

NO. 23921

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

MARILYN J. BROTT, Plaintiff-Appellant, v.  
DAVID T. BROTT, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT  
(FC-D NO. 99-0398)

MEMORANDUM OPINION

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

Plaintiff-Appellant Marilyn J. Brott (Marilyn) appeals from the family court's<sup>1</sup> October 20, 2000 Divorce Decree.

Marilyn was born on March 14, 1937. Defendant-Appellee David T. Brott (David) was born on November 8, 1943. The parties commenced living together in 1967. The parties filed joint tax returns as husband and wife prior to their marriage. The parties were married on December 14, 1982, and have no children. Marilyn filed a Complaint for Divorce on August 23, 1999. The trial occurred on September 26, 2000. The family court entered its Divorce Decree on October 20, 2000. On August 3, 2001, after David filed his answering brief, the family court filed its Findings of Fact and Conclusions of Law.

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<sup>1</sup> Family Court Judge Eric G. Romanchak presided in this case.

POINTS ON APPEAL AND RESPONSES

In her opening brief, Marilyn contends that the family court:

1. Failed to provide any explanation for deviating from the partnership model division when it awarded David the jointly-owned second purchase money mortgage on the Las Vegas property.

2. Abused its discretion when it awarded Marilyn spousal support of \$1,500 per month through the month she attains age 65 on March 14, 2002, and \$1,000 per month through the month David attains age 62 on November 8, 2005, and did not award Marilyn spousal support of \$3,000 per month for the rest of her life.

3. Erred in distributing personal and household items without first determining the market values of the items distributed.

David, in his answering brief, disagrees and responds as follows:

1. There was no deviation. The assets and debts awarded to each party are nearly equal without consideration to past or future.

2. Marilyn never established her need for spousal support of \$3,000 per month.

3. Marilyn presented no evidence as to values of personal and household furnishing items.

DISCUSSION

1.

Absent a valid explanation for the deviation, the value of all Marital Partnership Property must be awarded pursuant to the Partnership Model Division. Jackson v. Jackson, 84 Hawai'i 319, 332, 933 P.2d 1353, 1366 (App. 1997). In this case, it is difficult to decide whether the value of all Marital Partnership Property was awarded pursuant to the Partnership Model Division because the court did not require the parties to, and it did not, present a document itemizing and valuing all of the relevant property and categorizing all of the relevant values. However, it appears from our review of the record that all values of existing property were divided equally between the parties except the following were awarded to David:

\$18,800	Las Vegas promissory note
5,000	jewelry
1,200	48-inch Sony color television
227	leather recliner and ottoman
2,480	teak master bedroom set <sup>2</sup>
625	Category 3 Arizona land
3,500+	Category 3 and 5 tools

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<sup>2</sup> It appears that the teak furniture master bedroom set includes the following items valued as follows:

Teak dresser	\$1,000
Two teak night stands	280
Teak etagere	90
Teak wardrobe	1,088
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TOTAL	\$2,458

The award of the Category 3 property/values to David is self-explanatory. The following two considerations appear to justify the award of the uncategorized property/values to David:

a. At the time of the separation of the parties, Marilyn took approximately \$25,000 from the joint savings account and, during the separation, she received rental income and cash which she did not deposit into her accounts<sup>3</sup>; and

b. David is entitled to reimbursement of \$13,000 Category 3 cash he inherited and used during the marriage.

2.

Marilyn asked the family court to award her (a) the residence and (b) \$3,000 per month spousal support. In support of her request, she stated that her total monthly expenses were \$3,423. The following expenses made up a part of that total:

Mortgage	\$1,596
Repairs	192
Telephone, electricity, propane, water, sewer	509
Debt service	<u>356</u>
TOTAL	\$2,653

The first three expenses listed above pertain to the marital residence which the court ordered to be sold. The debt causing the fourth expense listed above was not identified. Marilyn did not provide evidence of what her expenses would be after the sale

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<sup>3</sup> Other than the testimony of Plaintiff-Appellant Marilyn J. Brott (Marilyn) that she used some to pay utility payments, there is no evidence as to what happened to these funds.

of the marital residence if and when the court ordered the marital residence to be sold. It appears that if David retires at age 62 as planned, David and Marilyn will each be supporting himself or herself via (a) social security and (b) his or her estate and that David's estate will not be significantly more than Marilyn's. There is no evidence that Marilyn's social security check and her estate<sup>4</sup> will not be sufficient to pay her reasonable expenses.<sup>5</sup>

3.

The Findings of Fact and Conclusions of Law filed on August 3, 2001, decided the market values of the household items

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<sup>4</sup> The August 3, 2001 Findings of Fact and Conclusions of Law state, in relevant part, as follows:

FINDINGS OF FACT

. . . .

15. During the marriage [Defendant-Appellee David T. Brott (David)] accumulated savings and an interest in the Aetna and Stars 401(K) retirement plans. According to [David's] financial statements . . . , the plans had a combined worth of approximately \$142,835.00.

. . . .

19. . . . [T]he parties' marital residence at 9 Akahale Street was ordered to be sold. The property shall be listed for sale at \$550,000. However, [Marilyn] presented an estimated closing statement that if the property were to sell for \$500,000, the parties would net \$256,580.37 which is to be divided equally.

<sup>5</sup> Conclusion of law no. 2 states, in relevant part, as follows:

2. Medical Insurance: . . . [I]t is just and equitable to require [David] to pay for [Marilyn's] medical insurance through the end of the month [Marilyn] attains the age of 65 years (when she becomes eligible for Medicare), on March 14, 2002[.]

distributed to David. Marilyn did not challenge the relevant findings and, thus, is bound by them.

CONCLUSION

Accordingly, we affirm the family court's October 20, 2000 Divorce Decree.

DATED: Honolulu, Hawai'i, April 29, 2002.

On the briefs:

Herman H. M. Ling  
for Plaintiff-Appellant.

Chief Judge

Linda N. Monden  
(Rush Moore Craven Sutton  
Morry & Beh)  
for Defendant-Appellee.

Associate Judge

Associate Judge