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NO. 27216

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

PHYLLIS YUMIKO HANTA OKADA, nka HANTA, Plaintiff-Appellee,
v.
HOWARD TAKAO OKADA, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 03-1-2061)

SUMMARY DISPOSITION ORDER

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

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2006 JUN 27 AM 8:17

FILED

Defendant-Appellant Howard Takao Okada (Howard) appeals from the family court's^{1/} Divorce Decree entered on June 1, 2004.

Howard and Plaintiff-Appellee Phyllis Yumiko Hanta Okada^{2/} (Phyllis) were married on July 3, 1977. Their first child was born on September 28, 1982 and the second child was born on January 16, 1986. March 16, 2004 is the date of the conclusion of the evidentiary part of the trial (DOCOEPOT). The court filed a Decision and Order on April 8, 2004. The Divorce Decree was entered on June 1, 2004. On August 23, 2004, the court entered Findings of Fact and Conclusions of Law. Premature appeal No. 26647 was dismissed on February 2, 2005. On April 1, 2005, a Stipulation Regarding Final Division of Household Effects was approved by the court and filed. Howard filed a notice of

^{1/} Judge Bode A. Uale presided.

^{2/} The Divorce Decree authorized Plaintiff-Appellee Phyllis Yumiko Hanta Okada to "resume the use of her maiden name and be known hereafter as PHYLLIS YUMIKO HANTA."

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appeal on April 5, 2005. On April 15, 2005, the court entered Findings of Fact and Conclusions of Law (2005 FsOF and CsOL).

This case was assigned to this court on November 23, 2005.

Howard challenges only the division and distribution of the property and debts part of this divorce case.

Upon careful review of the record and the briefs submitted by the parties, and duly considering and analyzing the relevant law, and in accordance with Hawai'i Rules of Appellate Procedure Rule 35,

IT IS HEREBY ORDERED as follows:

(1) 2005 FOF no. 25 finding that "[Phyllis] received a total of \$182,593.45 in inheritance from her mother and father's estate during the marriage" is affirmed.

(2) The finding in 2005 COL no. 11 that the value of the residence at 45-653 Apapane Street, Kaneohe, Hawaii 96744 is \$490,000 is affirmed.

(3) The following parts of the 2005 CsOL are vacated:

11. Real Property.

. . . The Court awarded [Phyllis] a credit for the cost of improvements of \$40,518.00 and a credit for the estimated termite repair of \$30,160.00. The net market value of the property is \$294,620.00.

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18. Debts. . . . The parties have no other joint debts.

Each party shall assume and pay his or her respectively incurred debts after the separation of the parties in February 2003, and shall indemnify and hold harmless the other party from any claims made against the non-responsible party. The above indemnification shall include reasonable attorney's fees and costs incurred in the defense of any such claim. All other debts not specifically referred to elsewhere herein shall be paid by the party who incurred the debt.

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20. Reimbursement to [Phyllis]. In awarding the equalization as provided below, the Court granted [Phyllis'] request for reimbursement of one-half (1/2) of the payment in the amount of \$18,476.23 (\$36,952.42 X 50%) that she made for the support of the children during the parties' separation.

21. Equalization of Property Division. The Court adopts [Phyllis'] Property Division Chart in allocating the division of the property of the parties. In order to equalize the property division as set forth herein, [Phyllis] shall pay to [Howard] the sum of \$125,422.87 within ninety (90) days from the filing date of the Divorce Decree.

(4) The following parts of the Decision and Order filed on April 8, 2004 are vacated:

5. The Court adopts [Phyllis'] property division chart (. . .) in allocating the division of the property of the parties. [Howard] is awarded an equalization payment of \$125,422.87;

6. In awarding said equalization payment the Court grants [Phyllis'] request for reimbursement of one-half of the payments in the amount of \$18,476.23 she made for the support of the children during the parties' separation[.]

(5) The following parts of the June 1, 2004 Divorce Decree are vacated:

11. Real Property.

. . . The Court awarded [Phyllis] a credit for the cost of improvements of \$40,518.00 and a credit for the estimated termite repair of \$30,160.00. The net market value of the property is \$294,620.00.

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18. Debts. . . . The parties have no other joint debts.

Each party shall assume and pay his or her respectively incurred debts after the separation of the parties in February 2003, and shall indemnify and hold harmless the other party from any claims made against the non-responsible party. The above indemnification shall include reasonable attorney's fees and costs incurred in the defense of any such claim. All other debts not specifically referred to elsewhere herein shall be paid by the party who incurred the debt.

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20. Reimbursement to [Phyllis]. In awarding the equalization as provided below, the Court granted [Phyllis'] request for reimbursement of one-half (1/2) of the payment in the amount of \$18,476.23 (\$36,952.42 X 50%) that she made for the support of the children during the parties' separation.

21. Equalization of Property Division. The Court adopts [Phyllis'] Property Division Chart in allocating the division of

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the property of the parties. In order to equalize the property division as set forth herein, [Phyllis] shall pay to [Howard] the sum of \$125,422.87 within ninety (90) days from the filing date of the Divorce Decree.

All parts of the June 1, 2004 Divorce Decree that are not vacated are affirmed.

IT IS FURTHER ORDERED that this case be remanded for further proceedings consistent with the following instructions:

(1) The court shall find and list each asset and its value at DOCOEPOP. If a value is taken at a date other than at DOCOEPOP, the court shall explain why. The court shall also decide Howard's allegations that:

The value of the HEEFCU account is listed at \$4,135, but should be \$4,435.39;

The value of the American Savings Bank checking account is listed at \$3,195, but should be \$2,999.40;

The value of the American Savings Bank savings account is listed at \$120,000, but should be \$132,369.67;

The value of the 1995 Previa is listed at \$6,435, but should be \$6,960;

The value of the Ark Funds - State Street Bank account, which is not listed should be \$3,045;

The value of the jewelry, which is not listed, should be \$6,000;

The value of tools is listed at \$10,000, but should be \$6,000; and

The value of the 2003 Highlander is listed at \$26,910, but should be \$24,095.

(2) The court shall find and list all debts and their amounts at DOCOEPOP. If a value or an amount listed is other than at DOCOEPOP, the court shall explain why. The court shall also decide Howard's allegations that the \$13,910 Union

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Mastercard debt and the \$2,578 Aloha Visa debt should be listed as debts of the marital partnership.

(3) With respect to the expenditure of marital funds by a party pre-DOCOEPOT, findings are necessary to decide an allegation that the expenditure was a non-marital or improper expenditure that will be charged to the party who made it.

(4) The court shall include as a marital asset all money Phyllis used to pay her attorney fees and costs and shall charge her with having received that money.^{3/}

(5) The court shall decide if Phyllis' post-date-of-separation-pre-DOCOEPOT cosmetic surgery was a reasonably necessary marital expense and, if not, shall include as a marital asset all money she used to pay for it and shall charge her with having received that money.

(6) The court shall decide if Phyllis' post-date of separation-pre-DOCOEPOT monetary gifts to each of her three sisters was a gift from Phyllis rather than a gift from the marital partnership and, if from Phyllis, shall include as a marital asset the money she gifted and charge her with having received that money.

(7) The court shall ignore the following:

The \$40,518 post-date-of-separation-pre-DOCOEPOT marital expense to improve the residence;^{4/}

The \$36,952.42 post-date-of-separation-pre-DOCOEPOT marital expense for the children;

^{3/} 2005 COL no. 23 orders each party to pay his or her own attorney fees and costs.

^{4/} This expense is a part of the value of the residence.

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Howard's debt for money borrowed to pay his attorney fees; and

The estimated cost of the contemplated repair of the termite damage to the residence.

(8) The \$182,593.45 Category 3 net market value of Phyllis' inheritance during the marriage is her investment in the marital partnership to be returned to her at the termination of the marriage before dividing and distributing the marital estate. Therefore, the court shall divide the net DOCOEPOP values by first, awarding \$182,593.45 to Phyllis and second, distributing the remainder to the parties in equal shares.

DATED: Honolulu, Hawai'i, June 27, 2006.

On the briefs:

Chunmay Chang
for Defendant-Appellant.

Craig G.H. Yim
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge