

NOT FOR PUBLICATION

NOS. 26854 and 26993

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

No. 26854

RICHARD A. MOODY, Petitioner-Appellee, v.
DOROTHY S. LAM, aka DOROTHY S. MOODY, Respondent-Appellant

(FC-DA NO. 04-1-0637)

and

No. 26993

DOROTHY SOO-KIU MOODY, nka DOROTHY SOO-KIU LAM,
Plaintiff-Appellant, v.
RICHARD ALLYN MOODY, Defendant-Appellee

(FC-D NO. 95-4254)

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT

MEMORANDUM OPINION

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

No. 26854, an appeal from a domestic abuse protective order, and No. 26993, an appeal from a post-decree order in a divorce case, were consolidated on August 16, 2005 for purposes of final disposition.

I.

Appeal No. 26993

No. 26993 is an appeal from orders entered in FC-D No. 95-4254, a divorce case initiated by Plaintiff-Appellant

KHAMUKAHO
CLERK, INTERMEDIATE COURTS
STATE OF HAWAII

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Dorothy Soo-Kiu Lam (Lam), formerly known as Dorothy Soo-Kiu Moody, against Defendant-Appellee Richard Allyn Moody (Moody).

The record reveals the following relevant facts: Lam and Moody were married in 1986; their daughter was born in 1987; their son was born in 1992; and Lam filed for a divorce in 1995. That same year, the family court entered a divorce decree awarding Lam and Moody joint legal custody of the two children, awarding Lam physical custody of the two children, awarding Moody specified rights of visitation, and ordering Moody to pay specified child support. In 1996, the family court awarded Moody physical custody of the two children and awarded Lam visitation. In 1997, pursuant to Hawaii Revised Statutes (HRS) § 634J (1993), the family court declared Lam a vexatious litigant and prohibited Lam from filing any motions pertaining to child custody and visitation without approval of the family court. On December 21, 2001, in response to a motion filed by Moody, Judge Choy entered an order confirming Moody's sole legal and physical custody of the two children, specifying Lam's rights of visitation, and deciding other matters, including the following:

1. CUSTODY AND VISITATION.

. . . .

7. Communication. All communication between the parties regarding visitation shall be via facsimile or the telephone. As set forth in the Order for Protection filed in FC-DA No. 00-1-0077, the only contact the parties may have is appearing in Court proceedings and limited contact by telephone and in person to facilitate any custody and visitations [sic] orders as determined in this action.

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2. FUNDS THAT PREVIOUSLY WERE IN AN ESCROW ACCOUNT AND WHICH ARE IN [MOODY'S] POSSESSION, REPRESENTING [LAM'S] SHARE OF PROCEEDS RESULTING FROM THE SALE OF THE LAST 10% OF ALOHA CONFERENCE CENTER SERVICES, INC. STOCK.

As set forth in Exhibit "A" attached hereto:

A. From the \$505,344.40 that was wired from the escrow company to [Moody], the following sums should be paid to [Moody].

\$83,961.00	(for taxes to be paid by [Moody])
499.20	(accountant fees)
2,252.48	(unnecessary medical expenses paid by [Moody])
13,691.11	(attorney's fees paid by [Moody] as of 12/18/01)

B. From the remaining funds, the following amounts shall be set aside in three separate trust accounts, with [Moody] named as trustee of each of the accounts.

\$ 75,000	<u>Attorney's Fees and Costs Account:</u> (for future attorney's fees and costs, including the attorney's fees and costs for the conclusion of this matter)
\$125,000	<u>Judgment Account:</u> (for past judgments against [Lam] in this and other actions in which the parties were involved)
\$139,500	<u>Child Support Account:</u> (for child support of \$1,000 per month, \$500 per child, commencing October 2001, as set forth below)

C. The remaining amount of \$69,940.61^{1/2} shall be turned over to [Lam] upon written request by [Lam] no later than forty-eight hours after this Order is signed and filed. In the event [Lam] does not request the funds, then [Moody] shall place the funds in a non-interest bearing account until such time as [Lam] requests the funds.

In the event there are any funds remaining in the Judgment Account or the Future Attorney's Fees and Costs Account after sixty (60) months, the remaining funds shall be released to [Lam] upon her written request.

3. CHILD SUPPORT. [Lam] shall pay to [Moody] as and for the support of the parties' minor children \$500.00 per child per month for a total of \$1,000 per month. Said sum shall be payable in one installment to be taken out of the Child Support Fund by [Moody] on a monthly basis. . . .

^{1/} It appears that this amount should have been \$65,440.61.

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In the event either child does not attend college or there are funds remaining after the youngest child has graduated from college or reached age 23, then any remaining funds shall be returned to [Lam] upon her written request.

On January 24, 2002, after a January 9, 2002 hearing in response to Moody's motion, Judge James R. Aiona, Jr., ordered that Lam's

visitation as set forth in the Order dated December 21, 2001, and all previous orders are suspended until all of the following are completed:

A. [Lam] provides the passports from any and all countries of [the minor children] to counsel for [Moody]; and

B. [Lam] provides [Moody's] counsel the psychological evaluation done in her criminal trial regarding charges against [Lam] for violating the Order for Protection issued in FC-DA No. 00-1-0077; and

C. There is a further Order of the Court in this matter.

Further, the Court ordered PACT visitation until Lam had met the conditions and then specific visitation after Lam had met the conditions.

On August 2, 2004, Lam filed a motion for a modification of the December 21, 2001 order and the January 24, 2002 order. On October 13, 2004, after a hearing on September 22, 2004, Judge Christine E. Kuriyama entered an order denying (1) Lam any child visitation rights and (2) Lam's request for a modification of (a) the December 21, 2001 order, (i) requiring her to pay \$1,000 per month child support and (ii) deciding other financial matters, and (b) the January 24, 2002 order imposing conditions on Lam's child visitation rights. Denials (1) and (2)(b) were based on the Order for Protection

filed on June 28, 2004 in FC-DA 04-1-0637. Denial (2)(a)(i) was based on the court's finding that there had been no material change in circumstances. Denial (2)(a)(ii) was based on the fact that the challenged orders "either have been appealed or the times for an appeal have expired." On November 24, 2004, Judge Kuriyama entered an order denying Lam's October 25, 2004 motion for reconsideration.

On December 8, 2004, Lam filed a notice of appeal from the October 13, 2004 order. On February 3, 2005, pursuant to Lam's request, Judge Kuriyama entered the Findings of Fact and Conclusions of Law. This appeal was assigned to this court on July 5, 2005.

In her opening brief filed pro se, Lam appears to challenge the part of Judge Choy's December 21, 2001 order quoted above and Judge Aiona's January 24, 2004 order quoted above. She asserts that no judge is authorized to enter such orders. In other words, she asserts that these orders are void. We conclude that they are not void and that her right to appeal them is long past.

We further conclude that Lam's appeal from the October 13, 2004 order is without merit.

II.

Appeal No. 26854

No. 26854 is Lam's appeal from a June 28, 2004 Order for Protection entered in a domestic abuse case (FC-DA No. 04-1-0637) initiated by Moody against Lam.

The record in FC-DA No. 04-1-0637 reveals the following relevant facts: On March 31, 2004, pursuant to HRS § 586-3 (Supp. 2004), Moody applied for, and was granted, a Temporary Restraining Order for Protection (TROFP) prohibiting Lam from having any contact with Moody and their two children. This TROFP expired on June 29, 2004. On June 28, 2004, after a hearing, Judge Allene R. Suemori entered an Order for Protection prohibiting Lam from having any contact with Moody and their two children except "in courtroom proceedings[.]" This Order for Protection states that it is "permanent; until further order of the court." On July 8, 2004, Lam filed a "Motion for Relief and or Reconsideration, to Set Aside and Vacate the Permanent Restraining Order Filed 6/28/2004". On September 16, 2004, Judge Suemori summarily denied Lam's motion.

Lam filed a notice of appeal on September 28, 2004. This appeal was assigned to this court on April 22, 2005.

In her opening brief, Lam presents various arguments. The only argument that merits discussion is Lam's argument that

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the law does not authorize a permanent protective order. We agree. The basis for a protective order is stated in HRS § 586-5.5 (Supp. 2004) as follows:

(a) If, after hearing all relevant evidence, the court finds that the respondent has failed to show cause why the order should not be continued and that a protective order is necessary to prevent domestic abuse or a recurrence of abuse, the court may order that a protective order be issued for a further fixed reasonable period as the court deems appropriate.

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(b) A protective order may be extended for such further fixed reasonable period as the court deems appropriate. Upon application by a person or agency capable of petitioning under section 586-3 [for a protective order], the court shall hold a hearing to determine whether the protective order should be extended. In making a determination, the court shall consider evidence of abuse and threats of abuse that occurred prior to the initial restraining order and whether good cause exists to extend the protective order.

HRS § 586-5.5(a), quoted above, permits a protective order to be issued for a "fixed reasonable period as the court deems appropriate[.]" We conclude that a "permanent" protective order cannot satisfy the statutory requirement that it be for a "fixed reasonable period" because such a "permanent" order is for the lives of both parties and such a for-the-lifetimes-of-two-people period of time is not a "fixed . . . period" of time.

CONCLUSION

Accordingly, as to No. 26854, (FC-DA No. 04-1-0637), we remand for an amendment of the June 28, 2004 Order for Protection deleting the part that says "permanent; until further order of the court" and replacing the deleted part with a specific date

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that is reasonable. We affirm as to No. 26993 (FC-D No. 95-4254).

DATED: Honolulu, Hawai'i, November 10, 2005.

On the briefs:

Dorothy Soo-Kiu Lam,
pro se respondent-appellant in
No. 26854; and pro se
plaintiff-appellant in No.
26993.


Chief Judge


Associate Judge


Associate Judge