NO. 25702

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

FARRIS ODEH, Plaintiff-Appellant, v.
OLGA ODEH kna OLGA ZELDIN, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-D NO. 97-0365)

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

In this post-decree contest over winter break visitation, Father appeals, *pro se*, the November 20, 2002 order of the family court of the second circuit[1] that denied his August 30, 2002 motion for sanctions against Mother, and the March 3, 2003 order that denied his December 2, 2002 motion for reconsideration.

We affirm.

I. Background.

We recount the background of this case in some detail, because it is pivotal in this appeal to know exactly what went on before, and to see clearly what is before us now.

The family court dissolved the marriage on March 18, 1999. The divorce decree incorporated a pre-decree order that had awarded the parties "joint legal custody and shared physical custody" of their minor daughter (DOB July 8, 1995).

[1] The Honorable Eric G. Romanchak, judge presiding.

On April 18, 2000, Mother filed a motion for post-decree relief, requesting a new "access schedule" because she was moving from Maui to New York City with the child. Father responded on May 25, 2000 with a post-decree motion of his own, asking for sole legal and physical custody. On June 27, 2000, the family court filed an order that preserved joint legal custody but awarded Mother sole physical custody of the child, "subject to Father's rights of shared access[.]" The order allowed Mother to relocate, in which event Father's winter break visitations with the child would comprise the following:

> The child shall spend all Winter Breaks (anticipated to be two weeks long) that begin in even numbered years with her Father. The child shall depart within 24 hours after the end of school and shall return no later than 24 hours before the beginning of school. In the event Father wishes to spend Winter Break in the same area as Mother's residence during odd numbered years, he shall be entitled to spend as much time as possible with the child and at least one continuous week. The parties shall share Christmas Day in that event.

Father appealed (No. 23622) the family court's June 27, 2000 order. On July 24, 2002, this court affirmed in a memorandum opinion.

Meanwhile, Mother and daughter had relocated to New York City. Father sought to exercise his option to visit the child there during winter break 2001, but Mother had plans to spend the winter holidays that year in Pennsylvania.

On November 26, 2001, Father, through New York counsel, filed an order to show cause in the New York Supreme Court located in Brooklyn, demanding that he be given visitation that

winter in New York City. On December 5, 2001, Mother fired back here in Hawai‘i with a motion to affirm the family court's jurisdiction and to clarify Father's winter break visitations. The family court held a hearing on Mother's motion on December 12, 2001. On January 2, 2002, the family court filed a written order on Mother's motion affirming its jurisdiction and providing:

> [Father] shall be entitled to visit with the parties' daughter . . . in Pennsylvania from December 28, 2001 until January 2, 2002 from 8:00 a.m. until 7:30 p.m. each day, there shall be no overnight visits. [Mother] shall provide [Father] with the address and telephone number of the place she will be staying at in Pennsylvania.
>
> Each party shall submit proposed visitation orders to clarify all ambiguities apparent to either party in the last visitation order filed on June 27, 2000. Said proposed orders shall be submitted to the court for its consideration by January 31, 2002.

(Enumeration and headings omitted.) Accordingly, on February 8, 2002, the family court entered an amended version of its June 27, 2000 order regarding custody and visitation. In pertinent part, it read:

> The child shall spend all Winter Breaks (anticipated to be two weeks long) that begin in even numbered years with her Father. The child shall depart within 24 hours after the end of school and shall return no later than 24 hours before the beginning of school. In the event Father wishes to spend Winter Break in the same area as Mother's residence during odd numbered years and Mother will be present at her place of residence during the Winter Break, he shall be entitled to spend time with the child up to one week, from 10:00 a.m. to 6:00 p.m. each day and is not to interfere with the child's school or extra curricular activities. The parties will share Christmas Day in that event. Mother shall notify Father by October 15 of each odd numbered year if she has plans outside of her place of residence for all or a portion of the child's Winter Break.

In the meantime, on December 20, 2001, Father, newly *pro se*, had filed a motion to compel in the family court, as

follows:

> 1. On December 5, 2001, [Mother] filed a Motion to Clarify Winter Break Visitation. On December 12, 2001 a hearing was held and this Court ordered that visitation was to take place in the State of Pennsylvania. This Court further ordered that [Mother's] attorney was to provide [Father] with the address in Pennsylvania where the minor child would be.
>
> 2. The change in visitation was based upon [Mother's] assertion that she would be on vacation in Pennsylvania with the parties' child during the time of [Father's] court ordered visitation.
>
> 3. Since the date of this Court's order [Mother] and her attorney have refused to disclose the location of [Mother's] vacation in Pennsylvania. Further, [Mother] has made certain statements indicating that there is no vacation in Pennsylvania at all and that she and the parties' child will remain in New York during the winter break.
>
> Wherefore, [Father] respectfully asks this Court:
>
> 1. To order [Mother] to immediately disclose the address of the vacation spot in Pennsylvania,
>
> or, in the alternative,
>
> 2. That if there is no vacation in Pennsylvania, to find that [Mother's] motion of December 5, 2001 was without any basis in fact, and therefore,
>
> 3. Vacate its order of December 12, 2001 and allow [Father] to visit with his child in New York for "one continuous week" including overnight.

In his affidavit in support of this motion, Father deposed:

> 1. Following the order of Judge Eric G. Romanchak on December 12, 2001 changing my visitation with my daughter during her winter break, [Mother] and her attorney have refused to disclose where my daughter will be during the winter break.
>
> 2. On December 12, 2001 I telephoned [Mother's attorney] and was advised that [my] daughter would be at a cabin in Hawley, Pennsylvania on a street called Sunny Point. On the same date I contacted [Mother] for the address. She refused to give any further details.
>
> 3. I have been unable to find "Sunny Point Street" on a map of Hawley, Pennsylvania.
>
> 4. On December 14, 2001 I telephoned the Hawley Pennsylvania Police Department at 570-253-5752 and was advised that there is no roadway called Sunny Point in Hawley Pennsylvania whatsoever.
>
> 5. On December 14, 2001 I sent a letter to [Mother's attorney], via fax, to ask for the address and directions to the cabin in Pennsylvania. I have still not been provided this information.

> 6. On December 18, 2001 I telephoned [Mother] to again ask for the address and/or directions to the cabin in Pennsylvania. At that time, she advised me that there was no vacation to Pennsylvania because "there is no snow."

The family court held a December 26, 2001 hearing on Father's motion, and filed its written order the next day:

> [Father] shall have the child from 8:00 a.m. until 7:30 p.m., from December 28, 2001 through December 31, 2001 in Pennsylvania. [Father] shall also have the child from 8:00 a.m. until 12 noon on January 1, 2002 in Pennsylvania. [Father] shall then have the child in New York from 3:00 p.m. at her school and return her to [Mother] at 7:30 p.m. at her home on January 2, 2002.
>
> All pick-ups and drop-offs in Pennsylvania shall occur at the local supermarket, Lake Rigin Supermarket, located at the intersection of Route 6/6th Street and Highway 590, located near Wallenpaupack Road. The phone number of the supermarket is (570)226-6000. [Father] must call [Mother] if he will be more than 15 minutes late.

(Enumeration and headings omitted.)

On August 30, 2002, Father filed yet another motion for post-decree relief, seeking sanctions against Mother for her alleged interference with his 2001 winter break visitation. Father alleged, in non-repetitive part, as follows:

> 3. On October 31, 2001, [Mother] telephoned [Father] and told him that she had rented a vacation home where there was to be a large family reunion and the plans could not be changed. [Mother] then sent a letter to [Father] confirming that she was taking the child out of state and would not permit [Father] to exercise his visitation[.]
>
> . . . .
>
> 7. On December 20, 2001, only after [Father] filed his Motion to Compel, [Mother's] attorney faxed a letter claiming [Mother] did not know how to get to the vacation spot. [Mother's] attorney also faxed another page titled "Directions to Vacation Location[.]" This did not indicate where the vacation spot was or how to get there[.]
>
> 8. At the close of the hearing on [Father's] Motion to Compel and outside of the courtroom, [Mother's] attorney advised [Father] of the following:
>
> a) that no one in [Mother's] family knows where the vacation spot is;

b) that the rental home was in a small resort town and as such there were no phone lines and no addresses on the cottages;

c) the cottage was located in a small secluded subdivision with one street called Woodland Shore Drive;

d) there were only a couple of homes in the area and "you can't miss it[."]

9) On December 26, 2001, just several hours before [Father] was to leave the island and travel to New York and then to Pennsylvania, [Mother's] attorney advised him by telephone that [Mother] had changed her mind and would exchange the child at a supermarket and would not allow [Father] to pick up the child at the rental cottage.

10. Upon arriving at the vacation resort town [Father] discovered that the information that he had been given and that the representations made to this Court were false, specifically:

a) There is no roadway in the area called Woodland Shore Drive;

b) The subdivision where [Mother] was staying has at least 10 streets and in excess of 200 houses, all with telephone lines;

c) There was no family reunion taking place in Pennsylvania, in fact, no one was staying at the home except [Mother] and her parents whom the child sees every day;

d) The "rental cottage" is a home owned by [Mother's] parents and, therefore,

1) [Mother] must have known how to get to their own home;

2) [Mother's] plans to travel to her family's own home during [Father's] scheduled visitation could have easily been changed.

11. As a result of the misrepresentations of [Mother], [Father] incurred $277 in expenses to travel from New York to Pennsylvania, $6500.00 in legal fees paid to attorneys [New York counsel] to enforce this court[']s visitation order, and lost the equivalent of 8 days of visitation to which he was entitled.

Wherefore, [Father] respectfully asks this Court to order sanctions against [Mother] as follows:

1. That [Mother] be ordered to pay to [Father] $6,777.00 for legal fees and costs incurred in changing travel and accommodations in order to follow her and the child to Pennsylvania unnecessarily;

2. That [Father] be granted 8 additional days of visitation with his daughter during Summer break 2003 to make up for the visitation days that he lost as a result of [Mother's] misrepresentation of the truth.

(Citations to exhibits omitted.)

The family court held a hearing on Father's motion on October 23, 2002. At the hearing, Father complained:

> Also I never wanted to visit [my daughter] in Pennsylvania. Why would I want to do that? So that's just a lie. I wanted to visit [my daughter] in New York as the order originally stated, and I also wanted the full two weeks.
>
> I was entitled to two weeks, with one week uninterrupted with overnights included. [Mother's] offer included not the full time in New York, but very limited daytime visitation. And that was unacceptable because it was against the original order that this Court made.
>
> . . . .
>
> The motion that I'm filing today is basically -- it was my contention from the beginning that [Mother and her present and former attorneys] had continually lied and misrepresented the truth to this Court to get exactly what they wanted.
>
> And I have been trying my desperate [sic] to prove that they have been lying all this time, and my -- and their lies and my requests have been going ignored as far as I know.
>
> And [Mother] has been getting exactly what she wanted even though she is continually twisting the truth and lying to this Court.
>
> And this time I have black and white evidence proof that she -- [Mother and her attorney] lied to this Court last December to deny me my proper visitation with my daughter or my daughter to deny proper visitation with her father. They lied to do this.
>
> And it is my belief that [Mother] and her attorneys are using the court as a game to manipulate the rules and manipulate my daughter's visitation. Entitled me -- and I think that's not only offensive, waste of the time of the Court, waste of my time, takes away from [my chiropractic] clients, but also a waste of attorney's fees.
>
> And for her to ask for me to pay her attorney's fees because she's wasting everybody's time because she's lying, I -- I'm appalled that she even is asking that. I have evidence that I was (inaudible) -- that they lied about clear evidence about the visitation last Christmas that influenced the Court to change an existing order that took away time from me.
>
> And all I'm asking for -- I'm not asking for my daughter back. All I'm asking for is the money that I incurred to have an order enforced, and I'm asking for the days that I lost because of this lying and misrepresentation of truth. I'm not asking [Mother] be in trouble. I'm not asking that she be arrested for contempt. I understand that's complete. I'm asking for the time I lost because of their lies.

After further arguments, the family court took the matter under advisement and invited the parties to file post-hearing affidavits, which it would consider before issuing an order on the motion.

In his supplemental affidavit filed on October 28, 2002, Father deposed:

> 1. [Father] originally notified [Mother] that he intended to spend the "one continuous week" to which he was entitled with his daughter over her Christmas break. One continuous week was understood to mean seven days 24 hours each day totaling 168 continuous uninterrupted hours.
>
> 2. As a result of [Mother's] representations to this Court [Father] had to fly to New York and then drive to Pennsylvania and was only allowed to spend 5 days with his daughter from 8:00 a.m. until 7 p.m. totaling 55 hours.
>
> 3. During the trip [Father] made certain observations:
>
> a. the town was not a remote village consisting of a few cottages with no address and telephone lines as [Mother] had told this court;
>
> b. that there was no extended family at the house as [Mother] had represented to this court;
>
> c. it appeared to [Father] that [Mother] and her parents knew there [sic] way around the Pennsylvania town; and,
>
> d. [My] daughter stated that she had been to the Pennsylvania house many times and that it was "grandpa's house[."]
>
> 4. Upon returning to Maui, [Father] made inquiry to the Recorder of Deeds of the County of Wayne of the State of Pennsylvania. It was confirmed that [Mother's parents] are the owners of the house in Pennsylvania.
>
> 5. The property recorded in the deed . . . is the same property where [Mother] and her parents were staying during [Father's] visitation with his daughter. The property is the same property that [Mother] claimed no one in her family knew the location of. The property is the same property that [Mother] has taken the child to many times without ever notifying [Father].
>
> 6. Had [Mother] not lied to this court about the ownership of her family's vacation home and the "non-refundable" nature of her vacation plans to go there during [Father's] court ordered visitation with his daughter, [Father] would not have had to:

> a. incur $6500.00 in legal fees;
>
> b. incur $277.00 in travel expenses;
>
> c. lose 113 hours of visitation with his daughter;
>
> d. use this Court's time to resolve an issue that turned out to be nothing more [than Mother] "playing games" with the orders of this Court.
>
> Wherefore, [Father] respectfully asks this Court to order sanctions against [Mother] as follows:
>
> 1. That [Mother] be ordered to pay to [Father] $6,500.00 for costs incurred in enforcing [h]is right to visitation;
>
> 2. That [Mother] be ordered to pay $227.00 for costs incurred by [Father] in changing travel and accommodations in order to follow her and the child to Pennsylvania unnecessarily;
>
> 3. That [Father] be granted 8 additional days of visitation with his daughter during Summer break 2002 [sic] to make up for the "continuous" time lost as a result of the defendant's misrepresentations to this Court.

(Citation to exhibit omitted.) Father attached to his supplemental affidavit what appears to be a copy of a certified copy of an indenture that conveyed to Mother's parents real property located in the township of Paupack, Wayne County, Pennsylvania. The parcel is apparently part of a subdivision named "Sunny Point." The indenture was dated February 1, 2002 and recorded twenty-one days later.

In her November 5, 2002 supplemental affidavit, Mother responded, in relevant part, as follows:

> 2. I have followed every court order issued in this case and now feel that [Father] is abusing the court system in Hawaii and New York in order to harass me while at the same time not meeting his financial obligations to us. He surprisingly has nearly $7,000 to pay attorney[']s fees and costs, but is more than $10,000 in arrears on child support and alimony. I had to pay my New York attorney $350.00 per hour to represent me in the court action [Father] filed in New York.
>
> 3. I did not make any misrepresentations to this court. The house where we stayed in Pennsylvania did not have a house number and it did not have a telephone.

> 4. We did have a family reunion during the Christmas break. My brother and uncle visited as well as a number of my and my parent[s'] friends. [Father] did not spend any time at the home, therefore, he has no personal knowledge as to who was or wasn[']t there.
>
> 5. That vacation was the first time any member of my family spent in that house, including [my daughter]. My parents made the arrangement to rent the house on a non-refundable deposit. My father later told us he was looking to buy a place in the area and wanted us to all spend time together to see what it was like. My father did purchase the home the following February 2002. He was not the owner during the holidays (this is proven by [Father's] own exhibit). Since that time, [my daughter] has visited that home and I am entitled to take her there without notice to [Father] for so long as it is not more than a night.
>
> 6. I made arrangements with [Father] to have child exchange at the main local super market because I wanted to make sure that the exchanges occurred on time and there was no way he could get lost since everyone in town knows where that super market is. I also did not trust [Father] and at least I could have witnesses at that location. [Father] never complained about the area of exchange and he made all of his visits as ordered by the court, except for the last day during which he explained that he could not pick up [my daughter] on January 2, 2002 because of his flight schedule. [Father] complains of having to go to Pennsylvania and then leaving before his visitation was over. Yet, we offered to stay in New York under the same terms ordered by the court and he rejected the offer. I was concerned about [my daughter] staying at a drafty motel, knowing that [Father] did not take her asthma seriously and so I was willing to stay in New York. I have tried to be accommodating. At the same time, I wish to be able to make plans for the holidays during alternating years as [Father] has. The court made that possible for us when it issued an amended order.
>
> 7. [Father] originally asked for visitation from December 26, 2001 through January 2, 2002. The court awarded him visitation from December 28, 2001 (because [Father's] flight did not leave until December 27, 2001, see court minutes of December 12, 2001 hearing) through January 2, 2002.

On November 20, 2002, the family court issued its order denying Father's August 30, 2002 motion for sanctions. Father followed with a December 2, 2002 motion for further hearing or reconsideration. The only basis Father asserted for this motion was: "This Court did not allow [Father] an opportunity for hearing, but rather issued its decision without a hearing on November 20, 2002 denying [Father's] motion without any specific

findings." Father also purported to "incorporate[] herein his motion for Sanctions and Amended Motion for Sanctions [sic; presumably, Father's supplemental affidavit] in their entirety."

At the January 8, 2003 hearing on this last of Father's motions, the family court pointed out to Father that it did hold a hearing on his motion for sanctions:

> THE COURT: Well, I -- there was no -- you didn't -- you didn't present testimony or evidence, but I asked -- I looked at the file in this case; right? And you attached all this stuff and this is what you're basing your motion on.
>
> [FATHER]: Correct.
>
> THE COURT: So I'm telling you I did consider that. I took that as matters that I would consider to support your motion. But I wanted [Mother's counsel] to have an opportunity to respond likewise in writing.
>
> [FATHER]: Correct yes, your Honor.
>
> [MOTHER'S COUNSEL]: And I would say that his affidavit is testimony. That's --
>
> THE COURT: I took that as being the submission. I mean, it took me a couple hours to go through all your stuff.
>
> [FATHER]: Correct.
>
> THE COURT: So I certainly considered that, and I looked at the memorandum and the affidavit and I considered that. And I didn't feel there's any basis to reconsider or to alter.

On March 3, 2003, the family court filed its order denying Father's motion for further hearing or reconsideration.

Father filed his notice of this appeal on March 18, 2003, specifying "the final order denying [Father's] motion for Sanctions against [Mother] filed November 20, 2002 and the Court[']s denial of [Father's] motion to reconsider filed March 3, 2003." (References to exhibits omitted.)

II. Discussion.

We quote Father's points of error on appeal in their entirety and verbatim (except for bracketed material supplied), lest we misrepresent his import and intent.

Father's first point of error reads as follows:

> On June 27, 2000, after a trial, at which all parties were present, wherein the Court heard testimony of witnesses and reviewed evidence, the Maui Family Court entered an order which, as on [sic] of its terms defied Winter Break Visitation with the parties minor child. (R. 620-625) [citation is to the family court's June 27, 2000 order].
>
> It has never been disputed that the Appellant notified the Appellee months in advance of "Winter Break" that he intended to travel to her place of residence New York and intended to spend "at least one continuous week" with his daughter. It has likewise never been disputed that Appellee indicated that she would not allow Appellant to see his child in clear defiance of the June 27, 2000 order to the contrary.
>
> Notwithstanding the above, the Maui Family Court rewarded Appellee's defiance of its very order by requiring the Appellant, after traveling to New York, to travel still hundreds of miles further, to Pennsylvania in order to see his daughter and then the Court went further and restricted the days and times during which Appellant would be allowed to see his daughter.
>
> The Appellant cannot point to the basis for the Court's finding in the record because there is no basis. The Findings of Fact (R.759-763) contain no mention of Winter Break, nor do the Conclusions of Law (R759-763) [citations are to the findings of fact and conclusions of law supporting the family court's June 27, 2000 order].
>
> There was no basis for the court to restrict the Appellant's visitation and it was improper for the Court to do so.
>
> When a Court's decision has "clearly exceeded the bounds of reason" or has "disregarded rules or principles of law or practice to the substantial detriment of a party litigant", the family court abuses its discretion. Doe v. Doe, 98 Haw. 144; 44 P.3d 1085 (2002), citing In Re Jane Doe, Born on June 20, 1995, 95 Haw. 183, 189, 20 P.3d 616, 622 (2001)[.]
>
> Here the court's decision clearly exceeded the bounds of reason and as a result the Plaintiff-Appellant was deprived of several precious days with his daughter.

Opening Brief at 4-5.

It would appear that here, Father challenges (1) the

family court's January 2, 2002 order on Mother's December 5, 2001 motion to affirm jurisdiction and clarify visitation; (2) the family court's December 27, 2001 order on Father's December 20, 2001 motion to compel; and, implicitly, (3) the family court's February 8, 2002 amended version of its June 27, 2000 order regarding custody and visitation.

However, we must remind ourselves that Father's notice of this appeal did not specify those earlier orders, but rather, the family court's November 20, 2002 and March 3, 2003 orders denying his August 30, 2002 motion for sanctions and his December 2, 2002 motion for further hearing or reconsideration, respectively. We observe that the earlier orders finally decided the 2001 winter break visitation controversy, but Father did not appeal any of them. Compare Dosland v. Dosland, 5 Haw. App. 87, 89, 678 P.2d 1093, 1095 (1984):

> The June 2, 1982 order denying [appellant's] original motion was final and appealable. Since it was not appealed within the time limit . . . it became the final and binding law of the case prior to the filing of [appellant's] second motion on December 6, 1982, and as such, it bars consideration of a subsequent motion under Rule 60(b), [Hawai'i Family Court Rules (HFCR)], which is based on the same grounds.

(Citations omitted.) We also note that Father did not move to reconsider any of the earlier orders. Compare Cuerva & Associates v. Wong, 1 Haw. App. 194, 199, 616 P.2d 1017, 1021 (1980):

> The [Hawai'i Rules of Civil Procedure (HRCP)] Rule 60(b)(6) motion contained nothing that [appellant] had not already argued before the court at the trial. It was merely [appellant's] method of asking the court to reconsider its directed verdict [upon which the appellant had previously but untimely moved for

> reconsideration]. In our view, it was a misuse of [HRCP] Rule 60(b)(6).

(Enumeration and indented format omitted.) Hence, we will not address Father's first point of error.

For his second point of error on appeal, Father contends as follows:

> On June 27, 2000, after a trial, at which all parties were present, wherein the Court heard testimony of witnesses and reviewed evidence, the Maui Family Court entered an order which, as on [sic] of its terms defied Winter Break Visitation with the parties minor child (R. 620-625).
>
> It should be noted that the order of June 27, 2000 was drafted in its entirety by the attorney for [Mother] (R.613-619) [citation is to the order proposed by Mother, later adopted by the family court as its June 27, 2000 order].
>
> It was only after Appellee denied Appellant his visitation and Appellant took steps to enforce this visitation that the Appellee claimed her own order was unclear through her Motion to Clarify Winter Break Visitation.
>
> The June 27, 2000 order (with regard to Winter Break Visitation) was clear.
>
> > Winter Breaks - The child shall spend all Winter Breaks (anticipated to be two weeks long) that begin in even numbered years with her Father. The child shall depart within 24 hours after the end of school and shall return no later than 24 hours before the beginning of school. In the event Father wishes to spend Winter Break in the same area as Mother's residence during odd numbered years, he shall be entitled to spend as much time as possible with the child and at least one continuous week. The parties will share Christmas Day in that event.
> > (R. 623-624).
>
> There is nothing unclear about this provision. In December 2001, the Appellant "wished to spend Winter Break in the same area as Mother's residence". It was "an odd numbered year" and he, therefore, should have been "entitled to spend "at least one continuous week" with the child.
>
> What is unclear is why the Family Court, on a Motion to Clarify this provision would change the terms in order to give the Appellee permission to circumvent the desired visitation by leaving her residence during future Winter Breaks What [sic] is also unclear is why the Family Court would (if for some reason the Appellee saw it in her heart to stay home and allow the Winter Break visit to even take place) restrict the visits to not allow the child to stay overnight with the Appellant.
>
> The Court took no testimony on the issue - it simply entered the

> orders drafted by Appellee's attorney (R.827-828 and R. 855-861) [citations are to the family court's January 2, 2002 order on Mother's December 5, 2001 motion to affirm jurisdiction and clarify visitation, and the family court's February 8, 2002 amended version of its June 27, 2000 order, respectively].
>
> The Court's failure to take testimony was an abuse of discretion. Hawaii Rule[s] of Evidence [Rule] 611(a) indicates that the role of the judge is to exercise reasonable control over the manner in which proceedings are conducted in order to ensure that witnesses and parties are fairly treated and that the search for truth is not impaired by presentation of prejudicial, confusing, or extraneous material. HRE611(a), Doe v. Doe, 98 Haw. 144 (foot note n12); 44 P.3d 1085 (2002)[.]
>
> Adding further to the mystery, there were no Findings of Fact or Conclusions of Law made by the Family Court.
>
> In this matter the Court exercised no control over the proceedings. The Court allowed the attorney for the Defendant-Appellee Proceed [sic] on a motion that had no basis in fact or law and then signed the order she drafter [sic] granting her motion.
>
> The court[']s order was clearly erroneous.

Opening Brief at 6-7.

Here again, insofar as Father attacks the earlier orders identified above, we will not address his arguments.

By the same token, we will not consider Father's complaint about the alleged lack of testimony at the hearings out of which the earlier orders issued. We have no way of doing so at any rate, because Father has not seen fit to include transcripts of those hearings in the record on appeal. According to Hawai‘i Rules of Appellate Procedure (HRAP) Rule 10(a)(4) (2003), "The record on appeal shall consist of the following: . . . . the transcript of any proceedings prepared pursuant to the provisions of [HRAP] Rule 10(b)[.]" (Format modified.) HRAP Rule 10(b)(1)(A) (2003) places on the appellant the affirmative burden of providing necessary transcripts:

> When an appellant desires to raise any point on appeal that requires consideration of the oral proceedings before the court or agency appealed from, the appellant shall file with the clerk of the court appealed from, within 10 days after filing the notice of appeal, a request or requests to prepare a reporter's transcript of such parts of the proceedings as the appellant deems necessary that are not already on file.

Hence, it is well settled that, "'The burden is upon appellant in an appeal to show error by reference to matters in the record, and he or she has the responsibility of providing an adequate transcript.'" Bettencourt v. Bettencourt, 80 Hawai‘i 225, 230, 909 P.2d 553, 558 (1995) (brackets omitted) (quoting Union Bldg. Materials Corp. v. The Kakaako Corp., 5 Haw. App. 146, 151, 682 P.2d 82, 87 (1984)). See also State v. Hoang, 93 Hawai‘i 333, 334, 3 P.3d 499, 500 (2000); Lepere v. United Pub. Workers, Local 646, AFL-CIO, 77 Hawai‘i 471, 474, 887 P.2d 1029, 1032 (1995); State v. Goers, 61 Haw. 198, 202-3, 600 P.2d 1142, 1144-45 (1979); State v. Hawaiian Dredging Co., 48 Haw. 152, 158, 397 P.2d 593, 598 (1964); Marn v. Reynolds, 44 Haw. 655, 663, 361 P.2d 383, 388 (1961); Ling v. Yokoyama, 91 Hawai‘i 131, 135, 980 P.2d 1005, 1009 (App. 1999); Costa v. Sunn, 5 Haw. App. 419, 430, 697 P.2d 43, 50 (1985); Johnson *ex rel.* Galdeira v. Robert's Hawaii Tour, Inc., 4 Haw. App. 175, 178, 664 P.2d 262, 265 (1983); Hawaiian Trust Co., Ltd. v. Cowan, 4 Haw. App. 166, 168, 663 P.2d 634, 636 (1983). Furthermore, HRAP Rule 11(a) (2003) provides that, "After the filing of the notice of appeal, the appellant . . . shall comply with the provisions of [HRAP] Rule 10(b) and shall take any other action necessary to enable the

clerk of the court to assemble and transmit the record." See also Bettencourt, 80 Hawai'i at 231, 909 P.2d at 559 ("it is counsel's responsibility to review the record once it is docketed and if anything material to counsel's client's case is omitted or misstated, to take steps to have the record corrected" (brackets, citation and internal quotation marks omitted)).

Finally, with respect to the "mystery" of the missing findings of fact and conclusions of law, HFCR Rule 52(a) (2001) requires findings of fact and conclusions of law only if the order they support is appealed, Mark v. Mark, 9 Haw. App. 184, 192, 828 P.2d 1291, 1296 (1992), and Father failed to appeal the earlier orders he attacks.

On his last point of error on appeal, Father argues as follows:

> During the Winter 2001 visitation and within the months after the Court changed the Appellant visitation, the Appellant discovered evidence that the Appellee had made deliberately false statements during proceeding [sic] for and in support of her Motion to Clarify Winter Break Visitation.
>
> With the evidence in hand, the Appellant filed a Motion for Sanctions on August 30, 2002 (R.890-926). In his motion, Appellant asked the Family Court to order as sanctions against the Appellee that she pay attorney's fees the Appellant incurred in trying to enforce his visitation, that she be ordered to pay extra travel expense incurred in having to follow her to Pennsylvania. The Appellant further asked the Court vacate [sic] its orders amending the visitation schedule as all of the evidence brought before the court was false and designed to mislead the court.
>
> The Court refused to hold a hearing on the Plaintiff-Appellee's motion and denied it on November 20, 2002. (R. 1006-1007).
>
> Once again there were no Findings of Fact or Conclusions of Law made by the Family Court.
>
> The Court again abused its discretion in failing to hold a hearing and allow the Plaintiff-Appellant to present his evidence and its denial of the motion was clearly erroneous.

Opening Brief at 7-8.

Contrary to Father's assertion, the family court held a hearing on both his August 30, 2002 motion for sanctions and his December 2, 2002 motion for further hearing or reconsideration. Further, Father makes no argument here about the procedures the family court utilized during and after those hearings, and we discern no abuse of discretion therein in any event. See Doe v. Doe, 98 Hawai'i 144, 154-55, 44 P.3d 1085, 1095-96 (2002).

Here again, Father complains of a lack of findings of fact and conclusions of law. However, "we may waive the family court findings required under HFCR Rule 52(a) where[,]" as here, "the record is clear and such findings are unnecessary to a determination of the issues on appeal." State v. Tomas, 84 Hawai'i 253, 257, 933 P.2d 90, 94 (App. 1997) (citations and internal quotation marks omitted).

III. Conclusion.

Accordingly, we affirm the November 20, 2002 and the March 3, 2003 orders of the family court.

DATED: Honolulu, Hawai'i, November 22, 2004.

On the briefs:

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Chief Judge

Associate Judge

Associate Judge