

MIETRO

MONDAY, JULY 12, 2010

A legal trailblazer with a cold nose

When a marriage crumbles, it's often the little ones who get hurt the most, and they don't get much littler than Lucky, the 16-pound Lhasa apso at the center of *Craig Myers v. Gayle Myers*.

When the Calvert County couple separated, it was easy to sort out such things as the house and the bank accounts. What wasn't so easy was Lucky. They both wanted her.

If Lucky were a piece of jointly owned property — a couch, a ring — the court could have ordered her sold and the proceeds split down the middle. But Judge Graydon S. McKee III took a different approach in his ruling last month. No, he didn't pull the old King Solomon trick and order Lucky split down the middle. He decreed that the divorced couple would *share* custody of Lucky: six months with Gayle, six months with Craig.

Gayle's attorney, James Maxwell, said he researched the law in all 50 states ("and territories") and he didn't come across a single custody order like Judge McKee's, an order that basically treats a pet as if she were a child.

"This is what lawyers call sui generis," said James, of the Rockville firm Maxwell & Barke. "For the first time that I could see in this country, you have an order that actually shares the custody of a dog. . . . It elevates the character or the role of the pet to membership in the family, in a way."

"It's definitely a unique case," said Craig's attorney, Mark Carmean, of the Calvert firm Lamson, LeBland and Carmean. "I have never had a case in divorce work where we actually went to court over an animal."

That doesn't mean there's never tension over the family cat or dog. But usually one side gives. Not this time. Neither party was budging. When Gayle moved out a year ago, she took Lucky with her. Craig took her back (Lucky, not Gayle). Then they worked out a week on/week off arrangement. But having to see each other every seven days for the doggy drop-off was causing stress. And so they employed the American legal



JOHN KELLY'S WASHINGTON



Thanks to a Calvert County judge's ruling, Lucky will continue to have two owners, but one at a time for six-month stretches.

COURTESY OF GAYLE MYERS

system.

"Judge McKee was a very good judge to hear the case, I will say that," Mark said. "He certainly had patience for both sides. He let both sides take the stand and have their say."

Craig told the judge that as it was he who had found Lucky, a stray who is about 4 years old, *he* should have the dog. Gayle said as she was Lucky's primary caregiver, *she* should have the dog. When Judge McKee learned that Lucky was listed as joint property in bankruptcy paperwork the couple had filed, he felt he couldn't give her to either party entirely.

Gayle's attorneys suggested Lucky go to whichever party would pay the most to buy out the other or that her fate be decided by the flip of a coin. Instead, Judge McKee decreed shared custody.

"We call that stomach justice," said Mitchell Karpf, a Florida lawyer who heads the American Bar Association's family law section. "He did what he thought was right."

Both sides aren't entirely sure that going by the gut is legal in

this case. The law is fairly clear that pets are chattel. But neither side is planning an appeal. On July 1, Lucky switched homes. One Jan. 1, she'll switch them again.

By the way, Lucky never testified as to which home she'd prefer.

"The problem is, no interpreter could be found for dog language," James said.

Who says lawyers don't have a sense of humor?

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