

NO. 25568

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

ELLEN B. POLITANO, Plaintiff-Appellee, v.
GLORIA HSU, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
HONOLULU DIVISION
(CIVIL NO. 1RC02-02975)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Gloria Hsu (Hsu), also known as Gloria Alt, appeals (1) the Findings of Fact and Conclusions of Law filed on November 8, 2002, (2) the Judgment filed on December 5, 2002, and (3) the denial of her "Motion to Reconsider or for New Trial" filed on December 13, 2002, in the District Court of the First Circuit, Honolulu Division (district court).¹

On appeal, Hsu contends the district court (1) erred by finding there was a written agreement between Plaintiff-Appellee Ellen B. Politano (Politano) and Hsu, (2) erred by allowing Politano to recover attorney's fees in excess of the estimate she quoted to Hsu, (3) erred by allowing Politano to recover attorney's fees without proof or evidence of any time sheets, and (4) abused its discretion by denying Hsu's counterclaim because she did not call an expert witness. In the alternative, Hsu

¹ The Honorable Christopher P. McKenzie presided.

contends the district court erred by not reducing the award of attorney's fees because Politano obviously did not do the work and either overcharged Hsu or expended Hsu's money for unnecessary expenses.

Upon careful review of the record and the briefs submitted by the parties, we hold as follows:

(1) The district court did not err in finding that there was a written retainer agreement between Politano and Hsu as there is substantial evidence in the record to support such a conclusion. See Leslie v. Tavares, 91 Hawai'i 394, 399, 984 P.2d 1220, 1225 (1999).

(2) The district court did not err in awarding attorney's fees to Politano, despite Hsu's claim that there was an oral agreement to limit the amount of legal fees that Hsu would be charged. "An appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trial judge." Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 117, 839 P.2d 10, 28 (1992) (internal quotation marks, citations, and brackets omitted). The district court's conclusion that Politano was entitled to recover damages was properly supported by its finding that an oral agreement did not exist limiting the amount of legal fees that Hsu would be charged. See Robert's Hawaii Sch. Bus,

Inc. v. Laupahoehoe Transp. Co., Inc., 91 Hawai'i 224, 239, 982 P.2d 853, 868 (1999).

(3) The district court did not err by allowing Politano to recover attorney's fees, despite her failure to submit handwritten time sheets. While Politano did not submit any handwritten time sheets, she did submit a computer-generated invoice detailing what hours were worked on Hsu's case, what services were provided, and at what hourly rate.

(4) The district court did not err by denying Hsu's counterclaim. Despite conflicting testimony, the district court concluded that "[e]xcept as otherwise referred to below, [Politano's] charges to [Hsu] were reasonable, fair, necessary to provide the services required by [Hsu] and were within acceptable standards of a Hawaii family court lawyer[,] and "[Politano] performed services as a family law attorney in conformance with the standard of conduct of a competent Hawaii family court lawyer and was not negligent or otherwise responsible for any damages to [Hsu] arising out of her professional relationship with [Hsu]." Such issues are "the province of the trial judge." Amfac, 74 Haw. at 117, 839 P.2d at 28.

(5) The district court did not err in denying Hsu's "Motion to Reconsider or for New Trial" because Hsu merely restated the same arguments she had adduced at trial and failed to present any new evidence to warrant reconsideration or a new

trial. See Ass'n of Apartment Owners of Wailea Elua v. Wailea Resort Co., Ltd., 100 Hawai'i 97, 110, 58 P.3d 608, 621 (2002).

Therefore,

IT IS HEREBY ORDERED that the Findings of Fact and Conclusions of Law filed on November 8, 2002; the Judgment filed on December 5, 2002; and the denial of Hsu's "Motion to Reconsider or for New Trial" filed on December 13, 2002 in the District Court of the First Circuit, Honolulu Division, are affirmed.

DATED: Honolulu, Hawai'i, September 21, 2004.

On the briefs:

Gloria Hsu,
defendant-appellant pro se.

Ellen B. Politano,
plaintiff-appellee pro se.

Chief Judge

Associate Judge

Associate Judge