

CHRISTINE M. EVANS, Plaintiff, v. GORDON P. BRAUN, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action — Law, No. 2010–102

Domestic Relations; Protection from Abuse; Intimate Partners; Dating Relationship; Emotional or Private Concerns

1. The purpose of the PFAA is to protect victims of domestic abuse, its provisions allowing the Court to respond quickly and flexibly to advance warnings of abuse. The goal is not punishment, but advance prevention of physical and sexual abuse.
2. Under 23 Pa. C.S.A. §6108(d), with an appropriate hearing, a member of the protected class who has been subjected to abuse under the Act is entitled to a Protection from Abuse (PFA) Order granting them protection for a period suitable to the circumstances of the case, up to thirty-six (36) months.
3. The PFA Act is a domestic relations statute, governing only those persons with a domestic, familial or romantic relationship. In trade for the broad remedies the Act has to offer, to invoke its protection, an individual must have standing conferred by a listed relationship. If the parties do not fall within the relationships covered by the Act, the court is unable to grant relief.
4. The Act is clearly not limited to relationships that are sexual, nor only to those which involve a shared household.
5. A “dating relationship” is sufficient to satisfy the relationship requirement under the Act.
6. The Superior Court has construed “intimate partners” to mean those who mutually chose to enter relationships that are personal, who chose to have intimate or sexual relationships.
7. Plaintiff and Defendant went on two official dates, and had been to one another’s home. The Court heard testimony as to conflicts which had occurred between the two as to the level of commitment in their relationship, and the disagreements they had over how quickly their relationship would progress. The Plaintiff described the Defendant’s actions and attitudes with detail that only comes from a close personal relationship. It was common knowledge at their place of employ that the two were engaged in a dating relationship. The disagreement that precipitated Defendant’s threat, and the discussion in the parking lot at Dilly’s, was clearly one between two individuals who have a dating relationship.
8. There was both an obvious emotional bond between the parties, as well as an election by both individuals to have some measure of personal interaction. The interaction between Plaintiff and Defendant did involve emotional or private concerns not unlike those found in family settings, though not as extensive or intense. The interface concerning personal issues and concerns between the two demonstrate they clearly had a chosen romantic relationship.

Appearances:

Rebecca S. Dempsey, Esquire, *Counsel for Plaintiff*

Frank C. Sluzis, Esquire, *Counsel for Plaintiff*

Statement of the Case

The Plaintiff and the Defendant work together for a community health care provider. After meeting at work, the two began a stormy dating relationship during the summer of 2009. After an agreeable date, however, Defendant came to Plaintiff's home uninvited, causing her to become upset and ask him for space. The two later reconciled at some point prior to December, 2009. Both parties agree that on December 5, 2009, Plaintiff and Defendant attended a play in Harrisburg, Pennsylvania. On the way to the performance, the Defendant informed the Plaintiff he was carrying a gun. Later, when the two returned to his home, the Defendant removed the gun from his waistband, handed it to the Plaintiff, remarked on its weight and told her it could put a very big hole in her. The Plaintiff testified she did not know whether the Defendant was attempting to impress her or intimidate her with the statement, and kept her concerns to herself.

On December 17, 2009, the parties were in the midst of a quarrel. Plaintiff, attending a Christmas party organized by women who were friendly to one another at work, asked Defendant to come over to the restaurant-bar, Dilly's, to make amends. When the Defendant arrived, Plaintiff was standing outside smoking a cigarette with a particularly close friend. The friend went inside, knowing the two were fighting and wishing to allow them to speak freely. After the Defendant became increasingly short tempered, sarcastic, and aggressive, the Plaintiff turned to go back into the establishment. The Defendant called her name, and the Plaintiff halted and turned around to look at him. The Defendant then proceeded to pull back his jacket and expose his Colt forty-five semi-automatic pistol, held in his waistband. He told the Plaintiff to remember he still had the gun, and he was not afraid to use it.

Plaintiff fled inside, feeling threatened, intimidated, and scared of the Defendant, given his previous comments regarding the gun. The Plaintiff testified that Defendant has a harsh temper, and she was afraid of him. Although she told the table of women only that the two had fought, Plaintiff reported the entire incident confidentially to her close friend soon thereafter that same evening, becoming hysterical upon relaying Defendant's threatening behavior with the pistol. The next day, the Plaintiff reported the incident to her employer, impelled by fear due to their shared workplace. An employee assistance counselor advised her to inform the police, who in turn referred her to the office of Women in Need (WIN). The office responded by scheduling her for the next available appointment. After the appointment, WIN filed a Protection from Abuse action on the Plaintiff's behalf, with a temporary order of protection issued ex parte the same date, Friday, January 8, 2010. Hearing was set for January 14, 2010, but was continued by Order dated January 12, 2010, at the request of Defendant. Hearing was held Thursday, January 21, 2010.

Following the Plaintiff's case in chief, the Defendant moved for a directed verdict. The Court denied the motion, and Defendant presented his case. Following the conclusion of argument by counsel, the Court issued a Final Protection from Abuse Order. As did the temporary order, the final Order required that the Defendant surrender his handgun as well as other firearms kept in his home. On February 16, 2010, the Court received the Defendant's Notice of Appeal from the final Protection Order, Order Accessing Costs, and the Attachment requiring surrender of firearms. Being uncertain of the basis of Defendant's appeal, the Court by Order dated February 17, 2010, directed the filing of a Concise Statement of Matters Complained of on Appeal. The Defendant having timely filed such statement on March 8, 2010, the Court will now address the issues raised in the Statement.

On appeal, Defendant raises a single issue for review, in two procedural settings. First, Defendant contends the Plaintiff failed to present any evidence in her case in chief regarding her membership in a class entitled to seek protection under the Protection from Abuse Act [hereinafter PFAA or Act], 23 Pa. C.S.A. §6101 (2010) et seq., such that the Court erred as a matter of law in failing to grant his motion for directed verdict. Second, Defendant claims the Court erred in granting the Plaintiff's petition for protection, arguing she failed to carry her burden to demonstrate her membership in a protected class entitled to relief under the Act.

Because the Plaintiff presented sufficient evidence in her case in chief to support the denial of a directed verdict, Defendant's first claim of error is without merit. Further, the Plaintiff did present sufficient evidence for the Court to find all the necessary factors under the Act by a preponderance of the evidence, including her standing to obtain relief. As a result, the Protection from Abuse Order should stand, and the Defendant's appeal should be denied.

Discussion

I. Standard of Review

In a Protection from Abuse action, our appellate courts review the trial court's legal conclusions for an error of law or abuse of discretion. See *Ferri v. Ferri*, 854 A.2d 600, 602 (Pa. Super Ct. 2002). In reviewing the denial of a directed verdict, the Superior Court asks only whether an abuse of discretion or error of law controlled the outcome of the case,

as such a motion may be granted only where the facts are clear and there is no room for doubt. See *Faherty v. Gracias*, 874 A.2d 1239, 1246 (Pa. Super. Ct. 2005). The Supreme Court describes discretion as “the exercise of judgment, wisdom and skills so as to reach a dispassionate conclusion, within the framework of the law.” *Custer v. Cochran*, 933 A.2d 1050, 1054 (Pa. Super. Ct. 2007) (citing *Commonwealth v. Widmer*, 744 A.2d 745, 753 (Pa. 2000)). Discretion is not exercised “for the purpose of giving effect to the will of the judge,” but rather “on the foundation of reason, as opposed to prejudice, personal motivation, caprice or arbitrary actions.” *Id.* Discretion is abused where the judgment of the trial court is “manifestly unreasonable or where the law is not applied or where the record shows the action is a result of partiality, prejudice, bias or ill will.” *Id.* Where a trial court errs in its application of the law, an appellate court will correct the error, as the scope of review on questions of law is plenary. See *Holderman v. Hagner*, 760 A.2d 1189, 1192 (Pa. Super. Ct. 2000).

Where an appellant claims the evidence presented by the Plaintiff is insufficient to support the entry of a protection order, the standard of review is well established. As the Superior Court has stated:

When a claim is presented on appeal that the evidence was not sufficient to support an order of protection from abuse, we review the evidence in the light most favorable to the petitioner and granting her the benefit of all reasonable inferences, determine whether the evidence was sufficient to sustain the trial court’s conclusion by a preponderance of the evidence.

Ferri, 854 A.2d at 602. As to matters of credibility, an appellate court will defer to the determinations of the trial judge, before whom the witnesses appeared and testified. See *Fonner v. Fonner*, 731 A.2d 160, 162 (Pa. Super Ct. 1999).

II. Persons Eligible to Obtain Relief under the Protection from Abuse Act

The purpose of the PFAA is to protect victims of domestic abuse, its provisions allowing the Court to “respond quickly and flexibly to advance warnings of abuse.” *Holderman v. Hagner*, 760 A.2d 1189, 1194 (Pa. Super. Ct. 2000) (citing *Eichenlaub v. Eichenlaub*, 490 A.2d 918, 922 (Pa. Super. Ct. 1985)). A petition may be brought seeking protection by either alleging abuse, or to bring about the cessation of abuse. See 23 Pa. C.S.A. §§6106(a), 6108(a) (2010). With an appropriate hearing, a member of the protected class who has been subjected to abuse under the Act is entitled to a Protection from Abuse (PFA) Order granting them protection for a period suitable to the circumstances of the case, up to thirty-six (36) months. See 23 Pa. C.S.A. §6108(d). The goal is not punishment, but “advance prevention of physical and sexual abuse.” *Snyder v. Snyder*, 629 A.2d 977, 981 (Pa. Super. 1993).

However, the Act is a domestic relations statute, and it governs only those persons with a “domestic, familial and/or romantic relationship.” See *Scott v. Shay*, 928 A.2d 312, 315-16 (Pa. Super. Ct. 2007). Criminal law provides remedies for those who are not connected in some intimate manner, but was historically inadequate to prevent present and future acts of violence in such a personal setting. See *id.* In trade for the broad remedies the Act has to offer, to invoke its protection, an individual must have standing conferred by a listed relationship. See 23 Pa. C.S.A. §6102(a). The determination of “whether certain parties fall within the relationships covered by the PFA Act affects only the court’s ability to grant relief, not its jurisdiction under the Act.” *Custer v. Cochran*, 933 A.2d 1050, 1054 n. 4 (Pa. Super. Ct. 2007).

The PFA Act affords protection for several classes of individuals, enumerated as part of the definition of the term “abuse” in the statute. See 23 Pa. C.S.A. §6102(a). In the instant case, the Court found Plaintiff satisfied the burden of proving herself a member of the protected class of “sexual or intimate partners.” *Id.* Although the legislature did not expound on its definition of this intended class, the Superior Court has provided guidance for courts to consider when determining whether a plaintiff is entitled to protection under this category.

The Act is clearly not limited to relationships that are sexual, nor only to those which involve a shared household. See, e.g., *D.H. v. B.O.*, 734 A.2d 409, 410 (Pa. Super. Ct. 1999) (former roommate and homosexual lover has standing to pursue PFA Order); *Custer*, 933 A.2d at 1055-56 (shared household not required in order to issue PFA Order). According to our appellate courts, “a dating relationship” is sufficient to satisfy the relationship requirement under the Act. *Varnier v. Holley*, 854 A.2d 520, 522 (Pa. Super. Ct. 2004); *R.G. v. T.D.*, 672 A.2d 341, 342 (Pa. Super. Ct. 1996). In *Scott*, the Superior Court construed “intimate partners” to mean those who “mutually chose to enter relationships” that are “personal,” who “chose to have intimate or sexual relationships.” *Scott*, 928 A.2d at 316.

Considering the facts in the light most favorable to the Plaintiff, and accepting as true all the evidence in support of her assertion of eligibility for relief under the Act, the Defendant’s motion for directed verdict was properly denied. See *Faherty v. Gracias*, 874 A.2d 1239, 1246 (Pa. Super. Ct. 2005). Plaintiff’s case consisted of her own testimony, and that of the close friend to whom she first disclosed the incident of abuse. Plaintiff testified that she and the Defendant went on

two official dates, and that he had been to her home and she had been to his. See Transcript of Proceedings in Protection from Abuse Hearing, Thursday, January 21, 2010 [hereinafter T.P.], at 5:11, 8:11-12, 9:13-14. She spoke about the conflicts which had occurred between the two as to the level of commitment in their relationship, and the disagreements they had over how quickly their relationship would progress. See *id.* at 12:15-19. Obviously, the two mutually chose to begin a relationship that was personal and intimate. The disagreement that precipitated Defendant's threat, and the discussion in the parking lot at Dilly's, was clearly one between two individuals who have a dating relationship. See *id.* at 6.

Plaintiff described the Defendant's actions and attitudes with detail that only comes from a close personal relationship. E.g., *id.* at 12; 9-10. The Court, as it stated at the end of the hearing, found the Plaintiff's testimony credible. In addition, according to the testimony of the close friend, Plaintiff and Defendant had suffered from difficulties in communication, and Plaintiff had described these difficulties to her. See *id.* at 26:15-19. It seems to have been common knowledge at their place of employ that the parties were engaged in a dating relationship. See *id.* at 25-26. In addition, the friend testified credibly to Plaintiff revealing in one of their conversations that the Defendant had told the Plaintiff he loved her. See *id.* at 26:20. Given all these pieces of evidence, in the context of the request for a directed verdict, it was far from clear to the Court that the Plaintiff and Defendant were not involved in an intimate relationship. To the contrary, even absent testimony presented by the Defendant, Plaintiff presented sufficient facts from which it was possible to find such a relationship did in fact exist. Based on the testimony of the Plaintiff and her close friend, there was both an "obvious emotional bond" and an election by both individuals to have "some measure of personal interaction." Scott, 928 A.2d at 315. Thus, the motion for directed verdict was properly denied.

The Defendant's case provided further proof of the intimate relationship between him and the Plaintiff. One of the women at the Christmas party was called to testify, relating that after the incident at Dilly's, Plaintiff called her to discuss the Defendant and her poor "relationship choices." See *id.* at 38:11-15. Another woman at the party similarly testified that Plaintiff was upset when discussing the relationship, and had concluded the two were not going to be together. See *id.* at 50:5-8. The Defendant's son stated the two had a dating relationship, and testified Plaintiff had been introduced to him by his father. See *id.* at 56:10-11. Thus, it was clear to the Court that parties had a "bond regarding the private matters of life" sufficient to bring them within the purpose and spirit of domestic relations law. Scott, 928 A.2d at 315.

The testimony from Defendant himself also contradicts his assertion on appeal that he and the Plaintiff did not have an intimate relationship. Defendant stated on direct examination from his attorney that the two dated, and described the formal dates. See *id.* at 61:21; 61:21-62:6, 63:2-7. Although the Court did not find his version of events credible, during the hearing, Defendant testified to his reasons "for wishing to end the relationship." *Id.* at 67:9-23. He described the Plaintiff's fondness for texting, a habit which apparently he disliked, and discussed various texts sent back and forth between them. See *id.* at 69-70. The Defendant, by his own admission, met the Plaintiff's daughter, had been to her home, and discussed their relationship with women friends as well as with his son, asking for advice. See *id.* at 70-71. Thus, the interaction between Plaintiff and Defendant did involve "emotional or private concerns not unlike those found in family settings, albeit not...as extensive or as intense." Scott, 928 A.2d at 315. The "interface concerning personal issues and concerns" between the two demonstrate they clearly had a "chosen romantic relationship." *Id.*

Conclusion

All of the evidence presented, taken together, left the Court free from doubt that Plaintiff and Defendant were involved in an intimate dating relationship sufficient to confer upon Plaintiff standing to seek an order of protection. Indeed, at the hearing, Defendant acknowledged as much on numerous occasions by testifying about their relationship and the private, intimate concerns this mutually agreed upon bond created. Even viewing only the evidence presented in the Plaintiff's case in chief, there was clearly evidence presented to satisfy the burden of proving an intimate partnership sufficient to place the parties within the purview of the Protection from Abuse Act. Taken with the evidence presented by Defendant, the Court was clearly convinced and free from doubt that the parties did have a "sexual or intimate partnership" making the Plaintiff eligible for relief under the Act. As the Defendant's appeal is without merit, the Protection from Abuse Order should stand, and the appeal should be dismissed.

ORDER OF COURT

March 25, 2010, pursuant to Pa. R.A.P. 1931(c), it is hereby ordered that the Prothonotary of Franklin County shall promptly transmit to the Superior Court of Pennsylvania the record in this matter along with the attached Opinion sur Pa. R.A.P. 1925(a) and Order of Court.

