

[Half-a-Pug Each: Court Orders Joint Custody of Pet for Former New Jersey Couple](#)

Published 1, September 23, 2009



A New Jersey court has handed down a ruling that may be cited in thousands of disputes over pets by divorcing or separating couples. Doreen Houseman and Eric Dare split up after 13 years as an unmarried couple in 2006 and agreed on the easy division of possessions with one notable exception: Dexter, their pet pug. Now, Judge John Tomasello has ruled that the former couple must have joint custody of the six-year-old dog — rotating every five weeks.

Originally, the trial court ruled that Dare could keep the dog but an appellate court reversed Tomasello's decision for not considering the "subjective" value of the dog. The panel found that a dog cannot be treated as simple chattel with a (pug) face value but is more like a family heirloom or work or art with a subjective value. Under the original ruling, Houseman was paid \$1,500 for her pug share.

The appellate panel ruled that "[t]here is no reason for a court of equity to be more wary in resolving competing claims for possession of a pet based on one party's sincere affection for and attachment to it than in resolving competing claims based on one party's sincere sentiment for an inanimate object based upon a relationship with the donor." For the full opinion, click [here](#).

The case had some interesting rivaling claims from organizations. Animal groups urged the adoption of a "best-interest-of-the-pet" standard — a parallel to the standard for children. Veterinary groups opposed such a rule, [here](#).

The appellate decision is a fascinating extension of the usual rules governing chattel. In my torts class, we discuss various philosophical perspectives including Georg Wilhelm Friedrich Hegel's view that private property rights are the "embodiment of personality." In torts, we often deal with "soft values" or "soft variables" where the market value of an object does not capture the equitable or subjective value. Pets are treated as chattel under the law while most people view them as family members of infinite value. This causes a tension as the law seeks to quantify and divide property despite the subjective valuation of the parties.

The appellate court focuses on the equitable and subjective value of Dexter. It ruled that specific performance of an oral contract (that Houseman would have possession of Dexter) could not be resolved with simple monetary relief:

The remedy of specific performance can be invoked to address a breach of an enforceable agreement when money damages are not adequate to protect the expectation interest of the injured party and an order requiring performance of the contract will not result in inequity to the offending party, reward the recipient for unfair dealing or conflict with public policy. . . .

Specific performance is generally recognized as the appropriate remedy when an agreement concerns possession of property such as “heirlooms, family treasures and works of art that induce a strong sentimental attachment.” *Id.* at § 360 comment b. That is so because money damages cannot compensate the injured party for the special subjective benefits he or she derives from possession.

On the same reasoning, when personal property has such special subjective value courts have determined that an award of possession of personalty is the only adequate remedy for tortious acquisition and wrongful detention of property. . . . And, consideration of special subjective value is equally appropriate when a court is called upon to exercise its equitable jurisdiction to resolve a dispute between joint owners of property that cannot be partitioned or without hardship or violation of public policy. . . .

The special subjective value of personal property worthy of recognition by a court of equity is sentiment explained by facts and circumstances – such as the party’s relationship with the donor or prior associations with the property – that give rise to the special affection. . . . In a different context, this court has recognized that pets have special “subjective value” to their owners. *Hyland v. Borrás*, 316 N.J. Super. 22, 25 (App. Div. 1998) (concluding that the owner of an injured dog was entitled to recover costs of treatment that exceeded replacement cost); see also *Pitney v. Bugbee*, 98 N.J.L. 116, 120 (Sup. Ct. 1922) (noting the importance of the “companionship” of animals to humans in concluding that a bequest to the Society for Prevention of Cruelty to Animals was exempt from tax as a transfer to a benevolent and charitable organization). Courts of other jurisdictions have considered the special subjective value of pets in resolving questions about possession. See, e.g., *Morgan v. Kroupa*, 702 A.2d 630, 633 (Vt. 1997) (affirming a decision awarding possession of a dog to a person who found the lost pet, “diligently attempted to locate the dog’s owner and responsibly sheltered and cared for the animal for over a year”).

There is no reason for a court of equity to be more wary in resolving competing claims for possession of a pet based on one party’s sincere affection for and attachment to it than in resolving competing claims based on one party’s sincere sentiment for an inanimate object based upon a relationship with the donor. See *Burr*, *supra*, 101 N.J. Eq. at 626. In both types of cases, a court of equity must consider the interests of the parties pressing competing claims for possession and public policies that may be implicated by an award of possession. Cf. *Juelfs v. Gough*, 41 P.3d 593, 597 (Alaska 2002) (approving modification of a property settlement agreement providing for shared possession of a dog because the arrangement assumed cooperation between the parties that did not exist); *Akers v. Sellers*, 54 N.E.2d 779, 779-80 (Ind. Ct. App. 1944) (speculating that the interests

of the pet might be different but finding the evidence adequate to support an award of possession to the wife, rather than husband, on the ground that the husband had given her the dog).

Now, after three years of litigation and \$40,000 in legal costs, the couple will share the pet.

The fact that the couple was not married adds to the novelty of this shared custody ruling. It is likely to be cited in future pet cases and may chip away at the more traditional treatment of pets as simply chattel valued at their market rates. While the court still compares Dexter to forms of “subjective” chattel, it is still a step away from simple pug market calculations.