Court of Appeals rules that denying domestic violence protection to persons in same-sex dating relationships is unconstitutional

In this post on August 15, 2017, DVPOs for Same-Sex Dating Relationships?, my former colleague Jeff Welty discussed the constitutionality of G.S. 50B-1(b)(6) in light of recent rulings by the United States Supreme Court addressing the rights of same-sex couples and in light of a South Carolina appellate court ruling that providing domestic violence protection to persons in heterosexual dating relationships while denying protection to persons in same-sex dating relationships is unconstitutional. Like the South Carolina statute, N.C.G.S. 50B-1(b)(6) provides that while persons of the opposite sex in a dating relationship are eligible for a DVPO, persons of the same sex in a dating relationship are not eligible for protection. On December 31, 2020, in M.E. v. T.J., the North Carolina Court of Appeals held this provision unconstitutional as applied to deny a plaintiff protection from domestic violence simply because plaintiff and defendant had been in a same-sex dating relationship rather than a heterosexual relationship.

Definition of domestic violence

To obtain an ex parte DVPO, a plaintiff must establish there is a danger of acts of domestic violence at the time the request is made, G.S. 50B-2(c)(1), and to obtain a permanent DVPO, plaintiff must establish that an act of domestic violence occurred. G.S. 50B-3(a). G.S. 50B-1 defines domestic violence as one of the acts listed in G.S. 50B-1(a) committed by a person with whom plaintiff has or has had a personal relationship. Therefore, a plaintiff is entitled to protection pursuant to Chapter 50B only if the plaintiff can establish both a personal relationship with defendant and that defendant committed one of the specified acts against plaintiff or against a minor child residing with or in the custody or plaintiff. G.S. 50B-1(a).

Personal relationship is defined in G.S. 50B-1(b) and subsection 50B-1(b)(6) provides that personal relationship includes “persons of the opposite sex who are in a dating relationship or have been in a dating relationship.” Persons of the same sex who are in or have been in a dating relationship are not included in the definition of personal relationship. Therefore, persons who are in or have been in a same-sex dating relationship are not entitled to Chapter 50B protection unless those persons have one of the other personal relationships identified in G.S. 50B-1(b).

M.E. v. T.J.

Plaintiff M.E. filed a complaint seeking both an ex parte and a permanent DVPO pursuant to Chapter 50B alleging defendant T.J. had committed acts of domestic violence against her. Plaintiff alleged she had been in a dating relationship with defendant. The trial court denied plaintiff’s request for ex parte relief, stating in the order that although plaintiff’s allegations of violence were “significant”, the trial court could not grant the ex parte DVPO because plaintiff did not establish a

personal relationship with defendant. While plaintiff and defendant had been in a dating relationship, they were of the same sex. Following the hearing on plaintiff's request for a permanent relief, the trial court entered an order denying plaintiff's request, stating in the order that:

"[P]laintiff has failed to state a claim upon which relief can be granted pursuant to the statute, due to the lack of statutorily defined personal relationship. …[H]ad the parties been of opposite genders, th[e] facts [presented] would have supported the entry of a Domestic Violence Protective Order (50B)."

Plaintiff appealed, arguing that the denial of her requests for both an ex parte DVPO and a permanent DVPO because she was in a same-sex relationship with defendant "violated her 14th Amendment and state constitutional rights to due process and equal protection of the laws." The court of appeals agreed, concluding that "[n]o matter the [level of constitutional] review applied, N.C.G.S. § 50B-1(b)(6) does not survive Plaintiff's due process and equal protection challenges under either the North Carolina Constitution or the Constitution of the United States."

The court of appeals held (emphasis added):

"We therefore reverse the trial court's denial of Plaintiff's complaint for a Chapter 50B DVPO, and remand for entry of an appropriate order under Chapter 50B. **The trial court shall apply N.C.G.S. § 50B-1(b)(6) as stating: "Are persons who are in a dating relationship or have been in a dating relationship." The holdings in this opinion shall apply to all those similarly situated with Plaintiff who are seeking a DVPO pursuant to Chapter 50B; that is, the "same-sex" or "opposite-sex" nature of their "dating relationships" shall not be a factor in the decision to grant or deny a petitioner's DVPO claim under the Act."**

There is much more to say about this opinion; the court of appeals engages in an extensive and thorough analysis of the due process and equal protection issues arising under both the federal and state constitutions because of the application of G.S. 50B-1(b)(6) in this case. That analysis will be the topic of future posts. In addition, there is a dissent by Judge Tyson arguing that the appellate court had no jurisdiction to consider the appeal in this case because plaintiff's appeal was not properly before the court due to several significant procedural problems. We may hear more from the Supreme Court on this matter soon.