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Domestic Violence Case Makes International Claim

By Adriana Gardella, WeNews Correspondent



Jessica Lenahan

NEW YORK (WOMENSENEWS) – At a March 2 hearing Jessica Lenahan will become the first individual U.S. victim of domestic violence to bring her case before any international human rights body.

Her attorneys are taking the step after exhausting U.S. legal remedies for Lenahan, who has brought suits against a Colorado police department for failing to enforce a restraining order against her now deceased ex-husband.

“We requested this hearing before the Inter-American Commission to give Jessica a chance to tell her story to the world, an opportunity she was denied by the U.S. judicial system,” says Caroline Bettinger-Lopez, a human rights fellow at Columbia Law School’s Human Rights Institute and a supervising attorney for the law school’s Human Rights Clinic, who, along with the American Civil Liberties Union, is part of the legal team representing Lenahan.

Bettinger-Lopez says attorneys will urge the Inter-American Commission on Human Rights – an entity of the Organization of American States charged with protecting human rights – to find the U.S. government responsible for human rights violations not only in Jessica’s case, but more broadly as well.

“We want the commission to consider the epidemic of domestic violence in this country and our government’s inadequate response to it,” she says. “We hope the commission will leave the hearing determined not only to investigate Jessica’s case and rule in her favor, but also to find that the U.S. must act with ‘due diligence’ to prevent and investigate domestic violence, protect victims and their children and compensate victims who are harmed by the state’s failure to respond when it is aware of the danger.”

In a landmark 2001 ruling the Inter-American Commission on Human Rights held the government of Brazil accountable under international law for tolerating domestic violence in the case of Maria da Penha Maia Fernandes.

Lenahan's case will address the issue of what affirmative obligation the United States has to protect domestic violence victims. A decision in the case is expected by late 2007.

Crime in Castle Rock, Colorado



Caroline
Bettinger-Lopez

In June 1999, Lenahan's ex-husband Simon Gonzales shot and killed the couple's daughters – Rebecca, 10, Katheryn, 8, and Leslie, 7 – after abducting them from outside Lenahan's home in Castle Rock, Colo.

Hours later Gonzales drove to the local police department, opened fire on the building and was killed by police. At the time, Lenahan had a restraining order that required Gonzales to stay away from her and the daughters, although he was permitted to spend alternate weekends with his children and to take them for one prearranged dinner during the week.

While Colorado law mandates that police arrest anyone in violation of a restraining order, officers did not respond to Lenahan's repeated pleas to arrest Gonzales. Lenahan first called police at 6 p.m. on June 22, 1999, after discovering her daughters were missing, and continued to seek help – even telling police where her ex-husband was located – until the girls were found dead at 3:20 a.m. Evidence revealed that Gonzales had murdered his daughters hours before he arrived at the police station, leading Lenahan to believe that police intervention could have prevented their deaths.

In 2000, Lenahan filed a \$30 million lawsuit against the Castle Rock Police Department and three of its members, alleging that they violated her right to due process by failing to enforce her restraining order. The district court dismissed her case, but on appeal the Tenth Circuit held that the mandatory arrest provisions of Colorado law essentially gave Lenahan a property right to police enforcement of her order.

U.S. Supreme Court Review

Castle Rock appealed to the Supreme Court, arguing that the Tenth Circuit decision could spur a “potentially devastating” flood of lawsuits that “could bankrupt municipal governments.”

In June 2005, in a 7-2 decision written by Justice Antonin Scalia, the Supreme Court held that Lenahan's due process rights had not been violated because she had no personal entitlement to police enforcement of her restraining order. The dissent, written by Justice Stevens and joined by Justice Ginsburg, pointed out that this holding ignored

the clear language and intent of the Colorado statute which, like domestic violence mandatory arrest statutes nationwide, responded to a persistent pattern of non-enforcement of domestic violence laws and was specifically intended to remove police discretion from the decision of whether to arrest the violator of a protective order.

Because the United States has not signed the American Convention on Human Rights any decision by the commission will be nonbinding. So, while the Inter-American Commission may recommend relief for Lenahan or suggest changes in domestic violence laws and policies in the United States, the United States is under no obligation to abide by those recommendations. For instance, even though Lenahan's suit seeks a monetary judgment, it is unlikely that an award would be enforced.

Still Bettinger-Lopez believes that the United States, which has submitted a thorough response to Lenahan's claim, will take any findings by the Inter-American Commission seriously. Its recommendations, though nonbinding, will be influential in building international consensus on the issue of domestic violence as a human rights issue. Moreover, Bettinger-Lopez says, "We expect to win in the court of public opinion."

More Appeals to International Realm

The commission may see more cases like Lenahan's.

Dianne Post, a Phoenix, Ariz., lawyer who has worked with battered women and children for over 30 years, is drafting a petition to submit to the commission. Post expects to file her suit on behalf of a minimum of 15 domestic violence victims who allege that they have been harmed by what Post calls the "policy and practice of giving child custody to abusers and molesters."

While every state requires its courts to consider domestic violence as a factor in making custody determinations, Washington, D.C., attorney Joan Zorza, a longtime advocate for domestic violence victims and their children, says this does not always happen "due to gender bias against women and a belief that we must not hurt a father's reputation." In reality, judges often ignore documented evidence of spousal abuse, claiming that it is irrelevant in a custody case, says Zorza.

Advocates for victims of domestic violence say that a controversial concept known as parental alienation is being used successfully by alleged abusers to remove children from the custody of the spouse who alleges the abuse. The theory of parental alienation, which has been widely denounced as junk science, holds that children become alienated from the alleged abuser because they have been coached and corrupted by the complaining spouse.

"The problem of family courts often punishing mothers for reporting abuse is nothing new," says Post. "But since legislation, litigation and education have not stopped this outrage, I'm bringing this petition before the commission to object to the practice as a violation of international human rights law."

Post believes that Lenahan's case will help pave the way for her arguments that the United States is not adequately addressing domestic violence and send a message that the federal government is ultimately responsible for such state issues as divorce and custody.

Adriana Gardella, a former practicing attorney, is a writer in New York.

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