

IN THE MARIETTA MUNICIPAL COURT
WASHINGTON COUNTY, OHIO

STATE OF OHIO : Case No. 05CRB188
Plaintiff :
vs : DECISION AND ENTRY
DONALD HUNTER :
Defendant :

Defendant moves to dismiss the complaint filed herein based on the contention that the Domestic Violence statute (O.R.C § 2919.25) violates Article XV, § 11 of the Ohio Constitution. This provision of the Ohio Constitution was the recently adopted provision intended to prevent recognition of same-sex marriages.

In this case, Defendant is charged with violating ORC Section 2919.25(A) which prohibits one from knowingly causing or attempting to cause physical harm to a family or household member. Neither the Defendant or his alleged victim are or ever have been married to each other. Notwithstanding ORC Section 2919.25(F)(1)(a)(i) defines “family or household member” as a person who has resided with or is residing with the offender as “a person living as a spouse”. That term is further defined in ORC Section 2919(F)(2) as a “person . . . who is living or has lived with the offender in a common law marital relationship, who has otherwise cohabited with the offender, . . .”

It should be noted that after October 10, 1991, ORC Section 3105.12 was amended to recognize common law marriages that occurred before that date. It specifically does not recognize the validity of those marriages arising on or after that date. Even though Ohio law changed in 1991 in regard to common law marriages, the Ohio legislature has amended the Domestic Violence statute, ORC Section 2919.25, eight

times leaving the language intact referencing common law marriages in its definition of family or household member. It is clear that the intent of the legislature in enacting and amending ORC Section 2919.25 was to prohibit acts of violence against persons who are legally married or living in a relationship, whether legal or not, that resembles a marital relationship. It is for that reason that they prohibited acts of violence by a perpetrator against a person living as a spouse.

The court has reviewed the opinion written on this subject by Judge Frye of the Franklin County Court of Common Pleas in [State v. Rodgers, 131 Ohio Misc. 2d 1, 6 \(Ohio Misc., 2005\)](#). In that decision Judge Frye stated:

It is evident that while "cohabitation" defines a relationship between people, that status is factual not legal. "Cohabitant" is therefore not a legal status, let alone a legal status that "intends to approximate the design, qualities, significance or effect of marriage" within the meaning of the Marriage Amendment.

In all cases where the defendant is accused of committing an act of domestic violence while cohabiting with a partner, this court would agree with Judge Frye that the statute is constitutionally applied to prohibit such conduct, notwithstanding the recent amendment.

Motion Denied.

SO ORDERED:



Hon. W.M. Nuzum, III, Judge

2005crb00188

cc: Amy Brown Thompson,
Counsel for Plaintiff
Dennis Sipe,
Counsel for Defendant