NOT FOR PUBLICATION

NO. 25244

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

JANE DOE and MARY SMITH, Plaintiffs-Appellees, v.
JOHN DOE, Defendant-Appellant

APPEAL FROM FAMILY COURT OF THE FIRST CIRCUIT
(FC-P NO.10742)

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

In response to this appeal by Defendant-Appellant John Doe:[1]

1. We affirm the July 11, 2002 "Order Granting Plaintiffs' Motion and Affidavit for Relief After Order Filed May 3, 2002" (July 11, 2002 Order Granting Relief), in favor of Plaintiffs-Appellees Jane Doe and Mary Smith.

2. We dismiss the September 6, 2002 "Order Denying the Motion to Stay Execut[i]on" of the July 11, 2002 Order Granting Relief (September 6, 2002 Denial of the Motion to Stay Execution).

3. We affirm in part and vacate in part the September 23, 2002 "Findings of Fact and Conclusions of Law" (FsOF and CsOL), which supported the July 11, 2002 Order Granting Relief.

[1] Unless otherwise indicated, the Honorable Karen M. Radius was the presiding judge.

4. We dismiss the undecided September 25, 2002 "Motion for Reconsideration or Amendment of Order Denying Motion to Stay Execution of Order Filed August 27, 2002, Dated September 6, 2002" (September 25, 2002 Motion for Reconsideration).

The July 11, 2002 Order Granting Relief was appealed on August 6, 2002.

The July 11, 2002 Order Granting Relief, the September 6, 2002 Denial of the Motion to Stay Execution, the FsOF and CsOL, and the undecided September 25, 2002 Motion for Reconsideration were appealed by an "Amended Notice of Appeal" filed on October 14, 2002.

The undecided September 25, 2002 Motion for Reconsideration did not extend the time for appeal of the September 6, 2002 Denial of the Motion to Stay Execution because it was not filed within the time permitted by Hawai‘i Family Court Rules (HFCR) Rule 59(e) (2003), which states as follows:

> (e) *Motion to Reconsider, Alter or Amend a Judgment or Order.* Except as otherwise provided by HRS section 571-54, a motion to reconsider, alter or amend the judgment or order shall be filed not later than 10 days after entry of the judgment or order. Excepting motions for reconsideration from proceedings based upon HRS sections 571-11(1), (2), (6) and (9), all motions for reconsideration shall be non-hearing motions. At its discretion, the court may set the matter for a hearing. Responsive pleadings to a motion for reconsideration shall be filed no later than 10 days after filing of the motion to reconsider, alter or amend the judgment or order.

The October 14, 2002 Amended Notice of Appeal was filed more than thirty days after the family court entered its September 6, 2002 Denial of the Motion to Stay Execution. This

notice of appeal being untimely, Hawai‘i Rules of Appellate Procedure (HRAP) Rule 4(a)(1) (2003), the purported appeal of the September 6, 2002 Denial of the Motion to Stay Execution is dismissed.

The FsOF and CsOL and the undecided September 25, 2002 Motion for Reconsideration are not appealable because they are not final judgments, orders, or decrees. This conclusion is based on the following statute, rule, and precedent. Hawai‘i Revised Statutes (HRS) § 641-1 (1993) states as follows:

> **Appeals as of right or interlocutory, civil matters.** (a) Appeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts and the land court, to the supreme court or to the intermediate appellate court, except as otherwise provided by law and subject to the authority of the intermediate appellate court to certify reassignment of a matter directly to the supreme court and subject to the authority of the supreme court to reassign a matter to itself from the intermediate appellate court.
>
> (b) Upon application made within the time provided by the rules of court, an appeal in a civil matter may be allowed by a circuit court in its discretion from an order denying a motion to dismiss or from any interlocutory judgment, order, or decree whenever the circuit court may think the same advisable for the speedy termination of litigation before it. The refusal of the circuit court to allow an appeal from an interlocutory judgment, order, or decree shall not be reviewable by any other court.
>
> (c) An appeal shall be taken in the manner and within the time provided by the rules of court.

HRAP Rule 4(a)(1) (2003) permits appeals in civil cases "after entry of the judgment or appealable order."

> [E]very court must determine as a threshold matter whether it has jurisdiction to decide the issues presented. Moreover, subject matter jurisdiction may not be waived and can be challenged at any time.
>
> As a general matter, an appellate court's jurisdiction is limited to a review of final judgments, orders and decrees. A judgment is final when all claims of the parties to the case have been terminated. Absent the entry of final judgment as to all claims, an appeal may generally be taken from a nonfinal order or

> decree if (1) leave to take an interlocutory appeal has been granted by the circuit court pursuant to HRS § 641-1(b); (2) the order or decree has been certified as final for appeal purposes pursuant to Hawai'i Rules of Civil Procedure (HRCP) Rule 54(b) 3; (3) the order or decree being appealed is an "appealable order" under the collateral order doctrine; (4) the order or decree being appealed is an "appealable order" under the Forgay or immediate execution/irreparable injury doctrine; or (5) the order or decree is immediately appealable pursuant to a statutory provision.

Wong v. Takeuchi, 83 Hawai'i 94, 98-99, 924 P.2d 588, 592-593 (1996) (internal citations, quotation marks and footnotes omitted).

The FsOF and CsOL is not a judgment, order, or decree. The only way a finding or a conclusion may be validly challenged in an appeal is in a valid appeal of the judgment, order or decree supported by the findings and conclusions. HRAP Rule 28(b)(4)(C) (2003) requires the opening brief to include the following:

> (4) A concise statement of the points of error set forth in separately numbered paragraphs. Each point shall state: (i) the alleged error committed by the court or agency; (ii) where in the record the alleged error occurred; and (iii) where in the record the alleged error was objected to or the manner in which the alleged error was brought to the attention of the court or agency. Where applicable, each point shall also include the following:
>
> . . . .
>
> (C) when the point involves a finding or conclusion of the court or agency, a quotation of the finding or conclusion urged as error;
>
> . . . .
>
> Points not presented in accordance with this section will be disregarded, except that the appellate court, at its option, may notice a plain error not presented.

In this case, John Doe validly challenged only FsOF nos. 5, 6, 8, 10, and 15 and COL no. 5.

BACKGROUND

Jane Doe gave birth to Mary Smith on July 21, 1979. On June 1, 1984, Jane Doe, for herself and Mary Smith, filed a petition seeking a judgment declaring John Doe's paternity of Mary Smith. On January 21, 1986, the family court entered its Decision and Judgment declaring John Doe to be the father of Mary Smith; awarding Jane Doe the care, custody, and control of Mary Smith, subject to the reasonable visitation rights of John Doe; and ordering John Doe to pay child support of one hundred ten dollars ($110.00) per month. These monthly child support payments were to continue until Mary Smith "has reached age 18 and so long thereafter, including summer months, as [Mary Smith] is pursuing a high school diploma or is enrolled in an accredited educational and/or vocational institution and under age 23, unless [Mary Smith] prior thereto shall die, be adopted, become emancipated or self-supporting, or until the further order of the Court."

On March 14, 1991, Jane Doe, for herself and Mary Smith, filed a "Motion and Affidavit for Relief After Order or Decree", seeking an increase in the amount of child support payable. On September 11, 1991, the family court approved and ordered the parties' "Stipulation Granting Petitioner [Jane Doe's] Motion and Affidavit for Relief After Order or Decree Filed March 14, 1991" (September 11, 1991 Stipulated Order).

This September 11, 1991 Stipulated Order increased John Doe's child support payments to three hundred dollars ($300.00) per month commencing April 5, 1991, ordered John Doe to provide medical and dental insurance for Mary Smith, and stated:

> Payments shall continue until [Mary Smith] attains the age of 18 years, or graduates from high school or discontinues high school, whichever occurs last. Child support for [Mary Smith] shall further continue uninterrupted so long as [Mary Smith] continues . . . her education post high school on a full-time basis at an accredited college or university, or in a vocational or trade school, or until [Mary Smith] attains the age of 23 years, whichever occurs first.
>
> All child support payments shall be payable to and paid through the Child Support Enforcement Agency, . . . , pursuant to the Order for Income Assignment to be filed concurrently with the Decree/Order.
>
> The Child Support Enforcement Agency is hereby made a party for the limited issue of child support.

Regarding the Child Support Enforcement Agency (CSEA), HRS § 576E-14 (2002) states as follows:

> **Modification, suspension, or termination of court and administrative orders.** (a) The responsible parent, the [CSEA], or the person having custody of the dependent child may file a request for suspension, termination, or modification of the child support provisions of a Hawaii court or administrative order with the [CSEA]. Such request shall be in writing, shall set forth the reasons for suspension, termination, or modification, including the change in circumstances since the date of the entry of the order, and shall state the address of the requesting party. The [CSEA] shall thereafter commence a review of the order and, if appropriate, shall commence administrative proceedings pursuant to sections 576E-5 through 576E-9. The need to provide for the child's health care needs through health insurance or other means shall be a basis for the [CSEA] to commence administrative proceedings pursuant to section 576E-5.
>
> (b) Only payments accruing subsequent to service of the request on all parties may be modified, and only upon a showing of a substantial and material change of circumstances. The [CSEA] shall not be stayed from enforcement of the existing order pending the outcome of the hearing on the request to modify.
>
> (c) The establishment of the guidelines or the adoption of any modifications made to the guidelines set forth in section 576D-7 may constitute a change in circumstances sufficient to permit review of the support order. A material change of circumstances will be presumed if support as calculated pursuant

> to the guidelines is either ten per cent greater or less than the support amount in the outstanding support order. The most current guidelines shall be used to calculate the amount of the child support obligation.
>
> (d) The responsible parent or custodial parent shall have a right to petition the family court or the [CSEA] not more than once every three years for review and adjustment of the child support order without having to show a change in circumstances. The responsible or custodial parent shall not be precluded from petitioning the family court or the [CSEA] for review and adjustment of child support more than once in any three-year period if the second or subsequent request is supported by proof of a substantial or material change of circumstances.
>
> (e) Upon satisfaction of a responsible parent's support obligation toward the dependent child and the State, the [CSEA] or hearings officer without application of any party may issue an order terminating child support and may concurrently, if applicable, issue an order terminating existing assignments against the responsible parent's income and income withholding orders.
>
> (f) In those cases where child support payments are to continue due to the adult child's pursuance of education, the [CSEA], at least three months prior to the adult child's nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child to the [CSEA], prior to the child's nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the [CSEA] upon the child reaching the age of nineteen years. In addition, if applicable, the [CSEA] or hearings officer may issue an order terminating existing assignments against the responsible parent's income and income assignment orders.

After graduating from high school in 1997, Mary Smith took the 1997 fall college semester off and began her Leeward Community College (LCC) studies in the spring semester of 1998. She attended LCC in subsequent fall and spring semesters until August 2001 when, in the words of her lawyer, "[S]he had an opportunity to go dance hula in Japan. So when she came back she didn't enroll for school for five months and that was from August

2001 to December 2001."

On October 31, 2001, the CSEA sent John Doe's employer a "Notice to Terminate Income Withholding" dated October 31, 2001. In relevant part, this notice stated as follows: "Based on the records and the files of the [CSEA], your company is no longer required to withhold support from the employee's income. Effective immediately, your company shall cease making the deductions for the above-referenced docket."

Mary Smith resumed her undergraduate studies commencing the spring semester of 2002. In his opening brief, John Doe states that "Spring Semester at [LCC] is from January 14, 2002 to May 8, 2002."

On May 3, 2002, Jane Doe and Mary Smith filed a "Motion and Affidavit for Relief After Order or Decree" (May 3, 2002 Motion for Relief) seeking the reinstatement of child support payments from John Doe. This motion stated, in relevant part, that "[t]he prior order for child support terminated on [Jane Doe's] birthday,[2] as she took a five month break from school. Now, she is attending school full time at Leeward Community College." (Footnote added.) When this motion was argued before the family court on May 9, 2002, counsel for Jane Smith argued, in relevant part, as follows:

> She's now [on May 9, 2002] enrolled in school full time and

[2] The record does not reveal the factual basis for this statement.

> she's asking that child support be reinstated . . . . And we're also asking for the support from January until May . . . .
>
> And our position would be that the stipulated order when it said that the support should be uninterrupted, if you read the actual phrasing of it, it tends to indicate that the statute was trying to protect a child who maybe wouldn't start school immediately but they didn't start in the full but started in the spring semester. And that's how we interpret the way that it's written out.
>
> And furthermore she didn't drop out of school. She had an opportunity which she sees and it's like a sabbatical. I think if any professor took a sabatical, he hasn't terminated his employment.

The family court's July 11, 2002 Order Granting Relief granted only a part of Jane Smith's request. It ordered John Doe to resume paying child support to Mary Smith in the amount of four hundred and forty dollars ($440) per month only for the months of May, June, and July 2002 and ordered the termination of child support payments for all periods of time thereafter because Mary Smith would reach the age of twenty-three (23) on July 21, 2002. Accompanying the July 11, 2002 Order Granting Relief, the family court also filed its "Original Order/Notice to Withhold Income for Child Support" (Order to Withhold Income), which included the "Child Support Guidelines Worksheet[.]" The Order to Withhold Income was delivered to the CSEA and to John Doe's employer.

On August 27, 2002, John Doe filed a motion to stay execution of the July 11, 2002 Order Granting Relief "since an appeal has been taken regarding said order."

At the hearing on September 5, 2002, the court stated that "the Court does not believe it would be irreparable harm to

[John Doe] if I don't stay this. Also, there isn't any offer of any bond. I'm going to deny the motion." Further discussion occurred as follows:

> THE COURT: I did get proposed findings, came to the office a couple days ago, I've got those, need to look at them.
>
> [COUNSEL FOR JOHN DOE]: . . . I didn't receive those proposed findings of fact and conclusions of law.
>
> [COUNSEL FOR JANE DOE AND MARY SMITH]: Well, they were mailed out to you, sir.
>
> [COUNSEL FOR JOHN DOE]: It was supposed to be filed on August 26th, never received it.
>
> [COUNSEL FOR JANE DOE AND MARY SMITH]: Well, they were mailed out to you, sir, and I probably have an extra copy. I'd be glad to give you a copy today.
>
> THE COURT: Okay. You'll do that out in the hallway.
>
> [COUNSEL FOR JANE DOE AND MARY SMITH]: Yes.
>
> . . . .
>
> [COUNSEL FOR JOHN DOE]: If there is an objection to the proposed findings of fact and conclusions of law, do I file it with her or with the plaintiffs because she is going to withdraw?
>
> THE COURT: With the plaintiffs, with the plaintiffs.
>
> [COUNSEL FOR JANE DOE AND MARY SMITH]: Okay.
>
> THE COURT: So I need . . . a copy sent to my office right away --
>
> . . . .
>
> THE COURT: -- because all I have in my office is [counsel for Jane Doe and Mary Smith's] draft.
>
> . . . .
>
> [COUNSEL FOR JOHN DOE]: Yeah, because I didn't receive any.
>
> . . . .
>
> [COUNSEL FOR JOHN DOE]: I'll file one --
>
> . . . .
>
> [COUNSEL FOR JOHN DOE]: -- within ten days after I get it.
>
> THE COURT: Good, because she's going to give it to you

today. Thank you.

The family court's September 6, 2002 Denial of the Motion to Stay Execution denied John Doe's motion and stated, in relevant part, as follows: "Court finds there is no irreparable harm to [John Doe] to continue making child support payments as ordered on May 9, 2002, pending appeal. In addition, Court further finds there was no bond furnished as security."

On September 6, 2002, the family court entered its order allowing Mary Smith's counsel to withdraw from the case.

The family court's FsOF and CsOL supported its July 11, 2002 Order Granting Relief.

John Doe's September 25, 2002 Motion for Reconsideration asked the family court "to set aside or delete that portion of the [September 6, 2002 Denial of the Motion to Stay Execution] that states 'Court further finds there was no bond furnished as security' since [John Doe] has fully complied with the [July 11, 2002 Order Granting Relief], and no bond is required if Order complied with fully." John Doe did not say when he "fully complied with the [July 11, 2002 Order Granting Relief]" but whenever he did so, he thereby mooted his August 27, 2002 motion to stay execution of the July 11, 2002 Order Granting Relief. That may explain why there is nothing in the record indicating that the September 25, 2002 Motion for Reconsideration has ever been decided.

POINTS OF ERROR

John Doe contends that the family court reversibly erred when it:

1. Did not require Jane Doe and Mary Smith to "join" the CSEA in the proceedings leading to the July 11, 2002 Order Granting Relief.

2. Filed findings of fact nos. 5, 6, 8, 10, and 15 and conclusion of law no. 5.

3. Entered the July 11, 2002 Order Granting Relief awarding Mary Smith child support for the months of May, June, and July of 2002.

4. Entered its September 6, 2002 order granting Mary Smith's counsel's oral motion to withdraw as counsel.

STANDARDS OF REVIEW

A. Findings of Fact and Conclusions of Law

Findings of fact are reviewed under the "clearly erroneous" standard. In re Jane Doe, 84 Hawai'i 41, 46, 928 P.2d 883, 888 (1996) (citations omitted). "A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is left with a definite and firm conviction that a mistake has been made." State v. Balberdi, 90 Hawai'i 16, 20-21, 975 P.2d 773, 777-778 (1999). Substantial evidence is "credible evidence which is of

sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." Roxas v. Marcos, 89 Hawai'i 91, 116, 969 P.2d 1209, 1234 (1998) (quoting Kawamata Farms v. United Agri Prods., 86 Hawai'i 214, 253, 948 P.2d 1055, 1094 (1997) (citations, internal quotation marks, and original brackets omitted)).

Conclusions of law are reviewed *de novo* under the right/wrong standard. In re Jane Doe, 84 Hawai‘i at 46, 928 P.2d at 888 (citations omitted).

B. Modification of Family Court Orders

Pursuant to HRS § 584-18(a)(1) (1993), the family court in a paternity proceeding "shall have continuing jurisdiction to modify or revoke a judgment or order . . . [f]or future education and support." Thus, the family court "possesses wide discretion in making its decisions and those decisions will not be set aside unless there is a manifest abuse of discretion." In the Interest of Doe, 77 Hawai‘i 109, 115, 883 P.2d 30, 36 (1994) (citation omitted). Under the abuse of discretion standard, the appellate court "is not authorized to disturb the family court's decision unless (1) the family court disregarded rules or principles of law or practice to the substantial detriment of a party litigant; (2) the family court failed to exercise its equitable discretion; or (3) the family court's decision clearly exceeds the bounds of reason." Wong v. Wong, 87 Hawai‘i 475, 486, 960 P.2d 145, 156

(App. 1998) (citation omitted).

DISCUSSION

A.

John Doe contends that the family court reversibly erred when it did not require Jane Doe and Mary Smith to "join" the CSEA in the proceedings leading to the July 11, 2002 Order Granting Relief and the case should be dismissed or in the alternative vacated and remanded for further proceedings. John Doe misunderstands the record. The September 11, 1991 Stipulated Order made the CSEA a party in the case. The question is whether the failure to serve the May 3, 2002 Motion for Relief on the CSEA had any adverse impact upon the validity of the July 11, 2002 Order Granting Relief. The answer is no.

HRS § 576D-7(a) (1993) states that, "[t]he family court, in consultation with the [CSEA], shall establish guidelines to establish the amount of child support when an order for support is sought or being modified under this chapter." HRS § 576D-3 (a) (2003) states that the CSEA "shall undertake any legal or administrative action to secure support for a child by enforcing an existing order or obtaining a court order of support." In light of (1) the CSEA's functions as described in these statutes, (2) the fact that, in its July 11, 2002 Order to Withhold Income, the family court directed the three remaining payments owed by John Doe to be made payable to and sent to the

CSEA, and (3) the fact that the CSEA was mailed certified copies of both the July 11, 2002 Order to Withhold Income and the July 11, 2002 Order Granting Relief, we conclude that the absence of the CSEA from the proceedings leading up to the July 11, 2002 Order Granting Relief was harmless.

B.

1.

John Doe contends that the FsOF and CsOL should be vacated because

> [Jane Doe and Mary Smith] and their attorney submitted their proposed FOF/COL to the Court for approval, but failed to provide a copy of the proposed document to [John Doe's] counsel, ignoring both the Court's instruction and Rule 21 of the Rules of the Circuit Court. Consequently, [John Doe] had no opportunity to object to the form of the proposed Findings and Conclusions, which were entered with modifications by the Family Court.
>
> . . . .
>
> Despite this dialogue [at the hearing on September 5, 2002], [John Doe's] counsel still did not received [sic] the proposed Findings of Fact and Conclusions of Law from [Jane Doe and Mary Smith's] attorney, as ordered by the Family Court at both the May 9, 2002 and the September 5, 2002 hearings. [John Doe's] counsel had no opportunity to review [Jane Doe and Mary Smith's] Findings of Fact and Conclusions of Law and submit objections as allowed under Rule 21, Circuit Court Rules, prior to the Court's entry of the FOF/COL on September 23, 2002. . . .
>
> No sanctions were imposed by the Family Court on [Jane Doe and Mary Smith's] attorney for dereliction of professional responsibility.
>
> The failure of [Jane Doe and Mary Smith's] counsel to follow the Family Court's orders and the Circuit Court Rules in settling the proposed Findings of Fact and Conclusions of Law had the direct effect of precluding [John Doe's counsel] from participating in noting objections to the document before it was entered by the Family Court. Another consequence . . . is that the findings of fact adopted by the Family Court are not supported by substantial evidence. . . . [T]his Court should vacate the orders in favor of [Jane Doe and Mary Smith] and the Findings of Fact and Conclusions of Law, ... The case should be remanded for a new trial.

John Doe's argument is not persuasive. After the hearing on September 5, 2002, he did not say anything to the court about his alleged nonreceipt of a copy of Jane Doe and Mary Smith's proposed findings and conclusions. Even after the court filed its FsOF and CsOL on September 23, 2002, John Doe's only response was his September 25, 2002 Motion for Reconsideration asking the family court "to set aside or delete that portion of the [September 6, 2002 Denial of the Motion to Stay Execution of the July 11, 2002 Order Granting Relief] that states 'Court further finds there was no bond furnished as security' since [John Doe] has fully complied with the [July 11, 2002 Order Granting Relief], and no bond is required if Order complied with fully." In light of the record, assuming John Doe did not receive a copy of Jane Doe and Mary Smith's proposed findings and conclusions, that error was both waived by John Doe and harmless to him.

2.

John Doe contends that FsOF nos. 5, 6, 8, 10, and 15 are not supported by substantial evidence and COL no. 5 is an abuse of discretion.

FOF no. 5 states: "On July 21, 2001, [John Doe] contacted [the CSEA], requesting that the Order for monthly child support in the amount of $300.00 terminate, as [John Doe] believed the adult child quit attending college on a full time

basis." We agree that this finding is clearly erroneous because there is nothing in the record supporting it. According to the assertions by John Doe's attorney at the May 9, 2002 hearing, "After investigation was made by [the CSEA] this [October 31, 2001 CSEA] letter was given to [John Doe's employer] . . . terminating child support or withdrawal of wages from his employer. And . . . it shows that at that time she wasn't attending school. She was working. So the [CSEA] terminated any payment of child support, withholding any child support from his employer[.]" There is no evidence of what prompted the CSEA to send the letter. The error, however, is harmless because the fact of what prompted the CSEA to send the letter is not relevant.

FOF no. 6 states: "In August 2001, [Mary Smith] took a 5 month hiatus from [LCC]. [Mary Smith] had the opportunity of traveling to Japan to dance hula, for a number of months." John Doe specifically challenges the use of the word "hiatus" in characterizing Mary Smith's time off from school. "Hiatus" is defined as "an interruption or lapse in or as if in time or continuity[.]" WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1065 (1981). This definition fits the description that Mary Smith's counsel presented to the court at the May 9, 2002 hearing. It is also supported by the responses to the court's following inquiry into Mary Smith's post-high school educational history:

THE COURT: . . . When did you enroll in Leeward?

[MARY SMITH]: Um, I took the first semester off when I got out of high school, and then I went to the spring semester.

THE COURT: Of? What year was that?

[MARY SMITH]: '98

THE COURT: '98. So you did spring semester '98. Did you go full time?

[MARY SMTIH]: Um-hmm.

THE COURT: Okay. So you took 12 or 15 credits then?

[MARY SMITH]: Um-hmm. Yes.

THE COURT: And then did you go summer school?

[MARY SMITH]: No.

THE COURT: Did you go fall '99?

[MARY SMITH]: Yes. All the way through.

THE COURT: Okay. So each semester you registered then until this time you danced hula?

[MARY SMITH]: Yes.

FOF no. 8 states as follows:

> A Class Schedule and Statement from [LCC] was attached a[s] Exhibit 'C' to the [May 3, 2002 Motion for Relief]. [Mary Smith] was enrolled for the Spring 2002 semester at [LCC], and was enrolled in 4 classes for a total of 12 units, which is considered a full time course load by the University of Hawai‘i and community college system.

John Doe disagrees with the court's finding that "a total of 12 units . . . is considered a full time course by both University of Hawai‘i and community college system." Although there is no evidence in the record to support this finding, we conclude that it states a judicially noticeable fact.

FOF no. 10 states as follows: "On March 6, 2002, a Notice of Production of Documents in Lieu of Deposition Upon Written Questions and a Subpoena Duces Tecum were filed with the

Family Court of the First Circuit, requesting that [John Doe's employer] produce documents relative to [John Doe's] year-to-date earnings for 2001, as well as his current monthly gross income." FOF no. 15 states as follows: "Pursuant to testimony at hearing, and pursuant to documents produced by the custodian of records for [John Doe's employer], [John Doe's] income was established, without objection, as $3,757.41 per month." John Doe contends that these two FsOF are clearly erroneous because there was "no evidence or fact that [John Doe's] employer . . . produced documents relative to [John Doe's] earnings for the year 2001."

FOF no. 10 is supported by substantial evidence. The Notice of Production of Documents in Lieu of Deposition Upon Written Questions and the Subpoena Duces Tecum requesting John Doe's employer to produce documents relative to his year-to-date earnings for 2001 and his current monthly gross income were filed with the family court on March 6, 2002.

As for FOF no. 15, although it is true that there is no evidence in the record that John Doe's employer generated documents relative to his 2001 income, the Child Support Guidelines Worksheet prepared by counsel for Jane Doe and Mary Smith, and filed on July 11, 2002, stated that John Doe's monthly gross income was $3,757.41, and John Doe did not challenge it or the court's use of the information in it when deciding upon the amount of child support payable. Therefore, the error is

harmless.

COL no. 5 states: "Child support payments of $440.00 per month shall be paid to [Mary Smith] from the month the Motion was filed, May 2002, as well as June 2002 and July 2002. Thereafter, child support payments shall cease, as [Mary Smith] will be 23 years of age." The portion of COL no. 5 that John Doe disputes is the amount of child support owed. He states that the family court orally ordered him to pay $410.00 per month at the May 9, 2002 hearing, not $440.00. John Doe is correct. The transcript reflects that the family court orally ordered child support for the months of May, June, and July 2002 in the amount of $410.00 per month. However, the Child Support Guidelines Worksheet states that John Doe's child support payments should be $440.00 and it was within the family court's discretion to use this larger amount in its July 11, 2002 Order Granting Relief.

C.

John Doe argues that the July 11, 2002 Order Granting Relief is reversible error because Mary Smith stopped attending college classes and did not satisfy the condition set forth in the September 11, 1991 Stipulation Granting Relief that "[c]hild support for [Mary Smith] shall further continue uninterrupted so long as [Mary Smith] continues . . . her education post high school on a full-time basis at an accredited college or university, or in a vocational or trade school[.]" In other

words, he contends that when the child drops out for one semester, the child fails to continue his or her education "on a full-time basis" and the result must be permanent termination of his obligation to pay child support. We disagree and conclude that the court acted within its discretion. As stated previously, a family court in a paternity proceeding "shall have continuing jurisdiction to modify or revoke a judgment or order . . . [f]or future education and support." HRS § 584-18(a)(1) (1993).

John Doe further argues that the family court's requirement that he continue paying child support for the months of May, June, and July 2002 was made "despite an absolute lack of evidence that [Mary Smith] wouldl [sic] be attending or continuing school in those months." Based upon Mary Smith's class schedule attached to the May 3, 2002 Motion for Relief, the hearing held on May 9, 2002, in which the court extensively questioned Mary Smith regarding her education, and the September 23, 2002 FsOF and CsOL, we disagree. A student is a "full time" student if the student attends school during the spring and fall semesters. Attendance at the summer session is not required.

D.

John Doe's closing point on appeal is that the family court erred in granting Mary Smith's counsel's oral motion to

withdraw from the case. He argues that (1) because he had filed a notice of appeal in the case, the family court lacked jurisdiction to grant the motion to withdraw; and (2) because the court granted the motion, "the prosecution of this appeal will most likely be delayed."

It is true, as John Doe points out, that the filing of a notice of appeal generally transfers jurisdiction from the family court to the appellate court. See In Interest of Doe, 81 Hawai‘i 91, 98, 912 P.2d 588, 595 (App. 1996). However, HFCR Rule 62(a) (2003) states, in relevant part, that "[w]hen an appeal is taken from any judgment relating to the custody or support of a child or spousal support, the court in its discretion may suspend, modify or grant such judgments during the pendency of the appeal upon such terms as it considers proper." See Tetreault v. Tetreault, 99 Hawai‘i 352, 360, 55 P.3d 845, 853 (App. 2002). It follows that the family court also retained jurisdiction to decide counsel’s motion to withdraw from the case.

"The granting of [a counsel's] leave to withdraw by the court is generally in the discretion of the court and depends upon such considerations as proximity of the trial date, length of time an action has been pending, and possibility for the client to obtain other representation." 7 Am. Jur. 2d Attorneys at Law § 188 (1997).

Rule 1.16(b)(5) of the Hawai‘i Rules of Professional Conduct (HRPC), which is the local rule a lawyer must comply with when withdrawing from a case, states as follows: "[A] lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if . . . the representation will result in an unreasonable financial burden on the lawyer[.]" John Doe alleges that by allowing Mary Smith's counsel to withdraw, his appeal would be delayed. But as both the general rule and HRPC Rule 1.16(b)(5) make absolutely clear, the withdrawing attorney only has a duty to ensure that the interests of his or her client is not harmed by the withdrawal. There is no duty to the opposing party or the opposing party's counsel.

In making its decision, the court must consider the effect of the withdrawal upon the interests of the opposing party and the opposing party's counsel and proper judicial process. Here, there is no factual basis in the record supporting John Doe's allegation that by allowing Mary Smith's counsel to withdraw, his appeal would be delayed.

Mary Smith's counsel articulated to the court that she was withdrawing from the case because "[Mary Smith] can't afford to retain me any further[.]" Predicated on these assertions, the court granted the motion, stating, "[Mary Smith's] counsel is allowed to withdraw as counsel from the case, and over [John

Doe's] counsel's objection, based on [Mary Smith's] inability to continue to pay attorney's fees." The court did not abuse its discretion in granting the motion to withdraw.

CONCLUSION

Accordingly, the September 23, 2002 "Findings of Fact and Conclusions of Law" is affirmed except that finding of fact no. 5 and that part of finding of fact no. 15 which states "and pursuant to documents produced by the custodian of records for [John Doe's employer]" are vacated. The July 11, 2002 "Order Granting Plaintiffs' Motion and Affidavit for Relief After Order Filed May 3, 2002" is affirmed. The purported appeal of the September 6, 2002 "Order Denying the Motion to Stay Execut[i]on" is dismissed. The purported appeal of the undecided September 25, 2002 "Motion for Reconsideration or Amendment of Order Denying Motion to Stay Execution of Order Filed August 27, 2002, Dated September 6, 2002" is dismissed.

DATED: Honolulu, Hawai‘i, January 23, 2004.

On the briefs:

Ernest Y. Yamane
for Defendant-Appellant.

Chief Judge

Associate Judge

Associate Judge