

NO. 24967

IN THE SUPREME COURT OF THE STATE OF HAWAII

IN THE MATTER OF THE JANE DOE TRUST
DATED NOVEMBER 30, 1992

APPEAL FROM THE FIRST CIRCUIT COURT
(TRUST NO. 00-1-0024)

CLERK OF APPELLATE COURTS
STATE OF HAWAII
NORMA I. YARA

2005 MAR 18 PM 12:19

FILED

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Acoba, JJ.
and Circuit Judge Raffetto, in Place of Duffy, J., Recused)

On February 17, 2005, we ordered the parties to report on the status of this appeal, No. 24967, In re Jane Doe Trust, in light of our decision in No. 25760, Doe v. Doe, filed on December 23, 2004 (Memo. op.).

On February 23, 2005, Respondent-Appellant Mary Roe (Appellant) moved to dismiss this appeal. On March 1, 2005, Appellee John Doe (Appellee) filed a status report in response to this court's order, and addressed the allegations contained in Appellant's motion to dismiss appeal. No party objects to the dismissal of this appeal.

The parties, however, appear to disagree on the payment of fees, particularly the Master's Fees, and costs once the probate appeal is dismissed. By her motion to dismiss, Appellant makes the following two assertions: (1) that the October 11, 2002 oral settlement agreement "provided for, inter alia, the cancellation of the \$17,781 and \$51,402 payments by [Appellant] ordered by the probate court, and the dismissal of that portion

of the probate appeal, No. 24967, covering these disputed payments"; and (2) that attached to the family court's March 11, 2003 Stipulated Order purporting to memorialize the October 11, 2002 agreement was "a proposed order dismissing No. 24967 . . . providing that both parties would assume their own fees and costs." Based on these assertions and pursuant to the memorandum opinion, Appellant requests "that this [c]ourt order the dismissal of [In re Jane Doe Trust], with both parties to assume payment for their own fees and costs, as provided in the March 7, 2003 [sic] Stipulated Order." (Emphasis added.)

Appellee contends that Appellant "incorrectly states" the terms of the October 11, 2002 agreement. Rather, Appellee asserts that the agreement "provided that 'the remaining Master's fees (\$11,197.54 as of November 20, 2002)' - not the \$17,781.00 figure cited by [Appellant's] counsel - 'be paid from the assets of the [Jane Doe] Trust and not by [Appellant] personally[.]'" Appellee also states that "the settlement agreement . . . provided that the entire appeal[, In re Jane Doe Trust,] be dismissed pursuant to stipulation." Based on these contentions, Appellee maintains that "upon dismissal of the appeal, it is anticipated that the [p]arties will submit to the Probate Court an Ex Parte Petition for Partial Relief from Orders and Judgments and to Allow Remaining Master's fees to be Paid out of [Jane Doe] Trust in a form that is consistent with this Court's Memorandum Opinion."

The matters raised by Appellant and Appellee were to be determined on remand according to the memorandum opinion issued in Doe v. Doe. We noted, therein, that at the October 11, 2002 settlement conference,

beyond mention of a joint application to the probate court asking that the surcharge imposed against Wife be set aside, the master's fees be paid by the trust, and the dismissal of the pending probate appeal, the record fails to disclose any discussion of probate court or trust matters. Therefore, other provisions regarding the trust should not have been included in the Stipulated Order.

Memo. op. at 16 (emphasis added). Accordingly, we remanded Doe v. Doe to the family court "with instructions to strike those provisions of the March 11, 2003 Stipulated Order that were not agreed to, consistent with the decision" as stated in the memorandum opinion. Id. at 20. We also stated that "the March 11, 2003 Stipulated Order . . . [is] affirmed in all other respects." Id.

Therefore, pursuant to the memorandum opinion in Doe v. Doe, Appellant's motion to dismiss, and there being no objection to such dismissal,

IT IS HEREBY ORDERED that this appeal is dismissed in accordance with our decision in Doe v. Doe.

DATED: Honolulu, Hawai'i, March 18, 2005.

Peter Van Name Esser,
on the motion for
Respondent-Appellant.

Rhonda L. Griswold and
Colin O. Miwa (Cades
Schutte) in response
for Appellee.

