***** NOT FOR PUBLICATION *****

NO. 23378

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

JOHN DOE, Plaintiff-Appellant,

vs.

JANE DOE, Defendant-Appellee,

and

STEPHANIE A. REZENTS, Guardian Ad Litem.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 95-2875)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, Acoba,
and Circuit Judge Chang, in place of Duffy, J., recused)

The plaintiff-appellant John Doe (Father) appeals from (1) the oral order of the family court of the first circuit, the Honorable R. Mark Browning presiding, denying Father's motion for post-decree relief, filed on March 14, 2000 pursuant to Hawaiʻi Family Court Rules (HFCR) Rule 60(b) (1996 and 1997), from the family court's amended order relating to custody, visitation, and appointment of custody guardian ad litem (GAL) [hereinafter, "the amended order relating to custody"], filed on August 16, 2000, wherein Father requested that the family court change the surname of his minor child (Daughter) from "Roe-Doe" to "Doe" and (2) the family court's written order, the Honorable R. Mark Browning also presiding, filed on March 20, 2000, denying Father's motion for attorneys' fees and costs, filed on January 28, 2000.

On appeal, Father contends that: (1) the family court exceeded its jurisdiction by changing Daughter's surname to "Roe-Doe" in its amended order relating to custody and, consequently, that the family court's decision to change Daughter's surname to "Roe-Doe" was void, pursuant to HFCR Rule 60(b)(4); (2) the family court erred in finding that Daughter's surname at birth was "Roe Doe" despite the evidence adduced by Father that (a) he and the defendant-appellee (Mother) had agreed that Daughter's surname would be "Doe" and (b) Mother had fraudulently completed a Hawai‘i Department of Health Designation of Surname form contrary to the foregoing agreement; (3) the family court erred in finding that Daughter identified her surname as a hyphenated combination of both parties' surnames, notwithstanding Daughter's young age and Mother's strong influence over Daughter; (4) the family court abused its discretion in giving more weight to Mother's subjective testimony and evidence concerning Daughter's surname than to the objective evidence submitted by Father; (6) the family court erred in awarding attorneys' fees to Mother, insofar as the August 16, 1999 amended order relating to custody was not patently more favorable as a whole to Mother than Father's HFCR Rule 68 offer; and (7) the family court erred in awarding attorneys' fees and costs to Mother with respect to Father's HFCR Rule 60 motion at issue in the present matter.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we affirm the orders of the family court. With respect to Father's jurisdictional argument, the record reflects that Father expressly requested that the family court either clarify or

change Daughter's surname to "Doe," father's surname. Inasmuch as the family court had jurisdiction, pursuant to Hawai‘i Revised Statutes (HRS) § 571-8.5(10), to act "for the promotion of justice in matters pending before [it]," the family court's August 16, 2000 amended order, clarifying Daughter's surname and ordering in the best interest of Daughter that a hyphen be inserted between "Roe" and "Doe," was not void, pursuant to HFCR Rule 60(b)(4). Moreover, Father's appeal of the family court's oral order denying his HFCR Rule 60(b) motion for post-decree relief is barred, inasmuch as the motion essentially raised the same issues and arguments raised during the May 28, 1999 hearing, the appeals from which were dismissed by this court on December 3, 1999, pursuant to Hawai‘i Rules of Appellate Procedure (HRAP) Rules 4(a)(1) and (4). See Isemoto Contracting Co., Ltd. v. Andrade, 1 Haw. App. 202, 204 n.2, 616 P.2d 1022, 1025 n.2 (1980) (noting that an appellant is not entitled to reconsideration where "the motion to reconsider the order denying his motion to vacate involved the same rules, matters[,] and arguments he presented to the lower court in his motion to vacate."). Consequently, we affirm the family court's decision to award Mother her attorneys' fees and costs associated with Father's HFCR Rule 60(b) motion for post-decree relief. Finally, inasmuch as Father failed to include the transcript of the March 16, 2000 hearing in the record on appeal, we have no basis upon which to review the family court's order, filed on March 20, 2000, denying Father's motion for attorneys' fees and costs, filed on January 28, 2000.[1] See HRAP Rule 10(b)(1) (2000) ("Within 10 days after

[1] Likewise, assuming that Father's present appeal was not barred, his failure to include the March 16, 2000 transcript nevertheless precludes this court from reviewing his points of error on appeal.

filing the notice of appeal[,] the appellant shall order from the reporter a transcript of such parts of the proceedings as he deems necessary which are not already on file. . . .") (Emphasis added.)); Bettencourt v. Bettencourt, 80 Hawai'i 225, 230-31, 909 P.2d 553, 558-59 (1995); Orso v. City and County of Honolulu, 55 Haw. 37, 38, 514 P.2d 859, 860 (1973); Tradewinds Hotel, Inc. v. Cochran, 8 Haw. App. 256, 266, 799 P.2d 60, 66 (1990).

Therefore,

IT IS HEREBY ORDERED that the orders from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, October 31, 2003.

On the briefs:

John S. Edmunds, of Edmunds, Maki, Verga, & Thorn, and Durell Douthit, for the plaintiff-appellant John Doe

Peter Van Name Esser, for the defendant-appellee Jane Doe