

NO. 29108

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

YUKIKO MCCLURE, Petitioner-Appellant, v.
GARY A. LITE, Respondent-Appellee

EM. RIMANDO
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APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-DA NO. 08-1-0130)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Watanabe and Fujise, JJ.)

Petitioner-Appellant Yukiko McClure (McClure) appeals from an Order Dissolving Temporary Restraining Order for Protection (the Dissolution Order) entered by Family Court of the Second Circuit (family court)¹ on April 3, 2008.

On March 25, 2008, in FC-DA No. 08-1-0130, McClure filed an ex parte petition for a temporary restraining order pursuant to Hawaii Revised Statutes (HRS) Chapter 586 (Petition) against Respondent-Appellee Gary A. Lite (Lite). The family court issued a temporary restraining order, and subsequently conducted a hearing on McClure's Petition on April 3, 2008. The family court then entered the Dissolution Order, which dissolved the March 25, 2008 temporary restraining order.

On appeal, McClure contends that:

(1) "The [f]amily [c]ourt erred in finding that [McClure] was not credible."

¹ The Honorable Richard T. Bissen, Jr., presided.

(2) "The [f]amily [c]ourt erred in finding that [McClure] had not established facts sufficient to grant an Order for Protection."

Upon careful review of the record and the brief submitted by McClure² and having given due consideration to the arguments advanced and the issues raised, we resolve McClure's points of error as follows:

(1) The family court did not err in finding that McClure was not credible. McClure claims that the family court's determination of credibility was based on an incorrect assumption that a sophisticated, educated woman who speaks her mind would not find herself in a domestic abuse situation. However, upon review of the record, it appears that the family court weighed McClure's account of events against Lite's account of events and found that Lite's version made more sense. Questions of credibility and weight of the evidence are left to the trial court. Rapozo v. Better Hearing of Hawaii, LLC, 119 Hawai'i 483, 493-94, 199 P.3d 72, 82-83 (2008); Kie v. McMahel, 91 Hawai'i 438, 444, 984 P.2d 1264, 1270 (App. 1999).

(2) There was insufficient evidence to support the granting of the Order for Protection sought by McClure. As discussed in section (1) above, the family court did not find McClure credible.

Although McClure introduced photos of bruises and a rug burn, the photos alone would not establish domestic abuse unless

² No answering brief was filed.

the family court believed that Lite caused the bruises and rug burn in the manner testified to by McClure. Moreover, Lite testified that the instances of physical contact between him and McClure were not the product of domestic abuse but rather either accidents or something not initiated by him, and the family court found Lite's testimony to be credible.

Accordingly, there was insufficient evidence to grant an Order for Protection.

Therefore,

IT IS HEREBY ORDERED that the Order Dissolving Temporary Restraining Order for Protection filed April 3, 2008 in FC-DA No. 08-1-0130 is hereby affirmed.

DATED: Honolulu, Hawai'i, May 8, 2009.

On the brief:

Byron Y. Fujieda
(Sloper & Fujieda)
for Petitioner-Appellant.



Chief Judge



Associate Judge



Associate Judge