

NO. 29927

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

EMILY THOMAS-YUKIMURA, Plaintiff-Appellee, v.
DAVID YUKIMURA, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIFTH CIRCUIT
(FC-D NO. 07-1-0098)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Fujise and Reifurth, JJ.)

Defendant-Appellant David Yukimura ("Yukimura"), pro se, appeals from the Order on Plaintiff's and Defendant's Motions for Post-Decree Relief ("Order") filed on June 4, 2009 in the Family Court of the Fifth Circuit ("Family Court").¹ The Order followed the September 26, 2008 Decree Granting Divorce and Awarding Child Custody ("Decree"), which dissolved the marriage between Yukimura and Plaintiff-Appellee Emily Thomas-Yukimura ("Thomas-Yukimura") and resolved various post-decree motions brought by the parties.

We interpret Yukimura's opening brief as contending that the Family Court erred in modifying the Decree to adjust Thomas-Yukimura's share of capital gains tax to be paid upon the court-ordered sale of the family home because Thomas-Yukimura's request was untimely and improperly presented via an oral motion, and because the issue should have been raised on appeal within thirty days of the Decree.

Upon careful review of the record and Yukimura's brief, and having given due consideration to the arguments advanced and

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The Honorable Calvin K. Murashige presided.

the issues raised by the parties, we resolve Yukimura's point of error as follows:

Because the transcript from the January 29, 2009 hearing has not been made a part of the record, we are unable to review the basis for the Family Court's decision to amend the Decree regarding taxation of capital gains from the home sale. Without the transcript, we are unable to consider the merits of Yukimura's contention that the issue was improperly raised before the Family Court and that the Family Court improperly considered and granted Thomas-Yukimura's oral motion. Thus, we leave undisturbed the Family Court's decision and Order. See *Bettencourt v. Bettencourt*, 80 Hawai'i 225, 230, 909 P.2d 553, 558 (1995) ("The burden is upon appellant in an appeal to show error by reference to matters in the record, and he or she has the responsibility of providing an adequate transcript." (brackets omitted) (quoting *Union Bldg. Materials Corp. v. Kakaako Corp.*, 5 Haw. App. 146, 151, 682 P.2d 82, 87 (1984))).

Therefore,

IT IS HEREBY ORDERED that the Order on Plaintiff's and Defendant's Motions for Post-Decree Relief, filed on June 4, 2009, in the Family Court of the Fifth Circuit is affirmed.

DATED: Honolulu, Hawai'i, January 22, 2013.

On the brief:

David Yukimura,
Pro Se Defendant-Appellant

Presiding Judge

Associate Judge

Associate Judge