

NOT FOR PUBLICATION

NO. 27124

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

FREDERICK B. GILES, Plaintiff-Appellee,
v.
DIANA R. GILES, Defendant-Appellant
and
WILLIAM J. PLUM, Court Appointed Receiver-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 93-1864)

SUMMARY DISPOSITION ORDER

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

Receiver-Appellant William Plum (Plum or Receiver)
appeals from a November 8, 2004 order and a January 13, 2005
order entered in the Family Court of the First Circuit by Judge
Christine E. Kuriyama.

Plaintiff-Appellee Frederick B. Giles (Plaintiff) and
Defendant-Appellant Diana R. Giles (Defendant) were divorced on
December 30, 2003. In an effort to collect judgment debts owed
to him by Defendant, Plaintiff asked the family court to order
the sale of Defendant's residential property at 2309 Ferdinand
Avenue, Honolulu, Hawai'i (Ferdinand Avenue Property). On
August 14, 2003, Judge Allene R. Suemori entered an order
appointing Plum, who is an attorney-at-law, as receiver to take
possession of and sell the Ferdinand Avenue Property. The order
stated that "[Plum] shall be compensated for his work at the rate

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of \$200 per hour."^{1/} On July 21, 2004, Judge Kuriyama entered an order approving the sale of the Ferdinand Avenue Property for \$950,000. The sale closed escrow on August 31, 2004.

On September 10, 2004, Plum filed "Receiver's Third Interim Report" in which he requested "the sum of \$23,104.88 for [his] services[.]" Actually, Plum requested a fee of \$22,180 (110.9 hours @ \$200 per hour) plus \$924.01 tax, or a total of \$23,104.01, to reimburse him for the resulting general excise tax payable by him. On November 8, 2004, Judge Kuriyama entered an "Order Directing Receiver to Disburse Funds and Directing Execution of Release of Liens" that authorized Plum to be paid \$17,328.01^{2/} for his services. On November 18, 2004, Plum filed a motion requesting

that the Court honor your Receiver's request for \$23,104.88 [sic] in fees. In conjunction with, or in the alternate, should the above request be denied, your Receiver requests payment for 5.8 hours of work (i.e.. [sic], \$1,208.32) completed after the September 1, 2004 hearing that was not contemplated before the hearing on September 1, 2004, and was not included in the Order.

In an accompanying declaration, Plum stated, in relevant part:

28. Lastly, I estimated 2 hours would be needed to wrap the matter up after the hearing on September 1, 2004. I was mistaken. I spent 7 hours drafting, circulating, and working out the language for the proposed orders by the parties. A true and correct copy of my detailed statement for the additional time is attached as Exhibit 1 to this Motion. Included in those hours are notations for activity surrounding a claim by the City and County of Honolulu that they had not been paid the overdue property taxes from escrow. I would like to be paid for those services if my original request for fees is not granted. The amount being requested is **\$1,208.32**.

(Emphasis in original.)

^{1/} The August 14, 2003 order said nothing about adding an additional amount to reimburse the general excise taxes payable by the recipient of the compensation.

^{2/} We note that \$17,328.01 is 75% of \$23,104.01.

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On January 13, 2005, Judge Kuriyama entered an "Order Re: Court Appointed Receiver's Motion for Reconsideration of and/or Relief from 'Order Directing Receiver to Disburse Funds and Directing Execution of Release of Liens' Filed on November 8, 2004" that stated, in relevant part:

1. In his Third Interim Report filed on September 10, 2004, Receiver requested an award of \$22,180.00 in fees [calculated at a court ordered hourly rate of \$200.00 for 110.9 hours of work completed], plus a 4.166% general excise tax of \$924.01, The foregoing fees . . . were incurred during the period from June 11, 2003 through September 10, 2004. Pursuant to the Court's November 8, 2004 order, Receiver was awarded what the Court determined to be a reasonable fee of \$16,635.00, with a 4.166% general excise tax of \$693.01, for a total fee award of \$17,328.01. . . .

In reviewing and deciding upon Receiver's request for reconsideration of the \$17,328.01 fee award, the Court notes that Receiver was appointed to evaluate and take possession and control of the Ferdinand Avenue property in Manoa held by Defendant . . . and to market the property, in relation to the efforts of Plaintiff . . . to enforce the Court's February 10, 2003 order awarding Plaintiff two money judgments against Defendant. These judgments total \$94,829.93, with statutory interest at the rate of 10% per annum on the foregoing amount. The Court finds that the task with which Receiver was charged was not unduly difficult or complex in terms of the work performed or the issues raised and that the number of hours expended by Receiver in carrying out the assignment was excessive under the totality of the circumstances, and to a certain extent was duplicative in that Receiver was communicating with and working with two separate attorneys for Plaintiff in the same matter.

Accordingly, the Court denies Receiver's request for reconsideration with respect to the full amount of fees sought, i.e. \$23,104.88, and instead partially grants Receiver's request by (a) clarifying that the fee request is being reduced by 27.7 hours, the number of hours the Court finds to be excessive, and (b) awarding Receiver a reasonable fee of \$16,640.00, together with a 4.166% general excise tax of \$693.22 on that amount, for a total fee award of \$17,333.22.

2. In the instant motion for reconsideration, Receiver is seeking an additional fee of \$1,208.32 [calculated at 5.8 hours, including an anticipated .3 hours to "wrap up" the case, together with a 4.166% general excise tax of \$48.32], for work performed after the filing of Receiver's Third Interim Report. The Court finds the additional request for fees to be reasonable and warranted under the circumstances, and grants the full amount of the fee requested.

3. In light of the significant amount of fees and expenses incurred to date by the parties with respect to the pending litigation, the Court does not wish to have the parties incur additional fees and expenses and does not believe that a hearing on the instant motion for reconsideration is necessary or

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warranted under the circumstances. Accordingly, Receiver's request for a hearing on the foregoing motion is denied.

(Brackets in original.)

On April 11, 2005, Judge Kuriyama entered Findings of Fact and Conclusions of Law which state, in relevant part:

3. The Court, after carefully reviewing the time sheets submitted by Receiver as Exhibit 2 to Receiver's Third Interim Report filed on September 10, 2004, properly determined that Receiver's \$23,104.88 fee request was unreasonable in light of the totality of the circumstances involved.

4. Based upon the evidence presented, the Court properly concluded that of the 110.9 billable hours charged by Receiver in performing his duties pursuant to the August 14, 2003 Order Appointing Receiver, 27.7 hours of work were unreasonably expended given among other factors, the nature of his assignment, the level of difficulty or complexity of the work performed and the issues involved, and the fact that Receiver was working and communicating with two separate attorneys for Plaintiff in the same matter.

On February 11, 2005, Plum filed a notice of appeal.

This case was assigned to this court on September 15, 2005.

In this appeal, Plum asserts the following three challenges:

(1) "The family court clearly erred when it found that Receiver's task was not unduly difficult or complex in terms of the work performed or the issues raised."

(2) "The family court abused its discretion when it determined that the number of hours expended by Receiver in carrying out his assignment was excessive and to a certain extent duplicative."

(3) "The family court abused its discretion when it determined that a hearing was not reasonable or necessarily warranted to consider the issues raised in the motion for reconsideration and instead proceeded to utilize an erroneous

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methodology which resulted in a reduction of Receiver's fee request by 27.7 hours."

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, and applying the relevant standard of review,

IT IS HEREBY ORDERED that the following are affirmed:


(1) the November 8, 2004 "Order Directing Receiver to Disburse Funds and Directing Execution of Release of Liens" and (2) the January 13, 2005 "Order Re: Court Appointed Receiver's Motion for Reconsideration of and/or Relief from 'Order Directing Receiver to Disburse Funds and Directing Execution of Release of Liens' Filed on November 8, 2004".

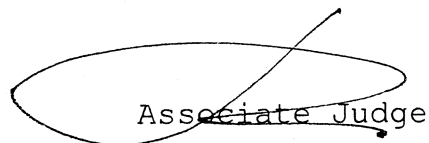
DATED: Honolulu, Hawai'i, June 27, 2006.

On the brief:

Gregory T. Grab
for Court Appointed
Receiver-Appellant.


Chief Judge


Associate Judge


Associate Judge