

NO. 22607

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

TERRY LYNNE HEW, Plaintiff-Appellee, v.
RANDALL YIN TAU HEW, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 98-2073)

MEMORANDUM OPINION

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

Defendant-Appellant Randall Yin Tau Hew (Randall)

appeals the family court's May 19, 1999 Decree Granting Absolute Divorce (Divorce Decree). More specifically, Randall appeals: (1) some of the decisions dividing and distributing the property and debts of the parties; and (2) the lack of a decision regarding the question of child support.

We affirm the Divorce Decree relating to the dissolution of the marriage; vacate the Divorce Decree relating to spousal support and the division and distribution of the property and debts of the parties; and remand for further proceedings consistent with this opinion. The family court and the parties are reminded of the time limitation imposed by Hawai'i Revised Statutes (HRS) § 580-56(d) (1993) and discussed in Todd v. Todd, 9 Haw. App. 214, 832 P.2d 280 (1992).

BACKGROUND

Randall and Plaintiff-Appellee Terry Lynne Hew (Terry) were married on October 20, 1978. They are the parents of two sons. The first (First Son) was born on July 26, 1979, and the second (Second Son) was born on February 21, 1981.

Randall's father is David Siuk En Hew (David). Randall's mother is Dora Loo Hew (Dora). Randall's brother is Rodney Yin Tet Hew (Rodney). Rodney's wife is Yvonne Mou Hew (Yvonne).

On December 13, 1994, David, Randall, and Rodney, each as trustee of his personal trust, entered into the following:

LIMITED PARTNERSHIP AGREEMENT
OF
HEW-HAWAII PARTNERS

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RECITALS

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2. The General Partner desires to manage and to operate the business.

3. The Limited Partner desires to invest in the business and to limit its liability.

In consideration of the mutual covenants contained herein, the parties agree as follows:

1.00 General Provisions: . . . The Partnership term . . . shall end on (1) the dissolution of the partnership by operation of law, (2) the dissolution at any time designated by the general partner, or (3) dissolution at the close of the month following the qualification and appointment of the personal representative of the deceased General Partner.

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5.00 Capital Contributions:

5.01 Initial Capital Contributions: The initial capital contributions shall be as follows:

GENERAL PARTNER:

DAVID SIUK EN HEW, Trustee -- \$1.00

LIMITED PARTNER:

DAVID SIUK EN HEW, Trustee -- \$33.00
RANDALL YIN TAU HEW, Trustee -- \$33.00
RODNEY YIN TET HEW, Trustee -- \$33.00

Each partner shall be allocated a percentage share of the partnership based upon the proportionate share of the initial capital contribution of such Partner as stated above in the total amount of property contributed to the Partnership by the General Partner and Limited Partner.

5.02 Additional Capital Contributions: There shall be no additional capital contributions to the capital of the Partnership unless agreed to in writing by all of the Partners.

5.03 Return of Capital Contributions: No Limited Partner shall be entitled to withdraw or demand the return of any part of his capital contribution except upon dissolution of the partnership and as specifically provided for in this Agreement.

. . . .

7.00 Profits and Losses:

7.01 Interests in Profits or Losses: The net profits or net losses of the Partnership shall be credited or charged to the capital account of each Partner in proportion to each Partner's interest in the Partnership.

7.02 Limitation on Liability for Losses Chargeable to Limited Partners: No Limited Partner shall be personally liable for any of the losses of the Partnership in excess of its capital account in the Partnership.

7.03 Distribution of Profits: The earnings of the Partnership shall be distributed at least annually except that earning may be retained by the Partnership and transferred to each Partner's capital account for the reasonable needs of the business as determined in the sole discretion of the General Partner.

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8.07 Periodic Financial Statements: Financial statements shall be prepared not less than annually and copies of the statement shall be delivered to each Partner. . . .

. . . .

9.00 Compensation of General Partner: The General Partner shall receive reasonable compensation for services rendered to the Partnership. Such compensation shall be reviewed periodically and adjusted accordingly.

10.00 Transfer of Interest of a Limited Partner:

10.01 Sale: A Partner may sell its Limited Partnership interest, subject to the following provision:

- a. Written Notice:
- b. Option to Purchase by Partnership:
- c. Non-exercise of Option to Purchase:
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10.03 Substituted Limited Partner: No assignee or transferee of the whole or any portion of a Limited Partner's interest in the Partnership shall have the right to become a substituted Limited Partner in place of the assigning Limited Partner unless all of the following conditions are satisfied:

- a. Written Consent of the General Partner:
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e. Consent and Transfer Fee: A consent and transfer fee not to exceed Twenty Thousand Dollars (\$20,000.00) has been paid by the assignee to the Partnership. The amount of the consent and transfer fee shall be determined in the sole discretion of the General Partner.

f. Election of General Partner To Treat Assignee as Substituted Limited Partner: The General Partner may elect to treat as [sic] assignee who has not become a substituted Limited Partner as a substituted limited partner in the place of its assignor should the General Partner deem, in its sole discretion, that such treatment is in the best interest of the Partnership for any of its purposes or for any of the purposes of this agreement.

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10.06 Restriction on Transfer, Assignment, or Encumbrance of Partnership Interest: Anything in this agreement to the contrary notwithstanding, no Limited Partner or other person who has become the holder of interest in this Partnership shall transfer, assign or encumber all or any portion of its interest in the Partnership during any fiscal year, if such transfer, assignment or encumbrance would (in the sole and unreviewable opinion of the General Partner) result in the termination of the partnership for purposes of the then-applicable provisions of the Internal Revenue Code of 1954, as amended.

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12.05 Dissolution of Partnership: The Partnership shall be dissolved only upon the occurrence of any of the following events:

- a. Written Consent or Affirmative Vote: The written consent or affirmative vote . . . by Limited Partners owning more than Eighty-Nine Percent (89%) of the then outstanding Partnership interests.

. . . .

e. Expiration of Term: The expiration of the time period otherwise set forth in Article 1.00, herein.

f. Voluntary Dissolution: Voluntary dissolution of the Partnership by agreement of the Partners.

g. Court Order: The entry of a dissolution decree or judicial order by a court of competent jurisdiction or by operation of law.

. . . .

13.00 Amendments: Except with respect to vested rights of the Partners, this Agreement may be amended at any time by a majority vote as measured by the interest in the sharing of profits and losses.

By deed dated May 20, 1995, David, Dora, Randall, Terry, Rodney, and Yvonne conveyed 1975 and 1975-A Metcalf Street, Honolulu, TMK 2-8-9-34, to Hew-Hawaii Partners.

By deed dated May 20, 1995, David, Dora, Randall, Terry, Rodney, and Yvonne conveyed 690 Kihapai Street, Kailua, TMK 4-2-67-30, to Hew-Hawaii Partners.

By deed dated May 20, 1995, David, Dora, Randall, and Rodney conveyed 1277 Onioni Street, Kailua Heights, TMK 4-2-34-70, to Hew-Hawaii Partners.

By deed dated May 20, 1995, David, Dora, and Randall conveyed 1050 Iopono Street, Enchanted Lake, TMK 4-2-58-75, to Hew-Hawaii Partners.

By deed dated May 20, 1995, David, Randall, and Rodney conveyed 557 Kipuka Place, Kailua, TMK 4-3-60-21, to Hew-Hawaii Partners.

On June 9, 1998, Terry filed a Complaint for Divorce.

In his Settlement Conference Statement filed on April 6, 1999, Randall stated, in relevant part, as follows:

The parties own interests in two rental properties, [1423A Akiikii Place and 45-569 Mahinui Road] and their marital residence [1423 Akiikii Place]. The marital residence is co-owned with [Randall's] parents. All of the property should be sold and the parties' net proceeds should be divided equally. [Randall's] parents should be reimbursed for their mortgage payments made during the pendency of this action. They should also receive their share of the rental income.

. . . .

[Randall] contends that all of his holdings and interest in the Hew Family Limited Partnership is his separate property for which [Terry] has no claim to.

In his Asset and Debt Statement filed with his Settlement Conference Statement, Randall stated that \$250,000 was owed on 1423A Akiikii Place, the value of the Hew-Hawaii Partners was "not known," and his interest in "RETIREMENT; PENSION; PROFIT SHARING ACCOUNTS" was "none."¹

In her Settlement Conference Statement filed on April 8, 1999, Terry stated, in relevant part, as follows:

3. REAL PROPERTY. The parties are [sic] own all or a portion of the real property in which they reside; the adjacent rental property; and another piece of real property. While there is a mortgage on at least two of these properties, those mortgages are in the name of and are the responsibility of [Randall's] parents.

[Terry] seeks her one-fourth share of the value of these properties. Any mortgages existing on these properties are against that portion owned by [Randall's] parents and should not affect the amount due to [Terry].

4. HEW FAMILY PARTNERSHIP. The parties also jointly owned one-half of several other properties. However, after

¹ This representation regarding retirement accounts is contradicted by finding of fact no. 74 of the family court's August 27, 1999 Findings of Fact and Conclusions of Law.

learning of the divorce, [Randall] and his father formed the Hew Family Partnership and transferred these properties into that vehicle. [Terry] signed the transfer papers which removed her name from all of these properties without knowing what she was signing and because she feared [Randall] who was insisting that she sign.

[Terry] should be awarded one-half of the value of [Randall's] one-third interest in Hew Family Partnership.

The trial occurred on April 26 and 27, 1999.

At the conclusion of the trial, the family court judge who tried the case stated, in relevant part, as follows:

Both parties are going to present to the Court written arguments with reference to the evidence and the exhibits only.
. . . .

With that -- in addition to that, both parties will present to the Court proposed decrees.

And also, both parties are going to present to the Court a listing of the properties held jointly by the parties and David and Dora Hew with cost, mortgage, values and reference to all the properties in the Hew family partnership and with reference specifically as to who's interest at what time and so forth.

. . . .

. . . I have no idea what my decision is going to be. All I can tell you is, I will think about it, struggle with it, review the evidence and make a decision that I think is required of me by law and by the evidence. Okay.

And that may mean that you will lose on certain positions. Nevertheless, that's what I have to do.

I think you are both good people in many ways. And sorry it got to this point.

Good luck as I said and God bless.

Thank you very much.

On May 10, 1999, Randall's counsel submitted his closing argument. In relevant part, it states as follows:

II. ADULT CHILDREN.

. . . At the time of trial, both [sons] resided with their father. It appears that [First Son] will continue to live with his father and that [Second Son] will return to live with his mother. Both adult children are dependent on the parties for

educational purposes. [First Son] is currently attending Kapiolani Community College and [Second Son] is completing his senior year [at] the Academy of the Pacific. [Randall] deems it reasonable that both parties should continue to be responsible for 1/2 of both [sons'] educational expenses and that their additional living expenses should be paid to each of them directly by both parties. The parties should also share the cost of medical and dental insurance premiums for both sons as well as the unreimbursed medical and dental expenses.

. . . .

V. DIVISION OF REAL PROPERTY.

The parties own a 1/2 interest along with [Randall's] parents in three (3) residential properties. There are 1423 Akiikii Place, [Enchanted Lake,] 1423A Akiikii Place[, Enchanted Lake] and 45-359 [sic] Mahinui Road[, Kaneohe]. . . . [Randall] deems it reasonable that [Terry] is entitled to her equitable interest in said property, but said interest should be subject to the exi[s]ting mortgage obligation.

VI. HEW FAMILY LIMITED PARTNERSHIP.

The Hew Family Limited Partnership was formed by [Randall's] father on December 13, 1994. [David] through his trust served as the general partner. Limited partners included [David's] trust, [Randall's] trust and [Rodney's] trust. The family limited partnership held three (3) properties.² [Randall] testified that he had a 1/3rd interest. The uncontroverted evidence adduced at trial was that neither [Terry] or [Randall] contributed towards the acquisition of the properties. Essentially, the Hew Family Limited Partnership is an estate planning vehicle established by [David] who also managed and made all decisions relating to the properties. The family limited partnership generated income but all income although attributed [to] the various limited partnerships was received by [David]. [David] also paid all of the taxes related to the income of the trust.

It is clear that the Hew Family Limited Partnership is controlled by [David]. There is nothing to show that [Randall] is free to sell any of the properties, receive or control income or deal specifically with any of the parcels of real estate that are owned by the property. All benefits and liabilities are received by [Randall's] parents. It is therefore [Randall's] position that [Terry] should have no interest in this property. This is purely a Category 3 property and not part of the parties' marital estate.

² The Hew-Hawaii Partners "held" more than "three (3)" properties. It "held" 1975 and 1975A Metcalf Street, 690 Kihapai Street, 1277 Onion Street, 1050 Iopono Street, and 557 Kipuka Place. It appears that it also "held" other properties, including, but not limited to, the one-half interest in 1423 and 1423A Akiikii Place that Plaintiff-Appellee Terry Lynne Hew (Terry) and Defendant-Appellant Randall Yin Tau Hew (Randall) did not own.

[Terry] has claimed that she signed documents not knowing what they were. It appears that she had executed Exhibit 23 which purports [sic] to be the deed to 1975 and 1975A Metcalf Street property and Exhibit 26 690 Kihapai Street. The fact that she did not know anything about these properties gives credence to the fact that ownership of the property in the family limited partnership accruing to [Randall] and to any degree to [Terry] is nominal in nature. It also supports [Randall's] claim that this is not marital property. Moreover, any appreciation of this property should not be marital in nature inasmuch as [Randall] has received title to the property as part of an estate planning vehicle.

Accordingly, [Terry] should have no interest in this property. It is also of note that [Terry] in her divorce action did not name [Randall's] parents as third parties to this divorce action. Therefore, [Terry] should be precluded from claiming any substantial interest in the Hew Family Limited Partnership.

(Emphasis in original, footnote added.)

Exhibit "B" of Randall's closing argument filed on May 10, 1999, states, in relevant part, as follows:³

³ The record does not reveal the relationship between the tax assessed valuation of a parcel real property in the City and County of Honolulu and the market value of that parcel of real property.

Properties held Jointly with David and Dora Hew

Address	TMK	Cost	Mortgage	1997 Tax Value	Current Tax Assessed Value
1423 Akiikii Pl	1-4-2-88-35	\$ 152,000.00		\$ 383,500.00	\$ 330,800.00
1423A Akiikii Pl	1-4-2-88-45	\$ 100,000.00	\$155,000.00	\$ 433,300.00	\$ 316,400.00
45-569 Mahinui Rd	1-4-5-91-2	\$ 91,000.00		\$ 325,500.00	\$ 270,700.00
		\$ 343,000.00	\$155,000.00	\$1,142,300.00	\$ 917,900.00

Properties held by the Hew Family Partnership

Address	TMK	Cost	Mortgage	1997 Tax Value	Current Tax Assessed Value
1975 & A Metcalf	1-2-8-9-34	\$ 175,000.00	\$150,000.00	\$ 515,300.00	\$ 296,500.00
1050 Iopono St	1-4-2-58-75	\$ 370,000.00	\$212,423.00	\$ 450,300.00	\$ 481,000.00
557 Kipuka Pl	1-4-3-6-21	\$ 190,000.00		\$ 213,000.00	\$ 598,300.00
1277 Onioni St	1-4-2-34-70	\$ 255,000.00	\$200,000.00	\$ 361,600.00	\$ 732,400.00
690 & 690A Kihapai	1-4-3-67-30	\$ 112,000.00		\$ 459,000.00	\$ 344,300.00
Totals		\$1,102,000.00	\$562,423.00	\$1,999,200.00	\$2,452,500.00

1423 & 1423A Akiikii Pl. - rental income received by Plaintiff and Defendant (P-\$1000 and D \$850)

Plaintiff resides in 1423A Akiikii with David and Dora Hew paying the mortgage

Note: 1975 & 1975A Metcalf and 690 Kihapai Street Deeded by Plaintiff [sic] and Defendant [sic] to Hew Family Ltd Partnership 5/20/95

All Tax Assessed Values obtained from the City and County Real Property [Tax] Assessment Office

A proposed division of property attached to a letter from Randall's counsel addressed to the court and filed on May 13, 1999, states as follows:

PROPERTY DIVISION CHART-HEW V. HEW¹

ASSETS:		Value	Division		Value H's	Value W's		Actual H
1423 Akiikii Pl (½ interest)	J	\$ 164,400.00	50% 50%		\$ 82,200	\$ 82,200.00	\$	\$164,400.00
1423 Akiikii Pl (½ interest)	J	\$ 198,200.00	50.00% 50%		\$ 99,100.00	\$ 99,100.00	\$	\$198,200.00
Mahinui St (½ interest)	J	\$ 135,000.00	50% 50%		\$ 67,500.00	\$ 67,500.00		\$135,000.00
Kihapai St (½ interest)	J ²	\$ 172,150.00	50% 50%		\$ 86,075.00	\$ 86,075.00	\$172,150.00	\$
Metcalfe (½ interest)	J	\$ 190,400.00	50% 50%		\$ 95,200.00	\$ 95,200.00	\$	\$190,400.00
Onioni St (½ interest)	H	\$ 166,200.00	50% 50%		\$ 83,100.00	\$ 83,100.00	\$166,200.00	\$
Kipuka Pl (½ interest)	H ³	\$ 89,950.00	50% 50%		\$ 44,975.00	\$ 44,975.00	\$ 89,950.00	\$
Iopono (½ interest)	H	\$ 190,550.00	50% 50%		\$ 95,275.00	\$ 95,275.00	\$190,550.00	\$ 0.00
Stock (Exh. AA)	H	\$ 3,246.00	50% 50%		\$ 1,623.00	\$ 1,623.00	\$ 3,246.00 ⁴	\$
Ins.Cash Value-12/98 (Ex. BB)	H	\$ 12,532.99	50% 50%		\$ 6,266.50	\$ 6,266.49	\$	\$ 12,532.99
1997 Taxes (Ex.I)	H	\$ 7,780.00	50% 50%		\$ 3,890.00	\$ 3,890.00	\$	\$ 7,780.00
1998 [Taxes] 719,812	H	\$ 11,000, app.	50% 50%		\$ 5,500.00	\$ 5,500.00		\$ 11,000.00
1998 Taxes	W	\$ 500.00	50% 50%		\$ 250.00	\$ 250.00	\$ 0.00	\$ 500.00
TOTAL		\$	50% 50%		\$	\$	\$ ⁵	\$
<u>TOTALS:*</u>		\$1,341,908.99			\$670,954.50	\$670,954.49	\$622,096.00	\$719,812.99

¹Please note, not included in [the] chart are Defendant's retirement, debt owed Defendant by Graham Murata, alleged Hale O'Malia promissary [sic] notes, all of which are awarded [to] Defendant.

²Joint before transfer to Hew partnership, as was Metcalfe.

³Husband had Wife sign off on this property.

⁴Defendant withdrew this money as of 2/11/99.

⁵Difference in Values takes into account monies owed by Husband to Wife for alimony, debt to Father and attorney's fees.

A comparison of Randall's May 10, 1999 submission with his May 13, 1999 submission suggests that the values of the

properties held by the Hew-Hawaii Partners expressed in the May 13, 1999 submission may be of unstated percentages of the market values. For example, the May 10, 1999 submission states that the "Current Tax Assessed Value" of 1277 Onioni Street is "\$732,400." The May 13, 1999 submission states that one-half of the value of 1277 Onioni Street is "\$166,200.0[0]."

On May 18, 1999, Terry's counsel submitted her closing argument. In it, she stated, in relevant part, as follows:

It is [Terry's] position that the shield which [Randall] attempted to create is invalid and these properties should be treated as if they had never been transferred into the partnership.

. . . It is [Terry's] position that she should [be awarded] the parties one-half interest in Mahinui, 1423 and 1423A Akiikii Place and the Metcalf property. [Randall] should receive the remaining properties which include the Kihapai, Iopono, Kipuka, and Onioni Road houses. It is worth noting, however, that [Randall] almost certainly has additional properties which [Terry] was unable to locate. The property value charts prepared by [Randall] show properties on other islands and in California. See Exhibits 55 and 51-52. His letter to a United Mortgage mentioned a 10% interest in Molokai. See Exhibit 65.

Further, there may well be a property on Wailea Street, which could be part of the Hew Hawaii Partnership. [Randall] wrote a Memo to a lending institution, Exhibit 59, apparently seeking loan money on this property which he listed as being in the Hew Hawaii Partnership. He provided what seems to be a copy of the multiple listing description of the property. At trial, [Randall] testified this was not part of the Hew Hawaii Partnership and that he made up a phony multiple listing to see how the lending institution would react to the property if it was owned that way.

(Emphasis in original.)

The family court's August 27, 1999 Findings of Fact and Conclusions of Law (August 27, 1999 FsOF and CsOL) state, in relevant part, as follows:

22. Judge Browning directed [Terry] to resubmit her Decree, after making various changes as per his instructions.

[Terry] did so. Judge Browning then returned the Decree for one additional change and, when same was resubmitted, signed the Decree which was filed-stamped May 19, 1999.

The Divorce Decree states, in relevant part, as follows:

5. **REAL PROPERTY.**

A. **Award of Property.** [Terry] is awarded as her sole and separate property, the parties' one-half interest in the properties located at 1423 and 1423A Akiikii Place and 45-569 Mahinui Road. The court finds that the debt on 1423A Akiikii Place, which is in the name of [Randall's] parents, is that of [Randall's] parents and perhaps [Randall], but is not that of [Terry].⁴ [Terry] is also awarded one-half interest in the property located [at] 1975 and 1975A Metcalf. [Randall] shall deliver to [Terry] within 60 days a deed placing in her name one-half interest in this property. [Randall] is awarded the remaining properties, including those on Iopono Street, Kipuka Street, Onioni Street, and Kihapai.

. . . .

6. **VEHICLES.** [Terry] is awarded the 1995 Mazda Protege, which is held in her name, and [Randall] is awarded the 1991 Mazda Protege, which is currently held in his name alone. Both vehicles are debt free. . . .

7. **DEPOSITORY ACCOUNTS.** The parties have already divided the monies which were in their joint accounts as of separation. At present the parties have no joint account. Accordingly each is awarded his or her separate accounts.

8. **LIFE INSURANCE.** [Randall] is awarded the Royal/Sun life insurance policy on his life, subject to paying [Terry] the cash value thereof, which is \$12,523.99 plus the amount by which that cash value has increased as of the April 26, 1999, the date of trial. [Randall] shall provide [Terry] with a copy of the cash value for that date establishing that he is paying her the correct increased amount.

9. **RETIREMENT.** [Randall] is awarded his retirement with Graham Murata Russell without offset to [Terry]. [Terry] has no retirement plan.

10. **MONIES OWED [RANDALL] BY GRAHAM MURATA RUSSELL.** [Randall] is awarded the money which Graham Murata Russell owes him for the billings he has made to them for time expended (at \$100/hr) and costs advanced since June 1998.

⁴ The determination "that the debt on 1423A Akiikii Place, which is in the name of [Randall's] parents, is that of [Randall's] parents and perhaps [Randall], but is not that of [Terry]" is not a finding. It is a conclusion and/or a distribution of a debt to "perhaps [Randall]" but not to Terry.

11. **PROMISSARY [sic] NOTES FROM HALE O'MALIA and/or the EPISCOPAL CHURCH.** [Randall] testified that he possessed two promissory notes, one in the amount of \$70,000 and the other in the amount of \$30,000, made in his favor by the Hale O'Malia project and/or the Episcopal Church. [Randall] is awarded these promissory notes as his sole and separate property.

. . . .

15. **DEBTS.**

. . . .

B. **[TERRY'S] DEBT TO PARENTS FOR LIVING EXPENSES.** [Randall] shall reimburse [Terry] in the sum of \$5,250 for the debt which she incurred to her parents for living expenses since separation.

. . . .

16. **ATTORNEY'S FEES AND COSTS.** Each party will pay his or her own attorney's fees and costs.

. . . .

18. **TAX MATTERS.**

A. **[Randall's] 1996 and 1997 Tax Returns.** Within ten (10) days of the date of this Order, [Randall] shall direct the IRS and the State of Hawaii that the taxes he overpaid for tax years 1996 and 1997 shall be forwarded to him as refunds. He shall direct the state and federal taxing authorities to forward said refunds to him care of his attorney Blake T. Okimoto. Upon Mr. Okimoto receiving each refund, he shall have [Randall] shall [sic] sign said refund and shall then forward same to [Terry] through her attorney J.E. Mayla Blakley.

B. **Tax Year 1998.** [Randall] is awarded the tax return on his 1998 taxes and [Terry] is awarded the \$500 tax return on her 1998 taxes.

(Footnote added.)

On June 17, 1999, Randall filed a notice of appeal.

On June 21, 1999, the family court entered its Order to Submit Proposed Findings of Fact and Conclusions of Law directed to counsel for Terry.

On August 6, 1999, David and Dora filed their Motion to Intervene. The motion cited Rule 24(a) (2) of the Hawai'i

Family Court Rules and stated, in relevant part, that "[t]he Akiikii Property and the Mahinui Property are owned by the Hew Living Trust and Randall and Terry (as tenants by the entirety) as tenants in common." In other words, it appears that David and Dora conveyed their one-half interests to Hew-Hawaii Partners. The record does not reveal when this conveyance was made.

The Motion to Intervene was heard and orally granted on August 26, 1999. The order was entered on September 21, 1999.

The family court's August 27, 1999 FsOF and CsOL state, in relevant part, as follows:

FINDINGS OF FACT

. . . .

26. The Court finds that all four of [Terry's] witness[es] were credible. Further, based upon demeanor as well as the consistency and content of her testimony, the Court finds that [Terry], who testified extensively, was an honest and reliable witness.

. . . .

28. Based both upon his demeanor and upon actual testimony, the Court finds that [Randall] was not a credible witness. . . .

. . . .

30. The Court finds that [Dora] was a partially credible witness. . . .

. . . .

32. [Randall] has been a realtor throughout most of the marriage, gaining expertise in various areas of commercial real estate including shopping center management. He is also knowledgeable regarding the home purchase and rental market due to his extensive and ongoing work for [David].

33. [Terry] is a medical stenographer. During the marriage her primary focus was the children. She worked, primarily out of the home, to pay for the children's private schooling. [Terry] testified that, based upon her experience, the advent of voice recording is reducing demand for her professional skills. She has to compete with more people for less work and receives fewer benefits.

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34. [David] owns a number of rental properties. He has engaged in this business ever since the parties married. The business activities include selecting houses for purchase, purchasing houses, fixing up purchased houses so they can be rented, and, at times, may involve selling properties or refinancing existing properties to obtain funds for use in new properties or for other things.

35. The Court finds, based upon the testimony of both parties, that over the term of the marriage, [Randall] actively worked in [David's] business, spending on the average at least a day a week and often considerable more time. Further, [Randall] has had periods of unemployment, or limited employment, when he has worked exclusively, or almost exclusively, on [David's] business.

36. [Terry] testified that, over the years when she asked [Randall] about being paid for his work for [David], [Randall] invariably indicated they were being compensated through being given ownership interest in various properties.

37. The Court finds that such compensation for work in the family business is consistent with the family's practice, as testified to by [Randall], who stated it was customary in his family to compensate the children and grandchildren who assist the grandparents, whether in the business or otherwise.

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40. During [First Son's] 1994-94 [sic] year at Punahou, [Terry] told [Randall] she planned to divorce him. As [Randall's] testimony, [sic] it is clear he was also aware when she retained counsel in Spring 1995.

41. Ultimately [Terry] chose [First Son's] best interests over her own and decided to delay filing until [First Son] graduated high school.

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42. The evidence, both direct and circumstantial, indicated [Randall] clearly knew [Terry] planned to file upon [First Son's] graduation.

(1) [Terry] filed within a day or so of [First Son's] graduation party.

(2) [Randall] quit his job, effective May 31, 1998, only few days prior to [First Son's] graduation party. . . .

. . . .

43. Based upon the credible evidence . . . , the court finds that:

(1) [Randall] was verbally and emotionally abusive to [Terry] throughout the marriage and, on occasion, was physically threatening as well;

(2) [Terry] feared, and continues to fear, [Randall]; and

(3) [Randall] intimidated [Terry] through such abuse, at times bullying her and getting her to do things, such as signing documents without reading them, that were not in her best interests and that, absent such coercion, she would not have done.

. . . .

45. Although [Randall] identified himself as unemployed, he also testified that he was working extensively for [David]. [Randall] also identified himself as without income when, in fact, both he and [Dora] testified that [David and Dora] paid his medical/dental and car insurance bills; his housing including telephone, utilities, etc.; his car repairs; all expenses for the parties' children including his one-half of the younger son's private school tuition as well as giving him \$20 a day in cash and a credit card for his use for gas, clothes and anything else he might need.

. . . .

58. In 1994-95, when [Terry] indicated to [Randall] her firm intent to obtain a divorce, she was record owner to one-half interest in several properties, including 1423 Akiikii Place; 1423A Akiikii Place; 45-569 Mahinui Road; 1975 & 1975A Metcalf; and 690 and 690A Kihipai [sic]. Further, [Randall] also was on title for 1050 Iopono; 557 Kipuka Place; and 1277 Onioni Street. The parties' interests in all of these properties were acquired during the marriage.

59. The Court also finds, based upon [Randall's] lack of forthrightness and upon representations in written documents and the various accounting records included in [Terry's] exhibits, it is highly probable [Randall] owns, or did own as of 1995, an interest in other properties, on other islands or in other states, or perhaps which have been sold pursuant to an Agreement of Sale. Further, [Randall] claimed ownership of a Wailea property by the Hew Family Partnership. [Randall's] explanation that he made a fake MLS listing for the property to see what the bank would do regarding mortgages does not bolster his credibility.

60. The [Hew Family Partnership] was formed in 1995 and is organized with [David] as a general partner and [Randall] and

his brother as limited partners.⁵ Mr. McEnerney testified the corporation is scheduled for involuntary dissolution due to non-submission of necessary documents.⁶ The only items transferred into this entity are the properties in which [Randall] and [Terry] or [Randall] had an interest.⁷ Mahinui and the Akiikii Street properties were not transferred into this corporation.

61. The Court finds . . . that in late [sic] 1995, [Terry] was coerced into signing, without reading or obtaining legal advice, a number of deeds and other documents which transferred her interest in various properties into the Hew Family Partnership (HFP), a recently formed entity.⁸

62. . . . [T]he Court finds [Randall] is actively involved in the management and running of this corporation, something which is inconsistent with limited partnership status.

63. The Court believes . . . that the HFP is essentially a sham designed to deprive [Terry] of her interest in the parties' real estate assets and to present an artificial barrier to [Randall's] ability to transfer to [Terry] her share of such assets.

64. The Court finds that the parties' pre-HFP interest in all of the properties listed in No. 58 above were acquired through [Randall's] labor during the marriage and thus are joint property subject to equal division between the parties.

65. The Court finds that transfer of the property by [Terry] to HFP, based upon coercion, was unconscionable and void.

66. . . . [T]he Court finds [Randall] has taken an active managerial role in the HFP which is inconsistent with his alleged status as a limited partner.

. . . .

68. In 1993, [Randall's] parents borrowed \$160,000 via a mortgage on 1423A Akiikii Place. [Randall] and [Terry] signed

⁵ The first sentence of finding of fact no. 60 is clearly erroneous. The Hew-Hawaii Partners was formed December 13, 1994, and the partners are the trustees or successor trustees of the personal trusts of Randall's father, David Siuk En Hew (David), Randall, and Randall's brother, Rodney Yin Tet Hew.

⁶ There is no indication in the record that this termination occurred.

⁷ In light of the sentence following it, the relevance of this sentence is not apparent. The family court did not identify the properties in which Terry and Randall did not have an interest that were not transferred.

⁸ The conveyances referred to in finding of fact no. 61 may not have changed the relevant categorization of the net market values of Randall's resulting indirect interest in the properties transferred.

this mortgage as well. [Terry] testified⁹ that she often was required to sign documents without knowing what they contained and that [David] often used one property to finance another.

69. In 1995, this mortgage was refinanced only without [Terry's] name on it. The new mortgage amount was \$184,000.

. . . .

72. . . . [T]he Court finds that the proceeds of the 1993 mortgage placed on 1423A Akiikii Place, which was refinanced in 1995, went to [David and Dora] and not to the parties. Thus, [Terry], who is not on the mortgage, has no responsibility for repayment of this mortgage.¹⁰

. . . .

74. In addition to the real property, the parties own two life insurance policies on [Randall's] life, both with cash value; two vehicles; household goods and effects; personal effects; business items for each party; [Randall's] retirement plan¹¹ with Graham Murata; [Randall's] accounts receivable from Graham Murata for work done for which he will be compensated at the rate of \$100 per hour when the project is completed; [Randall's] 1996 and 1997 tax returns and the parties 1998 tax returns.

75. The Court finds that [Randall's] tax returns for 1996 and 1997 reflect substantial contributions by the parties paid from their joint accounts.

. . . .

CONCLUSIONS OF LAW

. . . .

F. [Terry] is awarded the parties' one-half interest in the 1423 and 1423A Akiikii Place; in Mahinui Place; and in 1975 and 1975A Metcalf Place. The existing mortgage on this property is the responsibility of [David and Dora] or of [Randall] but not the responsibility of [Terry].

G. [Randall] is awarded the parties' interest in the Iopono; Kipuka Place; Onioni Street; and Kihapai properties.

⁹ A fact alleged in testimony is not a fact until the court finds it to be a fact.

¹⁰ See footnote 4, *supra*. In other words, the family court concluded that Randall's (not Terry's) debt was not a marital debt. It did so, however, without finding what Randall's parents did with the money that generated the debt.

¹¹ We note that in his asset and debt statement filed with his settlement conference statement, Randall stated he did not have any interest in a retirement plan.

.
M. The Court also concludes that [Randall's] direct assumption of an active managerial role in HFP renders him a general rather than a limited partner.

(Footnotes added.)

The following are Randall's points on appeal.

1. The family court erred in awarding Terry real property belonging to a third party limited partnership and real property co-owned with Randall's parents,¹² when the partnership and Randall's parents were not parties to the divorce action.

2. The family court erred in awarding Terry a one-half interest in the 1975 and 1975-A Metcalf Street properties when Randall had, at most, a one-third interest in said properties, with the remaining two-thirds interest being owned by the remaining partners in the Hew family partnership.¹³

3. The family court erred in awarding Terry the entire interest of the parties in marital real property and otherwise ordered the division and distribution of property and debts in an inequitable manner by deviating from the partnership model.

¹² It appears that David and Randall's mother, Dora Loo Hew, conveyed their interest in 1423 Akiikii Place, 1423A Akiikii Place, and 45-569 Mahinui Road to the Hew Family Partnership. See David S. E. Hew and Dora L. Hew's Motion to Intervene filed on August 6, 1999.

¹³ See footnote 4 above.

4. The family court erred in ordering the division of mortgages of third parties who were not parties to the divorce action.¹⁴

5. The following findings of fact are clearly erroneous:

Finding of fact no. 59: "Nowhere was evidence presented by [Terry] of documentation showing [Randall] as title holder of an interest in other properties on other islands or in other states, or which have been sold pursuant to an Agreement of Sale."

Finding of fact no. 62: "Michael McEnerney . . . testified at trial that if a limited partner took an active role in running a business, he/she becomes a general partner but it does not terminate the partnership."

Finding of fact no. 63.

Finding of fact no. 64:

There was no evidence as to the value of [Randall's] work for his father. . . . As such, the transfers of properties other than the Akiikii Street properties and Mahinui Road properties, may be in excess of the labor by [Randall] for his father. Therefore, the transfer to [Randall] of properties such as Iopono, Onioni, Kihapai, Metcalf and Kipuku would be gifts from father to son.¹⁵

(Footnote added.)

¹⁴ See footnote 9.

¹⁵ These would be gifts of only the excess of the labor. Because Randall and Terry were co-owners, the gifts would be to Randall and Terry.

Finding of fact no. 65: "To make such a finding, the partnership must be made a party to the divorce action to be able to defend against such a finding."

6. The family court erred in failing to resolve the issue of the contribution of the parties towards the support of their adult children who remain dependant on the parties for their education.

"Pursuant to Pretrial Orders Number 1 and 2 entered on September 10, 1998, and February 22, 199[9,] the matter of support was a disputed issue. . . . Further, said matter was addressed in [Randall's] closing Argument submitted to the court." "[First Son] currently attends Kapiolani Community College. [Second Son] was completing his senior year at the Academy of the Pacific. . . . [Randall] testified that the parties two sons were currently residing with him. [Terry] testified that [Second Son] said he was moving in to live with her[.]" (Record citations omitted.)

7. The family court erred in ordering Randall to refile his 1996 and 1997 separate tax returns and pay the refund to Terry, when said taxes were paid by Randall's parents. The family court

erred in ordering [Randall] to direct the IRS and the State of Hawaii that the taxes overpaid for tax years 1996 and 1997 on his individual tax returns, shall be forwarded to him as refunds, instead of being applied to the next year's return. The Court then ordered that the refunds shall be forwarded to [Terry]. . . . [Randall] had testified that the money to pay his tax returns came from his parents and [Terry] did not offer any testimony to dispute that. [Terry] instead testified that she

stopped filing joint tax returns with [Randall] in 1994, because she wanted no part in said dealings.

DISCUSSION

1.

HRS § 580-47(a) (Supp. 1999) states, in relevant part, as follows:

Upon granting a divorce, . . . the court may make any further orders as shall appear just and equitable . . . (3) finally dividing and distributing the estate of the parties, real, personal, or mixed, whether community, joint, or separate; and (4) allocating, as between the parties, the responsibility for the payment of the debts of the parties whether community, joint, or separate. . . . In making such further orders, the court shall take into consideration: . . . the condition in which each party will be left by the divorce . . . and all other circumstances of the case.

Clearly, the family court cannot perform its duty under HRS § 580-47 unless and until it knows the identity and value of both "the debts of the parties" and the property in "the estate of the parties."

We conclude that this case was both inadequately pre-tried and tried before it was ready to be tried. The family court should not have commenced trial until at least one party had satisfied his/her burden of identifying all of his/her/their assets and liabilities and stated the market value of each. If the failure of a party to supply relevant information was the result of that party's negligence or obstinance, the family court should have exercised its powers to motivate that party to cease his or her negligence or obstinance and to supply the information.

2.

The family court cannot decide the property division part of a divorce case until the family court identifies all of the Marital Separate Property (assets and debts) and Marital Partnership Property (assets and debts) and categorizes and values all of the assets and debts included therein. In this case, the family court failed to comply with those duties outlined in Jackson v. Jackson, 84 Hawai'i 319, 933 P.2d 1353 (App. 1997), and cases cited therein.

3.

Finding of fact no. 59 states as follows:

The Court also finds, based upon [Randall's] lack of forthrightness and upon representations in written documents and the various accounting records included in [Terry's] exhibits, it is highly probable [Randall] owns, or did own as of 1995, an interest in other properties, on other islands or in other states, or perhaps which have been sold pursuant to an Agreement of Sale. Further, [Randall] claimed ownership of a Wailea property by the Hew Family Partnership. [Randall's] explanation that he made a fake MLS listing for the property to see what the bank would do regarding mortgages does not bolster his credibility.

Finding of fact no. 59 finds a probability of ownership. A probability of ownership is not a fact of ownership. There is no evidence of the value, if any, of this probability of ownership. Absent further investigation and verification, the most the family court can do with respect to this finding of probability of ownership is to award Terry whatever interest Randall may own in these alleged properties.

4.

Findings of fact nos. 62 and 66 and conclusion of law M state, in relevant part, as follows:

62. . . . [T]he court finds [Randall] is actively involved in the management and running of this corporation [sic], something which is inconsistent with limited partnership status.

66. . . . [T]he Court finds [Randall] has taken an active managerial role in the HFP which is inconsistent with his alleged status as a limited partner.

M. The Court also concludes that [Randall's] direct assumption of an active managerial role in HFP renders him a general rather than a limited partner.

We conclude that, in a divorce case where the general partner of a limited partnership is not a party in the case and the husband is the only one of the three limited partners who is a party in the case, the family court is not authorized to decide that the husband's active managerial role in the limited partnership renders him a general rather than a limited partner.¹⁶

¹⁶ The question whether the family court is authorized to make the general partner or the other limited partners parties in the divorce case is not an issue in this appeal. We note, however, that Rule 19 of the Hawai'i Family Court Rules (HFCR), which took effect on January 1, 2000, expressly states the family court's authority to join third parties as parties in the case.

HFCR Rule 19 states, in relevant part, as follows:

JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION.

(a) Persons to be Joined if Feasible. A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (A) as a practical matter impair or impede the person's ability to protect that interest or (B) leave any of the persons already

(continued)

5.

Finding of fact no. 40 states as follows: "During [First Son's] 1994-94 [sic] year at Punahou, [Terry] told [Randall] she planned to divorce him. As [Randall's] testimony, [sic] it is clear he was also aware when she retained counsel in Spring 1995."

The family court must find exactly when (a) Terry told Randall that she planned to divorce him and (b) Terry retained counsel. If either or both events occurred before Terry signed the various deeds on May 20, 1995, the validity of finding of fact no. 61 is questionable. The family court then must re-examine the questions whether, and if so exactly how Terry, after retaining counsel and/or telling Randall that she planned to divorce him, was "coerced into signing" the various deeds.

6.

The residential properties at 1975 and 1975A Metcalf Street, 1050 Iopono Street, 557 Kipuka Place, 1277 Onioni Street,

(continued)

parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

(b) Determination by Court Whenever Joinder Not Feasible.

...

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

and 690 and 690A Kihapai Street are all owned by the Hew-Hawaii Partners.¹⁷ Finding of fact no. 58 states as follows:

In 1994-95, when [Terry] indicated to [Randall] her firm intent to obtain a divorce, she was record owner to one-half interest in several properties, including 1423 Akiikii Place; 1423A Akiikii Place; 45-569 Mahinui Road; 1975 & 1975A Metcalf; and 690 and 690A Kihapai [sic]. Further, [Randall] also was on title for 1050 Iopono; 557 Kipuka Place; and 1277 Onioni Street. The parties' interests in all of these properties were acquired during the marriage.

The fact that the deeds conveying 1975 and 1975A Metcalf Street and 690A Kihapai were signed by David and Dora, Randall and Terry, and Rodney and Yvonne as "Grantors" suggests that Terry had record title to some interest in those properties but was not "record owner to one-half interest" in them.

The evidence indicates that Terry and Randall were record owners of a one-half interest in 1423 and 1423A Akiikii Place and 45-569 Mahinui Road. The reason Randall gives why the family court erred when it awarded these one-half interests to Terry without David and Dora being parties is because

[a]s held in Rossiter v. Rossiter[,] 666 P.2d 217, 4 Haw. App. 333 (1983), the record owner of land is a necessary and indispensable party to a divorce action. . . .

. . . [David and Dora] have attempted to discuss issues of rental incomes, mortgages and other property related bills, with [Terry]. . . . [Terry] refuses to discuss such matters with [David and Dora]. It is clear, that as co-owners of said properties, [David and Dora] are being affected by the Family Court's award of property in the divorce to [Terry]. Therefore, pursuant to Rossiter v. Rossiter, [David and Dora] should have been parties to

¹⁷ According to Plaintiff's Exhibits 51 and 55, in 1997 the Hew-Hawaii Partnership owned real property on Molokai, the island of Hawai'i, and California and the following real properties on Oahu: 45-104 Maui Place, 41-1661 Humupaa Street, 45-569 Mahinui Street, 1179 Kahili Street, 1034 Mokapu Road, and 41-021 Wailea Street, and David owned numerous other properties. As trustee of his personal trust, Randall's interest in the Hew-Hawaii Partnership is 33%.

the divorce action before the Family [C]ourt ruled on the disposition of property in which they have an ownership interest in.

We conclude that Randall misinterprets Rossiter v. Rossiter, 4 Haw. App. 333, 666 P.2d 217 (1983). In Rossiter, a nonparty owned all of the property in question. In this case, the parties own one-half of the property in question. The family court has jurisdiction over the one-half of the property owned by Terry and Randall and does not need David and Dora to be parties before awarding that one-half interest to Terry.

7.

Findings of fact nos. 43(3), 61, 63, and 65 state, in relevant part, as follows:

43(3). [Randall] intimidated [Terry] through such abuse, at times bullying her and getting her to do things, such as signing documents without reading them, that were not in her best interests and that, absent such coercion, she would not have done.

61. The court finds . . . that in late [sic] 1995, [Terry] was coerced into signing, without reading or obtaining legal advice, a number of deeds and other documents which transferred her interest in various properties into the Hew Family Partnership (HFP), a recently formed entity.¹⁸

63. The Court believes . . . that the HFP is essentially a sham designed to deprive [Terry] of her interest in the parties' real estate assets and to present an artificial barrier to [Randall's] ability to transfer to [Terry] her share of such assets.

65. The Court finds that transfer of the property by [Terry] to HFP, based upon coercion, was unconscionable and void.

We conclude that in a divorce case where the general partner of a limited partnership is not a party in the case and the husband is the only one of the three limited partners who is

¹⁸ No finding of fact identifies the person(s) who "coerced [Terry] into signing[.]"

a party in the case, the family court is not authorized to decide that the limited partnership is a sham and that the wife's prior conveyances of real property to the limited partnership was "based upon coercion, was unconscionable and void." Rossiter, *supra*.

In the answering brief, Terry's counsel admits that "[i]t was consistent with the practices of [Randall] and [David and Dora] to have [Terry] sign documents without reading them or even knowing what they contained. For years, [Terry] relied on [Randall] to protect her interests." This admission contradicts the finding that Terry was "coerced into signing[.]"

8.

The Divorce Decree states, in relevant part, as follows:

[Terry] is also awarded one-half interest in the property located [at] 1975 and 1975A Metcalf. [Randall] shall deliver to [Terry] within 60 days a deed placing in her name one-half interest in this property. [Randall] is awarded the remaining properties, including those on Iopono Street, Kipuka Street, Onioni Street, and Kihapai.

The general partner and the limited partners of the Hew-Hawaii Partners are the trustees or the successor trustees of the personal trusts of David, Randall, and Rodney. As general partner, trustee David has a 1% share of the partnership. As limited partners, trustee David, trustee Randall, and trustee Rodney each have a 33% share of the partnership.

The family court cannot award Terry an interest in property that is not owned by one or more of the parties in the

case. Rossiter, *supra*. The "property located [at] 1975 and 1975A Metcalf" is owned by Hew-Hawaii Partners and it is not a party in this case. Randall's interest in the Hew-Hawaii Partners is as trustee of his personal trust. Randall is a party but he is not a party as a partner of Hew-Hawaii Partners or as trustee of his personal trust. Therefore, the family court lacks jurisdiction to award Terry "one-half interest in the property located [at] 1975 and 1975A Metcalf."

In the answering brief, Terry's counsel states that "the argument that [Terry] should resort to a civil action is also without merit as this was a transaction between marital partners." Our first response is that these were transactions between one or both of the marital partners and others. All of the relevant transactions involved David, Randall, and Rodney as grantor and Hew-Hawaii Partners as grantee. Some of the relevant transactions also involved Dora, Rodney, and Yvonne.

Our second response is that the family court's subject matter jurisdiction in divorce cases is specified in and limited by HRS § 580-47 (Supp. 1999). The new HFCR Rule 19(a) cited in footnote 14 above does not expand the family court's subject matter jurisdiction. HFCR Rule 19 does not mandate or authorize a joinder of a nonparty in situations where the family court does not have subject matter jurisdiction to adjudicate the issue involving the nonparty.

The question is whether, as discussed in Eaton v. Eaton, 7 Haw. App. 111, 748 P.2d 801 (1987), the family court has pendent, ancillary, or incidental jurisdiction to decide that:

1. Randall is a general partner of Hew-Hawaii Partners rather than a limited partner;

2. Terry was coerced by some unidentified person(s) using some unidentified means into signing regular system or land court deeds conveying real property to Hew-Hawaii Partners; and

3. The deeds signed by Randall and Terry to Hew-Hawaii Partners are unconscionable and void.

In the answering brief, Terry's counsel states, in relevant part, as follows:

[Randall] argues the decision below is defective because [David and Dora] were not included as parties. [Randall] knew the matters which were before the trial court but made no move to have [David and Dora] included as parties. Only now, when he dislikes the results of the trial, does he reach for a second bite off the apple by claiming [David and Dora] were not parties.

[David and Dora] also knew about the litigation. Both were listed as witnesses, although only [Dora] testified. [Randall's] counsel, however, indicated [David] was outside the courtroom while the trial was ongoing[.]

[David and Dora] did not seek to intervene prior to trial nor did they choose to appeal the trial court's decision. They neither sought the trial court's permission to appeal nor filed a Writ of Mandamus. Instead, they rely on [Randall] to represent their interests, just as they did at the trial court level. If they are dissatisfied with the appellate decision, will they then try for a third bite of the apple, arguing that they were essential parties to the appeal rendering the decision invalid?

(Footnotes omitted.)

Terry fails to recognize that in divorce cases, the family court's jurisdiction over property and debts extends only to "the estate of the parties" and "the debts of the parties."

HRS § 580-47(a) (Supp. 1999). The family court's jurisdiction does not extend to nonparties or their property, debts, or interests. Rossiter, *supra*. Therefore, a nonparty has no duty to intervene in the divorce case when the family court exceeds its jurisdiction by purporting to exercise jurisdiction over the property, debts, or interests of the nonparty.

9.

Assuming it is a fact, the fact that Randall's 1996 and 1997 taxes were paid by David and Dora does not preclude the family court from awarding Terry the tax refunds due Randall. The question is whether Randall owes a corresponding debt to David and Dora.

10.

Randall contends that the family court erred in failing to resolve the issue of the contribution of the parties towards the support of their adult children who remain dependent on the parties for their education. He notes that "said matter was addressed in [Randall's] closing Argument submitted to the court." His note refers to the following part of his May 10, 1999 closing argument.

II. Adult Children.

. . . At the time of trial, both [sons] resided with their father. It appears that [First Son] will continue to live with his father and that [Second Son] will return to live with his mother. Both adult children are dependent on the parties for educational purposes. [First Son] is currently attending Kapiolani Community College and [Second Son] is completing his senior year [at] the Academy of the Pacific. [Randall] deems it reasonable that both parties should continue to be responsible for

1/2 of both [sons'] educational expenses and that their additional living expenses should be paid to each of them directly by both parties. The parties should also share the cost of medical and dental insurance premiums for both sons as well as the unreimbursed medical and dental expenses.

Terry did not disagree with Randall's position. We agree with Randall that this part of his closing argument was erroneously omitted from the Divorce Decree.

CONCLUSION

Accordingly, we vacate (1) paragraph "5. **REAL PROPERTY.**" of the May 19, 1999 Decree Granting Absolute Divorce; and (2) the following of the August 27, 1999 Findings of Fact and Conclusions of Law: The first sentence of finding of fact no. 34; findings of fact nos. 40, 42, 43, 58, 59, 60, 61, 62, 63, 64, 65, 66, and 72; and conclusions of law F, G, and M.

We remand for further proceedings consistent with this opinion. In doing so, we remind the family court and the parties of the HRS § 580-56(d) (1993) time limitation discussed in Todd v. Todd, 9 Haw. App. 214, 832 P.2d 280 (1992).

DATED: Honolulu, Hawai'i, February 26, 2001.

On the briefs:

Chief Judge

Blake T. Okimoto and
Anne M. Okimoto
for Defendant-Appellant.

Associate Judge

J. E. Mayla Blakley
for Plaintiff-Appellee.

Associate Judge