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NOS. 24864, 24962, AND 24964

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.)

Defendant-Appellant Glenn Kiyohiko Mizukami (Glenn) appeals from the family court's (a) January 30, 2002 "Order Granting Motion for Reconsideration of Pretrial Order No. 2 Filed on 12/20/01, Under Rule 59, [Hawai'i Family Court Rules (HFCR)] (Thomas Collins Movant)" (appeal No. 24962), (b) January 14, 2002 "Order Granting in Part and Denying in Part Plaintiff's Motion[s] and Affidavit for Post-Decree Relief Filed on April 30, 2001 and July 16, 2001, and Denying Defendant's Motions and Affidavit for Post-Decree Relief Filed on June 1, 2001 and July 19, 2001" (appeal No. 24864), and (c) February 6, 2002 "Order Denying Defendant's Non-Hearing Motion for Reconsideration of Unfiled Order Denying Motion for Appointment of Guardian Ad Litem for [Son] Filed January 14, 2002" (appeal No. 24964). We affirm.

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### BACKGROUND

The son (Son) of Glenn and Plaintiff-Appellee Donna Edwards Mizukami, now known as Donna Edwards (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 arrearage 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

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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) deciding not 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.

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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 Donna's 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;<sup>1</sup>

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. Therefore, the effective order was the September 20, 2000 order, as amended by the May 14, 2001 order. The amended order was affirmed in appeal No. 24327.

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

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On April 30, 2001, Donna moved for the determination of the child support arrearage, the entry of a corresponding judgment, and the enforcement of the judgment.

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. This order was affirmed in appeal No. 24327.

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 1/2 of final bill." This order was affirmed in appeal No. 24442.

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 July 16, 2001, Donna moved for an order (a) enforcing Glenn's obligations to pay \$24,950 past due child support and one-half of Son's orthodontic expenses, (b) finding Glenn in contempt for violating various previous court orders, and (c) directing Glenn to pay Donna's attorney fees.

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On July 19, 2001, Glenn moved for a change of legal and physical custody of Son to him and for a modification of Glenn's child support obligations.

On December 20, 2001, "Pretrial Order No. 2" was filed. On December 28, 2001, Donna moved for reconsideration of "Pretrial Order No. 2" to correct mistakes her counsel made in its list of the issues in dispute.

On January 3, 2002, Glenn moved for the appointment of a guardian ad litem for Son based upon Son's alleged "readily apparent lack of educational progress" while being home-schooled by Donna.

Judge Bode A. Uale presided over a trial on January 7, 2002. Immediately prior to the trial, Glenn filed "Defendant's Memorandum of Trial Issues."

On January 30, 2002, Judge Suemori entered an order granting Donna's December 28, 2001, motion for reconsideration of "Pretrial Order No. 2". On March 1, 2002, Glenn appealed this order, thereby commencing appeal No. 24962.

At 9:58 a.m. on January 14, 2002, Glenn filed "Defendant's Motion and Affidavit for Reconsideration of Unfiled Order Denying Motion for Appointment of Guardian Ad Litem for [Son] Filed January 3, 2002." On February 6, 2002, Judge Uale entered an "Order Denying Defendant's Non-Hearing Motion for Reconsideration of Unfiled Order Denying Motion for Appointment of Guardian Ad

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Litem for [Son] Filed January 14, 2002." This order stated, in relevant part, as follows:

1. [Glenn] failed to satisfy the requirement of the Divorce Decree requiring him to provide proof of completion of an anger management program before he can have unsupervised visitation;

2. [Glenn] fails to show good cause to warrant the Court's reconsideration[.]

On March 5, 2002, Glenn appealed this order, thereby commencing appeal No. 24964.

At 3:57 p.m. on January 14, 2002, the family court filed Judge Uale's "Order Granting in Part and Denying in Part Plaintiff's Motion[s] and Affidavit for Post-Decree Relief Filed on April 30, 2001 and July 16, 2001, and Denying Defendant's Motions and Affidavit for Post-Decree Relief Filed on June 1, 2001 and July 19, 2001." This order denied Glenn's motions for change of custody and visitation; ordered Glenn to submit a certificate of completion of an anger management program to Donna prior to unsupervised visits; imputed income of \$3,000 per month to Glenn and found that Donna's income was \$4,408.34 per month; ordered Glenn to pay \$320 per month child support; denied Glenn's request for credits against his child support debt; denied Donna's request for interest on child support arrearage; entered Judgment against Glenn in favor of Donna for (a) \$280 additional child support through December 31, 2001, and (b) \$29,237.51 attorney fees; ordered a writ of execution against Glenn for all judgment amounts;

and ordered that all prior orders shall remain in full force and effect.

On January 22, 2002, Glenn appealed the January 14, 2002 order, thereby commencing appeal No. 24864.

On May 29, 2002, the Hawai'i Supreme Court entered an order consolidating appeals Nos. 24864, 24962, and 24964 into appeal no. 24864.

On February 12, 2002, Judge Uale entered "Findings of Fact and Conclusions of Law" resulting from the January 7, 2002 trial. These findings of fact state, in relevant part, as follows:

**FINDINGS OF FACT**

. . . . .

20. On July 25, 2001, the Court orally ordered that a Writ of Execution issue against [Glenn].

21. On July 26, 2001, one day after the Court orally ordered that the Writ of Execution issue against [Glenn's] real and personal property, [Glenn] paid the \$19,800.00 judgment against him with a check written on the account of Ms. Henreitte Taylor.

22. Ms. Taylor's deposition was noticed on or about August 10, 2001. On August 20, 2001, the remaining balance which [Glenn] owed in the amount of \$4,790.04 was paid to CSEA [Child Support Enforcement Agency].

. . . . .

26. [Glenn's] evidence regarding the alleged deficiencies in the minor child's home schooling was not convincing.

27. The Court found [Donna's] testimony that the DOE [State of Hawai'i Department of Education] had approved home schooling of the minor child to be credible. The minor child is also receiving tutoring in mathematics.

28. There is no basis for [Glenn] to allege that a change in custody and/or visitation is in the child's best interest.

29. [Glenn] testified at trial that his income in 2001 was \$20,000 to \$25,000.



30. [Donna's] Exhibit Five and Six demonstrates [sic] that over the past several years, [Glenn] has claimed income in excess of \$6,000.00 a month and net worth in excess of \$900,000.00.

31. Considering the evidence, including [Glenn's] own testimony, the Court finds that \$3,000 a month is a reasonable income to impute to [Glenn].

. . . . .

33. [Glenn] presented no credible evidence of his direct child support payments and/or contributions to the minor child which could reasonable [sic] be construed as being in place of child support payments.

. . . . .

**CONCLUSIONS OF LAW**

. . . . .

6. Based upon [the] respective merits of the parties, the relative abilities of the parties, the economic condition of each party at that time of the hearing, the burdens imposed upon either party for the benefit of the child of the parties, and all other circumstances of the case it is fair and reasonable for [Glenn] to pay [Donna's] attorney fees in the amount of \$29,237.51.

. . . . .

7. Based upon the evidence in the record of [Glenn's] repeated disobedience of child support orders, the issuance of a writ of execution against [Glenn's] real and personal property is warranted.

DISCUSSION

1.

Glenn contends that the February 10, 2000 CSEA order was a final judgment barring change via subsequent orders. We disagree. The February 10, 2000 CSEA order was a final judgment pertaining to child support as of January 1, 2000, and not to child support for periods thereafter.

Glenn contends, in relevant part, as follows:

A. Burden on Appeal No. 24864 is met by:

1. Res Judicata bar of all 3 [Donna's] repeatedly moved executions of CSEA final judgment February 10, 2000  
. . . . .

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- a. [Donna] moved against said bar . . . August 9, 2000, and was denied September 20, 2000 . . . .
  - b. [Donna] again moved April 30, 2001 . . . against same bar of both same CSEA final judgment & Family Court final judgment September 20, 2000, and was again denied on June 19, 2001 Minute Order, . . . .
  - c. [Donna] moved July 16, 2001, for the third time, against same bar of same CSEA final judgment . . . .
- . . . .

. . . [Donna's] recourse after each of said three final judgments was to appeal. Instead, [Donna] waived appeal and decided to repeatedly relitigate, said same CSEA final judgment, in the Family Court. Clearly such repeated action against res judicata was frivolous, and contrary to Principles & Practices of Law.

In other words, Glenn contends that Donna's motions filed on August 9, 2000, April 30, 2001 and July 16, 2001, were barred by the res judicata effect of prior final judgments. We disagree.

Res judicata applies when "(1) the issue decided in the prior adjudication is identical with the one presented in the action in question, (2) there was final judgment on the merits, and (3) the party against whom res judicata is asserted was a party or in privity with a party to the prior adjudication." Dorrance v. Lee, 90 Hawai'i 143, 148, 976 P.2d 904, 909 (1999) (citations and block quotation format omitted). Donna's motions filed on August 9, 2000, April 30, 2001, and July 16, 2001 presented issues not identical with the issues decided in prior final judgments. It appears that Glenn misunderstands that the law of res judicata does not bar Donna from more than once seeking enforcement of the same monetary judgment.

2.

Glenn contends that the court: (a) erred in denying his request for a change of custody and the appointment of a GAL for Son; (b) abused its discretion and failed to follow statutory guidelines when deciding Donna's income and imputing Glenn's income; (c) erred by failing to either offset Glenn's child support obligation or award Glenn an amount equivalent to the attorney fees and costs he incurred during post-divorce proceedings; (d) erred when it ordered him to pay Donna's attorney fees and costs; (e) erred in allowing Donna to introduce certain evidence; (f) erred in refusing to allow Glenn to introduce certain evidence when his allotted time at the trial expired; and (g) erred by authorizing writs of execution.

Glenn did not cause any transcripts of proceedings in the family court to be made a part of the record on appeal. In the absence of transcripts of the relevant proceedings in the family court, especially a transcript of the January 7, 2002 trial, it is not possible for us to examine the validity of Glenn's points on appeal. Therefore, Glenn has failed his burden on appeal.

3.

Glenn challenges the January 30, 2002 order granting Donna's December 28, 2001 motion for reconsideration of "Pretrial Order No. 2". "Pre-trial Order No. 2" had been filed on

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December 20, 2001 and pertained to the January 7, 2002 trial.

Glenn argues that

[s]aid motion filed December 28, 2002 untimely requested modification of said "Pretrial Order No. 2" Stipulated Order of Trial issues. At trial, [Donna] argued issues other than those stipulated and Court approved. On January 30, 2002 Judge Suemori granted said Motion For Reconsideration, in effect "retroactively" allowing [Donna] to argue such barred issues at Trial 23 days earlier. To wit, at Trial Donna had improperly argued said issues by unlawful surprise. Said motion was non-hearing until set for hearing at 1:30 p.m. January 23, 2002. When opposing counsel failed to appear, Judge Suemori "cancelled" said hearing and [Glenn] was thereby denied the opportunity to request dismissal of said motion. Thereafter on January 30, 2002 the motion was granted. The Family Court gave no reasons for its said order, and no Fs of F/Cs of L were filed. Therefore, a transcript was not available for Appeal No. 24962 which referenced each point to the Record supporting "Pretrial Order No. 2" and Hawai'i Family Court Rules (HFCD) Rule 16, and opposing said order granting untimely filed January 30, 2002 more than 3 weeks too late.

HFCD Rule 16 (2003) states, in relevant part, that a pre-trial order "limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice." At the January 7, 2002 trial, "to prevent manifest injustice[,] " the court was authorized to orally grant some or all of the requests contained in Donna's December 28, 2001 motion for reconsideration of Pretrial Order No. 2 or to otherwise amend Pretrial Order No. 2. After the trial, Donna's December 28, 2001 motion was moot. The court was authorized to enter its January 30, 2002 order granting Donna's December 28, 2001 motion only if it was confirming something it had orally done at or before the January 7, 2002 trial. In other words, the January 30, 2002 order is either valid or it is moot and

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harmless to Glenn. In the absence of a transcript of the January 7, 2002 trial, we are unable to answer the question.

CONCLUSION

Accordingly, we affirm the family court's (a) January 30, 2002 "Order Granting Motion for Reconsideration of Pretrial Order No. 2 Filed on 12/20/01, Under Rule 59, HFCR (Thomas Collins Movant)", (b) January 14, 2002 "Order Granting in Part and Denying in Part Plaintiff's Motion[s] and Affidavit for Post-Decree Relief Filed on April 30, 2001 and July 16, 2001, and Denying Defendant's Motions and Affidavit for Post-Decree Relief filed on June 1, 2001 and July 19, 2001," and (c) February 6, 2002 "Order Denying Defendant's Non-Hearing Motion for Reconsideration of Unfiled Order Denying Motion for Appointment of Guardian Ad Litem for [Son] Filed January 14, 2002."

DATED: Honolulu, Hawai'i, July 11, 2003.

On the briefs:

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

Chief Judge

Thomas D. Collins III  
for Plaintiff-Appellee.

Associate Judge

Associate Judge