

Domestic Violence and the Right to Property in U.S. Caselaw

I. INTRODUCTION

This memorandum sets forth the relevant law addressing the right to property in domestic violence cases. The Advocates for Human Rights drafted this memo in response to National VAW Monitors' concerns raised at the Budapest Meeting in 2006. Several Monitors cited obstacles in drafting and passing domestic violence laws which include order for protection provisions. They had noted officials' concerns regarding property rights. Advocates in Minnesota likewise faced this challenge when passing [Minnesota's domestic violence law](#) in 1976. Since then, however, U.S. courts have recognized that property rights are not absolute and protecting women and children's safety is a compelling state interest which can supersede property rights. In one case, the court noted the importance of a state's power to protect the safety of its citizens:

"The police power is the inherent power of a body politic to enact and enforce laws for the promotion of the general welfare. It has long been recognized that property rights are not absolute and that persons hold their property "subject to valid police regulation, made, and to be made, for the health and comfort of the people..."¹

"...The restrictions that the act places on the use of property to protect abused spouses and children are necessary to dispel the dangers of domestic violence. In doing so, they violate no constitutional mandate against the taking of property."²

In another case, the court noted the seriousness of domestic violence and the extreme danger presented in these cases prioritized people's safety over property rights:

"The magnitude of the problem of domestic violence is evidenced by statistics compiled by the FBI in 1973 which indicate that one-fourth of all homicides in the United States occur within the family."³

The caselaw summarized below addresses the right to property in terms of: 1) a taking without compensation; 2) an exercise of the state's police power, and; 3) a taking without a jury trial. Not all of these cases are based on facts situations of domestic violence. Some courts have, however, applied the general rules on taking of property to domestic violence cases. This memo also presents another rule: courts may not order the victim out of the home under domestic abuse laws that provide for orders for protection.

This memo is followed by quotations from domestic violence cases that address the right to property against the governmental interest, i.e. protecting the health, welfare and safety of its citizens. A summary of the facts and how each case came to court are provided for each case.

Where possible, cases are linked to the internet. Where cases are not available on the internet, they will be sent separately as attachments.

II. ISSUE 1: WHETHER AN ORDER FOR PROTECTION CONSTITUTES AN UNCONSTITUTIONAL TAKING AND REQUIRES THE STATE TO PAY COMPENSATION.

1. **Three elements must be established to constitute an unconstitutional taking and require the state to pay compensation.**⁴
 1. A state action
 2. which affects a property interest in the constitutional sense, and
 3. which deprives the owner of all beneficial use of his or her property.
2. **The husband must be denied all beneficial use of the property to constitute a taking of property and require the state to pay compensation.**
 1. Children still living in the house still provide the husband with some beneficial use of the property. The husband is using the property to house his children.⁵
 2. A wife still living in the house still provides the husband with some beneficial use of the property. The husband is not required to find her alternative shelter.⁶

III. ISSUE 2: WHETHER THE PENNSYLVANIA PROTECTION FROM ABUSE ACT IS AN UNCONSTITUTIONAL EXERCISE OF THE STATE'S POLICE POWER.

1. **Property rights are not absolute and are subject to the legitimate use of the state's police power.**⁷
 1. "The police power is the inherent power of a body politic to enact and enforce laws for the promotion of the general welfare. It has long been recognized that property rights are not absolute and that persons hold their property "subject to valid police regulation, made, and to be made, for the health and comfort of the people..."⁸
 2. The test to determine whether there is an unconstitutional exercise of the state's police power:
 - i. "...a law which purports to be an exercise of the police power must not be unreasonable, unduly oppressive or patently beyond the necessities of the case, and the means which it employs must have a real and substantial relation to the objects sought to be attained."⁹
 - ii. The Protection from Abuse Act is not a due process violation, because the sanctions bear a real and substantial relationship to the stated objectives, which are to provide for remedies and procedures relating to abuse of adults or children by a person who is a family or household member.¹⁰
 3. With regard to state use of police power, there is no unconstitutional deprivation of individual rights and property rights when:

- i. any deprivation of use of property is temporary,
- ii. title to real estate is not affected,
- iii. all exclusion orders are modifiable.¹¹

IV. ISSUE 3: WHETHER AN ORDER FOR PROTECTION LAW IS UNCONSTITUTIONAL AS DEPRIVING AN INDIVIDUAL OF PROPERTY WITHOUT A JURY TRIAL.

1. **The Protection from Abuse Act is not unconstitutional as depriving a party of his property without a jury trial.**¹²
1. The act does not involve any criminal proceeding, but invokes the equitable power of the court.

V. ISSUE 4: WHETHER THE COURT EXCEEDED ITS AUTHORITY UNDER THE DOMESTIC ABUSE ACT BY ORDERING THE VICTIM OUT OF THE HOME.

1. **An order for the abused party to vacate the family residence is inconsistent with the language of the statute and its remedial purpose.**¹³
 1. As a remedial statute, the Domestic Abuse Act receives liberal construction.¹⁴
 2. The liberal construction accorded remedial legislation, however, is “remedial solely in favor of an injured...person.”¹⁵

¹ Boyle citing *DePaul v. Kauffman*, 441 Pa. 386, 393 (1971).

² *Boyle v. Boyle*, 12 Pa. D. & C.3d 767, 773 (1979 Pa. D. & C.).

³ *State ex. rel. Williams v. Marsh*, 626 S.W.2d 223, 230-31 (1982).

⁴ *Pitsenberger v. Pitsenberger*, 410 A.2d 1052 (Md. App. 1979). Note: *Pitsenberger* involves a divorce where the wife is awarded use of the property and the husband is required to leave. There is no domestic abuse alleged.

⁵ *Pitsenberger v. Pitsenberger*, 410 A.2d 1052 (Md. App. 1979).

⁶ *Cote v. Cote*, 599 A.2D 869 (1992 Md. App.).

⁷ *Boyle v. Boyle*, 12 Pa. D. & C.3d 767, 772 (1979 Pa. D. & C.).

⁸ Boyle citing *DePaul v. Kauffman*, 441 Pa. 386, 393 (1971).

⁹ Boyle citing *DePaul v. Kauffman*, 441 Pa. 386 (1971).

¹⁰ *Boyle v. Boyle*, 12 Pa. D. & C.3d 767, 772 (1979 Pa. D. & C.).

¹¹ *Boyle v. Boyle*, 12 Pa. D. & C.3d 767, 773 (1979 Pa. D. & C.) citing *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

¹² *Boyle v. Boyle*, 12 Pa. D. & C.3d 767, 775-76 (1979 Pa. D. & C.).

¹³ *Swenson v. Swenson*, 490 N.W. 2d 668 (1992 Minn. App.).

¹⁴ *Swenson* citing *Krause v. Merickel*, 344 N.W.2d 398 (Minn. 1984).

¹⁵ *Swenson* citing *Leppla v. American Family Ins. Group*, 306 Minn. 478, 238 N.W.2d 592, 595 (1976) (quoting *Christensen v. Hennepin Transp. Co.*, 215 Minn. 394, 412, 10 N.W.2d 406, 416 (1943)). Note: *Leppla* and *Christensen* are not domestic violence cases; *Leppla* deals with an insurance claim resulting from a fatal car accident, and *Christensen* is a lawsuit to recover damages from the car owner involved in an accident with plaintiff.