

NOT FOR PUBLICATION

NO. 26957

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

JILL C. HARDING, Petitioner-Appellee, v.
JAMES M. RICHMOND, Respondent-Appellant

K. HANAKAHO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 MAR -2 AM 10:09

FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-DA NO. 04-1-1982)

SUMMARY DISPOSITION ORDER

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

Respondent-Appellant James C. Richmond (Richmond) appeals from the Order for Protection entered on October 18, 2004.¹ We vacate and remand.

On September 28, 2004, in district court case Civil No. 1SS04-1-01242, Richmond's current girlfriend, Stephanie Young (Young), obtained a three year protective order against Richmond's former girlfriend, Jill C. Harding (Harding). On October 5, 2004, in district court case Civil No. 1SS04-1-01362, Harding's petition for protective order against Young was denied.

On October 4, 2004, in family court case FC-DA No. 04-1-1959, Richmond filed a petition for protective order against Harding. On October 7, 2004, in family court case FC-DA No. 04-1-1982, Harding filed a petition for protective order against Richmond. Based on the petitions, temporary restraining orders were entered in both family court cases.

¹ Judge Allene R. Suemori presiding.

NOT FOR PUBLICATION

At the October 18, 2004 hearing, after both parties were duly sworn, the court asked them questions, found "that both parties made behaviors in their statements that would cause a reasonable person to suffer extreme emotional distress," and granted both petitions.

On October 27, 2004, Richmond filed a motion for reconsideration in which he complained that the court deprived him "of his day in court by deciding both cases without permitting [Richmond] to cross-examine [Harding] and call witnesses and present evidence in his defense." The court denied this motion on January 14, 2005.

Richmond filed a notice of appeal on November 17, 2004. This case was assigned to this court on July 21, 2005.

Hawaii Revised Statutes (HRS) § 586-3 (Supp. 1995) states, in relevant part, as follows:

Order for protection. (a) There shall exist an action known as a petition for an order for protection in cases of domestic abuse.

. . . .

(c) A petition for relief shall be in writing upon forms provided by the court and shall allege, under penalty of perjury, that: a past act or acts of abuse may have occurred; threats of abuse make it probable that acts of abuse may be imminent; or extreme psychological abuse or malicious property damage is imminent; and be accompanied by an affidavit made under oath or a statement made under penalty of perjury stating the specific facts and circumstances from which relief is sought.

HRS § 586-5.5(a) (Supp. 2005) states as follows:

Protective order; additional orders. (a) If, after hearing all relevant evidence, the court finds that the respondent has failed to show cause why the [temporary restraining] 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.

NOT FOR PUBLICATION

In this appeal, Richmond essentially repeats what he said in his October 27, 2004 motion for reconsideration and contends that the court deprived him of his constitutional due process guarantees to a full and fair evidentiary hearing on the merits. We agree.

Therefore, in accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

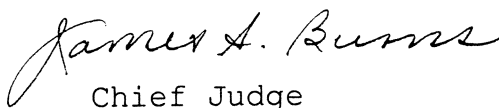
IT IS HEREBY ORDERED that the Order For Protection entered on October 18, 2004 is vacated and this case is remanded to the family court for further proceedings consistent with this opinion.

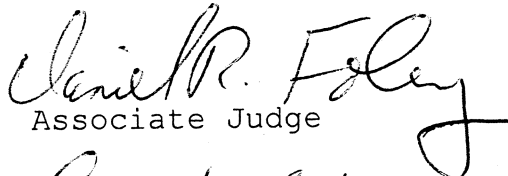
DATED: Honolulu, Hawai'i, March 2, 2006.

On the briefs:

James M. Richmond
Respondent-Appellant Pro Se.

Gary L. Hartman
for Petitioner-Appellee.


Chief Judge


Associate Judge


Associate Judge