IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

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COLLEEN P. COLLINS, Petitioner/Plaintiff-Appellant,

vs.

JOHN A. WASSELL, Respondent/Defendant-Appellee.

SCWC-30070

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(ICA NO. 30070; FC-D NO. 07-1-0206)

February 28, 2014

CONCURRING OPINION BY ACOBA, J.

The circumstances of this case seem straightforward and not to require complex analysis - that for financial reasons the parties simply postponed the formal legal ties of marriage until the children of Petitioner/Plaintiff-Appellant Colleen P. Collins (Collins) had completed their college education. The wedding ceremony on June 18, 2000, whose effect was suspended and the formalization of the parties' marriage on January 19, 2005 were plainly the temporal bookends of what would seem to be an

emotional and economic attachment between Collins and Respondent/Defendant-Appellee John A. Wassell (Wassell) that continued into their marriage in 2005.

Thus, the accommodation of college scholarship criteria for Collins' children was the circumstance that interrupted the symmetry of a relationship that would otherwise have manifested the parties' intent to maintain a "partnership." While for purposes of financial aid, the parties attempted to emphasize their unmarried status by representing that Collins was single on financial aid forms, signing a letter to the State Department of Health in which they represented that they had decided not to become married, and maintaining individual retirement accounts, life insurance policies, and vehicles, the parties in fact did share financially in the household expenses through a joint checking account. Collins also allowed Wassell to live in her townhouse in Pacific Heights without paying rent, while Wassel continued to receive rent from his residence in Paradise Park. In return, Wassell helped to improve the townhouse by installing a new water heater, painting some rooms, and conducting other repairs. When Collins sold the townhouse, the parties moved into Wassell's residence and a portion of the proceeds from the sale was used to pay the mortgage on Wassell's residence. Under the circumstances it would not be inequitable to give credence to the underlying basis of their relationship in distributing the assets

upon dissolution of the marriage. See Booth v. Booth, 90 Hawaiʻi 413, 417, 978 P.2d 851, 855 (1999) (holding that "the family court has broad discretion to divide and distribute the estate of the parties in a 'just and equitable' manner," and "[a]s such, the family court assesses and weighs all valid and relevant considerations to exercise its equitable discretion in distributing marital property").

The Helbush v. Helbush, 108 Hawaiʻi 508, 122 P.3d 288 (App. 2005), test was not helpful in resolving this case but only magnified ordinary living details beyond the significance they had in a larger more comprehensive view of the parties' relationship. Thus, respectfully, in my view the court was wrong in the ultimate conclusion it drew from the facts, but was placed on that path in its attempt to heed the Helbush test.[1]

What is pertinent for our purposes and what Helbush sought to resolve is the case that is not before us - the committed relationship that in time culminates in marriage - without the presence of a putative marriage ceremony. Parties may commit to each other without ever contemplating marriage. Thus, it is incongruous to subject such situations to the

[1] In Helbush, the Intermediate Court of Appeals (ICA) posited 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." Helbush, 108 Hawaiʻi at 515, 122 P.3d at 295.

category of "economic partnerships," as based on our case law on marriage dissolution, where the parties are in a self-defined relationship before marriage. Any attempt, then, to characterize the nature of a relationship as for example, an economic partnership, seems futile and unhelpful.

Fundamentally, in determining whether and to what extent credit should be allocated between the parties for pre-marital assets, the touchstone must be equity. Hawaiʻi Revised Statutes (HRS) § 580-47;[2] see also Myers v. Myers, 70 Haw. 143, 148, 764 P.2d 1237, 1241 (1998) (holding that the family court has "the discretion to divide martial property according to what is just and equitable"). The definition of what is equitable in an asset distribution is necessarily committed to the proper exercise of discretion by the family court. See Markham v. Markham, 80 Hawaiʻi 274, 277, 909 P.2d 602, 605 (App. 1996) (holding that the family court has "broad discretion to divide

[2] HRS § 580-47 states in relevant part that:

> (a) Upon granting a divorce, or thereafter if ... jurisdiction of those matters is reserved under the decree by agreement of both parties or by order of court after finding that good cause exists, the court may make any further orders as shall appear just and equitable (1) compelling the parties or either of them to provide for the support, maintenance, and education of the children of the parties[.] . . . (4) . . . In making these further orders, the court shall take into consideration: the respective merits of the parties, the relative abilities of the parties, the condition in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the parties, the concealment of or failure to disclose income or an asset .... and all other circumstances of the case.

and distribute the estate of the parties"). In the exercise of that discretion, the court should determine on an equitable basis whether assets engendered during the pre-marital relationship and brought into the marriage were treated, used, or employed as joint assets without respect to how one might characterize a couple's living arrangement. The questions to be answered should be the extent to which a party substantially contributed to accumulating or obtaining the asset during the premarital relationship and whether the parties intended that and acted as though the asset was accumulated or obtained for the benefit of both of them.[3] Any formulation in excess of such a standard would hold parties to the expectations and obligations of marriage as developed in our case law, when such expectations and obligations cannot be inferred legally simply from people choosing to live together. Therefore, I concur in the result reached by the majority but on the basis set forth above.

/s/ Simeon R. Acoba, Jr.

[3] Correspondingly, losses brought into the marriage may be allocated similarly.