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## Domestic Violence

### **Court Finds ‘Dating Relationship’ Despite Parties’ Claim They Were Just Friends**

**A** trial court’s authority to draw its own inferences and conclusions from evidence includes the power to find a “dating relationship” in a domestic violence proceeding even though the parties themselves characterized their relationship as a friendship that did not involve dating, the California Court of Appeal, Second District, held Aug. 23 (*Phillips v. Campbell*, 2016 BL 273368, Cal. Ct. App., No. B263353, 8/23/16).

California’s Domestic Violence Protection Act (Cal. Fam. Code § 6200 et seq.), provides that a restraining order may be granted where the parties are “having or [have] had a dating . . . relationship.” § 6211(c).

Section 6210 of the Act defines “dating relationship” as “frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations.”

In this case, professional cyclist Amy Phillips had applied for a domestic violence restraining order against James Campbell. She stated they had been friends for several months and that when he “expressed an interest in moving forward in [the] relationship” she responded that she “was not interested [and] wanted to just be friends.”

Phillips stated that Campbell came to her house at 3:30 a.m. “banging on the doors and windows,” and thereafter harassed her by posting her personal information and photos on Facebook, posting videos of her on YouTube, and sending private messages to individuals sharing personal information about her.

She also stated that he sent her text messages in which he called her a “psycho evil witch” and a “compulsive liar” who had “lied” about him and “destroyed [his] life.”

Campbell, who lives in Florida, appeared at the subsequent hearing telephonically. Thereafter, the trial court found that “there was relationship [between the parties] that qualifies as a dating relationship and that the communications and interaction from [Campbell] to [Phillips] qualifies for a domestic violence restraining order protecting [her].”

Campbell appealed, arguing that the court erroneously found that the parties had a dating relationship. Characterizing their former relationship as “BEST FRIENDS,” he said that any reference to his “love” for Phillips was “a platonic love of caring and concern for his BEST FRIEND [and they] engaged in social activities just like [he] does with all of his friends.”

**Substantial Evidence.** In affirming the DVPA restraining order, Justice Kenneth R. Yegan said that substantial evidence supported the finding that a dating relationship existed, because a reasonable trier of fact could find that the parties had “frequent, intimate association primarily characterized by the expectation of affection,” § 6210.

He pointed to Phillips’ testimony that “[w]e were friends for several months. During that time, we spent time together, dined out on occasion, and [Campbell] stayed in my home for several days.” She had also sent him a message stating that he had a strong emotional “hold” on her and complimented him on a kiss that he had given her.

Additionally, Yegan took note of evidence showing that after Phillips rebuffed his advances, Campbell accused her of “leading [him] on” while she was dating someone else, and sent her a message stating: “How does [that] make u feel that [the] only guy u fell in love with ever would rather be dead than hear or see from u again?”

Finding that Campbell’s testimony also showed that his relationship with Phillips was more than just a friendship, Yegan said that “[a]lthough there is no evidence that the parties had sexual relations, [Campbell] admitted that [ ] he had sent nude photographs of himself to” Phillips.

“The nude photographs are evidence of ‘intimate associations’ and an ‘expectation of . . . sexual involvement’ within the meaning of section 6210,” Yegan said.

**Factual Question.** Acknowledging that Phillips denied that her relationship with Campbell involved “dating,” he said that the “trial court was not required to accept, and did not accept” her characterization of the parties’ relationship.

“Whether a dating relationship existed was a factual question to be decided by the trial court based upon all of the evidence,” he said, noting its statement that “[a]ll of the evidence shows there was an expectation of affection or desire to have affection . . . . So although you guys may have called it ‘We are not dating’ or ‘We don’t want to date,’ you certainly have all the attributes, it looks like, [of a dating relationship] under [section] 6210[.]”

Yegan further noted that when Campbell stated that he had never actually gone on a date with Phillips, the court replied: “What I have seen in these papers is that you guys had lots of communication, that you actually stayed at her residence . . . . So that’s where I’m seeing there was something more to this than to say, ‘We never went on a date.’”

Campbell “has not demonstrated, as a matter of law, that the trial court erred in exercising its traditional power to draw reasonable inferences from the evidence,” Yegan concluded.

Justices Arthur Gilbert and Steven Z. Perren concurred.

Campbell appeared pro se. Phillips was represented by Lvovich & Szucsko, San Francisco.

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*Full text at [http://www.bloomberglaw.com/public/document/Phillips\\_v\\_Campbell\\_No\\_B263353\\_2016\\_BL\\_273368\\_Cal\\_App\\_2d\\_Dist\\_Aug](http://www.bloomberglaw.com/public/document/Phillips_v_Campbell_No_B263353_2016_BL_273368_Cal_App_2d_Dist_Aug)*