

MTK., Plaintiff vs. AAS, Defendant	: IN THE COURT OF COMMON PLEAS OF : LYCOMING COUNTY, PENNSYLVANIA : : NO. 08-20, 784 : : : 1925(a) OPINION
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Date: November 21, 2008

**OPINION IN SUPPORT OF THE ORDER OF JUNE 23, 2008 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

The Defendant, AAS, has filed an appeal of this Court’s entry of a final Protection From Abuse Order against her in favor of the Plaintiff, MTK., which was entered on June 27, 2008 following an evidentiary hearing. The Court found from the evidence presented at the hearing that Ms. S had thrown a glass candlestick at Mr. K with such force as to cause a hole to be made in the wall of her apartment. This incident occurred during an altercation which had arisen when Ms. S was hosting Mr. K in her apartment for his birthday celebration and after both had imbibed alcohol. Ms. S’s throwing of the glass candlestick at Mr. K constituted an attempt to intentionally, knowingly, or recklessly cause bodily injury to him and was an act of abuse under the provisions of 23 Pa.C.S. § 6102(a) (1), “abuse.” Based upon this act, particularly when coupled with all the surrounding circumstances involving the altercation, the Court found that Mr. K was entitled to the benefit of a Protection From Abuse order.

STATEMENTS OF ISSUES INVOLVED ON APPEAL

The Concise Statement of Issues on Appeal filed by Ms. S on July 16, 2008 pursuant to Pa.R.A.P. 1925(b) states the following:

“a. That the trial court erred in granting a Protection From Abuse against Appellant as Plaintiff offered no testimony supporting a finding that Appellant had previously abused him, that he required

any protection from immediate and present danger of abuse by Appellant or that he required any type of protection from Appellant thus disregarding the purpose of a Protection From Abuse.”

FACTS AND PROCEDURAL HISTORY

Mr. K filed a Petition seeking a Protection From Abuse order against Ms. S on June 13, 2008 asserting, among other things, that on May 19, 2008 at approximately 2:30 p.m. at 803D Sheridan Street (Williamsport, Pennsylvania) he had suffered an act of abuse consisting of, “bruised arm, pushed into t.v., large glass candle thrown at me” (paragraph 13 of petition filed 6/13/08). He also asserted that there had been prior incidents where Ms. S had engaged in abusive acts specifically, “hitting, punching, clawing, verbally threaten me, assaulted.” *Id.* at paragraph 14. On June 13, 2008, Mr. K received a temporary protection from abuse order against Ms. S after appearing before the Honorable Richard A. Gray at an *ex parte* hearing. The Protection From Abuse Petition and Temporary Order was served upon Ms. S by the Sheriff of Lycoming County on June 17, 2008. (See Sheriff’s return filed July 1, 2008).

On June 18, 2008, to case number 08-20,826, Ms. S filed a Protection From Abuse Petition against Mr. K specifically asserting that on May 19, 2008, at her apartment, Mr. K committed acts of abuse against her when she refused to go drinking with him for his birthday. See copy of Petition attached hereto as Appendix A. Ms. S’s assertion included that Mr. K had picked up a floor lamp and smashed it against the wall putting holes in the wall, thrown a laptop computer against the wall, pushed her television into the wall, and thrown Ms. S into the television stand injuring Ms. S’s back. *Id.* at paragraph 15. In her petition, Ms. S also asserted that on May 16, 2008 another incident had occurred later at her apartment after Mr. K had broken into her apartment when Ms. S was “in bed” and that during that later incident he had

broken her cell phone and her laptop computer and had slapped her face several times. *Id.* at paragraph 15.

Both petitions were joined for an evidentiary hearing held before this Judge on June 27, 2008. At the hearing, Ms. S was represented by Nels J. Taber, Esquire. Mr. K appeared without counsel and represented himself during the proceedings. This Court, at the conclusion of the hearing, entered orders granting Ms. S a Final Protection From Abuse order against Mr. K and also granting Mr. K a Final Protection From Abuse order against Ms. S. It is from this latter order that Ms. S now appeals.

This Court rendered its decision on the record at the conclusion of the hearing, and although this Judge did not render a detailed statement of findings of fact, I did state a finding that Ms. S had thrown a candle at Mr. K during an argument at her apartment after Ms. S had become outraged during the birthday celebration.

This Court found the testimony of both Ms. S and Mr. K lacking in believability as to many aspects. N.T., 6/27/2008, p. 5-9. The factual determinations this Court made, although not articulated, supported the credibility of Mr. K leading to the finding of the salient fact that Ms. S had thrown a glass candle at him with sufficient force to put holes in her apartment during an argument during which Ms. S had become outraged after both had been drinking alcohol. The testimony did establish the additional facts, which we now set forth.

Ms. S is now 26 years of age and Mr. K is now 27 years of age. (See Petition filed 6/13/08, paragraph 7 and Appendix A, paragraph 7). They have had an ongoing relationship of at least being friends and companions since age 16 which included at one point the exchange of diamond engagement rings. See, N.T., 6/27/2008, pp. 35, 41. Ms. S and Mr. K were current or

former sexual intimate partners with each other at the time each filed their respective Protection From Abuse Petitions on June 13, 2008 and June 18, 2008. (See Petition filed 6/13/2008 and Appendix A). In October 2007, Ms. S had obtained another Protection From Abuse order against Mr. K, following which they resumed a relationship and the resumption of the relationship resulted in her withdrawal of the prior PFA sometime prior to the May 2008 incidents. N.T., 6/27/2008, pp. 39-42.

On May 16, 2008, in the evening, Mr. K went to Ms. S's apartment. *Id.* at 23. Ms. S testified the parties had been in a "dating" relationship in which "things were fine up until May 16th." *Ibid.* On that evening, an argument ensued between the parties during which Mr. K became violent, slapped Ms. S and broke her cell phone and laptop computer. *Id.* at 23. Subsequently, the parties through text messaging arranged to get together at Ms. S's apartment during the afternoon of May 19, 2008 to celebrate Mr. K's birthday, at which time Mr. K and his daughter went to the apartment. *Id.* at 24. Mr. K and his daughter left that afternoon and he returned in the evening for the purposes of celebrating his birthday, bringing beer and gin with him; the parties also shared food and ice cream cake and both drank alcoholic beverages. *Id.* at 44, 47. Again, an argument broke out between the two, apparently after some disclosure by Mr. K to Ms. S of him having a communication with another female friend; during this confrontation, Ms. S went into a rage and through a large glass candle at Mr. K which smashed into the wall. *Id.* at 44. During this argument, Mr. K had also picked up a floor lamp of Ms. S's, smashed it into the wall, pushed over her television, and pushed Ms. S into either the television stand or a wall. *Id.* at 26, 44, 45. Mr. K left the apartment at about the time that Ms.

S decided to call the police. *Id.* at 26, 47. When Ms. S called the police she stayed on the telephone with them until an officer arrived, which took a good half hour. *Id.* at 26.

Officer Dockey of the Williamsport Police Department arrived at Ms. S's apartment around 11:00 p.m. *Id.* at 13. When Officer Dockey arrived he was able to locate Ms. S's apartment in the apartment complex because he could hear her screaming. *Ibid.* Upon entering her apartment he observed the apartment was in disarray with a broken laptop and a broken cell phone on the floor, a broken floor lamp, the television had been pushed over and there were holes in the wall. *Id.* at 14. Ms. S advised Officer Dockey that Mr. K and his daughter had been to her apartment for a birthday party with some cake and ice cream after which they had left and between 10:00 and 10:30 p.m. she had been asleep in the apartment and was awakened by Mr. K coming into the apartment in an agitated state throwing items around. *Id.* at 16. She had indicated to Officer Dockey that Mr. K broke the computer and the lamp at that time. *Id.* at 16, 17. A photograph, Exhibit 5, depicted the hole in the wall, Exhibit 6 and 7, other photographs of the television set, and photograph Exhibit 4, the floor lamp. *Id.* at 14-16. Officer Dockey had also observed the cell phone on the floor that Ms. S had implied had been broken during the incident. *Id.* at 14.

After obtaining an arrest warrant, Officer Dockey arrested Mr. K the following day at approximately 6:00 p.m., at which time he observed no visible injuries to Mr. K. *Id.* at 17, 18.

DISCUSSION

This Court found that Ms. S's credibility as well as Mr. K's was lacking. We did note that Ms. S appeared to exaggerate items and did so intentionally. She had deceived Officer Dockey into thinking that the parties were "just friends" and also that her computer and cell

phone had been broken by Mr. K following his breaking into her apartment on the night of May 19, 2008. Subsequently, she acknowledged in testimony before this Court (and also apparently at a preliminary hearing) that the cell phone and laptop had been broken by Mr. K on May 16, 2008, an incident which she had not previously reported to the police. Ms. S's experiences of May 19, 2008, even under her version, were not such that she would be screaming in the manner that Officer Dockey was to hear when he arrived a half hour after the episode was over. There was no evidence to support Ms. S's claim that somehow Mr. K had broken into her apartment on the night of May 19, 2008 during a period of time that she was asleep.

The Court agrees with the contentions made by Mr. K at the hearing that Ms. S had staged many of the physical events and evidence observed by Officer Dockey. We also found that some of the details that Mr. K was able to relate such as the way the events of May 19, 2008 unfolded, being provided an ice cream birthday cake, the place that he had obtained his alcohol and the amount of alcohol he obtained, the items that they were eating for his birthday celebration, and the specificity of the acts of both parties provided credibility to his testimony. In addition, his version of the events of May 19, 2008 seem to have a more logical and acceptable description of the events as one might expect them to unfold. We found the relation of the event of Ms. S throwing a glass candle at Mr. K to be credible. When Ms. S was called on rebuttal she did not deny Mr. K's allegation of the thrown candlestick.

When I stated my conclusions on the record, finding that Ms. S had thrown the glass candlestick at Mr. K, I did phrase it in terms that her conduct was such that would amount to placing Mr. K in fear that her actions would cause him injury. This would imply that Ms. S

had engaged in a course of conduct which under the circumstances would have placed Mr. K in a reasonable fear of bodily injury under the definition of abuse under section 6102(a) of the Protection From Abuse Act (23 Pa.C.S. § 6102), abuse, subparagraph 5. The Court acknowledges that one incident of throwing a candlestick may not in and of itself arise to a “course of conduct”, however, there was testimony which we accept as being true that there had been prior incidents of violent and angry behavior that occurred on behalf of both parties as Mr. K testified and Ms. S implied or otherwise acknowledged. Nevertheless, the actual “abuse” definition that applies to the throwing of the candlestick under these circumstances was an attempt by Ms. S to intentionally, knowingly, and recklessly cause bodily injury to Mr. K, which is included under the definition of abuse under section 6102(a), abuse subparagraph (1). Accordingly, an act of abuse as set forth in Mr. K’s Petition having been established by the evidence found credible at trial, the issuance of a Protection From Abuse order in favor of Mr. K against Ms. S was justified.

CONCLUSION

Based upon an act of abuse having occurred when Ms. S threw a glass candlestick at Mr. K, she has committed an act of abuse and Mr. K is entitled to receive the protection of the Final Protection From Abuse order which was entered in this case. This Court’s prior order of June 23, 2008 should be affirmed.

BY THE COURT,

William S. Kieser, Judge