

NOT FOR PUBLICATION

NO. 26177

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

MARTHA JEAN CHIYOMI WALLEN, nka MARTHA JEAN CHIYOMI NOBORIKAWA,
Plaintiff-Appellee/Cross-Appellant, v.
DONNIE WAYNE WALLEN, Defendant-Appellant/Cross-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D No. 97-3897)

SUMMARY DISPOSITION ORDER

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

In this post-decree divorce action, Donnie Wayne Wallen (Wallen) appeals the October 14, 2003 order of the Family Court of the First Circuit (family court)¹ that granted the June 30, 2003 motion for post-decree relief filed by his ex-wife, Martha Jean Chiyomi Noborikawa fka Martha Jean Chiyomi Wallen (Noborikawa). Noborikawa cross-appeals.

After a scrupulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we resolve the appeal and cross-appeal as follows:

1. In his appeal, Wallen contends the family court abused its discretion in failing to consider his offer of proof and arguments in the context of Carroll v. Nagatori-Carroll, 90 Hawai'i 376, 978 P.2d 814 (1999). We disagree. Carroll was and remains inapposite to this case.

¹ The Honorable Darryl Y. C. Choy presided.

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2. In her cross-appeal, Noborikawa contends the family court incorrectly lined out paragraph three of its October 14, 2003 order granting her motion for post-decree relief. We agree. The family court's post-hearing action was completely inexplicable in the record and potentially precluded fulfillment of the terms of the divorce decree. Further, it constituted an untimely modification of the divorce decree's division and distribution of property. Hawaii Revised Statutes § 580-56(d) (1993); Boulton v. Boulton, 69 Haw. 1, 5, 730 P.2d 338, 340 (1986).

Therefore,

IT IS HEREBY ORDERED that paragraph three of the family court's October 14, 2003 order is restored, and the order is affirmed, thus modified.


DATED: Honolulu, Hawai'i, September 26, 2005.

On the briefs:

Christopher R. Evans,
for Defendant-Appellant/Cross-Appellee.

Thomas D. Farrell
(Coates & Frey),
for Plaintiff-Appellee/Cross-Appellant.


Acting Chief Judge


Associate Judge


Associate Judge