

Civil Court
of the
City of New York
JUL 17 2019
ENTERED
NEW YORK COUNTY

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART

-----X
VICTORIA DICCE,

Plaintiff,

-against

KEVIN KANE,

Defendant.
-----X

Index No.: 011899/17
AMENDED
DECISION AND ORDER

Present:
CAROL R. SHARPE
Judge

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion in limine to determine the legal standard applicable to the trial of this action.

<u>Papers</u>	<u>Numbered</u>
Plaintiff's Affirmation and Memorandum of Law.....	1-2
Defendant's Affirmation in Opposition and Memorandum of Law.....	3-4

The Court recalls its July 11, 2019 decision and order solely to correct a scribner's error in the CPLR 2219 recitation. The Court's July 11, 2019 decision and order remains in full force and effect.

Plaintiff commenced this replevin action seeking custody of a dog named Mack. The briefs submitted by the parties established that the ownership documents are in defendant's name, that the parties had an intimate relationship, that they each took care of Mack, and that Mack now lives with defendant. The facts will not be recited here as this Court's role is not to be the finder of facts, but to decide, as a matter of law, the standard that will be used to analyze the facts in this replevin action.

As a society we do not view pets as property in the same way as we do cars or pieces of furniture. Pets are treated as a part of the family and the court is sometimes called upon to decide where the pet should reside when the family structure changes. In addressing where a pet should reside, the Appellate Division, First Department in *Raymond v. Lachmann*, 264 A.D.2d 340, 341, 695 N.Y.S.2d 308 (1st Dept. 1999) held that "[c]ognizant of the cherished status accorded to pets in our society, the strong emotions engendered by disputes of this nature, and the limited ability of the courts to resolve them satisfactorily, on the record presented, we think it best for all

concerned that, given his limited life expectancy, Lovey, who is now almost ten years old, remain where he has lived, prospered, loved and been loved for the past four years.” See also *Travis v. Murray*, 977 N.Y.S.2d 621, 631, 42 Misc. 3d 447 (Sup. Ct., NY Co, 2013)(“The standard to be applied will be what is “best for all concerned,””); *S.H. v M.S.*, 2019 N.Y. Misc. LEXIS 3211*41, 2019 NY Slip Op 50999(U), 2019 WL 2529269 (Sup. Ct. NY Co. June 7, 2019)(“this court declines to follow a traditional property analysis in determining which party shall ultimately keep Charlie, and instead employs the “best for all concerned” standard”).

The action remains one for replevin. The “best for all concerned” standard will be applied to the evidence at the trial. In addition to the ownership records, other factors such as, where the pet resides, who cared for the pet, as well as the age and health of the pet will be considered.

This means that whichever spouse is awarded [Mack] will have sole possession of him to the complete exclusion of the other. Although regrettably a harsh and seemingly unfeeling outcome, it is the only one that makes sense. As has been stated, our judicial system cannot extend to dog owners the same time and resources that parents are entitled to in child custody proceedings. The extension of an award of possession of a dog to include visitation or joint custody—components of child custody designed to keep both parents firmly involved in the child's life—would only serve as an invitation for endless post-divorce litigation, keeping the parties needlessly tied to one another and to the court”

Travis v. Murphy 977 N.Y.S.2d at 621.

Accordingly, the action continues to be one of replevin, and in determining with whom Mack will live, the “best for all concerned” standard will apply.

Dated: July 17, 2019
New York, NY



CAROL R. SHARPE, A.J.S.C