

NO. 22350

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

DEBRA H. CAMPBELL, Plaintiff-Appellant, v.
JAMES M. CAMPBELL, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 97-4032)

MEMORANDUM OPINION

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

Plaintiff-Appellant Debra H. Campbell (Debra or Plaintiff) appeals the family court's¹ February 11, 1999 First Amended Divorce Decree. We affirm.

BACKGROUND

Debra and Defendant-Appellee James M. Campbell (James or Defendant) were married on March 6, 1971, in Pennsylvania. Their daughter was born on February 14, 1987.

Debra filed a Complaint for Divorce on November 17, 1997. On December 28, 1998, the family court orally announced its decision. On December 31, 1998, the family court entered its Divorce Decree.

On January 8, 1999, Debra filed (1) Plaintiff's Motion for [Post]-Decree Relief, and (2) a Hawai'i Family Court Rules (HFCR) Rule 59(a) (1999) motion for further hearing and

¹ District Family Court Judge Kenneth E. Enright presided in this proceeding.

Rule 59(b) (1999) motion for reconsideration. These motions were set for hearing on January 27, 1999, at 1:30 p.m.

January 17, 1999, was a Sunday. January 18, 1999, was a legal holiday. On January 19, 1999, Defendant's HFCR Rule 59(a) and 59(b) Motion and a cover letter request to also set the hearing on January 27, 1999, at 1:30 p.m., were submitted to a family court clerk and date stamped as follows:

RECEIVED

JAN 19 1999

FAMILY COURT, FIRST CIRCUIT

On January 21, 1999, Defendant's HFCR Rules 59(a) and 59(b) Motion and a notice of hearing setting the motion for hearing on January 27, 1999, at 1:30 p.m., were filed in the First Circuit Court.

Debra's motions and James' motion pertained only to the subject of the division and distribution of the assets and debts of the parties.

As a result of the January 27, 1999 hearing, the family court entered its February 11, 1999 order and its February 11, 1999 First Amended Divorce Decree.

Debra timely filed an appeal.

On May 10, 2000, the family court entered its Findings of Fact and Conclusions of Law, in relevant part, as follows:

8. [Debra] is fifty (50) years old and is trained as a Board-Certified emergency room physician.

9. [Debra] has been medically diagnosed with chronic fatigue syndrome.

10. [Debra] has not been employed since 1991 because of her diagnosed condition of chronic fatigue syndrome.

11. [Debra] is currently receiving payments of EIGHT THOUSAND DOLLARS (\$8,000) per month (tax-free) under a specialty-specific disability policy from UNUM Insurance Company.

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17. [James] is fifty-three (53) years old and is a Board-Certified emergency room physician.

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21. [James'] net business income . . . averages TWELVE THOUSAND DOLLARS (\$12,000.00) per month, before taxes.

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26. When the parties and their daughter . . . moved to Hawaii in 1992, [James] was unable to find enough work in Hawaii as an emergency physician to support the family in the style to which they were then accustomed.

27. Because he was unable to adequately financially support himself, [Debra] and [Daughter] with the work available in Hawaii, [James] chose to commute back and forth from Hawaii to New York in order to work at two jobs, one in each state.

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30. [James] invested \$275,000.00 into a pizza business called "Wahiawa Pizza, Inc."

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33. [James'] Pizza Business was not successful and did not provide the family with anticipated income.

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35. The Pizza Business now has an approximate current gross asset value of \$50,000.00.

36. [James] alone remains liable for \$103,000.00, the balance on the signature loan for the Pizza Business.

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47. During the marriage, [James] inherited a total of \$205,888.00 from his mother's estate.

48. During the marriage, [James] inherited a total of \$331,888.00 from his father's estate.

. . . .

53. There is no credible evidence that [Debra] received any significant inheritance(s) from her own family during the marriage.

54. There is no credible evidence that [Debra's] father gifted any interest in Pennsylvania land to [Debra] at any time.

55. There is no credible evidence that [Debra] received \$75,000.00 worth of stocks and insurance by gift or inheritance from her family.

. . . .

57. There is no credible evidence to support that [Debra] received more than \$2,000.00 worth of coins as a gift from her family.

. . . .

100. The significant debts now owed by the parties are due in large part to the fact that they have lived beyond their means for years during the marriage.

DISCUSSION

A.

Debra contends that James' HFCR Rule 59 motion was not timely filed and, therefore, the family court lacked jurisdiction to grant it. We disagree.

Prior to its amendment on January 1, 2000, HFCR Rule 59(d)(1) stated, "A motion for further hearing or reconsideration of decision shall be filed not later than 20 days after the announcement or filing of a decision whichever occurs first." Under this rule, James' HFCR Rule 59 motion had to be filed no later than January 19, 1999. On that date, it was submitted to and "RECEIVED" by a circuit court clerk assigned to

the family court. It was "FILED" in the First Circuit Court on January 21, 1999.

The family court's November 24, 1997 Memorandum addressed to "All Attorneys" and "Family Court Judges and Staff" regarding the subject of "Motions for Reconsideration" states that effective December 15, 1997, except for certain motions for reconsideration not relevant to this appeal, "all motions for reconsideration shall be non-hearing motions. At its discretion, the court may set the matter for a hearing." The November 24, 1997 Memorandum also states that

[a]fter filing the non-hearing motion with the Legal Documents Receiving Section on the 1st floor of the First Circuit Court, a copy of the motion must be delivered to the Family Court's Court Management Services (CMS) on the 2nd floor of the First Circuit Court, Room 2027. This copy of the motion will be forwarded to the judge whose name appears on the right side of the caption.

Obviously, James' HFCR Rule 59 motion reversed the process specified in the family court's November 24, 1997 Memorandum. The question is whether the fact that a document was submitted to and "RECEIVED" by a circuit court clerk assigned to the family court rather than "FILED" "with the Legal Documents Receiving Section on the 1st floor of the First Circuit Court" satisfies the requirement of HFCR Rule 59(d)(1) (1999) that "[a] motion for further hearing or reconsideration of decision shall be filed not later than 20 days after the announcement or filing of a decision whichever occurs first."

James notes that (a) Hawai'i Revised Statutes § 606-1(b) (1993) states that "[t]he respective clerks of the . . . circuit courts . . . shall be ex officio clerks of all the courts of records, and as such may issue process returnable in all such courts"; and (b) HFCR Rule 5(e) (2000) states that "[t]he filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court[.]" James contends that the submission of his motion to a circuit court clerk on January 19, 1999, and the clerk's acceptance and date stamping of it as "RECEIVED," was a filing that satisfied the jurisdictional requirements of HFCR Rule 59(d)(1). We agree.

B.

Debra challenges findings of fact nos. 53, 54, 55, and 57. She contends that the finding that she "had received little if any inheritance during her marriage so as to counter Husband's inheritance claims in the equitable division of their property" is clearly erroneous, necessitating a new trial. She argues that "recognizing [James'] entire claimed inherited property of approximately \$400,000, while completely rejecting [Debra's] claim of inherited property in excess of \$400,000 . . . skewed the distribution heavily in [James'] favor."

Upon a review of the record, we agree with James that findings of fact nos. 53, 54, 55, and 57 are not clearly erroneous.

C.

Debra contends that the findings of fact are insufficient to determine how the family court valued and weighed the various assets of the parties, requiring remand either for a new trial or the entry of more definite findings of fact and conclusions of law. In her opening brief, Debra notes that

[a]lthough in justifying its modified decision, the lower court referred to the customary general standards for the exercise of its discretion in property divisions, it made no attempt to explain how it actually valued the various assets of the parties, the categories of assets involved, or how it arrived at its corresponding property division, while purporting to apply a partnership model.

. . . .

. . . [I]n this case in both the original "Divorce Decree" and the "First Amended Divorce Decree," as well as in both trial transcripts and the belatedly-entered "Findings of Fact and Conclusions of Law" nowhere does the lower court once explain how, weighing the various assets of the parties, it somehow collectively came to its balancing conclusion, except for the transcript of the hearing in which [James'] late-filed Rule 59(b) Motion was granted, where we are told only that the lower court is trying to apply the partnership model.

Yet, at that hearing the lower court left the parties to wonder what values it had indeed assigned to each asset when it entered its original Divorce Decree, and, more importantly, how it could so cavalierly have changed its mind a few weeks thereafter at the Rule 59(b) hearing and suddenly "ball-parked" a switching of the parties' most valuable asset.

The lower court, as a result, in all fairness has left for appellate review a record in complete shambles, which even armed with an efficient and well-tuned calculator, there is no way for the parties to intelligently brief this appeal with anything approaching the mathematical precision usually accompanying such appellate disputes, or for this Court to review and to determine the accuracy or equitableness of what the lower court was

attempting to do - first, when on December 31, 1998, it divided the property of the parties, and, six weeks later, when on February 11, 1998, apparently unsure of itself, it reversed course and bent over in the opposite direction.²

(Footnotes omitted; footnote added.)

We agree with Debra that the family court failed in its duty to value and categorize the net market value of each Marital Partnership Property asset and debt. We agree with Debra that the family court failed to comply with the following precedent:

² The allegation that "apparently unsure of itself, [the court] reversed course and bent over in the opposite direction" is contradicted by the record. At the February 3, 1999 hearing, the court stated, in relevant part:

When I -- when I did this decision I attempted to stick very close to [Defendant-Appellee James M. Campbell's (James')] position and I did so because of the amount of Category 3 property that was established at trial that I would otherwise have to award to him unless I was to go with what his position was as to what was fair and equitable.

However, I deviated from [James'] proposal to the extent that I awarded [Plaintiff-Appellant Debra H. Campbell (Debra)] Red Hill because I recognized that that was something that was -- a piece of property that was important to [Debra].

However, I have -- what I have to do in order to have an outcome that is what I consider the best possible outcome for [Debra] is take what [counsel for James] has represented, . . . would be in his client's opinion a fair and equitable division which is the request as set forth in his memorandum at Pages 2 and 3.

And have that be the revisions to the decree because it -- and unfortunately that means that Red Hill can't go to [Debra].

But nonetheless, it . . . still deviates from a fifty/fifty division of these assets by -- by a significant amount.

And my justification for doing so is that I would find that a party's position that a division of property is fair and equitable would establish a valid and relevant consideration to deviate from the partnership model.

The Partnership Model requires the family court, when deciding the division and distribution of the Marital Partnership Property of the parties part of divorce cases, to proceed as follows: (1) find the relevant facts; start at the Partnership Model Division, and (2) (a) decide whether or not the facts present any valid and relevant considerations authorizing a deviation from the Partnership Model Division and, if so, (b) itemize those considerations; if the answer to question (2) (a) is "yes," exercise its discretion and (3) decide whether or not there will be a deviation; and, if the answer to question (3) is "yes," exercise its discretion and (4) decide the extent of the deviation.

Jackson v. Jackson, 84 Hawai'i 319, 332, 933 P.2d 1353, 1366 (1997).

In this case, however, in light of the family court's findings regarding the Category 3³ net market value attributable to James and not attributable to Debra, the court's deviation from the Partnership Model Division clearly favored Debra rather than James. Viewed from Debra's perspective, the family court's decisions regarding the division and distribution of the assets and debts of the parties were well within the boundaries of its discretion. Therefore, the family court's neglect was harmless error.

³ Category 3. The date-of-acquisition NMV [net market value], plus or minus, of property separately acquired by gift or inheritance during the marriage but excluding the NMV attributable to property that is subsequently legally gifted by the owner to the other spouse, to both spouses, or to a third party.

Tougas v. Tougas, 76 Hawai'i 19, 27, 868 P.2d 437, 445 (1994).

CONCLUSION

Accordingly, we affirm the family court's February 11, 1999 First Amended Divorce Decree.

DATED: Honolulu, Hawai'i, July 16, 2001.

On the briefs:

Gary Victor Dubin
for Plaintiff-Appellant. Chief Judge

Thomas L. Stirling, Jr., and
Renee M. Yoshimura
(of counsel, Stirling
& Kleintop) Associate Judge
for Defendant-Appellee.

Associate Judge