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2013 NOV 13 PM 4: 08

SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

CAROLYN JANE LAMB,
Plaintiff-Appellant,

v.

BENJAMIN RALPH HOFFMAN,
Defendant-Appellee.

OPINION

Cite as: 2013 Guam 25

Supreme Court Case No.: CVA12-036
Superior Court Case No.: CS0589-03

Appeal from the Superior Court of Guam
Argued and submitted on May 24, 2013
Hagåtña, Guam

Appearing for Plaintiff-Appellant:
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Appearing for Defendant-Appellee:
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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

MARAMAN, J.:

[1] This case is on its third appeal after remand to the trial court for proceedings consistent with this court's opinion in *Lamb v. Hoffman*, 2011 Guam 13 ("*Lamb II*"). Plaintiff-Appellant Carolyn Jane Lamb argues that the trial court acted beyond the scope of this court's mandate in *Lamb II* when it ordered that a Lexus automobile be returned to Defendant-Appellee Benjamin Ralph Hoffman. Furthermore, Carolyn assigns error to the order returning the automobile to Benjamin on the alternative ground that the automobile had originally been seized as security for Benjamin's child and spousal support obligations, and his spousal support obligation has not been satisfied.

[2] For the reasons set forth below, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] The facts underlying the original trial court proceedings can be found in *Lamb v. Hoffman*, 2008 Guam 2 ("*Lamb I*"), and *Lamb II*; thus, only those facts which are relevant to the current appeal will be recited.

[4] Benjamin and Carolyn were married in 1982. They have one daughter, Emma, born in 1989. In 1998, Carolyn filed a divorce action in Pictou County, Nova Scotia, Canada. Benjamin was ordered to pay Carolyn C\$2,391.00 per month in child support and C\$10,000.00 per month in spousal support.

[5] Benjamin subsequently moved to Guam, and Carolyn pursued him here to collect on past due child and spousal support. The child support referee issued a Findings and Recommended Order on September 5, 2003, wherein she ordered Benjamin to surrender the registration, title,

and keys to his Lexus to the law firm representing Carolyn “as security for past due and future child and spousal support payments pursuant to 5 G.C.A. section 34126.” Record on Appeal (“RA”), tab 35 at 2 (Findings & Recommended Order, Sept. 5, 2003). The referee also ordered Benjamin to pay \$25,000.00 to the Superior Court registry “as security for past due and future child and spousal support payments as provided in 5 G.C.A. section 34126.” *Id.*

[6] On January 26, 2004, the referee issued another Findings and Recommended Order, wherein she determined, *inter alia*, that Benjamin should not be given credit toward his support obligations for the transfer of certain Cell-Loc shares (“3001497 Cell-Loc shares”) to Carolyn because the shares were marital assets. Additionally, the referee found Benjamin to be in contempt for failing to fulfill his child and spousal support obligations. After hearing Benjamin’s objections, the Superior Court confirmed and ratified the referee’s Recommended Order. Benjamin appealed.

[7] In the original appeal, the *Lamb I* court expressed an inclination to agree with Benjamin that he should be given credit for the liquidation value of the 3001497 Cell-Loc shares. However, because of certain ambiguities in the record before the court, it ultimately remanded to the trial court the question of how much credit Benjamin should receive for the 3001497 Cell-Loc shares, allowing the parties to present arguments on the issue.

[8] On remand from *Lamb I*, the parties presented evidence regarding the 3001497 Cell-Loc shares, as well as evidence regarding a check from Benjamin to Carolyn for C\$2,391.00 and settlement agreements between the parties entered in Florida and Canada in 2005. The trial court awarded full credit to Benjamin for the liquidation value of the 3001497 Cell-Loc shares. The trial court also credited toward Benjamin’s child support obligation the amounts transferred to Carolyn under the Florida and Canada settlement agreements. As a result of these credits, the

trial court determined that Benjamin had fulfilled his child support obligations for the period of March 1, 2000 until January 26, 2004, i.e., the time period which the trial court determined it had jurisdiction over Benjamin. The trial court also ordered, per Benjamin's request, that the Lexus be sold and the proceeds from the sale, along with the \$25,000.00 held in the court registry, be used for Emma's educational expenses, and that any remaining amount be held in trust for Emma until her 25th birthday. Carolyn appealed.

[9] On second appeal, this court in *Lamb II* determined that in light of the evidence presented on remand that the 3001497 Cell-Loc shares were marital property, it was error for the trial court to award full credit to Benjamin for the liquidation value of these shares, as he was entitled to only 50% credit. We remanded the matter to the trial court to determine Benjamin's spousal and child support credit according to this holding.

[10] We also held that the trial court had exceeded the scope of the mandate in *Lamb I* when it considered the effect of the Florida and Canada settlement agreements and the check for C\$2,391.00 on Benjamin's support obligations. Characterizing the court's mandate in *Lamb I* as limited to the question of how much credit Benjamin should receive for the 3001497 Cell-Loc shares, we determined that the settlement agreements and the check fell outside the scope of *Lamb I*'s mandate. Moreover, because the court in *Lamb I* reviewed the referee's calculation of arrearage through September 30, 2003, we held that the trial court exceeded the scope of the mandate when it calculated arrearage through January 26, 2004. As for the portion of the trial court's order concerning the assets in the court registry (i.e., the Lexus and the \$25,000.00), we determined that the trial court did not act outside the scope of the mandate.

[11] On remand from *Lamb II*, the trial court credited Benjamin with 50% of the liquidation value of the 3001497 Cell-Loc shares. It also credited toward Benjamin's child support

obligation the \$25,000.00 held in the court registry. The court found that although the referee's original Findings and Recommended Order of September 5, 2003, required the \$25,000.00 payment as security for both child and spousal support, the statutory basis for the security, 5 GCA § 34126, contemplates security for child support only. The trial court heard argument from the parties regarding the Lexus automobile. The court noted that like the \$25,000.00, the Lexus was held as security for Benjamin's child support obligations pursuant to 5 GCA § 34126. Finding that Benjamin satisfied his child support obligations through September 30, 2003, the trial court ordered the Lexus be released to Benjamin. Carolyn timely filed the instant appeal.

II. JURISDICTION

[12] This court has jurisdiction over an appeal from an order after remand pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 113-38 (2013)) and 7 GCA § 3107 (2005).

III. STANDARD OF REVIEW

[13] We review *de novo* the trial court's interpretation of our mandate. *Lamb II*, 2011 Guam 13 ¶ 11 (citing *Town House Dep't Stores, Inc. v. Ahn*, 2003 Guam 6 ¶¶ 16-17). The trial court's actions on remand are reviewed for an abuse of discretion. *Town House*, 2003 Guam 6 ¶ 17.

[14] The trial court's conclusions of law are reviewed *de novo*. *Babauta v. Babauta*, 2011 Guam 15 ¶ 19 (citing *Mendiola v. Bell*, 2009 Guam 15 ¶ 11).

IV. ANALYSIS

A. Whether the Trial Court Acted Outside the Scope of this Court's Mandate When it Ordered the Return of the Lexus to Benjamin.

[15] Relying on our holding in *Lamb II* that the trial court had exceeded the scope of the mandate in *Lamb I* when it gave Benjamin credit for the Florida and Canada settlement agreements and calculated arrearage beyond the period of time reflected in the referee's original

order, Carolyn argues that the trial court again exceeded the scope of our mandate in *Lamb II* when it ordered the release of the Lexus to Benjamin. Appellant's Br. at 10-13 (Feb. 14, 2013). Carolyn argues that the status of the Lexus was not within the scope of our mandate in *Lamb II* because the portion of the trial court's order on remand from *Lamb I* regarding the Lexus had not been appealed in *Lamb II*, and the mandate in *Lamb II* did not address the Lexus. *Id.* at 10-12.

[16] In *Lamb II*, we concluded that several actions of the trial court on remand exceeded the scope of the mandate in *Lamb I*, because the only issue remanded to the trial court was whether and to what extent Benjamin should receive credit for the liquidation value of the 3001497 Cell-Loc shares. *Lamb II*, 2011 Guam 13 ¶¶ 19-20, 23. We reversed the trial court's calculation of arrears insofar as it went beyond the dates set forth in the referee's order, as well the trial court's award of credit to Benjamin for the Florida and Canada settlement agreements and the check for C\$2,391.00. *Id.* ¶¶ 20, 23 & n.7, 25. We did not, however, find the trial court's directions to sell the Lexus and use the proceeds along with the \$25,000.00 in the court registry for Emma's educational expenses to have been outside the scope of the mandate in *Lamb I*. *See id.* ¶ 23 n.7 ("The credit the Superior Court granted for assets in the Guam Court Registry, however, was not outside the scope of our mandate. These assets were surrendered by Benjamin to the Courts of Guam following a Findings and Recommended Order from September 5, 2003 citing 5 GCA § 34126. Since the Superior Court released these assets to Carolyn pursuant to an order and statutory authority different from the mandate we issued in *Lamb I*, we do not find the granting of credit for assets in the Guam Court Registry outside the scope of our mandate.").

[17] On remand from *Lamb II*, the trial court again revisited the status of the assets in the court registry. Because crediting Benjamin for only 50% rather than the full value of the 3001497 Cell-Loc shares left him with an outstanding child support obligation, the trial court

applied the \$25,000.00 in the court registry toward Benjamin's child support obligation. RA, tab 238 at 4-7 (Dec. & Order (Remand), Oct. 9, 2012). There being no remaining outstanding child support obligation, the trial court then ordered the release of the Lexus to Benjamin.¹ *Id.*

[18] We determined in *Lamb II* that the trial court did not exceed the scope of the mandate in *Lamb I* for the reason that in *Lamb I*, the court did not review the order and statute requiring the surrender of the assets. *See Lamb II*, 2011 Guam 13 ¶ 23 n.7. By this same reasoning, it is clear here that the trial court similarly did not exceed the scope of the mandate in *Lamb II* when it ordered the release of the Lexus to Benjamin. The referee's September 5, 2003 Findings and Recommended Order requiring surrender of the Lexus and the statutory basis for this surrender, 5 GCA § 34126, were never under review by this court. The mandate in *Lamb II*, like the mandate in *Lamb I*, did not foreclose the trial court from deciding what to do with the Lexus once the reason for its surrender was fulfilled.

[19] Moreover, the trial court's August 2009 order that the Lexus be sold and the proceeds from the sale be used for Emma's educational expenses or otherwise held in trust for her was predicated on full credit for the 3001497 Cell-Loc shares. *See* RA, tab 204 at 3-4 (Dec. & Order (On Remand), Aug. 14, 2009). Pursuant to our mandate in *Lamb II*, the trial court recalculated Benjamin's arrears, crediting him with only 50% of the value of the Cell-Loc shares. Consequently, Benjamin owed a balance on his child support obligation. It was proper for the trial court to infer that, given our order to recalculate arrearage and the resulting balance after this recalculation, it must address how the remaining arrears could be satisfied. Thus, the trial

¹ Interestingly, Carolyn argues that the trial court exceeded the scope of our mandate in releasing the Lexus, but she does not make the same argument about the application of the \$25,000.00 toward Benjamin's child support obligation.

court could use the assets in the court registry held as security for child support. Further, the court could dispose of any assets not needed to discharge the arrears.

B. Whether the Trial Court Erred in Releasing the Lexus to Benjamin Given His Failure to Satisfy His Spousal Support Obligation.

[20] Carolyn argues that even if it was not outside the scope of our mandate in *Lamb II* for the trial court to address the status of the Lexus, it was nevertheless error for the trial court to order its release. Appellant's Br. at 13. Carolyn contends that because the Lexus was held as security for Benjamin's child support *and* spousal support obligations, the vehicle should not have been returned to Benjamin because his spousal support obligation has not been satisfied. *Id.* at 13-14.

[21] Reviewing the trial court's most recent Decision and Order (Remand), it is clear that the trial court had a valid reason for releasing the Lexus. While the trial court acknowledged that the referee required the surrender of the \$25,000.00 and the Lexus "as security for both child and spousal support," the court determined that the statute that was the basis for the surrender of the assets, 5 GCA § 34126, deals only with child support. RA, tab 238 at 5 (Dec. & Order (Remand)). The trial court applied the \$25,000.00 to Benjamin's child support obligation only, and there being no outstanding child support, ordered the return of the Lexus to Benjamin. *Id.* at 5-7.

[22] Title 5 GCA § 34126 provides, in pertinent part:

(a) If an obligor fails to make three (3) or more *child support* payments as required by court order, the court, . . . may order the person to either execute a bond, subject to the approval of the court, or to pay security to the court, the bond or security to be conditioned on the payment of past due and future *child support* payments as required by court order. If the obligor fails to make a *child support* payment as required by the court order after having executed a bond or having paid security to the court, the court shall collect on the bond or may seize all or a portion of the security. An amount collected from a bond or an amount of forfeited security shall be paid to the obligee *for the benefit of the child* and shall be applied to the outstanding indebtedness of the absent parent. . . .

5 GCA § 34126(a) (2005) (emphases added). From the plain language of the statute, it is clear that the statute does not contemplate the surrender of assets for spousal support, nor does it provide grounds for the trial court to continue to hold on to the assets once all child support obligations were finally satisfied. Notwithstanding the language in the referee's order that the Lexus would serve as security for both child and spousal support, 5 GCA § 34126 does not provide a basis for the trial court to withhold the Lexus from Benjamin, even if he has yet to satisfy his spousal support obligation. Accordingly, the trial court did not err in ordering the return of the Lexus to Benjamin.

[23] Additionally, while Carolyn is correct that Benjamin never appealed the trial court's 2009 order to sell the Lexus and use the proceeds for Emma's educational expenses, this did not preclude the trial court from ultimately returning the Lexus to Benjamin. Benjamin did not appeal the order of sale because it was he who had requested that the Lexus be sold in the first place and that the proceeds go to his daughter. Despite his request and the trial court's order to Carolyn's attorney to sell the vehicle, the vehicle was never sold. When the case was again before the trial court on remand from *Lamb II*, the status of the vehicle was unresolved. Given these circumstances, the trial court did not abuse its discretion in ordering that the Lexus be returned to Benjamin now that his child support obligation is satisfied.²

[24] Finally, Benjamin requests that the case be remanded to the trial court to determine the fair market value of the Lexus as of the date when it was first ordered sold by the trial court, June 22, 2009. Appellee's Br. at 11 (March 7, 2013). However, as he did not raise this issue in a cross-appeal, we will not consider it. See *Rahmani v. Park*, 2011 Guam 7 ¶ 68 ("It is a well-

² During oral arguments in this current appeal, Benjamin informed the court that he sold the Lexus and placed the proceeds of the sale in a trust fund for his daughter. Digital Recording at 10:35-10:36 (Oral Argument, May 24, 2013); see also Appellee's Br. at 10 (March 7, 2013) ("[T]he Lexus was already sold and the funds are no longer in Guam.").

settled rule that, absent a cross-appeal, an ‘appellee may not attack the [judgment] with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary’ (quoting *United States v. Am. Ry. Express Co.*, 265 U.S. 425, 435 (1924))).

V. CONCLUSION

[25] The trial court did not act beyond the scope of our mandate in *Lamb II* when it revisited the issue of the proper disposal of the Lexus and other assets in the court registry, particularly in light of Benjamin’s resulting child support balance after recalculation of arrearage on remand. Furthermore, 5 GCA § 34126, the statutory basis for the surrender of the Lexus as security, is concerned with fulfillment of child support payments, not spousal support. Thus, it was not error for the trial court to order the return of the Lexus to Benjamin once his child support obligation was satisfied, despite his outstanding spousal support obligation. Finally, because Benjamin did not file a cross-appeal, we will not consider his request that the case be remanded to the trial court to determine the fair market value of the Lexus as of the date it was first ordered sold by the trial court.

[26] For the foregoing reasons, we **AFFIRM**.

Original Signed: **Robert J. Torres**
By

ROBERT J. TORRES
Associate Justice

Original Signed: **Katherine A. Maraman**
By

KATHERINE A. MARAMAN
Associate Justice

Original Signed: **F. Philip Carbullido**
By

F. PHILIP CARBULLIDO
Chief Justice

I do hereby certify that the foregoing
is a full true and correct copy of the
original on file in the office of the
clerk of the Supreme Court of Guam.

NOV 13 2013

By: **Charlene T. Santos**
Deputy Clerk
Supreme Court of Guam