

*** NOT FOR PUBLICATION ***

NO. 24276

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

ROSALIA R. CHANDLER, Plaintiff-Appellant

vs.

JAMES L. CHANDLER, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-DA NO. 01-1-0424)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Plaintiff-appellant Rosalia R. Chandler (Mrs. Chandler) appeals from the March 19, 2001 order of the family court of the first circuit, the Honorable Lillian Ramirez-Uy presiding, mutually prohibiting Mrs. Chandler and James L. Chandler (Mr. Chandler) [hereinafter, collectively, "the Chandlers"] from committing any act of domestic abuse against each other until further order of the divorce court.¹ On appeal, Mrs. Chandler argues that the family court abused its discretion in granting Mr. Chandler a protective order against her because (1) Mr. Chandler failed to file a written petition for an order for protection, as required by HRS ch. 586, (2) a mutual order for protection "does not enhance her protection against domestic abuse or the recurrence of abuse against Mrs. Chandler by Mr. Chandler[,]" (3) Mrs. Chandler was not given reasonable notice that Mr. Chandler sought a protective order against her, and (4) the family court's general powers of equity do not permit it to

¹ Mr. Chandler filed for divorce on March 15, 2001.

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grant protective orders in the absence of a petition.²

² Mrs. Chandler specifically challenges the family court's Conclusions of Law (COL) Numbers 3, 6, 10, 11, 12, 13, 15. The COLs read, in relevant part, as follows:

3. The [c]ourt also has equitable powers as recognized in HRS [§] 571-3: "In any case in which it has jurisdiction the [Family] court shall exercise general equity powers as authorized by law."

. . . .
6. Pursuant to HRS [§] 586-4(b), the [c]ourt can issue a restraining order orally when the person to be restrained is present in [c]ourt and probable cause is established by the written statement or testimony of an applicant for relief.

. . . .
10. HRS [§] 586-5(b) provides that "[t]he protective order may include all orders stated in the temporary restraining order **and may provide further relief, as the court deems necessary to prevent domestic abuse or a recurrence of abuse...**" The [c]ourt deemed issuance of protective orders "necessary to prevent domestic abuse" based upon the history of these parties and their testimony. This statute clearly authorized the [c]ourt to issue an Order for Protection restraining Wife's conduct based upon the evidence presented even in the absence of an oral request for an Order for Protection from Husband.

11. HRS [§] 586-5.5 repeats the authorization provided by HRS [§] 586-5(b) to "...provide further relief as the court deems necessary..."

12. HRS [§] 586-2 establishes the venue for filing an "application for relief under this [Chapter 586] chapter." It does not limit the Court's jurisdiction to act in only those cases where a petition for an order for protection has been filed.

13. The statutory provisions, inter alia, HRS [§] 586-3(d) establishing the [f]amily [c]ourt's responsibility to "designate an employee or appropriate nonjudicial agency to assist the person in completing the petition" [for a restraining order] was not intended to diminish or restrict the authority of [f]amily [c]ourt judges to act decisively in the absence of a formal petition where "deemed necessary to prevent domestic abuse."

. . . .
15. Wife was not denied due process because she did not know when she would be required to defend against a request by Husband for a protective order at the March 19, 2001 hearing. The [c]ourt had the authority to issue appropriate orders with or without a request from Husband. Further, Wife knew or should have known that Husband could request a restraining order against her in that he had done so in 1999. Accordingly, Wife did not suffer the violation of her rights under the Constitution of the State of Hawaii or the Constitution of the United States.

(continued...)

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Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised and arguments advanced, we hold that the family court has equitable powers and statutory authority to fashion relief necessary to prevent acts of domestic abuse. See HRS §§ 571-3 (1993), 571-8.5(3) (Supp. 2003), 571-8.5(10) (Supp. 2003) and 571-14(8) (Supp. 2003). Inasmuch as the record demonstrated that both Mr. and Mrs. Chandler committed acts of abuse against each other, the family court had authority to issue a "Mutual Order For Protection," even if Mr. Chandler did not file a petition for a protective order. Cf. Hough v. Stockbridge, 76 P.3d 216 (Wash. 2003). Therefore,

IT IS HEREBY ORDERED that the family court's March 19, 2001 judgment, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, July 20, 2004.

On the briefs:

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Rosalia R. Chandler

James L. Chandler, defendant-
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brief filed

²(...continued)
(Some brackets, emphasis, and ellipsis in the original.)