COLLAS CRILL

Divorce: Who gets the dog?

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'My husband has left and taken the dog and boy do I miss her ...'

With apologies to Les Dawson, the issue of who gets the dog/cat/horse on divorce is perhaps more common than you think and does come up from time to time. So what does happen to pets on separation and how does the Court decide custody of animals?

There can be no doubt the care of pets can become a very emotive issues on divorce. Social media is alive with Hollywood stars seeking to convince us that their separation is entirely amicable and that as part of the settlement their pampered pet, once out of therapy, will spend time with both parties and everyone smiles.

In Guernsey, as in the UK, under the law pets are regarded as chattels and are treated just like your car, crockery or coffee set. In theory, animals can be transferred to one party or the other just like any other property but in practice this is exceptionally rare and there are no locally reported cases.

Case reports from the UK show judges to be reluctant to get involved in such disputes. In a 2018 case, two dogs were divided, one to each party, and the parties were given short shrift by the judge who told them if they wanted to argue about access to the other dog then they should approach a mediator and not trouble the Court again.

Put simply, our Courts do not currently recognise the special place that pets hold within the family. You may think that this is unfair, especially when you look at how animals are treated in other jurisdictions.

Alaska, not usually associated with legal firsts, was the first American state to allow judges to provide for pets in divorce cases. This was followed by other states, including California which in January 2019 implemented the Section 2605 of the Family Code giving judges the power in divorce cases to determine ownership of a pet animal, and to make an order requiring a party to care for the pet.

In deciding who gets custody, the Court can consider a number of factors including who feeds the pet, who exercises it and who takes the pet to the vet. You might think that this is a little OTT but this is the law.

Closer to home, Portugal and now Spain have brought in similar laws recognising pets as sentient beings and as true members of the family for whom custody orders can be made.

So, for now at least, if you find yourself in dispute about a pet, common sense dictates that you do not trouble the Courts and do everything you can to resolve matters sensibly. As with all issues on divorce, get sensible legal advice at the outset, be prepared to compromise and talk.

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