

IN THE COURT OF COMMON PLEAS OF HANCOCK COUNTY, OHIO
Domestic Relations Division

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| TINAMARIE BLOOMFIELD |) | Case Number: 2005-DV-00012 |
| |) | |
| |) | |
| Petitioner |) | Judge Joseph H. Niemeyer |
| |) | Magistrate Karen Elliott |
| vs. |) | |
| |) | |
| MICHAEL STEARNS |) | |
| |) | MOTION CONTRA MOTION TO |
| Respondent |) | DISMISS EX-PARTE ORDER AND |
| |) | PETITION FOR CIVIL PROTECTIVE |
| |) | ORDER |
| |) | |
| |) | LEGAL AID OF WESTERN OHIO, INC. |
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| |) | Tinamarie Bloomfield |

Petitioner Tina Marie Bloomfield moves the Court to deny Respondent's Motion to Dismiss, on grounds that Respondent is not entitled to dismissal as a matter of law.

The reasons in favor of Petitioner's Motion are set forth in the attached Memorandum in Support.

LEGAL AID OF WESTERN OHIO, INC.

R. Edward Marks (0062630)
Linda Gabriele (0064035)

Lisa A. Miller (0075526)

Attorneys for Petitioner Tina Marie Bloomfield

MEMORANDUM IN SUPPORT

I. STATEMENT OF FACTS

Petitioner, Tinamarie Bloomfield, sought a Domestic Violence Civil Protection Order after Respondent Michael Stearns physically threatened her and brandished a handgun near her home. This Court granted Ms. Bloomfield an ex parte protection order on January 10 pursuant to R.C. 3113.31(D).

The Petitioner and Respondent were not married. They cohabitated as intimate partners for approximately two years.

The events leading up to this case began on July 13, 2004, at a home Ms. Bloomfield shared with Mr. Stearns in Findlay. (Petition for Domestic Violence Civil Protection Order (hereinafter Petition), at handwritten addendum, paragraph 3.) On that day, Mr. Stearns

kicked Ms. Bloomfield while she was in the bedroom of the home. When Ms. Bloomfield walked out of the room, Mr. Stearns followed her down the hallway, grabbed her by the hair, pulled her onto a couch, sat on her chest, and tried to strangle her. *Id.* Ms. Bloomfield struggled to escape and ran outside to her car. Mr. Stearns ran after her and ripped a mirror off the car as she drove away. *Id.*

The relationship further deteriorated over the next several months. Then, on January 4, 2005, Mr. Stearns confronted Ms. Bloomfield in the parking lot outside her workplace at a local gym (Petition, at handwritten addendum, para. 2.) When she would not agree to come over to his truck, he cursed at her and spit in her face. When Ms. Bloomfield tried later that day to retrieve her clothes and other personal belongings from the home she had shared with Mr. Stearns, he grabbed her by the hair, forced her to the floor, kicked her, and threw a glass at her, shattering it. He then threw a box containing an ornamental yard rock toward her before allowing her to leave. *Id.*

Four days later, on January 8, Respondent Stearns arrived with two handguns at Ms. Bloomfield's parents' home. (Petition, at handwritten addendum, para.1.) Mr. Stearns knew that Ms. Bloomfield was inside the house. He had telephoned there repeatedly that morning, demanding to speak to her. When Ms. Bloomfield refused to come to the phone, Mr. Stearns appeared at the residence. Ms. Bloomfield's father met Mr. Stearns at the door and tried to persuade him to leave while Ms. Bloomfield hid upstairs with her mother. *Id.*

Mr. Stearns then told Ms. Bloomfield's father that he had a gun and intended to kill himself. *Id.* Ms. Bloomfield's father immediately went to the phone to call police. Mr. Stearns then walked to a nearby barn on the property, with a pistol clearly visible in his hand. *Id.* Ms.

Bloomfield and her parents then observed Mr. Stearns walk back toward the house, gun still in hand. He got into his truck and sped away. Sheriff's deputies pursued and arrested him a short time later. *Id.*

Mr. Stearns does not deny that he committed these acts of domestic violence. Instead, he asks this Court to find that domestic violence protection orders are no longer available to unmarried couples due to the recent enactment of Article XV, Section 11 of the Ohio State Constitution. (Respondent's Motion to Dismiss, at p. 6.) The amendment prohibits recognition of "a legal status for unmarried individuals that intends to approximate the design qualities, significance or effect of marriage." Mr. Stearns asserts that this language requires denial of domestic violence protection orders to unmarried cohabitants. *Id.*

For the reasons that follow, Mr. Stearns has misread the meaning and applicability of the constitutional amendment as applied to R.C. 3113.31. The Civil Protection Order requested by Ms. Bloomfield should be granted.

II. ARGUMENT

A) **ARTICLE XV, SECTION 11 AND R.C. 3113.31 ARE NOT IN CONFLICT AND PETITIONER'S CIVIL PROTECTION ORDER THEREFORE SHOULD NOT BE DISMISSED.**

1. **The Respondent's burden of proof requires him to show there is no reasonable interpretation of ORC 3113.31 compatible with Article XV, Section 11**

Defendant's argument that Article XV, Section 11 of the Ohio Constitution has rendered any portion of R.C. 3113.31 unconstitutional is without merit.

In a 2003 decision, the Third District Court of Appeals affirmed the long-established principle that a party who challenges the constitutionality of a statute has the burden of proving beyond a reasonable doubt that the statute is invalid. *In Re Protest of Brooks* (2003), Ohio App.3d 370, 374-375, 801 N.E.2d 503, citing *State v. Meyer* (1983), 14 Ohio App.3d 69, 470 N.E.2d 156; *State v. Sinito* (1975), 43 Ohio St.2d 98, 330 N.E.2d 896; *United Air Lines v. Porterfield* (1971), 28 Ohio St.2d 97, 276 N.E.2d 629. A statute should not be struck down unless there is no interpretation possible that makes it compatible with a constitutional provision. *Brooks, supra*, at 374-375, citing *Woods v. Telb* (2000), 89 Ohio St.3d 504, 511, 733 N.E.2d 1103.

When reviewing the provisions of R.C. 3113.31, this court should uphold any reasonable construction which would avoid invalidation. *See Brooks, supra; City of Cleveland v. Schill* (2002), 147 Ohio App.3d 239, 769 N.E.2d 907. The court is required to presume that the legislature intended the statute to be constitutional, and that the entire statute is intended to be effective, reasonable and just. R.C. 1.47

R.C. 3113.31 defines eligibility for Civil Protection Orders to include a person “who otherwise has cohabited with the respondent.” R.C. 3113(A)(4). It has been well established that every word contained within a statute should be presumed to have a legal purpose and effect. *Richards v. Market Exch. Bank Co.* (1910), 81 Ohio St. 348, 90 N.E. 1000. The phrase “who otherwise has cohabited with the respondent” in R.C 3113.31(A)(4) should be read as having independent significance, and not superfluous or duplicative of the immediately preceding phrase “a person who is living or has lived with the respondent in a common law marital relationship.”

Respondent's burden therefore is to prove that the phrase "who otherwise has cohabited" has no reasonable meaning in the context of R.C. 3113.31(A)(4) other than as a legal status approximating "the design qualities, significance or effect of marriage." The Respondent has not met this burden, nor can he. There is ample authority to show that cohabitation is a factual description irrelevant to any status or benefits lawfully reserved for married persons. *See, e.g., State v. Williams* (1997), 79 Ohio St.3d 459, 464, 683 N.E.2d 1126; *Lauper v. Harold* (1985), 23 Ohio App.3d 168, 492 N.E.2d 472 (cohabitation for a period three years created no marriage-like rights regarding division of furniture and household goods). For the reasons explained below, this Court has abundant grounds to uphold the required presumption that the statute is not in conflict with Article XV, Section 11.

2. Cohabitation is a factual status which does not disqualify unmarried persons from standing to invoke Ohio's Domestic Violence Laws.

Respondent's argument rests on flawed interpretation of Article XV, Section 11. The amendment by its plain language requires only that the State not recognize a "legal status" approximating marriage for unmarried persons.¹ The amendment is silent and has no applicability to the type of factual relationship between unmarried cohabitants that is defined in R.C. 3113.31.

¹ Article XV, Section 11 states in its entirety: "Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effects of marriage."

Cohabitation in the context of a domestic violence case is a factual determination, and does not create any legally sanctioned relationship for the cohabitants. *See Williams, supra*, 79 Ohio St.3d at 465. The legislature, when enacting R.C. 3113.31, fully understood this difference between parties who have legal status equivalent to marriage and parties who simply have “otherwise cohabitated.”

In 1991, for example, Ohio expressly revoked recognition of common law marriage between cohabitants. R.C. 3105.12(B). This is strong indication that the legislature had no intent to give the phrase “living as a spouse” in R.C. 3113.31 any meaning that would convey or imply marital or quasi-marital rights.

The domestic violence statutes were not intended to create or distinguish legal status between victims and abusers, but to protect a broad group of family or household members from being threatened or physically abused. *Thomas v. Thomas* (1988), 44 Ohio App.3d 6, 7, 540 N.E.2d 745; *State v. Linner* (1996), 77 Ohio Misc.2d 22, 665 N.E.2d 1180. The Ohio Supreme Court in *State v. Williams, supra*, framed its landmark definition of cohabitation by stating that “the essential elements of cohabitation are (1) sharing of familial or financial responsibilities and (2) consortium.” *Williams, supra*, 79 Ohio St.3d at 465. Factors evaluated by the *Williams* Court included the parties’ arrangements for shelter, food, clothing, utilities, and commingled assets. *Id.* Factors cited to support a finding of consortium include mutual respect, fidelity, affection, society, cooperation, solace, comfort, aid of each other, friendship, and conjugal relations. *Id.* Cohabitation, the court said, is a factual determination unique to each case, and must be decided on a case-by-case basis. *Id.*

The *Williams* court further recognized the strong policy considerations which support inclusion of unmarried cohabitants in domestic violence cases:

Domestic violence is an unusual outgrowth of an intimate relationship between a man and a woman. It has certain inherent characteristics which place the victim in a position of being extremely susceptible to violence at any give time and/or place . . . Clearly the General Assembly believed that an assault involving a family or household member deserves further protection than an assault on a stranger. *Williams* at 463.

Respondent has misread *Williams* to imply that cohabitation creates a marriage-like legal status rather than a factual determination. To the contrary, the definition of cohabitation contained in *Williams* shows that Ohio, even after enactment of Article XV, Section 11, may legitimately extend eligibility for domestic violence protection orders to persons living in specified circumstances without also endowing those relationships with any legal status that involves the design, qualities, significance or effects of marriage. The phrase “family or household members” contained in R.C. 3113.31 and its related criminal statute RC 2919.25 encompasses a broad range of persons in factually intimate relationships with the alleged abuser. *See Thomas, supra*, 44 Ohio App.3d at 7. Eligible petitioners include: a parent or a child of the respondent, or another person related by consanguinity or affinity to the respondent (R.C. 3113.31(A)(3)(a)(ii)); a parent or a child of a spouse, person living as a spouse, or former spouse of the respondent, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the respondent (R.C. 3113.31(A)(3)(a)(iii)); or the natural parent of any child of whom the respondent is the other natural parent or is the putative other natural parent (R.C. 3113.31(A)(3)(b)).

R.C. 3113.31 appropriately reflects the unique nature and heightened dangers inherent in domestic violence. *Felton v. Felton* (1997), 79 Ohio St.3d 34; 679 N.E.2d 672. There is no

rational basis to require or imply a marriage-like status between victim and abuser to grant protection orders when one unmarried cohabitant assaults or threatens another. Therefore, no conflict with Article XV, Section 11 exists.

3. Application of ORC 3113.31 to unmarried parties does not create any “design, qualities, significance or effect of marriage.”

Even if Respondent were correct in his assertion that cohabitation conveys some type of legal status, Respondent’s interpretation of Article XV, Section 11 is still inapplicable to this case.

There is no language in the statutory definitions of “family or household” member in R.C. 3113.31 or in the related criminal statute R.C. 2919.25 that creates or extends any right, privilege or quality that would be available by tradition or by statute exclusively to persons who are lawfully married. The legislature has demonstrated time and again that it understands how to unambiguously distinguish such requirements and benefits that are intended for married persons alone.

For example, the legislature has specified that no marriage is lawful in Ohio without the issuance of a license. R.C. 3109.09. Married persons have a statutory mutual obligation of support. R.C. 3103.01. Married persons enjoy privileged communications that may be excluded from evidence. R.C. 2317.02(D). Married persons may inherit from an intestate spouse. R.C. 2105.06. Married persons may elect against the will of a spouse. R.C. 2106.01. Married persons may claim dower rights in the property of a spouse. R.C. 2103.02. Married persons may claim spousal support. R.C. 3103.03. Married persons may claim tax exemptions

for a spouse. R.C. 5747.025. Only married persons are allowed to file a joint tax return. R.C. 5747.08(E).

None of these benefits or effects of marriage are bestowed upon an unmarried cohabitant by granting of a protection order under R.C. 3113.31. The types of legal benefits cited above are statutorily granted only on the basis of the parties' legal status as husband and wife, without regard to factual status such as cohabitation.

In contrast, Domestic Violence Civil Protection orders under ORC 3113.31 are not a benefit limited to married persons. *Thomas, supra*, 44 Ohio App.3d 6. The legal marital status of a domestic violence victim is irrelevant to the compelling government interest in preventing household violence. *Id.*

The courts have an obligation to enforce the legislative intent for protecting victims of domestic violence. *Felton, supra*, 79 Ohio St.3d at 44. Respondent Stearns fundamentally misunderstands the basis on which persons other than married couples are included under ORC 3113.31. This court therefore should find that ORC 3113.31 can be harmoniously interpreted and applied to unmarried cohabitants without violation of Article XV, Section 11.

B) DENIAL OF DOMESTIC VIOLENCE PROTECTION TO UNMARRIED COHABITANTS WOULD VIOLATE THE FEDERAL CONSTITUTION'S GUARANTEE OF EQUAL PROTECTION.

If Respondent's interpretation of Article XV, Section 11 were to prevail under state law, Respondent's motion still must be denied under the Equal Protection clause contained in the Fourteenth Amendment to the United States Constitution. U.S. CONST. amend. XIV, §1.

An amendment to a state constitution cannot deny statutory benefits to an entire class of similarly situated persons without some rational governmental interest to justify the distinction. *Romer v. Evans* (1996), 517 US 620, 116 S. Ct. 1620, 134 L.Ed.2d 855. On this basis, Article XV, Section 11's purpose to preserve and limit traditional forms of legal marriage cannot justify exclusion of unmarried cohabitants from domestic violence protection orders. Such arbitrary exclusion of unmarried persons from domestic violence laws is an arbitrary classification that cannot survive rational basis review. *See Romer, supra*.

R.C. 3113.31 plainly and simply prohibits violent conduct among persons who have a history of close personal or intimate relationship, regardless of whether those circumstances arose by kinship, by marital status, or by personal choice. *See Thomas, supra*, 44 Ohio App.3d 6; *Williams, supra*, 79 Ohio St.3d 459. Domestic violence civil protection orders are not based on any legal status between the parties, but on the factual circumstances of their relationship. *Id.* To follow Respondent's viewpoint, Article XV, Section 11 also would prohibit the state from issuing a protection order to restrain an unmarried father from abusing his child's mother, as parenthood is arguably a more traditional aspect of marriage than cohabitation. This would be an absurd and irrational limitation on the legislature's authority.

Marital status is unrelated to the state's compelling interest to prevent parties in close personal relationships from threatening or harming each other. *See Williams supra*, 79 Ohio St.3d 459, *Felton, supra*, 79 Ohio St.3d 34; *Thomas, supra*, 44 Ohio App.3d 6; *Linner, supra*, 77 Ohio Misc.2d 22. To the extent that any language in Article XV, Section 11 of the Ohio Constitution can be argued to support a different conclusion, this court should find that such interpretation fails rational basis review under the federal Fourteenth Amendment.

CONCLUSION

For the reasons discussed above, the Respondent's argument is factually and legally without merit. Respondent's Motion to Dismiss must be denied.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a copy of the foregoing Motion Contra Motion to Dismiss was served on Bradley Warren, Attorney for Respondent, at 301 E. Main Cross Street, P.O. Box 1086, Findlay, Ohio 45840 by hand delivery and by regular United States mail this _____ day of _____, 2005.

LEGAL AID OF WESTERN OHIO, INC.

R. Edward Marks (0062630)