NOT FOR PUBLICATION

NO. 25519

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

WILLIAM RAYMOND FRANCIS, Plaintiff-Appellant, v.
MARIA LETICIA FRANCIS, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 97-2387)

MEMORANDUM OPINION
(By: Burns, C.J., Watanabe and Fujise, JJ.)

Plaintiff-Appellant William Raymond Francis (William) appeals from the November 6, 2002 Decree Granting Absolute Divorce and Awarding Child Custody (Divorce Decree) entered in the Family Court of the First Circuit.

> Hawaii divorce cases involve a maximum of four discrete parts: (1) dissolution of the marriage; (2) child custody, visitation, and support; (3) spousal support; and (4) division and distribution of property and debts. Black v. Black, 6 Haw.App. [493], 728 P.2d 1303 (1986). In Cleveland v. Cleveland, 57 Haw. 519, 559 P.2d 744 (1977), the Hawaii Supreme Court held that an order which finally decides parts (1) and (4) is final and appealable even if part (2) remains undecided. Although we recommend that, except in exceptionally compelling circumstances, all parts be decided simultaneously and that part (1) not be finally decided prior to a decision on all the other parts, we conclude that an order which finally decides part (1) is final and appealable when decided even if parts (2), (3), and (4) remain undecided; that parts (2), (3), and (4) are each separately final and appealable as and when they are decided, but only if part (1) has previously or simultaneously been decided; and that if parts (2), (3), and/or (4) have been decided before part (1) has been finally decided, they become final and appealable when part (1) is finally decided.

Eaton v. Eaton, 7 Haw. App. 111, 118-19, 748 P.2d 801, 805 (1987) (footnote omitted).

William challenges the following parts of the Divorce Decree: "(2) child custody, visitation, and support" and "(4)

division and distribution of property and debts." We conclude that this court does not have appellate jurisdiction to decide William's challenge of either part of the Divorce Decree because, when William filed his notice of appeal, neither part of the Divorce Decree had been finally decided and William had not obtained permission to file an interlocutory appeal.

RELEVANT BACKGROUND STATED CHRONOLOGICALLY

August 1, 1986	William and Defendant-Appellee Maria Leticia Francis (Maria) were married.
January 27, 1995	Maria gave birth to a daughter (Daughter One). William is the biological father of Daughter One.
July 11, 1997	William filed a complaint for divorce.
July 30, 1998	Maria gave birth to a daughter (Daughter Two). William is not the biological father Daughter Two.
August 12, 1999	Judge Allene R. Suemori entered an "Order Granting Ex Parte Motion to Immediately Suspend [Maria]'s Visitation (Other Than Telephone), Prohibit Contact by Russell S. Bird [Russell], and Shorten Time for Hearing on [William]'s Motion for Pre-Decree Relief."
May 12, 2000	Judge Lillian Ramirez-Uy entered an Order Awarding Attorney's Fees ordering Maria to pay William's attorney's fees in the amount of $1,500 "with respect to the fees and expenses incurred for the *Motion to Impose Rule 37 Sanctions Against [Maria]*."[1/] (Emphasis in original.)
June 1, 2000	Judge Ramirez-Uy entered an order granting William's May 19, 2000 motion

1/ A judgment was entered on December 5, 2001.

to enforce a settlement agreement reached between the parties on May 16, 2000, at the offices of Dispute Prevention & Resolution, Inc. Said agreement related to all issues regarding custody and visitation and reserved for later trial all monetary or economic issues. Said settlement agreement was thereafter committed to a written stipulation for signature by the parties and their counsel. Despite the agreement, [Maria] now refuses to execute the stipulation. Accordingly, [William] requests the Court to enforce the settlement agreement reached and enter the stipulation and order.

This June 1, 2000 order stated, in relevant part, as follows:

3. Award of Legal and Physical Custody. [William] is awarded the legal and physical custody of [Daughter One] subject to [Maria's] rights of visitation as described hereafter. The schedule for visitation with [Daughter One] to which the parties have mutually agreed shall continue until modified by the Custody Guardian Ad Litem.

4. Appointment of Custody Guardian Ad Litem.

A. The parties have agreed to the selection of THOMAS S. MERRILL, Ph.D., as Custody Guardian Ad Litem ("CGAL") for [Daughter One]; . . . .

. . . .

C. The CGAL shall be given authority to order and/or conduct psychological evaluations and drug and/or alcohol assessments. The CGAL shall be authorized to direct one or more of the parties to engage in independent therapy. . . .

D. Within a reasonable time, as determined by the CGAL, the CGAL shall prepare a treatment plan for [Daughter One]. . . .

. . . .

6. Joinder of Additional Party. [Russell], the father of [Maria's] child, [Daughter Two], born July 30, 1998, during the present marriage between [William] and [Maria], shall be joined as a party to this action by separate stipulation (between the parents and [Russell]) and order. . . .

7. Notice for Relocation. [William] shall provide [Maria] with reasonable notice of any intention on his part to relocate with [Daughter One] off the island of Oahu, Hawai'i.

8. Effect of Approval. Approval by the Court of this stipulated order settles all the custody and visitation issues between the parents and shall be incorporated into a Decree Granting Absolute Divorce and Awarding Child Custody. The divorce itself and the issues of support, property division, attorney's fees and all other economic issues of this divorce action shall be reserved for further hearing and order of the Court.

March 12, 2001 The CGAL, Dr. Merrill, sent an e-mail to counsel for Maria stating, in relevant part, as follows:

> Subsequent to my last e-mail to you, I spoke with both of you and also with [William]. The following will recap my thoughts after my conversation with [William].
>
> I think we all agree that [William] will be leaving in the very near future. Exactly when that might be is unknown though it could be as early as the end of this week. [William] stated that his best guess was in the June/July period.
>
> As I indicated in my last e-mail to you, I have no data that would support continuation of the visitation schedule currently in place, specifically the necessity for supervised visitation at the PACT center. Thus, I would like to see [William] and Maria move towards a more normalized form of visitation with the time shared between them to ultimately be equal. Given [William's] imminent departure, I would like to see them begin to move towards that schedule now.
>
> I shared these thoughts with [William] on Friday. While I knew that he had rather strong opinions with regards to the visitation set-up, I must admit that I was not prepared for his reaction. He is adamantly opposed to any change in the visitation protocol that would allow for unsupervised visitation or visitation where [Russell] is present. He states that he has documented proof this would be harmful to [Daughter One]. When I indicated that I had not seen this "proof" he stated that it was due to the fact that his attorney had failed to provide it to me. We spoke at length, each presenting the other with our perceptions and finished with [William] imploring me not to change the existing set-up with significant concerns for dire consequences if I did. He stated that he was going to leave the office as soon as he could in order to compile and send to me the evidence that he wished me to consider before making any recommendations for change.
>
> I do not feel that it was a particularly fruitful or constructive conversation. While I clearly heard [William's] position, it leaves little room for implementation of any sort of change in the current supervised-visitation paradigm. Further, given my experience of the difficulty in getting the Guardian Ad Litem function implemented, I foresee significant difficulty in implementing any sort of change before [William] leaves for his next assignment.
>
> In view of the above, it is my recommendation that:
> 1. A thorough custody evaluation be performed to include psychological assessment of Maria, [William], Russell and [Daughter One];
> 2. The data generated by the evaluation be used to determine the custody and visitation arrangement that will be in the best interest [of] [Daughter One];
> 3. The evaluation should be started immediately, given [William's] imminent departure;
> 4. In the absence of any credible evidence to the contrary, should [William] be required to leave for his new assignment prior

to completion of the evaluation and subsequent decision on custody and visitation, that [Daughter One] remain in Hawaii until the evaluation is complete.

March 14, 2001 — Maria filed an ex-parte motion for temporary sole legal and physical custody of Daughter One. This motion was supported by Maria's affidavit stating, in relevant part, as follows:

> 3. Pursuant to a mediated "agreement," to which I later objected, [William] has custody of [Daughter One]. My visits with [Daughter One] have been at the PACT visitation center for one and one-half years because of alleged physical abuse of [Daughter One] by the father of my baby, [Daughter Two], born July 30, 1998, [Russell] . . . .
>
> . . . .
>
> 6. The first I heard about [William] leaving the island was Tuesday, March 6, 2001, at approximately 5:00 p.m. when [William] told me the following on the telephone: he wished that he had told me in person but that he received a letter from the military that he was being moved out. He did not say when. I know its [sic] an immediate move because of my knowledge of how the military works.
>
> 7. On March 9, 2001, at a PACT visitation with [Daughter One], she informed me that she and her dad were moving to Washington, D.C. and that . . . the movers were coming the next day. . . .
>
> 8. On March 12, 2001, I spoke with the director of [Daughter One's] preschool who informed me that [William] had told her that day that [Daughter One] would be withdrawn within the next two weeks, or by the end of the month.
>
> . . . .
>
> 10. This has been my biggest fear since our divorce started in 1997; that [William] would make up some alleged abuse of [Daughter One], gain custody that way, and then through the military relocate and make it difficult, if not impossible, for me to ever have any quality relationship with [Daughter One].

March 14, 2001 — Judge Bode A. Uale entered an order granting Maria's ex parte motion for temporary sole legal and physical custody of Daughter One; restraining both parties from removing Daughter One from the City and County of Honolulu; and restraining both parties from removing marital property from Honolulu.

April 4, 2001 — After a hearing, Judge Uale ordered Daughter One to be returned to the care and custody of William, specified a schedule of visitation for Maria, and ordered CGAL Dr. Merrill to

recommend a treatment plan that "shall address the well-being of [Daughter One] and what is in her best interests with regard to visitation with [Maria]."

July 5, 2001 — Judge Suemori entered an order allowing Edward R. Lebb and Durell Douthit to withdraw as attorneys for William "on the grounds that [William] . . . has failed to comply with the representation agreements between him and the aforesaid law firms with respect to the payment of fees and costs."

August 13, 2001 — Judge Suemori approved and ordered a Stipulation Joining [Russell] as a Party. This stipulation states that Russell is the father of Daughter Two.

October 8, 2001 — Maria gave birth to a son (Son). William is not the biological father of Son.

November 21, 2001 — Judge Darryl Y.C. Choy entered a

> Judgment . . . against [William] and in favor of [Russell] as follows: (a) In the principal amount of one hundred ninety and no/100 dollars ($190.00), plus (b) pre-judgment interest at the statutory rate of ten percent (10%) per annum, for a per diem amount of zero and 05/100 dollars ($0.05), from and including August 1, 2001 until but excluding the date of the entry of this Judgment, plus (c) post-judgment interest at the statutory rate of ten percent (10%) per annum, for a per diem amount of zero and 05/100 dollars ($0.05), from and including the date of the entry of this Judgment until full satisfaction of the amounts owed pursuant to this Judgment.

November 28, 2001 — By affidavit, William advised the court, in relevant part, as follows:

> 6. Since March 2001 I have continued to do everything that I can to remain in Hawaii and, with the support of my command and the Department of the Army, I have been successful.
>
> . . . .
>
> 11. Further, and on a more positive note, I may be able to obtain a third, consecutive, three year tour of duty here in Hawaii. This would allow our daughter [Daughter One] to continue to have both parents in her life.

November 29, 2001 — William filed an asset and debt statement in which he reported that Maria owned Panama Land acquired in 1995 at a cost of $17,000.

An accompanying footnote stated:

> [William and Maria] purchased property in [a] prestigious neighborhood for [Daughter One] who was born while [William] was stationed in Panama. [William's] salary and credit cards were used to purchase the property & make payments. After [Maria] abandoned [the] marriage [William] discovered [that Maria had] put the property in her name only. On the record, in court [Maria] claimed the property had been foreclosed but [Maria] never produced records on [the] property or foreclosure paperwork in discovery. [William] won [a] Rule 37 ruling in May 00 but sanctions and fees were deferred. [Maria] still has not complied. [William] had PI investigate [Maria's] claims that property was foreclosed. Property was not foreclosed and had an estimated value of $23,000. [William] believes [Maria] has sold the property which she had put in her name only unbeknownst to him.

November 29, 2001 Judge Suemori entered Pretrial Order No. 6 stating, in relevant part, as follows:

> 1. The court grants [Maria's] oral motion for a finding of material change in circumstances since June, 2000 regarding the custody of [Daughter One] and finds that it is in the best interest of [Daughter One] to have a complete custody evaluation done by Dr. Merrill, including psychological evaluations done by Dr. Kappenberg.
>
> . . . .
>
> 3. [William] is ordered to schedule and have completed his psychological evaluation with Dick Kappenberg Ph.D. no later than Dec[ember] 10, 2001. In the event he does not do so, the court may sanction him monetarily and by restricting his evidence presented.
>
> 4. [William's] oral motion to object to Dr. Kappenberg conducting the psychological evaluations is denied.

December 27, 2001 Judge Ramirez-Uy entered an order allowing Marianita Lopez to withdraw as counsel for William.

December 31, 2001 William filed a Motion to Stay Proceedings. He supported this motion with a nine-page, single-spaced, declaration stating, in relevant part, as follows:

> 2. I am an officer in the Unites States Army on active duty, stationed at the Headquarters, United States Pacific Command here in Hawaii. A graduate of the United States Military Academy at West Point, I am currently a Lieutenant Colonel assigned to the Strategic Planning and Policy Directorate, U.S. Pacific Command. Among my duties and responsibilities I serve as a member of the U.S. Pacific Command's Crisis Action Team.

. . . .

7. I am not an attorney nor do I have the experience and know-how to properly prepare for, or represent myself in court. Against my objections, I am currently without the representation by [a] competent attorney. Combined with the increased military duties and responsibilities since 11 September 2001, I am not only unable to attend, I am unable to prepare for these proceedings at this time.

. . . .

19. Opposing counsel and Dr. Merrill have both gone out of their way to misrepresent the facts to the court and wrongfully make it appear that I am purposefully delaying and being obstinate when I am actually deeply in debt and very busy serving my country.

. . . .

24. Further, on 21 November 2001 this court granted my attorney's motion to withdraw against my objections because I was unable to continue to pay her at the accelerated rate of opposing counsel's litigation since 11 September 2001 . . . .

. . . .

38. Therefore, because of my military duties and responsibilities I will be unable to prepare for these proceedings and I will be unable to attend . . . because this court allowed my attorney to withdraw only six weeks from the trial during the holiday season when few attorneys will even be in town, because we were not afforded an opportunity to have a settlement conference, because this court has opened up custody as an issue in this case just five weeks prior to the trial, and because the issue of Dr. Thomas Merrill's misconduct and suitability to serve as a CGAL is central to this case, I request a stay or a continuance of the proceedings in my divorce case until I have an opportunity to obtain counsel and allow my new counsel time to properly prepare.

39. So that I am clear, I strongly desire to exercise my rights to be represented by counsel.

This motion was scheduled for hearing on January 8, 2002, the date of the trial.

January 8, 2002 William, Maria, counsel for Maria, and CGAL Dr. Merrill appeared. A copy of a transcript of proceedings quotes Judge James R. Aiona as saying, in relevant part, as follows:

> This was scheduled for a one-day trial, and we were fortunate enough to have the opportunity to discuss settlement, and I believe we do have an agreement, and that's exactly what we're going to do at this point in time. We are going to put on the record what we've agreed to regarding this matter.
>
> . . .

And so what I'm asking now, [William] and [Maria], at this point in time listen to what's being said because when [counsel for Maria's] done, I'm going to ask you if you've heard everything whether you understood everything she said and most importantly whether or not you agree with what was said.

And if you don't, that's your time to speak up because I don't want you later saying, well, gee, you know, that's not what I agreed to and I didn't understand what she was saying. It's understood by my statement now that both of you speak English, both of you understand English, and both of you are competent and not under the influence of any medication, alcohol, or drugs at this point in time where you can't fully comprehend what's going on. And your silence is admissions to that at this point in time. Okay.

. . . .

THE COURT: Okay. Now we're gonna go into the divorce. First of all, [William], did you hear everything that [counsel for Maria] said?

[WILLIAM]: Yes, sir, I did.

THE COURT: Anything you didn't understand?

[WILLIAM]: Um, no, sir. I believe I asked the questions specifically right at the time when I didn't.

THE COURT: You agree with what was said?

[WILLIAM]: Yes, sir.

. . . .

THE COURT: Okay. I want to thank you guys.

[WILLIAM]: Thank you, Your Honor.

THE COURT: Have a good day.

[WILLIAM]: I appreciate this.

January 11, 2002 — After a hearing on November 21, 2001, Judge Ramirez-Uy entered: (1) an "Order Granting Defendant Russell Bird's Motion for Summary Judgment, Filed on October 25, 2001"; and (2) a judgment in favor of Russell on all "claims" asserted by William against Russell in this case.[2/]

[2/] A part of the January 11, 2002 "Judgment Against Plaintiff in Favor of Defendant Russell Steven Bird on All Claims" (the Judgment), and the corresponding part of the January 11, 2002 "Order Granting Defendant Russell Bird's Motion for Summary Judgment, Filed on October 25, 2001" (the Summary

April 25, 2002 — Maria filed a motion to enforce the settlement agreement stated on the record at the January 8, 2002 hearing.

May 20, 2002 — Counsel for William filed a memorandum in opposition to Maria's April 25, 2002 motion. This memorandum stated, in relevant part, as follows:

> [William] respectfully opposes [Maria's] Motion to Enforce Settlement Agreement and request[s] that trial be had on the issues in this matter. Cases should be decided on the merits. If one of the parties want[s] the case to be decided on its [sic] merits, then that party should have his or her day in court, and not forced into some unfair agreement because the opposition wants to take advantage of their knowledge of the legal system, or the law, or just the situation at the time of the matter.
>
> It is undisputed that on January 8, 2002, [William] was not represented by counsel and was pro se. [William] was forced into settlement talks with [Maria's] counsel, Sarah Harvey by the Presiding Judge on that date. Clearly, [William] was at a serious disadvantage, in not knowing the law, nor his rights with regard to what he was entitled, and what he should be awarded, in his case. The alleged agreement is noticeably one-sided in favor of [Maria], who was represented by counsel. [William] was put in the unenviable position of being forced to go to trial without an attorney, or consent to one-sided terms proposed by [Maria's] attorney, ... This put [William] in a no win situation, whereby if this court grants [Maria's] motion, [it] would be totally inequitable and unjust.

Judgment Order) appear to be erroneously worded. The Judgment states, in relevant part, as follows:

> Judgment is hereby entered against Plaintiff William Raymond Francis [William] and in favor of Defendant Russell Steven Bird [Russell] on all claims [William] asserted against . . . Russell . . . in this case, including claims that (a) Russell . . ., and not William . . ., was the father of [Daughter Two] and [Son]; and (b) a restraining order against Russell . . . was necessary to protect [Daughter One] in 1999 because he allegedly drank alcohol excessively, drove while under the influence of alcohol, and/or abused, hit, bruised, grabbed, punched, struck and/or sexually touched [Daughter One].

With William having asserted that Russell, and not William, was the father of Daughter Two and Son, a judgment entered against William and in favor of Russell reasonably will be interpreted to mean that William is wrong, the opposite is true and, therefore, William, and not Russell, is the father of Daughter Two and Son. In the Summary Judgment Order, however, the court "found, by clear and convincing evidence, that [William] was [sic] not the legal father of either child, thereby rebutting the presumption of [William's] paternity and disestablishing [William] as the legal father of those children[.]"

> [William] has continued to maintain that he wishes to have a trial on the merits. But for whatever reason, [Maria] and her counsel do not want to have a trial, or to have the case decided on its merits. This corroborates [William's] contention that the alleged agreement is biased in favor of [Maria]
>
> Moreover, when one looks at the transcripts of the hearing of January 8, 2002, it is obvious that numerous issues important to [William] were either not addressed, while others were decidedly [sic] so far in favor of [Maria], that it appears that [William] would have "given the store away". This only occurred because [William] was not represented by an attorney.
>
> [William] respectfully requests that this court deny [Maria's] motion and to allow this matter to proceed to trial.
>
> (Emphasis in original.)

May 29, 2002 — After a hearing, Judge Suemori entered the following order:

> 1. Based on representations that [William] is in Tripler Hospital, this matter shall be continued to June 12, 2002 at 8:30 a[.]m[.] before the Honorable Allene Suemori.
>
> 2. Because of [William's] health, [Maria] shall be immediately granted sole temporary physical and legal custody of [Daughter One].

June 12, 2002 — After a hearing, Judge Suemori entered an order granting Maria's April 25, 2002 motion.

July 10, 2002 — Judge Suemori entered an Order Awarding Attorney's Fees that ordered William to pay to Maria, as and for her attorney fees related to Maria's April 25, 2002 motion, $2,808.00 "from [William's] funds in the client trust account of Richard Lee, Esq."

November 6, 2002 — Judge Suemori entered the Divorce Decree. It states, in relevant part, as follows:

> IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:
>
> . . . .
>
> 5. ALIMONY. Neither party is receive [sic] spousal support, and no order for such support shall enter.
>
> . . . .
>
> 7. CUSTODY AND VISITATION.
>
> (A) Legal Custody: The parties are awarded joint legal custody of [Daughter One]. As part of their joint legal

custody, [Maria] shall be entitled to complete access to all of [Daughter One's] medical records. In that regard, the Court suggests that the party wishing records provide the medical doctors stamped self addressed envelopes for the doctors' convenience to be mailed to that parent from time to time.

(B) Physical Custody: The parties recognize that working together, discussing the needs of their child, and coming to an agreement is in their child's best interest. They are also cognizant that their child is in need of counseling. The parties shall share their joint physical custody subject to the following provisions which are deemed at this time to be in the best of [sic] interests of their child.

(1) Timesharing: The following schedule had been agreeupon [sic] by the parties: In week one, [Daughter One] shall be with [William] from Friday after school to drop off Monday morning at school. In week two, [Daughter One] shall be with [William] from Friday after school to drop off Tuesday morning at school. [Daughter One] shall be with [Maria] after school on Monday to drop off at school on Friday in week one. In week two, [Daughter One] shall be with [Maria] from Tuesday after school to drop off at school on Friday morning.

(2) Holidays:

(a) The parties shall share equally [Daughter One's] birthday, Christmas, New Years, Easter, Thanksgiving, unless the parties mutually agree.

(b) Father's Day, Mother's Day, and the Parties[']' Birthdays shall be spent as follows unless otherwise mutually agreed: Father's Day shall be spent with Father and Mother's Day shall be spent with Mother. Father's birthday shall be spent with Father and Mother's birthday shall be spent with Mother.

(3) Out of State Travel with [Daughter One]. Both parties agree that out-of[-]state travel with [Daughter One] will expand her experiences and is in her best interests. With that in mind, either parent shall be allowed to travel out-of[-] state with [Daughter One] for periods not to exceed an agreed upon amount of time, upon written agreement of the party, which consent shall not be unreasonably withheld by the non[-]traveling party. The traveling party shall give the other parent notice of their intent to travel and shall provide a written proposed itinerary with addresses and contact numbers at all stops so that the other parent is not needlessly worried. Both parties shall make mutually agreed upon arrangements for the child to communicate with the non-traveling parent. The non-traveling party, however, shall use discretion and shall not contact the child at every stop.

(4) Right of First Refusal for Child Care: If either party requires overnight child care assistance because of his or her unavailability during time that he or she is responsible for [Daughter One], that party shall first offer the other parent the chance to care for [Daughter One]. Such notice shall be given at least twenty-four (24) hours in advance of the

responsible parent's absence unless that need for child care arises 24 hours before the assistance is needed.

(5) Relocation with [Daughter One]: Both parties recognize [Daughter One's] need for each parent. That being the case, neither party shall relocate with [Daughter One] off of Oahu without the written notarized agreement of the other parent or the further Order of the Court.

(6) Legal Decisions: If there is a legal decision concerning [Daughter One] upon which the parties do not agree, they shall consult with a mutually agree-upon [sic] third party professional in the field of disagreement to try to resolve the disagreement prior to taking the matter to court for resolution. The third party professional shall consider the recommendations from the child's therapist or counselor when discussing the matter with the parents.

(7) Therapy and Evaluation. [Daughter One] shall remain in therapy with Anita Trubitt until clinically discharged and who shall report to both parents.

(8) Activities. [Daughter One] shall be involved in Brownies and soccer. Any other activities will be the choice of the child and each parent and shall be conducted during that parent's respective time with [Daughter One]; that parent shall also be logistically and financially responsible for signing [Daughter One] up for the chosen activity and taking her to and from that activity. The parties may mutually agree to modify this schedule.

7. CHILD SUPPORT. The issue of child support is reserved. When child support is calculated, it shall be pursuant to the figures on the parties' most current filed income and expense statement. For the limited purposes of child support, CSEA [(Child Support Enforcement Agency)] is made a party hereto.

8. PRIVATE SCHOOL EXPENSES. [William] shall be responsible for private school expenses for [Daughter One] and both parties shall continue to work together to agree on [Daughter One's] private school.

9. POST HIGH SCHOOL EDUCATIONAL EXPENSES. The issue of post high school educational expenses is reserved. The Court retains jurisdiction over this issue.

. . . .

11. [WILLIAM'S] MILITARY RETIREMENT.

(A) Effective upon [William's] retirement from the United States Armed Forces, and continuing for so long as both parties shall live, [Maria] shall receive a portion of each payment of military disposable retired or retainer pay to which [William] is entitled.

(B) [Maria's] portion of each payment of disposable retired or retainer pay shall be "X" in the following formula, in which "15.5" is the total number of years of the marriage which

were also years credited to [William] for retirement purposes, "Y" is the total number of years credited to [William] for retirement purposes, and in which "DRRP" equals the payment of disposable retired or retainer pay to be divided.

$$X = [.5][15.5/Y][DRRP]$$

(C) Disposable retired or retainer pay for these purposes shall be the gross retired or retainer pay to which [William] is entitled less only amounts which:

(1) are owed by [William] to the United States for previous overpayment or retired pay and for recoupments required by law resulting from entitlement to retired pay;

(2) are deducted from the retired pay of [William] as a result of forfeitures of retired pay ordered by a court martial or as a result of a waiver of retired pay required by law in order to receive compensation under Title 5 or 38 U.S.C. [(United States Code)];

(3) in case where [William] is entitled to retired pay under Chapter 61 of Title 10 U.S.C. an amount which is equal to the amount of retired pay of [William] under that Chapter computed using the percentage of [William's] disability on the date when [William] was retired (or on the date on which his name was placed on the temporary disability retired list); or

(4) are deduced [sic] because of an election under 10 U.S.C. Sections 1431 et. Seq. To provide an annuity to [Maria] or any former spouse to whom payment of a portion of [William's] retired pay is being made pursuant to a court order.

(D) If other deductions from gross monthly retired or retainer pay are made, [Maria's] portion of each payment of disposable retired or retainer pay shall be increased so that [Maria] receives what she would have received had those other deductions not occurred.

(E) The United States Government shall directly pay to [Maria] her portion of [William's] disposable retired or retainer pay because the parties have been married for ten (10) years while [William] served in the Armed Forces.

(1) The parties were married on August 1, 1986.

(2) [William] served in the United States Armed Forces since May 30, 1982[.]

(F) In the event that the United States government will not directly pay [Maria] all that she is entitled to under this Section, [William] shall immediately make payment to [Maria] of her portion of his disposable retired or retainer pay as soon as he received [sic] it.

(G) The Family Court continues jurisdiction over [William's] disposable retired or retainer pay pursuant to the Uniform Services Former Spouses Protection Act of 1982 as amended.

(1) Pursuant to Hawaii Revised Statutes (HRS) Sections 580-1, 580-47, the Family Court has jurisdiction to divide property of a divorcing couple and [William's] disposable retired or retainer pay is subject to equitable division upon divorce.

(2) This Court notes that [William] has been afforded his rights under the Soldiers and Sailors' Civil Relief Act of 1940 and has consented to jurisdiction.

(H) If at any time after he retires, [William] voluntarily causes a reduction in his gross retired or retainer pay, and thereby deprives [Maria] of a part or all of her share of retirement benefits, the Family Court shall have continuing jurisdiction to enforce these orders.

(I) [William] shall not merge his military retired or retainer pay with another retirement program that prevents, decreases, or limits [Maria's] monthly disposable retired or retainer pay. If [William] does prevent, decrease or limits [Maria's] monthly disposable retired or retainer pay he shall make the payments to assure that [Maria] receives her proportionate share and that payment that has been awarded in this Decree.

(J) The Parties acknowledge that [William's] entitlement to the Department of The Army-related Retired Pay may be delayed, reduced by a statutory amount, or waived if he becomes employed by the federal government after he retires from the Army, thereby adversely affecting [Maria's] entitlement to timely receive her full percentage share of his military retired pay.

If [Maria's] entitlement is reduced, delayed or merged by reason of [William's] employment by the federal government, [Maria] shall be entitled to the same percentage share should [sic] would have received, and at the same time, had [William] not obtained such employment, including any and all cost of living increases (COLA). [William] shall take all steps to ensure that [Maria's] share is not reduced and the payment of her full share is not delayed as a result of this federal employment. This means that [William] may have to pay [Maria] personally and directly.

[William] shall begin payment to [Maria] of her full monthly percentage share within thirty (30) days of the receipt of his retirement orders or the effective date of his actual retirement from the Department of the Army. Payments shall be made to [Maria] by [William] by the first (1st) day of each month.

In the event [William] chooses federal civil service employment and chooses to waive his military retired pay in favor of civil service retired pay, he shall promptly notify [Maria] of his intent to do so, and further, that he shall indemnify [Maria] for such an election. [William] shall timely pay [Maria] directly the full amount of her percentage share (including COLA) awarded herein, irrespective of such election by [William].

If necessary, [William] shall promptly authorize an allotment directly from his civil service pay to [Maria] her [sic] full percentage share of the military retirement, including all COLA benefits.

In the event that [William] elects to accept an early separation from the military service and receives any form of payment from the U.S. government in connection with such early separation other than or in addition to, disposable retired or retainer pay as stated above, [Maria] is awarded a percentage share of any such gross payments [()hereafter referred to as "early out payments") to [William] by the U.S. government, whether titled "SSB Lump Sum," "VSI Annual Pay," ["]VSI # of Years" or any other "early out" payments, whether voluntary, involuntary or otherwise. [Maria's] percentage share shall be calculated pursuant to the following formula:

"X" is [Maria's] percentage share,
"M" is the total number of months of the marriage which are also years credited to [William] for retirement purposes, and
"Y" is the total number of months credited to [William] for retirement purposes.
X = [15.6][M/Y]

[William] shall pay directly to [Maria] her share of the early separation payments within 15 days after his receipt thereof. [William] shall also advise [Maria] in writing of his intent to accept such "early out" option or any form of early separation action, whether voluntary or otherwise, at least thirty (30) days in advance of the effective date thereof.

. . . .

19. REAL PROPERTY

(1) The Florida property shall be sold immediately by a realtor unrelated to the parties. The balance of the proceeds after sale shall be split evenly between the parties after the mortgage, cost of sale and the following debts are paid:

A. All amounts owed to Dr. Merrill by both parties.

B. Joint credit cards of approximately $4080.00 and $1545 totaling approximately $5425.00

C. $1500.00 for prior cash advance.

D. $1050.00 owing to Russell Bird.

Parties agree that any other judgment and/or court orders including but not limited to attorney's fees shall be paid from the proceeds of the sale of the property. These debts shall be paid forthwith from the escrow account. Each party shall be responsible for one half of the capital gains tax or any other tax due as a result of the sale, if any, on the sale of the Florida property.

(2) Issues regarding the Panama property are reserved.

. . . .

23. GUARDIAN AD LITEM. Parties agree that [William] withdraws his Motion to Remove Dr. Thomas Merrill and that Dr. Merrill is discharged effective January 8, 2002.

November 6, 2002 Judge Suemori entered Findings of Fact and Conclusions of Law.

December 6, 2002 William filed a notice of appeal.

June 30, 2004 This appeal was assigned to this court.

POINTS ON APPEAL

William asserts the following points on appeal:

A. The family court reversibly erred when it repeatedly disregarded the June 1, 2000 order awarding William sole legal and physical custody of Daughter One and settling the issues of custody and visitation.

B. The family court reversibly erred when it (1) dismissed the restraining order protecting Daughter One from Maria and her boyfriend, Russell, and (2) dismissed Russell from the divorce action. As noted by William, "[Russell] was a family member, in the same household as [Daughter One], which gave the Family Court jurisdiction."

C. The family court reversibly erred when it appointed a CGAL and allowed the CGAL to make recommendations regarding custody.

D. The family court reversibly erred when, based on the recommendation of the CGAL, it ordered William to undergo a psychological evaluation and to pay for it.

E. The family court reversibly erred when it (1) allowed counsel for William to withdraw seven weeks before trial and (2) failed to grant William's motion for a continuance of the trial.[3/]

F. The family court reversibly erred when it repeatedly held "unrecorded 'off-the-record' conferences and entire hearings with 'attorneys only' or ex parte conferences where only one side was present with the judge."[4/]

G. The family court reversibly erred when it decided "that the 8Jan02 transcript was a divorce settlement agreement between [William] and Maria[.]"

H. Finding of fact nos. 9, 10, and 24 are clearly erroneous and conclusion of law nos. 4 and 14 are wrong. They, and conclusion of law no. 13, state as follows:

FINDINGS OF FACT

. . . .

> 9. At the Settlement Conference, the Court found that the parties had reached an agreement, ...
>
> 10. The agreement was orally put on the record, ... The agreement became an oral contract between the parties.

[3/] It appears that William did not have an attorney because he was unable to pay for one. He did not and does not have a right to court appointed counsel. He appears not to recognize that "the trial judge may deny the continuance if, in his or her opinion, the ability of plaintiff to prosecute the action or defendant to conduct his or her defense is not materially affected by reason of his or her military service." 53A Am Jur 2d, *Military and Civil Defense* § 390 (1996).

[4/] William does not cite any authority prohibiting the court from holding "unrecorded 'off-the-record' conferences . . . with 'attorneys only'." In the absence of anything relevant in the record on appeal, not even a relevant affidavit, the relevant facts pertaining to William's allegations of "ex parte conferences where only one side was present with the judge" are not a part of the record on appeal.

. . . .

24. [William] made no claim as to having been coerced by either Judge Aiona or [counsel for Maria] during the Settlement Conference, ...

CONCLUSIONS OF LAW

. . . .

4. The Settlement Agreement as put on the record on January 8, 2002, is enforceable as an Agreement in Contemplation of Divorce under Hawaii Revised Statute §572-22.

. . . .

13. The terms as read into the record is a stipulated oral decree.

14. Anything that came up later on is irrelevant to the stipulated oral decree.

I. The November 6, 2002 Divorce Decree contains substantive parts that were not a part of the agreement described in the January 8, 2002 transcript.[5/]

J. The family court's application of the "best interests" standard "in determining custody and visitation is a violation of equal protection constitutional rights for military members. There is no basis to deny custody or visitation due to a federal military requirement to take orders and leave Hawaii, but in essence the military member having to leave Hawaii loses custody/visitation just on the basis of his leaving."

K. "The court abused its discretion in not effectively sanctioning and preventing parties, lawyers and GALs from engaging or continuing to engage in misconduct,

---

[5/] Specifically, William notes that "[t]here was no statement or discussion regarding disability pay[,]" and "there was no mention . . . regarding the payment of $1,050.00 to Mr. Russell Bird."

misrepresentations, fraud, malicious prosecution and abuse of process."[6/]

In sum, William

respectfully requests the relief specified in the arguments, to

---

[6/] William states the specifics of his point on appeal "K" as follows:

> K. Despite the fact that the 14Mar01 fraudulent ex parte motion was baseless, malicious and traumatized [Daughter One] and [William] . . ., and despite the fact that it cost [William] over $6,000 to fight that motion alone, [William's] motion for fees was denied without hesitation by the same judge (Judge Uale) that granted the unprecedented reversal of custody in the first place. Further, Judge Uale rewarded this reprehensible tactic by granting [Defendant-Appellee Maria Leticia Francis] 49% unsupervised visitation . . . .
>
> This blatant use of the fraudulent and malicious ex parte motion, the abuse of discretion and arrogant use of power, the disregard for previous court orders, disregard for the facts and history of the case, the disregard for the child's true best interests, the display of judicial bias, lack of due diligence (the judge should have reviewed the record before he granted the fraudulent ex parte motion) and quite possibly, incompetence, proved to [William] that the family court system was hopelessly biased, corrupt, and inept. Further, it not only allowed "dirty lawyer tricks" and collusion between attorneys and GALs to get the court to ignore the facts and history of the case, the court's own previous orders and even the Rule of Law - the court rewarded such misconduct by ineffectively sanctioning offenders, much less holding them accountable in other ways.
>
> Just as it is wrong or an abuse of discretion to award too large a sanction, it is equally wrong and an abuse of discretion to award too small a sanction. If lawyers and GALs make tens of thousands of dollars churning cases, then the occasional $50-150 sanction (when they get blatantly caught red-handed) is meaningless in their bottom-line -- huge profits! Further, Family Court fails to treat families as customers and instead caters to lawyers, GALs and insiders, as evidenced by the [off]-the-record abuses. The court and lawyers/GALs protect each other to keep a divorce industry profitable and growing by making cases unnecessarily adversarial, then avoiding consequences for their misconduct and behavior.
>
> Judges must protect the customer, families and the children - and not anyone else, including themselves if they make honest mistakes. Keep everything on the record and make clear that no misconduct of any sort will be tolerated, including having attorneys pay sanctions and fees to the other side, as required to stop the churning of cases or frivolous motions and controversy.

> include but not limited to: restoring [William's] sole legal & physical custody per the 1Jun00 orders and incorporating this into the final divorce decree; vacating Judge Suemori's 29Nov01 ruling which made custody an issue in this divorce; vacating the 6Nov02 Divorce Decree and all associated rulings attempting to enforce an alleged 8Jan02 "agreement"; vacating the order that unjoined Russell . . . as a party to this divorce; vacating the order that dissolved the 12 August 1999 restraining order that prohibited Russell . . . from having any contact whatsoever with [Daughter One]; to hold a trial to finally settle this divorce on all issues except custody; and the removal of Dr. Merrill []as GAL and Anita Trubitt in all matters associated with this divorce.

DISCUSSION

William challenges the following two parts of the Divorce Decree: "(2) child custody, visitation, and support" and "(4) division and distribution of property and debts." This court does not have appellate jurisdiction to decide either challenge because when William filed his notice of appeal, neither part of the Divorce Decree had been finally decided and William had not obtained permission to file an interlocutory appeal.

The "(2) child custody, visitation, and support" part had not been finally decided because the Divorce Decree states, in relevant part, as follows:

> 7. CHILD SUPPORT. The issue of child support is reserved. When child support is calculated, it shall be pursuant to the figures on the parties' most current filed income and expense statement. For the limited purposes of child support, CSEA is made a party hereto.

This order does not preclude the family court from ordering child support retroactive to the November 6, 2002 date of the Divorce Decree.

The "(4) division and distribution of property and debts" part had not been finally decided because the Divorce

Decree states, "(2) Issues regarding the Panama property are reserved." Consequently, this court does not have appellate jurisdiction to decide William's appeal.

CONCLUSION

Hawai'i divorce cases involve a maximum of four discrete parts: (1) dissolution of the marriage; (2) child custody, visitation, and support; (3) spousal support; and (4) division and distribution of property and debts.

This court affirms the "(1) dissolution of the marriage" and the "(3) spousal support" parts of the November 6, 2002 Decree Granting Absolute Divorce and Awarding Child Custody.

On the ground that this court does not have appellate jurisdiction, this court dismisses William's appeal from the "(2) child custody, visitation, and support" and the "(4) division and distribution of property and debts" parts of the November 6, 2002 Decree Granting Absolute Divorce and Awarding Child Custody.

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

On the briefs:

William R. Francis
Pro Se Plaintiff-Appellant.

Mei Nakamoto
for Defendant-Appellee.

James A. Burns
Chief Judge

Associate Judge

Associate Judge