

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

HLS-C,	:
Plaintiff	:
vs.	: No. 10-21392
	:
RC,	:
Defendant	: Protection from Abuse

OPINION AND ORDER

Before the Court is Plaintiff’s Petition for Protection from Abuse. Plaintiff filed her Petition on October 20, 2010. A Temporary Protection from Abuse Order was entered on October 20, 2010. The final hearing was held before the Court on November 3, 2010.

Preliminarily, Defendant requests that the PFA Petition be dismissed for “failure to hold an evidentiary hearing within ten (10) days of the temporary Order”. The Court notes, however, that the Act requires that a hearing be held within ten (10) business days of the filing of a Petition. 23 Pa. C.S. A. § 6107 (a). The Petition was filed in this matter on October 20, 2010. The hearing was held on November 3, 2010 which is within ten (10) business days of the date of the filing of the Petition.

The basis of Plaintiff’s Petition for Protection from Abuse rests on her allegation that on October 15, 2010 at approximately 2:00 a.m. the Plaintiff saw her husband smoking crack in the bathroom of the residence. Defendant denied that he had smoked crack and that the Plaintiff fabricated the story either to take control of the residence and custody of their children or in retaliation for his recent threat to divorce her and file for custody.

The Court finds the testimony of the Defendant to be credible and concludes that he did not smoke crack.

The testimony by the Plaintiff falls far short of convincing the Court, even by a preponderance standard, that the Defendant smoked crack or for that matter committed any other act toward the Defendant which constitutes abuse. The crux of Plaintiff's fear of the Defendant relates to his alleged drug usage and how he apparently treats her when he is "using". The Court concludes that Defendant is not presently using crack and Plaintiff's fears are not based in fact or reasonable.

ORDER

AND NOW, this 9th day of November, 2010, following a hearing, the Court **DENIES** the Plaintiff's Petition for Protection from Abuse and **VACATES** the Temporary Protection from Abuse Order entered on October 20, 2010.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Brad Hillman, Esquire
Joel McDermott, Esquire
Court Administrator
Gary Weber, Esquire (Lycoming Reporter)
Work File