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*McGowan*  
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IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LYLA BONNIE HEE,	)	FC-D No. 88-2586
	)	
Plaintiff,	)	MEMORANDUM IN OPPOSITION
	)	TO PLAINTIFF'S MOTION FOR
vs.	)	RECONSIDERATION;
	)	CERTIFICATE OF SERVICE
CLAYTON HOWE WAH HEE,	)	
	)	Hearing: June 19, 1989
Defendant.	)	Time: 1:30 p.m.
	)	Judge: Evelyn B. Lance

MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR RECONSIDERATION

Plaintiff's Motion for Reconsideration filed on May 19, 1989, asked the Court to reconsider its Decision announced herein on April 28, 1989. Defendant firmly opposes the Motion.

A contested divorce proceeding was had on April 11 and 12, 1989, before the Honorable Evelyn B. Lance, Judge of the Family Court of the First Circuit. On April 28, 1989, the Court announced its decision on the financial issues therein. Plaintiff's counsel, William C. Darrah, was instructed to prepare a written Divorce Decree within the ten (10) days prescribed by the Hawaii Family Court Rules. Mr. Darrah has not prepared

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the Divorce Decree nor requested any extension to prepare same.

ARGUMENT

Plaintiff's Motion for Reconsideration is untimely and should be denied. Rule 59(g) of the Hawaii Family Court Rules, provides in pertinent part:

"(1) A motion for reconsideration of the decree, order or 'decision and order' shall be filed not later than 20 days after filing of the Decree or Order or announcement of the 'decision and order' whichever occurs sooner." Underscoring added.

The Court's Decision and Order was announced on April 28, 1989. It was announced on the record before both attorneys and Plaintiff, and Plaintiff's counsel was directed to prepare the written Decree. The Decision and Order relating to financial issues was clear and unequivocal.

Plaintiff's Motion for Reconsideration was filed on May 19, 1989, 21 days following the Court's announcement of its Decision and Order, which is one day too late. Therefore, the Court should not entertain Plaintiff's Motion for Reconsideration as the Court has lost jurisdiction to grant said Motion for Reconsideration.

Assuming, arguendo, that the Court should consider Plaintiff's Motion for Reconsideration as being filed timely, the Motion should still be denied. Said Motion for Reconsideration does not allege that the Court overlooked or misapprehended any fact but seeks to reargue

the case, all of which has been argued before the Court at the time of the trial on the merits as well as at time of final arguments. Plaintiff seeks to have the Court again adjust the division of assets which were acquired during the marriage. Plaintiff further argues again that Defendant did not sacrifice anything in the course of the marriage and was instead completely free to pursue his own career and extracurricular ambitions, entirely without burden or responsibility economically or otherwise. Such arguments were rejected by the Court.

Plaintiff also argues that the Court should award her a disproportionate amount of the marital assets because she had more at the time of marriage and perhaps contributed some of her trust monies to the marriage. The law is clear that such transfer, conveyance or contribution by the parties of separately owned assets is a contribution to the marriage partnership, and upon divorce it would be equitable to divide same as marital assets. There is no requirement that financial contribution by both parties be equal. If that was a requirement, in many divorce actions there would be a substantial disparity in dividing up assets between married parties. It would in effect undermine the foundation of the marriage partnership.

Plaintiff seems to imply that the Court has selectively penalized her by valuing certain assets at separation and other personal assets as of the date of

trial. Defendant can only assume that Plaintiff is referring to the \$17,000.00 time certificate that she had at the time of separation but did not have at the time of trial. Her excuse was that she used the money for support even though she had support money from Defendant, her salary and positive cash flow from investment properties. It would be only fair, as the Court found, that she be imputed with that amount in determining division of assets.

In addition, Plaintiff seems to imply that the Court penalized her by charging her with certain personal assets acquired after separation. Defendant can only assume that Plaintiff is referring to the automobile. However, the evidence was clear that although her present automobile was acquired after separation that she traded in a vehicle with substantial equity which was acquired during the marriage. Therefore, it would be only fair that the Court impute to her the value of that traded automobile which is what the Court did.

Finally, the Court in making its decision indicated that if in calculating the child support the Court was in error in the method of its calculations that the Court would entertain a Motion for Reconsideration relating to same. The Court presented to both attorneys' the Court's calculations using the child support guidelines. Defendant contends that the methodology in

calculating the child support was correct as far as the child support guidelines were concerned. Plaintiff is requesting that the Court reconsider the child support amount again arguing that the Court should impute to Defendant more income that he is actually receiving and, that the Court determine child support based on a person's potential to earn income. Such a claim was made at the time of trial and argued extensively by Plaintiff. The Court rejected said argument and inserted as gross income for Defendant what he was making at the time and for Plaintiff what she was making at the time plus the dividends she was earning from her trust assets, all of which are in accordance with the child support guidelines.

Therefore, Defendant submits that the Court should deny Plaintiff's Motion for Reconsideration for the reasons set forth above.

Dated: Honolulu, Hawaii, June 2, 1989.

Respectfully submitted,




DANIEL S. UKISHIMA  
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was delivered to WILLIAM C. DARRAH, Esq., Attorney for Plaintiff, at Suite 105, 547 Halekauwila Street, Honolulu, Hawaii 96813, his last known address, on June 2, 1989.

Dated: Honolulu, Hawaii, June 2, 1989.

  
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DANIEL S. UKISHIMA  
Attorney for Defendant