

NO. 30358

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

COLLEEN P. COLLINS, Plaintiff-Appellant, v.
JOHN A. WASSELL, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-D NO. 07-1-0206)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., Reifurth and Ginoza, JJ.)

Plaintiff-Appellant Colleen P. Collins ("Collins") appeals from the January 25, 2010 Order Granting Defendant's Rule 68 Motion for Award of Attorney's Fees and Costs Filed Herein on June 22, 2009 ("Order Granting Fees and Costs") entered in the Family Court of the Third Circuit ("Family Court").¹ On appeal, Collins contends that the Family Court (1) lacked jurisdiction to enter the Order Granting Fees and Costs, (2) abused its discretion in awarding attorneys' fees and costs, (3) clearly erred in failing to make certain necessary findings of fact, and (4) clearly erred in its conclusions of law 5 and 6.

Defendant-Appellee John A. Wassell ("Wassell") filed his motion for attorneys' fees and costs pursuant to Hawai'i Family Court Rules ("HFCR") Rule 68 on June 22, 2009. The Divorce Decree was filed on September 9, 2009, and Collins filed a notice of appeal from the Divorce Decree on September 18, 2009. The Order Granting Fees and Costs was filed on January 25, 2010, more than four months after the Divorce Decree was filed, and while Collins's appeal of the Divorce Decree was still pending. We conclude that the Family Court lacked jurisdiction to enter

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The Honorable Anthony Bartholomew presided.

its Order Granting Fees and Costs. See Haw. R. App. P. 4(a)(3); *Buscher v. Boning*, 114 Hawai'i 202, 221, 159 P.3d 814, 833 (2007).

Therefore, the January 25, 2010 Order Granting Fees and Costs is void for lack of jurisdiction. The Family Court may decide Wassell's HFCR Rule 68 request for attorneys' fees and costs upon acquiring jurisdiction over the matter.

DATED: Honolulu, Hawai'i, February 27, 2013.

On the briefs:

Joy A. San Buenaventura
for Plaintiff-Appellant

Chief Judge

Andrew S. Iwashita
for Defendant-Appellee

Associate Judge

Associate Judge