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Experts Criticize Judge's Deportation Threat

The jurist, who denied a restraining order to an illegal immigrant, should have ruled on the merits of her domestic abuse case, they say.

July 21, 2006 | Sam Quinones | Times Staff Writer

A substitute judge who declined to hear a woman's request for a restraining order against her husband because she was an illegal immigrant should have focused on the merits of her case rather than her legal status, immigration law and domestic violence experts said Thursday.

Los Angeles County Superior Court Judge Pro Tem Bruce R. Fink, a family law attorney of 34 years, said he believed he was helping Aurora Gonzalez when he ordered her to leave his courtroom last week or risk arrest and deportation to Mexico.

But immigration law experts said Fink overreached by issuing the threat. A state judge has no authority to order an arrest for violation of federal immigration laws, they said.

Regardless, Gonzalez, who lives in a domestic abuse shelter, would probably have been granted a stay of any deportation proceeding under the federal Violence Against Women Act, said Ed Pilot, a Beverly Hills immigration attorney.

"By issuing the restraining order, it could help her on her VAWA case," he said. Also, if Gonzalez had a pending application for legal residency, as asserted, she would have been allowed a grace period while the issue was resolved, he added.

Fink "may have had the best intentions in the world," Pilot said, "but he's treading into an area that he understandably is not an expert on."

Victor Nieblas, an immigration attorney and adjunct professor of immigration law at Loyola Law School in Los Angeles, agreed that Gonzalez would probably have been protected.

"This is what the judge doesn't understand," Nieblas said. "You can't assume that because someone is here without documents that the automatic result is deportation."

The Los Angeles County Superior Court is investigating the incident, which occurred during a July 14 hearing on Gonzalez's request for a restraining order against Alfredo Salgado, 51, her husband of six years and a legal resident.

In her court petition, Gonzalez accused him of years of emotional and verbal abuse against her and the couple's two young boys. In one argument, she said, he told her to leave the house and the children and threatened to call immigration officials.

During his questioning of Gonzalez, Fink asked if she was in fact an illegal immigrant, and she said she was.

"I hate the immigration laws that we have," the judge said, according to the court transcript, "but I think the bailiff could take you to the immigration services and send you to Mexico. Is that what you guys want?"

Fink then warned Gonzalez that he was going to count to 20, and that if she was still in the courtroom when he finished, he would have her arrested and deported, according to the court transcript.

At that point, Gonzalez left, and Fink dismissed the case.

In an interview Wednesday, Fink said that once Gonzalez admitted she was in the country illegally, his main concern was to not get her in trouble with immigration officials.

"We have a federal law that says this status is not allowed," he said. "You can't just ignore it. What I really wanted was not to give this woman any problems."

He also said it appeared to him that the couple, both of whom were present for the hearing, wanted to get back together and that there was no mention of violence in the complaint. And he said he believed that a restraining order would have kept them apart for at least a year and disrupted any effort by Gonzalez to gain legal status.

But Alicia Valdez Right, deputy director of legal services for the Harriett Buhai Center for Family Law in Los Angeles, said the main issue should have been Gonzalez's safety and welfare.

"When you focus on that, the immigration issue is irrelevant," she said.

An Orange County attorney specializing in bankruptcy and family law, Fink has also served as a substitute judge since graduating from Pepperdine Law School in 1971.

A colleague described him as an astute and fair attorney. "He is not some sort of warrior in the culture wars," said Michael Franco, a bankruptcy lawyer.

He said Fink was forced to deal with the fact that Gonzalez admitted being an illegal immigrant. "The saying is, 'It's kind of hard to un-ring the bell,'" Franco said. "I wouldn't know how to handle it... It's a minefield."

But immigration experts said Fink put himself in the predicament when he asked Gonzalez her legal status.

"As we experience the immigration debate, people are starting to realize how complex immigration law is," Nieblas said. "There's processes, laws, relief, a whole array of matters. It's just not a simple declaration, 'You're illegal. Get out of my courtroom.'"