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NO. CAAP-24-0000752

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

HAVI NIU, Plaintiff-Appellee,
v.
NERISHA IVALANI FOTU NIU, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(CASE NO. 2FDV-22-0000767)

SUMMARY DISPOSITION ORDER

(By: Leonard, Presiding Judge, Wadsworth and Guidry, JJ.)

Defendant-Appellant Nerisha Ivalani Fotu Niu (**Wife**) appeals from the Family Court of the Second Circuit's (**family court**) June 17, 2024 "Divorce Judgment." On December 31, 2024, the family court entered its "Findings of Facts [(**FOFs**)] and Conclusions of Law" (**FOFs/COLs**) and, on July 1, 2025, it entered its post-judgment "Order Denying [Wife's] Motion to Dismiss and [Wife's] Answer to Judgment Divorce Regarding Hearing of

July 29, 2024 Filed on August 2, 2024" (**Order Denying Reconsideration**).¹

Wife raises six points of error on appeal, contending that the family court erred: (1) when it "ruled that all properties were Category 5 Marital Property," "failed to address [Plaintiff-Appellee Havi Niu's (**Husband**)] property in Tonga," and "ruled that Wife be ordered to pay \$1000.00/month to Husband as alimony"; (2) "where it ordered \$2,953.11 in [attorney's] fees for [Husband] based on 'good cause'"; (3) "where it found [Wife] in contempt of court, and consequently ordered [attorney's] fees and costs [to] be paid by [Wife]"; (4) "where it did not allow [Wife] to call witnesses related to her case"; (5) "where it did not allow [Wife] to call [Husband] as a witness during her case-in-chief"; and (6) "where it denied [Wife's] motions for reconsideration based on newly discovered evidence."

Upon careful review of the record, briefs, and relevant legal authorities, and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Wife's contentions of error as follows:

¹ The Honorable James R. Rouse presided over the trial and entry of the Divorce Judgment, FOFs/COLs, and Order Denying Reconsideration. Wife's appeal is timely taken from the Order Denying Reconsideration.

(1) **Category 5 Property**. Wife contends that the family court erred in including four parcels of real property (the **Properties**) as Category 5 properties. "We review the family court's final division and distribution of the estate of the parties under the abuse of discretion standard, in view of the factors set forth in [Hawaii Revised Statutes (**HRS**)] § 580-47 [(2018)]^[2] and partnership principles." Selvage v. Moire, 139 Hawai'i 499, 506-07, 394 P.3d 729, 736-37 (2017) (citation omitted).

"Hawai'i law follows a framework based on partnership principles for the division of marital partnership property during divorce proceedings." Id. at 507, 394 P.3d at 737 (citation omitted). Pursuant to this framework, family courts divide property into five categories of net market values. Id. Category 5 property consists of marital partnership property that is divided equally between the parties. Aoki v. Aoki, 105 Hawai'i 403, 405, 98 P.3d 274, 276 (App. 2004). Wife contends that the Properties were not Category 5 properties, but rather, her "sole and separate propert[ies]" pursuant to a post-marital

² 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) (2018). HRS § 580-47 gives the family court "wide discretion to divide Marital Partnership Property in a manner that is just and equitable under the facts and circumstances of each case." Hamilton v. Hamilton, 138 Hawai'i 185, 200, 378 P.3d 901, 916 (2016) (cleaned up).

agreement entered into between the parties or, in the alternative, because she used her funds and gift monies from her family to purchase the Properties. Husband disputes Wife's contentions.

At trial, Wife argued that Husband knew that the Properties were to be treated as marital separate property; the family court found Wife not credible. "It is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." In re Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001) (cleaned up). The record reflects that Wife provided no evidence to support her claim that she and Husband had entered into a post-marital agreement.

The record also reflects that Wife's father and sister testified at trial that they collectively gave Wife over \$200,000 towards the purchase of the Properties, but that neither witness presented any other evidence to corroborate their testimony. The family court found that their testimony was not credible.

On this record, we conclude that Wife did not meet her burden of establishing that the Properties were her own separate properties. The family court therefore did not clearly err in determining that they were not her own separate properties.

Tonga Property. Wife contends on appeal that the family court erred in failing to include property in Tonga (**Tonga Property**), that is allegedly owned by Husband, as part of the marital estate. The only evidence at trial was Husband's testimony that the Tonga Property is owned by his parents. There was no clear error in failing to include the Tonga Property in the marital estate. "As a general rule, if a party does not raise an argument at trial, that argument will be deemed to have been waived on appeal; this rule applies in both criminal and civil cases." County of Hawai'i v. C & J Coupe Fam. Ltd. P'ship, 119 Hawai'i 352, 373, 198 P.3d 615, 636 (2008) (citations omitted).

Spousal Support Award. Wife contends that the family court abused its discretion in awarding spousal support to Husband, by not properly considering the factors set forth in HRS § 580-47(a)³ and in awarding spousal support as a sanction

³ HRS § 580-47(a) provides, in relevant part,

Upon granting a divorce . . . the [family] court may make any further orders as shall appear just and equitable . . .
(2) compelling either party to provide for the support and maintenance of the other party

In addition to any other relevant factors considered, the court, in ordering spousal support and maintenance, shall consider the following factors:

- (1) Financial resources of the parties;
- (2) Ability of the party seeking support and maintenance to meet his or her needs independently;
- (3) Duration of the marriage;

(continued . . .)

against Wife for her misconduct. "[T]he family court has wide discretion when making its decision regarding spousal support," but in exercising this discretion, "the family court must consider all of the factors enumerated in HRS § 580-47(a)."

Jacoby v. Jacoby, 150 Hawai'i 158, 166, 498 P.3d 689, 697 (2021) (citations omitted).

Wife does not point to any evidence that supports her argument that spousal support was awarded as a sanction against Wife. The family court's finding that Wife's monthly income was \$12,554.36, and Husband's monthly income was \$2,500, is consistent with the information provided in Wife and Husband's submitted Income and Expense Statements. The family court also made specific findings that the parties' ages, length of

³(. . . continued)

- (4) Standard of living established during the marriage;
- (5) Age of the parties;
- (6) Physical and emotional condition of the parties;
- (7) Usual occupation of the parties during the marriage;
- (8) Vocational skills and employability of the party seeking support and maintenance;
- (9) Needs of the parties;
- (10) Custodial and child support responsibilities;
- (11) Ability of the party from whom support and maintenance is sought to meet his or her own needs while meeting the needs of the party seeking support and maintenance;
- (12) Other factors which measure the financial condition in which the parties will be left as the result of the action under which the determination of maintenance is made; and
- (13) Probable duration of the need of the party seeking support and maintenance.

marriage, lack of children, financial assets, and occupations support the Spousal Support Award. Wife does not specifically challenge these findings on appeal. The family court did not abuse its discretion by awarding spousal support to Husband.

For the foregoing reasons, we conclude that the family court acted within the permissible scope of its discretion in categorizing the Properties as category 5 properties, not including the Tonga Property as part of the marital estate, and awarding spousal support to Husband.

(2) Wife contends that the family court erred by entering its August 24, 2023 "Amended [FOFs], Conclusions of Law[], and Orders Regarding [Husband's] June 16, 2023 Filed Motion for Attorney's Fees and Costs and [Husband's] August 3, 2023 Filed Non-Hearing Motion for Attorney's Fees and Costs" (**August 2023 Fees Order**).⁴ The family court therein directed Wife to reimburse Husband \$2,953.11 in attorney's fees incurred for work on Husband's motion for an order directing Wife to cease any attempts to refinance the Properties.⁵ We review a

⁴ The family court did not cite HRS § 580-47(f) (2018) as a statutory basis for awarding fees. Nor did Husband cite HRS § 580-47(f) as statutory authority for his fees request. HRS § 580-47 therefore did not govern the family court's fees award. See Cox v. Cox, 138 Hawai'i 476, 489, 382 P.2d 288, 301 (2016) ("[T]he provisions of HRS § 580-47 must govern in all instances where a party to a family court proceeding seeks an award for attorney's fees and costs subject to this statute." (footnote omitted)).

⁵ These fees relate to counsel's work on Husband's "Ex Parte Motion for an Order That [Wife] Cease Immediately All Refinancing and Money Distributions Related to the Parties['] Four Real Properties Until Further
(continued . . .)

family court's award of attorney's fees and costs for abuse of discretion, limiting the family court's discretion "only by the standard that [the imposition of fees and costs] be fair and reasonable." Hamilton, 138 Hawai'i at 209, 378 P.3d at 925 (citation omitted).

In awarding fees, the family court awarded fees pursuant to HRS §§ 580-9 (2018), 580-10.5 (2018), and 584-16 (2018) (repealed 2026), concluding that,

9. H.R.S. §607-14.5 authorizes an award of attorneys' fees when the court finds that a claim or defense is frivolous. The record is devoid of any court finding [Wife] or [Husband's] claims frivolous, accordingly [the court] will not be awarding fees and costs pursuant to this statute.
10. This court finds however, **pursuant to H.R.S. §§580-9; §580-10.5; §584-16;** H.F.C.R. Rules 2.1; 7; 8; 9; 10; 11; 12; 37; 54; 60(b); 89; and H.C.C. Rule 7.2 that [Husband's] request for reimbursement of fees and costs is warranted, and good cause exists to grant in its entirety [Husband's] counsel's Non-hearing Motion for Fees.

(Emphasis added) (footnotes omitted.) See City & County of Honolulu v. Hsiung, 109 Hawai'i 159, 178, 124 P.3d 434, 453 (2005) ("Ordinarily, attorneys' fees cannot be awarded as damages or costs unless so provided by statute, stipulation, or agreement." (citation omitted)). We consider the applicability of these statutory provisions in turn.

⁵(. . . continued)
Order of the Court and for Attorney's Fees and Costs." Although Husband subsequently withdrew his request for an order directing Wife to cease any attempts to refinance the subject properties, he did not withdraw his request for attorney's fees incurred for work on the motion.

HRS § 580-9 permits the family court to "compel either spouse to advance reasonable amounts" for the trial expenses "including attorney's fees . . . incurred by the other spouse." This statute does not apply here because the family court's fees award was not an "advance," but an outright award of fees to Husband.

HRS § 580-10.5, which governs automatic restraining orders, instructs that a restraining order "shall specify that . . . [n]either party shall . . . dispose of any property . . . belonging to or acquired by either party, except as," among other things, "[r]equired for payment of reasonable attorney's fees and costs in connection with the action." This statute does not apply here. While HRS § 580-10.5 contemplates that the parties' property may be used to pay reasonable attorney's fees, it does not authorize the family court to award attorney's fees.

HRS § 584-16, which gave the family court discretion to award reasonable costs in parentage proceedings, was repealed in 2026 with the adoption of portions of the Uniform Parentage Act, as codified in HRS chapter 584A. Like HRS § 584-16, the newly adopted costs provision in HRS Chapter 584A authorizes attorney's fees and costs to be awarded in parentage proceedings. 2025 Haw. Sess. Laws Act 298, § 2 at 971 (eff. Jan. 1, 2026) (to be codified at HRS § 584A-505) (instructing that the family court "may order reasonable fees of counsel

. . . and other costs of the action and pretrial proceedings . . . to be paid by the parties in proportions and at times determined by the court."). This is not a parentage proceeding, and this statute therefore does not apply.

On this record, we conclude that the award of attorney's fees was outside of the permissible scope of the statutory authority cited by the family court, and we therefore vacate the August 2023 Fees Order.

(3) Wife contends that the family court erred by entering the September 25, 2023 "Order Granting [Husband's] Motion Filed August 31, 2023" (**Contempt Order**), which held Wife in contempt of court for failing to comply with the August 22, 2023 "Order on Settlement Conference Held on August 9, 2023" (**Occupancy Order**).⁶ We review the family court's Contempt Order for abuse of discretion. LeMay v. Leander, 92 Hawai'i 614, 620, 994 P.2d 546, 552 (2000).

Pursuant to the Occupancy Order, the family court ordered that Husband "shall have exclusive occupancy of the [parties' West Wakea residence] . . . from August 18, 2023 through August 22, 2023 to visit with [Husband's] daughter." The family court further ordered that Wife was not to be at the

⁶ The Honorable Adrienne N. Heely entered the Occupancy Order, and the Honorable James R. Rouse entered the Contempt Order.

West Wakea residence during this time. Wife moved for reconsideration; the family court denied Wife's motion.

Following Wife's failure to adhere to the Occupancy Order, the family court held Wife "in contempt for willfully violating the [family court's] [Occupancy Order]," and ordered Wife to reimburse "[Husband's] attorney's fees and costs for having to file and pursue [the contempt] motion" and "for [Husband's] expenses spent for lodging in the amount of \$3,187.36."

Hawai'i courts possess the inherent authority to hold parties in contempt. Id. at 621, 994 P.2d at 553. To establish contempt, the moving party must demonstrate that: "(1) the order with which the contemnor failed to comply is clear and unambiguous; (2) the proof of noncompliance is clear and convincing; and (3) the contemnor has not diligently attempted to comply in a reasonable manner." Id. at 625, 994 P.2d at 557 (citation omitted). "A knowing or intentional state of mind is immaterial when determining civil contempt violations due to its remedial purpose; the real question is whether the alleged contemnor has failed to comply with the court's order." Id. (citations omitted).

It is undisputed that Wife did not comply with the Occupancy Order, and that Wife's son and his family were in fact living at the West Wakea residence from August 18 through

August 22, 2023. Wife did not deny this, but instead attempted to justify her noncompliance with the Occupancy Order by making arguments that had previously been rejected by the family court.⁷ We conclude that the family court acted within the scope of its permissible discretion in holding Wife in contempt for not complying with the Occupancy Order.

(4) Wife contends that the family court erred by not allowing her to call "Elena and Steve Walker" (the **Walkers**),⁸

⁷ Wife argued at the contempt hearing that her son and his family were living at the West Wakea residence because they had been displaced by the Maui fires. Wife had previously made these arguments in her motion for reconsideration of the Occupancy Order, and the family court had rejected them, as set forth in FOF 16:

16. Prior to [Husband's] daughter's visit, [Wife] filed an Emergency Ex Parte Motion for Reconsideration of the [family court's] decision to allow [Husband] to spend time with his daughter at the marital home. [Wife] claimed that following the hearing she received a text from "her son who lives in Lahaina that he needed her house as shelter because of the Lahaina fires he had nowhere to go". Therefore, [Wife] argued that the house would be unavailable to [Husband] and his daughter. The [family court] scheduled the hearing on [Wife's] Motion to August 17, 2023, the day before the visit.

[Wife's] Motion for Reconsideration was heard by the [family court] the day before the visit. There was a short hearing on August 17th wherein the Judge asked [Wife] several questions regarding her request. The Judge who also resided in Lahaina at the time of the fires asked [Wife] questions such as where does your son live? [Wife] would or could not answer the questions. The Judge was able to ascertain that [Wife's] son did not live in the section of Lahaina that suffered from the fires and that his home was intact. The [family court] did not find [Wife's] testimony credible and denied her Ex Parte Motion for Reconsideration.

(Citations omitted.)

⁸ Wife alludes to other "witnesses [who would] substantiate the cash payments made to Husband for work he did" but does not identify or make
(continued . . .)

"based solely on [Wife] allegedly failing to give notice of said witnesses to opposing counsel prior to the February 15, 2024[] hearing." The family court's imposition of sanctions is reviewed for abuse of discretion. Weinberg v. Dickson-Weinberg, 123 Hawai'i 68, 71, 229 P.3d 1133, 1136 (2010). "[T]he sanction chosen must be commensurate with the offense[.]" Id. at 77, 229 P.3d at 1142.

Wife attempted to call the Walkers as witnesses during her case-in-chief at the February 2024 trial. The family court gave Wife the opportunity to demonstrate that she had provided notice of her intent to call the Walkers as witnesses. The Walkers' names were not included on Wife's October 17, 2023 witness list, nor did she seek to amend the witness list to include the Walkers.

In Weinberg, the Hawai'i Supreme Court explained that the trial court's inherent powers include the authority to,

curb abuses and promote a fair process which extends to the preclusion of evidence and may include dismissal in severe circumstances. It follows that if the trial court has the inherent power to level the "ultimate sanction" of dismissal, it necessarily has the power to take all reasonable steps short of dismissal, depending on the equities of the case.

Id. at 75, 229 P.3d at 1140 (cleaned up). The supreme court instructed that, "the imposition of a sanction," including the

⁸(. . . continued)
arguments specific to those other witnesses. Wife's argument as to witnesses other than the Walkers is therefore waived.

preclusion of evidence, "requires an analysis of the relevant facts and circumstances that resulted in the exercise of discretion." Id. at 76, 229 P.3d at 1141 (cleaned up).

Here, the family court, in balancing the equities, determined that Wife could not call witnesses that had not been included on Wife's filed witness list. Wife did not request an extension of the pretrial discovery deadlines, or a continuance of trial, but nevertheless maintained that she should be allowed to call the Walkers during the ongoing trial. Husband objected on the basis that his counsel had not been given any notice that Wife intended to call the Walkers as witnesses, and that counsel's inability to prepare for the Walkers' testimony would prejudice Husband.

Weinberg distinguished this court's prior holding in Glover v. Grace Pac. Corp., 86 Hawai'i 154, 164, 948 P.2d 575, 585 (App. 1997), in which we concluded that the trial court did not abuse its discretion by striking an expert witness. The supreme court therein clarified that "the striking of *one* expert witness—whose value to the outcome of trial was unknown inasmuch as neither the trial court nor the parties knew what the expert's as yet unfurnished final opinion would have been—does not have the same effect of essentially barring *nearly an entire body of evidence*, as in this case." Weinberg, 123 Hawai'i at 77-78, 229 P.3d at 1142-43. We find this instructive.

Here, the family court precluded Wife from calling two witnesses whose testimony was of unknown value. When the family court asked Wife for an offer of proof, Wife said this: "[Steve Walker] has a lot because that's Blue Hawai'i. He represents -- he's the property manager, and he does the admin [sic] for Blue Hawai'i. So he has a lot to clear up with issues that [Husband's counsel has] been discussing."⁹ On this record, we conclude that the family court did not abuse its discretion by determining that, on balance, the prejudice to Husband was significant and warranted preclusion of Wife's undisclosed witness testimony, the value of which could not be discerned based on Wife's offer of proof. Unlike Weinberg, this is not a case where "[t]he family court's ruling effectively precluded [a party] from presenting any expert witnesses and reports, as well as other documentary evidence," such that the prejudice to the party "was tantamount to entering a default against [the party]." Id. at 76, 229 P.3d at 1141.

(5) Wife contends that the family court erred by not allowing her to recall Husband as a witness during her case-in-chief. We review Wife's contention for abuse of discretion. See State v. Locken, 134 Hawai'i 376, 387, 341 P.3d 1176, 1187 (App. 2014) (citing Hawaii Rules of Evidence Rule 611(a) ("The

⁹ Wife did not make any offer of proof as to Elena Walker's testimony.

court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.")).

Wife misstates the record by representing that the family court denied her the opportunity to recall Husband for examination. Wife was allowed to cross-examine and conduct a recross-examination of Husband at the February 13, 2024 trial proceedings. Wife was thereafter allowed to conduct a separate direct examination of Husband.

Wife contends that she was denied the opportunity to question Husband as to "new" evidence regarding his "unreported" income. Although Wife characterizes the evidence as "new," she concedes that the evidence was available to her at the time of trial and would have been addressed "had she been allowed to call [Husband]." Again, the record reflects that Wife examined Husband, and had ample opportunity to question Husband as to his income on both cross and direct examination. Any failure to "confront[]" Husband as to evidence in Wife's possession at trial was therefore due to Wife's own oversight. See id. ("Defense counsel had a full and fair opportunity to examine [the witness]. However, due to oversight, he forgot to ask [the

witness] a question that he had intended to ask. Under standard rules of trial practice, an attorney for a party is required to ask all desired questions before a witness is excused.").

Wife's contention that she was denied the opportunity to adequately examine Husband lacks merit.

(6) Wife contends that the family court erred by denying her motion for reconsideration based on "newly discovered" evidence. We review the family court's denial of Wife's motion for reconsideration under the abuse of discretion standard. Bettencourt v. Bettencourt, 80 Hawai'i 225, 231, 909 P.2d 553, 559 (1995) .

Wife sought to introduce the evidence discussed in sections (4) and (5), supra, consisting of testimony by the Walkers and Husband that would allegedly have "provided valuable insight into the gift monies used, the state of the rentals, and the ownership of the [P]roperties," and that "would have authenticated . . . invoices" purportedly establishing Wife's ownership of the Properties. This evidence was not new. Wife admits that she had this evidence prior to trial; she contends that it should be *considered* "newly discovered" because she was not permitted to introduce this evidence at trial.

As addressed in sections (4) and (5), supra, the family court did not err in denying Wife's requests to call the Walkers as witnesses, nor was she denied the opportunity to

thoroughly question Husband. We conclude that the family court did not abuse its discretion by denying Wife's motion to reconsider those rulings.

For the foregoing reasons, we affirm in part and vacate in part. We vacate the August 2023 Fees Order, which awarded Husband fees in the amount of \$2,953.11. We affirm the Contempt Order, and the family court's award of attorney's fees and costs pursuant to that order. We affirm the Divorce Judgment, FOFs/COLs, and Order Denying Reconsideration in all other respects.

DATED: Honolulu, Hawai'i, September 22, 2026.

On the briefs:	/s/ Katherine G. Leonard Presiding Judge
Kai Lawrence, for Defendant-Appellant.	/s/ Clyde J. Wadsworth Associate Judge
Sarah M. Nishioka, for Plaintiff-Appellee.	/s/ Kimberly T. Guidry Associate Judge