

NO. 27710

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

HEATHER WHITFIELD OUTLAW, formerly known as
HEATHER O. KURPIS, Plaintiff-Appellee,
v.
PETER A. KURPIS, Defendant-Appellant

CLERK
STATE OF HAWAI'I
APPELLATE COURTS
L. N. RIMANDO

2006 OCT -6 AM 7:55

FILED

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-D NO. 98-150K)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Peter A. Kurpis (Father) appeals from the September 2, 2005 "Order on Defendant's Motion for Post-Decree Relief, Dated July 25, 2005" (September 2, 2005 Order) entered in the Family Court of the Third Circuit.¹

Father and Plaintiff-Appellee Heather Whitfield Outlaw (Mother), were married on May 9, 1992. They have two children (the Children). Their daughter was born on February 22, 1993, and their son was born on October 26, 1994. On June 4, 1998, Mother filed a complaint for divorce. The divorce decree entered on August 20, 1998, awarded Father and Mother joint legal and physical custody of the Children.

Subsequent requests for change by Mother and Father were decided by the December 1, 2003 order, which states in part:

- O. Mother presently resides in Kohala, Hawaii.
- P. Father since March 2003 and presently resides in Seattle, Washington with his fiancé.

¹ Judge Aley K. Auna, Jr. presided.

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- FF. Relocation to Washington will not significantly improve the [C]hildren's quality of life.
 - GG. It would be in the best interests of the [C]hildren that sole legal and physical custody of the [C]hildren be awarded to Mother, with reasonable visitation to Father.

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II. VISITATION: The Court finds that it would be in the best interests of the [C]hildren that Father has every Christmas vacation and summer vacation with the [C]hildren subject to the following provisions:

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- b. Father shall be responsible for transportation costs of visitation.
 - c. Mother has taken annual summer trips with the [C]hildren to visit her parents. If she elects to take such a trip in the future, it would be in the best interest of the [C]hildren that she be allowed no more than 10 days with the [C]hildren during that summer. She shall be responsible for the [C]hildren's transportation costs for the trip with her.
 - d. The parties may agree to other physical visitations and it is the Court's hope that Mother be extremely flexible, especially if Father is in Hawaii.
 - e. Father shall have unlimited telephone and written contact with the [C]hildren during reasonable hours.

Father's notice of appeal, filed on February 1, 2005, commenced appeal No. 27092. In that appeal, Father contended that the court abused its discretion when it awarded legal and physical custody to Mother. As noted in the September 2, 2005 Order, before appeal No. 27092 was decided, Father

moved for post-decree relief Specifically, [Father] sought: a restraining order enjoining [Mother] from removing [the Children] from Hawaii and from intervening/preventing them from continuing to attend school in Kohala, Hawaii; and an order that if [Mother] chooses to leave Hawaii, then [Father] shall be awarded custody of [the Children]; to provide reasonable visitation for the [C]hildren with [Mother]; and an appropriate award of child support.

The family court's September 2, 2005 Order denied Father's motion and noted that "there does not appear to be any urgency to modify

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the existing custody orders in effect at this point." The instant appeal was commenced by Father on January 11, 2006. This three-judge panel was assigned to the instant appeal on July 24, 2006. In the meantime, on May 3, 2006, this Court filed a Memorandum Opinion affirming the December 1, 2003 order awarding custody of the Children to Mother.

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 applying the law relevant to the issues raised and arguments presented,

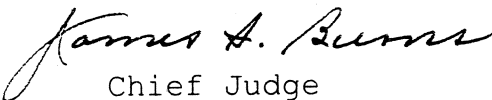
IT IS HEREBY ORDERED that the September 2, 2005 "Order on Defendant's Motion for Post-Decree Relief, Dated July 25, 2005" is affirmed.

DATED: Honolulu, Hawai'i, October 6, 2006.

On the briefs:

Peter Kurpis
Pro Se Defendant-Appellant.

Ira Leitel
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge