

NOT FOR PUBLICATION

NO. 25481

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DONALD ROBERT KENNEDY, JR., Plaintiff-Appellee, v.
SHERYL MARIE CHING, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-D NO. 97-185K)

MEMORANDUM OPINION

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

Defendant-Appellant Sheryl Marie Ching (Ching or Defendant) appeals from (A) the October 21, 2002 Order Replacing Parts (8), (9), and (10) of the December 15, 2000 Divorce Decree, and (B) portions of the October 21, 2002 Findings of Fact and Conclusions of Law entered on remand in the Family Court of the Third Circuit by District Family Judge Aley K. Auna, Jr. Plaintiff-Appellee Donald Robert Kennedy, Jr. (Kennedy or Plaintiff) opposes the appeal. We vacate and remand for further proceedings consistent with this opinion and Jackson v. Jackson, 84 Hawai'i 319, 933 P.2d 1353 (1997).

RELEVANT BACKGROUND

On May 17, 2002, this court filed a Memorandum Opinion in this case that stated, with footnotes omitted, in relevant part, as follows:

Plaintiff-Appellant Donald Robert Kennedy, Jr. (Kennedy), appeals the division and distribution of the property and debts part of the Divorce Decree entered on December 15, 2000, by District Family Judge Aley K. Auna, Jr. We vacate the division and distribution of the property and debts part of the Divorce Decree and remand that issue for further proceedings consistent with this opinion.

NOT FOR PUBLICATION

BACKGROUND

Kennedy was born on December 18, 1948. Defendant-Appellee Sheryl Marie Ching (Ching) was born on January 23, 1951. Kennedy and Ching were married on February 27, 1993 (DOM). They separated in January 1997. Kennedy filed a complaint for divorce on July 24, 1997. The trial occurred on April 6 and 7, 2000. The family court filed its written decision and order on September 13, 2000. Kennedy filed a motion for reconsideration on September 25, 2000. The court filed its decision and order granting in part and denying in part Kennedy's motion for reconsideration on December 1, 2000. The Divorce Decree was entered on December 15, 2000.

In its September 13, 2000 decision and order, the court presented a comprehensive chart (September 13, 2000 Chart) that valued each item of marital partnership property (MPP), allocated each item in accordance with the Marital Partnership Division, and stated the distribution of each item. Property valued at \$1,846,948 was distributed to Kennedy and property valued at \$1,011,006 was distributed to Ching.

Although the court noted that Kennedy's Category 1 East Ohina Place property had been sold in October 1995 for \$206,000, it included that property in the property distributed to Kennedy.

Although the court noted that Kennedy's Category 1 \$210,000 Purchase Money Mortgage (PMM) from Stephen Doyle had been satisfied in December 1993, it included that value in the values distributed to Kennedy.

The court decided, in relevant part, as follows: "Wasting of Assets Claim: The Court has reviewed the extensive evidence presented, including trying to follow the trail of the proceeds of [Kennedy's] MPP Category 1 assets (East Ohina and Doyle PMM) that were sold or received after DOM. The evidence does not show wasting of marital assets."

The court noted that Kennedy had \$15,212 cash at DOM and that Ching had \$3,500 cash at DOM. Notwithstanding the nonexistence of that cash at the date of the conclusion of the evidentiary part of the trial (DOCOEPOT), the court included the Category 1 \$15,212 in the property distributed to Kennedy and the Category 1 \$3,500 in the property distributed to Ching.

The court noted that in November 1996, Ching received a personal injury settlement of \$20,665 and used it for marriage expenses. The court categorized this settlement as Category 5 property and, notwithstanding its nonexistence at DOCOEPOT, distributed this amount one-half to each party.

The court noted that in or about March 1993, Ching received about \$18,000 in settlement of an employment claim. The court categorized this settlement as a Category 1 value and, notwithstanding its nonexistence at DOCOEPOT, included it in the property distributed to Ching.

In sum, the court awarded more property and a greater value than actually existed. In its December 1, 2000 Order Granting in Part and Denying in Part Plaintiff's Motion for Reconsideration, Filed on September 25, 2000, the court recognized its errors and ordered an Amended Distribution/Allocation Summary Chart (AD/ASC).

NOT FOR PUBLICATION

The court's AD/ASC deleted Ching's \$20,665 personal injury settlement Category 5 value.

This appeal challenges the fact that the court's AD/ASC also deleted Kennedy's Category 1 \$431,212 (East Ohina, Doyle PMM, and \$15,212 cash) and Ching's Category 1 \$21,500 (\$18,000 employment settlement and \$3,500 cash) from consideration. As a result of the deletions, the court awarded property valued at \$1,469,452 to Kennedy and property valued at \$915,125 to Ching, and Ching was awarded property valued at \$140,807 more than the amount calculated pursuant to the Partnership Model Division formula.

On this subject, the court stated in its December 1, 2000 Order, in relevant part, as follows:

2. Having reconsidered that aspect of [Kennedy's] Motion for Reconsideration as set forth in Paragraph No. 1 above, are the above-named assets still considered MPP Category 1 properties subject to a capital contribution credit?

[Kennedy] argues that the parties should be awarded a capital contribution credit for their respective properties that are no longer in existence; citing Jackson v. Jackson, 84 Haw. 319 (1997), as follows: "If a party does not own the Category 1 property at the DOCOEPOT, that Category 1 NMV [net market value] is a part of the total of the DOCOEPOT NMVs and is subtracted from the Category 5 NMVs." 84 Haw. at 336.

In this case, however, it would be patently unjust, unfair, and inequitable to provide the parties a capital contribution credit for an asset no longer in existence.

Of particular concern is the proceeds from the sale of [Kennedy's] East Olina [sic] Place property and the receipt of payment of the Doyle Purchase Money Mortgage, where the evidence shows that [Kennedy] benefitted from this sale and receipt and used the majority of the proceeds for his own use rather than for the marital partnership.

As for the cash brought into the marriage and [Ching's] Employment Settlement proceeds, it appears that they were absorbed into the marital partnership. Thus, both parties benefitted from these assets.

Although the Court concluded on Page 17 of its Order on Trial that there was no evidence of wasting of marital assets, the Court now also concludes that providing a capital contribution credit of assets no longer in existence would be inequitable under the circumstances of this case.

Accordingly, that portion of the Court's Order on Trial concluding that these assets are MPP Category 1 properties subject to a capital contribution credit is hereby set aside.

NOT FOR PUBLICATION

In this appeal, Kennedy challenges the family court's "failure to give either party a capital contribution credit for the Category 1 property he or she brought into the marriage even though that property no longer existed at DOCOEPOT." Kennedy complains that the family court "didn't deduct [Kennedy's] or [Ching's] capital contribution of Category 1 assets which no longer existed at DOCOEPOT from the Category 5 assets of the marital estate[.]"

PARTNERSHIP MODEL DIVISION RULES

Under the Partnership Model, assuming all valid and relevant considerations are equal,

1. The Category 1 and 3 NMVs are the "partner's contributions" to the Marital Partnership Property that, assuming all valid and relevant considerations are equal, are repaid to the contributing spouse; and

2. The Category 2, 4, and 5 NMVs are Marital Partnership Property that, assuming all valid and relevant considerations are equal, are awarded one-half to each spouse.

Hussey v. Hussey, 77 Hawai'i 202, 207-08, 881 P.2d 1270, 1275-76 (App. 1994). We label this Hussey division the Partnership Model Division.

Thus, under the Partnership Model Division, Category 2, 4, and 5 NMVs are divided 50% to the owner and 50% to the nonowner. Id.

The Partnership Model requires the family court, when deciding the division and distribution of the Marital Partnership Property [FN8] 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.

FN8. In Hussey v. Hussey, 77 Hawai'i 202, 206-07, 881 P.2d 1270, 1274-75 (App.1994), we distinguished between Premarital Separate Property, Marital Separate Property, and Marital Partnership Property.

Question (2) (a) is a question of law. The family court's answer to it is reviewed under the right/wrong standard of appellate review. Questions (3) and (4) are discretionary matters. The family court's answers to them are reviewed under the abuse of discretion standard of appellate review.

Jackson v. Jackson, 84 Hawai'i 319, 332-33, 933 P.2d 1353, 1366-67 (1997).

NOT FOR PUBLICATION

DISCUSSION

The family court decided that

[i]n this case, however, it would be patently unjust, unfair, and inequitable to provide the parties a capital contribution credit for an asset no longer in existence.

. . . .

Although the Court concluded on Page 17 of its Order on Trial that there was no evidence of wasting of marital assets, the Court now also concludes that providing a capital contribution credit of assets no longer in existence would be inequitable under the circumstances of this case.

The family court's decision that adherence to the Partnership Model Division rules would be inequitable under the circumstances of the case does not answer the question of what facts, if any, present any valid considerations authorizing a deviation from the Partnership Model Division.

With respect to the noncash Category 1 values relating to property no longer owned by the parties, the following is the only factual basis stated by the family court for its deviation from the Partnership Model Division:

Of particular concern is the proceeds from the sale of [Kennedy's] East Olina [sic] Place property and the receipt of payment of the Doyle Purchase Money Mortgage, where the evidence shows that [Kennedy] benefitted from this sale and receipt and used the majority of the proceeds for his own use rather than for the marital partnership.

We conclude that this factual basis is insufficiently specific to be a valid and relevant consideration authorizing a deviation from the Partnership Model Division. Kennedy is a partner of the marital partnership. The mere fact that he used marital partnership funds "for his own use" is not substantial evidence that he did not use them "for the marital partnership." The family court must identify the use of marital partnership funds, state why the use was not a marital partnership use, and state why it should be charged solely to the spending partner.

The answering brief argues that "the evidence at trial revealed that during the marriage [Kennedy] supported his two adult sons generously with marital assets, and that after the parties' 1998 separation, he spent lavishly on them using marital assets, and otherwise depleted marital assets for his benefit." This, however, is not the reason given by the family court for the deviation. Had this been the reason, the family court would have had to identify the expenditures upon which this generalized finding is based, state why the expenditures were not marital partnership expenditures, and state why they should be charged solely to Kennedy.

With respect to the Category 1 cash, the following is the only factual basis stated by the family court for its deviation from the Partnership Model Division: "As for the cash brought

NOT FOR PUBLICATION

into the marriage and [Ching's] Employment Settlement proceeds, it appears that they were absorbed into the marital partnership. Thus, both parties benefitted from these assets." This fact is not a valid basis for deviating from the Partnership Model. Under the Partnership Model, the fact that "both parties benefitted" from one party's Categories 1 and 3 values is not a valid and relevant consideration authorizing a deviation from the Partnership Model Division. A party's Categories 1 and 3 values are that party's capital investment into the marital partnership. Under the Partnership Model Division, when the marital partnership is terminated by divorce, each party is reimbursed his or her capital investment into the marital partnership. Epp v. Epp, 80 Hawai'i 79, 905 P.2d 54 (App. 1995). The remaining balance is divided equally.

CONCLUSION

Accordingly, we vacate the division and distribution of the property and debts part of the December 15, 2000 Divorce Decree and remand that issue for further proceedings consistent with this opinion. More specifically, we vacate parts (8), (9), and (10) of the December 15, 2000 Divorce Decree.

The vacated "parts (8), (9), and (10) of the December 15, 2000 Divorce Decree" decided that there should be a major deviation from the Partnership Model Division, that Kennedy should not be awarded his \$431,212 Category 1 NMV, and that Ching should not be awarded her Category 1 \$21,500 NMV, and ordered, in relevant part, as follows:

(8) MARITAL PARTNERSHIP REAL PROPERTY DIVISION

. . . Plaintiff Husband shall pay to Defendant Wife the sum of \$64,048.00 as an equalization payment out of his portion of the proceeds of the sale of the 10 Puako Beach Drive property. (Paragraph (9) C below).

(9) PROPERTY DIVISION

. . . .

C. Plaintiff shall make an equalization payment to Defendant of the sum of \$64,048.00 from and out of his portion of the proceeds from the sale of 10 Puako Beach Drive, Puako, Hawaii property.

The basis for this decision is as follows: The total NMV to be divided is \$2,384,577. When the family court deviated from the Partnership Model Division by not awarding Kennedy his \$431,212

NOT FOR PUBLICATION

Category 1 NMV and Ching her Category 1 \$21,500 NMV, it awarded the following NMVs:

<u>Item</u>	<u>Kennedy</u>	<u>Ching</u>
Categories 1, 2, 3, 4	\$1,061,693	\$635,462
Category 5	<u>343,711</u>	<u>343,711</u>
TOTAL	\$1,405,404	\$979,173

The NMV of the property actually distributed to Kennedy was \$1,469,452, and to Ching was \$915,125. To compensate for the differences, the court in its December 1, 2000 order ordered Kennedy to pay Ching \$64,048.00.

The family court's October 21, 2002 Findings of Fact and Conclusions of Law entered on remand decides that there should be no deviation from the Partnership Model Division and that Kennedy should be awarded his \$431,212 Category 1 NMV and Ching should be awarded her Category 1 \$21,500 NMV. Therefore, it ordered, in relevant part:

(8) MARITAL PARTNERSHIP REAL PROPERTY DIVISION

The total net proceeds from the sale of the parties' one-half (½) undivided interest in 10 Puako Beach Drive, Puako, Hawaii shall be divided equally by the parties. However, Defendant shall pay Plaintiff the sum of \$140,807.00 as and for the equalization payment she owes him from her one-half (1/2) share of the net proceeds from the sale of the 10 Puako Beach Drive property. [See Paragraph (9)C below.]

(9) PROPERTY DIVISION

. . . .

C. Defendant shall make an equalization payment to Plaintiff in the amount of \$140,807.00 from her one-half (1/2) share of the net proceeds from the sale of 10 Puako Beach Drive, Puako, Hawaii property.

The basis for this decision is as follows: The total NMV to be divided is \$2,384,577. When the family court decided not to

NOT FOR PUBLICATION

deviate from the Partnership Model Division and to award Kennedy his \$431,212 Category 1 NMV and Ching her Category 1 \$21,500 NMV, it awarded the following NMVs:

<u>Item</u>	<u>Kennedy</u>	<u>Ching</u>
Category 1	\$ 431,212	\$ 21,500
Categories 1, 2, 3, 4	1,061,692	635,463
Category 5	<u>117,355</u>	<u>117,355</u>
TOTAL	\$1,610,259	\$774,318

The NMV of the property actually distributed to Kennedy was \$1,469,452, and to Ching was \$915,125. To compensate for the differences, the court, in its December 1, 2000 order, ordered Ching to pay \$140,807 to Kennedy.

On October 21, 2002, the court entered its findings of Fact and Conclusions of Law.

Ching filed a notice of appeal on November 18, 2002. This appeal was assigned to this court on June 18, 2003.

POINTS ON APPEAL

In her opening brief, Ching presents three points on appeal as follows:

1. The Court Failed to Comply

"This Court should reverse and remand a second time because the trial court did not comply with the mandate of the ICA [Intermediate Court of Appeals]. Judge Auna did not identify the expenditures referred to in his prior orders or explain how these expenditures were for non-marital or non-partnership purposes." "Judge Auna did not 'find the relevant facts' or

'decide whether or not those facts' justified 'deviation from the Partnership Model Division' in this case."

2. Kennedy Clearly Wasted Marital Assets

In her April 17, 2000, Post-trial Argument, [Ching] cited Ahlo v. Ahlo, 1 Haw. App. 324, 619 P.2d 112 (1980), and said, "[Kennedy] wasted \$419,500 in marital assets." "[Kennedy] obviously ran up incredible expenses," she argued, "by intentionally wasting marital assets in the year preceding the trial."

"[Kennedy's] claims to the return of the Doyle [PMM] and Ohina [house sale] contributions," insisted [Ching], "must be offset by the \$419,500 in marital assets that [he] wasted throughout the marriage." "[Ching] asks," based on the trial court's ruling in Ahlo, "that [Kennedy] be credited with all marital assets wasted during the marriage[.]"

Judge Auna equivocated. "The evidence does not show," he declared in his first order, "wasting of marital assets." "Although the court concluded [before] that there was no evidence of wasting," he wrote later, "[it] now also concludes that providing a capital contribution credit of assets no longer in existence would be inequitable[.]" "[Kennedy] benefited from the [Ohina and Doyle assets]," he found, "and used the majority of the proceeds for his own use[.]"

After reversal and remand by the ICA, Judge Auna ruled as follows in his findings of fact and conclusions of law:

23. This court has reviewed the extensive evidence presented, including trying to follow the trail of the proceeds of [Kennedy's] MPP category 1 assets (East Ohina Place and Doyle PMM) that were sold or received after the date of the marriage. 24. The evidence does not show wasting of marital assets.

The court erred. First, the court did not comply with the ICA's mandate because it failed to identify the expenditures referred to in its prior orders or decide whether they were used for marital purposes. Second, the court made no findings about expenditures in support of these conclusions of law. Third, tracing the proceeds of the Ohina and Doyle assets was irrelevant to whether [Kennedy] wasted marital assets. Fourth, the "finding" that "the evidence does not show wasting" is clearly erroneous.

(Record reference omitted.)

3. Even Absent Waste, Deviation was Appropriate

While [Ching] claimed in her Post-trial Argument that [Kennedy] wasted \$419,500 in marital assets, she argued alternatively that [Kennedy's] negative contributions could be considered by Judge Auna as a valid and relevant consideration justifying a deviation from partnership principles. "So too," [Ching] wrote:

NOT FOR PUBLICATION

expenditures by one spouse for non-partnership or expenditures for non-family purposes, including the support of adult children from a former marriage, with marital assets, may be considered and provide a basis for a deviation from partnership principles under Section 580-47, HRS.

[Ching] concluded her argument as follows:

Thus, while an analysis of [Kennedy's] contributions of capital in the form of the proceeds of the Doyle and Ohina properties is necessary, it is equally necessary to consider and credit [Ching] with the enormous increase of more than \$219,500 in marital debt after October 1998 on 45 Puako Beach Drive, and the \$200,000 [Kennedy] spent on his adult children before moving to California. This is the teachings [sic] of Woodworth, Ahlo and Kretak, supra.

In his December 1, 2000, order Judge Auna found "it would be patently unjust, unfair and inequitable" to credit [Kennedy] with his \$432,000 in Category 1 assets "no longer in existence." "[T]he evidence shows that [Kennedy] benefitted from this sale and receipt and used the majority of the proceeds for his own use rather than for the marital partnership."

After reversal and remand by the ICA, Judge Auna ruled as follows in his findings of fact and conclusions of law:

118. [Ching] is leaving this almost eight year marriage with \$317,522 more in value than she had when she entered the marriage. 119. Therefore, there are no valid and relevant considerations warranting a deviation from Marital Partnership Principles in her favor in this case.

The court erred. First, the court did not comply with the ICA's mandate because it did not consider [Kennedy's] negative contributions to the marital estate. Second, negative contributions to a marital estate, regardless of whether waste occurred, are a valid and relevant consideration that authorizes a deviation from Partnership Model Division. Third, [Kennedy] left this marriage with \$345,000 more than he had when he entered the marriage. Fourth, the reason stated for the ruling is not a valid or relevant consideration. Fifth, the conclusion that there are no valid and relevant considerations warranting a deviation from Marital partnership Principles is wrong as a matter of law.

(Record references omitted.)

In her opening brief, Ching argues:

Third, there was no dispute that [Kennedy] gave \$80,000 to his adult sons after DOFSICOD [date of separation in contemplation of divorce] to purchase two trucks. This was either an irresponsible waste of marital assets without consent, or an attempt by [Kennedy] to reduce the equity in his separate property and lower the amount of Category 2 appreciation to be divided in this divorce. Neither finding would be necessary to show dissipation,

NOT FOR PUBLICATION

Fourth, [Kennedy] acknowledged he did not tell [Ching] about this \$80,000 gift to his sons after DOFSICOD, and she never consented to this dissipation of marital property.

. . . .

Sixth, [Kennedy] acknowledged he did not tell [Ching] about the \$55,000 in marital assets he used to pay debts against two life insurance policies owned by his sons after DOFSICOD, and she never consented to this dissipation either.

Seventh, [Kennedy] acknowledged he did not tell [Ching] about the \$15,000 in marital assets used to pay his attorney fees after DOFSICOD, and she did not consent to this dissipation either."

Eighth, [Kennedy] acknowledged he did not tell [Ching] about the \$50,000 in marital assets used to finance taxes and repairs on his separate property after DOFSICOD, and she did not consent to this dissipation either.

Ninth, while [Kennedy] gave substantial funds to his sons before DOFSICOD, and [Ching] did not object, this \$200,000 expenditure of marital assets nevertheless constituted dissipation, since there was no evidence she knew about the support, they were not [Ching's] sons, they were adults at DOM, and [Kennedy] had no legal obligation to support them. Further, even if [Ching] knew and kept silent, it was only to maintain marital harmony. . . .

Finally, even if all or part of this \$419,000 in non-marital expenditures did not constitute dissipation, the trial court should (and indeed did in its December 1, 2000 order and initial Divorce Decree) treat them as substantial negative contributions to this marital partnership that clearly justified a deviation from Partnership Model Division.

(Footnote omitted.)

DISCUSSION

As noted in this court's prior opinion,

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, 332-33, 933 P.2d 1353, 1366-67 (footnote omitted) (1997).

First, the court must identify the relevant disputes of material fact and then it must decide them. In this case, it did neither. Clearly, Ching contends that the Marital Partnership Property does not, but should, include a NMV that allegedly was spent by Kennedy for non-Marital Partnership purposes and, therefore, that one-half of that NMV should be awarded to Ching out of Kennedy's share of the Partnership Model Division. However, neither Ching nor the record clearly identifies exactly what expenditures by Kennedy are being challenged by Ching and the court's only response is the following:

III. CONCLUSIONS OF LAW.

. . . .

Defendant's Wasting Claim.

. . . .

24. The evidence does not show wasting of marital assets.

. . . .

Deviation from Marital Partnership Principles.

. . . .

115. There has been no wasting of assets.

. . . .

119. Therefore, there are no valid and relevant considerations warranting a deviation from Marital Partnership Principles in her favor in this case.

Ching's opening brief does no more than allow us to deduce that Ching is alleging and challenging Kennedy's expenditure of, and corresponding reduction of, the NMV of the Marital Partnership Property by \$419,500. Ching initially

contends that Kennedy "obviously ran up incredible expenses by intentionally wasting marital assets in the year preceding the trial." She subsequently contends that Kennedy's claims "must be offset by the \$419,500 in marital assets that [he] wasted throughout the marriage."^{1/} Ching alleges that this \$419,500 includes the alleged increase of more than \$219,500 in marital debt after October 1998 on 45 Puako Beach Drive, and the alleged \$200,000 he allegedly spent on his adult children before moving to California. Ching alleges that the \$200,000 includes \$80,000 Kennedy allegedly gave to his adult sons after DOFSICOD to purchase two trucks, \$55,000 Kennedy allegedly paid for debts against two life insurance policies allegedly owned by his sons, \$15,000 Kennedy allegedly paid for his attorney fees after DOFSICOD, and \$50,000 in marital assets used to finance taxes and repairs on his separate property after DOFSICOD.

We know the relevant evidence. For example, Kennedy testified that his prior wife had deceased when their first son was nine years old and their second son was six years old.^{2/} From that time, Kennedy was the sole parent of both sons. Kennedy told his sons, "If you have a chance to make it through

^{1/} With respect to this contention, the relevant precedent is Hatayama v. Hatayama, 9 Haw. App. 1, 818 P.2d 277 (1991).

^{2/} The record is unclear about the age of the two sons of Plaintiff-Appellee Donald Robert Kennedy, Jr. (Kennedy). Kennedy testified that (a) when their mother died, the older son was age 9 and the younger son was age 6, and (b) on April 6, 2000, the older son was age 29 and the younger son was age 24. We do not understand how there can be a three-year difference in one year and a five-year difference in another.

school, and you get through, we'll take care of it and I will buy you a truck when you get out of school. Our deal was if you could make college and get his medical degree before he was 25, I'd buy him a truck."

The family court cannot decide that "[t]here has been no wasting of assets" and/or that "there are no valid and relevant considerations warranting a deviation from Marital Partnership Principles in [Ching's] favor in this case" until it finds whether or not Ching's allegations are facts by finding the relevant specific particulars and details of the alleged and challenged expenditures.

In light of our decision to vacate and remand, we will comment upon (a) COL No. 114, which states that "[s]ince no children were born of the marriage, no burdens have been imposed upon either party for the benefit of any children[,]" and (b) Ching's argument that because Kennedy's two sons were adults at DOM, Kennedy had no legal obligation to support them. Both (a) and (b) fail to understand that the relevant law, Hawaii Revised Statutes (HRS) § 580-47 (Supp. 2003) and HRS § 577-7(b) (1993), recognizes a duty of a parent to pay for some or all of the education of his or her adult child(ren).

Further, if Kennedy is permitted to reduce the marital estate after DOFSICOD by paying \$15,000 to his attorney, why should Ching not be permitted to pay \$15,000 from the marital estate to her attorney?

CONCLUSION

Accordingly, we vacate (A) the October 21, 2002 Order Replacing Parts (8), (9), and (10) of the December 15, 2000 Divorce Decree, and (B) conclusions of law nos. 24, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, and 119 of the October 21, 2002 Findings of Fact and Conclusions of Law. We remand for further proceedings consistent with this opinion and Jackson v. Jackson, 84 Hawai'i 319, 933 P.2d 1353 (1997).

DATED: Honolulu, Hawai'i, October 29, 2004.

On the briefs:

Charles T. Kleintop and
Dyan M. Medeiros
(Stirling & Kleintop)
for Plaintiff-Appellee.

Chief Judge

Peter Van Name Esser and
Ira Leitel
for Defendant-Appellant.

Associate Judge

Associate Judge