

CONCURRING AND DISSENTING OPINION BY GINOZA, C.J.

I concur that there is sufficient evidence in this case to support the conclusion of the Family Court of the First Circuit (Family Court) that Respondent-Appellant Mark-Alex Kassebeer (Kassebeer) committed domestic abuse against Petitioner-Appellee Rachel Schack (Schack).

I respectfully dissent, however, from the majority's holding that the Family Court erred in determining that the Order For Protection was necessary to prevent a recurrence of abuse. Hawaii Revised Statutes (HRS) § 586-5.5 (2006) provides in relevant part:

§586-5.5. Protective order; additional orders.

(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.

(Emphasis added).

Here, Schack testified that she and Kassebeer had been broken up for about seven months and she was still storing a poster from his graduation and had been trying to contact him to pick it up. On the day of the incident, Schack texted Kassebeer's grandmother (that was the last place she knew Kassebeer was staying) to ask if she could bring the poster to the grandmother's house. Schack later received a call from Kassebeer, who said he was going to come over to pick up the poster. Schack initially told Kassebeer that she did not want him to come over, but she said "okay, fine" only after Kassebeer told her over the phone that he was on his way. Schack then put the poster in a loading dock for Kassebeer because she testified she was not comfortable with him coming up to her apartment. According to Schack, the building normally has a locked lobby and a person needs to be buzzed in or have a key to enter, but on the day of the incident work was being done on the elevator so the door was propped open. Kassebeer thus entered "without permission, came up to [Schack's] door, knocked on it."

Schack testified that she did not want to answer the door, so her boyfriend at the time answered the door, at which time Kassebeer said there were things from Schack's car he had bought and that he wanted. Schack and her boyfriend told Kassebeer that "he wasn't welcome here," and Schack told Kassebeer "if you want those things, we can bring it down to you but I don't want you to come to my apartment." Rather than leaving Schack's apartment, Kassebeer then tried to force his way inside. According to Schack:

My boyfriend was standing in the doorway with his arm across the door to keep Mark from entering, but Mark tried to push his way through, so he pushed him back out to keep him out of our apartment.

. . . .

And then they kind of got into a scuffle. And I -- I came over and I kept telling Mark, "stop, Mark, stop." And he got my boyfriend into a head lock and he slammed his head into the door frame. At that point I tried to separate them and he shoved me into the wall and then he ended up tripping, falling backwards into the hallway. And I got on top of him to try and keep him from attacking either of us again, and I had my legs on his arms.

And my neighbor came out into the hallway and she asked -- she was -- she said, "should I call the cops, should I call cops," and I said, "yeah, call the cops." So she went and called the cops.

I was able to get off of Mark fast enough to close the door before he tried to come in but he was pushing his weight up against the door as I was closing it, but I -- I was able to lock it so he couldn't get in. And I waited a little while until he left the hallway and he went downstairs.

(Emphasis added).

Kassebeer testified that when he arrived at the apartment building, he saw his "signs" down in the lobby. He further testified that he knew he "had more stuff up there so I just went upstairs." According to Kassebeer, after he knocked on Schack's apartment door, her boyfriend opened the door with a very aggressive stance, was blocking Kassebeer's way, and "I said I was just here for my stuff, that was all, took a step forward. I was pushed." After being pushed, Kassebeer testified he tried to take another step forward, and then: "I -- he swung. I

reacted[,]” Kassebeer put Schack's boyfriend in a head lock, and during the struggle the boyfriend's head hit the door frame.

During his testimony, Kassebeer admitted that after he knocked on Schack's door he was not invited in, but that he still took a step in towards the door “[b]ecause I had assumed that I was there for my stuff so I was going to get it.”

According to Schack, she lived alone and the police officer who responded to the incident strongly suggested she “get a TRO against Mr. Kassebeer to prevent him from trying to come into the apartment again, and there isn't someone else there, or [from] coming into my work and having something like this happen again. That's the biggest reason I got it.”

In rendering its decision, the Family Court stated that “it's very clear that there's at least a threat of imminent physical harm[.]” The Family Court primarily relied on the fact that Kassebeer tried to enter Schack's apartment even though he was not invited inside. The record clearly supports a finding that Kassebeer tried to enter Schack's apartment without permission. Schack testified that when Kassebeer appeared at her apartment door she specifically told him that he was not welcome there, but he tried to push his way through. The altercation then started, Kassebeer put Schack's boyfriend in a head lock, slammed the boyfriend's head into the door frame, and shoved Schack into a wall. Kassebeer himself testified that, although Schack's boyfriend was blocking the door, Kassebeer twice stepped forward to enter the apartment, which then led to the altercation. Moreover, given the conversation between Schack and Kassebeer before he arrived, he was supposed to pick up the posters, which he saw down in the lobby. Instead of picking up the posters, Kassebeer unilaterally decided to go up to Schack's apartment and then tried to force his way inside.

Kassebeer contends on appeal that the Family Court's determination, that a protective order is necessary to prevent domestic abuse or a recurrence of abuse, is not supported by substantial evidence.

[T]he question on appeal is whether the record contains "substantial evidence" supporting the family court's determinations, and appellate review is thereby limited to assessing whether those determinations are supported by "credible evidence of sufficient quality and probative value." In this regard, the testimony of a single witness, if found by the trier of fact to have been credible, will suffice.

In re Doe, 95 Hawai'i 183, 196, 20 P.3d 616, 629 (2001) (citations omitted).

In my view, there is substantial evidence in the record to support the Family Court's determination that a protective order was "necessary to prevent domestic abuse or a recurrence of abuse." HRS § 586-5.5.

Therefore, I respectfully concur in part and dissent in part. I would affirm the Order For Protection filed on April 3, 2017, by the Family Court of the First Circuit.

Jina M. King