

NOT FOR PUBLICATION

NOS. 25791 and 26210

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

ON KYOUNG TANG, Plaintiff-Appellee, v.
WAYNE LEE TANG, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 01-1-2570)

SUMMARY DISPOSITION ORDER

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

Appeal Nos. 25791 and 26210 were consolidated for disposition on November 18, 2004.

No. 25791

Defendant-Appellant Wayne Lee Tang (Wayne) appeals from the following decree and order entered in the Family Court of the First Circuit by Judge Darryl Y. C. Choy: (1) the March 13, 2003 Divorce Decree and (2) the April 30, 2003 Order Granting Plaintiff's Rule 68 Motion for Attorney Fees and Costs Filed 4/1/03.

In Korea, during her prior marriage, Plaintiff-Appellee On Kyoung Tang (On Kyoung) gave birth to her first daughter on November 3, 1986. In 1992, On Kyoung came to Hawai'i on a student visa with her daughter. On January 18, 1995, On Kyoung and Wayne were married. On Kyoung's second daughter, fathered by Wayne, was born on September 9, 1995.

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On Kyoung did not complete her divorce from her first husband until the Decree Granting Divorce and Awarding Child Custody was filed on December 2, 1996. A Decree Granting Annulment of the marriage between On Kyoung and Wayne was filed on January 27, 1997.

On Kyoung and Wayne were re-married on February 5, 1997. They separated in July of 2001. On Kyoung filed a complaint for divorce on July 27, 2001. An Order for Pre-Decree Relief was entered on September 17, 2001. It enjoined and restrained the parties from transferring, encumbering, wasting, or otherwise disposing of any real or personal property, except as necessary, over and above current income, for the ordinary course of business or for usual living expenses.

On March 28, 2002, On Kyoung presented her proposed Agreement Incident to Divorce (AITD) to Wayne pursuant to Hawai'i Family Court Rules (HFCR) Rule 68 (2004).

On January 15, 2003, the family court received On Kyoung's Motion for Summary Judgment. This motion contended that (1) On Kyoung owned one-half of Tang Ventures, Ltd., and (2) their economic partnership began with their first marriage. The hearing on this motion was held on January 29, 2003. The February 18, 2003 Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment decided that:

1. The Court finds that Plaintiff's Motion for Summary Judgment was filed within the time constraints of Rule 56.

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DECISION AND ORDER

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1. The Court grants summary judgment and finds that [On Kyoung] is a 50% owner of Tang Ventures, Ltd. dba Globalpak.

2. The Court denies summary judgment as to establishing the date the marital partnership began.

The Divorce Decree was entered on March 13, 2003.

Wayne's March 14, 2003 motion for reconsideration was denied on April 11, 2003.

On April 1, 2003, On Kyoung filed "Plaintiff's Rule 68 Motion for Attorney Fees and Costs." This motion was heard on April 17, 2003. On April 30, 2003, the court filed an "Order Granting Plaintiff's Rule 68 Motion for Attorney Fees and Costs Filed 4/1/03," ordering Wayne to pay to On Kyoung the sum of \$25,000 as reasonable attorney fees and costs.

On April 25, 2003, Wayne filed a notice of appeal. On May 9, 2003, Wayne filed an amended notice of appeal. On July 1, 2003, the court filed its Findings of Fact and Conclusions of Law (FsOF and CsOL). This appeal, no. 25791, was assigned to this court on February 18, 2004.

The essence of Wayne's appeal is stated in his Amended Opening Brief as follows:

The overall property division was not equitable, and was not carried out in accordance with governing law for the following reasons: (1) the Family Court used January 18, 1995, the date of the parties' first marriage, as the starting point for the economic partnership rather than the date of the parties' actual marriage; (2) the Family Court wrongly found that [he] wasted \$115,000 of marital assets; (3) the Family Court wrongly found that [he] transferred one-half (1/2) of the outstanding stock in Tang Ventures, Ltd., to [On Kyoung] on February 2, 1996, thereby denying him his Category 1 interest in that asset; (4) the Family

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Court wrongly denied [his] claim for the full value of his Category 1 interest in the real property; and (5) the Family Court wrongly denied [his] claim for his Category 1 interest in his deferred and accrued interest on his shareholder loans and salary earned prior to marriage.

Specifically with respect to (3), Wayne

denied that the stock transfer had ever occurred. But, setting that issue aside, he had argued throughout the proceedings that [On Kyoung] had defrauded him by marrying him when she knew, or should have known, that she was not legally eligible to marry, and that he had transferred property interests to her, or to the parties jointly, relying on his reasonable belief that they were married. That argument was repeated in his Trial Memorandum, filed January 24, 2003, It is inconceivable that [he] would have transferred one-half (1/2) of the outstanding stock in the company he had founded in 1989 to [her] in January 1996 except for the fact that he thought that they were married.

Wayne also contends that the court erred when it entered the April 30, 2003 order that granted Plaintiff's Rule 68 Motion for Attorney Fees and Costs because the divorce decree in its entirety is patently more favorable to him than the offer.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and upon a careful and thorough review of the record and the briefs and having given due consideration and analyzing the law relevant to the issues raised and the arguments advanced by the parties, we decide that errors, if any, made by the family court are harmless, and that the family court did not reversibly err.

Therefore,

IT IS HEREBY ORDERED that (1) the March 13, 2003 Divorce Decree and (2) the April 30, 2003 Order Granting Plaintiff's Rule 68 Motion for Attorney Fees and Costs Filed 4/1/03 are affirmed.

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No. 26210

Wayne appeals from the October 8, 2003 Order Re Plaintiff's Attorney Fees and Costs, entered in the Family Court of the First Circuit,¹ ordering him to pay \$1,457.72 to Plaintiff's counsel "as and for Plaintiff's attorney fees and costs relating to the defense of Defendant's Motion for Relief from Order filed September 9, 2003."

Wayne's September 9, 2003 motion was an HFCR Rule 60(b) motion alleging, in relevant part, as follows:

10. It is believed that [On Kyoung] has significant income and assets that she did not disclose at trial. It was shown at trial that [On Kyoung] made over \$93,000.00 in deposits from August 2001 - June 2002. A significant portion of the deposits were cash deposits or deposits of travelers checks. [On Kyoung] also had a \$20,000.00 CD in Korea. When asked about the status of these funds, [On Kyoung] claimed that she spent it all during one of her trips to Korea. It is now believed that [On Kyoung] actually hid these funds from [Wayne] and the Court and later used these funds to purchase the 6-bedroom house and pay-off the 2-bedroom condominium.

On October 3, 2003, after a hearing and an oral decision on September 17, 2003, Wayne filed a "Motion for Reconsideration of Court's Oral Decision of September 17, 2003 Granting Plaintiff's Oral Motion for Rule 11 Sanction Against Defendant." This motion states, in relevant part, as follows: "the granting of [On Kyoung's] oral request for Rule 11 sanctions is not supported by the Court's findings, is not in conformity with the clear language of the Rule 11 both under Hawaii Family Court Rules or under Civil Rules of Procedure, and is in

¹ The Honorable Darryl Y.C. Choy, presiding.

violation of procedural requirements."

We note that the Hawai'i Rules of Civil Procedure are not applicable. The applicable HFCR Rule 11 (2004) states, in relevant part, as follows:

SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; SANCTIONS.

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. . . . The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief forme[d] after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

In his opening brief filed on March 16, 2004, Wayne states the following as a justification of his motion: "In order for Wayne to investigate whether On Kyoung had hidden assets, [Wayne] has to file a motion for necessary discovery, as On Kyoung and her counsel had denied his request for necessary information in the past."

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and upon a careful and thorough review of the record and the briefs and having given due consideration and analyzing the law relevant to the issues raised and the arguments advanced by the parties, we decide that Wayne's appeal is without merit.

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Therefore,

IT IS HEREBY ORDERED that the October 8, 2003 Order Re Plaintiff's Attorney Fees and Costs is affirmed.

DATED: Honolulu, Hawai'i, December 27, 2004.

On the briefs:

No. 25791

Chief Judge

Robert M. Harris
for Defendant-Appellant

Associate Judge

Craig G.H. Yim
for Plaintiff-Appellee

No. 26210

Associate Judge

Huilin Dong
for Defendant-Appellant

Craig G.H. Yim
for Plaintiff-Appellee