

DISSENTING OPINION BY WATANABE, J.

I respectfully disagree with the majority's conclusion that in light of Schefke v. Reliable Collection Agency, Ltd., slip op. (No. 21827, Sept. 21, 2001), "[t]he family court erred in limiting [Plaintiff-Appellant Jane Doe's (Jane Doe)] award of attorney's fees to a lodestar amount with no consideration given to a contingent fee enhancement." Majority Opinion at 9. In my opinion, the principles regarding contingency enhancements of attorney's fee awards espoused by the Hawaii Supreme Court in Schefke are not applicable to the facts of this case.

In Schefke, the trial court, based on Hawaii Revised Statutes (HRS) §§ 378-5(c) (1993) and 388-11(c) (Supp. 2000), awarded the plaintiff attorney's fees and costs totaling \$92,567.16 for prevailing on a claim that he suffered retaliation by his employer after he filed an employment discrimination claim with the Hawaii Civil Rights Commission. Hawaii Revised Statutes § 378-5(c) provides:

In any action brought under this part, the court, in addition to any judgment awarded to the plaintiff or plaintiffs, shall allow costs of action, including costs of fees of any nature and reasonable attorney's fees, to be paid by the defendant.

Hawaii Revised Statutes § 388-11(c) states, in relevant part:

(c) The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow interest of six per cent per year from the date the wages were due, costs of action, including costs of fees of any nature, and reasonable attorney's fees, to be paid by the defendant.

The Hawaii Supreme Court held that when an attorney has entered into a contingent fee arrangement with his or her client, a trial

court may enhance an award of reasonable attorney's fees under a fee-shifting statute such as HRS §§ 378-5(c) and 388-11(c).

However, the supreme court specifically limited its holding as follows:

We note that this holding applies only to statutes with fee-shifting provisions enacted to "encourage the enforcement of . . . law through lawsuits filed by private persons." Delaware Valley II, 483 U.S. at 737 (Blackmun, J., dissenting). For example, the holding is inapplicable to attorney's fees under HRS § 607-14 (1993), which authorizes courts to award reasonable attorney's fees to the prevailing party "in all actions in the nature of assumpsit and in all actions on a promissory note or other contract in writing that provides for an attorney's fee."

Schefke, slip op. at 106.

This case did not involve "the enforcement of . . . law through lawsuits filed by private persons." Rather, it was more akin to an assumpsit action or an action on a promissory note or other contract in writing, since Jane Doe already had an order establishing child support and brought this lawsuit to enforce the obligation of Defendant-Appellee John Doe (John Doe) to pay child support under the prior court order. Accordingly, I do not believe that Schefke is applicable. Since I believe that the record on appeal contains substantial evidence to support the reasonableness of the Family Court of the First Circuit's (the family court) award of attorney's fees to Jane Doe's counsel, I would affirm that part of the family court's January 3, 2000 "Order Regarding [Jane Doe's] Motion for Order to Show Cause Why [John Doe] Should Not Be Found in Contempt of Court" that awarded Jane Doe attorney's fees.