

P E N N S Y L V A N I A LAW WEEKLY

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ABUSING THE ABUSE ACT

Superior Court has expanded the application of PFA beyond all discernable boundaries

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Can brother and sister business partners who do not reside in the same home, and who have no relationship outside of work, seek Protection From Abuse orders against each other?

An en banc panel of the Superior Court has inexplicably answered "yes" in *Custer v. Cochran*, PICS Case No. 07-1501 (Pa. Super. Sept. 25, 2007) Todd, J., Ford Elliott, P.J. concurring (23 pages), thereby overruling an identical 1996 case, which was dismissed for lack of jurisdiction.

The Protection From Abuse Act is designed to provide family or household members with a tool to secure court protection from acts of domestic abuse. Section 6102 of the law provides the two key definitions at issue in *Custer*:

Under the statute, "abuse" is defined as:

"The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood:

- (1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon;
- (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 ..."

Section 6102 further defines "family or household members" as "[s]pouses or persons who have been spouses, persons living as spouses or who have lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood."

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The Superior Court found that Carol Custer and Donald Cochran were persons related by consanguinity and that Custer carried her burden in proving abuse by Cochran.

In 1976 when the Protection From Abuse Act was originally enacted and codified, the relief was limited to abuse between "family or household members who reside together." The title of the act originally was "An Act relating to abuse of adults and children by a person who resides with them; and providing for remedies and procedures." In 1978, the term "abuse" was expanded to include "family or household members who reside together; or who formerly resided together and both parties continue to have legal access to the residence." The original PFA statute was replaced in 1990.

Yankoskie v. Lenker, 526 A.2d 429 (Pa. Super. 1987) examined the historical application of the PFA since passage and primarily focused on the language "legal access to the residence" as applied to the facts of that case. The *Yankoskie* court's interpretation broadened the application of the PFA.

In 1996, six years after the repeal of the former statute and its amendments, the Superior Court first had occasion to consider whether sibling business partners not residing in the same household could maintain a Protection From Abuse action against each other. In *Olivieri v. Olivieri*, 678 A.2d 393 (Pa. Super 1996), the Superior Court determined that feuding brother and sister business partners who did not live together or socialize together outside the office fell outside the purview of the PFA statute. In *Olivieri*, a brother and sister who jointly owned a business, did not reside together, and had no contact other than business contacts brought Cross-petitions under the Protection From Abuse Act. With minuscule differences, the facts of *Olivieri* are identical to those of *Custer v. Cochran*. It is also noteworthy that the PFA in existence at the time of *Olivieri*, was enacted in 1990 whereby the legislature expanded the Act and no longer provided that the alleged abuser and victim must reside in the same household.

Custer's First Stand

The Superior Court in *Custer* was dealing with the same version of the PFA Act that the *Olivieri* court did. The statute, as amended in 1990, had been in effect for six years when the *Olivieri* court stated:

"We agree with the trial court that the Protection From Abuse Act simply does not apply to the dispute between Maria and Frank Olivieri. We have stated that 'the Protection From Abuse Act is a vanguard measure dealing with the problems of wife and child abuse. It is designed to protect against abuse...between family or household members who reside together [and] also between unmarried persons living together.', citing *Cipolla v. Cipolla*, 264 Pa. Super. 53 (1979)."

It further stated:

"As found by the trial court, neither the Family Division nor the Protection From Abuse Act are intended to resolve a dispute between business partners who do not reside in the same household,

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whether or not the partners happen to share biological parents. The proper forum for the Olivieris' claims is the civil courts and we will not allow the Protection From Abuse Act to serve as a weapon in purely business disputes."

In Custer, the Superior Court found that Olivieri was distinguishable because the Olivieris sought PFA relief as a back-door resolution to their business dispute. In Custer, the court took notice of a pending civil suit instituted by Custer and one other sibling against Cochran, over disposition of the corporation.

Therefore, the panel reasoned, Custer sought PFA protection against physical abuse and was not seeking intervention in the business dispute.

I cannot discern the factual differences between Olivieri and Custer, other than Custer and Cochran were shareholders with another sibling in a corporation whereas Frank and Maria Olivieri were partners who wholly owned their business. These slight factual differences in no way differentiate Custer from Olivieri. In both cases, brother and sister are business siblings feuding and seeking Protection From Abuse in a business setting between related persons not residing in the same residence and not socializing outside the business. In my view, the facts are identical.

The Superior Court ruling in Custer, however, saw a distinction and a difference. But it also overturned part of the Olivieri decision.

"Moreover, to the degree that this Court in Olivieri limited application of the PFA Act to parties that reside in the same household, it was in error....Thus, to the degree that Olivieri suggests that the present version of the PFA Act imposes a common residency requirement, it is expressly overruled."

The Custer court, earlier in the opinion, made this observation: "In 1990, the Legislature ... expanded the reach of the Act and removed the restriction that the abuser must reside in the same household with his or her victim...."

But Olivieri's holding does not depend on a common residency. A careful reading of Olivieri indicates nothing requiring a common residency. To the contrary, the Olivieri court was clear that the siblings "are not family members that should be covered under the Protection From Abuse Act." That court found the Olivieris to be "...simply feuding business partners who are fighting about the way the business is run." (emphasis added).

Distorting the PFA Act

In the wake of Custer, the PFA Act has now been expanded to cover related persons in a business setting who do not live together nor socialize outside of business. In Custer, the trial court entered a PFA order that prohibited Cochran from abusing, harassing, stalking, or threatening Custer and forbade him to enter her residence for a period of six months. Since

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Custer and Cochran had nothing to do with one another outside of the business setting, one must wonder about the necessity of an order forbidding the brother to enter the sister's residence. The PFA order actually under review deals with feuding sibling business associates who encounter each other in their workplace or business dealings. Similarly, the Olivieri court – which threw out a PFA petition – found feuding sibling business associates fighting about the way the business was run. Simply put, there is no difference.

President Judge Kate Ford Elliott's concurring opinion is couched in language that is far more compelling than the majority's.

"Certainly I, along with the Majority opinion's author and all of the members of this en banc panel, fully appreciate and understand the importance of the Act in the lives of victims of domestic abuse," she wrote. "It is only the application of the Act to the facts of this case which cause me great concern. As with Olivieri, I believe that to apply these crucial and important protections within the context of a strictly business relationship may very well be an abuse of the Act itself. However, based on the plain reading of the definitions provided by the Act, I can accept that the majority's affirmance of the trial court's grant of PFA relief is legally sustainable."

When the drafters of the 1976 legislation contemplated the need for the PFA Act, they could not have foreseen this untenable and bizarre result. While the result reached by the majority may be, as Ford Elliott wrote, "legally sustainable," in my view it defies the purpose of the Protection From Abuse Act, which is to prevent domestic violence. The PFA Act was not designed to resolve disputes between feuding siblings in a business setting. •

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