DISSENTING OPINION BY REIFURTH, J.

I respectfully dissent. While the Family Court properly recognized that *Helbush v. Helbush*, 108 Hawai'i 508, 122 P.3d 288 (App. 2005), sets out the legal standard that the Family Court must apply in evaluating whether a divorcing couple had created a premarital economic partnership, I disagree with the majority's conclusion that the factors cited by the Family Court were relevant to the analysis that it was required to make. I would vacate the decision and remand for the court to conduct a new premarital-economic-partnership analysis.

I. The Family Court improperly determined that Collins and Wassell had not created a premarital economic partnership.

The Family Court's rationales for concluding that no premarital economic partnership existed between Collins and Wassell's DOC and their DOM can be grouped into three categories: (1) except for a single Joint Account, Collins and Wassell maintained "distinct separate financial identities," with independently-owned financial and retirement accounts, insurance policies, and automobiles; (2) the Joint Account only covered part of Collins and Wassell's living expenses; and (3) Collins and Wassell represented themselves on financial aid applications and to government officials after the DOC as being single.

The Family Court's stated reasons for concluding that no premarital economic partnership existed in this case do not accurately reflect the law of premarital economic partnerships in Hawai'i.[1] In *Helbush*, we said that "a 'premarital economic partnership' occurs when, prior to their subsequent marriage, a man and a woman cohabit and apply their financial resources as well as their individual energies and efforts to and for the benefit of each other's person, assets, and liabilities." 108 Hawai'i at 515, 122 P.3d at 295. When a premarital economic

[1] The Family Court "possesses wide discretion in making its decisions, and those decision[s] will not be set aside unless there is a manifest abuse of discretion." *Fisher v. Fisher*, 111 Hawai'i 41, 46, 137 P.3d 355, 360 (2006) (quoting *In re Doe*, 95 Hawai'i 183, 189, 20 P.3d 616, 622 (2001)). But "[w]here the issue is whether a trial court applied incorrect legal principles in exercising its discretion, we freely review the court's decision to determine whether the law was correctly applied." *State v. Rapozo*, 123 Hawai'i 329, 347, 235 P.3d 325, 343 (2010) (quoting *Estate of James Campbell*, 106 Hawai'i 453, 461, 106 P.3d 1096, 1104 (2005)).

partnership is found to exist, "the family court, in the exercise of its duty to divide and distribute property in divorce cases, allowably consider[s] [each party's] respective contributions to [the other party's] separate property during . . . their premarital . . . economic partnership and their subsequent marriage." *Id.* at 515, 122 P.3d at 294–95 (original brackets and emphasis omitted).

The Family Court's analysis emphasized its finding that Collins and Wassell attempted to maintain separate financial accounts or "financial identities." It never explained, however, in what manner such a finding lent support to its ultimate determination that there was no partnership. Indeed, such a finding does not bear here on the issue of whether a premarital economic partnership had been created.[2] The court's focus on separate financial identities fails to recognize or address the fact that marital relationships exist wherein the spouses each maintain individual financial accounts from which collective expenses are paid. Certainly, a finding that parties formed a singular financial identity will generally lend strong support to a finding of a partnership. But the absence of such a finding, particularly without any findings regarding the commonality of maintaining individual financial arrangements in the marital or premarital context,[3] reveals little to nothing about whether each party applied his or her financial resources, energies, or efforts for the benefit of the other.[4] *See Chen v. Hoeflinger*, 127 Hawai‘i 346, 358–59, 279 P.3d 11, 23–24 (App. 2012) (one party's use of her income to pay for household goods in support of both parties and the other party supplementing when that

[2] For this same reason, Wassell's contention in his answering brief that the parties, allegedly, had a "fully executed oral agreement" to "maintain separate finances" is irrelevant.

[3] The *Helbush* inquiry is properly understood not as inquiring whether, as the Family Court suggested, the parties' relevant conduct resembles that of a business partnership, but rather, whether such conduct resembles the sort of economic partnership typical of marriage. *See Helbush*, 108 Hawai‘i at 514-15, 122 P.3d at 294-95.

[4] Even if such a finding were sometimes relevant, I would hold here that it is not substantial evidence upon which to conclude that a partnership had not been created.

income was insufficient justified conclusion that a premarital economic partnership existed). Thus, it was improper for the Family Court to conclude that no premarital economic partnership was formed on the basis that Collins and Wassell failed to maintain a singular financial identity.[5]

Furthermore, even if such a finding were probative, it is here insufficiently supported. The Family Court, for example, made no findings as to whether the parties named each other as beneficiaries under the aforementioned insurance policies or retirement accounts.

The ultimate issues are whether, and the extent to which, prior to the DOM, the parties applied their financial resources and individual energies for each other's person, assets, and liabilities, not whether, and the extent to which, the parties created joint bank accounts or added both of their names to their cars' titles. Thus, the thrust of the Family Court's inquiry must be to consider the nature and degree of such application, and it must do so adequately.[6]

Besides being misfocused, the Family Court's inquiry fell short of the mark. Its determination that the Joint Account was insufficiently funded to pay for all of the parties' monthly living expenses does not tend to establish the absence of a premarital economic partnership. Furthermore, the Family Court's analysis was incomplete as it did not make findings on how

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[5] It was not necessarily improper, however, for the Family Court to inquire into the couple's motivations for delaying legal marriage, or concomitantly, for maintaining separate financial identities. That the couple did so because they believed it appropriate that Collins bear alone the liability of her daughters' college tuition appears relevant to the partnership inquiry. Of course, there is a countervailing consideration that the court does not consider, in that the couple's decision was financially beneficial for each of them, which appears not incongruent with the concept of a partnership. But these considerations properly correspond to a more general inquiry into a couple's motivations for not legally marrying, rather than an inquiry into the extent to which the couple maintained separate financial identities or the significance thereof.

[6] This inquiry properly considers more than just monetary contribution to the partnership. *See Helbush*, 108 Hawai‘i at 515, 122 P.3d at 294-95; *see also Aiona-Agra v. Agra*, No. 30685, 2012 WL 593105, at *3 (App. Feb. 23, 2012) (SDO) (concluding that a finding of premarital economic partnership was not clearly erroneous where evidence was presented that the "[w]ife contributed some individual energy and efforts to the construction of the home and [h]usband lived rent-free with [his] [w]ife and [her] family" (internal quotation marks omitted)), *aff'd*, No. SCWC-30685, 2012 WL 3309639.

Collins and Wassell accounted for the difference between their living expenses and what was taken out of the Joint Account to defray those expenses. Clearly, one or both of them made up the difference, and thereby contributed to the joint enterprise, but, based on the Family Court's findings, it is unclear who did so, or to what extent. While the weight to be assigned to those contributions is for the Family Court to decide, *Helbush*, 108 Hawai‘i at 515, 122 P.3d at 295, it is error to ignore them entirely. Thus, it was improper for the Family Court to conclude that no premarital economic partnership was formed on the basis that the Joint Account was insufficiently funded to cover all of Collins and Wassell's joint expenses.

Finally, the fact that Collins truthfully represented on a financial-aid application that she was single and the fact that Collins and Wassell truthfully informed the Department of Health that they had decided to stay unmarried are likewise immaterial. Before Collins and Wassell's DOM, they were legally single and unmarried. To have said otherwise would have misrepresented the actual legal status of their relationship. There is no requirement that a couple must have a demonstrated intent to get married before a premarital economic partnership can be created; what is required is that "premarital cohabitation matured into marriage." *Helbush*, 108 Hawai‘i at 514, 122 P.3d at 294. It was improper for the Family Court to conclude that no premarital economic partnership was formed on the basis that Collins and Wassell truthfully stated their marital status.[7]

II. Conclusion.

I am mindful of the deference that we afford to the family court and to family court decisions. Furthermore, I take no issue with the majority's observation that it is the prerogative of the family court to determine credibility and the weight of the evidence. Op. at 9. Rather, I conclude that the Family Court erred here, not in determining credibility or the

[7] Similarly, a couple's decision to enjoy the fruits of living as if married, but deciding to avoid legal marriage for the purpose of avoiding negative tax consequences (i.e., the so-called "marriage penalty"), does not appear probative of whether a partnership had been formed.

weight of evidence, but in failing to utilize the analysis required by *Helbush* and its progeny.

It may be, upon remand, that the Family Court would reach the same conclusion with regard to the premarital economic partnership as it has herein. And it may be, upon review of that decision, that I might agree that the Family Court correctly applied *Helbush* in reaching that conclusion. So long, however, as that analysis ignores the fact that a premarital economic partnership can be created even where none of the parties' assets or monies are commingled, *see Chen*, 127 Hawai‘i at 358–59, 279 P.3d at 23–24; fails to adequately consider the nature and degree to which the parties applied their resources, energies, and efforts for each other's benefit; or credits against the partnership the fact that the parties truthfully described the legal status of their relationship; I submit that it is conducted in error.

In sum, I would vacate the Family Court's conclusion of law no. 3 ("COL 3") that no premarital economic partnership was formed because the court took into consideration multiple irrelevant factors without considering multiple relevant factors that focus less on the form of the relationship and more on the day-to-day reality of how it worked, when making its decision.[8] Consequently, I would vacate findings of fact 47 and 67 relating to Wassell's debt of $4,239.59 to Collins, which depends entirely on the court's COL 3, as well as the Decision and the property-division and equalization provisions in the Divorce Decree, which incorporate in part COL 3.[9] I would remand the case for further proceedings consistent with this decision.

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[8] While the parties' decision that Wassell should not pay for Collins's daughters' higher education might be a relevant consideration on remand, it is not dispositive on appeal given the substantial evidence presented at trial that the parties did in fact apply their financial resources and energies for each other's benefit.

[9] I concur with the majority that the Family Court's conclusion that Collins "believed that the financial responsibility for sending her daughters to college was hers alone," to the extent that it contrasts her obligation with Wassell's. Op. at 10–11. The evidence is clear that Collins believed that she *and her daughters* shared the obligation, but that Wassell did not.