

NO. 27746

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

TRACEY MIEKO NAKAYAMA, Plaintiff-Appellee,  
v.  
LEE SCOTT CAMERON, Defendant-Appellant

K. HANAKAHO  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

2007 APR 16 AM 8:01

FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(FC-D NO. 04-1-2022)

MEMORANDUM OPINION

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

Defendant-Appellant Lee Scott Cameron (Lee) appeals from the September 8, 2005 Order Regarding Plaintiff's Attorney's Fees and Costs (September 8, 2005 Order) entered by Judge Christine E. Kuriyama, the December 14, 2005 Decree Granting Absolute Divorce (December 14, 2005 Divorce Decree), and the January 13, 2006 Order Denying Defendant's Motion for Reconsideration, or New Trial, for the Decree Granting Absolute Divorce Filed 12/14/05, Filed on December 27, 2005 (January 13, 2006 Order) entered by Judge Nancy Ryan. We affirm.

BACKGROUND

Lee and Plaintiff-Appellee Tracey Mieko Nakayama (Tracey) were married on January 21, 2002. They have no children. On June 30, 2004, Tracey filed a Complaint for Divorce. At that time, Lee was not a member of the United States Navy.

**NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER**

On September 28, 2004, after a hearing on September 15, 2004, at which Lee was represented by attorney Jessi Hall, Judge Christine E. Kuriyama awarded Tracey exclusive use and occupancy of the residence at 95-112 Kipapa Drive #418, Mililani, Hawaii 96789, effective October 15, 2004, and ordered that custody of the parties' dog Neptune shall be with the party occupying the residence. On December 2, 2004, Judge Kuriyama granted Jessi Hall's request to withdraw as counsel for Lee. On January 28, 2005, Judge Kuriyama ordered Lee to pay \$1,156.58 as and for Tracey's attorney fees and costs for violating the September 28, 2004 order.

On February 10, 2005, Judge Kuriyama entered an order setting the case for a two hour trial on April 15, 2005. On April 15, 2005, Judge Kuriyama entered an order noting that a letter had been received from Lee's Commanding officer at the United States Navy's Naval Hospital Corps School, Great Lakes, Illinois 60088-5257, stating that Lee was "undergoing initial instruction" there and would not be available to appear in court on April 15, 2005, but would be available after his "graduation" on July 22, 2005, and moved the short trial date to August 5, 2005. Counsel for Tracey was ordered to serve copies of the order upon Lee at his last known home address in Calgary, Canada, "c/o Naval Hospital Corps School, Bldg 130-H, 601 D Street, Great Lakes, IL 60088-2822." The mailing to this Illinois address was returned because Lee was not there.

On August 2, 2005, the court received Lee's July 19, 2005 response to Tracey's April 15, 2005 motion in limine pertaining to the April 15, 2005 trial that had been postponed. In this document, Lee argued that Tracey's motion "is rendered unnecessary by the Court's rescheduling of the April 15, 2005 trial date" and stated that he was at the "Naval Hospital, Camp Pendleton".

On the afternoon of August 3, 2005, a letter dated August 2, 2005 was transmitted by Lee to the family court via facsimile. In this letter, Lee wrote in part to Judge Kuriyama:

I am now undergoing extensive training at Camp Pendleton, California until September 21, 2005. Pursuant to the enclosed letter from my commanding officer, or by his direction, I am not able to take leave at this time to attend trial and defend my interests in this lawsuit.

Currently, my orders state that my training will be completed and I will report to my permanent duty station on September 22, 2005 where I will be able to request regular leave and attend this trial. Accordingly, I respectfully request a stay of this hearing[.]

Orally on August 5, 2005, and in writing on August 30, 2005, Judge Kuriyama set the case "for a half-day trial for the trial week of October 24, 2005[,]" and found that "[Lee] did not provide [counsel for Tracey] with a copy of his August 2, 2005 letter requesting a stay as well as a copy of the letter from Captain Schuyler," and granting the August 24, 2005 request by counsel for Tracey for attorney fees for "counsel's appearance for the scheduled August 5, 2005 trial and for . . . preparation for trial." The September 8, 2005 Order ordered Lee to pay \$1,526.83 in costs and fees to counsel for Tracey "as a result of

[Lee's] absence at the short trial."

On October 17, 2005, Lee filed a motion asking the Court

to provide him relief of its Judgements. Additionally, [Lee] requests that the Court sanction [Tracey] for submitting affidavits and Motions in bad faith and for making false statements to the Court. Finally, [Lee] also humbly moves the Court to pass summary judgement on the entire matter of TRACEY MIEKO NAKAYAMA v. LEE SCOTT CAMERON.

In this motion, Lee stated that his "imminent deployment to Iraq [EXHIBIT F] may require his absence throughout the designated trial week or cause the Court to grant another stay of proceedings." (Brackets in original.) "EXHIBIT F" is a letter written by direction of Lee's Commanding Officer at the Navy Hospital at Camp Pendleton, California, stating in part that Lee "[w]ill depart for pre-deployment training 23OCT05 and will be deployed to Iraq for a period of 7 months starting 15DEC05." This motion was scheduled for a hearing on November 16, 2005. Lee did not appear at the November 16, 2005 hearing. On November 18, 2005, after the hearing on November 16, 2005, Judge Kuriyama entered an order (November 18, 2005 Order) denying Lee's October 17, 2005 motion and awarding counsel for Tracey \$234.36 in attorney fees.

Finding of Fact no. 30 of the Findings of Fact and Conclusions of Law (FsOF and CsOL) entered by Judge Ryan on March 29, 2006, states that "[a] trial to finalized [sic] the divorce was held on October 25, 2005, at which time, both [Tracey] and [Lee] appeared and testified. [Lee] did not request

a continuance due to the Service Member's Civil Relief Act, nor did [Lee] make any request for the appointment of legal counsel."

The December 14, 2005 Divorce Decree states in part:

12. Attorney's Fees and Costs:

Pursuant to the Court's decision on [Tracey's] Motion in Limine filed on April 15, 2005 which came on for hearing on October 25, 2005, [Tracey] is awarded an additional sum of \$1,745.98 as and for her attorney's fees and costs.

13. Net Equalization Payment:

[Tracey] owes [Lee] the sum of \$14,306.50 . . . . [Lee] owes [Tracey] the sums of \$1,156.58, \$1,526.83 and \$1,745.98 for a total sum of \$4,429.39 as and for attorney's fees and co[s]ts. Therefore, [Tracey] shall pay to [Lee] the sum of \$9,877.11.<sup>1/</sup>

(Footnote added.)

Judge Ryan's January 13, 2006 Order denied Lee's December 27, 2006 motion for reconsideration.

On February 3, 2006, Lee filed a notice of appeal. The record on appeal does not contain any transcripts of the trial or of any of the family court's hearings.

DISCUSSION

I.

The Servicemembers Civil Relief Act (SCRA), 50 App. U.S.C.A. § 522, as Amended Dec. 19, 2003, states in part:

**522. Stay of proceedings when servicemember has notice**

**(a) Applicability of section**

This section applies to any civil action or proceeding in which the plaintiff or defendant at the time of filing an application under this section--

(1) is in military service or is within 90 days after termination of or release from military service; and

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<sup>1/</sup> The record does not indicate why the November 18, 2005 Order requiring payment of \$234.36 attorney fees was not included.

(2) has received notice of the action or proceeding.

**(b) Stay of proceedings**

**(1) Authority for stay**

At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

**(2) Conditions for stay**

An application for a stay under paragraph (1) shall include the following:

(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

(B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

**(c) Application not a waiver of defenses**

An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

**(d) Additional stay**

**(1) Application**

A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

**(2) Appointment of counsel when additional stay refused**

If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

II.

In Lee's case, the first stay was from April 15, 2005 to August 5, 2005. That is more than 90 days. The second stay was from August 5, 2005 to the week of October 24, 2005. According to Lee, that is "78 days." The trial was held on October 25, 2005.

Lee contends that the second stay for less than "a minimum period of 90 days" was, in effect, the court's refusal to grant "an additional stay" that (a) obligated the court, pursuant to SCRA § 522(d)(2), to "appoint counsel to represent the service member in the action or proceeding," and (b) caused the August 30, 2005 Order, the September 8, 2005 order, the November 18, 2005 Order, and the December 14, 2006 Divorce Decree to be void. We disagree.

If certain specified conditions are satisfied, SCRA § 522(b) requires the court to "stay the action for a period of not less than 90 days[.]" SCRA § 522(b) applies to only the first stay. SCRA § 522(d) applies to requested additional stays "based on continuing material affect of military duty on the servicemember's ability to appear." In Lee's case, the second stay was a requested additional stay. SCRA § 522(d) does not say anything about the lengths of additional stays except that they must be "based on continuing material affect of military duty on the servicemember's ability to appear." SCRA § 522(d)(2)

requires the appointment of counsel only when a requested additional stay is refused. In Lee's case, the requested additional stay was granted.

III.

Lee contends that on October 17, 2005, he requested a third stay, the court ignored the request, and the court violated SCRA § 522(d)(2) when it failed to appoint counsel to represent Lee. We disagree. Lee's October 17, 2005 motion did not request an additional stay. On the contrary, it implicitly urged the court to hold the trial prior to October 23, 2005. In addition, FOF no. 30 indicates that Lee did not, and nothing in the record on appeal indicates that Lee did, object to the trial on October 25, 2005.

IV.

The FsOF state in part:

33. Based upon [Tracey's] exhibit 11, which was received into evidence without objection, the court found that the marital residence's value to be the sum of \$198,100.00.

34. [Lee] presented no credible rebuttal evidence regarding the value of the marital residence.

Lee contends:

In the Findings, the marital residence was valued at the real property tax assessed value for 2004, without any appreciation in the value of the real estate. For property acquired during the marriage, the case law provides that the appreciation in value is a marital asset subject to division by the court. It is standard practice for attorneys to utilize real estate appraisers to determine the appreciation in value. A new trial would permit [Lee] to present appraisal evidence of the value of the marital residence in 2005. This would increase the value of the marital estate, and [Lee's] share of the court's award of property division. Unfortunately, [Lee] was not appointed counsel by the court as required by SCRA, and so was deprived of legal counsel who would have advised him, and the court, of the full value of the marital estate.

In light of our conclusion that the SCRA did not require the family court to appoint counsel for Lee, we affirm FOF no. 33.

V.

The August 30, 2005 Order ordered Lee to pay Tracey's "reasonable attorney's fees for [Tracey's] counsel's appearance for the scheduled August 5, 2005 trial and for [Tracey's] counsel's preparation for trial" because "[Lee] did not provide [counsel for Tracey] with a copy of his August 2, 2005 letter requesting a stay as well as a copy of the letter from Captain Schuyler[.]" Lee asks, "Was the Family Court applying the wrong law by placing the burden on [Lee] to provide notices to [Tracey's] attorney when [the] SCRA only requires notices to the court?" "Did the Family Court abuse its discretion by ordering [Lee] to pay [Tracey's] attorney's fees when it granted his SCRA relief in the 1st SCRA order?"

Tracey's August 24, 2005 request for fees and costs was based on the following:

7. That due to [Lee's] lack of timely notification and resulting absence, [Tracey] has unnecessarily incurred attorney's fees and costs in preparation for the scheduled short trial which was later continued by the Court.

This request was based on a lack of timely notification. The August 30, 2005 Order indicates that it was based on the fact that "[Lee] did not provide [counsel for Tracey] with a copy of his August 2, 2005 letter requesting a stay as well as a copy of

the letter from Captain Schuyler[.]” The September 8, 2005 Order indicates that it was entered "as a result of [Lee's] absence at the short trial."

Clearly, Lee knew before August 2, 2005, that he would be "undergoing extensive training at Camp Pendleton, California until September 21, 2005[,]" and that the scheduled August 5, 2005 trial would have to be rescheduled to be held after September 22, 2005. We conclude that the court's award of attorney fees was authorized by Lee's failure to timely request a rescheduling of the date of trial.

CONCLUSION

Accordingly, we affirm (1) the September 8, 2005 Order Regarding Plaintiff's Attorney's Fees and Costs, (2) the December 14, 2005 Decree Granting Absolute Divorce, and (3) the January 13, 2006 Order Denying Defendant's Motion for Reconsideration, or New Trial, for the Decree Granting Absolute Divorce Filed 12/14/05, Filed on December 27, 2005.

DATED: Honolulu, Hawai'i, April 16, 2007.

On the briefs:

Ronald D.S. Lau  
for Defendant-Appellant.

Blake T. Okimoto and  
Trina L. Yamada  
for Plaintiff-Appellee.

  
Chief Judge

  
Associate Judge

  
Associate Judge