thereof, it is the person's conscious object to engage in conduct of that nature or to cause that result; and
 - If the element involves the attendant circumstances, the person is aware of the existence of such circumstances or believes or hopes that they exist.
- (e) **"Recklessly"**. A person acts recklessly with respect to an element of an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the element exists or will result from the conduct. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

14

Proof Challenges

16

Important Tip:

Work harder to
exonerate the
innocent!

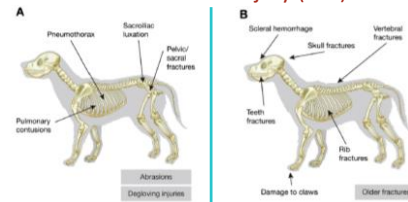
18

Non-Accidental Injury vs. Accidental Injury

Blunt force trauma, also called non-penetrating trauma is an **injury to the body caused by forceful impact, injury, or physical attack with a dull object or surface**. It is in contrast to penetrating trauma, in which an object or surface pierces the body, causing an open wound.

19

Typical Injuries Motor Vehicle Accident (MVA) vs. Non-Accidental Injury (NAI)



A = MVA: Motor Vehicle Accident

B = NAI: Non-Accidental Injury

20

Characterization and Comparison of Injuries Caused by Accidental and Non-accidental Blunt Force Trauma in Dogs and Cats - *J Forensic Sci*, 2016

TABLE 2—Odds ratio in favor of non-accidental injury (NAI) for injuries found to be statistically significant through chi-square analysis.

Injury	NAI (n = 50)	MVA (n = 426)	Odds Ratio in Favor of NAI	95% Confidence Intervals
⇒ Skull fracture	16	17	15.1	(6.64, 33.64)
Teeth fracture	13	20	7.1	(3.29, 15.48)
Vertebral fracture	5	15	3.1	(1.06, 8.77)
Rib fracture	14	38	4.1	(1.97, 8.01)
Pelvic/sacro fracture	4	96	0.3:1	(0.10, 0.85)
Sacroiliac luxation*	0	48	0.077:1	(0.0047, 1.27)
Abrasions	5	310	0.041:1	(0.016, 0.11)
Degloving injury*	0	36	0.11:1	(0.0004, 1.75)
Damage to claws	6	19	3:1	(1.11, 7.70)
Scleral hemorrhage	14	34	4.5:1	(2.20, 9.12)
Pneumothorax	3	122	0.16:1	(0.048, 0.52)
Pulmonary contusion	12	186	0.41:1	(0.21, 0.80)
⇒ Older fractures	11	1	110:1	(15.08, 953.06)

21

Pain and Suffering

22

Delaware – Intent of Statute?

“**Cruel**” = unnecessary or unjustifiable **physical pain or suffering**

“**Cruel mistreatment**” = unnecessary or unjustifiable **physical pain or suffering**

“**Cruel neglect**” = includes neglect whereby **pain or suffering** is caused to the animal

“**Cruelty to animals**” = includes mistreatment whereby unnecessary or unjustifiable **physical pain or suffering** is caused

23

Normal Vital Signs

Species	Normal Core Body Temperature °F	Normal Heart Rates	Normal Respiratory Rates
Dog	101-102	70-180	16-20
Cat	101-102.5	170-240	20-30
Rabbit	102-104	130-325	32-60
Guinea Pig	100-103	240-350	40-150
Horse	99-100.5	35-45	8-16
Cow	101-101.5	60-70	10-30
Sheep	102-102.5	60-80	12-20
Goat	103-103.5	70-90	12-20
Pig	102-102.5	60-80	8-15
Chicken	105-106	200-400	15-30
Hamster	101-102	250-500	35-135

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Other Experts in "Animal Cases"

- Veterinary technicians
- Dog trainers and animal behaviorists
- Breeders (small and large animal)
- Farriers
- Wildlife rehabilitators
- Blood sport experts
- Exotics experts

31

Why do people harm animals?

Legal Justification? Explanation? Defense? Excuse?

32

ABUSE
is **NEVER** okay

33

Motive

WHY someone does something.

34

Accountability

WHETHER
someone does something.

35

COVID-19 → Increase in Abuse

- Forced to stay at home = increased isolation
- Economic Hardships = increased risk factors
 - Layoffs; evictions; foreclosure
- Increase in child abuse and animal cruelty
 - Increased stress
 - Neglect
 - Virtual classrooms & tele-medicine
 - Critical reporters and responders off-line
 - Virtual visits by social workers, probation officers



36

Delaware: Endangering the welfare of a child

§ 1100 (2) “Child” shall mean any individual less than 18 years of age. §18-6-401

§ 1102 (a) A person is guilty of endangering the welfare of a child when:

- (1) Being a parent, guardian or any other person who has assumed responsibility for the care or supervision of a child the person:
 - a. **Intentionally, knowingly or recklessly** acts in a manner **likely to be injurious to the physical, mental or moral welfare of the child**

37

Why domestic violence victims recant:

- The “close” relationship with the defendant
- Fear of more and greater violence to the victim or others including the family
- External pressure – financial dependence
- Defendant acts remorseful and apologetic
- Victim feels “guilty”

39

Hoarding cases distinguish themselves

- Number of animals
- Complexity of crime scene investigation
- Cost (time and money) involved in the investigation and prosecution
- Sympathetic defendant
- Mental illness vs. criminal conduct

41

Delaware Rules of Evidence Rule 404 - Character Evidence Crimes or Other Acts

(b) Crimes, Wrongs, or Other Acts.

(1) **Prohibited Uses.** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) **Permitted Uses; Notice in a Criminal Case.** This evidence may be admissible for another purpose, such as proving **motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.**

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Consider some commonly used defenses

- It was an accident; I had no idea
- It didn't happen: There's no injury; there's no evidence
- Causation
- It was justified or excusable: self defense; discipline; training
- Lack of identification; “Some other dude did it”; I don't look like someone that would do that
- Animal was sick/dying; couldn't afford veterinary care
- “Reasonable doubt”

40

Severe and Protracted Cruelty

- Being kept by a hoarder is a slow kind of death for the animal. Actually, it is a fate worse than death.

Randall Lockwood PhD, ASPCA

- In no other type of cruelty is there a wider gulf between the intent to benefit the animals and the harm inflicted on the animals.

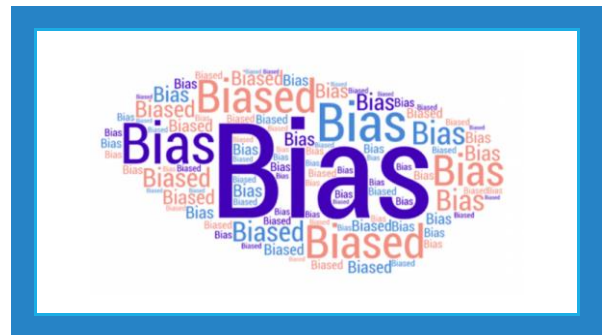
Frank McMillan DVM, Best Friends

42

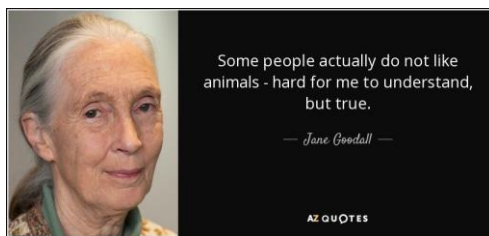
Are they “legally” insane?

- Is a legal test not a psychiatric test
- Not insanity:
 - Horrific crime, unprovoked, violent
 - Common terms
 - Crazy; Wacky; Nuts, Weird, Berserk
- Psychiatric terms
 - Antisocial; Paranoid schizophrenic; Bipolar. PTSD
- Impulsive; no control; couldn't stop

43



44



45

Bias against animal welfare officers

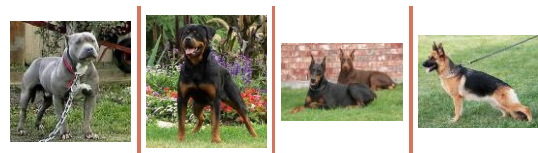


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Species Bias

47



Breed Bias

48

Examples of statutory provisions addressing the “link”

49

Colorado Statutory Requirements of Peace Officers §18-6-803.6

Must arrest a suspect if there is probable cause to believe they committed an act of domestic violence

Must make reasonable efforts to collect and preserve evidence

Must note on the charging document that the alleged act constitutes domestic violence

Must use every reasonable means to enforce protection orders

Must arrest a suspect who has allegedly violated a protection order

51

Colorado Civil Protection Order §13-14-105

A court of record that is authorized to issue protection or restraining orders, in connection with issuing a civil protection order, has jurisdiction to include any provisions that the court deems necessary for the protection of persons, including but not limited to:

- Restraining a party from molesting, injuring, killing, taking, transferring, encumbering, concealing, disposing of or threatening harm to an animal owned, possessed, leased, kept, or held by any other party or a minor child of any other party
- Specifying arrangements for possession and care of an animal owned, possessed, leased, kept, or held by any other party or a minor child of any other party;

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Colorado: Domestic Violence Definition

§18-6-800.3.

“Domestic violence” means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. “Domestic violence” also includes any other crime against a person, or against property, **including an animal**, or any municipal ordinance violation against a person, or against property, including an animal, **when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.**

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Colorado Criminal Protection Order §18-1-1001 (November 1, 2018)

Upon motion of the district attorney or on the court’s own motion for the protection of the alleged victim or witness, the court may, in cases involving domestic violence...enter any of the following further orders against the defendant:

“An order prohibiting the taking, transferring, concealing, harming, disposing of, or threatening to harm an animal owned, possessed, leased, kept, or held by an alleged victim or witness”

52

Delaware Pet Ownership Ban

§ 1325

(c) Any person convicted of a misdemeanor violation shall be prohibited from owning or possessing any animal for 5 years

(d) Any person convicted of a felony violation shall be prohibited from owning or possessing any animal for 15

54

**There are immense
benefits for humans,
animals and the
community if you take
animal abuse seriously!**



DIANE BALKIN

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(303) 884-2000

55

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Panel 4

Partnerships

Dr. Mary Lou Randour
Animal Welfare Institute

Adam Lamb
Brandywine Valley SPCA

Tanner Polce
Brandywine Valley SPCA

Kim Eppehimer
Friendship House

Capital Police Representative
Dog Therapy Program

Adam Lamb, Chief Executive Officer

Adam Lamb focuses his career on marrying open access sheltering with no-kill standards. Lamb came to the BVSPCA from Tampa, Florida, where he worked at the SPCA Florida, Humane Society of Tampa Bay and Hillsborough County Animal Services.

In 2015, the BVSPCA became the first open admission no-kill shelter in Pennsylvania. Lamb took the county operation from a modest animal control shelter with a live release rate of 65% and an intake of 5,501 to what's now the Brandywine Valley SPCA, serving the entire state of Delaware and two Pennsylvania counties with nearly 19,000 animals in its care per year and a live release rate of 96%. In 2018, the BVSPCA led Delaware to becoming the first "No-Kill" state in the nation.

Recognizing the importance of keeping owned pets in their homes, Lamb has also launched programs for pet retention, such as services for domestic violence survivors, pet food assistance, free vaccine clinics, and humane education.

Tanner Polce, Chief Advancement Officer

Tanner Polce joined the BVSPCA team in late 2020 after serving years in numerous roles for the State of Delaware and as a Councilmember in the City of Dover. Tanner served as senior staff in the Office of the Lt. Governor from 2016-2020. Prior to the role of Policy Director for the Office, he served as Legislative Aide to Senator David Sokola and then-Senator Hall-Long. In 2017, Tanner was elected to Dover City Council and served a term before selecting to not seek election. His deep understanding of relationship management, policy and strategy has been instrumental in growing revenues and cultivating new connections.

Tanner holds a B.A. in Political Science and an M.B.A both from Wesley College. Tanner plays a critical role in the organization's development, partnership and strategic advancement of the BVSPCA.

Kim Eppehimer is the Executive Director of Friendship House, a nonprofit organization uniting people facing homelessness with loving, supportive communities they can call home. She has been with FH since 2014 and is honored to serve the community through FH's mission. Kim's educational background includes a Master's in Financial Accounting from the University of Maryland, a Certificate of Non-Profit Management from University of Delaware, and a Certificate of Theology and Ministry from Princeton Theological Seminary. She is a member of the Human Trafficking Advisory Board and the Behavioral Science Advisory Board with Wilmington University, as well as the Human Services Advisory Council with University of Delaware. Kim is also an active member of the DE Campaign to End Debtor's Prison advocacy group. Most recently, she was successful in getting FH through the COVID-19 pandemic, expanding every FH program in the past two years and creating a new program in collaboration with New Castle County at the NCC Hope Center, a 400 bed shelter system. Outside of managing FH, Kim is often found running local trails, enjoying playing games with her husband and two boys, mastering the art of cuddling with her dogs, or working on various word or jigsaw puzzles.

Alternative Sentencing

Mary Lou Randour, Ph.D.

Senior Advisor, Animal Cruelty Programs and Training

Animal Welfare Institute

Marylou@awionline.org

What Doesn't Work

- ▶ Get tough approaches
 - ▶ Scared Straight
Two meta-analyses found that participation in Scared Straight-type programs increases the odds that youth will commit offenses in the future.
- ▶ DARE
 - ▶ Longstanding, popular program, however multiple studies showed no effect
 - ▶ A few studies showed a negative effect
 - ▶ In 2009 developed a new model, from Just say No! to Keepin' it REAL.
 - ▶ Curriculum developed by violence prevention experts & curriculum developers
 - ▶ Classroom instruction, 10 weeks, continued education over school year

Empirical information about violent offending

- ▶ Life course persistent delinquency and adolescent-limited delinquency
- ▶ Ages 18 - 29 is period when early signs of delinquency persist or desist
- ▶ 50% of children with serious conduct disorder do not develop Adult Personality Syndrome
- ▶ First appearance of violent behavior
 - ▶ before age 11 - 50% persisted
 - ▶ between 11 and 13 - 30% persisted
 - ▶ adolescence - 10% persisted
- ▶ Mental health and personality variables as risk factors
 - ▶ Hyperactive-impulsive-attention deficit combined with conduct disorder
 - ▶ Mood disorders
 - ▶ Post-traumatic stress disorder

National Institute of Justice's Crime Solutions www.crimesolutions.gov

- CrimeSolutions.gov programs and practices are identified, screened, reviewed, and rated using a standardized process. Programs are reviewed based on evaluations and practices based on meta-analyses that synthesize different evaluations, but those evaluations have to be sufficiently rigorous. Each screened program and practice is reviewed by two certified reviewers using objective scoring instruments. Ratings are assigned based on the consensus score, which is subject to a documented dispute resolution process when necessary.

Blueprints for Healthy Youth Development

www.blueprintsprogram.org

- ▶ The Blueprints for Healthy Youth Development mission is to promote interventions that work. They provide a comprehensive, trusted registry of evidence-based interventions (programs, practices and policies) that are effective in reducing antisocial behavior and promoting a healthy course of youth development and adult maturity. They also advocate for evidence-based interventions locally and nationally and produce publications on the importance of adopting high-scientific standards when evaluating what works in social and crime prevention interventions.

How rigorous is rigorous?

► Crime Solutions

► Effective	19%
► Promising	61%
► No effect	20%

► Blueprints

► Model Plus	3.5%
► Model	15.7%
► Promising	80.8%

NIJ's Multisite Evaluation of Prosecutor-Led Diversion Programs

- ▶ Study implemented by the Center for Court Innovation, the RAND Corporation, the Association of Prosecuting Attorneys, and the Police Foundation.
- ▶ Milwaukee Diversion; Milwaukee Deferred; Chittenden County RICC; Cook County Felony Drug; Cook County misdemeanor Drug; Cook County Misdemeanor Deferred Prosecution
- ▶ Milwaukee Diversion; Cook County Felony Drug School; and Cook County Misdemeanor Deferred Prosecutions had statistically significant less arrests after two years to comparison groups ($p < .05$)

The element of success

- ▶ Programs that follow Risk-Need-Responsivity model reduce recidivism up to 35%
 - ▶ Risk: Offender treatment calibrated to level of risk
 - ▶ Need: primary address criminogenic needs-history of antisocial behavior; antisocial personality pattern; antisocial cognition; antisocial associates; family and/or marital; school and/or work; leisure and/or recreation; substance abuse
 - ▶ Responsivity - offender treatment therapies match an offender's learning style, motivation level, and cultural background
- ▶ Therapeutic treatment model
- ▶ Select tested treatment with trained staff
- ▶ Assure fidelity of intervention
 - ▶ Training
 - ▶ Manual
 - ▶ Supervision
- ▶ Separate higher risk from lower risk
- ▶ Provide services to moderate and higher risk
- ▶ Completion of program
- ▶ Longer duration

The elements of success, cont'd

- ▶ Provide services to moderate and higher risk
- ▶ Completion of program
- ▶ Longer duration
- ▶ Cognitive social learning strategies
- ▶ Group based delivery alongside individual delivery
- ▶ Treatments that incorporated role-play activities and relapse prevention
- ▶ Home work
- ▶ Interpersonal skill development
- ▶ Follow-up and follow-through after treatment completion

Meta-analysis of diversion programs for juvenile offenders

- ▶ 28 eligible studies; 57 experimental comparisons, and 19,301 youth
- ▶ Five types of programs were reviewed
 - ▶ Case management
 - ▶ Individual treatment
 - ▶ Family treatment
 - ▶ Youth court
 - ▶ Restorative Justice
- ▶ Only family treatment produced statistically significant reduction in recidivism
- ▶ Restorative justice also produced significant reductions in recidivism when researchers were involved

NIJ Findings

- ▶ Of the NIJ study of 15 programs, only four used a formal, validated tool.
- ▶ Milwaukee was a unique model among all programs examined adopting a rigorous protocol for risk informed decision making
 - ▶ Short form LSI-R:SV
 - ▶ Defendants scoring medium or high risk given full length LSI-R
 - ▶ Medium risk routed to Deferred Prosecution
 - ▶ High risk ineligible
- ▶ Few programs used evidenced-based cognitive behavior therapy although some were beginning to adopt; instead, educational classes predominated
- ▶ Only four programs used restorative justice models

Don't reinvent the wheel: Examples of successful programs and practices-Juveniles

- ▶ Big Brothers, Big Sisters
- ▶ Functional Family Therapy
- ▶ Juveniles Breaking the Cycle Program (Lane County, Oregon)
- ▶ Mentoring
- ▶ Multisystemic Therapy
- ▶ Police Diversion
- ▶ Treatment in Secure Corrections for Serious Juvenile Offenders

Examples of effective programs for adult offenders

- ▶ Alleghany County (Penn) Jail-Based Reentry Specialist Program
- ▶ Cook County Misdemeanor Deferred Prosecution
- ▶ Enhanced Thinking Skills
- ▶ Milwaukee Diversion Program
- ▶ Reduced Probation Caseload in Evidence-Based Setting (Iowa)

Don't I need a program that specializes in animal cruelty offenses?

- ▶ **NO**
- ▶ Animal cruelty is a behavior, not a diagnosis
- ▶ Remember “the link” - animal cruelty offenders also likely to be committing other interpersonal crimes therefore need program proven effective with violent offenders (recognizing level of violence may vary)
- ▶ Choosing evidence-based program most important factor

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Courthouse Facility Dogs

A Witness's Best Friend

BY JILL MARIANI

“Dogs are such agreeable friends—they ask no questions, they pass no criticisms.” George Eliot, *Scenes of Clerical Life* (1857), quoted in *People v. Tohom*, 969 N.Y.S.2d 123 (App. Div. 2013), *leave denied*, 22 N.Y.3d 1203 (2014).

Many victims of violence lose the power of their voice. Depending on the degree of trauma and the nature of the crime, a victim may feel ostracized and powerless. Articulating the details of the criminal acts perpetrated against a victim to strangers, including police, jurors, judges, spectators, and the perpetrator and their counsel, can trigger disturbing emotions

and rekindle the trauma the victims experienced during the actual events.

Recognizing the therapeutic effect of canines, several courts throughout the United States permit professionally trained facility dogs to accompany vulnerable victims and witnesses during their testimony in the courtroom. This article familiarizes the legal community with the rapid evolution of this

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novel approach of enlisting the services of a courthouse dog, a particular type of facility dog, to assist anxious and traumatized victims/witnesses to provide complete and truthful testimony.

Definition

It is important to note what a facility dog is, and what it is not. The inaccurate use of the term facility dog by the courts and others often confuses other types of working dogs with *facility dogs*. Working dogs that provide assistance to a human being, but are not facility dogs, include (1) a *service dog*, trained to perform one or more specific tasks to assist a person with a disability; (2) a *therapy dog*, trained to provide psychological or physiological therapy to one or more individuals; (3) an *emotional support/comfort dog*, trained to respond to a particular crisis suffered by the dog's handler; or (4) a *detection dog*, trained to find explosives, drugs, or contraband items or to engage in search-and-rescue operations.

A facility dog is an expertly trained animal that assists an anxious or traumatized individual to communicate the facts that he or she has experienced or witnessed. The temperament of this type of dog is more subdued than most other working dogs. Usually a golden or Labrador retriever, a facility dog is bred to detect a human being's stress level. The facility dog can calm a victim/witness with a gentle nudge to that person's leg or by simply laying a furry head on the person's lap, making the individual feel safe.

A facility dog must graduate from an accredited dog association, such as Assistance Dog International, or one of its affiliated organizations. Undergoing at least a two-year training period, these dogs must pass the same public access test as other working dogs. From puppyhood, these dogs are sensitized to be resilient in stressful situations, while also expressing confidence and affection. Rebecca Wallick, *Dogs in the Courtroom, Follow-Up Part II*, *The Bark* (Feb. 2015), <https://tinyurl.com/y9ty4wb7>.

A facility dog can be paired with a myriad of handlers, including forensic interviewers, psychologists, social workers, counselors, therapists, victim advocates, law enforcement personnel, and prosecutors. These dogs can benefit victims or witnesses in a variety of circumstances, from an initial interview or forensic examination, to pretrial briefings, courtroom testimony, sentencing, and other post-conviction proceedings.

The Inspiration

The inspiration for the courthouse facility dog

harkens back to Jeeter, a golden retriever/Labrador retriever mix, from Ellen O'Neill-Stephens's household. In 2003, practicing as a drug court prosecutor in the Kings County District Attorney's Office in Seattle, Washington, Ms. O'Neill-Stephens discovered that Jeeter could assist "at-risk" children or those "rehabilitating" from substance abuse with their recovery. Eventually, Ms. O'Neill-Stephens established the Courthouse Dogs Foundation, a nonprofit organization advocating for and educating others about the use of these dogs. Rebecca Wallick, *Dogs in the Courtroom*, *The Bark* (July 2018), <https://tinyurl.com/ycmxzlc8>.

The use of facility dogs was continued by Deputy Prosecutor Page Ulrey, whose dog, Ellie, a Labrador retriever mix, obtained "facility dog" status from Canine Companions for Independence. As the first recognized courthouse facility dog, Ellie worked with the prosecution team in the King's County District Attorney's Office. *Id.* Jeeter and Ellie spurred the development of programs in nearly three dozen states throughout the continental United States and in Hawaii that utilize hundreds of facility dogs. See Jenni Bergal, *Canines Helping Out in the Courtroom*, PEW (June 26, 2017), <https://tinyurl.com/yb4nnuek>. At least one-third of these dogs have accompanied witnesses into courtrooms.

The Benefit

The courthouse facility dog, the preferred term, may assist any vulnerable participant in any court proceeding, including victims/witnesses in criminal proceedings; individuals recovering from substance abuse, mental illnesses, and post-traumatic stress disorders before drug courts and mental health courts; and even defense witnesses. Casey Holder, Comment, *All Dogs Go to Court: The Impact of Court Facility Dogs as Comfort for Child Witnesses on a Defendant's Right to a Fair Trial*, 50 *Hous. L. Rev.* 1155 (2013).

The positive effects derived from a canine accompanying a victim/witness is rooted in science. Research has shown that traumatized individuals may experience a surge of the hormone cortisol that affects an individual's cognitive capacity, resulting in difficulty recalling information or focusing on a question. Research has also found that interacting with a dog can produce another hormone called "oxytocin," sometimes referred to as the "love hormone," which is associated with the feeling of well-being and comfort and can assist a victim in communicating effectively. Gabriela N. Sandoval, *Court Facility Dog—Easing the Apprehensive Witness*, 39 *Colo. Law.*,

no. 4, Apr. 2010, at 17, <https://tinyurl.com/y9pn5v5r>; James C. Ha, *Dog Behavior: Modern Science and Our Canine Companions* (Academic Press 2018).

By establishing a safe and stable environment, these dogs assist the victim/witness to recall and articulate critical and truthful information better. Trained to perform unobtrusively in public, the courthouse dog will sit quietly next to a victim/witness for long periods of time and will not interrupt the flow of testimony or disturb the courtroom proceedings. Rebecca Wallick, *Stilson Comforts at Sentencing*, *The Bark* (Feb. 2015), <https://tinyurl.com/yc5dudos>.

Legal Authority

Initially the authority for permitting a canine to accompany a victim/witness into the courtroom was grounded in the trial judge's inherent discretion to direct courtroom protocol and decorum. Such discretion has justified a judge's ruling to limit the examination of witnesses, to remove an uncooperative or obstructive participant, or to allow jurors to ask questions of the witnesses. See, e.g., *People v. Johnson*, 315 Mich. App. 163 (2016) (citing *People v. Rose*, 289 Mich. App. 499, 509 (2010)).

Some courts have also invoked specific statutes to buttress that authority. For example, in 2013, a New York trial court permitted *Rose*, a graduate facility dog placed with the Poughkeepsie children's home, to assist a child witness to testify against her father in a criminal sexual assault case. See *People v. Tohom*, 969 N.Y.S.2d 123 (App. Div. 2013), *leave denied*, 22 N.Y.3d 1203 (N.Y. 2014). The judge relied on a 1986 amendment to the Fair Treatment Standards for Crime Victims, pursuant to Executive Law on § 642-a(4), authorizing a judge to "be sensitive to the psychological and emotional stress a child witness may undergo when testifying."

Several years before the enactment of a specific statute, a California trial judge relied on California Evidence Code § 765 to permit a facility dog to accompany two juvenile sisters in the courtroom during their testimony against the defendant, a relative charged with committing numerous lewd and sexual acts against them. *People v. Chenault*, 175 Cal. Rptr. 3d 1 (Ct. App. 2014). Many of the cases that permitted the presence of a dog in court have involved victims of sexual assault who were either minors or adults with developmental disabilities.

In the last five years, several states have enacted specific statutes permitting certified dogs to accompany victims/witnesses. At last count, at least 15 states have enacted statutes expressly permitting a professionally trained canine designated as a facility

dog to accompany victims and vulnerable witnesses during their testimony in specified circumstances.

Some statutes limit the accompaniment of a certified canine to underage victims or witnesses (ranging from 13 to 18 years of age) in criminal matters or in noncriminal matters involving child abuse or neglect (see, e.g., Ark. Code Ann. § 16-43-1002; Idaho Code § 19-3023; Miss. Code Ann. § 99-43-101; Okla. Stat. Ann. § 2611.12(C) (therapeutic dog)). Other statutes extend the accommodation to adults who are intellectually, physically, or developmentally disabled; to victims and witnesses of sexual offenses, regardless of age (see, e.g., 725 Ill. Comp. Stat. Ann. 5/106B-10; Fla. Stat. Ann. § 92.55 (facility dogs and therapy dogs)); or to victims of domestic violence (see, e.g., Cal. Penal Code §§ 868.4, 868.5 (codifying *People v. Chenault*)).

As the concept and its benefits have become better understood, some state legislatures have broadened the courts' authority to permit canines to accompany any vulnerable witness, as defined by the statute or case law. See, e.g., Ala. Code §§ 12-21-147 & 12-21-148 (therapy and facility dogs); Ariz. Rev. Stat. Ann. § 8-422; Conn. Gen. Stat. Ann. § 51-10d (therapy dogs); Hawaii Rev. Stat. § 621-30; La. Rev. Stat. § 15-284; Mich. Comp. Laws Ann. § 600.2163a; Va. Code Ann. § 18.2-67.9:1; Wash. Rev. Code § 10.52.110.

Burden of Proof

Although some statutes provide for such an accommodation upon the court's own motion (see, e.g., Fla. Stat. Ann. § 92.55; Miss. Code Ann. § 99-43-101), the usual procedure is for a party to make an application. There appear to be three standards of proof among the jurisdictions to justify the presence of facility dogs. Some courts do not require the movant to make a showing but place the onus on the defendant to establish prejudice or impropriety. Other courts require the applicant to establish explicitly the necessity of the dog to facilitate the witness's testimony. In some jurisdictions, this burden of proof is codified (see, e.g., Hawaii Rev. Stat. § 621-30(b) (a "compelling necessity"), Va. Code Ann. § 18.2-67.9:1(C) (preponderance of the evidence); Wash. Rev. Code § 10.52.110(5) (dog's presence is necessary)). Yet other jurisdictions simply require that the record clearly demonstrate that the witness would have difficulty testifying without the assistance of a facility dog. See, e.g., *People v. Tohom*, 969 N.Y.S.2d 123 (App. Div. 2013); Cal. Penal Code § 868.4(b)(3); Okla. Stat. Ann. § 2611.12 (D)(1)(c); Va. Code Ann. § 18.2-67.9:1(C) (2).

Irrespective of the applicable standard, the moving

party should seek permission in written form from the court and set forth the following facts, some of which are required by statute: (1) the credentials of the facility dog, including the type of training and certification attained; (2) the extent of any prior in-court experience by the canine; (3) details about the experience and the training of the facility dog's handler; (4) any established relationship between the witness/victim and the canine, and noting if the presence of the dog was requested by the victim/witness; and (5) the low risk of any disruption by the canine in the court proceedings, including information about any liability insurance policy. See, e.g., Hawaii Rev. Stat. § 621-30(c)(2); Okla. Stat. Ann. § 2611.12(D)(1)(b); Wash. Rev. Code § 10.52.110(4)(b); see also Ala. Code §§ 12-21-147(a)(3)(a)(5) & 12-21-148(a)(1)(d) (requires a minimum \$500,000 liability policy). It is also prudent to request that the dog be present during preliminary hearings or other court appearances so that the trial judge can evaluate the behavior of the canine in settings where there is no trial jury. Adherence to such practices may well shape the law in states where there is no specific statute and make way for amendments broadening existing laws.



Defense Objections

The major concern raised by defense counsel is that the accused party may be unduly prejudiced by the mere appearance of the canine in the courtroom. More specifically, they argue that the dog may make the witness appear more appealing to the jury or may make the defendant appear so menacing that the witness needs to be protected by a dog, or may suggest that the witness is undergoing therapy as a result of trauma inflicted by the defendant. William Glaberson, *By Helping a Girl Testify at a Rape Trial, a Dog Ignites a Legal Debate*, N.Y. Times (Aug. 8, 2011), <https://tinyurl.com/42y8nu9>. The research of Professor Dawn McQuiston of Wofford College in Spartanburg, South Carolina, indicates that the presence of the canines has no effect on jurors. See Dave Collins, *Comfort Dogs in Court Do Opposite*

for Some Defenders, Judges, Chi. Trib. (Apr. 5, 2018), <https://tinyurl.com/y978xvbr>; Kayla Burd, *Facility Dogs in the Courtroom: Comfort Without Prejudice?*, Sage J. (May 2, 2019). Nevertheless, several precautionary measures can be taken to minimize any potential prejudice. First, the parties should seek the court's approval to voir dire prospective jurors on the issue of whether a facility dog accompanying a witness would create any undue sympathy for the witness or cause prejudice to a party in any way. Some statutes expressly permit such an inquiry.

See, e.g., Ark. Code Ann. § 16-43-1002(e); Wash.

Rev. Code § 10.52.110(7)(a). Second,

the parties and the court should agree upon the procedure for the physical introduction of the facility dog into the courtroom. In most reported cases, and as specified in several statutes, the facility dog accompanies the witness to and from the witness box outside the presence of the jury. Furthermore, in most instances, the dog is not visible to the jurors during the testimony. See, e.g., Wash. Rev. Code § 10.52.110(7)(b), (c). Third, the parties should discuss with the court the need for and wording of any preliminary instructions to the jury

before the testimony begins, and any general instructions at the conclusion of the testimony. The jurors should be informed that while a dog may be accompanying a particular witness during the trial, the jury should "not make or draw any conclusions based on the presence of the dog's service." Some statutes have codified a requirement for jury instructions. See, e.g., Ariz. Rev. Stat. Ann. § 8-422(C).

National Support

There is national recognition of the benefit of facility dogs to victims/witnesses. In 2018, the National District Attorneys Association and the Association of Prosecuting Attorneys each passed a resolution supporting the implementation of courthouse facility dogs to accompany victims and vulnerable witnesses. See Nat'l Dist. Att'ys Ass'n, *2018 Resolution of The National District Attorneys Association* (2018), <https://tinyurl.com/ybktypzl>; Ass'n of Prosecuting Att'ys,

Courthouse Facility Dog Resolution of the Association of Prosecuting Attorneys (Feb. 2018), <https://tinyurl.com/y96lbo9d>. On December 19, 2019, the US Senate passed a bill sponsored by Senator John Cornyn (TX) called Dogs as Witnesses Guardians Act (S. 1029) (DAWG Act), or Courthouse Dogs Act, which authorizes federal judges to permit a certified facility dog to accompany a witness testifying in criminal proceedings. *Courthouse Dogs Act*, S. 1029, 116th Cong. (2019), <https://tinyurl.com/y9jxsynd>.

The legislation is now pending in the House of Representatives with bipartisan support. *Courthouse Dogs Act*, H.R. 5403, 116th Cong. (2019), <https://tinyurl.com/y9vfwtpg>.

Embraced Internationally

The American model of the courthouse facility dog has been embraced worldwide. It is being replicated in Argentina, Canada, Chile, the United Kingdom, and part of continental Europe. Dr. Elizabeth Spruin, a canine behaviorist and an investigative psychologist in the School of Psychology, Politics and Sociology at the Canterbury Christ Church University, in England, specializes in the use of dogs to support vulnerable members of society in her role as the director of the Justice Support Dogs International Laboratory. The research lab is dedicated to examining the benefits that specially trained dogs can provide victims and witnesses in the criminal justice system. Ella Rhodes, *Paws for Court*, 29 *The Psychologist* 896 (Dec. 2016), <https://tinyurl.com/ybfdazus>. Oliver, a black lab certified facility dog, was the first canine to work throughout the British justice system providing support to victims and witnesses of crimes, including children with autism and emotional issues. Dr. Spruin's research shows that Oliver's presence makes victims/witnesses feel less anxious and more relaxed in legal proceedings, enabling them to communicate more clearly and openly.

Operating from its headquarters in Brussels, Belgium, Victim Support Europe (VSE), an international advocacy group, is committed to offering the assistance of facility dogs to victims. VSE has partnered with other European organizations to advance a multi-country project on research, best practices, and implementation of a facility dog program to address a significant EU-wide problem of secondary victimization or victim-blaming. There are currently facility dog programs in Belgium, Hungary, Ireland, Italy, Romania, and Serbia. For instance, Children at Risk in Ireland has partnered with Dogs for the Disabled to raise funds to train a courthouse dog to assist minors to

testify in criminal matters. See, e.g., *CARI Seeking to Employ Courthouse Dog to Help Children Give Evidence*, Raidió Teilifís Éireann (Nov. 2019), <https://tinyurl.com/ybc4teym>; Patricia Hynes, *Top Dogs*, 112 *L. Soc'y Gazette*, no. 3, Apr. 2018, at 36, <https://tinyurl.com/yc7nebwq>.

On this side of the Atlantic, Kim Gramlich is the founder and chair of the Justice Facility Dogs Canada (JFDC), an organization that provides advocacy and education across Canada. JFDC supports Canadian legislation that would permit facility dogs to aid victims within the Canadian criminal justice system. One of JFDC's goals is to develop Canadian crisis response teams that would respond to mass casualty incidents and disasters.

In 2009, Cecilia Marre, the executive director of Corporacion Bocalan Confiar, an assistance dog organization in Santiago, Chile, started a victim support program that employs canines to assist public prosecutors in nonjury criminal trials. Ellen O'Neill-Stephens, *Courthouse Dogs Go South*, *The Bark* (July 2018), <https://tinyurl.com/y9t9bo65>. Titan, a five-year-old golden retriever, is a courtroom dog working with children in Buenos Aires, Argentina. Bubble Staff, *This Argentine Courtroom Therapy Dog That Helps Kids Is the Best Boi*, *The Bubble* (Jan. 2020), <https://tinyurl.com/y85vq7yf>.

A few programs have been initiated in the jurisdictions Down Under. Joanne Baker, a nonlawyer in Australia with a Master of Science in Canine Science, is the president and managing director of Righteous Pups Australia, Inc. She pairs dogs with at-risk teens and young people with disabilities, including autism spectrum disorders, at her facility (<https://tinyurl.com/y8z4zygs>). In New Zealand, Gail Bryce, a court's victim advisor, introduced the concept of courthouse facility dogs through Louie, her black Lab who worked in the Tauranga court. Louie died in December 2018, after assisting in 35 trials. Ministry of Justice, *Justice: Our People, Our Communities* 14 (2017), <https://tinyurl.com/ycfa7xzv>.

Conclusion

Increasingly in the United States and internationally, courthouse facility dogs are recognized as assets in the courtroom. They assist victims/witnesses with trauma, mental illness, or intellectual disability and those who might otherwise be unable or unwilling to testify. A facility dog can give victims and witnesses a voice and the courage to speak their truth. With appropriate procedures in place and oversight by the courts, facility dogs deserve a role in the criminal justice system. ■

A Snapshot of Delaware's NIBRS Animal Cruelty Crime Statistics

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Delaware leads the nation

Total number of animal cruelty crime incidents reported in 2019 in **U.S.** **9,956**

Total number of animal cruelty crime incidents reported in 2019 in **DE** **1,294**

Population of U. S. in 2019 **328,200,000**

Population of DE in 2019 **973,764**

Animal cruelty crime incidents were 0.13% of the population of Delaware. *If the same percentage of 0.13% were applied to the U. S., there would have been 426,660 animal cruelty crime incidents nationally, rather than the 9,956..*

Youthful offenders in Delaware

- Age ranges of animal cruelty crime offenders ranged from 8 – 80.
- **2.5%** of animal cruelty crime incidents involved youth **18 and under**
- **9.0%** of animal cruelty crime incidents involved youth between ages **19-24**

For further information on analysis of NIBRS data nationally, see Addington, L. and Randour, M. L. (forthcoming), Intentional Cruelty vs Neglect: New Insights on Animal Cruelty Crimes and Implications for Policy, **Criminal Policy Justice Review**

Panel 5
**Delaware Responses to
Animal Cruelty**

Moderator

Andrea L. Rocanelli, Esquire
Delaware ADR, LLC



HONORABLE ANDREA L. ROCANELLI (Ret.)

Judge Rocanelli relies on more than 30 years of legal experience to encourage principled negotiation. Judge Rocanelli has received dispute resolution training at Pepperdine University's Straus Institute for Dispute Resolution and Harvard Law School's Negotiation Workshop, as well as Crisis Intervention Team (CIT) training from the National Alliance of Mental Illness (NAMI).

Even where disputes seem intractable, Judge Rocanelli will employ her extensive legal and judicial experience to achieve durable agreements that advance business goals by identifying creative solutions not always available in contested litigation. Judge Rocanelli's ability to reasonably predict the responses and rulings of Delaware state and federal judges and to forecast the reaction of Delaware juries is especially helpful to parties' realistic assessment of their positions.

Judge Rocanelli's excellent success rate for expedited resolution of complex disputes is the result of dedicated focus, thorough preparation, and strong interpersonal skills. Judge Rocanelli has successfully resolved cases where other mediators had failed, including highly expedited mediations taking place on weekends prior to the start of trial. Judge Rocanelli has successfully mediated coverage disputes, claims resulting from asset purchase agreements, disputes involving remediation of Superfund sites, and other sophisticated legal claims. If your clients' needs are time sensitive, expedited dispute resolution is available.

Judge Rocanelli is an experienced jurist with a reputation for fairness and integrity. Judge Rocanelli has served as a professional factfinder in scores of bench trials and has extensive experience as the presiding judge at hundreds of jury trials. Judge Rocanelli is well-regarded for her legal opinions which reflect scholarship, keen insight and common sense.

Judge Rocanelli was appointed to the Superior Court of the State of Delaware by Governor Jack A. Markell in 2013. Previously, Judge Rocanelli served as a judge of the Court of Common Pleas by appointment of Governor Markell in April 2009. Judge Rocanelli received her J.D. from Harvard Law School, and her B.A., *summa cum laude*, from Boston College where she was inducted into Phi Beta Kappa. After several years of private practice in Boston, Judge Rocanelli practiced law in Delaware prior to serving as Chief Counsel of the Office of Disciplinary Counsel for the Delaware Supreme Court, with responsibility for the practice of law and legal ethics in the state of Delaware.

Speakers

Chris Motoyoshi

Delaware Office of Animal Welfare

Mark Tobin

Delaware Office of Animal Welfare

Jenna R. Milecki, Esquire

Delaware Department of Justice

Charles Tate, Esquire

Office of Defense Services

Dr. Jamey Leeanne Rislin

Youth Rehabilitative Services

Dr. Mary Lou Randour

Animal Welfare Institute

Adam Lamb

Brandywine Valley SPCA

Tanner Polce

Brandywine Valley SPCA

Bio

Christina Motoyoshi is Executive Director for the Delaware Division of Public Health (DPH) Office of Animal Welfare (OAW), dedicated to the health, safety, and welfare of companion animals and promoting the human-animal bond in the state of Delaware. Chris has been with OAW for 8 years, working to launch and lead the newly created state office dedicated to pets, and to advance policies to protect animals and people in Delaware.

Prior to joining the Division of Public Health, Chris brought 25 years of experience in business and nonprofit management. Starting her career in the private sector, she later followed her passion and transitioned to the nonprofit sector, providing leadership to organizations dedicated to a variety of causes, including children, education, and animal welfare. She is the former Development Director and Acting Director for Delaware SPCA, and Executive Director of Tri-State Bird Rescue & Research.

Mark Tobin is the Chief of Delaware Animal Services (DAS), the law enforcement unit for the Office of Animal Welfare (OAW), which enforces animal cruelty, dog control and rabies control for the state. Under his leadership, DAS handles over 20,000 calls for service each year, ensuring laws are properly enforced for the well-being and humane treatment of animals and protection of the public. He also oversees animal welfare officer training and certification in the state. Mark is a former police officer and K-9 handler with New Castle County Police where he managed the K-9 unit, and retired after 23 years. He is a nationally certified and award-winning K-9 instructor, and has served as the Northeast Director for National Police Canine Association since 2007. He owns K9 Camp Dog Obedience School.

Jenna R. Milecki, Esquire

Jenna Milecki is a Deputy Attorney General at the Delaware Department of Justice and is the current Unit Head of the Domestic Violence Unit. She has been a prosecutor working in New Castle County, Delaware since graduating from Widener Law School in 2012. During her time at the DOJ, she has tried cases in various units within the office, ranging from misdemeanor offenses to sexual assault and homicide cases; notably the Paladin homicide trials. In her current position she handles domestic violence felony cases, as well as the supervision of domestic violence prosecutors who handle intimate partner and familial violence cases and child abuse cases in Superior Court, Family Court, and the Court of Common Pleas. In her time in the Special Victims Unit and in her current position in the Domestic Violence Unit, she has focused her career on the protection of vulnerable victims, including women and children. She hopes to continue to support victims in the cases she prosecutes and to improve the criminal justice process for those affected by crime.

Dr. Jamey Leeanne Rislin is a licensed counseling psychologist and licensed clinical social worker. She attended Mount Holyoke College and double majored in Psychology and Dance. At Mount Holyoke College, she was deemed a Sarah Williston Scholar, a distinction given for academic achievement, and awarded the Helen Warren Smith Award for Outstanding Service. While dancing professionally, she attended the University of Pennsylvania and earned her master's degree in Social Work. She was awarded the Rosa Wessel Award for Outstanding Service and Student Leadership, and The Women Of Color Graduate Student Award for Service and Scholarship. She attended New Mexico State University's Counseling Psychology Doctoral Program and earned distinction as a RISE (Research Initiative for Scientific Enhancement) to the Postdoctorate Fellow, an NIH-sponsored fellowship that focused on biomedical/biobehavioral research that improved human health and reduced illness. Dr. Rislin was awarded The A. Toy Caldwell-Colbert Distinguished Student Service Award and earned the same award for her work with Psychologists for Black Lives the next year. Dr. Rislin completed her internship and post-doctorate at the South Texas Veterans Health Care System (STVHCS). At the end of her post-doctoral year, she was awarded the Art Nezu Dissertation Diversity Award for her dissertation, "Your Stress Ain't Like Mine! A Mixed Methodological Study Focused on the Impact of the Chronic Racial Stress Response and Coping on the Health of Adult African/Black Americans." Dr. Rislin currently works as a psychologist with The Delaware Department of Services For Children, Youth and Families (DSCYF). She provides behavioral health treatment services to justice-impacted youth that range in age from 12 – 19. She is currently a member of The Diversity, Equity and Inclusion (DEI) Committee for DSCYF and provides leadership for the education subgroup of the DEI committee. She is working with a colleague on The C.R.E.A.T.E. project, The Culture, Race, Ethnicity, Accessible Treatment Repository for Evidence Based Practice, sponsored by APA's Division 45. The goal of this project is to establish a repository of culturally adapted, modified and informed treatment interventions for racial and ethnic minorities. Dr. Rislin is a member of Delta Sigma Theta Sorority, Incorporated. As such, she continues to engage in community service. She is a board member for The Alliance For Higher Education In Prison. Dr. Rislin has worked in a plethora of clinical settings with diverse clients with varied psychosocial and mental health needs. Her research focuses on minority mental health, the impact of systems of oppression on mental and physical health/coping, and best practices in improving treatment outcomes, satisfaction and service delivery for diverse clients and client systems. She is particularly interested in multicultural considerations in psychology, mental health literacy, issues of diversity, equity and inclusion (DEI) and the associated pedagogy of DEI. She currently resides with her partner, her high school sweetheart, her son, her snuggle-muffin, and her brother-in-law, the one that claimed her sweet-tea recipe and calls it his own. In her personal life, she values warmth, authenticity, passion, collaboration and balance. Dr. Rislin recognizes the importance of the scientist-practitioner-advocate-artist role and brings this level of integrated thought to all aspects of her work.

Panel 6

How Can Our Domestic Violence and Child Welfare Policies and Practices Recognize the Link?

Moderators

The Honorable Jennifer B. Ranji
Family Court of the State of Delaware

Martha-Elin Blomquist, Ph.D.
*National Council of Juvenile and
Family Court Judges*

The Honorable Jennifer Ranji

Judge, Family Court of the State of Delaware

Jennifer Ranji was appointed to serve as a Judge on the Family Court by Governor Jack Markell in 2015. Judge Ranji serves as the Court's domestic violence liaison judge. Prior to being appointed to the Bench, Judge Ranji served as Cabinet Secretary for the Delaware Children's Department, where she led a 1,200 person agency providing services to abused, neglected, and delinquent children.

Judge Ranji served as Policy Advisor to Governor Markell from September 2009 to July 2012. She played a leading role in developing and implementing the Governor's education policy agenda and early childhood initiatives, as well as in the passage of the animal shelter standards law and creation of the Office of Animal Welfare.

Judge Ranji also served as Deputy Legal Counsel in the Office of Governor Thomas Carper, where she was responsible for policy and legislative initiatives in the areas of domestic violence and child welfare. Before joining Governor Carper's Administration, Judge Ranji was Director of Legal Affairs for Family Court and Deputy Director of the Domestic Violence Coordinating Council. Judge Ranji also practiced law with Drinker, Biddle & Reath, LLP, during which she provided *pro bono* representation to domestic violence victims, child abuse victims, and animal welfare agencies.

Judge Ranji received her B.A. from Rutgers University in 1991 and earned her law degree from Widener University School of Law in 1995. She currently chairs the Advisory Board for the Brandywine Valley SPCA. She is a former chair of the Women and the Law Section of the Delaware State Bar Association, the Delaware Child Protection Accountability Commission, and the Children and Domestic Violence Subcommittee of the DVCC, as well as former co-chair of the Delaware Child Death Review Commission.

Dr. Martha-Elin Blomquist

Dr. Martha-Elin Blomquist is a Senior Site Manager for the Juvenile Law Programs at the National Council of Juvenile and Family Court Judges (NCJFCJ), with more than a decade of experience in site management work with NCJFCJ and over 30 years of experience related to child welfare, juvenile justice, and court systems. She currently provides training and technical assistance to juvenile drug treatment courts to assist them with implementing recommended practice. Dr. Blomquist has provided on-site training and technical assistance to courts involved in NCJFCJ's Model Courts and Project ONE projects to plan and carry out systems change in both child welfare and juvenile justice. She is the NCJFCJ's liaison with the Annie E. Casey Foundation (AECF) and works with members of the AECF Juvenile Justice Strategy Group to involve judges in collaboration with state juvenile correctional administrators, probation departments, and community-based organizations to promote therapeutic interventions, adolescent-appropriate services, and community connections for youths involved in serious delinquency. She also serves as staff for the Courts and Military-Connected Families Project and the Judicial Responses to Animal Cruelty Projects. Each of these projects focuses on developing and providing training and technical assistance to court and child-serving system stakeholders to help them address pressing issues. Dr. Blomquist holds a master's and Ph.D. in Jurisprudence and Social Policy from the University of California Berkeley School of Law where she specialized in juvenile and criminal justice studies and research. She has taught in women's studies and criminal justice programs at several universities and has been an author or co-author of various publications issued by the NCJFCJ as well as by peer-reviewed journals.

Speakers

David A. White, Esquire
Office of Disciplinary Counsel

Staci Pesin Harpell, Esquire
Copeland Taylor Harpell, LLC

Kara M. Swasey, Esquire
Bayard, P.A.

Andrea L. Rocanelli, Esquire
Delaware ADR, LLC

Trenee Parker
Division of Family Services

Tania Marie Culley, Esquire
Office of the Child Advocate

David A. White
Chief Disciplinary Counsel, Office of Disciplinary Counsel,
Delaware Supreme Court

Mr. White is a frequent speaker/moderator in the areas of legal ethics and Alternative Dispute Resolution. In March 2021, the Delaware Supreme Court appointed Mr. White Chief Disciplinary Counsel of the Office of Disciplinary Counsel (“ODC”), and Arm of the Court.

The ODC, which functions as an educational and professional resource for members of the Delaware bar, receives, evaluates, investigates, and when necessary, prosecutes complaints of lawyer misconduct and the unauthorized practice of law. The Office also recommends sanctions for attorney misconduct to the Board on Professional Responsibility and the Court.

Previously, Mr. White was in private practice and was the office managing partner in the Wilmington, Delaware office of McCarter & English, LLP. There, he was a member of the firm’s business litigation, products liability, and bankruptcy practice groups. A substantial portion of his practice was devoted to ADR and representing lenders in the areas of commercial loan workouts, commercial litigation, commercial real estate, and related bankruptcy issues.

Mr. White was a Superior Court Commissioner from 2001-2008 and for several years he taught a civil litigation course for the University of Delaware, Division of Professional and Continuing Studies, where he was awarded Excellence in Teaching awards in 2007 and 2008.

Mr. White has served on the Executive Committee of the Delaware State Bar Association for many years and he is also an Honorary/Volunteer member of the Professional Guidance Committee.

Education:

Widener University School of Law, J.D 1986

University of Delaware, B.A. 1982

Staci P. Harpell
Staci@copelandtaylor.com
302-281-5545

Ms. Harpell is a partner at Copeland Taylor Harpell, LLC. Ms. Harpell concentrates her practice in the area of family law. Ms. Harpell practices throughout Delaware and in the neighboring counties of Pennsylvania. She gets to know each client individually and works closely with them to protect their rights and families. Ms. Harpell negotiates custody and visitation agreements tailored to the family's needs if possible. But if an agreement can't be reached, Ms. Harpell will fight in court for her client's right to see their child or to protect a child from an ex-spouse that is a danger to the child. Ms. Harpell also assists clients with divorce, proving cohabitation to terminate alimony, child support, PFAs, and third-party visitation. Ms. Harpell has also represented clients on appeal to the Delaware Supreme Court.

Ms. Harpell is a former Chair of the Family Law Section of the Delaware Bar Association. She has provided pro bono legal services through the Office of the Child Advocate and Delaware Volunteer Legal Services. Prior to entering private practice, Ms. Harpell was a judicial law clerk for the Honorable Alan N. Cooper and the Honorable Joelle P. Hitch at the Delaware Family Court.

Trenee Parker, MA, graduated from Wesley College in 1994, and earned her Master's Degree in Psychology from Salisbury University in 2001. Trenee has spent her entire career as an employee of Division of Family Services. Trenee began her career in 1995 as an intern, and began employment in 1996 when she started working in an Investigation unit in Georgetown. From that point forward, Trenee has worked in Treatment and Adoption before moving into supervision and then administration. Trenee was appointed to the position of Deputy Director in December 2015 and was later appointed to the position of Director by Cabinet Secretary Josette Manning in January 2018.

TANIA M. CULLEY, ESQUIRE
CHILD ADVOCATE – DELAWARE
Office of the Child Advocate
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Tania Culley became Delaware's first Child Advocate in February of 2000, and has led Delaware's Office of the Child Advocate since that time. As Child Advocate, she manages an office of 40 employees and contractors, including eleven attorneys who primarily represent children in Family Court proceedings. Her office supervises a pool of over 250 volunteer attorneys, 200 CASAs, the CASA Program, the Office of the Investigation Coordinator, as well as provides legislative, policy and educational advocacy and training to Delaware's child protection community.

Tania is Executive Director of the Child Protection Accountability Commission, Delaware's Citizen Review Panel, which also reviews all Delaware child abuse deaths and near deaths, and is a Commissioner on Delaware's Child Death Review Commission. She serves on many committees and task forces focusing on child abuse, court improvement, youth aging out of foster care and juvenile justice. Over the years, Tania has drafted and lobbied for many statutory changes to Delaware laws on behalf of children and has conducted many trainings and professional development forums relating to abused and neglected children.

A Delaware native, Tania is a graduate of Christiana High School, the University of Delaware and Widener University School of Law, and is a Certified Child Welfare Law Specialist through the National Association of Counsel for Children.

Speakers

Janine N. Howard-O'Rangers, Esquire
Delaware Volunteer Legal Services

Chris Motoyoshi
Delaware Office of Animal Welfare

Mark Tobin
Delaware Office of Animal Welfare

Adam Lamb
Brandywine Valley SPCA

Erica Davis
Coordinator, Family Court of the State of Delaware

JANINE N. HOWARD-O'RANGERS, ESQUIRE
Delaware Volunteer Legal Services, Inc.
Widener University School of Law
P. O. Box 7306
Wilmington, DE 19803

Janine N. Howard-O'Rangers is the Executive Director of Delaware Volunteer Legal Services, Inc. ("DVLS") and a Legal Consultant to the Widener University Delaware Law School Delaware Civil Clinic. Before becoming Executive Director, Ms. Howard-O'Rangers was a staff attorney for DVLS where she represented victims of domestic violence with family law issues and recruited *pro bono* attorneys. She graduated *cum laude* from Temple University in 1992 with a Bachelor's degree in Political Science and *cum laude* from Widener University School of Law in 1995. She was admitted to the Delaware Bar in 1995 and the Pennsylvania Bar in 1997. She is a member of the Family Law Sections of the American Bar Association and the Delaware State Bar Association ("DSBA"). Ms. Howard-O'Rangers is a former Chair of the DSBA Family Law Section. In addition, Ms. Howard-O'Rangers serves on a number of committees that address access to justice and domestic violence issues.

Bio

Christina Motoyoshi is Executive Director for the Delaware Division of Public Health (DPH) Office of Animal Welfare (OAW), dedicated to the health, safety, and welfare of companion animals and promoting the human-animal bond in the state of Delaware. Chris has been with OAW for 8 years, working to launch and lead the newly created state office dedicated to pets, and to advance policies to protect animals and people in Delaware.

Prior to joining the Division of Public Health, Chris brought 25 years of experience in business and nonprofit management. Starting her career in the private sector, she later followed her passion and transitioned to the nonprofit sector, providing leadership to organizations dedicated to a variety of causes, including children, education, and animal welfare. She is the former Development Director and Acting Director for Delaware SPCA, and Executive Director of Tri-State Bird Rescue & Research.

Mark Tobin is the Chief of Delaware Animal Services (DAS), the law enforcement unit for the Office of Animal Welfare (OAW), which enforces animal cruelty, dog control and rabies control for the state. Under his leadership, DAS handles over 20,000 calls for service each year, ensuring laws are properly enforced for the well-being and humane treatment of animals and protection of the public. He also oversees animal welfare officer training and certification in the state. Mark is a former police officer and K-9 handler with New Castle County Police where he managed the K-9 unit, and retired after 23 years. He is a nationally certified and award-winning K-9 instructor, and has served as the Northeast Director for National Police Canine Association since 2007. He owns K9 Camp Dog Obedience School.

Adam Lamb, Chief Executive Officer

Adam Lamb focuses his career on marrying open access sheltering with no-kill standards. Lamb came to the BVSPCA from Tampa, Florida, where he worked at the SPCA Florida, Humane Society of Tampa Bay and Hillsborough County Animal Services.

In 2015, the BVSPCA became the first open admission no-kill shelter in Pennsylvania. Lamb took the county operation from a modest animal control shelter with a live release rate of 65% and an intake of 5,501 to what's now the Brandywine Valley SPCA, serving the entire state of Delaware and two Pennsylvania counties with nearly 19,000 animals in its care per year and a live release rate of 96%. In 2018, the BVSPCA led Delaware to becoming the first "No-Kill" state in the nation.

Recognizing the importance of keeping owned pets in their homes, Lamb has also launched programs for pet retention, such as services for domestic violence survivors, pet food assistance, free vaccine clinics, and humane education.

Erica Davis is the current Domestic Violence Coordinator with Delaware Family Court and leads several court improvement initiatives to better the Court's response to domestic violence. Before moving to this position, she worked as a Domestic Violence victim advocate for many years, providing direct service to survivors. She has chaired the statewide Domestic Violence Task Force and contributed to various initiatives focused on improving Delaware's response to DV. Her valuable experience on both sides of the Court position her well for the development of improvement initiatives, and for helping Court staff and the Court's stakeholders.



Panel 7
Legislation for Consideration

Moderators

The Honorable Jennifer B. Ranji
Family Court of the State of Delaware

Thomas P. McGonigle, Esquire
Barnes & Thornburg LLP

Speakers

The Honorable Nicole Poore

Delaware State Senate

The Honorable Stephanie L. Hansen

Delaware State Senate

The Honorable Krista Griffith

Delaware State House of Representatives

The Honorable Debra Heffernan

Delaware State House of Representatives

The Honorable Kyle Evans Gay

Delaware State Senate

Senator Nicole Poore (D) Senator (SD 12)



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Legislative Service

Senate, 2012 to present
Majority Whip, 2016 to 2018
Majority Leader, 2018 to 2020

Background

Family

Spouse: William E. Poore
Children: Nicholas, Alexis and Luke

Education

St. Elizabeth's High School, 1990
Associate degree, Criminal Justice, Delaware Technical Community College, 1992
Bachelor's degree, Criminal Justice, Wilmington University, 1994

Occupation

President, Jobs for Delaware Graduates

Biography

Sen. Nicole Poore represents the 12th Senate District, which includes most of New Castle and Bear, all of Delaware City and communities south of the Chesapeake & Delaware Canal, including Whitehall, Bayberry and others.

Raised in New Castle's Jefferson Farms community, Sen. Poore graduated from St. Elizabeth's High School in 1990 and later earned an associate degree in criminal justice from Delaware Technical Community College and a bachelor's degree in criminal justice from Wilmington University.

She joined her brother in building a successful healthcare staffing startup that was later sold to Welsch Carson, one of the largest investment firms in the United States. Sen. Poore then became a senior client services manager for Agile 1, where she handled workforce solutions for the DuPont Co. She also served as a member of the Delaware Juvenile Justice Advisory Board, volunteered the Rape Crisis Center and served as Exceptional Care for Children's director of development. She is currently the president of Jobs for Delaware Graduates, a nonprofit that helps students connect with sustainable, skills-based career opportunities.

Sen. Poore's interest in government policy began after the birth of her oldest son Nicholas, who was diagnosed cerebral palsy. Her activism in the special-needs community led to a successful 2012 bid for state Senate. Following her unchallenged bid for reelection in 2016, Sen. Poore was selected to serve as Senate Majority Whip by her peers. She then served as Senate Majority Leader from 2019 to 2021.

Sen. Poore currently chairs the Joint Capital Improvement Committee and serves as vice chair of both the Senate Health & Social Services Committee and the Senate Labor Committee. She also sits on the Senate Elections & Government Affairs Committee.

Sen. Poore serves as a member of the Human Trafficking Interagency Coordinating Council, the Domestic Violence Coordinating Council, the Utilities Coordination Council and the Riverfront Development Corporation.

State Senator Stephanie Hansen, Esq, – Brief Bio 2022

Sen. Stephanie Hansen represents the 10th Senate District, which includes portions of Newark, Glasgow, Bear, Middletown and other communities along the western side of Southern New Castle County.

She grew up downstate and graduated from Seaford Senior High School before earning a bachelor's degree in geology from the University of Delaware and a master's degree in earth science from the University of New Orleans. Hansen began her professional career as an environmental scientist, and later a hydrologist, at the Delaware Department of Natural Resources and Environmental Control.

Hansen entered public service as the founder and first president of the Frenchtown Woods Civic Association and then the multi-community Bear Glasgow Council of Civic Organizations. She served as president of New Castle County Council from 1996 to 2001, and, while on council, graduated cum laude from Widener University School of Law. She went on to practice environmental law for nearly 20 years before retiring in 2020 to concentrate on her job as a State Senator since being elected in 2017.

She quickly distinguished herself as a prolific legislator best known for her work on the opioid epidemic and a host of environmental, energy, and conservation issues. She also formed the 10th Senate District Multicultural Committee to help foster understanding among different cultural communities and the HOA Leaders Forum to provide a forum for information exchange and expertise to homeowner associations.

Sen. Hansen currently serves as chair of the Senate Environment & Energy Committee and vice chair of the Transportation Committee. She also serves as a member of the Health & Social Services, Elections & Government Affairs, Rules & Ethics, Executive, and Sunset committees.

She and her husband David live in Middletown. She has five children and stepchildren and five grandchildren.

Representative Krista Griffith (D)

Representative (RD 12)



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Krista.Griffith@delaware.gov (<mailto:Krista.Griffith@delaware.gov>)

Legislative Service

House, 2018 - Present

Background

Family

Husband, Ted; sons, Sam and Nate

Education

Juris doctor, Suffolk University Law School, Boston, MA
Bachelor of arts, University of New Hampshire, Durham

Occupation

Attorney

Affiliations: Admitted to practice law in the State of Delaware and before the Supreme Court of the United States

Biography

Krista M.Z. Griffith is State Representative for the 12th District of Delaware, which includes neighborhoods in Hockessin, Greenville and North Wilmington. She is a parent, attorney and advocate who has dedicated her career to protecting Delaware residents and improving the lives of people of all ages. Her work has helped ensure that Delawareans, including the most vulnerable, have access to economic and educational opportunity as well as equitable treatment by the justice system.

Krista served for nearly a decade as a Deputy Attorney General in the Delaware Department of Justice under the administrations of Beau Biden and Matt Denn. Krista led Attorney General Biden's Senior Protection Initiative and was assistant unit head of the Department of Justice's Domestic Violence and Child Abuse units. She also represented state agencies including the Department of Services for Children, Youth and their Families.

Krista knows first-hand the healthcare challenges confronting Delaware families. When her younger son, Nate, faced a life-threatening leukemia diagnosis, Krista left the Department of Justice in 2015. She spent months at Nate's bedside while he underwent successful cancer treatment.

Krista has dedicated hundreds of hours to board leadership and community service for several nonprofit organizations in Delaware including the Down Syndrome Association of Delaware.

[Click here to sign up for e-newsletters from Rep. Griffith \(https://lp.constantcontactpages.com/su/GeNn242\)](https://lp.constantcontactpages.com/su/GeNn242)

Sponsored Legislation

2020 - 2022 (GA 151)

Representative Debra Heffernan (D) Representative (RD 6)



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Debra.Heffernan@delaware.gov (<mailto:Debra.Heffernan@delaware.gov>)

Legislative Service

House, 2010 - Present

Background

Family

Spouse: Patrick; Children: Margaret, Jake and Charlotte

Education

Caesar Rodney High School; University of Delaware, B.A. in Biology; Duke University, M.S. Environmental Toxicology

Occupation

Environmental Toxicologist, Former President of Brandywine School Board

Biography

Rep. Heffernan is the former President of the Brandywine School Board and an environmental toxicologist with more than 30 years of experience. She has served for fifteen years on the state's Hazardous Substances Cleanup Act (HSCA) Advisory Committee (originally named the Brownfields Advisory Committee), which is working to protect Delawareans from pollutants while making the state greener and more economically viable. A graduate of Caesar Rodney High School, she earned a bachelor's degree in biology from the University of Delaware and a master's degree in environmental toxicology from Duke University.

Rep. Heffernan is a member of the Bellefonte Lions Club and volunteers with local nonprofits and Special Olympics of Delaware. She is a 30 year resident of Edgewood Hills, where she lives with her husband, Pat and has three children in their 20's that all graduated from Brandywine School District schools.

Rep. Heffernan is proud to have been selected by Parenting magazine as Delaware's 2010 Outstanding Mom Advocate for Education and represented Delaware at the inaugural Mom Congress held in Washington, D.C.

[Click here to sign up for e-newsletters from Rep. Heffernan \(https://lp.constantcontactpages.com/su/tSY8m24\)](https://lp.constantcontactpages.com/su/tSY8m24)

Sponsored Legislation

2020 - 2022 (GA 151)

Legislation	Intro Date	Long Title	Status	In Chamber	Sponsor
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Senator Kyle Evans Gay (D) Senator (SD 5)



Legislative Hall

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Email

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Legislative Service

Senate, 2020 to present

Background

Family

Husband: Olin

Daughters: Ellen and Alice

Education

Unionville High School, 2004

Bachelor's degree, International Relations and History, Brown University, 2008

Juris Doctorate, Boston University, 2012

Occupation

Attorney

Biography

Sen. Kyle Evans Gay represents the Fifth Senate District, which encompasses sections of Brandywine Hundred, including the Ardens.

Sen. Gay was raised in Kennett Square, Pa. After graduating from Unionville High School, she earned a bachelor's degree in international relations and history from Brown University and a law degree from Boston University.

Sen. Gay began her professional career as a deputy attorney general in the Delaware Department of Justice before clerking in Delaware Superior Court. She has worked in private practice representing clients in Delaware's business courts since 2014. She also practices pro bono on behalf of children in foster care.

Sen. Gay has volunteered with several Delaware nonprofits, led multiple professional and civic organizations and served on Delaware's Public Integrity Commission. She also is a past president of the Junior League of Wilmington and a founding member of Spur Impact Association, an organization that encourages civic engagement among young professionals. She currently serves on the board of the Delaware Bar Foundation.

After becoming a vocal advocate for the successful Equal Rights Amendment to the Delaware Constitution, Sen. Gay was elected to the Delaware Senate in 2020, becoming the first Democrat to represent the Fifth Senate District in more than 40 years.

She currently serves as chair of both the Judiciary Committee and Senate Elections & Government Affairs Committee, co-chair of the Joint Legislative Oversight and Sunset Committee, and a member of both the Senate Transportation Committee and the Senate Veterans Affairs Committee.

Closing Remarks

The Honorable Jennifer B. Ranji
Family Court of the State of Delaware

The Honorable Rosa Figarola
Eleventh Judicial Circuit of Florida