NO. 25121

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

DAWN M. WOOLSEY, Plaintiff-Appellant, v.
HALE K. WOOLSEY, JR., Defendant-Appellee

APPEAL FROM FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 90-0448)

MEMORANDUM OPINION
(By: Burns, C.J., Watanabe and Foley, JJ.)

Plaintiff-Appellant Dawn M. Woolsey (Dawn or Plaintiff) appeals from the family court's March 18, 2002 "Order Granting in Part, Denying in Part, Plaintiff's Motion and Affidavit for Post-Decree Relief Filed April 20, 2001, Plaintiff's Motion to Amend Divorce Decree Dated March 14, 1990, and Defendant's Motion for Post Decree Relief Filed February 9, 2001" (March 18, 2002 Order). We affirm in part, vacate in part, and remand with instructions.

BACKGROUND

June 20, 1975	Dawn and Defendant-Appellee Hale K. Woolsey, Jr. (Hale or Defendant) were married.
August 25, 1977	Birth date of daughter (Daughter One).
July 22, 1979	Birth date of daughter (Daughter Two).

May 18 or 25, 1981[1]	Birth date of son (Son).
March 14, 1990	The court entered a Decree Granting Divorce and Awarding Child Custody (Divorce Decree) that awarded joint legal and physical custody of the children, did not award any alimony or child support to be paid, and ordered that "[Hale] shall be responsible for all of the private school expenses of the minor children" and that "[a]ll medical and dental expenses not paid or reimbursed by insurance shall be paid equally by the parties."
July 2, 1998	Dawn waived the rights the Divorce Decree had given her to a part of Hale's civil service retirement benefits.
November 12, 1998	After a trial on October 6, 1998, Judge Lillian Ramirez-Uy signed a "MINUTE ORDER" but did not file it.[2] It is located in the

[1] The Matrimonial Action Information filed by Plaintiff-Appellant Dawn M. Woolsey (Dawn) on February 5, 1990, the Affidavit of Plaintiff filed on February 14, 1990, and the March 14, 1990 Decree Granting Divorce and Awarding Child Custody each state that the son (Son) of the parties was born on "May 18, 1981".

Dawn's Motion and Affidavit for Post-Decree Relief initially states that Son was "born 5/18/81". The December 10, 1998 Decision and Order Re: Defendant's Motion for Post-Decree Relief Filed 4/3/98 and Plaintiff's Motion for Post-Decree Relief Filed 4/16/98 states that Son was "born 5/25/81".

The relevant finding of fact entered on November 19, 2003 does not answer the question. It erroneously states, in relevant part, as follows:

> 2. A son ("Son") was born o[n] March 14, 1990.
>
> 3. The Court entered a "Decree Granting Divorce and Awarding Child Custody" on March 14, 1990.

[2] In Donnelly v. Donnelly, 98 Hawai'i 280, 281 n.1, 47 P.3d 747, 748 n.1 (App. 2002), this court stated, in relevant part, as follows:

> In the instant case, on October 18, 1999, the court signed a document entitled "MINUTE ORDER" which, in fact, is a written decision and order. However, this document was not filed. It was merely placed in the back of the court record where the court minutes prepared by the clerk of the court and other unfiled documents are placed.

back of the family court record with unfiled documents such as the unofficial minutes of court proceedings prepared by the court's clerk. In her opening brief at page 10, Dawn allegedly quotes it, in relevant part, as follows:

Rule 10(a) of the Hawai'i Rules of Appellate Procedure (HRAP) provides that the record on appeal shall consist of the following:

> (1) the original papers filed in the court or agency appealed from;
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> (2) written jury instructions given, or requested and refused or modified over objection;
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> (3) exhibits admitted into evidence or refused;
>
> (4) the transcript of any proceedings prepared pursuant to the provisions of Rule 10(b);
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> (5) in a criminal case where the sentence is being appealed, a sealed copy of the presentence investigation report; and
>
> (6) the indexes prepared by the clerk of the court appealed from.

In light of HRAP Rule 10(a) quoted above, the family court's "MINUTE ORDER" was not a part of the record on appeal. Pursuant to this court's November 7, 2001 Order of Temporary Remand, the family court filed its October 18, 1999 Minute Order *nunc pro tunc*.

In its November 14, 2001 Order Complying With Order of Temporary Remand, the family court noted (1) "that said minute orders are normally not filed" and (2) that it "is unable to file the proposed decree submitted by [Jo Ann] on November 30, 1999, as it was returned to [Jo Ann's] counsel in late 1999 since it was not adopted by the Court, noting that this is the normal procedure followed by the Court."

We urge the family court to review its "normal procedure." There is a significant difference between "court minutes" and "minute orders." In light of HRAP Rule 10(a) quoted above, the family court should not enter orders that are not filed and should file all orders. This is especially true in this case in light of the court's finding of fact, item "E" of part "II," that "[t]he Court entered a Minute Order on October 18, 1999 and directed [Jo Ann's] counsel to prepare a decree." In any event, when the family court considered [Jo Ann's] February 14, 2000 Motion for Reconsideration, Alteration or Amendment of Decree, it should have filed its October 18, 1999 Minute Order.

Similarly, in light of HRAP Rule 10(a) and the facts of this case, the family court should file all proposed decrees submitted by the parties, including those not adopted by the family court.

> (2) College Expenses
>
> The Divorce Decree is silent as to this issue. Therefore, it is not an enforcement issue. Therefore, [Dawn's] claim for an offset of $8,500 is denied, with leave to the parties to amend the decree[3] to resolve this issue prospectively, either by stipulation or by specific motion.

(Footnote added.)

December 10, 1998 — On a document that had been prepared by Dawn's attorney, and approved as to form by Hale's attorney, Judge Ramirez-Uy entered a "Decision and Order Re: Defendant's Motion for Post-Decree Relief Filed 4/3/98 and Plaintiff's Motion for Post-Decree Relief Filed 4/16/98". It expressly referred to a "Minute Order dated: 11/12/98". It awarded Dawn sole physical custody of Son and ordered Hale to pay child support of $440 per month commencing November 1998 until Son

> attains the age of 18 years or graduates from high school or discontinues high school whichever occurs last, subject to further order of the Court. Child support for said child shall further continue uninterrupted so long as said child continues his education post high school on a full-time basis at an accredited college or university, or in a vocational or trade school, and shall continue until said child's graduation or attainment of the age of 23 years, whichever event shall first occur.

It further states as to College Expenses, "The Divorce Decree is silent as to this issue. Therefore, it is not an enforcement issue."

February 9, 2001 — Hale filed a Motion and Affidavit for Post-Decree Relief alleging that he paid child support in excess of his obligation because Son is not a full-time student.

April 20, 2001 — Dawn filed Plaintiff's Motion to Amend

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[3] We note that the statement "with leave to the parties to amend the decree to resolve this issue prospectively" erroneously implies that the parties can amend the decree. Only the court can amend the court's decree.

Divorce Decree. In it she alleged that the November 12, 1998 Minute Order states that the Divorce Decree is silent as to the issue of college expenses "with leave to the parties to amend the decree to resolve this issue prospectively, either by stipulation or by specific motion[.]" Dawn "requests that the issue of College Expenses be included and the Divorce Decree be amended." Dawn attached to the motion her affidavit indicating that she obtained "a parent Federal Plus Loan for college tuition for" Daughter One and Daughter Two in the total amount of $9,111 and the balance owed was $4,711.

April 20, 2001 — Dawn filed a Motion and Affidavit for Post-Decree Relief alleging Hale's failure to pay Son's Kamehameha Schools tuition of $1,375.46 and to reimburse Dawn $334 for his share of the children's dental and medical expenses. Dawn admitted to owing Hale $2,305.41 for Son's dental expenses and Hale's unspecified overpayment for Son's educational support.

April 27, 2001 — Dawn alleges that, after a hearing, Judge Darryl Choy stated a detailed decision on the record and ordered Hale's attorney to prepare the order.

May 21, 2001 — Judge Choy entered an "Order Imposing Sanction" ordering Isaac Keahi Smith (Smith), the attorney for Hale, to pay a $100 monetary sanction or to purchase a case of facial tissue because Smith "failed to submit documents within the period allowed under Rule 58, Hawaii Family Court Rules[.]" Hawai‘i Family Court Rules (HFCR) 58 states, in relevant part, as follows:

> (a) Preparation of judgments and other orders. Within 10 days after entry or announcement of the decision of the court, the prevailing party, unless otherwise ordered by the court, shall prepare a judgment or order in accordance with the decision and secure thereon the approval as to form of the opposing counsel or party (if pro se) and deliver to the court the original and necessary copies, or if not so

> approved, serve a copy thereon upon each party who has appeared in the action and deliver the original and copies to the court.

March 4, 2002 — The family court received a letter and a proposed order forwarded by Smith. The letter stated, in relevant part,

> The Court in its order indicated that the Court would address [Hale's] request for attorney's fees and costs upon counsel's request so I have enclosed also for your review an **Affidavit for Attorney's Fees and Costs.** Please consider this a formal written request for such attorney's fees and costs.
>
> We are submitting the above-mentioned documents to you for Court processing, pursuant to Rule 58 of the Hawaii Family Court Rules. We are also forwarding copies of these documents to [Dawn] concurrently herewith.

(Emphasis in original.)

Smith's affidavit requested attorney fees of $2,096.36 and costs of $82.43, a total of $2,278.79.

March 18, 2002 — Judge Choy signed and filed the "Order Granting in Part, Denying in Part, Plaintiff's Motion and Affidavit for Post-Decree Relief Filed April 20, 2001, Plaintiff's Motion to Amend Divorce Decree Dated March 14, 1990, and Defendant's Motion for Post Decree Relief Filed February 9, 2001" that had been prepared by Smith. By that time, Dawn was proceeding pro se. There is no indication that this March 18, 2002 Order had been presented to her for her approval. After terminating child support payments for Son effective May 2000, ordering Dawn to "reimburse [Hale] for the support overpayments for the months of June, July and August, 2000, in the total amount of $1,320.00", ordering Dawn to pay Hale $2,305.41 for her share of the children's dental expenses, ordering Hale to pay Dawn $334 for his share of the children's medical expenses, ordering Dawn to pay Hale $566.33 for her share of the children's medical

expenses, and ordering Hale to pay $1,999.42 for his share of Daughter Two's college tuition loan, the family court "hereby entered [a Judgment] in favor of [Hale] in the amount of $538.32 which reflects the difference for dental and medical expenses, $2,200.00 for support overpayment for a total of $2,738.32." It further granted Smith's request and ordered Dawn to pay $2,178.79 for Hale's attorney fees and costs.

March 28, 2002 — Dawn filed "Plaintiff's Motion Against Order Granting in Part, Denying in Part, Plaintiff's Motion and Affidavit for Post-Decree Relief Filed April 20, 2001, Plaintiff's Motion to Amend Divorce Decree Dated March 14, 1990, and Defendant's Motion for Post Decree Relief Filed February 9, 2001, Filed March 18, 2002" (March 28, 2002 Motion) in which she stated, in relevant part, as follows:

> According to the minutes of the trial, with respect to child support overpayment, both parties were ordered to get Child Support Enforcement Agency's (CSEA) calculations as to what the amounts were as it pertained to either three months or five months. . . .
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> . . . .
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> The order, as prepared by Mr. Smith and filed March 18, 2002, with respect to CSEA overpayment, has no legal basis for the amount of $2,200.00. Mr. Smith, to date, has not sent [Dawn] any calculations as was court ordered to substantiate his claim for $2,200.
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> . . . .
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> Mr. Smith also submitted on the date referenced above his affidavit requesting attorney fees and costs. It is important to note that his request was made after the trial April 27, 2001 and at trial the court did not address any request for attorney fees. In fact, the record reflects that Mr. Smith could make such a request; however, request only placed the parties in a position to negotiate. [Dawn] must conclude that Mr. Smith is not acting in accordance with any decision arising out of the trial and never communicated to [Dawn] for her approval.

> . . . .
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> At this point, to further protect more violations of [Dawn's] substantial due process rights, [Dawn] to insure against more manifest injustice cannot sign said order. However, [Dawn], as is her understanding, will negotiate to amend the order with Mr. Smith. At this late date, [Dawn] believes that filing of said order is premature as the parties had no settlement talks.
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> . . . .
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> [Dawn], through her review of the Appearance Minutes, further states that the "court will not address the request for attorney's fees until Mr. Smith makes his request. That puts [the] parties in a position to negotiate." [Dawn] is and always has been agreeable to discuss with Mr. Smith so as to arrive at a settlement or an agreement. [Dawn] reiterates, as referenced above, for the order to be entered as a judgment is premature and further violates [Dawn's] substantial due process rights. At this point, [Dawn] feels she is being railroaded into signing a document wherein she has had absolutely no input nor was the opportunity ever afforded her by way of discussion."

Dawn's March 28, 2002 Motion also contends that "[Dawn's] college tuition loan for [Daughter One] totaling $5,112.88 was not considered" and states, "Please note that [Hale] was awarded dental expenses for [Daughter One] and [Daughter Two]. To show consistency in dispensing justice, consistency was not exhibited at trial." Finally, Dawn's March 28, 2002 Motion contends that Hale "must be compelled to reimburse Kamehameha Schools" the "$1,375.46 as owed to Kamehameha Schools Bishop Estate financial aid on or about May 22, 1999."

April 1, 2002 — Dawn sent two letters to Judge Choy in support of her March 28, 2002 Motion. In her second letter she states, in relevant part:

> I am asking the court to at least consider dismissing [Hale's] claims for attorney's fees and allow the parties to negotiate the remainder of claims. At this point, based upon the imposed sanctions and the fact that I see no

> legal basis for [Hale] being awarded attorney's fees, to dismiss attorney's fees, in my opinion, would be proper, if not legal. Furthermore, it is my opinion that once the attorney's fees are not an issue, I would prevail monetarily upon the remaining issues and [Hale's] claims would be moot. I would be willing to dismiss all my outstanding claims, past, present and future if [sic] [Hale] owes me. This would bring closure, which I feel is necessary and long overdue. For the record, I did not initiate any of these recent court proceedings."

May 7, 2002 — Judge Choy entered an order denying Dawn's March 28, 2002 Motion.

May 24, 2002 — Dawn filed a notice of appeal of the March 18, 2002 Order.

June 7, 2002 — Dawn designated "the entire file for case FCD-90-0448" as the record on appeal, and "no transcripts to be prepared." Apparently unaware that HFCR Rule 72 applies to situations "[w]here a right of appeal to the family court is allowed by statute," and not to appeals of family court decrees or judgments, she also filed a "Statement of the Case" in which she stated her arguments on appeal.

November 15, 2002 — Dawn filed an opening brief in which she challenges the March 18, 2001 Order and the May 7, 2002 Order. Generally, she alleges and complains "that the judgment as entered is flawed. The core issue on appeal is that the judgment was approved with omissions, errors, and misstatements therein and to date said flaws have not been remedied."

Specifically, she:

(a) challenges the March 18, 2002 Order requiring her to "reimburse [Hale] for the support overpayments for the months of June, July and August, 2000, in the total amount of $1,320.00";

(b) challenges the March 18, 2002 Judgment of "$2,200.00 for support overpayment";

(c) challenges the March 18, 2002 Order requiring her to pay Hale's $2,178.79 attorney fees and costs;

(d) alleges that her "college tuition loan for [Daughter One] (dependent child) totaling $5,112.88 was not considered"; and

(e) challenges the fact that Hale was not ordered to pay "$1,375.46 as owed to Kamehameha Schools Bishop Estate financial aid."

October 27, 2003 This court entered an Order of Temporary Remand to the family court for compliance with HFCR Rule 52(a).[4]

November 19, 2003 Judge Choy entered Findings of Fact and Conclusions of Law (FsOF and CsOL), in relevant part, as follows:

FINDINGS OF FACT

. . . .

6. Son received financial aid and or tuition benefits from Kamehameha Schools until

[4] The family court did not comply with Hawai‘i Family Court Rules (HFCR)Rule 52(a) (2003) which states as follows:

> **Findings by the court.** (a) Effect. In all actions tried in the family court, the court may find the facts and state its conclusions of law thereon or may announce or write and file its decision and direct the entry of the appropriate judgment; except upon notice of appeal filed with the court, the court shall enter its findings of fact and conclusions of law where none have been entered, unless the written decision of the court contains findings of fact and conclusions of law. To aid the court, the court may order the parties or either of them to submit proposed findings of fact and conclusions of law, where the written decision of the court does not contain the findings of fact and conclusions of law, within 10 days after the filing of the notice of appeal, unless such time is extended by the court. Requests for findings are not necessary for purposes of review. Findings of fact if entered shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If a decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein.

his graduation from Kamehameha Schools in May 2000.

7. Son did not enroll on a full-time basis at the Honolulu Community College in August 2000, and Son partially withdrew on September 5, 2000, and completely withdrew on October 12, 2000.

8. Because Son did not continue his education post high school on a full-time basis at an accredited college or university, or in a vocational or trade school, Dawn was not entitled to receive the child support payments that she received for the months after May 2000.

9. Hale is entitled to a refund from Dawn for child support overpayments made during the months after May 2000.

10. Dawn assumed responsibility for college tuition loan obligations in the sum of $3998.85[.]

11. Based upon the evidence presented, Dawn is entitled to rei[m]bursement from Hale for half of the sum of her obligation for college tuition loans, in the sum of $1,999.42.

12. Hale assumed responsibility for dental expenses not paid or reimbursed by insurance in the sum of $4,610.82.

13. Hale is entitled to rei[m]bursement from Dawn for dental expenses not paid or reimbursed by insurance in the sum of $2,305.41, based upon the divorce decree.

14. Dawn assumed responsibility for medical expenses not paid or reimbursed by insurance in the sum of $668.00.

15. Dawn is entitled to rei[m]bursement from Hale for medical expenses not paid or reimbursed by insurance in the sum of $334, based upon the divorce decree.

16. Hale assumed responsibility for medical expenses paid or reimbursed by insurance in the sum of $1,132.66.

17. Hale is entitled to rei[m]bursement from Dawn for medical expenses not paid or reimbursed by insurance in the sum of $566.33, based upon the divorce decree.

18. Hale was represented by counsel who made a reasonable request for attorney’s fees

> and costs in the sum of $2,178.79.
>
> CONCLUSIONS OF LAW
>
> . . . .
>
> 4. The request for attorney's fees and costs made by Hale's attorney, in the sum of $2,178.79, was reasonable under the circumstances presented by this case.

DISCUSSION

1.

HFCR Rule 58 (2003) states, in relevant part, as follows:

> (a) Preparation of judgments and other orders. Within 10 days after entry or announcement of the decision of the court, the prevailing party, unless otherwise ordered by the court, shall prepare a judgment or order in accordance with the decision and secure thereon the approval as to form of the opposing counsel or party (if pro se) and deliver to the court the original and necessary copies, or if not so approved, serve a copy thereon upon each party who has appeared in the action and deliver the original and copies to the court. Any party objecting to a proposed judgment or order shall, within 5 days after receipt, serve upon all parties and deliver to the court that party's proposed judgment or order, and in such event, the court shall proceed to settle the judgment or order.[5]

(Footnotes added.)

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[5] HFCR Rule 52(c) (2003) states, in relevant part, as follows:

> (c) Submission of draft of a decision. At the conclusion of a hearing or trial, or at such later date as matters taken under advisement have been decided, the judge for convenience may designate the attorney for one of the parties to prepare and submit a draft of a decision, containing such provisions as shall have been informally outlined to such attorney by the judge. The attorney requested to prepare the proposed decision shall, within 10 days, unless such time is extended by the court, deliver a draft of the decision to the division clerk. Upon review and finalization of form by the judge, the decision shall be entered.

HFCR Rule 52(c) does not conflict with HFCR Rule 58(a) (2003). HFCR Rule 52(c) pertains to a written decision that is, in effect, the court's findings of fact and conclusions of law. In contrast, HFCR Rule 58(a) pertains to "a judgment or order". HFCR Rule 54(a) (2003) states that "'Judgment' as used in these rules includes a decree and any order from which an appeal lies."

Dawn states that

> [o]n March 1, 2002 Mr. Smith prepared a judgment and order and further violated Rule 58 as he circumvented [Dawn's] required approval as to form and sent said document directly to the Honorable Darryl Y.C. Choy for his review and approval. [Dawn] always expected to be negotiating a settlement which is explicitly documented in the minutes from the trial. [Dawn's] substantial due process rights were violated.

Dawn does not disagree with Smith's statement in his March 1, 2002 letter that "[w]e are also forwarding copies of these documents to [Dawn] concurrently herewith." Therefore, it appears that she had her HFCR Rule 58(a) opportunity to state her disagreement with the March 18, 2002 Order before it was entered. Moreover, Dawn stated her disagreements in her unsuccessful March 28, 2002 Motion and letters in support thereof.

Hawai‘i Rules of Appellate Procedure (HRAP) Rule 10(b)(1)(A) (2003) allowed Dawn only "10 days after filing the notice of appeal" to order a transcript of the April 27, 2001 hearing that led to the March 18, 2002 Order. Dawn did not order that transcript. Without that transcript, it is almost impossible for her to successfully challenge any finding of fact entered by the family court pursuant to the April 27, 2001 hearing. Obviously, Dawn thinks that the detailed minutes of the court's decision prepared by the court's clerk after the April 27, 2001 hearing are sufficient. It appears that she is unaware that those minutes are not a part of the record on appeal and cannot be mentioned when arguing or deciding her appeal. Orso v. City and County of Honolulu, 55 Haw. 37, 514 P.2d 859 (1973).

HRAP Rule 10(a) (2003) lists what is in the record on appeal, and the minutes prepared by the court clerk are not included within that list.

It also appears that Dawn does not understand that to the extent that there are any material differences between the family court's oral decisions and orders and its subsequent written orders, decrees and judgments, the latter supercede the former. Mark v. Mark, 9 Haw. App. 184, 828 P.2d 1291 (1992).

HRAP Rule 28(b) (2003) allowed Dawn "[w]ithin 40 days after the filing of the record on appeal" to file her opening brief. Dawn was authorized to ask the relevant appellate court to order the family court to comply with HFCR Rule 52(a) and to delay the HRAP Rule 28(b) (2003) time limit for the filing of her opening brief until the family court complied with HFCR Rule 52(a). She did not do that.

2.

a.

The record supports the March 18, 2002 Order requiring Dawn to reimburse Hale for support overpayments for the months of June, July, and August 2000 in the total amount of $1,320.

b.

The March 18, 2002 Order required each party to pay the following amounts to the other party:

DAWN		HALE	
$1,320.00	(reimburse child support)	$ 334.00	(medical)
2,305.41	(dental)	1,999.42	(college tuition loan)
566.33	(medical)		

The net Dawn owes Hale for dental and medical expenses is $2,537.74. Dawn owes Hale $1,320 for his child support overpayment. Hale owes Dawn $1,999.42 for her debt for Daughter Two's college tuition loan. Net, Dawn owes Hale $1,858.32. In light of those numbers we, like Dawn, do not understand the basis for the March 18, 2002 "judgment" "in favor of [Hale] in the amount of $538.32 which reflects the difference for dental and medical expenses, $2,200.00 for support overpayment for a total of $2,738.32." Neither the FsOF and CsOL nor the answering brief provide an explanation. The answering brief states that "the Family Court entered judgment for [Hale], in the amount of $538.32, which reflected the difference for dental and medical expenses and $2200 for a child support overpayment of $2,738.32."

c.

Dawn challenges the March 18, 2002 Order requiring her to pay Hale's $2,178.79 attorney fees and costs. She notes that Hawaii Revised Statutes § 580-47 (Supp. 2003) states, in relevant part, as follows:

> (f) Attorney's fees and costs. The court hearing any motion for orders either revising an order for the custody, support, maintenance, and education of the children of the parties, or an order for the support and maintenance of one party by the other, or a motion for an order to enforce any such order or any order made under subsection (a) of this section, may make such orders requiring either party to pay or contribute to the payment of the attorney's fees, costs, and expenses of the other party relating

> to such motion and hearing as shall appear just and equitable after consideration of the respective merits of the parties, the relative abilities of the parties, the economic condition of each party at the time of the hearing, the burdens imposed upon either party for the benefit of the children of the parties, and all other circumstances of the case.

Dawn contends that

> [b]ased upon what appears just and equitable after consideration of [Dawn's] respective merits in the case, the relative abilities of [Dawn], the economic condition of [Dawn] at the time of the trial, the burdens imposed upon [Dawn] for the benefit of the children of [Dawn], and all other circumstances of the case an award of attorney's fees and costs in the amount of $2,178.79 is improper, if not illegal. As required, [Dawn] submitted current Income and Expense as well as Asset and Debt Statements. These statements reflect financial hardship which were [sic] never considered.

In conclusion of law no. 4, the court decided that "[t]he request for attorney's fees and costs made by Hale's attorney, in the sum of $2,178.79, was reasonable under the circumstances presented by this case." In light of this decision, Dawn has failed her burden of showing that her alleged "financial hardship" was never considered.

d.

Dawn alleges that "[her] college tuition loan for [Daughter One] (dependent child) totaling $5,112.88 was not considered. The evidence on the record clearly showed that this loan existed as of February 17, 1996. As of December 1998 the outstanding balance was $4,062.88 which sets one-half at $2,031.44."

Allegedly, a November 12, 1998 "MINUTE ORDER" addresses the question of the payment of the college expenses of Daughter One and Daughter Two and states,

> The Divorce Decree is silent as to this issue. Therefore, it is not an enforcement issue. Therefore, [Dawn's] claim for an offset of $8,500 is denied, with leave to the parties to amend the decree to resolve this issue prospectively, either by stipulation or by specific motion.

There was no subsequent stipulation. Dawn did not file a motion until April 20, 2001. By that time, Daughter One was long past age 23 and had already incurred the relevant college expenses. Post-April 20, 2001, the family court could not have ordered Hale to pay college expenses Daughter One incurred pre-April 20, 2001. Therefore, we affirm the fact that it did not do so.

e.

Dawn notes that the Divorce Decree ordered that "[Hale] shall be responsible for all of the private school expenses of the minor children" and her "pleadings at trial addressed an expense of $1,375.46 as owed to Kamehameha Schools Bishop Estate financial aid on or about May 22, 1999. Dawn challenges the fact that Hale was not ordered to pay "$1,375.46 as owed to Kamehameha Schools Bishop Estate financial aid.[.]"

Finding of fact no. 6 states that "Son received financial aid and or tuition benefits from Kamehameha Schools until his graduation from Kamehameha Schools in May 2000." Absent the relevant transcript(s), there is no evidence that the "financial aid and or tuition benefits" Son received from Kamehameha Schools is a debt that must be repaid.

CONCLUSION

Accordingly, we vacate the following part of the family court's March 18, 2002 "Order Granting in Part, Denying in Part, Plaintiff's Motion and Affidavit for Post-Decree Relief Filed April 20, 2001, Plaintiff's Motion to Amend Divorce Decree Dated March 14, 1990, and Defendant's Motion for Post Decree Relief Filed February 9, 2001": that part wherein a Judgment was entered "in favor of [Hale] in the amount of $538.32 which reflects the difference for dental and medical expenses, $2,200.00 for support overpayment for a total of $2,738.32." We remand and instruct the family court to replace the vacated part with the following language: "Judgment is entered in favor of Defendant and against Plaintiff in the amount of $1,858.32." In all other respects, we affirm.

DATED: Honolulu, Hawai‘i, March 4, 2004.

On the briefs:

Dawn M. Woolsey, *pro se*
Plaintiff-Appellant.

Dennis W. Jung
for Defendant-Appellee.

Chief Judge

Associate Judge

Associate Judge