



Child custody with pets

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Case Law on Pets and Children's Shared Custody in Spain

As I explained in my article "Pets on Family Law in Spain", Spring 2022 Newsletter, the Law 17/2021, of 15 of December amended several articles of the Spanish Civil Code and Law of Civil Procedure to pay regard to the welfare requirements of animals.

Article 94 bis was included in the Civil Code to rule the care of pets on divorce: "The judicial authority will entrust the care of the pets to one or both spouses, and will determine, where appropriate, the way in which the spouse to whom they have not been entrusted may have them in their company, as well as the distribution of the burdens associated with the care of the animal, taking into account the interest of the family members and the well-being of the animal, regardless of the ownership of the animal and who has been entrusted with its care. This order will be recorded in the corresponding animal identification record."

The Judgement nº 526/2023 of Pontevedra High Court, dated 3rd of November 2023, orders a maintenance obligation of 40.-euros per month for the care of the family pet. This measure was established in the divorce decree in addition to the children's arrangements.

The case is a divorce, in which, among other measures, it was ordered that the pet would be left in the care of the ex-wife and her ex-husband would have to pay her maintenance to support part of the pet's expenses:

"The spouses' pet will be in the care of Ms. Sagrario and the extraordinary and veterinary expenses will be paid in half.

Mr Pablo will contribute to the cost of the animal with the amount of 40 euros per month, payable in the first five days of each month and updateable annually in accordance with the CPI. "

The ruling also addresses the Spanish Supreme Court case-law (STS nº 257/2013, of 29th April) that children's shared custody must be established, unless it is proved that shared custody would be detrimental to the minor. Shared custody is not *an exceptional measure, but rather on the contrary, it must be considered normal and even desirable, because it allows to be effective the right of the children to relate to both parents, even in crisis situations, whenever it is possible and as long it is.*

Pontevedra High Court ordered that children's arrangements would be regulated through a system of shared custody with weekly exchanges. In addition, provisions were detailed for the Christmas, Easter and summer holidays.

Following the Spanish Supreme Court case-law (STS nº15/2020 of 16th January 16), the High Court reiterates that in the absence of fundamental causes, the application of shared custody will proceed: "There is no cause in the procedure that advises against shared custody, therefore, it must be established. Article 92 of the Civil Code and the Supreme Court case law are violated, since the interest of the affected minors has not been adequately safeguarded in a resolution that has not taken into account the parameters repeatedly established by the Supreme Court for the correct application of the principle of protection of the minor's interest to order sole custody, which in this case will not allow the daughters' right to interact with both parents to be effective."

"On the other hand, as this High Court has already said on numerous previous occasions, the Court does not care so much about the past as much as the present and the future, if the father's involvement was not as intense as the appellant wanted, or considered that it should have been, the opportunity for the father to do so is now, that is, through shared custody."

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