After a Divorce, Who Gets the Dog?

"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 his. 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. [...] 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. When we started couples therapy, our dogs were Topic A.

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. [...]