

IN THE UTAH COURT OF APPEALS

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| Kristin Choi, |) | MEMORANDUM DECISION | |
| |) | (Not For Official Publication) | |
| Petitioner and Appellee, |) | | |
| |) | Case No. 20070265-CA | |
| v. |) | | |
| |) | F I L E D | |
| Peter Iacavazzi, |) | (March 13, 2008) | |
| |) | | |
| Respondent and Appellant. |) | <table border="1"><tr><td>2008 UT App 79</td></tr></table> | 2008 UT App 79 |
| 2008 UT App 79 | | | |

Third District, Silver Summit Department, 054500262
The Honorable Bruce C. Lubeck

Attorneys: Richard S. Nemelka and Stephen R. Nemelka, Salt Lake City, for Appellant
Asa E. Kelley, Salt Lake City, for Appellee

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Peter Iacavazzi appeals the February 28, 2007 order denying a motion to vacate the criminal portions of the February 8, 2006 protective order. In April 2006, Iacavazzi filed his Verified Motion to Vacate Protective Order or In the Alternative to Modify the Protective Order. That motion sought alternative relief of either (1) vacating the protective order in its entirety or (2) modifying the order to remove the civil portion of the order regarding child custody and parenting time. The district court granted only the "alternative" relief sought in Iacavazzi's motion. The court's Order Dismissing Civil Portion of the Protective Order ruled, in part,

[T]he civil provisions in paragraphs a through l, specifically paragraphs a, b, and d, of the Protective Order entered in the above entitled matter on the 8th of February, 2006, are hereby terminated and vacated and said provisions shall be null and void in regard to custody, parenting time and related issues in said paragraphs.

Despite this June 5, 2006 order granting the "alternative" request for relief in Iacavazzi's motion to vacate, he filed a request for a hearing on the motion in August 2006, representing that "the Court has not yet entered a ruling with regard to the motion to vacate the protective order in its entirety." This was followed by additional requests for a hearing. On February 28, 2007, the district court denied Iacavazzi's motion insofar as it requested that the remaining criminal provisions of the protective order be vacated. The court ruled that the criminal portions could not be vacated absent the consent of Appellee Kristin Choi. The court denied a motion for new trial, and this appeal followed.

Although this appeal is taken from the February 28, 2007 order denying a motion to vacate the criminal portions of the February 8, 2006 protective order, Iacavazzi challenges the original decision to issue a protective order. Accordingly, he asserts that the June 5, 2006 order did not fully resolve his motion to vacate the protective order when it granted the alternative relief requested in the motion and removed the civil provisions of the protective order. However, the district court resolved the motion to vacate by granting the alternative relief sought. The June 5, 2006 order, which was drafted by Iacavazzi's own counsel, did not reserve any issues from the motion to vacate for further action. Iacavazzi only later elected to construe that ruling as a partial ruling and to seek a further ruling to remove the criminal provisions of the protective order. In the February 28, 2007 order, the district court correctly ruled that the criminal portions of the cohabitant protective order could not be removed without Choi's consent as petitioner. Utah Code section 30-6-4.2(10) provided, in relevant part:

[T]he criminal provisions of a protective order may not be vacated within two years of issuance unless the petitioner":

- (a) is personally served with notice of the hearing as provided in Rule 4 and 5, Utah Rules of Civil Procedure, and the petitioner personally appears before the court and gives specific consent to the vacation of the criminal provisions of the protective order;
- or
- (b) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the protective order.

Utah Code Ann. § 30-6-4.2(10)(2007) (current version at Utah Code Ann. § 78B-7-106 (2008)).

Therefore, the district court correctly ruled that the criminal provisions of the protective order could not be vacated in February 2007, which was only one year after issuance of the protective order.¹ We affirm.

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge

1. Iacavazzi is not without a remedy for seeking relief from the protective order because two years have now passed since the issuance of the February 8, 2006 protective order. See Utah Code Ann. § 30-6-4.2(6)(c) (2007) (current version at Utah Code Ann. § 78B-7-106 (2008)).