

NOT FOR PUBLICATION

NO. 24184

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

IN RE MARN FAMILY LITIGATION
(MASTER FILE)

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(MFL MASTER FILE NO. 00-1-MFL)

MEMORANDUM OPINION

(By: Burns, C.J., and Foley, J., and
Circuit Judge Chan, in place of Watanabe, J., recused)

Contemnor-Appellant Alexander Y. Marn (Alex) appeals from the (1) March 2, 2001 "Order Granting Business Master's Motion for Issuance of an Order Finding Alexander Y. Marn in Civil Contempt of Court Filed on September 21, 2000" (First Contempt Order) and (2) May 8, 2001 "Order Granting Business Master's Second Motion for Issuance of an Order Finding Alexander Y. Marn in Civil Contempt of Court Filed on January 23, 2001" (Second Contempt Order).

In this appeal, Alex contends that the Circuit Court of the First Circuit, State of Hawaii (circuit court), erred in (1) issuing the First Contempt Order and (2) sanctioning him to pay \$11,731.57 in professional fees and costs. We disagree and affirm.

Alex further contends that the circuit court erred in (3) issuing the Second Contempt Order and (4) imposing an evidentiary sanction. We conclude that the Second Contempt Order

is not a final order and, for lack of appellate jurisdiction, we dismiss this appeal of it.

BACKGROUND

Alex is the Managing Partner of Pumehana Partners (PP), President of Ala Wai Investment, Inc. (AWII), and general partner of McCully Associates (MA). As Managing Partner and President, Alex retained exclusive control over the corporate books and records of PP, AWII, and MA (Business Records). Eight complaints filed in the circuit court alleged that Alex denied certain partners, officers, directors, and shareholders access to those Business Records. "Case Management Order No. 1," filed on February 25, 2000, consolidated the eight complaints into one case, the "Marn Family Litigation," for purposes of "case management, pre-trial discovery, procedural and other matters."

Stipulated Order and April 25, 2000 Order

On March 10, 2000, the parties to the Marn Family Litigation, including Alex, entered into a "Stipulation and Order for Appointment of a Business Master" (Stipulated Order). The Stipulated Order provided, in relevant part, as follows:

2. That JOHN P. MOON . . . shall be appointed by the Court to serve, . . . as a business master [(Business Master)] and empowered:

(a) With the authority to exercise such control and custody over the books and records of the Marn Family Entities as to provide reasonable access thereto by the parties to this litigation. The term "Marn Family Entities" means and includes [PP], . . . [MA], . . . and [AWII] The books and records of the Marn Family Entities shall not be removed from the respective places of business except as directed by the business master, and in such instances of removal, the business master shall retain custody and control of all

original documents. The confidentiality of all documents, if any, shall be respected by the parties and the business master;

(b) To authorize during regular business hours reasonable access to and the inspection and copying (at the requesting party's expense) of the books and records of the Marn Family Entities by the respective partners, directors, officers and shareholders of each of the Marn Family Entities and/or their respective agents, subject to the right to withhold any document based on a claim of privilege or attorney work product protection. . . . ;

(c) To recommend to the Court the employment of such accountants, business advisors and other experts as may be necessary to properly review and evaluate the books and records of the Marn Family [Entities]; [and]

.

(g) To perform such other acts as further instructed by the Court upon full hearing or in writing.

On April 25, 2000, the circuit court entered an order (April 25, 2000 Order) authorizing Business Master to retain the independent Certified Public Accounting firm of Taryn Schuman CPA, Inc. (TRS), to assist Business Master in examining the Business Records and conducting an audit of PP. Business Master engaged TRS a short time later.

On June 20, 2000, Business Master took control of the then existing Business Records and physically moved them in four hundred seventeen storage boxes to Suite 111 in the McCully Shopping Center. TRS personnel re-keyed the room in order to obtain exclusive control of the facility.

On July 25, 2000, TRS completed an inventory of the Business Records in Business Master's control and delivered a copy of the inventory to each party involved in the Marn Family Litigation, including Alex. In a letter dated August 21, 2000, and

sent to each party, Business Master described the following general procedures used by TRS:

Authorized parties

The Business Master advises TRS of the parties that are authorized to have access to the business records located in Suite 111 . . . (McCully Shopping Center).

Scheduling of records inspection

TRS has sole custody of the keys for Suite 111. The respective approved parties and representatives schedule the date and time for the records inspection directly with TRS.

Retrieval of records

- TRS has requested, but not required, that the parties submit a list of the records that they would like to review prior to any scheduled inspection.
- TRS reviews the list of records submitted by the parties and determines the location of the records. TRS retrieves the records stored in Suite 111. If the requested records were previously returned by TRS to [MA] personnel, TRS arranges for the return of the records to Suite 111. . . .
- TRS inventories the records/boxes returned by MA personnel.
- The business records are placed on or beside the table that the party will utilize during the records inspection in plain view of TRS.

Records inspection

- TRS arrives at Suite 111 prior to the commencement of the scheduled records inspection. TRS grants the respective parties access to Suite 111 and maintains a log of the individuals that are granted access to Suite 111. TRS escorts the individual(s) to the table that has been designated for their use.
- The parties have been instructed not to remove any records from the files and to review one box of records at a time to insure that the contents of each storage box remain intact. The parties place the files/documents back into the storage box after their review. The parties designate the records that they would like copied with a post-it.
- TRS observes the review of the records by the parties at all times.

Copying

- All copies requested are copied by TRS. TRS maintains a log of the number of copies that are made for each party and will bill the parties for the cost of the copies.

- Effective August 21, 2000, TRS will stamp (copied by TRS personnel) each document copied.

Search upon entry and exit

TRS will search each party's briefcase, bag or any other item upon entry and exit from Suite 111 for business records that were removed by the party.

The First Contempt of Court

On several occasions, beginning on or about August 9, 2000, through approximately August 28, 2000, two parties to the Marn Family Litigation were observed entering and leaving Suite 111 with a storage box. Videotaped surveillance recorded TRS personnel moving storage boxes in and out of Suite 111 during the same period.

In an August 22, 2000 letter prompted by Alex, Arthur Roeca (Roeca), the attorney for AWII and MA, questioned Business Master about the policies and procedures for inspecting and copying the Business Records. In a letter dated August 23, 2000, Business Master responded, in relevant part, as follows:

2. The Business Master has already provided the parties . . . with the general policies and procedures applicable to the inspection and copy of business records in the custody of the Business Master. Please refer to the Business Master's letter dated August 21, 2000 addressed to all counsel of record along with the August 17, 2000 letter from [TRS]. (Please advise me if your office did not receive this.)

No response followed from the attorney for AWII and MA.

On August 29, 2000, TRS personnel discovered that, at some point after the end of the August 28, 2000 workday, someone chained and padlocked the doors to Suite 111. Because TRS never used padlocks to secure Suite 111 and did not have a key to unlock

the padlocks on August 29, 2000, TRS personnel could not enter Suite 111 to do their work. An investigation conducted by Business Master revealed that Alex, on August 29, 2000, without any other person's knowledge or authorization, chained Suite 111. Alex, at 12:30 p.m. on August 29, 2000, after talking with the attorney for AWII and MA, caused the removal of the chains and padlock securing Suite 111.

On September 21, 2000, Business Master responded to Alex's conduct by filing "Business Master's Motion for Issuance of (1) An Order to Show Cause Why Alexander Y. Marn Should Not Be Held in Criminal Contempt of Court Or Alternatively, (2) An Order Finding Alexander Y. Marn in Civil Contempt of Court" (First Motion for Contempt) (emphasis in original).

On October 9, 2000, Alex filed a declaration opposing the First Motion for Contempt. Alex admitted that he caused the chains to be placed on the doors at 8:30 a.m., but noted that no one on behalf of Business Master became aware of the doors being chained until about 10:30 a.m., and that the chains were removed at 12:30 p.m., "a total time delay to [Business Master's] representatives of no more than two (2) hours." (Bold typesetting omitted.) Business Master replied to Alex's declaration on October 12, 2000.

In his October 9, 2000 declaration, Alex alleged that no response had been received from Business Master to Roeca's

August 22, 2000 letter. In fact, Business Master responded on August 23, 2000.

On October 16, 2000, Alex filed a supplemental declaration and Business Master filed a supplemental affidavit.

On October 17, 2000, Judge Virginia L. Crandall held a hearing on the First Motion for Contempt. During the October 17, 2000 hearing, Alex, appearing *pro se*, stated as follows:

Now, I admit I chained the doors [to Suite 111]. I admit that. But I've got to say, I did not violate [the] Court Order. There is nothing in the Court Order that says chaining of the doors is a contempt of court.

As a matter of fact, when I first heard about this being in contempt of court was when we -- myself and Art Roeca [counsel for AWII and MA] -- was [(sic)] in Art Roeca's office talking about this case. And Art Roeca got a call from [Business Master]. Art Roeca turned to me; and says, "Alex, did you chain the door?" I said, "Yeah, I did." He said, "Why?" "Because of all the things I told you. I got video tapes. This guy is just going in and out of that room. He's taking banker boxes out of there."

[Art Roeca] says, "You know what, we better unchain that door. It's a contempt of court. You can't do that." I said, "Geez, I didn't realize that." He said, "You get those chains off the door now."

"Okay, if that's what's your recommendation is, fine."

Got on the phone, dialed up my office, said, "Marilyn, take those chains off the door. Get to Susan, get the keys, unchain the door and call me right back as soon as the doors are open."

About seven minutes later, she called back. She said, "The doors are open." Art Roeca was right there. She called back to [Business Master], said, "[Business Master], the doors are open."

One telephone call opened the doors. I did not know that there was a contempt of court. And there is nothing in the Court Order that states that.

. . . .

So therefore, if I am in contempt of court, I didn't realize it[.]

Following oral arguments, Judge Crandall orally decided, in pertinent part:

That [Alex] is a party to this action; was ordered by the Court to comply with the Court's order that the Business Master take physical custody and control of the [Business Records]. And [Alex] has the ability and the power to comply with that [sic] Court's Order.

Third, that [Alex] has refused to comply with the order of the Court by unilaterally placing a lock upon the door to the room which housed the [Business Records], thereby interfering and impeding the Business Master's ability to maintain physical custody and control of the [Business Records]; and that [Alex] does not have a privilege, right, or lawful basis to refuse to comply with the Order of the Court.

Therefore, the Court concludes that [Alex] acted in violation of [Hawaii Revised Statutes (HRS)] Section 710-1077(6) and is in civil contempt of the Court.

. . . .

. . . [W]ith respect to the civil contempt, the Court is going to, one, order that you [Alex] personally pay all [of Business Master's] reasonable fees and expenses, including his professional fees and expenses which were incurred with respect to and/or in connection with the August 29, 2000 incident. And you're to personally pay for all other parties' professional fees and costs incurred with respect to or in connection with the August 29, 2000 incident[.]

On March 2, 2001, Judge Crandall entered the First Contempt Order. In this First Contempt Order,¹ Judge Crandall

^{1/} In the March 2, 2001 "Order Granting Business Master's Motion for Issuance of an Order Finding Alexander Y. Marn in Civil Contempt of Court Filed on September 21, 2000," Judge Crandall ordered, in relevant part, as follows:

2. Alexander Y. Marn shall personally pay Business Master . . . fees and costs incurred with respect to or in connection with the [August 29, 2000 incident (Incident)] . . . the amount of \$3,731.57.

3. Alexander Y. Marn shall personally pay Taryn R. Schuman, CPA, Inc.'s . . . professional fees and costs incurred with respect to or in connection with the Incident . . . the amount of \$1,000.00.

4. Alexander Y. Marn shall personally pay Brooks Tom Porter & Quitiquit's, the attorneys for the Business Master, attorneys' fees and costs incurred with respect to or in connection with the Incident . . . the amount of \$5,000.00.

5. Alexander Y. Marn shall personally pay [a party to the Marn Family Litigation's] attorneys' fees and costs incurred with respect to or in connection with the Incident . . . the amount of \$500.00.

(continued...)

ordered Alex to pay a total of \$11,731.57 for reasonable professional fees and costs. A timely notice of appeal followed.

The Second Contempt of Court

When it approved Business Master's Third Report on September 11, 2000, the circuit court supplemented the Stipulated Order as follows: "[AWII, MA, and PP] shall cooperate with and permit [Business Master] and his authorized agents to inspect all newly created [Business Records] on a bi-weekly basis, commencing immediately." Bi-weekly inspections began on September 29, 2000.

On December 22, 2000, four TRS employees conducted a regular inspection of the newly created Business Records pursuant to the supplemented Stipulated Order. At the end of the workday,

^{1/}(...continued)

6. Alexander Y. Marn shall personally pay [a party to the Marn Family Litigation's] attorneys' fees and costs incurred with respect to or in connection with the Incident . . . the amount of \$0.

7. Alexander Y. Marn shall personally pay Pumehana Partners' attorneys' fees and costs incurred with respect to or in connection with the Incident . . . the amount of \$500.00.

8. Alexander Y. Marn shall personally pay McCully Associates' and Ala Wai Investments, Inc.'s attorneys' fees and costs incurred with respect to or in connection with the Incident . . . the amount of \$0.

9. Alexander Y. Marn shall personally pay [a party to the Marn Family Litigation's] attorneys' fees and costs incurred with respect to or in connection with the Incident . . . the amount of \$500.00.

10. Alexander Y. Marn shall personally pay [a party to the Marn Family Litigation's] attorneys' fees and costs incurred with respect to or in connection with the Incident . . . the amount of \$500.00.

The sum of the court-ordered amounts equals \$11,731.57.

Alex demanded that the TRS employees turn over to him copies of all of the documents in their possession, including the "inspection records" prepared by them. A TRS employee responded that copies could not be made without the express authority of Business Master or Taryn Schuman (Taryn), President of TRS. A TRS employee attempted to contact them by telephone. Before such contact was made, Alex took the paperwork and handed it to a receptionist for copying. Complying with an instruction that, because of prior incidences of hostility, they were not to confront anyone at the business offices, TRS personnel allowed the unauthorized copying to continue without complaint.

On January 23, 2001, Business Master filed "Business Master's Second Motion for Issuance of (1) An Order to Show Cause Why Alexander Y. Marn Should Not Be Held in Criminal Contempt of Court Or Alternatively, (2) An Order Finding Alexander Y. Marn in Civil Contempt of Court" (Second Motion for Contempt) (emphasis in original). Under alternative "(2)", Business Master requested an order requiring Alex to pay for Business Master's and "all other parties' professionals' reasonable fees and costs incurred with respect to and/or in connection with the December 22, 2000 incident" and appointing a receiver to replace Alex as President of AWII. Alex filed a memorandum in opposition to the Second Motion for Contempt on February 6, 2001. Business Master replied on February 9, 2001.

Judge Crandall held a hearing on the Second Motion For Contempt on February 14, 2001. On May 8, 2001, Judge Crandall issued the Second Contempt Order. The Second Contempt Order stated, in relevant part, as follows:

1. The [Stipulated Order] is clear and unambiguous, i.e., the Business Master has custody and control over all records, including those records generated by his agents (e.g., [TRS]), and their employees.

2. In reviewing [Alex's] affidavit, in particular paragraph 10, what was clear to the Court was not so much what was stated as what was not stated, and what was not stated was how the documents came from the possession or box of the TRS employees to the hands of the [MA] receptionist. [A TRS employee's] affidavit noted that [Alex] reached into the box and took those documents himself.

3. It states in paragraph 10 of [Alex's] Affidavit that he doesn't believe permission was necessary, and he had requested that the receptionist begin making copies. It doesn't say how the receptionist got . . . possession of those copies. What it leaves then un rebutted is the [TRS employee's] Affidavit that [Alex] himself physically took possession of those records and gave them to the receptionist.

4. [Alex's] Affidavit does not state that he didn't pick them up, it says, "I did not seize them."

. . . .

6. . . . [I]t has been pointed out that our justice system provides for self help in very limited instances, and this is not a situation where self help is appropriate. [Alex] was advised that the [TRS] employees were seeking permission to have him make those copies of the records, and he chose not to wait for that permission to be obtained from the Business Master.

7. . . . [F]urthermore, these records, it appears to the Court, were being taken to support an argument that [Alex] wants to make with respect to the conduct of the Business Master and these bi-weekly inspections, and these records have been attached as an exhibit in part to a motion that is set before the Court next week.

Therefore, on the basis of these Findings of Fact, the Court [concludes] as a matter of [law] that it is not going to refer this matter as criminal contempt. However, this is a matter of civil contempt that [Alex] knows that the Business Master has control and custody of the records and violated the [Stipulated Order] by not waiting for his permission.

The Second Contempt Order (1) prohibited any use of the documents copied by Alex on December 22, 2000, in any court proceeding and summarily denied any argument based on them, (2) deferred making a decision on the request for the appointment of a receiver, and (3) deferred making a decision on the request for an award of professional fees and costs. A timely notice of appeal followed.

POINTS ON APPEAL

On appeal, Alex asserts that the circuit court erred when it (1) (a) granted Business Master's First Motion for Contempt and (b) sanctioned him to pay \$11,731.57 in reasonable professional fees and costs and (2) (a) granted Business Master's Second Motion for Contempt and (b) imposed an evidentiary sanction from which there is no means of avoidance.

STANDARD OF REVIEW

"[W]hether a contempt order is civil or criminal in nature is a question of law, and the [circuit] court's characterization of the sanction is not binding upon [the appellate court]." LeMay v. Leander, 92 Hawai'i 614, 620, 994 P.2d 546, 552 (2000). The circuit court's determination whether a party is in civil contempt of court is reviewed for abuse of discretion. Id. The circuit court's imposition of contempt sanctions is likewise reviewed for abuse of discretion. See Glover v. Johnson, 199 F.3d 310, 312 (6th Cir. 1999). A court abuses its discretion if it has

"clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant." Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114, 839 P.2d 10, 26 (1992) (citation omitted).

DISCUSSION

1.a.

First Contempt Order

In Lemay, the Hawai'i Supreme Court stated that,

In distinguishing criminal from civil contempt, a court's inquiry is focused upon the character and purpose of punishment and not upon the punishment itself. Hawai'i Pub. Employment Relations Bd. v. United Public Workers, Local 646, AFSCME, AFL-CIO, 66 Haw. 461, 479, 667 P.2d 783, 795 (1983) (citing Shillitani v. United States, 384 U.S. 364, 369-70, 86 S. Ct. 1531, 16 L. Ed. 2d 622 (1966) (quoting Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 441, 31 S. Ct. 492, 55 L. Ed. 797 (1911))). In United Public Workers, this court adopted the Shillitani Court's test for distinguishing criminal contempt from civil contempt, i.e., "What does the court primarily seek to accomplish by imposing sentence?"

The primary purpose of criminal contempt is to punish past defiance of a court's judicial authority, thereby vindicating the court. In contrast, civil contempt may be characterized as a court's desire to compel obedience to a court order, or to compensate the contemnor's adversary for injuries that result from noncompliance. In other words, there are essentially two forms of civil contempt - coercive and compensatory. Although civil contempt is often associated with a purge provision whereby contemnors may purge themselves of a fine or sanction by complying with the court's order, a sanction or fine without a purge provision is also considered to be remedial and civil, and not punitive and criminal, if paid to the complainant and not to the court. A contempt adjudication is also considered to be civil in nature when the sanction is wholly remedial, serves only the purposes of the complainant, and is not intended as a deterrent to offenses against the public.

92 Hawai'i at 621, 994 P.2d 553 (citations partially omitted).

In the instant case, Judge Crandall sanctioned Alex to pay the reasonable professional fees and expenses incurred as a result of Alex's conduct on August 29, 2000. Because the payment

of \$11,731.57 seeks to put Business Master and the other parties back to the position they were at prior to the padlocking incident on August 29, 2000, the sanction is wholly compensatory in nature. Accordingly, Alex's first contempt of court is civil contempt.

In LeMay, the Hawai'i Supreme Court explained the law of civil of contempt as follows:

The appropriate standard of proof for a citation of civil contempt is by clear and convincing evidence. Additionally, to hold a party in civil contempt, there must be a court decree that sets forth in specific detail an unequivocal command that the contemnor violated, and the contemnor must be able to "ascertain from the four corners of the order precisely what acts are forbidden." A knowing or intentional state of mind is immaterial when determining civil contempt violations due to its remedial purpose; the real question is whether the alleged contemnor has failed to comply with the court's order.

92 Hawai'i at 624-25, 994 P.2d at 556-57 (citations omitted).

In the Stipulated Order, the parties to the Marn Family Litigation agreed, in relevant part, as follows:

2. That JOHN P. MOON . . . shall be appointed by the Court to serve, . . . as a business master and [be] empowered:

(a) With the authority to exercise such control and custody over the books and records of the Marn Family Entities as to provide reasonable access thereto by the parties to this litigation. The term "Marn Family Entities" means and includes [PP], . . . [MA], . . . and [AWII] The books and records of the Marn Family Entities shall not be removed from the respective places of business except as directed by the business master, and in such instances of removal, the business master shall retain custody and control of all original documents. The confidentiality of all documents, if any, shall be respected by the parties and the business master;

(b) To authorize during regular business hours reasonable access to and the inspection and copying (at the requesting party's expense) of the books and records of the Marn Family Entities by the respective partners, directors, officers and shareholders of each of the Marn Family Entities and/or their respective agents, subject to the right to withhold any document based on a claim of privilege or attorney work product protection. . . .;

(c) To recommend to the Court the employment of such accountants, business advisors and other experts as may be necessary to properly review and evaluate the books and records of the Marn Family [Entities][.]

As noted above, on June 20, 2000, TRS re-keyed the locks on the doors of Suite 111 to obtain exclusive control of the facility and the Business Records therein.

In the circuit court, Alex, appearing *pro se*, argued as follows:

Now, I admit I chained the doors [to Suite 111]. I admit that. But I've got to say, I did not violate [the] Court Order. There is nothing in the Court Order that says chaining of the doors is a contempt of court.

As a matter of fact, when I first heard about this being in contempt of court was when we -- myself and Art Roeca [counsel for AWII and MA] -- was [(sic)] in Art Roeca's office talking about this case. And Art Roeca got a call from [Business Master]. Art Roeca turned to me; and says, "Alex, did you chain the door?" I said, "Yeah, I did." He said, "Why?" "Because of all the things I told you. I got video tapes. This guy is just going in and out of that room. He's taking banker boxes out of there."

[Roeca] says, "You know what, we better unchain that door. It's a contempt of court. You can't do that." I said, "Geez, I didn't realize that." He said, " You get those chains off the door now."

"Okay, if that's what's your recommendation is, fine."

Got on the phone, dialed up my office, said, "Marilyn, take those chains off the door. Get to Susan, get the keys, unchain the door and call me right back as soon as the doors are open."

About seven minutes later, she called back. She said, "The doors are open." Art Roeca was right there. She called back to [Business Master], said, "[Business Master], the doors are open."

One telephone call opened the doors. I did not know that there was a contempt of court. And there is nothing in the Court Order that states that.

. . . .

So therefore, if I am in contempt of court, I didn't realize it[.]

The Stipulated Order and the April 25, 2000 Order are clear that the court awarded Business Master and TRS exclusive

control of the Business Records. This award was in effect on August 29, 2000. When Alex, on that date, chained and padlocked the doors to Suite 111 and physically prohibited access by Business Master and TRS to the Business Records, Alex violated, and was in civil contempt of, the Stipulated Order and the April 25, 2000 Order. The court acted consistent with LeMay and did not abuse its discretion when, on October 17, 2000, it decided that Alex had been in civil contempt of court.

1.b.

Sanction for the First Contempt Order

Regarding the \$11,731.57 sanction, this is the amount of reasonable fees and expenses incurred by Business Master and other parties regarding the First Motion for Contempt.² In light of the fact that payment of this sanction reasonably places Business Master and the other parties in the position they would have been in if Alex had not chained and padlocked Suite 111, the imposition of this sanction is not an abuse of discretion.

2.

Second Contempt Order

The Second Contempt Order (1) prohibited any use of the documents copied by Alex on December 22, 2000, in any Court proceeding and summarily denied any argument based on them, (2) deferred making a decision on the request for the appointment

^{2/} See note 1, above

of a receiver, and (3) deferred making a decision on the request for an award of professional fees and costs.

The dispositive question is whether we have appellate jurisdiction to decide the appeal of the Second Contempt Order. Before we answer that question, we first must decide whether the Second Contempt Order was civil or criminal in nature.

Because the Second Contempt Order's evidentiary preclusion placed Business Master and the other parties to the Marn Family Litigation in the position they would have been in had Alex complied with TRS' instructions on December 22, 2000, the sanction is wholly remedial, serves only the purposes of Business Master and the other parties to the Marn Family Litigation, and is not intended as a deterrent to offenses against the public. See LeMay, 92 Hawai'i at 621, 994 P.2d at 553. Therefore, the Second Contempt Order is civil in nature.

HRS § 641-1(a) (1993) authorizes appeals from "final" orders. Because the Second Contempt Order did not dispose of all of the requests made by Business Master in the Second Motion for Contempt and no part of it qualifies for appeal under any special rule of appealability as described in HRS § 641-1(b) (1993), Chuck v. St. Paul Fire and Marine Ins. Co., 61 Haw. 552, 555, 606 P.2d 1320, 1323 (1980), Penn v. Transportation Lease Hawaii, Ltd., 2 Haw. App. 272, 274, 630 P.2d 646, 649 (1981), Harada v. Ellis, 60 Haw. 467, 480, 591 P.2d 1060, 1070 (1979), or Siangco v.

Kasadate, 77 Hawai'i 157, 161, 883 P.2d 78, 82 (1994), it is not appealable.

CONCLUSION

Accordingly, we affirm the March 2, 2001 "Order Granting Business Master's Motion for Issuance of an Order Finding Alexander Y. Marn in Civil Contempt of Court Filed on September 21, 2000."

For lack of appellate jurisdiction, we dismiss the appeal of the May 8, 2001 "Order Granting Business Master's Second Motion for Issuance of an Order Finding Alexander Y. Marn in Civil Contempt of Court Filed on January 23, 2001."

DATED: Honolulu, Hawai'i, May 22, 2003.

On the briefs:

James M. Sattler
for Contemnor-Appellant.

Chief Judge

Crystal K. Rose,
Liane L. Brown, and
Brian A. Bilberry
for Successor Trustee of
The Annabelle Y. Dunn
Revocable Trust and Personal
Representative of the Estate
of Annabelle Y. Dunn.

Associate Judge

Acting Associate Judge

Christian P. Porter and
R. Laree McGuire (Brooks Tom
Porter & Quitiquit, LLP)
for Business Master-Appellee.