



NEWSLETTER

Forget the Kids ... Who Gets the Dog??

By Koryn K. Sheppard, Esq., P.M.P.
Law & Mediation Firm of Klueck & Hoppes

“Pet custody” is a recent topic of interest in Family Law. How to treat pets in a divorce is a somewhat evolving issue. While the standard practice for years has been to treat pets as any other property, there has been a more recent trend of making more creative orders about pets. Typically, this applies to dogs more often than other types of pets.

Variations of “pet custody” that I’ve seen include sharing and exchanging the pet like a child or exchanging the family pet with the children. An attorney friend of mine told me that she had a case where a couple was ordered to share a dog despite living in different states. The dog was in California for 6 months and in Virginia for 6 months.

Practitioners I have spoken to take a dim view of “pet custody.” Several have noted that this simply is another issue for people to fight over during a divorce and is often a way for one party to simply try to injure another party emotionally and financially. Another practitioner commented that it’s simply a means for people to stay connected when they should be moving on. Another attorney friend of mine told me that her case failed to settle at Mandatory Settlement Conference due in large part because the parties could not agree on who keeps the dogs. This means that the case is going to trial over who gets the dogs. In short, they generally feel that pets should be treated like any other property item.

Interestingly, this issue often reverses course when the pet is considered more of an expense than asset. Pets require food, maintenance, veterinary care, boarding, etc. Family law practitioners are likely familiar with a now infamous case in which one family law practitioner left two dogs at the office of another practitioner when the clients could not determine who should maintain responsibility of the dogs.

Upcoming Events Calendar

April 13

**Estate Planning and Probate Section
12:15 - 1:15 p.m.**

Law Offices of Nancy Kaupp Ewin, Esq.
8166 La Mesa Blvd., La Mesa
Topic: Catch You on the Flip Side: Probate
Sales in Today’s Marketplace
Speakers: Claudia Powell, CLPF, and
Frank McLin, Realtor

April 18

**Family Law Section
12:00 - 1:15 p.m.**

East County Court, Dept. 6
250 E. Main Street, El Cajon
Topic: Debt Collection Tactics and Tips
Speakers: Will Hannosh, Esq. and Sheriff’s
Office representative TBA

April 18

**Civil Litigation Section
12:00 - 1:15 p.m.**

BJ’s Restaurant, Grossmont Center, La Mesa
Topic: Robot Cars – Legal Potholes in the
Road Ahead
Speaker: Brett J. Schreiber, Esq.

April 20

**Criminal Law Section
12:00 - 1:15 p.m.**

East County Court, Dept. 10
250 E. Main Street, El Cajon
Topic: What Bail Can Tell Us
Speaker: Ryan Mullinax, Bail bondsman

May 2017

**Young/New Lawyers Division Mixer
Date/Time/Location TBA**

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In a hypothetical scenario, one party did not want to shoulder the expense of maintaining the parties' dogs. The other party would not take the dogs but cited the Family Law Automatic Temporary Restraining Orders (preventing the disposal of community property) when the first party threatened to take the dogs to the animal shelter. In a similar hypothetical case, one party left pets in the family residence, but then relocated. The party remaining in the home wanted the pets removed and wanted to discontinue the utilities while away for several months. This led to a dispute about financial responsibility for maintaining the space and utilities for housing the animals.

Pets are akin to sentimental property items, such as photographs, which are difficult to place a true dollar value on. Some judicial officers seem to place particular value on the emotional connection people have with pets, recognizing the sentimental value of pets. Family law courts are known to be "courts of equity". Thus, in family law, judges generally have fairly broad discretion in decision making. How this issue will be treated in any particular case may depend on which judge is hearing the case. Emotional support animals and service animals add another layer of complexity to the findings of fact and outcome of such hearings. Practitioners may need to be prepared to show up with more than a "bill of sale" in order to argue the pet's true value; and clients may need to prepare to fund evidentiary hearings over who gets the dog.

FBA Board Goes Bowling

On Friday, March 24, 2017, members of the Foothills Bar Association board attended a social event at Parkway Bowl in El Cajon. Traci Hoppes, Glen Honig, Garrison Klueck, Mark Raftery, George de la Flor, Koryn Sheppard and Will Hannosh attended along with some of their family members. A fun time was had by all in the cosmic bowling room of Parkway Bowl.



Perfected Title Revisited and Restated

By Keith A. Jones, Esq.

In February 2017, my Foothill Bar Association newsletter article concerned a 2016 San Diego eviction case. In that case, the plaintiff had purchased the subject property at an 8:00 a.m. foreclosure sale, and later that day served the defendant occupant with the requisite notice to vacate. When the defendant didn't surrender possession after three days, the plaintiff filed the unlawful detainer action. Fifteen days elapsed between the foreclosure sale date and when the plaintiff recorded the trustee's deed, which recording also occurred after the plaintiff filed the eviction lawsuit.

The defendant unsuccessfully argued at trial that the notice was defective because the plaintiff had not first perfected its title to the property by recording the deed. On appeal, the defendant succeeded by arguing that purchasing property at a sale did not equate to transfer of title evidenced by the recording of a deed with public records. The defendant claimed that since the transfer of title had not been perfected with a recording, he did not have an opportunity to confirm via official public records that the plaintiff was the true owner. San Diego's Appellate Division agreed with the defendant, relying on Code of Civil Procedure Section 1161a(b)(3) to conclude that the plaintiff's notice had been served before perfecting title rendering it fatally defective.

No so fast! In March 2017, in an appeal in a Ventura County eviction case, the Second Appellate District rejected the San Diego Appellate Division's decision under slightly different facts as to timing. As stated in my February article, a plaintiff in an unlawful detainer action needs to prove ownership or right to possession of the subject property as a prima facie element in order to evict an occupant. The San Diego Appellate Division concluded that the plaintiff needed to establish that perfected title existed when it served a notice to vacate on the occupant.

In the Ventura case, the plaintiff served the notice to vacate on the defendant the day after purchasing the property at a foreclosure sale. Five days after serving the notice, the plaintiff recorded the deed transferring the property but didn't file the unlawful detainer complaint five weeks after serving the notice. The plaintiff succeeded at a bifurcated trial which first addressed whether the defendant's lease had been extinguished by the foreclosure sale. The defendant surrendered possession after losing on the first phase, reserving its right to appeal the trial court's decision and to challenge whether the notice was defective as being premature.

The appellate court in the Ventura case also relied on Code of Civil Procedure Section 1161a(b)(3) to reach its decision, but it concluded that the plaintiff's notice to vacate was effective even though it was served before it recorded the trustee's deed. The Ventura appellate bench honed in on the statute's phrase that states the occupant "*may be removed*" after the title "*has been duly perfected.*" Therefore, since the plaintiff established perfected title at the time of filing the complaint, the notice to vacate was not defective.

The Ventura decision reasoned that the plaintiff needed to prove perfected ownership at trial, and that the defendant would have an opportunity at trial to prove that the plaintiff had not perfected title as a defense. Additionally, it disagreed with the San Diego case and concluded that a party does not begin an unlawful detainer action by serving a notice to quit. Rather, it does so when it files the lawsuit at which time the court has jurisdiction over the parties.

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As lawyers, we know that the laws change via the legislative system as well as via the judicial system that interprets the laws. Whether this issue will end up before the California Supreme Court since the appellate districts remains to be seen. Or perhaps we'll hear from another appellate district which concludes that proof of perfected title by time of trial as opposed to time of filing the complaint suffices. After all, an owner can't "*remove*" the occupant without a judgment.

FBA Civil Litigation Section MCLE Update

By Cheryl L. Stengel, Esq.

The Civil Litigation Section of the Foothills Bar Association will present the MCLE program "Robot Cars – Legal Potholes in the Road Ahead," with attorney Brett J. Schreiber on Tuesday, April 18, 2017 from 12:00 to 1:15 p.m. at BJ's Restaurant in Grossmont Center in La Mesa.

Autonomous vehicles have arrived. The technological, regulatory, legal and ethical issues surrounding robot vehicles are dynamic and ever-changing. Mr. Schreiber, a partner at Thorsnes Bartolotta McGuire and CASD's Immediate Past President, will present an informative and interactive discussion on robocars, their legal implications and how a world without car crashes will impact our practices and our communities.

The seminar is free to members of the Foothills Bar Association and only \$10.00 for nonmembers. You may order lunch from BJ's menu but do not have to. Walk in registrants will be accommodated as space allows. Please RSVP to mark@thelawcorp.com. This program has been approved for 1.0 hour of MCLE general credit by the State Bar of California.



Notices

Looking for Speakers for Future FBA Civil Litigation Section Meetings:

If you have a litigation topic you would like to present at an upcoming Civil Litigation Section MCLE meeting, please contact Section Co-Chairs Mark Raftery at mark@markrafterylaw.com or Cheryl Stengel clstengel@outlook.com.

Foothills Bar Association Notice of Board Meeting:

The Foothills Bar Association Board of Directors generally meets on the third Tuesday of each month. The next meeting will be on April 18, 2017 at the Law & Mediation Firm of Klueck & Hoppes, APC. 7777 Alvarado Road, Suite 413, La Mesa, CA 91942, beginning at 4:45 p.m. If you want your voice to be heard in policy discussion and upcoming events planning or would simply like to learn more about the organization, your attendance is welcome.

The Family Court needs settlement conference judges. Please volunteer and share your expertise. Contact Kelly Fabros at 619-456-4065 or Kelly.Fabros@SDCourt.CA.Gov.

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**FOOTHILLS BAR ASSOCIATION
OF SAN DIEGO COUNTY**
Service, Professionalism, Collegiality

THE CIVIL LITIGATION SECTION OF
THE FOOTHILLS BAR ASSOCIATION PRESENTS:

**“ROBOT CARS – LEGAL POTHOLES IN THE ROAD
AHEAD”**

Speaker

Brett J. Schreiber, Esq.

**Tuesday, April 18, 2017 – Noon to 1:15 p.m.
BJ’s Restaurant, Grossmont Center, La Mesa**

The seminar is free for members of FBA and only \$10.00 for non-members. Walk in registrants will be accommodated as space allows.

Mark Raftery and Cheryl Stengel,

Co-Chairs

The Foothills Bar Association certifies that this activity has been approved by the State Bar of California for 1.0 hour General MCLE credit

Registration for the Program on April 18, 2017

Name _____ Number Attending _____

Telephone _____

Fax registration to Mark Raftery at (619) 238-5344 or email to
mark@thelawcorp.com by April 17, 2017

SUBMISSIONS

Your submissions are welcome! Send articles, letters, flyers, and other non-advertising [submissions to Cheryl Stengel at clstengel@outlook.com.](mailto:clstengel@outlook.com)

ADDRESS CHANGES

Send change of address or telephone number to Bradley Schuber at bschuber@krigerlawfirm.com

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