

NO. 27550

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

LUWALHATI ADMANA JOHNSON, Plaintiff-Appellant, v.
LANT ARTHUR JOHNSON, Defendant-Appellee.

K. HAMAOKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2008 MAY -1 AM 7:55

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(FC-D NO. 96-2110)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Fujise, Leonard, JJ.)

In a post-divorce decree proceeding, Plaintiff-Appellant Luwalhati Admana Johnson (**Mother**) appeals pro se from three post-decree orders entered by the Family Court of the First Circuit¹ (**Family Court**) in favor of Defendant-Appellee Lant Arthur Johnson (**Father**): (1) the September 14, 2005 order granting Father's motion to reduce Father's child support obligation (**September 14, 2005 Order**); (2) the October 14, 2005 order granting Father's ex parte motion to correct an error in the September 14, 2005 Order (**October 14, 2005 Order**); and (3) the November 25, 2005 order denying Mother's motion for reimbursement of certain expenses (**November 25, 2005 Order**). Ms. Johnson filed two appeals and they were consolidated.

Mother raises the following points on appeal:

- (1) The Family Court erred in reducing Father's child support obligation;
- (2) The Family Court erred in granting default judgment against Mother on Father's motion to modify the parties' child support obligation;

¹ The Honorable Karen M. Radius presided.

(3) The Family Court erred in granting Father's ex parte motion to correct an error in the September 14, 2005 Order;

(4) The Family Court erred in ordering/approving the December 12, 2005 Findings of Fact and Conclusions of Law; and

(5) The Family Court erred in denying Mother's post-decree motion for reimbursement of expenses.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Mother's points of error as follows:

The Family Court erred when it imputed \$3,000 monthly gross income to Mother. Under the Hawai'i Child Support Guidelines, imputed income may be used when a parent is not employed full-time or is employed below full earning capacity. 2004 Hawai'i Child Support Guidelines Instructions at 3.² If the parent is able to work and the child is over three years old, the following guidelines apply:

If a parent's income is limited for any other reason, the parent's income will be determined according to his or her income capacity in the local job market, considering both the reasonable needs of the child(ren) and the reasonable work aspirations of the parent.

If any custodial parent (with a child more than 3 years old) who is mentally and physically able to work, remains at home and does not work, no less than thirty (30) hours of weekly earning [sic] at the minimum wage may be imputed to that parent's income.

Id.

However, the record in this case does not support the Family Court's imputation of \$3,000 to Mother's monthly gross income. Although Father testified that Mother had graduated from law school and had become licensed in at least two jurisdictions,

² "The family court, in consultation with the [Child Support Enforcement] agency, shall establish guidelines to establish the amount of child support when an order for support is sought or being modified under this chapter." Hawaii Revised Statutes § 576D-7(a) (1993).

there was no evidence in the record that Mother was gainfully employed as an attorney (or otherwise).³ The wholly speculative figure of \$3,000 monthly gross income suggested by Father and imputed to Mother was clearly erroneous because the record lacked probative and substantial evidence to support the Family Court's finding that she could have earned that amount. See Haflich v. Haflich, 109 Hawai'i 103, 112-13, 123 P.3d 698, 707-08 (App. 2005). Therefore, we vacate the September 14, 2005 Order.

In light of our ruling on the issue of Mother's imputed income, we need not address Mother's arguments that the Family Court erred in: (1) entering default against her on Father's motion; and (2) granting Father's ex parte motion to correct an error in the September 14, 2005 Order. In light of our ruling on the issue of Mother's imputed income, and based upon our careful review of the record, it appears that the December 12, 2005 Findings of Fact nos. 17.m. and 17.n. are clearly erroneous and that the Family Court erred in the December 12, 2005 Conclusions of Law paras. K. and L.

With respect to the November 25, 2005 Order, the Family Court erred, in part, when it denied Mother's motion for a reimbursement of expenses. The Family Court did not err when it denied Mother's request for non-medical expenses because the Divorce Decree did not require that Father reimburse the children's travel or musical expenses. The Family Court did not err when it denied Mother's request for reimbursement of uninsured medical care delivered to one of the children on March 11, 2004 because the Divorce Decree ordered Mother to pay and maintain the children's medical and dental insurance coverage

³ Indeed, although not considered by the Family Court on Father's motion because Mother failed to properly and timely file them in connection with the motion, Mother's 2003 and 2004 federal individual income tax returns showed that she did not earn anywhere near an annual gross income of \$36,000.

and routine medical expenses. However, the Family Court erred when it concluded, at the November 23, 2005 hearing, that the Divorce Decree "did not provide for the [non-routine] medical expenses" such as orthodontic braces. Paragraph 5.c. of the April 16, 1990 Decree Granting Absolute Divorce and Awarding Child Custody provides that Plaintiff shall assume and pay the first \$250.00 of "any major, non-routine or unusual medical and/or dental expenses for a child" per child and per calendar year, but that the parties shall allocate and pay any additional amounts in accordance with the schedule set forth in Paragraph 5.c. Although Father appears, for a period of time, to have paid medical premiums for the children that he was not required to pay under the terms of the Divorce Decree, he offers no authority supporting the proposition that such voluntary payments satisfy or offset his obligation to contribute to major non-routine dental expenses such as a child's braces. Indeed, we reject that proposition. For these reasons, we vacate the Family Court's November 25, 2005 Order to the extent that it denies any reimbursement to Mother for the child's braces and affirm it in all other respects.

Accordingly, we: (1) vacate the September 14, 2005 Order; (2) vacate the November 25, 2005 Order to the extent that it denies any reimbursement to Mother for the child's braces; and (3) vacate Findings of Fact nos. 17.m. and 17.n. and Conclusions of Law paras. K. and L. in the December 12, 2005 Findings of Fact and Conclusions of Law. The October 14, 2005 Order is moot. We remand for the recalculation of child support and a further order

on the reimbursement issue, consistent with this order. In all other respects, we affirm.

DATED: Honolulu, Hawai'i, May 1, 2008.

On the briefs:

Luwalhati Admana Johnson
Pro Se Plaintiff-Appellant.

Derek R. Kobayashi
Mihoko E. Ito
(Goodsill Anderson Quinn &
Stifel)
for Defendant-Appellee.

Corinne K.A. Watanelle

Presiding Judge

Alana D. H. Fijine

Associate Judge

~~*[Signature]*~~
Associate Judge