

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 26-ST-00064

Tabar Gifford v. Jennifer Dye

ENTRY REGARDING MOTION

Title: Motion to Dismiss; Memorandum in Opposition; Reply to Memo in Opposition (Motion: 7)
Filer: Barbara R. Blackman; Daniel A. Seff; Barbara R. Blackman
Filed Date: June 30, 2026; July 30, 2026; August 10, 2026

The court began the merits hearing in this case on Apr. 2. Both parties represented themselves. Both now have counsel and defendant Dye has moved to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction (Mot. 7). She asserts plaintiff Gifford and she are “household members” under 15 V.S.A. § 1101(2) and Gifford should have brought this case as a petition for relief from abuse (“RFA”) in the family division under 15 V.S.A. §§ 1102(a) and 1103. See 12 V.S.A. §§ 5132, 5133(a) (authorizing stalking cases in the superior court for “[a] person, other than a family or household member as defined in 15 V.S.A. § 1101(2)”).

For the reasons that follow, the court denies Dye’s Mot. 7.

I. Standard

On a Rule 12(b)(1) motion, the court accepts Plaintiff’s allegations as true, including all reasonable inferences, denying dismissal “unless it appears beyond doubt that there exist no facts or circumstances that would entitle the [non-movant] to relief.” *Housing Our Seniors in Vt. Inc. v. Agency of Commerce & Cmty. Dev.*, 2024 VT 12, ¶ 11, 219 Vt. 80, 85 (internal quotation and other citations omitted). “A court may consider evidence outside the pleadings in resolving a motion to dismiss for lack of subject matter jurisdiction[.]” *Mullinnex v. Menard*, 2020 VT 33, ¶ 8, 212 Vt. 432 (internal quotations and citation omitted).

II. Background

Applying this legal standard, the court focuses on the matters most relevant to Mot. 7.

Gifford and Dye met in 2001. Gifford Jan. 27, 2026 Aff. (Mot. 7, Ex. 4, § II) (“Gifford Aff.”), Dye Aff., ¶ 3. They lived in the same UVM dorm as students during the 2001-02 academic year.¹ Gifford Aff., § II, Ex. 7, ¶¶ 4-5, Gifford Decl., ¶ 5. They also shared an

¹ Prior to Mot. 7, this court knew that the parties “shared housing during college (approximately 2002-2003)” and they “never had a romantic or sexual relationship, and [they] have not lived together or had any domestic relationship since that time.” Gifford Aff., § II. The court issued the temporary order and began the Apr. 2 merits hearing with that information in mind. No party testified about and the court did not independently inquire further into their history.

apartment with others in a “communal living arrangement” during June through late fall of 2002. Ex. 7, ¶¶ 6-8, Gifford Decl., ¶ 7.

During the summer of 2013, Gifford rented a lake house where Dye sometimes stayed overnight. Gifford Decl. ¶¶ 9-13. Dye characterizes this arrangement differently, but the court takes Gifford’s allegations as true and draws all reasonable inferences in her favor. See § I, above.

Gifford and Dye never had a domestic, romantic, sexual or dating relationship. Gifford Decl., ¶ 7, Gifford Aff., § II.

III. Discussion

Dye submits the court lacks subject matter jurisdiction, requiring this court to dismiss this stalking case so that the parties as household members may seek an RFA order in the family division. Gifford asserts the parties are not household members, this court has subject matter jurisdiction to continue this stalking proceeding and Gifford has waived venue.

This court does not find that Gifford and Dye are household members. Dye focuses only on her and Gifford “for any period of time” “hav[ing] lived together” or “shared occupancy of a dwelling.” 15 V.S.A. § 1101(3). Dye does not allege the parties had any other qualifying relationship under § 1101(3).

Both parties rely on the limited available decisions that addressed this question only collaterally. *Embree v. Balfanz*, 174 Vt. 560 (2002) (mem.), found both that the trial court’s “recitation of evidence in findings is not a finding of the facts” and, even if it were, the parties’ spending 11 nights in the same household over 13 years was “much too slender a reed to support the application of the Family Abuse Act.” *Id.* at 562.

Wright v Bradley, 2006 VT 100, ¶¶ 3–4, 180 Vt. 383, addressed the dating relationship component of “household members.” That component contains a list of factors a court may consider in reaching its determination, unlike the cohabitation component. See 15 V.S.A. § 1101(3).² *Wright* concluded: “In view of the statutory language taken as a whole, we hold that plaintiff was required to show a *substantial* dating relationship to support her request for an abuse prevention order and the family court had discretion in determining whether that relationship existed.” *Id.* ¶ 8 (emphasis added). The court thus read “substantial” into the statute. The parties’ two dates in two different school years were not substantial. *Id.* ¶ 10.

The outcomes of both *Embree* and *Wright* show that the VSC does not read § 1101(3) literally. *Embree* demonstrates that 11 nights over 13 years in the same household does not amount to “any period of time” under the statute. Rather, *Embree* effectively translates “any period of time” to mean “any significant period of time.” Similarly, *Wright* explicitly translates “minors or adults who are dating or who have dated” to mean “minors or adults who are dating

² What *Embree* and *Wright* cite as § 1101(2) now appears in § 1101(3) with no substantive change. For convenience, this court cites to the updated section number.

or who have dated substantially.” It does not include people who have had two dates over different academic years.

These outcomes match what courts do when interpreting statutes.

In construing a statute, the court’s “primary objective ... is to effectuate the Legislature’s intent.” The first step in doing so is to examine the plain language of the statute. We presume that this language was “drafted advisedly, and that the plain[,] ordinary meaning of the language used was intended.” When legislative intent is clear from the statutory language, we accept the plain meaning, our inquiry is at its end, and courts enforce the statute according to its terms. Only where “the language creates ambiguity or uncertainty” do “we resort to statutory construction to ascertain the legislative intent.”

T.C. v. L.D., 2020 VT 19, ¶ 4, 211 Vt. 582, 585 (citations omitted).

While § 1101(3) defines “household members,” dictionary definitions further highlight that term’s “plain and ordinary meaning.” “Household” means “belonging to the house and family; domestic,” Black’s Law Dictionary (12th ed. 2024), or “those who dwell under the same roof and compose a family” or “a social unit composed of those living together in the same dwelling.” <https://www.merriam-webster.com/dictionary/household>. “Dwell” means “to reside in a place permanently or for some period,” Black’s Law Dictionary (12th ed. 2024), and a “dwelling house” is “[t]he house or other structure in which one or more people live; a residence or abode.” *Id.* “Dwelling” means “a shelter (such as a house) in which people live.” <https://www.merriam-webster.com/dictionary/dwelling>.

None of the statutory or dictionary definitions encompass Gifford’s and Dye’s living in the same UVM dorm during 2001-02. Nor do they encompass their occasional lakeside overnights in 2013. Neither the statutory definition nor the “plain and ordinary meaning” of “household members” provided by the cited dictionary resources include people living in the same dorm (or apartment) building or people who occasionally stayed overnight in a temporary rental. These periods of time do not fall within *Embree*’s or *Wright*’s expanded tests.

These tests might encompass the parties’ sharing an apartment with others in 2002 if the court viewed that “communal living arrangement” in isolation. In the context of their two-decade relationship history, this court concludes that their sharing an apartment with others for a number of months over twenty plus years of knowing each other does not make them “household members” under § 1101(3). *Embree* and *Wright* give this court some discretion in interpreting § 1101(3). Both decisions indicate this court must look at the overall relationship history of the parties, just as *Embree* and *Wright* both did. A handful of months in the parties’ two-decade relationship does not, in this court’s view, pass the implicit test of significant or explicit test of substantial required by *Embree* and *Wright*, respectively.

The tests of *Embree* and *Wright* match another approach to statutory interpretation endorsed by the VSC.

Rather than relying on abstract definitions, we must evaluate the meaning of these terms in the context of the statute. The canon of construction, “noscitur a sociis,” which more or less means, “it is known by its associates,” requires us to “seek the meaning from the context, and by the light of what precedes or follows.”

In re E.C., 2010 VT 50, ¶ 10, 188 Vt. 546, 548 (citations omitted). This associative approach looks at the words surrounding the ones in question. *Id.* In § 1101(3)’s “household members” definition, the portion urged by Dye in her motion relates only to cohabitation – (a) “persons who, for any period of time, are living or have lived together, are sharing or have shared occupancy of a dwelling.” 15 V.S.A. § 1101(3). “Household members” also include (b) “persons who . . . are engaged in or have engaged in a sexual relationship” and (c) “minors or adults who are dating or have dated,” where “[d]ating” means a social relationship of a romantic nature.” *Id.* The statute then identifies a non-exhaustive list of factors a court may consider to determine whether parties have dated. *Id.*

Dye raises only (a) in her motion. Yet § 1101(3) groups (a) with (b) and (c). Under the associative approach to statutory interpretation, the *Embree* and *Wright* Courts properly exercised discretion in assessing whether the parties qualified as household members, rather than applying the statutory language inflexibly. The statute defines neither “sexual” nor “dating.” It says what “‘dating’ means” but allows the court to make a discretionary, fact- and case-specific determination, as *Wright* did. “Sexual” may at first glance appear clearer, but the “sexual assault” reference in § 1101(1)(A)(v) and its cross reference to 12 V.S.A. § 5131(5) which, in turn cross-references six other statutes, illustrates that “sexual” will also require a discretionary interpretation, depending on the facts and circumstances of the particular case. In other words, all three components of § 1101(3) require some interpretive discretion, as *Embree* and *Wright* employed.

Under the associative approach to interpreting § 1101(3), this court must view the cohabitation component with equal fact- and case-specific discretion, as *Embree* and *Wright* both did. If 11 nights over 13 years did not make the parties “household members” in *Embree* and two dates in two academic years did not make the parties “household members” in *Wright*, this court does not believe Gifford and Dye became “household members” as a result of several months of a non-dating “communal living arrangement” during the course of their twenty-plus-year history of knowing each other. That passing shared housing arrangement did not make them family or household members when applying § 1101(3) to the facts of this case as authorized by the VSC in *Embree* and *Wright* or when interpreting § 1101(3) with reference to the “plain and ordinary meaning” provided by the dictionary or associated elements in the statute.

Applying the associative approach to 15 V.S.A. § 1103(a) and 12 V.S.A. § 5133(a) produces a similar conclusion. Both statutes group “family or household member” together when describing the parties eligible to seek an RFA or order against stalking. Because the Abuse Prevention Statute does not define “family member,” *Embree* interpreted its plain and ordinary meaning by reference to the dictionary to discern legislative intent. *Embree*, 174 Vt. at 561-62. “‘Family’ is defined as ‘[a] group consisting of parents and their children’ or ‘[a] group of persons connected by blood, by affinity, or by law.’” *Id.* at 561 (citing Black’s Law Dictionary). As already noted, *Embree* applied a fact-specific discretionary approach to interpreting § 1101(3)

and found that the parties' 11 nights under the same roof over 13 years did not make them "household members." This court makes the analogous conclusion regarding Gifford's and Dye's several months' "communal living arrangement" over their two-decade-plus history of acquaintance. It did not make Gifford and Dye "household members."

Given today's decision, the court does not need to reach Dye's "jurisdictional"³ argument.

IV. Order

This court denies Dye's Mot. 7.

The clerk shall please send notice for the continued merits hearing. The court will reserve one hour to ensure sufficient time. If the parties require more time, they shall please file by Sep. 2 written requests for additional time, with sufficient explanation, for the court's consideration.

Electronically signed pursuant to V.R.E.F. 9(d) on August 28, 2026.


Colin Owyang
Superior Court Judge

³ "Such absolute jurisdictional distinctions appear especially curious, if not absurd" *Gould v. Robinson*, No. 2012-312, slip op. at 2 (Vt. Feb. 25, 2013) (unpub. mem.). Subsequent superior court decisions have consistently read *Gould* as a decision based on venue, not jurisdiction. E.g., *PLH, LLC v. Town of Bennington*, No. 21-2-18 VTEC, 2018 WL 4200936, at *5 (Vt. Super. Jul. 11, 2018) (Walsh, J.) ("The *Gould* Court concluded that the Civil Division was the proper venue for this abuse claim and not the Family Division."); *Bennington Town Plan Entergy Element*, No. 20-2-18 VTEC, 2018 WL 4200939, at *5 (Vt. Super. Jul. 11, 2018) (Walsh, J.) (same); *University Mall, LLC v. City of South Burlington*, No. 102812, 2013 WL 4404950, at *2 (Vt. Super. Apr. 09, 2013) (Durkin, J.) (same).