

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

NADIA DRAYTON,

PLAINTIFF,

V.

FREESTON DRAYTON,

DEFENDANT.

CASE NO. **SX-2014-DV-029**

DOMESTIC VIOLENCE

MEMORANDUM OPINION

THIS MATTER came before the Court on Monday, March 2, 2014, on a domestic violence complaint, filed by Nadia Drayton against Freeston Drayton on or about February 14, 2014. At the scheduled hearing, Nadia Drayton was represented by Attorney Richard Austin of Legal Services of the Virgin Islands. Attorney Martial Webster represented Freeston Drayton.

In her complaint and at the hearing, Nadia Drayton alleged that Freeston Drayton appeared at their former marital abode at 676 Barren Spot on or about January 23, 2014, asserting his right of entry. She stated he attempted to push his way past her, but she was able to close the door before he was able to. She further stated that on February 14, 2014, he came to her home at 7:30 a.m., and blocked her vehicle from leaving for about twenty minutes, while staring at her as if daring her to do something. On February 20, 2014, she says that she heard Mr. Drayton's vehicle and observed him from her kitchen window as he walked around the yard with a machete in hand, cursing and saying she had better watch her back or she would get what is coming to her. She described these incidents as a continuing pattern or practice of harassment by Mr. Drayton toward her in order that she may vacate the premises. She also asserts the visits to the home are a violation of a standing order in the parties' divorce proceedings.

Mr. Drayton disputed Mrs. Drayton's account of the January 23, 2014-visit. He admitted he went to the house, but only after he was advised an earlier temporary restraining order had been resolved and he could return to the former marital abode. He disputed the assertion he attempted to push past Mrs. Drayton; and he called a friend, Donald Claxton, who said that he observed Mr. Drayton give Mrs. Drayton a paper, and then observed Mrs. Drayton take the paper and close the door. He said he called Mr. Drayton to him, and Mr. Drayton responded by leaving the residence with him. He testified he observed no shouting and did not see Mr. Drayton attempt to push past Mrs. Drayton. Mr. Drayton also denied the incident complained of on February 14, 2014, and argued that it would be physically impossible to block Mrs. Drayton's vehicle given the layout of the property. He admitted going to the property after February 14, 2014, to pick coconuts, but denied threatening Mrs. Drayton. He said he has gone to the yard a couple of times, but has not seen Mrs. Drayton. He said he chopped coconuts and left. He said he was advised the police were looking for him, and learned a new application for a temporary restraining order had been filed only after he went to the property to get the coconuts.

Mr. Drayton's attorney argued the current matter stems from an ongoing plot by Mrs. Drayton to file domestic violence complaints against Mr. Drayton in order to obtain an advantageous position in their divorce matter. He pointed to two other cases filed by Mrs. Drayton, which were dismissed when audio and video evidence served to dispute or undermine her assertions. He pointed to the timing of the instant matter – just weeks after the dismissal of the last application and after Mr. Drayton asserted his “right” to possession of the former marital abode. Mrs. Drayton's attorney argued the evidence admitted is sufficient to support a permanent restraining order. He argued the

visits served as harassment and an attempt at intimidation. He questioned Mr. Drayton's assertion he was there to retrieve tools while separately asserting he is disabled from an ongoing medical condition. He argued that Mr. Drayton knows the parties' relationship is acrimonious and that prudence would have dictated he not go to property until the parties' divorce and property disputes are finally settled. He pointed to Mr. Drayton's stature and argued any reasonable person would be fearful under similar circumstances. He also noted Mr. Drayton's obvious feelings that he is the sole owner of the property, having bought the undeveloped land on which the former marital abode sits prior knowing Mrs. Drayton.

To prevail on her application for a permanent restraining order, a victim must prove the allegations of domestic violence by a preponderance of the evidence. Title 16 V.I.C. § 97(a). Under Virgin Islands law, any of an enumerated list of acts, attempts or threats against someone who is protected would constitute domestic violence. Title 16 V.I.C. § 91(b). In this case, Mrs. Drayton, in Paragraph 5 of the Complaint, checked three acts or threats of domestic violence, to wit: harassment, destruction of property, and forcible or unlawful entry.

At the hearing, if Mrs. Drayton established by a preponderance of the evidence that she has been subjected to an act, threat or attempt of harassment, destruction of property, and/or unlawful entry, and that a permanent restraining order is needed in order to deter or prevent further incidents of abuse, she must be granted that permanent restraining order. Title 16 V.I.C. § 91(a) (3). If the court is not convinced of her arguments when applying the appropriate standard of proof, the matter must be dismissed.

ANALYSIS

That complaint alleged, in Paragraph No. 5, acts by Mr. Drayton of (1) harassment; (2) forcible or unlawful entry; or (3) destruction of property. At trial, Mrs. Drayton and her attorney pointed to what they believe is a continuing pattern or practice of harassment, designed to remove her from the parties' former marital abode so that Mr. Drayton could regain possession. This harassment, they assert, includes not just the period prior to the filing of the complaint, but immediately thereafter.

Harassment is defined in Title 16 of the Virgin Islands Code, in part, as:

engaging in a purposeful, knowing or reckless course of conduct involving more than once incident that alarms, or causes distress to another person and serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person distress and must actually cause distress.

Mrs. Drayton has alleged several acts she claims were harassing. If any are viewed in isolation, one might reasonably argue they do not constitute harassment as defined by the applicable provision. However, when viewed together, this Court believes that Mrs. Drayton has established on the record, by preponderance, that she is a victim of harassment as defined.

Rightly or wrongly so, Mrs. Drayton has been living at the parties' marital abode since May of 2013, when a temporary restraining order removed Mr. Drayton from the premises and returned possession to Mrs. Drayton (who had vacated the premises months earlier.) That temporary restraining was dissolved in January 2014 and it was apparent Mr. Drayton believes, rightly or wrongly so, that the dissolution of the temporary restraining order did or should have returned the parties to the *status quo ante*.

It was clear from the testimony that when Mr. Drayton went to the property on January 23, 2014, he believed he had a right to be there. He did not go there to inform Mrs. Drayton of this perceived right. He went to assert that perceived right. This Court believes he did or should have known that, given the acrimonious relationship and history between him and Mrs. Drayton, confrontation was likely to ensue. Still, he tried to gain entry into the house, but was unable to do so when Mrs. Drayton closed the door. The Court finds it more likely than not that he behaved in the manner alleged by Mrs. Drayton. This is evident from the fact that he (admittedly) did not leave the premises until the police were called, arrived, and escorted him away.

After that, the Court believes and finds that Mr. Drayton, obviously frustrated with the turn of events on January 23, 2014, began to assert his perceived right in other ways. The Court finds that he went to the property on other occasions, creating an environment ripe for intimidation and fear. On or about February 14, 2014, he went to the property at 7:30 a.m., and blocked Mrs. Drayton from leaving. According to him, he sought tools for an unstated purpose, while still maintaining that he is disabled and unable to work. He went on the property to cut coconuts, which he says he used for health reasons; but the Court finds it more likely he used the coconut gathering as an excuse to demonstrate to Mrs. Drayton that he intended to be unrelenting.

While on the property, Mr. Drayton possessed a machete. He may have used it to cut coconuts, but this Court finds he did and/or should have known how intimidating and frightening the open possession of this item could be for Mrs. Drayton and the parties' minor children. Mr. Drayton argued he is a changed man, and maybe he is, but this revelation did not diminish the Court's concern over his behavior prior to the filing of the complaint against him. This is particularly true since the parties are apparently

mired, knee-deep, in a divorce action – a far better forum for resolving their property issues than that which was presented them at the moment of confrontation in January and thereafter.

In sum, this Court believes and finds that Mrs. Drayton is and was fearful of what has happened, and that she has been distressed by the turn of events leading up to the filing of the complaint, and thereafter. The behavior of Mr. Drayton appears to have as a principal purpose the alarm or distress she has suffered and, for these reasons, the Court has concluded she has been the victim of an act, attempt or threat of domestic violence.

Because the Court finds that Mr. Drayton has harassed Mrs. Drayton as defined by the domestic violence statute, it need not decide whether he also committed an act, attempt or threat of destruction of property or forcible or unlawful entry as only one occurrence need be proven. Since the object of the parties' disdain for one another appears to be the former marital abode, the Court further finds it prudent and necessary to only put the order in place, but only for a period long enough to permit the Family Court to address the pending divorce matter.

A permanent restraining order that will expire at the end of six (6) months shall issue under separate cover. This permanent restraining order will bar Mr. Drayton from having any direct contact with Mrs. Drayton and provide her with temporary possession of the parties' marital abode. This order will be subject to any final order granted in the parties' divorce matter.

Date: 6 March 2014

Jessica Gallivan
JESSICA GALLIVAN

Superior Court Magistrate

ATTEST:

ESTRELLA GEORGE

Acting Clerk of the Court

Estrella George
Court Clerk Supervisor

Date: 3/7/14