

DISSENTING OPINION BY NAKAMURA, C.J.

I respectfully dissent.

I believe this court has jurisdiction to render a decision in this appeal. First, in my view, the property division portion of the Divorce Decree did not become final and appealable until after the Family Court entered its "Order (Re: Hearing on Plaintiff's Motion for Clarification of Divorce Decree Entered on June 24, 2008, Filed on July, 7, 2008 and Other Matters)" (hereinafter, "Post-Decree Order") on November 26, 2008. The Divorce Decree awarded one-half of the increase in value of the Husband's interest in Avalon Cove, Inc. (Avalon Cove) from the date of marriage to the end of trial to Wife.<sup>1/</sup> Although the Divorce Decree set forth a procedure for determining the value of Wife's share, the steps necessary to determine that value (such as the Family Court's order selecting a real estate appraiser to value the Avalon Cove properties and the appraisal itself) were not completed, and the actual value of Wife's share was not established, until after the Divorce Decree was filed. The Post-Decree Order is the first written order that specifies the actual dollar amount that Husband must pay to Wife with respect to Avalon Cove. The Post-Decree Order was filed on November 26, 2008, and Husband filed his notice of appeal within thirty days after the Post-Decree Order.

Second, assuming arguendo that all portions of the Divorce Decree, including the property division portion, were final and appealable when the Divorce Decree was filed on June 24, 2008, I believe this court would still have jurisdiction to decide an appeal from the Post-Decree Order. Under this scenario, this court would not have jurisdiction to decide an appeal from any portion of the Divorce Decree because Husband's July 7, 2008, motion for clarification, which in substance was a motion for reconsideration, would only have extended the time for

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<sup>1/</sup> The parties to this appeal are Plaintiff/Cross-Defendant/Appellant Hirokazu Nakajima (Husband) and Defendant/Cross-Appellee Aki Nakajima (Wife).

filing a notice of appeal from the Divorce Decree to November 5, 2008, thirty days after the October 6, 2008, deemed denial of Husband's motion. See Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(3) (2006). However, in my view, after Husband's motion was deemed denied pursuant to HRAP Rule 4(a)(3) on October 6, 2008, the Family Court retained the authority to enter an order that modified the deemed denial. The Post-Decree Order materially and substantially modified the deemed denial of Husband's motion and therefore was an independently appealable post-decree order. Husband's December 26, 2008, notice of appeal was timely with respect to the Family Court's November 26, 2008, Post-Decree Order.

*Craig H. Nakamura*