

Department of Legislative Services

Maryland General Assembly

2011 Session

FISCAL AND POLICY NOTE

House Bill 770

(Delegate Kramer, *et al.*)

Judiciary

Family Law - Divorce - Ownership of a Pet

This bill authorizes a court to assign ownership of a pet if there is a dispute regarding ownership during the granting of an annulment or a limited or absolute divorce. The court is authorized to issue a decree that grants: (1) sole ownership of the pet to one party; (2) sole ownership of the pet to one party with visitation rights granted to the other party on a schedule that the court determines; or (3) ownership of the pet to both parties with custody to be shared by both parties on a schedule that the court determines. If the court grants such a decree, the bill prohibits the court from ordering either party to make any payment for pet maintenance or other expenses to the other party. "Pet" is defined as a domesticated animal that does not include livestock.

Fiscal Summary

State Effect: The bill's changes can be implemented by the Judiciary with existing resources.

Local Effect: The circuit courts can implement the bill's changes with existing resources.

Small Business Effect: None.

Analysis

Current Law: When a court grants an annulment or a limited or absolute divorce, the court may resolve any dispute between the parties with respect to the ownership of personal or real property. Except as otherwise provided, the court may not transfer

ownership of personal or real property from one party to the other. When a court determines ownership of personal or real property the court may: (1) grant a decree that states what the ownership interest of each party is; and (2) order a partition and a sale instead of partition and a division of the proceeds.

Background: For the purposes of division of property proceedings, pets are considered personal property. How this personal property is treated, however, may vary in the courts of different states with jurisdiction over divorce. In July 2010, for example, in granting a limited divorce, a judge for the circuit court of Calvert County determined that a dog, Lucky, was the joint property of the parties and awarded shared custody of the dog with six months of each year spent with each of the parties. (*Myers v. Myers*, Case No.-04-C-10-000068 DL (July, 2010)). A Tennessee judge granted joint custody of a dog in 2001, ordering a switch in custody every six months. In *Bennet v. Bennet*, 655 So.2d 109 (Fla. Dist. Ct. App. 1995) the trial court awarded the wife visitation of the dog, but the appellate court overturned the order because of concerns of judicial economy. The court stated “Our courts are overwhelmed with the supervision of custody, visitation, and support matters related to the protection of our children. We cannot undertake the same responsibility with animals.”(*Bennet v. Bennet* pp. 110-111.)

Some states have also tried to address the issue of pet custody through legislation. For example, Assembly Bill 436, introduced in Wisconsin in 2007, would have required the petitioner in an annulment, divorce or legal separation to include information about pets and whether a written agreement exists that provides for their placement. If a party filed a motion to have the court determine placement of the pet, the bill authorized the court to: (1) order the terms of any ownership or custody agreement reached between the parties; (2) place the pet with one of the parties; or (3) order the parties to surrender the pet to a local humane society and provide evidence that it was done. A similar bill was introduced in Michigan the following year.

Additional Information

Prior Introductions: None.

Cross File: SB 814 (Senator Shank) - Judicial Proceedings.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Animal Legal and Historical Center, Michigan State University College of Law, Wisconsin State Legislature, Michigan Legislature, Department of Legislative Services

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mm/kdm

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