

NOT FOR PUBLICATION

NO. 27359

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

SHIRLEY J. EGUSA, nka SHIRLEY J. BREASHEARS
Plaintiff-Appellee,
v.
ERNEST M. EGUSA, Defendant-Appellant

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-D NO. 9182)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Ernest M. Egusa (Ernest) appeals from the Judgment entered on May 19, 2005 and the Order Denying Defendant's Motion for Reconsideration of Judgment and/or New Trial entered on June 22, 2005.^{1/}

Ernest and Plaintiff-Appellee Shirley J. Egusa, now known as Shirley J. Breashears (Shirley) were married on March 27, 1971. Their first daughter was born on October 14, 1971 and their second daughter was born on September 12, 1974 (hereinafter The Children).

On March 20, 1980, the Family Court of the Third Circuit entered a Decree of Absolute Divorce (Divorce Decree) that terminated the marriage of Ernest and Shirley, awarded the custody of The Children to Shirley, and stated, in relevant part, "Orders concerning child custody, visitation, support and property settlement shall be held in abeyance."

^{1/} Judge William S. Chillingworth presided.

NOT FOR PUBLICATION

On March 21, 1980, a Stipulated Settlement Agreement signed by Ernest and Shirley was approved and ordered by the court. It stated, in relevant part:

1. The residence owned by the parties situate at 1185-A Komohana Street, Hilo, Hawaii, shall be the sole and separate property of [Ernest]; provided that upon the sale of said residence [Ernest] shall deposit and hold one-half of the net proceeds of the sale in a trustee account in his name as Trustee for [The Children]. The funds in the trustee account shall be held in the form of a reasonably safe investment. The funds in trustee account shall be for the use and benefit of the children of the parties, as agreed to by the parties. If the parties fail to agree as to the use of said funds for the children the issue shall be subject to further determination by this Court.

At that time, the balance due on the mortgage was \$34,000.

On September 16, 1982, at Shirley's request, Ernest's parental rights to The Children were terminated by the District Court of Sequoyah County, Oklahoma. The court noted that "[Ernest], by and through his attorney, Wayne C. Metcalf, has advised [Shirley] that he does not desire to contest these proceedings and has advised [Shirley] to go ahead with and obtain the termination of his parental rights."

In 1998, Ernest secured a \$97,100.00 loan by a mortgage on the residence and the proceeds of the loan, plus a \$600.00 loan deposit, were distributed as follows:

\$14,662.31 to pay the first mortgage;
\$60,264.63 to pay a second mortgage placed in 1997;
\$18,201.35 to Ernest in cash; and
\$4,571.71 for loan transaction fees.

On May 31, 2000, Ernest sold the residence for \$115,000 and the net proceeds were distributed as follows:

NOT FOR PUBLICATION

\$95,510.78 to pay the mortgage; and

\$10,478.96 to Ernest in cash.

On March 10, 2004, Shirley filed a motion for post-decree relief seeking enforcement of the obligation imposed on Ernest by the Divorce Decree "upon the sale of said residence[.]" Shirley alleged that Ernest sold the Komohana Street residence on or about May 31, 2000, and did not place any proceeds into a trustee account for The Children.

In his response filed on April 14, 2004, Ernest admitted Shirley's allegations but contended that the termination of his parental rights in 1982 terminated the obligation imposed upon him by the Divorce Decree.

A trial was held on January 18, 2005. In her March 29, 2005 trial memorandum, Shirley sought a judgment in the amount of \$46,509.01 which was calculated as follows:

\$ 60,961.02	cash realized from the 1997 mortgage loan;
\$ 18,039.00	cash realized from the 1997 mortgage loan;
\$ 18,201.35	cash realized from a 1998 mortgage loan; and
<u>\$ 10,478.96</u>	cash realized from the 2000 sale
\$107,680.33	total cash realized by Ernest from the property while he owned it and upon its sale
<u>(\$ 14,662.31)</u>	less the cash Ernest used in 1998 to pay the balance due on the original mortgage
\$ 93,018.02	net cash to Ernest from the property while he owned it and upon its sale
\$ 46,509.01	one-half of the net cash to Ernest from the property while he owned it and upon its sale

NOT FOR PUBLICATION

The parties do not dispute the fact that, on April 12, 2005, the court mailed to counsel for each party a letter stating, in relevant part:

Gentlemen:

The Court rules as follows on [Shirley's] Motion for Order to Show Cause for Relief After Order or Decree filed March 10, 2004:

. . . .

10. The Court concludes that [Shirley] shall be entitled to Judgment for \$46,000.00, being the value of the one-half interest in the real property in issue, less \$5,000.00 (one-half of the stipulated costs of maintaining the property post-divorce)^{2/}. Judgment will enter for [Shirley] for \$41,000.

11. The Stipulated Settlement Agreement provides for costs and attorney's fees to the prevailing party in the event of an action to enforce the agreement. [Shirley] is the prevailing party.

Counsel for [Shirley] will prepare the Judgment and affidavit for attorney's fees and costs.

Footnote added. The court should have filed this letter in the court record, but did not.

The May 19, 2005 Judgment states, in relevant part, that "Judgment is entered in favor of [Shirley], and against [Ernest], in the amount of \$41,000 plus \$12,432.68 reasonable attorney's fees and costs, for a total judgment of \$53,432.68["

On May 27, 2005, Ernest filed a motion for reconsideration and/or new trial. In an accompanying memorandum, the following was one of his arguments:

The trial court had to redraft the provision as to arrive at the position that he [sic] made a Judgment upon. The provision contained the provision that upon sale [Ernest] was to place one-half of the net proceeds of sale into a trustee account. The Judge ruled that a far larger amount needed to be placed into the

^{2/} In her answering brief, Plaintiff-Appellee Shirley J. Egusa, nka Shirley J. Breashears (Shirley), states that "[t]he \$5,000.00 figure the Court used for costs of maintaining the property post-divorce is based on a concession in final argument by [Shirley's] counsel."

NOT FOR PUBLICATION

trustee account by invalidating (at least partially) the mortgages on the property. In addition, the trial judge failed to take into account the cost of upkeep of the premises through the years, the real property taxes paid, the improvements made on the property and the time spent by [Ernest] in taking care of the property. The lack of findings of fact by the trial judge makes it impossible for us to now know what formula the judge used in determining [Shirley's] interest in the proceeds of sale. The result was that [Shirley] is being unconscionably rewarded at [Ernest's] expense.

. . . The result given to [Shirley] in terms of money is not just as to her interest in the property at the time of divorce. A small interest in the house has become more valuable than the entire value of the house at the time of divorce. Under Hawaii divorce law [Shirley] has been over compensated for her interest in the home.

The Order Denying Defendant's Motion for

Reconsideration of Judgment and/or New Trial was entered on June 22, 2005. Ernest filed a notice of appeal on June 16, 2005. This case was assigned to this court on January 20, 2006.

Ernest contends that the court was required to enter findings of fact and conclusions of law. We disagree. Hawai'i Family Court Rules Rule 52(a) (2006) states, in relevant part, that "upon notice of appeal filed with the court, the court shall enter its findings of fact and conclusions of law where none have been entered, unless the written decision of the court contains findings of fact and conclusions of law." When filed, the court's April 12, 2005 letter decision will be sufficient.

In the opening brief, Ernest contends that "[t]he trial court committed error when it found that [Shirley's] termination of the parental rights of [Ernest] did not supersede the Divorce Decree provision granting [Shirley] an enforceable interest in [Ernest's] real property[,]" and that "[t]he provision was so vague as to not give [Ernest] notice of the potential claim of [Shirley] and there the trial judge improperly redrafted the

NOT FOR PUBLICATION

provision to grant [Shirley] relief." (Emphasis omitted.) He states that:

After the termination of parental rights of [Ernest] by [Shirley] [The Children] ceased to legally exist as children of [Ernest]. There was [sic] no legally enforceable rights between [Ernest] and these children. It would be illogical for the average person to believe that the children continued to have a one-half interest in [Ernest's] home. The evidence at trial disclosed that although [Ernest] had at least some legal advice through the years no attorney predicted the present outcome. The provision in this case is highly unusual and therefore not readily understood by lawyer or layman alike.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the points raised and arguments advanced, we conclude as follows:

1. Although it was done at Shirley's request, the Oklahoma court, not Shirley, terminated Ernest's parental rights.

2. The termination of Ernest's parental rights did not extinguish his court-ordered duty, upon the sale of the residence, "to deposit and hold one-half of the net proceeds of the sale in a trustee account in his name as Trustee for [The Children]."

3. The total of the costs of regular repair and maintenance, real property taxes, and the value of the time spent by Ernest in taking care of the residence, was the price Ernest paid for his right to use the property prior to its sale or his death.

4. If and to the extent that Ernest spent funds to improve the residence, he did so subject to his court-ordered duty, upon the sale of the residence, "to deposit and hold one-

NOT FOR PUBLICATION

half of the net proceeds of the sale in a trustee account in his name as Trustee for [The Children]."

5. Assuming Ernest was authorized to use mortgage loans for his personal benefit, he was not authorized to use mortgage loans to reduce the benefit to the beneficiaries of the trust upon the sale of the residence.

6. Because the trustee account fund cannot be spent without her agreement, Shirley has a sufficient interest to ask the court to require Ernest to comply with the Divorce Decree.

7. Absent a modification of the Divorce Decree, the court must enforce the Divorce Decree's requirement that Ernest shall become the trustee of the fund and the court is not authorized to order Ernest to pay the fund to Shirley.

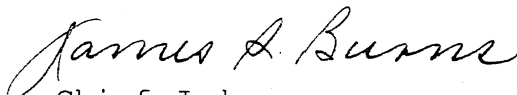
THEREFORE, we vacate the Judgment entered on May 19, 2005, and remand for further proceedings consistent with this order.

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

On the briefs:

Harry Eliason
for Defendant-Appellant.

Andrew P. Wilson
(Roehrig, Roehrig & Wilson)
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge