

NOT FOR PUBLICATION

NO. 27262

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

TAMARA ANN YAMAGUCHI, Plaintiff-Appellee, v.
RANDAL MICHITO YAMAGUCHI, Defendant-Appellee
and
TOMOE YAMAGUCHI and MICHIO YAMAGUCHI,
Parties in Interest-Appellants

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 00-1-2961)

SUMMARY DISPOSITION ORDER

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

Parties-in-Interest-Appellants Michio Yamaguchi

(Michio) and Tomoe Yamaguchi (Tomoe) appeal from the following orders of the Family Court of the First Circuit: (1) the February 15, 2005 "Order Granting Plaintiff's Motion and Affidavit for Post-Decree Relief of December 17, 2004"; (2) the March 30, 2005 "Order Granting Plaintiff's Request for Attorney's Fees and Costs Incurred in Connection with Plaintiff's Motion and Affidavit for Post-Decree Relief Filed December 17, 2004"; and (3) the March 30, 2005 Judgment.

Michio, Tomoe, Plaintiff-Appellee Tamara Ann Yamaguchi (Tamara), and Defendant-Appellee Randal Michito Yamaguchi (Randal) agreed to the following final version of paragraph "2" of a September 15, 2003 settlement agreement:

2. In addition, the Grandparents [Michio and Tomoe] will arrange for the transfer of the Waikiki Condominium Unit 804, (Waikiki) Coral Terrace, 2222 Aloha Drive, Honolulu, Hawaii, (with stipulated value of \$185,000.00) into a trust. Tamara will have the right to occupy or use the property for life, remainder to Ashley. A quitclaim deed will convey the

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property into the trust. Said trust will provide that the sale of that condo will not be permitted until Ashley is 30 years old. Upon transfer of the unit into the trust, which shall be done forthwith, the trust/Tamara will collect the rent and will be responsible for the costs, maintenance and upkeep of the property. Until the property is transferred into the trust and effective upon the next month after the signing of the settlement agreement the granddaughter [Ashley] will be entitled to the net rental income for child support/educational support and credited towards Randal Yamaguchi's obligations.

On December 24, 2003, Judge Darryl Y.C. Choy entered a Divorce Decree. Its caption listed Michio and Tomoe as "Joined Third-Party Defendants". It stated in relevant part: "The agreement entered into between the parties and Defendant/Father's parents, Michio and Tomoe Yamaguchi, dated September 15, 2003 relating to the parties' property interests, is incorporated into this decree by reference."

On February 19, 2004, Judge Allene R. Suemori entered an "Order Dismissing Grandparents Michio and Tomoe Yamaguchi Previously Joined as Parties Under Rule 19 & 20 Hawaii Family Court Rules". On March 5, 2004, Judge Suemori entered an "Order Directing Michio and Tomoe Yamaguchi to Sign the Trust Agreement Pursuant to the Decision of February 3, 2004" that ordered Michio and Tomoe "to execute the trust agreement prepared by [counsel for Tamara] pursuant to the **Decision and Order Re: Motion to Enforce Settlement Agreement**, filed February 3, 2004." (Emphasis in original.) On March 8, 2004, in an "Order Granting Plaintiff's Request for Attorneys' Fees and Costs Incurred in Creation of Trust Document", Judge Suemori ordered Michio and Tomoe to pay \$3,700 to one of Tamara's attorneys and \$11,389 to

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the other.

On April 1, 2004, Tomoe and Michio commenced appeal no. 26483 which was assigned to this court on December 20, 2004.

On December 17, 2004, notwithstanding appeal no. 26483, Tamara moved for an order requiring Michio and Tomoe to sign a quitclaim deed, in the form attached to the motion, conveying Apartment No. 804 to "STEPHEN CONRAD DAVIS, Trustee of the Yamaguchi Irrevocable Residence Trust dated June 11, 2004[.]" On February 15, 2005, after a hearing on January 12, 2005, Judge Suemori entered an "Order Granting Plaintiff's Motion and Affidavit for Post-Decree Relief of December 17, 2004" which required Michio and Tomoe to sign the quitclaim deed no later than January 14, 2005 at 4:30 p.m. and, if not, directing the Chief Clerk of the First Circuit Family Court to sign it for them. The Chief Clerk signed the quitclaim deed for Michio and Tomoe.

On March 30, 2005, Judge Suemori entered an "Order Granting Plaintiff's Request for Attorney's Fees and Costs Incurred in Connection with Plaintiff's Motion and Affidavit for Post-Decree Relief Filed December 17, 2004" that ordered (1) Michio and Tomoe to pay Tamara \$12,655 for attorney fees "within thirty (30) days of the effective date of this Order," (2) the trustee of Randal's trust to pay \$629 in attorney fees to Tamara, and (3) "[i]f payment in full is not made within the time specified, then a judgment together with judgment interest

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effective thirty (30) days from the effective date of this Order shall enter against Michio and Tomoe Yamaguchi and/or Defendant Randal Yamaguchi." Also on March 30, 2005, ignoring the prior order allowing thirty-days to pay, Judge Suemori entered a Judgment in favor of Tamara and against Michio and Tomoe for \$12,655. This Judgment noted that "[i]nterest shall accrue at the rate of ten percent (10%) per year until the amount is paid in full."

On April 8, 2005, Michio and Tomoe filed a motion for reconsideration. This motion for reconsideration was denied by Judge Karen M. Radius on June 16, 2005. Meanwhile, on April 28, 2005, Michio and Tomoe commenced this appeal no. 27262. This appeal was assigned to this court On January 9, 2006.

In a memorandum opinion filed on November 21, 2005, this court decided appeal no. 26483, in relevant part:

Paragraph "2" of the final version of the September 15, 2003 settlement agreement, which was incorporated into the Divorce Decree, (a) requires Michio and Tomoe to convey the Aloha Drive condo by quitclaim deed into a trust, (b) awards to Tamara "the right to occupy or use the property for life, remainder to Ashley[,]" and (c) specifies that "the trust/Tamara will collect the rent and will be responsible for the costs, maintenance and upkeep of the property." In other words, the condo shall be conveyed by a quitclaim deed to a trust. Until (a) her death or (b) the sale of the condo with her consent on or after Ashley's 30th birthday, whichever occurs first, Tamara shall be the trustee of the trust and, as such, she shall have the exclusive rights to decide (a) who is authorized to occupy the condo, (b) the conditions, if any, of the authorized occupancy, and (3) the amount, if any, payable to the trust for the authorized occupancy. Tamara may occupy the condo. She may authorize Ashley and/or others to occupy the condo. While retaining these exclusive rights, Tamara will be the sole income beneficiary of the trust and she will be obligated to pay all of the debts of the trust, including the costs, maintenance and upkeep of the condo. Whenever (a) Tamara dies, (b) the court finds that Tamara is not paying for the costs, maintenance and upkeep of the condo, or (c) on or after Ashley's 30th birthday, Tamara permits the sale of the condo, whichever occurs first, the court shall terminate Tamara's

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interest in the trust. If Tamara's interest in the trust is terminated prior to Ashley's 30th birthday, Ashley will replace Tamara and the trust will continue to Ashley's 30th birthday. If Tamara's interest in the trust is terminated on or after Ashley's 30th birthday, the trust thereupon [shall] be terminated. When the trust is terminated, all of its liabilities shall be paid and all of its remaining assets shall be conveyed to Ashley.

Neither the trust document prepared by counsel for Michio and Tomoe nor the trust document prepared by counsel for Tamara conforms to this interpretation. Therefore, an amended trust document must be prepared and approved by the family court.

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Accordingly, we vacate (1) the February 3, 2004 Decision and Order Re: Motion to Enforce Settlement Agreement, (2) the March 5, 2004 order directing Michio and Tomoe to sign the trust agreement pursuant to the February 3, 2004 decision and order, and (3) the March 8, 2004 order awarding attorney fees to counsel for Tamara. We remand for action consistent with this opinion.

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, we disagree with the contention that the family court lacked jurisdiction (a) to enforce its March 5, 2004 order while that order was on appeal and (b) to require Tomoe and Michio to comply with its March 5, 2004 order after it had dismissed them from the case. However, in light of this court's November 21, 2005 memorandum opinion,

IT IS HEREBY ORDERED that (1) the February 15, 2005 "Order Granting Plaintiff's Motion and Affidavit for Post-Decree Relief of December 17, 2004", (2) the March 30, 2005 "Order Granting Plaintiff's Request for Attorney's Fees and Costs Incurred in Connection with Plaintiff's Motion and Affidavit for Post-Decree Relief Filed December 17, 2004", and (3) the

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March 30, 2005 Judgment are vacated and this case is remanded to the family court for further consideration and action in the light of the decision in appeal no. 26483. We do not reach the questions whether the family court erred (1) by awarding attorney's fees or the amount thereof and (2) by entering the Judgment when it did.

DATED: Honolulu, Hawai'i, June 23, 2006.

On the briefs:

Darwin L.D. Ching
for Parties in Interest-
Appellants.

Richard J. Diehl
(Diehl & Weger) and
John W. Schmidtke, Jr.
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge