

NOT FOR PUBLICATION

NO. 25258

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MARTIN DAVID SCHILLER, Plaintiff-Appellant, v.
JANET LOUISE SCHILLER, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 00-1-1585)

ORDER DENYING MOTION FOR RECONSIDERATION
(By: Burns, C.J., Lim and Foley, JJ.)

Upon consideration of the May 14, 2004 Motion for Reconsideration of the Memorandum Opinion Filed on May 4, 2004, the memorandum in support, and the records and files in this case,

IT IS HEREBY ORDERED that the motion is denied.

In relevant part, this court's memorandum opinion filed on May 4, 2004, stated as follows:

LACK OF APPELLATE JURISDICTION OVER THE DISTRIBUTION
OF PROPERTY AND DEBTS PART OF THE DIVORCE DECREE

Sua sponte we conclude that we do not have appellate jurisdiction over the part of this divorce case that involves the division and distribution of the property and debts of the parties.

The Divorce Decree states, in relevant part, as follows:

D) Personal Effects. Each party is awarded his or her own personal effects, clothing and jewelry. If there is a dispute as to any particular item of item, then the parties shall submit an agreed upon list of such disputed items to the Court and the Court shall then render a decision as to such disputed properties.

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E) Household Furniture, Furnishings and Effects. The parties' household goods and effects, and their furniture and appliances are to be divided by mutual agreement. If there is a dispute as to any particular item of item, then the parties shall submit an agreed upon list of such disputed items to the Court and the Court shall then render a decision as to such disputed properties.

In Eaton v. Eaton, 7 Haw. App. 111, 113-119. 748 P.2d 801, 804-806 (1987), this court stated, in relevant part as follows:

In relevant part, the August 6, 1986 FOF&COL state:

CONCLUSIONS OF LAW

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6. The personal property of the Plaintiff and Defendant which have not yet been distributed should be divided in such a manner agreeable to the parties so that each receives approximately equal value.

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Sua sponte we conclude that we do not have appellate jurisdiction to review the district family court's decisions and orders as to the division and distribution of the property and debts over which the district family court had jurisdiction.

Hawaii divorce cases involve a maximum of four discrete parts: (1) dissolution of the marriage; (2) child custody, visitation, and support; (3) spousal support; and (4) division and distribution of property and debts. Black v. Black, 6 Haw. App. 493, 728 P.2d 1303 (1986). In Cleveland v. Cleveland, 57 Haw. 519, 559 P.2d 744 (1977), the Hawaii Supreme Court held that an order which finally decides parts (1) and (4) is final and appealable even if part (2) remains undecided. Although we recommend that, except in exceptionally compelling circumstances, all parts be decided simultaneously and that part (1) not be finally decided prior to a decision on all the other parts, we conclude that an order which finally decides part (1) is final and appealable when decided even if parts (2), (3), and (4) remain undecided; that parts (2), (3), and (4) are each separately final and appealable as and when they are decided, but only if part (1) has previously or simultaneously been decided; and that if parts (2), (3), and/or (4) have been decided before part (1) has been finally decided, they become final and appealable when part (1) is finally decided.

In this case, parts (1) and (3) were final and appealable on August 6, 1986. Part (4), however, is not final and appealable because the district family court has not fully and finally divided and distributed all of the property and debts of the Plaintiff and the Defendant over which it had jurisdiction. See Black v. Black, *supra*. The family court is required in divorce cases to divide and distribute all the property and debts over which it has jurisdiction. HRS § 580-47(a)(3). In this case, the district family court refused to perform its duty.

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In many divorce cases, the family court expressly specifically and/or generally finally divides and distributes all of the property and debts of the parties over which it has jurisdiction. We recommend this practice in all cases. In some divorce cases, the family court expressly divides and distributes some of the property and debts of the parties and implicitly divides and distributes the remainder. See DeMello v. DeMello, 3 Haw. App. 165, 646 P.2d 409 (1982); Jendrusch v. Jendrusch, 1 Haw. App. 605, 623 P.2d 893 (1981). In this case, the district family court neither expressly nor implicitly divided and distributed the personal property of the parties.

(Footnote omitted.) With respect to appellate jurisdiction over the division and distribution of the property and debts part of the case, the instant case presents us with the same situation as did Eaton.

. . . .

CONCLUSION

Accordingly, we affirm the dissolution of the marriage. We conclude that we do not have appellate jurisdiction to decide the appeal of the part of this case pertaining to the division and distribution of property and debts. . . .

In his motion for reconsideration Appellant contends that "the trial court in this case divided all of the parties' personal effects and household furniture, furnishings and effects in Paragraphs "D" and "E" of the Divorce Decree." We disagree.

Paragraph "D" awarded each party "his or her own personal effects, clothing and jewelry" but did not decide who owned what. In recognition of this fact, it further stated that "[i]f there is a dispute as to any particular item of item, then the parties shall submit an agreed upon list of such disputed items to the Court and the Court shall then render a decision as to such disputed properties."

Paragraph "E" stated that "[t]he parties' household goods and effects, and their furniture and appliances are to be

divided by mutual agreement." In other words, at the time of the Divorce Decree, the parties' household goods and effects and furniture and appliances had not yet been divided. In recognition of this fact, paragraph "E" further stated that "[i]f there is a dispute as to any particular item of item, then the parties shall submit an agreed upon list of such disputed items to the Court and the Court shall then render a decision as to such disputed properties."

Appellant further contends that the "[i]f there is a dispute" sentence in paragraphs "D" and "E"

does not affect the finality of the parties' Divorce Decree.

This provision is required only in the event of a dispute. No such dispute ever arose. Nor was a dispute likely, as the record made clear that the parties were already living in different states at the time of trial and their personal property had largely, if not entirely, been divided. Since the parties never submitted a list of any kind to the family court, there was nothing left for the court to do. The paragraphs at issue here were therefore final for purposes of this appeal.

It appears that Appellant does not understand that the question is the finality/appealability of the Divorce Decree when it is entered and, thus, post-Divorce Decree events or non-events and/or actions or inactions by either or both of the parties are not relevant. When the Divorce Decree states that "[i]f there is a dispute as to any particular item of item, then the parties shall submit an agreed upon list of such disputed items to the Court and the Court shall then render a decision as to such disputed properties", until the court finally decides that there is no dispute or that all disputes have been resolved, it has not

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rendered a final and appealable decision.

DATED: Honolulu, Hawai'i, May 24, 2004.

On the motion:

Thomas L. Stirling, Jr.,
and Darcy H. Kishida
(Stirling & Kleintop)
for Plaintiff-Appellant.

Chief Judge

Associate Judge

Associate Judge.