

Intimate Partner Sexual Abuse:

CIVIL CASE STUDY

SHANNON PHELAN V. LEWIS TATE

Shannon Phelan appears before you seeking a permanent order of protection. Three weeks ago, an intake judge issued a summons and an *ex parte* temporary order of protection against Lewis Tate, with whom Ms. Phelan has a child in common, a four-year old daughter. Ms. Phelan has alleged that Mr. Tate, from whom she separated 3 months ago, has repeatedly waited for her outside of her place of work, sent flowers to her office, and left over 250 messages on her answering machine and pager. She asserts that she is fearful for her safety. Although she was given the name of a domestic violence services agency at intake, she appears again today without counsel and states that she wants to proceed *pro se*. She is concerned that she will lose more time from work if she meets with a lawyer and imperil her job as office manager for a dentist.

Mr. Tate has appeared as well, having been served by the county sheriff's office. He is calm and articulate. He waives his right to counsel, stating that he has "nothing to hide" and admits to all of the alleged conduct, but asserts that these were the understandable actions of a devastated father seeking to reconcile with the mother of his child, and that, moreover, he was acting upon the advice of their pastor, who counseled him to let his feelings be known to her. He states that it has long been his dearest wish to marry Ms. Phelan, but that she had refused his proposals of marriage too many times to count. He states further that he was encouraged to press his case by her welcoming of his sexual advances on two occasions when he "surprised" her, once in her car and once when he returned their daughter from a visit and pretended to leave her house but waited in the attached garage until the child was asleep.

He concludes: "She doesn't know what she wants, Your Honor. One day she's admitting I'm the only guy she'll ever love, talking about getting back together, and the next day she runs to the court, claiming I'm some kind of monster. If I'm such a bad guy, why was I in her bed last Sunday night? Everything was fine with us until she started going back to school. Now I guess a home and family aren't interesting enough for her. All I want is for us to be a family. I love Shannon and my daughter more than life itself. My daughter will tell you, I'm a great dad. No one understands why she's doing this to me, least of all me. Maybe if we can get some kind of counseling, to help her straighten out her thinking, this could all be for the best. I'm very concerned about her, Your Honor. I think that she is having some kind of nervous breakdown and needs help. I really don't know if she should be taking care of our daughter right now. If you ask me, I think she's drinking again."

Mr. Tate begins to sob. He concludes: "Living on this roller coaster is killing me. And God only knows what it's doing to my daughter."

You turn to the petitioner. She appears somewhat disheveled and pale. Her lips are set in a tight angry line, she is shaking her head, “No,” in an agitated manner, and she does not look up at the bench when you address her. You ask her to speak up for the record, and she responds, “Your Honor, he’s twisting everything around. I never wanted to be with him. He attacked me. Look at him! He’s twice my size. What could I do? The only help I need is help getting him away from me.”

Q1.

What does Ms. Phelan’s demeanor suggest to you?

[Choose all that apply]

- **She is angry and vindictive**
- **She is emotionally affected by being in close proximity to Mr. Tate**
- **She is not open to hearing points of view other than her own**
- **She is overwhelmed by hearing Mr. Tate defend his conduct in court**
- **She cannot defend against his assertions that she willingly had him “in her bed.”**

Q2.

At this point you may:

[Choose all that apply]

- **Admonish petitioner that the order of protection was issued by the Court, and she is without authority to let respondent near her so long as that order is in effect**
- **Ask petitioner whether she would agree to counseling with respondent**
- **Advise petitioner again that the Women’s Legal Aid office is available to assist her**
- **Ask Child Protective Services to visit petitioner’s home to assess the security of her child**

Protection Order Violation:

Shannon Phelan returns to your Court with a petition alleging violation of the order of protection previously issued. She asserts that Mr. Tate, when returning their daughter after court-ordered visitation, presses her to engage in sex in exchange for child support money. She asks that visits be suspended.

No prior order for child support has been entered by any court. Mr. Tate admits to engaging in sexual relations but asserts that the encounters have been consensual. He shakes his head and says, “Your Honor, I tell her there’s an order of protection, but she can’t keep her hands off me.”

Q3.

What do you infer from Ms. Phelan’s initial failure to make any claim based on the “surprise” sexual encounters with Mr. Tate in her car and garage, and his boasts about them?

[Choose all that apply]

- **She is embarrassed about violating the order of protection**
- **She is ambivalent about separation**
- **She is using the court system to manipulate respondent**
- **She does not identify herself as a “rape” victim**
- **She is embarrassed by the incidents**
- **She is fearful of losing custody of her children**
- **The encounters were probably consensual**

Q4.

At this point you may:

[Choose all that apply]

- **Order a temporary order of child support based on income guidelines**
- **Admonish both parties that the order of protection is the Court’s, and that neither party has power to change its conditions**
- **Admonish Mr. Tate that he is violating the order of protection even if he is approached by his wife**
- **Consider changing visitation to a supervised setting**
- **Modify the order of protection to a full stay-away order with no provision for visitation pending a hearing on the allegations**
- **Refer Ms. Phelan to the District Attorney’s office**
- **Set the matter down for a factual trial**