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NO. 24581

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

LINDA REGINA GRIFFING, Plaintiff-Appellee, v.
PAUL MARTIN GRIFFING, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D No. 88-1037)

MEMORANDUM OPINION

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

Defendant-Appellant Paul Martin Griffing (Paul) appeals from the: (1) Order Regarding June 13, 2001 Hearing entered by the Family Court of the First Circuit¹ (the family court) on July 18, 2001 (the July 18, 2001 Order), which granted in part and denied in part the Motion and Affidavit for Post-Decree Relief filed on April 4, 2001 by Plaintiff-Appellee Linda Regina Griffing, also known as Linda Lai (Linda) (Linda's motion) (Paul and Linda collectively, the parties); and (2) "Order Denying [Paul's] Motion for Reconsideration and/or New Trial Filed on 7/25/01" entered by the family court on August 27, 2001 (the Order Denying Reconsideration). We vacate both orders and remand for further proceedings consistent with this opinion.

BACKGROUND

On July 21, 1988, a "Decree Granting Absolute Divorce and Award[ing] Child Custody" (the Divorce Decree) was entered in

^{1/} Judge Gale L.F. Ching entered the orders from which this appeal was taken.

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the family court, ending the marriage of Paul and Linda. The Divorce Decree awarded Linda the "sole care, custody and control" of Paul and Linda's only child (Child), who was five years old at the time. The Divorce Decree contained the following child support clause:

a) Child Support. [Paul] shall pay directly to [Linda] as and for support, maintenance and education of [Child] the sum of Three hundred thirty AND NO/100 DOLLARS (\$330) per month. Said sum to be payable on the 1st day of each month, commencing on the 1st day of July, 1988, and continuing on the 1st day of each month thereafter until [Child] attains the age of 18 years, graduates from high school or discontinues high school whichever occurs last, subject to further order of the [c]ourt. Child support shall continue uninterrupted if [Child] continues his education post high school on a full-time basis at an accredited college or university, or in a vocational or trade school, and shall continue until [Child's] graduation or attainment of the age 23 years, whichever event shall first occur. All of the foregoing shall be subject to further order of the [c]ourt.

(Emphasis added.) The Divorce Decree did not specifically address who would be responsible for payment of Child's post-high school educational expenses.

On April 4, 2001, Linda's motion was filed, requesting that the family court: (1) recalculate the child support to be paid by Paul, based on the current Child Support Guidelines (the Guidelines); (2) order Paul to pay for "the cost of . . . tuition, fees, books, travel expenses, room, board, and all other related charges for the post[-]high school education of [Child]"; and (3) order Paul to pay for Linda's incurred legal expenses.

In opposing Linda's motion, Paul noted that he was

a retired 68[-]year[-]old, living on social security and working part time in order to meet his financial obligations. His net income each month is \$2886.90. This is in contrast to [Linda] whose net income is \$8086.62 per month.

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. . . . [Linda's] counsel had earlier informed [Paul] that "[Linda's] estimate for tuition and room and board is \$33,050.00 per year plus books and other fees and costs." This was the first notice that [Paul] received of [Linda's] plans to seek contribution towards [Child's] post[-]high school plans.

(Footnote omitted.)

Following a June 13, 2001 hearing on Linda's motion, the family court entered the July 18, 2001 Order, which denied Linda's request for modification of child support. Thus, Paul continued to be obligated to pay monthly child support of \$330.00. In addition, the July 18, 2001 Order required Linda and Paul to share equally in Child's post-high school educational expenses, "including but not limited to the cost of tuition, fees, books, travel expenses for school, room, board and other related expenses." Child had been accepted at Tulane University, a private university in New Orleans, Louisiana. Child's educational expenses for the 2001-02 academic year were estimated at \$34,284.00, not including travel expenses.

ISSUES ON APPEAL

Paul argues on appeal that the family court:

(1) lacked jurisdiction to modify the Divorce Decree, which contained "no separate paragraph covering post-high [school] educational expenses[,]" more than one year after entry of the Divorce Decree; (2) "disregarded principles of practice in ordering [Paul] to pay in excess of 70% of his net income [in child support and educational expenses]"; (3) erred when it ordered Paul "to equally share in the post-high school education of [Child]" when the "[t]estimony and exhibits presented at trial

established [Paul's] income to be substantially less than [Linda's]"; (4) "further erred in requiring [Paul] to continue to pay [Linda] child support, when [Child] will no longer be residing with her"; and (5) "abused its discretion in ordering [Paul] to contribute towards post[-]high school educational expenses, in excess of any amount to be ordered as child support and in an amount disproportionate to the incomes of the parties."

DISCUSSION

A.

As to the jurisdictional issue, we conclude that the family court had reserved jurisdiction under Hawaii Revised Statutes (HRS) § 580-47(a) and continuing jurisdiction under HRS § 580-47(c) to enter orders regarding Child's post-high school educational expenses.

HRS § 580-47 provides, in relevant part, as follows:

Support orders; division of property. (a) Upon granting a divorce, or thereafter if, in addition to the powers granted in subsections (c) and (d), jurisdiction of those matters is reserved under the decree by agreement of both parties or by order of court after finding that good cause exists, the court may make any further orders as shall appear just and equitable (1) compelling the parties or either of them to provide for the support, maintenance, and education of the children of the parties; In making these further orders, the court shall take into consideration: the respective merits of the parties, the relative abilities of the parties, the condition in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the parties, and all other circumstances of the case. In establishing the amounts of child support, the court shall use the guidelines established under section 576D-7. Provision may be made for the support, maintenance, and education of an adult or minor child and for the support, maintenance, and education of an incompetent adult child whether or not the petition is made before or after the child has attained the age of majority. In those cases where child support payments are to continue due to the adult child's pursuance of education, the agency, three months prior to the adult child's nineteenth birthday, shall

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send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child to the child support enforcement agency, prior to the child's nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college, or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency, hearings officer, or court upon the child reaching the age of nineteen years. In addition, if applicable, the agency, hearings officer, or court may issue an order terminating existing assignments against the responsible parent's income and income assignment orders.

. . . .

(c) No order entered under the authority of subsection (a) or entered thereafter revising so much of such an order as provides for the support, maintenance, and education of the children of the parties shall impair the power of the court from time to time to revise its orders providing for the support, maintenance, and education of the children of the parties upon a showing of a change in the circumstances of either party or any child of the parties since the entry of any prior order relating to the support, maintenance, and education. The establishment of the guidelines or the adoption of any modifications made to the guidelines set forth in section 576D-7 may constitute a change in circumstances sufficient to permit review of the support order. A material change of circumstances will be presumed if support as calculated pursuant to the guidelines is either ten per cent greater or less than the support amount in the outstanding support order. . . . The most current guidelines shall be used to calculate the amount of the child support obligation.

HRS § 580-47(a) and (c) (Supp. 2003) (emphases added).

The child support provision of the Divorce Decree, quoted above, specifically stated that Paul's obligation to pay "for support, maintenance and education" of Child "shall be subject to further order of the [c]ourt." Thus, the family court's jurisdiction to make further orders affecting Paul's obligation with respect to Child's education was specifically reserved by the parties pursuant to HRS § 580-47(a). In addition, the family court had express continuing jurisdiction

under HRS § 580-47(a) to make "further orders . . . for the . . . education" of Child.

B.

Paul's remaining issues on appeal all relate to whether the family court properly determined the parties' obligations to pay for Child's post-high school educational expenses. We conclude, based on our review of the record on appeal and the applicable statutory and case law in Hawai'i, that the family court erred in holding Paul liable for one-half of Child's college expenses.

Hawai'i law indicates that the Guidelines established pursuant to HRS § 576D-7 continue to apply while a child is enrolled as a full-time student in pursuit of a post-high school education. HRS § 580-47(a) and (c); Matsunaga v. Matsunaga, 99 Hawai'i 157, 164, 53 P.3d 296, 303 (App. 2002). Consequently, the Guidelines must be followed, "except when exceptional circumstances warrant departure." HRS § 576E-15 (Supp. 2003); Child Support Guidelines, November 1, 1998, at 1. Whether there are exceptional circumstances permitting a departure from the Guidelines is a question of law, reviewed on appeal "under the right/wrong or de novo standard[.]" Mack v. Mack, 7 Haw. App. 171, 180, 749 P.2d 478, 483 (1988).

In Matsunaga, the divorcing parties had two daughters. The divorce decree provided that the mother and father would pay a proportionate share of the daughters' higher-education

expenses, "based on the percentage their net income bears to the total net income of the parties. . . . Such education expenses shall include but not be limited to tuition, fees and book expense at an amount no greater than the then current tuition, fees and book expenses at the University of Hawaii, Manoa."

Matsunaga v. Matsunaga, 99 Hawai'i at 159, 53 P.3d at 298. After the divorce, the mother and the daughters moved to Washington. Subsequently, the mother sought to have the divorce decree modified to require the father to pay for his pro rata share of one daughter's expenses at the University of Puget Sound, a private university in the state of Washington. The family court recalculated the father's child support obligation and "re-affirmed and enforced" the higher educational provision of the parties' divorce decree. Id. at 160, 53 P.3d at 299. This court held:

The family court cannot determine whether an exceptional circumstance warrants a deviation from the applicable guideline amount until it determines where the child will be a full-time student and what the child's reasonable expenses will be. Therefore, the family court must decide, in light of all the relevant facts, at what post-high school college or colleges, university or universities, or vocational school or schools it is reasonable for Daughter 1 to be a full-time student. If the University of Puget Sound is included, Daughter 1's actual and reasonable expenses must be considered. If the University of Puget Sound is not included, Daughter 1's actual and reasonable expenses must be considered but no more than the actual and reasonable expenses Daughter 1 would incur if she was a full-time student at the most expensive of the listed institutions.

Id. at 164, 53 P.3d at 303.

In this case, the family court, as in Matsunaga,² failed to expressly "determine whether an exceptional circumstance warrant[ed] a deviation from the applicable guideline amount[.]" Id. The family court also did not determine, "in light of all the relevant facts, at what post-high school college or colleges, university or universities, or vocational school or schools it is reasonable for [Child to attend as] a full-time student." Id. Finally, the family court did not determine the "actual and reasonable expenses" that would be incurred by Child in attending a college, university, or vocational school that is reasonable in light of the parties' circumstances. Id. On remand, the family court is ordered to make the determinations required by Matsunaga.

Matsunaga requires that the family court consider "all the relevant facts" in determining where it is reasonable for a child to be a full-time student and what the child's reasonable expenses will be. Id. Such relevant factors may include, for example,

whether the parent, if still living with child, would have contributed toward the costs of the requested education, the effect of the background, values, and goals of the parent on the reasonableness of the child's expectation of a higher education; and the relationship of the requested education to any prior training and to the overall long-range goals of the child. In addition, it is proper to consider the amount of the contribution sought, the ability of the parent to pay that cost, and the relative financial resources of both parents. Also to be considered are the financial resources of the child, the ability of the child to earn an income

^{2/} We note that Matsunaga v. Matsunaga, 99 Hawai'i 157, 53 P.3d 296 (App. 2002), was decided after the Family Court of the First Circuit entered its decision in this case.

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during the school year or on vacation, and the availability
of financial aid.

24A Am. Jur. 2d Divorce & Separation § 1036 (1998) (footnotes
omitted).

CONCLUSION

In light of the foregoing discussion, we vacate the
family court's: (1) July 18, 2001 Order Regarding June 13, 2001
Hearing; and (2) August 27, 2001 "Order Denying [Paul's] Motion
for Reconsideration and/or New Trial Filed on 7/25/01" and remand
this case for further proceedings consistent with this opinion.

DATED: Honolulu, Hawai'i, April 23, 2004.

On the briefs:

Blake T. Okimoto for
defendant-appellant.

George W. Van Buren, Robert G.
Campbell, and John B. Shimizu
(Van Buren Campbell & Shimizu,
of counsel) for plaintiff-
appellee.