

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27363

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

RAYMOND ECHT and JESSICA ECHT,
Petitioners-Appellees, v.
PETER FROST, Respondent-Appellant

NORMA I. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT,
PUNA DIVISION
(Civ. No. 3SS 05-1-101)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding J., Lim, and Fujise, JJ.)

Respondent-Appellant Peter Frost (Frost) appeals *pro se* from an Order Granting Petition for Injunction Against Harassment (the Order), entered by the District Court of the Third Circuit, Puna Division (the district court), Judge Barbara T. Takase presiding, on May 16, 2005. The Order, which was prepared on a pre-printed, check-off form, granted the Petition for Injunction Against Harassment by Frost (the Petition) that was filed pursuant to Hawaii Revised Statutes (HRS) § 604-10.5 (Supp. 2005)¹ by Petitioners-Appellees Raymond Echt and Jessica Echt

¹ Hawaii Revised Statutes § 604-10.5 (Supp. 2005) provides now, as it did during the proceedings below, in relevant part, as follows:

Power to enjoin and temporarily restrain harassment.

(a) For the purposes of this section:

"Course of conduct" means a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose.

"Harassment" means:

- (1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or

(continued...)

¹(...continued)

(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual, and that serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

(b) The district courts shall have power to enjoin or prohibit or temporarily restrain harassment.

(c) Any person who has been subjected to harassment may petition the district court of the district in which the petitioner resides for a temporary restraining order and an injunction from further harassment.

(d) A petition for relief from harassment shall be in writing and shall allege that a past act or acts of harassment may have occurred, or that threats of harassment make it probable that acts of harassment may be imminent; and shall be accompanied by an affidavit made under oath or statement made under penalty of perjury stating the specific facts and circumstances from which relief is sought.

(e) Upon petition to a district court under this section, the court may temporarily restrain the person or persons named in the petition from harassing the petitioner upon a determination that there is probable cause to believe that a past act or acts of harassment have occurred or that a threat or threats of harassment may be imminent. The court may issue an ex parte temporary restraining order either in writing or orally; provided that oral orders shall be reduced to writing by the close of the next court day following oral issuance.

(f) A temporary restraining order that is granted under this section shall remain in effect at the discretion of the court for a period not to exceed ninety days from the date the order is granted. A hearing on the petition to enjoin harassment shall be held within fifteen days after the temporary restraining order is granted. In the event that service of the temporary restraining order has not been effected before the date of the hearing on the petition to enjoin, the court may set a new date for the hearing; provided that the new date shall not exceed ninety days from the date the temporary restraining order was granted.

The parties named in the petition may file or give oral responses explaining, excusing, justifying, or denying the alleged act or acts of harassment. The court shall receive all evidence that is relevant at the hearing, and may make independent inquiry.

If the court finds by clear and convincing evidence that harassment as defined in paragraph (1) of that definition exists, it may enjoin for no more than three years further harassment of the petitioner, or that

(continued...)

(collectively, the Echts) on May 2, 2005. We reverse.

Pursuant to HRS § 604-10.5, a district court has the power to enjoin "harassment[,]" which is defined as "[p]hysical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault" or "an intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual, and that serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress." The term "[c]ourse of conduct" is defined as "a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose." HRS § 604-10.5(a).

In orally granting the Petition, the district court stated:

¹(...continued)

harassment as defined in paragraph (2) of that definition exists, it shall enjoin for no more than three years further harassment of the petitioner; provided that this paragraph shall not prohibit the court from issuing other injunctions against the named parties even if the time to which the injunction applies exceeds a total of three years.

Any order issued under this section shall be served upon the respondent. For the purposes of this section, "served" shall mean actual personal service, service by certified mail, or proof that the respondent was present at the hearing in which the court orally issued the injunction.

Where service of a restraining order or injunction has been made or where the respondent is deemed to have received notice of a restraining order or injunction order, any knowing or intentional violation of the restraining order or injunction order shall subject the respondent to the provisions in subsection (h).

Any order issued shall be transmitted to the chief of police of the county in which the order is issued by way of regular mail, facsimile transmission, or other similar means of transmission.

All right, I heard enough.

I'm going to find by a preponderance of the evidence, I'm going to find, uh, that there is sufficient evidence to issue the granting of the injunction.

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I am going to order that, uh, there was an incident which occurred which amounts to sufficient evidence to issue the injunction, and I am going to order that you refrain from contacting, threatening, or having any kind of physical contact with the [Echts].

I'm going to also order that you refrain from telephoning the [Echts], entering or visiting their residence, including the yard and garage and/or their place of employment.

The petition is going to be granted for a period of one year beginning today.

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All right. I am going to find the [Echts'] testimony credible and that there was threat of harassment; and by clear and convincing evidence that the [Echts]' petition should be granted.

(Emphasis added.)

The Petition filed by the Echts did not allege that Frost had subjected the Echts to "[p]hysical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault[,]" and our review of the record of the proceedings below indicates that no evidence of this form of harassment was ever adduced. Therefore, in order to grant the injunction against harassment, the district court was required to find that Frost had engaged in "[a]n intentional or knowing course of conduct directed at [the Echts] that seriously alarm[ed] or disturb[ed] consistently or continually bother[ed them], and that serve[d] no legitimate purpose[.]" Furthermore, the district court was required to find that the course of conduct "would cause a reasonable person to suffer emotional distress."

The record reveals that the district court based its order on one incident, rather than "a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose." Therefore, in entering the Order, the district court did not apply the correct statutory standard for issuing an injunction against harassment.

Accordingly, we reverse the Order.

DATED: Honolulu, Hawai'i, August 14, 2006.

On the briefs:

Peter Frost,
respondent-appellant, *pro se*.

Raymond Echt and Jessica Echt,
petitioners-appellees, *pro se*.

Corinne K. A. Watanabe



Alena D. K. Fujita