

NO. 27313

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

ALICE A. STOMBER, Plaintiff-Appellee, v.  
STEPHEN J. STOMBER, Defendant-Appellant

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(FC-D No. 01-1-0179)

ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANT-APPELLANT'S MOTION FOR RECONSIDERATION  
AND AMENDING THE APRIL 17, 2007 ORDER DISMISSING APPEAL  
(By: Watanabe, Presiding J., and Nakamura, J.)<sup>1</sup>

On April 26, 2007, Defendant-Appellant Stephen J. Stomber (Stephen) filed a Motion for Reconsideration of the Order Dismissing Appeal (the Dismissal Order) entered by this court on April 17, 2007. The Dismissal Order concluded that we lacked appellate jurisdiction because the order entered by the Family Court of the First Circuit (the family court) on March 29, 2005 that granted in part and denied in part Stephen's Motion and Affidavit for Post-Decree Relief (the Post-Decree Order) failed to "determine the amount of Stephen's current income or the modified amount of child support payable by Stephen" and was therefore "not final and appealable."

In seeking reconsideration of the Dismissal Order, Stephen admits that the "*Post-Decree Order* did not set forth the

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<sup>1</sup> Former Chief Judge James S. Burns was a member of the panel on this appeal but has since retired from his judgeship, effective the close of business on April 18, 2007.

[f]amily [c]ourt's determination in regard to the amount of Stephen's current income, as well as . . . the modified amount of child support he was to pay." However, Stephen argues that "[n]o precedent stands for the proposition that an order which directs the payment of a specific amount of current monthly child support, whether modified support or otherwise, is not final and appealable unless it also expressly sets forth the parents' respective earnings which were used for purposes of the [Hawai'i Amended Child Support Guidelines] calculation." Stephen also points out that a Child Support Guidelines Worksheet (the Worksheet) that was filed concurrently with the filing of the Post-Decree Order reflects that Stephen's monthly gross income as of March 29, 2005 was \$3,880. Additionally, an "Amended Order/Notice to Withhold Income for Child Support" that was filed on March 29, 2005 (the Withholding Order) directed The American Legion National Headquarters (the American Legion)<sup>2</sup> to deduct a total of \$740 per pay period from Stephen's income "until further notice" and to forward said payments to the Child Support Enforcement Agency of the State of Hawai'i (CSEA) "within 5 working days of the pay date/date of withholding." Stephen argues that collectively, the Post-Decree Order, the Worksheet, and the Withholding Order finally resolved the child support

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<sup>2</sup> It appears that The American Legion National Headquarters was Defendant-Appellant Stephen J. Stomber's employer.

issues raised in his January 28, 2005 Motion and Affidavit for Post-Decree Relief and therefore, the Dismissal Order was wrongly entered.

We agree with Stephen that to be final and appealable, the Post-Decree Order was not required to expressly set forth Stephen's income and accordingly, grant in part Stephen's motion for reconsideration. However, we disagree with Stephen that the Withholding Order, which merely directs the American Legion to deduct a set amount from Stephen's paychecks and forward the amount to the CSEA, imposes an obligation on Stephen to pay a specific amount for child support that, along with the Post-Decree Order and the Worksheet, constitutes a final and appealable order.

The record reveals that when Stephen filed his Motion and Affidavit for Post-Decree Relief on January 28, 2005, he was required to comply with the Amended Administrative Findings and Order on Remand, issued by a CSEA hearings officer on August 16, 2004, which obligated him to pay \$713 monthly per child, for a total of \$2,140 monthly (the CSEA Order). While the Withholding Order indicates that the family court intended to reduce Stephen's child support obligation under the CSEA Order, the Post-Decree Order failed to expressly do so and therefore, no final and appealable order exists in the record that supersedes the CSEA Order as to Stephen's child support obligations.

Accordingly, we grant in part and deny in part Stephen's Motion for Reconsideration. The fourth sentence of the "DISCUSSION" portion of the Dismissal Order is hereby amended to read as follows:

It does not determine [the amount of Stephen's current income or] the modified amount of child support payable by Stephen.

(Bracketed language is to be deleted.)

The clerk of the court is directed to incorporate the foregoing changes in the Dismissal Order.

DATED: Honolulu, Hawai'i, May 4, 2007.

Robert M. Harris for  
defendant-appellant  
on the motion.

*Corinne K. Watanabe*

Presiding Judge

*C. W. Nakanishi*

Associate Judge