

NOT FOR PUBLICATION

NO. 26935

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

MARIE STELLA MARTIN FISHER, Plaintiff-Appellant,
DAVID THOMAS FISHER, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-DIVORCE NO. 03-1-3145)

SUMMARY DISPOSITION ORDER

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

Plaintiff Marie Stella Martin Fisher (Mother or Plaintiff) appeals the October 13, 2004 decree of the Family Court of the First Circuit (family court)¹ that granted her a divorce from Defendant David Thomas Fisher (Father).

After a painstaking 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 resolve Mother's points of error on appeal as follows:

1. In finding that relocation to Virginia was in the best interests of the minor children, the family court did not clearly err, Maeda v. Maeda, 8 Haw. App. 139, 143, 794 P.2d 268, 270 (1990), because there was substantial evidence to support that finding. In re Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001); Tetreault v. Tetreault, 99 Hawai'i 352, 356-58, 55 P.3d 845, 849-51 (App. 2002). Cf. Maeda, 8 Haw. App. at 144, 794 P.2d at 270.

¹ Per diem Family Court Judge Gregg Young presided.

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2. In finding of fact 67 (assuming it is a finding of fact) -- "From his observations and contact with the family over the years, Bowditch testified the girls' welfare and care would be better served by having the girls and Father relocated to Virginia" -- the family court clearly erred, because the family court struck that testimony during trial and there was thus not substantial evidence to support that finding. In re Doe, 95 Hawai'i at 190, 20 P.3d at 623.

3. In allocating credit card debt between the parties, the family court did not abuse its discretion, Teller v. Teller, 99 Hawai'i 101, 107, 53 P.3d 240, 246 (2002), because

- (a) the family court did not transgress any "law of the case" by making a final allocation pursuant to a December 12, 2003 stipulated order for pre-decree relief, which provided that "any questions or issues regarding any of Plaintiff's charges shall be deferred and reserved for future determination" and was thus "a 'temporary' decision made only for the time pending trial and/or the 'permanent' decision[,] "Aoki v. Aoki, 105 Hawai'i 403, 411, 53 P.3d 274, 282 (App. 2004); and
- (b) Mother's cursory and conclusory arguments, regarding the reasonableness *vel non* of her credit card charges and a purportedly unjustifiable

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deviation from marital partnership principles, are not cognizable on appeal because Mother,

not having properly briefed the motley array of questions stated and advanced, cannot with reason expect the appellate court to make a painstaking survey of them in order to cull unimportant questions and determine the crucial ones, nor has [s]he the right to cast upon it h[er] burden of studying the record and authorities to essay the essential to the maintenance of the appeal and its efficient prosecution.

Ala Moana Boat Owners' Ass'n v. State, 50 Haw.

156, 159, 434 P.2d 516, 518 (1967) (citation, internal quotation marks, and block quote format omitted).

4. The family court erred in appending to its conclusion of law A.1 the ultimate clause -- "with tie-breaking authority to Father" -- because the family court thus derogated the award of joint legal custody contained in the divorce decree, and apparently did so without motion, notice or opportunity to be heard.

5. The family court erred in paragraph 4 of the divorce decree by referring to Father's residence in Virginia as the children's "primary" residence, because the decree awarded the parties joint physical custody.

Therefore,

IT IS HEREBY ORDERED that finding of fact 67 and the ultimate clause of conclusion of law A.1, contained in the family court's March 8, 2005 findings of fact and conclusions of law, are vacated. The word "primary" is stricken from paragraph 4 of

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the family court's October 13, 2004 divorce decree, but the divorce decree is otherwise affirmed.

DATED: Honolulu, Hawai'i, April 19, 2006

On the briefs:

Paul A. Tomar,
Lynne J. McGivern, and
Jill M. Hasegawa
(Ashford & Wriston),
for Plaintiff-Appellant.

R. Steven Geshell
for Defendant-Appellee.



Acting Chief Judge



Associate Judge



Associate Judge