

**IN THE HOOPA VALLEY TRIBAL COURT OF APPEALS
HOOPA VALLEY TRIBE
HOOPA, CALIFORNIA**

Thomas Joseph II, *Petitioner and Appellee*,
v.
Jolanda E. Ingram-Marshall, *Respondent and Appellant*.

No. PO-09-019/A-09-003 (February 09, 2010)

SYLLABUS*

Trial court issued restraining order against terminated tribal employee's former supervisor. Court of Appeals holds (1) evidence in record does not support finding that harassment as defined by the tribal code had occurred or was likely to occur; (2) mere harm to a person's character or credibility does not constitute a basis for a restraining order under tribal law; and (3) tribal personnel policies and grievance procedures, not court-ordered restraining orders, are proper forum for resolving employee-supervisor conflicts. Trial court order vacated and original action ordered dismissed.

Before: Matthew L.M. Fletcher, Chief Judge; Michelle Demmert, Judge; Eric Nielsen, Judge.

Appearances: Thomas Joseph II, *pro se*; Jolanda E. Ingram-Marshall, *pro se*.

OPINION

Fletcher, C.J.:

We vacate the July 13, 2009 restraining order, and the August 12, 2009 order modifying the restraining order, against Jolanda E. Ingram-Marshall. We remand this matter to the Hoopa Valley trial court with orders to dismiss the action with prejudice.

The Court of Appeals may forego oral argument if all three Appellate Judges agree "the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument," or if the appeal is determined to be frivolous or moot. Hoopa Valley Tribal Code § 2.6.20. All three Judges in this case agreed that

* The syllabus is not a part of the Court's Opinion. The syllabus is a summary of the Opinion prepared by the publishers of this reporter only for the convenience of the reader. Therefore, the syllabus should not be cited in whole or part as legal authority. Only the Opinion, which follows the syllabus, may be cited as legal authority.

the decisional process would not be aided by oral argument and therefore chose to not hear oral argument in this appeal.

I. Procedural History

On July 13, 2009, the Hoopa Valley Tribal Court (Richard C. Blake, Chief Judge) issued a restraining order on behalf of Thomas Joseph II against Jolanda E. Ingram-Marshall. The order stated in relevant part:

[Ingram-Marshall is] hereby restrained from engaging in, committing, or performing directly or indirectly, by any means whatsoever, any of the following acts:

**Being within 50 feet of plaintiffs, their family members and/or
Threatening, assaulting or threatening to assault or physically harm
plaintiffs and their family members, and/or harassing plaintiff(s)
through verbal abuse, slander, or other means;
Telephoning or entering plaintiffs' homes or place of employment;
Engaging or persuading others to perform the same type of acts;
Failure to obey this restraining order will result in matter being
referred to Humboldt County DA for criminal prosecution for
violation of court order.**

Restraining Order/Order Following Hearing (July 13, 2009), at 3 (emphasis in original).

On August 12, 2009, Chief Judge Blake modified the restraining order, so as to not “restrict[Ingram-Marshall] from the Hoopa Valley Tribal Offices since she conducts regular business in that facility.” *Amended (8/12/09) Restraining Order/Order Following Hearing* (August 12, 2009), at 1.

Ingram-Marshall filed a notice of appeal on July 28, 2009 challenging the restraining order, and asserting that Chief Judge Blake should have recused himself from the matter.

We vacate the restraining order and dismiss the action.

II. Standard of Review

Section 2.6.18 of the Hoopa Valley Tribal Code provides:

(a) De Novo review

Questions of law will be decided with no deference granted to the tribal court decision.

(b) Clear Error

The appellate court must decide any questions of fact based on a clear error standard. The appellate court may only reverse the lower court decision on a question of fact where the record shows that the lower court decision on the factual question is clearly erroneous.

(c) Abuse of discretion

Where the lower court exercised its grant of discretion on an issue, the appellate court may only reverse the lower court if it finds the decision was arbitrary, capricious, or not in accordance with the law, or otherwise an abuse of discretion.

We apply a *de novo* standard of review in reviewing the trial court's conclusions of law in relation to the interpretation of the Hoopa Valley Tribe's Protective Order Code. *Cf. Slater v. Hoopa Valley Tribe*, 6 NICS App. 59, 62 (Hoopa Valley Tribal Court of Appeals 2001) (applying *de novo* standard of review in "legal determinations").

III. The Restraining Order

The Hoopa Valley Tribe's Protective Order Code provides in relevant part, "The Hoopa Valley Tribal Court has the authority to issue *civil protective orders* in all cases of *harassment*, violence, threats of violence, or elder abuse situations, as defined within this code that arise within the exterior boundaries of the Hoopa Valley Reservation." 14D Hoopa Valley Tribal Code § 14D.1.06 (2007) (emphasis added). "Harassment" is defined in that code as "a series of acts over any period of time directed as a specific person that would cause, or has caused, a reasonable person to be seriously alarmed, or annoyed and that serves no legitimate purpose." § 14D.1.08 (defining "Harassment"). Upon the filing of a petition, the petitioner must prove by a preponderance of the evidence that the respondent "represents a threat of harm or harassment to the petitioner." § 14D.2.05(d). Finally, the trial court must make specific findings of fact before issuing a protective order. § 14D.2.05(e)(4).

Our review of the trial court's decision to issue a restraining order is guided by the standards of review provided by tribal law. We apply a *de novo* standard of review to the trial court's conclusions of law. *See* Hoopa Valley Tribal Code § 2.6.18(a) ("Questions of law will be decided with no deference granted to the tribal court decision."). We need not review the trial court's decisions in this matter under the abuse of discretion standard normally applicable to the

issuance of restraining orders or other injunctive relief, *see* Hoopa Valley Tribal Code § 2.6.18(c), because we find that the trial court made fundamental errors in its conclusions of law.

In issuing the restraining order, Chief Judge Blake made the following findings:

The court finds good cause to issue the protection order believing Mr. Joseph is entitled to live peacefully without the fear of continued harassment. He provided witnesses that the court found to be creditable [*sic*] and the court also believes that without the order of protection this matter may continue to escalate within the community and potential to damage the plaintiff or his character is likely.

Restraining Order/Order Following Hearing (July 13, 2009), at 2. Chief Judge Blake's order referenced the subject of the restraining order, Ingram-Marshall, in two places. First, he wrote: "The youth testified and the guardian of the youth, testified that Mrs. Marshall was not a friendly person and they believed that she did not act professionally while in the presence of the children." *Id.* Second, he noted: "Mr. Joseph believes that the actions of the defendant has resulted in not only termination from his employment but also believes that she continues to push forward on ruining his credibility in the community, he feels without the issuance of this protection order he would be at risk." *Id.* Chief Judge Blake did not expressly state that these last two comments were his "findings," but for the sake of argument we will assume they are findings.

The evidence and Chief Judge Blake's findings do not support the issuance of a restraining order against Ingram-Marshall. Chief Judge Blake made no finding that Ingram-Marshall was violent, or threatened violence, domestic violence, or elder abuse. *See* § 14D.1.06. Although there are references to "rude" behavior by Ingram-Marshall to clients, *e.g.*, Recording of July 9, 2009 Hearing at 3:49 – 3:51 (testimony of witness alleging "rude behavior" and "rudeness" toward clients), there is no evidence of physically aggressive behavior by the appellant. Chief Judge Blake's findings also make no reference to "harassment" or any of the other instances that would justify the issuance of a protective order under the statute. It appears that the key finding of the order relates to the potential of Ingram-Marshall to injure the "character" (or "credibility") of Joseph. Most of the testimony in the July 9 hearing relates to Ingram-Marshall's working relationship with Joseph (which has been terminated) and with her clients (which is unaffected by the restraining order). We hold that Chief Judge Blake's order is deficient under § 14D.2.05(e)(4), and must be vacated.¹ We write further to clarify why the lower court's order should not only be vacated, but that the entire matter must be dismissed.

¹ We note further that the appropriate standard a petitioner for a protective order must meet is stated in Section 14D.2.05(d) – "[T]he burden of proof under the code rests with the Petitioner, who must prove by a preponderance of the evidence that the Respondent represents a threat of harm or harassment to the petitioner." The trial court apparently found "good cause to issue the protection order...." *Restraining Order/Order Following Hearing* (July 13, 2009), at 2. Whether the trial court finds "good cause" to issue a protection order is irrelevant under the statute.

We hold that the issuance of protective orders under Title 14D cannot be valid based on a mere finding that a victim's "character" or "credibility" would be harmed. It would appear that Chief Judge Blake's order relied upon the definition of "harassment" provided in the statute. Indeed, absent a finding of physical violence or the threat of physical violence, the only plausible justification for the issuance of the restraining order in this matter is due to "harassment" perpetrated by Ingram-Marshall. The statute defines "harassment" to include acts that would cause a "reasonable person to be seriously alarmed, or annoyed and that serves no legitimate purpose." § 14D.1.08. Thus, the code requires a trial court finding, with supporting evidence on the record, that the harassment in question involves something more than an injury to a person's "character" or "credibility."

We interpret the statute in light of the purposes for the statute as articulated by the Hoopa Valley Tribal Council, as well as the structure of the statute. The tribal council's stated purpose for enacting the statute is as follows, in relevant part:

The purposes of this Code are to:

(1) insure the safety and protection of all persons within the community from *violence, threats of violence, or harassment, including domestic violence*;

(3) to insure that community members are able to seek protection from their community when necessary *** [.]

§ 14D.1.03 (emphasis added). The overarching purpose of the Protective Order Code is to protect community members from physical violence or the threat of physical violence. Further, the Code references "violence" repeatedly. *E.g.*, §§ 14D.1.08 (providing definitions of "causing physical harm or bodily injury", "coerce," "stalking," and "violence"); 14D.2.04 ("immediate danger of violence or some other physical, emotional, or financial harm"); 14D.2.12 ("acts of violence, harassment, threatening behavior, exploitation, or elder abuse"); 14D.4.04(1) ("committing or threatening to commit acts of violence against the Petitioner"); 14D.4.04(6) (referencing gun ownership and possession); 14D.4.04(8) (referencing "safety of the Petitioner"); 14D.4.05 ("violent, threatening, or harassing"); Chapter 5 ("Domestic Violence Protection Orders"). In short, the content, structure, and purpose of the Protective Order Code are to prevent physical violence and the threat of physical violence, not mere attacks on "character" and "credibility." The Hoopa Protective Order Code was not designed—and cannot be interpreted—to serve as a general code of conduct for Hoopa community members. We hold, further, as a matter of law that, under the Protective Order Code, mere attacks on a person's "credibility" and "character" are insufficient without more to justify a finding that there is a threat of future acts that might come under the rubric of the Code.

The language used by the tribal council in defining "harassment" cements this conclusion. "Harassment" includes, according to the statute, acts that would cause a reasonable

person to be “annoyed and *that serves no legitimate purpose.*” § 14D.1.08 (emphasis added). Once again assuming for the sake of argument, Chief Judge Blake could have found that Ingram-Marshall’s behavior was annoying as to constitute “harassment.” *See Restraining Order/Order Following Hearing* (July 13, 2009), at 2 (“This order of protection does not allow for the harassment of the defendant in any manner.”). Whether Ingram-Marshall’s behavior served a legitimate purpose goes directly to her duties as an employer. All of Ingram-Marshall’s alleged bad behavior involved her work as Joseph’s supervisor. As such, the proper forum for the allegations was not in a tribal court personal protection order proceeding, but through normal employment channels with Ingram-Marshall’s employer.

In sum, we conclude that the trial court’s conclusions of law were incorrect, and require the restraining order be vacated. Ms. Ingram-Marshall’s other arguments on appeal are moot and we decline to address them at this point.²

² Ingram-Marshall’s allegation that Chief Judge Blake should have recused himself from this matter on the basis that she was a candidate for Chief Judge in opposition to Chief Judge Blake, *see* Motion to Disqualify Judge (July 9, 2009), while moot, requires comment. While few, if any tribal courts, have been confronted with whether elected judges ought to recuse themselves from cases involving political opponents, state courts have frequently dealt with the issue, with varying outcomes. *Compare Seeco, Inc. v. Hales*, 969 S.W.2d 193, 197 (Ark. 1998) (“In fact, ordinarily, it is incumbent upon a sitting judge to recuse in cases where a political opponent is appearing as counsel.”), *with Grievance Administrator v. Feiger*, 719 N.W.2d 123, 149 (Mich. 2006) (“[A] judge is not automatically disqualified from hearing a case involving those who have been either the judge’s campaign supporters or opponents.”). In short, whether or not a judge should recuse in the circumstance where a political opponent appears as counsel or as a party must be analyzed based on the facts of the matter, and we have few facts to assess in this case, given the lack of sworn testimony on the matter. However, Chief Judge Blake’s conduct during the hearing, coupled with disregard for the statutory requirements for issuing a restraining order, suggest significant bias against Ingram-Marshall that *could be* traced to her status as a former political opponent. *See generally* HOOPA VALLEY TRIBAL CODE § 1.2.09 (requiring disqualification where “a reasonable person would believe that the Judge could not be impartial”). Our decision to vacate the restraining order and dismiss this action moots the question.