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

MA. MARILYN V. CASTRO, on behalf of herself and her minor daughter,
LOLAINE MARIE V. CASTRO,
Petitioners-Appellees,

v.

RICARDO C. CASTRO,
Respondent-Appellant.

SUPREME COURT NO. 05-0010-GA
SUPERIOR COURT NO. 05-0171

Cite as: 2009 MP 8

Decided August 7, 2009

Stephen C. Woodruff, Saipan, Northern Mariana Islands, for Petitioners-Appellees
Edward C. Arriola, Saipan, Northern Mariana Islands, for Respondent-Appellant
BEFORE: JOHN A. MANGLONA, Associate Justice; TIMOTHY H. BELLAS, Justice Pro Tem; JESUS C. BORJA, Justice Pro Tem.

MANGLONA, J.:

¶ 1 Appellant Ricardo C. Castro appeals a trial court order prohibiting him from entering onto his property and evicting tenants with no legal interest in the property, arguing that the trial court (1) effectuated a compensable taking, (2) violated his procedural due process rights by prohibiting him from commencing eviction proceedings, and (3) violated his substantive due process rights by arbitrarily ousting him from his property. We find that the trial court did not effectuate a taking, as it is inherently incapable of doing so, and that no procedural due process violation occurred because Ricardo was allowed to raise the issue of his property rights during the relevant judicial proceeding. However, because the protective order did not promote a legitimate state objective, the trial court arbitrarily deprived Ricardo of a recognized property interest, and in doing so violated his substantive due process rights. Accordingly, we REVERSE the trial court's decision and VACATE the protective order.

I

¶ 2 Appellant Ricardo C. Castro owned several apartments in Susupe. Ricardo's son, Richard, was married to the appellee, Marilyn Castro, and the couple resided in one of Ricardo's apartments with their daughter, Lolaine Castro. On February 3, 2004, Richard moved out of the apartment, but Ricardo allowed Marilyn and Lolaine to remain without objection until January 2005, at which time he verbally requested that they vacate the premises. Marilyn and Lolaine did not comply with his request, and in March 2005, Ricardo again reiterated his desire that they move out. Once again, Marilyn and Lolaine remained in the apartment. On April 4, 2005, Ricardo sent a letter – the first written notice – demanding that Marilyn and Loraine move out within seven days. The letter contained no threats, but reminders of his previous verbal requests, and a concluding notice which stated, "I am giving you up until Monday April 11, 2005 to vacate MY house." Appellant's Except of Record ("ER") at 8.

¶ 3 The day before Ricardo's deadline, Marilyn sought and obtained a Temporary Restraining Order ("TRO") pursuant to 8 CMC § 1916.[1] The TRO prohibited Ricardo from,

[1] 8 CMC § 1916 is entitled the "Domestic and Family Violence Prevention Act of 2000." Whether Ricardo was abusive to Marilyn or Lolaine is not at issue in this case. Nevertheless, we note that there is no evidence in the record to support a finding that Ricardo was abusive at any time relevant to these proceedings. In fact, Ricardo allowed Marilyn and Lolaine to remain in his apartment rent-free for almost one year before asking them to relocate. Even then, he claims to have offered them alternative living arrangements in a different apartment he owned. The only allegation of potentially inappropriate behavior by Ricardo appears in Marilyn's testimony at the April 13, 2005 hearing, where she stated, "[t]hat's what he said to my daughter – that I need to move you guys out of here – in a loud voice," to which the 11-year-old Lolaine replied "[G]randpa, fuck you." ER at 37-38. Attorney for Marilyn and Lolaine also stated in his April 11, 2005 Declaration of Counsel that Marilyn seemed "upset, scared, and nervous on account of a statement conveyed to her by a third party upon the instructions of Respondent." ER at 10. He further submitted that the third party allegedly told Marilyn that Ricardo would request police assistance if Marilyn

among other things, contacting, molesting, battering, or coming within ten yards of Marilyn or Loraine or their residence. *Castro v. Castro*, Civ. No. 05-0171 (NMI Super. Ct. April 11, 2005) (Order to Show Cause and Temporary Restraining Order at 2). Because Marilyn had applied for the TRO ex parte, the trial court set a hearing for April 13, 2005 to give Ricardo an opportunity to be heard on the issue.

¶ 4 Following the April 13, 2005 hearing with both parties, the trial court issued a protective order (the "order"), again stating that Ricardo "shall not molest, attack, strike, threaten, sexually assault, batter, telephone or disturb the peace of [Marilyn] and children/family members." *Castro v. Castro*, Civ. No. 05-0171 (NMI Super. Ct. April 13, 2005) (Order of Protection at 1). The order was entered on a form containing mostly boilerplate language. The court noted which provision applied to Ricardo, filled in the parties' names, and entered other routine administrative information pertinent to the hearing. The order also had a blank area for the judge to include special provisions. In this section, the trial court stated that "[Ricardo] is ordered not to evict [Marilyn]. [Marilyn] have [sic] 30 days to move out. [Ricardo] is ordered not to turn off the power and turn on the water 2 hours in the morning and 2 hours in the evening." *Id*. at 2. The order was effective for one year from the date of issuance, "unless sooner modified or dissolved by the Court . . . ." *Id.* The trial court also ordered the parties to appear for a review hearing the following month. The parties reconvened on May 12, 2005, and the trial court subsequently dissolved the order based on testimony that Marilyn and Lolaine had already moved out of the apartment. On appeal, Ricardo claims the April 13, 2005 order prohibiting him from exercising his right to eject Marilyn and Lolaine violated his due process rights, and that the government committed an unconstitutional taking by excluding him from his property.

II

Mootness

¶ 5 Aside from costs on appeal, Ricardo does not request monetary damages for the alleged harm caused by the trial court's order preventing him from evicting Marilyn and Lolaine. Rather, he "seeks reversal of the lower court's order. . . ." Appellant's Br. at 11. However, because Marilyn and Lolaine have moved off the premises, any action by the Court would not affect the legal rights of either party in this case. The case, in essence, became moot the day Marilyn and Lolaine moved out.

¶ 6 The "[d]uty of the Court is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions on moot questions or abstract propositions, or to

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and Lolaine did not move out by April 11, 2005. *Id.*

declare principles or rules of law which cannot affect the matter at issue in the case at bar." *Bank of Saipan v. Superior Court*, 2004 MP 15 ¶ 8 (citing *In re Seman*, 3 NMI 57, 64 (1992)). Further, "courts lack jurisdiction to decide moot cases." *Govendo v. Micronesian Garment Manufacturing, Inc.*, 2 NMI 270, 281 (1991). An application of these principles to the facts of this case would preclude the Court from taking any action, as a decision for either party would amount to a mere declaration of law.

¶ 7 On the other hand, this Court can depart from the mootness doctrine when a case rests soundly within one of three recognized exceptions. For example, a defendant's "voluntary cessation of illegal conduct does not moot a case; if it did the courts would be compelled to leave 'the defendant . . . free to return to his old ways." *United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 203 (1968) (citing *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953). Additionally, if the principal plaintiff in a class action lawsuit ceases to belong to the class, the case does not automatically become moot for the parties he or she formerly represented. *Sosna v. Iowa*, 419 U.S. 393, 401 (1975). The final exception, which is applicable to the case at hand, applies if a controversy is capable of repetition yet has evaded, or will likely continue to evade review. *Bank of Saipan*, 2004 MP 15 ¶ 8.

¶ 8 The "capable of repetition yet evading review" exception applies when the issue raised is one that "affects the public interest and it is likely that similar issues arising in the future would likewise become moot before the Court can make a determination." *Id.* Some jurisdictions hold that this exception is only applicable only when "there is a reasonable expectation that the same complaining party will be subjected to the same action again." *Foster v. Carson*, 347, F.3d 742, 746 (9th Cir. 2003) (citing *Cole v. Oroville Union High Sch. Dist.*, 228 F.3d 1092, 1098 (9th Cir. 2000)). However, the exception set forth in *Bank of Saipan* does not require the potential reoccurrence of a similar conflict between identical parties. Under the Commonwealth's broader "capable of repetition yet evading review" exception, a case is justiciable even though the potentially repetitive act may never again involve the parties before the court. The issue must simply be a matter of public interest that will likely continue to arise yet become moot before the Court has an opportunity to review it.

¶ 9 When applying the "capable of repetition yet evading review" exception, we first determine whether the controversy involves an issue that affects the public interest. We have previously recognized that constitutional questions satisfy this prong of the exception. *See Seman*, 3 NMI at 65. Ricardo alleges a violation of his due process rights, and also seeks reversal pursuant to the Commonwealth takings clause in Article XIII of the Commonwealth Constitution. In accordance with *Bank of Saipan*, the constitutional nature of his claims makes them

appropriate for review under this prong of the exception.

¶ 10 Additionally, it is likely that similar controversies will arise in the future but become moot before this Court has an opportunity to review them. The trial court's order was effective for just over one month. Such temporary protective orders in similar cases are not uncommon, and due to their inherently short duration, quite easily escape review. Therefore, the threat of such repetition sufficiently brings this case within the second requirement of the exception, and justifies our consideration despite its mootness.

III

Judicial Takings

¶ 11 Ricardo asserts that the trial court unconstitutionally took his property by prohibiting him from going within ten yards of his apartment between April 11, 2005 and May 16, 2005.[2] Since a deprivation of property rights by the judiciary differs from a traditional taking of private land for public use by the legislative or executive branch, we examine whether a takings analysis is applicable when the state action occurs in the form of a judicial order. Constitutional issues are inherently questions of law and are, therefore, reviewed de novo. *Commonwealth v. Tinian Casino Gaming Control Comm'n*, 3 NMI 134, 143 (1992).

¶ 12 The Commonwealth government's eminent domain authority derives from the Commonwealth Constitution, which states, "[t]he Commonwealth may exercise the power of eminent domain as provided by law to acquire private property necessary for the accomplishment of a public purpose." NMI Const. art. XIII § 1. However, when it does so "[t]he government is required to pay 'just compensation' for private property taken for a public purpose." *Commonwealth v. Bordallo*, 1 NMI 208, 219 (1990) (citing NMI Const. art. XIII § 2). It is well-settled that a taking requires state action. However, the Commonwealth takings clause does not specify whether the act can or must derive from any specific branch of government. Rather, the provision simply grants authority to "[t]he Commonwealth." NMI Const. art. XIII § 1. Nevertheless, this Court has previously articulated that "[c]ourts lack the power of eminent domain and lack the power to pass laws or promulgate regulations [which are executive in nature]. Therefore, the Court is simply incapable of 'taking' property as that term is defined in constitutional law. To suggest otherwise is to fundamentally misunderstand what the term means." *Roberto v. Roberto* 2004 MP 7 ¶ 7 (finding that a takings analysis is improper where appellant seeks review of the lower court's probate findings).

¶ 13 The judiciary generally lacks the eminent domain powers reserved for other branches of

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[2] While the trial court held the review hearing on May 12, 2005, it did not actually dissolve the order until May 16, 2005.

government, such as the power to impose an easement for public utilities purposes, or to seize an area of wetlands for wildlife preservation. Consequently, if the judiciary cannot "take" in the traditional sense of the word, then it cannot be expected to compensate an aggrieved party who claims a taking has occurred. We will not apply Section 2, requiring compensation, to the trial court's actions, while ignoring the fact that Section 1 is wholly inapplicable to the judicial branch.

¶ 14 In addition, cases centering on the government's power of eminent domain overwhelmingly, if not uniformly, include the government as a party to the action. The present case is limited to a dispute between two private parties. Accordingly, a reversal premised on takings jurisprudence would, in effect, amount to a judgment against a non-party. In a dispute between private parties over property, "we simply decide how the law should apply . . . ." *Id.* In practice, if we were to accept Ricardo's interpretation of judicial takings theory, a claim would arise every time an appellate court, upon further evaluation of the facts and applicable law, elected to reverse or modify a decision affecting property rights. *Ryan v. Tanabe*, 97 Hawai'i 305, 315 (1999). Each time a lower court, upon misguided application of the law, temporarily misplaced an individual's property interest, it could later expect a collateral lawsuit attempting to compensate a party for the amount of time he or she was dispossessed, whether it be for a few hours or a period of years. "Such a construction defies common sense, and we reject it as untenable." *Id.* Appellate courts must be allowed to review and modify lower court decisions without the threat of a lawsuit hanging over the head of the judiciary. Thus, where the trial court erroneously allows an individual to remain on another's property in the context of an alleged domestic dispute, no taking has occurred.

Due Process

¶ 15 Having found that no taking occurred under Article XIII of the Commonwealth Constitution, we next consider whether the trial court deprived Ricardo of his right to due process under Article I, Section 5. Constitutional issues, including whether a trial court order violates a party's right to due process, are subject to de novo review on appeal. *Office of the Attorney Gen. v. Rivera*, 3 NMI 436, 441 (1993).

¶ 16 Ricardo claims a violation of his right to due process of law under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 5 of the Commonwealth Constitution. The Commonwealth provision states that "[n]o person shall be deprived of life, liberty or property without due process of law." NMI Const. art. I § 5. Put another way, "[d]ue process is a constitutional right against the improper deprivation of a property interest." *Estate of Faisao v. Tenorio*, 4 NMI 260, 265 (1995). Additionally, as Ricardo notes, federal due process guarantees are applicable in the Commonwealth pursuant to Section

501 of the Covenant.[3] *Office of the Attorney Gen. v. Honrado*, 5 NMI 8, 10 (1996) (citing Covenant § 501 (48 U.S.C. § 1801 note)). Because the Commonwealth and U.S.Constitutions are essentially coextensive in regard to due process protections, we analyze the present facts as if the two bodies of law are one.

¶ 17 Due process has both a procedural and a substantive component. *Matter of Seman*, 3 NMI at 67. "The concept of procedural due process implies that official action must meet a minimum standard of fairness to the individual, conferring the right, for example, to adequate notice and a meaningful opportunity to be heard." *Honrado*, 5 NMI at 10. However, the Commonwealth's Due Process Clause, like its federal counterpart, ensures not only a fair process, but protects individuals against improper substantive deprivations of property, whether by legislative or executive action, or by court order. "A statute [or order] violates substantive due process when a litigant with standing shows that a challenged statute [or order] adversely affects a recognized life, liberty, or property entitlement and in doing so does not promote a legitimate state objective by reasonable means." *Matter of Seman*, 3 NMI at 67 (citing *Moreno v. State Department of Taxation*, 775 P.2d 497, 501 (Wyo. 1989)). "A due process infringement of an individual's non fundamental life, liberty, or property entitlement occurs only when it amounts to an arbitrary deprivation of that entitlement." *Id*. (quoting *Moreno*, 775 P.2d at 500). When, however, the Commonwealth places a restriction on a *fundamental* individual right, the Commonwealth must provide a compelling justification for such an abridgment. *See Id.* (emphasis added).

¶ 18 The trial court order directing Ricardo not to evict Marilyn and Lolaine raises aspects of both procedural and substantive due process. On one hand, Ricardo was not allowed to commence eviction proceedings when it was his legal right to do so. It is undisputed that Ricardo was the sole owner of the apartment where Marilyn and Lolaine resided; neither Marilyn nor Lolaine had any legally cognizable interest in the property during the period in controversy. Furthermore, the trial court made no finding of abuse under 8 CMC § 1916, which would have allowed it to take protective measures that might have incidentally infringed on Ricardo's property rights. Instead, the order explicitly stated that "[Ricardo] is ordered not to evict [Marilyn]." *Castro*, Civ. No. 05-0171 (Order of Protection at 2). We understand this to mean that, in addition to self-help remedies, Ricardo was also precluded from commencing eviction proceedings or bringing a trespass action to oust Marilyn and Lolaine without violating the order. When viewed in this light, the trial court barred Ricardo from pursuing any available remedy that

[3] Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. § 1801 note.

may have allowed him to lawfully regain access to his apartment. Employing this logic, Ricardo was deprived of "a meaningful opportunity to be heard" on the merits of his real property claim. *Honrado*, 5 NMI at 10.

¶ 19 On the other hand, Ricardo was present and represented by counsel at the April 13, 2005 proceedings against him. He was allowed to testify, and the trial court presumably took his testimony into account prior to affirming the order. Further, the parties engaged in a discussion with the court concerning Lolaine's and Marilyn's status as tenants. More importantly, Ricardo's attorney brought to the court's attention 2 CMC § 40204, which governs a property owner's remedies regarding holdover tenants. Although the purpose of the hearing was to discern the validity of Lolaine's domestic abuse allegations, the trial court heard testimony regarding the order's impact on Ricardo's property rights, and subsequently allowed the order to remain in effect without regard to its unconstitutional collateral consequences. Because the issue of property rights was raised and addressed in a proceeding in which the party alleging a due process violation was present and allowed to testify, we find that Ricardo's procedural due process rights were not violated.

¶ 20 We next consider whether the trial court violated Ricardo's substantive due process rights by not allowing him to make use of his property during the period in question. Under the *Seman* standard for determining substantive due process violations, the Court must first determine whether the infringed-upon right is fundamental or non fundamental. 3 NMI at 67. The *Seman* Court considered the constitutionality of a statute allowing the Commonwealth to involuntarily commit an adult to a psychiatric unit for observation and treatment. *Id.* at 60. Upon evaluating the nature of the appellant's confinement, the Court held that "liberty [is] a fundamental right that is recognized in the constitutional sense as carrying a preferred status and so is entitled to special protection." *Id.* at 67 (citing *Molar v. Gates*, 159 Cal.Rptr. 239 (Cal.Ct.App.1979)).

¶ 21 While we have never adopted a conclusive list of fundamental rights in the context of a due process analysis, we note that the United States Supreme Court has held certain individual interests to be fundamental. Among these interests are the right to vote, *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 670 (1966) (recognizing the right to vote as fundamental, and more specifically holding that poll taxes are unconstitutional prohibitions to ballot access); the right to travel, *Shapiro v. Thompson*, 394 U.S. 618, 631 (1969) (recognizing that individuals have a fundamental right to travel and relocate from one state to another); the right to privacy, *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965) (finding a fundamental right to marital privacy, and specifically prohibiting states from banning the use of contraceptives by married couples); *Roe v. Wade*, 410 U.S. 113, 155 (1973) (finding a fundamental right of an adult to have an abortion prior

to viability of the fetus); *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) (finding a fundamental right to sexual relations between two consenting adults); *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (finding a fundamental right to marriage); and rights guaranteed by the First Amendment, *Sherbert v. Verner*, 374 U.S. 398, 403 (1963) (recognizing an individual's fundamental right to freely practice her religion); *Brandenburg v. Ohio*, 395 U.S. 444, 449 (1969) (finding a fundamental right to free speech so long as it is not likely to incite imminent lawless action).

¶ 22 In the present case, Ricardo asserts that the trial court unconstitutionally deprived him of an interest in his property, namely the right to enter onto it between April 11, 2005 and May 16, 2005. We must, therefore, determine whether an owner's interest in his property is fundamental, such that his use and access should be free from government interference absent compelling circumstances.

¶ 23 History and tradition are the starting point when deciding whether to recognize a right as fundamental. *See Lawrence*, 539 U.S. 558, 572 (2003). One only has to look to the preamble of the Commonwealth Constitution to understand that its framers based the rights and regulations therein on historical and cultural considerations. It states in part that, "[w]e the people . . . ordain and establish this Constitution as the embodiment of our traditions and hopes for the Commonwealth . . . ." NMI Const. pmbl. The Covenant also recognizes that history and tradition are central factors in determining the importance of certain individual rights over others. Covenant § 805 (48 U.S.C. § 1801 note). Indeed, some individual interests are so enshrined, whether through historical or cultural considerations, or through the text of the Constitution itself, that they are insulated from government intrusion unless there is a compelling reason to permit such intrusion. *See Loving*, 388 U.S. at 11.

¶ 24 Property rights and the proverbial "bundle of sticks" are essential and unique individual interests that must be guarded with the utmost vigilance. However, provisions found in Commonwealth Constitution and subsequent statutes lead us to believe that property rights are not fundamental for purposes of due process analysis. For example, the Commonwealth legislature enacted extensive zoning laws in 1994 allowing the zoning board to impose regulations on land usage. 2 CMC § 7221. In addition, the Commonwealth Constitution gives the government the authority to seize private land for public use. NMI Const. art. XIII § 1. Likewise, the United States Supreme Court has expanded states' eminent domain powers even more by authorizing them to seize land from an individual and convey it to another private party for purposes of economic development. *Kelo v. City of New London*, 545 U.S. 469, 486 (2005). Additionally, in upholding the Commonwealth's land alienation restrictions set forth at Article XII, the Ninth Circuit held that equal rights to land ownership are not "fundamental in the

international sense." *Wabol v. Villacrusis*, 958 F.2d 1450, 1462 (9th Cir. 1992). Perhaps more relevant to the case at hand, a landowner must allow a holdover tenant to remain on his or her property for three days prior to commencing eviction proceedings for nonpayment of rent, 2 CMC § 40204(b), and fifteen days for a failure to cure a material breach other than nonpayment of rent, 2 CMC § 40204(c).

¶ 25 The above examples of state intrusion on individual property interests are strong evidence that land regulations have become necessary to further certain societal goals, and thus are generally accepted exercises of government power. Because of this, and because "absolute" property rights are not guaranteed by either the Commonwealth or the United States Constitution, we find that they are not fundamental for due process purposes. We note that our decision is consistent with federal precedent, which uniformly subjects government interference with real property to a rational basis analysis, indicating that federal courts do not consider property rights to be fundamental. The United States Supreme Court has held that states may reasonably regulate private property through zoning schemes, eminent domain powers, set-back provisions, and land use restrictions, even if those regulations are not entirely necessary. *Kelo*, 545 U.S. at 488; *Lingle v. Cheveron U.S.A., Inc.*, 544 U.S. 528, 537 (2005); *Eastlake v. Forest City Enters., Inc.*, 426 U.S. 668, 674 (1976). Moreover, the Eleventh Circuit has explicitly said that property rights "are not equivalent to fundamental rights, which are created by the constitution itself." *Dekalb Stone v. County of Dekalb*, 106 F.3d 956, 959 n.6 (11th Cir. 1997).[4] Likewise, we do not consider an owner's interest in his or her property to be fundamental, such that his use and access should be free from government interference absent compelling circumstances.

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[4] In *Dekalb Stone*, the government granted special permission to a landowner to mine rock in a residential neighborhood. Because many neighbors complained about the noise, the government ordered the owner to cease operations. Thereafter, the owner alleged that his substantive due process rights had been violated, and that his right to use his land as he saw fit was fundamental. The court disagreed, stating that land usage rights were not fundamental, as any such right was state-created rather than constitutionally guaranteed. The only way he would have been able to succeed on a substantive due process claim was if the government's decision was "arbitrary and capricious." *Id.* at 959. Since the government had an interest in providing a nuisance-free environment for surrounding residents, the order to cease met that standard.

Unlike *Dekalb Stone*, the instant case does not involve zoning variances or land use rights. Here, the Court is asked to define a party's property rights in the context of a landlord-tenant dispute, and the effect of a judicial order issued under the color of a domestic abuse statute. Nonetheless, the plaintiff in this case, like the plaintiff in *Dekalb Stone*, complains that a government decision kept him from enjoying his property when it was his alleged right to do so.

Similarly, we acknowledge that we have relied upon eminent domain cases, even though it is readily apparent to this Court that no taking occurred. We have also looked to property rights and equal protection analysis under the territories clause, even though the government in the case at hand did not act in a discriminatory manner. Although factually dissimilar, these cases demonstrate that courts abstain from subjecting government interference with property rights to strict scrutiny analysis. The case at hand is unique, and for this reason we must reach beyond factually analogous case law and incorporate related real property and constitutional principles to set up a framework for our analysis.

¶ 26 Having determined that the property interest at issue is not fundamental, we must now apply the appropriate test to determine whether the trial court's order violated Ricardo's substantive due process rights. When evaluating government infringement on a non fundamental right, the Court should determine whether the challenger has shown that the state action adversely affected a recognized property entitlement, and in doing so failed to promote a legitimate state objective. *See Seman*, 3 NMI at 67. Here, the trial court failed to promote a legitimate state objective by not allowing Ricardo to enter onto his property. The purpose of the order was to protect Lolaine and Marilyn from harassment by Ricardo, but the trial court never made any finding of harassment. As Ricardo points out, even after the April 13, 2005 hearing where Marilyn expressly admitted, "I didn't testify for any harassment," the trial court still allowed Marilyn and Lolaine to remain in the apartment while simultaneously excluding Ricardo. ER at 36. Because the trial court found no threat of violence or harassment, the order prohibiting Ricardo from venturing onto his property was arbitrary. When a challenger asserts a deprivation of a property entitlement, a substantive due process violation occurs "only when it amounts to an arbitrary deprivation of that entitlement." *Seman*, 3 NMI at 67. Because there was no legitimate purpose for allowing the order to remain effective, the trial court's April 13, 2005 order was a violation of Ricardo's substantive due process rights.

¶ 27 We note that statements made by the trial judge and by the appellees' counsel in the April 13, 2005 hearing provide insight into the trial court's reasons for allowing the TRO to remain effective even though the court made no finding of abuse. In January 2005, Ricardo verbally asked Marilyn and Lolaine to vacate the apartment, but they did not acquiesce. On April 5, 2005, Ricardo again insisted that they leave, this time by sending written notice. In an effort to prevent eviction, Marilyn applied for the TRO within a week of receiving the notice. In the subsequent TRO review hearing, counsel for the appellees admitted that "Ms. Castro wants to leave the property – she wants to leave the property entirely. The issue is that she needs a place to stay until we can find the [means] for her to be able to do that." ER at 46. Shortly thereafter, the trial judge stated, "[w]e've got to figure out what to do with Ms. Castro," and questioned the appellant's counsel, stating "so you're saying three days [notice] and you can just go yank them out and throw them on the street, is that what you're saying, Mr. Arriola?" *Id*. at 55. These statements, combined with the virtual absence of testimony concerning the alleged abuse or harassment, clearly indicate that the trial judge and appellees' counsel were principally concerned with the fact that the appellees had no other place to live, rather than potential domestic abuse.

¶ 28 The humanitarian concerns expressed by the trial judge and appellees' counsel have been addressed by the legislature, which recognized that a grace period for nonpaying tenants was

needed to prevent temporary homelessness, and to allow tenants time to secure alternative housing. A landowner must allow holdover tenants to remain for three days prior to evicting them for nonpayment of rent. 2 CMC § 40204(b). The trial court, not wanting to oust a woman and child who had no other home, essentially extended this grace period under the color of a domestic abuse statute. Generally, the trial court has broad discretion in tailoring a remedy to fit the factual circumstances of a particular case. *See Ito v. Macro Energy Inc.*, 4 NMI 46, 64 (1993). However, it must do so within statutory parameters, and may not "contradict a clear legislative mandate." *Aquino v. Tinian Cockfighting Bd.*, 3 NMI 287, 297 (citing *Worley v. Harris*, 666 F.2d 417, 422 (9th Cir. 1982)). Accordingly, the trial court was not authorized to venture outside the three-day time period created for landlord-tenant disputes and prevent Ricardo from commencing an eviction action. According to Ricardo, he offered to let Marilyn and Lolaine stay in one of his other apartments until they could find a place of their own. As a result, the trial court might have been able to conform its remedy to statutory guidelines while accomplishing its goal of temporarily providing housing for the appellees. Nevertheless, the trial court violated Ricardo's substantive due process rights by preventing him from commencing an eviction action when it was his legal right to do so.

¶ 29 There are situations in which the trial court does, however, have greater flexibility to craft a remedy that incidentally infringes upon an individual's property interests. This exception lies in the area of domestic relations. The trial court may exclude an allegedly abusive owner from his or her residence "regardless of ownership of the residence." 8 CMC §1916(b)(3). Additionally, an order of this nature is "effective until further order of the court." 8 CMC §1916(e). However, this remedy is available only where it appears that domestic violence has occurred. 8 CMC § 1916(a). The appellee expressly admitted that neither she nor her daughter had been abused; they merely needed extra time to secure other housing. Upon this admission the protective order should have been dissolved, as the statute designed to protect against domestic abuse was no longer applicable. The appellant, therefore, should have been allowed to commence eviction proceedings, and the trial court's prohibition against doing so violated his substantive due process rights.

IV

¶ 30 For the foregoing reasons, we hold that the trial court violated appellant's substantive due process rights by preventing him from commencing an eviction action when it was his legal right to do so. The trial court made no finding of abuse, yet abridged the appellant's property interests pursuant to 8 CMC §1916, a statute designed to protect individuals from domestic abuse. This abridgment, therefore, amounted to an arbitrary deprivation of the defendant's property interests.

Accordingly, we REVERSE the trial court's decision and VACATE the April 13, 2005 protective order.[5]

SO ORDERED this 7th day of August, 2009.

__/s/_____
JOHN A. MANGLONA
Associate Justice

__/s/_____
TIMOTHY H. BELLAS
Justice Pro Tem

__/s/_____
JESUS C. BORJA
Justice Pro Tem

[5] In addition to reversal of the protective order, the appellant requests costs on appeal from the appellees. In accordance with Commonwealth Rule of Appellate Procedure 39(a), "if a judgment is reversed . . . or is vacated, costs may be allowed as ordered by the Court." The appellant may submit an itemized and verified bill of costs within fourteen days after the entry of judgment, which the Court will consider at that time.