

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA**

|                                 |   |               |
|---------------------------------|---|---------------|
| KATHERINE DUCK and on behalf of | : |               |
| minor children JONATHON PEDRAZA | : |               |
| and TYLER TURNER,               | : |               |
| Plaintiff                       | : | PFA           |
|                                 | : |               |
| v.                              | : |               |
|                                 | : |               |
| DUWAINE DUCK,                   | : | No. 06-21,469 |
| Defendant                       | : |               |

**OPINION**  
**Issued Pursuant to Pa. R.A.P. 1925(a)**

The plaintiff has appealed this court’s order of November 7, 2006, denying her request for a Protection From Abuse order after a hearing. The court denied the request upon finding the plaintiff did not meet her burden under 23 Pa.C.S.A. §6102. That section defines “Abuse” as one of the following:

- (1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury. . . .
- (2) Placing another in reasonable fear of imminent serious bodily injury.
- (3) The infliction of false imprisonment . . . .
- (4) Physically or sexually abusing minor children . . . .
- (5) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury.

The evidence presented at trial did not rise to the level of establishing any of the above. Although the plaintiff testified at length of all manner of horrific abuse perpetuated upon her by the defendant, the court did not find her testimony to be credible. The testimony of Teresa Bartholomew, one of the plaintiff’s witnesses, was highly unbelievable. Ms. Bartholomew, who was the formerly the plaintiff’s arch enemy,

appears to be assisting the plaintiff in her case against the man who is now their common enemy, and was clearly being untruthful.<sup>1</sup>

The court found the defendant to be credible. Although he admitted to some physical altercations with the plaintiff, none occurred within the past year except an incident where the plaintiff bit his fist. More importantly, all the incidents were caused by the plaintiff's excessive drinking. While drunk, the plaintiff would fly into rages during which she would sometimes attack the defendant, coming at him with knives, kicking him, and throwing things. The defendant would sometimes strike back to defend himself. On at least one occasion, the plaintiff's son Jonathan Pedraza was injured by the plaintiff when he attempted to pull her off of the defendant, whom she was attacking. At other times, the defendant would physically restrain the plaintiff to stop her from destroying the household property or hurting herself, which she tried to do on numerous occasions. It is noted the defendant called the police during some of these disputes and ironically, the local police advised the defendant to obtain a PFA against the plaintiff.

The credible evidence clearly established the plaintiff was the aggressor in physical altercations between the two parties, and the aggression was due to her alcohol abuse. There was no credible evidence to suggest the plaintiff was in reasonable fear of suffering bodily injury from the defendant, nor that he falsely imprisoned her, nor that he attempted to cause her bodily injury except in self-defense, nor that he knowingly or recklessly caused her bodily injury except in self-defense. In fact, the filing of the PFA suspiciously coincided with the parties' dispute over who should be the one to leave the residence, and with the plaintiff's anger over an alleged girlfriend of the defendant.

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<sup>1</sup> On December 9, 2004 and December 10, 2004, this court presided over a custody trial between Mr. Duck and Ms. Bartholomew, when Mrs. Duck fully supported Mr. Duck. The court had two full days to observe the demeanor and credibility of the parties at that time.

Regarding threats, the defendant admitted that both he and the plaintiff frequently wished the other person dead during their heated disputes. However, the court does believe the plaintiff took these threats seriously, any more than the defendant took seriously the threats the plaintiff made to him. In fact, the plaintiff had no reason to fear the defendant, as she was the physical aggressor. This matter should be resolved in divorce proceedings rather than a PFA.

Regarding the plaintiff's children, there was no credible evidence the defendant abused either child, although some of the discipline he imposed was physical. Jonathan Pedraza testified he was not afraid of the defendant, because he is not an abusive sort of person. There was an incident when the defendant reached for Jonathan to take him into the house when he and his brother were fighting; Jonathan started falling back, and the defendant grabbed his throat. However, the court is convinced that action does not rise to the level of abuse, as no injury was caused and the defendant did not intend to injure Jonathan.

Date: \_\_\_\_\_ BY THE COURT,

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Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk  
Hon. Richard A. Richard A. Gray, J.  
Bradley Hillman, Esq.  
Christian Lovecchio, Esq.  
Gary Weber, Esq.