

NO. 24749

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

BRIAN K. YAMAMOTO, Plaintiff-Appellee

vs.

LORI ANN L. YAMAMOTO, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(FC-D NO. 99-0521)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Upon review of the record, it appears that the November 7, 2001 pretrial order in FC-D No. 99-0521 is not a final and appealable order pursuant to HRS § 641-1(a) (1993). Normally, a post-decree order is an appealable final order under HRS § 641-1(a) only if the order finally determines the post-decree proceeding. Hall v. Hall, 96 Hawai'i 105, 111 n.4, 26 P.3d 594, 600 n.4 (App. 2001) (citation omitted), vacated in part on other grounds, Hall v. Hall, 95 Hawai'i 318, 22 P.3d 965 (2001). The November 7, 2001 pretrial order did not finally determine all of the issues in Defendant-Appellant Lori Ann L. Yamamoto's (Appellant Lori Yamamoto) October 15, 2001 motion for post-decree relief. Therefore, absent the family court's certification pursuant to HRS § 641-1(b) (1993), the November 7, 2001 pretrial order is appealable only if appellant Lori Yamamoto can satisfy all of the requirements for either the collateral order doctrine or the Forgay doctrine.

The November 7, 2001 pretrial order is not appealable under the collateral order doctrine because it did not resolve an issue completely separate from the merits of the proceeding. Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 321, 966 P.2d 631, 633 (1998). On the contrary, the November 7, 2001

pretrial order resolved an important issue directly related to the merits of the proceeding.

The November 7, 2001 pretrial order is also not appealable under the Forgay doctrine from Forgay v. Conrad, 47 U.S. 201 (1848), because it did not require immediate execution of a command that property be delivered to Appellant Lori Yamamoto's adversary, Plaintiff-Appellee Brian K. Yamamoto. Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995). Instead, the November 7, 2001 pretrial order made Appellant Lori Yamamoto solely responsible for a mortgage debt that is owed to a third-party lender. Therefore, the November 7, 2001 pretrial order is not immediately appealable under the collateral order doctrine or the Forgay doctrine, the appeal of the November 7, 2001 pretrial order is premature, and we lack appellate jurisdiction over this case.

Accordingly, IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, April 4, 2002.