

NOT FOR PUBLICATION

NO. 26607

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

NANCY R. GRIMES, Plaintiff-Appellant,  
v.  
ROBBIE C. GRIMES, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT  
(FC-D NO. 99-0030)

KUHIMAKALLO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2005 DEC -2 AM 9:33

FILED

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant Nancy R. Grimes (Nancy) appeals from the Amended Judgment of Divorce entered on May 5, 2004 in the Family Court of the Second Circuit.<sup>1/</sup>

The parties were married on May 15, 1993. Their daughter (Daughter) was born on May 26, 1996. Nancy filed a complaint for divorce on January 28, 1999.

On September 23, 1999, after a hearing on February 17, 1999, the court entered an Order After Hearing, ordering Defendant-Appellee Robbie C. Grimes (Robbie) to pay Nancy child support commencing February 20, 1999, calculated on the basis that Robbie's monthly income was \$6,500; ordered Robbie to pay Nancy temporary alimony of \$500 per month commencing February 20, 1999; ordered Robbie to pay directly (a) the car insurance and the \$449 per month lease payment for the vehicle that Nancy drove, and (b) the \$372 per month debt service on the credit

<sup>1/</sup> The Honorable Eric G. Romanchak presided.

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cards; restrained both parties from charging on the existing credit cards; and ordered that all future credit card charges were to be paid by the charging party.

The October 18, 1999 Decree Granting Divorce and Awarding Child Custody awarded the parties joint legal custody of Daughter and awarded Nancy physical custody of Daughter subject to Robbie's rights of visitation. Robbie was ordered to pay \$780 per month child support and to continue to maintain medical and dental insurance coverage through his employer. Robbie was authorized to claim Daughter as his dependent for tax purposes in odd numbered years, and Nancy was authorized to do so in even numbered years. Each was awarded the personal property then within his or her possession, Nancy was ordered to pay all of the remaining credit card debt, Robbie was ordered to pay transitional alimony of \$1,000 per month for six months commencing October 1999, and each party was ordered to pay his or her own attorney fees and costs. Nancy appealed.

In a Memorandum Opinion filed on September 18, 2001 in appeal no. 23016, this court vacated the family court's November 30, 1999 Order Denying Plaintiff's Motion for Reconsideration and Motion to Alter or Amend a Judgment Pursuant to Rules 59 and 60 of the Hawai'i Family Court Rules and remanded. The judgment on appeal was filed on February 28, 2002.

On April 12, 2002, Nancy filed a Motion: (1) Requesting the Entry of Written Findings and Conclusions Under HFCR 52(a)

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[1999]; (2) Requesting Further Hearing on Reconsideration and/or New Trial Under HFCR 59(a), (b), and (c); (3) Further Proceedings for Court to Decide the Relevant Category 1 and 5 Market Values. The court limited its May 24, 2002 hearing to the issue of whether Robbie had improperly and fraudulently concealed the existence of a business named "Robbie's Tile" and a 1976 Fiat Spider vehicle.

On December 9, 2003, the court entered its Decision and Order Re: Plaintiff's April 12, 2002 Motions. On May 5, 2004, the court entered an Amended Judgment of Divorce. In substance, the changes the court made to the original Judgment of Divorce were that it ordered (a) Robbie to pay one-half of Nancy's \$13,049.41 credit card debt and (b) Nancy to pay (i) one-half of her \$13,049.41 credit card debt, (ii) \$600 for the damage she caused to the Ford Explorer, and (iii) \$2,949.30 to Robbie.

On June 4, 2004, Nancy filed a notice of appeal. On November 9, 2004, the court entered its Findings of Fact and Conclusions of Law (FsOF and CsOL). FOF no. 10 decided that the 1976 Fiat Spider vehicle and the business named "Robbie's Tile" had no NMV. This appeal was assigned to this court on February 28, 2005.

Nancy's opening brief does not conform to many of the various requirements of Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b) (2005). Nancy contends that the court abused its discretion when it (a) did not award her "alimony of

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\$1,000.00/month for four years" and retain jurisdiction "to extend it thereafter"; (b) permitted only a limited evidentiary hearing and argument; (c) made "the Amended Decree of May 5, 2004 even more onerous on Appellant than the original Decree of October 18, 1999"; (d) entered findings of fact that were clearly erroneous; and (e) ordered her to pay her own attorney's fees.

Although the Amended Decree of May 5, 2004 is not more onerous to Nancy than the original Decree of October 18, 1999, the court's decision and basis for it indicate that the court did not understand Hawai'i's partnership model for dividing property and debts upon a divorce.

The date of separation (DOS) was November 11, 1998. The date of divorce (DOD) was October 18, 1999. Absent special circumstances, which party made what payments between the DOS and the DOD is irrelevant and only the net market values (NMVs) at the time of the divorce are the relevant NMVs. In this case, however, the September 23, 1999 pre-trial order ordered Robbie to "directly pay the \$372 per month debt service." It also ordered:

5. Concerning the parties' credit cards:
  - a. Both parties are restrained from charging on the parties' existing credit cards.
  - b. If either party does charge on any existing credit card, that party shall be solely responsible for repaying any such charge.

Implicitly, this order was effective no later than the date of the February 17, 1999 hearing. Consequently, the family court was authorized to use the credit card debt as it existed on the

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DOS. Any increase caused by Robbie's failure to pay the \$372 per month debt service was payable by Robbie and any increase caused by Nancy's additional charges was payable by Nancy. Therefore, the family court erred when it credited Robbie and Nancy for payments they made on the credit card debt post-DOS and pre-DOD.

The court's reference to "the parties' credit cards" is misleading. It appears that the only credit cards were Nancy's four credit cards. In her November 10, 1999 motion for reconsideration, Nancy alleged that on the November 11, 1998 DOS her credit card balances were as follows:

American Express Optima	11-10-98	\$ 4,196.00
American Express Gold	11-08-99 [sic]	\$ 1,520.21
CitiBank Mastercard	11-01-98	\$ 6,832.45
Bank of Hawaii Visa	11-01-98	\$ 528.00

TOTAL \$13,076.66

In FOF no. 6, the court stated that "[a]t the time of separation, [Nancy] had debt totaling \$13,049.41 from credit cards that were in her sole name." The specifics are as follows:

American Express Optima	\$ 4,196.92
American Express Gold	\$ 1,520.21
CitiBank Mastercard	\$ 6,832.00
Bank of Hawaii Visa	\$ 500.28

TOTAL \$13,049.41

FOF no. 5 finds that Robbie paid the \$2,900 joint marital tax debt. It appears that he paid it prior to the October 18, 1999 DOD. The debt having been incurred during the marriage and having been paid during the marriage, it is not a debt at the time of the divorce and the court erred when it allowed Robbie a credit for having paid it during the marriage.

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In this appeal, Nancy has not objected to the \$600 assessment against her for damaging the Ford Explorer.

The court's finding that the NMV of Robbie's tools have a Category 1 NMV of \$10,000 and no Category 2 NMV is not clearly erroneous.

In light of the above, Robbie's partnership model share is as follows:

tools	Category 1	\$10,000
computer/electronics	Category 5	\$500
Beanie Babies	Category 5	\$1,000
credit card debt	Category 5	(\$6,524.705)

In light of the above, Nancy's partnership model share is as follows:

computer/electronics	Category 5	\$500
Beanie Babies	Category 5	\$1,000
credit card debt	Category 5	(\$6,524.705)

The total of the Category 5 partnership model share for each party is a negative \$5,024.705.

The court (1) ordered each party to pay \$6,524.705 of the credit card debt;<sup>2/</sup> (2) awarded the computer/electronics and the Beanie Babies to Nancy; and (3) ordered Nancy to pay \$2,949.30 to Robbie. In other words, Nancy wound up with a Category 5 negative of \$6,474.005, and Robbie wound up with a Category 5 negative \$3,575.405. There is no reasonable basis in the record for this deviation from the Category 5 partnership model division.

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<sup>2/</sup> The court neglected to enter any order regarding the payment of the post-divorce debt service charges added to the unpaid amount of the credit card debt.

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This case is further complicated by information Nancy has provided to this court that, apparently, she did not provide to the family court. In her opening brief, Nancy informed this court that, on August 13, 2001, in Case Number 01-14155 lbr, the United States Bankruptcy Court in Las Vegas, Nevada, filed a Chapter 7 Discharge of Debtor discharging Nancy from all of her dischargeable debts.<sup>3/</sup> The record does not indicate whether the bankruptcy court or the credit card companies were aware of the family court's order requiring Robbie to pay \$6,524.705 of the credit card debt. Thus, in 2004, the family court ordered each party to pay \$6,524.705 of Nancy's credit card debt that Nancy owed on the DOD but did not owe in 2001. If this order is affirmed, Robbie will be required to pay \$6,524.705 of Nancy's prior credit card debt that Nancy has not owed since 2001.

In light of the record, we decide that the family court's orders regarding alimony and attorney fees and costs are not an abuse of its discretion but that the family court's order requiring Nancy to pay Robbie an equalization payment of \$2,949.30 is an abuse of its discretion.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

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<sup>3/</sup> The record does not indicate how much, if any, either party paid on the credit card debt post-date of divorce and pre-date of discharge in bankruptcy.

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IT IS HEREBY ORDERED that the twelve numbered paragraphs of the Amended Judgment of Divorce entered on May 5, 2004 are vacated and the family court is ordered to replace them with the following:

1. Defendant is awarded his tools which have a \$10,000 Category 1 value and no Category 2 value.

2. Plaintiff is awarded the parties' computer and electronics which have a \$1,000 Category 5 value.

3. Plaintiff is awarded the Beanie Babies which have a \$2,000 Category 5 value.

4. Plaintiff's credit cards debts were discharged in bankruptcy on August 13, 2001.

5. Plaintiff shall be charged \$600 for the damage to the Ford Explorer.

6. The business known as "Robbie's Tile[,] " and the 1976 Fiat Spider have no value.

All terms of the Decree Granting Divorce and Awarding Child Custody filed in the above-entitled case on October 18, 1999, which are not inconsistent with this Amended Judgment of Divorce shall remain in effect.

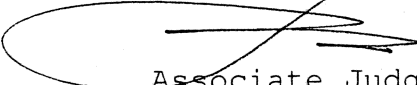
DATED: Honolulu, Hawai'i, December 2, 2005.

On the briefs:

Joel Edelman  
for plaintiff-appellant.

Erika E. Ireland  
(Law Office of Yuklin Aluli)  
for defendant-appellee.

  
Chief Judge

  
Associate Judge

  
Associate Judge