

NO. 27976

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

OLIVIA DUNN ATHENS, Plaintiff-Appellee,
v.
JOHN STEPHEN ATHENS, II, Defendant-Appellant

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

2007 APR 10 AM 8:01

FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 02-1-0407)

MEMORANDUM OPINION

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

Defendant-Appellant John Stephen Athens, II (John) appeals from the March 24, 2006 Order Re: Defendant's Motion for Post Decree Relief Filed February 17, 2005 (March 24, 2006 Order) that was entered in the Family Court of the First Circuit.¹ We vacate and remand for further proceedings consistent with this opinion.

BACKGROUND

John and Plaintiff-Appellee Olivia Dunn Athens, nka Olivia Dunn Ycaza (Olivia), were married on January 7, 1972 in Ecuador. They are the parents of two children. Olivia commenced this divorce case on February 6, 2002.

On June 18, 2002, Judge Darryl Y.C. Choy entered an order that awarded temporary custody of the children to Olivia, granted Olivia's request to relocate with the children to Sacramento, California, and ordered John to pay child support, spousal support, and specified expenses.

¹ Judge Karen M. Radius presided.

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On December 29, 2003, pursuant to the agreement of both parties, Judge Allene Suemori entered a Decree Granting Absolute Divorce and Awarding Child Custody (Divorce Decree) that stated in part:

3. CHILDREN. The parties are the parents of Henry Stephen Ycaza Athens born March 26, 1986 ("Henry"), and Andrea Olivia Ycaza Athens born October 9, 1987 ("Andrea"). . . .

. . . .

C. ASSESSMENT BY MARGARET LEE, PH.D. Margaret Lee, Ph.D. shall conduct a family assessment to develop a treatment approach to address the children's relationship with their father. Father shall pay Dr. Lee's fees and costs related to Dr. Lee's contacts with him and the children and any other parties recommended by Dr. Lee as is agreed to by the parties and Dr. Lee. Each party shall pay for one-half (1/2) of Dr. Lee's fees and costs related to Dr. Lee's contacts with Mother as is agreed to by the parties and Dr. Lee.

D. Each party shall support the children in having the best possible relationship with the other party, shall never disparage, denigrate or belittle the other party in the presence of the children, shall never argue or fight with the other party in the presence of the children, and shall always do whatever he/she reasonably can to ensure that there is as much consistency and continuity as possible in the manner in which the children receive guidance and nurturance in all areas of their life.

. . . .

4. CHILD SUPPORT. . . .

Payments of child support shall continue for each child until the child attains age eighteen years, or graduates from high school, or discontinues high school, whichever occurs last (subject to Paragraph 8. COLLEGE EXPENSES).

. . . .

7. PRIVATE EDUCATION EXPENSES. Father shall pay 60% and Mother shall pay 40% of the children's private education expenses. . . .

8. COLLEGE EXPENSES. Father shall pay 60% and Mother shall pay 40% of the children's college expenses up to the amount of California resident tuition at a California state university system school. . . . The children shall discuss with both parents their proposals of where they would like to attend college, and both parents and the children shall work together to accomplish payment of the children's college expenses as described above. . . .

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9. ALIMONY. Father shall not be ordered to pay further alimony after September 2003.

11. REAL PROPERTY.

Father shall be awarded these real property interests upon payment of \$51,689 to Mother on or before ninety (90) days from the date of the filing of the divorce decree.

22. ENFORCEMENT. Subject to the Family Court's approval, a party who fails to comply with this divorce agreement shall be liable to the other party for all of the legal fees and costs incurred and all of the damages suffered by the other party as a result of noncompliance. The Family Court shall have continuing jurisdiction over the parties and their property to enforce and implement the provisions of this divorce agreement.

On April 1, 2004, John filed a motion seeking compliance with paragraph 3.C. of the Divorce Decree and an order terminating his obligation to pay child support for Henry "at end of May 2004, since he turns 18 on March 26, 2004, and graduates from high school on May 29, 2004."

Hawaii Revised Statutes § 577-1 (1993) states: "**Age of majority.** All persons residing in the State, who have attained the age of eighteen years, shall be regarded as of legal age and their period of minority to have ceased."

On May 21, 2004, after a hearing on May 5, 2004, Judge William J. Nagle, III, entered an order that states in part:

2. . . . [I]t is also undisputed the [sic] Henry will attend college, in which case the provisions of Section 8 of the Divorce Decree will control FATHER's obligations. The Court therefore enforces the Divorce Decree to terminate FATHER's child support obligations, effective May 31, 2004. . . .

3. The Court also finds that . . . MOTHER has not complied with that provision of the Divorce Decree, and has presented no satisfactory excuse for her non-compliance. In fact, based upon MOTHER's testimony, the Court concludes that MOTHER has no intention of performing her obligations concerning Dr. Lee and

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that sanctions are necessary to ensure her compliance. The Court also finds that MOTHER has failed to facilitate communications between FATHER and his children, to the point of impeding such communications, contrary to the Divorce Decree. The Court will advise the parties of the sanctions to be imposed in a separate Order.

4. The Divorce Decree contains no provision which ties the performance of MOTHER's obligations under the Divorce Decree to payment of the parties' property division. The Court therefore denies FATHER's request for a "suspension" in the payment of property division equalization pending MOTHER's compliance with her obligations concerning Dr. Lee. However, as sanctions against MOTHER, the Court may condition release of the equalization payment to MOTHER, to MOTHER's compliance with the provisions of the Decree concerning communications between the children and FATHER, as well as Dr. Lee's treatment of the children.

5. The Court denies FATHER's request for weekly or bi-weekly teleconferences involving the Court, Dr. Lee and the parties as unnecessary and burdensome to the Court. The Court's Order For Sanctions will address the substance of that request.

On May 26, 2004, Judge Nagle entered an Order for Sanctions Against Plaintiff Olivia Dunn Athens that states in part:

[T]he Court finds that MOTHER has intentionally and willfully flouted the terms of the Divorce Decree . . . as to the Court-ordered intervention of therapist Margaret Lee, Ph.D.

. . . .

IT IS HEREBY ORDERED that the following sanctions be imposed against MOTHER:

1. MOTHER is ordered to deliver to FATHER all passports in the names of the children
2. MOTHER is prohibited from removing the children from the United States without prior approval of this Court.
3. FATHER admits that he owes MOTHER the sum of \$51,689.00 as and for an equalization payment FATHER is ordered to pay the total amount of all equalization payments into an interest-bearing account Out of the interest bearing account, FATHER will make the following payments:
 - A. To Dr. Lee, the amount of MOTHER's share of the retainer
 - B. Upon written confirmation from Dr. Lee that the children have completed their first counseling session with Dr. Lee, FATHER shall pay to MOTHER the amount of \$10,000.00.

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C. Upon receipt of Dr. Lee's closing report on her counseling of the children, FATHER shall pay the remainder of the amount in the interest-bearing account to MOTHER.

4. MOTHER is ordered to contact Dr. Lee and make appointments for the children's counseling no later than five (5) business days after the filing of this Order. The Court notes that the children's social life, or their concurrence with counseling, are not excuses for failure to attend such counseling.

5. MOTHER is advised that her continued flouting of responsibilities under the Divorce Decree may be considered a material change in circumstances, warranting inquiry by the Court into whether a change in physical custody of the minor child lies in the best interests of the child.

On June 30, 2004, in response to Mother's June 8, 2004 motion for reconsideration, Judge Nagle ordered: Henry, whose 18th birthday was on March 26, 2004, may retain his passport; John shall immediately pay Olivia \$10,000; and John shall pay Olivia's attorney fees and costs in bringing her motion for reconsideration. On May 9, 2005, John's appeal from this order, appeal no. 26795, was dismissed for lack of appellate jurisdiction.

On August 11, 2004, Judge Nagle decided that John's July 15, 2004 motion for partial reconsideration of an order deciding a motion for reconsideration was not authorized by Hawai'i Family Court Rules Rule 59 and noted that "the Court awarded attorneys fees to [Olivia] in its June 30, 2004 Order based upon [John's] improper and unauthorized withholding of the initial \$10,000 payment to [Olivia] as a means of coercing [Olivia] to withdraw her Motion for Reconsideration."

On February 17, 2005, John filed a Motion and Affidavit for Post-Decree Relief (February 17, 2005 Motion) asking the

court to:

1. Order Olivia to show cause why she should not be held in contempt and sanctioned for continuing "to defy the Court[']s orders of May 21 & 26, 2004 with respect to providing the children with therapy and cooperating with Dr. Lee."

2. Order immediate resumption of therapy of the children by Dr. Lee with bi-weekly monitoring and status hearings by the Court;

3. Order Olivia incarcerated until she complies with court orders for therapy;

4. Order Olivia incarcerated if she fails to comply with the following requested orders:

a. Order that John shall have temporary physical custody of Andrea from June 6, 2005 through August 15, 2005;

b. Order Olivia to produce Andrea in court during Andrea's Easter break "for a private conference with the Judge" and visitation with John;

c. Order Olivia to produce Henry in Court during Henry's spring break "for a private conference with the judge" and visitation with John;

5. Order Olivia to reimburse John his \$43,693.40 divorce expenses;

6. Order Olivia to reimburse John the \$10,000 payment John made to Olivia pursuant to the May 26th, 2004 order;

7. Terminate the order requiring John to pay 60% of Andrea's private high school expenses; and

8. Order Olivia to pay future costs of therapy for the children.

In the February 17, 2005 Motion and accompanying memorandum, John alleged/asserted that: "Father has not seen or had any contact with the children for 2 1/2 years as a result of [Mother's] obsessive alienation of children from him"; "Mother, in large part by the Court allowing her to move with the children to California, has been able to seal off the children from their Father totally, including his family"; and the \$10,000 "was obtained in bad faith by Mother, and that she participated in the initial two therapy sessions solely for the purpose of obtaining the money."

In a January 10, 2005 letter to Judge Nagle, Dr. Lee stated in part:

Given that my practice is 1 1/2 hours from [Mother's] home, the sessions require the children give up a weekend day, which adds to their resistance. At this point, further reconciliation efforts appear somewhat futile. I am, therefore recommending that Andrea obtain individual psychotherapy near her home, to more deeply explore the psychological implications of holding such a polarized and dismissive view of her father.

On April 19, 2005, Judge R. Mark Browning entered an Order for Short Trial to be held on July 29, 2005 that stated in part:

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2. Trial shall be limited to 2 hours and 60 minutes.²

4. The witnesses shall be as follows:

- (a) Margaret Lee, Ph.D.
- (b) Therapist for Andrea Athens
- (c) [Olivia]
- (d) [John]

No witnesses shall be allowed to testify except as specified in this Order.

5. The disputed issue(s) at trial shall be limited to:

- (a) Whether [Olivia] shall be held in contempt of court of the Divorce Decree filed 12/29/04, paragraphs C and D.
- (b) Responsibility for payment of Andrea and Henry Athens' plane fare to Honolulu for the trial.
- (c) Attorney's fees and costs for [Olivia].

9. Other:

- (a) Andrea and Henry Athens shall accompany [Olivia] to Honolulu for the trial. Judge Browning or the trial judge will talk to Andrea and Henry individually.
- (b) [John] shall advance the costs of Andrea & Henry's travel for the trial.
- (d) [John's] request for summer visitation is reserved.
- (e) The Court does not have jurisdiction to make orders with regard to Henry, who is 19 years old and therefore beyond the jurisdiction of this Court.³

(Footnotes added.)

² It appears that what this order was supposed to say was trial 2 hours, 60 minutes each side. At the trial, Defendant-Appellant John Stephen Athens, II, unsuccessfully sought a 3 hour trial.

³ Since Henry Athens is "beyond the jurisdiction of this Court[,]" it appears that the court erroneously ordered that "Henry Athens shall accompany [Plaintiff-Appellee Olivia Dunn Athens] to Honolulu for the trial."

On April 27, 2005, John filed a motion for reconsideration of the April 19, 2005 Order for Short Trial. In an accompanying declaration and memorandum, John stated in part:

[T]here is nothing in the Order for Short Trial that requires [Olivia] to have the children receive therapy pending the trial that is not scheduled until the end of July, 2005. It is simply unconscionable for the Court to allow [Olivia] to prevent the children from having the treatment they need for this period of time. . . .

. . . .

Incredibly, the Order for Short Trial, instead of helping to solve the alienation problem, actually will make it worse. [John] implores the Court to give some thought as to what it is doing and why. [John] does indeed want the Court to speak privately and individually with the children, so they can understand that it is the Court which has ordered them to have therapy as agreed to by both [Olivia] and [John]. This is in the context of the children's continued therapy, and was envisioned by [John] to occur shortly after the order was entered as a prelude to their resuming therapy. However, in the Order for Short Trial, the Court has linked this private meeting with the children to [Olivia's] contempt trial. In the highly charged atmosphere of a contempt trial, where [Olivia] may be subject to incarceration and other sanctions, [Olivia] will have the children in a frenzy of hatred of [John] for having caused this. [John] will be blamed for everything, and [Olivia] will have the children totally involved in her views of the trial proceedings. In her report, Dr. Lee notes that one of the causes of alienation has been [Olivia's] involvement of the children in the divorce proceedings. This must not continue, especially at the instigation of the Court. Therefore, it is simply not remotely appropriate, and even very damaging and counterproductive, for the children to accompany [Olivia] to her contempt trial.

The children are old enough that they do not need to fly to Honolulu with [Olivia]. Henry flew by himself to Honolulu last summer to see his friends. If [Olivia] does want to fly with them, that is fine, but it should not be at the time of the contempt trial.

. . . .

[Olivia's] violations of Judge Nagle's orders of last May were raised in [John's] February 17th motion, and were important to his motion. Therefore, it is incorrect for the Court to limit the issue at trial to "whether [Olivia] shall be held in contempt of court of the Divorce Decree". A significant part of [Olivia's] contempt is her violations of these two orders of Judge Nagle, which orders were entered for the very purpose of enforcing [Olivia's] compliance with the Divorce Decree.

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On May 26, 2005, Judge Browning denied the April 27, 2005 motion for reconsideration.

A July 14, 2005 letter that John sent from Ecuador to Judge Browning states in part:

I have been informed that due to travel plans Your Honor is unavailable to meet with Henry and Andrea Athens for the post-divorce short trial set on July 29, 2005 at 8:30 a.m. I am objecting to a continuance of this trial

I also object to any judge handling the case, except for Your Honor, the Honorable William J. Nagle, III, the Honorable Darryl Y.C. Choy, or the Honorable Allene R. Suemori. . . . I will agree to any of these judges meeting with Henry and Andrea in place of Your Honor, since they are familiar with the background of the divorce. I will not agree to any change of judge if this means a continuance of the trial date. (Note that meeting with the children does not have to be at the exact time and date of the trial, but since the children will be in Honolulu, the meeting should be close to the trial date.)

The court may note that this case has been passed around to a multitude of judges. I feel this in large measure is why there has been no continuity or follow-through with the court's orders by [Olivia], and why [Olivia] has been able to avoid her court ordered obligations. . . .

I would be agreeable to a few days continuance to the extent that the return date for the ticket I purchased for Andrea is not until August 1st. (I don't know anything about Henry's ticket, since [Olivia] declined my offer to purchase his ticket).

On July 29, 2005, Judge Karen M. Radius presided over the short trial. Prior to the start of the trial, John told Judge Radius:

But what we are here to determine are violations of the divorce decree and Judge Nagle's previous orders and sanction orders regarding the enforcement of the decree. . . .

Uh, I think you're about the ninth judge that I've been before here at Family Court, so there's been very little continuity between proceedings and probably very little understanding of the background to the case.

John's Exhibit No. 18 is a document he described as follows: "This is a letter from my daughter Andrea that she wrote to (Olivia's) attorney in which she basically says that I

mean no more to her than some stranger at her school, that she doesn't keep in touch with me. I never did anything when she was growing up." Prior to the start of the trial, the following was stated:

THE COURT:

The first question is -- well, if you folks think we're going to have Andrea as a witness and you're both going to cross-exam her --

[COUNSEL FOR OLIVIA]: No.

[JOHN]: Absolutely not.

. . . .

THE COURT: Okay. So you're saying there's a right to cross-exam, [counsel for Olivia]?

[COUNSEL FOR OLIVIA]: I'm not going to be able to do so. The court is going to interview her personally. My suggestion is the court take this under advisement and make a determination of whether or not to admit this because my -- I don't have a due process right here to cross-exam Andrea as to this letter that was written, what was behind it, why she wrote it, whether it was instigated by her mother.

At the short trial, Dr. Lee and Olivia testified.

Henry was not there. In part, the following was stated:

THE COURT: . . . [T]his is [John's] motion for contempt asking that I either put [Olivia] in jail and/or say that he doesn't have to pay certain items and/or stop private school tuition for [Andrea]. If I grant the motion, if I find her in contempt and grant the motion, how does that affect the kids in this case?

[DR. LEE]: Um, I think that that has complications. I actually think that putting her in jail would backfire and that it would be -- make it much more difficult for the kids to eventually perhaps seek their own, um, contact with [John] because he'll be seen as very punitive. Um, so personally I feel that that would have a complicated psychological effect on the children.

In terms of money, a lot of what the children had been told about the divorce kind of has a financial focus, so the same kind of backfiring could occur.

After Olivia testified, Judge Radius stated, "Okay.

And, um, what I'm going to do at this time then is close this

hearing and let [Andrea] step in. And I'm going to talk to [Andrea], and then I'll bring you back in after a while."

After talking with Andrea, the court reopened the hearing and advised the parties, "I talked with [Andrea]."

During his closing argument, John stated in part:

I have no wish to send [Olivia] to jail.

. . . .

And I think that would be extremely inappropriate --

. . . .

-- for a number of reasons --

. . . .

-- as upset as I am about, uh --

THE COURT: So what is your request for relief? What relief do you want?

[JOHN]: Uh, I want relief from all of the expenses that I've had for attorneys fees and working out the settlement agreement and the -- for the therapy expenses. And this basically can be in the form of discounting against the equalization payment.

. . . .

THE COURT: . . . You said you wanted various credit for . . . thirty-five thousand seven sixty-eight, thirty-five hundred to Lee, three three eight seven to the other doctor, credit against the forty-one thousand you owe Missus. Okay.

[JOHN]: Um-hmm.

. . . .

THE COURT: Anything else? Any other relief you're asking for?

[JOHN]: Uh, I -- I had thought about more therapy, more custody. And I've been changing custody and so forth, but it's not going to work. The children are too old.

The court concluded the proceedings with the statement, "I'll do a written order after I've read all the extra special things from today."

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On March 22, 2006, John filed a motion for an order terminating his obligation to pay child support for Andrea who turned 18 on October 9, 2005 and would graduate from high school on May 24, 2006.

The March 24, 2006 Order denying John's February 17, 2005 Motion states in part:

2. [Olivia's] compliance with Judge Nagle's order that [Olivia] take Andrea . . . and Henry . . . for assessment and development of a treatment plan by Dr. Lee was complied with only minimally and somewhat grudgingly.

3. Andrea does not want to engage in therapy of any kind, nor does she see the need for a relationship with [John] or seek such a relationship. Further orders of this nature will result in deepened resistance and resentment by Andrea.

4. Holding [Olivia] in contempt or jailing [Olivia] for her lack of enthusiasm or grudging compliance will not be in the best interest of [Andrea] and will deepen the chasm between [John] and [Andrea].

5. While [John] complains that [Olivia] does not encourage and/or force the children to write, phone or visit [John], [John] has ceased writing [Andrea] or sending holiday greetings or gifts. [John's] rather rigid, judgmental approach to seeking this relationship with [Andrea] does not in anyway endear [John] to [Andrea].

6. [Olivia] likewise presents herself as the victim of [John's] non-payment of certain property settlement payments, yet [Olivia] fails to file any Motions to Enforce those payments or for garnishment of [John's] wages or liens against his property. Instead [Olivia] uses [John's] continued alleged non-payment as evidence that [John] doesn't wish a relationship with the children and insists that he only wants to save money and [Olivia] uses her assessment of the situation as another reason for continued bitterness.

7. Neither party has insight into how their own actions and/or inactions have exacerbated the current situation.

8. It is not in [Andrea's] best interest to order a change of custody of [Andrea] at this time. A change in custody even for a summer period will not create a relationship with [John].

9. [John's] requests for relief are denied.

. . . .

11. Each party shall pay their own attorneys fees and costs for this Motion.

On April 3, 2006, John filed a motion for reconsideration of the March 24, 2006 Order. On May 17, 2006, Judge Radius denied the April 3, 2006 motion.

On August 9, 2006, the court entered Findings of Fact and Conclusions of Law (FsOF and CsOL) which, in essence, repeated the March 24, 2006 Order.

DISCUSSION

I.

John contends that the court erred when it listened to the testimony of Andrea ex parte in a private in-chambers meeting, and then used this testimony to rule against John without disclosing to John what was stated by Andrea and without giving John an opportunity to respond. John asserts that "[n]ot only did this ex parte procedure violate the due process rights of Father, but this procedure was a clear violation of judicial conduct by Judge Radius. Therefore, the ruling must be reversed." John further states that

the purpose of the interview was not to elicit evidence from Andrea. Rather, the interview was to be part of the enforcement process of [Olivia's] obligations under the Divorce Decree. Judge Browning intended the Court's meeting with Andrea to make "clear to her that participation in therapy is not her choice . . . and that it is not something that [John] is imposing upon her, rather it is the court that is issuing that order[.]" . . . The purpose of the interview was not for Judge Radius to listen to what Andrea wanted. Judge Browning states in his order that "the trial judge will talk to" the children. (emphasis added). . . . [John] had no reason to believe that Judge Radius might change the purpose of the meeting and take testimony from Andrea. [John] relied on Judge Browning's order. . . .

. . . Even though Judge Browning had pointedly "reserved" from the July 29th hearing consideration of [John's] request for summer visitation with Andrea, Judge Radius ignored this limitation and proceeded to rule on [John's] visitation request. . . .

. . . .

The entire point of all of [John's] post-decree litigation was to re-establish contact and a relationship with his children, as was intended by the Decree. . . . Judge Radius could have used the meeting with Andrea to accomplish a great many things. Yet Judge Radius did nothing to try to bridge the gulf between [John] and daughter - the purpose of the provisions in the Decree and the orders of Judge Nagle. The findings and conclusions indicate Judge Radius simply did not understand why she was meeting with Andrea.

. . . The meetings between judge and children were designed by Judge Browning as part of the process to obtain compliance with the letter and spirit of the Divorce Decree's requirement for therapy. Anything else discussed should only have been in the context of the Court re-establishing contact between [John] and the children. For a severely alienated child, such as Andrea, it was absurd for Judge Radius to accept Andrea's views of [John] and counseling without question.

(Footnotes, original brackets, and record citations omitted.)

We note the following:

1. In the February 17, 2005 Motion, John asked the court to order Olivia to produce Andrea and Henry in court "for a private conference with the Judge."

2. In the July 14, 2005 letter from Ecuador to Judge Browning, John wrote, "(Note that meeting with the children does not have to be at the exact time and date of the trial, but since the children will be in Honolulu, the meeting should be close to the trial date.)"

3. Immediately prior to the July 29, 2005 short trial (a) John and counsel for Olivia agreed that Andrea would not be a witness subject to their cross-examination, and (b) John did not

object when counsel for Olivia suggested that the court take his offer of Exhibit No. 18 into evidence "under advisement and make a determination of whether or not to admit this because my -- I don't have a due process right here to cross-exam Andrea as to this letter that was written, what was behind it, why she wrote it, whether it was instigated by [Olivia]."

We conclude that (1) the record is ambiguous with respect to the purpose of the off-the-record meeting in chambers between Judge Radius and Andrea; (2) the court's March 24, 2006 Order and its FsOF and CsOL show that Judge Radius considered Andrea to be a witness; (3) Andrea was 17 years of age when Judge Radius talked with her; (4) Judge Radius's conversation with Andrea should not have been off-the-record and out of the presence of the parties and counsel; and (5) the March 24, 2006 Order must be vacated.

II., III., and IV.

In point II, John contends that the court erred in deciding that Olivia "minimally and somewhat grudgingly" complied with the orders of Judge Nagle and sections 3.C. and 3.D. of the Divorce Decree requiring Dr. Lee to give therapy to the children and requiring Olivia to facilitate communications between John and the children.

In point III, John alleges that the court decided that Olivia's minimal compliance was not a violation and contends that

it erred in so deciding. In John's view, "[m]inimal compliance is inadequate and subjects [Olivia] to contempt of court and sanctions."

In point IV, John alleges that the court decided that Olivia's minimal compliance with Judge Nagle's orders constitutes a valid defense to the contempt of court charge against Olivia and contends that it erred in so deciding. In John's view, "either full compliance or substantial compliance is required as a matter of law."

In light of our decision in part I above, we do not reach the issues presented in parts II, III, and IV.

V.

John contends that the court erred when it delayed entering a decision until eight months after the trial, by which time much of the relief requested by John was rendered moot as a result of Andrea having turned 18 years of age. We conclude that this is not a valid point on appeal.

CONCLUSION

Accordingly, not knowing what Judge Radius and Andrea said to each other during their private conversation and how much, if any, each paragraph in the March 24, 2006 Order was influenced by that conversation, we vacate the March 24, 2006 Order Re: Defendant's Motion for Post Decree Relief Filed February 17, 2005, and we remand for further proceedings

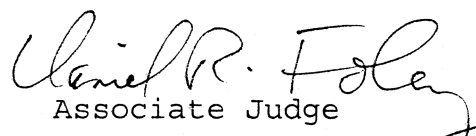
consistent with this opinion. Judge Radius shall not preside over any further proceedings in this case.

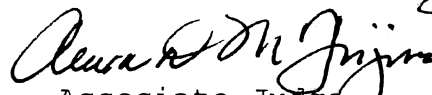
DATED: Honolulu, Hawai'i, April 10, 2005

On the brief:

John Stephen Athens, II.
Pro Se Defendant-Appellant.


Chief Judge


Associate Judge


Associate Judge