

NO. 24444

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

THAO FARIAS, Plaintiff-Appellant, v.
GEORGE FARIAS, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-D NO. 11921)

MEMORANDUM OPINION

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

Plaintiff-Appellant Thao Farias (Thao) appeals from the July 11, 2001 Decision, entered in the Family Court of the Third Circuit, District Family Judge Terence T. Yoshioka presiding. We affirm the result of the family court's July 11, 2001 Decision, but not the analysis used in reaching it.

The October 30, 1984 Decree Granting Absolute Divorce and Awarding Child Custody (Divorce Decree) was prepared by Thao's attorney, approved as to form and content by Defendant-Appellee George Farias (George), and stated, in relevant part, as follows: "[Thao] to receive 50% of [George's] retirement benefits as of the date of the divorce. Upon request by [Thao], [George] shall pay this amount in cash to her not later than when [George] is first entitled to receive his retirement benefits."

George retired from employment with the State of Hawaii on March 31, 2000, and has received or will receive a

payment each month thereafter. He also received a lump sum payment in the year 2000.

On December 12, 2000, Thao filed a Motion and Affidavit for Relief After Order or Decree (December 12, 2000 Motion) seeking the following:

The parties' divorce decree provides that [Thao] is to receive 50% of [George's] retirement benefits as of the date of divorce. [George] has recently retired, and [Thao] seeks to [sic] a division of the subject retirement plan, to include: (1) [Thao's] Linson share of the subject retirement plan and (2) the appreciation upon [Thao's] Linson share of the subject retirement plan. In addition, [Thao] seeks an award of attorney's [fees] and costs that are necessitated in order to accomplish the required division.

In other words, Thao sought a 22.8% share of all of George's retirement receipts.

In her June 15, 2001 memorandum in support of the December 12, 2000 Motion, Thao argued, in relevant part, as follows:

As a court of equity, the Family Court should strive to reach a result that is just and equitable under the circumstances. In this case, a just and equitable result would be application of the Linson formula to the retirement benefits at issue in this case. [George's] only argument against this fair and equitable result is that [Thao's] request is inconsistent with the terms of the Decree. However, as shown above, the Decree is actually silent as to how appreciation on [Thao's] share of the retirement plan should be treated, and under these circumstances, the Court should interpret the Decree fairly and equitably by awarding a Linson share to [Thao].

In its July 11, 2001 Decision, the family court began by stating as follows:

In determining [Thao's] interest in [George's] retirement benefits, the court takes judicial notice of the fact that the parties themselves formulated the provisions of their divorce decree pursuant to their agreement and that the decree was not ordered by the court following a contested divorce trial. As such, the decree is a contract between the parties, the provisions of which were subsequently approved by the divorce court.

Given this fact, the court must apply the rules governing the construction of contracts in determining [Thao's] rights in [George's] retirement benefits.

The family court then decided that there was no ambiguity in paragraph 6 of the Divorce Decree and that it was "thus constrained to limit [Thao's] rights to [George's] retirement benefits determined as of October 30, 1984, the date of the parties' divorce." Ultimately in its Decision, the family court awarded Thao "50 percent of the vested retirement benefits which [George] was entitled to withdraw as of October 30, 1984, the date of the parties' divorce, together with interest thereon at the rate of ten percent (10%) per annum commencing as of the date when [George] was entitled to retire."

We conclude that the family court was wrong in deciding that it "must apply the rules governing the construction of contracts in determining [Thao's] rights in [George's] retirement benefits." The agreement of the parties merged into the Divorce Decree. Jendrusch v. Jendrusch, 1 Haw. App. 605, 609, 623 P.2d. 893, 896 (1981). When interpreting a decree/judgment, the determinative factor is the intention of the court as gathered from all parts of the decree/judgment itself. Id. at 605, 623 P.2d at 897.

On the other hand, we conclude that the family court's interpretation of paragraph 6 of the Divorce Decree is right. Clearly, the family court's interpretation of paragraph 6 of the

Divorce Decree was the intention of the court that entered the Divorce Decree.

Accordingly, we affirm the result of the family court's July 11, 2001 Decision, but not the analysis used in reaching it.

DATED: Honolulu, Hawai'i, September 13, 2002.

On the briefs:

Steven J. Kim
(Lynch Ichida Thompson
& Kim) Chief Judge
for Plaintiff-Appellant.

Craig M. Sadamoto
for Defendant-Appellee. Associate Judge

Associate Judge