

CONCURRING OPINION OF FUJISE, J.

I agree with the disposition and the reasoning of the majority as to virtually all aspects of this case. However, I write separately because I disagree with the implication that the calculation of the fair market value of assets generally includes a component of future appreciation of that asset, such that the family court must now explain why it assumed appreciation in value of the marital residence was not already included in calculating the fair market value of the marital residence and the boat "Prowler."

Here, the family court's division of Marital Partnership Property between the parties resulted in an unequal distribution of the assets in the amount of \$265,000. Conclusion of Law (COL) 34. The determination of the values used in reaching that distribution was made, using Net Market Values (NMV) to determine the values in each of the five categories of Marital Partnership Property. COL 13; Hussey v. Hussey, 77 Hawai'i 202, 881 P.2d 1270 (App. 1994) overruled on other grounds by State v. Gonsales, 91 Hawai'i 446, 984 P.2d 1272 (App. 1999). In reaching the NMV, any incumbrance on the property is deducted from the "fair market value" (FMV). The FMV of property is "the amount at which an item would change hands from willing seller to willing buyer, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." Antolik v. Harvey, 7 Haw. App. 313, 319, 761 P.2d 305, 309 (1988).

When, as is often the case, the property in question has not been sold by the time the family court must determine its FMV, the family court must rely on other evidence of value. With regard to real property, for example, the family court may rely, as was done here, on submission of a real property tax bill as evidence of the FMV of that real property.<sup>1</sup> Schiller v. Schiller, 120 Hawai'i 283, 294, 205 P.3d 548, 559 (App. 2009).

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<sup>1</sup> In the City and County of Honolulu, where the marital residence in this case was located, real property tax assessments are based on the fair market value of the property, which is in turn determined by using the market data and cost approaches. Revised Ordinances of Honolulu, § 8-7.1 (1990).

Appraisals using a market analysis generally include comparing sales prices and attributes of other, comparable properties ("comps") with the attributes of the subject property to arrive at the market value of the subject property. See, for example, the Uniform Residential Appraisal Report ("Appraisal Form") used by FannieMae, <https://www.fanniemae.com/singlefamily/selling-servicing-guide-forms?taskId=task-71> (last visited Mar. 12, 2014) ("The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.").<sup>2</sup>

While the purchasers of the comps may well have considered and relied upon the possibility that the properties they are buying may appreciate in value in agreeing to their respective purchase prices, such a consideration, let alone a corresponding dollar figure for that anticipated appreciation, is not generally separately listed as a comp's attribute<sup>3</sup> in this market analysis. Moreover, even if it was in some way quantified, that value would, of necessity, be relevant to the expectations at the point in time that the comps were sold. Values used in the property division are determined the end of the evidentiary part of the trial. Malek v. Malek, 7 Haw. App. 377, 380, 768 P.2d 243, 246 (1989) quoted with approval in Cox v. Cox, 125 Hawai'i 19, 26-27, 250 P.3d 775, 782-83 (2011).

Thus, to ask the family court to explain why future appreciation of the marital residence is not included in the market value of that property may well be asking for the impossible: That value is not generally ascertained when appraisals are done.

However, I do agree that the basis for reaching the \$65,000 figure the family court used in this case to reduce the

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<sup>2</sup> I suspect the market value of a boat is ascertained in a similar way. To the extent it is not, the parties are free to present evidence establishing the methods of establishing fair market value of the Prowler on remand.

<sup>3</sup> The form does ask for an assessment of whether property values in the subject property's neighborhood are "increasing," "stable," or "declining" but does not ask for such information for the comps.

equalization payment was unclear. While the family court identified a number of factors for this reduction, including the relative ages of the parties, the respective needs of the parties, that a significant portion of the assets credited to Husband were prior expenditures made by Husband and Wife had more in liquid assets, no dollar amounts were attributed to any of these factors. Thus, I agree that this case should be remanded for more detailed findings providing the basis for its reduction of the equalization payment.