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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

MARISSA T. DELA ROSA, Petitioner, **vs.** **LUCIO SANTOS ALDAN,** Respondent.	**FCD FP CIVIL CASE NO. 24-0010** **ORDER DENYING RESPONDENT'S MOTION TO EXPUNGE RECORDS OF FAMILY PROTECTION ACT AND ORDER OF PROTECTION**

I. INTRODUCTION

THIS MATTER came before the Court for a hearing on Respondent's Motion to Expunge Records of Family Protection Act and Order of Protection ("Respondent's Motion") on September 18, 2024, at 1:30 p.m. in Courtroom 217A, at the Superior Court, Guma' Hustisia, Susupe, Saipan, Commonwealth of the Northern Mariana Islands. Marissa T. Dela Rosa ("Petitioner") appeared and was represented by Jane Mack. Lucio Santos Aldan ("Respondent") appeared and was represented by Stephen Nutting.

Respondent's Motion sought to expunge records of a January 12, 2024 Order of Protection ("Order"). Respondent claimed the Court has inherent authority to expunge such records; and that the Court should do so here to preserve Respondent's ambition to join the United States military. Petitioner argued that even if the Court has inherent authority, it should not expunge the Order so as to preserve the measure of justice it afforded Petitioner. Furthermore, Petitioner argued that expunging the Order would set a dangerous precedent, reducing the efficacy of the Family Protection Act. The Court now **DENIES** Respondent's Motion.

II. BACKGROUND

On January 8, 2024, Petitioner filed a Petition Pursuant to Public Law 12-19 ("Petition"). The Petition stated that the parties began dating in January 2021, starting when they were both minors. Respondent later stated they broke up in April 2022. At the January 12, 2024 hearing, Petitioner stated on record that Respondent choked her "multiple times" and rapidly accelerated his vehicle while Petitioner was only partially within the car. *See* Petition (Jan. 8, 2024).

In August 2023, Respondent moved to Guam to attend college on a Reserve Officers' Training Corps (ROTC) scholarship. On December 23, 2023, Respondent contacted Petitioner, seeking to meet when he returned to Saipan for Christmas break. At the January 12, 2024 hearing, Petitioner stated that Respondent would not stop contacting her. She stated that she received messages urging her to kill herself from Respondent's family members.

On January 12, 2024, the Court heard Petitioner's January 8, 2024 Petition. Petitioner appeared *pro se*. Respondent appeared and was represented by Joaquin DLG Torres. Respondent opted not to testify at the hearing. Based on Petitioner's testimony, the Court determined that domestic violence had occurred. It granted Petitioner an order of protection to expire in six (6) months' time (July 12, 2024).

On April 12, 2024, attorney Stephen Nutting entered an appearance on behalf of Respondent, substituting in for Joaquin DLG Torres. At a May 13, 2024 review hearing, Respondent motioned the Court to expunge the Order. On June 4, 2024, attorney Jane Mack filed an entry of appearance on behalf of Petitioner. On June 12, 2024, Respondent filed his Motion to Expunge and a memorandum of law in support. On June 15, 2024, Petitioner filed Opposition to Respondent's Motion. The Court continued a June 18, 2024, hearing on Respondent's Motion to September 18, 2024, at 1:30 p.m.

III. LEGAL STANDARD

"The Clerk of the Superior Court, and the Department of Public Safety shall maintain a registry of all orders for protection issued by a court of this Commonwealth or registered in this Commonwealth." 8 CMC § 1925. The Legislature did not establish statutory authority to expunge orders of protection from this registry.

States that codified procedure for expunging protection orders almost universally require that the order was dismissed or not heard. *See e.g.* HRS. §586-5.5 (c) (Hawaii, records may be sealed if the order is denied); *see also* 23 PA. C. S. §6108.7 (Pennsylvania, expungement available where order entered by consent decree and ten [10] years have elapsed); *see also* Md. Family Law Code §4-512 (Maryland, record may be sealed where order of protection denied or dismissed and three [3] years have elapsed). Only West Virginia allows the expungement of a granted protection order by statute. Even then, West Virginia requires that two (2) years elapse from the order's end. *See* W. Va. Code §48-27-511.

These statutory schemes indicate that legislatures disfavor expunging records of granted orders of protection. Courts, too, strongly disfavor exercising inherent authority to expunge such records. *See Hart v. Smothers*, 215 A.3d 641 (Pa. Super. Ct. 2019) (finding that the lack of statutory authority to expunge records of an order of protection meant that the court lacked authority); *see also Comm'r of Prob. v. Adams*, 843 N.E.2d 1101, 1111 (Mass. App. Ct. 2006) (court has authority to expunge only "in the rare and limited circumstance that the judge has found through clear and convincing evidence that the order was obtained through fraud"). Even when presented with clear and convincing evidence of fraud, the court in *Adams* balanced the interests of the aggrieved respondent against the government's interest in maintaining records. *See id*.

IV. DISCUSSION

At the January 12, 2024 Order to Show Cause hearing, Petitioner detailed her Petition under oath. Respondent, represented by counsel, chose not to testify. The Court found that domestic violence had occurred and granted Petitioner an order of protection. *See* Order of Protection (Jan. 12, 2024). Respondent moved to expunge records of this granted order of protection. Other jurisdictions almost universally disfavor expunging records of granted orders of protection. Here, the Court lacks any statutory authority to do so.

Finding no statutory authority to expunge a final order of protection, Respondent asserts that the Court has inherent authority. In opposition, Petitioner analyzed a Seventh Circuit test which balanced an aggrieved criminal defendant's interest in expungement against the government's interest in maintaining records. *See United States v. Flowers*, 389 F.3d 737, 738 (7th Cir. 2004).

However, the Seventh Circuit overturned the test in *Flowers*, holding that trial courts have no inherent authority to grant equitable expungement for valid arrests and convictions. *See United States v. Wahi*, 850 F.3d 296, 298 (7th Cir. 2017). This comports with the Ninth Circuit rule. *See United States v. Sumner*, 226 F.3d 1005, 1014 (9th Cir. 2000) (trial courts lack inherent authority to expunge records unless arrest or conviction unlawful, or to correct clerical error). While it considered criminal records rather than protection orders, *Sumner* mirrors Massachusetts' reasoning in *Adams*. Trial courts should only exercise inherent authority to rectify unlawful rulings, such as those procured by clear fraud, or to correct clerical errors. *See Adams*, 843 N.E.2d at 1111.

Both *Sumner* and *Adams* found equitable expungement improper for final lawful actions such as arrests, convictions, and orders of protection. They found that trial courts lack inherent authority to expunge records of these actions. Here, Respondent seeks equitable expungement of a granted order of protection. The legislature did not provide statutory authority to expunge orders from the mandated registry. *See* 8 CMC § 1925. Petitioner testified under oath at a lawful hearing in

which the Court found domestic violence had occurred. After considering applicable law and testimony, the Court granted Petitioner an order of protection. The Court lacks inherent authority to grant equitable expungement of such a final order.

Even if the Court did have inherent authority, and if *Flowers* had not been overturned, the test balancing the moving party's interests against the government's interest in maintaining records would have to be supplemented by the interests of a Family Protection Act petitioner. *See Flowers*, 389 F.3d at 738. Family Protection Act petitioners are victims of domestic violence. Their interests require as much, if not more, weight than the government's interest in maintaining records.

The *Flowers* court considered the "unwarranted harm" suffered by a party seeking to expunge records. *See id*. However, if the United States military considers protection orders in its entry criteria, it is not unwarranted that a valid order of protection might harm Respondent's chances of joining the armed forces. Domestic violence is an unwarranted harm. It should carry strong consequences.

The interests of Family Protection Act petitioners, therefore, are of equal or greater consequence than the government's interest in maintaining records. The Family Protection Act would lose its efficacy if respondents could motion for expungement whenever they sought employment or changed their minds about testimony. Aside from subverting the interests of the legislature, granting Respondent's motion would set a harmful precedent, forcing victims to relitigate the experiences for which the Court granted them protection. The Court will not claim authority it lacks to create such a precedent.

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V. CONCLUSION

The Court **DENIES** Respondent's Motion to Expunge Records of Family Protection Act and Order of Protection.

SO ORDERED this **1st** day of October, 2024.

TERESA K. KIM-TENORIO
Associate Judge