NO. CAAP-14-0001246

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

KAZUKO IRIE ST. ROMAIN, Plaintiff-Appellee, v.
ROBERT FRANCES ST. ROMAIN, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 11-1-1233)

SUMMARY DISPOSITION ORDER
(By: Leonard, Presiding Judge, Reifurth and Ginoza, JJ.)

Defendant-Appellant Robert Frances St. Romain (**Robert**) appeals from the Order Regarding Plaintiff's Motion for Attorney's Fees and Costs per Family Court Rule 68, filed on October 3, 2014 (**Order Regarding Fees**) in the Family Court of the First Circuit (**Family Court**).[1] The Order granted attorney's fees to Plaintiff-Appellee Kazuko Irie St. Romain (**Kazuko**), pursuant to Hawaiʻi Family Court Rules (**HFCR**) Rule 68, after Robert rejected Kazuko's Rule 68 Offer of Settlement (the **Offer**), but obtained a judgment that was patently not more favorable than the Offer.

[1] The Honorable Kevin A. Souza presided.

On appeal, Robert challenges the Family Court's findings of fact (**FOFs**) and conclusions of law (**COLs**), and argues that the court erred in ordering him to pay $11,393.99 in attorney's fees and costs to his ex-wife, Kazuko.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Robert's points of error as follows:

HFCR Rule 68 (2014) provides, in relevant part:

> At any time more than 20 days before any contested hearing held pursuant to HRS sections 571-11 to 14[2] . . . is scheduled to begin, any party may serve upon the adverse party an offer to allow a judgment to be entered to the effect specified in the offer. Such offer may be made as to all or some of the issues . . . . If the judgment in its entirety finally obtained by the offeree is patently not more favorable than the offer, the offeree must pay the costs, including reasonable attorney's fees incurred after the making of the offer, unless the court shall specifically determine that such would be inequitable. . . .

On March 8, 2013, the parties were divorced by settled and stipulated terms, memorialized in a Family Court Decree Granting Absolute Divorce (**Decree**). Pursuant to the Property Division section of the Decree, Robert was awarded certain personal property, including clothing, jewelry, memorabilia, musical and recording equipment, fishing gear, business records, boats, cars, and motorcycles. Robert was denied access to Kazuko's house due to a temporary restraining order (**TRO**) filed against him on February 2, 2012, but successfully moved to have

[2] HRS § 571-14 (2014) provides that the Family Court "shall have exclusive original jurisdiction" over HRS Chapter 580, which governs "Annulment, Divorce, and Separation." See HRS § 571-14(a)(3) (2006) and Chapter 580 (2006).

the TRO lifted[3] so he could retrieve his awarded property. On August 17, 2013, Robert went to the house to collect the awarded property, but he claimed that certain awarded items were missing or that Kazuko failed to make them available. On October 17, 2013, Robert filed a Motion and Declaration for Post-Decree Relief (**Relief Motion**) seeking enforcement of the property division/awards of the Decree. Robert asserted that Kazuko had disposed of many of the personal belongings he was specifically awarded, and that many items that were made available were in a poor state of repair because Kazuko left them outside and exposed to the elements. An evidentiary hearing on the motion was set for May 27, 2014.

On March 10, 2014, Kazuko conveyed the aforementioned Rule 68 Offer of $5,000 to settle the case, which was rejected by Robert. On May 30, 2014, the court entered its Decision and Order, stating, *inter alia*, that, "based on the credible and reliable evidence adduced at trial, . . . all of the items being sought by Defendant's motion were either: (1) already returned to Defendant, (2) not located at the marital residence at the time of the divorce; or (3) never existed to begin with" that Robert did not present any evidence at trial to establish the value or damage to the items; that, based on the "credible and reliable evidence issued at trial," the list of items to be collected was handwritten by Robert, himself, and constituted his own claim as to what items were located at Kazuko's residence; and that, even

[3] On August 7, 2013, the Honorable Catherine H. Remigio issued an order amending the TRO to allow Robert to retrieve his personal property.

assuming that Robert established at trial that Kazuko failed to comply with the terms of the Decree or the order amending the TRO, he still failed to meet his burden of establishing value for the items he sought. The Decision and Order accordingly denied Robert's Relief Motion.

On July 16, 2014, Kazuko filed a Rule 68 Motion for Attorney's Fees and Costs (**Fee Motion**), seeking $11,393.99 in fees and costs incurred after the making of the March 10, 2014 Offer. After a hearing was held on September 17, 2014, on December 2, 2014, the court entered its FOFs and COLs, granted Kazuko's Fee Motion, and concluded, *inter alia*, that the Rule 68 Offer was properly presented by Kazuko to Robert, that the judgment finally obtained by Robert, which awarded him nothing, was not patently more favorable to Robert than Kazuko's Offer, that an award of attorney's fees and costs to Kazuko would not be inequitable in accordance with HRS Chapter 580-47, and that the attorney's fees and costs being requested are reasonable and supported by appropriate time sheets and documentation.

Robert's further arguments are unavailing. Robert points to no facts or evidence addressing, *inter alia*, the "relative abilities of the parties," "the condition in which each party will be left by the divorce," or "the concealment of or failure to disclose income or an asset." Without any specific references to the matters that were allegedly wrongly considered by the Family Court, or any other citations to the record supporting his argument, Robert has not shown that the record lacks substantial evidence to support its findings. Robert

failed to identify support in the record for his contentions, and thus, this court has no basis to find error in the Family Court's challenged FOFs and COLs.

Pursuant to HFCR Rule 68, attorney's fees may be awarded when the "judgment in its entirety finally obtained by the offeree is patently not more favorable than the offer." HFCR Rule 68. Here, the Family Court awarded Robert nothing, whereas pursuant to the Offer, Kazuko would have given him $5,000.

Accordingly, the Family Court's October 3, 2014 Order Regarding Fees is affirmed.

DATED: Honolulu, Hawaiʻi, June 14, 2016.

On the briefs:

Michael A. Glenn,
for Defendant-Appellant.

Presiding Judge

Everett Cuskaden,
Ryan C. Cuskaden,
for Plaintiff-Appellee.

Associate Judge

Associate Judge