DISSENTING OPINION BY GINOZA, C.J.

I respectfully dissent. In my view, the Family Court of the Second Circuit (**Family Court**) improperly precluded Respondent-Appellant Gabby L. Ordonez-Snow (**Ordonez-Snow**) from being questioned by his counsel. Following a petition by Petitioner-Appellee Kaycee A. Higa (**Higa**) pursuant to Hawaii Revised Statutes (**HRS**) Chapter 586, the Family Court issued a Temporary Restraining Order (**TRO**) against Ordonez-Snow. A hearing was set at which the Family Court was to consider, among other things, whether Ordonez-Snow could show cause why the restraining order should not be continued. See HRS § 586-5.5(a) (2018). The TRO states, in pertinent part:

> At the show cause hearing, the parties will be allowed to testify, call and examine witnesses and give legal or factual reasons why these orders should or should not be continued to be in effect. Each party may be represented by a private lawyer and shall be prepared to proceed.

At the show cause hearing, the Family Court placed both parties under oath at the beginning of the hearing and then started by questioning Higa. The Family Court then asked questions of Ordonez-Snow.[1] Subsequently, the Family Court asked counsel for Ordonez-Snow whether he had any witnesses, to which counsel stated "[j]ust the respondent[.]" The Family Court responded "[w]ell, he's already testified" and when counsel further indicated he wished to "clean up things", the Family Court stated "[w]ell, I think I've heard enough" and proceeded to rule. Thus, at no time was Ordonez-Snow allowed to present his direct testimony under questioning by his counsel, even though counsel advised the Family Court he intended to call Ordonez-Snow. In its Findings of Fact and Conclusions of Law, the Family Court made a finding of credibility in favor of Higa.

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[1] In Kie v. McMahel, 91 Hawaiʻi 438, 443, 984 P.2d 1264, 1269 (App. 1999), this court expressed concerns about the extent to which a trial court elicits testimony in a proceeding under HRS Chapter 586. In the instant case, Ordonez-Snow did not challenge the Family Court's questioning of the parties and thus waived any issues in this regard. Moreover, it appears from the record that the Family Court acted in an impartial manner in questioning the parties. However, precluding Ordonez-Snow from being questioned by his own counsel, after counsel stated his intent to do so, is problematic.

Given the circumstances in this case, I would hold that the Family Court abused its discretion by not giving Ordonez-Snow the appropriate opportunity to respond to Higa's petition. At the show cause hearing, Higa had the burden to prove her underlying allegations, but if she met that burden Ordonez-Snow had to show cause why the protective order was not necessary. Kie, 91 Hawaiʻi at 442, 984 P.2d at 1268. Here, by precluding Ordonez-Snow from presenting his testimony under questioning by his counsel, as requested, the Family Court did not give Ordonez-Snow an appropriate opportunity to present his case. See generally Id. at 443, 984 P.2d at 1269 (discussing how the testimony of the parties allowed the court to evaluate the credibility of the witnesses and weigh the evidence). See also Doe v. Doe, 98 Hawaiʻi 144, 155 n.12, 44 P.3d 1085, 1096 n.12 (2002) (noting that under Hawaii Rules of Evidence Rule 611 a trial court has discretion in controlling the presentation of evidence, but that this discretion "must be balanced against the rights of the parties to present their cases on the merits.").

For these reasons, I respectfully dissent.