

NO. 22278

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

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

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(FC-P No. 98-0121)

MEMORANDUM OPINION

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

Respondent-Appellant Jane Roe (Mother), the natural mother of a female minor born on June 22, 1993 (Child), appeals from various post-judgment decisions and orders entered by the Family Court of the First Circuit (the family court) in this paternity action (FC-P No. 98-0121) filed by Petitioner-Appellee Child Support Enforcement Agency of the State of Hawai'i (CSEA) on February 6, 1998 (the petition).

Mother's contentions on appeal essentially revolve around two issues: first, the family court's determination of the amount of past and current child support owed to Mother by Respondent-Appellee John Doe (Father), the acknowledged biological father of Child; and second, the family court's failure to order Father to pay sanctions to Mother as compensation for the extra work and expense she allegedly

incurred due to Father's failure to provide requested documents and information that would cast light on what Father's income and property holdings were.

We affirm.

#### BACKGROUND

The petition alleged, in relevant part, that:

(1) Mother was unmarried at the time of Child's birth; (2) Father had signed an affidavit for Child's birth certificate with the Department of Health and therefore, was the presumed father of Child; (3) Child's legal status had not yet been established; and (4) Mother was receiving public assistance money from the Department of Human Services, State of Hawai'i (DHS).

The petition requested in part that: (1) Mother be granted care, custody, and control of Child; (2) Father be granted rights of reasonable visitation; (3) Father be ordered to pay or make reimbursement for his proportionate share of Mother's pregnancy-related and Child's birth-related medical and hospital expenses; (4) Father be ordered to provide medical insurance coverage for Child; (5) Father be ordered to pay for past support accrued from the time of Child's birth, or the filing of the petition, whichever was appropriate, up until entry of a support order; and (6) Father be ordered to pay for Child's support, maintenance, and education from the time of Child's birth until Child reached the age of eighteen, and thereafter, so long as

Child was pursuing a high school diploma or enrolled as a full-time student in an accredited educational and/or vocational institution and under age twenty-three.

A. The February 27, 1998 Hearing

At a hearing on the petition held on February 27, 1998, neither Father nor Mother disputed that Father was Child's biological father. Much of the hearing focused on what Father's income and assets were for purposes of calculating Father's past and future child support obligations.

The testimony and evidence offered at the hearing revealed that Father was the sole employee at Wu's Sundries in Hau'ula, a convenience store owned by Father's parents. He was paid seven dollars an hour by his parents to manage the store, and, according to his pay stubs, regularly received \$770 for the first part of the month and \$840 for the second part of the month, a total of \$1,610 a month. Father lived with his girlfriend at 54-060 Kamehameha Highway in a three-bedroom, one-bath house behind the store, for which he paid his parents \$250 a month in rent. The house had previously been rented to "three childs (sic) and three adults" for \$1,000 a month. However, Father testified, the rental "was a bad experience and we stopped renting [the house] out."

Asked at the hearing whether he owned any property, Father answered in the negative. However, the following colloquy then ensued:

[CSEA's ATTORNEY]: You own no property?

[FATHER]: No.

My name is in couple of my parent's [sic] properties, though.

[CSEA's ATTORNEY]: Okay.

Then you do own property.

How many properties do you own -- are your name on the title of?

[FATHER]: That I have to ask my parents. I don't know that.

THE COURT: These are income producing property?

[FATHER]: Not that I --

THE COURT: You rent it out?

[FATHER]: Yeah.

THE COURT: Well, you're entitled to this house behind the store?

[FATHER]: Well, it -- they put my name on the -- on the deed and so forth because they travel a lot and in case anything happens and so forth then my name is in there.

And we -- we never did just take it out after that. So, I don't want my name in any property and so forth.

Mother testified that she is a full-time student at the University of Hawai'i and lives with her grandparents rent-free. She had been paying \$350 per month in child care expenses, but starting on the Monday following the hearing, due to her "grandparent's physical condition," she would need to enroll Child full-time in pre-school at a cost of \$425 per month.

Mother also testified that she was receiving public assistance for Child and herself in the amount of \$800 per month.<sup>1</sup>

At the conclusion of the hearing, the family court ordered Father to pay \$650 per month in child support and reserved the issue of past child support until Father could provide a more accurate picture of his financial situation. The family court directed both parties to submit to the court before May 21, 1998 an Asset and Debt Statement. Additionally, Father was directed to produce his "taxes, going back to date of birth of [Child] and . . . a listing of all properties, identifying the value of the properties, the location of the properties as well as who else is on the title and the way the title is held."

Thereafter, on March 4, 1998, the family court entered a written judgment, ordering, adjudging, and decreeing, in relevant part, that: (1) Father shall add Child to his medical plan; (2) Mother shall have sole custody of Child, subject to visitations by Father according to a schedule approved by the family court; (3) Mother shall consult with Father before making major decisions concerning Child; and (4) Father shall pay \$650 in child support each month, commencing April 1998 and continuing until Child "becomes 18, or until 23 so long as [Child] is still in high school or enrolled full time in an accredited educational

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<sup>1</sup> According to the testimony of Respondent-Appellant Jane Roe (Mother), she received \$450 per month in public assistance for her daughter, born on June 22, 1993 (Child). In addition, she received between \$350 and \$400 monthly in food stamps and public medical benefits.

or vocational institution, or until the further order of the [c]ourt."

The judgment also provided that the child support order was temporary and subject to modification retroactive to the commencement date of the order, and reserved the issue of past child support pending further determination by a competent tribunal.

Finally, the family court ordered that: (1) all parties shall appear for "further pre-trial on May 28, 1998, at 8:30 a.m."; (2) Mother and Father shall submit "Income and Expense and Asset and Debt Statements by May 21, 1998"; and (3)

Father shall provide by May 21, 1998 the following:

- ① List of all property that Father's name appears on the title. The list shall include the present value of the property, the location of the property, number of people on the title and how title is held. The list shall include all property held in the years 1993, 1996-1998;
- ② Tax returns filed since 1993.

Before the hearing terminated, CSEA's attorney brought to the family court's attention that Mother and Father were involved in another paternity case involving Child that had been filed by Mother on February 11, 1994 (FC-P No. 94-0161), to which CSEA was not a party. CSEA's attorney also mentioned that "the parties are in agreement that that case can be dismissed." The family court said in response: "We'll dismiss [Case FC-P No. 94-0161] and put everything in this case. Rather than have two cases[,], we'll just have one case."

B. Father's Motion and Affidavit for Relief After Order or Decree

On April 22, 1998, Father filed a Motion and Affidavit for Relief After Order or Decree, requesting a modification in his visitation schedule with Child and a reduction in his child support obligation to \$300 per month. No change in circumstances necessitating a reduction in child support payments was mentioned. However, attached to Father's motion was a Child Support Guidelines Worksheet (CSGW), in which Father's monthly gross and net income were represented to be \$1,610 and \$610, respectively. Also attached to Father's motion was Father's Income and Expense Statement (I&E Statement), which represented that Father's gross semi-monthly income was \$840, the equivalent of \$1,680 per month, and that Father's net monthly income was \$1,211.94. According to the I&E Statement, Father's monthly housing and transportation expenses totaled \$450. Additionally, his personal expenses per month for food (\$350), clothing (\$100), laundry and cleaning (\$25), personal articles (\$40), recreation (\$20), household (\$25), child support (\$650), and Child's medical insurance (\$174) totaled \$1,384. The I&E Statement represented, therefore, that Father's monthly expenses exceeded his income by \$722 per month. Father's Asset and Debt Statement, which was also attached to Father's motion, stated that Father owned property in fee in Ka'a'awa and owned, with his parents, fee title to property in Hau'ula. However, Father did not provide any

information as to the date of acquisition of the Ka'a'awa property, or the cost or current gross value of either property. Additionally, although Father stated that no debt was owed on the Hau'ula property, he was uncertain as to the total debt owed on the Ka'a'awa property.

On May 26, 1998, CSEA filed a memorandum in opposition to Father's request to reduce his child support obligation. CSEA pointed out that there were discrepancies in Father's testimony, Father's Asset and Debt Statement, and Father's CSGW regarding the amount of Father's gross monthly income. Additionally, CSEA explained, the family court had earlier imputed additional income to Father based on the value of the rent his employer-parents were giving him by allowing him to reside in a house at below-market rent. CSEA noted that Father had not yet produced the list of all properties on which his name appeared on the title, as ordered by the family court on February 27, 1998, and a May 28, 1998 hearing had previously been set to evaluate Father's property holdings.

C. The May 28, 1998 Hearing

At the May 28, 1998 hearing, Father's counsel stated that Father owned an undivided one-third interest in a Hau'ula property and a one-fifth interest in a Ka'a'awa property. Mother's counsel then produced copies of documents for both properties that confirmed that Father owned a one-fifth interest

in the Ka'a'awa property but indicated that Father owned an undivided one-half interest in the Hau'ula property.

CSEA's counsel voiced her frustration that Father's last-minute production of previously ordered documents had disadvantaged CSEA, and possibly Mother, because they could not verify Father's information in advance of the hearing.

At this point, Mother's counsel interjected that, based on a cursory title search back to 1995, she was of the view that

[Father] is on a lot of titles and dated -- recorded May 5th, 1998 there was a deed between his brother and himself and what they did was they signed off to his brother.

So, he transferred property [in Kalihi] that he owned with his brother.

Mother's counsel also told the family court that "because [Father's] making us do all this extra work, your Honor, I'm gonna propose that they pay my attorney's fees[.]"

Father's counsel explained that he was a "late comer to the case" and was interested in resolving the child support issue without going to trial. He noted that Father had produced, as ordered, his income tax returns for the years 1993 through 1996. Although Father had not yet produced a copy of his 1997 income tax returns, his counsel said that Father was not trying to hide anything. The problem, according to Father's counsel, was that Father's "tax preparer filed the tax just recently and [Father] couldn't get a copy of it. . . . We'd be happy to provide it either today or as soon as we get it."

Because there were still questions as to Father's income and assets: (1) the family court set trial for August 24, 1998; (2) ordered Father to provide a list of his properties by July 2, 1998; and (3) ordered the parties to exchange discovery documents no later than July 31, 1998.

D. The August 24, 1998 Trial

On August 24, 1998, trial commenced on the issues of present and past child support owed to CSEA and Mother, as well as Father's visitation rights.

As to the issue of present child support owed to Mother, Mother testified that Child was presently enrolled in a public elementary school and attended Japanese school after elementary school ended. Mother testified that she did not know how much the Japanese school tuition was but that her mom, Child's grandmother (Grandmother) paid for it.

As to the issue of past child support, Mother recalled that in January or February 1994, Father began paying \$200 a month in child support. In January 1995, when Child started pre-school half-time, Father began paying an additional \$175 (one-half of Child's tuition) per month, for a total of \$375 per month in child support. Father continued paying \$375 per month in child support throughout 1996 and through half of 1997. In June or July 1997, Mother enrolled Child in pre-school full-time, and asked Father to pay half (\$234.50) of Child's monthly

full-time tuition. Mother testified that for one month, Father increased his support to \$434.50 (\$200 + \$234.50 (one-half of Child's full-time tuition)). The next month, however, Father decreased his support payment to \$250, and the month thereafter, he discontinued paying child support altogether. In July 1998, Mother began receiving payments from CSEA in the amount of \$650 per month.

On cross-examination, Mother testified that she was seeking over \$10,000 in back child support for Child. She admitted, however, that she did not know what Father earned; she also said that the amount Father had paid for child support in the past was not based on Father's earnings. As to her own employment, Mother testified that she began working as a full-time salaried employee at Bank of America in 1990. However, in 1995, she converted to part-time employment status when she went back to school to pursue her undergraduate degree. In 1997, she quit her job after Bank of America merged with American Savings and Loan. At the time of trial, Mother was a full-time law student and earned no income.

Father testified that his entire income was listed on his tax returns for 1993 through 1997, all of which were offered into evidence. He stated that his wages, as stated in his tax returns, totaled \$19,480 in 1993, \$18,893 in 1994, \$17,570 in 1995, \$19,670 in 1996, and \$18,900 in 1997. Regarding the

amounts of child support he had paid to Mother in the past, Father stated that he did not believe that the Child Support Guidelines (CSG) were used to calculate his past child support payments; Father had just been told by Mother's prior attorney to pay Mother \$200 a month.<sup>2</sup>

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<sup>2</sup> The record on appeal indicates otherwise. According to the transcript of proceedings held before the Family Court of the First Circuit (the family court) on April 8, 1994 in FC-P No. 94-0161, the paternity case initiated by Mother against Respondent-Appellee John Doe (Father) that was dismissed and essentially incorporated into the paternity case of Petitioner-Appellee Child Support Enforcement Agency of the State of Hawai'i, the following discussion took place regarding Father's obligation to support Child:

[MOTHER'S COUNSEL]: . . . .

Your Honor, two other matters that were discussed outside with [Father] and [Father] can tell the [c]ourt one of which is that [Father] would not have any objection to paying child support if it's based on the [f]amily [c]ourt income support guidelines, that formula.

I have to re-calculate the figures because the figures that were contained in our petition are off.

[Mother] makes more money than that so that's how it would be effected [sic], your Honor.

Secondly, he has agreed to put [Child] on his health and dental insurance. So, those are the only two other -- other things.

THE COURT: Okay.

So you have like what's the status? Is there an agreement or --

[MOTHER'S COUNSEL]: Your Honor, we would be willing to put it on record now. I'll go back to my office, type it up because we thought there was going to be a problem and dispute. We were able to help it out with the help from the Court Counselor.

And [Father] has been cooperative in that respect also.

. . . .

Your Honor, first with respect to the support.

(continued...)

Father offered into evidence copies of: (1) his pay stubs for part of 1997 and 1998; (2) his tax returns for 1993 through 1997; (3) an Asset and Debt Statement; (4) an I&E statement; and (5) a number of documents (deeds, real property

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<sup>2</sup>(...continued)

[Father] agrees to pay child support in the amount and matter [sic] as specified by the Family Court Income Guidelines.

THE COURT: Is that correct, Sir?

[FATHER]: Yes.

But do I have to like fill out a form and so forth?

THE COURT: Right.

There would be like a form that the [f]amily [c]ourt has a pre-printed form that both you and [Mother] would be required to honestly put down the information contained in there.

And then after -- after they do it's kind of a calculation which the [c]ourt will receive. I mean, we come out with calculations to what the Child Support Guidelines should be or around what it could -- should be.

But it's not necessarily binding on the [c]ourt. The [c]ourt will emphasize to you it's a guideline only and it does not require the [c]ourt to follow.

But generally the [c]ourts have followed that because it's been found to be pretty fair given the -- the present economic circumstances and whatnot . . . in Hawaii [Hawai'i].

But also . . . if there's a compelling reason why you are not able to follow the guidelines you can tell the [c]ourt that and hopefully the [c]ourt can make adjustments.

But unless there's compelling reasons the [c]ourt will generally follow those guidelines, okay?

[FATHER]: Okay.

. . . .

[MOTHER'S COUNSEL]: Second, your Honor, that [Father] would agree to put [Child] . . . on the medical and dental coverage, his medical and dental coverage.

tax assessments, joint venture agreements, assignments of rents for security, canceled checks, etc.) which indicated Father's real property holdings. As to the documents related to Father's real property holdings, Father's counsel represented that he had obtained them from Father's parents. Father testified that he had not personally prepared his tax returns or the real estate documents--his parents' attorney or accountant had prepared them--and Father was consequently unfamiliar with their contents. Father just trusted that his parents had his best interests at heart and thus signed documents they placed before him for signature.

Father was cross-examined extensively by Mother's counsel about the exhibits regarding his income and real property holdings. Father explained that Wu's Sundries, the store where he works at, is located at 54-060 Kamehameha Highway in Hau'ula (the Hau'ula property). The Hau'ula property consists of four lots, with the store on one lot, a three-bedroom house where Father lives with his girlfriend on another, a "broken down house which nobody occupies" on the third, and a storage shack on the fourth. The warranty deed for the Hau'ula property indicated that Father's parents own a fifty percent interest in the property as tenants by the entirety, and Father owns a fifty percent interest in the property as a tenant in severalty. When asked whether he paid rent for the three-bedroom house he occupied, Father replied, "I give my mom and dad money, two

hundred dollars [every month]. They can take it as rent or I guess whatever." Father also testified that he personally received no rental or other income from the Hau'ula property and did not know whether there was an existing mortgage on it.

Father stated that he is part-owner of a property in Ka'a'awa, located at 51-580 Kamehameha Highway (the Ka'a'awa property). There are two houses on the Ka'a'awa property, and the front house is being rented for \$1,000 a month. According to Father, the realtor collects the rent each month and gives Father a check for \$900 (\$1,000 less a \$100 management fee). Father then writes and gives a check to his parents for \$1,000.

Father was questioned by Mother's counsel about a deed to a third piece of property, located in Kalihi (the Kalihi property), filed with the Bureau of Conveyances on May 5, 1998, that indicated that Father had transferred his interest in the property to his brother on March 16, 1998 (Father's Exhibit I). As to that property, Father testified that he held title with his brother for a couple of months, but Father added: "I don't think I ever owned that property. My name was on it and I didn't pay anything for it so I don't think I ever owned it." Father subsequently clarified that he was supposed to put up half of the money to buy the Kalihi property with his brother. However, because he was unable to come up with the money, his brother made

all the payments, and consequently, Father was forced to give the Kalihi property back to his brother.

Mother's counsel asked Father to explain a promissory note from him to his parents, offered into evidence as Father's Exhibit H, whereby Father agreed to pay his parents \$159,000 in monthly installments of \$1,000 for ten years for a "1/5th undivided interest as tenant in common, including the exclusive right of possession to the single[-]family dwelling closest to Kamehameha Highway, being a 3-bedroom, 1½ bath, 2-car carport residence[,]" located at 51-594 Kamehameha Highway in Ka'a'awa. The following colloquy ensued:

Q. So, then, the promissory note does it pertain to a separate piece of property in Kaawa [sic]?

A. I guess the rent pays for itself. I don't know.

Q. The rent pays for itself?

A. What do you mean? I don't understand.

Q. Because this promissory note is for an address that's listed in the note as 51-594 Kamehameha Highway in Kaaawa [Ka'a'awa].

And the only property that -- that your Counsel listed as you having any interest in is 51-580 Kamehameha Highway.

So, there -- there is separate piece of property.

A. I don't know. Maybe there was a type error. I'm not sure. So, there's two different prop --

Q. Yes.

A. -- two different addresses?

Q. Yeah.

I just needed for you to clarify that.

Subsequently, on redirect examination, Father explained that the Ka'a'awa property had many owners, was not subdivided, and had several addresses. He also testified that the different addresses "detract[] from the value of the property" and he received no income from any of the properties on which his name appears on the deeds.

The family court then ordered the parties to submit written closing arguments regarding the child support issue by September 16, 1998.

E. Closing Arguments

1. CSEA's Closing Argument

On September 15, 1998, CSEA filed its closing arguments. CSEA argued that Father owed DHS \$7,106 for welfare benefits, food stamps, and medical insurance provided by DHS for Child's benefit during the period from September 1997 to May 1998. CSEA also requested that the family court enter judgment, ordering Father to pay, beginning September 1998, \$600 per month in child support. CSEA argued that, in calculating Father's child support obligations, Father's monthly income should be calculated at \$3,572, broken down as follows:

First, CSEA considered Father's testimony that he is paid seven dollars an hour for working about ten and one-half hours a day (based on the store hours Father testified to of 9:30 a.m. to 8:00 p.m.), seven days a week managing Wu's

Sundries. Assuming that federal and state laws were followed, CSEA excluded from its consideration one-half hour for lunch, for which Father would not be paid. Adjusting Father's salary pursuant to the federal Fair Labor Standards Act to account for over-time pay at time-and-a-half (\$10.50) for every work hour over forty hours (i.e., thirty hours), CSEA argued Father's weekly salary should be imputed to be \$595 a week (\$7 x 40 hours + \$10.50 x 30 hours) or \$2,578 per month.

Second, CSEA argued, the rental value of the Hau'ula house in which Father was living should be imputed to be \$1,000 a month. Since Father was only paying \$200 in rent, CSEA explained, the \$800 difference should be considered an "employment fringe benefit[]" and imputed to Father as income.

Third, since Father owned a one-fifth interest in the Ka'a'awa property, CSEA argued that one-fifth of the \$900 net monthly rent collected from the tenants of the Ka'a'awa property, i.e., \$180 per month, should be imputed to Father as income.

Lastly, CSEA argued, the interest from the \$5,676 that Father had invested in savings and money market accounts (about \$170 per year or \$14 per month) should be included as income.

## 2. Father's Closing Argument

On September 15, 1998, Father submitted his closing arguments. Father argued that because CSEA had not established how much of the money paid by DHS to Mother for Child's support

actually went to support Child and what part went to support Mother, Father should not have to pay any back child support to DHS. Regarding Mother's request for back child support, Father: (1) disputed Mother's figures as to his gross income; (2) argued that Mother should not be entitled to child support contributions up to the time of the filing of the underlying petition; (3) urged the family court to credit the amount Father had already paid to Mother for child support against any child support arrearages that Father was determined to owe Mother; and (4) requested that, if any arrearages were found to be payable to Mother and DHS, such arrearages be made payable on an installment basis that Father could afford, premised on his current income.

As to current or future child support, Father claimed that CSEA and Mother have "fail[ed] absolutely in producing any evidence" that Father has any income above his stated salary or that the real estate he owned was capable of producing additional income. Father also noted that since basic child care for Child had been provided by Grandmother and no canceled checks, receipts, and/or tax returns were offered into evidence documenting that Grandmother was paid for such services, Mother was not entitled to be awarded any costs for back child care expenses. Finally, Father requested reasonable attorney's fees and costs because CSEA and Mother had brought this case to trial,

based on their contention that Father enjoyed a tremendous amount of income due his ownership of real estate.

3. Mother's Closing Argument

Mother filed her closing arguments on September 16, 1998. Mother argued that:

(1) In light of Father's testimony that the Ka'a'awa property was being rented out for \$1,000 per month, with \$100 of this amount being retained by the company managing the property, the sum of \$900 per month in rental income should be imputed to Father;

(2) The transfer by Father of his interest in the Kalihi property to his brother was suspect since the transfer occurred after the February 28, 1998 hearing and before the May 28, 1998 hearing;

(3) Since Father holds title to at least three pieces of property, a minimum of \$2,200 per month in rental income should be imputed to Father; and

(4) In light of Father's testimony that he earns seven dollars an hour and works a minimum of ten hours per day, seven days a week without any overtime pay at time-and-a-half, Father's average monthly income should be imputed to be \$2,123.

Mother noted that as a full-time law student at the William S. Richardson School of Law, she was precluded by the law school's policies from working during her first year. Therefore,

she argued, no income should be imputed to her. Additionally, her after-school care costs for Child must be taken into consideration in determining Father's past and current child support obligations. Mother further argued that if the family court decided to impute income to her because she was not working, then under the CSG, the amount of \$683 per month, based on working thirty hours per week at the minimum wage, should be imputed to her. Additionally, child care expenses at \$66 per month should be imputed to Mother.

In summarizing her position, Mother stated as follows:

Mother requests that this honorable [c]ourt enter temporary judgment against Father in the amount of \$32,440.00 for Father's past child support obligation owing to Mother for the period June 22, 1993 through August, 1998, and \$690.00 per month in child support beginning September 1, 1998.

Because of Father's deliberate attempt to evade production of documents ordered in the hearing held on 02/28/98, the judgment filed 03/04/98, the hearing held on 05/28/98, and the order filed on 06/02/98, an accurate accounting of Father's child support obligations cannot be established. Mother is therefore requesting a further hearing in order for the court to determine Father's interests, if any, in the profit/loss incomes for the Hauula [Hau'ula] and Kalihi St. stores, and Father's exact ownership interests in 51-594 Kamehameha Highway, Kaaawa [Ka'a'awa], Hawai'i.

Mother also requests that Father pay all her attorney's costs and fees due to Father's failure to submit these documents, despite two court hearings and two court orders to do so, as well as Father's failure to prove an exceptional circumstance exists where child support should be modified downwards from \$650.00 per month to \$300.00 per month as Father requested in his Motion and Affidavit for Relief After Order or Decree filed on 04/22/98.

F. The Family Court's Decision

On October 29, 1998, the family court signed a minute order (October 29, 1998 minute order) and instructed Mother's

attorney to prepare a decision and order based on an attached order. On November 18, 1998, Mother filed a Motion for Reconsideration of the October 29, 1998 minute order. On November 27, 1998, the family court entered its Decision and Order (Decision and Order), which essentially incorporated the order attached to the family court's minute order. The family court found, in relevant part, as follows:

3. Father works for his parents as the manager/cashier of a family store at \$7.00 per hour for 10.5 hours a day, seven days a week.

4. Assuming Father has a lunch period of one-half hour, his actual work day is ten hours a day or seventy hours per week.

5. Pursuant to state law, Father's imputed income would include time-and-a-half payment for hours worked in excess of forty (40) hours per week.

6. Father's imputed weekly income is \$595.00 ( $\$7.00 \times 40 \text{ hours} + \$10.50 \times 30 \text{ hours}$ ); or \$2,578.33 per month.

7. In addition, Father has imputed income for the 3-bedroom house (of which he owns 50%) behind the family store. The 1998 assessed value of this property is \$565,300.00 and has been paid in full since September 7, 1993.

8. Father "rents" the 3-bedroom house from his parents at \$200.00 per month.

9. Three years ago, the house rented for \$1,500.00 per month.

10. Father failed to provide the Warranty Deed and the Mortgage for the property located at 322 Kalihi Street, Honolulu, as previously ordered by this [c]ourt.

11. A copy of said Mortgage provided by Mother indicates that Father transferred his interest in the Kalihi Street properties between court hearings in this matter and is therefore suspect.

12. Based upon the foregoing, the [c]ourt imputes an additional \$1,300.00 per month as income to Father.

13. Father's imputed gross income for 1993 was then \$3,878.00 per month, Mother's was \$984.00.

. . . .

15. Based upon these incomes, Father owes Mother \$151.20 from [Child's] date of birth, June 22, 1993, to July 1, 1993. For the remaining portion of 1993, Father owes Mother \$3,402.00, for a total of \$3,553.00 for the year 1993. The [c]ourt finds that this amount should be reduced by the \$1,000.00 gift made to Mother by Father's family in 1993. Therefore, Father owes Mother a total of \$2,553.00 in past child support for the year 1993.

16. Father's gross imputed income remained the same for the year 1994, Mother's gross income for the year 1994 was \$1,132.00 per month.

17. Father then owed Mother \$6,684.00 (\$557.00 x 12 months), and in fact paid \$2,400.00, leaving a balance of \$4,284.00 Father owes Mother for the year 1994.

18. Father's gross imputed income remained the same for the year 1995, while Mother's gross income dropped to \$758.00 for 1995.

19. Mother paid \$66.00 in child care expenses for [Child] in the year 1995.

20. Father's child support obligation for the year 1995 was then, \$7,716.00 (\$643.00 x 12 months) less the \$4,500.00 he paid, for a total of \$3,216.00.

21. Father's monthly imputed income remained the same in the year 1996, while Mother's gross income increased to \$872.00 per month.

22. Mother's child care expenses remained at \$66.00 per month for the year 1996.

23. Father's child support obligation for the year 1996 was then \$7,584.00 (\$632.00 x 12 months) less the \$4,500.00 he actually paid, for a total owing of \$3,084.00.

24. Father's monthly imputed income remained the same for the year 1997, while Mother's income decreased to \$617.00 per month for the year 1997.

25. Mother's child care expenses remained at \$66.00 per month for the year 1997.

26. Father's child support obligation to Mother for the first eight months of the year 1997 was then \$5,144.00 (\$643.00 x 8 months), less the \$2,813.00 he actually paid, for a total of \$2,331.00.

27. Father received a one-fifth ownership of additional property - two houses in Ka'a'awa, on August 25, 1997.

28. One of said houses is rented at \$1,000.00 per month, of which the property management company takes 10% or \$100.00.

29. Father's portion of the rental is \$180.00 per month and is additional imputed income to Father.

30. Father's gross income increased to \$4,058.00 (\$3,878.00 + \$180.00) for the last four months of 1997, while Mother's gross income remained at \$617.00 per month.

31. Mother's child care expenses remained at \$66.00 per month for the last four months of 1997.

32. Father's child support obligation for the last four months of 1997 was then \$667.00 per month.

33. Mother received cash welfare (AFDC), food stamps, and medical insurance on [Child's] behalf for the period September 9, 1997 through May 31, 1998.

34. During that period, a total of \$4,275.00 in AFDC benefits and \$2,831.00 in food stamps were paid to Mother for the benefit of [Child].

35. No cash value was established for the medical insurance and medical expenses for that period.

36. Based upon the foregoing, CSEA paid \$814.00 per month for the period September 9, 1997 through May 31, 1998, a period of 8.73 months.

37. For the period September 9, 1997 through December 31, 1997, Father owed Mother \$667.00 in child support. Father therefore owes CSEA \$2,488.00 (\$667.00 x 3.73 months) for the period September 9, 1997 through December 31, 1997.

38. Because CSEA paid child support to Mother for essentially the last four months of 1997, Father does not owe Mother child support for that period.

39. Father has \$5,676.00 in interest bearing accounts for the year 1998.

40. Income from these accounts is to be included as child support guideline income at \$14.00 per month.

41. For the first eight months of 1998, Father's gross income increased to \$4,072.00 per month (\$4,058.00 + \$14.00 interest income), while Mother's gross income increased to \$683.00 per month.

42. Mother's child care expenses were \$66.00 per month for the first eight months of 1998.

43. Father's child support obligation for the first eight months of 1998 was then \$655.00 per month.

44. CSEA paid welfare benefits for the first five months of 1998.

45. Father therefore owes \$3,275.00 (\$655.00 x 5 months) to CSEA for past child support paid by CSEA to Mother.

46. Father owes Mother no past child support for the first five months of 1998 as said child support was paid by CSEA.

47. Father does owe Mother past child support for the period June 1, 1998 to August 31, 1998, a period of three months at \$655.00 per month or \$1,965.00. For that period, Father paid Mother \$650.00 and therefore Father owes Mother the remaining total of \$1,315.00.

48. Based upon the foregoing, Father owes CSEA \$5,763.00 (1997 - \$2,488.00 + 1998 - \$3,275.00) for past child support.

49. Based upon the foregoing, Father owes Mother \$16,783.00 in past child support (1993 - \$2,553.00 + 1994 - \$4,284.00 + 1995 - \$3,216.00 + 1996 - \$3,084.00 + 1997 - \$2,331.00 + 1998 - \$1,315.00).

50. Mother is currently unemployed by [sic] is attending full-time classes at the William S. Richardson School of Law and therefore, no income is imputed to her.

51. Based upon the foregoing, current child support calculated at \$655.00 per month is consistent with the [CSG].

The family court then ordered as follows:

3. Father is to pay \$655.00 per month in child support to Mother which is consistent with the findings of the [c]ourt and the [CSG.] Child support payments shall continue until [Child] attains age eighteen years, or graduates from high school, whichever occurs last. Child support shall further continue uninterrupted so long as [Child] continues her education post high school on a full-time basis at an accredit[e]d college or university, or in vocational or trade school or until [Child] attains the age of twenty-three years, whichever occurs first.

4. The newly calculated child support payments of \$655.00 per month are to commence September 1, 1998.

5. Father is to pay a minimum of \$100.00 additional child support each months [sic] until the \$16,783.00 in past child support owed to Mother is paid in full.

The family court did not address Mother's request for sanctions in its Decision and Order.

On January 25, 1999, the family court filed its order denying Mother's Motion for Reconsideration of the October 29, 1998 minute order. On February 11, 1999, Mother timely appealed from the Order Denying [Mother's] Motion for Reconsideration filed on January 25, 1999, the Decision and Order filed on November 27, 1998, and the Order for Income Assignment filed on November 27, 1998.<sup>3</sup>

#### ISSUES ON APPEAL

On appeal, Mother argues that:

(1) The family court erred when it determined in Findings of Fact (FsOF) Nos. 19, 22, 25, 32, and 42 and Conclusions of Law Nos. 3 and 5 that Mother had paid only \$66 in child care expenses during the years 1995, 1996, and 1997 and during the first eight months of 1998 because the evidence

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<sup>3</sup> On December 18, 1998, Father, acting pro se, also filed a notice of appeal; however, his appeal was dismissed by the Hawai'i Supreme Court (the supreme court) on March 15, 1999 for lack of appellate jurisdiction. The supreme court reasoned that because Mother had filed a motion for reconsideration of the family court's November 27, 1998 Decision and Order, Father's notice of appeal, which was filed before entry of the January 25, 1999 order denying Mother's motion for reconsideration, was of no effect.

Following his receipt of the supreme court's March 15, 1999 order dismissing his December 18, 1998 appeal, Father filed a motion with the family court, requesting an extension of time to file a notice of appeal on grounds that he "was not aware that a Motion for Reconsideration was filed after the [f]amily [c]ourt's final [D]ecision and [O]rder was granted." Father's motion was approved and so ordered by a family court judge on March 29, 1999, and Father thereupon filed his second notice of appeal on April 1, 1999. However, on July 14, 1999, the supreme court dismissed Father's second appeal, again for lack of appellate jurisdiction, on grounds that the family court abused its discretion when it granted Father's motion to extend the time to file his notice of appeal.

indicated that Mother's actual child care expenses were far greater;

(2) FOF No. 29 of the November 27, 1998 Decision and Order was clearly erroneous because it imputed as income to Father only \$180 of the \$1,000 monthly rental income that was received for the house located at 51-580 Kamehameha Highway;

(3) The family court abused its discretion when it failed to order further hearings to determine Father's interests in real property located at 54-060 Kamehameha Highway in Hau'ula, 51-580 Kamehameha Highway in Ka'a'awa, 322 Kalihi Street in Honolulu, and 51-594 Kamehameha Highway in Ka'a'awa;

(4) The family court abused its discretion when it failed to address the issue of sanctions when Father failed to provide all real property documents which pertained to property in which Father has or had an interest; and

(5) The family court abused its discretion when it failed to reconsider its November 27, 1998 Decision and Order.

#### DISCUSSION

##### A. Whether the Family Court Clearly Erred in Calculating Mother's Past Child Care Expenses

Mother argues that the following FsOF relating to her child support expenses, entered by the family court as part of its November 27, 1998 Decision and Order, were clearly erroneous:

19. Mother paid \$66.00 in child care expenses for [Child] in the year 1995.

. . . .

22. Mother's child care expenses remained at \$66.00 per month for the year 1996.

. . . .

31. Mother's child care expenses remained at \$66.00 per month for the last four months of 1997.

. . . .

42. Mother's child care expenses were \$66.00 per month for the first eight months of 1998.

FsOF are reviewed under the clearly erroneous standard.

Dan v. State, 76 Hawai'i 423, 428, 879 P.2d 528, 533 (1994). "A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with a definite and firm conviction that a mistake has been made." State v. Okumura, 78 Hawai'i 383, 392, 894 P.2d 80, 89 (1995) (internal quotation marks omitted).

Based on our review of the record on appeal, we agree with Mother that the family court clearly erred in entering the foregoing FsOF. The \$66 monthly child care figure appears to be based on a brochure submitted into evidence by Mother that indicated that the monthly tuition rate for the Japanese language classes that Child was then attending after her elementary school classes ended at 1:30 p.m. was \$66. As discussed above, however, the undisputed evidence was that Mother's child care costs prior to Child's beginning public elementary school were higher than \$66 per month.

Specifically, Mother testified on February 27, 1998 that her child care expenses at the time were \$350 per month, but that starting on the Monday following the hearing, Child would be enrolled full-time in pre-school, at a cost of \$425 per month. Additionally, Mother submitted as an exhibit a letter from Rose Keahi, head teacher for Merry-Go-Round Child Care Center, which stated that Mother had paid the following amounts for child care for the years indicated: 1996 - \$4,158 (\$346.50 per month); 1997 - \$4,654 (\$387.83 per month); and 1998 - \$3,025 (\$378.13 per month for the first eight months).

Since the evidence shows that Mother paid significantly more in child care expenses than \$66 per month for the years 1996 through 1998, we agree with Mother that the family court clearly erred in finding that Mother's child care costs were only \$66 per month for those years.

However, based on our review of the record, we also conclude that the family court's erroneous FsOF constitute harmless error insofar as the family court's determination of Father's past child support obligations are concerned. As noted previously, on February 11, 1994, Mother filed a paternity action against Father (FC-P No. 94-0161), in which she sought child support from Father (Mother's paternity action). When CSEA instituted the paternity petition that underlies this appeal, the parties to this action agreed to dismiss Mother's paternity

action and to address all of the issues raised in Mother's paternity action in the underlying paternity action initiated by CSEA.

According to the record of Mother's paternity action, Father, who was not represented by an attorney in that action, agreed, at an April 8, 1994 pre-trial hearing/trial, to place Child on his medical and dental coverage and to pay child support according to the CSG then in effect. Mother's attorney represented to the family court that he would be typing up a judgment "this morning" regarding Father's child support obligations and visitation rights. The family court's minutes for the in-court proceedings on April 8, 1994 include the following notation: "JUDGMENT W/I TEN DAYS." Although no judgment appears to have been prepared by Mother's attorney and entered by the family court, there appears to be no dispute that Father was subsequently informed by Mother's attorney that he owed \$200 per month in child support under the CSG and that Father paid Mother \$200 per month for child support for the period from January or February 1994 until July or August 1997. It is also unquestioned that in addition to his \$200 monthly child support obligation, Father paid Mother one-half of Child's pre-school expenses for the period from January 1995 until July or August 1997.

provides, in relevant part, as follows:

**Modification, suspension, or termination of court and administrative orders.** (a) The responsible parent, [CSEA], or the person having custody of the dependent child may file a request for suspension, termination, or modification of the child support provisions of a Hawaii [Hawai'i] court or administrative order with [CSEA]. Such request shall be in writing, shall set forth the reasons for suspension, termination, or modification, including the change in circumstances since the date of the entry of the order, and shall state the address of the requesting party. [CSEA] shall thereafter commence a review of the order and, if appropriate, shall commence administrative proceedings pursuant to sections 576E-5 through 576E-9. The need to provide for the child's health care needs through health insurance or other means shall be a basis for [CSEA] to commence administrative proceedings pursuant to section 576E-5.

(b) Only payments accruing subsequent to service of the request on all parties may be modified, and only upon a showing of a substantial and material change of circumstances. The agency shall not be stayed from enforcement of the existing order pending the outcome of the hearing on the request to modify.

(Emphasis added.)

Although no written order was entered by the family court in Mother's paternity action as to the amount of child support that Father owed under the CSG, the record indicates that Father agreed at a hearing before the family court in 1994 to pay child support according to the CSG and thereafter paid what he was told was his child support obligation under the CSG. It appears from the record that although Mother's attorney promised to do so, he failed to prepare the order or judgment that memorialized the parties' agreement as to Father's child support

obligation under the CSG.<sup>4</sup> If such order had been prepared and Father's \$200 monthly child support obligation had been established by court order, HRS § 576E-14 would have prohibited

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<sup>4</sup> The transcripts for the April 8, 1994 pre-trial hearing/trial in Mother's paternity action include the following discussion regarding the preparation of the order regarding Father's obligation to pay child support:

[MOTHER'S COUNSEL]: Okay.

Your Honor, with respect to this case what would be your Honor's pleasure? Should we write it up? I'll write up the stipulation.

THE COURT: Well, we need to have something in writing.

[MOTHER'S COUNSEL]: Right.

THE COURT: Whatever is on the record won't be something that --

[MOTHER'S COUNSEL]: Correct.

THE COURT: -- is an enforceable order.

[MOTHER'S COUNSEL]: Correct.

So that's why we just orally put it on the record and I'll be typing this up this morning and I'll have [Father] --

THE COURT: We can take it off calendar at which time you submit to the [c]ourt --

UNIDENTIFIED VOICE: Within ten days?

[MOTHER'S COUNSEL]: Correct.

THE COURT: Right.

And submit it to the [c]ourt.

So, either of you can ask the [c]ourt - the Judge to decide the case if there's any areas you guys cannot agree on including the areas of visitation or whatever it is.

[MOTHER'S COUNSEL]: Correct.

THE COURT: Okay.

[MOTHER'S COUNSEL]: Okay?

[FATHER]: All right.

the retroactive modification of Father's obligation. Under these circumstances, we conclude that the family court should not have awarded Mother a retroactive increase in the amount of child support payments that Father was required to pay her; pursuant to HRS § 576E-14(b), any increase should have been allowed only from the date CSEA's petition was served on Father.

Since Mother was awarded a retroactive increase in child support, however, and Father's appeals from the family court's Decision and Order were previously dismissed by the Hawai'i Supreme Court as untimely, Mother, in essence, will enjoy a windfall as to the amount of past child support payments that Father is obligated to pay her. Therefore, although the family court's FsOF Nos. 19, 22, 31, and 42 regarding Mother's past monthly child care expenses were unsupported by the evidence, we will not disturb the family court's conclusion that Father owed Mother \$16,783 in past child support by increasing the amount of Father's past child support obligations because to do so would add to Mother's windfall.

B. Father's Interests in the 51-580 Kamehameha Property

In its November 27, 1998 Decision and Order, the family court found as follows:

27. Father received a one-fifth ownership of additional family property - two houses in Ka'a'awa, on August 25, 1997.

28. One of said houses is rented at \$1,000.00 per month, of which the property management company takes 10% or \$100.00.

29. Father's portion of the rental is \$180.00 per month and is additional imputed income to Father.

Mother contends that FOF No. 29 is clearly erroneous because Father testified that he received a check for \$900 each month for the rental of one of the houses located at the 51-580 Kamehameha Highway property, then turned around and cut a check to his parents for \$1,000 each month. Mother maintains that because Father did not state that he shared the \$900 in rental income with the other owners of the property, the entire \$900 in net rental income should be imputed to Father and, therefore, the family court clearly erred in entering FOF No. 29, which imputed Father's share of the rental income as only \$180 per month.

Inasmuch as the deed for the property in question indicates that Father owned only a one-fifth share of the property, however, we cannot conclude that the family court clearly erred in imputing only one-fifth of the monthly net rental income, i.e., \$180, to Father.

C. Whether a Further Hearing Was Warranted

Mother claims that the family court erred in computing Father's child support obligation without first determining exactly what Father's property holdings were and what income, rental or otherwise, accrued to him from those properties.

Accordingly, Mother argues, the family court abused its discretion in failing to order a further hearing to determine Father's property interests.

Based on our review of the record, we cannot conclude that the family court abused its discretion. The parties had an opportunity to prove the value of Father's various property interests at three separate hearings below. It was not an abuse of discretion for the family court to reach its conclusions based on the evidence presented at the various hearings below and to decline to schedule a further hearing.

D. Sanctions

Finally, Mother argues, Father failed to provide all real property documents that he had been ordered to produce and, therefore, the family court abused its discretion when it failed to address the issue of Mother's request for sanctions against Father. For the following reasons, we disagree.

First, the record indicates that Mother never filed a written motion requesting sanctions against Father, and Mother concedes in her opening brief that the issue of sanctions against Father and/or Father's counsel was not verbally addressed during the trial below because "time had run out."

Additionally, the record indicates that on February 27, 1998, CSEA's counsel asked the family court to order Father to provide "taxes, going back to date of birth of [Child] and . . .

a listing of all properties, identifying the value of the properties, the location of the properties as well as who else is on the title and the way the title is held[,]" by May 21, 1998. (Emphasis added.) Pursuant to a judgment dated March 4, 1998, the family court granted CSEA's oral motion, entering the following order against Father:

Father shall provide by May 21, 1998 the following:

- ① List of all property that Father's name appears on the title. The list shall include the present value of the property, the location of the property, number of people on the title and how title is held. The list shall include all property held in the years 1993, 1996-1998;
- ② Tax returns filed since 1993.

(Emphases added.) In other words, the family court did not expressly order Father to turn over to Mother and CSEA any documents that indicated that Father held a title interest in property; instead, the family court order Father to provide CSEA and Mother with a list of properties in which Father held an interest. Father complied with the family court's order when he included an Asset and Debt Statement as an attachment to his Motion and Affidavit for Relief after Order or Decree, filed with the family court on April 22, 1998.

It was not until the May 28, 1998 hearing, when Mother's counsel produced evidence that she claimed suggested that Father had not been candid in disclosing his actual real property interests that the family court ordered as follows:

Deadline for [F]ather to turn over real estate transaction is 5 p.m., 7/2/98. Documents shall be exchanged by 5 p.m., 7/31/98--exhibit, witness lists).

When trial commenced on August 24, 1998, there was no indication by Mother or CSEA that Father had failed to comply with the family court's May 28, 1998 order.

In light of the foregoing circumstances, we cannot conclude that the family court abused its discretion in failing to order a further hearing to determine Father's interests in real property and Father's past and present child support obligations.

E. The Order Denying Mother's Motion for Reconsideration

Based on the foregoing discussion, we cannot conclude that the family court abused its discretion when it denied Mother's motion that the court reconsider its November 27, 1998 Decision and Order and Income Assignment.

Affirmed.

DATED: Honolulu, Hawai'i, January 23, 2001.

On the briefs:

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