

NO. 27818

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

PIYAPORN TANAKA, Plaintiff-Appellee/Cross-Appellant, v.
TROY YOSHIO TANAKA, Defendant-Appellant/Cross-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-Divorce No. 03-1-1971)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J. and Fujise, J.,
with Watanabe J., concurring separately)

Defendant-Appellant/Cross-Appellee Troy Yoshio Tanaka (Husband) appeals from a divorce decree entered by the Family Court of the First Circuit (family court)¹ on March 13, 2006. Plaintiff-Appellee/Cross-Appellant Piyaporn Tanaka (Wife) cross-appeals from the same divorce decree.

After a careful review of the issues raised, arguments advanced, applicable law, and the record in this case, we resolve Husband's appeal and Wife's cross-appeal as follows:

A. Husband's Claims

1. The family court did not err in distinguishing Antolik v. Harvey, 7 Haw. App. 313, 761 P.2d 305 (1988), and adopting Wife's valuation of Husband's business, Kitchen & Bath Remodeling (K&BR), which did not contain the value of goodwill personal to the owner and operator, i.e., Husband. As Wife's expert, John Candon, CPA/ABV, ASA, CBA, CFE (Candon), noted, Antolik involved a single-employee professional services enterprise. By contrast, Candon reported that K&BR operated under a trade name separate from any personality, maintained a well-trained work force, spent \$10,000 in advertising, and attracted customers based on the good reputation it had earned over the years for its renovation work. Candon opined that K&BR

¹ The Honorable Christine E. Kuriyama presided.

could continue to profitably operate without Husband, by hiring a competent manager. Based on this evidence, which the family court found credible, it was not clearly erroneous to find that the K&BR valuation did not include an element of personal goodwill.

2. The family court did not err in excluding the testimony and report of Dr. Marvin Acklin (Dr. Acklin) regarding an alleged incident of family violence against Husband's twelve year-old son from a previous marriage (Son) by Wife. The family court had excluded Son's testimony, a ruling Husband does not challenge on appeal. No other evidence of this incident was proffered. Husband sought to introduce Dr. Acklin's report and testimony regarding Son's description of the alleged incident as a substitute for Son's testimony. Dr. Acklin had not been listed as an expert before Son made the disclosure of the alleged incident, nor had Son's therapist been listed as an expert witness. The description of the alleged incident contained in the proffered testimony and report was undisputedly hearsay, and not admissible as a basis of Dr. Acklin's expert opinion as there was no matter upon which Dr. Acklin's expert opinion was necessary. See Hawaii Rules of Evidence Rule 703. The family court's decision to exclude Dr. Acklin's report and testimony on hearsay grounds was correct.

B. Wife's Claims

1. The family court did not err in its calculation of child support pursuant to the "2004 Amended Hawai'i Child Support Guidelines" and the "Instructions for the 2004 Hawai'i Child Support Guidelines." In this regard, Wife challenges the family court's determination of monthly income for the parties. The monthly income imputed to Wife was equal to the amount she had earned as a full-time employee. This figure was also supported by testimony by Husband's expert witness who analyzed Wife's resume and the employment market in Wife's chosen field. Husband listed \$5,000 as his monthly income, a figure that he reported for over two years and the court accepted. Wife did not provide

evidence that Husband's income was more than this figure. We conclude that the family court did not err in its calculations of monthly income of the parties.

2. The family court did not abuse its discretion in denying Wife's request for transitional alimony. Once again, Wife challenges the family court's imputation of \$2,600 as her monthly income as the basis for her argument that the family court erred in denying her transitional alimony request. As we have already concluded the imputation of \$2,600 as Wife's monthly income was supported by the evidence, this claim is also without merit. To the extent Wife also challenges the denial of her alimony request based on Husband's income, we also reject her claim as she failed to establish a need for alimony insofar as she did not present evidence that her expenses would exceed her income and assets. See Cassiday v. Cassiday, 6 Haw. App. 207, 208, 716 P.2d 1145, 1146 (1985), rev'd on other grounds, 68 Haw. 383, 716 P.2d 1133 (1986) ("If there is no need for spousal support, then there is no obligation to pay.").

Therefore,

IT IS HEREBY ORDERED that the March 13, 2006 Decree Granting Absolute Divorce and Awarding Child Custody of the Family Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, December 28, 2009.

On the briefs:

Lynnae Lee and
Curtis Kam,
for Defendant-Appellant/Cross-Appellee. Presiding Judge

Robert M. Harris,
Dana W. Smith, and
Justin L. Sturdivant, Associate Judge
for Plaintiff-Appellee/Cross-Appellant.

I concur in the result.

Associate Judge