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NO. 25352

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

LINDA JO DESUACIDO, Plaintiff-Appellee, v.
MICHAEL DESUACIDO, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 01-1-0924)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Michael Desuacido (Michael or Defendant) appeals from (1) the August 28, 2002 order granting the motion for post-decree relief filed on August 5, 2002, and (2) the Findings of Fact and Conclusions of Law (FsOF and CsOL) entered on October 16, 2002, in the Family Court of the First Circuit, Judge Bode A. Uale, presiding. We affirm.

Michael and Plaintiff-Appellee Linda Jo Desuacido (Linda or Plaintiff) were married on January 19, 1991. They have three children. Their first daughter was born on February 26, 1992. Their second daughter was born on September 3, 1993. Their first son was born on October 5, 1997.

The June 28, 2001 Decree Granting Absolute Divorce and Awarding Child Custody (Divorce Decree) awarded legal custody of the children jointly to the parties, awarded sole physical custody of the children to Linda, subject to Michael's rights of reasonable visitation, and ordered Michael to pay to Linda \$553

NOT FOR PUBLICATION

per child, per month, commencing August 5, 2001, to "provide adequate medical and dental insurance coverage for" the three children, and to pay one-half of the children's medical and/or dental expenses not reimbursed or covered by insurance.

On August 5, 2002, Linda filed a motion seeking (1) to be awarded sole legal and physical custody of the children, (2) a specific definition of Michael's visitation rights, (3) compliance with the Divorce Decree, and (4) an "order requiring [Michael] or the Cheif [sic] Clerk under [Hawai'i Family Court Rules (HFCR)] Rule 70 if [Michael] refuses, to sign an authorization so the U.S. Passport agency will issue U.S. passports to the minor children." This motion was supported by Linda's affidavit which stated the relevant supporting facts. On August 28, 2002, the court heard this motion. At that hearing, the following was stated, in relevant part:

MR. DESUACIDO: In here regarding the matter, for the record, I received by mouth scriptures which disguise me to be in this place. I don't know this man. I don't have a contract with this man.

. . . .

THE COURT: What is your name?

MR. DESUACIDO: I'm here concerning the matter.

THE COURT: Tell me your name, sir.

MR. DESUACIDO: My name is Michael.

. . . .

THE COURT: Michael what?

MR. DESUACIDO: Michael Esobru (phonetic spelling).

THE COURT: Your name is not Desuacido? Michael Desuacido?

NOT FOR PUBLICATION

MR. DESUACIDO: My father does not allow me to go to law with the Judge.

. . . .

THE COURT: Okay.

Sir, what's your position?

MR. DESUACIDO: For the record, I don't see my law, the scripture which describes me to be here. I don't know this man. I don't have a contract with this man.

I demand that he demonstrates upon the record that he show his contract that he holds with Jesus Christ that Jesus showed me to him that states how they contact your body with the temple -- the temple of God which is in you which the -- what's his name -- in you. It's the --

THE COURT: Sir, . . . if you don't tell me what your position is . . . there's a strong possibility that I may cut off your visitation with your children because you're appearing to me that you have some kind of psychological problem. So I'm just asking you to talk to the issues that are in this motion and try to make some, you know, coherent statement to me. . . .

MR. DESUACIDO: Well, I don't know this man. I don't have a contract with him for him to -- for, you know -- to bring me to this point of - to come past with the, you know -- come into law, you know -- my Father says -- does not allow me to come to law with the judge.

THE COURT: Okay. Is that your position, Mr. Desuacido?

MR. DESUACIDO: Yeah.

THE COURT: You don't have anymore to say?

MR. DESUACIDO: I like this man to demonstrate for the record the contract that he had with the Lord, Jesus Christ, that he sold my soul to him.

. . . .

THE COURT: Where's the children's birth certificates?

MR. DESUACIDO: Father doesn't allow me to -- to go to -- to law with the Judge.

THE COURT: Did you take the birth certificates from your ex-wife's house?

MR. DESUACIDO: Father doesn't allow me to go to law with the Judge.

THE COURT: Where do you work, now?

MR. DESUACIDO: Father doesn't allow me to go to law with

NOT FOR PUBLICATION

the Judge.

THE COURT: What's your current income?

MR. DESUACIDO: Father doesn't allow me to go to law with the Judge.

THE COURT: Are you willing to sign the authorization so your children can obtain passports?

MR. DESUACIDO: Father doesn't allow me to go to law with the Judge.

THE COURT: Court's ready to rule.

On August 28, 2002, the court entered the following order:

Plaintiff is granted sole legal and physical custody of the minor children. Defendant, forthwith, shall only have supervised visitation with the minor children through PACT [Parents and Children Together]. The court believes Defendant exhibits signs of a mental disability which places the children in danger and warrants supervised visitation and ordering Defendant to have a psychological assessment [sic] within 48 hours of today. Copies of said assessment [sic] shall be given to the court and to plaintiff's counsel. If Defendant complies with the psychological assessment [sic] order and that assessment indicates he is not a danger to the children Defendant may have regular Type B visitation. If Defendant does not comply all visitation shall remain supervised. Defendant is as of August 28, 2002 \$8,194.62 in arrears in his child support. Said amount is reduced to judgement and shall accrue interest at 10% per annum from today. Defendant is ordered to immediately provide medical coverage for the minor children. Plaintiff shall have judgement [sic] with interest against Defendant for \$94.70 for unpaid Dental bills for the minor children. The Chief Clerk is hereby ordered to immediately sign all necessary documents on behalf of Defendant to allow the U.S. Passport Agency to issue passports for [the children]. Defendant shall pay, immediately, the sum of \$750.00 directly to Scott T. Strack, Plaintiff's attorney, as and for attorneys [sic] fees.

On September 25, 2002, Michael filed a notice of appeal. The family court entered the FsOF and CsOL on October 16, 2002. In this appeal, the FsOF and CsOL challenged by Michael are printed in bold and state, in relevant part, as follows:

NOT FOR PUBLICATION

FINDINGS OF FACT

1. This matter came before the Court, regularly scheduled, before the Honorable BODE UALE on August 28, 2002 at 1:30 p.m.

2. Present were Plaintiff together with counsel . . . and Defendant Pro Se.

3. . . . Defendant initially refused to give his name to the Court.

4. Defendant continued his unusual behavior by answering most of the Court's inquiries with a standard answer to the effect of, "My father does not allow me to appear before a Judge and this Court".

5. After satisfying itself that the Defendant was present and at Court to defend the motion the Court proceeded to hear the Plaintiff's motion.

6. Plaintiff presented evidence that Defendant had broken into Plaintiff's house on more than one occasion.

7. Plaintiff presented evidence that Defendant had broken verbal agreements regarding the visitation with the children by not returning the children in a timely fashion.

8. Plaintiff presented evidence that Defendant had quit a well paying job after the divorce.

9. Defendant failed to pay previously Court ordered child support and was in arrears to the date of the hearing in the amount of \$8,194.62 as and for past child support.

10. Plaintiff presented evidence that Defendant had failed to pay, as required by the divorce decree, \$94.70 in dental expenses of the minor children.

11. Plaintiff presented evidence that Defendant had not maintained medical and dental insurance for the minor children as required by the divorce decree.

12. Plaintiff presented evidence that Defendant has refused to execute necessary documents to allow the U.S. Passport Agency to issue passport for the parties three minor children so they could travel to Japan with Plaintiff and her new husband to live.

13. Plaintiff presented evidence that she had incurred not less than \$750.00 in attorneys fee's [sic] and costs in connection with this motion.

14. Defendant was given the opportunity to present any evidence, rebuttal or testimony to challenge or contradict Plaintiff's evidence at the hearing.

NOT FOR PUBLICATION

15. Defendant chose to present nothing except to again repeat, "My father does not allow me to appear before a Judge and this Court". When given a final opportunity by the Court of "Do you have anything further to say in response to any of Plaintiff's evidence?" Defendant said, "No".

16. Defendant's behavior in Court gave serious concern to the Court for the safety of the minor children.

CONCLUSIONS OF LAW

17. It is in the best interest of the minor children that Plaintiff be awarded sole legal and physical custody of said children.

18. Until it can be determined by an expert that Defendant does not pose a danger to the minor children all of his visitation with the minor children shall be supervised through PACT.

19. Should Defendant be accessed [sic] on a timely basis and found not to be a danger to the minor children, his visitation shall be non-supervised.

20. Defendant's child support arrears of \$8,194.62 through August 28, 1999 payable to Plaintiff is hereby reduced to judgment and shall from August 28, 2002 bear statutory interest of 10%.

21. Defendant's share of past due dental expenses for the minor children of \$94.70 through August 28, 1999 is hereby reduced to judgment and shall from August 28, 2002 bear statutory interest of 10%.

22. It is in the best interests of the minor children of the parties to be allowed to travel with their mother to Japan to live.

23. That pursuant to Rule 70 of the Hawaii Family Court Rules the Chief Clerk of the Circuit Court is authorized to sign on Defendant's behalf all necessary forms/documents to allow the U.S. Passport Agency to issue passports to the party's three minor children.

24. Defendant is responsible to Plaintiff for her attorney's fees of \$750.00.

25. Defendant is required to maintain medical and dental insurance for the minor children pursuant to the divorce decree entered in this matter.

In his five points on appeal, Michael contends that the court erred as follows:

Point A. In proceeding with the August 28, 2002 hearing on the August 5, 2002 motion even though it was not

served upon Michael.

Point B. In relying upon the arguments of Linda's counsel, who was unsworn and incompetent to testify at the hearing, in making FsOF nos. 5, 6, 7, 8, 11, 12, and 14, and CsOL nos. 17, 20, 21, 22, and 24, none of which were supported by any competent evidence.

Point C. In proceeding with the hearing and granting the motion where the court believed that Michael was suffering from an apparent mental disability, rather than continuing the hearing if Michael's competency was questioned.

Point D. In awarding sole legal and physical custody to Linda, and in ordering Type B visitation to Michael where there was no evidence as to the best interests of the children, and where the motion did not seek any relief permitting the children to be relocated to Japan, away from their habitual residence in Hawai'i.

Point E. In entering judgment against Michael for any monetary amounts owed, because no evidence was submitted at the hearing, and erroneously entered FsOF nos. 9, 10, 11, and 13, and CsOL no. 20, 21, and 24.

Upon a review of the record, we conclude that none of these points have any merit, and that only "Point A" merits the following discussion.

In the opening brief, Michael states that he

merely received a telephone call from Plaintiff-Appellee's counsel advising him that there was a court date he needed to appear at, but he was never served or given a copy of the motion. Due to the lack of service upon Defendant-Appellant: (1) the Family Court never acquired personal jurisdiction of Defendant-Appellant for purposes of the motion for post-decree relief; and (2) Defendant-Appellant never received any pre-hearing notice of the relief being sought.

In the reply brief, Michael contends that

[i]n Paul v. Paul, [9 Haw. App. 176, 830 P.2d 1158 (1992),] Husband was previously subject to the Family Court's jurisdiction, having initiated a divorce action and obtained a divorce decree. Nevertheless, the ICA held that Husband was entitled to personal service of a post-decree motion to set, in the manner required by HFCR 4(d)(1). Thus, under the Paul case, the fact that the Family Court previously had jurisdiction over Father in the divorce action, prior to entry of the divorce, does not eliminate the need to effectuate proper service of a post-decree motion filed after the entry of the divorce decree.

We conclude that Michael misinterprets Paul. Paul was a divorce case initiated by the husband. In Paul, the family court had jurisdiction over the husband and part "(1) dissolution of the marriage". 9 Haw. App. at 178-79. It did not have jurisdiction over part "(4) division and distribution of property and debts" of the divorce case. Id. It used its jurisdiction over the husband and part "(1) dissolution of the marriage" when it entered the divorce decree on March 4, 1991. Therefore, when the divorced wife, on June 17, 1991, filed a motion to set the part "(4) division and distribution of property and debts" issues for a hearing and served it by mail on the attorney who previously represented the divorced husband in the case, and the attorney, but not the husband, was present at the hearing, this court concluded that the family court does not acquire personal

jurisdiction over the absent divorced husband with respect to part "(4) division and distribution of property and debts" absent personal service of process on the divorced husband pursuant to HFCR Rule 4. Id. at 181-82.

The instant case differs from Paul in two relevant respects. First, the family court acquired and asserted personal jurisdiction over Linda, Michael, and the children with respect to part "(2) child custody, visitation, and support." Personal jurisdiction continued to exist on August 5, 2002 when Linda filed a motion seeking to be awarded sole legal and physical custody of the children, and on August 28, 2002, when the court heard Linda's motion and entered its order.

Second, Michael personally appeared at the August 28, 2002 hearing on Linda's August 5, 2002 motion, and his appearance was not a special appearance to contest the court's personal jurisdiction over him.

NOT FOR PUBLICATION

Accordingly, we affirm the family court's (1) August 28, 2002 order granting the motion for post-decree relief filed on August 5, 2002, and (2) the October 16, 2002 Findings of Fact and Conclusions of Law.

DATED: Honolulu, Hawai'i, July 28, 2004.

On the briefs:

Scott T. Strack
for Plaintiff-Appellee.

Chief Judge

Steven J. Kim
(Lynch, Ichida, Thompson, Kim,
& Hirota)
for Defendant-Appellant.

Associate Judge

Associate Judge