Nos. 15-FM-1058 & 15-FM-1059

DISTRICT OF COLUMBIA COURT OF APPEALS

YARKIA TANNER and JACQUELYNN WYNN,

Appellants,

v.

CHARLES CALDWELL,

Appellee.

ON APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA, DOMESTIC VIOLENCE UNIT

APPELLANTS' BRIEF

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RULE 28(a)(2)(A) STATEMENT

The parties to the case are appellants Yarkia Tanner and Jacquelynn Wynn, the respondents below, and appellee Charles Caldwell, the petitioner below. In the Superior Court, Ms. Tanner and Ms. Wynn were represented by Maggie Donahue of the Legal Aid Society for the District of Columbia. On appeal, the appellants are represented by Ms. Donahue, as well as Becket Marum, Jeannine Gomez, Julie Becker, and Jonathan Levy, all of the Legal Aid Society of the District of Columbia. In the Superior Court, Charles Caldwell was represented by Rodney Mitchell. On appeal, Charles Caldwell is proceeding *pro se*. No intervenors or *amici* appeared in the Superior Court. On appeal, the Domestic Violence Legal Empowerment and Appeals Project is an *amicus curiae* in support of appellants, represented by its Legal Director, Joan S. Meier.

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ON APPEAL FROM THE SUPERIOR COURT
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APPELLANTS' BRIEF

STATEMENT OF THE ISSUE PRESENTED

Whether tenants of a rooming house "share a mutual residence" with their landlord, who lives in a separate basement apartment unit attached to the rooming house, such that the landlord can invoke the jurisdiction of the Superior Court's Domestic Violence Unit to obtain a Civil Protection Order barring the tenants from their home?

STATEMENT OF THE CASE

Appellants Yarkia Tanner and Jacquelynn Wynn live in the upstairs unit of a two-family rental house. Their landlord, appellee Charles Caldwell, lives in the other unit, which is an attached English basement. In April of 2015, Mr. Caldwell filed a complaint for possession in the Landlord and Tenant Branch, and Ms. Tanner and Ms. Wynn counterclaimed, alleging overpayment of rent and housing code violations. That case remains pending.

In July of 2015, Mr. Caldwell alleged that Ms. Tanner and Ms. Wynn threatened him in relation to their ongoing landlord/tenant dispute. Mr. Caldwell asked the Domestic Violence Unit for a Temporary Protection Order and Civil Protection Order. As the basis for jurisdiction to issue such orders, Mr. Caldwell asserted that he shared a mutual residence with his tenants. The court entered a CPO requiring Ms. Tanner and Ms. Wynn to vacate the premises. This Court later stayed that CPO, which had rendered the appellants homeless. This appeal challenges the trial court's ruling that Mr. Caldwell shares a mutual residence with Ms. Tanner and Ms. Wynn as well as the resulting trial court orders.

STATEMENT OF FACTS

Charles Caldwell owns the building at 9 T Street, NE, which, at his request, was licensed by the District of Columbia as a "Two Family Rental." JA 66; *accord* JA 72-73. As Mr. Caldwell testified, "it's a two-unit – the basement is

separate from upstairs," and Mr. Caldwell lives in the basement. JA 50, 74. The upstairs unit is the main residence, which Mr. Caldwell operates as a rooming house. *See* JA 35-36, 58-62. Since August of 2014, Yarkia Tanner and Jacquelynn Wynn have rented a room from Mr. Caldwell in the upstairs rooming house where they also have access to the rooming house common areas (including bathrooms, the dining room, and the kitchen). *See* JA 23-24.

A. The Landlord-Tenant Action

In January of 2015, Mr. Caldwell began expressing his wish to end Ms. Tanner's and Ms. Wynn's tenancy. He first sent a letter purporting to terminate their lease, then provided a 30-day notice to correct or vacate, and finally, on April 30, 2015, filed a complaint for possession in the Landlord and Tenant Branch of the D.C. Superior Court. *See* JA 23-24, 110-112. On June 1, 2015, Ms. Tanner and Ms. Wynn filed an answer and counterclaim, alleging they had overpaid rent due to substantial violations of the D.C. Housing Code, including a lack of heat, mouse infestation, roach infestation, bedbug infestation, mold, holes, and problems with door locks. On July 29, 2015, the court entered a protective order by consent, which effectively ended direct payment of rent to Mr. Caldwell. *See* JA 21.

B. The Criminal and Civil Protection Order Cases

Mr. Caldwell alleges that two days later, on July 31, 2015, as part of their ongoing landlord/tenant dispute, Ms. Tanner and Ms. Wynn threatened to kill him.

See JA 153-154. Ms. Tanner and Ms. Wynn were arrested and charged with misdemeanor attempted threat. As a condition of their release from custody, Ms. Tanner and Ms. Wynn were initially ordered not to contact Mr. Caldwell and to stay at least 100 yards away from him, *see* JA 16-17, 20-21, 37-40, but the criminal court later modified this condition to require them to stay only at least 10 feet away from Mr. Caldwell, *see* JA 15-16, 19-20, 51-52.

At the same time, Mr. Caldwell asked the Domestic Violence Unit to issue Temporary Protection Orders (TPOs) and Civil Protection Orders (CPOs) specifically requiring Ms. Tanner and Ms. Wynn to vacate their home – the same relief that Mr. Caldwell was simultaneously seeking from the Landlord and Tenant Branch but which that Branch had not then (and has not now) granted. As the sole basis for jurisdiction by the Domestic Violence Unit, Mr. Caldwell asserted that he shared a mutual residence with his tenants. *See* JA 41, 44. The court issued the TPOs and ordered Ms. Tanner and Ms. Wynn to vacate the premises immediately, rendering them homeless.

On August 17, 2015, Ms. Tanner and Ms. Wynn filed Motions to Dismiss Mr. Caldwell's petitions for CPOs. They argued that the Domestic Violence Unit lacked authority to adjudicate these cases because they did not share a "mutual residence" with Mr. Caldwell and that this matter belonged in the Landlord and Tenant Branch rather than the Domestic Violence Unit. They also pointed out that

Mr. Caldwell was abusing the CPO process in order to end-run the tenant protections provided in the Rental Housing Act, and that the court should look with skepticism on a landlord trying to evict a tenant through the CPO process instead of by obtaining a writ of eviction in the Landlord and Tenant Branch. Mr. Caldwell opposed the motion on the ground that his use of some common areas in the upstairs rooming house meant that he shared a mutual residence with his tenants.

Mr. Caldwell's counsel told the court that Mr. Caldwell lived in the basement of 9 T Street, NE, JA 58-59, and Mr. Caldwell himself testified that he sleeps in the basement, where he lives with his fiancée, JA 73-74, 86. The basement apartment occupied by Mr. Caldwell has "a separate entrance," "one bedroom," a "living room," a "kitchen" (with four burners, a sink, and cabinets), and "a bathroom." JA 59-62; *accord* JA 73-77, 79, 83-84, 96. Mr. Caldwell registered 9 T Street, NE with the District as a Two Family Rental, including his basement apartment as one unit and the upstairs rooming house as the other. *See* JA 66, 72-73.

Mr. Caldwell additionally claimed that he had used portions of the upstairs rooming home at various times, including the bathrooms, dining room, kitchen, and hallways. These assertions were disputed, but ultimately accepted by the trial court. *See* JA 152. There was similarly conflicting testimony regarding the events

of July 31, 2015, and the court again credited Mr. Caldwell's version. *See* JA 156. Accordingly, the court concluded that Ms. Tanner and Ms. Wynn had committed an intrafamily offense and issued CPOs requiring them to vacate their home (which, in light of the previously issued TPOs, meant continuing to stay away from their home). *See* JA 114-119. The court specifically rejected Ms. Tanner and Ms. Wynn's proposed 10-foot stay-away order that would have paralleled the orders issued in their pending misdemeanor cases.

On September 3, 2015, Ms. Tanner and Ms. Wynn filed notices of appeal from the CPOs, JA 120-123, as well as motions to modify the CPOs pending appeal to allow them to remain in their home while still requiring them to stay away from Mr. Caldwell. The trial court denied these motions on September 11, 2015. JA 147-163.

On September 16, 2015, Ms. Tanner and Ms. Wynn filed motions to modify pending appeal with this Court. The bases for those motions, like the motions filed with the Domestic Violence Unit earlier, were that neither Mr. Caldwell's residence in his separate basement apartment nor his occasional use of some upstairs common areas meant that he shared a "mutual residence" with his upstairs rooming house tenants (Ms. Tanner and Ms. Wynn), and that Mr. Caldwell should not be permitted to abuse the streamlined process to address domestic violence in order to end-run the Landlord and Tenant Branch eviction procedures. Those

motions were supported by an *amicus curiae* submission from the Domestic Violence Legal Empowerment and Appeals Project (DV LEAP). DV LEAP described the legislative history of the District's domestic violence statutes and explained that the Legislature never intended to expand the special procedures employed by the Domestic Violence Unit to encompass disputes between landlords and tenants who live in the same physical edifice but do not share a residence in any functional or meaningful sense. DV LEAP also provided its perspective as a leading advocate of domestic violence victims in the District that extending the reach of domestic violence laws to encompass such landlord/tenant disputes would enlarge the jurisdiction of the Domestic Violence Unit far beyond its core mission and thereby detract from the Unit's goal of providing safety and just redress for the true victims of domestic violence.

This Court granted those motions on September 25, 2015 and stayed the CPOs with the conditions that Ms. Tanner and Ms. Wynn stay at least 10 feet away from Mr. Caldwell and not assault or threaten him or destroy his property. In granting this interim relief, this Court quoted the following excerpt from *Barry v. Washington Post Co.*, 529 A.2d 319, 320-21 (D.C. 1987): "To prevail on a motion for stay, a movant must show that he or she is likely to succeed on the merits, that irreparable injury will result if the stay is denied, that opposing parties will not be harmed by a stay, and that the public interest favors the granting of a stay." This

Court's stay order allowed Ms. Tanner and Ms. Wynn back into their home after having been homeless for nearly two months. Ms. Tanner and Ms. Wynn have remained in their home since that time and have not threatened or harmed Mr. Caldwell.

SUMMARY OF THE ARGUMENT

A landlord (Mr. Caldwell), who lives in a self-contained basement apartment with its own entrance, bedroom, living room, bathroom, and kitchen, does not share a "mutual residence" with his tenants (Ms. Tanner and Ms. Wynn), who live in a rooming house with its own entrance, bedrooms, living room, bathrooms, and kitchen, simply because their separate units are part of a single edifice with one roof over both. To the contrary, Mr. Caldwell himself registered the edifice that he owns at 9 T Street, NE as one containing two separate units, and he resides in one of those separate units, while Ms. Tanner and Ms. Wynn reside in the other. Individuals who live in different units within the same edifice do not live together or share a residence.

The fact that the landlord in this case also occasionally used some of the common rooms in the upstairs rooming house does not mean that he resided there. Using a room within a unit is very different from residing in that unit. When Mr. Caldwell occasionally used part of the upstairs rooming house, he continued to reside in the basement apartment. Indeed, his occasional use of rooms upstairs was

similar to the occasional use that any visitor might make of those rooms, including using the bathroom and the kitchen while visiting residents of the rooming house. But just as those visitors did not become residents of the rooming house by using its bathroom, neither did Mr. Caldwell become a resident of the rooming house by his occasional presence upstairs. To the contrary, at all times relevant here, Mr. Caldwell resided in the basement unit, which he designated as its own unit, separate from the upstairs rooming house.

Various District statutes and a separate segment of the Superior Court – the Landlord and Tenant Branch – are devoted to the business relationship between landlords and their tenants. Those statutes and that Branch specifically address attempts by landlords to evict tenants from their homes. The landlord-tenant forum is well-suited to address Mr. Caldwell's attempts to evict Ms. Tanner and Ms. Wynn here.

Different statutes and a different unit of the Superior Court – the Domestic Violence Unit – are devoted to preventing and combating violence between individuals who have specified personal relationships. Mr. Caldwell does not have *any* personal relationship with Ms. Tanner or Ms. Wynn. His only relationship with them is that of their landlord, and the only reason he was able to use some of the common areas in their residence was that he is their landlord. His dispute with them does not belong in the Domestic Violence Unit. That Unit should retain its

statutory mandate to address true domestic violence and leave landlord/tenant disputes to the Landlord and Tenant Branch.

Regardless of the proper unit of the Superior Court to hear this matter, it was an abuse of discretion to effectively evict Ms. Tanner and Ms. Wynn from their home when Mr. Caldwell's asserted interest in his safety was adequately protected by a stay-away order that did not require Ms. Tanner and Ms. Wynn to leave their home. Indeed, a Division of this Court did precisely that by staying the CPO while ordering Ms. Tanner and Ms. Wynn to have no contact with Mr. Caldwell. Mr. Caldwell has not alleged that Ms. Tanner or Ms. Wynn has harmed or threatened him in any way since this Court put that order in place.

ARGUMENT

The trial court made two dispositive errors. First, as a matter of law, the parties in this case do not share the "mutual residence" necessary to proceed under the Intrafamily Offenses Act absent any other familial, sexual, or intimate relationship. Second, the trial court abused its discretion in requiring Ms. Tanner and Ms. Wynn to leave their home when it had less drastic options that would have served the purpose of the intrafamily statute without rendering them homeless. These errors are especially clear in light of the "entire mosaic" of the parties' relationship, which reflects a landlord battling his tenants over rent and housing conditions.

I. THE PARTIES DO NOT SHARE A MUTUAL RESIDENCE.

The Intrafamily Offenses Act provides for the entry of a CPO only when the petitioner and the respondent have a specified relationship or in cases involving sexual assault, sexual abuse, or stalking. *See* D.C. Code § 16-1001 *et seq.* The trial court issued the CPOs here on the basis that Ms. Tanner and Ms. Wynn "shared a mutual residence" with Mr. Caldwell. *Id.* § 16-1001(6)(A); *see* JA 41, 44 (CPO petitions). This Court should reverse because the facts found by the Superior Court (and not contested here) do not constitute a shared mutual residence under the statute. *See, e.g.*, *Tippett v. Daly*, 10 A.3d 1123, 1126 (D.C. 2010) (*en banc*) (meaning of statutory phrase reviewed *de novo*). Mr. Caldwell is the landlord of a two-unit building. He lives in one self-contained apartment unit with its own entrance, bedroom, living room, kitchen, and bathroom. Ms. Tanner and Ms. Wynn are tenants in the other unit – a rooming house with its own separate entrance, bedrooms, living room, kitchen, and bathrooms. Because they live in separate units, Mr. Caldwell does not "share[] a mutual residence" with Ms. Tanner or Ms. Wynn.

A. Individuals Who Live in Different Units within a Single Edifice Do not "Share a Mutual Residence," Especially Where Each Unit Has Its Own Bedroom(s), Living Room(s), Bathroom(s), and Kitchen.

Mr. Caldwell registered 9 T Street, NE with the District of Columbia as a "Two Family Rental." *See* JA 66, 72-73. By regulation, a Two Family Rental

encompasses two separate residences: (1) "an English basement apartment, converted basement apartment, or carriage house in a single-family home," and (2) "the main residence." 14 DCMR § 201.1(b). The property at 9 T Street, NE fits this description. Mr. Caldwell lives in the English basement portion of the Two Family Rental. *See, e.g.*, JA 58-59 ("THE COURT: Basement. That's where your client lives? MR. MITCHELL [Mr. Caldwell's counsel]: That's where my client lives."); JA 50 ("THE COURT: And which – and you're in the basement? MR. CALDWELL: Correct."). Mr. Caldwell and his counsel both repeatedly referred to his "basement apartment," JA 56, 62, 83, 94, and his unit meets the legal definition of an apartment, *see* 14 DCMR § 199.1 (defining "apartment" as "one or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and under the control of the occupant of the room(s)." *See* JA 104 (Mr. Caldwell's counsel's closing argument, stating "[h]e does not say that he does not have a basement apartment. That's, that's what we, we testified in open court that he has a space in his English-style basement that he lives.").

By contrast, Ms. Tanner, Ms. Wynn, and other tenants live in the "main residence" portion of 9 T Street, NE, which Mr. Caldwell operates as a rooming house. Like the basement apartment, the rooming house has its own separate entrance, doorbell, bedroom(s), living room, kitchen, and bathroom(s). The parties thus occupy different residences and do not share a mutual residence as a matter of

law, especially where, as here, these two separate residences have nothing in common except they are separate parts of a single building that has one common roof, one common foundation, one common street address, and some common outdoor space.

Moreover, as used in both common parlance and domestic violence law, the phrase "share a mutual residence" refers to roommates, that is, individuals who occupy the same "dwelling unit," which is defined as "any room or group of rooms forming a single unit which is used for living, sleeping, and the preparation and eating of meals." D.C. Code § 47-813(d)(3). This Court's two decisions addressing what constitutes sharing a mutual residence reinforce that view. In *Shewarega v. Yegzaw*, 947 A.2d 47, 50 (D.C. 2008), the parties both resided in a rooming house, which is a single residence in which the residents have separate bedrooms but share a kitchen, living room, hallways, entrance, and bathrooms. This Court left undisturbed the trial court's conclusion that these elements constituted a single mutual residence. *Id.* at 52. This Court distinguished the shared residence in *Shewarega* from the situation in *Salvattera v. Ramirez*, 111 A.3d 1032, 1034 (D.C. 2015), in which a sexual assault victim and perpetrator both lived in the same apartment building and used the same staircase to access their respective apartments, which required the victim to frequently come within a few feet of the perpetrator's apartment. This Court correctly noted that the victim in

Salvaterra "never lived with [her] assailant," *id.* at 1036, because they lived in separate apartment units within the building, and neither their close proximity within the same edifice nor their shared entrance and internal stairwell made these two separate dwelling units a single shared mutual residence. Again, in common parlance, co-residents of a single rooming house may be characterized as roommates or housemates, while residents of separate apartments within a single building cannot. *See Robinson v. Block*, 869 F.2d 202, 209 (3d Cir. 1989) ("Indicia of not living together might include, *inter alia*, separate entrances and locks, separate finances, utility bills and telephones, and essentially separate living quarters."). It is further relevant that, under federal law, a basement apartment with a separate entrance and its own kitchen and bathroom that lacks an interior passage to the upstairs main residence of a house is a separate residence from the upstairs unit. *See Cohen v. United States*, 999 F. Supp. 2d 650, 670 (S.D.N.Y. 2014) (applying 26 C.F.R. § 1.121-1(e)(2)).

B. A Person Who Resides Elsewhere Does not Become a Resident of a Rooming House by Visiting the Rooming House and Using Its Common Areas.

The trial court based its erroneous legal conclusion that Mr. Caldwell shared a mutual residence with Ms. Tanner and Ms. Wynn, not on where any of the parties *lived*, but instead on Mr. Caldwell's allegations that he "regularly *uses* the common areas" upstairs. Despite conflicting evidence, the trial court found that

"although [Mr. Caldwell] uses the bathroom in the basement he *sometimes* uses the upstairs bathroom," "showers in the upstairs bathroom three times or more each week," "interacts with his tenants every day in the main level of the house," "uses the dining room area to conduct business about six times a month," "[o]n holidays and special occasions, . . . uses the kitchen on the main level and back porch," JA 149-151 (emphasis added); *see* JA 86-90, and stores items upstairs, JA 90-91. But, as a matter of law and common sense, *using* a space is very different from *residing* in that space. Indeed, the regulation defining a "rooming house," specifically notes that the "occupants" (*i.e.* residents) do not have exclusive control over and/or access to common areas, and thus Mr. Caldwell's "use" of those areas – no matter how extensive – does not, as a matter of law, make him a resident of the rooming house.

Such use is, instead, consistent with being a mere visitor or invitee (or a trespasser). Indeed, a friend of Mr. Caldwell's testified that he visited the common areas in the upstairs rooming house just as Mr. Caldwell himself did. *See* JA 92-103, 105-106 (Mr. Caldwell's longtime friend Ricky Norris testifying that he had used the front and back porches, and upstairs dining room, kitchen, and bathroom at 9 T Street, NE as a visitor); *see also Greenpeace, Inc. v. Dow Chem. Co.*, 97 A.3d 1053, 1060-61 (D.C. 2014) (tenants have the right to allow visitors in common areas); *Parker v. Martin*, 905 A.2d 756, 760 n.13 (D.C. 2006) (quoting

regulation distinguishing between a "resident" and a "regular visitor to the residential premises who spends a substantial portion of his time in the residential premises"); *Childs v. Purll*, 882 A.2d 227, 234 n.11 (D.C. 2005) (same); *Brown v. United States*, 627 A.2d 499, 503-04 (D.C. 1993) (uninvited visitor on apartment stairwell landing); *Curry v. United States*, 520 A.2d 255, 265 (D.C. 1987) (individuals found in an apartment and possessing keys to the apartment, one of whom paid rent for the apartment, "were not residents" of that apartment because they appear not to have slept there); *United States v. Anderson*, 175 U.S. App. D.C. 75, 79, 533 F.2d 1210, 1214 (1976) (noting non-resident access to rooming house common areas); *United States v. Gonzalez*, 141 U.S. App. D.C. 144, 145, 436 F.2d 298, 299 (1970) (distinguishing between a resident of an apartment and a frequent visitor). Indeed, a close friend or personal assistant to one of the residents of the rooming house might well use all of the common areas just as Mr. Caldwell allegedly does, but that would not convert the friend or personal assistant into a resident, especially when that friend or personal assistant – like Mr. Caldwell here – had his own separate residence with its own sleeping, eating, bathing, and living spaces.

C. Equating a Landlord's Use of a Rooming House's Common Areas with the Landlord Residing in the Rooming House Would Subvert Both District Housing Law and District Domestic Violence Law.

Finally, from a practical perspective, treating Mr. Caldwell as if he shared a mutual residence with Ms. Tanner and Ms. Wynn would not properly implement District law. The District has a law – the Rental Housing Act – that was enacted specifically "to strike a balance between the rights of landlords and tenants," *Tenants of 2301 E St., NW v. District of Columbia Rental Hous. Comm'n*, 580 A.2d 622, 628 n.11 (D.C. 1990), as "a comprehensive scheme for the regulation of rental housing in the District," *Winchester Van Buren Tenants Ass'n v. District of Columbia Rental Hous. Comm'n*, 550 A.2d 51, 53 (D.C. 1988). Similarly, the Superior Court's Landlord and Tenant Branch is focused on the landlord/tenant relationship (as its name suggests) and specifically designed to quickly and fairly adjudicate efforts by landlords to evict their tenants. *See Landlord and Tenant Branch*, http://www.dccourts.gov/internet/superior/org_civil/landlordtenant.jsf (last visited January 5, 2015) ("The Landlord and Tenant Branch handles all actions for the possession of real property."). This specific law and judicial branch recognize that "[t]here are unique factual and legal characteristics of the landlord-tenant relationship that justify special statutory treatment inapplicable to other litigants." *Lindsey v. Normet*, 405 U.S. 56, 72 (1972). Mr. Caldwell initiated his litigation against Ms. Tanner and Ms. Wynn in the Landlord and Tenant Branch,

and that is where it clearly belongs. It involves a landlord's action against his tenants seeking possession of real property, and it does not involve any relationship other than the landlord/tenant relationship.

The District has a separate law – the Intrafamily Offenses Act – that specifically addresses domestic violence. As its name suggests, "the broad remedial purpose of the Intra-family Offenses Act [is] to protect victims of family abuse from both acts and threats of violence." *Robinson v. Robinson*, 886 A.2d 78, 86 (D.C. 2005). Although the Intrafamily Offenses Act also encompasses certain offenses (sexual assault, sexual abuse, and stalking) regardless of the relationship between the individuals involved and also encompasses specified personal relationships that are similar to familial relationships, it has never covered any business or professional relationship, including the landlord/tenant relationship. The Superior Court's Domestic Violence Unit was created in significant part to hear cases involving this specific statute, *see Robinson v. United States*, 769 A.2d 747, 750-51 (D.C. 2001), with the goal "to effectuate the statutory intent of eliminating domestic and family violence," Super. Ct. Dom. Violence Unit R. 1. The dispute between Mr. Caldwell and his tenants here does not fit within the category of cases covered by the Intrafamily Offenses Act and in which the Domestic Violence Unit is expert. It involves no personal relationship of any kind – domestic, familial, family-like, friendly, or otherwise – and instead involves a

run-of-the-mill landlord/tenant dispute including an attempt by the landlord to evict the tenants.

Interpreting the Intrafamily Offenses Act as covering the relationship between Mr. Caldwell and his tenants here would undermine the District's housing laws because it would effectively allow landlords to move eviction proceedings out of their designated forum (the Landlord and Tenant Branch), which is expert in the landlord/tenant relationship generally and evictions in particular and which is guided by statutes focused on balancing the interests of landlords and tenants, into a different forum (the Domestic Violence Unit) whose expertise and statutory law focus on familial and other family-like personal relationships typically not present between a landlord and tenant. This would undermine the balancing of landlord and tenant interests under District housing law, despite the fact that such balancing was intended to be part of "a comprehensive scheme for the regulation of rental housing in the District." *Winchester*, 550 A.2d at 53. That balancing would be especially undermined because a landlord can choose to use rooming house common areas (and thereby, according to the decision below, choose to become a co-resident with his tenants), while a tenant has no reciprocal ability to use areas within a landlord's home. *See George Washington Univ. v. Weintraub*, 458 A.2d 43, 53 (D.C. 1983) (apartment landlord retains responsibility for and access to common areas). In short, under the decision below, a landlord could unilaterally

choose to "share a mutual residence" with the tenant and thereby unilaterally create a relationship covered by the Intrafamily Offenses Act, while the tenant cannot make either of those choices. This landlord-favoring rule would upset the careful balance between landlords and tenants struck by District housing laws and implemented by the Landlord and Tenant Branch.

At the same time, treating landlords who use the common areas in their rooming houses as residents of those rooming houses for the purposes of the Intrafamily Offenses Act would undermine District domestic violence law. The Act is "a *distinct* statutory scheme for handling intrafamily offenses and protecting victims against further abuse." *In re Robertson*, 940 A.2d 1050, 1055 (D.C. 2008) (emphasis added). The Domestic Violence Unit was "established by the Chief Judge to hear domestic violence cases *exclusively*." *Robinson*, 769 A.2d at 748 (emphasis added). As *amicus curiae* Domestic Violence Legal Empowerment and Appeals Project (DV LEAP) explained below, expanding the reach of both this statute and the Domestic Violence Unit to include offenses between landlords and tenants would undermine the focus of the statute and Unit, thereby diminishing their ability to serve their purpose of helping the victims of true domestic violence who are either the victims of specified crimes not at issue here (sexual assault, sexual abuse, and stalking) or who are in specified familial or domestic relationships also not present between the landlord and his tenants here.

II. THE COURT ABUSED ITS DISCRETION IN REQUIRING MS. TANNER AND MS. WYNN TO VACATE THEIR HOME.

The Court abused its discretion in requiring Ms. Tanner and Ms. Wynn to vacate their home. "[O]rdering a person to vacate his or her home . . . is a serious step, not to be lightly undertaken." *Robinson v. Robinson*, 886 A.2d 78, 86 (D.C. 2005). The trial court must weigh the facts carefully, balancing the respondent's property rights against the need to safeguard the petitioner's security and peace of mind. *See id.*; *Salvattera v. Ramirez*, 111 A.3d 1032, 1037-38 (D.C. 2015). And in shaping a remedy under the statute, the court must consider the "balance of harms" that will result from an order of one kind or another. *Cruz-Foster v. Foster*, 597 A.2d 927, 930 (D.C. 1991); *Salvattera*, 111 A.3d at 1037. In conducting this balancing, the courts must consider the "entire mosaic" of the relationship between the parties. *Cruz-Foster*, 597 A.2d at 930; *see Tyree v. Evans*, 728 A.2d at 101, 106 (D.C. 1999) (in a CPO action seeking an order to vacate a home, "the court is bound to consider the 'entire mosaic'"). As detailed below, the trial court erred by failing to engage in this balancing process, provide rational explanations for its conclusions, consider the entire mosaic, and address applicable legal presumptions.

With respect to Ms. Tanner and Ms. Wynn's interests, the trial court stated that the CPOs would not cause them irreparable harm because – in the court's view – its "order to vacate was within the court's broad remedial power under the

Intrafamily Offenses Act." JA 160. As noted in Section I, above, the trial court's premise is wrong; the Intrafamily Offenses Act does not apply here. Moreover, the court's logic is flawed. Whether or not the Intrafamily Offenses Act applies here is independent of whether – or how much – an order requiring Ms. Tanner and Ms. Wynn to vacate their home harms them. Even if the trial court had correctly concluded that it had statutory authority to order Ms. Tanner and Ms. Wynn to vacate their home (which it did not, as noted above), it was still required to balance the harms involved in issuing such an order, and it failed to do so by failing to weigh any harm to Ms. Tanner and Ms. Wynn. In fact, that harm – homelessness – is *per se* irreparable. *See Akassy v. William Penn Apartments Ltd. P'ship*, 891 A.2d 291, 309 (D.C. 2006) ("The upheaval of the tenant from his home, even if he can find alternative housing, creates a cognizable irreparable injury."). Indeed, the CPOs here predictably caused extreme hardships on Ms. Tanner and Ms. Wynn, who had to endure unsafe, unsanitary, unhealthy, and undignified conditions as a direct result of the CPOs issued here. *See* JA 63 (noting that Ms. Tanner and Ms. Wynn have slept in parks); JA 164-166 (Ms. Tanner's declaration, describing the hardships of sleeping in parks a majority of the time, as well as an emergency room, a trailer with no water or electricity, and a shelter with bedbugs). It is precisely this harm that prompted this Court to note that "ordering a person to vacate his or her home . . . is a serious step, not to be lightly undertaken."

Robinson, 886 A.2d at 86. And in those cases in which this Court has approved that serious step, it is because of danger far greater than that supposedly posed by Ms. Tanner and Ms. Wynn here, each of whom allegedly uttered a single threat on a single occasion and never engaged in any violent act towards Mr. Caldwell. *Cf. id.* at 87 (order to vacate home followed years of physical and mental abuse and property damage, topped off by post-CPO efforts to harass and intimidate); *Salvattera*, 111 A.3d at 1034 (individual who committed sexual assault ordered to vacate home).

The trial court similarly erred in purporting to analyze Ms. Caldwell's need for a CPO that required Ms. Tanner and Ms. Wynn to vacate their home. The court credited Mr. Caldwell's testimony that he feared Ms. Tanner and Ms. Wynn, but its explanation – that this fear was supported by another tenant's vague testimony that "the home was violent while respondents resided there," and by "the smell of [unspecified] drugs coming from respondents' room" – is illogical. JA 161.

The trial court also failed to apply a statutory presumption that Mr. Caldwell sought the CPOs in retaliation for Ms. Tanner and Ms. Wynn seeking redress against him in the Landlord and Tenant Branch. Under D.C. Code § 42-3505.02, the court was required to presume that Mr. Caldwell's allegations against Ms. Tanner and Ms. Wynn were retaliatory because he made those allegations within six months after Ms. Tanner and Ms. Wynn exercised their legal rights as tenants

by, among other things, filing a counterclaim in the Landlord and Tenant Branch. *See Gomez v. Independence Mgmt. of Del., Inc.*, 967 A.2d 1276, 1289 (D.C. 2009). That presumption applies even taking Mr. Caldwell's allegations as true and therefore assuming that he was legally entitled to seek CPOs. *See id.* at 1290 (section 42-3505.02 applies even to landlord actions "that would otherwise be lawful"). Moreover, although the presumption of retaliation "is triggered even in the absence of direct evidence, whether from the tenant or anyone else, that the landlord in fact acted with a retaliatory motive," *Bridges v. Clark*, 59 A.3d 978, 984 (D.C. 2013), there was such evidence here. Mr. Caldwell sought CPOs against Ms. Tanner and Ms. Wynn despite the fact that the criminal court had already ordered them to stay away from him in order to ensure his safety as required by D.C. Code § 23-1321(c)(1)(B). This is direct evidence that he sought the CPOs in retaliation for Ms. Tanner's and Ms. Wynn's allegations of housing code violations in the Landlord and Tenant Branch, rather than to ensure his own safety, which the criminal court had already done. To rebut the statutory presumption (and evidence) that Mr. Caldwell's motivation in seeking the CPOs was retaliatory and not based on genuine fear, Mr. Caldwell would have had to produce "clear and convincing" evidence that he lacked a retaliatory motive. *Bridges*, 59 A.3d at 982, 984; D.C. Code § 42-3505.02(b). He produced no such evidence, and the trial court therefore erred in accepting his asserted motive.

The trial court similarly erred in failing to consider the "entire mosaic" of the relationship between the parties, which further belies any claimed fear on Mr. Caldwell's part. *See Cruz-Foster*, 597 A.2d at 930; *Tyree*, 728 A.2d at 106 (in a CPO action seeking an order to vacate a home, "the court is bound to consider the 'entire mosaic'"). This is not a situation of familial violence, sexual assault, or stalking. Rather, the "entire mosaic" here reveals a landlord seeking to rid himself of troublesome tenants. He first sought redress in the Landlord and Tenant Branch, but, when thwarted in that forum, sought a CPO. And, in particular, he did not seek a CPO that merely required the tenants to stay away from him (which they were already required to do) but sought a CPO that specifically required them to leave the leased premises (*i.e.*, their home). With this view of the entire mosaic, it is clear that Mr. Caldwell turned to the Domestic Violence Unit, not out of fear for his safety, but in retaliation for the counterclaims filed in the Landlord and Tenant Branch and in order to obtain the eviction order that had eluded him in the proper forum. The trial court erred in failing to consider this entire mosaic and in therefore wrongly concluding that Mr. Caldwell had a genuine fear for his safety and in erroneously balancing his interest in safety against Ms. Tanner and Ms. Wynn's interest in avoiding homelessness.

Finally, the trial court abused its discretion in weighing the competing interests here when it declined to issue a more limited CPO as requested by Ms.

Tanner and Ms. Wynn. The requested CPO would have required Ms. Tanner and Ms. Wynn to stay away from and not interact with Mr. Caldwell but would also have permitted them to remain in their home. The trial court's only explanation for rejecting their proposal was the court's conclusion that Mr. Caldwell's fear was "**REAL**." JA 161. Even if Mr. Caldwell's fear was real, his safety would have been assured by a stay-away order, so his subjective fear could not justify the court unnecessarily ordering Ms. Tanner and Ms. Wynn to vacate their home in addition to staying away from Mr. Caldwell. A Division of this Court apparently agreed that Mr. Caldwell's safety could be assured by a stay-away order, as it required Ms. Tanner and Ms. Wynn to stay away from Mr. Caldwell when it stayed the CPOs and allowed Ms. Tanner and Ms. Wynn to return to their home. Moreover, events since this Court stayed the CPOs demonstrate that a simple stay-away order does assure Mr. Caldwell's safety without rendering Ms. Tanner and Ms. Wynn homeless.

There may be unusual circumstances in which the relationship between a landlord and tenant is covered by the Intrafamily Offenses Act. *See Shewarega v. Yegzaw*, 947 A.2d 47, 50 (D.C. 2008) (tenant can obtain CPO against landlord when they both live in the same boarding house where they share a kitchen, living room, dining room, entrance, and hallways and therefore share a mutual residence). But courts should scrutinize such allegations carefully, especially when the

landlord asks for a CPO that has the effect of evicting the tenant. The court in *Leaverton v. Lasica*, 101 S.W.3d 908 (Mo. Ct. App. 2003), recognized this problem and reversed a trial court's grant of a protection order requiring a tenant to vacate, noting that the domestic violence statute under which the trial court found authority to order the tenant to vacate was not intended to be a solution for disputes arising between landlords and tenants. As the court noted, "[t]he potential for abuse" of the statute was great, and the harm that can result from such abuse is real and significant. *Id.* at 912 (quoting *Wallace v. Van Pelt*, 969 S.W.2d 380, 387 (Mo. Ct. App. 1998)). That is particularly true where, as here, the landlord does not invoke domestic violence law in order to seek a stay-away order for his own safety, but instead, already armed with an adequate stay-away order, seeks a further order requiring the tenants to vacate and thus effectively evicting them (the typical relief which the Landlord and Tenant Branch was designed to provide).

The Intrafamily Offenses Act is a remedial statute and must be construed broadly "for the benefit of the class it is intended to protect." *Maldonado v. Maldonado*, 631 A.2d 40, 42 (D.C. 1993). But that statute was not intended to protect landlords seeking to evict their tenants. Instead, the Rental Housing Act addresses such attempts, and the Landlord and Tenant Branch balances the interests of landlords and tenants by providing landlords with an expedited avenue

for eviction while also recognizing the extreme shortage of affordable housing in the District and the need for broad tenant protections.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision of the Superior Court, vacate the CPOs issued against Ms. Tanner and Ms. Wynn, and remand this action with instructions that it be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Appellants' Brief to be delivered by first class mail, postage prepaid, this 6th day of January, 2016, to:

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