

FOR PUBLICATION

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

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DAVID MASATO YASUMURA, Appellant-Appellant, v.
CHILD SUPPORT ENFORCEMENT AGENCY, STATE OF HAWAI'I,
and LORI SHIZUKO YASUMURA, Appellees-Appellees

NO. 25395

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-AP NO. 01-1-0015)

MAY 9, 2005

BURNS, C.J., FOLEY AND FUJISE, JJ.

ORDER GRANTING MOTION FOR RECONSIDERATION,
MISLABELED AS A MOTION FOR CLARIFICATION
(By: Burns, C.J., Foley and Fujise, JJ.)

On May 2, 2005, Appellees-Appellees Child Support
Enforcement Agency, State of Hawai'i (CSEA) filed its "Motion for
Clarification" asking

this Court to clarify its April 20, 2005 Order to remand the
matter to the OCSH; that the Order reflect that it is the CSEA
that issues the proposed Administrative Findings and Order; and
that Footnote No. 5 state that HRS § 576-14(f) and HRS § 580-47(f)
impose the burden of proving continuing education on the custodial
parent or Daughter, not the CSEA.

In an accompanying "Declaration of Counsel", Deputy
Attorney General Lawrence A. Sousie "declare[s] pursuant to
Haw.R.App.Prco. 40(b), that the above Motion for Clarification is
presented in good faith and not for purposes of delay." Thus,

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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this declaration indicates that the basis for CSEA's motion is HRAP Rule 40 which states as follows:

RULE 40. MOTION FOR RECONSIDERATION

(a) Time. A motion for reconsideration may be filed by a party only within 10 days after the filing of the opinion, dispositional order, or ruling unless by special leave additional time is granted during such period by a judge or justice of the appellate court involved.

(b) Contents. The motion shall state with particularity the points of law or fact that the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. The motion shall be supported by a declaration of counsel to the effect that it is presented in good faith and not for purposes of delay.

(c) Response; Reply Argument. No response to a motion for reconsideration or reply to a response will be received unless requested by the appellate court. There shall be no oral argument on a motion for reconsideration unless ordered by the appellate court.

(d) Disposition of Motion. The appellate court within 10 days of the filing of a motion for reconsideration, shall either grant or deny such motion. The failure of the appellate court to act within the 10 days shall constitute a rejection. If a motion for reconsideration is granted, the appellate court may, with or without new argument, modify the decision or take such action as may be appropriate.

(e) Only One Motion Permitted. Only one motion for reconsideration may be filed by any party, unless the court modifies the substance of its opinion, dispositional order, or ruling.

We are unaware of any rule within the Hawaii Rules of Appellate Procedure (2005) (HRAP) that authorizes a motion for clarification. In light of the declaration quoted above, however, we conclude that CSEA's motion is an HRAP Rule 40 motion for reconsideration. We grant the motion for reconsideration, rescind the opinion filed on April 20, 2005, and will file a new opinion.

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1.

This court's April 20, 2005 opinion states that "[w]e remand this matter for recalculation of Father's child support obligation under the 1998 Amended Child Support Guidelines and for further proceedings consistent with this opinion." The CSEA "suggests that the matter be remanded to the OCSH. The OCSH will then issue and file an Amended Administrative Findings and Order, and the thirty (30) day appeal period pursuant to HRS § 91-14 will be in full force and effect." We will appropriately amend our opinion.

2.

This court's April 20, 2005 opinion states that "[o]n April 24, 2001, the OCSH issued its Administrative Findings and Order that proposed a reduction of Father's child support obligation to \$60.00 per month, commencing May 1, 2001. Mother objected to the proposed reduction and requested a hearing[.]" The CSEA states:

2. The ICA Order incorrectly states that the OCSH issued its proposed Administrative Findings and Order on April 24, 2001. In fact, the proposed Administrative Findings and Order is always issued by the CSEA. If either party objects to the proposed Administrative Findings and Order and requests a hearing, the hearing is conducted by the OCSH, which then issues the actual, filed Administrative Findings and Order. It is the actual, filed Administrative Findings and Order that can be appealed to the Family Court.

We will appropriately amend our opinion.

3.

In footnote no. 5 of this court's April 20, 2005 opinion, it is stated that "[i]f it had been established that Daughter had attained the age of eighteen and had graduated from high school, HTS § 576E-14(f) and HRS § 580-47(a) imposes the burden on the CSEA to prove that Daughter was continuing her education post-high school on a full time basis." The CSEA states:

This is incorrect.

Both HRS § 576E-14(f) and HRS § 580-47(a) state that the CSEA shall send notice "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 child support enforcement agency, 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."

Clearly, both statutes impose the burden of proving Daughter's continuing education on the custodial parent or the Daughter, not the CSEA.

The cited statutes impose a burden on the CSEA to seek proof from the custodial parent or adult child. Both statutes impose on the custodial parent or adult child the burden of proving to the CSEA the adult child's continuing education. When the case is being heard by the Office of Child Support Hearings, it would appear that the CSEA has the burden of proving that it properly sought the proof and the response it did or did not receive.

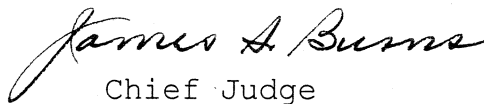
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Moreover, the CSEA fails to address the issue presented by this case. HRS § 583A-102 (Supp. 2004) defines "Child" as "an individual who has not attained eighteen years of age." When the parent who had been the non-custodial parent asks the CSEA for a termination of his or her obligation to pay child support to the CSEA and the OSCH hears the case, who has the burden of proving the adult child's entitlement to child support?

Footnote no. 4 will be deleted, and footnote 5 will be renumbered to footnote no. 4 and appropriately amended.

On the motion:

Lawrence A. Sousie,
Deputy Attorney General,
State of Hawaii,
for Appellee-Appellee.


Chief Judge


Associate Judge


Associate Judge