

Women's eNews

October 26, 2007

Court Affirms Right to Protection of Abuse Victims

By Alison Bowen, WeNews correspondent

(WOMENSENEWS) – Jessica Lenahan wants to know who riddled her three daughters' bodies with bullets.

Whether the trigger finger that killed her daughters – Rebecca, 10; Katheryn, 8; and Leslie, 7 – belonged to her estranged husband or a police officer returning his fire is one of many unanswered questions that prompted Lenahan to file a petition before the Inter-American Commission on Human Rights after she unsuccessfully carried a lawsuit filed in a Colorado state court that was eventually heard by the U.S. Supreme Court.



Jessica Lenahan

The Inter-American Commission on Human Rights, which convenes in Washington, D.C., to hear cases, agreed on Oct. 9 to admit Lenahan's case, finding that she exhausted all legal avenues in the United States.

"I think that they owe me an explanation of who shot the kids," Lenahan said. "This is what I'm asking the U.S. for, is these things, and they still have not been able to give the answers."

She also wants validation that the Castle Rock, Colo., police department violated her right to due process by failing to enforce a restraining order against her husband.

The international court's ruling says that countries in the Americas are responsible for protecting victims of domestic abuse from private acts of violence under the American Declaration on the Rights and Duties of Man, an international treaty signed in 1948.

"Allowing her case to go forward is saying that she has a valid case," said Caroline Bettinger-Lopez, Lenahan's co-counsel and human rights fellow and attorney at Columbia Law School in New York. "That's kind of the first victory."

Defied Restraining Order

In events that have become well-known in domestic-violence circles as the “*Castle Rock case*” Lenahan’s estranged husband, Simon Gonzalez, kidnapped her three daughters in 1999, violating a court-issued restraining order that required arrest upon violation.

Eight phone calls in 10 hours to the police produced no assistance, and her husband later drove to the police department and opened fire. A spray of officers’ return fire killed him, and officers then found the couple’s three daughters dead in Gonzalez’s truck. Police said the girls had been killed hours earlier.

Araceli Martinez-Olguin, co-counsel for Lenahan at the New York-based American Civil Liberties Union’s Women’s Rights Project, said a restraining order is issued when a judge has already decided that harm is likely to occur. Police maintained there was no reason to believe any danger would ensue.

The United States sent a Justice Department delegation to hearings and vigorously argued their case in a 40-page brief.

Among their key arguments made were that the local police provided an adequate response to Lenahan’s calls and that she failed to show officers the restraining order. The United States also argued that Lenahan did not exhaust her legal remedies because the actual facts in her case were never heard at the state level before her litigation was initiated with higher courts and she had leapfrogged over a police administrative review process.

Lenahan’s latest pleadings may provide abuse victims a way to assert their rights through international courts. Her case now moves into a second phase to determine whether the United States and the Castle Rock Police Department violated her human rights, including the rights to due process and special protection as a domestic violence victim.

A successful ruling paired with similar court decisions around the world could create a body of litigation to protect domestic violence victims. Bettinger-Lopez and advocacy groups hope a victory would spur the United States to proactively increase protections. A final ruling could take up to several years.

Advocates Watch Court Proceedings

An array of advocacy groups submitted friend-of-the-court briefs supporting Lenahan’s case throughout the legal battles, including the Denver-based National Coalition Against Domestic Violence and the Washington-based National Network to End Domestic Violence. Lenahan will not receive financial compensation, but her case points to another strategy to help victims and advocates plumb the system for justice.

“I think it’ll carry a lot of weight,” Bettinger-Lopez said. “It opens the door for other people to file complaints against their countries for failing to protect them when the government is aware that they’re in danger.”

In a similar case that originated in Brazil, the commission ruled in 2001 that a battered woman’s human rights were violated by a government that tolerated violence.

Rulings by the commission established suggested procedures for all members of the Organization of American States, including the United States, but no official enforcement exists, Bettinger-Lopez said. Political and moral pressures create more of an incentive.

“The world is watching,” she said. “If the U.S. gets accused of human rights violations by an international tribunal, that’s very embarrassing.”

Maya Raghu, senior staff attorney at New York-based Legal Momentum, a women’s advocacy law group, said U.S. law, which focuses on what the state cannot do to citizens, differs from international law, which highlights citizens’ rights, such as safety.

“International human rights laws have evolved to say that, yes, there is this duty on states to protect their citizens,” Raghu said.

U.S. Not Likely to Respond

Raghu, who plans to file a friend-of-the-court brief supporting Lenahan’s case, said the U.S. government does not automatically submit to international laws, and she finds it unlikely that the commission’s decision will inspire U.S. courts to revisit their decisions or find them binding in any way.

The commission’s ruling could conflict with the U.S. Supreme Court’s June 27, 2005, decision on Lenahan’s case, which found she had no personal entitlement to police enforcement of her restraining order.

A dissent, written by Justice John Paul Stevens and joined by Justice Ruth Bader Ginsburg, said the majority rule ignored the clear language and intent of Colorado’s mandatory arrest statute. Colorado’s law, like similar statutes around the nation, responded to a persistent pattern of non-enforcement of reports of violence and was specifically intended to remove police discretion from the decision of whether to arrest the violator of a protective order.

But Raghu said that the decision of the human rights commission, combined with favorable decisions in other international forums, may serve as a prelude to a blanket international law protecting victims.

“The nice thing with this decision, and hopefully the decision on the merits, it will be contributing to this body of law,” Raghu said. “And that’s always helpful.”

If Lenahan wins her case, domestic violence groups will have an international referral for survivors who wish to bring cases to court.

“It encourages women to use the extent that they can of the law,” said Sheryl Cates, CEO of the Texas Council on Family Violence based in Austin, Texas, which operates the National Domestic Violence Hotline. Many survivors don’t have the finances or expertise to maneuver through the courts, Cates said, but Lenahan’s success would provide another nugget of guidance the hotline could provide.

Christina Falck, director of development at the Boston-based R.O.S.E. Fund, which assists abuse victims with reconstructive surgery for injuries and self-esteem programs, said the commission’s decision highlights a “colossal” case that rightfully propels it into conversation.

Lenahan’s case reverberates among abuse victims, she said.

“Unfortunately, this is more the case than the exception,” Falck said. “You do see survivors battling with the courts and saying, ‘How many restraining orders do I have to get for someone to pay attention to me?’”

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This series is supported by a special grant from Mary Kay Inc.

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