DISTRICT OF COLUMBIA
COURT OF APPEALS

Y. T.,	)	
	)	
Respondent/Appellant,	)	
	)	
v.	)	
	)	
C. C.,	)	
	)	
Petitioner/Appellee.	)	_____
	)	
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	)	
J. W.	)	
	)	
Respondent/Appellant,	)	
	)	
v.	)	
	)	
C. C.,	)	
	)	
Petitioner/Appellee.	)	

BRIEF OF AMICUS CURIAE DOMESTIC VIOLENCE LEGAL EMPOWERMENT AND APPEALS PROJECT (DV LEAP) IN SUPPORT OF APPELLANTS' EMERGENCY MOTION TO MODIFY CIVIL PROTECTION ORDERS PENDING APPEAL

Amicus DV LEAP submits this brief in support of Appellants' Emergency Motion to Modify CPOs, to address the likelihood of success on the merits of the appeal regarding the trial court's treatment of a landlord and tenants in a two-family house as sharing a "mutual residence." DV LEAP does not believe the trial court properly interpreted the Intrafamily Offenses Act ("the Act")'s "mutual residence" provision, and is concerned that such a ruling could open the floodgates of the Act to populations never intended to be protected by the Act, undermining the

statute's effective protections for victims of domestic violence, stalking and sexual assault.

In this case, as is fully described in Appellants' Emergency Motion, the Petitioner/Appellee ("Landlord") lives in a basement apartment in a house that is licensed as a "Two Family Rental," while renting out rooms in the upstairs unit to various individuals, including Respondents/Appellants ("Tenants"). Emergency Motion at 2. While at trial there were factual disputes about the degree of use Landlord made of the upstairs unit's facilities, Appellants' Emergency Motion – and this *Amicus* brief - expressly accept the facts credited by the trial court regarding Landlord's uses of the upper unit. Emergency Motion at 11, 14. The question at hand is a purely legal one: Whether, on the conceded facts, it is lawful to treat a Landlord and Tenant who occupy separate housing units as "sharing a mutual residence" under the IntraFamily Offenses Act, D.C. Code Section 16-1001(7).

I. The IFO Act Was Never Intended to Extend to Situations Such as This.

The Intrafamily Offenses Act was first adopted by Congress in 1970 as a means of providing "a civil, legal process for the resolution of domestic disputes." D.C. Court Reform and Criminal Procedure Act of 1970: Part C. Intrafamily Offenses, Pub. L. 91-358, Bill No. S. 2601S, Sec. 131(a), H. Rep. 91-907, H.R. 16-196 (hereafter "H. Rep. 91-907"). The Act's history makes clear that the statute has always been intended to remediate the scourge of domestic violence, broadly defined to include violence in the family and among people who live together. *See Salvaterra v. Ramirez,* 111 A.3d 1032, 1035 (D.C. 2015) (the protection order ''was designed to protect victims of family abuse from acts and threats of violence'')(citation omitted).

Indeed, for many years an "intimate relationship" was an express requirement for coverage under the Act; its elimination served particular goals, and was never intended to open the statute to commercial relationships that happened to involve use of some shared space.[1]

A. The Act Focuses on Domestic Violence and Familial or Homemaking Relationships.

The Intrafamily Offenses Act – the first civil protection order statute in the country - was adopted by the District of Columbia Council in 1970 to establish an innovative and critically needed civil legal response to domestic violence, or violence in the family. In its very first iteration, the statute was drafted to cover solely criminal offenses committed by a "spouse . . . parent, legal guardian or legal custodian . . . " or "by one person against another person with whom he shares a mutual residence *and is in a close relationship rendering the application of this chapter appropriate*." D.C. Court Reform and Criminal Procedure Act of 1970: Part C. Intrafamily Offenses, Pub. L. 91-358, Bill No. S. 2601S, Sec. 131(a). Indisputably, at that time, any relationship other than a familial or intimate one was not covered by the statute.

In 1982, the D.C. Council revisited the statute and expanded it on numerous fronts, in part to keep up with developments across the country, in part to

[1] In 2008, the Act was expanded to cover victims of sexual assault and stalking, regardless of the relationship. D.C. Practice Manual (2014 Edition), Vol. 1, p. 351. While this resulted in the Act's incorporating these particular non-intimate social relationships, they are a particular exception to the otherwise over-arching focus of the Act on intimate, familial type relationships. Without further legislative action, it would be incongruous to apply the Act to still another category of non-social relationship, especially one that is a non-social business arrangement.

accommodate the flood of petitioners that was overwhelming the D.C. Office of the Corporation Counsel (predecessor to the D.C. Office of the Attorney General), and of most importance at that time, to spell out a comprehensive list of potential remedies that could be ordered within a CPO. *See Salvaterra v. Ramirez,* 111 A.3d 1032, 1035 (D.C. 2015)(reviewing legislative history).

Of relevance to this case, one 1982 amendment moved the language "*and is in a close relationship rendering the application of this chapter appropriate,"* from its original place modifying only the "mutual residence" criterion, to a separate paragraph modifying *all* the covered relationships under the statute. Council of the District of Columbia, Committee on the Judiciary Report, May 12, 1982, on Bill 495, the Proceedings Regarding IntraFamily Offenses Amendment Act, p. 9. Thus, the Act now covered acts committed by an offender upon a person:

> (A) to whom the offender is related by blood, legal custody, marriage, having a child in common, or with whom the offender shares or has shared within the last year, a mutual residence; *and,*
> (B) with whom the offender maintains or maintained an intimate relationship rendering the application of this chapter appropriate.

Id. (emphasis added). The legislative history explained:

> (1) Family and home relationships are generally to be nurtured and protected by society; (2) actions by persons in a family or *home type relationship* can vacillate emotionally over a course of time.

Id. (emphasis added). Importantly, the Judiciary Report went on to emphasize:

> Consistent with the philosophy of domestic violence statutes around the country, the special civil protections of the intrafamily statute become available under the bill to persons with whom the offender "maintains or maintained an intimate relationship " rendering application of the intrafamily offenses statute appropriate—i.e . the offender and the complainant must have or have had bonds of a genuinely familial, devoted, or homemaking nature; the substance of the relationship, not its form, being the key.

Judiciary Report, p. 9. Again, even while expanding the "mutual residence" language to include parties who have shared a residence within the past year, the legislature was careful and deliberate in specifying that the relationships covered by the Act must be familial, devoted or "homemaking."

Since 1982 the IFO Act has been amended repeatedly to address many different issues. *See generally,* District of Columbia Practice Manual (2014 Edition), Vol. 1, pp. 350-351. Of most relevance for this case, in 1995 the Council replaced the "intimate relationship" clause with a subparagraph permitting petitions for protection by individuals "with whom the offender maintains or maintained a romantic relationship not necessarily including a sexual relationship." This change simultaneously expanded the Act to cover dating relationships and also, more indirectly, allowed coverage of mutual residents without an intimate relationship.

The legislative history on this statutory development indicates that it was propelled primarily by the domestic violence community's concern over the lack of CPO protections for victims of dating and other intimate or familial violence. In extensive hearings on the proposed "Domestic Violence in Dating Relationships Act of 1993 and 1994," a broad range of victim advocates pressed for broader protections (beyond individuals in familial relationships or living together) for victims of social relationship-based violence.[2] John McCabe, then-Chief of the Domestic Violence Section of the Office of the Corporation Counsel, described the

[2] See Committee Report on Bill 10-477, "The Domestic Violence in Dating Relationships Act of 1994," from James E. Nathanson, Chair, Committee on the Judiciary, October 12, 1994 (hereafter "1994 Report").

Office's concern over the number of victims ineligible for a CPO against an abusive intimate partner due to the requirement of "shared mutual residence," and noted several vulnerable groups that the proposed amendments would particularly benefit, including juveniles, college students, and the gay and lesbian community.[3] In its report to the D.C. Council recommending enactment of the dating relationship provision, the Committee on the Judiciary described the purpose of the bill broadly as addressing a need in modern society for civil protections when a person in a "significant [or intimate] *social* relationship" becomes a victim of domestic violence. 1994 Report at 1, 2 (emphasis added).

Although not reflected in the documented legislative history, members of the advocacy community, including *Amicus,* recall an additional impetus for removing the intimate relationship requirement from all covered relationships including mutual residents. This was a concern for members of same-sex relationships who might have been deterred from going to court if they had to declare their relationship to be "intimate" – a term which had until then been assumed to reference a sexual or romantic relationship. *See Sandoval v. Mendez,* 521 A. 2d 1168 and 1172 (Ferren, J., dissenting) (D.C. 1987). In addition, the "intimate relationship" requirement had previously led to the denial of protection in other sympathetic circumstances. *See Sandoval,* 521 A.2d 1168 (affirming the denial of a CPO to one member of a couple where two couples shared a house but the particular litigants

[3] Domestic Violence in Dating Amendment of 1994: Hearing on Bill 10-477 Before the DC Council Committee of the Judiciary, April 13, 1994 (statement of John McCabe, Chief, Domestic Violence Section, Office of Corporation Counsel). It appears that ultimately the "intimate relationship" language was dropped altogether, but the Committee Report says nothing about this.

were not in an intimate relationship).[4] This decision may also have contributed to the DC Council's final determination that the statute should protect roommates without requiring them to declare their relationship to be sexual, romantic, or intimate.

Thus, in *Shewarega v Yegzaw,* 947 A.2d 47, 52 (2008), this Court found that these statutory changes meant that the Act did apply to non-intimate co-residents of a rooming house. The *Shewarega* decision is surely a reasonable reading of the Act, but it is a far cry from this case. While the *Shewarega* litigants were not "intimate," they both *lived in* the same part of the house and shared a single kitchen, bathroom, and other common areas. In this case in contrast, the litigants each have their own separate kitchens, bathrooms, and living spaces. This landlord does not "live with" his tenants.

In short, an understanding of the purpose and intent of the statute makes clear that it is not designed to make CPOs available to parties who have a purely business relationship – in which, by virtue of his property ownership, a Landlord may access the spaces in which his tenants live. Indeed, if the Landlord's use of the tenants' common spaces in this case suffices to create a "mutual residence" within the meaning of Section 1001, the same would be true for a landlord living in an apartment building and sharing common areas such as lounge or party rooms, bathrooms, and lobby areas with tenants. Yet as recently as last year, this Court

[4] *See* 1994 Report, Appendix (Testimony of Catherine Klein, Esq., et al, Catholic University Law School Families and the Law Clinic, Catholic University of America, Columbus School of Law, et al, in Support of Bill # 10-477, at p. 9, (citing *Sandoval* as a bad outcome compelled by the disfavored "intimate relationship" language)).

implicitly recognized that litigants who both lived in separate apartments within the same apartment building did not share a "dwelling." *Salvaterra v. Ramirez,* 111 A.3d 1032 (D.C.2015) (noting that the specific provision of the Act permitting a respondent to be ordered to "vacate the dwelling unit of the petitioner" (Sec. 16-1005(c)(4)) did not apply to two tenants living in separate apartments within the same apartment building, and holding that the vacate order could instead be authorized pursuant to the "catch-all" remedy (Sec. 16-1005(c)(11)) enumerated in the Act). It is unlikely that the Act's use of the term "residence" (in the phrase "mutual residence") is intended to be broader than the term "dwelling" (in the phrase "dwelling unit of the petitioner").

For all of the foregoing reasons, *Amicus* believes the trial court erred in applying the Act to the parties in this case.

II. PERMITTING APPLICATION OF THE ACT TO THE LANDLORD-TENANT RELATIONSHIP IN THIS CASE WILL OPEN THE STATUTE TO ABUSE AND WEAKEN THE LAW'S EFFECTIVENESS FOR REDUCING DOMESTIC VIOLENCE.

While the domestic violence community normally advocates for a liberal, protective construction of the Act, there is a danger to infinite expansions. The more the Act becomes a "Christmas tree" statute, providing something for everyone without any particular domestic violence focus, the less clear will be the CPO remedy's core purpose, and the greater the risk of obscuring the importance of the dynamics of domestic violence and sexual assault in interpreting the Act's scope.

The central importance of the dynamics of domestic violence and trauma to a proper application of the Act can be seen in two of this Court's decisions. For instance, in *Murphy v. Okeke,* 951 A.2d 783 (D.C. 2008), this Court rightly reversed a

trial court's award of a CPO to a *perpetrator* of a violent assault, which had been issued based on the theory that the victim must be prevented from "provoking" the abuser's violence. This Court issued a powerful ruling that trial courts must not use CPOs in a manner that removes accountability from the perpetrator of violence. *Id*. at 790. Without an understanding of domestic violence dynamics and why it is so important for perpetrators to be held legally accountable, a reading of the Act without regard for that context – such as that of the trial court - could have instead furthered the use of CPOs in a manner which punishes victims and encourages perpetrators of abuse.

Similarly, in *Salvaterra v. Ramirez, supra,* this Court's careful analysis reinforced the importance of the CPO remedy as a means of reducing the trauma suffered by innocent victims as a result of the perpetration of egregious abuse. Again, a more literal and less purposeful interpretation of the Act could easily have resulted in rendering it not only useless to victims, but affirmatively harmful to them - by protecting perpetrators' convenience at the cost of subjecting victims to further trauma and suffering.

Expanding the Act to increasing numbers of non-intimate relationships will inevitably undermine courts' focus on the essential role protection orders play in interrupting the power and control of abusers. The integrity of the IntraFamily Offenses Act and the CPO remedy it provides rests not only on its generous interpretation to fulfill the spirit of the Act and the purpose of reducing intimate abuse and its consequences, but also on maintaining some degree of coherence in its scope and application for this goal. *Amicus* urges the Court to uphold the Act's

significance for victims of abuse by denying its application to a landlord who is seeking a way around the strictures of the landlord-tenant law and procedures.

Respectfully submitted

By: _____

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CERTIFICATE OF SERVICE

I, Joan S. Meier, hereby certify that I have caused to have served a copy of the foregoing Brief of *Amicus Curiae* Domestic Violence Legal Empowerment and Appeals Project (DV LEAP) on counsel for Appellant and on Appellee on Friday September 25, 2015, at the following addresses:

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