

NO. CAAP-12-0000120

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MAY LYNN MAUKELE, Petitioner-Appellee, v.
NICANOR E. CASUMPANG, JR., Respondent-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
WAILUKU DIVISION
(DC TRO NO. 12-1-0020)

SUMMARY DISPOSITION ORDER

(By: Leonard, Presiding Judge, and Reifurth and Ginoza, JJ.)

Respondent-Appellant Nicanor E. Casumpang, Jr. ("Casumpang") appeals from the Injunction Against Harassment, filed on January 30, 2012 in the District Court of the Second Circuit ("District Court").¹

On appeal, Casumpang claims that the District Court erred when it imposed a three-year injunction against him for harassment. Specifically, Casumpang contends that the District Court erred in using a subjective reasonable-person test and that his former co-worker, Petitioner-Appellee May Lynn Maukele ("Maukele"), failed to establish by clear and convincing evidence that Casumpang's conduct would cause a reasonable person to suffer emotional distress under Hawaii Revised Statutes ("HRS") § 604-10.5(a)(2) (Supp. 2013).² **[OB at 12-14]**

¹ The Honorable Blaine J. Kobayashi presided.

² HRS § 604-10.5 states, in relevant part:

(a) For the purposes of this section:

"Course of conduct" means a pattern of conduct

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments that they advance and the issues that they raise, we resolve Casumpang's point of error as follows and affirm:

Casumpang contends that Maukele failed to demonstrate that Casumpang's conduct would cause a reasonable person emotional distress, as required under HRS § 604-10.5(a)(2). Casumpang does not challenge Maukele's claim that his conduct was an "intentional or knowing course of conduct directed at [Maukele] that seriously alarm[ed,] or disturb[ed] consistently[,] or continually bother[ed her] and serve[d] no legitimate purpose[.]" HAW. REV. STAT. § 604-10.5(a)(2). Thus, the only issues on appeal are whether Casumpang's conduct "would cause a reasonable person to suffer emotional distress[,]" *id.*, and whether the court applied the correct standard in making its determination.

We review the question of whether Casumpang's conduct would cause emotional distress to a reasonable person *de novo*. *Luat v. Cacho*, 92 Hawai'i 330, 343, 991 P.2d 840, 853 (App. 1999) (citing *State v. Trainor*, 83 Hawai'i 250, 255, 925 P.2d 818, 823 (1996)). We conclude that Maukele's testimony sufficiently provided clear and convincing evidence, which the District Court determined to be credible, that Casumpang's conduct would cause a reasonable person emotional distress. Maukele told the court that Casumpang told her that "I can be your boyfriend" and made sexual comments on a daily basis about the work tools (e.g. in

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

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

HAW. REV. STAT. § 604-10.5(a)(1) and (2).

response to her request for a particular tool, "he would say . . . Oh, I got the big one here"). Maukele further described an incident when she was walking through the motor shop and Casumpang purposefully bumped into her and brushed his arm against her "top."

Furthermore, Casumpang does not establish, and the record does not support the assertion, that the District Court applied a subjective standard in determining that Casumpang's conduct caused emotional distress. *Cf. Luat*, 92 Hawai'i at 344-45, 991 P.2d 854-55 (reversing the trial court where the court's language reflected a misapprehension of the clear and convincing standard of proof and where the court stated that "you have to take the petitioner as you find her or him.") Instead, the District Court appears to have properly used an objective reasonable-person standard in evaluating the evidence before it.

THEREFORE,

IT IS HEREBY ORDERED that the Injunction Against Harassment, filed on January 30, 2012 in the District Court of the Second Circuit, is affirmed.

DATED: Honolulu, Hawai'i, October 24, 2014.

On the briefs:

Shawn A. Luiz
for Respondent-Appellant.

Presiding Judge

Deborah K. Wright and
Keith D. Kirschbraun
(Wright & Kirschbraun)
for Petitioner-Appellee.

Associate Judge

Associate Judge