2006

Corwell v. Corwell : Brief of Appellee

Utah Court of Appeals

Joanna B. Sagers; Keri Gardner; Michael A. Zody; Attorneys for Appellee.
Randy S. Ludlow; Attorney for Appellant.

IN THE UTAH COURT OF APPEALS

STACEY CORWELL (HALL), Appellee/Petitioner, vs. ROCKY CORWELL, Appellant/Respondent.	Appellate Case No. 20061088

BRIEF OF APPELLEE

RESPONSE TO APPELLANT'S APPEAL FROM AN ORDER OVERRULING OBJECTION TO COMMISSIONER'S RECOMMENDATION TO GRANT PROTECTIVE ORDER

Michael A. Zody (5830)
PARSONS BEHLE & LATIMER
Pro Bono Co-Counsel for Appellee/Petitioner
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Telephone: (801) 532-1234
Facsimile: (801) 536-6111

JOANNA B. SAGERS
KERI GARDNER
Attorneys for Appellee/Petitioner
Legal Aid Society of Salt Lake
205 North 400 West
Salt Lake City, UT 84103

RANDY S. LUDLOW
Attorney for Appellant/Respondent
185 South State Street, Suite 208
Salt Lake City, UT 84111

IN THE UTAH COURT OF APPEALS

STACEY CORWELL (HALL), Appellee/Petitioner, vs. ROCKY CORWELL, Appellant/Respondent.	Appellate Case No. 20061088

BRIEF OF APPELLEE

RESPONSE TO APPELLANT'S APPEAL FROM AN ORDER OVERRULING OBJECTION TO COMMISSIONER'S RECOMMENDATION TO GRANT PROTECTIVE ORDER

Michael A. Zody (5830)
PARSONS BEHLE & LATIMER
Pro Bono Co-Counsel for Appellee/Petitioner
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Telephone: (801) 532-1234
Facsimile: (801) 536-6111

JOANNA B. SAGERS
KERI GARDNER
Attorneys for Appellee/Petitioner
Legal Aid Society of Salt Lake
205 North 400 West
Salt Lake City, UT 84103

RANDY S. LUDLOW
Attorney for Appellant/Respondent
185 South State Street, Suite 208
Salt Lake City, UT 84111

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

STATE CASES

STATE STATUTES

JURISDICTIONAL STATEMENT

The Court of Appeals has appellate jurisdiction of this case pursuant to UTAH CODE ANN. § 78-2a-3 (2006). The Honorable Anthony B. Quinn, Judge, Third District Court, Salt Lake County, State of Utah submitted an order overruling appellant's objection to Commissioner Michael S. Evan's issuance of a protective order on October 30, 2006. *See* UTAH CODE ANN. § 30-6-1 *et seq.* (2006).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Issue 1: Whether the district court properly ruled that the appellant, Rocky Corwell ("Corwell"), was a cohabitant under the Cohabitant Abuse Act ("Act") when he was a former spouse of the appellee Stacey Hall ("Hall").

Issue 2: Whether Corwell waived any right to a hearing under the Cohabitant Abuse Act when he filed his Notice to Submit for Decision notifying the district court that the case was ready for a final resolution.

Standard of Review: The district court based its jurisdiction over Corwell on a legal finding that Corwell was a "cohabitant" under the Act. See UTAH CODE ANN. § 30-6-1(2)(a) (2006) and (R. at 148). Corwell's right to a hearing under the Act also involves a question of law. This Court reviews the district court's legal conclusions for correctness. *Keene v. Bonser*, 107 P.3d 693, 695 (Utah Ct. App. 2005).

STATUTES

UTAH CODE ANN. 30-6-1(2)-(3) COHABITANT ABUSE ACT - DEFINITIONS:

> (2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person who is 16 years of age or older who:

(a) is or was a spouse of the other party;

(b) is or was living as if a spouse of the other party;

(c) is related by blood or marriage to the other party;

(d) has one or more children in common with the other party;

(e) is the biological parent of the other party's unborn child; or

(f) resides or has resided in the same residence as the other party.

(3) Notwithstanding Subsection (2), "cohabitant" does not include:

(a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or

(b) the relationship between natural, adoptive, step, or foster siblings who are under 18 years of age.

UTAH CODE ANN. 30-6-1(2)-(3) COHABITANT ABUSE ACT – ABUSE OR DANGER OF ABUSE—PROTECTIVE ORDERS:

(1) Any cohabitant who has been subjected to abuse or domestic violence, or to whom there is a substantial likelihood of abuse or domestic violence, may seek an ex parte protective order or a protective order in accordance with this chapter, whether or not that person has left the residence or the premises in an effort to avoid further abuse.

(2) A petition for a protective order may be filed under this chapter regardless of whether an action for divorce between the parties is pending.

(3) A petition seeking a protective order may not be withdrawn without approval of the court.

UTAH CODE ANN. 30-6-4.3(1)(E) COHABITANT ABUSE ACT – HEARINGS ON EX PARTE ORDERS:

(1) When a court issues an ex parte protective order the court shall set a date for a hearing on the petition within 20 days after the ex parte order is issued.

(e) If the hearing on the petition is heard by a commissioner, either the petitioner or respondent may file an objection within ten days of the entry of the recommended order and the assigned judge shall hold a hearing within 20 days of the filing of the objection.

UTAH R. CIV. PROC. R. 7(D):

(d) Request to submit for decision. When briefing is complete, either party may file a "Request to Submit for Decision." The request to submit for decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. If no party files a request, the motion will not be submitted for decision.

STATEMENT OF THE CASE

Pursuant to Utah Rules of Appellate Procedure Rule 24(b)(1), for purposes of this appeal, Appellee agrees with the statement of the case and facts found on pages 4-6 of the Brief of the Appellant.

SUMMARY OF THE ARGUMENT

First, the district court properly upheld the Commissioner's issuance of the protective order against Corwell under the Cohabitant Abuse Act ("Act"). Corwell is a cohabitant under the Act because he is Hall's former spouse. The annulment of the parties' marriage does not preclude Corwell from being classified as a cohabitant. In addition, the fact that the parties never resided together does not have any bearing on the district court finding jurisdiction over Corwell under the Act.

Second, Corwell waived his right to a hearing under the Act when he filed his Notice to Submit for Decision ("Notice"). The Notice stated that the case was ready for

resolution by the court. In the alternative, the district court's failure to hold a hearing is not reversible error.

ARGUMENT

I. THIS COURT SHOULD UPHOLD THE DISTRICT COURT'S RULING THAT CORWELL, AS HALL'S FORMER SPOUSE, WAS A COHABITANT UNDER THE COHABITANT ABUSE ACT EVEN THOUGH CORWELL NEVER RESIDED WITH HALL.

Corwell is a cohabitant under the Cohabitant Abuse Act ("Act") and the district court properly overruled Corwell's objection to the Commissioner's issuance of the protective order against him. The Act provides protection to victims of domestic violence. Victims can only obtain a protective order under the Act if their alleged aggressor is a "cohabitant" for purposes of the Act.

Corwell contends that he is not a cohabitant because, by virtue of the annulment, he was never Hall's spouse and because he never resided with Hall. The following sections will show that 1) Corwell is a cohabitant under the Cohabitant Abuse Act because he was Hall's spouse; and 2) Corwell is a cohabitant even though he never resided with Hall.

A. Corwell is a cohabitant under the Cohabitant Abuse Act because he was Hall's spouse.

The district court properly upheld the issuance of a protective order against Corwell under the Act because he was Hall's spouse. The Act does not leave the meaning of "cohabitant" open for interpretation. Rather, it clearly outlines several ways in which an individual might attain "cohabitant" status. UTAH CODE ANN. § 30-6-1(2) (2006). The most relevant section for purposes of this appeal is section (2)(a), which

states that a "'cohabitant' means ... a person who... is *or was a spouse* of the party." (emphasis added). The Act is broad in its cohabitant definition to provide remedies for previously unprotected victims. *Bailey v. Bayles*, 18 P.3d 1129, 1132 n. 4 (Utah Ct. App. 2001) ("The purpose of the Cohabitant Abuse Act was to create a timely and simplified process whereby some level of protection and safety could be afforded to victims who had previously been outside the umbrella of orders available to persons involved in criminal prosecutions.").

In interpreting the Act and its definition of "cohabitant," this Court "look[s] first to the plain language of the statute to discern legislative intent." *Keene v. Bonser*, 107 P.3d 693, 697 (Utah Ct. App. 2005) (citations omitted). "In construing the plain language of a statute, words 'which are used in used in common, daily, nontechnical speech, should, in the absence of evidence of a contrary intent, be given the meaning which they have for laymen in such daily usage.'" *Id.*

The plain language of section (2)(a) defining cohabitation clearly applies to spouses or former spouses. There is no ambiguity in this definition and no need to look beyond the plain language of the statute. Therefore, applying the statute, Corwell is a cohabitant because he is Hall's former spouse. It is undisputed that Corwell and Hall were married on March 19, 2005 in Clark County, Nevada. (R. at 29).

Corwell contends that section (2)(a) should not apply to him because his marriage to Hall was annulled and declared *void ab initio* on March 29, 2006. Brief of Appellant, p. 6. However, the Act does not include such an exception in the case of annulment. In fact, while the Utah legislature contemplated and created specific exceptions to the

cohabitant definition for parent-child relationships and siblings under the age of eighteen, it notably did not create an exception for annulled parties. *See* UTAH CODE ANN. § 30-6-(3) (2006).

Corwell argues that if this Court applies the Act to annulled parties then it is abrogating the common law of annulment. He argues that the common law of annulment can only be abrogated through a specific directive from the legislature. However, treating annulled parties as former spouses and cohabitants under the Act does not undo the common law benefits of annulment for the involved parties. For example, the annulment still relieves parties from financial obligations such as alimony or other forms of marital support.

Corwell also argued below at the district court level that the annulment precluded him from being classified as a cohabitant under the Act. The district court correctly rejected this proposition and stated in its order:

> The clear purpose of the Protective Order statute is to provide relief for persons who are the victims of violence in intimate relationships. The clear intention of the legislature is that those purposes be applied broadly. Those purposes are not served by reliance on the legal fiction that the parties were never married due to the annulment. The fact that they once had the status of a married couple is sufficient to confer jurisdiction under this act.

(R. at 148-9).

Like the district court, this Court also rejected a narrow interpretation of the Act's cohabitant definition in *Keene v. Bonser*. There, Bonser contested the district court's finding "that he "resided in the same residence" as Keene and was thus a "cohabitant"

under the Act." *Keene*, 107 P.3d at 695. Despite living in Wyoming, Bonser frequently stayed at Keene's Utah residence. *Id.* Bonser argued, *inter alia*, that he could not be a cohabitant under the Act's residency prong, UTAH CODE ANN. § 30-6-1(2)(f) (2006), because he could not get a Utah's driver's license and because he could not register to vote in Utah. *Id.* at 696. In other words, Bonser argued that the Court should narrow the Act's cohabitant definition. The Court in *Keene*, however, rejected Bonser's proposal for a "narrow, legalistic interpretation" of the Act's cohabitant definition. *Id.* In doing so, it noted that the "Utah legislature has adopted a *broader view of cohabitation* in the cohabitant abuse context than Utah case law has in other contexts." *Id.* (e mphasis added).

Akin to Bonser's argument in *Keene*, Corwell is relying on the legal fiction of annulment to argue that he should not be considered a cohabitant. Like in *Keene*, this Court should reject Corwell's proposal for a narrow and legalistic interpretation of the Act's cohabitant definition.

In addition to the plain language of the statute, public policy dictates that the Act should extend protection to spouses who are victims of domestic violence even where there has been an annulment. The *Keene* Court looked beyond the statutory definitions and considered "the purpose behind the Act." *Id.* at 698. It noted the "expansive reach intended by legislatures in enacting domestic violence and abuse statutes." *Id.* Likewise, the district court recognized the purpose of the Act to protect "victims of violence in intimate relationships." (R. at 148). Additionally, these purposes are evident in the Act itself if one looks to the types of relationships the Act targets for protection from

domestic abuse. For example, other than spouses or former spouses, the Act protects those who reside together, have children together, *or* are related by blood or marriage. UTAH CODE ANN. § 30-6-1(2)(c), (d) & (f) (2006).

Corwell and Hall were involved in an intimate relationship as evidenced by their March 2005 marriage. This is precisely the type of involved emotional relationship the Act is intended to encompass. The annulment did not reduce the emotional entanglement of the parties. In fact, in many cases, annulment can, like divorce, escalate the parties' emotions of hatred and animosity towards one another. As evidenced in this very case, the parties continued to have problems even after the annulment. For instance, it is undisputed that on one occasion Corwell called Hall and threatened to "punch her in the face." Brief of Appellant p. 5. In sum, the Act is meant to protect victims who are involved in complex emotional relationships from future violence. The parties' annulment did not diminish the complexity of their relationship. Thus, the Act should continue to provide protection to victims, like Hall, even after a marriage is annulled.

To conclude, the district court properly found jurisdiction over Corwell under the Act because he is Hall's former spouse. This Court should reject Corwell's argument that the annulment precludes him from being a cohabitant. The Act is not meant to be applied in such a narrow and legalistic manner. Finally, public policy dictates extending the Act to former spouses even where the spouses have annulled the marriage.

B. Corwell is a cohabitant even though he never resided with Hall.

The district court properly found jurisdiction over Corwell as a cohabitant under the Act even though he never resided with Hall. A person who "resides or has resided in

the same residence as the other party" is a cohabitant for purposes of the Act. UTAH CODE ANN. § 30-6-1(2)(f) (2006). However, presenting evidence of joint residency is not the only way to establish cohabitant status under the Act. For instance, a person is a cohabitant if they are or were a spouse of the other party, if they are related by blood or marriage to the other party, if they have common children with the other party, or if they are the biological parent of the other party's unborn child. UTAH CODE ANN. § 30-6-1(2)(a), (c)-(e) (2006). None of these relationships require the parties to have resided together at any time. For example, it is quite common for those who are related by blood not to reside together. Also, many people who share common children have never resided together. Thus, it is clear from the Act's cohabitant definition that there is no separate requirement for residency.

Despite the unambiguous language of the statute, Corwell repeatedly argues that the Act's cohabitant definition requires some form of residency. For example, he argues that "[t]he primary characteristic of all the relationships encompassed by the Act is that they require the parties to have resided together at some point." Brief of Appellant, p. 7. He also argues that "[s]ince the parties ... never resided together *as required by the Act*, the trial court lacked jurisdiction to issue an ex parte protective order against appellant." *Id.* at p. 10 (emphasis added). These arguments ignore the plain language of the statute. Nowhere does the Act require residency. As mentioned, there are several ways to establish cohabitant status without having to show residency.

While some states require proof of residency to obtain jurisdiction over an alleged aggressor, Utah's Act encompasses a larger range of relationships and thus does not

require a showing of residency. For example, in Vermont's domestic abuse statute, courts can only obtain jurisdiction over "persons living together or sharing occupancy and persons who have lived together in a sexual relationship." VT. STAT. ANN. tit. 15, § 1101(2) (2006). Similarly, Ohio's domestic abuse statute limits its jurisdictional reach to a "person who is residing or has resided with the offender . . . ." OHIO REV. CODE ANN. § 2919.25(F)(1)(a) (2007). Vermont and Ohio are among several states that require some form of residency to obtain jurisdiction in domestic abuse cases. Had the Utah legislature intended to require residency as Corwell contends, it would have stated so explicitly as other states have done.

To conclude, contrary to Corwell's arguments, the Act does not include a residency requirement in its cohabitant definition. There are several other ways for a party to meet the Act's jurisdictional requirement without ever showing residency. Here, the district court properly found jurisdiction over Corwell because the parties were spouses. The fact that the parties never resided together does not bear any weight on this Court's review of the district court's jurisdictional finding.

II. CORWELL WAIVED ANY RIGHT TO A HEARING WHEN HE FILED HIS NOTICE TO SUBMIT FOR DECISION.

Corwell effectively waived any right to a hearing when he filed his Notice to Submit for Decision with the district court on October 24, 2006. Corwell filed an objection (R. at 89) to the issuance of the protective order against him on June 2, 2006, along with a supporting memorandum (R. at 91-96). Once the objection has been filed,

the district court is to hold a hearing within twenty days of the filing of the objection. *See* UTAH CODE ANN. § 30-6-4.3(1)(e) (2006).

Approximately five months later, on October 24, 2006, Corwell filed the pleading titled 'Notice to Submit for Decision' ("Notice"). (R. at 146). In the Notice, Corwell stated that his motion objecting to the issuance of the protective order was "at issue and ready for decision of the Court." Under the circumstances, Corwell should not be allowed to raise the objection of a lack of hearing now on appeal. The district court should have been "given an opportunity to address a claimed error and, if appropriate, correct it." *See State v. Holgate*, 10 P.3d 346, 350 (Utah Ct. App. 2000). By submitting the Notice and representing that the case was ready for decision, Corwell waived the right to a hearing.

Moreover, the district court's failure to hold a hearing is not reversible error. Corwell raised two arguments in his objection memorandum: 1) the district court lacked jurisdiction because Corwell was not a cohabitant; and 2) the finding that Corwell presented a credible threat should be overturned because misrepresentations made by Hall in the Petition required a finding that Hall was not credible and should not be awarded a protective order. (R. at 91-96). As to this second argument, Corwell did not request an opportunity to present new evidence, but rather challenged the finding of a threat based on the record evidence received by the Commissioner during the protective order hearing (which was not an ex parte hearing). (R. 91-96).

The first argument is purely a legal argument which the district court could resolve without an evidentiary hearing. It required the district court only to look at the Act's definition of cohabitant and determine whether Corwell qualified as a cohabitant.

With respect to Corwell's second argument, Corwell has not challenged on appeal the factual finding that he presented a threat to Hall, and characterizes his argument as a purely legal argument. Appellant's Brief, p. 1. By failing to challenge specific factual findings, Corwell has waived this issue. Moreover, Corwell's attack on the threat finding was based on the record submitted to the Commissioner. As noted above, Corwell did not ask for an evidentiary hearing on this issue. In addition, there are undisputed facts which support the finding that Corwell presented a threat to Hall's safety. Namely, Corwell called and threatened Hall that he would "punch her in the face." Brief of Appellant, p. 5. Under the circumstances, remand for a hearing is not warranted.

CONCLUSION

The district court properly found jurisdiction over Corwell under the Cohabitant Abuse Act. Also, Corwell waived his right to a hearing under the Act by filing a Notice to Submit for Decision indicating to the district court that the case was ready for a final resolution. This Court should affirm the judgment of the district court and uphold the protective order issued against Corwell.

Michael D. Zody May 30, 2007

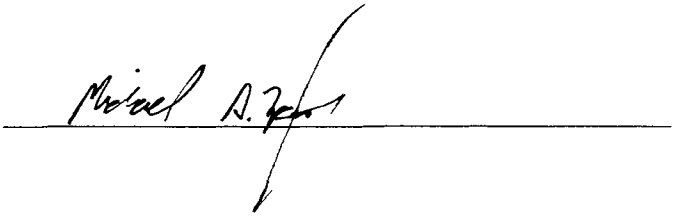
MICHAEL ZODY
PARSONS BEHLE & LATIMER
Attorneys for Stacey Hall

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May, 2007, I caused to be mailed, first class, postage prepaid, two true and correct copies of the foregoing BRIEF OF APPELLEE, to:

JOANNA B. SAGERS
KERI GARDNER
Attorneys for Appellee/Petitioner
Legal Aid Society of Salt Lake
205 North 400 West
Salt Lake City, UT 84103

RANDY S. LUDLOW
Attorney for Appellant/Respondent
185 South State Street, Suite 208
Salt Lake City, UT 84111



ADDENDUM A

See attached Appellant's Notice to Submit for Decision and Memorandum in Support of Respondent's Objection to Commissioner's Issuance of Ex Parte Protective Order.

Randy S. Ludlow #2011
Attorney for Petitioner
185 South State Street, Suite 208
Salt Lake City, Utah 84111
Telephone: (801) 531-1300
Fax: (801) 328-0173

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STACY C. HALL	)	**MEMORANDUM IN SUPPORT OF RESPONDENT'S OBJECTION TO COMMISSIONER'S ISSUANCE OF EX PARTE PROTECTIVE ORDER**
Petitioner,	)	
	)	
vs.	)	Civil No. 064902056 CA
ROCKY CORWELL,	)	Judge Quinn
Respondent.	)	Comm. Michael S. Evans
	)	

COMES NOW the respondent, Rocky Corwell, by and through his attorney of record, Randy S. Ludlow, who hereby files his objection, as provided in § 30-6-4.3(1)(e), Utah Code Ann., (2006), to the issuance of an ex parte protective order against him by Commissioner Evans, on the following grounds:

I. THE RESPONDENT AND PETITIONER WERE NEVER COHABITANTS AS DEFINED IN § 30-6-1, UTAH CODE ANN. (2006), THEREFORE THIS COURT LACKS JURISDICTION TO ISSUE AN EX PARTE PROTECTIVE ORDER AGAINST RESPONDENT PURSUANT TO THE COHABITANT ABUSE ACT.

Petitioner and respondent are not cohabitants as defined in § 30-6-1 of the Cohabitant Abuse Act (the "Act"), therefore this court lacks jurisdiction under to the Act to issue an ex parte protective order against respondent. The Act defines several classes of persons as "cohabitants." The two relevant classes in this matter are found at § 30-6-

1(2)(a), which requires that the parties are or were spouses, and § 30-6-1(2)(f), which requires that the parties reside or resided in the same residence. In this case, the parties never resided in the same residence, and the parties' brief marriage was annulled and declared void *ab initio* in March, 2006, prior to the events alleged in petitioner's Verified Petition for Protective Order.

Petitioner indicates in her Verified Petition that the parties did not reside together at any time. This is consistent with the sworn stipulation entered into by the parties in the annulment action, which is attached as Exhibit A to this Memorandum, wherein the petitioner agreed that she and the respondent never resided together at any time. Exhibit A, Stipulation, dated March 3, 2006, ¶ 4.

Commissioner Evans relied on § 30-6-1(2)(a), which requires that the parties are or were spouses. However, the annulment void *ab initio* had the effect of legally rendering the marriage null and void. Utah has generally adopted the common law regarding annulments, as evidenced in § 30-1-17.1(2), Utah Code Ann. (2006). Under the common law and as defined in Black's Law Dictionary, an annulment "differs conceptually from a divorce in that a divorce terminates a legal status, whereas an annulment establishes that a marital status never existed." Abridged Fifth Edition (1983).

Under Utah case law, the only area where annulment is treated differently than at common law involves the reinstatement of alimony from a prior marriage following annulment of the subsequent marriage. See *Ferguson v. Ferguson*, 564 P.2d 1380 (Utah 1977). In *Ferguson*, the Utah Supreme Court relied on principles of equity and public policy to find an exception to the common law regarding annulment. The Court looked to language in Title 30 of the Utah Code that authorized the district court to award alimony and support in annulment actions as equity required. To the Court, this

evidenced the Legislature's intent to ensure that woman and children were not left without any support following an annulment. Id. at 1382. The Court observed that the principal argument for restoring alimony from the prior marriage was that alimony was not allowed in annulments and if the woman's prior status was not restored, she would be left without support. Id. at 1381. Since the Legislature had provided for alimony in annulments, the Court reasoned that it could not mechanically reinstate alimony but had to make a determination whether such reinstatement was equitable. The Legislature has since clarified the statute to make clear that alimony will be reinstated following an annulment void *ab initio* so long as the prior spouse is made a party to the annulment action and his rights are determined therein. § 30-3-5(9), Utah Code Ann. (2006).

Under the rules of statutory construction, the court must "construe each act of the legislature so as to give it full force and effect. When a construction of an act will bring it into serious conflict with another act, our duty is to construe the acts to be in harmony and avoid conflicts." *Jerz v. Salt Lake County*, 822 P.2d 770, 773 (Utah 1991). Under § 30-1-17.1, the Legislature makes clear its intent not to abrogate the common law regarding annulment. When the Legislature has intended to alter the common law, it has done so specifically, as in § 30-3-5(9).

The Cohabitant Abuse Act does not specify any exceptions to the common law of annulment. It states that cohabitants includes parties who were spouses., Under the common law of annulment, the parties to the marriage were never spouses because the marriage is considered null at its inception. If the Act is read to incorporate an unstated abrogation of the common law, it directly contradicts the Legislature's intent to rely on the common law except for certain limited exceptions.

In order to harmonize the various provisions referred to above, it is necessary to follow the previous example set by the Legislature and assume that if the Legislature had intended to abrogate the common law and treat annulments in the same manner as divorces, it would have stated so within the Act.

It is likely that the Legislature did not do so, because it was assumed that if the marriage was annulled the parties would still be encompassed within the Act because they had resided together. The overall intent of the Act is to provide persons with a legal means to protect themselves from violence perpetrated by the persons with whom they reside. The case at hand is unique, however, in that the parties never in fact resided together, despite attempting to enter into a marriage. The parties had a wedding but because of the petitioner's admitted misrepresentations to induce the respondent to marry her, they never in fact had a marriage, which the court recognized in granting the annulment void *ab initio*. Since the parties were never legally spouses and because they never resided together as required by the Act, this court lacks jurisdiction to issue an ex parte protective order against respondent. Therefore, the ex parte protective order issued by Commissioner Evans must be dismissed.

II. RESPONDENT DOES PRESENT A CREDIBLE THREAT TO PETITIONER'S SAFETY THEREFORE THE PROTECTIVE ORDER SHOULD BE DENIED

Under § 30-6-2, Utah Code Ann. (2006), the petitioner must show previous domestic abuse or the substantial likelihood of imminent abuse in order for the court to issue a protective order. In the ex parte protective order, Commissioner Evans found that the respondent "presents a credible threat to the physical safety" of petitioner. However, petitioner makes several material misrepresentations within her verified petition, which seriously impact her credibility.

In her sworn Verified Petition, petitioner states in Paragraph 3 that she and respondent are currently married, when in fact the marriage was annulled one month earlier. In Paragraph 5, petitioner states that she initiated the annulment action (Third District Court case number 054902113) and that respondent was "violently opposed" to this action. However, the respondent was in fact the petitioner in that action. A copy of the Decree of Annulment is attached as Exhibit B to this Memorandum. Finally, petitioner states her name within the Verified Petition as "Stacey Corwell." Pursuant to the Decree of Annulment, however, petitioner was awarded her maiden name "Stacy Hall."

Whether petitioner deliberately misled the court or whether she is merely confused or in denial regarding her marital status and the procedural history of the annulment, these misrepresentations cast serious doubt upon the entire verified petition and upon petitioner's version of what occurred in April 2006 and her allegations regarding earlier abuse.

In addition to petitioner's misrepresentations, respondent presented evidence to Commissioner Evans indicating that petitioner had been subjecting respondent and his girlfriend to ongoing threats and harassment, that respondent requested assistance from the Salt Lake City police department to stop petitioner's ongoing harassment prior to his alleged threat against petitioner, and that respondent was recovering from the effects of anesthesia and recuperating from eye surgery at the time the alleged threat was made. Exhibit C, Response in re Protective Order.

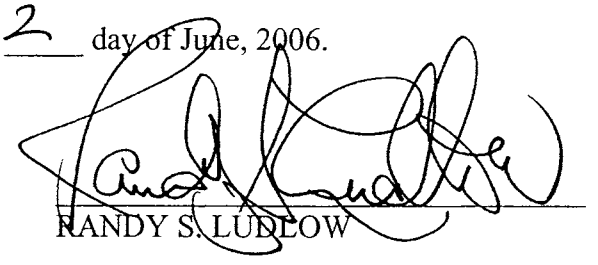
When these circumstances are viewed in their entirety, in light of petitioner's false statements in the Verified Petition, it is not substantially likely that respondent constitutes a credible imminent threat to petitioner. Petitioner has abused this process in

her ongoing efforts to harass the respondent. Prior abuse or a substantial likelihood of imminent abuse by respondent does not exist in this case and the court should deny petitioner's request for a protective order.

CONCLUSION

Petitioner and respondent are not cohabitants as defined by the Cohabitant Abuse Act, therefore this court lacks jurisdiction to issue a protective order against respondent and the petitioner's request must be denied. In the alternative, based on the overall circumstances and material falsehoods made by petitioner in her Verified Petition for Protective Order, a substantial likelihood does not exist that respondent presents an imminent credible threat to petitioner's safety, and respondent asks the court to deny petitioner's request for a protective order.

Dated this 2 day of June, 2006.



RANDY S. LUDLOW

Randy S. Ludlow #2011
Attorney for Respondent
185 South State Street, Suite 208
Salt Lake City, Utah 84111
Telephone: (801) 531-1300
Fax: (801) 328-0173

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

STACEY CORWELL,	:	
	:	**NOTICE TO SUBMIT**
Petitioner,	:	**FOR DECISION**
	:	
vs.	:	
	:	
ROCKY CORWELL,	:	Case No. 064902056 CA
	:	Judge Quinn
Respondent.	:	Comm. Michael S. Evans

The following motion(s) are now at issue and ready for decision of the Court. The document(s) indicated have been filed with the Court.

1. **Type of Motion:** Respondent's Objection to Commissioner's Issuance of Ex parte Protective Order (Request for Oral Argument and *De Novo* Review).

2. **Date filed:** June 2, 2006

3. **Party filing motion:** Respondent

and,

1. **Type of Motion:** Memorandum in Support of Respondent's Objection to Commissioner's Issuance of Ex parte Protective Order (Request for Oral Argument and *De Novo* Review).

2. **Date filed:** June 2, 2006

3. **Party filing motion:** Respondent

DATED this 24 day of October, 2006.

RANDY S. LUDLOW

MAILING CERTIFICATE

I hereby certify that on this 24th day of October, 2006, a true and correct copy was mailed in the United States Mail, postage prepaid, of the foregoing **NOTICE TO SUBMIT FOR DECISION** to the following:

Joanna B. Sagers
Keri Gardner
LEGAL AID SOCIETY OF SALT LAKE
205 North 400 West
Salt Lake City, Utah 84103

SHARLA J. WEAVER
Legal Assistant