IN THE SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

GREGORIA OLUPOMAR,

Plaintiff-Appellee,

v.

VIRGINIA MAHORA,

Defendant-Appellant.

Appeal No. 2000-024

MANDATE

¶ 1 APPEAL FROM the COMMONWEALTH SUPERIOR COURT.

¶ 2 THIS CAUSE came on to be heard by the Commonwealth Supreme Court, and was argued and duly submitted.

¶ 3 ON CONSIDERATION WHEREOF, it is now here ORDERED, ADJUDGED AND DECREED by this Court, that the lower court's April 7, 2000 Order restraining Appellant, is hereby VACATED.

Filed and entered this 8 day of February, 2002.

CRISPIN M. KAIPAT
Clerk of Court

IN THE SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

GREGORIA OLUPOMAR,
Plaintiff-Appellee,

v.

VIRGINIA MAHORA,
Defendant-Appellant.

APPEAL NO. 2000-024

ERRATA

¶ 1 PLEASE TAKE NOTICE that the above case should be "cited as": *Olupomar v. Mahora,* 2001, MP 17, instead of *Olupomar v. Mahora*, 2001, MP. The citation number, "17" after MP, was inadvertently omitted.

Dated this 19 day of November, 2001.

Cris M. Kaipat, Clerk of Court

IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

GREGORIA OLUPOMAR,

Plaintiff-Appellee,

v.

VIRGINIA MAHORA,

Defendant-Appellant.

Appeal No. 00-024-GA

JUDGMENT

¶ 1 THIS CAUSE came on to be heard from the Commonwealth Superior Court and was duly argued and submitted.

¶ 2 Parties are herewith given a copy of this Court's opinion which VACATED the April 7, 2000, lower court order restraining the Appellant in this matter.

Entered this 15 day of November, 2001.

Cris M. Kaipat, Clerk of Court

FOR PUBLICATION

IN THE SUPREME COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

GREGORIA OLUPOMAR,
Plaintiff-Appellee

v.

VIRGINIA MAHORA,
Defendant-Appellant.

OPINION

Cite as: *Olupomar v. Mahora*, 2001 MP

Appeal No. 2000-024
Argued and Submitted March 29, 2001

For Gregoria Olupomar:
None[1]

For Virginia Mahora:
Douglas W. Rhodes, Esq.
Micronesian Legal Services Corp.
Marianas Office
P.O. Box 500826
Saipan, MP 96950

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[1]Appellee did not submit a brief for this appeal.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice, ALEXANDRO C. CASTRO, Associate Justice, and JOHN A. MANGLONA, Associate Justice.

DEMAPAN, Chief Justice:

¶1 Virginia Mahora ("Appellant") appeals the Superior Court's decision granting Gregoria Olupomar ("Appellee") a restraining order pursuant to the Commonwealth Family Protection Act of 1986 (" Family Protection Act'). We have jurisdiction pursuant to 1 CMC § 3102 (a) and N.M.I. Const. art. IV, § 3. We **REVERSE** the lower court's grant of a restraining order in that the relationship between Appellee and Appellant was not entitled to the protections of the Family Protection Act.

ISSUES PRESENTED AND STANDARDS OF REVIEW

1. Did the Superior Court err in granting a temporary restraining order under the Family Protection Act of 1986 where there is no showing that the parties currently or formerly reside together.

2. Did the Superior Court err in granting a temporary restraining order under the Family Protection Act of 1986 where the parties are not family members as that term is defined under the Act.

¶2 The court's finding of a family relationship and residential relationship between the parties presents a question of fact reviewed under the clearly erroneous standard. *Pangelinan v. Itaman*, 4 N.M.I. 114 (1994). Whether a restraining order complies with the terms of the Family Protection Act is a question of law, reviewed *de novo*. *See Norita v. Norita*, 4 N.M.I. 381 (1986), *Commonwealth v. Kaipat*, 2 N.M.I. 322, 327-28 (1991) (holding that the correct interpretation and application of a statute is a question of law).

FACTUAL AND PROCEDURAL BACKGROUND

¶3 Appellee and Appellant are contentious neighbors who reside in Tanapag, Saipan. Excerpts of Record ("E.R.") at 8. Appellant has lived on the Tanapag property for approximately forty-six years. E.R. 35. Appellee and her partner, Herminio Olupomar ("Olupomar"), have been Appellant's neighbors for approximately five years. E.R. 9, 21. The parties do not live together, but they have separate houses on separate pieces of land. E.R. 1, 9, 41,42.

¶4 Olupomar testified in the lower court that his family and Appellant's grandmother resided together a long time ago. E.R. 30. Appellant testified that no one in her family had ever lived with the Olupomar family. E.R. 35.

¶5 On February 14, 2000, Appellee and Appellant engaged in an argument where Appellant slapped and pushed Appellee. The Appellee also complained that Appellant verbally harassed her.

¶6 On March 27, 2000, Appellee filed a petition for a Temporary Restraining Order ("TRO") under the Family Protection Act. The Appellee signed the petition for a TRO pursuant to 8 CMC § 1225 of the Family Protection Act. In her TRO petition Appellee stated that the relationship between Appellee and Appellant is that of a "neighbor." E.R. 1.

¶7 The court entered an *ex parte* order granting the TRO. E.R. 3-4. On April 5, 2000, Appellee and Appellant both appeared for the hearing without representation. After the hearing the court granted a one year TRO against Appellant. *Olupomar v. Majora*, FCD FP No. 00-0127 (Sup. Ct. April 7, 2000) (Order).

¶8 On June 8, 2000, Appellant, represented by counsel, filed a Motion for Relief from the TRO. E.R. 20. The basis to vacate the TRO was that Appellee did not have a family relationship with Appellant as defined by the Family Protection Act. On June 15, 2000, the court heard evidence and

argument on the motion. The motion was denied in court and the written decision was issued June 20, 2000 continuing the TRO until April 4, 2001. *Olupomar v. Majora*, FCD FP No. 00-0127 (Sup. Ct. June 20, 2000) (Order). The appellant timely appeals.

ANALYSIS

¶9 The Appellant asks this Court to vacate the TRO that was issued on April 7, 2000.

¶10 As a general rule, in order to decide a case, a court must be able to afford a petitioner the relief he or she seeks. *Govendo v. Micronesia Garment Factory Mfg., Inc.,* 2 N.M.I. 270, 281 (1991). The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. *Govendo*, 2 N.M.I. at 280, see also *Wong v. Board of Regents, University of Hawaii*, 616 P.2d 201, 204 (Haw. 1980).

¶11 Since the expiration of the TRO has passed, even deciding in favor of the Appellant would not give her effective relief from the TRO. Nonetheless, in exceptional situations mootness in not an obstacle to the consideration of an appeal. *Govendo*, 2 N.M.I. at 282. A well-established exception to the mootness doctrine allows a court to review a mooted matter if the question involved affects the public's interest, is likely to recur, and it is likely that similar issues arising in the future would likewise become moot before an authoritative determination by an appellate court can be made. *In re Seman*, 3 N.M.I. 57, 64-65 (1992); *In re Duncan*, 3 CR 383, 387-88 (N.M.I. Trial Ct. 1988) (holding that a court may hear controversies "capable of repetition yet evading review.")

¶12 The exception applies in this case. We will review this matter as one of public importance in order to define the correct interpretation of the definitions and scope contained in the Family Protection Act. The vital functions of the Family Protection Act cannot be fulfilled without the proper scope of the Act defined. The lower court misinterpreted the scope and definitions contained in the Family Protection Act, which if not solved by this Court is likely to be repeated. Lastly, absent extraordinary circumstances, there is no readily available way for a party to appeal the issuance of a TRO before it expires. We will therefore proceed to consider the validity of the TRO.

¶13 The stated purpose of the Family Protection Act is:

> [T]o preserve and maintain the customary strong family relationships that exist in the Northern Mariana Islands. The article provides necessary legal protections for family members who are victims of civil and criminal family abuse.

8 CMC § 1221 (b).

The definitions as used in 8 CMC § 1222 for "abuse" and "family members" are as follows:

> (a) "Abuse" means the occurrence of one or more of the following acts between **family members who reside together or who formerly resided together**.
>
> * * *
>
> (g) "Family members" includes spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, **household members or other persons related by blood, marriage, or customary affinity** as brothers, sisters, children, spouses, or parents.

8 CMC § 1222 (Emphasis added).

¶14 It is a well-established principal of statutory construction that language is given its plain meaning. *Estate of Faisao v. Tenorio*, 4 N.M.I. 260 (1995). Under the Family Protection Act, for "abuse" to be actionable, it must be between family members who "reside together or who formerly resided together." 8 CMC § 1222(a). We must determine whether the relationship between Appellee

and Appellant falls under the protection of the act.

A. *The Parties Did Not Reside Together Under the Parameters of the Family Protection Act*

¶15 Under the relevant facts of this case, there was no testimony that Appellee and Appellant ever resided together. Rather, Appellee and Appellant are contentious neighbors who reside in Tanapag. The Appellant has been living on the property for about forty-six years, and Appellee for approximately four or five years. Appellee and Appellant have only known each other for the four or five years that they have been neighbors. It is undisputed that Appellee and Appellant have never resided with each other. They have separate houses on separate lots of land. The facts are at all times that the Appellee and Appellant were neighbors who lived from 15, 50, 100 and 150 feet apart (varying testimonies at hearing). The abuse that occurred was between the parties as neighbors. Thus, the abuse falls outside the protections of the Family Protection Act for a TRO to properly issue.

B. The Parties Are Not Family Members Under the Family Protection Act

¶16 The lower court based the issuance of the TRO on finding that the parties are "family members" as defined in 8 CMC § 1222(g). The lower court found that Appellee "is married to Mr. Olupomar and that Mr. Olupomar is related by blood and Carolinian custom" to the Appellant to justify the establishment of a family relationship under the Act. *Olupomar v. Mahora,* FCD FP Action No. 00-0127 (Sup. Ct. June 20, 2000).

¶17 However, the Family Protection Act pertains to "persons related by blood, marriage, or customary affinity as brothers, sisters, children, spouses, or parents." Thus, even though Appellee and Appellant are, perhaps, related by blood or custom it is not as "brothers, sister, children or parents." The transcript of the proceedings below verifies what Appellant contends in her motion.

The only evidence offered of a family relationship was the vague testimony of Appellee's husband stating that his father and Appellant's father were some degree of cousin either by blood or custom. At best, Appellee would be Appellant's third cousins-in-law.

¶18 The only abuse which is actionable under the Family Protection Act is abuse between family members who reside together or formerly resided together. 8 CMC § 1222. The court went beyond the scope of the statutory remedy with a TRO because there is no evidence to support a familial relationship under the parameters of the Family Protection Act.

¶19 Public policy supports upholding the scope of the Family Protection Act. If the Family Protection Act were to be read to extend to all disagreements, its purpose would be thwarted because no benefit to the "family unit" would be gained.

CONCLUSION

¶20 For the foregoing reasons, the April 7, 2000 Order from the lower court restraining Appellant, is hereby **VACATED.**

Dated this 15 day of November, 2001.

MIGUEL S. DEMAPAN, Chief Justice

ALEXANDRO C. CASTRO, Associate Justice

JOHN A. MANGLONA, Associate Justice