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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

RECKTENWALD, C.J., NAKAYAMA, AND McKENNA, JJ., WITH ACOBA, J., CONCURRING SEPARATELY, AND POLLACK, J., DISSENTING SEPARATELY

OPINION OF THE COURT BY RECKTENWALD, C.J.

In June 2000, Colleen Collins and John Wassell gathered at a park with their friends, families, and a minister, for the apparent purpose of getting married. After the wedding ceremony, the couple began having second thoughts about the marriage because of its financial implications. Specifically, they believed that Collins and her two daughters would be better able to afford college tuition if Collins was listed as a single parent on financial aid applications. Thus, the couple requested that the minister not submit the completed license and certificate of marriage to the State Department of Health. The minister returned the form to Collins and Wassell, and they subsequently wrote to the State Department of Health stating that they were not getting married.

Following a one-week honeymoon, Collins and Wassell began living together. They each maintained individual financial accounts, but also shared a joint bank account. The couple deposited monetary gifts from their wedding into the joint account and they each agreed to deposit funds into the account. Collins made regular monthly deposits to the joint account. Collins also deposited funds from the sale of her separately owned townhouse and a tax refund into the joint account. Funds from the joint account were used to pay off the mortgage on Wassell's separately owned house, and for the couple's shared utility and grocery bills. The couple legally married in January 2005, after Collins no longer needed financial aid to fund her daughters' college educations.

In 2007, Collins filed for divorce against Wassell, and argued that she was entitled to an equalization payment for her contributions during the period of premarital cohabitation. Wassell, however, maintained that an equalization payment was not warranted because he and Collins had agreed that they would each maintain separate financial identities until the time of their legal marriage. The family court agreed with Wassell and determined that the couple did not form a premarital economic partnership within the meaning of Helbush v. Helbush, 108 Hawaiʻi 508, 122 P.3d 288 (App. 2005).[1] The Intermediate Court of Appeals affirmed the divorce decree entered by the family court, and Collins sought review in this court.

For the reasons set forth below, we now affirm the rule set forth in Helbush, that, in dividing and distributing property of a married couple pursuant to Hawaiʻi Revised Statutes (HRS) section 580-47, premarital contributions are a relevant consideration where the parties cohabited and formed a premarital economic partnership. We further hold that the family court clearly erred in concluding that Collins and Wassell did not form a premarital economic partnership. We therefore vacate the judgment of the ICA and the family court's divorce decree and remand to the family court for further proceedings consistent with this opinion. Because our resolution of these two issues is dispositive, we do not consider Collins's arguments that: (1) in the absence of a premarital economic partnership the family court should have nevertheless considered her premarital contributions;

[1] As discussed further infra, the Intermediate Court of Appeals determined in Helbush that "a 'premarital economic partnership' occurs when, prior to their subsequent marriage, [two people] 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 Hawaiʻi at 515, 122 P.3d at 295.

and (2) premarital contributions are a valid and relevant consideration warranting deviation from partnership principles.

I. Background

The following factual background is taken from the record on appeal.

A. Family Court Proceedings

On August 8, 2007, Collins filed a complaint for divorce against Wassell, alleging that their marriage was irretrievably broken. In her position statement, Collins stated that she should be awarded an equalization payment for her contributions during the couple's premarital cohabitation:

> Cohabitation occurred on June 18, 2000 when [Wassell] moved into [Collins's townhouse]. [Wassell] did not pay [Collins's] mortgage at that time although he was receiving rent from his house. From the time of cohabitation until the date of marriage, the parties had a joint financial relationship where [Collins] paid off the mortgage in the marital house, previously owned by [Wassell] and continued to pay into the joint account from where joint bills were paid. Although[] marriage did not occur until 2005 <u>equalization is due [Collins] for the amount of: $74,122.00</u>. [Collins] is further entitled to her prorata rental equity due to [Wassell's] sole use of the marital home during separation.

(Emphasis added).

After Wassell filed an answer, he filed a motion for partial summary judgment, requesting that the family court determine the following: (1) the couple was married on January 19, 2005; (2) the couple agreed after their wedding ceremony on June 19, 2000, that they would not file their marriage license and would not be married; (3) the purpose of the couple not filing their marriage license was to allow Collins to complete financial aid forms as a single parent; and (4) the couple's "arrangement, whereby the partners would cohabitate but keep their finances separate while maintaining their single status . . . in lieu of a traditional marriage indefinitely and expressly for [Collins's] personal financial interest" was a valid and enforceable premarital agreement.

Collins filed an opposition to Wassell's motion arguing that pursuant to the ICA's decision in Helbush, she and Wassell had formed a premarital economic partnership after their 2000 wedding ceremony. The family court granted the motion in part, determining that Wassell's and Collins's date of marriage (DOM) was January 19, 2005, but denied the motion as to the remaining issues.

Wassell argued in his position statement the following:

> [Collins] argues for deviation from the Partnership Model division based upon DOM [(]January 19, 2005) valuations. [Collins's] argument is based upon a June 18, 2000 marriage ceremony which she put on for show. Although [Wassell] thought that the marriage was taking place, at the post-ceremony reception [Collins] told [Wassell] that she did not want the marriage for financial reasons. [Collins's] daughters were about to attend prestigious colleges[.] . . . [Collins] would need financial aid to pay for the $30,000 plus annual cost. If [Collins] was married the financial aid available would be less. [Collins] wanted to keep their finances separate so she could complete the financial aid forms showing her separate individual income and expenses. [Wassell] agreed not to be married on June 18, 2000 and to keep their finances separate.
>
> It is [Wassell's] position that there was no joint financial relationship from June 18, 2000, as [Collins] contends. It is [Wassell's] position that they loved each other and wanted to live together. When they lived together as gestures of their love

they bought each other meals, and shared their living arrangements and helped each other in various ways.

A one-day trial was held on the division of the parties' marital estate. Collins and Wassell were the only two witnesses to testify and they testified in relevant part as follows.

Collins testified that, on June 18, 2000, she and Wassell had a wedding ceremony with their friends, families, and a minister. After the ceremony, the couple signed the marriage license, but neither Collins nor Wassell mailed the marriage license to the State Department of Health because Collins "was afraid that [her] daughters would lose a lot of financial aid that they were receiving for college." Specifically, Collins was concerned that the colleges would consider both her and Wassell's incomes in determining financial aid awards for her daughters if she were married. Wassell told Collins that he thought her daughters should pay their own way through college. Collins did not believe that it was Wassell's responsibility to help pay for her daughters' college educations.

Collins further testified that, following their honeymoon, for a few weeks the couple moved back and forth between Collins's separately owned townhouse and Wassell's separately owned house. Wassell then moved into Collins's townhouse. Wassell moved all of his furniture into the townhouse, but left some appliances in his house. While the couple was living at the townhouse, Wassell did not pay any part of the mortgage nor did he pay rent to Collins. Collins paid for all of the townhouse's utilities. Collins acknowledged that Wassell may have done small things around the townhouse, but testified that he did not make any major repairs. While Wassell was living in Collins's townhouse, he was able to rent out his house.

Collins testified that, even though they were not legally married between June 2000 and January 2005, she and Wassell conducted their finances as if they were married. Specifically, Collins testified that although she and Wassell agreed to maintain their individual bank accounts, they also agreed to contribute to a joint bank account, which would be used to pay for shared living expenses. The monetary gifts the couple received at their wedding ceremony, totaling $1,120, were deposited into this joint account. Collins regularly deposited between $500 and $700 a month into the joint account. Collins also deposited a personal income tax refund totaling $1,043.60 into the joint account. According to Collins, Wassell made a few contributions to the account.

Collins sold the townhouse in 2001, at which point the couple moved into Wassell's house. The money from the sale of Collins's townhouse, totaling $23,020.74, was deposited into the joint account. On the same day that deposit was made, $4,239.59 from the joint account was used to pay off the mortgage on

Wassell's house. Funds from the joint account were also used to pay for the utilities of Wassell's house, the couple's groceries, and gas for Collins's and Wassell's vehicles. Collins and Wassell continuously cohabited until their separation on January 1, 2007. Collins testified that, as of 2004, all of her friends thought that she was married.

Wassell testified that he made repairs and improvements to Collins's townhouse, such as replacing a water heater, painting, and fixing the plumbing, louvered windows, and an outdoor clothesline. Wassell acknowledged that Collins had paid approximately $4,200 to pay off the mortgage on his house, and testified that, after they were separated in 2007, he offered to repay Collins the money.

With regard to the marriage license that was signed but never submitted to the State Department of Health, Wassell testified that Collins wanted to remain single for purposes of completing the financial aid forms. Wassell further testified that he and Collins therefore agreed to have separate finances. According to Wassell, that agreement lasted until January 19, 2005, when he and Collins were officially married. At that point, Collins no longer needed to submit financial aid applications.

Wassell also testified that he made deposits into the joint account, which was previously held in his name only. Wassell explained that he and Collins set up the joint account so that they could both have access to its money, and so that bills could be paid automatically from the account.

Wassell indicated that he (1) paid Collins $1,000 on April 17, 2001, (2) paid for the propane, internet, and telephone bills with funds from his separate bank account, and (3) paid for food between ninety and ninety-five percent of the time that he and Collins went out to eat.

The family court made the following relevant findings of fact:

> FINDINGS OF FACT
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> . . . .
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> 16. Ms. Collins believed that if she were to marry Mr. Wassell and disclose financial information reflecting her change in financial status to the two colleges, she would likely be unable to afford the resulting tuition, with the consequence that her daughters would not be able to attend those colleges.
> 17. In order to avoid that consequence, Ms. Collins and Mr. Wassell agreed that they would not mail their marriage license and certificate to the Department of Health, and that each of them would maintain separate financial identities, so that Ms. Collins could continue to qualify for the financial aid she needed to send her daughters to their schools of choice.
> 18. Ms. Collins believed that the financial responsibility for sending her daughters to college was hers alone, and that Mr. Wassell did not share in that obligation, and for his part, Mr. Wassell did not believe he was obligated to assist Ms. Collins with the financial burden arising from her daughters' college education.
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> . . . .
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> 21. Mr. Wassell owned a residence in Hawaiian Paradise Park, and Ms. Collins owned a townhouse in Pacific Heights.
> 22. For a time, the couple went back and forth between the two residences, then settled on living in Ms. Collins'[s] townhouse.
> 23. Mr. Wassell's house in Paradise Park was rented out during some portion of the time that the couple lived in Ms. Collins'[s] townhouse.
> 24. The rent that Mr. Wassell received from the rental of his residence in Hawaiian Paradise Park was not shared with Ms. Collins.

25. Mr. Wassell did not pay rent to Ms. Collins during the period that the couple was living in Ms. Collins'[s] townhouse.
26. Shortly after the apparent marriage in June of 2000, Ms. Collins'[s] name was added to an account that Mr. Wassell had at CU Hawaii FCU, and the account thereafter remained a joint account.
27. The couple agreed that the joint account would be used for household expenses; both were to deposit funds in the account.
28. The couple received wedding gifts and gifts of cash at their apparent wedding in June, 2000; the cash gifts were deposited into the joint credit union account.
29. Following her addition to the joint account, Ms. Collins made regular monthly deposits, typically in the amount of $500.00, into the joint account.
30. Mr. Wassell made few, if any, deposits into the joint account during the years 2000 through 2007.
31. The funds in the joint account were used primarily for household expenses, i.e. food and household utilities.

. . . .

47. On the date of the legal marriage on January 19, 2005, Ms. Collins was owed a debt by Mr. Wassell in the amount of $4,239.59, which had been incurred when Ms. Collins used her funds to pay off the balance of Mr. Wassell's mortgage in December, 2001.

. . . .

67. On the [date of marriage (DOM)], [Collins] was owed a debt with a [net market value (NMV)] of $4,239.59 by [Wassell] (for the mortgage payoff on the HPP property). On the [date of the conclusion of the evidentiary part of trial (DOCOEPOT)], this debt remained unpaid, and thus unchanged in value. The DOM NMV of this debt is [Collins's] Category 1 asset.

. . . .

As relevant here, in its third conclusion of law, the family court stated that "[b]etween the dates of June 18, 2000, and January 19, 2005, the parties did not participate in an 'economic partnership' within the meaning of Helbush[], and the division of their marital assets by the court must therefore be based upon the date of their legal marriage." In summary, the family court analyzed this issue as follows.

The family court explained that, under Helbush, cohabitation alone is insufficient to establish an economic partnership. Specifically, the family court explained that "there must be a commingling of finances, assets, and energies sufficiently comprehensive to establish a 'partnership.'" The family court stated that "there is no such thing, for these purposes, as a 'partial partnership.'" In this regard, the family court explained that "[p]arties who are emotionally involved with one another and who are cohabiting must inevitably [commingle] their energies and finances to some extent — the exigencies of normal life and collective activity could scarcely allow it to be otherwise." Thus, the family court observed, "some measure of such commingling is to be expected in every instance of cohabitation, and does not by its mere existence rise to the level necessary to establish a Helbush 'economic partnership.'"

The family court then evaluated whether Collins and Wassell had "committed their energies and their assets to one another's purposes to the extent necessary to warrant a conclusion that they were engaged in a relationship akin to that found in a business partnership." The family court stated that although Collins and Wassell "quite explicitly commingled a portion of their funds for housekeeping purposes," they also "simultaneously maintained distinct separate financial identities."

The family court explained that the most obvious example of Collins's and Wassell's separate financial identities was the couple's conscious decision not to make their first marriage legal "for the express purpose of maintaining separate financial identities." The family court noted that Collins and Wassell had two motives in agreeing not to be married. First, Collins sought to take full advantage of the financial aid available to her, and, second, Wassell "could refrain from shouldering any share of that not insignificant burden." The family court stated that "[f]ar from reflecting the parties' intention to 'apply their financial resources to and for the benefit of each other's persons, assets, and liabilities,'" these facts reflected "the parties' express intention not to do so." (Citation and ellipsis omitted).

The family court specifically noted that Collins represented in her financial aid applications that she was single, and that Collins and Wassell signed a letter to the State Department of Health representing that they had decided not to be married. The family court further noted that both Collins and Wassell maintained separate individual checking, savings, and retirement accounts, and life insurance policies, and that Collins and Wassell each appeared to hold title to their own vehicle.

With respect to the joint account, the family court observed that Collins was the primary, if not the exclusive, contributor to the account, and that Collins's monthly deposits were "obviously insufficient to pay the living expenses of two adults." The family court concluded that the "joint account no doubt reflected a measure of financial cooperation by the parties, but it seems wholly inadequate to carry the weight of establishing an economic partnership between them."

Based on its findings and conclusions, the family court divided the marital estate and concluded that under a strict application of marital partnership principles, Collins would owe Wassell an equalization payment of $11,807.85. However, because Wassell had wasted assets after the family court's express order to the contrary, the court concluded that Collins was entitled to a deviation in the amount of $17,238.05. Accordingly, the family court ordered Wassell to pay a final equalization payment of $5,430.20, the difference between the deviation and Collins's equalization payment.

The family court filed its divorce decree, and Collins appealed.

B. ICA Appeal

On appeal, Collins argued that the family court incorrectly valued the parties' financial contributions on the date of marriage.[2] Instead, Collins argued, the family court

[2] Collins challenged Findings of Fact Nos. 17, 18, and 67, which are set forth above, as well as several Findings of Fact (Nos. 68, 70, 71, 73-76, 78-80, and 82) that valued various assets as of the date of marriage. She also challenged Conclusion of Law No. 3, and the family court's decision. The (continued...)

should have concluded that Collins and Wassell formed a premarital economic partnership on the date of their wedding ceremony, and should have calculated the value of the parties' assets and any equalization payments based on that date. Collins asserted that the majority of the family court's findings supported a conclusion that the parties had formed a premarital economic partnership. Collins argued that the family court's finding that the parties initially agreed not to become legally married in order to avoid negative financial aid consequences for Collins's daughters did not void this premarital economic partnership.

A majority of the ICA affirmed the family court's divorce decree. The ICA "decline[d] to overturn" the family court's determination that Collins and Wassell had not formed a premarital economic partnership, noting that the factors the family court cited in support of its decision "were relevant to evaluating the parties' intent and the degree to which they applied their resources and efforts 'to and for the benefit of each other's person, assets, and liabilities.'" In addition, the ICA concluded that the family court's decision was based on

[2](...continued)
ICA concluded that Findings of Fact 17, 18, and 67 were not clearly erroneous, and that the remaining challenged factual findings were not erroneous because the family court determined that Collins and Wassell had not entered into a premarital economic partnership. The ICA therefore concluded that the date of marriage was the relevant date for valuing Wassell's assets, dividing the couple's assets, and equalizing the parties' obligations. Collins's application does not separately address these findings of fact.

factual findings supported by substantial evidence. The ICA further concluded that because no premarital economic partnership was formed, it did not need to address Collins's argument that the family court erred in using the date of marriage in valuing Wassell's assets, dividing the parties' assets, and equalizing the parties' obligations.

In a dissenting opinion, Judge Reifurth stated that the family court erred in failing to utilize the analysis required by Helbush in determining that Collins and Wassell had not formed a premarital economic partnership. Judge Reifurth noted that the family court's analysis focused on Collins's and Wassell's attempt to maintain separate "financial identities," which he argued was not solely determinative of whether a premarital economic partnership was formed. Specifically, Judge Reifurth explained that:

> The ultimate issues are whether, and the extent to which, prior to the [date of marriage], 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.
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> . . . .
>
> I would vacate the Family Court's conclusion of law no. 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.

(Footnote omitted).

II. Standard of Review

A. Family Court Decisions

> The family court's [findings of fact] are reviewed on appeal under the "clearly erroneous" standard. A [finding of fact] is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with a definite and firm conviction that a mistake has been made. "Substantial evidence" is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.
>
> On the other hand, the family court's [conclusions of law] are reviewed on appeal de novo, under the right/wrong standard. [Conclusions of law], consequently, are []not binding upon an appellate court and are freely reviewable for their correctness.

Kakinami v. Kakinami, 127 Hawaiʻi 126, 136, 276 P.3d 695, 705 (2012) (citations omitted).

IV. Discussion

In her application, Collins raises the following question: whether the family court misapplied the premarital cohabitation rule set out in Helbush in concluding that Collins and Wassell had not entered into a premarital economic partnership. We now affirm the rule set forth in Helbush, that, in dividing and distributing property pursuant to HRS § 580-47, premarital contributions are a relevant consideration where the parties cohabited and formed a premarital economic partnership. We further hold that the family court erred in concluding that

Collins and Wassell did not form a premarital economic partnership.[3]

A. An overview of Hawaiʻi's property division scheme

In Hawaiʻi, "[t]here is no fixed rule for determining the amount of property to be awarded each spouse in a divorce action other than as set forth [in] HRS § 580-47." Kakinami, 127 Hawaiʻi at 136-37, 276 P.3d at 705-06 (citing Tougas v. Tougas, 76 Hawaiʻi 19, 26, 868 P.2d 437, 444 (1994)). Under HRS § 580-47, the family court has wide discretion to divide marital property according to what is "just and equitable." Tougas, 76 Hawaiʻi at 26, 868 P.2d at 444 (citing Gussin v. Gussin, 73 Haw. 470, 479, 836 P.2d 484, 489 (1992)).

As this court has explained, when the directive of the court is to do what is just and equitable, each case must be decided upon its own facts and circumstances. Gussin, 73 Haw. at 479, 836 P.2d at 489 (citing Carson v. Carson, 50 Haw. 182, 183, 436 P.2d 7, 9 (1967)). Of course, this discretion is not without limitation. A grant of discretion means that "the court has a range of choice, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any

[3] In her application, Collins also raises two additional questions: (1) whether the rule set forth in Helbush precludes the family court from considering premarital contributions in the absence of a premarital economic partnership; and (2) assuming that the parties did not enter into a premarital economic partnership, did the ICA gravely err in not considering whether Collins's premarital contributions were a valid and relevant consideration warranting deviation from the marital partnership categories. Insomuch as we conclude that the family court erred in finding that Collins and Wassell did not form a premarital economic partnership, we do not consider these additional arguments.

mistake of law." Gussin, 73 Haw. at 479, 836 P.2d at 489 (internal quotation marks and citation omitted). "To the extent that a certain degree of uniformity, stability, clarity or predictability of family court decisions can be attained, while at the same time preserving the wide discretion mandated by HRS § 580-47, judges are compelled to apply the appropriate law to the facts of each case and be guided by reason and conscience to attain a just result." Id. at 486, 836 P.2d at 492 (internal quotation marks omitted).

Consistent with the wide discretion bestowed on the family court, HRS § 580-47 provides that upon granting a divorce, the family court may "make any further orders as shall appear just and equitable . . . finally dividing and distributing the estate of the parties, real, personal, or mixed, whether community, joint, or separate[.]" HRS § 580-47(a). Section 580-47 further provides that in making these orders, the family court shall consider 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, any violation of a restraining order by either party, and all other circumstances of the case. HRS § 580-47(a).

Cases in this jurisdiction have "created a framework based on partnership principles that provides further guidance for family courts to use in dividing property upon divorce." Kakinami, 127 Hawaiʻi at 137, 276 P.3d at 706. In Gussin, this court rejected the notion that the division and distribution of the estates of parties must commence at uniform starting points. 73 Haw. at 486, 836 P.2d at 492. This court held that the concept of uniform starting points "restrict[ed] the family courts' discretion in the equitable division and distribution of parties' estates." Id. The court specifically rejected the ICA's "rebuttable presumptions" that bound a judge to presume specific percentage splits in the division of each category of property. Id. at 481, 836 P.2d at 490. This court instead determined that "the 'partnership model of marriage' provides the necessary guidance to the family courts in exercising their discretion and to facilitate appellate review." Id. at 486, 836 P.2d at 492. Specifically, the court noted:

> This court has accepted the "time honored proposition that marriage is a partnership to which both partners bring their financial resources as well as their individual energies and efforts." The ICA has also acknowledged that, in divorce proceedings regarding division and distribution of the parties' estate, "partnership principles guide and limit the range of the family court's choices."
>
> Under general partnership law, "each partner is entitled to be repaid his contributions to the partnership property, whether made by way of capital or advances." Absent a legally permissible and binding partnership agreement to the contrary, "partners share equally in the profits of their partnership, even though they may have contributed unequally to capital or services." Hawaii partnership law provides in relevant part as follows:
>
> Rules determining rights and duties of partners. The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

> (a) Each partner shall be repaid the partner's contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to the partner's share in the profits.

Id. at 483-84, 836 P.2d at 491 (citations omitted).

In Tougas, this court again endorsed the "partnership model" and noted that the family court can utilize the following five categories of net market values as guidance in divorce cases:

> Category 1. The net market value (NMV), plus or minus, of all property separately owned by one spouse on the date of marriage (DOM) but excluding the NMV attributable to property that is subsequently legally gifted by the owner to the other spouse, to both spouses, or to a third party.
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> Category 2. The increase in the NMV of all property whose NMV on the DOM is included in category 1 and that the owner separately owns continuously from the DOM to the DOCOEPOT [date of the conclusion of the evidentiary part of the trial].
>
> Category 3. The date-of-acquisition NMV, plus or minus, of property separately acquired by gift or inheritance during the marriage but excluding the NMV attributable to property that is subsequently legally gifted by the owner to the other spouse, to both spouses, or to a third party.
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> Category 4. The increase in the NMV of all property whose NMV on the date of acquisition during the marriage is included in category 3 and that the owner separately owns continuously from the date of acquisition to the DOCOEPOT.
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> Category 5. The difference between the NMVs, plus or minus, of all property owned by one or both of the spouses on the DOCOEPOT minus the NMVs, plus or minus, includable in categories 1, 2, 3, and 4.

76 Hawaiʻi at 27, 868 P.2d at 445 (citation omitted).

The court in Tougas further noted that the NMVs in Categories 1 and 3 are the parties' "capital contributions" that are, pursuant to general partnership law, returned to each spouse. Id. (citations omitted). Categories 2 and 4 are the "during-the-marriage increase in NMVs of the Categories 1 and 3 Properties owned at DOCOEPOT[,]" which similar to partnership profits, are generally to be shared equally. Id. Thus, these cases establish that the "partnership model is the appropriate law for the family courts to apply when exercising their discretion in the adjudication of property division in divorce proceedings." Id. at 28, 868 P.2d at 446.

B. Premarital contributions are a relevant consideration in dividing the marital estate

This case presents an issue of first impression for this court, i.e., whether premarital contributions made during a period of cohabitation are a relevant consideration in dividing property pursuant to HRS § 580-47. A long line of ICA cases has concluded that premarital contributions are relevant in dividing the marital estate. For the reasons set forth below, we also hold that premarital contributions may be considered by the family court in dividing the martial estate when the parties entered into a premarital economic partnership and cohabited prior to marriage.

The proposition that parties may enter into an economic partnership prior to marriage first appears to have been recognized in Raupp v. Raupp, 3 Haw. App. 602, 609 n.7, 658 P.2d 329, 335 n.7 (1983). In Raupp, the ICA noted that "[w]here the parties first commenced an economic partnership and later married, it may be appropriate to obtain [an itemized description and value of all property owned by each party] as of the time they commenced their economic partnership," in dividing the martial estate upon divorce. Id.; see also Higashi v. Higashi, 106 Hawaiʻi 228, 241, 103 P.3d 388, 401 (App. 2004) (noting that the economic partnership begins on the earlier of the date of marriage or the date the parties first commenced their economic partnership that continued when they married). Raupp and Higashi therefore stand for the general proposition that premarital circumstances may be relevant in distributing property upon divorce if the couple formed an economic partnership prior to marriage.

In Malek v. Malek, 7 Haw. App. 377, 379, 768 P.2d 243, 246 (1989), the ICA held that the family court properly considered contributions made by one spouse to the other spouse's separate property during the couple's premarital cohabitation and subsequent marriage. In Malek, the only major asset involved in the divorce was the husband's lease of a two-acre parcel of land with a house on it. Id. at 378, 768 P.2d at 246. During a sixteen-month period of premarital cohabitation, the couple lived together on this property. Id. at 379, 768 P.2d at 245. Although the husband provided all of the financial support for the couple, and the wife was unemployed, the wife assisted in upgrading the house. Id. at 379, 768 P.2d at 246. The family court valued the husband's lease at $92,000 when the couple began living together, $113,000 when the couple married, and $115,000 when the couple separated in contemplation of divorce. Id. at 378, 768 P.2d at 245. As part of its property division, the family court awarded the wife five percent (i.e., $6,650) of the property's value on the date of marriage. Id.

On appeal, the husband argued that the family court could not consider anything that happened before the couple was legally married in distributing property pursuant to HRS § 580-47. Id. at 380, 768 P.2d at 246. The ICA rejected this argument, concluding that the "family court's discretion when dividing and distributing property and debts in divorce cases is not so restricted." Id. The ICA held that "[w]hen the parties thereafter divorced, the family court, in the exercise of its duty to divide and distribute property in divorce cases, allowably considered their respective contributions to [the] separate property during both their premarital cohabitation and subsequent marriage." Id.; see also Hussey v. Hussey, 77 Hawaiʻi 202, 206, 881 P.2d 1270, 1274 (App. 1994) (defining premarital separate property as "property owned by each spouse immediately prior to their marriage or cohabitation that was concluded by their marriage") (emphasis added)), overruled on other grounds by State v. Gonsales, 91 Hawaiʻi 446, 984 P.2d 1272 (App. 1999). Thus, pursuant to Malek, in making an equitable distribution of property pursuant to HRS § 580-47, the family court may consider contributions made to specific assets during a period of premarital cohabitation. 7 Haw. App. at 379-80, 768 P.2d at 246.

Relying on Malek, 7 Haw. App. at 380, 768 P.2d at 246, the Helbush court concluded that where premarital cohabitation matures into marriage, the family court is generally allowed to consider the respective contributions of each spouse during both the premarital economic partnership and subsequent marriage in dividing and distributing property pursuant to a divorce. 108 Hawaiʻi at 515, 122 P.3d at 295. The Helbush court explained that "a 'premarital economic partnership' occurs when, prior to their subsequent marriage, [two people] 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." Id. The Helbush court therefore concluded that the family court is allowed to consider premarital contributions of each spouse in dividing the marital estate when the couple formed an economic partnership and lived together prior to marriage.[4]

We now affirm the holding of Helbush that premarital contributions are a relevant consideration when the parties entered into a premarital economic partnership during a period of

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[4] To be clear, the rule set forth in Helbush applies only to situations in which a relationship ultimately culminates in marriage, and does not address circumstances where cohabitation does not result in marriage. See Maria v. Freitas, 73 Haw. 266, 274, 832 P.2d 259, 264 (1992) (holding that "[a] person who is not legally married does not qualify for the positive legal consequences of marriage" (citation omitted)).

cohabitation. See Helbush, 108 Hawaiʻi at 514-15, 122 P.3d at 294-95.

Our conclusion in this regard is consistent with HRS § 580-47 and our adoption of partnership principles, which, as noted above, provide guidance for family courts in dividing property upon divorce. The family court is vested with wide discretion in "finally dividing and distributing the estate of the parties, real, personal, or mixed, whether community, joint, or separate." HRS § 580-47(a). In making a division and distribution of property, HRS § 580-47(a) identifies certain enumerated factors which the family court shall consider, including the respective merits of the parties, the relative abilities of the parties, the condition in which each party will be left by the divorce, and "all other circumstances of the case." HRS § 580-47(a) (emphasis added). Contributions made by either spouse after the couple entered into a premarital economic partnership are therefore included within "all [the] other circumstances of the case" which the family court is required to consider in determining an equitable distribution of the marital estate.[5] HRS § 580-47(a).

[5] The dissent argues that applying the test set forth above "may lead to challenges of otherwise valid prenuptial agreements." Dissenting opinion at 17. As the dissent points out, however, Collins and Wassell did not enter into a premarital agreement. Dissenting opinion at 19. Moreover, where a couple has formed a premarital economic partnership, they are fully able to control the disposition of property acquired during the premarital period by executing a valid premarital or postmarital agreement. See HRS § 572D-3 (2006) ("Parties to a premarital agreement may contract with respect to . . . [t]he rights and obligations of each of the parties in any of the (continued...)

C. The family court erred in determining that a premarital economic partnership was not formed

The family court determined that Collins and Wassell did not form a premarital economic partnership because they maintained "distinct separate financial identities," and were therefore not "engaged in a relationship akin to that found in a business partnership." Collins argues that, in evaluating whether she and Wassell entered into a premarital economic partnership, the family court did not adequately consider the nature and degree to which she and Wassell applied their resources, energies, and efforts for each other's benefit, and that the family court relied on irrelevant factors, such as the parties' admitted use of separate financial accounts, Collins's filing financial aid applications as a single parent, and the parties' letter to the Department of Health stating their intention not to be legally married. For the reasons set forth below, the family court erred in determining that Collins and Wassell did not enter into a premarital economic partnership.

As stated above, a premarital economic partnership is formed when, "prior to their subsequent marriage, [two people] cohabit and apply their financial resources as well as their individual energies to and for the benefit of each other's

[5](...continued)
property of either or both of them whenever and wherever acquired or located[.]"); HRS § 572-22 (2006) ("All contracts made between spouses . . . not otherwise invalid because of any other law, shall be valid."). A valid premarital or postmarital agreement must be enforced by the family court. <u>See</u> <u>Epp v. Epp</u>, 80 Hawaiʻi 79, 86, 905 P.2d 54, 61 (App. 1995).

person, assets, and liabilities." Helbush, 108 Hawaiʻi at 515, 122 P.3d at 295. Whether a premarital economic partnership has been formed depends upon the intention of the parties. See, e.g., Stanford Carr Dev. Corp. v. Unity House, Inc., 111 Hawaiʻi 286, 302, 141 P.3d 459, 475 (2006) ("[W]hether an agreement creates a partnership or not depends upon the intention of the parties." (Brackets in original and citation omitted)). Absent an express agreement, in evaluating whether the parties intended to form a premarital economic partnership, the family court must consider the totality of the circumstances, including both the economic and non-economic contributions of the parties. See Cassiday v. Cassiday, 68 Haw. 383, 387, 716 P.2d 1133, 1136 (1986) ("[M]arriage is a partnership to which both partners bring their financial resources as well as their individual energies and efforts."); see also LeMere v. LeMere, 663 N.W.2d 789, 797 (Wis. 2003) (noting that marriage is "an equal partnership, in which the contributions of the spouse who is primarily engaged in child-rearing and homemaking are presumptively valued equally with those of the income-earning spouse"). In making this determination, relevant considerations may include, but are not limited to, joint acts of a financial nature, the duration of cohabitation, whether — and the extent to which — finances were commingled, economic and non-economic contributions to the household for the couple's mutual benefit, and how the couple treated finances before and after marriage.[6] See, e.g., In re Marriage of Clark, 71 P.3d 1228, 1230 (Mont. 2003) (concluding that trial court did not err in considering premarital contributions where one spouse made improvements to the home and surrounding property of the other spouse); Floyd v. Floyd, 436 S.E.2d 457, 459 (Va. Ct. App. 1993) ("[A] trial court may properly consider the parties' premarital contributions, both monetary and nonmonetary, insofar as those contributions affected the value of the marital property but that cohabitation alone — absent a showing of its impact on marital property values — is not an appropriate consideration."); Wall v. Moore, 704 A.2d 775, 777 (Vt. 1997) (affirming the family court's determination that it could consider the non-monetary and monetary contributions of the parties during their 11-year premarital relationship when dividing the couple's assets upon divorce); Hendricks v. Hendricks, 784 N.E.2d 1024, 1028 (Ind. Ct. App. 2003) (concluding that trial court did not abuse its discretion in considering premarital contributions where spouse worked part-time, paid rent on couple's home, and started business with other spouse).

ICA cases applying the rule enunciated in Helbush have therefore properly focused on both the financial and non-financial aspects of the parties' premarital relationship. See,

[6] The dissent argues that this test is "nearly unlimited" and provides "no guidance" to the family court. Dissenting opinion at 13. Respectfully, the test to be used in evaluating whether a premarital economic partnership has been formed must be flexible in order to accommodate the range of factual circumstances presented to the family court.

e.g., Chen v. Hoeflinger, 127 Hawaiʻi 346, 279 P.3d 11 (App. 2012); Aiona-Agra v. Agra, No. 30685, 2012 WL 593105 (App. Feb. 23, 2012) (SDO); Doe v. Roe, No. 28596, 2010 WL 2535138 (App. June 23, 2010) (mem. op.); Gordon v. Gordon, Nos. CAAP-12-0000806, CAAP-12-0001096, 2013 WL 6231721 (App. Nov. 29, 2013) (mem. op.) (upholding family court's determination that a couple entered into a premarital economic partnership by jointly contributing capital and labor to real estate investments, and living in a relationship which culminated in marriage).

For example, in Chen, Hui Z. Chen married Thomas J. Hoeflinger in 1995. 127 Hawaiʻi at 350, 352, 279 P.3d at 15, 17. Chen began living with Hoeflinger in 1992. Id. at 352, 279 P.3d at 17. The family court concluded that the couple entered into a premarital economic partnership when Chen "was employed at a hospital and she utilized her income to pay for the household expenses such as food and supplies to which [Hoeflinger] also contributed when [Chen's] income was insufficient." Id. at 359, 279 P.3d at 24 (brackets in original). The family court further noted that Chen and Hoeflinger also enjoyed "all of the conjugal benefits as if they were husband and wife." Id. On appeal, Hoeflinger contended that the family court erred in finding that he and Chen formed a premarital economic partnership. Id. at 358, 279 P.3d at 23. Specifically, Hoeflinger argued that there was no premarital economic partnership because Chen did not contribute to or enhance the parties' assets. Id. at 359 n.11, 279 P.3d at 24 n.11. The ICA rejected these arguments, noting that "[w]hen Chen paid for food and supplies for the benefit of Hoeflinger, it enhanced and supported Hoeflinger." Id.

In Aiona-Agra, the family court also determined that Heather Aiona-Agra (Wife) and Jayson Javier Agra (Husband) formed a premarital economic partnership. 2012 WL 593105, at *3. On appeal, Husband argued that the record "fail[ed] to evidence a single 'financial resource' from [Wife] prior to their marriage[.]" Id. The ICA rejected this argument and concluded that Husband's position "ignore[d] the fact that the partnership model considers more than just monetary contributions to the partnership." Id. The ICA determined that "the unchallenged findings of fact establish that Wife contributed some 'individual energies and efforts' to the construction of the home and Husband lived rent-free with Wife and with Wife's family, as a direct benefit of his relationship with Wife." Id. Accordingly, the ICA concluded that the family court did not err in finding that

Husband and Wife had formed a premarital economic partnership.[7] Id.

In sum, these cases properly recognize that the family court, in determining whether a premarital economic partnership was entered into, must consider both the financial and non-financial contributions of the parties during the premarital relationship.

Here, the undisputed facts establish that Collins and Wassell formed a premarital economic partnership in 2000. In this regard, it is undisputed that following the wedding ceremony in 2000, the couple began living together. The couple continued to live together until they were legally married in 2005. Collins testified that, as of 2004, all of her friends thought that she was married. During this time, Collins and Wassell applied "their financial resources as well as their 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.

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[7] In contrast, in Doe, 2010 WL 2535138, at *7, the ICA affirmed the family court's determination that no premarital economic partnership was formed. There, the couple had cohabited for approximately one year before they married. Id. at *1. Two days prior to their date of marriage, the husband purchased property in Kamuela. Id. at *7. Upon divorce, the family court awarded the husband a capital contribution credit for the property. Id. at *1. The family court concluded that "[s]imply cohabitating together does not automatically transform a relationship into a premarital economic partnership[.]" Id. at *7. The family court further made unchallenged findings that there was no credible evidence that the wife had contributed financially toward the purchase of the property, had worked to enhance its value prior to the date of marriage, or had participated in its upkeep prior to the date of marriage. Id. The ICA therefore affirmed the family court's determination and noted that there was "no clear error in the family court's ruling." Id.

Specifically, upon returning from their honeymoon, the couple first lived in Collins's townhouse. Collins thereby applied her resources to the partnership by allowing Wassell to live in her townhouse rent-free. See Aiona-Agra, 2012 WL 593105, at *3 (noting that it was relevant to the inquiry as to whether a premarital economic partnership was formed that one spouse lived rent-free with the other spouse's family). Wassell, in turn, applied his energies and efforts to and for the benefit of the partnership by helping to make improvements to the townhouse, including installing a new water heater, painting some rooms, and making other small repairs. In addition to receiving the benefit of living in Collins's townhouse rent-free, Wassell further benefitted from Collins's contributions because he was able to rent out his separately owned house.

The parties' utilization of the joint bank account further demonstrates the existence of a premarital economic partnership. Wassell created the joint account by adding Collins's name to what had been his separate account. Following the 2000 wedding ceremony, the couple deposited cash gifts totaling more than $1,100 into the joint account. Collins also deposited proceeds from the sale of her townhouse totaling more than $23,000 into the joint account, and later deposited a tax refund of more than $1,000 into the account. The couple agreed that they would each deposit funds into the account, and that the funds would be used for household expenses. Collins made regular monthly deposits to the account, and the funds were used to pay off the mortgage on Wassell's house, and to pay for household expenses, including groceries and household utilities.[8] See Chen, 127 Hawaiʻi at 352, 359, 279 P.3d at 17, 24 (noting that a premarital economic partnership was formed when one spouse purchased food and supplies for the benefit of the other spouse during their premarital cohabitation).

To the extent the family court noted that Collins's monthly contribution into the joint account was insufficient to cover the parties' monthly expenses, the family court failed to recognize that the remainder of Collins's and Wassell's joint living expenses were presumably covered by one or both of the parties. Indeed, in addition to using funds from the joint account to pay for groceries and the utilities for Wassell's house, evidence offered at trial indicated that Wassell occasionally bought groceries, and that, when the couple ate out, Wassell paid the bill between ninety and ninety-five percent of the time.

After nearly five years of living together, the couple legally married. Notably, nothing appears to have materially

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[8] The dissent argues that we place "undue reliance" on the joint bank account. Dissenting opinion at 15. As explained above, in addition to the joint account, the manner in which Collins and Wassell handled their real property and covered their mutual expenses further demonstrated that they had formed a premarital economic partnership. Moreover, in determining whether a premarital economic partnership has been formed, the relevant inquiry is whether the parties have applied "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. For all the reasons set forth above, that standard was plainly satisfied here.

changed in the couple's day-to-day relationship or how they managed their financial affairs. Indeed, Collins expressly testified that she and Wassell maintained separate bank accounts both before and after their legal marriage in 2005. It therefore appears that, even after they were legally married, the couple cohabited in Wassell's house and continued to use the joint account as they had during their premarital relationship, i.e., as a common fund into which both made deposits and from which withdrawals were made to pay for communal expenses. Because Collins and Wassell applied "their financial resources as well as their 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, the family court erred in determining that Collins and Wassell had not entered into a premarital economic partnership.

The family court further erred in relying on its finding that Collins and Wassell "maintained distinct separate financial identities." Specifically, the family court noted that the couple maintained separate checking and savings accounts. However, the fact that Collins and Wassell each maintained separate financial accounts does not, in and of itself, support the family court's ultimate determination that no premarital economic partnership was formed. See, e.g., Epp, 80 Hawaiʻi at 93, 905 P.2d at 68 (noting that marital partners' pattern or practice of conducting some or all of their property and financial affairs as if they were not marital partners is not a basis for deviating from the partnership model). In focusing on "separate financial identities," the family court failed to address whether the parties' individual financial accounts were used to pay collective expenses. Put another way, the holding of funds in separate accounts is not dispositive when the parties' respective financial resources, energies, and efforts are otherwise applied for each other's mutual benefit. See Helbush, 108 Hawaiʻi at 515, 122 P.3d at 295.

Finally, the family court erroneously focused on Collins's representation on her daughters' financial aid applications that she was single and the letter to the Department of Health signed by Collins and Wassell that indicated that they decided not to be married. Specifically, the family court appeared to suggest that it was inconsistent for Collins to assert that she and Wassell had entered into a premarital economic partnership after she stated on financial aid applications that she was single.

First, it should be noted that Collins's representations on financial aid applications and to the Department of Health that she was unmarried were factually accurate, because Collins and Wassell were not, in fact, married until January 19, 2005. Indeed, it would have been inaccurate for Collins or Wassell to represent to financial aid representatives that they were married. Thus, Collins did not misrepresent her legal status on the financial aid applications and the couple did not misrepresent their legal status in the letter to the Department of Health.

Second, these representations are not necessarily inconsistent with an intent to form a premarital economic partnership. Although Collins and Wassell agreed not to become legally married in 2000, that does not mean that they agreed they would not be economic partners. To the contrary, they immediately began behaving like the legally married couple that they eventually became. Again, the relevant inquiry is whether the parties intended to apply their resources, efforts, and energies for each other's benefit before ultimately marrying. The funding source for Collins's daughters' college tuition is but one aspect of the couple's financial circumstances, and Collins's interest in receiving financial aid as a single parent is not sufficient to override the parties' apparent intent to engage in a premarital economic partnership in all other aspects of their financial lives. Furthermore, it appears that both parties benefitted financially from these representations — Collins was able to send her daughters to the colleges of their choice, and Wassell presumably benefitted from funds that otherwise would have paid for college expenses.

The family court's valuation and division of Wassell's house illustrates why the court's application of the principles set forth in Helbush failed to ensure a fair and equitable property distribution in this case. Collins argued that Wassell should be awarded the house, which he separately owned, but that she was entitled to an equalization payment for that property. As noted above, during the period of premarital cohabitation, Wassell lived rent-free in Collins's townhouse, Wassell collected rent from his house, Collins used the proceeds from the sale of her separately owned townhouse to pay off the mortgage on Wassell's house, and the couple eventually cohabited in Wassell's house prior to their legal marriage. According to Collins, the value of the house more than doubled during that period. The family court nevertheless valued the property on the date of marriage and awarded it solely to Wassell. Under the principles set forth above, Wassell's house should have been valued at the time that the premarital economic partnership began. Otherwise, Wassell is allowed to retain all of the appreciation attributable to Collins's and Wassell's joint efforts prior to marriage. See Helbush, 108 Hawaiʻi at 515, 122 P.3d at 295.

While the family court is given broad deference to weigh the evidence and to determine credibility, see Booth v. Booth, 90 Hawaiʻi 413, 417, 978 P.2d 851, 855 (1999) (holding that "the family court assesses and weighs all valid and relevant considerations to exercise its equitable discretion in distributing marital property"), the family court here applied incorrect legal principles when considering the nature and degree to which the parties applied their financial resources, energies, and efforts for each other's benefit. <u>See</u> <u>Helbush</u>, 108 Hawaiʻi at 515, 122 P.3d at 295. Under the circumstances of this case — particularly where the family court relied solely on the parties' financial identities, failed to adequately consider the nature and degree to which the parties applied their financial resources, energies, and efforts for the benefit of each other, and weighed against the parties that they truthfully stated their marital status to third parties — the family court erred in determining that Collins and Wassell did not form a premarital economic partnership.

V. Conclusion

For the foregoing reasons, we vacate the ICA's judgment, the family court's Conclusion of Law No. 3, Findings of Fact No. 47, 67, 68, 70, 71, 73-76, 78-80, and 82, and the Decision, and the property-division and equalization provisions in the Divorce Decree. We remand to the family court to make a division and distribution of property in light of Collins's and Wassell's premarital economic partnership.

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