NO. CAAP-21-0000068

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

AC, Petitioner-Appellant,
v.
AC, Respondent-Appellee

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(CASE NO. FC-M 15-1-055K)

MEMORANDUM OPINION
(By: Leonard, Presiding Judge, Hiraoka and Wadsworth, JJ.)

Petitioner-Appellant AC (**Father**) appeals from: **(1)** the "**Order and Judgment** Against [Father] re Attorney's Fees and Costs Awarded per Order re [Mother]'s Motions Filed on 9/24/2020 and 10/2/2020, Filed on 11/17/2020" entered by the Family Court of the Third Circuit on **November 23, 2020**; and **(2)** the "Order Granting in Part and Denying in [Part] [Father]'s Motion for Reconsideration of Order re Motions Filed 9/24/20 and 10/3/20 Filed November 17, 2020, Filed on 11/27/2020" entered by the family court on **January 14, 2021** (**Reconsideration Order**).[1] For the reasons explained below, we vacate the November 23, 2020 Order and Judgment, vacate the January 14, 2021 Reconsideration Order in part, and remand for further proceedings consistent with this memorandum opinion.

[1] The Honorable Cynthia T. Tai presided.

Background

Father and Respondent-Appellee AC (**Mother**) were never married. They filed for nine orders of protection against each other during the course of their acrimonious relationship. They have two children, **AJ** (born in 2013) and **AZ** (born in 2014) (collectively, the **Children**).

In 2015 Father filed a "Complaint for Custody, Child Support and Visitation[.]" In March 2016 the family court approved and entered a "**Stipulation** re Complaint for Custody, Child Support and Visitation[.]" Father (who lives on Hawaiʻi Island) and Mother (who lived in Montana at the time) agreed to joint legal custody of Children. Mother received "primary physical custody of the children subject to Father's reasonable visitations[.]" There was no provision for child support.

In April 2019 Father filed a motion for relief from the Stipulation (**Father's Motion for Relief**). He sought sole physical custody of Children (then ages six and four) subject to Mother's right of visitation, and child support.

On January 23, 2020, the family court orally ordered Father to pay temporary child support of $1,166 per month beginning January 2020.[2] The January payment was due at the end of the month. The February payment was due on February 10, 2020. The family court did not set deadlines for payments after February 2020; the hearing minutes indicate the court "will determine child support retroactive to the date [Father's] motion was filed."

On March 24, 2020, the family court entered findings of fact, conclusions of law, and an order on Father's Motion for Relief. The family court found and concluded that it was in Children's best interest that Father and Mother continue to share joint legal custody. Primary physical custody with Mother was

[2] The record does not appear to contain a written order by the family court, but the oral order is reflected in the family court's minutes.

continued, subject to Father's right to secondary physical custody.

As to child support, the family court ordered Father to pay $1,080 per month retroactive to July 1, 2019.[3] As of March 2020, Father owed ($1,080 x 9 months) **$9,720.** Because the family court previously ordered Father to pay temporary child support of $1,166 per month from January 2020, Father was given a credit for the higher amount for January, February, and March, 2020.[4] Father received a credit of ($1,166 x 3 months) **$3,498.** The family court calculated the amount Father owed from July 2019 through March 2020 as ($9,720 - $3,498) **$6,222.** Father was ordered to pay the arrearage at $100 per month beginning on April 1, 2020, until paid in full.

On April 7, 2020, Father moved for reconsideration. On **May 27, 2020,** the family court entered an **Amended Order** on Father's Motion for Relief. As to child support, the family court noted Father had physical custody of Children during April, May, and June 2019. Mother owed Father child support of ($682 x 3 months) **$2,046,** which was credited against Father's arrearage. Father was ordered to pay the reduced arrearage of ($6,222 - $2,046) **$4,176** at $100 per month beginning on April 1, 2020, until paid in full.[5]

Mother filed the first motion for relief at issue in this appeal on **September 24, 2020** (**Mother's Motion for Relief**). She claimed that Father did not pay child support for March 2020 ($1,166); that Father improperly deducted $981 from his July 2020

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[3] Although Father's Motion for Relief had been filed in April of 2019, it appears that Father had physical custody of Children during April, May, and June 2019. This is discussed below, in connection with Father's motion for reconsideration.

[4] The family court's oral order had not set a date for the March 2020 temporary support payment, and Father did not make the March 2020 payment.

[5] The amount of Father's arrearage was based upon Father having paid the March 2020 orally-ordered temporary child support of $1,166, even though Father did not make the March payment.

child support payment;[6] and that Father had not paid child support for September 2020 ($1,080). The motion was set for hearing on December 7, 2020.

On **October 2, 2020**, Mother filed the other motion at issue in this appeal, an ex parte motion to advance the December 7, 2020 hearing date on her motion for relief.[7] Mother's ex parte motion also asked that Father be sanctioned for violating the May 27, 2020 Amended Order and ordered "to pay all of Mother's attorney's fees and costs incurred in relation to this and her earlier motion filed on September 24, 2020."

The family court advanced the hearing date as Mother requested. The hearing began on October 7, 2020, and continued on October 12, 2020.

On **November 17, 2020**, the family court entered its "**Order** re [Mother]'s Motions Filed on 9/24/2020 and 10/2/2020." As to child support, the November 17, 2020 Order provided:

> 1. ***As of October 2020***, Father owes a total of ***$10,129*** in unpaid child support to Mother, which includes the arrearage amount previously determined in the Order filed May 27, 2020. Father may pay $5,000 of this $10,129 amount over time at a minium of $100 per month, due on the first of the month with his $1,080.00 child support payment. The remaining amount, $5,129, shall be paid forthwith, and judgment in this amount shall issue.

(emphasis added) (footnote omitted). The family court also ordered that Father pay Mother's reasonable attorney's fees and costs incurred in connection with her motion for relief.

On November 20, 2020, Mother's counsel filed a declaration concerning attorney's fees and costs. On November 23, 2020, the family court entered the Order and

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[6] The family court had noted, during the January 23, 2020 hearing on Father's Motion for Relief, that "the law does not allow the court to say that whatever [Father] paid for his airline ticket to go to Arizona to visit the children takes the place of child support."

[7] The family court's January 14, 2021 Reconsideration Order incorrectly refers to Mother's ex parte motion as having been filed on October 3, 2020.

Judgment in favor of Mother and against Father for $5,842.93 in attorney's fees and costs.

Father filed a motion for reconsideration on November 27, 2020. Mother stipulated that the amount of Father's child support arrearage should have been $7,883 rather than the $10,129 stated in paragraph 1 of the November 17, 2020 Order.

On **January 14, 2021,** the family court entered the Reconsideration Order from which Father now appeals. The family court granted Father's motion for reconsideration in part and denied it in part. The January 14, 2021 Reconsideration Order provided:

> 1. Pursuant to [Mother's] stipulation that paragraph 1 of the Order Re [Mother]'s Motions Filed on 9/24/2020 and 10/2/2020, filed on November 17, 2020 (Nov. 17, 2020 Order), should be corrected, the Motion is granted insofar as the Nov. 17, 2020 Order is corrected to state that Father owes a total of ***$7,982*** [sic] in unpaid child support to Mother ***as of October 2020***, and not the $10,129 as stated in the Nov. 17, 2020 Order.
>
> 2. In all other respects, the Motion is denied.

(emphasis added) (footnote omitted).

Father filed a timely notice of appeal. Mother did not file a cross-appeal. The family court entered its "Findings of Fact, Conclusions of Law and Order" (**FOF, COL & Order**) on March 24, 2021.

Points of Error

Father's amended opening brief raises four points of error:[8]

[8] Father's amended opening brief does not comply with Rule 28(b)(4) of the Hawaiʻi Rules of Appellate Procedure (**HRAP**), which requires that a point of error cite "where in the record the alleged error occurred[.]" Father also failed to comply with HRAP Rule 28(b)(4)(C), which requires: "when the point involves a finding or conclusion of the court or agency, either a quotation of the finding or conclusion urged as error or reference to appended findings and conclusions[.]" A copy of the family court's March 24, 2021 FOF, COL & Order was appended to Father's amended opening brief, but neither the statement of points nor the appendix specify the particular findings or conclusion challenged by Father.

> "1. The Family Court's Determination that Father Owes Mother $7,982.00 in Unpaid Child Support is Not Supported by Substantial Evidence";
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> "2. The Family Court Abused its Discretion by Reducing the Time the Children Spend with Father in Hawaii, Contrary to their Best Interests, Without Applying the Proper Legal Standard Set Forth in Waldecker v. O'Scanlon for Modification of Custody Provisions, Without Identifying Circumstances[ ]Justifying the Modification as Being in their Best Interests and by Violating the Law of the Case. Waldecker v. O'Scanlon, 137 Haw. [sic] 460, 375[ ]P.3d 239 (2016); Wong v. City and County of Hawaii[sic] 66 Haw. 389, 665 P.2d 157 (Haw. [sic] 1983)";
>
> "3. The Family Court abused its discretion by modifying the custody provisions without an evidentiary hearing, giving Father only 24 hours' [sic] notice of the October 7, 2020 hearing and demanding Father's response be filed that same day or else it would not be considered by the court despite the fact that the court continued the October 7, 2020 hearing to October 12, 2020 and then placed stringent time restrictions on Father's argument, thereby denying Father's right to a hearing at a 'meaningful time and in 'a [sic] meaningful manner' as required by the United States and Hawaii Constitutions"; and
>
> "4. The Family Court Abused Its Discretion by Sanctioning Father with an Award of Attorney's Fees & Costs to Mother %in [sic] the Sum of $5,942.001 [sic][.]"

(initial capitalization in original).

Standards of Review

The Hawaiʻi Supreme Court has held:

> [T]he family court possesses wide discretion in making its decisions and those decision[s] will not be set aside unless there is a manifest abuse of discretion. Thus, we will not disturb the family court's decisions on appeal unless the family court disregarded rules or principles of law or practice to the substantial detriment of a party litigant and its decision clearly exceeded the bounds of reason.

Fisher v. Fisher, 111 Hawaiʻi 41, 46, 137 P.3d 355, 360 (2006) (citation omitted).

We review findings of fact under the "clearly erroneous" standard. A finding of fact is clearly erroneous when the record lacks substantial evidence to support the finding or when, despite some evidence to support the finding, we are left with the definite and firm conviction in reviewing all of the evidence that a mistake has been committed. Birano v. State, 143 Hawaiʻi 163, 181, 426 P.3d 387, 405 (2018).

"Findings of fact . . . that are not challenged on appeal are binding on the appellate court." Okada Trucking Co. v. Bd. of Water Supply, 97 Hawaiʻi 450, 458, 40 P.3d 73, 81 (2002) (citations omitted).

The family court's conclusions of law are ordinarily reviewed de novo, under the right/wrong standard, "and are freely reviewable for their correctness." Fisher, 111 Hawaiʻi at 46, 137 P.3d at 360 (citation omitted). However, when a conclusion of law presents mixed questions of fact and law, we review it under the "clearly erroneous" standard because the court's conclusions are dependent on the facts and circumstances of each individual case. Est. of Klink ex rel. Klink v. State, 113 Hawaiʻi 332, 351, 152 P.3d 504, 523 (2007). A conclusion of law that is supported by the trial court's findings of fact and reflects an application of the correct rule of law will not be overturned. Id.

Discussion

1. The family court's determination that Father Owes Mother $7,982.00 in Unpaid Child Support appears to be a clerical mistake.

Mother stipulated that the amount of Father's child support arrearage should have been $7,883 rather than the $10,129 stated in paragraph 1 of the November 17, 2020 Order. The family court's January 14, 2021 Reconsideration Order (which was based on Mother's stipulation) stated that the amount owed by Father was $7,982. We vacate paragraph 1 of the January 14, 2021 Reconsideration Order and remand to the family court for correction of the apparent clerical mistake.

Father's remaining arguments are without merit. Father contends that the family court failed to account for payments Father made to the Child Support Enforcement Agency (**CSEA**). Father alleges that in August 2020 "documents [were] served on him" from CSEA that purportedly ordered him to pay a total of $154 per month in child support commencing "6/1/2020." The record on appeal contains no copy of a CSEA order.[9] During the hearing on Mother's Motion for Relief, Father's counsel acknowledged that Father had received a ***proposed*** administrative order and that "***it [was] not yet an order***."[10] (Emphasis added.) Mother's reply memorandum in support of her motion for relief contained a copy of a CSEA "Notice of Suspended Action," dated September 15, 2020, stating that "all further actions on this case are being suspended, because service of the required documents could not be completed on" Father. Any voluntary

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[9] One page of an undated, unsigned document was attached as Exhibit C to Father's memorandum in opposition to Mother's Motion for Relief.

[10] According to CSEA's website:

> The administrative process begins with a ***proposed*** administrative order being sent to the parties by certified mail. If the parties are not served by certified mail, an attempt is made to personally serve the proposed administrative order on the parties. If both parties cannot be served, the administrative process stops and further action cannot be taken until information on where the party can be served is obtained by the CSEA. When a party is served, [they have] the right to request an administrative hearing if the party disagrees with the proposed administrative order. The request for an administrative hearing must be made within ten (10) days of being served with the proposed administrative order. When a request for an administrative hearing is received, a hearing is scheduled only when both parties have been served. If both parties have been served and no one has requested a hearing, the proposed administrative order is processed as an uncontested action.
>
> ***A child support order is issued by an administrative hearings officer after a hearing or as a result of an uncontested action is filed with the Family Court.*** The child support order issued in this manner has the same force and authority as the child support orders issued by the Family Court.

(emphasis added). Order Establishments, State of Hawaii, Child Support Enforcement Agency, https://ag.hawaii.gov/csea/order-processing/#OE (last visited Mar. 22, 2022).

payments by Father to CSEA — or refunds therefor — are an issue between Father and CSEA; CSEA is not a party to this appeal.

Father also contends that the family court should have given him additional time to obtain an accounting from CSEA or to call CSEA as a witness to an evidentiary hearing. The record does not indicate Father requested continuances for either of those purposes. Father's argument is waived. See Ass'n of Apt. Owners of Wailea Elua v. Wailea Resort Co., 100 Hawaiʻi 97, 107, 58 P.3d 608, 618 (2002) ("Legal issues not raised in the trial court are ordinarily deemed waived on appeal.").

Finally, Father contends that the family court's child support calculation is incorrect because it "includes an award of attorney's fees to Mother's counsel which have since been paid (and are not child support arrears)[.]" Father does not cite to any evidence in the record supporting his contention, and we find none.

2. The family court did not abuse its discretion by modifying Children's Thanksgiving and summer visits, but abused its discretion by modifying spring break visits.

Father contends that the family court abused its discretion by ordering: (a) Children will no longer spend Thanksgiving in Hawaiʻi; (b) Children must be returned to Arizona 10 days before school starts (rather than 7) after spending their summer break in Hawaiʻi; and (c) Mother will have AJ during spring break in odd-numbered years.

When modifying child custody, "the question is whether or not there has been such a change of circumstances that the modification will be for the best interest of the child." Waldecker v. O'Scanlon, 137 Hawaiʻi 460, 470, 375 P.3d 239, 249 (2016) (cleaned up).

A. Thanksgiving

Father does not challenge the following findings of fact, made on March 24, 2020, when the family court ruled on

Father's Motion for Relief:

> 5. [Mother] moved to Montana with both children in 2015 and lived there until 2018. In 2018 she moved to Phoenix, Arizona, where she continues to live to date.
>
> . . . .
>
> 103. The children have been subjected to a years[-]long tug of war between the parents spanning from Arizona to Hawaii. The children need peace, stability, and predictability to return to their lives. It is in the best interest of the children that they remain living with Mother in Arizona during the school year, so that their established lives, routines and relationships in Arizona can continue. However, it is also in the children's best interest that they spend the majority of their non-school time with Father, while also having time with him ***in Arizona during the school year***, if he wishes to visit.

(emphasis added). The May 27, 2020 Amended Order on Father's Motion for Relief provided:

> 5. Father's Custodial Time with the Children. Father shall be awarded custodial time with the children as follows:
>
> . . . .
>
> d. Thanksgiving Holiday. Thanksgiving in all even numbered years commencing after school on the last day of school before Thanksgiving until Sunday at 6:00 p.m. If Father spends the holiday with the children in Hawaii and accompanies the children back to Arizona and/or stays in Arizona, he shall instead return the children to school on Monday morning. Otherwise they shall be back in Mother's custody in Arizona by 6:00 p.m. on Sunday.

The family court addressed changes in Thanksgiving vacation during the October 12, 2020 hearing on Mother's Motion for Relief:

> Now, with respect to the Thanksgiving visits. While the Court is sympathetic to the fact that Thanksgiving visits should be as family orientated as possible for the best interest of the children, the Court also notes that ***the young age of these children*** sort of ***necessitate*** a closer type of gathering and perhaps ***less travel for a five-day period of visitation***, and would order that those visits occur where the children are during the Thanksgiving season.
>
> ***In other words, no bringing them to Hawaii, when two days are spent on the plane.***

(emphasis added).

The November 17, 2020 Order on Mother's Motion for Relief stated:

> 4. The following modifications to the current visitation Order filed May 27, 2020 are hereby granted:
>
> a. Father's Thanksgiving visits with the children shall only occur where the children reside, and Father shall not take them to Hawaii for the Thanksgiving visit.

In the March 24, 2021 FOF, COL & Order, the family court made a mixed finding of fact and conclusion of law when it ruled on Mother's Motion for Relief:

> 14. . . . . After hearing all the arguments from both parties, the Court found that it was in the best interest of the children [that] . . . Thanksgiving visits that are five days long should be spent in Arizona where the children reside, given their young age[.]

Father's amended opening brief refers to this mixed finding and conclusion, but does not specifically contend it was clearly erroneous. It was not. In even-numbered years, Father may have Children after school the Wednesday before Thanksgiving, and must return Children to school on Monday morning. To travel to Hawaiʻi, Father and Children would be required to fly from Arizona to Hawaiʻi on Thanksgiving day, spend Friday and Saturday in Hawaiʻi, and return to Arizona on Sunday to be back at school on Monday morning. On this record, we cannot say that the family court abused its discretion by requiring that Father spend Thanksgiving (in even-numbered years) with Children in Arizona, rather than Hawaiʻi, given Children's young age and the time and stress involved to travel between Arizona and Hawaiʻi.

B. Summer Break

The May 27, 2020 Amended Order on Father's Motion for Relief provided:

> 5. Father's Custodial Time with the Children. Father shall be awarded custodial time with the children as follows:

> . . . .
>
> b. Summer Vacation. Every Summer Break . . . Father's visitation shall commence one week after the last day of school at 6:00 p.m. (i.e.[,] if last day of school is a Friday, then Father's time starts one week later on Friday) and ending at 6:00 p.m. ***one week before the day school resumes*** (i.e.[,] if school resumes on a Monday, the children shall be back in Mother's care on the Monday before school resumes).

(emphasis added).

The family court addressed changes in the summer vacation schedule during the October 12, 2020 hearing on Mother's Motion for Relief:

> With respect to mother's request to order the children to return from summer vacation no later than ***two weeks*** before school commences, the Court is inclined to impose a ***10 day*** buffer for the children, given their age.
>
> That would provide them with a sufficient period to adjust to change of time, change of routines, as well as a change in -- afford them the opportunity to get ready for school before it starts.

(emphasis added).

On March 24, 2021, the family court entered this finding:

> 14. At the October 12, 2020 hearing, the Court heard arguments from both counsel . . . . After hearing all the arguments from both parties, the Court . . . (6) found that children require stability and that a 10 day buffer for the children to adjust before school to be appropriate[.]

The family court also found:

> 37. . . . .
>
> . . . .
>
> (b) *Educational needs of the children:* The children's educational needs are being adequately met by Mother in Arizona although the Court concludes that Father fails to recognize that he must return the children to Mother to afford the children adequate time to adjust, affording them the opportunity [sic] prepare for school properly without haste.

Father claims, in a footnote in the argument section of his amended opening brief, that finding 37(b) was clearly erroneous. Father has not cited any evidence in the record to support his claim of error. On this record, we cannot say that the family court abused its discretion by requiring that Children be returned to Arizona ten days before the beginning of a new school year, in light of Children's young age.

C. Spring Break

There is no specific mention of visitation during Spring Break in the March 17, 2016 Stipulation, the July 1, 2019 order on Father's Motion for Relief, or the September 9, 2019 second order on Father's Motion for Relief. The May 27, 2020 Amended Order on Father's Motion for Relief provided:

> 5. Father's Custodial Time with the Children. Father shall be awarded custodial time with the children as follows:
>
> a. Spring Break. ***Every*** Spring Break commencing after school on the last day of school every year for a period of up to ten (10) consecutive days commencing after school on the day the children are released from school and ending on the day school resumes when Father shall drop of [sic] the children off to begin school that morning at the appropriate time.
>
> . . . .
>
> g. A.J.'s Birthday. ***If A.J.'s birthday does not fall during Spring Break***, in all even numbered years, Father may travel to Arizona to spend up to one week with the children in March, to include A.J.'s birthday[.]

(emphasis added).

During the October 12, 2020 hearing on Mother's Motion for Relief the family court stated:

> Second at issue, which I think is actually the crux of what -- why we keep coming back to court is this disconnect, also set forward in the May 27th order, which is the birthday of AJ and where it falls within spring break or outside of spring break.
>
> The Court believes that ***it was not the intention to deprive mother of all birthdays of AJ***, should they fall within the spring break, but instead -- [interruption by Father's counsel].

> So with respect to the two paragraphs that appear on their face to be a bit problematic, I suppose, for these particular parties, ***the Court believes that mother should have at least half of AJ's birthdays, regardless of where they fall***, and I think that's probably the easiest way of stating it.
>
> Thus, in odd numbered [sic] years, mother would spend those with AJ.

(emphasis added).

The November 17, 2020 Order on Mother's Motion for Relief stated:

> 4. The following modifications to the current visitation Order filed May 27, 2020 are hereby granted:
>
> . . . .
>
> c. Father may not visit the children during A.J.'s birthday on any odd-numbered year Spring Break visits ***so that Mother may celebrate A.J.'s birthday with him during odd-numbered years***.

(emphasis added). The family court found:

> 14. At the October 12, 2020 hearing, the Court heard arguments from both counsel . . . . After hearing all the arguments from both parties, the Court found that it was in the best interest of the children to: . . . (2) afford Mother to spend a birthday with one child in "odd numbered" [sic] years[.]

Father argues that the family court abused its discretion based on the doctrine of "law of the case." Father cites the supreme court's syllabus in Wong v. City & Cnty. of Honolulu, 66 Haw. 389, 390, 665 P.2d 157, 159 (1983) ("A judge should generally be hesitant to modify, vacate, or overrule a prior interlocutory order of another judge of equal and concurrent jurisdiction."). Wong was a tort action in which one circuit court judge modified a discovery sanction previously entered by another circuit court judge in the same case. The supreme court held:

> A judge should generally be hesitant to modify, vacate or overrule a prior ***interlocutory*** order of another judge who sits in the same court. . . . The normal hesitancy that a court would have in modifying its own prior rulings is even greater when a judge is asked to vacate the order of a brother or sister judge.

Id. at 395-96, 665 P.2d at 162 (emphasis added).

In this case, the family court's May 27, 2020 Amended Order on Father's Motion for Relief was not an interlocutory order. Mother could have, but did not, appeal from the May 27, 2020 Amended Order. Rather, Mother moved the family court for relief from that order. An order concerning custody of a minor child is "subject to modification or change whenever the best interests of the child require or justify the modification or change[.]" Hawaii Revised Statutes (**HRS**) § 571-46(a)(6) (2018); Waldecker, 137 Hawaiʻi at 470, 375 P.3d at 249 ("[A]ny custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification or change."). The "law of the case" doctrine does not apply under the circumstances of this case.

We nevertheless conclude that the family court abused its discretion by modifying the Spring Break provision of the May 27, 2020 Amended Order. Although the family court recited the "best interest of the children" standard, its ruling was based upon what it felt was Mother's best interest. Mother cites nothing in the record indicating that it was in AJ's "best interest" to modify the Spring Break provision in the May 27, 2020 Amended Order. Accordingly, we vacate that part of the January 14, 2021 Reconsideration Order denying reconsideration of the Spring Break provisions of the November 17, 2020 Order on Mother's Motion for Relief.

3. The family court did not deprive Father of due process.

Father contends, for the first time on appeal, that the family court deprived him of custodial rights without an evidentiary hearing. Mother's Motion for Relief was filed on September 24, 2020, and set for hearing on December 7, 2020. On October 2, 2020, Mother filed an ex parte motion to advance the December 7, 2020 hearing date. The family court advanced the hearing date to October 7, 2020.

During the hearing Father's counsel explained that she had prepared a response, and requested leave to email it to the court. The family court granted the request. Father's counsel explained that Father had not signed his declaration. The family court asked counsel to "send what you have." Father's counsel began to make an offer of proof. The following exchange took place:

> [THE COURT:] So I am not going to be ambushed by a late filing. I am sympathetic to you, [Father's counsel], but I don't have much time.
>
> . . . .
>
> So what the Court will do to afford an opportunity to review, and also, [Father's counsel], perhaps you can get [Father]'s declaration signed. Otherwise, I'm going to afford it no weight.
>
> [FATHER'S COUNSEL]: Okay.
>
> THE COURT: We will move this to Monday [October 12, 2020] at 3:00.
>
> You have 15 minutes, and I will assume that everything is in your pleadings, and I'm just going to -- we will do limited argument, and then I will just issue the order. Okay?
>
> [FATHER'S COUNSEL]: Yes. Thank you very much, your Honor.

Father accepted the family court's five-day continuance to allow Father time to sign his declaration and file his response to Mother's Motion for Relief. Father also agreed to a limited argument. Father never requested an evidentiary hearing. Father's argument that the family court deprived him of due process is without merit.

4. The record is not sufficient for us to determine whether the family court erred by awarding attorney's fees and costs to Mother.

The November 17, 2020 Order stated "Father shall pay Mother's reasonable attorney's fees and costs incurred in relation to her Motions." The November 23, 2020 Order and Judgment awarded attorney's fees of $5,842.93. Neither order identifies the authority under which the award was made.

The March 24, 2021 FOF, COL & Order cites HRS §§ 580-9 and 584-16, but neither applies to this case. The former refers to temporary spousal support in annulment, divorce, and separation cases, but Father and Mother were never married and Mother never claimed spousal support from Father. The latter is part of the Hawaiʻi Uniform Parentage Act, but the parties never contested Father's paternity of Children.

The family court made the following conclusion of law (which is actually a combined finding of fact and conclusion of law):

> 49. The Court finds that Father's actions, including his failure to return the children to Mother as set forth in the March 24, 2020 Order on July 29, 2020[,] was not an isolated incident. This Court concludes that Father's consistent failure to adhere to the Court's Orders support the finding that Father's payment of Mother's attorney's fees and costs to be fair and reasonable.

It thus appears that the family court assessed Mother's attorney's fees against Father as a sanction.

> It is well established . . . that orders imposing sanctions should set forth findings that describe, with reasonable specificity, the perceived misconduct (such as harassment or bad faith conduct), as well as the appropriate sanctioning authority.

Trs. of Est. of Bishop v. Au, 146 Hawaiʻi 272, 282, 463 P.3d 929, 939 (2020) (cleaned up).

The supreme court explained that the making of findings regarding the purported misconduct "serves multiple important purposes":

> First, it clearly identifies and explains to the sanctioned person the conduct underlying the sanction. Additionally, findings that describe with reasonable particularity the perceived misconduct facilitate a meaningful and more efficient appellate review. Specifying the sanctioning authority, including the court's inherent authority if applicable, is also necessary for meaningful appellate review. Finally, the findings assure both the litigants and the court that the decision to impose sanctions was the result of reasoned consideration.

Trs. of Est. of Bishop, 146 Hawaiʻi at 283, 463 P.3d at 940 (citations omitted).

Here, the November 17, 2020 Order, November 23, 2020 Order and Judgment, and March 24, 2021 FOF, COL & Order were deficient because they failed to specify the authority supporting an award of attorney's fees to Mother. If the fee award was intended to be a sanction, they failed to set forth findings that describe, with reasonable specificity, the perceived misconduct by Father, as well as the appropriate sanctioning authority. Accordingly, we vacate the November 23, 2020 Order and Judgment and the portions of the November 17, 2020 Order and the March 24, 2021 FOF, COL & Order pertaining to the award of Mother's attorney's fees and costs. We remand to the family court for: (1) specification of the authority supporting the award of attorney's fees and costs to Mother; and (2) if the award of attorney's fees and costs imposes a sanction against Father, findings that describe, with reasonable specificity, the perceived misconduct by Father, as well as the appropriate sanctioning authority.

Conclusion

For the foregoing reasons, the family court's November 23, 2020 Order and Judgment is vacated, the January 14, 2021 Reconsideration Order is vacated in part, the March 24, 2021 Findings of Fact, Conclusions of Law and Order is vacated in part, and this case is remanded to the family court for further proceedings consistent with this memorandum opinion.

DATED: Honolulu, Hawaiʻi, April 4, 2022.

On the briefs:

Andrea Alden,
for Petitioner-Appellant.

Daniel S. Peters,
for Respondent-Appellee.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Clyde J. Wadsworth
Associate Judge