NO. 23794

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

URSULA MARIE NEW, now known as Ursula Maria Ozga Freitas,
Plaintiff-Appellant, v.
DAVID GENE NEW, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 90-0582)

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

In this post-divorce case, Plaintiff-Appellant Ursula Marie New, now known as Ursula Maria Ozga Freitas (Plaintiff), appeals from the following orders entered in the Family Court of the First Circuit by Per Diem District Family Judge Gale L. F. Ching:

1. The June 30, 2000 "Order Regarding Plaintiff's Motion and Affidavit for Post-Decree Relief Filed on December 1, 1999."[1]

2. The July 20, 2000 "Order Denying Plaintiff's Motion to Award the Plaintiff an Equitable Division of the Texas

[1] This June 30, 2000 order denied the motion by Plaintiff-Appellant Ursula Marie New, now known as Ursula Maria Ozga Freitas (Plaintiff), seeking reimbursement of payments of the daughter's medical expenses, establishment of a $300 medical expense fund from which Plaintiff could pay the daughter's medical expenses, $5,000 punitive and exemplary damages, and reimbursement of all legal expenses and costs.

Property That the Defendant Committed Fraud During the Divorce Proceedings, Filed April 28, 2000."[2]

3. The July 20, 2000 "Order Granting Defendant's Motion in Limine Re: Payment of Retirement Benefits By Allotment Filed April 17, 2000."[3] The motion sought an order precluding evidence or argument regarding Plaintiff's claims that Defendant-Appellee David Gene New (Defendant) had not complied with the prior order requiring Defendant to pay Plaintiff her share of Defendant's retirement by allotment.

4. The July 20, 2000 "Order Granting Defendant's Motion in Limine Re: Calculation of Plaintiff's Share of Defendant's Military Retirement Filed April 17, 2000." The motion sought an order precluding evidence or argument regarding claims for recalculation of Plaintiff's formula share of Defendant's military retirement.

5. The July 20, 2000 "Order Regarding Plaintiff's Motion for Post-Decree Relief to Enforce the $7,800.00 Child Support Arrearages and to Recalculate the Child Support From September 11, 1998 Order Due to Fraud, Perjury, and Concealment

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[2] This July 20, 2000 order denied Plaintiff's Hawai‘i Family Court Rule 60(b)(3) motion seeking the award to her of an equitable division of a parcel of Texas real estate owned by Defendant-Appellee David Gene New (Defendant).

[3] The operative language of this July 20, 2000 order does not conform to its title. The operative language states as follows: "It is hereby ordered, adjudged and decreed that Defendant's Motion in Limine Re: Calculation of Plaintiff's Share of Defendant's Military Retirement is hereby GRANTED."

of Assets That Are Subject to Be Taken Into Account in the Calculation and the Misconduct By the Defendant's Counsel on Defendant's Motion to Set Aside Judgment." This order denied Plaintiff's requests.

On July 7, 2000, Plaintiff filed a motion for reconsideration of the order noted in item 1 above. On July 28, 2000, Plaintiff filed four separate motions for reconsideration of the orders mentioned in items 2, 3, 4, and 5 above. On September 14, 2000, the family court entered its "Order Denying Plaintiff's Motion for Reconsideration Filed July 7, 2000," and its "Order Denying Plaintiff's Motion[s] for Reconsideration Filed July 28, 2000." Plaintiff also appeals these orders.

Pursuant to this court's May 13, 2002 "Order for Temporary Remand for Entry of Findings of Fact and Conclusions of Law and Order Permitting Rebriefing,"[4] the family court, on

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[4] In this order, we stated, in relevant part, as follows:

> Rule 52 of the Hawai'i Family Court Rules (HFCR), as amended effective January 1, 2000, states as follows:
>
> **Findings by the court.**
>
> (a) *Effect.* In all actions tried in the family court, the court may find the facts and state its conclusions of law thereon or may announce or write and file its decision and direct the entry of the appropriate judgment; except upon notice of appeal filed with the court, the court shall enter its findings of fact and conclusions of law where none have been entered, unless the written decision of the court contains findings of fact and conclusions of law. To aid the court, the court may order the parties or either of them to submit proposed findings of fact and conclusions of law, where the written decision of the court does not contain the findings of fact and conclusions of law, within 10 days after the filing of the

(continued...)

[4](...continued)

> notice of appeal, unless such time is extended by the court. Requests for findings are not necessary for purposes of review. Findings of fact if entered shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If a decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein.
>
> (b) *Amendment*. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made by the court, the question of sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the family court an objection to such findings or has made a motion to amend them or a motion for judgment.
>
> (c) *Submission of Draft of a Decision*. At the conclusion of a hearing or trial, or at such later date as matters taken under advisement have been decided, the judge for convenience may designate the attorney for one of the parties to prepare and submit a draft of a decision, containing such provisions as shall have been informally outlined to such attorney by the judge. The attorney requested to prepare the proposed decision shall, within 10 days, unless such time is extended by the court, deliver a draft of the decision to the division clerk. Upon review and finalization of form by the judge, the decision shall be entered.

The family court did not enter a written decision in this case. When Plaintiff filed the notice of appeal, HFCR Rule 52(a) required the family court to enter its findings of fact and conclusions of law.

Although HFCR Rule 52(a) expressly states that "[r]equests for findings are not necessary for purposes of review[,]" a lot of time and expense is wasted if genuine issues of material fact have not been resolved or if there is a genuine issue whether the family court is applying the relevant law and the appellant does not make a reasonable effort to cause the family court to enter such findings and/or conclusions before the appellant files an opening brief. This is because the solution to a situation where there is a genuine issue of material fact or a genuine issue whether the family court is applying the relevant law is a temporary remand for entry of findings and conclusions and an order for rebriefing after such entry. Thus, Plaintiff should have (1) sought to have the family court comply with its duty pursuant to HFCR Rule 52(a) and (2) sought permission pursuant to

(continued...)

May 28, 2002, entered its Findings of Fact and Conclusions of Law and Order.[5] In light of the fact that this case on appeal was remanded solely for entry of findings of fact and conclusions of law with respect to the orders appealed from, the family court, on remand, lacked jurisdiction to enter any additional orders. Therefore, the following parts of the CsOL are null and void and we vacate them:

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[4](...continued)

> Hawai‘i Rules of Appellate Procedure (HRAP) Rule 29 to delay the filing of the opening brief until a reasonable time after the family court complied with its duty pursuant to HFCR Rule 52(a).
>
> After the family court complies with its duty pursuant to HFCR Rule 52(a), and if Plaintiff challenges any of the findings and/or conclusions, a transcript of the relevant hearings may be required to decide whether Plaintiff satisfied her burden on appeal. If a transcript of proceedings is required pursuant to HRAP Rule 10, and Plaintiff fails to cause it to be made a part of the record on appeal pursuant to HRAP Rule 10, Plaintiff will have failed to satisfy her burden on appeal.

[5] In paragraph 7 of her amended opening brief, Plaintiff complains as follows:

> As anticipated, Joyce Uehare, attorney for the Defendant/Appellee submitted "Findings of Facts" and "Conclusion of Law" with the Family Court on May 24, 2002. In turn the Family Court Judge, Honorable Judge Gail Ching submitted to the Intermediate Court of Appeals the Defendant's "Finding of Facts" and Conclusions of Law". In which the Plaintiff/Appellant highly object to. The Finding of Facts and Conclusion of Law should be what the Family Court Judge based his decision on. Yet the Intermediate Court of Appeals receives "The Family Court of The First Circuit Finding of Facts and Conclusion of Law" written by the Defendant's attorney.

Obviously, Plaintiff does not understand that, no matter who prepared them, when the judge signs and files the court's findings and conclusions, they are "what the Family Court Judge based his [or her] decision on."

6. Plaintiff's Motion and Affidavit for Post-Decree Relief filed January 25, 1999 is hereby denied.[6]

. . . .

10. Given the application of 10 U.S.C. Section 1408(d), the Court hereby amends its October 15, 1998 Order to provide that Defendant shall pay directly to Plaintiff her share of his military retirement in the amount of $182.00 per month.

11. Accordingly, Plaintiff's Motion and Affidavit for Post-Decree Relief filed November 10, 1999 is hereby denied.

. . . .

12. Plaintiff's request for reimbursement of medical expenses for the daughter is granted to the extent that Defendant has not already paid these amounts. The remaining relief requested in Plaintiff's motion, including her request for punitive damages, is denied.

. . . .

16. . . . Accordingly, Plaintiff's Motion and Affidavit for Post-Decree Relief filed January 13, 2000 seeking establishment of child support arrears in the amount of $7,800.00 is denied.

17. . . . Accordingly, Plaintiff's Motion for Post-Decree Relief to enforce the $7,800.00 Child Support Arrears and to Recalculate the Child Support from [the] September 11, 1998 order due to Fraud, Perjury, and Concealment of Assets filed April 28, 2000 is hereby denied.

. . . .

20. Based on the applicable law and facts, this Court hereby denies Plaintiff's Motion for an Equitable Division of Defendant's Texas property filed April 28, 2000.

DISCUSSION

Defendant was born in 1955. Plaintiff was born in 1964. The parties were married on June 24, 1983. When this divorce case commenced in 1990, Defendant was, and had been, a United States Marine for over 17 years. The January 10, 1991 Divorce Decree awarded Plaintiff sole legal and physical custody

[6] This Conclusion of Law no. 6 pertains to a January 25, 1999 motion that was heard on March 3, 1999, and decided in a Decision/Order entered on May 3, 1999. It does not pertain to an order appealed in this appeal.

of the parties' female minor child, born on May 20, 1984, subject to Defendant's specified rights of visitation, ordered Defendant to pay child support of $500 per month, and awarded Plaintiff one-half of the marital part of Defendant's gross military retired/retainer pay.

POINT ONE

Plaintiff alleges, in her amended opening brief, that Defendant retired from the United States Marines in February 1998 and

> refused to pay the Plaintiff her portion of his "gross" retirement. The Defendant's "gross" retirement in February 1998 was $1900.00 per month. Using the formula it clearly indicates that the Plaintiff's share should be $266.00.[7] The Defendant has/will receive annual increases in his military retirement/retainer pay. The Defendant has/is refusing to pay the Plaintiff the amount as prescribed by the formula in the divorce decree.

(Footnote added.)

In light of Jones v. Jones, 7 Haw. App. 496, 780 P.2d 581 (1989), this point has no merit. The October 15, 1998 Order by District Family Judge R. Mark Browning notes that Defendant's retirement income is $1,900 per month and orders Defendant "to pay Plaintiff her share of his military retirement in the amount of $182.00 a month by allotment commencing on or about October 5,

[7] In Plaintiff's Position Statement filed on February 28, 2000, Plaintiff calculates the amount as follows: "½ X 7/25.5 (years of svc) X 1900 = $260.78."

1998 or as soon as it can be implemented."[8] No explanation of the calculation was provided. No consideration was given to the question whether an allotment was possible.

The factual explanation for the $182.00 amount was subsequently stated in the family court's May 28, 2002 Findings of Fact (FsOF) as follows:

> 2. . . . For purposes of calculating the Linson retirement, the approximate length of the marriage was seven (7) years.
>
> 3. On February 25, 1998, the Secretary of the Navy advised Defendant he was determined to be physically unfit to perform his duties because of his physical disability. Effective 2/28/98, Defendant [w]as released from active duty and transferred to the Temporary Disability Retired List.
>
> 4. Defendant was rated at a twenty (20) percent disability rating per the schedule for in [sic] use by the Department of Veterans Administration.
>
> . . . .

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[8] In her amended opening brief, Plaintiff asserts:

> b. On September 11, 1998 the Honorable Judge Browning did not Order an amount figure, despite what the signed order says. Transcripts from this hearing clearly show he stated, "With respect retirement, that is all ordered as the agreed upon sum. The delinquent amount needs to be paid with a 10 percent interest and that shall be paid within 30 days."
>
> c. Yet the Defendant/Appellee's attorney prepared the Order to say otherwise.

It appears that Plaintiff does not comprehend that the court's written order takes precedence over the court's oral order.

> 6. On March 1, 1998, Defendant officially retired from the United States Marine Corps.[9]
>
> . . . .
>
> 13. The formula Judge R. Mark Browning used to calculate Plaintiff's share of Defendant's military retirement was as follows:
>
> .5 multiplied by 7 years of service creditable multiplied by $1,300.00 ($1,900.00 gross disposable retired pay minus $600.00 disability pay) divided by 25 years of military service, i.e., ½ x 7/25 x $1,300.00 = $182.00.

The legal explanation for the $182.00 amount is contained in conclusion of law (COL) no. 5 of the family court's May 28, 2002 Conclusions of Law as follows:

> Defendant was eligible to receive $600.00 in disability benefits only to the extent that he waived a corresponding amount of his military retirement pay. Accordingly, this Court correctly used the figure of $1,300.00 ($1,900.00 - $600.00) as Defendant's monthly disposable retired pay for purposes of calculating Plaintiff's Linson formula share of Defendant's retirement.

In other words, Defendant is receiving $600 per month in disability benefits and $1,300 per month in retirement benefits. "[D]isability pay is not property divisible in a divorce case." Jones, 7 Haw. App. at 499, 780 P.2d at 584. The January 10, 1991 Divorce Decree awarded Plaintiff a share of only the $1,300.

The May 3, 1999 Decision/Order by District Family Judge Diana L. Warrington decided that "Plaintiff's request to modify

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[9] In her amended opening brief, Plaintiff questions why, if Defendant retired on March 1, 1998, he was ordered to pay her share to her commencing April 1, 1998. It appears that Plaintiff does not understand that Defendant is paid his retirement for March in April.

Plaintiff also alleges that the fact that Defendant on his 1998 Federal Income Tax 1040 states that he paid $2,002 ($182 X 11) to Plaintiff in 1998 means, as a matter of law, that he owes her for February and March. We disagree. The actual facts are not necessarily the same as the facts as told by Defendant to the Internal Revenue Service.

the amount of military retirement Defendant owes Plaintiff is denied." It is silent on the question of payment "by allotment."

Judge Ching entered a July 20, 2000 "Order Granting Defendant's Motion in Limine Re: Payment of Retirement Benefits by Allotment Filed April 17, 2000,"[10] and a July 20, 2000 "Order Granting Defendant's Motion in Limine Re: Calculation of Plaintiff's Share of Defendant's Military Retirement Filed April 17, 2000."

The following COL no. 7 explains why the family court should not have ordered Defendant "to pay Plaintiff her share of his military retirement . . . by allotment commencing on or about October 5, 1998 or as soon as it can be implemented":

> 10 U.S.C. Section 1408(d) permits direct payments to a former spouse if the former spouse was married to a military member "for a period of 10 years or more during which the member performed at least 10 years of service creditable[.]" This is otherwise known as the "20/10/10" rule.

In her amended opening brief, Plaintiff argues, in relevant part, as follows:

> c. . . . The Family Court . . . Ordered the Defendant to enact an allotment to commence October 05, 1998. It was up to the Defendant to complete the required documents to commence a voluntary allotment.
>
> On September 11, 1998 The Family Court did not Order the Marine Corp to commence an allotment. The court Ordered the Defendant to. Which washes the 10/10/20 argument the Defendant repeatedly argues.

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[10] The family court did not amend Judge Browning's October 15, 1998 Order requiring Defendant "to pay Plaintiff her share of his military retirement in the amount of $182.00 a month by allotment commencing on or about October 5, 1998 or as soon as it can be implemented."

It appears Plaintiff does not understand that the law prohibits the military from granting Defendant's request for an allotment to Plaintiff of a part of his retirement income.

POINT TWO

The Divorce Decree ordered, in relevant part, as follows:

> B. Child Health Care: Defendant shall maintain medical and dental insurance for the benefit of the child.
>
> Defendant 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 Plaintiff and any extraordinary medical and dental care which is not covered through military medical facilities or by CHAMPUS-sponsored services shall be paid by Plaintiff and Defendant 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 Defendant'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. Plaintiff shall be responsible for ordinary medical and dental expenses of the child not paid by insurance; Plaintiff and Defendant shall be responsible, equally, for all extraordinary medical and dental expenses not paid by insurance.

Plaintiff complains that "the Family Court denies the enforcement" of these orders. This complaint has merit. As noted above, the June 30, 2000 "Order Regarding Plaintiff's Motion and Affidavit for Post-Decree Relief Filed on December 1, 1999" denied the motion by Plaintiff seeking reimbursement of

payments of the daughter's medical expenses. In contrast, FOF no. 23 states, in relevant part, as follows: "On December 1, 1999, Plaintiff filed a Motion and Affidavit for Post-Decree Relief seeking inter alia reimbursement of medical bills for their daughter[.]"

COL no. 12, which we have declared void and vacated solely because of lack of jurisdiction, stated, in relevant part, as follows: "Plaintiff's request for reimbursement of medical expenses for the daughter is granted to the extent that Defendant has not already paid these amounts. . . ." In light of COL no. 12, why did the June 30, 2000 order deny the motion by Plaintiff seeking reimbursement of payments of the daughter's medical expenses? The family court must hear and finally decide the merits of Plaintiff's request.

POINT THREE

The family court's January 25, 1994 Stipulation and Order, entered by District Family Judge John S. W. Lim, ordered that "[c]hild support shall be modified based upon the Child Support Guidelines. The parties shall exchange financial information to include pay stubs and their most recent federal and state individual income tax returns. Plaintiff will provide receipts for child care."

Plaintiff states, in her opening brief, in relevant part, as follows:

> In 1994 a much needed child support modification was ordered. There was a $150 increase. Did the Defendant forget that this order existed? Because the Plaintiff to date has not received the monthly $150 increase. In 1998 the Plaintiff filed a motion for arrearages totaling $7,800. The motion was denied due to the lack of child care receipts for the parties child from the Plaintiff. In 2000 the Plaintiff was finally able to locate these receipts, under the impression that now with the receipts she would be awarded the $7,800. What was the point of even granting the modification?

This point has no merit. The following statement by Plaintiff is wrong: "In 1994 a much needed child support modification was ordered. There was a $150 increase." There is no such order in the record. To her amended opening brief, Plaintiff attached a Child Support Guidelines Worksheet, prepared by her then lawyer and dated March 11, 1994, stating that the Defendant's total monthly child support obligation was $650. If Plaintiff thinks this document is a family court order, she is wrong.

Judge Browning's October 15, 1998 Order ordered Defendant to pay child support of $310 per month commencing September 5, 1998. This order also decided that Plaintiff's "request for child support arrearage in the amount of $7,800.00, due to insufficient evidence, is denied without prejudice."

Judge Browning's November 16, 1998 Order ordered that "[a]s of June 24, 1998, Defendant shall pay to Plaintiff the sum of $310.00 per month for the support, maintenance and education of the child, to be paid on the 5th day of each month."

Judge Warrington's May 3, 1999 Decision/Order decided, in relevant part, as follows:

> 1. Plaintiff's request to modify child support is denied.
>
> . . . .
>
> 3. Plaintiff's request for a finding of exceptional circumstances due to the medical condition of the minor child and requesting an additional $100 per month in child support is denied. The Court's previous order that Plaintiff and Defendant share equally in the uninsured medical expenses for the minor child remains in full force and effect.

Defendant, in his answering brief, points out that

> [o]n February 16, 2000 Judge Ching entered a default order granting Wife's Motion for Enforcement of child support arrearages. Judgment was entered in the amount of $7,800.00 for child support arrears for the period from 1994-98. [Plaintiff] contends the lower court abused its discretion in granting the [Defendant's] subsequent Motion to Set Aside Order Granting Enforcement of Child Support arrearages filed on March 7, 2000.

(Record citations omitted.)

Judge Ching's July 20, 2000 Order denied Plaintiff's requests for the $7,800. The FsOF state, in relevant part, as follows:

> 39. At the Court's request, the Child Support Enforcement Agency provided a Certification of Account Balance dated May 9, 2000, which confirms that Defendant does not owe any child support arrears.
>
> 40. Plaintiff's figure of $7,800.00 in child support arrears is premised on a monthly child support obligation of $650.00 per month. There is no court order in the record establishing Defendant's child support obligation at $650.00 per month.

POINT FOUR

In paragraph 9.G. of her position statement, filed on July 16, 1990, Plaintiff stated, in relevant part, as follows: "Wife to be awarded a portion of the value of the house, located in Texas, held in trust for Husband by Husband's parents."

In paragraph 7.G. of his position statement, filed on July 24, 1990, Defendant stated, in relevant part, as follows:

"Defendant's parents do not hold a 'house in trust' in Texas for him. Defendant does not own a house in Texas."

The Divorce Decree stated that "[t]he parties own no real property" but was silent regarding property held in trust.

In his Asset and Debt Statement, filed on December 22, 1993, Defendant stated that he owned no real property and no property was held in trust for or by third persons.

On January 25, 1999, Plaintiff filed a motion asking for sundry orders not including an award of a part of the Texas real property and noting in passing that "IN JULY 1997 I CONTACTED COLORADO COUNTY CLERKS OFFICE IN COLUMBUS TEXAS TO LEARN HE WAS INHERETED PROPERY VALUED AT OVER $100,000.00. DEFENDANT HAS TRANSFERRED PROPERTY TO HIS WIFES NAME FOR $1.00 SALE."

At a hearing on March 3, 1999, Defendant testified, in relevant part, as follows:

> [Defendant]: . . . .
>
> The land that I have inherited has no cash value. All monies derived from it belong to my father until this is [sic] death. . . .
>
> . . . The land . . . is fifty-four point zero nine acres of which only eleven point three six will go to me.
>
> . . . .
>
> [Defendant]: I signed the gift deed when my mother was still alive.
>
> [Plaintiff]: Okay.
>
> The gift deed you did sign. Did you sign the lease for the Tarpon Exploration for the oil and gas leases?

> [Defendant]: That is required by the company so that my father could get the money and lease the land.[11]
>
> . . . .
>
> [Defendant]: To my knowledge there's no wells on the land as of yet.

Judge Warrington's May 3, 1999 Decision/Order expressly granted or denied ten of Plaintiff's requests but did not mention Defendant's inherited land and did not decide any issue arising therefrom.

In her position statement, filed on February 28, 2000, Plaintiff stated, in relevant part, as follows:

> On January 21, 2000 Honorable Judge Ching Ordered the defendant to submit his financial information by February 09, 2000 and to submit documents for the hearing by February 25, 2000. Awarded the cost of this motion to the Plaintiff.
>
> On or about February 01, 2000 the Defendant mailed to the Plaintiff, the defendant's financial information.
>
> THE DEFENDANT HAS COMMITTED PERJURY BY SUBMITTING THE FINANCIAL INFORMATION CONTAINED ON THIS NOTARIZED FINANCIAL INFORMATION. THE DEFENDANT SHOULD BE HELD ACCOUNTABLE.
>
> . . . .
>
> On January 24, 2000 the Plaintiff retained the service of John Wood - Wood and Tait. A summary of his services confirm (1) Bank account at Premier National Bank (2) in 1993 [Defendant] and Tobi purchased parcels of real property in New York and (3) Real property in Texas under David G. New. To date the Plaintiff endured additional expense of $800.00 plus charges.

On March 23, 2000, "Defendant's Motion to Have Plaintiff Declared a Vexatious Litigant and for an Order Requiring Plaintiff to Post Security Pursuant to HRS Chapter 634J" was filed. In a Memorandum in Support of Motion, Defendant's counsel stated, in relevant part, as follows:

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[11] If the land is owned by Defendant, he is the person who is authorized to "get the money and lease the land."

> Texas real property. Plaintiff first raised this issue in her pre-divorce pleadings. Specifically, in her Position Statement filed on July 9, 1990 she demanded a portion of the value of the Texas property. For unknown reasons, the 1991 Divorce Decree did not address any property in Texas or any other real property. In any event, Defendant submits that Plaintiff waived any interest she might have had in the Texas property.
>
> Approximately eight years after the divorce, Plaintiff attempted to link Defendant's obligations for child support and retirement to his inheritance of the Texas property by filing a Motion and Affidavit for Post-Decree Relief on January 25, 1999. Defendant believes this linkage was simply a transparent attempt to resurrect the Texas property as an issue which she had previously waived in the divorce. After a hearing on the merits, the court denied her claim on May 3, 1999.

Plaintiff states, in her opening brief, that the

> Texas property existed and should of [sic] been considered as part of the divorce. The Defendant intentionally concealed and committed fraud and perjury under oath during the divorce and every financial statement filed since the divorce, which these documents confirm the value of such property at over $100,000.00. This includes houses, oil and gas leases which are part of the property.
>
> The Plaintiff contacted the leases [sic] and was informed that the leases struck a major oil well recently.
>
> . . . .
>
> The Plaintiff discovered through her determination to prove that the Texas property existed during the marriage. The existence of these assets is proved by the documents provided by John Woods, the investigation service that the Plaintiff retained. The Defendants counsel agreed to what the witness, John Woods, would testify to.

Defendant states, in his answering brief, "According to [Plaintiff], [Defendant] received a gift of real property in Columbus, Texas on December 21, 1992. . . . Quite apart from the fact the real property was acquired after the date of divorce, [Plaintiff's] January 25, 1999 post-decree action was untimely and failed for lack of jurisdiction."

FOF no. 46 states, in relevant part, as follows: "The Gift Deed filed in Colorado County, Texas confirms that on

December 21, 1992, Defendant received a gift of real property in Columbus, Texas. Defendant received the gift of real property approximately two (2) years after the parties' divorce."

Based on FOF no. 46, we agree that Plaintiff has no valid claim to this Texas real property except as it is relevant when deciding issues relating to child support. However, in light of FOF no. 46, we question why, in a memorandum in support of the March 23, 2000 "Defendant's Motion to Have Plaintiff Declared a Vexatious Litigant and for an Order Requiring Plaintiff to Post Security Pursuant to HRS Chapter 634J," Defendant's counsel stated, in relevant part, as follows:

> Texas real property. Plaintiff first raised this issue in her pre-divorce pleadings. Specifically, in her Position Statement filed on July 9, 1990 she demanded a portion of the value of the Texas property. For unknown reasons, the 1991 Divorce Decree did not address any property in Texas or any other real property. In any event, Defendant submits that Plaintiff waived any interest she might have had in the Texas property.
>
> Approximately eight years after the divorce, Plaintiff attempted to link Defendant's obligations for child support and retirement to his inheritance of the Texas property by filing a Motion and Affidavit for Post-Decree Relief on January 25, 1999. Defendant believes this linkage was simply a transparent attempt to resurrect the Texas property as an issue which she had previously waived in the divorce. After a hearing on the merits, the court denied her claim on May 3, 1999.

The Divorce Decree was entered on January 1, 1991. In light of the facts that Defendant (1) did not disclose to the court that entered the Divorce Decree his ownership of any Texas real

property,[12] and (2) acquired Texas real property on December 21, 1992, what facts caused his counsel to argue that

> [f]or unknown reasons, the 1991 Divorce Decree did not address any property in Texas or any other real property. In any event, Defendant submits that Plaintiff waived any interest she might have had in the Texas property.
>
> Approximately eight years after the divorce, Plaintiff attempted . . . to resurrect the Texas property as an issue which she had previously waived in the divorce. After a hearing on the merits, the court denied her claim on May 3, 1999.

POINT FIVE

Plaintiff complains of her unspecified costs incurred in enforcing the family court's orders, of Defendant's counsel's unspecified unethical conduct, and of Judge Ching's "informal hearings" on May 12, 2000, and May 26, 2000, at which "there were no court reporters and ex parte communication occurring." These points have no merit.

If and to the extent Plaintiff seeks an award of "costs," she must move in the family court for the award, prove her payment of the costs, and cite legal authority supporting her right to an award of the costs. She has not done this.

The record does not reveal any unethical conduct by counsel for Defendant. If Plaintiff has grounds to complain of unethical conduct by opposing counsel that impacted on the family court's decisions negatively toward her, she must present the issue to the family court, specify the alleged unethical conduct,

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[12] Defendant's Asset and Debt Statement dated December 10, 1993, and filed on December 22, 1993, states that Defendant owns no real property and has no property held in trust for or by third persons.

and specify how she was allegedly harmed by it. If Plaintiff has grounds to complain of unethical conduct by opposing counsel with respect to this appeal that may impact on this court's decision, she may present the issue to this court, specify the alleged unethical conduct, and specify how she was allegedly harmed by it. If Plaintiff has grounds to complain of unethical conduct by opposing counsel, she may present her complaint to the Office of Disciplinary Counsel.

Plaintiff's complaint regarding Judge Ching's "informal hearings" obviously refers to settlement conferences where parties state offers of proof, not evidence. In family court, such conferences are permissible, necessary, productive, and encouraged.

CONCLUSION

Accordingly, subject to the following exceptions, we affirm all of the orders from which this appeal was taken.

First Exception: As discussed in section "POINT TWO," we vacate that part of the June 30, 2000 "Order Regarding Plaintiff's Motion and Affidavit for Post-Decree Relief Filed on December 1, 1999," that denies Plaintiff's request for reimbursement of payments of the daughter's medical expenses. The family court must hear and finally decide the merits of Plaintiff's request.

Second Exception: As discussed in section "POINT ONE," the family court must amend both the title and operative language of its July 20, 2000 "Order Granting Defendant's Motion in Limine Re: Payment of Retirement Benefits By Allotment Filed April 17, 2000" to state that it denies the request for payment by allotment.

Solely because the family court lacked the jurisdiction to enter them when it did, we declare that the following parts of the family court's May 28, 2000 Conclusions of Law and Order are null and void and we vacate them:

> 6. Plaintiff's Motion and Affidavit for Post-Decree Relief filed January 25, 1999 is hereby denied.
>
> . . . .
>
> 10. Given the application of 10 U.S.C. Section 1406(d), the Court hereby amends its October 15, 1998 Order to provide that Defendant shall pay directly to Plaintiff her share of his military retirement in the amount of $182.00 per month.
>
> 11. Accordingly, Plaintiff's Motion and Affidavit for Post-Decree Relief filed November 10, 1999 is hereby denied.
>
> . . . .
>
> 12. Plaintiff's request for reimbursement of medical expenses for the daughter is granted to the extent that Defendant has not already paid these amounts. The remaining relief requested in Plaintiff's motion, including her request for punitive damages, is denied.
>
> . . . .
>
> 16. . . . Accordingly, Plaintiff's Motion and Affidavit for Post-Decree Relief filed January 13, 2000 seeking establishment of child support arrears in the amount of $7,800.00 is denied.
>
> 17. . . . Accordingly, Plaintiff's Motion for Post-Decree Relief to enforce the $7,800.00 Child Support Arrears and to Recalculate the Child Support from [the] September 11, 1998 order due to Fraud, Perjury, and Concealment of Assets filed April 28, 2000 is hereby denied.

. . . .

20. Based on the applicable law and facts, this Court hereby denies Plaintiff's Motion for an Equitable Division of Defendant's Texas property filed April 28, 2000.

DATED: Honolulu, Hawai‘i, October 1, 2002.

On the briefs:

Ursula Marie New, now known as
Ursula Marie Ozga Freitas,
Plaintiff-Appellant, *pro se*.

Chief Judge

Joyce J. Uehara
for Defendant-Appellee.

Associate Judge

Associate Judge