

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

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CARMEN T. NAKASONE, Plaintiff-Appellee, v.  
GERALD NAKASONE, Defendant-Appellant

NO. 23460

APPEAL FROM THE FAMILY COURT OF THE FIFTH CIRCUIT  
(FC-D NO. 98-0009)

MARCH 18, 2002

ORDER DENYING DEFENDANT-APPELLANT'S  
MOTION FOR RECONSIDERATION OF THE COURT'S OPINION  
FILED HEREIN ON FEBRUARY 27, 2002

(By: Burns, C.J., Watanabe and Foley, JJ.)

For the reason stated herein, we deny "Defendant-Appellant's Motion for Reconsideration of the Court's Opinion Filed Herein on February 27, 2002." This motion for reconsideration, which shall be referred to herein as the "MR", was filed on March 8, 2002.

Hawai'i Family Court Rules (HF CR) Rule 68 (2000) states, in relevant part, as follows:

At any time more than 20 days before any contested hearing held pursuant to HRS sections 571-11 to 14 (excluding law violations and criminal matters) is scheduled to begin, any party may serve upon the adverse party an offer to allow a judgment to be entered to the effect specified in the offer. Such offer may be made as to all or some of the issues, such as custody and visitation. Such offer shall not be filed with the court, unless it is accepted. If within 10 days after service of the offer the adverse party serves written notice that the offer is accepted, any party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall treat those issues as uncontested. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible,

except in a proceeding to determine costs and attorney's fees. If the judgment in its entirety finally obtained by the offeree is patently not more favorable than the offer, the offeree must pay the costs, including reasonable attorney's fees incurred after the making of the offer, unless the court shall specifically determine that such would be inequitable in accordance with the provisions of HRS section 580-47, or other applicable statutes, as amended.

Defendant-Appellant Gerald Nakasone's (Defendant-Appellant and/or Gerald) HFCR Rule 68 Offer dated November 24, 1998, offered that "[Plaintiff-Appellee Carmen T. Nakasone (Plaintiff-Appellee and/or Carmen)] can have all of the personal property and household effects at the marital residence should she accept this proposal." Defendant-Appellant's HFCR Rule 68 Offer was silent as to the 1989 Ford 350, valued at \$4,600, and the guns, valued at \$700. This court's opinion concluded that Defendant-Appellant's HFCR Rule 68 Offer "was insufficient for purposes of HFCR Rule 68 because it pertained to the division and distribution of some but not all of the joint or separate real and personal property and debts." In other words, as to the division and distribution of property and debts, Defendant-Appellant's HFCR Rule 68 Offer was not complete enough "to allow a judgment to be entered."

In his MR, Defendant-Appellant states, in relevant part, as follows:

Clearly, paragraph 10 of Gerald's Rule 68 proposal and Carmen's response confirm that those miscellaneous items of personal property and household effects which were located at the marital residence, not otherwise addressed by the offer, would be awarded to Carmen and those miscellaneous items of personal property and household effects not located at the marital residence, including the Ford truck and the guns would be awarded to Gerald. What other conclusion is this Court asserting could be drawn?

. . . [T]he Family Court should assume that any property not designated by the Offeror was to be allocated to the Offeror in his/her Rule 68 proposal. Then the Family Court would assess whether, even with such an allocation, the offeree had failed to improve upon the Rule 68 proposal. In this case such an analysis would still have left Gerald as the prevailing party under the Rule 68 analysis as the truck and the guns were of an insignificant value compared to the overall value of the parties' estate. The Family Court's distribution of assets and debts was so favorable to Gerald that Carmen could not be seen as the prevailing party under any circumstances. Further, common sense would dictate that the property allegedly omitted from the Rule 68 proposal would have to be of such a significant nature as to skew the result of the analysis prior to the Court invalidating the entire proposal.

Should this ruling stand, this Court will have opened up a Pandora's box. Every successful Rule 68 proposal will be challenged on the grounds that not every item of miscellaneous personal property has been addressed in the proposal. Do the dog and cat need to be specifically mentioned, the fake diamond engagement ring, an old television set residing at the mother-in-law's house?

Defendant-Appellant fails to recognize that the question whether "the judgment in its entirety finally obtained by the offeree is patently not more favorable than the offer" is the second question. The first question is whether there is "an offer to allow a judgment to be entered to the effect specified in the offer." This is a question of law. An offer regarding the division and distribution of property and debts that is not complete enough to allow a judgment to be entered regarding the division and distribution of property and debts does not qualify. This requirement is similar to the requirement that must be satisfied before there can be appellate jurisdiction. It is not complicated or difficult to satisfy.

For example, paragraphs 10 and 11 of the HFCR Rule 68 Offer state as follows:

10. [Carmen] can have all of the personal property and household effects at the marital residence should she accept this proposal.
11. Each party would pay their separate debts. [Carmen] would be responsible for the Bank of Hawaii Visa. The parties would divide equally the J & C debt up to \$10,000.00. The remainder of the J & C debt would be the responsibility of [Carmen].

Paragraph 11 expressly assigns "[t]he remainder." In contrast, paragraph 10 is silent as to valuable personal property not at the marital residence. HFCR Rule 68 does not authorize the family court to imply or assume that the HFCR Rule 68 Offer offers to the offeror all property of monetary or other value not offered to the offeree. In the words of HFCR Rule 68, the offer must be sufficiently specific and comprehensive to "allow a judgment to be entered to the effect specified in the offer." With respect to the division and distribution of the joint and separate real and personal property and debts, the offer must be complete enough "to allow a judgment to be entered." In other words, when the judgment is entered to the effect specified in the offer, the judgment will award all joint and separate real and personal property.

In his MR, Defendant-Appellant asks, "Do the dog and cat need to be specifically mentioned, the fake diamond engagement ring, an old television set residing at the mother-in-law's house?" The answer is that although these animals and items do not "need to be specifically mentioned," the offer must state to whom they will be awarded by the judgment. Many a

divorce has involved the issue of who will be awarded the dog and/or the cat. Therefore,

Upon consideration of "Defendant-Appellant's Motion for Reconsideration of the Court's Opinion Filed Herein on February 27, 2002," filed on March 8, 2002,

IT IS HEREBY ORDERED that the motion is denied.

Kurt Bosshard,  
on the motion, for  
Defendant-Appellant.

Chief Judge

Associate Judge

Associate Judge