

NOT FOR PUBLICATION

NO. 24752

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

PHILIP HENRY CEDILLOS AND MEGHAN RK CEDILLOS,
Petitioners-Appellants, v.
MARK GURGONE and SHERRY GURGONE,
Respondents-Appellees

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT,
WAILUKU DIVISION
(CIVIL NO. 2SS01-168(W))

SUMMARY DISPOSITION ORDER

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

Philip Henry Cedillos and Meghan RK Cedillos (the Cedilloses) appeal from the November 7, 2001 Order for Dismissal entered by the District Court of the Second Circuit, Wailuku Division¹ (district court). The district court dismissed the Cedilloses' Petition for Ex Parte Temporary Restraining Order and Injunction Against Harassment against Mark Gurgone and Sherry Gurgone (the Gurgones). The Cedilloses and the Gurgones filed Petitions for Ex Parte Temporary Restraining Order and Injunction Against Harassment (TRO) against each other, and a combined hearing on the TRO's was held on October 31, 2001.

On appeal the Cedilloses contend the district court committed reversible error (1) in not considering and summarily denying the Cedilloses' oral motion to dismiss the Gurgones' TRO;

¹The Honorable Geronimo Valdriz presided.

(2) by denying the Cedilloses their right to confrontation under the Sixth Amendment to the United States Constitution; (3) by denying the Cedilloses their right to due process under the Fifth Amendment to the United States Constitution and Article I, § 5, of the Hawai'i Constitution; (4) by not entering specific findings of fact and conclusions of law and by entering clearly erroneous findings; and (5) in not recognizing that Mr. Gurgone admitted to violating the TRO that was in effect against him.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we resolve the Cedilloses' contentions as follows:

(1) The record does not support the Cedilloses' contention that the district court failed to consider and summarily denied their oral motion to dismiss the Gurgones' TRO because the court heard the Cedilloses' argument and properly exercised its discretion to vacate or otherwise modify a previously granted TRO. Kie v. McMahel, 91 Hawai'i 438, 442, 984 P.2d 1264, 1268 (App. 1999).

(2) Cedilloses' argument that they were denied their Sixth Amendment constitutional right to confrontation is without merit. The proceeding below was not a criminal prosecution.

(3) The record does not support the Cedilloses' argument that they were denied their right to due process under

the Fifth Amendment to the United States Constitution and Article I, § 5, of the Hawai'i Constitution.

(4) The district court did enter specific findings of fact and conclusions of law as required by Hawai'i Rules of Civil Procedure Rule 52(a), and such findings were not erroneous.

(5) The district court did not err in finding that Mr. Gurgones did not violate the TRO against him.

Accordingly, we affirm the Order for Dismissal filed on November 7, 2001 in the District Court of the Second Circuit.

DATED: Honolulu, Hawai'i, February 13, 2004.

On the briefs:

Philip Henry Cedillos and
Meghan RK Cedillos,
petitioners-appellants pro se.

Chief Judge

Mark Gurgone and
Sherry Gurgone,
respondents-appellees pro se.

Associate Judge

Associate Judge