

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

[Filed: December 16, 2016]

ALEXANDER M. CHAMPAGNE

:

VS.

:

C.A. NO. KC 2016-0293

:

:

KELLEY F. HIGGINS

:

DECISION

RUBINE, J. This action was filed by Alexander M. Champagne (Champagne or Plaintiff) against Kelley F. Higgins (Higgins or Defendant) seeking Declaratory and Injunctive Relief with respect to the issue of which party has a superior claim to ownership/possession of a pet Border Collie named Hector. Defendant filed a counterclaim for the same relief.

While the Court does not profess to have the Wisdom of Solomon, the Court believes its resolution of this dilemma is more humane than that employed by King Solomon.¹

After a bench trial on the merits, the Court makes the following findings of fact and conclusions of law.

FACTS

Champagne and Higgins travelled together to the Republic of China. They began their overseas journey on or about August 2010. Champagne at that time began graduate studies at a University in China. Higgins accompanied him, as they were dating at the time of his departure. After arriving in China, Higgins found employment. They resided together in China from August

¹ The story of King Solomon is found in the Bible at 1 Kings 3:15-28 which recounts the story of two women coming to King Solomon to determine which one was the true mother of a baby. Solomon suggested that the women bring him a sword for him to cut the baby in half and award one-half to each woman. As it turned out, the true mother was identified by the woman who cried out not to kill the baby, and offered to concede maternity. According to the King, the woman who did not want the baby killed had to be the true mother.

2010 to April 2012. On or about December 5, 2010, the couple mutually decided to acquire a dog for companionship.² From the time Hector was purchased he lived with Champagne and Higgins at their residence in China. After the dog began living with the parties, both parties paid for the dog's maintenance and care. Hector received necessary inoculations in China. The records of inoculations were introduced as part of the so-called "blue book"—a document prepared in China purportedly containing records of the dog's birth, ownership, registration, and proof of vaccinations (Pl.'s Ex. 1 for identification); they were written in Chinese, with bar codes, and without translation. These records, therefore, had no evidentiary value for the Court in resolving who paid the cost of vaccinators, who purchased the dog, or proof of payment for vaccinations in China. (Ex. 1 was never accepted as a full exhibit). At various times while in China, each paid for such items as food, visits to the veterinarian, and other incidentals concerning Hector's care and maintenance. The dog clearly served as a loyal companion to both Champagne and Higgins in China where Hector remained with the couple until April 2012. On or about that date, Higgins' visa expired; however, Champagne's graduate program was not yet completed. After discussion with Champagne and with his complete agreement and encouragement, Higgins was to leave China with Hector, and she completed the necessary paperwork for Hector's journey to the United States with her. She purchased a crate to ensure his safety during the flight. After discussion and permission from Champagne, Higgins returned

² Champagne testified that he purchased the dog in cash with his own money; however, Plaintiff failed to corroborate his testimony with documentary evidence, such as an invoice or bill of sale. For that reason, and the fact that there was no corroborating evidence of his cash purchase, his testimony of his independent purchase of the dog lacks credibility. Higgins has disputed that Champagne purchased the dog entirely with his own funds and credibly testified that acquiring the dog was a mutual decision incident to the sharing of living expenses, as they ordinarily did, and that she thus contributed to the cost of purchase.

to the United States with Hector. She also paid the expenses of Hector's return to the United States.

Upon arriving in the United States, Higgins and Hector moved in with Higgins' parents in Brewster, New York. Champagne remained in China until June 2012, at which time his graduate studies were complete. He returned from China and joined Higgins and Hector in New York. From April 2012 to May 2013, Hector resided with both Champagne and Higgins at the home of Higgins' parents. Higgins and Champagne remained in a romantic relationship at that time and continued enjoying the companionship of Hector together. The parties also shared responsibility for the care and maintenance of Hector at this time. In or about May 2013, the couple left Brewster, New York and moved with Hector to East Greenwich, Rhode, Island. They moved in with Champagne's parents, where the couple continued to enjoy the mutual companionship of the dog and jointly paid certain bills to attend to his care and maintenance. At no time, either when living in China or after his return to the United States, did Plaintiff ever have sole possession of Hector. Plaintiff fully consented to Defendant's sole possession to facilitate the dog's return to the United States. Higgins continued in sole possession from the time she left China until Champagne joined her in Brewster. Neither party acted in a manner inconsistent with joint ownership.

Throughout all the moves and changes in residence, Higgins remained the only constant in Hector's life. In fact, Defendant had sole possession and personally attended to Hector's care and maintenance while Plaintiff was still abroad. Higgins had sole possession of Hector from the time she returned from China to the time Plaintiff returned (April 2012 until May 2013). In June 2015, the couple discontinued their romantic relationship. At the time of the break-up, the couple resided in separate locations (Plaintiff in East Greenwich, Defendant in Providence). Hector

accompanied Higgins when she moved from East Greenwich to Providence. In Providence, she and Champagne discussed the future of Hector after the break-up. At the time of the discussions, she had sole possession of Hector and was his primary caretaker. Higgins testified that Champagne acknowledged her status at that time and indicated to Higgins that she could have exclusive possession of Hector, which was originally necessitated by the decision for Hector to return to the United States with her. The Plaintiff denies making such a statement. His participation in the decision for Higgins to take Hector home with her stands as tacit recognition by Champagne that she was to have exclusive possession of the dog, at least until he returned from China. This is not inconsistent with Champagne's testimony that he never intended Higgins' possession to be permanent. He did concede that after the break-up, Higgins was the dog's primary caretaker. Defendant recalls specifically that they never reached a final agreement with respect to Hector. Defendant believed there was an agreement that she and Hector would remain together after her return from China. There was discussion at the time that Higgins was to reduce their agreement to writing, but their arrangement was never written or agreed to in writing. After their discussions, Higgins sent an e-mail to Champagne stating that she never agreed to a 50/50 arrangement. She did, however, allow Hector to return to East Greenwich to stay with Champagne on occasion, but such visits were sporadic and never formalized and occurred only on occasions when the couples' schedules allowed. At any time before or after litigation ensued, the couple could have reached an agreement. However, without such an agreement, the Court is left to decide whether Plaintiff or Defendant have proven their entitlement to sole possession.³

³ The Court firmly believes that such disputes can best be resolved by agreement or mediation.

When Higgins and Hector arrived in the United States, they moved to Brewster, New York and then to East Greenwich, Rhode Island where they lived with Hector at the home of Champagne's parents in East Greenwich. At no time, either in China or after his return to the United States, did Champagne have sole possession of Hector. While living together in China, New York and Rhode Island, Hector lived with the couple and they shared his companionship, as well as sharing the costs and labor associated with Hector's care and maintenance. Defendant had sole possession of Hector from the time she returned from China until Champagne returned, at which time their joint possession resumed. The couple discontinued their romantic relationship on or about June 2015. It was only after the breakup that the couple discussed possession of Hector. According to Higgins, at that time they had a face-to-face discussion where Champagne disclosed his belief that Higgins was Hector's caretaker and that from that point moving forward, Hector was better off with Higgins. Champagne disputes that he ever made such a statement, but it is clear, that in light of their breakup, some discussion ensued about the ownership and possession of Hector.

On or about December 28, 2010, Higgins wrote both her name and Champagne's name as the co-owners in what they referred to as the "red book."⁴ The documentation prepared in China displayed Higgins' perception of co-ownership and joint possession in her insertion of both names in the blank area reflecting joint ownership. This Court believes that as of the time Hector joined them in their Chinese residence until Higgins transported the dog to the United

⁴ Champagne described the book as being blue, but no such blue book was marked as a full exhibit. The red book was authenticated by Higgins and marked as a full exhibit. Champagne testified that the content of the red book appeared identical to the blue book which he identified. The red book listed in handwriting both Champagne and Higgins as joint owners. Higgins testified that joint ownership represented her good faith belief of Hector's status at the time she made that handwritten entry. The Court agrees with Higgins that at the time she made such entry Hector was in fact jointly owned, and that she did not make that entry as part of a plan to prove joint ownership.

States, co-ownership and equal right to possession remained the status of Hector. The couple shared in the possession of Hector, both when the couple initially lived with Higgins' parents in New York, and thereafter when they moved to Rhode Island and lived together with Hector at the home of Champagne's parents in East Greenwich. In June 2015, the couple ended their romantic relationship, and Higgins moved into her own apartment in Providence with Hector. It was only at that time serious discussions took place concerning Hector's status after the break up. Both parties acknowledged such discussions having taken place in Providence at Higgins' apartment. Defendant recalls that at that time she was the primary caretaker of Hector. The parties are not in agreement that they reached an understanding of the future status of the dog. Plaintiff believes he has met his burden of proving sole ownership from the moment the dog was purchased until today, since right to possession typically follows ownership. See Terrien v. Joseph, 73 R.I. 112, 115 (1947). Plaintiff believes he is entitled to exclusive possession. Defendant on the other hand believes that ownership was joint, and that the couple reached an agreement that Hector would remain in Higgins' exclusive possession (not a 50/50 arrangement), but that she was willing to have Hector stay with Champagne occasionally.

Since no written agreement was ever prepared, and no party introduced such an agreement, the Court concludes that the status of Hector after the break up was never resolved consensually. Based upon these facts, the Court believes that both the Plaintiff and Defendant owned Hector jointly and that neither party met their respective burden of proving by a preponderance of the evidence exclusive ownership and right to possession from 2010 to the present. Therefore, neither party sustained their burden under a pure common law property analysis as to either the complaint or counterclaim for replevin or declaratory/injunctive relief. The Court finds that from 2010 until the couple broke up in June 2015, the parties were both

joint owners and shared the right to possession of Hector. The Court finds the more credible testimony to establish that the dog was jointly purchased and owned jointly by the couple, and served as their mutual companion during their stay in China and upon their return to the United States, both in New York and Rhode Island, until their romantic relationship ended. The main issue in this case is whether either party has the exclusive right to possession after their break up in June 2015.

The Court must determine which party is entitled to exclusive possession, after previously sharing the role as joint owners and sharing possession when they lived together in China, New York, and Rhode Island. At this time, Hector resides with Higgins in her home, either in Providence or Portsmouth.⁵ Although Champagne has possession for short periods of time as both party's schedules would permit, the Court finds that both parties are capable of serving as caregivers in a safe and loving environment.⁶

ANALYSIS AND CONCLUSIONS OF LAW

In Rhode Island as in most jurisdictions, domestic animals and pets are considered personal property or chattels and ownership and possession are determined by property law. In other words, the majority view finds pet animals to be no different than a piece of furniture or a painting.¹ For a good summary of the evolving law of companion pets, see generally Sabrina DeFabritiis, Barking Up the Wrong Tree: Companion Animals, Emotional Damages, and the

⁵ The testimony is clear that when Higgins no longer resided at the Champagne home in East Greenwich after the break up, that, she and Hector initially moved to Benefit Street in Providence. Thereafter the evidence is unclear whether she and Hector moved to Portsmouth or remained in Providence. In either instance, the testimony leads this Court to find that since Higgins left the Champagne home in East Greenwich and broke up with Champagne, Higgins has had exclusive possession of Hector at her residence, and as such she has been the primary caretaker of the dog.

⁶ There was some evidence that on one occasion when Hector was in Champagne's care, the dog was allowed to wander. However no injuries were reported and this Court does not find that Champagne abused or mistreated Hector. To the contrary the Court finds that both Champagne and Higgins would provide, and have provided safe and loving care to Hector.

Judiciary's Failure To Keep Pace, 32 N. Ill. U. L. Rev. 237 (2012). The premise of this article is summarized as follows:

“An increasing number of American households regard their companion animals as being as much a part of their family as they do their human family members; however, companion animals have not always held this status. The role companion animals serve has evolved from chattel property—whose function was to derive economic benefit—to family members who share a unique emotional bond with their human companions. The judiciary has failed to keep pace with this societal change. . . .”

A pure property analysis looks principally to the party who paid the purchase price, to determine right to possession. Because possessory interests of chattel property is governed by an analysis of a claim for replevin, a recent decision of the New York Supreme Court adopts a more enlightened approach in keeping with modern societal views. See Travis v. Murray, 42 Misc. 3d 447 (N.Y. Sup. Ct. 2013). The Court points out the problem of using pure replevin analysis in seeking to resolve a dispute over custody of a companion animal.

In a replevin case regarding the ownership of a dog, the standard to be applied is which party had the “superior possessory right” in the chattel and thus, it is the property rights of the litigants, rather than their respective abilities to care for the dog or their emotional ties to it, that are ultimately determinative. See id. at n.5. In order to address the limitations of property law in resolving a custody dispute over a companion animal, the Court in Travis adopted a standard that a court should employ in resolving the issues of ownership and possession of a companion dog. That standard would allow the court to look to factors not considered in order to determine property rights of ownership or possession of other chattels, but recognizes companion animals as *sui generis*, and right of possession should consider a standard based upon the “best for all concerned.” Id. at 456. In employing the Travis standard of weighing the best for all concerned with respect to ownership or rights to possession of a companion animal, this Court will accept

the view that a companion animal is different than an ordinary chattel. Without clear proof of individual ownership, the Court finds that the “best for all concerned” should be the governing principal in such disputes. Id. A pure property law analysis is not a workable solution in this case, especially in light of the Court’s finding that the couple enjoyed joint ownership from the time Hector was purchased until the parties ended their romantic relationship.⁷

CONCLUSION

Employing the test of “best for all concerned,” this Court concludes that exclusive possession of Hector is awarded to the Defendant Kelly Higgins at this time. For the periods when the dog was in the exclusive possession of one of the parties, the facts show that Higgins enjoyed exclusive possession of Hector in large measure due to Champagne’s recognition that Kelly became the primary caregiver, after she and Hector left China. Also, at present Higgins has exclusive possession of Hector, and the Court does not believe that the welfare of the dog or of either party would be enhanced by switching such exclusive possession to Champagne at this time. A judgment containing such declaratory ruling shall be prepared and presented to the Court.

⁷ The Travis Court, as well as other Courts and commentators, suggest that the use of visitation rights as in child custody disputes be avoided in cases of custody of companion animals. I agree that in awarding possession, the Court should refrain from addressing visitation rights. The Court finds reference in Travis to visitation, a judgment which requires continuing court supervision which is difficult enough in child visitation disputes, and should be avoided in the context of disputes over custody of a pet.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Alexander M. Champagne v. Kelley F. Higgins

CASE NO: KC 2016-0293

COURT: Kent County Superior Court

DATE DECISION FILED: December 16, 2016

JUSTICE/MAGISTRATE: Rubine, J.

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