

NO. 24061

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

KATHLEEN R. TRETSVEN, Plaintiff-Appellee, v.
JEFFREY A. TRETSVEN, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 99-0718)

MEMORANDUM OPINION

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

Defendant-Appellant Jeffrey A. Tretsven (Jeffrey) appeals from the Divorce Decree entered on November 20, 2000, in the Family Court of the First Circuit, District Family Judge Darryl Y. C. Choy presiding. More specifically, Jeffrey appeals the Division and Distribution of Property and Debts part of the Divorce Decree. We vacate the Division and Distribution of Property and Debts part of the Divorce Decree and remand that part for reconsideration and specified action.

Jeffrey and Plaintiff-Appellee Kathleen R. Tretsven (Kathleen) were married on May 5, 1985. Their son was born on December 7, 1989. The divorce proceeding was held on August 1, 2000. At the conclusion of the hearing, Judge Choy decided, in relevant part, as follows:

Court will award Hahaione property to [Kathleen].

. . . .

The debt owed to [Jeffrey's parents], I believe eleven thousand, shall be the sole obligation of [Kathleen]. The \$34,000 debt owed to [Jeffrey's brother] shall be the sole obligation of [Kathleen]. . . .

. . . .

. . . And [Kathleen's] pre-marital fifty-eight thousand court will rule this is satisfied with [Jeffrey's] share of the Hahaione property being awarded to [Kathleen].

The Divorce Decree states, in relevant part, as

follows:

14. Real Property.

. . . .

(b) 531 Hahaione Street, Honolulu, Hawaii. The parties' rental property located at 531 Hahaione Street, Honolulu, Hawaii, shall be awarded to [Kathleen] as her sole and separate property, subject to the loans owed to [Jeffrey's brother] in the amount of \$34,000 and to [Jeffrey's father] in the amount of \$11,110. [Kathleen] shall be solely responsible for all outstanding debts thereon and shall hold [Jeffrey] harmless from liability therefor. All costs relating to the transfer shall be the sole responsibility of [Kathleen]. [Jeffrey] shall execute all documents necessary to convey his interest in said property.

The Findings of Fact and Conclusions of Law¹ entered

by Judge Choy on June 4, 2001, state, in relevant part, as

follows:

¹ Finding of Fact no. 10a states, in relevant part, as follows: "The parties stipulated to the following issues: . . . Custody: The parties shall be awarded joint legal custody with physical custody to [Kathleen]. If parties are unable to agree on any legal decision, [Kathleen] shall make all final decisions." Clearly, this award is not an award of "joint legal custody."

III. CONCLUSIONS OF LAW.²

. . . .

11. Real Property.

. . . .

(b) 531 Hahaione Street, Honolulu, Hawaii. The parties' rental property located at 531 Hahaione Street, Honolulu, Hawaii, shall be awarded to [Kathleen] as her sole and separate property, subject to the loans owed to [Jeffrey's brother] in the amount of \$34,000 and to [Jeffrey's father] in the amount of \$11,110. [Kathleen] shall be solely responsible for all outstanding debts thereon and shall hold [Jeffrey] harmless from liability therefor. All costs relating to the transfer shall be the sole responsibility of [Kathleen]. [Jeffrey] shall execute all documents necessary to convey his interest in said property.

. . . .

20. [Kathleen's] Premarital Contribution Claim. The Court finds that [Kathleen's] premarital contribution claim of \$58,000 shall be deemed satisfied by awarding [Kathleen] the Hahaione Street property.

The appraised value of the Hahaione Street property was \$154,000. Subtracting the \$34,000 debt, the \$11,110 debt, and Kathleen's \$58,000 Category 1 net market value (NMV), the remaining \$50,890 appears to be a Category 5 NMV.³ Jeffrey challenges the award of the \$50,890 to Kathleen. He contends that it should have been awarded one-half to each party.

In his opening brief, Jeffrey alleges that the family court miscalculated. In her answering brief, Kathleen alleges various possible explanations why the family court did what it

² The items quoted are not conclusions of law or findings of fact. They are decisions regarding the division and distribution of property and debts.

³

Appraised Market Value	\$154,000
Debt to Jeffrey's brother	- 34,000
Debt to Jeffrey's parents	- 11,110
Kathleen's premarital contribution	- <u>58,000</u>
Net market value	\$ 50,890

did. The problem is that these are her explanations, not the court's.

This court's relevant precedent is as follows:

Thus, under the Partnership Model Division, Category 2, 4, and 5 NMVs are divided 50% to the owner and 50% to the nonowner.

The Partnership Model requires the family court, when deciding the division and distribution of the Marital Partnership Property of the parties part of divorce cases, to proceed as follows: (1) find the relevant facts; start at the Partnership Model Division and (2) (a) decide whether or not the facts present any valid and relevant considerations authorizing a deviation from the Partnership Model Division and, if so, (b) itemize those considerations; if the answer to question (2) (a) is "yes," exercise its discretion and (3) decide whether or not there will be a deviation; and, if the answer to question (3) is "yes," exercise its discretion and (4) decide the extent of the deviation.

Question (2) (a) is a question of law. The family court's answer to it is reviewed under the right/wrong standard of appellate review. Questions (3) and (4) are discretionary matters. The family court's answers to them are reviewed under the abuse of discretion standard of appellate review.

Jackson v. Jackson, 84 Hawai'i 319, 332-33, 933 P.2d 1353, 1366-67 (App. 1997) (footnote omitted).

In the case on appeal, the family court did not determine "the Partnership Model Division." As a result, we are unable to determine whether there was "a deviation from the Partnership Model Division." Jackson, 84 Hawai'i at 332, 933 P.2d at 1366. If there was "a deviation from the Partnership Model Division," the family court did not "(2) (a) decide whether or not the facts present any valid and relevant considerations authorizing a deviation from the Partnership Model Division and, if so, (b) itemize those considerations[.]" Id.

Accordingly, we vacate the Division and Distribution of Property and Debts part of the November 20, 2000 Divorce Decree and remand to the family court for reconsideration and the following action pertaining to the Division and Distribution of Property and Debts part of the November 20, 2000 Divorce Decree:

1. Determine the Partnership Model Division by finding the assets, debts, and values of the parties and categorizing those assets, debts, and values.

2. (a) Decide whether or not the facts present any valid and relevant considerations authorizing a deviation from the Partnership Model Division and, if so, (b) itemize those considerations.

3. If the answer to question (2)(a) is "yes," decide whether or not there will be a deviation from the Partnership Model Division.

4. If the answer to question (3) is "yes," decide the extent of the deviation and state the reason(s) for it.

DATED: Honolulu, Hawai'i, September 20, 2002.

On the briefs:

Richard Lee
and Jessi Hall
for Defendant-Appellant.

Chief Judge

Alvin T. Ito
for Plaintiff-Appellee.

Associate Judge

Associate Judge