

PROPERTY IN FAMILY LAW

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IS IT PROPERTY? (USUALLY!)

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1. INTRODUCTION

The writer has reviewed case law in Alberta and elsewhere to examine how the courts deal with the more unusual items that come before them in matrimonial property actions. Family law practitioners, in general, deal on a daily basis with houses, pensions, RRSP's, furniture etc., however, there are still questions that come up from time to time that require the court to determine if the "property in question" is actually matrimonial property. These questions range from the ridiculous (cats) to the sublime (SSARs). It is the writer's intention to simply review a number of types of property setting out basic facts and decisions and then to review a couple of decisions themselves, which represent a good analysis with respect to property.

2. PETS

Consider the reasons of Mr. Justice Wilson in *Millar v. Homenuik*:

I make no award with the respect to the cats. The husband in testimony expressed a "wish" to have them. I am not here for wish fulfillment. Furthermore, in my view, there is no property in a cat, or two cats. Cats confer their presence on people, they do not become their chattels. I note that the wife has said that these two cats cause her to budget \$70 per month for their maintenance and vet fees. That represents about 2% of the budget she filed. If I prune her budget to account for obvious overstatements in it, the percentage is greater. She might be well advised to give up the luxury of these cats.¹

The writer has often heard rumors of cases in Alberta which deal with pet "custody and access", however, I was unable to locate a reported decision. One wonders if this is simply an urban legend or if the cases are simply not reported.

¹*Millar v. Homenuik*, 2003 ABQB 570 at para 16.

Perhaps cases in Alberta are dealt with the same way as Mr. Justice Timms dealt with an application for "shared joint custody" of a dog in the Ontario Superior Court of Justice.

The parties deserve a just procedure; one that is fair to both parties; one that saves time and expense; one that is appropriate to the importance and complexity of the case and one that devotes appropriate court resources. Three judges have now spent time on this file. That is sufficient. Short of a full blown trial with contradictory oral evidence and findings of fact by a trial judge, nothing more can be added to allow the court to determine ownership.

The parties contest whether the dog was bought as a present for the applicant. It would seem that they also contest the amount of time that they spent together prior to the end of their relationship.

They do not contest that the dog, a mixed breed, was purchased from the local pound in 1996 for \$100. They do not contest that the respondent purchased the dog. They do not contest that the dog always lived with the respondent, except for a period of a few months after the parties ceased to have a relationship, when they shared possession back and forth

It would seem odd, if the dog was purchased as a gift for the applicant, that it always lived with the respondent prior to the termination of the parties' relationship. Assuming a "he said, she said" situation otherwise, that is the best evidence on the gift allegation and it stands against the applicant.

It would appear as if the applicant's involvement with the dog was totally dependent upon his relationship with the Respondent. The applicant may have spent money for such things as dog food and the like and he may have spent time caring for the dog. I do not consider that to be relevant to who owns the dog.

I am dismissing the applicant's claim for those reasons. If the respondent feels that she is entitled to costs, she may make written submissions in that regard.²

3. GOLF CLUB MEMBERSHIPS

In *D.G.M. v. K.M.M.*, Madam Justice Bielby dealt with the ownership of the memberships in the Mayfair Golf & Country Club and the Royal Glenora Club in Edmonton on the following basis:

²*Warnica v. Gering, 2004 CarswellOnt 5605.*