

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STEPHANIE KIM SMITH, APPELLANT
vs.
KOLE RYAN MCADAMS, RESPONDENT**

DOCKET NUMBER WD77449

Date: February 17, 2015

Appeal from:

The Circuit Court of Ray County, Missouri
The Honorable James Carey Thompson, Judge

Appellate Judges:

Division Two: Anthony Rex Gabbert, P.J., Joseph M. Ellis, J. and Karen King Mitchell, J.

Attorneys:

Jesi Nan DeMeire, for Appellant
Respondent Acting Pro Se

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS WESTERN DISTRICT

STEPHANIE KIM SMITH, APPELLANT

v.

KOLE RYAN MCADAMS, RESPONDENT

WD77449

Ray County, Missouri

Before Division Two Judges: Anthony Rex Gabbert, P.J., Joseph M. Ellis, J. and Karen King Mitchell, J.

Appellant Stephanie K. Smith filed a petition seeking an order of protection against Respondent Kole R. McAdams. In her petition, Appellant alleged that she was driving on a county highway when Respondent began following her in his vehicle and eventually cut her off, which caused Appellant to veer off the road. When Appellant turned into a residential driveway, Respondent blocked her in with his vehicle and demanded that she speak with him. When Appellant informed Respondent that she had called the police, Respondent drove away from the residence.

At an evidentiary hearing on Appellant's petition, Appellant and two other witnesses testified that Respondent had lived or resided in Appellant's home for approximately two years. However, on cross-examination, Appellant's daughter testified that Respondent last lived with Appellant approximately six years ago.

At the hearing's conclusion, the circuit court denied Appellant's request for a full order of protection and, at the request of Appellant, memorialized its findings in a written judgment. In the judgment, the circuit court found that "Respondent engaged in unwanted conduct which caused alarm to [Appellant]" and that Appellant "felt fear of danger of physical harm, and that such alarm was reasonable based upon the conduct of the Respondent." The circuit court further concluded that there was "undisputed evidence" that Appellant and Respondent "resided at the same residential address for two years." Nevertheless, the circuit court concluded that Appellant and Respondent were not "family" or "household members" as defined in § 455.010(7). In doing so, the circuit court found that "the nature of [Appellant and Respondent's] relationship, in addition to the passage of time between their cohabitation and this cause of action, render their relationship insufficient to meet the definition of 'household members' who 'have resided together in the past.'" Appellant now appeals from the denial of her petition for an order of protection.

REVERSED and REMANDED.

Division Two holds:

1. The circuit court erroneously determined that Appellant and Respondent's relationship was insufficient to meet the definition of household members set forth in § 455.010(7) in that, despite the circuit court's focus on the nature of Appellant and Respondent's relationship and the passage of time since their cohabitation, Appellant needed to establish only that she had resided with Respondent in the past in order to prove Respondent was a former household member, and, as the circuit court found, there was sufficient evidence in the record to establish that Appellant and Respondent had resided together in the past. Accordingly, the circuit court erred when it denied Appellant's petition for an order of protection on the basis that Respondent did not constitute a former household member for purposes of the Adult Abuse Act.

Opinion by Joseph M. Ellis, Judge

Date: February 17, 2015

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