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NO. CAAP-24-0000683

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

Y.M., Petitioner-Appellee, v.
J.M., Respondent-Appellant.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(CASE NO. 1FDA-24-0001443)

SUMMARY DISPOSITION ORDER

(By: Leonard, Presiding Judge, and Wadsworth and McCullen, JJ.)

Respondent-Appellant J.M. (**Father**) appeals from the September 18, 2024 *Order for Protection* (**OFP**) entered in favor of Petitioner-Appellee Y.M. (**Mother**) by the Family Court of the First Circuit (**Family Court**).^{1/} Following an evidentiary hearing, the Family Court found that the OFP was necessary to prevent domestic abuse or a recurrence of abuse, and enjoined Father from, among other things, threatening, physically abusing, or psychologically abusing Mother for a period of three years.

On appeal, Father contends that the Family Court clearly erred or otherwise abused its discretion in issuing the OFP because: (1) the elements of Hawaii Revised Statutes (**HRS**) § 586-5.5(a), which authorizes the issuance of an order for protection, were not satisfied; and (2) the court improperly relied on a 2021 "choking incident" that was barred from consideration by the doctrine of res judicata.

After reviewing the record on appeal and the relevant legal authorities, and giving due consideration to the issues

^{1/} The Honorable J. Alberto Montalbano presided.

raised and the arguments advanced by the parties, we resolve Father's contentions as follows, and affirm.

(1) The Family Court entered the OFP pursuant to HRS § 586-5.5. That statute provides in relevant part:

Protective order; additional orders. (a) If, after hearing all relevant evidence, the court finds that the respondent has failed to show cause why the [temporary restraining] 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

HRS § 586-5.5(a) (Supp. 2021) (emphases added); see also HRS § 586-3(a) (2018) ("There shall exist an action known as a petition for an order for protection in cases of domestic abuse."). Father contends that under HRS § 586-5.5(a), the two elements underlined above must be satisfied for a protective order to issue, and neither was satisfied here.

We review the Family Court's exercise of discretion as follows:

[T]he family court possesses wide discretion in making its decisions and those decision[s] will not be set aside unless there is a manifest abuse of discretion. Thus, we will not disturb the family court's decisions on appeal unless the family court disregarded rules or principles of law or practice to the substantial detriment of a party litigant and its decision clearly exceeded the bounds of reason.

Fisher v. Fisher, 111 Hawai'i 41, 46, 137 P.3d 355, 360 (2006) (quoting In re Doe, 95 Hawai'i 183, 189-90, 20 P.3d 616, 622-23 (2001)).

We review the Family Court's findings of fact for clear error and vacate only when "the record lacks substantial evidence to support the finding or, . . . despite substantial evidence in support of the finding, [we are] left with a definite and firm conviction that a mistake has been made." Id. "'Substantial evidence' is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." Id. We likewise review conclusions of law that present mixed questions of fact and law for clear error. See Estate of Klink ex rel. Klink v. State, 113 Hawai'i 332, 351, 152 P.3d 504, 523 (2007) (quoting AIG Hawaii Inc. Co. v. Estate of Caraang, 74 Haw. 620, 629, 851 P.2d 321, 326 (1993)).

Addressing Father's first contention requires a brief review of the relevant procedural background. On July 15, 2024, Mother filed a Petition for an Order for Protection (**Petition**) pursuant to HRS chapter 586. The Petition described alleged incidents of abuse by Father against Mother and their minor child (**Child**), including one incident on September 8, 2021, in which Father allegedly "choked [Mother] in front of [Child]" (the **choking incident**) (capitalization altered). The Petition also alleged that Father "absconded [Child] to Calif[ornia] with a man who sexually assaulted [Child] on a flight . . . " (the **plane incident**) (capitalization altered). On July 15, 2024, the Family Court issued a Temporary Restraining Order (**TRO**) against Father in favor of Mother and Child.

Evidentiary hearings on the Petition, along with Father's separate petition for a protective order in his favor against Mother, were held by the Family Court in due course. Mother testified in part about the choking incident. She explained that Father had installed a stripper pole in their house. When Mother attempted to take down the pole, Father "used both hands and snap[p]ed her neck" while Child was "holding [her] legs." Father then called the police, claiming that Mother had "hit his head and stuff like that."^{2/} Mother confirmed that "[she] made this allegation [about the choking incident] in another [domestic abuse] complaint . . . in April of 2022, but [she] dismissed it without prejudice because of the [parties'] divorce agreement[.]"

Mother also testified that in 2021, after obtaining a TRO against Mother, Father "handed [Child] to this drug dealer to have this drug dealer take [Child] alone on the plane to California at that time[,]" and the man sexually assaulted Child. During Mother's testimony, the Family Court pointed out that when Child was returned to Hawai'i, Mother and Father agreed in their divorce case to an order granting Father joint custody of Child. The Family Court indicated that he would not grant the Petition

^{2/} Mother alleged in the Petition that after Father "falsely claim[ed] she had assaulted him. HPD took [her] away in restraints traumatizing [Child]." (Capitalization altered.)

as to Child because "in my mind I think you've settled that [Father] didn't do it[.]"^{3/}

Father also testified during the hearing. He denied choking Mother. As to the plane incident, Father stated that "the attorneys and the judge agreed to let Mr. Lam, with our attorney from me, myself, my mother, mother's attorney, everybody, to go take [Child] to California where she was on a transfer flight" to visit her grandmother. Father claimed that Mother "had a resentment against [Mr. Lam] . . . because he saw her get arrested."

Following the testimony, the Family Court ruled on Mother's Petition as follows:

[Mother] has failed to prove the material allegations by a preponderance of the evidence for harm to the [C]hild. The [C]hild shall be removed from the protective order.

However, based on the incidence [sic] of 2021 that have been carried over and never adjudicated by this court, the court does find that there is . . . sufficient facts to establish physical abuse occurred on September the 8th, 2021, and therefore abuse has been found in this matter.

The court is going to grant the request for a protection order as to Mother only for a period of three years, which the court does find to be a reasonable time given the events.

In the OFP, the Family Court further found: (1) "[Father] has failed to show cause why the [TRO] should not be continued"; and (2) "[a] protective order is necessary to prevent domestic abuse or a recurrence of abuse, and is necessary for a period of 3 . . . year(s), which is a reasonable amount of time." The court also noted its consideration of the DHS Report.

The Family Court's findings, including that the OFP was necessary to prevent domestic abuse or a recurrence of abuse, are supported by substantial evidence. This evidence includes Mother's testimony that Father choked her in front of Child, as well as the DHS Report. Mother further testified: (1) although she was "mainly focused on [Child]'s safety," in the process of "trying to intervene to protect [Child,] . . . then [Mother]

^{3/} In making this decision, the Family Court also considered the (**Confidential**) DHS Report to Court Dated July 26, 2024 (**DHS Report**), as well as the testimony of its author.

would be harmed as well"; and (2) "two days after [Mother] filed the restraining order," Father appeared on Mother's street with a "professional stripper" at 4:29 a.m., "ha[ving] a fight . . . and screaming," and Mother believed the woman "was trying to stop [Father] from coming or approaching [Mother's] door[, b]ecause they were both very close to [her] door."

Father contends that the Family Court's "granting of the [OFP] against [Father] is incongruent with the reasoning it gave for not granting one on behalf of . . . [C]hild." He argues that during the hearing, the court "considered the age of the 2021 'choking' allegation" and "noted that the 2021 allegation no longer had any bearing after [Mother] agreed to share joint custody with [Father]." Father also challenges Mother's credibility, based in part on her "outlandish rape accusation" against Father, and faults the Family Court for "not giving such an alarming allegation as rape any weight[.]"

Father's "incongruity" argument confuses the choking incident with the plane incident. The Family Court, in indicating that it would not grant the Petition as to Child, reasoned that Mother had agreed in 2024 to joint custody with Father, even after the alleged plane incident involving Child. However, the court found that physical abuse of Mother had occurred during the September 8, 2021 incident, *i.e.*, the choking incident. Father's arguments based on Mother's credibility and the weight of the evidence are unavailing. "[A]n appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." Fisher, 111 Hawai'i at 46, 137 P.3d at 360 (quoting Doe, 95 Hawai'i at 190, 20 P.3d at 623). On this record, we cannot say that the court, having considered the DHS Report and all of the facts presented by Mother and Father, abused its discretion in concluding that the OFP in favor of Mother was necessary to prevent domestic abuse or a recurrence of abuse.

(2) Father contends that in entering the OFP the Family Court improperly relied on the choking incident, which was barred from consideration by the doctrine of *res judicata*. He does not state "where in the record the alleged error was objected to or

the manner in which [it] was brought to the attention of the court" Hawai'i Rules of Appellate Procedure Rule 28(b) (4) .

In any event, the res judicata argument lacks merit. "[T]he party asserting claim preclusion has the burden of proving three elements to establish that an action is barred: 1) there was a final judgment on the merits, 2) both parties are the same or are in privity with the same parties in the original suit, and 3) the claim decided in the original suit is identical with the one presented in the action in question." Priceline.com, Inc. v. Dir. of Tax'n, 144 Hawai'i 72, 82, 436 P.3d 1155, 1165 (2019) (citing E. Sav. Bank, FSB v. Esteban, 129 Hawai'i 154, 159, 296 P.3d 1062, 1067 (2013)).

Here, Father did not establish that there was a final judgment on the merits of Mother's prior allegation regarding the choking incident. Father asserts that during hearings on the Petition, the Family Court "acknowledged" and "confirm[ed]" that the allegations in Mother's Petition had already been litigated and "dismissed with prejudice." Not so. The Family Court merely acknowledged Father's testimony, not the merit of what he was saying. The Family Court made quite clear in ruling on the Petition that the alleged incidents in 2021 were "never adjudicated by this court." Father presented no contrary admissible evidence. Accordingly, claim preclusion did not bar the court's consideration of the choking incident in entering the OFP.

For the reasons discussed above, the September 18, 2024 *Order for Protection* entered by the Family Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, September 30, 2026.

On the briefs:

Rosa Flores
for Respondent-Appellant.

Branden T. Nakahara
for Petitioner-Appellee.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge