



FOR PULBICATION



E-FILED
CNMI SUPERIOR COURT
E-filed: Jul 26 2019 04:01PM
Clerk Review: N/A
Filing ID: 63629815
Case Number: 19-0093-FCD
N/A

By order of the Court, Judge Joseph N. Camacho

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

THE MATTER OF:	) Juvenile Case No. 19-0008
	) FCD-FP CIVIL ACTION NO. 19-0093
L.F.F.,)
)
A Minor Child.	) ORDER GRANTING MOTION TO DISMISS
	) THE VOID ORDER OF PROTECTION DUE
_____	) TO LACK OF SUBJECT MATTER
[T.M.M.]	) JURISDICTION AS THE PETITION FOR A
	) TEMPORARY RESTRAINING ORDER
Petitioner,	) LACKED THE NECESSARY ALLEGATION
	) OF DOMESTIC VIOLENCE OR
v.	) HARASSMENT, THUS THE ORDER OF
[L.F.F.], A Minor Child	) PROTECTION DID NOT COMPLY WITH 8
	) CMC § 1901 et seq.
Respondent.)
_____)

I. INTRODUCTION

This matter¹ came before the Court on July 17, 2019 at 10:00 am on the minor’s [L.F.F.] motion for relief from the Order of Protection issued in [T.M.M.] v. [L.F.F.], Family Court Case No. FCD-FP Civil Action No. 19-0093 (“Family Court Case”) as void and unenforceable due to lack of jurisdiction, and for dismissal of Paragraph I of the Amended Complaint of Delinquency in *In re the Matter of L.F.F.*, Juvenile Case No. 19-0008 (“Juvenile Case”).² Juvenile L.F.F. appeared with counsel Assistant Public Defender

¹ To add to the CNMI body of law the Court publishes this Order balanced with the need to maintain the juvenile’s confidentiality, therefore the Court uses initials for all of the private individuals involved in this case. NMI R. JUV. P. 6(1).

² On May 29, 2019, Presiding Judge Roberto C. Naraja re-assigned both the Juvenile Case and the Family Court Case to Judge Joseph N. Camacho.

1 Heather Zona; Assistant Attorney General Samantha Vickery for the government. Family
2 Court Case Petitioner T.M.M was not present.

3 On April 22, 2019, Minor filed his Motion for Relief from Order of Protection as
4 Void Due to Lack of Jurisdiction and to Dismiss Paragraph I of the Complaint; Declaration
5 of Counsel. On June 11, 2019, the Government filed its Opposition to Minor's motion for
6 relief from Order of Protection as Void Due to Lack of Jurisdiction and to Dismiss
7 Paragraph I of the Complaint. On June 12, 2019, the Minor [L.F.F.] filed his Reply
8 Memorandum in Support of his Motion for Relief from Order of Protection as Void Due to
9 Lack of Jurisdiction and to Dismiss Paragraph I of the Complaint.
10

11 The motion was heard on July 17, 2019. Following oral argument, the Court found
12 the Family Court lacked subject matter jurisdiction, and therefore the Family Court Order is
13 void and unenforceable. The Court granted the minor's motion in its entirety. The Court
14 now issues this written order further articulating its ruling.

15 **II. JUDICIAL NOTICE**

16 The Court takes judicial notice of the prior proceedings in the Juvenile Case and in
17 the Family Court Case. NMI R. EVID. 201(b)(2). *See also Del Puerto Water Dist. v. U.S.*
18 *Bureau of Reclamation*, 271 F. Supp. 2d 1224, 1232 (E.D. Ca. 2003) (“Judicially noticed
19 facts often consist of matters of public record, such as prior court proceedings...(citations
20 omitted)”).

22 **III. STATEMENT OF FACTS**

23 Paragraph I of the First Amended Complaint of Delinquency in the Juvenile Case
24 alleges L.F.F. committed contempt of court by failing to follow an Order of Protection
25 issued in the Family Court Case.
26

The Family Court Case: FCD-FP Civil Action No. 19-0093

On or about February 20, 2019, T.M.M., an adult, filed a Petition in the CNMI

1 Family Court pursuant to the Domestic and Family Violence Prevention Act of 2000
2 relating to alleged events of February 19, 2019. The Petition lists various questions that the
3 petitioner must fill-out. On the question “Frequency and Types of Violence (Provide as
4 Much Detail About Physical Violence as Possible):”, T.M.M. recited that her daughter
5 D.M. has a boyfriend (L.F.F.), and when D.M. is around L.F.F., D.M. “totally changes and
6 even talks back to us in a disrespectful manner. We have been trying to work with the
7 authorities and even talking to [L.F.F.] so [sic] help but it is not doing any good.”

8
9 Nothing on the written petition lists any physical violence or threats of violence to
10 any person, including T.M.M. or D.M. In the Petition, T.M.M. listed “Unknown” in
11 response to the form’s request regarding the relationship between herself and L.F.F. The
12 only family relationship is between T.M.M. and her 15-year old daughter D.M. There is no
13 family relationship between T.M.M. and 17-year old L.F.F.

14 As alleged in the Petition, the most recent event occurred on February 10, 2019, in
15 which D.M. was dropped at school by her parents but D.M. left the school campus. At 3:00
16 p.m., T.M.M. went to the home of one of D.M.’s friends, where D.M. was found. D.M. did
17 not want to leave with T.M.M. The police and DYS were called and eventually D.M. left
18 with T.M.M. At 5:30 p.m., T.M.M. learned that her daughter had again left the home. At
19 7:00 p.m., T.M.M. went looking for D.M. D.M. then followed T.M.M. home. At 8:30 p.m.,
20 L.F.F. arrived at T.M.M.’s residence and said he was checking to see if D.M. was okay.
21 L.F.F. had to be asked four times to leave the premises. The time frame is unclear from the
22 Petition, but it is alleged that L.F.F. and his friends drove by the house while shouting
23 profanities and, “Chagi Kagman! [Try Kagman!]”. T.M.M. claimed:

24
25 We need the protection of this restraining order because things are getting
26 worse. We have asked the Division of Youth Services and [Department of
Public Safety] for their help and nothing has been done to assist us on the
truancy of my daughter who is still 15 years of age. My fear is that [L.F.F.]
might take my daughter, get drunk and maybe abuse her somehow. My other

1 fear is that my other family members may react and I am already hearing that
2 they are intending to do something about L.F.

3 Petition at 2:24-3:3.

4 D.M. did not request for the restraining order in the Petition. D.M. was not present
5 at the hearing on the matter in Family Court. D.M.'s name was handwritten onto the
6 Petition by the Family Court judge.

7 An Order of Protection was entered in the Family Court Case which, among other
8 things, prevents L.F.F. from having contact with T.M.M., T.M.M.'s boyfriend (who is not
9 named in the Petition),³ and D.M.

10 **The Juvenile Case: Juvenile Case No. 19-0008**

11 On or about March 28, 2019, Department of Public Safety Detective Wally Emul,
12 Jr. ("Detective Emul") swore out a Complaint of Delinquency under oath in the Juvenile
13 Case. Detective Emul averred there was probable cause to support charges of contempt of
14 court, disturbing the peace, and criminal mischief. The complaint alleges facts that
15 occurred⁴ on March 29, 2019. The Complaint of Delinquency was filed on April 1, 2019.

16 A preliminary hearing was held in the Juvenile Case on April 11, 2019. Detective
17 Emul testified L.F.F. made contact with D.M. by sending her a message via Facebook
18 Messenger. Detective Emul also alleged L.F.F. and D.M. were together on March 29,
19 2019.
20

21 Also at the preliminary hearing, T.M.M. testified that L.F.F. did not send any
22 message to D.M., but that it was actually D.M.'s friend K.D. who initiated and contacted
23 D.M. T.M.M. and her boyfriend R.C. also testified that L.F.F. is not related to the family by
24 blood or marriage, does not live with them, and neither R.C. nor T.M.M. is in a dating
25

26

³ See *Santos v. Commonwealth*, 2017 MP 12 ¶ 18 (stating that "common law marriage is not valid in the Commonwealth").

⁴ A possible discrepancy as Det. Emul and the Assistant Attorney General may have signed the document a day earlier. For purposes of this Order, it is not relevant or dispositive as to the issue.

1 relationship with L.F.F. According to T.M.M. and R.C., L.F.F. is in a dating relationship
2 with T.M.M.'s daughter, D.M. D.M. is 15 years old. L.F.F. is 17 years old.

3 T.M.M. and R.C. further testified at the Preliminary Hearing that L.F.F. has not
4 made any threats to anyone in their family, has not physically harmed anyone in the family,
5 and has not committed any crimes against the family. T.M.M. further testified that she is
6 mainly concerned with D.M. and L.F.F. not obeying curfew. T.M.M. testified she was
7 trying to get the authorities to help her work with D.M.'s attitude. T.M.M. testified that
8 D.M. has skipped school approximately five times this year, and R.C. testified that D.M.
9 had run away ten times previously.
10

11 On April 16, 2017 the Office of the Attorney General filed the First Amended
12 Complaint of Delinquency (the "Complaint"). The First Amended Complaint contains
13 violations referred to as Paragraph I and Paragraph II.

14 Paragraph I of the Complaint alleges L.F.F. committed contempt in violation of
15 section 3307, Title 6 of the Commonwealth Code when L.F.F. made contact with T.M.M.
16 and D.M. on or between March 27, 2019 and March 29, 2019. *See* First Amended
17 Complaint of Delinquency at 1:220-2:2.
18

19 Paragraph II of the Complaint alleges L.F.F. committed the crime of Disturbing the
20 Peace in violation of section 3101(a), Title 6 of the Commonwealth Code, by coming "to
21 [T.M.M.]'s residence with his friends where he was advised multiple times to leave her
22 property, to which he did not listen, and started shouting profanities, including the phrase
23 "Chagi Kagman" at her..." *Id.* at 2:8-12.

24 L.F.F. was arrested in the Juvenile Case and held in custody at the Department of
25 Corrections from March 28, 2019 until April 1, 2019.
26

IV. DISCUSSION

At issue is whether the Order of Protection issued by the Family Court is valid and

1 enforceable. L.F.F. argues that the Order of Protection is void and unenforceable because
2 the Family Court lacked subject matter jurisdiction to issue the Order of Protection. The
3 prosecution argues the Family Court had jurisdiction over the matter and, therefore, to the
4 extent there is any defect in the Order of Protection, the Order would be voidable, not void,
5 and L.F.F. would still have to obey the Order until it was rescinded or modified.

6 Jurisdiction refers to a court's adjudicatory authority. *Reed Elsevier, Inc. v.*
7 *Muchnick*, 559 U.S. 154, 160 (2010) (citation omitted). A court must have jurisdiction over
8 the subject matter ("subject matter jurisdiction") for an order to be valid; otherwise it is
9 void and unenforceable. *See Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 17, *citing*
10 *Restatement, Judgments (Second) § 1* (1983). A void order cannot be the basis for
11 subsequent criminal liability; therefore, disobedience to a void order is not contempt. *See*
12 *id.* Where the tribunal's order is void, it may be attacked at a collateral proceeding. *See,*
13 *e.g., Wexler v. Janney*, 177 F.2d 808 (4th Cir. 1949).

14 In contrast, an order based on a mistaken view of the law or an erroneous
15 application of legal principles issued by a court with the power to make the order and which
16 has subject matter jurisdiction and personal jurisdiction is erroneous or voidable, but not
17 void. *See Matsunaga*, 2001 MP 11 ¶ 17.

18 Subject matter jurisdiction defines the court's authority to hear a given type of case;
19 it represents the extent to which a court can rule on the conduct of persons or the status of
20 things. *See Carlsbad Technology, Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009) (citations
21 omitted). A tribunal lacks subject matter jurisdiction when it attempts to decide a type of
22 controversy over which it has no authority to adjudicate. *Id.*

23 Subject matter jurisdiction can be limited by the plain terms of a statute. *See, e.g., In*
24 *re N.T.M.*, 1999 MP 24 ¶ 6.

1 Because subject matter jurisdiction involves a court's inherent power to hear a case,
2 it can never be forfeited or waived by the parties and can be raised at any time. *United*
3 *States v. Cotton*, 535 U.S. 625, 630 (2002).

4 The Family Court is a court of limited jurisdiction; therefore, it is constrained to
5 exercise only those powers granted to it by the Constitution or by statute. See *H.M. v. E.T.*,
6 930 N.E.2d 206 (N.Y. 2010). The Family Court cannot expand a statute as that is a
7 function of the legislature. See *Reyes v. Reyes*, 2004 MP 1 ¶ 90 (“No branch may assert
8 control over the others, except as provided in the constitution, and no branch may exercise
9 the power granted by the constitution to another.”), citing *Sablan v. Tenorio*, 4 N.M.I. 351,
10 363-64 (1996).

11
12 Here, the Family Court's subject matter jurisdiction with respect to Orders of
13 Protection is defined by the Domestic and Family Violence Prevention Act, 8 CMC § 1901
14 et seq. The statute is to be construed to promote the protection and safety of all victims of
15 domestic or family violence in a fair, prompt, and effective manner; and the prevention of
16 future violence in all families. 8 CMC § 1901. The Family Court's jurisdiction for issuing
17 restraining orders is limited to family and household members who have been victims of
18 domestic or family violence:

19
20 (a) A person who is or who has been a victim of domestic or family violence
21 may file a petition for an order in the Superior Court for protection *against a*
22 *family or household member* who commits an act of domestic or family
23 violence.

24 (b) A parent, guardian, or other representative may file a petition for an order
25 in the Superior Court for protection on behalf of a child against a family or
26 household member who commits an act of domestic or family violence.

8 CMC § 1911 (emphasis added). “Family members” are defined as:

- (1) Adults or minors who are current or former spouses;
- (2) Adults or minors who live together or who have recently lived together;
- (3) Adults or minors who are dating;

- 1 (4) Adults or minors who are engaged in or who have recently engaged in a
sexual relationship;
- 2 (5) Adults or minors who are related by blood or adoption;
- 3 (6) Adults or minors who are related by marriage or formerly related by
marriage;
- 4 (7) Persons who have a child in common; and
- 5 (8) Minor children of a person in a relationship that is described in
paragraphs (1) through (7).

6 8 CMC § 1902. “Domestic or family violence” is defined as follows:

7 “Domestic or family violence” means the occurrence of one or more of the
8 following acts by a family or household member, but does not include acts of
self-defense:

- 9 (1) Attempting to cause or intentionally, knowingly or recklessly causing
bodily injury to another family or household member;
- 10 (2) Placing a family or household member in fear of bodily injury;
- 11 (3) Attempting to cause or causing a family or household member to engage
in coerced or forced sexual activity by force, threat of force or intimidation;
- 12 (4) Engage in a knowing and willful course of conduct that constitutes
harassment.

13 8 CMC § 1902(a).

14 The statute is clear that Orders of Protection are only authorized for protection
15 against a family or household member who commits an act of domestic or family violence.

16 8 CMC § 1911(a). The Family Court does not have subject matter jurisdiction to issue
17 Orders of Protection for activities that do not constitute “domestic or family violence,” or
18 activities involving persons who are not “family members.”

19
20 The Petition filed by T.M.M. contains no allegations that L.F.F. made any threats or
21 committed any violent acts against T.M.M., her family members, or her daughter D.M; and
22 there were no allegations L.F.F. harassed D.M., his alleged girlfriend. During the
23 preliminary hearing, T.M.M. testified that L.F.F. had not made any threats, committed any
24 acts of violence, or committed any crimes against T.M.M. or any member of her family.
25 T.M.M.’s complaints appear to be more in line with general parenting issues: D.M. talks
26 back to her parents disrespectfully, does not go to school, runs away, and does not obey her
curfew. None of these activities constitute “family violence” as that term is defined in the

1 Domestic and Family Violence Prevention Act, 8 CMC § 1901 et seq. More importantly,
2 these issues are between D.M. and T.M.M., not L.F.F.

3 Similarly, the allegation that L.F.F. refused to leave the house and that he and his
4 friends shouted “Chagi Kagman” (“Try Kagman!”) at T.M.M. as alleged in Paragraph II of
5 the Complaint does not constitute domestic or family violence under the statute because
6 L.F.F. and T.M.M are not “family members.” Therefore, the legal remedies for the alleged
7 harassment of T.M.M. by L.F.F., if any, must rely on another law. The Domestic and
8 Family Violence Prevention Act, 8 CMC § 1901 et seq. does not confer jurisdiction on the
9 Family Court to issue an Order of Protection for the allegations of harassment made by
10 T.M.M. Consequently, the Family Court did not have the subject matter jurisdiction to issue
11 the Order of Protection. Therefore, the Order of Protection is void and unenforceable.
12 *Matsunaga*, 2001 MP 11 ¶ 17.

14 The Government argues there was subject matter jurisdiction because the Family
15 Court is empowered to hear requests for restraining orders. However, the act of someone
16 filing a petition in Family Court does not automatically give the Family Court subject
17 matter jurisdiction over the claim. The petition must contain the necessary allegations that
18 the Family Court has the statutory authority to hear for the Family Court to have subject
19 matter jurisdiction over the matter. *See Matsunaga*, 2001 MP 11 ¶ 17.

21 Because disobeying a void order is not contempt, *Matsunaga*, 2001 MP 11 ¶ 17, and
22 the underlying court order is void, the Order of Protection at issue cannot form the basis for
23 a contempt charge. Therefore, Paragraph I of the Complaint of Delinquency must be
24 dismissed with prejudice.

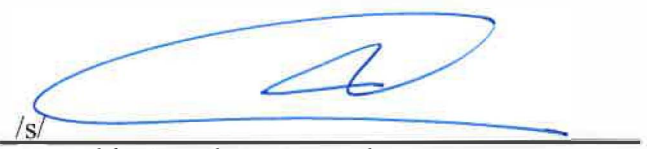
25 V. CONCLUSION

26 Based on the foregoing, the Court ORDERS that the Order of Protection in the
Family Court Case FCD-FP Civil Action No. 19-0093 is void and unenforceable for lack of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

subject matter jurisdiction; and the Court ORDERS that the criminal charge of Contempt contained in Paragraph I of the First Amended Complaint of Delinquency in Juvenile Case No. 19-0008 is dismissed with prejudice.

SO ORDERED this 26th day of July, 2019.



/s/

Honorable Joseph N. Camacho
Associate Judge, CNMI Superior Court