

NOS. 23294 AND 23349

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

MARILYNN SUEKO UENO, now known as
Marilynn Sueko Aihara, Plaintiff-Appellee, v.
THOMAS TADAO UENO, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 92-1071)

ORDER GRANTING MOTION FOR RECONSIDERATION AND
VACATING MEMORANDUM OPINION OF THE COURT
(By: Burns, C.J., Watanabe and Lim, JJ.)

I.

The motion for reconsideration filed by Plaintiff-Appellee Marilyn Sueko Aihara (Marilyn) on October 8, 2001 is hereby granted. The Memorandum Opinion filed by this court on October 3, 2001 is hereby vacated and a new memorandum opinion will be entered.

II.

The November 25, 1992 agreement incorporated into the Divorce Decree states in relevant part as follows:

If a party obligated hereunder to perform a certain act fails to do so, the Family Court shall have the power to order any relief it deems appropriate, including assessment against a non-performing party for fees, attorney's fees, and costs incurred on account of the failure to comply with the terms of this section.

In its March 16, 2000 judgment, the family court ordered "[t]hat each party shall bear his/her own cost, expenses and attorney's fees."

In her answering brief, Marilyn concluded that "[t]his Court should affirm the family court's March 16, 2000, Judgment for \$75,850, and award Marilyn attorney's fees for this appeal under HRS Section 580-47, HRS Section 607-14 (assumpsit), or the attorney's fees clause in the November 25, 1992, Agreement."

In her motion for reconsideration of this court's October 3, 2001 Memorandum Opinion, "Marilyn respectfully requests that this Court address her request for attorney's fees in the answering brief, which were provided for in the agreement signed by the parties."¹

We did not address the question of attorney fees because the request in the answering brief was premature and inadequate. If and when this appeal is finally decided, Marilyn may file a motion for attorney's fees pursuant to Rule 53(b) of the Hawaii Rules of Appellate Procedure (2001) and Hawaii Revised Statutes § 580-47(f) (2000).

DATED: Honolulu, Hawaii, October 16, 2001.

Peter Van Name Esser
on the motion for
Plaintiff-Appellee.

Chief Judge

Associate Judge

Associate Judge

¹ The November 25, 1992 Agreement Incident to Divorce was incorporated into the December 31, 1992 Divorce Decree. Therefore, the relevant document is the Divorce Decree, not the Agreement Incident to Divorce.