

DETERMINING THE VALUE OF COMPANION ANIMALS IN WRONGFUL HARM OR DEATH CLAIMS: A SURVEY OF U.S. DECISIONS AND LEGISLATIVE PROPOSAL IN FLORIDA TO AUTHORIZE RECOVERY FOR LOSS OF COMPANIONSHIP

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*"He is the friend and companion of his master, accompanying him on his walks; his servant aiding him in his hunting; the playmate of his children, an inmate of his home, protecting it against all assailants." In his well-known tribute to the dog, United States Senator Vest characterizes him as "the one absolutely unselfish friend a man may have in this selfish world, the one that never deserts him, never fails him, the one that never proves ungrateful or treacherous."*¹

INTRODUCTION

It is not unusual in the United States to find a companion² animal being treated as a family member.³ Such treatment can be attributed to Americans forming strong bonds with their companion animals, or even having a companion animal in lieu of children.⁴ Where the latter takes place, a human guardian may become extremely devastated when their companion animal is harmed or killed in a wrongful manner.⁵ The human guardian's assessed value for their companion animal may be priceless while the law finds a worth that is void of any sentimental meaning.

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¹ State v. Harriman, 75 Me. 562, 565 (Me. 1884). (Appleton, J., dissenting).

² The writer purposely refrains from using the word pet since its connotations are negative.

³ Carol Marie Cropper, Strides in Pet Care Come at Price Owners Will Pay, N.Y. Times, April, 5, 1998, § 1 at 16. (A 1995 report by the American Animal Hospital Association found that 70 percent of former and current pet owners surveyed thought of their pets as children. Asked what one companion they would want on a deserted island, 53 percent listed a dog or cat); See generally Steven M. Wise, Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of Companion Animals, 4 Animal L. 33 (1998).

⁴ Carol Marie Cropper, Strides in Pet Care Come at Price Owners Will Pay, N.Y. Times, April, 5, 1998, § 1 at 16. (Quoting Sally Prewett, on why she obtained a kidney transplant for her cat: "I don't have any children. I'm single. These cats are like my kids. I just can't imagine not doing it").

⁵ Sandra B. Barker & Randolph T. Barker, The Human-Canine Bond: Closer Than Family Ties?, 10 J. Mental Health Counseling 46, 54 (Jan. 1988). (During the 1980's, U.S. mental health practitioners began to take notice of the demand for counseling services in loss of companion animal cases).

Domestic and captured wild animals are recognized as personal property at common law.⁶ As a result, the valuation of damages for the loss of a companion animal is measured as personal property and often times the fair market value.⁷ Such an inflexible approach to valuing companion animals fails to distinguish between personal property such as a chair and a beloved pet.⁸ Needless to say, awarding damages for the fair market value of the companion animal serves as little or no deterrence for the tortfeasor. This is especially true in cases where the companion animal is not a pedigree or lacks special training.⁹ The writing in this article covers Florida decisions that have authorized the human guardian to plead and recover the “unique value” (cases involving intrinsic damages) for their companion animal.¹⁰

Those decisions reflect a shift in the court’s view of companion animals, and acknowledge public policy concerns for the guardian of a companion animal.¹¹ Florida is currently a jurisdiction that allows recovery of intentional infliction of emotional distress, mental pain and suffering, and/or punitive damages where the tortfeasor has engaged in an intentional harm and/or gross negligence involving a companion animal.¹² In addition, the writing proposes Florida Legislation that would permit a plaintiff to recover for “loss of companionship” in

⁶ See David S. Favre & Murray Loring, Animal Law, (Quorum Books 1983). (Owners of non-human animals are afforded all the property protections offered by the law, but owners may disregard these protections since non-human animals do not have legal rights).

⁷ See Peter Barton & Frances Hill, How Much Will You Receive in Damages from the Negligent or Intentional Killing of Your Pet Dog or Cat, 34 N.Y.L. Sch. L. Rev. 411 (1989). (As a general rule, the measure of damages for tortious injury or killing of an animal is the fair market value of the animal, and this standard applies to inanimate property as well); See Thomas G. Kelch, Toward a Non-Property Status for Animals, 6 N.Y.U. Envtl. L. J. 531 (1998); See Derek W. St. Pierre, The Transition from Property to People: The Road to Recognition of Rights for Non-Human Animals, 9 Hastings Women’s L. J. 255 (1998); See Gary L. Francione, Animals As Property, 2 Animal L. I. (1996).

⁸ Compare...Steven M. Wise, Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of Companion Animals, 4 Animal L. 33 (1998). (“If the economic value of companion animals was important to their human companions, as is normally the case with sofas, chairs, and other inanimate property, small animal veterinarians would close their doors, because human companions would never bring their companion animals for treatment. Instead, they would abandon them.”).

⁹ David Favre, How Much Is That Doggie in the Window: Valuation for a Lost Pet, TortSource, Vol. 7, No. 3 at 1&4, (spring 2005). (“[S]ome pets win awards and command high-dollar breeding and offspring fees”); See Mitchell v. Union Pacific R.R. Co., 188 F. Supp. at 869, (S.D. Cal. 1960). (Upheld a jury verdict of \$5,000 since the award was based on evidence that the dog could do special tricks and appeared at many charity events as a result of the special tricks. The income potential determined by the plaintiff’s experts was considered to be proper evidence in assessing damages).

¹⁰ Plaintiff’s Memorandum of Law in Opposition to Defendant’s Motion to Dismiss at 9, Riff v. Welleby’s Veterinary Medical Center, et al, (17th Cir. 2006) (No. 02-012991-08). Citing to La Porte v. Associated Independents, Inc., 163 So. 2d at 267 (1964). (Upheld award of \$2,000 compensatory damages and \$1,000 in punitive damages for the malicious killing of dog where garbage man threw garbage can on top of leashed dog resulting in its death. The Florida Supreme Court held that “the affection of a master for his dog is a very real thing and the malicious destruction of the pet provides an element of damage for which the “owner” should recover, irrespective of the value of the animal...”); See also Bluestone v. Bergstrom, No. 00CC00796 (Cal. Sup. Ct. Orange Co. 2003). (Court upheld a judgment of \$39,000, an award that applied special/unique value damages). (Provided by Fred Kray, Esq.).

¹¹ Jankowski v. Preiser Animal Hospital, LTD., 157 Ill. App. 3d at 818 (1987). (Dismissed a cause of action based on loss of companionship, but found that “the actual value to the owner may include some element of sentimental value in order to avoid limiting plaintiff to merely nominal damages.”).

¹² See Levine v. Knowles, 197 So. 2d 329 (3rd DCA 1967); La Porte v. Associated Independents, 163 So. 2d 267 (Fla. S. Ct. 1964); Johnson v. Wander, 592 So. 2d 1225 (Fla. S. Ct. 1992); Knowles Animal Hospital v. Wills, 360 So. 2d 37 (Fla. S. Ct. 1978); and Wertman v. Tipping, 166 So. 2d 666 (Fla. App. 1st Dist, 1964).

actions involving intentional or grossly negligent acts that result in serious injury or death of a companion animal.¹³

The writing is organized in the following manner: Section II covers the legal roots concerning the classification of companion animals; Section III gives a succinct overview of companion animal valuation; Section IV gives a succinct overview of the social and psychological value human guardians of companion animals place on their companion animals; Section V surveys Florida case law; Using all of the material that precedes it, Section VI proposes legislation in Florida that would authorize the owner of a companion animal to recover “loss of companionship” where their companion animal is seriously injured or killed due to intentional or grossly negligent acts; Section VII concludes on the material discussed throughout the writing

II. THE LEGAL CLASSIFICATION OF COMPANION ANIMALS

The U.S. legal framework on the law of property is a creature of the common law.¹⁴ According to common law, animals are considered personal property.¹⁵

The concept of animals as property is not, however, an original creation of the common law. Its lineage lays in antiquity. Steven Wise, in several articles dealing with, among other things, the history of the legal status of animals, notes that the present view of animals as property is based on the ancient Stoic view of the world. In this vision, the world was created for the benefit of humans who crown the natural hierarchy.¹⁶

To illustrate this view, Steven Wise, in Rattling the Cage, astutely points out how Greek philosophers such as Aristotle, in his Politics, said “that all nonhuman animals were created for (Great Chain of Being) the sake of humans”.¹⁷ Nevertheless, Greek philosophers such as Plato, a Pythagorean, elevated the moral status of animals, and practiced vegetarianism.¹⁸ Religious philosophy also played a crucial role in defining modern views concerning the property status of

¹³ RESTATEMENT (SECOND) OF TORTS, Sec. 903, (“Compensatory damages’ are the damages awarded to a person as compensation, indemnity or restitution for harm sustained by him. Comment: a. Where there has been harm only to the pecuniary interests of a person, compensatory damages are designed to place him in a position substantially equivalent in a pecuniary way to that which he would occupy had no tort been committed.”).

¹⁴ Thomas G. Kelch, Toward a Non-Property Status for Animals, 6 N.Y.U. Env’tl. L. J. 531 at 533 (1998). (Citing to Blackstone, Holmes and Pound, William Blackstone, Commentaries on the Law of England, II, 15-19, 20-21, 384-387, 401-05 (1969); Oliver Wendell Holmes, Jr., The Common Law, 206-46 (1881)); (Roscoe Pound, The Spirit of the Common Law, 185-87, 197-200 (1921)).

¹⁵ See Rebecca J. Huss, Valuing Man’s and Woman’s Best Friend: The Moral and Legal Status of Companion Animals, 86 Marq. L. Rev. 47 at 69 (2002) citing to Gary L. Francione, Animals, Property, and the Law, Philadelphia: Temple University Press, (1995). (The first U.S. judicial decision to authorize a property right in dogs was recorded in 1871); See generally Steven M. Wise, The Legal Thinghood of Nonhuman Animals, 23 B.C. Env’tl. Aff. L. Rev. 471 (1996).

¹⁶ See Thomas G. Kelch, Toward a Non-Property Status for Animals, 6 N.Y.U. Env’tl. L. J. 531 at 534 (1998) (Citing to Steven M. Wise, The Legal Thinghood of Nonhuman Animals, 23 Env’tl. Aff. 471, 475 (1996); Steven M. Wise, How Nonhuman Animals Were Trapped in a Nonexistent Universe, 1 Animal L. (1995).

¹⁷ See generally Steven M. Wise, Rattling the Cage: Toward Legal Rights for Animals (2000).

¹⁸ Martha C. Nussbaum, Animal Rights: The Need for a Theoretical Basis, 114 Harv. L. Rev. 1506 at 1514 (2001).

animals.¹⁹ According to traditional Christian theology, treating animals as mere property stems from belief systems that maintain humans as having a superior status in the world, and that animals are not legitimately the subject of such moral rights.²⁰ Interestingly, these religious belief systems were not only used to oppress animals, but applied to support slavery and the subjugation of women.²¹

In the Seventeenth Century, Africans brought into the U.S. were bought and sold as chattel. During this same period, women, once married, became the property of their husbands. Possibly the biggest barrier to the exertion of rights by either group was their status as property. Similarly, the subordination of non-human animals stems from a refusal to recognize that animals have interests of their own.²²

As such, American jurisprudence has failed to recognize companion animals as having their own interests by maintaining the legal classification of animals as property.²³

However, progress concerning the legal status of companion animals is occurring outside the US., in locations such as France, where a decision to alter their 300 year old civil code will result in the recognition of companion animals as “protected property/living sentient beings.”²⁴ In analyzing the U.S. legal framework concerning the legal status of animals, it is important to discuss how the common law defined the property rights to these animals because of their mobility.²⁵

The two categorizations for animals under the common law are wild and domestic.²⁶ If the animal is considered to be a “wild animal” a property right held by an individual would only exist upon capture or taming.²⁷ If the wild animal escaped, the property right held by the individual would disappear as well.²⁸ However, the holder of a property right to a domestic

¹⁹ Rebecca J. Huss, Valuing Man’s and Woman’s Best Friend: The Moral and Legal Status of Companion Animals, 86 Marq. L. Rev. 47 at 69 (2002). (Discussion on Judaism and how humans have dominion over animals and Christianity on human superiority due to animals lacking morality).

²⁰ *Id.* at 55; (citing to Andrew Linzey, Animal Rights: A Christian Assessment of Man’s Treatment of Animals, 20 (1976)).

²¹ See generally Derek W. St Pierre, The Transition from Property to People: The Road to the Recognition of Rights for Non-Human Animals, 9 Hastings Women’s L. J. 255 (1998). (Analyzing the classification of a living being as property and how at one point this effective tool of oppression created slavery and married women’s lack of rights).

²² *Id.* at 256.

²³ This statement strictly reflects the author’s opinion based on readings of legal scholars on animal rights and the law.

²⁴ Animal Liberation Front Article on the New French Civil Code: Available at: <http://www.animalliberationfront.us/News/Apr-May05/FrenchCode.htm> (last visited April 5, 2006). (quoting Justice Minister Dominique Perben, “Compared to 1804, men and animals now live together in a way that is completely different from two centuries ago.” The change to the civil code- which is likely to go into law by the end of the year—will create for animals a third kind of property, alongside movable and immovable goods).

²⁵ U.C.C. § 2-105 (2005); (The Sale of Goods is governed by the Uniform Commercial Code (UCC), rather than the common law, and animals are considered as movable goods).

See Rebecca J. Huss, Valuing Man’s and Woman’s Best Friend: The Moral and Legal Status of Companion Animals, 86 Marq. L. Rev. 47 at 69 (2002).

²⁶ *Id.* at 69.

²⁷ *Id.* at 69.

²⁸ *Id.* at 69.

animal would not lose this property right if the animal escaped.²⁹ Where the animal is categorized as a companion animal, a subcategory of domestic animals, a holder of this property right has more rights to the animal, but may have more duties under statutory law concerning the treatment and care of the companion animal.³⁰

The property status concerning companion animals has been under scrutiny where strained definitions of property such as “animate, constitutive, sentimental, sentient or personhood” have arisen on behalf of companion animals.³¹

Nevertheless, the property status concerning companion animals in the United States remains intact. However, legal decisions and legislative action have improved their status by providing human guardians of companion animals with a greater valuation of their companion animal with damages in excess of the fair market value for the companion animal in question.³²

III. VALUATION OF COMPANION ANIMALS

Working under the assumption that a wrongful injury or death to a pet has occurred, the question of appropriate valuation (economic and non-economic value) arises.³³ In an attempt to place a pet owner in the position prior to wrongful harm or loss of her companion animal, damages are calculated based on the fair market value of the companion animal at the time of its death.³⁴ “Because of these property-based notions of animals, tort law applied personal property concepts to the valuation of animals.”³⁵ Various courts agree that the following factors are appropriate to consider in adequately compensating the owner, in excess of the fair market value: the “age” of the animal; the general “health” of the animal; the specific “breed” of the animal; the special “training” of the animal; the “usefulness” of the animal; and the “special traits or characteristics of value” of the animal.³⁶

Companion animals with champion blood lines or popular purebreds can cost hundreds, and even thousands of dollars. However, a majority of companion animals are mixed breeds that have little or no calculated value, but the owners would tend to disagree with the courts, which is evidenced by acts such as owners paying hundreds and thousands for veterinary bills.³⁷

²⁹ *Id.* at 69.

³⁰ *Id.*

³¹ See Barbara J. Gislason, Veterinary Malpractice: Leading the Evolution of Animal Law, TortSource, Vol. 7, No. 3 at 1, (Spring 2005).

³² Thomas G. Kelch, Toward a Non-Property Status for Animals, 6 N.Y.U. ENVTL. L. J. 531 (1998); David Favre, How Much Is That Doggie in the Window: Valuation for a Lost Pet, TortSource, Vol. 7, No. 3 at 1&4, (Spring 2005). (“One objective measure of a pet’s value to a person is the amount of money an owner is willing to spend for veterinary care. A cat with little or no market value may require surgery that can cost hundreds or thousands of dollars, and many owners are willing to pay such amounts.”).

³³ David Favre, Overview of Damages for Injury to Animals- Pet Losses, Michigan State University - Detroit College of Law (2003).

³⁴ See generally Elaine T. Byszewski, Valuing Companion Animals in Wrongful Death Cases: A Survey of Current Court and Legislative Action and a Suggestion for Valuing Pecuniary Loss of Companionship, 9 Animal L. 215 (2003).

³⁵ See generally Margit Livingston, The Calculus of Animal Valuation: Crafting a Viable Remedy, 82 NEB. L. REV. 783 (2003).

³⁶ *Id.* at 218.

³⁷ This opinion is the editor’s beliefs based on assessing the purebred market in United States and conversations with top breeders in Florida. This opinion is the editor’s view on veterinary costs and the owner’s willingness to pay, which was reached by discussions with veterinarians in Florida and elsewhere.

Notwithstanding an owner's willingness to pay exorbitant amounts for treatment, only veterinary care that is reasonable and not in excess of the fair market value of the companion animal is used as a measure for the recovery of normal and foreseeable consequential damages arising from harm to the animal.³⁸ If the market value of the animal cannot be determined, courts have engaged in assessing the animal's value (pecuniary value) to the owner.³⁹ "In some cases, human guardians of companion animals have been able to plead and prove damages resulting from the sentimental loss experienced" upon their companion animal's wrongful death.⁴⁰

Where the companion animal is a victim of reckless or intentional actions by a wrongdoer, some courts have also authorized recovery for punitive damages.⁴¹ "In assessing the appropriateness of punitive damage awards, some courts seemingly use a test of proportionality, and examine whether the amount of punitive damages is proportional to the amount of actual damages awarded."⁴² Punitive damages compensate a human guardian of a companion animal for injury to his/her companion animal, and punish the tortfeasor for his/her behavior.⁴³ The following factors are taken into consideration by the courts when determining an award for punitive damages: degree of malice; amount needed to punish the defendant; wealth of the defendant; sentimental value of the companion animal; and degree of pain and suffering displayed by the human guardian of the companion animal.⁴⁴ Nevertheless, the courts' assessment of compensatory damages has generally been low, and in turn results in a low recovery rate for courts deciding to apply punitive damages.⁴⁵

The recovery of "mental pain and suffering" is considered within the broad policy and practical conflicts on the issue within each jurisdiction.⁴⁶ American jurisprudence has a history of being unwilling to award damages for "mental pain and suffering."⁴⁷ The strongest arguments for this reluctance lies in the court's assumption that the floodgates may open, fraud may occur or issues of proof, the questionability of who the defendant may be liable to, the fact that these damages are not tangible, and unpredictable liability for the defendant based on peculiar claims of value to the owner.⁴⁸

"Some animal advocates believe that the concept of "loss of companionship" for the death of a companion animal has the potential to evolve into a separate cause of action for non-economic

³⁸ *Id.* at 218.

³⁹ *Id.* at 218. (Citing to *Brosseau v. Rosenthal*, 443 N.Y.S. 2d 285 (N.Y. Civ. Ct. 1980); (*Jankoski v. Prieser Animal Hosp.*, 510 N.E. 2d 1084 (Ill. App. 1987). (Case law authorizing elements of sentimental value of the companion animal to the owner).

⁴⁰ Margit Livingston, *The Calculus of Animal Valuation: Crafting a Viable Remedy*, 82 NEB. L. REV. 783 (2003). (Citing to *Laporte v. Associated Independent's, Inc.*, 163 So. 2d 267, 269 (Fla. 1964) (authorizing damages for the affection of an owner for her companion animal); (*Jankoski v. Preiser Animal Hosp., Ltd.*, 510 N.E. 2d 1084, 1087 (Ill. App. Ct. 1987) (authorizing damages to include elements of sentimental value for the companion animal).

⁴¹ *Id.* at 791.

⁴² *Id.* at 791 (citing to *Porras v. Craig*, 675 S.W. 2d 503 (Tex. 1984) (where a companion animal has a negligible legal value, plaintiffs may not receive compensatory nor punitive damages).

⁴³ William C. Root, "Man's Best Friend: "Property or Family Member? An Examination of the Legal Classification of Companion Animals and its Impact on Damages Recoverable for their Wrongful Death or Injury, 47 VILL. L. REV. 423 at 424 (2002).

⁴⁴ *Id.* at 424.

⁴⁵ *Id.* at 791.

⁴⁶ See generally David Favre, *Overview of Damages for Injury to Animals- Pet Losses*, Michigan State University - Detroit College of Law (2003).

⁴⁷ *Id.* at Favre (2003).

⁴⁸ *Id.* at Favre (2003).

damages.”⁴⁹ However, courts have rejected these claims as an independent cause of action.⁵⁰ The basis for rejection stems from the concept of animals maintaining the property status or “state wrongful death statutes prevent recovery of emotional distress and loss of companionship for the loss of a child or spouse.”⁵¹ Courts that have taken the stance of not allowing the recovery for non-economic damages have based decisions on science, public policy, and legal reasoning from centuries that are not in tune with the modern times.⁵²

Historically, the common law was reluctant to claims for emotional distress and loss of companionship, even in the case of humans.⁵³ Nevertheless, not all decisions within the U.S. legal framework entertain such an archaic view of awarding damages only where a physical impact is present or an insignificant recovery of fair market value. In particular, the Florida case law below will shed light on how harm to companion animals is measured and when recovery is authorized. Some of the decisions are in favor of increasing the value of companion animals, while other decisions have perpetuated their property status. Learning from such decisions, a legislative proposal for the state of Florida is presented to allow recovery for owners of companions animals under “loss of companionship.”

IV. THE SOCIAL/PSYCHOLOGICAL SIGNIFICANCE OF COMPANION ANIMALS

The domestication of animals began almost 14,000 years ago.⁵⁴ Egyptians held burial ceremonies where their beloved pet was placed right next to his master.⁵⁵ When a dog died, the Egyptian owners of the companion animal practiced a ritual of shaving their entire bodies and heads.⁵⁶ Today in the United States, more than sixty percent of households include pets.⁵⁷ In caring for and pampering their pets, Americans spent over \$28.5 billion in 2001.⁵⁸ Modern social science has discovered that after the loss of a pet, pet owners experience similar or greater stress

⁴⁹ Elaine T. Byszewski, Valuing Companion Animals in Wrongful Death Cases: A Survey of Current Court and Legislative Action and a Suggestion for Valuing Pecuniary Loss of Companionship, 9 ANIMAL L. 215 at 223 (2003).

⁵⁰ *Id.* at 223.

⁵¹ *Id.*

⁵² Steven M. Wise, Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of Companion Animals, 4 ANIMAL L. 33 at 62 (1998).

⁵³ *Id.* at 62.

⁵⁴ Margaret Sery Young, The Evolution of Domestic Pets and Companion Animals, 15 Veterinary Clinics No. Am. Small Animal Practice 297, 302-03 (1985); Sonia S. Waisman & Barbara R. Newell, Recovery of “Non-Economic” Damages for the Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend, Animal Law (2001). (Both articles address the time period for domestication, but there seems to be a discrepancy of 2000 years with respect to beginning of domestication of animals).

⁵⁵ Lynn A. Epstein, Resolving Confusion in Pet Owner Tort Cases: Recognizing Pets’ Anthropomorphic Qualities Under a Property Classification, SOUTHERN ILLINOIS UNIVERSITY L. J. 32 at 33 (Fall 2001).

⁵⁶ Sonia S. Waisman & Barbara R. Newell, Recovery of “Non-Economic” Damages for the Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend, Animal Law (2001). (Citing to State v. Wallace, 271 S.E. 2d 760, 761 (N.C. App. 1980) (referring to Herodotus in An Account of Egypt (5th Century) (dogs regarded as sacred)).

⁵⁷ American Pet Products Manufacturers Association, Inc. 2000-2001 APPMA National Pet Owners Survey 2 (2001).

⁵⁸ Rebecca J. Huss, Valuing Man’s and Woman’s Best Friend: The Moral and Legal Status of Companion Animals, 86 MARQ. L. REV. 47 at 69 (2002). (Citing to Azell Murphy Cavann, Animal Magnetism- Doggone it! Americans Have a Soft Spot for Their Pets, Boston Herald, June 27, 2001, at 56.

levels as to when a family member dies.⁵⁹ Counseling for loss of animal companions became an important human service by the 1980's.⁶⁰ In response, a number of North American veterinary schools provided animal bereavement support hotlines.⁶¹ Studies indicate that the reason why guardians of companion animals experience this extreme level of sadness is a result of the strong and unique bond developed with their companion animal.⁶²

From childhood to geriatric stages in life, the ownership of a companion animal has served as a benefit to society. Children who owned a companion animal and were victims of child abuse, reported that the animal was sometimes their only friend, and in turn had better coping skills as adults through owning a companion animal.⁶³ Studies of pet ownership and mental health have indicated lower levels of depression in a nursing home following a pet therapy session.⁶⁴ Individuals with disabilities who at one point could not handle everyday tasks are now able to accomplish so much with their service dog.⁶⁵

The list concerning how companion animals have benefited society can continue, and interestingly, the list on how owners reciprocate their love for their animals is well documented.⁶⁶ Like children, companion animals are being dropped off at doggie day care to spend their day socializing, playing, and getting the attention they would not derive from their owners who are busy at work.⁶⁷ In addition, some Americans send their companion animals to receive behavioral assistance in an effort to correct problems and create a more rewarding life for themselves and their pets.⁶⁸ Furthermore, the protection of animals is seen in criminal anti-

⁵⁹ See generally Margit Livingston, The Calculus of Animal Valuation: Crafting a Viable Remedy, 82 NEB. L. REV. 783 (2003). (Citing to Boris M. Levinson, Grief at the Loss of a Pet, in Pet Loss and Human Bereavement, 51-64 (William J. et al. eds., 1984) (cites to several studies)).

⁶⁰ Sonia S. Waisman & Barbara R. Newell, Recovery of "Non-Economic" Damages for the Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend, Animal Law (2001). (Citing to Sandra B. Barker & Randolph T. Barker, The Human-Canine Bond: Closer Than Family Ties?, 10 J. Mental Health Counseling 46, 54 (Jan. 1988).

⁶¹ Barker at 54.

⁶² See Betty J. Carmack, The Effects on Family Members and Functioning After the Death of a Pet, In Pets and Family 149 (Marvin B. Sussman ed., 1985) (this article contains information on animal-human bonds).

⁶³ Sandra B. Barker, Therapeutic Aspects of the Human-Companion Animal Interaction, 16 Psychiatric Times, at <http://www.psychiatrictimes.com/p990243.html> (1999).

⁶⁴ Brickel, C. M. (1984). Depression in the Nursing Home: A Pilot Study Using Pet-Facilitated Psychotherapy, In R.K. Anderson, B.L. Hart, & L.A. Hart (Eds.), The Pet Connection (pp. 407-415): Minnesota: University of Minnesota, Center to Study Human-Animal Relationships and Environments.

⁶⁵ Service Animal Information from the Civil Rights Division of the U.S. Dept. of Justice and the National Association of Attorneys General, at <http://www.usdoj.gov/crt/ada/animal.htm> ("The ADA defines a service animal as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability").

⁶⁶ The editor is reaching a conclusion based on the numerous services provided for animals in United States, as discussed in the writing.

⁶⁷ Nationwide service called Happy Tails Dog Spa at: <http://www.happytailsdogspa.com/daycare.php> ("Each playgroup goes outdoors for a scheduled bathroom break in the morning before heading off to play[t]ime. After several hours of romping, sniffing and lounging, all dogs take a well-deserved nap between noon and 2:00 p.m. During this time, dogs receive requested snacks or medications. After naptime, the dogs are back outside for another bathroom break, with possible ball throwing or "swimming," depending on the weather").

⁶⁸ Animal Behavior Associates at: <http://faculty.washington.edu/jcha/abainfo8.htm> ("The field of domestic and companion animal behavior research has been a rapidly expanding one in recent years. Successful treatment of companion animal behavior problems today requires a strong background in the evolution and genetics of the species or breed, the practical application of modern learning theory, the latest research findings, and the application of these findings to clinical situations").

cruelty statutes that regard certain crimes against animals as a felony offense. Fla. Stat. § 828.12, (2006).

Another example of how owners love their pets beyond the living is the creation of a pet trust.⁶⁹ Recently, the Florida Bar Journal featured a co-authored article that discusses how a Florida statute provides for the creation of an enforceable trust with for a pet to be acknowledged as a primary beneficiary.⁷⁰ These are just some of the ways in which owners of companion animals value their animals. The idea of companion animals being calculated at the fair market value in the legal system does not add up to the value American society places on these creatures.

V. FLORIDA DECISIONS ON DAMAGES FOR HARM TO COMPANION ANIMALS

Florida is given special acknowledgement for its relatively long history of recognizing that companion animals are more valuable to an owner than the mechanical fair market value. Cases such as Wertman v. Tipping, set the wheels in motion for companion animals when the court affirmed a verdict of \$1000, for a purebred dog.⁷¹ The court declined in only applying the fair market value and held that recovery could include special or pecuniary value to the owner.⁷² Two year later, The Florida Supreme Court decided Laporte v. Associated Independents, Inc., and concluded: “(T)he affection of a master for his dog is a very real thing and...the malicious destruction of the pet provides an element of damage for which the owner should recover, irrespective of the value of the animal.”⁷³ The facts in Laporte, involved a defendant garbage man who laughed after he crushed plaintiffs’ dog to death after throwing a garbage can on the tethered dog.⁷⁴ The Court held that plaintiff’s were entitled to recover mental suffering as an element of damages since the act was malicious.⁷⁵

In Levine v. Knowles, the court found that plaintiff was entitled to proceed with a claim for punitive damages when the veterinarian intentionally cremated the plaintiff’s pet to destroy evidence of veterinary malpractice.⁷⁶ In a landmark verdict, the court in Knowles Animal Hospital v. Wills, upheld a jury award of \$13,000, when an animal hospital left plaintiff’s dog on a heating pad to burn for two days!⁷⁷ The court found gross negligence and authorized an award for plaintiff’s pain in suffering.⁷⁸ Finally in Johnson v. Wander, the Florida Supreme Court

⁶⁹ Darin I. Zenov & Barbara Ruiz-Gonzalez, Trusts for Pets, The FL Bar J. at 22 (Dec. 2005). (F.S. § 737.116, (2004).

⁷⁰ *Id.* (a trust may be established for the pet’s lifetime to care and maintain its existence. The trust does not violate the Rule Against Perpetuities (RAP), and in the case of several animals, it ceases to exist upon the death of the last animal involved in the trust. The settlor can appoint a trust protector who has the power to enforce the trust and ensure proper care and maintenance of the animal).

⁷¹ Wertman v. Tipping, 166 So. 2d 666 (Fla. Dist. Ct. App. 1964).

⁷² *Id.* at 666.

⁷³ Plaintiff’s Memorandum of Law in Opposition to Defendant’s Motion to Dismiss at 9, Riff v. Welleby’s Veterinary Medical Center, et al, (17th Cir. 2006) (No. 02-012991-08). (Citing to La Porte v. Associated Independents, Inc., 163 So. 2d 267, 269 (Fla. S. Ct. 1964)).

⁷⁴ *Id.* at 267.

⁷⁵ *Id.* at 267. (Compensatory damages at \$2000 and punitive damages at \$1000).

⁷⁶ Levine v. Knowles, 197 So. 2d 329 (3rd DCA 1967). (Court concluded: “owner has the same right of action to recover compensatory damages for the intrinsic value, if any, of a dead dog wrongfully destroyed”).

⁷⁷ Knowles v. Animal Hosp. v. Wills, 360 So. 2d 37 (Fla. Dist. Ct. App. 1978). (Plaintiff’s dog endured severe burns and disfigurement.

⁷⁸ *Id.* at 37.

reversed the trial court's decision to not allow claims for punitive damages and emotional distress after veterinarian had left plaintiff's dog endured severe burns after dog was left on a heating pad.⁷⁹ Apparently, burning companion animals is not uncommon for veterinarians in Florida.⁸⁰ The decision in Kennedy v. Byas, appears to be one of the strongest limitations for owner's of companion animals.⁸¹ In that decision the court concluded:

One area that was identified as having the gravity of emotional injury and lack of countervailing policy concerns to justify exceptions to the impact rule involves familial relationships, such as injury to a child as a result of malpractice. See Welker. We decline to extend this exception to malpractice cases involving animals. As we stated in Bennet v. Bennet, 655 So. 2d 109, 110 (Fla. 1st DCA 1995), "While a dog may be considered by many to be a member of the family, under Florida law animals are considered to be personal property." In making this point we have not overlooked the decision of the Florida Supreme Court in La Porte v. Associated Indeps., Inc., 163 So. 2d 267, 269 (Fla. 1964).⁸²

The court further concluded:

We acknowledge there is a split of authority on whether damages for emotional distress may be collected for the negligent provision of veterinary services. See Jay M. Zitter, Annotation, Recovery of Damages for Emotional Distress Due to Treatment of Pets, 91 A.L.R. 5th 545, §§ 3 and 4. We find ourselves in agreement, however, with the New York courts which recognize that while pet owners may consider pets as part of the family, allowing recovery for these types of cases would place an unnecessary burden on the ever burgeoning caseload of courts in resolving serious tort claims for individuals. Johnson v. Douglas, 187 Misc. 2d 509, 723 N.Y.S. 2d 627 (N.Y. Supp. Ct.), aff'd, 289 A.D. 2d 202, 734 N.Y.S. 2d 847 (N.Y. App. Div. 2001). We decline to carve out an exception to the impact rule for cases involving veterinary malpractice.⁸³

The Kennedy court's decision to side with the New York courts indicates a shift in the wrong direction for owners of companion animals. As such, effective tools like legislation for companion animals will statutorily erode the split of authorities discussed above, and protect a Floridian's right to recover damages when their companion animal is wrongfully harmed or killed.

⁷⁹ Johnson v. Wander, 360 So. 2d 37 (Fla. Dist. Ct. App. 1978).

⁸⁰ In light of the two cases with similar fact patterns and the departure from the standard of care exercised by a reasonable veterinarian, the editor has reached an opinion on veterinarians in this jurisdiction.

⁸¹ Kennedy v. Byas, 867 So. 2d 1195 (Fla. Dist. Ct. App. 2004).

⁸² Id at 1195. (Bennet v. Bennet, is a custody dispute case concerning a dog. The court reversed the trial's court ruling for the former wife that allowed her to have visitation rights to the dog).

⁸³ Id at 1195.

VI. LEGISLATIVE PROPOSAL IN FLORIDA FOR LOSS OF COMPANIONSHIP REGARDING COMPANION ANIMALS

Florida's Chloe Act of 2006

Florida is governed by the rules announced in the cases above. However, this does not mean that courts in general are comfortable with a callous description of a companion animal as personal property.⁸⁴ An illustration of this belief is a case decided by the Wisconsin Supreme Court where they concluded:

“Labeling a dog “property” fails to describe the value human beings place upon the companionship that they enjoy with a dog. A companion animal is not a fungible item, equivalent to other items of personal property. A companion dog is not a living room sofa or dining room furniture. This term inadequately describes the relationship between a human and a dog.”⁸⁵

In this writing, I propose a companion animal bill modeled after progressive legislation in Tennessee and Colorado.⁸⁶ The bill is named after my beloved dog, Chloe. See Text of Legislative Proposal labeled “B.” As a work in progress, the bill can be accomplished through strong lobbying, sponsorship from a Florida Legislator, and solidarity efforts by South Florida animal advocates. The time has come for Florida law to acknowledge society’s changing view of companion animals, and adequately compensate owners of companion animals for “loss of companionship,” in cases of wrongful injury or death. Companion animals have impacted the lives of their owners in such a way that their value is unique and should be reflected at law.⁸⁷

VII. CONCLUSION

Society’s growing attachment and appreciation for companion animals is ever-present. It is time for the legal system to acknowledge the significance of such relationships that are valued beyond the worth of the animal’s fair market value. Florida’s case law demonstrates that there is some level of awareness concerning a companion animal’s intrinsic value. However, legislation must be presented to ensure that tort victims are given their day in court and adequately compensated. Tennessee’s T-Bo Act, has already paved the way for companion animal owners to recover statutorily.⁸⁸ Florida should follow suit by enacting their own legislation for companion animal owners to recover intrinsic damages such as loss of companionship. The decision to enact

⁸⁴ Elaine T. Byszewski, Valuing Companion Animals in Wrongful Death Cases: A Survey of Current Court and Legislative Action and a Suggestion for Valuing Pecuniary Loss of Companionship, 9 ANIMAL L. 215 (2003). (Rabideau v. City of Racine, 627 N.W. 2d 795, 798 (Wis. 2001).

⁸⁵ Elaine T. Byszewski, Valuing Companion Animals in Wrongful Death Cases: A Survey of Current Court and Legislative Action and a Suggestion for Valuing Pecuniary Loss of Companionship, 9 ANIMAL L. 215 at 224 (2003). (Citing to Rabideau v. City of Racine, 627 N.W. 2d 795, 798 (Wis. 2001).

⁸⁶ Colorado proposed an exceptional bill that authorized non-economic damages capped at one hundred thousand dollars. The bill acknowledged a modern view of animals in the following language: “[c]ompanion dogs and cats are often treated as members of a family, and an injury to or the death of a companion dog or cat is psychologically significant and often devastating to the owner.” The bill even provided liability without an exemption for veterinarians who practiced in a negligent manner resulting in the killing of a companion animal.

⁸⁷ The editor bases this opinion from conversation’s with loving and responsible pet owners. In addition, this opinion is personally influenced by the editor’s love and admiration of her Brussels Griffon, Petit Brabancon, named Chloe.

⁸⁸ Tenn. Code Ann. § 44-17-403 (2000); 2000 Tenn. Pub. Acts, Ch. 762, § 1.

this legislation would not be a departure from other laws that regard animals highly in this state. Careful consideration to issues such as over-flowing the docket system, and fraud can be monitored and assessed prior to making this proposal a reality. However, this should not bar recovery for owners of companion animals to receive adequate compensation as a result of their loss. The decision to enact such legislation in Florida would uphold the goal of damages in tort law, which seeks to make their victims whole again.

APPENDIX PART "B"

LIABILITY FOR DEATH OF COMPANION ANIMAL

SUMMARY:

The Florida statute provides that a pet owner may seek non-economic damages up to \$25,000 for the death of his or her companion against the person who is liable for causing the death or injuries that led to the animal's death. The person causing the pet's death must have done so intentionally or, if done in a grossly negligent manner, the tort must have occurred either on the owner or pet caretaker's property or while in the control and supervision of the caretaker. These damages are not for the intentional infliction of emotional distress of the owner or other civil claims, but rather for the direct loss of companionship, love and affection of the pet." The Florida statute applies to any person who tortures, needlessly torments, seriously injures or kills a companion animal dog or cat in a grossly negligent manner and to any veterinarian or veterinary assistant whose gross negligence "causes injury or death to a companion animal."⁸⁹ Florida's judicial history acknowledges the individual and social value companion animals have on an owner and their family members since these animals become part of the family. Finally, the bill provides for burial expenses, attorneys fees and court costs. The overall intent of the statute is to deter tortfeasors from harming or killing companion animals. Equally important, the statute seeks to adequately compensate owners of companion animals and family members in the household where the companion animal resides or resided.

DEFINITIONS:

- (1) *Companion animal* shall mean a cat or dog. The drafter acknowledges that other animals are kept as pets, but declines to include any other animals aside from cats and dogs for the purpose of passing the statute with ease.
- (2) *Caretaker* shall mean a person owning, having possession, keeping, or having custody of, a companion animal.
- (3) *Person* shall mean any individual, corporation, partnership, association, or legal entity. Exception: acts involving rescue efforts to free a companion animal from experimentation by individuals or legal entities, whereupon destruction of the companion animal is necessary to end its suffering as a result of prior experimentation are not applicable to this statute. Individuals or legal entities that harm such animals may be liable under separate laws established under state or federal law.

⁸⁹ The majority of this bill is modeled after Colorado's legislative proposal for companion animals in 2003. Colo. H. 1260, 64th Gen. Assembly, 1st Reg. Sess. (Jan. 31, 2003).

- (4) *Veterinarian* shall mean a person who is licensed to engage in the practice of veterinary medicine under F.S. ch. 474 and is accredited by the United States Department of Agriculture.
- (5) *Intentional or Grossly Negligent Acts*: The following acts shall be deemed as intentional or grossly negligent acts towards animals (Cruelty Statutes- see Florida Statutes, 828.12, 828.13 and 828.16):
 - (a) Any person who unnecessarily overdrives, tortures, torments, deprives of necessary sustenance or shelter, or mutilates or kills any companion animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any companion animal in a cruel or inhuman manner shall be liable in civil damages in accordance with this Act.
 - (b) Any person who intentionally commits an act to any companion animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done shall be liable in civil damages in accordance with this Act.
 - (c) Any person, who acts intentionally or in a grossly negligent manner by impounding or confining a companion animal in any place and fails to supply the same during such confinement with a sufficient quantity of good and wholesome food and water, shall be liable in civil damages in accordance with this statute.

Statute in Full:

(a)(1) If a person's companion animal is killed or sustains injuries which result in death caused by the unlawful and intentional, or grossly negligent, act of another or the animal of another, the trier of fact may find the individual causing the death or the owner of the animal causing the death liable for up to twenty-five thousand dollars (\$25,000) in non-economic damages; provided, that if such death is caused by the grossly negligent act of another, the death or fatal injury must occur on the property of the deceased pet's owner or caretaker, or while under the control and supervision of the deceased pet's owner or caretaker. Florida's bill applies to any person who tortures, needlessly torments, seriously injures or kills a companion animal dog or cat in a grossly negligent manner and to any veterinarian or veterinary assistant whose negligence "causes injury or death to a companion dog or cat."⁹⁰ Florida's judicial history acknowledges the individual and social value companion animals have on an owner. In addition to such recovery, the bill provides for burial expenses, attorneys fees and court costs.

(2) If an unlawful act resulted in the death or permanent disability of a person's guide dog, then the value of the guide dog shall include, but shall not necessarily be limited to, both the cost of the guide dog as well as the cost of any specialized training the guide dog received.

(b) Limits for noneconomic damages set out in subsection (a) shall not apply to causes of action for intentional infliction of emotional distress or any other civil action other than the direct and sole loss of a pet.

⁹⁰ The majority of this bill is modeled after Colorado's legislative proposal for companion animals in 2003. Colo. H. 1260, 64th Gen. Assembly, 1st Reg. Sess. (Jan. 31, 2003).

(c) Noneconomic damages awarded pursuant to this section shall be limited to compensation for the loss of the reasonably expected society, companionship, love and affection of the pet.

(d) This section shall not apply to any not-for-profit entity or governmental agency, or its employees, negligently causing the death of a pet while acting on the behalf of public health or animal welfare; to any killing of a dog that has been or was killing or worrying livestock as in § 44-17-203; nor shall this section be construed to authorize any award of noneconomic damages in an action for professional negligence against a licensed veterinarian, unless the professional's acts rise to the level of gross negligence.

(e) Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article _____, section ____ (____) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.