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Pet Ownership in the Aftermath of Natural Disasters

Jessica Middlebrooks Shapiro

I. Introduction

I originally chose this topic because I have always been fond of New Orleans, Louisiana and animals. My mother was born in Shreveport, Louisiana and would often visit New Orleans. Growing up, she spoke of New Orleans' culture, music and food. In December 2010 I visited New Orleans for the very first time. It was everything my mother described and more. From eating beignets at Café du Monde, listening to jazz in the street, shopping on Royal Street, to a five-star dinner at Commander's Palace.

I returned in August 2011 and October 2011, and then again in January 2012 for Seton Hall Law's "BP Oil Spill Mess" Course. It was not until our class took a tour of the city's Ninth Ward did I truly feel the devastation of Hurricane Katrina. That same feeling resurfaced when Hurricane Sandy hit New Jersey, the state in which I was born and raised. My memories, like most affected by Hurricane Sandy, will be of the "old Jersey shore." In the aftermath of Sandy and given the likelihood of similar events in the near future, it is even more meaningful to address pet custody disputes resulting from these natural disasters.

Hurricane Sandy made landfall on October 29, 2012, near Atlantic City, New Jersey. Connecticut, New Jersey and New York residents would quickly learn that Hurricane Sandy

would be one of the largest and fiercest storms to ever? hit the tri-state area. It was reported that it was the worst hurricane in New Jersey in 200 years.^{fn} Residents were slammed with torrential rains, severe winds and widespread flooding. In the aftermath of the storm, residents faced lengthy power outages, gas shortages, and a paralyzed public transportation system.

There has been no shortage of media coverage of Hurricane Sandy, including coverage of pets displaced by the storm. As discussed in the *New York Daily News*:

In the aftermath of Hurricane Sandy, heartbroken pet owners are holding out hope that they will be reunited with their lost pets. But many say their search is fraught with confusion at a time when they already feel despair. ‘I just wish there was one single place to look for her,’ said Robbin Paraison, whose 7-year-old chocolate poodle Mocha was swept away by the rising waters as her family fled their Sea Gate, Brooklyn home.¹

These media accounts poignantly express that our laws, policies and programs fail to address pets in a natural disaster situation. Since the majority of households in America have pets,² this paper addresses whether original pet owners have a legal, custodial right to reclaim pets from new owners after a natural disaster occurs. In order to address this issue, this paper will examine how property law applies to pets; pet custody dispute cases;?? pet custody dispute cases that arose specifically from Hurricane Katrina; and legislative changes that have already occurred. It concludes with essential proposed legislative solutions, largely by contrasting existing Louisiana law with New Jersey law.

II. Background: Pets as Personal Property

This section presents an overview of the existing black law regarding pets as property. Pets have been considered personal property throughout legal history.³ Pets “are by law treated as any other form of movable property and may be the subject of absolute, i.e., complete

¹ Amy Sacks, *Sandy Victims Hunt for Missing Pets*, <http://www.nydailynews.com/life-style/sandy-victims-hunt-missing-pets-article-1.1203559#ixzz2Cb0dEXkK> (last visited December 5, 2012).

² ASPCA, *Pet Statistics*, <http://www.aspc.org/about-us/faq/pet-statistics.html> (last visited December 5, 2012).

³ David Favre, *Animal Law*, 32 (Wolters Kluwer Law & Buisness 2011).

ownership.”⁴ Absolute ownership of a pet creates title, which constitutes legally enforceable rights, and protections relative to a given object.⁵ Title to a pet may be obtained, transferred, or lost.⁶

A. Lost Pets

This section will largely focus primarily on dogs and cats, the pets which constitute the vast majority of “lost pets” due to disasters. When a person finds such a pet, title is determined primarily by the intentions of the original owner.⁷ If a pet is lost the original owner will retain title and have the right to regain possession. When a person finds a lost pet, an implied bailment is created under common law.⁸ A bailment is a contractual agreement between the original owner of the pet and its finder in which the finder owes a duty to take reasonable care of the pet and return it to its original owner.⁹ The Louisiana Civil Code states that “[o]ne who finds a corporeal movable that has been lost is bound to make a diligent effort to locate its owner or possessor and to return the thing to him. If a diligent effort is made and the owner is not found within three years, the finder acquires ownership.”¹⁰ Pets qualify under Louisiana law as a “corporeal movable.”¹¹

In New Jersey, the original owner has six years under the law to reclaim a lost pet.

Pursuant to N.J. Stat. Ann. § 2A:14-1,

Every action at law for trespass to real property, for any tortious injury to real or personal property, for taking, detaining, or converting personal property, for replevin of goods or chattels, for any tortious injury to the rights of another not stated in sections 2A:14-2 and 2A:14-3 of this Title, or for recovery upon a

⁴ Gary L. Francione, *Animals, Property, and the Law* 34 (Temple U. Press 1995) (quoting T.G. Field-Fisher, *Animals and the Law* 19 (U. Fedn. for Animal Welfare 1964)).

⁵ *See infra, supra*, note 3, at 30.

⁶ *Id.* at 36.

⁷ *Id.* at 37.

⁸ *Id.* at 68.

⁹ *Id.*

¹⁰ La. Civ. Code Ann. art 3419.

¹¹ *Id.*

contractual claim or liability, express or implied, not under seal, or upon an account other than one which concerns the trade or merchandise between merchant and merchant, their factors, agents and servants, shall be commenced within 6 years next after the cause of any such action shall have accrued.¹²

The original owner of a lost pet may recover possession of the pet by means of a replevin action. Replevin is “an action for the repossession of personal property wrongfully taken or detained by the defendant, whereby the plaintiff gives security for and holds the property until the court decides who owns it.”¹³ A plaintiff will generally recover possession of the pet by merely showing (1) ownership of the pet and (2) its wrongful detention by the defendant.¹⁴ In the landmark property law case of O’Keeffe v. Snyder, the New Jersey Supreme Court stated that under the “discovery rule”, the statute of limitations on an action for replevin begins to run when the owner knows or reasonably should know of his cause of action and the identity of the possessor of the chattel.¹⁵ Subsequent transfers of the chattel are part of the continuous dispossession of the chattel from the original owner.¹⁶

B. Abandoned Pets

Property law also affirms that the original owner loses all property rights to a pet if he or she abandons it.¹⁷ A pet is abandoned when its original owner relinquishes possession with the intent to give up absolute ownership.¹⁸ The Louisiana Revised Statutes’ section concerning “cruelty to animals” defines “abandons” as “to completely forsake and desert an animal previously under the custody or possession of a person without making reasonable arrangements for its proper care, sustenance, and shelter.”¹⁹ A typical example of abandonment is when a pet is

¹² N.J. Stat. Ann. § 2A:14-1.

¹³ Replevin, Black’s Law Dictionary (9th ed. 2009).

¹⁴ 66 Am. Jur. 2d Replevin § 1.

¹⁵ O’Keeffe v. Snyder, 83 N.J. 478, 502, 416 A.2d 862, 874 (1980).

¹⁶ Id.

¹⁷ Favre at 38.

¹⁸ La. Civ. Code Ann. art 3418.

¹⁹ La. Stat. Ann. § 14:102(2).

held for a statutorily mandated period of time at a shelter, usually because the pet has been found by a “stranger” or has been picked up by an Animal Welfare Officer. After the time period expires, the pet is considered to be abandoned and title transfers to the shelter. The shelter can then adopt out the pet and reassign title.

Further, the Louisiana Abandoned Animals Act sets forth the statutorily mandated period of time as follows: “an animal shall be considered abandoned when the owner thereof has not paid the charge for veterinary services, including medical, or for boarding, within ten days after rendition to the owner of the invoice for such services or boarding and no other agreement with the owner has been reached for the payment of such charge for services or boarding. The person to whom the charges are due may then give notice.”²⁰ Section 2453 of the Louisiana Abandoned Animals Act sets forth the notice requirements referred to in § 2452(A): “the notice shall be given to the owner of the animal or the owner’s agent at his last known address by registered mail or by certified mail, return receipt requested, and shall contain a statement that if the animal is not claimed within ten days after receipt of the notice, the animal may be sold, donated, turned over to the nearest humane society or animal control center, or otherwise disposed of as the person having custody of the animal may deem proper.”²¹

Under New Jersey law a pet is deemed abandoned after a seven-day holding period at an animal shelter has lapsed.²² Pursuant to N.J. Stat. Ann. § 4:19-15.16(f), “no shelter, pound, or kennel operating as a shelter or pound receiving an animal from a certified animal control officer may transfer the animal to an animal rescue organization facility or a foster home until the shelter, pound, or kennel operating as a shelter or pound has held the animal for at least seven

²⁰ La. Rev. Stat. Ann. § 3:2452.

²¹ La. Rev. Stat. Ann. § 3:2453.

²² N.J. Stat. Ann. § 4:19-15.16(f).

days.”²³ If the animal remains unclaimed, the animal may then be placed in a foster home or transferred to a shelter, pound, kennel operating as a shelter or pound, or animal rescue organization facility.²⁴ Similar to La. Rev. Stat. Ann. § 3:2452, notice is required by registered mail in New Jersey if the owner can be ascertained.²⁵

In New Jersey a pet is not deemed abandoned “if the owner ... seeks to claim [the animal] within seven days, or after the seven days have elapsed but before the animal has been adopted or euthanized.”²⁶ The shelter shall release the animal to the owner provided the owner shows “proof of ownership, which may include a valid cat or dog license, registration, rabies inoculation certificate, or documentation from the owner’s veterinarian that the cat or dog has received regular care from that veterinarian.”²⁷

Notably, in 2011 Governor Christie conditionally vetoed a bill, NJ S-2923, which recommended removal of existing sections that would permit euthanizing animals before the seven-day holding period if warranted by age, health or behavior.²⁸ Both houses of the Legislature accepted the governor’s conditional veto, thus allowing New Jersey to retain the seven day holding period.²⁹ According to the Monmouth County SPCA:

Euthanasia before seven days should never be allowed to happen except in cases of extreme suffering as verified by a veterinarian, or if the animal is showing aggression? so severe it poses a significant threat to staff. Age should never be a consideration for euthanasia within the seven day hold. This provision has the

²³ Id.

²⁴ N.J. Stat. Ann. § 4:19-15.16(h).

²⁵ N.J. Stat. Ann. § 4:19-15.16(c).

²⁶ N.J. Stat. Ann. § 4:19-15.16(g).

²⁷ N.J. Stat. Ann. § 4:19-15.16(g)(1).

²⁸ Monmouth County SPCA Pets Blogger, *NJ S2923 - Shelters and Animals Rights Organizations United in Opposition*, http://www.nj.com/pets/index.ssf/2011/08/nj_s2923_-_shelters_and_animal.html (last visited December 5, 2012).

²⁹ New Jersey State Legislature, Bill History of S2923, <http://www.njleg.state.nj.us/bills/BillView.asp> (last visited December 5, 2012).

potential to significantly increase the number of stray animals who are euthanized before their people have a chance to find them.³⁰

III. Natural Disasters and Ownership

On August 29, 2005, Hurricane Katrina made landfall in New Orleans, Louisiana. New Orleans' levee³¹ system was breached and flood defenses were destroyed.³² In the aftermath of Hurricane Katrina, owners started looking for their pets. However, many shelters were destroyed and there was no official database to track pets.

As pets were located, the issue of whether pets were "lost" or "abandoned" arose. In Louisiana, a judge is required to make a case-by-case determination as to whether a pet is lost or abandoned. If a judge deems the pet abandoned, the new owner is the rightful owner. However, if the pet is deemed lost, the original owner has three years³³ under Louisiana law to reclaim it, and six years³⁴ under New Jersey law.

A. Pet Custody Disputes

The following cases highlight some of the legal issues concerning pet custody disputes. It should be emphasized that courts are divided in analyzing custody disputes involving pets using current laws. The first example is "Patrick the Miracle Dog." Patrick was discovered on March 16, 2011 by a building superintendent in a Newark, New Jersey apartment building just moments

³⁰ Monmouth County SPCA Pets Blogger, *NJ S2923 - Shelters and Animals Rights Organizations United in Opposition*, http://www.nj.com/pets/index.ssf/2011/08/nj_s2923_-_shelters_and_animal.html (last visited December 5, 2012).

³¹ A levee is an embankment made to withstand the overflow of water in case of a flood.

³² John McQuaid & Mark Schleifstein, *Path of Destruction: The Devastation of New Orleans and the Coming Age of Superstorms* 192 (2006).

³³ La. Civ. Code Ann. art 3419.

³⁴ N.J. Stat. Ann. § 2A:14-1.

before he would have been killed by a trash compacter.³⁵ Patrick was emaciated, shivering and wrapped in a plastic bag.³⁶

Patrick was rescued and cared for by Associated Humane Societies, until he was taken to Garden State Veterinary Services where a giant hairball was removed from his stomach.³⁷ Associated Humane Societies sought permanent custody of Patrick, despite earlier rulings that he should remain in the custody of Garden State Veterinary Specialists.³⁸ On June 9, 2011, Superior Court Judge Joseph Cassini III denied Associated Humane Societies' request to move Patrick because Patrick was receiving adequate care at Garden State Veterinary Specialists.³⁹ This case brings attention to the first standard that courts may apply in analyzing custody disputes, the "best interest" standard.

This best interest standard is steadily growing more popular today.⁴⁰ In determining the best interest of a pet, the court may consider which of two persons attends to the pet's basic daily needs (food, shelter, physical care); who takes the pet to the veterinarian; who provides for social interactions; who assures that state and local regulations are complied with (licensing); and who has the greatest ability to financially support the pet.⁴¹ This attentive? approach towards pets is reflected in an increased number of custody battles.⁴² In the Patrick case, a petition by the Concerned Supporters of Patrick the Miracle Dog, reads: "we do not believe that it would be in Patrick's *best interest* for him to be moved from Garden State Veterinary Specialists where he

³⁵ Sarah Medina, *Patrick, The Miracle Dog, Recovers After Being Starved, Tossed Down Garbage Chute*, http://www.huffingtonpost.com/2012/09/18/patrick-the-miracle-dog-_n_1894325.html (last visited December 5, 2012).

³⁶ Id.

³⁷ Id.

³⁸ Mary Lou Byrd, *Patrick the Dog Stays in Tinton Falls, Judge Rules*, <http://longbranch.patch.com/articles/patrick-the-miracle-dogs-popularity-not-waning> (last visited December 5, 2012).

³⁹ Id.

⁴⁰ This standard is derived from child custody disputes in family law. [Could be greater explanation]

⁴¹ Joyce Tischler & Bruce Wagman, *Lawyers Must Plan for More Pet Custody Cases*, <http://www.aldf.org/article.php?id=308> (last visited December 5, 2012).

⁴² Id.

has been receiving loving care since he was found.”⁴³ Nonetheless, the majority of courts still apply a different standard, based on property analysis, in determining pet custody..

The next two illustrative cases come from the Vermont Supreme Court and bring attention to the property standard that courts may apply in analyzing pet custody disputes. These two cases apply traditional property law rather than the best interest standard. In the case Morgan v. Kroupa, Defendant Zane Kroupa (“Kroupa”) lost his pet dog named Boy.⁴⁴ Kroupa informed friends and local businesses of his loss, and notified the Addison County Humane Society of the dog’s escape.⁴⁵ Approximately two weeks later, Plaintiff Mary Morgan (“Morgan”) found the dog and brought it to her home.⁴⁶ She called the Addison County Humane Society with a description of the dog, put up notices in local businesses and state parks, and arranged for a local radio station to broadcast announcements regarding the found dog.⁴⁷ Morgan took care of the dog, feeding and sheltering it for over a year.⁴⁸ Kroupa did not locate the dog until he was informed by a friend that the dog was at Morgan’s boyfriend’s house.⁴⁹ Kroupa went to the home to attempt, unsuccessfully, to recover the dog.⁵⁰ As he was leaving, though, the dog jumped in his truck and accompanied Kroupa home.⁵¹

Morgan then brought an action in replevin to recover the dog.⁵² The trial court granted Morgan custody of the dog.⁵³ Kroupa appealed the decision arguing that he had a right to

⁴³ Mary Lou Byrd, *supra*. Not proper cite.

⁴⁴ Morgan v. Kroupa, 167 Vt. 99, 100, 702 A.2d 630, 631 (1997).

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ Id.

possession of the dog based on property law.⁵⁴ The Vermont Supreme Court found that the trial court was within its discretion in awarding custody of the dog to Morgan.⁵⁵ It found that when the finder of a lost dog makes a reasonable effort to locate the owner and responsibly cares for the pet over a reasonably extensive period of time, the finder may be awarded possession of the dog.⁵⁶

The Vermont Supreme Court held that there are several factors that a court should consider in making this discretionary decision.⁵⁷ Such factors include the reasonableness of the search efforts by both the owner and the finder and the length of time that the finder responsibly cared for the dog.⁵⁸ The Supreme Court rejected the best interest standard as an approach in deciding the case.⁵⁹ The Supreme Court held that “however strong the emotional attachments between pets and humans, courts simply cannot evaluate the ‘best interests’ of an animal.”⁶⁰

The next Vermont Supreme Court case validated a local ordinance permitting shelters to dispose of pets after only a short holding period and transfer title to a third person.⁶¹ In the case LaMare v. North Country Animal Rescue, Plaintiffs Chasidy LaMare (“LaMare”) and Charles Arnold’s (“Arnold”) German Sheppard, Billy, and Billy’s puppy broke free from their tether and ran away.⁶² The puppy returned a few hours later, but Billy never did.⁶³ The same day, a couple later found Billy running down the road and brought her to Lamoille Kennel.⁶⁴ The kennel

⁵⁴ Id. at 634.

⁵⁵ Id. at 633.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Favre at 42.

⁶⁰ Morgan at 633.

⁶¹ Favre at 43.

⁶² Lamare v. N. Country Animal League, 170 Vt. 115, 743 A.2d 598, 599 (1999).

⁶³ Id.

⁶⁴ Id.

notified Wolcott animal control.⁶⁵ As required by ordinance, animal control posted notices describing the dog in the village store, post office, and town clerk's office.⁶⁶ After nine days Billy was transferred to the North Country Animal League.⁶⁷

After learning of Billy's whereabouts at the League, LaMare and Arnold went to the League and identified the dog.⁶⁸ A League employee told them that Billy belonged to the League and that the only way to gain possession was to fill out an adoption application.⁶⁹ LaMare and Arnold immediately completed the application; however the League denied their application and informed them that Billy had been adopted by another family.⁷⁰ LaMare and Arnold sued to recover their dog and for damages from the League for violation of due process. The trial court ruled against LaMare and Arnold and they appealed.⁷¹ The Supreme Court held that as long as the League complied with statutory mandates, its transfer of title to a third person was upheld against the owner's original title because the owner was found to have forfeited title by losing the animal.⁷² The League complied with statutory mandates by posting descriptive notices in the town clerk's office, post office, and village store.⁷³ Thus, the court determined that the League did not deprive LaMare and Arnold of their due process rights.⁷⁴

The next case from West Virginia affirms that most animal control statutes do not violate constitutional rights of property and due process. In the case Haines v. Hampshire County Commission, Russell E. Haines and Estella J. Haines' ("Haines") dog was seized by the police

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id. at 600.

⁷¹ Id.

⁷² Id. at 605.

⁷³ Id. at 604.

⁷⁴ Id.

while running at large.⁷⁵ Officer Gee was unable to read the dog's tags and subsequently impounded the dog.⁷⁶ Officer Gee alleged that he posted a public notice for five days at the county courthouse, waited an additional eight days, and then transported the dog to PetSmart where the dog was spayed, treated for infection, and later adopted.⁷⁷ The Haines alleged that they reported their dog missing to Officer Gee on August 10, 2002; and that on September 4, 2002, they saw a notice with a picture of their dog in a local newspaper stating that the dog was available for adoption through the Hampshire County Pet Adoption Program.⁷⁸ On September 6, 2002, Officer Gee informed the Haines that the dog had already been adopted.⁷⁹

Then, the Haines filed suit alleging that their substantive and procedural due process rights were violated.⁸⁰ They argued that their dog was held in custody without notifying them of its whereabouts and then was unlawfully sold.⁸¹ The circuit court dismissed the Haines' complaint and they appealed, seeking repossession of their dog, monetary damages, and the removal of the Officer Gee, the individual who had impounded their dog.⁸² The West Virginia Supreme Court of Appeals held that a finding in favor of the Haines would render the effect of numerous animal control statutes virtually null and void.⁸³ As such, intervention by the Court would necessarily have a chilling effect on future enforcement efforts.⁸⁴ Here, the Court ruled that the Haines were without recourse because the Hampshire County Commission acted within

⁷⁵ Haines v. Hampshire County Comm'n, 216 W. Va. 499, 500 (2004).

⁷⁶ Id. at 500-01.

⁷⁷ Id. at 501.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Id.

⁸² Id.

⁸³ Id. at 503.

⁸⁴ Id.

the scope of applicable laws.⁸⁵ Notably, traditional property law would have applied had the Haines timely sought the return of their dog. [not clear what traditional property law]

B. Hurricane Katrina Cases

In hindsight, Hurricane Katrina taught our nation that the safety of pets must be made a priority in the event of a natural disaster.⁸⁶ To illustrate, the story of “Snowball” gained national attention in the aftermath of Hurricane Katrina.⁸⁷ Police took Snowball away from his owner, a young boy, during the evacuation.⁸⁸ The young boy cried “Snowball! Snowball!” until he was so overcome with grief that he vomited.⁸⁹ This story exemplifies that forcibly separating a pet and their owner is inexcusable.⁹⁰ [Not clear, in some cases might it be unavoidable, especially for a short period of time].

Hurricane Katrina has also brought national recognition to battles over interstate? pet custody disputes. When original Katrina pet owners learned of the relocation of their pets, they turned to the judicial system for their pets return. Ironically, the New Jersey case of Arguello v. Behmke was the first Hurricane Katrina pet custody case litigated in court.⁹¹ On August 29, 2005, Plaintiff Annabelle Arguello (“Arguello”) was forced to immediately evacuate her home due to Hurricane Katrina.⁹² Arguello had no choice but to leave her three dogs, including Chopper, behind with food and water.⁹³ Approximately a week later, Arguello took the dogs to

⁸⁵ Id. at 502.

⁸⁶ MSNBC.com, *Has Snowball finally been found?*, http://www.msnbc.msn.com/id/9255741/ns/health-pet_health/t/has-snowball-finally-been-found/#.UL6Jw4ZKyIw (last visited December 5, 2012).

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Arguello v. Behmke, 2006 WL 205097 (N.J. Super. Ch. Div. Jan. 26, 2006).

⁹² Id. at *1.

⁹³ Id.

Lamar–Dixon, a temporary animal shelter.⁹⁴ Arguello entered into an oral agreement with Lamar-Dixon that the shelter would hold Chopper for two weeks⁹⁵.

Upon returning to the shelter less than two weeks later, Arguello discovered that Chopper was not there.⁹⁶ Lamar-Dixon had entered into an agreement with a New Jersey rescue group, People for Animals.⁹⁷ Consistent with the agreement, People for Animals posted Chopper’s information on Petfinder for the required state statutory time period.⁹⁸ At the expiration of that period, Chopper was adopted out to Defendant Pam Behmke (“Behmke”), a New Jersey resident.⁹⁹ Arguello contacted Behmke, but she refused to return Chopper.¹⁰⁰

Consequently, Arguello instituted a writ of replevin for the return of her dog Chopper.¹⁰¹ A New Jersey court held that Arguello’s agreement with Lamar–Dixon constituted a bailment agreement.¹⁰² A bailment agreement “is created when personal property is delivered by one person into the possession of another person in trust for a specific purpose, under an agreement that the property will be returned to the owner, or accounted for, or kept for the owner to reclaim it, when the purpose is accomplished.”¹⁰³ Due to the existence of a bailment agreement, Lamar–Dixon did not have a legal right to transfer Chopper to People for Animals.¹⁰⁴ Therefore, the court granted the writ of replevin and ruled Chopper was to be returned to Arguello.¹⁰⁵ In doing so, the New Jersey court applied traditional property law. Arguello therefore retained absolute ownership of Chopper, thus demonstrating she had legally enforceable rights and protections.

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Id. at *4.

⁹⁷ Id. at *5. Why the stars??****

⁹⁸ Id. at *6.

⁹⁹ Id.

¹⁰⁰ Id. at *2.

¹⁰¹ Id.

¹⁰² Id. at *4.

¹⁰³ Id.

¹⁰⁴ Id. at *5.

¹⁰⁵ Id. at *8.

In some cases, proof of ownership may be difficult to establish because some pets can look virtually identical. Consequently, evidence of ownership may include a description of the pet’s behavior,¹⁰⁶ appearance,¹⁰⁷ identifying marks or scars,¹⁰⁸ whether the pet responds to its original name,¹⁰⁹ and DNA evidence.¹¹⁰ In the Texas case of Augillard v. Madura, “Jazz,” a pet dog, was recovered from New Orleans in the wake of Hurricane Katrina, having been considered abandoned by his owner, Plaintiff Shalanda Augillard (“Augillard”).¹¹¹ In fact, Augillard had left enough food and water for Jazz while she was overseeing the delivery of evacuation supplies.¹¹² Defendant Tiffany Madura (“Madura”) argued that the dog she adopted from New Orleans was not Jazz.¹¹³ Augillard exhausted many resources in order to identify Jazz, including offering two DNA tests and expert testimony regarding Jazz’s medical history.¹¹⁴ The Texas Court of Appeals held that the trial court erred by choosing to disregard the DNA evidence, which was deemed conclusive of the vital fact of Augillard’s ownership of Jazz.¹¹⁵

Significantly, the Court of Appeals noted “the obvious dissonance between the emotional investment at the heart of the human-pet relationship and the current legal system, which identifies ... [Jazz] ... as ‘property.’”¹¹⁶ The Court of Appeals went on to state that “while resolving this appeal in accordance with the applicable law governing ownership of chattel, we

¹⁰⁶ Conti v. ASPCA, 353 N.Y.S.2d 288, 290 (N.Y. Civ. Ct. 1974).

¹⁰⁷ Id.

¹⁰⁸ Arguello, 2006 WL 205097 at *6-7.

¹⁰⁹ Id.

¹¹⁰ Augillard v. Madura, 257 S.W.3d 494 (Tex. App. 2008).

¹¹¹ Id. at 495-96.

¹¹² Id. at 496.

¹¹³ Id. at 496-97.

¹¹⁴ Id. at 496.

¹¹⁵ Id. at 503.

¹¹⁶ Id.

recognize that there are important non-economic interests at stake in this case.”¹¹⁷ The Court of Appeals referred to commentator Kathy Hessler who stated,

People do not plan memorial services, or invest in serious medical treatment for their books or lawnmowers. They don’t plan to pay more in insurance premiums than the purchase price or replacement cost of the property they seek to protect. Individuals do not leave money for their bicycles in their wills, or seek visitation arrangements for their televisions upon the termination of their marriages.¹¹⁸

Thus it is submitted that Augillard is an important case because it exemplifies a court’s willingness to recognize the strong relationship that exists between owners and their pet. Nonetheless, the Court of Appeals was reluctant to apply the best interest standard and instead still viewed pets as property, as based on applicable law.

In the case Sumrall v. Deserio, Belinda Sumrall (“Sumrall”) was forced to evacuate and leave her dogs, Sandy Marie and Coco Ree, behind in New Orleans.¹¹⁹ The dogs were rescued by Kim Deserio (“Deserio”) and brought to the Montgomery County SPCA (“Montgomery SPCA”) in Maryland.¹²⁰ According to court documents, Sumrall posted queries on websites to locate her missing dogs; however, she received no responses.¹²¹ A volunteer helping Sumrall discovered that the dogs had been taken to Maryland and had been subsequently adopted.¹²² Thereafter Kathryn S. Bloomfield (“Bloomfield”), Sumrall’s attorney, contacted Montgomery SPCA and requested that the dogs be returned.¹²³ However, Montgomery SPCA refused to return the dogs because they already had a new home.¹²⁴

¹¹⁷ Id.

¹¹⁸ Id. (citing Kathy Hessler, *Mediating Animal Law Matters*, 2 J. Animal L. & Ethics 21, 28 (2007)).

¹¹⁹ Sumrall v. Deserio, 2006 WL 852344 (E.D. La. Mar. 23, 2006).

¹²⁰ Ernesto Londono, *Fangs are Bared Over Md. Group’s Katrina Dog Rescues*, <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/13/AR2006081300964.html> (last visited December 5, 2012).

¹²¹ Id.

¹²² Id.

¹²³ Id.

¹²⁴ Id.

Then, Bloomfield filed an action for a judgment declaring Sumrall to be the rightful owner and demanded the return of the dogs.¹²⁵ Bloomfield argued that Montgomery SPCA did not make an effort to find Sumrall before putting the dogs up for adoption.¹²⁶ A Louisiana judge ordered Montgomery SPCA to return the dogs to Sumrall.¹²⁷ Also, the judge ordered that a \$1,000 fine would be imposed for each day that Deserio disobeyed the order.¹²⁸ It is unknown whether the dogs were returned to Sumrall. Nevertheless, this case represents not only a pet custody battle, but a battle over the legal complexities of rescuing pets in disaster zones.¹²⁹

In yet another “Katrina” case, Army First Lieutenant Japheth Johnson (“Johnson”) had been serving in Iraq when Hurricane Katrina struck.¹³⁰ Johnson had left his dog, Missy, in the care of his mother at their New Orleans home.¹³¹ Johnson’s mother, however, was subsequently forced to leave Missy behind when a mandatory evacuation was ordered.¹³² Two weeks later, Missy was rescued near the Johnsons’ home and brought to the emergency animal shelter at the Lamar Dixon facility in Louisiana.¹³³ The next day, Missy, who had an embedded identification chip that identified her owner’s name, address, and telephone number, was transported by truck to a Texas animal shelter.¹³⁴

On September 15, 2005, Johnson returned from Iraq and began to search for his dog, Missy.¹³⁵ He placed a “lost” report on the Petfinder.com website. Soon after, a Stealth

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ Stealth Volunteers, *New Orleans Judge Orders Return Of Iraq Veteran’s Katrina Dog*, <http://www.illyria.com/petlaw/wiserelease.htm> (last visited December 5, 2012).

¹³¹ Id.

¹³² Id.

¹³³ Id.

¹³⁴ Id.

¹³⁵ Id.

Volunteer¹³⁶ identified Missy from the “found” report.¹³⁷ Another Stealth Volunteer confirmed that the registered phone number from Missy’s identification chip belonged to Johnson.¹³⁸ The Texas shelter had been contacted several times by Johnson, Johnson’s mother, and by Stealth Volunteers, but the shelter had refused to return Missy.

Subsequently, Johnson brought suit against the SPCA of Texas by means of a replevin action.¹³⁹ Johnson received an injunction¹⁴⁰ for the return of Missy.¹⁴¹ By granting the injunction, the court determined that Missy was wrongfully taken and detained¹⁴² by the SPCA of Texas. It is unknown whether Missy was ever returned to Johnson. This case, however, is significant because it is representative of a number of incidents where shelters throughout the country provided assistance to pets and then refused to return them to their original owners.¹⁴³

In still another Katrina case, Paula Duming (“Duming”) had been forced to evacuate her home due to Hurricane Katrina.¹⁴⁴ Duming was not allowed to take her dog, Pablo, with her.¹⁴⁵ Duming plead with rescuers to be allowed to take Pablo, but was turned down.¹⁴⁶ Before Duming was rescued by aircraft, she snapped a photograph of Pablo. Several days later, the animal shelter Best Friends Animal Society’s (“Best Friends”) rescued Pablo.¹⁴⁷ Pablo was then

¹³⁶ Id.; Stealth Volunteers is a grassroots organization responsible for more than a thousand reunions of Katrina pets with their families.

¹³⁷ Id.

¹³⁸ Id.

¹³⁹ Id.

¹⁴⁰ An injunction is a court order commanding or preventing an action; Injunction, Black’s Law Dictionary (9th ed. 2009).

¹⁴¹ Id.

¹⁴² Replevin, Black’s Law Dictionary (9th ed. 2009).

¹⁴³ Stealth Volunteers, *New Orleans Judge Orders Return Of Iraq Veteran’s Katrina Dog*, <http://www.illyria.com/petlaw/wiserelease.htm> (last visited December 5, 2012).

¹⁴⁴ Michael Kilmer-Rinker, *Paula and Pablo Are Reunited!*, <http://www.bestfriends.org/News-And-Features/News/Paula-and-Pablo-Are-Reunited!> (last visited December 5, 2012).

¹⁴⁵ Id.

¹⁴⁶ Id.

¹⁴⁷ Id.

placed with a foster organization, the Animal Benefit Club of Arizona.¹⁴⁸ Pursuant to a foster agreement, the Animal Benefit Club of Arizona agreed to provide all the necessary care and shelter for Pablo, hold him for at least three months, and release him to the original owner upon request and reasonable proof of ownership.¹⁴⁹

The Animal Benefit Club of Arizona placed him with Wendy Shieh and Dustin Jones in violation of the foster agreement it had with Best Friends.¹⁵⁰ Shieh and Jones renamed the dog Boots. About three months later, with the help of Best Friends, Duming was able to locate Pablo and asked Shieh and Jones to return him.¹⁵¹ Despite Duming's demands, Shieh and Jones refused to return the dog because of inconsistencies in the description of Pablo compared to Boots.¹⁵²

The matter appeared before the Maricopa County Superior Court in Arizona in March 2007.¹⁵³ The sole issue was whether Pablo was the same dog as Boots.¹⁵⁴ Based upon the evidence presented at trial, Judge Whitten found that Pablo and Boots were one and the same.¹⁵⁵ The court relied on the photo of Pablo that Duming took immediately prior to her evacuation.¹⁵⁶ The court ordered that Duming be reunited with her dog Pablo.¹⁵⁷ This case underscores that even though both claimants may have good intentions, under property law it ultimately boils down to who possesses absolute title to the pet.

In one final Katrina example, Doreen Couture's dogs had been dropped off at a temporary shelter before Couture evacuated Louisiana pursuant to a mandatory evacuation

¹⁴⁸ Id.
¹⁴⁹ Id.
¹⁵⁰ Id.
¹⁵¹ Id.
¹⁵² Id.
¹⁵³ Id.
¹⁵⁴ Id.
¹⁵⁵ Id.
¹⁵⁶ Id.
¹⁵⁷ Id.

order.¹⁵⁸ The dogs ended up at a shelter in Pinellas County, Florida and were adopted out into two different homes. Pam Bondi (“Bondi”) adopted Couture’s St. Bernard named Master Tank. When Couture located Master Tank, Bondi refused to turn the dog over. Couture filed suit in Florida to have Mastertank returned. However, the custody dispute ended when Bondi voluntarily returned Master Tank to Couture.

Importantly, Judge Henry J. Andringa of Pinellas County ruled on a significant motion brought by Murray Silverstein (“Silverstein”), the attorney representing Couture.¹⁵⁹ Silverstein presented the argument that Couture’s dogs are personal property and not “living and breathing creature[s] capable of feeling pain, pleasure and emotion.”¹⁶⁰ ?? Silverstein argued that to rule that the dogs were not personal property would set the law back one hundred years.¹⁶¹ He noted that common law generally holds that a finder of lost property has rights superior to anyone else in the property *except the true owner*.¹⁶² Dogs and other companion animals are considered the personal property of the owners and if the rightful owner finds his or her dog, he or she can then assert ownership.¹⁶³ Judge Andringa ruled for Silverstein, therefore allowing the ultimate court decision to be based on property law rather than who is capable of providing the best home for the pet.¹⁶⁴

The above cases reflect the current state of the law regarding pet custody disputes. We can certainly expect that pet custody disputes will arise from Hurricane Sandy. Notably, in the prior Katrina dispute, Arguello, the New Jersey Chancery Division applied traditional property

¹⁵⁸ Barbara J. Koll, *The Legacy of Katrina – Two Years Later*, <http://www.bestfriends.org/News-And-Features/News/The-Legacy-of-Katrina-%E2%80%93-Two-Years-Later> (last visited December 5, 2012).

¹⁵⁹ Sally Kalson, *In Pet Custody Battles, Courts Treat Animals as Property*, <http://www.post-gazette.com/stories/sectionfront/life/in-pet-custody-battles-courts-treat-animals-as-property-439551> (last visited December 5, 2012).

¹⁶⁰ Id.

¹⁶¹ Id.

¹⁶² Id.

¹⁶³ Id.

¹⁶⁴ Id.

law.¹⁶⁵ However, because this is “only” a Chancery decision, the Appellate Division or the New Jersey Supreme Court may eventually choose to apply the previously discussed “best interest” standard in resolving pet custody disputes.

IV. Legislative Changes

In the wake of Hurricane Katrina, the Louisiana Legislature responded to the subsequent pet issues by passing La. Rev. Stat. Ann. § 29:726, requiring the “humane evacuation, transport, and temporary sheltering of service animals and household pets in times of emergency or disaster.”¹⁶⁶ The law also requires the development of guidelines by the Governor’s Office of Homeland Security and Emergency Preparedness for such temporary shelters,¹⁶⁷ identification systems for pets and their owners,¹⁶⁸ and evacuation plans¹⁶⁹ for animals.

In 2006, the Louisiana Legislature required by law that the Louisiana Animal Welfare Commission establish the Louisiana Pet Registry.¹⁷⁰ The law provides that “the current owner of any animal may register that animal with the commission.”¹⁷¹ The law further provides for registration that “shall include the name and address of the owner and the name and a description of the animal. If the animal has been fitted with a microchip, the registration shall also include the brand of commercial microchip and the animal’s microchip identification number.”¹⁷² Also, the law requires that the commission “assign to each registered animal a unique identification number and provide to the owner of each registered animal a license tag bearing the identification number.”¹⁷³

¹⁶⁵ Arguello v. Behmke, 2006 WL 205097 (N.J. Super. Ch. Div. Jan. 26, 2006).

¹⁶⁶ La. Rev. Stat. Ann. § 29:726(E)(20)(a)(2009).

¹⁶⁷ La. Rev. Stat. Ann. § 29:726(E)(20)(a)(iii)(bb)(2009).

¹⁶⁸ La. Rev. Stat. Ann. § 29:726(E)(20)(a)(iii)(bb)(2009).

¹⁶⁹ La. Rev. Stat. Ann. § 29:726(E)(20)(a)(v)(2009).

¹⁷⁰ La. Rev. Stat. Ann. § 3:2365.

¹⁷¹ Id.

¹⁷² Id.

¹⁷³ Id.

Hurricane Katrina also sent a wakeup call to Congress, which in turn enacted a federal law called the Pets Evacuation and Transportation Standards Act of 2006.¹⁷⁴ This act is similar to Louisiana’s statute in that it requires state disaster plans to include accommodations for pets and their owners in the event of a major disaster or emergency.¹⁷⁵ Without providing such accommodations, neither state nor local agencies will be able to receive grant money provided by FEMA.¹⁷⁶

V. Proposed Changes

A. Legislative Solutions

Now, in the aftermath of Hurricane Sandy, it is submitted that New Jersey lawmakers should enact a law that mirrors La. Rev. Stat. Ann. § 29:726.¹⁷⁷ Notably, New Jersey may be forced to follow the requirements of federal law, since New Jersey is requesting billions of dollars in relief from FEMA.^{fn} The only similar bill proposed so far in New Jersey¹⁷⁸ would permit pet owners to board public transportation with their pets during emergency evacuation.¹⁷⁹ The bill characterizes the term “pet” as a “domestic companion animal” which is defined as a dog, cat, bird, fish or any animal commonly referred to as a pet that has been bought, bred, raised or otherwise acquired for the primary purpose of providing companionship, rather than for agricultural purposes.¹⁸⁰ The bill would permit the pet owner to board public transportation so long as the pet is under the owner’s control by use of a leash or tether, or is properly confined in an appropriate container or by other suitable means.¹⁸¹ As can be discerned, this bill is extremely

¹⁷⁴ Pub. L. No. 109-308, 120 Stat. 1725 (2006).

¹⁷⁵ Id. at § 2.

¹⁷⁶ Id. at § 3. FEMA should be explained.

¹⁷⁷ La. Rev. Stat. Ann. § 29:726(E)(20)(a)(2009).

¹⁷⁸ Bill number A3445 was introduced November 19, 2012; Quijano and Wagner sponsored bill.

¹⁷⁹ New Jersey State Legislature, <http://www.njleg.state.nj.us/bills> (last visited December 5, 2012).

¹⁸⁰ Id.

¹⁸¹ Id.

limited. Hence it is critical that New Jersey formulate more complete emergency plans for the evacuation, transport, and sheltering of pets during an emergency evacuation.

As a follow up to these recommendations, this author has spoken with Assemblywoman Valerie Huttle's Chief of Staff, Andrea Katz, regarding the drafting of a more comprehensive bill. Ms. Katz responded:

In a time of emergency, some residents are just as concerned with the safety of their pets as they are with their family members. For them, the thought of leaving their pets behind is just as horrible as leaving behind a child, parent, or spouse. We want to encourage people to evacuate when they are in a mandatory evacuation zone. We also want to reduce the suffering of families during a storm or disaster, and being able to hold onto a pet may certainly be a comfort in such a difficult time.¹⁸²

As part of this more comprehensive plan, it is further suggested that New Jersey needs to establish a pet registration program. Following Hurricane Sandy, the Humane Society of the United States has been working to match hundreds of lost pets with their owners.¹⁸³ Unfortunately, the closest thing to a pet registration system is the ad hoc Facebook.com website page "Hurricane Sandy Lost and Found Pets."¹⁸⁴ A volunteer from New Orleans has set up the page which has already gained over 26,000 likes¹⁸⁵.¹⁸⁶ People can post photos of lost or found pets from the areas affected by Hurricane Sandy.¹⁸⁷ To illustrate, a woman displaced by

¹⁸² Interview with Andrea Katz.

¹⁸³ Jen Connic, *Humane Society Working to Match Lost Pets From Hurricane Sandy With Owners*, http://www.nj.com/ocean/index.ssf/2012/11/humane_society_working_to_match_lost_pets_from_hurricane_sandy_with_owners.html (last visited December 5, 2012).

¹⁸⁴ Facebook.com, *Hurricane Sandy Lost and Found Pets*, <https://www.facebook.com/SandysPets> (last visited December 5, 2012).

¹⁸⁵ Facebook users can "like" status updates, comments, photos, and links posted by their friends by clicking the "like" button at the bottom of the content.

¹⁸⁶ Rt.com, *Hurricane Sandy Leaves Thousands of Pets in Need*, <http://rt.com/usa/news/sandy-leaves-pets-need-919> (last visited December 5, 2012).

¹⁸⁷ Id.

Hurricane Sandy reunited with her two Alaskan malamutes after their photograph went viral on Facebook.com.¹⁸⁸

Like the Louisiana Pet Registry program, the New Jersey pet registration program should identify pets through a unique microchip identification number. In order to enroll in the program, New Jersey residents would be required to pay a one-time registration fee.¹⁸⁹ The registration fee would cost approximately fifteen dollars.^{fn} [explain cost] Also, there would be a fee waiver for individuals with low income that qualify for indigent status. The program would significantly increase the likelihood that a substantial number of lost pets would be reunited with their owners.¹⁹⁰ Further, disaster-response teams could facilitate the rescue of pets in natural disasters.¹⁹¹ {This last sentence is unclear and needs more detail}

It is further recommended that, upon declaration of a state of emergency, the current seven day holding period at a shelter pursuant to N.J. Stat. Ann. § 4:19-15.16 should be extended to fourteen days. This would benefit not only the pet but also the owner, who may need more than a week to locate and retrieve their pet. This is especially true in cases where the owner has been displaced from his or her home, as was the situation for so many New Jersey residents recently affected by Hurricane Sandy.

B. Preventative Solutions

Natural disaster preparedness is imperative in preventing, or at least decreasing, pet custody disputes. Pets may seem like a secondary concern in the aftermath of Hurricane Sandy, which claimed not only homes, but human lives.¹⁹² However, the loss of a pet can be deeply

¹⁸⁸ Id.

¹⁸⁹ Id.

¹⁹⁰ La. Rev. Stat. Ann. § 3:2365.

¹⁹¹ Id.

¹⁹² Jesse Ellison, *How Pets Survived Hurricane Sandy*, <http://www.thedailybeast.com/articles/2012/11/07/how-pets-survived-hurricane-sandy.html> (last visited December 5, 2012).

emotionally traumatizing.¹⁹³ Thus it is highly recommended that pet owners prepare their pets prior to a natural disaster.¹⁹⁴ According to the Humane Society of the United States, pet owners should put a collar with visible identification on their pets, keep pictures of their pets for identification purposes, and create a pet emergency kit.¹⁹⁵ The pet emergency kit should include a large supply of food and water, medications, and vaccination records.¹⁹⁶ It is also essential to microchip pets in order to increase the chances of reunion if pets are lost.¹⁹⁷

Lastly, pet owners should develop their own personal emergency evacuation plan. In creating this plan, pet owners should plan on evacuating approximately one-hundred miles inland and be aware that many evacuation shelters do not accept pets.¹⁹⁸ Pet owners should also make a list of hotels that allow pets, as well as friends and family members, outside the affected area that can provide boarding? and/or pet friendly emergency shelters.¹⁹⁹

VI. Conclusion

The above pet custody dispute cases present several common themes. Most courts continue to treat pets as property regardless of the strong bond between pets and their owners. Pets clearly play a greater role than mere property in households today. The issue of pet custody is arising more frequently, and should the law recognize pets as more than personal property, the best interest standard may eventually become the predominate rule. This would be a progressive and welcome development. As the aftermath of Hurricane Sandy unfolds, New Jersey judges, as well as judges in other states impacted by the Hurricane, will have the opportunity to set new

¹⁹³ Id.

¹⁹⁴ The Humane Society of the United States, *Residents in Possible Path of Sandy Urged to Prepare, Include Pets in Disaster Plans*, http://www.humanesociety.org/news/press_releases/2012/10/hurricane-sandy-pet-disaster-plans-102512.html (last visited December 5, 2012).

¹⁹⁵ Id.

¹⁹⁶ Id.

¹⁹⁷ Id.

¹⁹⁸ Id.

¹⁹⁹ Id.

precedent by applying the best interest standard, and may depart from traditional property law. As such, Hurricane Sandy custody disputes will likely create new case law regarding pets during natural disasters.

Further, it is in the owners, best interest that their pets be deemed lost rather than abandoned. If a pet is deemed lost, the original owner has three years²⁰⁰ under Louisiana law to reclaim it, and six years²⁰¹ under New Jersey law. However, after a ten day²⁰² holding period at a shelter has lapsed in Louisiana, and a seven day²⁰³ holding period in New Jersey, the original owner's pet is usually deemed abandoned. This must certainly be distressing for pet owners affected by a natural disaster when comparing the different time periods between lost and abandoned pets. This current time frame should be extended to give the original owner more time to locate their pet.

It is my assumption that most pet owners do not intentionally leave their pets behind. This is especially true when pet owners refuse to evacuate and are later rescued from their homes. In order to safeguard their pets, pet owners "will put themselves in harm's way, and put first responders in harm's way if they have to be rescued."²⁰⁴ In most jurisdictions, pet owners are typically not allowed to bring their pets with them. In such cases, it is an injustice for their ownership rights to be relinquished. Also, pet owners should not be put into the position of risking their own lives because evacuation plans fail to accommodate pets.

²⁰⁰ La. Civ. Code Ann. art 3419.

²⁰¹ N.J. Stat. Ann. § 2A:14-1.

²⁰² La. Rev. Stat. Ann. § 3:2452.

²⁰³ N.J. Stat. Ann. § 4:19-15.16.

²⁰⁴ Jesse Ellison, *How Pets Survived Hurricane Sandy*, <http://www.thedailybeast.com/articles/2012/11/07/how-pets-survived-hurricane-sandy.html> (last visited December 5, 2012).

Good topic, well argued;

Final Grade: A-

Please see me. I think you should pursue the bill for stronger protection in NJ in the aftermath of Sandy. I will try to help you. It could also prove to be useful to you as a resume enhancer.

TITLE OF PAPER: Pet Ownership in the Aftermath of Natural Disasters

NAME OF STUDENT: Jessica Middlebrooks Shapiro

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