



Animal Law Update

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Legislative Update:

Animal Fighting: Animal fighting is already a felony in New York¹ however a person's attendance at such an "event" is only punishable by a violation. The New York State Legislature is considering a bill (A. 6287-B) which would make attending an animal fight a misdemeanor offence². The Senate has passed its version of the bill, however the Assembly has not.

Oreo's Law: After revision, on June 29th Oreo's Law passed the Senate and was then returned to the assembly. Oreo's law (S. 5794 A) "allows the release of any animal to another pound, shelter, society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protective association for the sole purpose of placing such animal in an adoptive home, when such action is reasonably believed to improve the opportunity for adoption."

Oreo's Law was first proposed after a decision was made by the New York City ASPCA to euthanize an abused dog (Oreo) when another animal not-for-profit organization was willing to save the dog's life.³

¹ §351 NYS Agriculture and Markets Law

² Similar laws in NJ and CT make this a felony.

³ Last June Oreo was thrown from the rooftop of a six-story building in Brooklyn and sustained near death injuries. She was dubbed the "miracle dog" by the ASPCA who brought her back to health and prosecuted her abuser. The ASPCA made the publicly

Pet Trusts: Effective May 5, 2010, the New York Estates Powers and Trust Law §7-8.1, which provides for honorary trusts for pets, was changed by renaming the section to Trusts for Pets, thus doing away with the "honorary" designation and by eliminating the twenty-one year duration of such a trust.

Animal Law cases of interest:

Pet Trusts: Speaking of pet trusts, Miami heiress Gail Posner passed away in May and left the bulk of her estate, including a mansion and a \$3 Million trust fund to her beloved Chihuahua, Conchita. Posner's only son, Ben Carr, who was only bequeathed a paltry \$1 Million, has filed suit against his mother's former staff members accusing them of manipulation of his mother's estate plan.

Will Contests: In June, the Dutchess County Surrogates Court, Pagonis, J., admitted a contested will into probate that contained bequests to animal welfare organizations. Such will was the third of a series of wills executed by the decedent in a short period of time prior to her passing. In an extremely well written decision⁴ discussing testamentary capacity and the standards of proof for a finding of undue influence, Judge Pagonis found that by a comparison of the three wills that the decedent indicated a clear and consistent intent to leave the bulk of her estate to organizations involving

unpopular decision to end her life when she exhibited understandable signs of aggression towards humans.

⁴ In the matter of the Estate of Boyd, 2010 WL 2243349.

animals. This and other convincing evidence led the Judge to admit the will to probate.

Animal Cruelty: The United States Supreme Court issued its decision in the case of United States v. Stevens⁵, which was a constitutional challenge to a 1999 law that criminalized the sale of depictions of animal cruelty. By a 8-1 vote, the Court held that the law violates the 1st Amendment and is unenforceable.

This unfortunate decision by the Court overturns the conviction of Robert Stevens, who was sentenced to prison for making and selling videos of dog fights. The original intent of the law was to ban so called “crush” videos, which depict puppies, kittens, baby chicks and other small animals being crushed to death, typically beneath the spiked heel of a woman’s shoe.

It is believed that a narrower law tailored to depictions of extreme animal cruelty could still be constitutional and a proposal to that effect has been introduced in the House of Representatives.

Animal Cruelty Conviction : In May, horse breeder and owner, Ernie Paragallo was sentenced to the maximum term of imprisonment, two years, for the starving of thoroughbreds at his farm in Greene County. County Judge George Pulver also ordered Paragallo to pay a fine of \$33,000. Additionally a hearing will be held to determine the amount Paragallo will be ordered to pay the Columbia-Greene County Humane Society and the Equine Rescue Resource, who financed the recovery and treatment of the 177 emaciated horses found at Paragallo’s farm.

Driven to Distraction: In more humorous news, last summer, Patricia Edwards was pulled over in South Dakota for driving under the influence ... of cats. She was living and driving in her car with her 15 cats, who she says were well cared for. The cats were seized and impounded, with the daily cost of their care running up a tab. Edwards tried to get them back before they were adopted out to other homes, but the court denied her request based on the grounds that she had no way to pay the shelter back for their care. The case was appealed all the way up to the state supreme court and a decision was recently handed down.

In the end, in a hotly contested 3-2 decision, the majority of the court didn’t directly focus on possible hoarding issues, or the legal issues surrounding seizure of animals. The appellate court focused on the dangers of driving while distracted by cats.⁶

In the majority opinion, the court disagreed with Edward’s argument that her cats had been seized without cause. The court stated that the seizure was justified as 15 cats wandering around the car is "beyond the unsanitary aspects of the situation [and] it presented a significant safety risk to the public."

The court went on to explain why Edwards was such a threat to the public welfare and to her cats. "Because of the cats in the back window, Edwards failed to see the patrol car behind her and nearly backed into it. What if, instead of the officer's patrol car, a less visible child on a skateboard or bicycle had passed by at that same moment?" The court further found that exigent circumstances existed to seize the cats, as the law “must be read to refer to emergency situations where impoundment without a

⁵ Slip Op. No. 08–769

⁶ State of South Dakota v. Fifteen Impounded Cats, 2010 SD 50

warrant or court order is necessary to protect the well-being of the animal.”

About the author-

Jonathan Schopf is an associate attorney with the Troy, New York firm of Pattison, Sampson, Ginsberg & Griffin, PC. His primary practice involves advising educational institutions and technology companies in developing successful strategies for risk management and proactive liability protection. He represents such clients in both state and federal courts in litigation involving insurance coverage, commercial transactions, technology-transfer, and labor and employment disputes. He also has a general practice and frequently represents individual and municipal clients in transactional matters as-well-as tax certiorari litigation, employment discrimination, business law, Article 81 guardianships and constitutional law.

Mr. Schopf maintains an ever expanding niche practice in the area of animal law and animal rights litigation which focuses on advocating for clients and the welfare of their companion animals in a variety of legal contexts. He is an attorney-member of the Animal Legal Defense Fund and the author of “Animal Law Update”, which is published quarterly in the Albany County Bar Association’s newsletter.