

CONCURRING AND DISSENTING OPINION BY GINOZA, J.

I concur with the majority opinion as to Defendant-Appellant Laura Moire's (Moire) points of error 1 and 2. However, I respectfully dissent as to Moire's point of error 3. In my view, there are valid and relevant considerations (VARCs), such that the Family Court of the Third Circuit (family court) should have exercised its discretion to consider whether the VARCs warrant deviation from the Partnership Model. I would remand on this basis.

In the process of deciding the division and distribution of marital partnership property, the family court is required to:

- (1) find the relevant facts; start at the Partnership Model Division and (2) (a) decide whether or not the facts present any valid and relevant considerations authorizing a deviation from the Partnership Model Division and, if so, (b) itemize those considerations; if the answer to question (2) (a) is "yes," exercise its discretion and (3) decide whether or not there will be a deviation; and, if the answer to question (3) is "yes," exercise its discretion and (4) decide the extent of the deviation.

Jackson v. Jackson, 84 Hawai'i 319, 332, 933 P.2d 1353, 1366 (App. 1997). Question (2) (a) is a question of law that is reviewed on appeal under the right/wrong standard. Id. at 332-33, 933 P.2d at 1366-67. In determining whether any VARCs justify deviation, the proper considerations are

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, and all other circumstances of the case.

Id. at 333, 933 P.2d at 1367 (emphasis added) (citation, quotation mark and block format omitted); Gordon v. Gordon, No. SCWC-12-0000806, 2015 WL 3540523, at *11, __ Hawai'i __, __ P.3d __ (2015) (Haw. June 4, 2015) (emphasizing that the "court's analysis in deciding whether or not to apply a deviation should focus on the abilities of the parties and the circumstances in which each party will be left by the divorce"); Hawaii Revised Statutes § 580-47(a) (Supp. 2014). The family court must "focus on the present and the future, not the past." Jackson, 84 Hawai'i at 333, 933 P.2d at 1367 (citation omitted).

The family court properly started with the Partnership Model division, which resulted in its property division chart reflecting a net award of \$2,825,089.76 to Selvage and a net award of \$37,059.11 to Moire. Under the Partnership Model, Selvage was awarded both of the couple's residences. Further, because Moire was under court order since August 2008 to pay Selvage \$1,500 a month in spousal support, the family court entered judgment against Moire in the amount of \$37,400 for unpaid spousal support owed to Selvage.

Although an inheritance "does not, without more, mandate deviation from the Marital Partnership Model[,]" Kakinami v. Kakinami, 127 Hawai'i 126, 143, 276 P.3d 695, 712 (2012) (citation and quotation mark omitted), I believe that the vast disparity in the parties' circumstances after the divorce, and the limited assets with which Moire will be left, constitute VARCs warranting that deviation be considered. See Tougas v. Tougas, 76 Hawai'i 19, 32, 868 P.2d 437, 450 (1994) ("The court may, nevertheless, alter . . . the ultimate distribution of the marital estate based on the respective separate conditions of the spouses."). Therefore, I conclude that question (2)(a) in Jackson should be answered in the affirmative (*i.e.*, there are VARCs), and that the family court should exercise its discretion to: decide question (3) in Jackson, (*i.e.*, whether to deviate from the Partnership Model); and if it decides to deviate, decide question (4) (*i.e.*, the extent of deviation).

Accordingly, I would remand the case to the family court to exercise its discretion as set forth above.