

Citation/Title

216 P.3d 129, 121 Hawai'i 203, Parker v. Puhi, (Hawai'i App. 2009)

*129 216 P.3d 129

121 Hawai'i 203

Unpublished disposition. See HI R RAP Rule 35 before citing.

Intermediate Court of Appeals of Hawai'i.

Keith E. PARKER, Petitioner-Appellee,

v.

Carl PUHI, Respondent-Appellant.

No. 29463.

Sept. 30, 2009.

Appeal from the District Court of the Second Circuit Molokai Division (DC-TRO No. 08-1-0247).

Keith E. Parker and Melony A. Parker, on the briefs, Pro Se Petitioners-Appellees.

Madelyn S. D'Enbeau, Deputy Corporation Counsel, County of Maui, on the briefs, for Respondent-Appellant.

NAKAMURA, C.J., FUJISE and LEONARD, JJ.

SUMMARY DISPOSITION ORDER

Respondent-Appellant Carl Puhi (Puhi) appeals from the "Order Granting Petition for Injunction Against Harassment" (Order), filed on October 14, 2008, in the District Court of the Second Circuit, Molokai Division (district court). (FN1) For the reasons explained below, we reverse the district court's Order.

On September 5, 2008, Petitioner-Appellee Keith E. Parker (Keith) filed a "Petition for Ex Parte Temporary Restraining Order and for Injunction Against Harassment" (Petition) against Puhi. On September 9, 2008, an Amended Petition was filed which added Keith's wife, Melony A. Parker (Melony), as a petitioner. The district court issued a temporary restraining order against harassment in favor of Keith and Melony (collectively, the "Parkers") and scheduled the hearing on the Parkers' petition for injunction for October 14, 2008.

After the hearing, the district court orally granted the Parkers' petition for injunction against harassment. On October 14, 2008, the district court issued the Order, which restrained and enjoined Puhi from contacting, threatening,

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physically harassing, or telephoning "the Petitioner(s)" or from visiting "the Petitioner(s)" residence or place of employment. Although the district court had orally granted the injunction in favor of both Keith and Melony, the Order only identified Keith as the petitioner. (FN2) The Order was effective for a period of three years after its issuance unless terminated or modified by order of the district court.

On appeal, Puhi contends that the district court erred in: 1) "concluding that the single incident described by the Parkers amounted to a course of conduct as defined by [Hawaii Revised Statutes (HRS)] § 604-10.5(a)"; 2) "concluding that clear and convincing evidence supported the allegation that Puhi engaged in an intentional or knowing course of conduct"; 3) concluding that clear and convincing evidence supported the allegation that a reasonable person would suffer emotional distress as a result of Puhi's conduct; and 4) failing to file written findings of fact. We conclude that there was insufficient evidence to support the district court's finding that Puhi had engaged in a course of conduct constituting harassment. We therefore reverse the district court's Order.

I.

HRS § 604-10.5 (Supp.2008) provides in relevant part as follows:

§ 604-10.5 Power to enjoin and temporarily restrain harassment . (a) For the purposes of this section:

"Course of conduct" means a pattern of conduct 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 that serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.*

(b) The district courts shall have power to enjoin or prohibit or temporarily restrain harassment.

....

(f)....

....

If the court finds by clear and convincing evidence that harassment as defined in paragraph (1) of that definition exists, it may enjoin for no more