



MondayMonday

In The Best Interests Of The Dog

December 9, 2013

The office Christmas Party season is here and may God protect us from ourselves. Lunchrooms are filled every afternoon with gift baskets and platters of wraps from vendors. We fill our pockets with boxed fudge and wonder who in their right mind is going to filch that sausage/salami thing which, apparently, needs no refrigeration. The staff has visions of bonuses dancing in their heads and everyone awaits the obligatory post-office hour bacchanal.

We wax nostalgic for the Christmas parties of our youth. As a young, single lawyer, these were frequently just the start of the evening, not the end, as they now are. Things were easier then and we would hob-nob with judges who had just spent the past 12 months making our lives a living hell. Now, however, rather than miseltoe, we marveled at the alchemy of champagne and shrimp, which would turn that curmudgeon of a jurist into a reasonable and friendly clone of Justice Cardozo.

In the old days, lawyers' Christmas parties were everything the old movies promised they would be. Inebriated couplings, dancing on tabletops, the partner putting his arm on your shoulder and telling



you that you had a future in the firm. It was all good. Now, we worry about DWIs, sexual harassment complaints and cell phone cameras which have an annoying habit of chronicling everything best left out of the archives of our lives. Happy holidays.

We almost always avoid lower court opinions in *MondayMonday*. There are far too many of them and their precedential, or even practical value, can be non-existent. But every so often, some reader finds a gem and sends it our way. This week, we thank a friend, reader and inveterate opinion junkie, Jeffrey Stillman, for last week's *Travis v. Murphy*, 2013 NY Slip Op 23405 (Sup. Ct., N.Y. Co. 11/29/13).

How could we possibly avoid an opinion which begins: "People who love their dogs almost always love them forever. But with divorce rates at record highs, the same cannot always be said for those who marry." Justice Matthew Cooper goes on to write the Rosetta Stone of dog possession opinions, all surrounding the "custody" battle over Joey, a 10-year old miniature Dachshund. Justice Cooper

traces popular journalism (*New York* magazine and *The New York Times*), and cases from varying jurisdictions as close as Queens and as exotic as Wisconsin and Texas. While New York may still view pets as chattel, governed by replevin theories, in forward-thinking Vermont, among Ethan Allen and his Green Mountain Boys, "Pets may be distinguished from other chattel by the mutual relationship; Pet owners love their pets and their pets love them back."

Following the lead of *Raymond v. Lachmann*, 264 AD2d 340 (1st Dep't 1999), which the court finds "poignant," the factors determining "custody" of a pet "transcend" mere property determinants. Justice Cooper, while not going so far as adopting a "best interests" of the hound rubric, does find that a "nuanced position that considers at least some of the factors traditionally associated with child custody" is best. Of course, what happens is that even under this "nuanced" approach, the decision to be made is just as muddled, be it children or Shih Tzus. To be sure, in the latter instance, Rover may have a tad more difficulty in letting you know how he feels about the situation than Junior.

What's a judge to do? Hold a hearing (one day only, please) in order to figure out "what is 'best for all concerned'." Sounds like a plan.

©Jay L. T. Breakstone, 2013. *MondayMonday* is published by PARKER WAICHMAN LLP, a National Law Firm, offering appellate counsel to the profession, together with trial counsel and referral/co-counsel in cases involving significant damages. 1.800.LAW.INFO (800.529.4636) Contact jbekastone@yourlawyer.com. For the online version visit www.monday-monday.yourlawyer.com.