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Mass. Supreme Judicial Court Upholds 209A Abuse-Prevention Order Against Out-of-State Man

By Eric T. Berkman

A District Court judge could issue a Chapter 209A abuse-prevention order against a Florida resident whose domestic partner allegedly fled to the commonwealth to escape his abuse, the Supreme Judicial Court has ruled.

Under the terms of the order, the defendant – who had not been to Massachusetts since 2002, when the couple moved to Florida – was directed not to contact the plaintiff or their child.

The defendant argued that because Massachusetts lacked personal jurisdiction over him, he could not be subject to such an order.

But the SJC disagreed, finding that as long as the order imposed no affirmative obligations on the defendant, personal jurisdiction was not required for the order to issue.

“If a court may constitutionally make orders affecting marriage, custody, and parental rights without personal jurisdiction of a defendant, it certainly should be able to enter an order protecting a resident ... from abuse,” Justice Margot G. Botsford wrote on behalf of the court, quoting the Iowa Supreme Court’s 2001 decision in *Bartsch v. Bartsch*.

Without such authority, the justice continued, “the unpalatable choices remaining are either to require the victim of abuse to return to the state in which the abuse occurred in order to obtain an effective abuse prevention order or, alternatively, to wait for the abuser to follow the victim to the commonwealth and, in the event of a new incident of abuse, for the victim to seek an order from a Massachusetts court.”

The 15-page decision is *Caplan v. Donovan*, Lawyers Weekly No. 10-016-08.

Declaring victory

The court’s ruling is a “very important victory” for domestic-violence victims, said

Pauline Quirion of Greater Boston Legal Services, who, along with her colleague Megan H. Christopher, represented the alleged abuse victim.

“It is important to remember that the purpose of a 209A order is to provide protection,” said Quirion. “The SJC correctly ruled that the commonwealth has the legitimate right to protect anyone within its borders from abuse regardless of the geographical source of the abuse.”

Quirion added that Chapter 209A jurisdiction has to be broad because the very nature of domestic violence sometimes requires victims to relocate to break the cycle of violence.

“To deprive victims of legal protection after they move to the commonwealth would render Chapter 209A meaningless,” she said.

Defense counsel Thomas T. Worboys of Wellesley said that “as hard as the SJC tried not to make new inroads into constitutional law, they ended up doing so.”

The whole concept of personal jurisdiction is that it has to be a fair forum in which to defend an action, Worboys explained.

“And now we have a court saying that so long as the order does not create an affirmative obligation or duty, it doesn’t have to be a fair forum,” he said. “Simple notice and a hearing – the bare bones of due process – are all that is required.”

Worboys also questioned the SJC’s determination that no affirmative obligation is being imposed on his client.

“The order was telling him not to contact his child,” Worboys said. “Even though it was a negative order saying not to do something, it’s hard to get my head around how that is not a personal obligation or duty.”

Fleeing Florida

Plaintiff Ariana Caplan and defendant David Donovan met in Massachusetts in 2000 and lived together before relocating to Florida two years later. They had a son in 2004.

According to the plaintiff, the defendant began physically abusing her the year their child was born.

After an incident in May 2006 in which the defendant allegedly threw the plaintiff across the room and threatened to kill her and take their son, the plaintiff fled to Massachusetts with the child.

On June 7, 2006, the plaintiff sought a Chapter 209A abuse-prevention order in Natick District Court. After an ex parte hearing, a judge issued an order directing the defendant not to abuse the plaintiff, not to contact her and not to come within 50 yards of her residence in Massachusetts.

The judge also awarded the plaintiff custody of the child and ordered the defendant not to contact him. Additionally, the defendant was ordered to surrender his firearms to local police in Florida and to pay the plaintiff a sum to be determined at a later hearing.

The defendant moved to dismiss the plaintiff's complaint for lack of personal jurisdiction and to vacate the order. Judge Sarah B. Singer denied the motion and extended the order for a year.

The SJC granted the defendant's subsequent application for direct appellate review.

No presence required

On appeal, the SJC acknowledged that Massachusetts lacked personal jurisdiction over the defendant.

Nonetheless, the court found that the order was properly issued, likening the situation to a state court's well-established ability to adjudicate matters involving the status of a marriage even where the state lacks personal jurisdiction over one of the parties.

"A court order that prohibits the defendant from abusing the plaintiff and orders him to have no contact with and to stay away from her serves a role analogous to custody or marital determinations, except that the order focuses on the plaintiff's protected status rather than her marital or parental status," said Botsford.

Such an order furthers the state's critical policy interest "of securing 'the fundamental human right to be protected from the devastating impact of family violence,' by declaring the protected status of a person who is currently domiciled in this commonwealth after coming here to escape from abuse," the justice continued, quoting the SJC's 1999 decision in *Champagne v. Champagne*.

At the same time, the court found, any abuse-prevention order must provide an out-of-state defendant with reasonable notice and an opportunity to be heard, and must not impose any affirmative personal obligations on the defendant.

Accordingly, "[s]o much of the abuse prevention order that orders the defendant not to abuse the plaintiff, not to contact the plaintiff and that orders the defendant not to contact and to stay away from the child is affirmed," the court concluded. "[S]o much of the order that orders the defendant to compensate the plaintiff and surrender firearms is vacated."

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