

NOT FOR PUBLICATION

NO. 25319

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

SOPHRONIA NOELANI JOSSELIN,
Plaintiff-Appellant, Cross-Appellee, v.
JEAN-MARIE JOSSELIN,
Defendant-Appellee, Cross-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D No. 00-1-1443)

SUMMARY DISPOSITION ORDER

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

Plaintiff Sophronia Noelani Josselin (Wife) appeals the August 13, 2002 divorce decree entered by the family court of the first circuit, the Honorable Paul T. Murakami, judge presiding. Defendant Jean-Marie Josselin (Husband) cross-appeals.

Upon a sedulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we resolve the points of error raised by Wife and Husband, respectively, as follows:

1. Wife's first primary point on appeal is that the family court erred in rejecting her claim that Husband wasted marital assets. We disagree. The family court found:

117. There was no credible evidence to support Ms. JOSSELIN'S contention that Mr. JOSSELIN wasted and dissipated assets in the marital estate, wrongfully diverted money from the marital estate, concealed assets in the marital estate, mismanaged assets in the marital estate, and committed fraud to the detriment of the marital estate and Ms. JOSSELIN.

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(Capitalized surname in the original.) We have consistently held that "it is the right of the trier of fact to determine credibility and to weigh evidence." CSEA v. Doe, 98 Hawai'i 58, 65, 41 P.3d 720, 727 (App. 2001) (citation and internal quotation marks omitted). Hence, there was, in the final analysis, absolutely no factual support for Wife's claim. Accordingly, Wife's sundry subsidiary lamentations -- regarding the family court's alleged misapprehensions about the material elements of Wife's claim, the burden and standard of proof thereof, and the law of property division -- lack merit. See also Higashi v. Higashi, No. 25354, slip op. at 23-25 (Haw. App. filed December 2, 2004).

2. Wife next argues that the family court erred in not considering Husband's "negative contributions to the marital estate." Wife's Opening Brief at 19. Inasmuch as this claim is merely another version of Wife's wasting claim, the family court did not err in this regard.

3. Wife contends the family court erred in various ways in computing child support, but primarily in its assignment of incomes to the parties pursuant to the child support guidelines. We disagree. The family court did not abuse its discretion, CSEA, 98 Hawai'i at 65, 41 P.3d at 727, in making its child support award.

4. Wife appears to argue that the family court erred in not awarding her delinquent family support and in denying her

request for a further hearing on the issue. Here again, we conclude the family court did not abuse its discretion. Id.

5. Husband's first point of error on cross-appeal is that the family court erred in failing to divide the assets and debts of the parties according to marital partnership principles, Gussin v. Gussin, 73 Haw. 470, 486, 836 P.2d 484, 492 (1992), and in failing to apply and articulate the analysis for deviating therefrom mandated by Jackson v. Jackson, 84 Hawai'i 319, 332, 933 P.2d 1353, 1366 (App. 1997). We disagree. The family court did not abuse its discretion, Tougas v. Tougas, 76 Hawai'i 19, 26, 868 P.2d 437, 444 (1994), in dividing the assets and debts of the parties. And the family court did cite Jackson as a basis for its decision. Further, the considerations the family court employed to arrive at its final division of assets and debts are pellucid when the evidence and the family court's findings are viewed in the light of marital partnership principles and the relevant factors set forth in Hawaii Revised Statutes (HRS) § 580-47 (Supp. 2003). Gussin, 73 Haw. at 486, 836 P.2d at 492. This being so, the fact that the family court did not "itemize those considerations[,]" Jackson, 84 Hawai'i at 332, 933 P.2d at 1366, is not sufficient reason to set aside the divorce decree's division of assets and debts. As we have held, "Gussin and Tougas do not require the family court to state what considerations caused it to deviate from the Partnership Model." Hussey v. Hussey, 77 Hawai'i 202, 208, 881 P.2d 1270, 1276 (App.

1994) (overruled on other grounds by State v. Gonsales, 91 Hawai'i 446, 984 P.2d 1272 (App. 1999)).

6. Husband contends the family court erred in denying his Hawai'i Family Court Rules (HFCR) Rule 68 (2002) motion, which asked the family court to order Wife to pay Husband \$54,790.10 on account of the attorneys' fees and costs he incurred, in defending against her claim of waste, after his HFCR Rule 68 offer. This point is devoid of merit. The family court did not abuse its discretion, Criss v. Kunisada, 89 Hawai'i 17, 26, 968 P.2d 184, 193 (App. 1998), in denying Husband's HFCR Rule 68 motion based upon its conclusion that, "It would be inequitable to assess Ms. JOSSELIN with fees and costs pursuant to Rule 68, Hawai'i Family Court Rules." (Capitalized surname in the original.) The family court's mere reference to HFCR Rule 68 does not mean that it did not exercise its discretion "in the light of the considerations stated in HRS § 580-47[.]" Criss, 89 Hawai'i at 26, 968 P.2d at 193. It merely confirms what is obvious from the record, that the family court did what HFCR Rule 68 required it to do.

7. Finally, Husband avers the family court erred in denying his HFCR Rule 11 (2002) motion, which requested that Wife's attorney pay the attorneys' fees and costs Husband incurred in defending against Wife's claim of waste, in the amount of \$102,904.74. We disagree. The family court did not abuse its discretion, cf. In re Hawaiian Flour Mills, Inc.,

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76 Hawai'i 1, 15, 868 P.2d 419, 433 (1994), in denying Husband's HFCR Rule 11 motion.

Therefore,

IT IS HEREBY ORDERED that the family court's August 13, 2002 divorce decree is affirmed.

DATED: Honolulu, Hawai'i, January 14, 2005.

On the briefs:

Peter Van Name Esser,
for plaintiff-appellant,
cross-appellee.

Charles T. Kleintop and
Dyan M. Medeiros
(Stirling & Kleintop),
for defendant-appellee,
cross-appellant.

Acting Chief Judge

Associate Judge

Associate Judge