

After a Divorce, Who Gets the Dog?

By Steven Petrow
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“I have some good news,” my divorce lawyer told me during our second consultation in her downtown Durham, N.C., office. Before divulging it, she asked a question: “Are you willing to pay \$16,000 for Zoe?”

In our first meeting I’d explained to the lawyer, Milan Pham, that I didn’t really care about our “stuff.” “North Carolina state law is clear,” she told me. “Community property — property acquired during the marriage — is to be divided equally.” Anything Jim and I had owned separately before the marriage was still his and mine.

But Zoe was not “stuff.”

She wasn’t a daughter, either. Zoe was a Jack Russell terrier, then 14 years old, who had entered my life with Jim. “Pets are treated exactly like televisions, furniture and cars,” Ms. Pham explained, meaning that Zoe belonged to Jim like any of the other assets he had brought into the marriage. (We’d been married for four years, together for 13 in total.) No matter that we’d shared the cost of her upkeep during the course of our marriage — regular vet visits, organic food and treats (including her daily broccoli fix), the groomer, dog walkers, even a canine psychiatrist — legally, Zoe was Jim’s.

I’d asked for joint custody.

Dividing our community property had been relatively straightforward. I got the leather bench from Design Within Reach; Jim took the Cuisinart coffee maker, burr grinder included. He took the barbecue; I got the TV. I didn’t get the Tiffany cobalt vase I’d hoped for (a gift from [our matchmaker](#)), which I mostly wanted because it anchored my blue glass collection). Jim seemed happy enough to let me have the rest of our wedding presents, as well as every gift I’d ever given him, including a photo book titled, “I, Jack Russell.” But not Zoe.

The impasse was rich in irony, since Zoe and Max (the goofy cocker spaniel I had brought into our relationship) had been the greatest challenge to us as a couple. We were a blended family that was not mixing well. Early in our relationship Zoe badly bit Max, tearing his flesh and requiring an emergency trip to the vet. I told Jim: “A dog that bites once will bite again. We have to get rid of her.” Understandably, that didn’t sit well with him. I had some skin in this game, too, since she drew blood from me, too. (Once, I was pretty sure I’d lost a nipple. Luckily, I was wrong.) When we started couples therapy, our dogs were Topic A. And it wasn’t long before we took both dogs to a canine “shrink” with a doctorate who — unsuccessfully — tried to repair both two-legged and four-legged relationships.

It seemed no amount of love could help Zoe overcome her nature. But over the years, especially after Max died, I grew to accept her, character flaws and all. We worked it out in ways that Jim and I could not. I came to appreciate how she would wake up happy every day, ready to greet the world with her prancing walk. I came to see how cataracts near-blinded her and incontinence shamed her. How could I not love her? How could I just write her off like the blue vase?

I had asked Jim for joint custody for two reasons. I'd grown deeply attached to Zoe. But I also hoped that the sharing of responsibilities would help us find a way to stay in each other's lives. Perhaps Zoe, who had brought us so much marital discord, would provide an enduring tie.

Jim's answer was "no." He made clear to me that he understood the law, emailing, "My lawyer did advise me that Zoe is considered personal property and as such it is my decision to make about her future." Then, to make sure I understood, he added, "You can't always have what you want."

What about what Zoe wanted? The law does not care. In dividing marital property, judges don't consider where your TV wants to live, and they've been similarly unsentimental about what might be in the best interests of "companion animals."

Until recently, that is. Three states — Illinois, Alaska and, effective this year, California — have amended their family code to treat pets differently from other types of marital assets.

"There is nothing in statute directing judges to treat a pet differently from any other type of property we own," a California assemblyman, Bill Quirk, noted in 2018 while advocating the change in law. "However, as a proud parent of a rescued dog, I know that owners view their pets as more than just property. They are part of our family, and their care needs to be a consideration during divorce proceedings." Thanks to Mr. Quirk, since January California judges have been permitted to consider the well-being of the animal, as well as who provided its care, in working out custody agreements.

Which is how I came to be sitting in my lawyer's office that day, entertaining the idea of paying \$16,000 for joint custody. Ms. Pham said "North Carolina may not be far behind" regarding the pets-as-property dispute. In the meantime, though, her legal team had examined other state laws and come up with a dollar amount to try to induce Jim to share custody. "It will certainly get Jim's attention," she said. "Indeed, it would," I thought.

To me Zoe was priceless, but even so, \$16,000 seemed excessive for an 11-pound geriatric terror (\$1,455 a pound!). Heartbroken, I signed the separation agreement that listed Zoe between "electric salt and pepper shaker" and "red bowl" on the inventory of Jim's property. Then she was gone, living with Jim in a new town 65 miles away.

A few weeks later came another email from Jim: "I am not suggesting I want to do this, but would you be interested in Zoe full time?" Without missing a beat, I replied, "yes," which led him to disclose that his new townhouse wasn't dog friendly. Although our legal agreement

was signed and recorded, I took full custody of Zoe. I understood the implications of my “win” when Jim wrote again, declaring that he wouldn’t pay for any of Zoe’s care “because I won’t ever see her again.” Or me, as it’s turned out so far.

I consider myself lucky to spend my days with Zoe now. After years of caring for my parents, who both died within months of my and Jim’s legal separation, I needed that little “terrier-ist” more than ever. Smiling more than snarling, and now two weeks shy of 17, she plays a daily game of “kill the squirrel,” where she chases those show-off rodents in the front yard with every expectation of capture. So far, the squirrels are winning. Zoe and I are victorious in our own way — we got what was best for us, no \$16,000 payment required.

Not long ago I spoke with Cristina Stella, a lawyer with the Animal Legal Defense Fund. In my divorce I’d belatedly learned the importance of having a prenup, which Jim and I had skipped. “I don’t know if you’ve ever heard the term ‘petnup’,” Ms. Stella said, “but it’s the best way to avoid custody disputes when the relationship dissolves.” Options include sole custody, joint custody and even pet support (like child support).

Divorce is not for the faint of heart, whether human or canine. I now know how to protect my rights and any four-legged “stuff,” should I marry again. How to protect my heart — well, that’s another matter.