

Melanie Shakarian - Article on CLASI's Gough v. Triner Case (Front Page, Metro and StateSection, Cols. Dispatch)

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Law adds insult to injured partner
 Anti-gay-marriage amendment also domestic-violence defense
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 Alayna DeMartini
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They lived together, then apart, then together, then apart — on a roller coaster without brakes.

By January, Virginia Gough wanted her boyfriend to stay away.

Many of her memories of him are grim. She says he bruised her ribs, punched her in the eye, tried to drown her, slammed her face into a steering wheel and tried to choke her. That's all according to court documents she filed in January.

Gough asked for a protection order. Columbiana County Common Pleas Judge David Tobin said no — not because Gough couldn't prove she was in danger, but because she and her boyfriend were not married.

Tobin and a handful of Ohio judges have ruled that the state's domestic-violence law doesn't apply to unmarried couples who don't have children together. They say it conflicts with the antigay-marriage constitutional amendment voters passed in November.

The amendment, which took effect in December, was aimed at barring gay marriage, but unmarried couples — gay and heterosexual — have been caught in what some see as a conflict:

- The state's domestic-violence law covers people "living as a spouse," including unmarried couples.
- But the amendment says Ohio does not give legal status to the relationships of unmarried people.

Defense attorneys across the state are using the amendment to win

dismissal of charges against unmarried clients accused of domestic violence. No one disputes that unmarried couples who have children together are covered under the domestic-violence law.

Franklin County judges have ruled that the domestic-violence law still applies to any couple. But in Greene County, east of Dayton, nine domestic-violence felonies have been dismissed because of the amendment. All nine are under appeal.

Such rulings anger Phyllis Carlson-Riehm, executive director of Action Ohio, a statewide coalition of domestic-violence shelters.

"What if suddenly half . . . the murderers could get away with it because of a loophole in the law?" she said.

Statewide, at least 15 cases have been sent to appeals courts. Only one has been ruled on. In Stark County, an appeals court decided that the anti-gaymarriage amendment has no bearing on the domesticviolence law.

The dispute is "very frustrating," said Elizabeth Ellis, Greene County assistant prosecutor. "It's our interest to protect the public, and this is kind of tying our hands to do that."

One out of four domestic-violence cases reported to police in Ohio last year involved unmarried couples, according to statistics from the state Bureau of Criminal Identification & Investigation.

The legislature will consider a bill this fall aimed at resolving the issue. State Rep. William J. Healy II, a Canton Democrat, has introduced House Bill 161 to change the domestic-violence law to cover "any person who is residing with the offender."

Advocates for domestic-violence victims fear that the fix won't come soon enough.

"The one thing we can't have happen is, while we're all debating what to do with this, a woman dies," said Alexandria Ruden, a lawyer with the Legal Aid Society of Cleveland.

The first case to touch off the statewide debate involved a Cleveland man accused of slapping and pushing his live-in girlfriend over a pack of cigarettes. Since he had a record of domestic violence, he was charged with a felony and could have been sentenced to 18 months in jail.

In March, Cuyahoga County Common Pleas Judge Stuart Friedman reduced the charge to misdemeanor assault, with a maximum penalty of six months.

"I wish the law hadn't forced me into making this conclusion," Friedman said. "No judge wants to be the person who allows someone to get beaten to a pulp or murdered. But we have to follow the law."

Phil Burress, who heads the Ohio Campaign to Protect Marriage, which spearheaded the constitutional amendment, said it never was intended to leave unmarried couples out of the domestic-violence law. And he said he doesn't think it has put anyone at risk. Judges drop and reduce domestic-violence charges every day, he said.

"That's the way the process works. . . . On a scale of one to 10, Issue 1 is rating a zero in terms of its (negative) impact on society," Burress said, referring to the number the issue had on the ballot when voters approved it.

Even if a domestic-violence charge is dropped, prosecutors can file a charge of assault to replace it. The penalty is the same for both misdemeanor assault and misdemeanor domestic violence. But a second offense for domestic violence is an automatic felony, with stiffer penalties.

Rarely does someone batter another only once, victims' advocates say.

Kimberly Banks' boyfriend had four felony domestic-violence convictions when she says he attacked her on the night of Nov. 26 in Fairborn, east of Dayton, because she got a phone call from her child's father.

She told police her boyfriend grabbed her by the throat, carried her into a bedroom, threw her down on the bed and punched her in the right eye. He told her he would kill her if she called police; she made a report the next day after he left.

They had lived together, on and off, for four years but never married.

Greene County Common Pleas Judge J. Timothy Campbell dismissed a domestic-violence charge after the man's attorney cited the constitutional amendment. The decision is being appealed.

When a judge drops a criminal charge, it often empowers the batterer, Carlson-Riehm said.

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