
NO. 24192

IN THE SUPREME COURT OF THE STATE OF HAWAII

LEROY R. ZOOK, Petitioner-Appellee,

vs.

GWENDOLYN SMITH, Defendant-Appellant.
(CIV. NO. 1SS00-1507)

SANDRA L. ZOOK, Petitioner-Appellee,

vs.

GWENDOLYN SMITH, Defendant-Appellant.
(CIV. NO. 1SS00-1503)

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CIV. NO. 1SS00-1507/1SS00-1503)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Defendant-appellant Gwendolyn Smith appeals from the February 7, 2001 order denying her motion for reconsideration of the temporary restraining orders (TROs) of the District Court of the First Circuit.¹ On appeal, Smith contends that the district court erred by: (1) refusing to grant Smith a continuance of the hearing; (2) denying Smith sufficient time to contact and arrange for alternative legal representation; (3) denying Smith

¹ The Honorable David Lo presided over the December 29, 2000 motion for continuance and the Honorable David Fong presided over the hearing and motion for reconsideration.

sufficient time to obtain the services of an attorney to represent her at the hearing, conduct discovery, obtain documents and testimony, gather witnesses, and prepare a defense to the allegations in the petitions; (4) granting the injunctions against harassment without clear and convincing evidence; (5) refusing to consider evidence that the alleged harassment was neither systematic nor continuous; (6) failing to apply an objective standard of proof in granting the injunctions; (7) instructing Smith to carry the burden of proving that the allegations were untrue; (8) depriving her of her due process, constitutional, first, fourth, fifth, and fourteenth amendment rights because: (a) the district court improperly heard and granted the injunctions against harassment, (b) the district court improperly refused to grant her petition for a protective injunction, (c) the district court failed to notify her of her right to file a response or set a response due date or evidentiary hearing and only allowed her to give "reasons" why the TROs should not be granted, and (d) the district court refused to entertain her motion for reconsideration containing new evidence from witnesses. For the purposes of this order, Smith's arguments have been reorganized to reflect the five main issues that she presents on appeal.

Upon carefully reviewing the record and the briefs submitted, we hold as follows: (1) there is no evidence that the

district court denied Smith's request for a continuance of the hearing. Regarding Smith's allegation that the continuance granted was not adequate, the trial court did not abuse its discretion in granting Smith a three-day continuance for a hearing on the TROs. Sanders v. Point After, Inc., 2 Haw. App. 65, 70, 626 P.2d 193, 197 (App. 1981); see also Sapp v. Wong, 62 Haw. 34, 41, 609 P.2d 137, 142 (1980); (2) the district court correctly applied a clear and convincing standard of proof in granting the injunctions. Hawai'i Revised Statutes (HRS) § 604-10.5 (Supp. 1999). The district court was not required to utilize an objective reasonable person standard as the court issued the injunctions based upon the definition of harassment in HRS § 604-10.5(a)(1) and not based upon the definition of harassment in HRS § 604-10.5(a)(2); (3) Luat v. Cacho, 92 Hawai'i 330, 991 P.2d 840 (App. 1999), is inapplicable in the present case. The language of the notices of the TROs did not deny Smith a full evidentiary hearing because Smith was aware that she could present witnesses at the hearing; (4) the district court did not err when it did not require evidence that the misconduct be systematic or continuous in order to constitute harassment. It is not required to prove systematic or continuous misconduct under HRS § 604-10.5(1) in order to prove harassment by threat of imminent physical harm, bodily injury, or assault; (5) the district court did not deprive Smith of her "due process

constitutional first, fourth, fifth and fourteenth amendment rights” because (a) there is no evidence in the record that supports her allegation that the district court violated her constitutional rights by granting the injunctions, See Hawai‘i Rules of Appellate Procedure (HRAP) Rule 10(b)(2) (providing that “[i]f the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion.”); see also Bettencourt v. Bettencourt, 80 Hawai‘i 225, 230-31, 909 P.2d 553, 558-59 (1995) (stating that the court could not review alleged error because the appellant failed to provide a transcript of the proceeding below), (b) her allegation that the district court denied her petition for a protective injunction is meritless because there is no evidence in the record that shows Smith filed such petition, and (c) she was provided a full evidentiary hearing, See Luat 92 Hawai‘i at 345-46, 991 P.2d at 855-56; and (d) the district court did not abuse its discretion by denying Smith’s motion for reconsideration because the district court was not provided with any basis to grant a motion for reconsideration. Therefore,

***** NOT FOR PUBLICATION *****

IT IS HEREBY ORDERED that the district court's denial of Smith's motion for reconsideration filed February 7, 2001 is affirmed.

DATED: Honolulu, Hawai'i, July 22, 2004.

On the briefs:

Gwendolyn Smith,
defendant-appellant,
pro se

Leroy R. Zook and
Sandra L. Zook,
petitioners-appellees,
pro ses