

**NOT FOR PUBLICATION**

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NO. 25749

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

BETTY CABASAG MACASPAC, Plaintiff-Appellee, v.  
GABRIEL ASUELO MACASPAC, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(FC-D No. 02-1-1469)

SUMMARY DISPOSITION ORDER

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

Gabriel Asuelo Macaspac (Defendant) appeals the March 31, 2003 decree of the family court of the first circuit, the Honorable William K. Wallace, III, judge presiding, that granted Betty Cabasag Macaspac's (Plaintiff) complaint for divorce.

After a thorough 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 conclude the family court abused its discretion, Teller v. Teller, 99 Hawai'i 101, 107, 53 P.3d 240, 246 (2002), in decreeing the following:

- 12. Other:** Defendant shall pay Plaintiff \$1,500.00 as his share of wedding expenses, \$400.00 for his U.S. Immigration Application Processing fee and Employment Card, \$700.00 for his air fare and travel expenses, and \$2,500.00 for his room and board paid by Plaintiff for his care while he lived with Plaintiff's brother in the Philippines, for a total of \$5,100.00. Defendant

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has the option to pay Plaintiff the entire amount of \$5,100.00 in full in the next thirty (30) days or pay to Plaintiff \$510.00 per month over the next ten (10) months.

. . . .

Plaintiff resides in the rental property and has control and benefit over the rental property and furniture therein. Defendant may become liable for future expenses if the parties default on the Rental Agreement.

(Bolding in the original.) In doing so, the family court “clearly exceeded the bounds of reason [and] disregarded rules or principles of law or practice to the substantial detriment of [Plaintiff].” Raupp v. Raupp, 3 Haw. App. 602, 609, 658 P.2d 329, 335 (1983) (citations omitted). Our review of the record and the transcript of the divorce trial clearly reveals that the family court could have made these awards -- and in fact made these awards -- solely in response to Plaintiff’s claim that Defendant defrauded her of the foregoing expenses by his refusal of her conjugal rights. However, “it is well-settled that one spouse’s personal conduct or misconduct towards the other spouse is irrelevant [to the family court’s division and distribution of the marital estate].” Markham v. Markham, 80 Hawai’i 274, 280, 909 P.2d 602, 608 (App. 1996) (citations omitted). See also Hatayama v. Hatayama, 9 Haw. App. 1, 11-12, 818 P.2d 277, 282 (1991); Wakayama v. Wakayama, 4 Haw. App. 652, 655, 673 P.2d 1044, 1046 (1983); Horst v. Horst, 1 Haw. App. 617, 624, 623 P.2d 1265, 1270-71 (1981); Richards v. Richards, 44 Haw. 491, 509, 355 P.2d 188, 198-99 (1960).

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Therefore,

IT IS HEREBY ORDERED that the family court's March 31, 2003 divorce decree is modified by striking the above-quoted provisions and, as modified, is affirmed.

DATED: Honolulu, Hawai'i, October 14, 2004.

On the briefs:

Steven J. Kim  
(Lynch Ichida Thompson  
Kim & Hirota),  
for defendant-appellant.

Chief Judge

Associate Judge

Theodore Y.H. Chinn  
(Law Offices of Theodore Chinn)  
and Victor Agmata, Jr.,  
for plaintiff-appellee.

Associate Judge