

NO. 22460

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

URSULA MARIE NEW, nka)	FC-D NO. 90-0582
Ursula Maria Ozga Freitas,)	
)	APPEAL FROM THE
Plaintiff-Appellant,)	FAMILY COURT OF THE
)	FIRST CIRCUIT COURT
vs.)	
)	
DAVID GENE NEW,)	
)	
Defendant-Appellee.)	
_____)	

MEMORANDUM OPINION

In this divorce case, Plaintiff-Appellant Ursula Marie New, now known as Ursula Maria Ozga Freitas (Ursula or Plaintiff), appeals the family court's (1) April 21, 1999 Order Denying Motion for Post-Decree Relief Filed 3/16/99, (2) April 21, 1999 Order Granting Kahi Mohala['s] Motion to Quash Subpoena, and (3) May 27, 1999 Order Denying Plaintiff's Motion for Reconsideration of Decision of October 22, 1999, Filed April 28, 1999, and Order Denying Plaintiff's Motion for Reconsideration of Decision of April 21, 1999, Filed May 10, 1999. We affirm.

FACTS

Defendant-Appellee David Gene New (David or Defendant) was born in 1955. Ursula was born in 1964. David and Ursula were married in 1983. When this divorce case commenced in 1990,

David was a United States Marine and had been one for over 17 years. The January 10, 1991 Divorce Decree awarded Ursula sole legal and physical custody of the parties' female minor child (Jane Doe), born on May 20, 1984, subject to David's specified rights of visitation. It further stated in relevant part as follows:

B. Child Health Care: [David] shall maintain medical and dental insurance for the benefit of the child.

[David] shall be responsible for the medical and dental care of the child to the extent that such care is available through military medical facilities or CHAMPUS-sponsored services. The cost of ordinary medical and dental care which is not covered through military medical facilities or by CHAMPUS-sponsored services shall be paid by [Ursula] and any extraordinary medical and dental care which is not covered through military medical facilities or by CHAMPUS-sponsored services shall be paid by [Ursula] and [David] equally.

Each party's obligation to the child under this section shall end when the child is no longer entitled to child support.

Before either party incurs any extraordinary medical or dental expense of a non-emergency nature for the child which under this provision must be paid in full or part by the other party, the party intending to incur the expense shall give the other party notice of his or her intent to incur said expense.

C. Continued Medical and Dental Insurance. Upon [David's] retirement or separation from the United States Marine Corp, he shall continue to provide medical and dental coverage for the benefit of the minor child. [Ursula] shall be responsible for ordinary medical and dental expenses of the child not paid by insurance; [Ursula] and [David] shall be responsible, equally, for all extraordinary medical and dental expenses not paid by insurance.

On February 16, 1999, the family court entered its Decision and Order in relevant part as follows:

3. [David's] request that he should not have to pay for child support for the time that [Jane Doe] was out of [Ursula's] home and at Kahi Mohala [Hospital] is denied.

. . . .

5. [David's] request that [Ursula] be responsible for any costs associated with [Jane Doe's] stay at Kahi Mohala is denied. Pursuant to the Decree filed herein, [Ursula] and [David] are responsible for sharing the cost of uninsured medical expense for [Jane Doe].

In her handwritten Motion and Affidavit for Post-Decree Relief filed on March 16, 1999, Ursula stated in relevant part as follows:

Due to the negligence on Kahi Mohala's part as of the filing of this motion [Jane Doe] will be repeating the 9th grade. I respectfully request this court order relief for [Jane Doe] and her family for Kahi's negligence[.]

From September 1998 to December 1998 the parties daughter [Jane Doe] was in the facility called Kahi Mohala which is located 91-2301 Fort Weaver Road in Ewa Beach. There [Jane Doe] attended school. Kahi failed to act in a prudent manner and as a result caused hardship for [Jane Doe] and her family.

I am respectfully requesting the following from this court[.]

1. Kahi Mohala is to supply a private tutor that will meet [Jane Doe's] needs academically and emotionally. . . .

. . . .

2a) Kahi Mohala be present (be ordered to be) to testify to questions that they refuse to respond to through numerous correspondences and telephone communications. . . .

. . . .

3. I respectfully request that Kahi provide [Ursula] with a complete copy of any and all records from [Jane Doe's] treatment from August 1998 - December 1998 without a 50¢ per page charge[.]
4. I respectfully request that this court order Kahi Mohala to seal [Jane Doe's] records
5. That Kahi be ordered responsible for any and all hardship caused to [Ursula] and [Ursula's] family for having to file this motion[.]
6. I respectfully request that after this court hears the testimony & reviews the evidence that will be before them order what "rights" [Ursula] is entitled to under the law[.]

On March 16, 1999, Kahi Mohala was served with a subpoena commanding it to appear in the family court on April 21, 1999, and to bring any and all related documents that were requested in the Motion and Affidavit for Post-Decree Relief filed March 16, 1999.

On April 13, 1999, Kahi Mohala filed Kahi Mohala's Motion to Quash Subpoena "on the grounds that the subpoena seeks information some of which has already been produced to [Ursula]; and, because the subpoena also seeks information which is beyond the jurisdiction of this court to order produced and/or to which [Ursula] is not entitled to at all." Kahi Mohala contends that "[Ursula's] dispute with Kahi [Mohala] is not one over which the family court has jurisdiction." Furthermore, Kahi Mohala contends that "[i]f [Ursula] has a dispute regarding medical care

and treatment, her remedy is pursuant to H.R.S. Chapter 671, and not in family court."¹

On April 21, 1999, the family court granted Kahi Mohala's April 13, 1999 motion "because the court agrees it does not have the jurisdiction to order what [Ursula] requests in her motion and subpoena as to Kahi Mohala Hospital." The family court also entered its Order Denying Motion For Post-Decree Relief Filed 3/16/99.

On May 10, 1999, Ursula filed "Plaintiff's Motion for Reconsideration of Decision From April 21, 1999." In the Declaration of Plaintiff, Ursula states in relevant part as follows without "sic" to indicate mistakes:

2. On March 16, 1999 the Plaintiff filed her Motion and Affidavit for Post Decree Relief, requesting various things as listed below.

2a. Kahi Mohala be Ordered to supply a tutor for the parties minor child since Kahi Mahalo failed to forward the child['s] grades in a timely manner. To this date [Kahi Mohala] still has not issued credits required by the DOE to pass/fail the 9th grade. Kahi Mahalo has failed to show accademic accomplishments met by said child while staying in Kahi from September 1998 - December 1990. The child's . . . home school was unable to place her accordingly as permitted by law under "Child Rights in Special Education". When tested by the DOH child placed very high academically. These reports have already been submitted to the Courts as evidence. Under the law said child has a right to an education. Kahi Mohala has a responsibility as a facilitator of educating inpatients to meet the DOE requirements at [a] minimum. Which I feel they have not. Without testimony from Kahi this Court can not determine this. This request was placed to allow the

¹ Hawai'i Revised Statutes Chapter 671 is entitled "Medical Torts."

child a tutor until she reaches the academic milestones she would of been at if Kahi would of not acted neglectful in educating her and providing the academic records as required. As already entered the report card sent to Campbell High School from Kahi. Child did not receive any credits nor does it indicate what grade level she was receiving. Kahi Mohalo was aware that as of November 23, 1998 the child was deemed "Special Education". Kahi Mohala made no attempt to . . . afford the child and the parent their rights allowed to them in Special Education.

. . . .

2g. As of this date the child [Jane Doe] will be repeating the 9th grade. No fault of the Plaintiff or the child. But due to circumstances beyond their control.

2h. Without testimony from Kahi Mohala this Court may not be able to determine if the fault lies solely on Kahi Mohala, the Defendant, or in any part. This Court will further not be able to determine the following.

1. Was wrong (educational wise) committed against the child?

2. Was wrong (educational wise) committed against the Plaintiff? The Plaintiff is responsible, liable and has invested in the child['s] education.

3. Was there Custodial Interference? This tort is recognized in cases of unjustified interference by third parties.

4. The Plaintiff's parental rights violated? By who, the Defendant, Kahi Mohala?

. . . .

3b. The child is entitled to fair, confidential, care, and did not receive this.

. . . .

3d. The Defendant had access to the facility, contact with the child and the staff.

. . . .

3f. The Defendant claims Kahi informed them to pick up the parties child because of lack of insurance.

3g. The insurance problem existed with the Defendant's insurance.

3h. Under the law and a policy of Kahi no patient can be refused do to method of payment.

3i. . . . Under the law and policy of Kahi Mahola Kahi has a responsibility to contact CPS not the Defendant.

. . . .

3k. On October 30, 1998 the Plaintiff married her current spouse Virgil Freitas in efforts to get [Jane Doe] covered under Virgil's insurance and maintain her medical therapy, since Plaintiff's insurance was fully deleted. The Defendant's insurance had a problem which the Defendant made no attempt to assist or resolve. . . .

3l. The Plaintiff was forced to sacrifice a wedding that her and her spouse wanted in efforts to maintain [Jane Doe] with medical care.

3m. If these facts are not true then why has Kahi Mohalo attempted to bill Virgil Freitas' insurance over \$30,000 to date if he has no legal obligation to the parties child.

1. Was negligence committed? By who? The Defendant? Kahi Mohala?

2. Was the Plaintiff's parental right violated? By who?

3. Why did the child have to endure more emotional trauma caused by the Defendant and Kahi? She was denied the right to medical care. She was denied the right to an education?

4. The Plaintiff has "Sole Legal Custody" she is liable, responsible and accountable. Who will this Court deem responsible for

interfering with her responsibilities? Who will this Court deem liable for her losses that was created with this interference?

5. What Constitutional Rights of the Plaintiff has been violated?

4. The Plaintiff was required by law and policy of Kahi Mohala to sign for the financial responsibility for the parties care.

4a. The Defendant continues to interfere with the Plaintiff's rights by interfering with this billing.

4b. Contractually the Defendant did not sign any agreement with Kahi. The Plaintiff did. If Kahi make any other arrangements with the Defendant would be a breach of the agreement with the Plaintiff.

. . . .

4e. The Defendant can not interfere with the rights of a contract.

1. With this interference this Court needs to determine who is responsible for this interference?

2. This interference caused detrimental hardship to the Plaintiff and family. Is the Defendant responsible? Is Kahi Mohala responsible.

5. Due to actions beyond the Plaintiff's control, the Plaintiff, and the Plaintiff's family suffered dearly because of the infringement forced upon her by the Defendant and Kahi Mohala. As written and already entered in the Court file the letter to Judge Kochi that this motion was in fact a mission to find facts. Many wrongs have been committed against the Plaintiff, the parties child, and the Plaintiff's spouse. This Court has jurisdiction in this matter. Family Court has "exclusive jurisdiction" when it comes to the child. These are educational and medical interrogatories which Kahi refuses to answer unless they have a Court Order. If this Court continues to deem they do not have any jurisdiction with this reconsideration. This Court may assign it to the appropriate Court(s).

. . . .

8. I respectfully request to understand how/why this Court contends they do not have jurisdiction, in effort to help alleviate and further frustration to the Plaintiff.

9. I respectfully request if this Court continues to feel they do not have jurisdiction then Order this Motion to the appropriate Court.²

10. I respectfully request that this Court allow the Plaintiff to subpoena Kahi Mohala in efforts to determine liability.

(Footnote added.)

On May 27, 1999, the family court entered its Order Denying Plaintiff's Motion for Reconsideration of Decision of October 22, 1999,³ filed April 28, 1999, and Order Denying Plaintiff's Motion for Reconsideration of Decision of April 21, 1999, Filed May 10, 1999. (Footnote added).

DISCUSSION

In this appeal, Ursula states various issues similar to the issues she raised in her May 10, 1999 Motion for Reconsideration of Decision From April 21, 1999. In relevant part, without "sic" to indicate mistakes, the substantive issues are as follows:

6. As so requested in the Motion for Reconsideration (2A) Kahi Mohala be ordered to supply a tutor for

² It is not as simple as Plaintiff-Appellant Ursula Marie New now known as Ursula Maria Ozga Freitas (Ursula) apparently thinks it is. Depending on what Ursula alleges against whom and what relief she seeks, Ursula will have to commence a case in the civil court and/or the family court.

³ The relevant year was 1998.

the parties minor child since Kahi Mohala failed to forward the child's grades in a timely manner. To this date the child has not been issued credits required by DOE. Kahi Mohala has failed to show academic accomplishments met by said child while staying in Kahi Mohala from September 1998 to December 1998. The child's ([Jane Doe]) home school was unable to place the child accordingly as permitted by law under "Child Rights in Special Education". When tested by the DOH the said child was placed very high academically. Under the law said child has a right to an education. Kahi Mohala has a responsibility as a facilitator of educating inpatients to meet the DOE requirements at minimum. With Judge Warrington granting the motion to Quash the Subpoena the court could not rule on this without testimony from Kahi Mohala. Kahi Mohala acted neglectful in educating the parties child and providing the academic records, as required under the law. . . .

- a. Was Custodial Interference committed here by [David] and Kahi Mohala?
 - b. What relief will be granted to the parties child, [Ursula], and [Ursula's] spouse for the following:
 - c. Kahi Mohala and the Defendants interference with [Ursula's] responsibility of education
 - d. The undo hardships(mentally, physically, and financially) the child, [Ursula], and [Ursula's] spouse had to endure
7. Judge Warrington ruled that Family Court does not have jurisdiction.
- a. HRS 571-11 Jurisdiction; Children, except otherwise provided in this chapter the court shall have "exclusive original jurisdiction in proceedings".

(2) Concerning any child living or found within the circuit

(2a) Who is neglected as to or deprived of educational services required by the law whether through the child's own misbehavior or non attendance or otherwise.

. . . .

8.

. . . .

c. Is this a recognizable tort for damages resulting from intentional interference with custodial parents rights?

d. What relief will [Ursula] receive for damages suffered due to both Kahi Mohala and the Defendants interference?

In sum, Ursula admits that her March 16, 1999 Motion and Affidavit for Post-Decree Relief was a request for an evidentiary hearing to discover and find the relevant facts and to determine the existence and extent of the liability of David and Kahi Mohala to Ursula, Jane Doe, and Virgil Freitas. The main harm alleged by Ursula is the fact that Jane Doe will be repeating the ninth grade. Ursula suspects/alleges that Kahi Mohala failed its duty to afford Jane Doe her special education rights and was negligent in educating Jane Doe and in timely supplying her academic records. In Ursula's view, many wrongs were committed against herself, Jane Doe, and Virgil Freitas, which caused them suffering and harm. Ursula alleges that her parental rights were violated and she was forced to sacrifice a wedding ceremony that she and Virgil Freitas wanted. Ursula wants a court hearing to question Kahi Mohala and David and to

determine: (a) if wrongs were committed, by whom and against whom; (b) who is at fault; (c) if David or Kahi Mohala were negligent; (d) if there was the tort of custodial interference; (e) if Ursula's constitutional rights were violated; and (f) who is liable for the losses.

DECISION

The family court does not have jurisdiction over claims for monetary damages for torts, breaches of contracts, breaches of constitutional rights, and/or breaches by a third party of parental rights.

A divorce case involves the divorce, the division and distribution of the property of the parties, spousal support, child custody and visitation, and child support. See HRS §§ 580-41 to -56 (1993 and Supp. 1997).

In this divorce case, the family court does not have jurisdiction over claims against David and/or Kahi Mohala by Ursula, Jane Doe, and/or Virgil Freitas for monetary and/or other relief for their allegedly having been the victims of the intentional/negligent violation/infringement of their alleged personal rights, contractual rights, rights to a non-negligent education, special education rights, parental rights, rights to a wedding ceremony, custodial rights, and/or constitutional rights.

Instead of presenting requests pertaining to David and the Divorce Decree, Ursula is attempting to use this divorce case

as a venue for, and this post-decree motion as a vehicle for litigating her controversy with Kahi Mohala. This she cannot do. If Ursula wants to pursue her controversy with Kahi Mohala, she must timely file a new case against Kahi Mohala.

CONCLUSION

Accordingly, we affirm the family court's (1) April 21, 1999 Order Denying Motion for Post-Decree Relief Filed 3/16/99, (2) April 21, 1999 Order Granting Kahi Mohala Motion to Quash Subpoena, and (3) May 27, 1999 Order Denying Plaintiff's Motion for Reconsideration of Decision of October 22, 1999, Filed April 28, 1999, and Order Denying Plaintiff's Motion for Reconsideration of Decision of April 21, 1999, Filed May 10, 1999.

DATED: Honolulu, Hawai'i, June 8, 2000.

On the briefs:

Ursula Maria Ozga Freitas,
Plaintiff-Appellant, *pro se*.

JAMES S. BURNS
Chief Judge

David G. New,
Defendant-Appellee, *pro se*.

CORINNE K. A. WATANABE
Associate Judge

JOHN S. W. LIM
Associate Judge