

# This puppy's not property

## Divorcing couple orderd to split custody of dog

By **STEVE LASH**

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Call it the Calvert County Canine Custody Case.

As they headed toward divorce, Gayle and Craig Myers had only one bone of contention: Who would have the right to keep Lucky, their 16-pound gray-black Lhasa apso.

Under Maryland law, family pets — unlike, say, children — are treated as jointly owned marital property and sold if the divorcing couple cannot agree on who gets to keep them. The parties then split the proceeds of the sale.

But the standard resolution did not seem right to retired Prince George's County Circuit Judge Graydon S. McKee III.

The judge, presiding over the limited-divorce proceeding by special assignment, decided on his own last month that Gayle and Craig, who have no children, would split custody of Lucky. The dog will alternate spending six months with each party; Gayle's turn began on July 1.

McKee rendered his decision after hearing testimony from Gayle, who lives in Alexandria, Va., and Craig, who resides in Dunkirk.

"It was very clear that both of them love this dog equally," McKee said. "The only fair thing to do was to give each one an equal chance to share in the love of the dog."

Had either side objected to his unusual resolution, McKee said, he would have applied the law and



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**Lucky will spend six months a year with each of his owners after a judge refused to order the dog sold.**

might have ordered the dog put in the care of a trustee, sold and the proceeds divided.

The judge, 72, said he has owned dogs but that his affection for them did not enter into his decision.

"I really applied good old common sense that my grandmother taught me when I was a little kid," said McKee, who retired in 2007 as chief judge of the Seventh Judicial Circuit, which includes Calvert County. "Treat other people the way you would want to be treated if you were in that situation."

McKee's resolution drew praise from Peter Petersan, litigation director of the Humane Society of the United States. Ordering a sale of the dog "clearly would not have been a just result in this situation" when you have two loving owners, Petersan said. "The judge thought of everyone involved, including the dog, which is fantastic."

Animal-law attorney Jan Berlage said McKee recognized that dogs and other pets are "family members" and not mere property.

"The judge seems to be taking into

account that the common law is changing,” said Berlage, who chairs the **Maryland State Bar Association’s** Animal Law Section. “Pets have a different role in our lives than farm animals that are fungible and can be replaced.”

Berlage, who said he was speaking for himself and not the section, is with **Gohn, Hankey & Stichel LLP** in Baltimore.

Attorneys for Gayle hailed what they characterized as McKee’s humane compromise in not requiring the divorcing couple to part with their beloved pet.

“This judge understood the role of pets, and particularly dogs, in the fabric of the American family,” said attorney James S. Maxwell. “The judge appropriately elevated the status of a dog to a member of a family.”

But Maxwell added that only a similar ruling by Maryland’s top court or a change in Maryland law will

ensure that McKee’s decision to treat dogs as more than marital property takes root in Maryland.

“Until we have an appellate ruling or legislative change, it’s just one judge’s opinion, one judge’s attempt to do the right thing,” said Maxwell, of **Maxwell & Barke LLC** in Rockville.

Craig’s attorney, Mark W. Carmean, said McKee’s ruling made for “a rather unique case, and certainly one I’ve never had before.”

Carmean voiced doubt that the judge’s order marks the start of a trend toward pet-custody rulings.

“We have a court system that deals with a lot of child-custody cases,” said Carmean, of **Lamson, LeBlanc & Carmean LLC** in Prince Frederick.

Treating pets in a similar fashion “would take up a lot of judicial time and energy,” he added. “I will leave it to family-law scholars to determine if

you can have a visitation schedule for an animal.”

Prior to McKee’s order, Gayle’s lead attorney had offered two alternatives to selling Lucky and splitting the proceeds. The first was a coin toss. Under the second, Gayle and Craig would write on separate sheets of paper the amount they would be willing to pay for Lucky, with the high bid winning custody, said the attorney, Brian M. Barke, Maxwell’s law partner.

“Our client just could not bring herself to have a trustee take her dog and sell her dog,” Barke said.

He added that McKee’s solution was unconventional but correct.

“I don’t think what he did is entirely legal,” Barke said. “He did the right thing.”

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