

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

ESTAFANIS MARIA SUTHERLAND,
PETITIONER,

v.

THOMAS R. SUTHERLAND,
RESPONDENT.

CASE NO. **SX-13-DV-178**

ACTION FOR: DOMESTIC
VIOLENCE

MEMORANDUM OPINION

THIS MATTER came before the Court on the Petitioner's complaint for domestic violence, filed on or about June 28, 2013. The Court entered a temporary restraining order on June 28, 2013, and set the matter down for a hearing on July 8, 2013. On July 1, 2013, Attorney Michael Sheesley entered an appearance on behalf of Respondent Thomas Sutherland. He also filed a *Motion for Immediate Return of Firearms to Defendant*, along with a *Motion for Dissolution or Modification of Temporary Restraining Order*. On July 5, 2013, the Court denied the motion requesting Respondent's firearm be returned to him, and further ordered the motion for dissolution would be heard at the Court's first available date, which was July 8, 2013. Attorney William Franks of Legal Services of the Virgin Islands, Inc. appeared on July 8, 2013 on behalf of the Petitioner. At the conclusion of the proceedings, both counsel agreed the evidence submitted in support or in defense of the motion for dissolution would be the same as that which would support or defend against the complaint and request for a permanent restraining order.

Based on the foregoing, the Court finds as follows:

1. Petitioner and Respondent are husband and wife, having married approximately 3 ½ years ago.
2. Petitioner, a female and housewife, is a 21 year-old national of the Dominican Republic.
3. Prior to marrying Respondent, Petitioner worked in a nightclub in the Dominican Republic. She is currently living in a women's shelter, has no job, and no income. She is not fluent in English.
4. Respondent is 53 year-old American male, who is gainfully employed with GEC, LLC.
5. Petitioner and Respondent have one child, although Petitioner is the mother of a son, who moved here from the Dominican Republic.
6. Petitioner and Respondent have had at least three sexual encounters with another person present, the first of which Petitioner consented to.
7. On the latter occasions, Petitioner consented only after Respondent threatened he would return her to the Dominican Republic.
8. Respondent has repeatedly degraded the Petitioner by calling her "ugly" names, such as useless and a whore.
9. In April 2013, the parties traveled to the Dominican Republic. While there, Petitioner discovered that Respondent had copied her Facebook messages and stored them on his phone. She erased the messages. An altercation ensued, which resulted in Petitioner losing her right-foot toenail.

10. Approximately twelve (12) days ago, Respondent pushed and/or grabbed Petitioner, causing noticeable bruising on both arms.¹
11. The pushing followed the Respondent taking a picture of the Petitioner while she was nude. When she asked why, and asked him to erase the picture, an argument ensued.
12. Petitioner has been intimidated by the fact that Respondent owns guns, and sleeps with a gun under his pillow with the barrel pointed in her direction.
13. Although Petitioner has expressed her concerns about the gun under the pillow, Respondent stated the safety was engaged.
14. Respondent recently filed for a divorce from the Petitioner.
15. Since filing for divorce, and before the Petitioner filed the instant complaint for domestic violence, Respondent bought food for the marital home and took a picture of the food.
16. The recent taking of Petitioner's picture (while she was in the nude) and of the food coincide, as does the receipt from a Banco Popular Account showing (dated June 28, 2013, at 3:43 p.m.) an available checking account balance of \$1001.18 and a reserve balance of \$4,516.27.
17. On or about June 27, 2013, Respondent secured a letter from his employer's attorney, indicating only he and his permittees could reside in the condominium unit the parties were living in. It also expressly stated that "Mrs. Sutherland

¹ During the hearing, Petitioner pointed to and the Court observed several bruises to both arms and evidence of a previously injured toenail.

does not have the permission of GEC, LLC to occupy the subject unit over the objections of Mr. Sutherland.”

18. On or about June 28, 2013, Respondent penned and delivered an eviction notice to the Petitioner, apparently prompting her to file the instant action in response.

ANALYSIS

Title 16 V.I.C. § 91(b) defines domestic violence as the occurrence, attempt, or threat of certain delineated acts. The acts complained of by the Petitioner in her complaint include: (1) assault; (2) harassment; (3) battery; (4) threats; and (5) rape. A finding (by a preponderance of the evidence) that any or all of these occurred, were attempted, or were threatened would be sufficient to justify the imposition of a permanent restraining order.

It is true the Respondent denied in his testimony having ever abused the Petitioner. He claimed the sexual encounters complained of were all consensual. He testified it was Petitioner who attacked him when she injured her toenail. He denied threatening to send Petitioner back to the Dominican Republic and/or that he ever threatened her immigration status.

However, the Court was more convinced of the Petitioner’s veracity and found her testimony more compelling. In all of the parties’ arguments noted, it was only the Petitioner who suffered any physical injury. Moreover, while the Respondent made broad denials of abuse, he did not specifically deny the testimony regarding his firearms or the incident of approximately 12 days ago in which Petitioner asserted he squeezed her arms after taking a picture.

Respondent's testimony he took pictures of the food in the refrigerator that he bought prior to the filing of the complaint of domestic violence because he knew she would assert that hunger would be one of her allegations was particularly not credible. The same was true for the rationale given for employing a camera to document surreptitiously what she was doing when he was not around. Instead, the Court was left with the distinct impression that Respondent has, for some time now, decided he wants a divorce, and has been calculatingly collecting "evidence" in support of his divorce petition.

CONCLUSION

This Court has found that Respondent has repeatedly degraded the Petitioner by referring to her in a derogatory manner. The Court has also found he threatened her with deportation, and he physically abused her by grabbing her arm in such a forceful manner as to cause noticeable injury to her arms. During another argument, he caused her to suffer injury to her toe. Respondent's actions were unlawful and constituted acts, attempts and/or threats of domestic violence. His treatment of her and, in particular his threats, caused her to submit to bizarre sexual acts she did not want to be a part of. The Court is concerned for her safety. Although Petitioner has moved out of the marital home, because they share a child together, there will likely be continuing contact between them, and therefore the potential for further acts of abuse and/or violence. As a result, the Court finds it necessary to impose against the Respondent a permanent restraining order in order to prevent any further threats, attempts or incidents of abuse.

The permanent restraining order will issue under separate cover.

As an adjunct to the issuance of a permanent restraining order, given the Petitioner's indigent status, the Court deems it necessary to enter also an award of temporary spousal support.

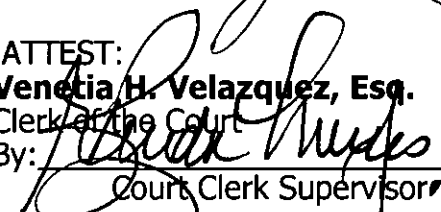
Date: 10 July 2013 

JESSICA GALLIVAN

Superior Court Magistrate

ATTEST:
Venetia H. Velazquez, Esq.

Clerk of the Court

By: 

Court Clerk Supervisor 7/10/13

xc: Attorney Michael Sheesley
Attorney Williams Franks