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NO. 25428

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

CHILD SUPPORT ENFORCEMENT AGENCY, STATE OF HAWAI'I,
Petitioner, v. JANE DOE, Respondent-Appellant,
and JOHN DOE, Respondent-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-P NO. 98-1236)

SUMMARY DISPOSITION ORDER

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

Respondent-Appellant Jane Doe (Mother) appeals from a family court order denying her motion for post-judgment relief in a paternity action. The relevant events occurred as follows:

January 12, 1993	Mother gave birth to a son (Son).
December 10, 1998	Petitioner Child Support Enforcement Agency, State of Hawai'i, filed a paternity petition.
May 5, 1999	A judgment was entered deciding that Respondent-Appellee John Doe (Father) is Son's biological father.

Hawaii Revised Statutes (HRS) § 584-15(e) (Supp. 2003)

states:

In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall use the guidelines established under section 576D-7. Provision may be made for the support, maintenance, and education of an adult or minor child and an incompetent adult child, whether or not the petition is made before or after the child has attained the age of majority.

August 23, 2000	After a trial, Judge Dan T. Kochi entered "Findings of Fact and Conclusions of Law; Order" (1) awarding Mother sole legal and physical custody of Son and awarding Father specified visitation rights; (2) finding that (a) Father's income was \$28,882 per month, (b) Mother's income was \$3,356 per month, and
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(c) \$750 per month was reasonable support payable by Father based upon Son's standard of living; (3) ordering Father to pay (a) Son's "child care and private school expenses, (b) medical and dental insurance coverage premiums, and (c) \$750 per month child support commencing September 1, 2000, "until [Son's] eighteenth (18th) birthday or graduation from high school whichever occurs later but, no longer than [Son's] nineteenth (19th) birthday, except as otherwise provided by law"; (4) ordering Father and Mother to each pay one-half of Son's medical and dental care expenses not covered by insurance; and (5) ordering Father to pay reasonable attorney fees and costs "for the prosecution of custody and child support." This "Findings of Fact and Conclusions of Law; Order" was not appealed.

HRS § 576D-7 (Supp. 2003) states, in relevant part as

follows:

Guidelines in establishing amount of child support. (a) The family court, in consultation with the agency, shall establish guidelines to establish the amount of child support when an order for support is sought or being modified under this chapter. The guidelines shall be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

. . . .

(e) The responsible or custodial parent for which child support has previously been ordered shall have a right to petition the family court or the child support enforcement agency not more than once every three years for review and adjustment of the child support order without having to show a change in circumstances. The responsible or custodial parent shall not be precluded from petitioning the family court or the child support enforcement agency for review and adjustment of the child support order more than once in any three-year period if the second or subsequent request is supported by proof of a substantial or material change of circumstances.

February 14, 2002 Mother filed a motion (a) alleging a change in financial circumstances and seeking more child support, (b) seeking "relief from the Order awarding child support of \$750.00 per month pursuant to Rule 60(b)(6) of the Hawaii Family Court Rules[,]" and (c) contending that "[t]he Court's award of child support

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based on [Mother's] reasonable needs for [Son] fails to allow child support based on [Father's] standard of living -- [Son's] actual needs are not a ceiling for the amount of child support."

September 25, 2002 After a hearing on June 10, 2002, Judge R. Mark Browning entered an order denying Mother's February 14, 2002 motion.

October 24, 2002 Mother appealed.

December 23, 2002 Judge Browning entered Findings of Fact and Conclusions of Law. With the parts challenged in this appeal printed in bold, they state, in relevant part, as follows:

FINDINGS OF FACT

. . . .

16. For purposes of calculating child support [Father] currently has gross income of \$31,751 per month and [Mother] currently has gross income of \$3,750 per month.

17. The child support amount for [Son], calculated pursuant to the Amended Child Support Guidelines, is \$3,250 per month.

. . . .

25. . . . Mother's general expenses are \$2,051 per month, Father's general expenses are \$3,182 per month, Mother's personal expenses are \$1,255 per month, Father's personal expenses are \$2,150 per month, [Son's] monthly expenses paid by Mother are \$600 per month, [Son's] monthly expenses paid by Father (including \$807 school expense for [Son]) are \$2,632 per month.

. . . .

28. . . . [T]he Court finds:

(a) There exists an exceptional circumstance deviation from the amount computed according to the child support guidelines in this case.

(b) [Father] has an "unusually high monthly income that would result in a computation (of child support) higher than the reasonable needs of the child" pursuant to . . . Doe VI v. Roe VI, 6 Haw. App. 629, 736 P.2d 448 (1987).

. . . .

(e) The Court finds that the amount of child support needed to support [Son's] reasonable needs according to his

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standard of living has not materially changed since the August 23, 2000, Decision

. . . .

(g) The Court denies [Mother's] request to extend [Father's] child support obligation to [Son's] 23rd birthday. The obligation will remain in effect until the child is 18 as Judge Kochi ordered on August 23, 2000.

29. The Court denies [Mother's] request to view this matter as a Hawaii Family Court Rule 60(b) Motion. Assuming arguendo that this matter can be characterized as a Rule 60(b) Motion, said Motion is denied.

. . . .

CONCLUSIONS OF LAW

. . . .

2. . . . [Mother] must prove a material change of circumstance in order to modify child support ordered on August 23, 2000.

. . . .

5. Assuming . . . that a material change of circumstance existed, the facts in this case warrant an exceptional circumstance deviation from the amount of child support calculated by the Amended Child Support Guidelines because [Father] has "unusually high monthly income that would result in a computation of child support which is higher than the reasonable needs of [Son].

. . . .

8. Child support will remain in effect until [Son] is 18.

In this appeal, Mother first contends that she did not have to prove a material change of circumstances in order to have child support reviewed and adjusted. In light of HRS § 576D-7(e), we agree. However, we also agree with Mother that "[i]f exceptional circumstances continue to exist, there is no reason that they would not continue to be recognized by the Family Court."

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Mother next contends that a material change of circumstances had occurred since child support was last calculated. For example, she notes that her income had increased and Father's income had increased. We conclude that, assuming a change of circumstances occurred, the change was not material.

Mother next contends that Father failed his burden of proving that exceptional circumstances warranted a deviation reducing the child support. We disagree.¹

¹ In the opening brief, Respondent-Appellant Jane Doe offered the following reasons for seeking more child support:

If Mother received more child support from Father one of the things she would do is to move from the condominium into a house. Then there would be a yard where Son could play and he would have a greater opportunity to make friends with children in the neighborhood than he does living in a condominium [in Nuuanu]. . . . She would like to move somewhere near Son's school.

Mother thinks it would cost \$1,500 or more to rent a house--perhaps \$1,500 to \$1,700, depending on quality and location. Mother checked on rents in neighborhoods such as Makiki, Punahou, Kaimuki, Wilhelmina Heights, and Manoa

. . . .

. . . Mother would like to take Son to Egypt, to see his culture, or to Japan, where [h]is cousins live, to Europe, or Korea, where she also has family.

Mother wants "to restart Son's computer classes, and wish[es] she was able to buy a digital camera and software for him[.]"

The family court

incorrectly used Mother's actual expenditures for Son to establish his reasonable needs at the appropriate standard of living. In doing so, it failed to consider Father's income and financial resources, or to take into account the standard of living that was appropriate for Son based on Father's income and resources.

That failure is underscored by the contrast between Son's standard of living when he is with Father compared with his standard of living when he is with Mother.

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Mother contends that it was wrong for the family court to order that Father's obligation for child support would terminate when Son reached the age of eighteen.

We conclude that HRS § 584-15(e) quoted above permits the family court to extend child support beyond Son's 18th or 19th birthday, and Judge Kochi's August 23, 2000 order does not preclude the family court from doing so. The statement in Judge Browning's finding of fact no. 28(g) that "[t]he obligation will remain in effect until [Son] is 18 as Judge Kochi ordered" is a misinterpretation of Judge Kochi's order.

Therefore, in accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that:

The family court shall amend paragraph 3 of its September 25, 2002 order to state as follows:

3. [Mother's] request for a change of the part of the August 23, 2000 order pertaining to when [Father's] obligation to pay child support shall cease is denied.

The family court shall amend its December 23, 2002

Findings of Fact, in relevant part, as follows:

[28](g) The Court denies [Mother's] request to amend the expiration date of [Father's] child support obligation. The obligation will remain in effect as ordered by Judge Kochi on August 23, 2000.

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The family court shall amend its December 23, 2002

Conclusions of Law, in relevant part, as follows:

8. Child support will remain in effect as ordered by Judge Kochi on August 23, 2000.

In all other respects, we affirm the September 25, 2002 order and the December 23, 2002 Findings of Fact and Conclusions of Law.

DATED: Honolulu, Hawai'i, November 10, 2004.

On the briefs:

Robert M. Harris and
Dana W. Smith
for Respondent-Appellant

Chief Judge

Peter Van Name Esser and
Michael L. Freed
for Respondent-Appellee

Associate Judge

Associate Judge