

Acosta v Shaw

2022 NY Slip Op 34588(U)

December 16, 2022

Supreme Court, Queens County

Docket Number: Index No. 717310/2020

Judge: Lourdes M. Ventura

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

FILED & RECORDED

SUPREME COURT OF THE STATE OF NEW YORK - QUEENS COUNTY

12/23/2022, 11:34:57 AM

Present: HONORABLE LOURDES M. VENTURA, J.S.C. -----X

IAS Part 37

**COUNTY CLERK
QUEENS COUNTY**

AMANDA ACOSTA,

Index

Number: 717310/2020

Plaintiff,

-against-

DECISION AND
JUDGMENT AFTER
HEARING

KYLE SHAW,

Defendant.

Motion Seq. No. 2

-----X

Amanda Acosta (“plaintiff”) commenced the above-entitled action by e-filing a summons and complaint on October 1, 2022. The verified complaint seeks to recover possession of a dog named Waffles and damages in the amount of one thousand dollars for the recovery of Waffles. Plaintiff alleges that Kyle Shaw (“defendant Shaw”) wrongfully took Waffles from plaintiff, has wrongfully detained Waffles and still detains Waffles to this day.

Plaintiff moved by notice of motion seeking an Order pursuant to CPLR 3215 granting a default judgment in favor of plaintiff pursuant to CPLR 3212 and awarding custody of Waffles to plaintiff; ordering defendant to transfer possession of Waffles to plaintiff by issuing an Order of Seizure pursuant to CPLR 7102(d); and granting plaintiff costs and attorney's fees in the amount of \$6,500.00 against the defendant.

This Court denied plaintiff’s branch of the motion seeking a default judgment against defendant and the branch of plaintiff’s motion seeking summary judgment pursuant to CPLR 3212 was held in abeyance until after this Court conducted and concluded a hearing regarding the custody of the Waffles. This Court scheduled an in-person hearing on August 8, 2022, and on said date, plaintiff appeared by counsel and defendant appeared as a self-represented litigant. Defendant agreed to proceed with the proceeding self-represented.

Both parties testified and presented documentary evidence in the form of exhibits during the course of the hearing. This Court has made determinations as to the credibility of the testimony and evidence presented at the hearing as it is well settled that “[i]ssues of credibility are properly determined by the hearing court” *Samet v Binson*, 67 AD3d 988, 988 [2d Dept 2009] and “[e]valuating the credibility of the respective witnesses is primarily a matter committed to the sound discretion of the Supreme Court” *Varga v Varga*, 288 AD2d 210, 211 [2d Dept 2001]).

During the hearing, plaintiff testified in relevant part, as follows:

On direct examination, plaintiff credibly testified that she is thirty-one (31) years old and currently employed at the Best Western Hospitality House in Midtown Manhattan as a front desk

agent since 2022. Plaintiff currently lives alone and defendant Shaw previously in her in the apartment. Plaintiff testified that defendant Shaw moved in with her in February 2015, he paid rent while living with her and he moved out of her apartment in approximately March 2020. Plaintiff testified that she commenced this lawsuit against defendant Shaw because he took Waffles from the household and has not returned Waffles.

Plaintiff testified that she met defendant Shaw in elementary school, and they remained in the same schools for middle school and high school. As a result, they have known each other for a very long time, during Christmas of 2014 they began a romantic relationship and a few months later defendant Shaw moved into her apartment. Plaintiff testified that her rent was \$500.00 per month and defendant Shaw agreed to pay half of that totaling \$250.00 for rent. Plaintiff testified that when they moved in together she believed she was employed, and that defendant Shaw was not.

Plaintiff testified that at the time defendant Shaw moved in plaintiff had a pet rabbit named "Lola" at the time. In October 2015 Lola passed away and they decided to get another pet. The decision to acquire another pet was amplified when in February 2016 plaintiff learned that she was pregnant, defendant Shaw and plaintiff agreed that they were not ready to have a child and she had an abortion. Plaintiff testified that the loss she experienced prompted her to want something more to take care of and she always wanted to have a dog or some kid of other pet. Plaintiff testified that the search for a dog was initiated and she and defendant Shaw discussed obtaining a French bulldog. Plaintiff testified that she searched shelters and visited numerous pet stores. Plaintiff eventually received information about a breeder that defendant Shaw's friend had recently used to purchase a French bulldog. Plaintiff contacted the breeder to discuss the possibility of obtaining a dog and received numerous photos and video of the litters that she had available which included a photo of Waffles. As soon as plaintiff saw the photo she knew that he was the dog that she wanted to get, shared that photo with Kyle and they both fell in love with Waffles. Plaintiff testified that they purchased Waffles for \$2,500.00 with the assistance of defendant Shaw's parents. Plaintiff and defendant did not have the funds to purchase Waffles and defendant's parents gave defendant bonds to cash in and use to pay for Waffles. Plaintiff testified that she and defendant Shaw worked out an agreement on how to split the cost for Waffles after defendant Shaw put up the money to pay for Waffles. Plaintiff testified that she paid for half of Waffles purchase price within six months of purchase by paying least two months of defendant's portion of the rent and giving him cash over time as she got paid.

Plaintiff testified that she and defendant Shaw picked up Waffles from the breeder and within a week Waffles was taken to the veterinarian by both parties. Plaintiff testified that she paid for the veterinarian and, if not, then the payment would have been split between the parties, but she couldn't recall exactly. Plaintiff introduced receipts attempting to demonstrate her payments toward veterinary visits to St. Marks Veterinary Hospital as exhibit 1. Plaintiff testified that there was a card on file, but the statements do not state whose card was used. Plaintiff also testified that Waffles was neutered and microchipped in 2017 at the Humane Society as demonstrated by exhibit 2. Plaintiff further testified that she specifically remembered setting up the appointment as well as making the payment for the 2017 rendered services. To further demonstrate that the card used

was hers, plaintiff introduced into evidence exhibit 4, a Consumer Federal Credit Union letter from plaintiff's bank identifying the last four digits of previous debit cards that plaintiff owned. Plaintiff identified that the card indicated "8771" in the Human Society invoice. Plaintiff also introduced into evidence Waffles Microchip identification Card as Exhibit 3 showing that she registered the microchip under her name and address. Plaintiff testified that Waffles had subsequent vet visits and services which she mostly paid for as demonstrated in exhibit 5 consisting of five (5) invoices and four (4) receipts. Plaintiff testified in October 2019 she had surgery, stayed with defendant Shaw's parents during her recovery and the parents took or accompanied defendant Shaw to a vet visit. Plaintiff testified Waffles was also vaccinated for rabies on one or two occasions when she had taken him to the vet.

Plaintiff testified about her purchase of food for Waffles on Amazon while he lived with her. Plaintiff introduced into evidence exhibit 6 consisting of an amazon receipt for merchandise purchased for Waffles. Plaintiff testified that defendant Shaw did not contribute to the purchases made through amazon.

Plaintiff testified that she and defendant Shaw shared the responsibility of walking Waffles anywhere from two to four times a day. Plaintiff testified that while she spent the most time with Waffles during the day, it was not consistent when she was working at the hotel from 7:00am to 3:00pm. Plaintiff testified that for the first six months of having Waffles, she would spend her one-hour lunch break with Waffles and would go home after work to ensure Waffles was not alone.

Plaintiff testified when Waffles lived with her they had a great relationship, she loved Waffles and he was a companion to her. Plaintiff testified when she first got Waffles it was a great change in terms of having another companion around, someone to take care of, and she grew to love him very quickly feeling very motherly towards him. Plaintiff testified after they obtained Waffles her relationship with defendant Shaw "had troubles, like couples do. But we, you know, tried our best to make things work and we considered ourselves a family, Waffles, Kyle and I." Plaintiff testified that in May 2019 their issues resulted in a break-up and defendant Shaw moved out in June 2019 without Waffles.

Plaintiff testified that both their grandmothers died in July on the same exact day, the parties spoke that entire time and those events brought them back together. Plaintiff testified that defendant Shaw moved back into the apartment in August 2019. Plaintiff testified that on October 28, 2019, she was struck by a vehicle, was severely injured, during her recovery she spent a lot of time with Waffles and they grew very close. Plaintiff further testified that she was unable to physically do a lot of things and that took a toll on her mentally as well as physically and Waffles was there the entire time through plaintiff's recovery. Plaintiff testified that Waffles served as the inspiration for her to go to physical therapy and to work hard to get back where she was before so she could be the person that could take care of him. Plaintiff testified that Waffles was a huge emotional help, his presence and he helped her mentally, physically, and in all ways. Plaintiff introduced into evidence exhibit 6 consisting of pictures of Waffles and plaintiff during plaintiff's recovery. Plaintiff testified that the accident took another toll on plaintiff and defendant Shaw's relationship. Plaintiff testified that things got "rocky during that time" and "things started to fall apart after that". Plaintiff testified defendant Shaw moved out around March 2020. Plaintiff

testified during her recovery, defendant Shaw and her parents who lived next door assisted plaintiff with taking care of Waffles. Plaintiff testified that defendant Shaw did not take Waffles with him.

Plaintiff testified that defendant Shaw visited a few times to see Waffles after he moved out. Plaintiff testified when defendant moved out she walked Waffles. Plaintiff testified after moving out defendant moved back in for a second time for one week. Defendant Shaw returned on the same day plaintiff picked up her second French bulldog Gigi from the same breeder they had obtained Waffles and that Gigi is Waffles niece. Plaintiff testified that defendant Shaw pleaded with her to let him come back and be a family as he wanted to work on things and be there throughout this transition with the new puppy. Plaintiff testified that Waffles and Gigi spent time together from March 2020 up until August 2020 and had a strong relationship. Plaintiff testified that during walks Waffles had exhibited signs of aggression towards other dogs on certain occasions and it was nice to see Waffles interacting with a dog he did not know and get so close to it very quickly. Exhibit 8 consists of several photos of Waffles and Gigi together. Plaintiff testified that defendant Shaw had lived with her for a couple of months after that, during Covid defendant Shaw moved out and he did not take Waffles with him.

Plaintiff testified after defendant Shaw visited Waffles after he moved out and had her permission to visit Waffles whenever he wished to do so. According to plaintiff, defendant Shaw also cared for Waffles when she traveled. In July 2020, her family had a one-year memorial service for her grandmother's death, and they planned a trip to Puerto Rico in July 2020. Plaintiff testified during this time defendant Shaw watched Waffles, she returned from her trip five to seven days later and, upon her return, defendant Shaw returned Waffles back to plaintiff.

Plaintiff further testified that in August 2020 defendant Shaw asked plaintiff to have Waffles for a visit at his new house in Queens and plaintiff came to pick Waffles up in August 2020 and kept him for about a week. Plaintiff testified that defendant Shaw knew that he was to return Waffles, that Waffles was just visiting and would socialize with another pet in his new household. Plaintiff introduced screenshots of text messages as plaintiff's exhibit 9. Plaintiff testified that the first conversation began on Wednesday August 5, 2020, at 2:33pm and defendant Shaw wanted plaintiff to agree to splitting time with Waffles 50/50 with him and he insisted that every two weeks they would exchange Waffles so that they would each have fair time with him. Plaintiff further testified that up until that point there was no specific agreement other than defendant Shaw would reach out to plaintiff when he wanted to spend time with Waffles. Plaintiff testified that she did not refuse to split the time and she wanted to sit down and discuss face to face what to do moving forward in October 2020. Plaintiff testified that her sister was due to give birth in September 2020 and she let defendant Shaw know that she would be going away and that if he wanted to watch Waffles during that time she was happy to drop him off and she knew defendant Shaw would be happy to have him. Plaintiff testified that defendant Shaw did not return Waffles and they were not able to work out any kind of an arrangement with regard to Waffles. Plaintiff testified that defendant Shaw refused to drop Waffles off.

Plaintiff testified that she has not seen Waffles since August 2020, she is heartbroken and she assumed over time she would have felt better, but she does not. Plaintiff testified that she loves Waffles a lot and misses him every day. She believes Gigi misses him as well as Gigi would sit

by the door as if she was waiting for Waffles to come by but she does not do that anymore. Plaintiff testified that she still feels his absence every day like something is missing from her life and it is him. Plaintiff testified that she believed that Waffles would be better off with her because she always did everything for him and went above and beyond to make sure he was taken care of with not only the items that he needed but with love and affection and just anything that she could offer. Plaintiff further testified that she always felt very nurturing and very motherly to him so she feels like she always offered him that kind of love and affection which every dog deserved in their lifetime. She made sure that he was healthy, took him to the vet, made sure he was fed, and she wanted to give him the best life that he could possibly have because that is what he deserved. She would strive to do that and did it before, would do it again and looks at herself as his mother as a significant figure in a child's life and a dog's life. Plaintiff testified that she has a large apartment and there are many dog parks and places to bring him outside and socialize with other pets. Plaintiff testified that defendant Shaw would not be capable of providing companionship because when they dated she noticed defendant Shaw didn't go to the doctor or dentist and didn't even have insurance for himself. She believes that if he does not care for himself how can she expect defendant Shaw will do those things for Waffles. Plaintiff testified that Waffles breed is prone to health issues, specifically, breathing issues because he is a short nose breed and Waffles didn't take medications for any kind of medical issues. Plaintiff testified that Waffles was two months old when they obtained Waffles and that she is either five- or six-years old now.

Defendant Shaw proceeded self-represented, and cross-examined plaintiff, and the relevant testimony was elicited as follows:

Plaintiff testified that it is true that defendant Shaw found the contact for Waffles, and it is true that defendant Shaw paid for Waffles in cash. Plaintiff further testified that when defendant Shaw moved in she was behind on rent multiple months, and he loaned her money from his parents and gave plaintiff that money for the rent. Plaintiff later denied receiving other money from defendant Shaw. Plaintiff testified that she uses her own amazon account for her purchases. Plaintiff testified that defendant Shaw took care of plaintiff and Waffles during her accident and Waffles was not forced to use wee-wee pads. Plaintiff testified that she had an elevator and Waffles did exhibit anxiety when he was out on his walks but not in the elevator. During the last year before defendant Shaw moved out, they both walked Waffles once plaintiff recovered from the accident. Plaintiff testified that she purchased Gigi because Waffles wanted a companion. Plaintiff arranged for Gigi to fly with her to Puerto Rico by registering her as her service animal. Defendant Shaw testified that Waffles' birthday is September 25, 2016, which plaintiff was unable to recall. Plaintiff testified that defendant Shaw gave her money for other expenses. Plaintiff testified that she works Monday through Friday from 7:00am to 3:00pm and that she lives alone. Plaintiff testified that while she is not home, Gigi is not alone because her parents live next door and she sometimes dog sits for people in the building.

Defendant provided a statement on direct examination and testified in relevant part as follows:

Defendant credibly testified that he and Waffles in a large, three-bedroom duplex with a big fenced-in backyard with plenty of room to run around and play. Defendant further testified that

he has three roommates, one of them owns a dog named Save, they all adore Waffles and shower him with love and affection. Defendant further testified that Waffles is a very happy and healthy and energetic dog who enjoys walking around the neighborhood. Waffles is very affectionate and playful, and loves defendant Shaw's friends, and he is always happy to see visitors. Defendant testified that Waffles is rarely alone and seems to enjoy the companionship with Savi and they get along splendidly. Defendant testified that he has had the benefit of living with Waffles his entire life in both environments, both in the city and in the boroughs, and can state without a doubt that the quality of his life is now better than it has ever been for Waffles. Defendant testified that when Waffles was in the city, Waffles was confined to the apartment on the 11th floor, was alone the majority of the time, and was sleepy and lethargic. When defendant Shaw took him out for walks, he exhibited stress going down the stairs and elevator, did not do his business outside and would wait to hold it to come back inside and use Wee-Wee pads. Now, Waffles is trained to do his business exclusively outside without Wee-Wee pads and he is calmer and more relaxed on walks. Defendant testified that he believed removing Waffles from this current home with him would be detrimental to his wellbeing and cause undue stress and anxiety. It is well known dogs can indeed suffer from separation anxiety and stress, as per the American Kennel Club, and suffer an array of symptoms and relocation and separation, at this time that would be unnecessarily cruel. Defendant testified that he is a conscientious dog owner and takes the responsibilities of Waffles very seriously and never shirked his duties and has never been neglectful or abusive.

Defendant Shaw stated that he does a lot of things that a loving dog owner does. He provides a stable and safe home, provides a healthy diet, walks Waffles all the time to ensure that he gets in enough exercise. Defendant Shaw bathes and grooms Waffles, provides plenty of playtime and trains him in healthy habits. Waffles is up to date on his vaccinations, parasite free, and is a trim and healthy weight for his breed and age. Defendant Shaw has spent an inordinate amount of time in the past two years responding to plaintiff's claims and has had to defend myself against a barrage of defamatory accusations, all of which have been aimed to hurt and punish him and not in Waffles' best interests. Nonetheless, defendant Shaw believes he has remained cooperative, from his initial attempts at visitation to a monetary offer as well as complying with all the Court's requirements. Defendant Shaw does not see any reason why Waffles should be removed from his home as he has been a constant in his life from the day he purchased him, brought him home, and he has been an excellent and loving custodian. Defendant Shaw believes it is in Waffles best interest to continue to live with him, as he has done his entire life, where he has thrived and established healthy routines and relationships. Defendant Shaw introduced into evidence photos of Waffles as defendant's exhibit A. Defendant Shaw also introduced into evidence Waffles vaccination record as defendant exhibit b.

On the morning of the hearing, defendant's daily routine commenced by waking up around 7:30am, spending about an hour and a half with Waffles in the backyard and then they went for a walk, he left him some food and then he left him in the care of his roommates to come to court. Defendant testified that, on a typical day, he is able to train clients out of his house in his home gym. He is able to complete workouts and instruction in the basement and Waffles is around too. As shown in the defendant's photo exhibit, Waffles hangs out and watches and is around many

people. Defendant Shaw testified that he is able to spend 80 to 85 percent of his time per day with Waffles.

Defendant Shaw was cross examined and in relevant part testified as follows:

Defendant Shaw testified that he has been living at his current address for about a year now. He has roommates and his share of the rent is \$650.00 per month for a total of \$3000.00 amongst the roommates. Defendant testified that there is another pet in the apartment (Savi) a pit mixed that is his roommate's pet. Defendant testified that his apartment consists of a first floor and the basement floor of the apartment building and the backyard. Defendant testified that he is the head jiu-jitsu instructor at Hinds Combat Fitness in Long Island City and this is his full-time job. He teaches most of his clients at his house, which is an hour every other night, and is approximately six hours to seven hours a week. Defendant testified that he spends at least a couple of hours a day at the house, has a couple of private clients lined up sometimes during the day and goes to teach every other night at Hinds and gets paid \$60.00 an hour and has ten clients. Defendant testified that he makes \$600 a week from the private client.

Defendant further testified that prior to his current residence he lived in Ozone Park in Queens around July or August 2020 and in the past two years he had moved to two different residences. Defendant testified from 2015 to 2020 he was living with plaintiff. Defendant testified that he was paying rent but was not on the lease and does not think either of them were on the lease because it was a sublet. Defendant testified that plaintiff did not pay for most of the household expenses. Defendant testified that he didn't have health insurance and does not have pet insurance for Waffles. Defendant testified prior to getting Waffles, he wanted a dog his entire life and it was not plaintiff who was pushing for a dog. Defendant testified that they both made contact, and remained in contact, with the breeder. He disagreed with that the majority of the interactions were made by plaintiff. Defendant testified that he paid \$2,500.00 for Waffles and plaintiff did not give him any money. Defendant testified that they shared a lot of expenses and plaintiff did not give him any money for Waffles. Defendant was asked to review text messages admitted into evidence as plaintiff's exhibit 9. Defendant acknowledged that he said "I take care of him too. I got him for us. He is our dog. I didn't buy you a dog. I paid for him, and you paid me back half". Defendant testified that plaintiff didn't give him any money, plaintiff did not give him credit for anything, and he did not know what credit would mean in a house where they shared all expenses.

Defendant testified that when he got Waffles he was living in plaintiff's home, and Waffles also spent a lot of time at his parents' house. Defendant Shaw testified that up until 2020 Waffles did not live anywhere else on a permanent basis other than that apartment. Defendant testified that to the best of his knowledge Waffles was vaccinated on time. Defendant was questioned whether the veterinary records indicated that Waffles next scheduled rabies booster was in April 2021 and defendant did not get Waffles vaccinated until 2022. Defendant testified Waffles was scheduled when he went to the vet. Defendant testified that for the rabies it is legally mandated during a one-to-three-year period. Defendant further testified that he never saw that on any of his paperwork, every year. According to defendant Shaw, it is common knowledge for dogs that they can go one to three years without a rabies shot and he asked the vet. Defendant testified that he has had Waffles exclusively since August 2020. Defendant testified that he was kicked out of plaintiff's

apartment more than three times, and he did not take Waffles with him, nor did he take all of his belongings with him, and he did not request to take Waffles any time after he left. Defendant testified that he did not ask plaintiff for permission to see Waffles, as he communicated with plaintiff whenever he wanted to see Waffles. Defendant further testified that when he visited Waffles it would be at plaintiff's apartment or Waffles would go with him to Queens. Defendant testified that he would return Waffles to spend time with plaintiff. Defendant testified that he had agreed that he would take Waffles for a period of time and that the agreement was defendant was to return Waffles as defendant Shaw had done before. Defendant testified that he did not return Waffles and, at the time he had possession, he tried to get an agreement from plaintiff for the two of them to split the time. Defendant Shaw further testified that he did not decide to keep Waffles from plaintiff and there was "some other stuff" in there as well. Defendant confirmed that he sent a text message to plaintiff stating that she would get Waffles over his dead body. Defendant testified that his text message stating "this might as well be full blown war" was referring to this legal battle that has taken two years of his life. Defendant testified that he was anticipating a legal battle because plaintiff told him she was going to sue him. Defendant said on August 7, 2020, he told plaintiff during a phone conversation that she would get Waffles over his dead body. Defendant could not remember if plaintiff said that she was going to deny defendant access to Waffles.

Defendant testified that he was really nervous about his ex-girlfriend (plaintiff). He was trying to cooperate, and she wasn't trying to cooperate, so he was really nervous. Defendant further testified that over the past two years he had asked if there was any sort of money that plaintiff wanted to resolve this matter and he tried to set up visitation. Defendant further testified that they also tried to enter into a contract but that was grossly inequitable, and he offered plaintiff to visit Waffles at any point. Defendant testified that as part of agreement plaintiff would be able to visit Waffles under defendant Shaw's supervision. When defendant was questioned if this is about him having control, defendant testified that it is about the dog and the welfare of the dog. Defendant testified that he thought the anxiety Waffles suffered was due to the environment he was living with plaintiff. Defendant testified that Waffles did not exhibit any anxiety when he took him from plaintiff. Defendant testified that he is looking to do what is best for Waffles and cooperate with the Court and wants to keep him in his custody where he belongs.

After cross examination defendant Shaw testified before the court, that he believe it is in the best interest for Waffles for him to remain where he is. He testified that he tried to be cooperative this entire time, and entire court experience, and trying to be as communicative with plaintiff's counsel. Defendant further testified that in the beginning, he was trying to be cooperative with plaintiff while it was still amicable because wants the best for Waffles and he would like to move on with my life. Defendant believes that it is in the best interest for he and to each take their respective dogs that they have purchased and live their lives.

Defendant further testified that Waffles is very athletic now, spends a lot of time outdoors and Waffles is very fulfilled. Defendant stated that Waffles is about 27 pounds, he eats once or twice a day, he sleeps for eight hours throughout the night and takes naps throughout the day sporadically.

ANALYSIS

“Replevin is strictly a possessory action and plaintiff, to recover, must show a possessory right recognized by law” (*Hofferman v Simmons*, 290 NY 449, 455 [1943]). However, when dealing with animals Specifically, the Second Department, Appellate Division in *Feger v Warwick Animal Shelter*, 59 AD3d 68, 72 [2d Dept 2008] recognized companion animals as a special category of property which consistent with the laws of this State and the underlying policy inherent in those laws to protect the welfare of animals. The court in *Feger* further acknowledged the “cherished status” accorded to pets in our society in awarding possession of a cat in a custody dispute based in large part on what was in the best interest of the animal (*Raymond v Lachmann*, 264 AD2d 340, 341 [1999]).

An applicable standard dealing with pet custody cases was further developed in a matrimonial action under *Travis v Murray* (42 Misc 3d 447 [Sup Ct, New York County 2013]). The *Travis* court concluded that in determining to whom a pet should be awarded, a “best for all concerned,” rather than a “best interests,” standard would be appropriate. This standard was subsequently adopted and applied by several courts in non-matrimonial actions dealing with causes of actions of replevin and right of possession (*see, e.g. Mundo v Weatherson*, 74 Misc 3d 1215(A) [Civ Ct 2022] *Mitchell v Snider*, 51 Misc 3d 1229[A][Civil Ct, New York County 2016]; *Ramseur v Atkins*, 44 Misc 3d 1209[A][Civ Ct, New York County 2014]; *Hennet v Allan*, 43 Misc 3d 542 [Sup Ct, Albany County 2014])).

Since the *Travis* decision, Domestic Relation Law (“DRL”) § 236 [B] [5] [d] [15] was enacted requiring courts to consider “the best interest” of such animal when awarding possession in divorce or separation proceedings (*L.B. v C.C.B.*, 175 NYS3d 705, 710 [Sup Ct 2022]; DRL § 236 [B] [5] [d] [15]).

While this court is aware that this action seeks causes of actions grounded in replevin and right of possession, which is distinguishable from divorce and separation proceedings, this Court would be remiss if it did not acknowledge that a determination regarding the custody of a pet, whether between two married persons or two previously co-habiting persons, should inherently consider the best interest of said animal as a factor to be consider during the court’s determination (*L.B. v C.C.B.*, 175 NYS3d 705, 710 [Sup Ct 2022]; DRL § 236 [B] [5] [d] [15]). Thus, this court will apply the “best for all concerned” standard (*see, e.g. Mundo v Weatherson*, 74 Misc 3d 1215(A) [Civ Ct 2022] *Mitchell v Snider*, 51 Misc 3d 1229[A][Civil Ct, New York County 2016]; *Ramseur v Atkins*, 44 Misc 3d 1209[A][Civ Ct, New York County 2014]; *Hennet v Allan*, 43 Misc 3d 542 [Sup Ct, Albany County 2014] and consider the “best interest” as a factor to be consider in the overall analysis (*L.B. v C.C.B.*, 175 NYS3d 705, 710 [Sup Ct 2022]; DRL § 236 [B] [5] [d] [15]).

Based upon the credible testimony of the parties, it is undisputed that defendant Shaw paid for Waffles and it is clear that the monthly expenses were shared between the parties during their time living together. Plaintiff credibly acknowledged that when the three of them resided together

they shared the walking responsibilities for Waffles anywhere from two to four times a day. This Court finds that both parties credibly testified about their love and devotion for Waffles, and both genuinely expressed an interest in doing what was in Waffles best interest. It is undisputed that since August 2020 Waffles has resided with defendant Shaw. Moreover, no evidence was adduced to controvert defendant Shaw’s account of Waffles current daily routine or care. Under Waffles’ current care, Waffles resides on a first floor of a duplex style house which has direct access to a backyard, has daily companionship with defendant Shaw, his live-in roommates and another dog named Savi.

Based upon the totality of the evidence, and the testimony adduced during the hearing, this Court finds that in considering the best interest of Waffles, and the best interest for all concerned, that Waffles remain with defendant Shaw.

In addition to seeking possession of Waffles, plaintiff seeks damages in the amount of one thousand dollars for the recovery of Waffles. Defendant Shaw did not oppose this during the hearing.

Accordingly, it is hereby

ORDERED that plaintiff’s branch of the motion seeking summary judgment is denied and the branch of plaintiff’s motion seeking a money judgment is granted; and it is further

ORDERED and ADJUDGED that defendant is awarded sole possession of Waffles; and it is further

ORDERED and ADJUDGED that plaintiff is awarded a money judgment against defendant Shaw in the amount of one thousand dollars and it is further

ORDERED that plaintiff is to file notice of entry and mail a copy of this order to defendant Shaw within five (5) days from entry of this order.

ORDERED that any other requested relief not expressly addressed herein has nonetheless been considered by this Court and is hereby denied.

This shall constitute the Decision and Order of the Court.

Dated: December 16, 2022

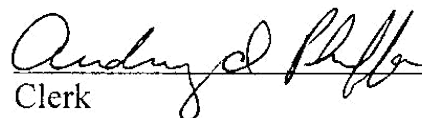
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**COUNTY CLERK
QUEENS COUNTY**



LOURDES M. VENTURA, J.S.C.


Clerk