

NO. 28383

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

DONNA EDWARDS MIZUKAMI, nka DONNA EDWARDS,
Plaintiff-Appellee, v. GLENN KIYOHICO MIZUKAMI
Defendant-Appellant

CLERK OF APPELLATE COURTS
STATE OF HAWAII
Glenn Kiyohiko Mizukami

2009 APR 30 AM 8:26

FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D No. 90-4214)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Watanabe, and Fujise, JJ.)

Defendant-Appellant Glenn Kiyohiko Mizukami (Mizukami or Defendant) appeals from the following orders entered by the Family Court of the First Circuit¹ (family court): (1) the November 22, 2006 "Order Granting . . . Defendant's Motion and Affidavit for Summary Judgment on Plaintiff[']s Motion for Post-Decree Relief and Denying Defendant's Motion [for] Summary Judgment Filed Nov[.] 3, 2006" (November 22, 2006 Order); (2) the December 22, 2006 "Order Denying Defendant's Motion & Affidavit for Stay and Reconsideration of November 22, 2006 Order Granting & Denying Defendant's Motion and Affidavit for Summary Judgment on Plaintiff's Motion for Post-Decree Relief, and Granting Plaintiff's Motion for Post-Decree Relief Filed on 11/06/06; Filed December 4, 2006" (December 22, 2006 Order Denying Reconsideration); and (3) the "Order Transferring [sic] Defendant's Real Property" attached as Exhibit C to Mizukami's January 22, 2007 notice of appeal.²

The "Order Transferring [sic] Defendant's Real Property" is unsigned and unfiled and not appealable.

¹ The Honorable Christine E. Kuriyama presided.

² The title to Mizukami's notice of appeal mentions that the notice of appeal is taken from . . . "3) December 28, 2006 Proposed Transfer of Defendant's Residence Property[.]" However, the body of the notice of appeal states that the appeal is taken from three attached family court orders, and the third attached order, which is unsigned and unfiled, is entitled, "Order Transferring [sic] Defendant's Real Property[.]"

The November 22, 2006 Order and the December 22, 2006 Order Denying Reconsideration provided that Mizukami must comply with four prior orders of the Intermediate Court of Appeals (ICA) awarding attorney's fees to Plaintiff-Appellee Donna Edwards Mizukami, now known as Donna Edwards (Edwards). The November 22, 2006 Order stated that if Mizukami failed to pay the attorney's fees and accrued interest within one month, Edwards' attorney "shall submit an order" to transfer title of Mizukami's real property to Edwards and her attorney.

Mizukami advances numerous points of error, which appear to argue, in relevant part, as follows:

(1) There were "[u]ndisputed explicated averments of counsel's misconduct & harmful Frauds-upon-the-Court";

(2) Edwards' motion for post-decree relief seeking enforcement of the awards of attorney's fees and interest "clearly shows said claims circumventing the respective [judgments on appeal] and the controlling superseding final ICA Rulings, and thus were plainly reviewable if at all, as original claims in the Family Court's jurisdiction; or otherwise were illegal & unwarranted";

(3) The family court's "refusal to plenary review [Mizukami's] documented pleadings and to properly review the Record even when the [family court] supposedly took 'judicial notice of the entire Record['] . . . constitutes abuse of authority & discretion";

(4) The family court improperly ordered Mizukami to pay off "awarded fees & interest within 30 days" or have his residence transferred to Edwards and her attorney because the property "would appraise at a value several times the awarded \$67,000, and is mortgaged to a first lienholder and other major creditors"; and the family court failed to release a lien placed on the residence by Edwards' attorney that obstructed the refinancing of the residence;

(5) The family court's "conduct of proceedings denie[d Mizukami's] substantive rights secured under the Hawai'i & United States Constitution provisions of Due Process & Equal Protection of the Laws";

(6) Findings of Fact (Findings) 1 through 4, which listed the four orders affirmed or issued by the ICA and directed Mizukami to pay Edwards' attorney's fees, were "unwarranted under the Parties' American Rule or on otherwise controlling statues [sic] . . . absent money judgment" and were "effectively reversed & ruled against" by the ICA's "superseding rulings";

(7) Finding 7, which stated that the family court's November 22, 2006 Order directed Mizukami to pay the outstanding awards of attorney's fees or Edwards was to submit an order for the family court clerk to transfer Mizukami's real property to Edwards and her attorney, "[e]rroneously fails to mention [Mizukami's] Motion For Summary Judgment which clearly was not considered but arbitrarily denied";

(8) Conclusions of Law (CsOL) 1 and 2, which provided that Edwards sought enforcement of binding ICA orders that either affirmed or awarded attorney's fees and are law of the case, are incorrect because the orders were not affirmed on appeal and "'Law of the Case' does not apply when the underlying decisions are unsound, as here"; and

(9) COL 3, which stated there is insufficient basis to stay or reconsider the November 22, 2006 Order, "is arbitrary and clearly incorrect & vacatable[.]"

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

(1) With respect to points of error one through three and five through nine, all pertaining to Mizukami's obligation to pay attorney's fees, we conclude that the four orders awarding attorney's fees to Edwards were either affirmed or issued by this court and are therefore law of the case.

Contrary to Mizukami's assertions, these orders have not been overturned. Inasmuch as Mizukami's arguments below and on appeal seek to relitigate matters established by these orders, the law-of-the-case doctrine "operates to foreclose reexamination

of decided issues either on remand or on a subsequent appeal[.]"
Ditto v. McCurdy, 98 Hawai'i 123, 128, 44 P.3d 274, 279 (2002).

In addition, Edwards is entitled to interest on the four orders awarding attorney's fees "at the rate of ten per cent a year," Hawaii Revised Statutes (HRS) § 478-3 (2008), "payable from the date the judgment was entered in the circuit or district court[.]" Hawai'i Rules of Appellate Procedure Rule 37 (2000).
See also Metcalf v. Voluntary Employees' Benefit Ass'n of Hawai'i, 99 Hawai'i 53, 60-61, 52 P.3d 823, 830-31 (2002) (stating that HRS § 478-3 applies "[i]n the absence of express statutory authority governing the payment of interest in a specific type of claim," and "[w]here a judgment results in an award of money, the prevailing party is ordinarily entitled to 'total' compensation").

Mizukami is obligated to pay Edwards the attorney's fees as provided by the four prior orders, plus interest.

(2) With respect to the fourth point of error, relating to the anticipated transfer of Mizukami's real property to Edwards and her attorney in the event of Mizukami's non-payment of attorney's fees, we decline to review this issue at this time because the record on appeal indicates that although Mizukami had not paid the required attorney's fees, the family court has not filed an order directing the transfer of title to Edwards and her attorney.

Therefore, the November 22, 2006 Order and the December 22, 2006 Order Denying Reconsideration are hereby affirmed.

DATED: Honolulu, Hawai'i, April 30, 2009.

On the briefs:

Glenn Kiyohiko Mizukami,
Defendant-Appellant, pro se.

Thomas D. Collins, III
for Plaintiff-Appellee.

