No. 03-FM-599

DISTRICT OF COLUMBIA COURT OF APPEALS

CALVINO J. STANFORD,

Appellant,

v.

DANNA NEWBALL,

Appellee.

Appeal from the Superior Court of the District of Columbia,
Family Division (No. IF-1549-03), The Honorable Lynn Leibovitz

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BRIEF OF APPELLEE

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September 10, 2004

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

The parties to the case are appellant/respondent Calvino L. Stanford and appellee/petitioner Danna Newball. Neither party was represented by counsel below. Mr. Stanford is represented in this Court by Nathaniel Sims. Ms. Newball is represented in this Court by Barbara McDowell and Sarah C. Connell.

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STATEMENT OF THE CASE

This appeal challenges the sufficiency of the evidence supporting the superior court's exercise of subject-matter jurisdiction over appellee Danna Newball's petition for a civil protection order against appellant Calvino Stanford. The court found that the petition stated "intrafamily offenses," within the meaning of Section 16-1001(5) of the District of Columbia Code, on two independently sufficient grounds: that the parties "maintained a romantic relationship," D.C. Code § 16-1001(5)(B), and that the parties "shared a mutual residence," D.C. Code § 16-1001(5)(A). The court then found that Mr. Stanford had committed the intrafamily offenses of threats and harassment and entered a civil protection order requiring, among other things, that he avoid any contact with Ms. Newball and her mother. Those rulings were made after an evidentiary hearing at which the court heard testimony from the parties and from Ms. Newball's mother.

STATEMENT OF FACTS

1. In May 2003, Ms. Newball, acting pro se, filed a Petition and Affidavit for Civil Protection Order against Mr. Stanford. R-3. In the section of the petition inquiring into the relationship between the parties, Ms. Newball checked two boxes: "romantic/dating relationship" and "now or previously having shared the same residence." Ibid.

Ms. Newball's petition alleged that Mr. Stanford had committed, or threatened to commit, intrafamily offenses on several then-recent occasions. R-3. The petition alleged that Mr. Stanford had refused Ms. Newball's requests that he move out of her house, responding to those requests by "getting in [her] face," "blasting music," and refusing to clean up after his dogs. Ibid. In addition, the petition alleged that, on or about May 11, 2003, Mr. Stanford repeatedly telephoned the apartment of Uldarica Gondola, Ms. Newball's mother, in an attempt

to contact Ms. Newball, even after Ms. Gondola told him that Ms. Newball was unavailable. Ibid. The petition further alleged that, on or about May 20, 2003, Mr. Stanford telephoned Ms. Newball at her place of employment, threatening her that "[y]ou'll see what happens" if he was not allowed to speak to her supervisor. Ibid. And, the petition alleged that, on or about the same date, Mr. Stanford attempted to contact public housing authorities to state that Ms. Newball was living in her mother's apartment in violation of government regulations.

2. On June 4, 2003, the superior court (Lynn Leibovitz, J.) conducted an evidentiary hearing on Ms. Newball's petition. Ms. Newball, Mr. Stanford, and Ms. Gondola testified at the hearing. Neither side was represented by counsel.

At the hearing, Ms. Newball testified that she and Mr. Stanford had a romantic relationship from mid-2001 to mid-2002. Tr. 11-12, 17-18. Ms. Newball testified that, although she lived in the District of Columbia during that period, she and Mr. Stanford stayed "most of the time" at his apartment in Laurel, Maryland. Id. at 12. According to Ms. Newball: "I slept there. We dated. We slept together. We had sex. And also he did promise marriage during that period." Ibid. Mr. Stanford, in contrast, testified that his relationship with Ms. Newball had been "strictly platonic," although he acknowledged that they visited each other's homes, that he did chores for her, and that he socialized with her. Id. at 11-12, 30-31.

Ms. Newball testified that in September 2002, several months after her romantic relationship with Mr. Stanford ended, she allowed him and his sons to move into her house at 1307 Emerson Street, Northwest. Tr. 4, 40-41. According to Ms. Newball, although Mr. Stanford had his sleeping quarters in the basement of the house, the basement was not a separate apartment. Id. at 4. Ms. Newball testified that, at first, she, Mr. Stanford, and his sons "were just like one family," cooking, doing household chores, and attending social events together. Id. at 6,

18. The parties had a six-month written lease that provided for Mr. Stanford to pay $450 a month in rent. Id. at 6.

Ms. Newball testified that she asked Mr. Stanford to move out in March 2003. Tr. 8, 22. According to Ms. Newball, after she gave Mr. Stanford a notice to quit in early May 2003, he became increasingly belligerent. Ms. Newball testified that Mr. Stanford, both in person and on the telephone, threatened "to F me up" or "to mess me up," and that she understood those statements to mean that "he was going to physically do something to me." Id. at 19-20, 26. Ms. Newball explained that she feared for her personal safety because, although Mr. Stanford had not put his hands on her, he had become angry, entered her bedroom, and gotten "[r]ight up in my face," "almost nose-to-nose," only about five inches away from her. Id. at 26-28. Ms. Newball testified that after Mr. Stanford received the notice to quit, he repeatedly telephoned her office and the apartment of her 80-year old mother, Ms. Gondola, who became upset at his threats and urged Ms. Newball to call the police. Id. at 20-21, 24-25. Ms. Newball testified that, in response to the threats, she stayed away from her house and had the doors secured. Id. at 21.

Mr. Stanford, for his part, denied that he had ever been angry with Ms. Newball or made the threats that Ms. Newball attributed to him. Tr. 33-35, 37, 51. He acknowledged that, on the day that he received the notice to quit, he telephoned Ms. Gondola three times, although he denied that he did so to harass Ms. Newball or Ms. Gondola. Id. at 34-36, 50. He claimed that he was merely seeking to have Ms. Newball reimburse him for the costs of certain items of his that were damaged in a flood of her basement. Id. at 35-36. He also acknowledged that he telephoned Ms. Newball's office, although he stated that he was only attempting to get a copy of the lease from her. Id. at 36-37.

Ms. Gondola testified that Mr. Stanford had called her apartment four times on the date in question, stating that he was "going to mess up my daughter" or "he's going to fuck her up." Tr. 42-44. According to Ms. Gondola, Mr. Stanford's "loud[]" and "[a]ngry" statements caused her to fear that he would physically hurt Ms. Newball. Id. at 44-45. Ms. Gondola also testified that Mr. Stanford called her resident manager to report that Ms. Newball was staying in the apartment. Id. at 46. Mr. Stanford acknowledged having made the telephone call to the resident manager, inquiring into the legality of Ms. Newball's staying with her mother from time to time. Id. at 50-51. When asked by the court "what purpose [he] could have possibly had for making that call other than to cause trouble for Ms. Newball and her mother," Mr. Stanford replied: "I wasn't causing trouble, Your Honor. I was trying to find out some information because my dad lives in a senior citizen building." Id. at 51.

3. At the end of the hearing, the court made oral findings of fact and conclusions of law. See Tr. 53-57.

a. The court found that it had subject-matter jurisdiction over the case pursuant to the Intrafamily Offenses Act. Tr. 53-54. The court found that "the parties had a social or sexual or romantic relationship," Tr. 54, which is one of the bases for intrafamily offense jurisdiction. See D.C. Code § 16-1001(5)(B). The court expressly refused to credit Mr. Stanford's denial of a sexual relationship between himself and Ms. Newball. Tr. 53-54.

In addition, the court found that "the two parties shared the same residence," id. at 53, which is a second basis for intrafamily offense jurisdiction. See D.C. Code § 16-1001(5)(A). The court reasoned that, "[a]lthough there is clearly a landlord/tenant relationship here and although Ms. Newball is well aware of that as evidenced by the notice to quit that she filed with Mr. Stanford, I am not compelled by the fact to find that there's no jurisdiction." Tr. 53. The

court added that the parties' "relationship clearly has become supercharged in an emotional way which goes beyond that of a mere landlord/tenant dispute." Id. at 54.

b. With respect to the merits, the court held that Mr. Stanford had committed intrafamily offenses against Ms. Newball. Tr. 56-57.

The court found that, on May 11, 2003, Mr. Stanford "angr[ily]" telephoned Ms. Gondola's apartment "three or four times in rapid succession," stating that, if Ms. Newball evicted him without paying for the damage to his property, "he would fuck her up" or "he would mess her up." Tr. 54-55. The court credited Ms. Gondola's understanding of Mr. Stanford's statements as threats to "mess up [Ms. Newball's] life" and "physically hurt her." Id. at 55. The court found that Mr. Stanford attempted "to carry out the threat * * * that he would mess up [Ms. Newball's] life" by telephoning Ms. Gondola's resident manager to suggest a "violation of the regulations under which Ms. Gondola lives there." Ibid. The court declined to credit Mr. Stanford's explanation of the call as an attempt to gain information for his elderly father. Ibid.

In addition, the court found that, on or about May 20 or May 23, 2003, Mr. Stanford telephoned Ms. Newball at work and made "threats that he would fuck her up and she would see what he would do." Tr. 55-56. The court determined that Mr. Stanford "meant by [those statements] the same thing he meant when he spoke to [Ms. Newball's] mother which was that he would make efforts to disturb [Ms. Newball's] life." Id. at 56. The court added that Mr. Stanford's statements, coupled with his attempts to speak with Ms. Newball's supervisor, could reasonably be understood by Ms. Newball "as a threat to commit bodily harm." Ibid.

The court concluded that Mr. Stanford's conduct constituted the intrafamily offenses of threats and harassment. Tr. 56-57. The court found that the elements of harassment were

satisfied because Mr. Stanford's numerous telephone calls "were both willful and intentional efforts to cause emotional distress" to Ms. Newball. Id. at 57.

The court entered a civil protection order directing Mr. Stanford not to assault, threaten, harass, or stalk Ms. Newball or to destroy her property. Tr. 57. The order also directed Mr. Stanford to stay 100 feet away from Ms. Newball, her home, her workplace, and her car, as well as from her mother and her mother's home, and to refrain from contacting Ms. Newball and her mother "in any manner." Ibid.

SUMMARY OF THE ARGUMENT

The Intrafamily Offenses Act, D.C. Code § 16-1001 et seq., extends its protections to individuals who are, or were, in a variety of personal relationships with their abusers. Over the years, the D.C. Council has expanded the Act's scope to protect persons in additional categories of relationships. In 1994, for example, the Council amended the Act to provide coverage to persons who have or had a "romantic relationship" with their abuser, even if they never lived together, as well as to persons who share or shared a residence with their abuser, even if they had never had a romantic relationship. This Court, in turn, has recognized that the Act's provisions should be generously applied in order to advance their remedial purposes. Cruz-Foster v. Foster, 597 A.2d 927, 929 (D.C. 1991).

Here, the superior court held that Ms. Newball's relationship with her accused abuser, Mr. Stanford, came within the coverage of the Intrafamily Offenses Act for two reasons -- each of which is, contrary to Mr. Stanford's assertions, independently sufficient after the 1994 statutory amendment. The court's holdings, which turned largely on its assessment of the parties' credibility, are neither infected by legal error nor without evidentiary support. There is, therefore, no justification for this Court to "usurp the prerogative of the [trial] judge, as the trier

of fact, to determine credibility and weigh the evidence." In re S.G., 581 A.2d 771, 775 (D.C. 1990).

First, the superior court found that Ms. Newball and Mr. Stanford "maintained a romantic relationship," which is one basis for exercising jurisdiction under the Intrafamily Offenses Act. See D.C. Code § 16-1001(5)(B). The court rested that finding on Ms. Newball's testimony that, for about a year ending in mid-2002, the parties had a romantic relationship that involved, "dat[ing], "sex," and her overnight stays at his apartment. Tr. 11-12, 17-18. Although Mr. Stanford denied that the parties' relationship was more than platonic, the court was entitled to find Ms. Newball's testimony more credible than his on those central facts.

Second, the superior court also held that Ms. Newball and Mr. Stanford "shared a mutual residence," which is a separate basis for exercising jurisdiction under the Intrafamily Offenses Act. See D.C. Code § 16-1001(5)(A). The holding is substantiated by the uncontroverted evidence that Ms. Newball and Mr. Stanford both lived in Ms. Newball's house from September 2002 to May 2003. Although Mr. Stanford asserts that he lived in a separate basement apartment in the house and thus that Section 16-1001(5)(A) should not apply, the court was entitled to credit Ms. Newball's testimony that the basement was simply "[p]art of the whole house," Tr. 4, and that the parties shared common areas, such as the kitchen, as well as household chores and social activities. And, although Mr. Stanford also contends that his payment of rent to Ms. Newball renders Section 16-1001(5)(A) inapplicable, nothing in the statutory text turns on the particular financial arrangements between the parties sharing a residence. This Court should not read exceptions into Section 16-1001(5)(A) that the Council did not put there, and thereby diminish the Act's protections for unrelated individuals living in the same housing unit.

ARGUMENT

Mr. Stanford confines his appeal to the question whether the superior court permissibly exercised subject-matter jurisdiction over Ms. Newball's petition for a civil protection order. The superior court determined that the petition fell within its jurisdiction under the Intrafamily Offenses Act on two independent grounds: that the parties had a romantic relationship and that the parties shared a mutual residence. See D.C. Code § 16-1001(5). Both determinations are substantiated by Ms. Newball's testimony, which the superior court found to be more credible in critical respects than Mr. Stanford's contrary testimony. Although the Court need only affirm one of those determinations in order to sustain the superior court's exercise of jurisdiction in this case, there is no viable basis for the Court to disturb either finding.[1]

I. THE INTRAFAMILY OFFENSES ACT CONFERS JURISDICTION OVER CASES BETWEEN PARTIES WHO EITHER "MAINTAINED A ROMANTIC RELATIONSHIP" OR "SHARED A MUTUAL RESIDENCE"

As a threshold matter, Mr. Stanford erroneously asserts that, "in order for an act to qualify as an intra-family offense, the people who lived together must also have had an intimate relationship." Appellant's Br. 9. In other words, Mr. Stanford contends that the superior court could exercise subject-matter jurisdiction over Ms. Newball's petition under the Intrafamily Offenses Act only if the parties both "shared a mutual residence" and "maintained a romantic

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[1] The civil protection order expired, by its terms, on June 4, 2004. See D.C. Code § 16-1005(d). This Court has previously held that the expiration of a civil protection order did not moot the appeal of the order when (i) the appellant attempted to expedite the appeal and (ii) the matter was "capable of repetition, yet evading review." See, e.g., McKnight v. Scott, 665 A.2d 973, 975 n.1 (D.C. 1995); Cloutterbuck v. Cloutterbuck, 556 A.2d 1082, 1083 n.1 (D.C. 1989). Here, although Mr. Stanford did not seek to expedite the appeal, and although he has moved out of Ms. Newball's house, the record does not negate the possibility of a recurrence of the conduct that prompted Ms. Newball to seek a civil protection order. For example, the superior court found that the animosity between the parties was initially triggered by Mr. Stanford's demands for compensation for water damage to his property in the house (see Tr. 54-55), and there is no indication that those demands have been satisfied or abandoned.

relationship." D.C. Code § 16-1001(5) (A) and (B). Although the superior court did find both of those jurisdiction-conferring facts, either fact alone would have sufficed under the plain language of the Act.

Subject-matter jurisdiction under the Intrafamily Offenses Act turns on whether the petition alleges an act within the definition of "intrafamily offense" in Section 16-1001(5) of the D.C. Code:

> The term "intrafamily offense" means an act punishable as a criminal offense committed by an offender upon a person:
>
> > (A) to whom the offender is related by blood, legal custody, marriage, having a child in common, or with whom the offender shares or has shared a mutual residence; or
> >
> > (B) with whom the offender maintains or maintained a romantic relationship not necessarily including a sexual relationship.

D.C. Code § 16-1001(5) (emphasis added). The two subparts of Section 16-1001(5) are linked by the disjunctive "or," not the conjunctive "and." Hence, the statutory text unambiguously confers jurisdiction over offenses involving parties who either "shared a mutual residence" or "maintained a romantic relationship." It is not necessary that both requirements be satisfied in a single case.

That was not always so. At one time, the final word in Section 16-1001(5)(A) was "and," not "or." See D.C. Code § 16-1001(5)(A) (1989 Repl. & 1994 Supp.). Giving effect to that earlier word choice, this Court held that subject-matter jurisdiction existed under the Intrafamily Offenses Act only in a case in which both subparts (A) and (B) of Section 16-1001(5) were satisfied. See, e.g., McKnight v. Scott, 665 A.2d 973, 975 (D.C. 1995); Sandoval v. Mendez, 521 A.2d 1168, 1171 (D.C. 1987).

In 1994, however, the D.C. Council amended the Intrafamily Offenses Act to change the final word of Section 16-1001(5)(A) from "and" to "or." See D.C. Law 10-237, § 2(a), 42 D.C.R. 36. The change of language was deliberate. The legislative history reflects a particular concern with extending protection to individuals who had a romantic relationship with the abuser but who never lived with the abuser. See Report of the Committee on the Judiciary of the Council of the District of Columbia, Bill 10-477 (Oct. 12, 1994) (hereinafter Judiciary Committee Report), at 1, 2. Witnesses before the Council also noted the importance of protecting roommates and housemates. See id. at 3 (summarizing testimony of representatives of D.C. Commission for Women).

The amendment took effect on March 21, 1995. See D.C. Code § 16-1001, historical and statutory notes. The amended Section 16-1001(5), although inapplicable to the pre-1995 conduct in McKnight and Sandoval, indisputably applies to the conduct in this case. Accordingly, although Mr. Stanford's purports to rely on McKnight and Sandoval, see Appellant's Br. 9, 11, his reliance is misplaced.

The superior court's exercise of jurisdiction over Ms. Newball's petition could be overturned, therefore, only if the court clearly erred in its findings on both of the two jurisdiction-conferring facts -- namely, that the parties had a romantic relationship and that the parties shared a residence. As explained below, Mr. Stanford has identified no such error in the superior court's findings on either of those facts.

II. THERE IS NO BASIS TO DISTURB THE SUPERIOR COURT'S EXERCISE OF JURISDICTION BASED ON THE PARTIES' HAVING "MAINTAINED A ROMANTIC RELATIONSHIP"

As noted above, the Intrafamily Offenses Act confers subject-matter jurisdiction over offenses committed upon a person "with whom the offender maintains or maintained a romantic relationship not necessarily including a sexual relationship." D.C. Code § 16-1001(5)(B). Here,

after an evidentiary hearing at which Ms. Newball and Mr. Stanford testified about the nature of their relationship, the superior court found that "the parties had a social or sexual or romantic relationship." Tr. 54. No basis exists for this Court to overturn that finding.[2]

"In cases tried by the judge without a jury, the scope of [appellate] review is circumscribed by D.C. Code § 17-305(a), which provides that the judgment may not be set aside except for errors of law unless it is 'plainly wrong or without evidence to support it.'" In re S.G., 581 A.2d 771, 774 (D.C. 1990) (quoting statute). And when, as here, such a judgment is challenged solely on grounds of evidentiary insufficiency, this Court is required to "consider the evidence in the light most favorable to [the prevailing party], giving full play to the right of the judge, as the trier of fact, to determine credibility, weigh the evidence, and draw reasonable inferences." In re T.M., 577 A.2d 1149, 1151 (D.C. 1990). That standard of review is justified, in part, by the reality that, while the trial judge who presided over the evidentiary hearing "was able to observe and assess the demeanor of the witnesses," the reviewing court "is limited to a paper record which may capture the words of a case but not its heart and soul." In re S.G., 581 A.2d at 774.

The superior court's finding that the parties had the requisite "romantic relationship" is adequately supported by Ms. Newball's testimony that, during an extended period of time in 2001 and 2002, she and Mr. Stanford "dated," "slept together," "had sex," and discussed marriage. Tr. 12. Although Mr. Stanford testified that the parties' relationship was instead "strictly platonic," id. at 30, the court expressly declined to credit his denial of a sexual relationship with Ms. Newball, id. at 53-54. The court's choice to accept Ms. Newball's account

[2] The superior court used the term "social" relationship as analogous to, not distinguishable from, a "romantic" relationship. See Tr. 53 (explaining that the parties' "social relationship" was "in the nature of a dating relationship").

of the parties' relationship over Mr. Stanford's is entitled to deference. See, e.g., Barnes v. United States, 760 A.2d 556, 559 (D.C. 2000) ("We must defer to the trial court's credibility determinations respecting witnesses who testify at the hearing.").

Mr. Stanford argues that the superior court was obligated to credit his testimony on that question because Ms. Newball's mother, Ms. Gondola, testified that she was not aware of any romantic relationship between Ms. Newball and Mr. Stanford. See Appellant's Br. 6; see also Tr. 15-16. The court could, however, permissibly credit Ms. Newball's explanation that "I don't involve my mother in my business." Id. at 18. It is hardly unusual for adult women to maintain their privacy, even from their mothers, about their romantic and other social relationships. Moreover, while Ms. Newball testified that the romantic relationship with Mr. Stanford occurred during a period in which she was sharing her house with Ms. Gondola, ibid., Ms. Newball also testified that the couple stayed together at his apartment in Maryland, id. at 12, and thus outside the observation of Ms. Gondola. [3]

Mr. Stanford also suggests that the superior court erred in finding jurisdiction under Section 16-1001(5)(B) because, as Ms. Newball acknowledged, the parties ended their romantic relationship before Mr. Stanford moved into her house and, consequently, approximately a year before the events that gave rise to her petition. See Appellant's Br. 9, 10. The Intrafamily Offenses Act, however, extends its protections to any person "with whom the offender maintains

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[3] Mr. Stanford suggests that Ms. Newball's credibility was undermined by her alleged "inconsistencies as to when the 'romantic relationship' began, or ended." Appellant's Br. 12. The trial transcript reflects, at most, some vagueness on Ms. Newball's part about the precise period during which the parties were romantically involved. See, e.g., Tr. 4, 17-18. In any event, even if the superior court found that Ms. Newball's testimony was not credible on some issues (as it did with respect to her testimony about Mr. Stanford's obligation to pay rent, see id. at 56), the court was still entitled to find that Ms. Newball's testimony was credible on other issues. See In re S.G., 581 A.2d at 775 (recognizing that a trial court is entitled to credit a witness's testimony "despite some inconsistencies in it").

or maintained a romantic relationship." D.C. Code § 16-1001(5)(B) (emphasis added). As the Council recognized, even after a romantic relationship has ended, the risk of violence, threats, or harassment by one party against the other persists. Indeed, one party's decision to end a relationship may be the very event that precipitates such conduct. See Judiciary Committee Report, supra, at 4 (noting testimony of Catherine Klein, Family Abuse Project, Catholic University Law School, that "78 per cent of violence between people in a relationship occurs after separation"); see also, e.g., McKnight, 665 A.2d at 974, 977 (affirming civil protection order against woman's "ex-finance" who "threatened her by phone and mail, vandalized her car, faxed and phoned her at work, and physically assaulted her").

In sum, because the superior court's finding that Ms. Newball and Mr. Stanford maintained a romantic relationship is neither "plainly wrong [n]or without evidence to support it," D.C. Code § 17-305(a), the court's exercise of jurisdiction over Ms. Newball's petition for a civil protection order must be sustained.

III. THERE IS NO BASIS TO DISTURB THE SUPERIOR COURT'S EXERCISE OF JURISDICTION BASED ON THE PARTIES' HAVING "SHARED A MUTUAL RESIDENCE"

The superior court found a second, independent basis for exercising jurisdiction over Ms. Newball's petition for a civil protection order: that jurisdiction existed under Section 16-1001(5)(A) of the D.C. Code because the parties "shared a mutual residence." See Tr. 53, 54. That ruling, too, must be sustained. At no point during these proceedings has Mr. Stanford disputed that he and Ms. Newball simultaneously lived in her house at 1307 Emerson Street, Northwest, between September 2002 and May 2003. He merely contends that Section 16-1001(5)(A) should not apply in this case because he paid rent to Ms. Newball and had his bedroom in the basement of her house. See Appellant's Br. 1, 8-9. This Court should reject Mr.

Stanford's invitation to read exceptions into the Intrafamily Offenses Act that the Council wisely did not put there.

A. It is well settled that the Intrafamily Offenses Act "must be liberally construed in furtherance of its remedial purpose." Cruz-Foster v. Foster, 597 A.2d 927, 929 (D.C. 1991); see id. at 131 (noting "[t]he Council's unambiguously stated preference for a generous construction of the remedial provisions of the Act"); United States v. Harrison, 149 U.S. App. D.C. 123, 461 F.2d 1209, 1210 (D.C. Cir. 1972) ("The provisions of the 1970 law regarding inter-family offenses must be liberally construed in furtherance of their remedial purpose."); Powell v. Powell, 547 A.2d 973, 974 (D.C. 1988) (noting that "the plain intent of the legislature [in the 1982 statutory amendments] was an expansive reading of the Act"). That rule of construction is fully applicable to Section 16-1001(5)(A)'s definition of an intrafamily offense to include those "committed by an offender upon a person * * * with whom the offender shares or has shared a mutual residence."

The phrase "shar[e] a mutual residence," in its ordinary meaning, implies that the parties reside within a single housing unit, whether a house or an apartment. The residence is a single, "mutual" one when both parties have access to common areas, such as the kitchen, even if only one party has access to other areas, such as a bedroom. See, e.g., Webster's New World Dictionary 1309 (2d college ed. 1997) (defining "share" as "to receive, use, experience, enjoy, endure, etc., in common with another or others"); id. at 940 (defining "mutual" as "shared in common; joint"). Section 16-1001(5)(A) thus encompasses offenses between roommates or housemates as those terms are generally understood. It would not necessarily follow, however, that Section 16-1001(5)(A) extends to persons who reside in separate, self-contained housing units within the same building.

That understanding of what constitutes "shar[ing] a mutual residence" under the Intrafamily Offenses Act is a sensible one. A person is particularly vulnerable to one who resides within the same house or apartment, in much the same way that a person is particularly vulnerable to one with whom she has a romantic or family relationship. Proximity under the same roof creates an enhanced potential for tension and, in some instances, for violence or the threat of violence. And, when such violence or threats come from a roommate or housemate, a person is often not in a position simply to avoid the dangerous situation. The risk to personal safety is thus exacerbated. See, e.g., Hamilton v. Ali, 795 A.2d 929, 934 (N.J. Super. Ct. Ch. Div. 2001) (explaining that whether the plaintiff and defendant are "household members," within the meaning of the New Jersey domestic violence statute, turns on "whether the living situation essentially places the plaintiff in a more susceptible position for abusive and controlling behavior in the hands of the defendant") (internal quotation marks omitted); People v. Siravo, 21 Cal. Rptr. 2d 350, 353-354 (Cal. Ct. App. 1993) (holding that the domestic violence exception to the marital testimonial privilege applied in a man's prosecution for an assault on his wife's housemate and reasoning that the exception protects "all cohabitants, regardless of the nature of their relationship" because "[i]ndividuals are uniquely vulnerable in their domestic environment"), review denied, 1993 Cal. LEXIS 5537 (Cal. Oct. 21, 1993).

Mr. Stanford's suggestion that Section 16-1001(5)(A) is inapplicable whenever one of the parties "shar[ing] a mutual residence" pays rent to the other is not supported by the text of the Intrafamily Offenses Act and is inconsistent with its remedial purposes. It would be arbitrary to cause the availability of the Act's important protections to turn on the particular financial arrangements between the parties. Cf. Fields v. United States, 793 A.2d 1260, 1262-1263 (D.C. 2002) (noting the superior court's grant of a civil protection order against a defendant who rented

a room in the complainant's house). The mere fact that rental payments are made does not, of course, establish anything about the nature of the parties' relationship. Even among adult family members or romantic partners who live together, the homeowner or principal tenant may collect rent from others in the household.

The Council's extension of intrafamily jurisdiction over those who, although not in a romantic or family relationship, live in the same housing unit has great importance for District residents of limited means. According to a recent report prepared by the Urban Institute for the Fannie Mae Foundation, "the region's supply of affordable housing is woefully inadequate," "meet[ing] the needs of less than 50 percent of the area's neediest renters," those with incomes below $10,000. Housing in the Nation's Capital (2003) at 3.[4] As a consequence, "a significant share of those with incomes below the poverty line live in housing that is overcrowded." Id. at 46; see id. at 47 (noting that 16.9% of District households below the poverty line live in "overcrowded" conditions, defined as more than one person per room, and 10.2% live in "severely overcrowded" conditions, defined as more than 1.5 persons per room). It is not uncommon, therefore, for unrelated individuals, including individuals who have never been romantically involved, to live within the same housing unit, often in very close quarters. See U.S. Census Bureau, District of Columbia: 2000, at 2 (noting that 9.1% of District residents in 2000 were living in households with "[n]onrelatives," but only 2.6% in households with an "[u]nmarried partner").[5] Such individuals, regardless of the particular nature of their personal

[4] The report is available at http://content.knowledgeplex.org/kp2/cache/kp/5569.pdf (last visited Sept. 1, 2004).

[5] The report is available at http://www.census.gov/prod/2002 pubs/c2kprof00-dc.pdf (last visited Sept. 2, 2004).

relationships or financial arrangements, are properly understood to be "shar[ing] a mutual residence" within the protections of the Intrafamily Offenses Act.

B. The superior court had a sufficient evidentiary basis to find that that Ms. Newball and Mr. Stanford "shar[ed] a mutual residence" within the meaning of Section 16-1001(5)(A). See Tr. 53-54. Ms. Newball testified that Mr. Stanford's basement quarters were not "a separate apartment or room," but were simply "[p]art of the whole house." Id. at 4. She added that there was no lock on the door separating the basement from the upstairs portion of the house until Mr. Stanford installed one at some point during his tenancy. Id. at 4-5. She also testified that, throughout Mr. Stanford's tenancy, he had access to the upstairs, including the kitchen and the top floor where her bedroom was located. Id. at 26-27; see id. at 49 (Mr. Stanford confirms his access to the kitchen at the time that he received the notice to quit).

Moreover, the testimony of both Ms. Newball and Mr. Stanford established that they shared not only the physical space at 1307 Emerson Street, Northwest, but also various activities that occurred there. According to Ms. Newball's testimony, during the initial period of Mr. Stanford's tenancy, "we were just like one family," in the sense that they purchased food, cooked, and socialized together. Tr. 5. Ms. Newball testified that she also helped to care for Mr. Stanford's younger son, including getting him ready for school and escorting him there. Id. at 39-49. Even Mr. Stanford acknowledged the parties' social relationship during the period that he lived in the house. See id. at 11-12, 31. The superior court thus recognized that this case did not involve a purely landlord-tenant relationship, stating that "[t]he relationship clearly has become supercharged in an emotional way which goes beyond that of a mere landlord/tenant dispute." Id. at 54.

In sum, Mr. Stanford has failed to identify any reversible error in the superior court's determination that the parties "shared a mutual residence" within the meaning of Section 16-1001(5)(A). For that reason, as well, the court's exercise of jurisdiction over Ms. Newball's petition must be sustained.[6]

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[6] Although the "Argument" section of Mr. Stanford's brief does not contain any challenge to the superior court's findings that he committed the intrafamily offenses of threats and harassment, the "Conclusion" section suggests, in passing, that those findings are erroneous. See Appellant's Br. 11. Such a challenge, even if properly preserved, would have no merit.

With respect to the offense of threats to commit bodily harm under D.C. Code § 22-407, the "essential elements" of the offense are "[t]hat the defendant uttered words to another person; that the words were of a such a nature as to convey fear of serious bodily harm or injury to the ordinary hearer; that the defendant intended to utter the words which constituted the threat." Evans v. United States, 779 A.2d 891, 894 (D.C. 2001). Here, there was evidence that Mr. Stanford made statements to Ms. Newball and her mother that "he would fuck [Ms. Newball] up," that it was reasonable for Ms. Newball to view such statements as a threat of serious bodily harm, and that Mr. Stanford uttered those words intentionally. See Tr. 53-56 (superior court's ruling). Although Mr. Stanford claims that,he did not subjectively intend those statements as a threat of "physical[] harm" (Appellant's Br. 11), the superior court found otherwise. See id. at 55-56. In any event, the statute requires only that the defendant intentionally make statements that a reasonable hearer would understand as a threat of bodily harm, whether or not the defendant subjectively intended to put the hearer in fear for her personal safety. See Evans, 779 A.2d at 894.

With respect to the offense of harassment in violation of D.C. Code § 22-404, the essential elements are that the defendant "willfully, maliciously, and repeatedly * * * engage[d] in a course of conduct either in person, by telephone, or in writing, directed at a specific person, which seriously alarms, annoys, frightens or torments the person." D.C. Code § 22-404(b) and (e). Here, the superior court found that Mr. Stanford's "numerous calls" to Ms. Newball, her employer, Ms. Gondola, and her landlord "were both willful and intentional efforts to cause emotional distress." Tr. 56-57; see id at 26-28 ((Ms. Newball testifies about fears for her personal safety as a result of Mr. Stanford's conduct).

CONCLUSION

The civil protection order should be affirmed.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Brief of Appellee to be delivered by first-class mail, postage prepaid, this 10th day of September 2004, to:

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