

NO. 24236

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

JULIANA MONET, Plaintiff-Appellee, v.
SAM MONET, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-DA NO. 97-1562)

MEMORANDUM OPINION

(By: Burns, C.J., Lim and Foley, JJ.)

In this domestic abuse case, FC-DA No. 97-1562, Defendant-Appellant Sam Monet (Sam or Defendant) appeals from the February 21, 2001 Extended Order for Protection, entered in the Family Court of The First Circuit by District Family Judge Marilyn Carlsmith, which extended the November 20, 1997 Order for Protection to February 21, 2004. We conclude that the family court erred when it granted the November 20, 2000 motions by Plaintiff-Appellee Juliana R. Monet¹ (Juliana or Plaintiff) to extend the alleged existing Order for Protection because there was no evidence of an existing Order for Protection. Consequently, the February 21, 2001 Extended Order for Protection expiring on February 21, 2004, is void.

¹ Plaintiff-Appellee Juliana R. Monet is now known as Juliana R. Simone.

BACKGROUND

On November 6, 1997, at a time when Sam and Juliana were husband and wife, Juliana commenced this domestic abuse case by filing an Ex Parte Petition for a Temporary Restraining Order for Protection and Statement. District Family Judge Darryl Y. C. Choy entered the requested temporary restraining order.

At the conclusion of a hearing on November 20, 1997, Judge Choy entered an Order for Protection valid until November 20, 2000.²

On November 21, 1997, Sam filed his notice of appeal of the November 20, 1997 Order for Protection. On February 27, 1998, in appeal No. 21149, the Hawai'i Supreme Court entered an

² Hawaii Revised Statutes (HRS) § 586-5.5 (1993) states, in relevant part that, after the restraining order is entered, "the court may order that a protective order be issued for such further period as the court deems appropriate, not to exceed three years from the date the protective order is granted."

Pursuant to an amendment effective on June 17, 1996, HRS § 586-5.5(a) (Supp. 1996) stated, in relevant part that, after the restraining order is entered, "the court may order that a protective order be issued for such further period as the court deems appropriate, not to exceed three years from the date the protective order is granted." HRS § 586-5.5(b) (Supp. 1996) stated, in relevant part, that "[a] protective order which was granted for a period less than three years may be extended for a period not to exceed three years from the date the original protective order was granted."

Pursuant to an amendment effective on July 15, 1998, HRS § 586-5.5(b) (Supp. 1998) stated, in relevant part, that "[a] protective order may be extended for a period not to exceed three years from the expiration of the preceding protective order."

Pursuant to an amendment effective on June 28, 2001, HRS § 586-5.5(a) (Supp. 2001) states, in relevant part that, after the restraining order is entered, "the court may order that a protective order be issued for a further fixed reasonable period as the court deems appropriate." HRS § 586-5.5(b) (Supp. 2001) states, in relevant part, that "[a] protective order may be extended for such further fixed reasonable period as the court deems appropriate."

Order Dismissing Appeal because Sam "failed to pay the filing fee or to otherwise oppose dismissal[.]"

The divorce case between Juliana and Sam, Monet v. Monet, FC-D No. 98-590, was filed in the Family Court of the First Circuit, State of Hawai'i (divorce case) in 1998.

In the divorce case, on March 27, 1998, after a hearing, District Family Judge R. Mark Browning entered in this domestic abuse case an order granting Juliana's March 10, 1998 motion "To Dismiss Family Court Restraining Order in FC-DA No. 97-1562 [the domestic abuse case] and incorporate it into the divorce action." This order was approved by Juliana, approved as to form and content by Juliana's attorney, and approved by Sam, *pro se*. In other words, by stipulation, the restraining order was incorporated into the divorce case and terminated in the domestic abuse case.

Notwithstanding the above, in this domestic abuse case, on November 20, 2000, Juliana filed (1) "Plaintiff's Ammended [sic] Motion and Affidavit to Extend Existing Order and Also to Ammend [sic] Existing Order" and (2) a "Motion and Affidavit to Extend Existing Order."

On November 20, 2000, because the hearing date was continued, District Family Judge John C. Bryant, Jr., extended the Order for Protection to November 28, 2000. On November 28,

2000, because the hearing date was continued, Judge Bryant extended the Order for Protection to February 21, 2001.

On November 22, 2000, Sam filed "[Defendant's] Motion to Dismiss Plaintiff's Motion and Affidavit to Extend Existing Order; Motion to Grant Restraining Order for [Defendant] Against Plaintiff." On December 6, 2000, after a hearing on November 28, 2000, Judge Bryant entered an order striking Sam's November 22, 2000 motion. The reason given was that the motion was "contemptuous, scurrilous, vexatious, and egregious. The Motion clearly impairs the respect due to the Court and the Court will not consider this Motion in the case."

On that same date, Judge Bryant also entered Findings of Fact and Conclusions of Law for Charge of Indirect-Constructive Criminal Contempt of Court deciding that Sam's November 22, 2000 motion contained "clearly contemptuous language" and ordered that

[Defendant] is charged with Indirect-Constructive Criminal Contempt of Court. This case is referred to the Office of Prosecuting Attorney, or its designee for further prosecution. [Defendant's] Arraignment and Plea . . . will be held on December 12, 2000 at 8:30 a.m. before the Honorable Marcia Waldorf at the District Court of the First Circuit.

On December 11, 2000, Sam moved for reconsideration of Judge Bryant's December 6, 2000 order. On January 12, 2001, Judge Bryant entered an order denying Sam's December 11, 2000 motion on the following basis:

5. Since [Defendant] only addresses issues raised in the November 20, 2000 hearing, the Court will address [Defendant's] current motion as a Motion to Reconsider the Court's order resulting from the November 20, 2000 hearing. Thus, pursuant to Rule 59(e) of the Hawai'i [sic] Family Court Rules, [Defendant] had ten (10) days to file a motion for reconsideration of the November 20, 2000 order. That time has since passed.

On February 21, 2001, in this domestic abuse case, a hearing was held "[p]ursuant to HRS Chapter 586, [on] [Juliana's] motion to extend the prior protective order, which order expires on February 21, 2001[.]" Sam did not appear. There was much discussion about the March 27, 1998 order and its effect. Judge Carlsmith stated in relevant part as follows:

THE COURT: Okay.

But -- but if we already consolidated it into the D case three is no separate DA case, then, is that right? That's what she's saying. Yet everything is in the DA file. They keep getting thicker. So why -- it's not making sense.

I mean, we probably had this problem before. What's the solution?

. . . .

UNIDENTIFIED FEMALE VOICE: If you make an order on the D case for it to go into DA -- transfer it to DA and then extend an order from DA.

THE COURT: But the trouble is unless we call up the D case the D case is not on the calender. . . .

Juliana noted that the restraining order in the divorce case "expired November 20th."

Judge Carlsmith entered an Extended Order for Protection expiring on February 21, 2004. On March 6, 2001, Sam filed a motion for reconsideration. On April 24, 2001, without a hearing, Judge Carlsmith entered an order denying Sam's motion.

DISCUSSION

In his opening brief, Sam states various points of error. We decide this case based on a point of error not stated by Sam.

In the divorce case, Judge Browning dismissed the restraining order entered in the domestic abuse case and incorporated it into the divorce case. A document signed by Judge Browning is captioned "FC-DA NO. 97-1562" and was filed in this domestic abuse case on March 27, 1998. A copy is attached.

When a divorce case and a domestic abuse case in the same family court involve the same two parties, can the family court judge hearing the divorce case enter in the domestic abuse case an order stipulated by the parties? Our answer is yes.

Therefore, Judge Browning's March 27, 1998 order entered in this domestic abuse case dismissed Judge Choy's November 20, 1997 Order for Protection, and there was no order for protection in existence in this case when Juliana filed her November 20, 2000 motions seeking an extension of the alleged order for protection. A nonexistent order cannot be extended.

CONCLUSION

Accordingly, we decide that the family court's

February 21, 2001 Extended Order for Protection expiring on
February 21, 2004, is void.

DATED: Honolulu, Hawai'i, October 10, 2002.

On the briefs:

Sam Monet,
Defendant-Appellant, *pro se*.

Chief Judge

Juliana R. Monet, now known as
Juliana R. Simone,
Plaintiff-Appellee, *pro se*.

Associate Judge

Associate Judge

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Attorney(s) for Juliana Ruth Monet
Plaintiff(s)

In The Family Court Of The First Circuit
State Of Hawaii

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

1998 MAR 27 P 2:46

T. WONG
CLERK

JULIANA R. MONET

Plaintiff,

VS.

SAM MONET

Defendant.

FC-DA NO. 97-1562

ORDER GRANTING DENYING

IN PART CONTINUING

ORAL RE:

MOTION TO CONTINUE

MOTION TO WITHDRAW

MOTION

TO DISMISS FAMILY COURT

RESTRAINING ORDER

FILED: Mar 10, 1998 in FC-D

HEARING: Mar 25, 1998 98-6

JUDGE: MARK BROWNING

ORDER GRANTING DENYING IN PART
 CONTINUING ORAL RE:

MOTION: TO DISMISS FAMILY COURT RESTRAINING ORDER FILED: Mar 10, 1998

in FC-D 98-590

PRESENT: DONNA F. DAVIS (Atty/Pltf) (Movant) Plaintiff

Joseph Kinoshita (Atty/Pltf) (Movant) Defendant

Attorney for Plaintiff/Defendant Plaintiff Defendant was/were duly served

Based upon the representations/record made, IT IS HEREBY ORDERED that the above oral motion is granted denied granted in part/denied in part as follows:

To Dismiss Family Court Restraining Order in FC-DA NO. 97-1562 and incorporate it into the divorce action.

In addition,

Dated: Honolulu, Hawaii

MAR 27 1998

Mark Browning
JUDGE OF THE ABOVE ENTITLED COURT

APPROVED:

Form Content, Donna F. Davis

Form Content, Juliana Monet

Form Content, _____ (Plaintiff)

Form Content, _____ (Defendant)