

NOT FOR PUBLICATION

NO. 25036

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

LORI JEAN H. KIM, fka LORI JEAN H. CAMERLINGO, Plaintiff-Appellee, v. KIRK CAMERLINGO, Defendant-Appellant, and DOROTHY CAMER, Intervenor-Appellee.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 98-1600)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Foley and Fujise, JJ.)

Defendant-Appellant, Kirk Camerlingo ("Camerlingo"),

appeals from the Family Court of the First Circuit's March 22, 2002 "Order Re: Trial Regarding Claims For Modification of Child Support, Back Child Support and Current Monthly Child Support As Set Forth in Plaintiff Lori Kim's Motion and Affidavit For Post-Decree Relief Filed July 16, 1999, and Defendant Kirk Camerlingo's Motion and Affidavit For Post-Decree Relief Filed July 23, 2001" ("Order").¹ We resolve² Camerlingo's points of error³ as follows:

¹ The Honorable Bode A. Uale, presided.

² This appeal was assigned to this court on February 18, 2003.

³ We note that Defendant-Appellant, Kirk Camerlingo's ("Camerlingo") points on appeal do not comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4) (2004) in that they are not presented in separately numbered paragraphs and do not specify where in the record the alleged error was objected to or otherwise brought to the attention of the court appealed from. Counsel is reminded that nonconforming points may be disregarded and may result in other sanctions. HRAP Rules 28(b)(4) and 51.

1. The family court did not err by entering its Order adjudicating the modification of child support request in Plaintiff-Appellee Lori Jean H. Kim, fka Lori Jean H. Camerlingo's ("Kim") July 16, 1999 motion for post-decree relief. While the court had previously adjudicated other issues raised in the July 16, 1999 motion, it had not yet disposed of this child support issue. Thus, contrary to Camerlingo's argument, the previous order relating to the July 16, 1999 motion was not final as to the child support issue because the family court had not decided this issue. Camerlingo agrees that the court's February 9, 2000 order did not address the child support modification. The child support issue raised in the July 16, 1999 motion was not finally determined until it was resolved in the Order. As no decision regarding the child support request contained in the July 16, 1999 motion existed prior to March 22, 2002, the court had the authority to order modification of child support on March 22, 2002.

Additionally, the court's award of the modified child support made retroactive to July 16, 1999 -- the date of Kim's motion requesting increased child support -- was proper. DeMello v. DeMello, 87 Hawai'i 209, 214, 953 P.2d 968, 973 (App. 1998) (citing Richardson v. Richardson, 8 Haw. App. 446, 459, 808 P.2d 1279, 1287 (1991)), as Camerlingo's attorney conceded below.

2. Contrary to Camerlingo's argument, there is substantial evidence in the record to support the family court's determination that there was a material change in Camerlingo's circumstances to justify the court's modified child support award. Upon our review we hold that Kim proved a material change in circumstance as required by Hawaii Revised Statutes (HRS) § 580-47 (Supp. 2003).

The record indicates that at the time of the divorce decree and the original child support award on October 22, 1993, Camerlingo was employed as a messenger and ordered to pay \$200.00 per month in child support. During the period from July 16, 1999 through the date of trial, March 11, 2002, Camerlingo's monthly income from his employment and rental properties ranged from approximately \$4,000.00 to \$ 13,000.00 and, under existing Child Support Guidelines, warranted an increase in Camerlingo's child support obligation from \$620.00 per month to \$1,570.00 per month. The increase in Camerlingo's income since the original child support award constitutes proof of a material change in circumstances so as to justify the court's decision to modify the child support award.

3. Camerlingo asserts that the court a) erroneously included his daughter's private school tuition in calculating the cost of her reasonable needs at the appropriate standard of living, and b) erroneously concluded that the modified child

support award did not exceed the cost of his daughter's reasonable needs. Camerlingo fails to argue the first part of the asserted error and thus waives it pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(7) (2004). However, even if he had not waived this point, the court did not err in including tuition costs in the calculation of his daughter's reasonable needs expense because Camerlingo stipulated that his daughter should attend the private school. As part of her monthly personal expenses, this tuition was properly included in calculating the cost of the daughter's reasonable needs at the appropriate standard of living. Richardson, 8 Haw. App. at 458-59, 808 P.2d at 1287.

We review the second part of this point under the *de novo* standard of review as it challenges a conclusion of law.⁴ An award of child support computed according to the Amended Child Support Guidelines ("ACSG") is presumptively correct unless an exceptional circumstance warrants departure. HRS § 571-52.5 (1993); Richardson, 8 Haw. App. at 457, 808 P.2d at 1287. The party seeking an exceptional circumstance deviation has the burden of proof. Id. An exceptional circumstance exists if the cost of a child's reasonable needs at the appropriate standard of living is less than the Total Monthly Support Obligation figure as determined by the ACSG. Id. at 457-58, 808 P.2d at 1287. The

⁴ In re Doe, 96 Hawai'i 272, 283, 30 P.3d 878, 889 (2001).

cost of the child's reasonable needs at the appropriate standard of living is determined by totaling the child's personal expenses and share of the custodial parent's household expenses. Id. at 458-459, 808 P.2d at 1287. Upon review of the record and the law, we hold that the family court's award of increased child support did not exceed the reasonable needs of the parties' daughter at the appropriate standard of living and, consequently, an exceptional circumstance deviation was not warranted.

4. Camerlingo's next claim is that the family court erroneously imposed discovery sanctions on him. The family court did not err in ordering these sanctions.

On February 9, 2000, the court ordered Camerlingo to comply with Kim's request for production of documents relating to his income and expenses. The court later found that Camerlingo had not complied. The court also found that Camerlingo intentionally withheld current and accurate income and expense and asset and debt statements in violation of Hawai'i Family Court Rules (HFCR) Rule 7(b)(5) (2000). Consequently, the court imposed sanctions available under HFCR Rule 37(b)(2)(B) (2000), precluding Camerlingo from testifying and presenting evidence at trial concerning his income and expenses. Said sanctions are authorized by HFCR Rules 7(b)(5) and 37(b)(2)(B). Furthermore, the family court has broad discretion when imposing HFCR Rule 37(b)(2)(B) sanctions. Ramil v. Keller, 68 Haw. 608, 619, 726

P.2d 254, 261 (1986). Finally, contrary to Camerlingo's assertion, the sanctions did not deny him due process. Id. at 616-617, 726 P.2d at 260-62.

5. Lastly, Camerlingo maintains that the family court erroneously granted a temporary restraining order ("TRO") against him, restricting his control over his financial assets. We hold that the family court did not err in granting or extending the TRO.

After hearing arguments from the parties in support of and in opposition to maintaining the TRO against Camerlingo, the court held that the TRO was authorized by HRS §§ 580-10 (1993) and 580-12 (1993) and appropriate, given the history of the case and the award of child support arrears and increased child support. Given the language of HRS § 580-10, the family court's broad discretion to grant restraining orders,⁵ and Camerlingo's history of concealing his assets, the court did not err in granting a TRO pursuant to HRS § 580-10 to prevent Camerlingo from disposing of his financial assets pending a final determination of the child support award. Similarly, the court did not err in employing HRS § 580-12 to sequester Camerlingo's property in order to preserve funds needed to pay the modified child support award. Finally, contrary to Camerlingo's

⁵ Cleveland v. Cleveland, 57 Haw. 519, 522, 559 P.2d 744, 747 (1977); HRS § 571-8.5(10) (Supp. 2003); HFCR Rule 65(b) (2000).

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contention, the court did not grant the restraining order pursuant to HRS § 580-13 (1993).

Therefore,

IT IS HEREBY ORDERED that the March 22, 2002 "Order Re: Trial Regarding Claims For Modification of Child Support, Back Child Support and Current Monthly Child Support As Set Forth in Plaintiff Lori Kim's Motion and Affidavit For Post-Decree Relief Filed July 16, 1999, and Defendant Kirk Camerlingo's Motion and Affidavit For Post-Decree Relief Filed July 23, 2001" is affirmed.

DATED: Honolulu, Hawai'i, December 8, 2004.

On the briefs:

Wesley W. Ichida
(Lynch Ichida Thompson Kim
& Hirota),
for Plaintiff-Appellee.

Acting Chief Judge

Ryan C. Cuskaden,
for Defendant-Appellant.

Scott S. Brower,
for Intervenor-Appellee.

Associate Judge

Associate Judge