

NOS. 24327 AND 24442

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

DONNA EDWARDS MIZUKAMI, now known as Donna Edwards,
Plaintiff-Appellee, v. GLENN KIYOHICO MIZUKAMI,
Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 90-4214)

MEMORANDUM OPINION

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

In appeal No. 24442, we affirm the family court's May 16, 2001 order requiring that Defendant-Appellant Glenn Kiyohiko Mizukami (Glenn) "shall pay \$2007.00 for half of orthodontic expenses and shall be re-imbursed if this is more than 1/2 of final bill or be increased if it is less than 1/2 of final bill."

In appeal No. 24327, we affirm the family court's (a) September 20, 2000 order as amended by its May 14, 2001 order and its (b) May 15, 2001 order requiring Glenn to pay Plaintiff-Appellee Donna Edwards Mizukami, now known as Donna Edwards (Donna), her attorney fees in the sum of \$3,497.25.

BACKGROUND

The son (Son) of Glenn and Donna was born on June 30, 1986. The "Decree Granting Divorce and Awarding Child Custody," entered by Judge Victoria S. Marks on August 2, 1991 (Divorce

Decree), awarded legal and physical custody of Son to Donna and ordered Glenn to pay child support of \$350 per month commencing August 5, 1991. Judge Marks noted that Glenn was \$1,350 in arrears in the payment of child support at that time, entered judgment for that amount, and ordered Glenn to pay \$50 per month on that judgment. Judge Marks also ordered, in relevant part, as follows: "[Glenn] shall provide medical and dental insurance for the benefit of the child. Ordinary medical and dental expenses not covered by insurance shall be paid by [Donna]. Any extraordinary medical and dental expenses not covered by insurance shall be paid 50% - 50% by the parties."

On February 10, 2000, after a contested hearing, the Office of Child Support Hearings entered its "Administrative Findings and Order" deciding that Glenn owed child support of \$19,800 as of January 1, 2000, and ordering him to pay it at the rate of \$50 per month commencing February 1, 2000.

On August 9, 2000, Donna moved for enforcement of the previous orders and for orders requiring Glenn to pay one-half of Son's orthodontic expenses, to reimburse Donna for all legal expenses she incurred, to pay statutory interest, and requiring the auction sale of Glenn's "entire sword collection for security for future support."

On September 18, 2000, Glenn filed his response to Donna's August 9, 2000 motion. Glenn alleged that he paid the

\$50 per month on the arrearage, questioned the necessity and cost of Son's orthodontic treatment, and questioned the necessity of Donna's August 9, 2000 motion.

On September 20, 2000, Judge Paul T. Murakami entered an order: (1) refusing to amend the February 10, 2000 order; (2) entering judgment against Glenn for child support for the period from February 1, 2000 to August 30, 2000, in the amount of \$2,450; (3) awarding Donna the right to statutory interest from January to September, 2000; (4) denying Donna's request for 25% attorney fees and ordering Donna to submit an affidavit of reasonable attorney fees for the court's consideration; (5) ordering Glenn to pay "50% of orthodontic estimate"; (6) denying, without prejudice, Glenn's request for change of custody; (7) reserving for further hearing the issues of foreclosure and sequestration of Glenn's property and transfer of title to Donna; and (8) ordering Glenn to pay child support of \$250 per month commencing October 1, 2000.

On September 22, 2000, Glenn sought reconsideration of the September 20, 2000 order. He supported his request with an addendum memorandum filed on October 5, 2000.

At some point in time, Donna submitted a proposed judgment for entry by the court. On January 22, 2001, Glenn filed his objection to the proposed judgment. On May 14, 2001, Judge Murakami entered an "ORDER GRANTING IN PART AND

DENYING IN PART DEFENDANT'S OBJECTIONS AND REQUEST FOR
RECONSIDERATION OF PLAINTIFF'S PROPOSED JUDGMENT AND ORDER
REGARDING ATTORNEY FEES" stating, in relevant part, as follows:

[T]he court having concluded that the instant pleadings fail to show good cause to warrant further hearing under Rule 59(j) Hawaii Family Court Rules:¹

IT IS HEREBY ORDERED that Defendant's Objections and Request for Reconsideration of Plaintiff's Proposed Judgment and Order Regarding Attorney Fees filed January 22, 2001 is granted in part and denied in part without hearing. Court amended it's [sic] order to delete the 10% interest on prior judgment and deleted the second paragraph of proposed judgment. Court sustained the request for attorney fees.

(Footnote added.)

Although the May 14, 2001 order "deleted the second paragraph of proposed judgment[,]" Judge Murakami did not enter any judgment or amended judgment. Therefore, the effective order is the September 20, 2000 order as amended by the May 14, 2001 order.

On May 15, 2001, Judge Murakami entered an order requiring Glenn to pay Donna for her attorney fees in the sum of \$3,497.25.

On May 16, 2001, Judge Allene R. Suemori entered an order requiring that Glenn "shall pay \$2007.00 for half of orthodontic expenses and shall be re-imbursed [sic] if this is more than 1/2 of final bill or be increased if it is less than

¹ The order cited Hawai'i Family Court Rules (HFCR) Rule 59(j), notwithstanding the deletion of HFCR Rule 59(j) effective January 1, 2000.

1/2 of final bill." On May 29, 2001, Glenn timely moved for reconsideration of this order.

On June 1, 2001, Glenn filed a notice of appeal of the May 14, 2001 order (appeal No. 24327). He thereby seeks to challenge (a) the September 20, 2000 order as amended by the May 14, 2001 order and (b) the May 15, 2001 order.

On June 1, 2001, Glenn moved for a change of legal and physical custody of Son to him, for review and amendment of child support arrearages for the period from January 1, 1994, through December 31, 2000, and for credit for cash allegedly spent by Glenn for Son at Donna's request. Glenn alleged that Donna "had terminated visitation and all contact by [Son] with [Glenn], adult sister, and paternal family from March 29, 1997 to present."

On June 19, 2001, Judge Suemori entered an order summarily denying Glenn's May 29, 2001 motion for reconsideration of the May 16, 2001 order pertaining to Son's orthodontic expenses. The order cited Hawai'i Family Court Rules (HFCR) Rule 59(j), notwithstanding the deletion of HFCR Rule 59(j) effective January 1, 2000.

On July 16, 2001, Glenn filed a notice of appeal of the June 19, 2001 order (appeal No. 24442). On September 6, 2001, Glenn filed an opening brief in appeal No. 24327.

On October 5, 2001, Justice Paula Nakayama consolidated appeals Nos. 24327 and 24442 under appeal No. 24327 and ordered Glenn's opening brief stricken. On November 5, 2001, Justice Nakayama denied Glenn's motion to vacate the October 5, 2001 order of consolidation, but vacated the October 5, 2001 order striking Glenn's opening brief and ordered: (1) the opening brief filed September 6, 2001, the answering brief filed October 16, 2001, and the reply brief filed October 31, 2001, to be designated as the briefs for No. 24327, and (2) the opening brief filed October 24, 2001, the answering brief filed December 5, 2001, and the reply brief filed December 14, 2001, to be designated as the briefs in appeal No. 24442.

DISCUSSION

Appeal No. 24442

In his opening brief filed on October 24, 2001, Glenn challenges (1) the validity of Donna's August 9, 2000 motion and (2) the May 16, 2001 order requiring him to "pay \$2007.00 for half of [Son's] orthodontic expenses[.]"

A.

Glenn contends that Donna's August 9, 2000 motion "was improper, frivolous and should have been dismissed by the Court[.]" This point has no merit. Donna's motion validly raised valid issues.

Glenn contends that Donna's August 9, 2000 motion violated Hawaii Revised Statutes (HRS) §§ 576D-7(e) (Supp. 2002), 576E-14(d) (Supp. 2002), and 580-47(e) (Supp. 2002) because those statutes allow Donna to petition the family court or the Child Support Enforcement Agency not more than once every three years. These statutes state that "[t]he responsible parent or the custodial parent shall have a right to petition the family court or the child support enforcement agency not more than once every three years for review and adjustment of the child support order without having to show a change in circumstances." It appears that Glenn does not understand the difference between "review and adjustment" and enforcement. Donna's August 9, 2000 motion sought enforcement of prior orders.

Glenn offers various reasons why this court should reverse the family court's May 16, 2001 order and issue a "writ of mandamus directing the Family Court to maintain a single Senior Judge, other than Honorable Allene R. Suemori, to preside in the case below to conclusion." None of these reasons have any merit.

B.

Pointing to the relevant provision in the Divorce Decree, Glenn challenges whether the alleged "orthodontic expense" is encompassed within the phrase "dental expense," is "not covered by insurance," is "extraordinary," and is reasonably

necessary. The family court implicitly answered all those questions in the affirmative. We affirm those implicit findings.

Glenn asks why only he was ordered to pay, to whom he was to pay, when was payment to be made, and toward which of the estimates filed. Obviously, only Glenn was ordered to pay because only he challenged the obligation to pay, payment was to be made to the orthodontist expressly for Glenn's one-half of Son's orthodontic expense, and payment was to be made promptly.

The family court's erroneous citation of HFCR Rule 59(j) in its June 19, 2001 order was harmless. HFCR Rule 59(e) (Supp. 2002) pertaining to motions to reconsider authorized a summary disposition of Glenn's motion for reconsideration.

Appeal No. 24327

1. Glenn challenges the May 15, 2001 order requiring him to pay Donna for her attorney fees in the sum of \$3,497.25.

a. Glenn contends that

[t]he Court below erred in presuming that the subject requested attorney fees were in fact paid by [Donna] and therefore reimbursable to [Donna] as relief and redress of [Donna's] expenses and thereby awardable to [Donna]; said fees are instead "unbillable" to [Donna], are not [Donna's] expenses, and therefore not reimbursable to [Donna] as award of relief or redress as would be otherwise provided by the principle of HRS § 580-47(f) or the same principle of other laws providing such relief through the Court's award of legal expenses to the prevailing party.

There being nothing in the record to support Glenn's allegation that "said fees are . . . 'unbillable' to [Donna],

[and] are not [Donna's] expenses," this argument lacks a basis in fact.

b. Comparing what Donna asked for in her August 9, 2000 motion and what she was awarded by the court, Glenn contends that Donna's August 9, 2000 motion was largely unsuccessful and "the Court below erred by not considering the respective merits of the parties and the results of its own adjudications, and thereby disregarded the principles of HRS § 580-47(f) and the same principle in other similar law" when it ordered Glenn to pay attorney fees to Donna. We conclude that Glenn's allegation "that Donna's August 9, 2000 motion was largely unsuccessful" is without basis in fact.

(c) Glenn contends that the award of \$2,007 to Donna does not justify the award of \$3,497.25 attorney fees. We disagree. Donna reasonably incurred that amount of attorney fees to obtain that award.

(d) Glenn contends that

[t]he Court below also erred by premature preferential focus of its consideration on [Donna's] counsel's requests for subject attorney fees early at the onset of the case while disregarding the many issues not yet heard nor disposed.

. . . The Court further erred by said award which was speculative and presumptuous as to which party shall eventually prevail, and by such award initiated precedent for final claims for legal expenses while deferring [Glenn's] expenses, and thereby prejudicing [Glenn's] prospective opportunities for award of [Glenn's] requests for expenses by the same Court.

. . . The Court below erred in conducting this case's proceedings with priority and focus on [Donna's] motions and issues, and thereby establishing the Court's position and role as one of advocacy, and its rulings as prejudicial to [Glenn's] requests and constitutional rights.

We decide that the family court acted well within its discretion when it entered its May 15, 2001 order requiring Glenn to pay Donna for her attorney fees in the sum of \$3,497.25.

(e) Glenn contends that

[w]hile the extant provisions of HFCR Rule 59(e) allow either hearing or non-hearing of motions for reconsideration by the Court, the former HFCR Rule 59(j) discretion of the Court to "summarily deny a motion" did not then exist. To wit, all motions for reconsideration pursuant to Rule 59(e) now require the Court's deliberation and decision. The former Rule 59 provision (j) summary denial, has not been re-instituted in the extant Rule 59 under other designation therein. There is a clear distinction between a deliberated decision and a summary denial.

This point has no factual basis. Glenn misinterprets the May 14, 2001 order. It states, in relevant part, as follows:

Upon consideration of Defendant's Objections and Request for Reconsideration of Plaintiff's Proposed Judgment and Order Regarding Attorney Fees filed January 22, 2001, and the Court having concluded that the instant pleadings fail to show good ca[use] to warrant further hearing under Rule 59(j) Hawaii Family Court Rules;

IT IS HEREBY ORDERED[.]

Moreover, a decision to summarily deny a motion for reconsideration does not involve a failure to make a deliberated decision. It involves a decision not to explain the deliberated decision.

CONCLUSION

Accordingly, we affirm the family court's:

September 20, 2000 order as amended by its May 14, 2001 order, in appeal No. 24327;

May 15, 2001 order requiring Glenn to pay Donna her attorney fees in the sum of \$3,497.25, in appeal No. 24327; and

May 16, 2001 order requiring that Glenn "shall pay \$2007.00 for half of orthodontic expenses and shall be re-imbursed if this is more than 1/2 of final bill or be increased if it is less than 1/2 of final bill," in appeal No. 24442.

DATED: Honolulu, Hawai'i, January 29, 2003.

On the briefs:

Glenn Kiyohiko Mizukami,
Defendant-Appellant, *pro se*.

Chief Judge

Thomas D. Collins, III,
for Plaintiff-Appellee.

Associate Judge

Associate Judge