

FOR PUBLICATION
IN THE SUPREME COURT OF THE COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS

GREGORIA OLUPOMAR,
Plaintiff-Appellee

v.

VIRGINIA MAHORA,
Defendant-Appellant.

OPINION

Cite as: *Olupomar v. Mahora*, 2001 MP 17

Appeal No. 00-024
Argued and Submitted March 29, 2001
Decided November 15, 2001

For Gregoria Olupomar:
None¹

For Virginia Mahora:
Douglas W. Rhodes, Esq.
Micronesia Legal Services Corp.
Marianas Office
P.O. Box 500826
Saipan, MP 96950

¹ Appellee did not submit a brief for this appeal.

BEFORE. MIGUEL S. DEMAPAN, Chief Justice, ALEXANDRO C. CASTRO, Associate Justice, and JOHN A. MANGLONA, Associate Justice.

DEMAPAN, Chief Justice:

¶1 [1,2] Virginia Mahora [hereinafter MAHORA] appeals the Superior Court's decision granting Gregoria Olupomar [hereinafter OLUPOMAR] a restraining order pursuant to 8 CMC §§ 1221-1233, the Commonwealth Family Protection Act of 1986 [hereinafter Family Protection Act]. We have jurisdiction pursuant to 1 CMC § 3102(a) and Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Marian Islands. We REVERSE the lower court's grant of a restraining order because the relationship between OLUPOMAR and MAHORA was not entitled to the protections of the Family Protection Act.

ISSUES PRESENTED AND STANDARDS OF REVIEW

1. Did the Superior Court err in granting a temporary restraining order under the Family Protection Act of 1986, where there is no showing that the parties currently or formerly reside together.
2. Did the Superior Court err in granting a temporary restraining order under the Family Protection Act of 1986, where the parties are not family members as that term is defined under the Act.

¶2 The court's finding of a family relationship and residential relationship between the parties presents a question of fact reviewed under the clearly erroneous standard. *Pangelinan v. Itaman*, 4 N.M.I. 114 (1994). Whether a restraining order complies with the terms of the Family Protection Act is a question of law, reviewed *de novo*. See *Norita v. Norita*, 4 N.M.I. 381 (1986), *Commonwealth v. Kaipat*, 2

N.M.I. 322, 327-28 (1991) (holding that the correct interpretation and application of a statute is a question of law).

FACTUAL AND PROCEDURAL BACKGROUND

¶3 OLUPOMAR and MAHORA are contentious neighbors who reside in Tanapag, Saipan. Excerpts of Record [hereinafter E.R.] at 8. MAHORA has lived on the Tanapag property for approximately forty-six years. E.R. at 35. OLUPOMAR and her partner, Herminio Olupomar, have been MAHORA'S neighbors for approximately five years. E.R. at 9, 21. The parties do not live together, but they have separate houses on separate pieces of land. E.R. at 1, 9, 41-42.

¶4 Herminio Olupomar testified in the lower court that his family and MAHORA'S grandmother resided together a long time ago. E.R. at 30. MAHORA testified that no one in her family had ever lived with the Olupomar family. E.R. at 35.

¶5 On February 14, 2000, OLUPOMAR and MAHORA engaged in an argument during which MAHORA slapped and pushed OLUPOMAR. OLUPOMAR also complained that MAHORA verbally harassed her.

¶6 On March 27, 2000, OLUPOMAR filed a petition for a Temporary Restraining Order [hereinafter TRO] under the Family Protection Act. OLUPOMAR signed the petition for a TRO pursuant to 8 CMC § 1225 of the Family Protection Act. In her TRO petition OLUPOMAR stated that the relationship between OLUPOMAR and MAHORA is that of a "neighbor." E.R. at 1.

¶7 The court entered an *ex parte* order granting the TRO. E.R. at 3-4. On April 5, 2000, OLUPOMAR and MAHORA both appeared for the hearing without representation. After the hearing the court granted OLUPOMAR a one year TRO against MAHORA. *Olupomar v. Majora*, FCD FP No. 00-0127 (N.M.I. Super. Ct. April 7, 2000) (Order).

¶8 On June 8, 2000, MAHORA, represented by counsel, filed a Motion for Relief from the TRO. E.R. at 20. The basis for the request to vacate the TRO was that OLUPOMAR did not have a family relationship with MAHORA as defined by the Family Protection Act. On June 15, 2000, the court heard evidence and argument on the motion. The motion was denied in court and the written decision was issued June 20, 2000, continuing the TRO until April 4, 2001. *Olupomar v. Majora*, FCD FP No. 00-0127 (N.M.I. Super. Ct. June 20, 2000) (Order). MAHORA timely appeals.

ANALYSIS

¶9 MAHORA asks this Court to vacate the TRO that was issued on April 7, 2000.

¶10 [5,6] As a general rule, in order to decide a case, a court must be able to afford a petitioner the relief he or she seeks. *Govendo v. Micronesia Garment Factory Mfg., Inc.*, 2 N.M.I. 270, 281 (1991). The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. *Govendo*, 2 N.M.I. at 280, *see also Wong v. Board of Regents, University of Hawaii*, 616 P.2d 201, 204 (Haw. 1980).

¶11 Since the expiration of the TRO has passed, even deciding in favor of MAHORA would not give her effective relief from the TRO. Nonetheless, in exceptional situations mootness is not an obstacle to the consideration of an appeal. *Govendo*, 2 N.M.I. at 282. A well-established exception to the mootness doctrine allows a court to review a mooted matter if the question involved affects the public's interest, is likely to recur, and it is likely that similar issues arising in the future would likewise become moot before an authoritative determination by an appellate court could be made. *In re Seman*, 3 N.M.I. 57, 64-65 (1992); *In re Duncan*, 3 CR 383, 387-88

(Trial Ct. 1988) (holding that a court may hear controversies “capable of repetition yet evading review”).

¶12 The exception applies in this case. We will review this matter as one of public importance in order to define the correct interpretation of the definitions and scope contained in the Family Protection Act. The vital functions of the Family Protection Act cannot be fulfilled without the proper scope of the Act defined. The lower court misinterpreted the scope and definitions contained in the Family Protection Act, which, if not corrected by this Court is likely to be repeated. Lastly, absent extraordinary circumstances, there is no readily available way for a party to appeal the issuance of a TRO before it expires. We will therefore proceed to consider the validity of the TRO.

¶13 The stated purpose of the Family Protection Act is: “to preserve and maintain the customary strong family relationships that exist in the Northern Mariana Islands. The article provides necessary legal protections for family members who are victims of civil and criminal family abuse.” 8 CMC § 1221(b). The definitions as used in 8 CMC § 1222 for “abuse” and “family members” are as follows:

(a) “Abuse” means the occurrence of one or more of the following acts between *family members who reside together or who formerly resided together*:

....

(g) “Family members” includes spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, *household members or other persons related by blood, marriage, or customary affinity* as brothers, sisters, children, spouses, or parents.

8 CMC § 1222 (emphasis added).

¶14 [8,9] It is a well-established principal of statutory construction that language is given its plain meaning. *Estate of Faisao v. Tenorio*, 4 N.M.I. 260 (1995). Under the Family Protection Act, for “abuse” to be actionable, it must be between family members who “reside together or who formerly resided together.” 8 CMC § 1222(a). We must determine whether the relationship between OLUPOMAR and

MAHORA falls under the protection of the act.

A. The Parties Did Not Reside Together Under the Parameters of the Family Protection Act

¶15 [10] Under the relevant facts of this case, there was no testimony that OLUPOMAR and MAHORA ever resided together. Rather, OLUPOMAR and MAHORA are contentious neighbors who reside in Tanapag. MAHORA has been living on the property for about forty-six years, and OLUPOMAR for approximately four or five years. OLUPOMAR and MAHORA have only known each other for the four or five years that they have been neighbors. It is undisputed that OLUPOMAR and MAHORA have never resided with each other. They have separate houses on separate lots of land. The facts are at all times that the OLUPOMAR and MAHORA were neighbors who lived from 15, 50, 100 and 150 feet apart (varying testimonies at hearing). The abuse that occurred was between the parties as neighbors. Thus, the abuse falls outside the protections of the Family Protection Act for a TRO to properly issue.

B. The Parties Are Not Family Members Under the Family Protection Act

¶16 The lower court based the issuance of the TRO on finding that the parties are “family members” as defined in 8 CMC § 1222(g). The lower court found that OLUPOMAR “is married to Mr. Olupomar and that Mr. Olupomar is related by blood and Carolinian custom” to MAHORA to justify the establishment of a family relationship under the Act. *Olupomar v. Mahora*, FCD FP Action No. 00-0127 (N.M.I. Super. Ct. June 20, 2000).

¶17 However, the Family Protection Act pertains to “persons related by blood, marriage, or customary affinity as brothers, sisters, children, spouses, or parents.” Thus, even though OLUPOMAR and MAHORA are, perhaps, related by blood or custom, their relationship is not as “brothers, sister, children or parents.” The transcript of the proceedings below verifies what MAHORA contends in her motion. The

only evidence offered of a family relationship was the vague testimony of OLUPOMAR'S husband stating that his father and MAHORA's father were some degree of cousin either by blood or custom. At best, OLUPOMAR would be MAHORA'S third cousins-in-law.

¶18 The only abuse, which is actionable under the Family Protection Act, is abuse between family members who reside together or formerly resided together. 8 CMC § 1222. It is clear that the lower court went beyond the scope of the statutory remedy when it granted a TRO, because there is no evidence to support a familial relationship under the parameters of the Family Protection Act.

¶19 Public policy supports upholding the scope of the Family Protection Act. If the Family Protection Act were to be read to extend to all disagreements, its purpose would be thwarted because no benefit to the "family unit" would be gained.

CONCLUSION

¶20 For the foregoing reasons, the April 7, 2000 Order from the lower court restraining MAHORA, is hereby **VACATED**.

Dated this 15th day of November, 2001.

/s/ _____
MIGUEL S. DEMAPAN, Chief Justice

/s/ _____
ALEXANDRO C. CASTRO, Associate Justice

/s/ _____
JOHN A. MANGLONA, Associate Justice