

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

K. N. : **No. 18-21625**
 :
 v. :
 :
 J. S. : **1925 (a) Opinion**

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

On December 17, 2018, Plaintiff K. N. (K.N.) filed a Petition for Protection of Abuse against Appellant, J. S. (J.S.). Following an ex parte hearing, a temporary order was entered on December 17, 2018. A final hearing was held on January 2, 2019.

Following this hearing, the court granted the Petition for Protection from Abuse.

On February 1, 2019, Singh filed a Notice of Appeal. At the time, J.S. was represented by counsel. J.S.'s Concise Statement of Errors Complained of on Appeal was filed on February 26, 2019. It contains 16 different alleged errors.

The errors can be consolidated into one issue, i.e. whether there was sufficient evidence for the court to conclude by a preponderance of the evidence that J.S. abused K.N.

The parties were married on December 7, 2015. The parties have one child, who born on August 1, 2016.

While living in the state of Washington, and by way of background, on November 17, 2018, J.S. called K.N. outside while she had the stove on. She communicated to him that the stove was on but J.S. would not allow her to go back inside. (Transcript, p. 6). Later that day while on the kitchen floor, J.S. slapped K.N. on the left side of her face

because her “smile wasn’t good enough.” (Transcript, p. 7). He then threatened to kill her and “punch her till she died.” (Transcript, p. 7).

All day he said the devil was inside K.N. and he had to get it out. (Transcript, p. 7). At one point, J.S. told K.N. to lie on the bed. He covered her eyes and began waving his hands and “channeling over her.” J.S. walked away and came back pretending to be someone else. He then pulled down her pants, inserted himself inside of her and “finished” on her stomach not allowing her to then clean herself off. (Transcript, p. 7).

He told K.N., “you know that wasn’t me that just had sex with you, that was someone else, you just cheated on me. How do you feel?” (Transcript, p. 7). Later that night when K.N. was able to put clothes on but not clean herself up, he locked her in the bathroom because she wasn’t smiling enough for him. She was locked in the bathroom for approximately one hour. (Transcript, pp. 7, 8).

The police were called and eventually showed up at the residence the following day but J.S. would not allow K.N. to open the door. (Transcript, pp. 11-12).

The parties eventually located to Pennsylvania. On December 3, 2018, J.S. asked K.N. to take him to the hospital in the morning. He then, however, soon changed his mind. (Transcript. p. 13). K.N. went to the grocery store with her mother and when she returned, he said “aren’t we going to go?” K.N. asked where and J.S. reminded her. Eventually, K.N. took J.S. to the emergency room. (Transcript, p. 13).

While they drove to the hospital in the dark, J.S. attempted to jump out of the moving vehicle twice. (Transcript, p.14). When they got to the hospital and while K.N. was speaking to a receptionist about what was going on, J.S. came out and made allegations against her accusing her of flirting with the receptionist. (Transcript, p. 14). K.N. denied

what she was being accused of but did not want to tell J.S. that they were discussing his mental health. (Transcript, p. 14). Previously, J.S. made K.N. sign a piece of paper with a colored pencil which stated “I will keep everything about [J.S.’s] heart appointment confidential and everything [J.S.] says, also everything [J.S.] is involved with, and I keep 100% confidentiality to myself and speak to nobody.” (Transcript, p. 15).

K.N. knew that J.S. would become upset if he knew what the topic of the conversation was with the nurses and the receptionist. The nurses placed K.N. in a private waiting room because she expressed that she was scared to be alone in a room with J.S. (Transcript, p. 17). J.S. was involuntarily committed to the Mental Health Unit of Divine Providence Hospital (UPMC Divine). (Transcript, p. 20).

After J.S. was released from the hospital, he went to a hotel. While at the hotel, he contacted K.N. and asked her to come visit him “alone.” She refused to do so being afraid of him. He would not tell her where he was or give her any specifics that she requested. (Transcript, p. 22).

The court found the testimony of the plaintiff, K.N., to be persuasive and credible.

As the court noted in its order, the parties came to court with two completely different perspectives. J.S. claimed that K.N. and her family “played nice to entrap him.” He claimed that this was all an elaborate scheme to separate the parties because of his race, and perhaps even his faith. He claimed that others were putting “fear and anger” into her heart.

As the court noted, K.N. desperately cared about J.S. and sought to better his welfare. She was concerned as to his mental health. She asserted that he has or was suffering from mental health issues that had to be evaluated and addressed and, until such, she was

concerned as to her own safety and the safety of her child.

The court found that the actions of K.N. were consistent with a spouse being concerned as to the mental health of the other spouse and putting her and her child in a safer environment with her family. The actions appeared to the court to be entirely consistent with her being in fear for her own safety. As the court noted, she would need to act somewhat surreptitiously in finding help on the other end of the country.

The testimony by K.N. as set forth above established by a preponderance of evidence that J.S. caused bodily injury to her by slapping her, placing her in fear of imminent bodily injury by telling her he would punch her until she died and threatening to kill her. The testimony also established by a preponderance of the evidence that he restrained her liberty for different periods of time and that he engaged in a course of conduct, placing her in reasonable fear of bodily injury by having sexual intercourse with her claiming to be someone else, then accusing her of cheating on him, and when the police came the following day to investigate her concerns, by not answering the door and instructing her to hide. While these incidents happened in the state of Washington, the incidents formed the background to what occurred in Lycoming County.

The court found by a preponderance of the evidence that while in Lycoming County, especially in light of the past circumstances, that J.S. knowingly engaged in a course of conduct that placed K.N. in reasonable fear of bodily injury. Among other things, J.S. forced K.N. to sign a document noting that she would keep “100 % confidentiality” and “speak to nobody”; attempted to jump out of the car while they were going to the hospital; continued to falsely accuse her of marital misconduct including flirting with individuals at the hospital; failed to tell her when he was being released from Divine; failed to tell her

where he was temporarily staying; requested that she be alone with him in the hotel room; continued to contact her and request that she come and be alone with him; continued to threaten that he would take her child claiming that she was an unfit mother; prohibited her from talking to anybody about what happened in Washington; continued to complain that there was a devil in her; constantly pried into her behavior and conduct, even the most mundane and normal routines; and constantly inferred marital and motherhood misconducts such that he would leave and take the child with him.

The primary goal of the PFA Act is not retrospect punishment but advance protection from abuse. It authorizes the court to grant protection to among other, spouses, and it covers spouses who may be subject to abuse as defined in the Act. Abuse is defined as the occurrence of one or more of the following:

Attempting to cause, or recklessly causing bodily injury;

Placing another in fear of imminent serious bodily injury;

Infliction of false imprisonment; or

Knowingly engaging in a course of conduct or repeatedly committing acts towards another under circumstances that place the person in fear of bodily injury.

Certainly, under this record, abuse has been proven to the degree required.

Contrary to what was alleged by J.S., the court did not error in finding that there was abuse, in finding that J.S. committed the numerous acts of misconduct, in finding J.S. slapped K.N. previously and finding that J.S. restrained K.N.'s liberty, in finding that K.N. was in fear of bodily injury or imminent serious bodily injury, in finding that J.S. committed a course of conduct or repeated acts without proper authority, in finding that J.S. engaged in a course of conduct which placed K.N. in fear of reasonable bodily injury, or in granting the PFA Order

for a maximum of three years.

Further, there is no evidence that there was a breakdown in the court's telecommunication system denying J.S. of due process rights, in "exceeding" the facts alleged in the petition, in J.S. not being properly served with the petition, in awarding custody of the minor child to the petitioner, in ordering supervised custody, in not addressing a conflict of interest issue, in not considering or providing proper weight to the documentary and testimonial evidence or not providing proper weight to contradictions in the testimony proffered by J.S.

Indeed, J.S.'s assertions of errors are without any basis in law or fact whatsoever.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: J.S. (via email)
Lindsay Walker, Esquire (attorney for K.N.)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)