

SUPREME COURT OF ALASKA

Cooper v. Cooper

144 P.3d 451 (Alaska 2006) · No. Nos. S-11566, S-11649 · Decided September 29, 2006

SUMMARY

The Alaska Supreme Court reviewed consolidated appeals involving the denial of a domestic violence protective order and the issuance of a mutual restraining order in a divorce proceeding. The court held that merely being in the same public place or appearing within a protected person's sight, without communicative conduct, does not constitute contacting or violating a protective order under the applicable statutes. It affirmed the denial of the protective order and reversed the mutual restraining order for lack of an independent factual basis.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Matthews, Justice; Bryner, Chief Justice; Eastaugh, Justice; Fabe, Justice
JURISDICTION	Alaska
DECIDED	September 29, 2006
DOCKET	Nos. S-11566, S-11649
DISPOSITION	other
PROCEDURAL POSTURE	Consolidated appeals from the denial of a petition for a long-term domestic-violence protective order and the grant of a mutual restraining order in a divorce proceeding.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo under the independent-judgment standard; factual findings are reviewed for clear error; and decisions denying a protective order or granting a mutual restraining order are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential.
PARTIES	Cynthia M. Cooper, n/k/a Cynthia M. Hora v. Daniel R. Cooper, Jr.

TOPICS

- domestic violence
- statutory interpretation
- appellate procedure
- divorce
- equitable relief

PRACTICE AREAS

family law

domestic violence

statutory interpretation

appellate procedure

equitable remedies

QUESTIONS PRESENTED

1. Whether the appeal from denial of the long-term domestic-violence protective order was moot.
2. Whether Cooper's alleged conduct established stalking sufficient to support issuance of a long-term protective order.
3. Whether merely being in the protected person's presence or sight, without communicative conduct, constitutes contacting under AS 18.66.100(c)(2) and a crime under AS 11.56.740(a)(1).
4. Whether the superior court applied the correct mental-state requirement for violating a protective order.
5. Whether the superior court had an independent factual and equitable basis to issue a mutual restraining order in the divorce proceeding.

HOLDINGS

1. The appeal was not moot because, if Hora prevailed, she might still be entitled to a protective order containing provisions similar to those in the expired order.
2. The superior court did not clearly err in finding that the evidence failed to establish the placing-in-fear element of stalking.
3. Merely appearing within the sight of a protected person or being in the same public place, without more, is not contacting within the meaning of AS 18.66.100(c)(2). Contacting ordinarily requires physical touching or direct or indirect communication.
4. AS 11.56.740(a)(1) requires knowing conduct, knowledge of the protective order, and reckless disregard that the conduct violates or would violate the order; it does not require that the defendant act intentionally.
5. The crime of violating a protective order under AS 11.56.740(a)(1) requires violation of a provision listed in AS 18.66.100(c)(1)-(7); violation of an additional-relief provision under AS 18.66.100(c)(16), such as a prohibition on being in the protected person's physical presence, may be enforceable by contempt or other means but is not itself the crime defined by AS 11.56.740(a)(1).
6. A court may not issue a mutual restraining order in a divorce action based solely on the parties' presence in the action, generalized animosity, distrust, or expressions of safety concerns; an independent factual basis must support the order against each party.

KEY QUOTATIONS

"Our answer is "no." The crime requires a violation of statutory prohibitions that may be included in a protective order and being in the presence of a protected person is not among them." (at 453)

"Contacting," as a verb, means in common usage physically touching or communicating." (at 458)

"In our view, an expression of concern by the parties is insufficient to establish an independent basis for the order." (at 459)

FACTUAL BACKGROUND

Hora and Cooper were married when Cooper was arrested for assaulting Hora in October 2003. A November 2003 long-term protective order prohibited domestic violence, stalking, harassment, physical presence, contact, and communication with Hora and her children. Hora later alleged that Cooper appeared near her at a shopping mall, made eye contact while driving past her, attended the same bar-convention sessions, and paced her vehicle, but the superior court found that the alleged encounters did not establish stalking or prohibited contacting. In the divorce proceeding, the superior court issued a mutual restraining order based on the parties' expressed safety concerns and general animosity.

PROCEDURAL HISTORY

After Cynthia Hora petitioned for a long-term protective order against Daniel Cooper, the superior court denied the petition following an evidentiary hearing. In the separate divorce proceeding, the superior court entered a mutual restraining order at Cooper's request. Hora appealed both decisions, and the Alaska Supreme Court consolidated the appeals. The Supreme Court affirmed the denial of the protective-order petition, reversed the mutual restraining order, and remanded with directions to vacate that order.

DISPOSITION

other

REMAND INSTRUCTIONS

In No. S-11649, remand with directions to vacate the mutual restraining order. In No. S-11566, affirm the denial of the long-term domestic-violence protective order.

CASES CITED

- Odum v. Univ. of Alaska, Anchorage, 845 P.2d 432, 434 (Alaska 1993)
- Williams v. Williams, 129 P.3d 428, 431 (Alaska 2006)
- State v. Kluti Kaah Native Vill. of Copper Ctr., 831 P.2d 1270, 1272 n.4 (Alaska 1992)
- Kenison v. State, 107 P.3d 335, 342-44 (Alaska App. 2005)
- Petersen v. State, 930 P.2d 414, 432 (Alaska App. 1996)
- State v. Strane, 61 P.3d 1284, 1286 (Alaska 2003)
- State v. Andrews, 707 P.2d 900, 907 (Alaska App. 1985), adopted, 723 P.2d 85 (Alaska 1986)
- Siggelkow v. State, 731 P.2d 57, 61 (Alaska 1987)