

IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA

APPELLATE JURISDICTION

CASE NUMBER:	21/SUV/0001
[ORIGINAL CASE NUMBER:	DVRO No. 63 OF 2020
BETWEEN:	RAVIN
AND:	GIRDHAR
Appearances:	<i>Mr. S. Nandan for the Appellant. Respondent in person.</i>
Date/Place of Judgment:	<i>Friday 16 August 2024 at Suva.</i>
Judgment of:	<i>Hon. Madam Justice Anjala Wati</i>
Category:	<i>All identifying information in this ruling have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any persons is purely coincidental.</i>
Anonymized Case Citation:	RAVIN v GIRDHAR – Fiji Family High Court Case number: 21SUV0001

JUDGMENT

Catchwords:

FAMILY LAW - DOMESTIC VIOLENCE RESTRAINING ORDER – APPEAL - *whether the evidence established violence against the person accused – since the evidence did not establish violence, an order against the person alleged not justified.*

Cause and Background

1. The appellant appeals against the decision of the Resident Magistrate in refusing to grant final domestic violence restraining order against the respondent and for discharging the interim standard non-molestation orders against him which were granted earlier in the proceedings without a hearing.
2. The parties had been in a de-facto relationship for over 3 decades. In early 2020, the appellant filed an application for domestic violence restraining order against the respondent.
3. The basis of the application was that:-

(1) In early March 2020, at night, the respondent asked her for money to pay for the mortgage payment. She said that she refused. He then started shouting at her. He became aggressive. He swore at her. The next morning, he again started yelling, swearing and threatening her. He called her children who live abroad and told them to ask her to vacate the house.

(2) He has been physically abusing and threatening her. This is witnessed by her house girl as well.

(3) In late 2019, he physically abused her by dragging her down the stairs, pushing her and pressing her neck. She says that she sustained a lot of bruises and marks.

(4) He had been abusing her a lot of times in the past 2 years since he went into another relationship.

4. In Section E of the application, to the question on “*why do you believe that domestic violence is likely to occur again or a threat is likely to be carried out?*”, she answered that “*the respondent is threatening to vacate me out of our jointly owned property which I have possession of and wants to bring his other de-facto partner to live there with him. He has told my children that he wants me to move out. It is likely that he will use force to vacate me and even abuse me as he has done in past.*”

5. The respondent filed an affidavit in response to the application. He deposed that he is in another relationship now. The house that the appellant lives in, is a substantial structure built and currently paid for by him. The house has substantial mortgage which he is paying.
6. He deposed that he tried to discuss with her the fact that it was best to rent the property out because of substantial mortgage repayments. The house, according to the respondent, is too big for one person to reside in.
7. When he tried to discuss this matter with the appellant, she started to fight and argue with him. The respondent says that the appellant's anger is not because of anything else but because she is not able to accept that he has started living in another relationship.
8. The respondent says that he no longer wishes to reside with the appellant. Their relationship is over. In that situation, there is no basis and necessity for him to have any contact or proximity with the appellant.
9. The respondent deposed that he gave the appellant one option to go and stay with their adult children abroad. There is a 4 bedroom house which is jointly owned by both of them. She could go and live there.
10. The respondent says that the appellant has conveniently used the DVRO to have physical occupation of the house and to evict him but she has not indicated how she will manage to meet the mortgage debt repayment. If the mortgage repayments are not made in a timely manner, they could lose the property and they need to resolve that as soon as possible. The respondent said that he suggested renting the property or ultimately selling the same.
11. The respondent says that the appellant has an alternative place of residence and that is the option that he wanted to discuss with her. He denies threatening or assaulting the appellant at any time of their relationship or even when it ended.

The Court's Findings

12. The court found that the appellant had made allegations of threats, yelling and physical/verbal abuse by the respondent. She showed certain photographs to the court claiming that the respondent had inflicted the injuries shown in the pictures.

13. The court found that none of the photos showed her face or clearly identified her. There was also no dates on the photos to timeline it with the allegations. The court found the photographs unreliable, due to lack of identification to the appellant.
14. The court stated that the photos would have been of assistance if it identified the appellant. It also found that the injuries and bruises could have been supported by medical evidence. Even a police report would have assisted the allegations.
15. The court also reflected on the appellant's cross -examination evidence where she stated that she felt bad about the respondent's new relationship. The court said that she expressed mixed emotions for the respondent. The court noted from her evidence that she invited him for tea even while she feared for her life. The court remarked that she opened the doors for the respondent and said that "*if he wants to come he can come*".
16. From the evidence, the court found that the allegations of violence was made because of the appellant's emotional status of losing the respondent and not because any form of violence was inflicted by him. The court did not find any domestic violence established on the evidence.

The Appeal

17. The appellant has raised 6 grounds of appeal. It is contended that the court below erred in law and in fact in:-
 - (1) *Dismissing the application for domestic violence restraining order without making any findings of facts on whether the respondent acted violently or threatened the appellant.*
 - (2) *Failing to consider the appellant's evidence given by affidavit and orally in support of her application for domestic violence restraining orders.*
 - (3) *Failing to properly evaluate the affidavit and oral evidence of the appellant in particular the evidence on both the history of violence and the threat by the husband for her to relocate abroad.*

(4) Coming to a conclusion that, in the circumstances of the case, there was no need for s.27 standard non-molestation orders when there was sufficient evidence before the court that the appellant had been physically assaulted, threatened, abused and harassed by the respondent and there had been history of violence by the respondent towards the appellant.

(5) Holding the view that the parties were knowledgeable enough to sort things out reasonably and issues between them could be resolved with civility and should issues remain the appellant should seek assistance of the court.

(6) Not considering that the onus and burden of proof had been met by the appellant in her application.

Law and Analysis

18. The issue that arises from the appeal is whether the evidence of the parties established that there was domestic violence perpetrated onto the appellant by the respondent.
19. The respondent had denied all allegations of violence. The court below had to assess which party's evidence was to be given weight. Simply put, the issue was to be resolved on credibility of the parties.
20. The appellant gave evidence of the respondent having history of violence. Her application states that from late 2019 the respondent had been very violent towards her.
21. The application was heard in 2021. The respondent had entered into a new relationship from 4 years before that time. He has children out of that relationship.
22. It is therefore indisputable that since 2017 the respondent is in another relationship. If the applicant was so badly injured and mentally tortured by the actions of the respondent, who was no longer her partner, it would be more likely than not that she would have reported the violence to the police and sought medical help. She did not. This inaction on her part casts a lot of doubt on her allegations.
23. She showed pictures to the court of the physical injuries she sustained but those pictures were rejected by the court as it did not have any identification. It also lacked details on the

time it was taken. I find that the court had properly rejected those pictures as establishing violence on her.

24. The concern is why the appellant did not seek medical attention when she sustained such severe bruises and injuries. No doubt she would be in extreme pain and agony. I do not overlook that the appellant had said that the respondent had dragged her down the stairs. The respondent gave evidence that there are 24-25 steps. In that case the injury to the appellant would be severe to seek medical help. At least for her own safety, she should have sought medical help, even if she did not want to report the matter to the police.
25. The respondent gave evidence that it was the appellant who had history of violence. She was the one who caused him immense mental and physical disturbance both in Fiji and when they had gone abroad.
26. The respondent's evidence that the appellant is the person who inflicted abuse was supported by the appellant's own witness. The appellant in her application had said that her domestic help had witnessed all the abuse and threatening.
27. She produced the domestic worker to give evidence. The worker testified that she had worked at their place for 3 months. She said that it was the wife who said things to the husband. She did not see any assault or violence. There were verbal arguments and the respondent was calm. She never saw the respondent angry. The appellant was the one who would shout. She was loud. The respondent was calm and told her to talk calmly. He would ask her to sit down and talk.
28. The worker further testified that the appellant did not like the respondent living at another place. She said that when the respondent came home for lunch the appellant would swear at him. The respondent would leave his food and go.
29. The domestic worker said that she would ask the appellant not to say anything whilst he is eating. She could say it after he has eaten. The appellant then shouted at her too. She says she left work after that. The appellant had accused her of causing fights amongst them. The worker said that the appellant remarked that she does not care if he eats or not.
30. Even the appellant's own witness testified that she was the one who was violent and not the respondent. The appellant's evidence was discredited by her own witness.

31. Following from the domestic worker's evidence, I find that if the appellant is making such serious allegations against the respondent, she has to establish it. Domestic Violence Act is for the safety and protection of parties. It is not for one party to abuse it against the other. Clearly the respondent's version is supported by the domestic worker. It was open to the court below to reject the evidence of the appellant.
32. If the appellant had other domestic workers to establish that the respondent was violent, she could have produced them to testify. She could have also produced her workers or someone else who could establish that they saw physical injuries on her. None of the allegations or injuries could be established.
33. What concerned the court below is that the appellant continued to invite the respondent to have tea and dinner at her place. Her actions did not support her claim that the respondent was a violent man. It is open to the court below to determine the issue on evidence and conduct of the parties.
34. The appellant continued to have social time like having tea and meals with the respondent. He was already in another relationship. If the respondent has tortured her mentally and physically, it is inconceivable that she would continue to associate with him. The appellant's conduct does not support her claim that the respondent is a violent and abusive man.
35. I note from the trial records that the appellant had also testified that she is hurt when he does not eat food at her home. She said that she would love to have dinner with him. According to her, if he wanted, he could go back. This evidence does not correlate to her allegation that the respondent is a violent man. Knowing that the respondent has moved on, she would not want to deal with a violent man.
36. The court's assessment was correct that her disturbance is the respondent parting from her and not the violence. I share the same sentiments. She is abusing the Domestic Violence Act to punish the respondent for leaving the relationship. I find this very unfair on the respondent.
37. Following from its findings that the appellant was aggrieved at the relationship coming to an end and thus her allegations of violence against the respondent, the court remarked that the parties should resolve the issue between them with civility. That is the advice that was

appropriate. Such remarks and guidance are not unwarranted when a presiding officer is able to sense the root cause of the application for domestic violence restraining order. One must not forget that the court was dealing with two persons who had lived as husband and wife for decades. It is expected that the trial courts will attempt to bring peace and harmony into a relationship whether it exists or has ended. I am surprised that such guidance from the court is treated as an error on its part.

38. The respondent admitted that he had a discussion with the appellant regarding the payment of the mortgage and he suggested that the property be rented or sold. The appellant continues to occupy a massive house. It is the respondent who is paying the mortgage of the house. The appellant does not contribute to that.
39. Given the financial burden, the respondent was entitled to discuss the issue with the appellant. He is within the rights as one of the owners paying mortgage to make suggestions to the appellant. If the appellant does not like the conversation or is too sensitive to connote it to violence, she should appoint someone to deal with these matters on her behalf. The financial issue that the parties are facing is a real life issue. It needs to be dealt with. The appellant cannot run away from dealing with the issue or preclude the respondent from doing it harmoniously. I do not find anything untoward about the respondent's conduct in doing so.
40. I am of the view and finding that the evidence before the trial court established the respondent as a more credible witness. The appellant could not establish any violence against the respondent and the court was correct in dismissing her application.

Final Orders

41. In the final analysis, I dismiss the appeal and order each party to bear their own costs of the appeal proceeding.

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Hon. Madam Justice Anjala Wati

16.08.2024

- To:***
- 1. Reddy and Nandan Lawyers for the Appellant.***
 - 2. Respondent in Person***
 - 3. File: Family Appeal Case Number: 01 of 2021.***