

**Electronically Filed
Supreme Court
SCWC-29553
13-FEB-2014
08:20 AM**

SCWC-29553

IN THE SUPREME COURT OF THE STATE OF HAWAII

HIROKAZU NAKAJIMA,
Petitioner/Plaintiff-Appellant,

vs.

AKI NAKAJIMA,
Respondent/Defendant-Appellee.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(ICA NO. 29553; FC-DIVORCE NO. 05-1-0587)

ORDER VACATING INTERMEDIATE COURT OF APPEALS' ORDER
DISMISSING APPEAL AND REMANDING APPEAL TO ICA
(By: Nakayama, Acoba, McKenna and Pollack, JJ.,
with Recktenwald, C.J., concurring and dissenting)

Upon consideration of petitioner/plaintiff-appellant Hirokazu Nakajima's application for writ of certiorari, which was filed on April 9, 2013, and accepted on May 21, 2013, the documents attached thereto and submitted in support thereof, and the record, it appears that the Intermediate Court of Appeals ("ICA") has jurisdiction to render a decision in the appeal.

The "Decree Granting Absolute Divorce", filed on June 24, 2008 ("Divorce Decree"), did not fully and finally determine

that part of the divorce concerning the division and distribution of property and debts. See Schiller v. Schiller, 120 Hawai'i 283, 289, 205 P.3d 548, 554 (App. 2009) (divorce cases involve four discrete parts: (1) dissolution of the marriage; (2) child custody, visitation and support; (3) spousal support; and (4) division and distribution of property and debts). Instead, the Divorce Decree sets forth a procedure for determining the valuation of the property to be distributed. The procedure was not completed until after the Divorce Decree was filed. See generally Black v. Black, 6 Haw. App. 493, 494, 728 P.2d 1303, 1304 (1986) (the property distribution portion of the divorce decree was not fully and finally decided until after the family court decided the valuation issue of a contested property). The "Motion for Clarification of Divorce Decree Entered on June 24, 2008", filed on July 7, 2008, was a motion that was necessary to effectuate the Divorce Decree, and the "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)", filed on November 26, 2008 ("Post-Decree Order"), was therefore the final, appealable order on the issue of the division and distribution of property and debts. See Aoki v. Aoki, 105 Hawai'i 403, 404, 98 P.3d 274, 275 (App. 2004) (the part of the divorce concerning the division and distribution of property and debts is separately final and appealable when decided). The

Notice of Appeal, which was filed on December 26, 2008, was filed within thirty days from the entry of the Post-Decree Order and, therefore, was timely. Accordingly,

IT IS HEREBY ORDERED that the ICA's "Order Dismissing Appeal", filed on February 22, 2013, is vacated, and the appeal is remanded to the ICA for disposition on the merits.

DATED: Honolulu, Hawai'i, February 13, 2014.

Blake T. Okimoto, Esq.
for petitioner/plaintiff-
appellant Hirokazu Nakajima

/s/ Paula A. Nakayama
/s/ Simeon R. Acoba, Jr.
/s/ Sabrina S. McKenna
/s/ Richard W. Pollack

