
COMMENT

THE GOLDEN RETRIEVER RULE: ALASKA'S IDENTITY PRIVILEGE FOR ANIMAL ADOPTION AGENCIES AND FOR ADOPTIVE ANIMAL OWNERS

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In this Comment, the authors examine recent national and Alaskan developments regarding a limited testimonial privilege for animal adoption agencies and adoptive owners. Unlike most testimonial privileges, this new privilege did not exist at common law and has only a limited foundation in statutes or rules of evidence. The authors conclude by noting the effect this privilege has on replevin and conversion cases involving lost animals that have been adopted by new owners.

I. INTRODUCTION

Recently, in the case of *Wall v. Gyuricsko*,¹ Judge Mary E. Greene of the Alaska Superior Court for the Fourth Judicial District continued a trend established by the Vermont Supreme Court and the Georgia Court of Appeals by refusing to require a private, nonprofit animal rescue organization to disclose the identity of the

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1. No. 4FA-01-687 CI, Summary Decision and Order (Sup. Ct. 4th Jud. Dist. Nov. 5, 2001).

adoptive family of a rescued pet.² Like the published cases on the topic, Judge Greene's opinion did not overtly declare that she was establishing a testimonial privilege.³ However, the court's justification for protecting the adoptive owners' identity—avoiding harassment of the adoptive owner and promoting the adoption of impounded dogs—was similar to that given by other courts.⁴

This Comment discusses the need for uniform protection for animal adoption agencies and adoptive animal owners by looking at statistics regarding animal ownership in the United States, debates among legal scholars about the status of companion animals, and the growth of adoption agencies for animals in the United States with a focus on Alaska. The Comment then explores existing Alaska case law on the status of animals in the state. Finally, the Comment will discuss recent case law from Alaska and other jurisdictions supporting the need for a testimonial privilege prohibiting the disclosure of the identities of adoptive families by animal adoption organizations. Should the Alaska Supreme Court refuse to recognize such a privilege, protective orders under Alaska Rule of Civil Procedure 26(c) should be a matter of course in animal custody disputes.⁵

II. TESTIMONIAL PRIVILEGES IN ALASKA

Under federal law, witness testimonial privileges are governed by the common law as interpreted in the “light of reason and experience.”⁶ While there is reluctance to recognize new privileges, this has not stopped the federal courts from adopting new privileges as justice requires.⁷ Alaska Rule of Evidence 501 limits testimonial

2. *Id.* at 4-5 (citing *Johnston v. Atlanta Humane Soc’y*, 326 S.E.2d 585, 588 (Ga. Ct. App. 1985); *Lamare v. North Country Animal League*, 743 A.2d 598, 604 (Vt. 1999)).

3. *Wall*, No. 4FA-01-687 CI, at 4-5. *See also Johnston*, 326 S.E.2d at 587-88; *Lamare*, 743 A.2d at 604.

4. *Wall*, No. 4FA-01-687 CI, at 4. *See also Johnston*, 326 S.E.2d at 587-88; *Lamare*, 743 A.2d at 604.

5. ALASKA R. CIV. P. 26(c) (“the court in the judicial district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.”).

6. FED. R. EVID. 501.

7. *See Jaffee v. Redmond*, 518 U.S. 1, 18 (1996) (recognizing common law privilege protecting confidential communications between psychotherapist and patient); *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 982 (6th Cir. 2003) (recognizing a privilege on communications made during settlement talks); *Pearson v. Miller*, 211 F.3d 57, 72 (3rd Cir. 2000) (finding waiver of patient-psychotherapist privilege, but ordering District Court to consider possibil-

privileges to those provided by the Constitution of the United States, the Alaska Constitution, enactments of the Alaska Legislature, the Rules of Evidence or other rules promulgated by the Alaska Supreme Court.⁸ Despite the seemingly more restrictive nature of Alaska Rule of Evidence 501 as opposed to the corresponding federal rule, the Alaska Supreme Court has recognized a common law privilege applying standards adopted from the federal courts.⁹ The *Allred* court specifically recognized that courts may create common law privileges when they find sufficient policy justification for doing so.¹⁰ The principles expounded in that case have yet to be overturned by the Alaska Supreme Court.

III. THE NEED FOR UNIFORM PROTECTION FOR ANIMAL ADOPTION AGENCIES AND ADOPTIVE ANIMAL OWNERS

Statistics show that there are approximately 68 million dogs and 73 million cats owned in the United States.¹¹ Twenty percent of these pets are obtained from shelters.¹² This percentage has increased significantly from just five years ago, when only 13% of cat owners and 17% of dog owners had turned to shelters.¹³ There are an estimated 6 to 8 million cats and dogs entering shelters each year, with 3 to 4 million cats and dogs being euthanized by these

ity of granting protective order under Federal Rule of Civil Procedure 26(c) to impose such restrictions upon discovery as it deems appropriate); *Folb v. Motion Picture Indus. Pension & Health Plans*, 16 F. Supp. 2d 1164, 1180-81 (C.D. Cal. 1998) (recognizing a federal mediation privilege); *D'Aurizio v. Borough of Palisades Park*, 899 F. Supp. 1352, 1361 (D.N.J. 1995) (“political vote privilege should apply to protect (1) from compulsory disclosure (2) the tenor of a person’s vote (3) at a political election (4) conducted by secret ballot (5) unless the vote was cast illegally”).

8. ALASKA R. EVID. 501.

9. *Allred v. State*, 554 P.2d 411, 416-18 (Alaska 1976); *State v. R.H.*, 683 P.2d 269, 271-72 (Alaska Ct. App. 1984). *But see* *Russell v. Municipality of Anchorage*, 706 P.2d 687, 693 (Alaska Ct. App. 1985) (holding that privilege should be narrowly construed).

10. *Allred*, 554 P.2d at 416.

11. The Humane Society of the United States, U.S. Pet Ownership Statistics, available at <http://www.hsus.org/ace/11831> (last visited Dec. 15, 2003) (citing American Pet Products Manufacturers Association (APPMA) 2001-2002 National Pet Owners Survey).

12. *Pet Owners Turn Increasingly to Shelters*, ANIMAL SHELTERING, July-August 2001, at 1.

13. *Id.*

shelters.¹⁴ Further, of the dogs and cats entering shelters, only 15% to 30% of dogs and 2% to 5% of cats are reclaimed by their owners.¹⁵ In seven years, one female cat and her offspring can theoretically produce 420,000 cats.¹⁶ In six years, one female dog and her offspring can produce 67,000 dogs.¹⁷

The number of animal rescue groups across the country has grown in order to handle the ever-increasing animal population.¹⁸ Golden Retriever Rescue of Fairbanks has compiled one of the most complete lists available of the various shelters and organizations in Alaska that are attempting to meet the needs of those who would adopt sheltered animals. They list 24 rescue organizations in Fairbanks alone and 18 statewide rescue organizations.¹⁹ Additionally, most organized boroughs and many municipalities exercise animal control powers.²⁰

Several articles written in recent years have explained how the law has adapted to reflect the increasing role of animals as “members of the family.” For example, one article argues for a shift in the tort system’s valuation of companion animals.²¹ The author cites cases from Alaska, Florida, Hawaii, Louisiana, and Texas to show that some jurisdictions will consider mental distress damages in companion animal cases.²² Another article discusses how common and statutory law across the country addresses one’s owner-

14. The Humane Society of the United States, HSUS Pet Overpopulation Estimates, available at <http://www.hsus.org/ace/11830> (last visited December 15, 2003).

15. *Id.*

16. *Id.*

17. *Id.*

18. See Nancy Lawson, *A New Breed Of Adoption Partner*, ANIMAL SHELTERING, January-February 2001, at 1-4.

19. Golden Retriever Rescue of Fairbanks, *Dog Organizations, Fairbanks and Alaska*, available at <http://www.grrf.org/organizations.htm> (last visited Jan. 29, 2004). As a Fairbanks-based organization, this list most likely is biased toward Interior organizations.

20. ANCHORAGE, ALASKA, ORDINANCES tit. 17 (2003); FAIRBANKS, ALASKA, CODE OF ORDINANCES tit. 6 (2003); JUNEAU, ALASKA, CODE OF ORDINANCES ch. 8.45 (2003); KENAI PENINSULA, ALASKA, CODE OF ORDINANCES tit. 8 (2003); MATANUSKA-SUSITNA, ALASKA, CODE OF ORDINANCES tit. 24 (2003); PALMER, ALASKA, CODE tit. 6 (2003); PETERSBURG, ALASKA, CODE tit. 7 (2003); SEWARD, ALASKA, CODE OF ORDINANCES ch. 9.05 (2003); SITKA, ALASKA CODE tit. 8 (2003); VALDEZ, ALASKA, CODE tit. 6 (2003); WASILLA, ALASKA, CODE tit. 7 (2003).

21. Debra Squires-Lee, *In Defense of Floyd: Appropriately Valuing Companion Animals In Tort*, 70 N.Y.U. L. REV. 1059, 1063 (1995).

22. *Id.* at 1076-78.

ship rights in dogs and argues that existing lost property statutes “must be changed to recognize the special property interest an owner has with her pet dog.”²³ The author advocates recognition of a dog owner’s property right under state law through registration or licensing and then the protection of that interest under the procedural safeguards of the state’s lost article statute.²⁴ A third article argues that “plaintiffs whose companion animals are wrongfully killed should at least be entitled to the same kind, though not necessarily the same magnitude, of common law damages as are parents of young children wrongfully killed.”²⁵

Two articles published in the last year have continued the arguments for treating animals more in line with the place they fill in many people’s lives. The first article examines the continuing debate in recent years as to whether companion animal owners should be able to recover more than the market value of their pets when they are injured or killed as a result of tortious conduct.²⁶ The author concludes that “pet owners should be compensated for any emotional suffering or loss of companionship that results from wrongful conduct against their companion animal.”²⁷

Finally, the second article notes that there is a trend toward greater integration of companion animals into households.²⁸ The article “supports and promotes the idea that there is a rational basis for changing the way that companion animals should be valued by the legal system.”²⁹

IV. ALASKA LAW ON THE STATUS OF COMPANION ANIMALS

In a state where dog mushing is the official sport and where there are such a variety of public and private animal rescue organizations, one might be surprised to find that case law and statutory law addressing the parameters of pet adoption and pet ownership is

23. Eric W. Neilsen, *Is The Law of Acquisition of Property by Find Going to The Dogs?*, 15 T.M. COOLEY L. REV. 479, 508-09 (1998).

24. *Id.*

25. Steven M. Wise, *Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal*, 4 ANIMAL L. 33, 34 (1998) (emphasis omitted).

26. William C. Root, Note, “*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, 423-25 (2002).

27. *Id.* at 449-50.

28. Rebecca J. Huss, *Valuing Man’s and Woman’s Best Friend: The Moral and Legal Status of Companion Animals*, 86 MARQ. L. REV. 47, 52 (2002).

29. *Id.*

limited.³⁰ However, given the relatively low value of such claims, it is not surprising that most disputes over pets are resolved without judicial intervention or recourse to the appellate courts.³¹

Despite the dearth of precedent in this area, three recent cases do address the status of dogs in Alaska. In the most recent, *Juelfs v. Gough*,³² parties to a divorce were fighting over canine visitation.³³ The wife in the dispute argued that “a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property.”³⁴ The trial court ultimately held that the original order, which awarded legal and physical custody of the dog to the husband and allowed the wife reasonable visitation rights, depended on the parties’ ability to cooperate.³⁵ Because the parties could not cooperate with regard to visitation, the order granting visitation rights to the wife had to be abandoned, leaving sole custody with the husband.³⁶

The other two reported Alaska cases addressing the legal status of pets are *Richardson v. Fairbanks North Star Borough*³⁷ and *Mitchell v. Heinrichs*.³⁸ Together, these cases establish that pets “have legal status as items of personal property.”³⁹ As personal property, the Alaska Supreme Court held that the damage award in cases where a dog has been wrongfully killed should ordinarily be limited to the animal’s market value at the time of death.⁴⁰ In addition, the *Richardson* court recognized a cause of action for “intentional infliction of emotional distress for the intentional or reckless killing of a pet animal in an appropriate case.”⁴¹ The negligent destruction of a dog by an animal shelter, however, does not rise to a level that would allow for emotional distress damages.⁴²

In *Mitchell*, the parties asked the Alaska Supreme Court to loosen the requirements for recovering sentimental value for the loss of a dog.⁴³ Here, the supreme court had to reconcile its ruling

30. ALASKA STAT. § 44.09.085 (Michie 2002).

31. See Squires-Lee, *supra* note 21, at 1076-78 (noting that even where non-economic damages were allowed, the maximum reported recovery was \$2,500).

32. 41 P.3d 593 (Alaska 2002).

33. *Id.* at 594.

34. *Id.* (citing *Morgan v. Kroupa*, 702 A.2d 630, 633 (Vt. 1997)).

35. *Id.* at 597.

36. *Id.*

37. 705 P.2d 454 (Alaska 1985).

38. 27 P.3d 309 (Alaska 2001).

39. *Richardson*, 705 P.2d at 456.

40. *Id.* (citation omitted).

41. *Id.* at 456-57.

42. *Id.*

43. 27 P.3d at 312.

in *Richardson with Landers v. Municipality of Anchorage*,⁴⁴ which recognized that for destroyed property with no real market value, the trial court should consider the value to the owner of the item rather than fair market value.⁴⁵ The supreme court reconciled these cases by reasoning that the trial court could consider the actual value of the pet to its owner, rather than just the fair market value.⁴⁶

However, the intrinsic value of a pet is still founded on property law principles. Therefore, owners could, in some cases, recover the value of training, care, and other out-of-pocket costs expended on the lost pet.⁴⁷ The supreme court concluded its opinion by stating that a plaintiff “may not recover damages for her dog’s sentimental value as a component of actual value to her as the dog’s owner.”⁴⁸

Under these decisions, one would believe that the statutes relating to lost property should apply to lost domestic pets. However, Alaska Statutes section 12.36.045(a), which requires the finder of lost property to deliver the property to a law enforcement agency and mandates that the finder wait for at least a year before the finder can claim the property as his or her own, simply cannot apply to lost pets.⁴⁹ Even if law enforcement agencies had sufficient funding, manpower, and infrastructure to care for domestic animals, the one-year waiting period would be considered by many to be inhumane. Some municipal animal shelters are permitted to

44. 915 P.2d 614 (Alaska 1996).

45. *Richardson*, 705 P.2d at 313 (citing *Landers*, 915 P.2d at 618).

46. *Id.* at 313.

47. *Id.* at 313-14. The *Richardson* court stated that in determining the actual value to the owner, it is reasonable to take into account the services provided by the dog or account for zero market value. Where, as here, there may not be any fair market value for an adult dog, the “value to the owner may be based on such things as the cost of replacement, original cost, and cost to reproduce.” Thus, an owner may seek reasonable replacement costs – including such items as the cost of purchasing a puppy of the same breed, the cost of immunization, the cost of neutering the pet, and the cost of comparable training. Or an owner may seek to recover the original cost of the dog, including the purchase price and, again, such investments as immunization, neutering, and training. Moreover, as some courts have recognized, it may be appropriate to consider the breeding potential of the animal, and whether the dog was purchased for the purpose of breeding with other purebreds and selling the puppies.

Id.

48. *Id.* at 314.

49. ALASKA STAT. § 12.36.045(a) (Michie 2002).

offer unidentified animals for adoption after seventy-two hours and may offer identified animals after 120 hours.⁵⁰ The vacuum left by the impracticality of applying Alaska Statutes section 12.36.045(a) to lost dogs requires Alaska to examine the recent decisions of other jurisdictions, which find that pets may be personal property but that not all personal property law can apply to pets.

V. JURISDICTIONS ADDRESSING THE DISCOVERABILITY OF ADOPTIVE FAMILY IDENTITIES

Two jurisdictions have published cases addressing the discoverability of adoptive family identities in pet adoption cases. Georgia was the first jurisdiction to address the issue. In *Johnston v. Atlanta Humane Society*,⁵¹ a Keeshond dog wandered from his owner's property and was found at a shopping center.⁵² The dog had neither an identification tag nor a vaccination tag.⁵³ Consequently, the dog was delivered to the Atlanta Humane Society, which ran an advertisement in the local paper to try to find the original owner.⁵⁴ After nine days, the dog was placed for adoption.⁵⁵ After the dog had been adopted, the original owner learned that a dog similar to the one he had lost had been adopted from the pound.⁵⁶ He filed a complaint against the Humane Society to recover the dog, or its value, and to force the Humane Society to release the identity of the adopter.⁵⁷ The trial court granted summary judgment to the Humane Society and denied discovery of the identity of the adopter based on public policy.⁵⁸

The owner argued that he had title to the dog and that the Humane Society could not transfer title to the new owner without first giving him notice of the intent to transfer the property and affording him an opportunity to protect his title to the dog.⁵⁹ The former owner also argued that he was entitled as a matter of right to depose the adoptive owner as to the circumstances of the transfer of his property.⁶⁰

50. See, e.g., FAIRBANKS NORTH STAR BOROUGH CODE OF ORDINANCES § 6.12.010(A) (2003).

51. 326 S.E.2d 585 (Ga. Ct. App. 1985).

52. *Id.* at 586.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 586-87.

60. *Id.* at 587.

The Court of Appeals of Georgia affirmed the trial court's grant of summary judgment in favor of the Humane Society and its denial of discovery of the adoptive owner's identity.⁶¹ The court held that the power to regulate the keeping of dogs and to enforce regulations by "fines, forfeitures and penalties" was a proper exercise of the police power.⁶² The court reasoned that "to allow the original possessor the right to learn the identity of the adopter by depositing the Humane Society would defeat the intent of the framers of the ordinance."⁶³ Further, "to allow an earlier owner to learn the identity of an adopter could lead to harassment and limit or curtail adoption so as to lead to the less desirable alternative of destruction [of animals]."⁶⁴

In *Lamare v. North Country Animal League*,⁶⁵ the Vermont Supreme Court, based on facts more sympathetic than those in *Johnston*, reached the same result. In *Lamare*, the plaintiffs' dog broke free from its tether.⁶⁶ Although the dog was licensed, she was not wearing her tags.⁶⁷ When the dog failed to return, the plaintiffs contacted their neighbors, friends, and family in search of their pet.⁶⁸ The plaintiffs continued searching for a month to no avail.⁶⁹

Several hours after her escape, the dog was found and turned over to the town animal control officer.⁷⁰ As required by ordinance, the officer placed notices in the village store, post office, and town clerk's office.⁷¹ After holding the dog for nine days without any response to the notices, the officer turned the dog over to the North Country Animal League.⁷²

A month later, the plaintiffs learned that their dog had been placed with the League.⁷³ They contacted the League twice, the second time learning that the dog was still in the League's custody.⁷⁴ The plaintiffs asked that the dog be returned, provided

61. *Id.* at 587-88.

62. *Id.* at 587.

63. *Id.* at 587-88.

64. *Id.* at 588.

65. 743 A.2d 598 (Vt. 1999).

66. *Id.* at 599.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

proof of ownership, and offered to pay all boarding costs.⁷⁵ When told that the only way to gain possession was to fill out an adoption application, the plaintiffs complied.⁷⁶ After waiting two days for the League to call their references, plaintiffs called to inquire about the status of their application.⁷⁷ They were told that their application had been denied because it was not in the dog's best interest to be returned to them.⁷⁸ They later discovered that the dog had been adopted prior to their application.⁷⁹

The plaintiffs sued the League and sought to discover the identity of the adoptive owners.⁸⁰ The trial court denied the plaintiffs' motion to compel disclosure of the owners, deciding that: the animal control officer had complied with the town's dog ordinance; the plaintiffs failed to conscientiously search for the dog; and that when the animal control officer gave the dog to the League, the League became the owner of the dog.⁸¹ The court cited *Morgan v. Kroupa*⁸² in support of its conclusion, which held that when the finder of a lost pet makes a reasonable effort to locate the owner and cares for the animal over a reasonably long period of time, the finder assumes possession of the dog.⁸³

Again citing *Morgan*, the court launched into a detailed discussion of the important public interests in regulating stray dogs and other domestic animals.⁸⁴ The court noted that a stray dog requires care and shelter, could pose hazards to traffic, spread rabies, and exacerbate animal overpopulation if left unneutered, and that due to the inherently social nature of dogs, long-term residence in a shelter is not in the public's or the animal's best interests.⁸⁵ The court ultimately ruled in favor of the defendants and upheld their right to ownership of the dog.⁸⁶

Before concluding, however, the court addressed the plaintiffs' claim that the trial court erred in denying their motion to compel disclosure of the adoptive family's identity. The court held that the plaintiff had made no showing that the adoptive family's identity

75. *Id.*

76. *Id.*

77. *Id.* at 599-600.

78. *Id.* at 600.

79. *Id.*

80. *Id.*

81. *Id.*

82. 702 A.2d 630 (Vt. 1997).

83. *Id.* at 633.

84. *Lamare*, 743 A.2d at 603.

85. *Id.*

86. *Id.*

was relevant to the trial court or the appeal.⁸⁷ The court added, citing *Johnston*, that the disclosure of the identity of the adopter “could lead to harassment and limit or curtail adoption so as to lead to the less desirable alternative of destruction.”⁸⁸ Finally, the justices admonished the League for being insensitive but decided that this did not affect the merits of the plaintiffs’ claim.⁸⁹

VI. WALL V. GYURICKSKO

The only Alaska case of which the authors are aware addressing the discoverability of adoptive families of pets is *Wall v. Gyuricsko*,⁹⁰ an Alaska Superior Court case decided by the Fourth Judicial District. In *Wall*, the plaintiffs lost their male Golden Retriever right before Christmas.⁹¹ The plaintiffs made some minimal efforts to locate the dog and then left for vacation without finding it.⁹² Upon returning three weeks later, the plaintiffs learned about an organization called Golden Retriever Rescue.⁹³ They were told that two male Golden Retrievers matching the description of the plaintiffs’ dog had been recovered by Golden Retriever Rescue during late December, but that both had been adopted.⁹⁴ The private adoption agency refused to disclose the names of the adoptive families.⁹⁵ The plaintiffs proceeded to sue for intentional infliction of emotional distress, punitive damages, and for replevin of their dog.⁹⁶

The plaintiffs sought the names of the adoptive families through a motion for injunctive relief and through discovery.⁹⁷ The trial court looked to *Lamare* and *Johnston*, pointing out that the Vermont court found that the adoptive families’ identities were irrelevant, and that both the Vermont and the Georgia court had recognized that the disclosure of the identity of the adopter “could lead to harassment and limit or curtail adoption so as to lead to the less desirable alternative of destruction.”⁹⁸ Accordingly, the court

87. *Id.* at 604.

88. *Id.*

89. *Id.* at 604-605 (citation omitted).

90. *Wall v. Gyuricsko*, No. 4FA-01-687 CI, Summary Decision and Order (Sup. Ct. 4th Jud. Dist. Nov. 5, 2001).

91. *Id.* at 2.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.* at 3.

98. *Id.* at 4-5.

denied the plaintiffs' motion to compel the disclosure of the adopters' identity.⁹⁹

VII. CONCLUSION

The status of companion animals is in a state of evolution. The common law recognizes that companion animals cannot be adequately characterized as mere property, nor do they have the same status as human companions. While the original owners often would like the animals to be treated as property so that they can recover their pets, shelters and rescue organizations cannot keep animals forever. Such an approach is not in the best interests of the public and would not be humane to the animals.

To promote public health, safety, and humanity toward animals, shelters and rescue organizations continually seek to place animals with adoptive families. With the exception of feral strays, all of the animals placed for adoption are technically "lost property." However, treating the animals as lost property under existing Alaska statutes would lead to a cumbersome, and ultimately unworkable, system. Euthanasia would be left as the only reasonable alternative.

To promote the laudable goals of adopting lost, unwanted, or neglected animals and reducing euthanasia rates, the courts must protect adoptive families from the harassment of discovery and suit by putative former owners. Any other approach could lead to the collapse of the animal adoption infrastructure and the unnecessary destruction of animals.

The cases cited above discuss some of the prerequisites for applying the privilege, including allowing a limited amount of time to pass before adopting out the animals, advertising for the previous owner, and difficulty in finding the original owner because of lack of identification on the animal. It is acknowledged that common law privileges are rare, but they also provide the only means available to reassure adoptive families that their act of charity and kindness will not be rewarded with a civil complaint.

Alaska should formally adopt the privilege established in *Wall v. Gyuricsko* to immunize animal shelters and rescue organizations from revealing the information about adoptive families to the pet's former owners. Such a privilege would promote the efforts of rescue organizations and shelters in trying to find adoptive families for lost or abandoned animals. Although broadening common law

99. *Id.* at 5. The Court did allow the plaintiffs to inspect the dogs in question to see if one of them was their dog. *Id.* at 12.

privileges does not comport with Alaska Rule of Evidence 501, this evidentiary expansion is permissible under *Allred*.