

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
APPELLATE DIVISION**

<p>Sandra Thomas,</p> <p style="padding-left: 40px;">Appellant,</p> <p style="padding-left: 80px;">v.</p> <p>Cyrus Thomas,</p> <p style="padding-left: 40px;">Appellee.</p>	<p>)</p>	<p>Civ. App. No. 2000-100</p> <p>Re: Terr. Ct. Civ. No. 322/2000</p>
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On Appeal from the Territorial Court of the Virgin Islands

Considered: August 16, 2001
Filed: June 7, 2002

Before: **RAYMOND L. FINCH**, Chief Judge, District Court of the Virgin Islands; **THOMAS K. MOORE**, Judge of the District Court of the Virgin Islands; and **DARRYL DEAN DONOHUE**, Territorial Court Judge, Division of St. Croix, Sitting by Designation.

ATTORNEYS:

Robert A. Eberhart, Esq.
Legal Services of the Virgin Islands, Inc.
Attorney for Appellant,

Cyrus Thomas, pro se
St. Thomas, U.S.V.I.
Attorney for Appellee.

MEMORANDUM

On January 26, 2000, Sandra Thomas ["Thomas" or "appellant"], filed a domestic violence complaint with the Family Division of the Territorial Court, seeking an order restraining

Cyrus Thomas ["appellee"], her estranged husband, from abusing and harassing her. Attached to the form complaint was a lengthy statement describing the alleged abuse visited upon the appellant by her husband. Briefly, the appellant alleged that the appellee showed up daily at the her residence (property co-owned by the parties, but at which the appellee no longer resided) to retrieve tools he kept there so "he can keep an eye on [the appellant]". (See App. at 4 (Response to Question No. 5 of the Complaint).) He frequently brought his girlfriend to the property, who "walks around the property and gives [the appellant] the 'evil eye.'" (*Id.*) The appellee stated that she had been physically abused by her spouse in the past, (see *id.* at 5), and just days before the complaint was filed, the appellee threatened to "'take matters into his own hands' if the appellant did not leave the property," (see *id.* at 4). The appellee continued to initiate contact with the appellant, in violation of a preexisting restraining order. (See *id.*) The appellant stated she was afraid of the appellee, (*id.*), who was at the time "obsessed with Appellant and will not leave her alone," (Appellant's Br. at 11). The appellant also stated in her complaint that the previous restraining order against her husband had expired, and requested a new 24-month restraining order requiring the appellee to remove his tools, stay away from the property, refrain from having any contact with

her, and attend counseling. (See App. at 5).

Characterizing Sandra Thomas's complaint as a petition for a restraining order, the Territorial Court judge denied the petition without prejudice on February 2, 2001. (See *id.* at 7 (Order, Terr. Ct. Fam. Div. No. 32/2000 (entered Feb. 2, 2000)).) No hearing was held. As grounds for denying the petition, the court stated as follows:

This matter is the second petition for a restraining order. The first petition resulted in a reciprocal restraining order entered on October 5, 1999 which expired January 5, 2000. The parties are still married. Neither party has filed for divorce. The property that plaintiff complains that defendant is unlawfully entering is the marital abode. Equitable division of the marital abode is appropriately distributed in a divorce action pursuant to V.I. Code Ann. tit. 33 § 2305(d).

Temporary restraining orders and permanent restraining orders can not be utilized as a substitute for a divorce and disposition of issues incident to a divorce.

See *id.* (emphasis in original). Thomas filed this timely appeal.

DISCUSSION

This Court has appellate jurisdiction to review judgments and orders of the Territorial Court in all civil cases. V.I. CODE ANN. tit. 4, § 33; Revised Organic Act of 1954 § 23A.¹ Our

¹ 48 U.S.C. § 1613a. The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995 & Supp. 2001), reprinted in V.I. CODE ANN. 73-177, Historical Documents, Organic Acts, and U.S. Constitution (1995 & Supp. 2001) (preceding V.I. CODE ANN. tit. 1).

review of the Territorial Court's application of legal precepts is plenary, and findings of fact are reviewed under a clearly erroneous standard. *Prosser v. Prosser*, 34 V.I. 139, 921 F. Supp. 1428 (D.V.I. App. Div. 1996).

Before we reach the merits of this appeal, we must first address the possibility that the appeal has been mooted by subsequent developments. Just a week after the disputed order was issued, Cyrus Thomas initiated divorce proceedings against Sandra Thomas. (See App. at 8 (statement of related cases and proceedings).) On May 10, 2000, the appellant filed another domestic violence complaint, alleging, *inter alia*, that since her last request, her husband tried to run her over with his car, threatened to kill her and her friends, and threatened to burn down her residence. See Complaint, Fam. No. DV 128/2000 (Terr. Ct. filed May 10, 2000). This time, the judge -- the same judge who denied her previous request for protection -- granted a six month protective order, and included in it an order to appraise and sell the residence. See Order, Fam. No. DV 128/2000 (Terr. Ct. filed June 6, 2000). Although Thomas was ultimately granted the relief she sought, which was temporary protection from her abusive husband, the Court concludes that this appeal is not moot.

Given the short-term nature of the relief granted under

section 97 (and the repetitive nature of domestic abuse in general), it is highly likely that many, if not most, appeals from section 97 orders would be moot by the time they reach an appellate panel. The continuing circumstances of domestic abuse as manifested in this case and in spite of the pending divorce, see Complaint, Fam. No. DV 128/2000 (Terr. Ct. filed May 10, 2000), well illustrate a "controversy of recurring character." *Indiana Employment Sec. Div. v. Burney*, 409 U.S. 540, 544-45 (1973) ("For a case to be moot, it must be absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." (internal quotation omitted)); see *Southern Pac. Terminal Co. v. Interstate Commerce Comm'n*, 219 U.S. 498, 515 (1911) ("The questions involved [here] are usually continuing (as are manifestly those in the case at bar) and their consideration ought not to be, as they might be, defeated, by short term orders, capable of repetition, yet evading review."). Accordingly, the Court finds that this case satisfies the "capable of repetition, yet evading review" exception to the mootness doctrine and reviews it on the merits.

The issue thus presented is whether the Territorial Court judge erred as a matter of law by denying the appellant's request for a restraining order (1) without a hearing as required by title 16, section 97(a) of the Virgin Islands Code, and (2) on

the apparent grounds that the parties were still married at the time of the request and that neither had filed for divorce. Among the stated purposes of chapter 2 of title 16 is to "assure victims of domestic violence the maximum protection from abuse that the law can provide." 16 V.I.C. § 90(a)(1). "Domestic violence" is defined as one of thirteen enumerated acts, including forcible or unlawful entry, *id.* § (b)(7), harassment, *id.* § (b)(10), and threats, *id.* § (b)(11). "Harassment" is defined as "engaging in a purposeful, knowing or reckless course of conduct involving more than one incident that alarms, or causes distress to another person and serves no legitimate purpose." *Id.* § 91(f). "Such conduct shall include . . . trespassing or coming upon or about the premises of the victim so as to intrude upon privacy or create a menacing or threatening situation." *Id.* § 91(f)(2). Finally, a "victim" includes "any person who has been subjected to domestic violence by a spouse." *Id.* § 91(c).

In her complaint, Sandra Thomas alleged that her husband threatened her, came daily and unnecessarily upon the premises to "keep an eye on her," entered her residence (from which he had voluntarily moved), initiated contact with her on numerous occasions, and intimidated her in an effort to force her to leave the residence. She further alleged that she was afraid of her

husband due to past physical abuse. Taking the allegations of the complaint as true, Sandra Thomas clearly stated a claim for domestic violence as defined by the statute, a claim that required a hearing at which she would have the opportunity to prove her allegations. *Id.* § 97(a) (upon the filing of a domestic violence complaint by a "victim" as defined by the statute, "a hearing shall be scheduled within 10 days of filing a complaint") (emphasis added).

Contrary to the suggestion of the Territorial Court judge, the marital status of the parties is irrelevant to the viability of a claim of domestic violence, both for purposes of criminal arrest and complaints for protective orders. See *id.* § 91(c) (expressly including both spouses and former spouses within the scope of covered "victims"); *id.* § 94(e) (providing that, in determining whether probable cause exists to make an arrest, officers "shall not . . . consider" as a factor that "the victim has not made efforts to obtain a divorce"); *id.* § 96 ("The Court in domestic violence actions shall not dismiss any complaint or delay disposition of a case because of the concurrent dissolution of a marriage . . ."). In every respect, the domestic violence statute makes absolutely clear that protection will not be denied or delayed because the parties are married, or are in the process of divorce. Nowhere is there any suggestion that protection may

be conditioned on the initiation of divorce proceedings. As already noted, a person can be a "victim" for purposes of obtaining relief pursuant to chapter 2 whether or not the attacker is a spouse or former spouse or the parties have ever been married. See *id.* § 91(c) (providing that a victim can be "any person who has been subjected to domestic violence by a spouse, former spouse, parent, child, or any other person related by blood or marriage, a present or former household member, a person with whom the victim has a child in common, or a person who is, or has been, in a sexual or otherwise intimate relationship with the victim."). Virgin Islands law reflects the modern understanding that virtually any intimate relationship can give rise to abusive conduct, and that a victim of domestic violence should be able to obtain protection from the court regardless of his or her legal relationship to the abuser.

There is yet another troubling aspect to the Territorial Court's order. In it, the court suggests that the appellant, by filing a second domestic violence complaint after the expiration of the first restraining order, was somehow improperly seeking the equivalent of an equitable division of the parties' property without going through the proper divorce channels. There is no basis for this suggestion. Using a check-off form provided by the Territorial Court itself, Thomas checked that she was the

victim of harassment and threats and further checked the type of temporary relief she sought. (See App. at 1-2.) She did not request disposition of assets, not only because disposition of assets is not an option on the form, but also because section 97 specifically provides that no order under that section can possibly affect any parties' interest in a co-owned or leased property. See *id.* § 97(b)(3) ("No Order shall affect any interest in the residence held by either party").

In sum, the Territorial Court erred when it denied Thomas's petition without scheduling a hearing as required by section 97(a) and when it suggested that the parties' marital status was the dispositive factor for denying Thomas's petition.

III. CONCLUSION

The Territorial Court erred when it dismissed Sandra Thomas's domestic violence complaint (1) without holding a hearing and (2) on the ground that the parties had not initiated divorce proceedings. We will vacate the order dismissing the complaint.

DATED this 7th day of June, 2002.

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Attorney for Appellee.

ORDER OF THE COURT

PER CURIAM.

AND NOW, this 7th day of June, 2002, having

considered the parties' submissions and arguments, and for the reasons set forth in the Court's accompanying Opinion of even date, it is hereby

ORDERED that the February 2, 2000 order of the Territorial Court entered in the above-captioned matter is **VACATED**.

ATTEST:
WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk

Copies to:
Judges of the Appellate Panel
Honorable Geoffrey W. Barnard
Honorable Jeffrey L. Resnick
Judges of the Territorial
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NOT FOR PUBLICATION