

No. 04-FM-843

DISTRICT OF COLUMBIA COURT OF APPEALS

MARY HOOKER ROBINSON,

Appellant,

v.

GREGORY D. ROBINSON, SR.,

Appellee.

Appeal from the Superior Court of the District of Columbia,
Family Division (No. IF-1100-03), The Honorable Jeanette J. Clark

REPLY BRIEF OF APPELLANT

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INTRODUCTION

In this case, the appellant, Mary Hooker Robinson, sought and obtained a civil protection order against the appellee, her husband Gregory D. Robinson Sr., to safeguard her from Mr. Robinson's threats and abuse. As the superior court found, Mr. Robinson violated that civil protection order. App. 238-39.¹ The court concluded that Mr. Robinson's continued abuse had put Mrs. Robinson in "fear of her safety" (App. 237) and that the parties' proximity "could result in some very tragic violence" (App. 239). Accordingly, the court ordered Mr. Robinson to vacate the marital home at 1224 Emerson St. App. 240, 252. Despite these findings, however, the court permitted Mr. Robinson to move into the jointly titled house next door at 1228 Emerson St., only ten to twelve feet away. App. 240, 252. The only reason the court gave for that decision was that "[t]he two houses are in the names of both individuals. . . . 1228 Emerson St. [is Mr. Robinson's] property, until the Divorce Court divides up the property He should have access to that property." App. 239-40. The court's decision to permit Mr. Robinson to move into 1228 Emerson St. merely because the property was jointly titled—despite Mr. Robinson's prior violation of the civil protection order and the acknowledged threat that his proximity posed to Mrs. Robinson—was legal error and constituted an abuse of discretion.

Mr. Robinson's submission provides no reason to question that conclusion. Mr. Robinson concedes the accuracy of Mrs. Robinson's statement of the facts (Br. 4); he does not dispute that his harassment and abuse of Mrs. Robinson violated the existing civil protection order, that Mrs. Robinson's safety required the parties' separation, and that the superior court was justified in ordering him to vacate the marital home. Nor does he dispute that, in ruling on

¹ Portions of the record included in the Appendix to Brief of Appellant are cited as "App.

Mrs. Robinson's request that Mr. Robinson be ordered to stay away from 1228 Emerson St., the superior court was required to consider *all* the facts and circumstances, and that treating Mr. Robinson's property interest in 1228 Emerson St. as the dispositive factor would constitute an abuse of discretion. Rather, he merely asserts in a conclusory fashion that the court did not abuse its discretion and suggests that the appeal may be moot. He is wrong on both counts.

ARGUMENT

I. BY PERMITTING MR. ROBINSON TO MOVE INTO 1228 EMERSON ST. AND FAILING TO ORDER HIM TO STAY A MEANINGFUL DISTANCE AWAY FROM MRS. ROBINSON AND HER HOME, THE SUPERIOR COURT ABUSED ITS DISCRETION.

As Mr. Robinson acknowledges (Br. 13), this Court has repeatedly held that, in deciding whether to grant a petitioner relief under the Intrafamily Offenses Act, the superior court must consider the "entire mosaic" of facts and circumstances. *Cruz-Foster v. Foster*, 597 A.2d 927, 930 (D.C. 1991) (internal quotation marks and citation omitted). Focusing on only one factor to the exclusion of others that might bear on the petitioner's entitlement to relief is legal error and an abuse of discretion by definition. *See id.* at 930, 932; *Maldonado v. Maldonado*, 631 A.2d 40, 42 (D.C. 1993).

Here, the *only* reason that the superior court gave for its decision to permit Mr. Robinson to move into 1228 Emerson St. was that the house was "in the names of both individuals" and was therefore Mr. Robinson's "property, until the Divorce Court divides up the property He should have access to that property. . . . If he so chooses to live in [1228 Emerson St.] until [the] divorce is final, then he certainly has a right to do that." App. 239-40.

Although Mr. Robinson now contends (Br. 11) that the superior court weighed "numerous relevant factors" in deciding whether to permit him to move into 1228 Emerson St., the record refutes that claim. While the superior court did consider Mr. Robinson's history of

abusing Mrs. Robinson and the patent risk to her safety in ordering Mr. Robinson to vacate 1224 Emerson St., the court failed to take those factors into account in deciding whether Mr. Robinson should be allowed to move into the house next door, instead concluding that because 1228 Emerson St. was in part Mr. Robinson's "property," he had "a right" to live there. App. 240.

In particular, the court never considered the undisputed fact that 1228 Emerson St. is only ten to twelve feet away from 1224 Emerson St. and that permitting Mr. Robinson to live there would force Mrs. Robinson routinely to encounter the person whose abuse she feared, and who had demonstrated that he was unwilling to abide by the terms of the civil protection order.² Nor did the court consider any of the other factors that should have informed its analysis, including Mrs. Robinson's physical and emotional vulnerability, Mr. Robinson's persistent and long-term harassment of Mrs. Robinson, his refusal to comply with the existing civil protection order, his substance abuse, and the possibility of separation violence. *See* Br. of Appellant 28-35. In short, the court permitted Mr. Robinson's supposed property rights to trump the obvious risk of renewed harassment and abuse created by permitting him to live mere feet away from Mrs. Robinson. That decision to treat Mr. Robinson's joint title to 1228 Emerson St. as the dispositive factor in ruling on Mrs. Robinson's request for relief was legal error and requires reversal. *See Cruz-Foster*, 597 A.2d at 930, 932; *Maldonado*, 631 A.2d at 42.

Even if the superior court had expressly taken into account factors other than Mr. Robinson's property rights, however, its decision would still have been an abuse of discretion. Although the superior court has the discretion to choose among permissible remedies, a

² This omission is particularly puzzling in view of the superior court's earlier conclusion that Mrs. Robinson was entitled to a civil protection order requiring Mr. Robinson to stay 50 feet away from her and her home (App. 110-11, 114)—which would necessarily require him to stay away from 1228 Emerson St. The court failed even to acknowledge that its order permitting Mr. Robinson to move into 1228 Emerson St. vitiated the earlier stay-away order.

particular remedy is permissible only if it has a reasoned basis in the specific facts of the case. *See, e.g., In re A.S.C.*, 671 A.2d 942, 947 (D.C. 1996) (court's decision must be "supported by 'substantial reasoning' based upon a factual foundation in the record") (citation omitted). Indeed, the facts of a particular case may foreclose certain options otherwise available to the court, so that only one outcome is a permissible exercise of the court's discretion. *See Johnson v. United States*, 398 A.2d 354, 365 (D.C. 1979).

In this case, the facts that should have been relevant to the superior court's decision are undisputed: Mr. Robinson had repeatedly threatened to hurt Mrs. Robinson (App. 41-42, 59, 70, 82, 173, 239); he had locked her out of the house and barricaded the door (App. 38-45, 59, 126-29); he had stolen and hidden her property, including her telephone and computer, in order to harass her (App. 132-38, 238-39); he regularly abused drugs and alcohol to the point that his judgment was impaired (App. 237-38); he had put Mrs. Robinson in fear of her safety (App. 237); and he had already violated the existing civil protection order (App. 238-39). Indeed, the superior court recognized that it was necessary to put distance between the parties to avoid the possibility of "some very tragic violence." App. 239. Under these circumstances, the superior court's decision to permit Mr. Robinson to move into 1228 Emerson St., only ten to twelve feet away from Mrs. Robinson's home, was unreasonable and was not a permissible exercise of discretion.

Mr. Robinson contends (Br. 14) that the superior court's order was justified because barring him from 1228 Emerson St. would have left him "homeless." But his alleged "homelessness" is mere hyperbole—as he acknowledged to the superior court, he had been staying in motels, not on the street, while the earlier court order directing him to stay 50 feet away from Mrs. Robinson's home was in place. App. 196. There was no evidence that Mr.

Robinson would not have been able to find another place to live if the stay-away order had been kept in place; and, indeed, the superior court did not make any such finding, or rely on Mr. Robinson's alleged "homelessness," in its findings and conclusions.

In any event, as discussed in Mrs. Robinson's opening brief (Br. 14-17, 20-22, 25-26), the very premise of the Intrafamily Offenses Act is that the offender's property rights cannot outweigh a significant risk of harm to the abused family member. Appellate courts interpreting and applying similar statutes have therefore held that a trial court should not deny a petitioner a vacate and stay away order simply because the abuser has not "found another place to stay A victim of . . . abuse . . . cannot be held hostage to the potential homelessness of her abuser, who created the intolerable situation in the first instance." *V.C. v. H.C.*, 257 A.D.2d 27, 34 (N.Y. App. Div. 1999) (reversing trial court order refusing to order abusive husband to vacate premises).³ Moreover, the obvious risks to the petitioner's safety and emotional well-being created by permitting the offender to live in the marital home also arise when the offender is permitted to live *near* the home; an offender's claim that he cannot find other housing thus cannot justify a court's refusal to grant a comprehensive stay-away order where such an order is otherwise warranted. *Cf. Zappaunbulso v. Zappaunbulso*, 842 A.2d 300, 307 (N.J. Super. Ct. App. Div. 2004) (affirming trial court's order directing abusive ex-husband to vacate the house he had rented in his ex-wife's neighborhood). Whatever the inconvenience to Mr. Robinson of having to find housing other than 1228 Emerson St., it surely cannot outweigh the risk of "tragic violence" that the superior court itself recognized could result from future contact between the

³ As the Appellate Division observed in another case, in rejecting the husband's argument that as joint owner of the marital home, he "has a right to be there and that . . . he has no other place to go," "[the husband's] right to possession is no stronger than [the wife's] and is dependent on his conduct, which has been found to be annoying and molesting in regard to her." *Kilmer v. Kilmer*, 109 A.D.2d 1004, 1004 (N.Y. App. Div. 1985).

parties—contact that was inevitable, given the superior court’s decision to permit Mr. Robinson to move into property just feet away from Mrs. Robinson.⁴

This Court has repeatedly held that the Intrafamily Offenses Act must be “liberally construed in furtherance of its remedial purpose”—to provide effective and comprehensive protection from threats of physical, mental, or emotional abuse by family members. *E.g.*, *Richardson v. Easterling*, No. 04-FM-159, 2005 WL 1653859, at *3 (D.C. July 14, 2005) (reversing and remanding order of superior court (Clark, J.) denying civil protection order in case of alleged emotional abuse) (quoting *Cruz-Foster*, 597 A.2d at 929). The superior court’s decision to permit Mrs. Robinson’s abuser to move into the house next door to her—thereby denying her the safe haven that a civil protection order is intended to provide—contravenes the intent of the Act and constitutes a clear abuse of discretion.

II. THIS APPEAL IS NOT MOOT.

Contrary to Mr. Robinson’s suggestion (Br. 6), this appeal has not been mooted by the parties’ divorce proceedings. On July 19, 2005, the superior court (Robert Morin, J.) granted Mr. Robinson’s request for a divorce from Mrs. Robinson and apportioned the couple’s marital property.⁵ The court ordered that the houses at 1224 Emerson St. and 1228 Emerson St. be sold, with the proceeds of the sale of 1224 Emerson St. to be divided equally and the proceeds of the sale of 1228 Emerson St. to be divided 65% to Mrs. Robinson and 35% to Mr. Robinson. In the alternative, the court permitted Mrs. Robinson, within 30 days of the court’s order, to refinance

⁴ It should be noted that Mr. Robinson was not living in 1224 or 1228 Emerson St. at the time of the superior court’s order; modifying the CPO to require him to stay away from both properties, as Mrs. Robinson requested, thus would merely have maintained the status quo.

⁵ Order, *Robinson v. Robinson*, No. DR-733-04 (D.C. Sup. Ct. July 19, 2005).

the properties and buy out Mr. Robinson's share. The court ordered the parties to list the properties for sale if Mrs. Robinson failed to refinance within 30 days.

The superior court's order in the divorce proceedings does not moot this appeal. For the present, nothing has changed: Mr. Robinson is still living at 1228 Emerson St., next door to Mrs. Robinson's residence at 1224 Emerson St. In any event, even if Mr. Robinson were to move out of 1228 Emerson St., the appeal would not be moot, because the current civil protection order does not require Mr. Robinson to *stay away* from 1228 Emerson St., as Mrs. Robinson requested. Unless and until the civil protection order is modified to require Mr. Robinson to stay away from both 1224 and 1228 Emerson St., Mrs. Robinson will be unable to live and go about her daily business secure from the fear of continued harassment and abuse by Mr. Robinson.⁶ Mrs. Robinson is entitled to a civil protection order that grants her a minimal zone of safety and security by requiring Mr. Robinson to stay a meaningful distance away from her and her home. That is the issue on this appeal, which remains alive notwithstanding the parties' divorce and would remain alive even if Mr. Robinson were to move out of 1228 Emerson St.⁷

⁶ It is, of course, well-established that even if Mr. Robinson were to decide voluntarily to stay away from 1228 Emerson St., that would not moot this appeal, since no court order would prevent him from returning to the vicinity. *See, e.g., Friends of the Earth, Inc. v. Laidlaw Envi'l Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000).

⁷ This Court has recognized, moreover, that mootness doctrine is relaxed in the context of appeals from civil protection orders. *See Cloutterbuck v. Cloutterbuck*, 556 A.2d 1082, 1083 n.1 (D.C. 1989) (holding that this Court would consider an appeal from an expired civil protection order because husband's history of abusing wife, and the one-year duration of CPOs, suggested that the matter was "capable of repetition, yet evading review"). Because the CPO in question has not expired and Mrs. Robinson has not received the comprehensive stay-away order that she sought, this appeal is plainly not moot under any standard. Under *Cloutterbuck*, however, even if the factual circumstances underlying the appeal were to change in a manner that would ordinarily render the appeal moot—if, for instance, the CPO were to expire—this Court would retain the ability to hear the appeal (which Mrs. Robinson acted diligently to expedite) because of the possibility that Mrs. Robinson would need to seek a stay-away order in the future and the inherent difficulty of reviewing such matters promptly.

CONCLUSION

The portion of the superior court's June 3, 2004 order denying Mrs. Robinson's motion for a modification of the civil protection order should be reversed, and the matter should be remanded to the superior court with instructions to modify the civil protection order to include a provision ordering Mr. Robinson to vacate and stay away from 1228 Emerson St.

Respectfully submitted,



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Dated: August 19, 2005

CERTIFICATE OF SERVICE

I hereby certify that, on this 19th day of August, 2005, I caused a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT to be delivered by overnight courier (Federal Express) to:

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