

NOT FOR PUBLICATION

NO. 26758

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

EMORY JAMES SPRINGER, Plaintiff-Appellant,
MICHIYO LOO SPRINGER, Defendant-AppelleeAPPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-D NO. 00-1-0176)K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 MAR -2 AM 10:10

FILED

ORDER DENYING MOTION FOR RECONSIDERATION

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

Hawai'i Family Court Rule 52(a) (2006) states:

(a) Effect. In all actions tried in the family court, the court may find the facts and state its conclusions of law thereon or may announce or write and file its decision and direct the entry of the appropriate judgment; except upon notice of appeal filed with the court, the court shall enter its findings of fact and conclusions of law where none have been entered, unless the written decision of the court contains findings of fact and conclusions of law. To aid the court, the court may order the parties or either of them to submit proposed findings of fact and conclusions of law, where the written decision of the court does not contain the findings of fact and conclusions of law, within 10 days after the filing of the notice of appeal, unless such time is extended by the court. Requests for findings are not necessary for purposes of review. Findings of fact if entered shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If a decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein.

This court's Summary Disposition Order (SDO) filed in this case on February 15, 2006 states in relevant part:

[Plaintiff-Appellant Emory James Springer (Emory)] contends that the family court erred when it did not file findings and conclusions. Prior to filing a notice of appeal, Emory filed a motion for reconsideration in which he asked the court to enter findings and conclusions. At that time, the court was not required to enter them. After he filed the notice of appeal and prior to filing an opening brief, Emory should have but did not (1) ask the family court to comply with HFCR Rule 52(a) and/or (2) ask the Hawai'i Supreme Court to temporarily remand the case to the family court for the family court's compliance with HFCR Rule 52(a). At this stage of this case, we conclude that the family court's error is not a basis for a remand.

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In his motion for reconsideration, Emory challenges this court's decision that the family court's failure to comply with Hawai'i Family Court Rules (HFCR) Rule 52(a) (2006) by entering findings of fact and conclusions of law was not a basis for remand. He contends that this decision (a) erroneously places a burden on him that HFCR Rule 52(a) places solely on the family court and (2) violates this court's precedent stated in State v. Gonsalves, 91 Hawai'i 446, 984 P.2d 1272 (App. 1999). We disagree. It appears that Emory is unaware of Rule 10(f) of the Hawai'i Rules of Appellate Procedure Rule (2006) which states:

Request for Findings of Fact and Conclusions of Law. In all actions where the court appealed from is not required to enter findings of fact and conclusions of law prior to the entry of an order, judgment, or decree, but is required to do so once a notice of appeal is filed, the appellant shall, no later than 10 days after filing the notice of appeal, file in the court appealed from a request for entry of findings of fact and conclusions of law, naming the judge who tried the action and entered the order, judgment, or decree being appealed. The named judge shall enter the requested findings of fact and conclusions of law within 28 days after the request has been filed. To aid the court, the court may order the parties or either of them to submit proposed findings of fact and conclusions of law after the filing of the request.

Emory did not comply with this requirement. Therefore, he cannot complain about the family court's noncompliance with HFCR Rule 52(a).

This court's SDO states in relevant part:

Emory contends that the court erred in awarding alimony because [Defendant-Appellee Michiyo Loo Springer (Michiyo)] "answer[ed] the complaint that she was not seeking alimony, submitted a position statement not seeking alimony, and made an opening statement that did not seek alimony." Emory fails to note that, in her closing argument, alimony was a part of one of the alternative decisions proposed to the court by Michiyo. Moreover, the family court does not need the permission of, or a request by, the party awarded alimony to award the alimony. This point has no merit.

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In his motion for reconsideration, Emory contends that this court erred in affirming the family court's award of alimony because "[t]o allow [Michiyo], at the close of the evidentiary portion of trial, to suddenly request alimony in simultaneously submitted written closing arguments without [Emory] being given notice, nor able to contest a request for alimony, is an absolute denial of [Emory's] fundamental due process rights[.]" (Emphasis in the original.) We disagree. As stated in the SDO, "the family court does not need the permission of, or a request by, the party awarded alimony to award the alimony."

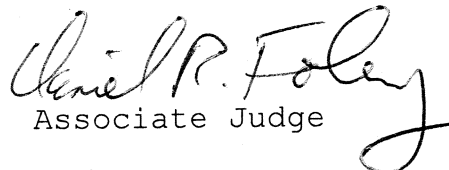
THEREFORE, it is hereby ordered that the motion for reconsideration filed on February 27, 2006 is denied.

DATED: Honolulu, Hawai'i, March 2, 2006.

On the motion:

Brian J. De Lima
(Crudele & De Lima)
for plaintiff-appellant.


Chief Judge


Associate Judge


Associate Judge