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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

LIWAYWAY C. ISAAC,
Plaintiff-Appellant,

v.

BRIAN E. ISAAC,
Defendant-Appellee.

OPINION

Cite as: 2014 Guam 21

Supreme Court Case No.: CVA13-021
Superior Court Case No.: DM0050-09

Appeal from the Superior Court of Guam
Argued and submitted on February 20, 2014
Hagåtña, Guam

Appearing for Plaintiff-Appellant:
Phillip Torres, *Esq.*
Torres Law Group
130 Aspinall Ave., Ste. 2A
Hagåtña, GU 96910

Appearing for Defendant-Appellee:
Daniel S. Somerfleck, *Esq.*
Somerfleck & Associates, PLLC
Nelson Bldg.
866 Rte. 7, Ste. 102
Maina, GU 96932

BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

MARAMAN, J.:

[1] Plaintiff-Appellant Liwayway C. Isaac appeals the trial court's judgment granting Defendant-Appellee Brian E. Isaac divorce on the ground of adultery. Based on its finding of adultery, the trial court disproportionately assigned the community property and denied Liwayway spousal support.

[2] We reverse and remand the case with instructions that the trial court grant the parties divorce on the ground of irreconcilable differences and equally divide the community property and debt. The trial court shall re-determine the issue of spousal support.

I. FACTUAL BACKGROUND

[3] Liwayway and Brian were married in 1998. The couple has three children. The youngest child was born in November 2005. In October 2008, Brian and Liwayway separated.

[4] In January 2009, Liwayway filed for divorce, claiming irreconcilable differences. Liwayway asked the trial court to divide the community property and debts equally. In addition, Liwayway requested child support and spousal support. Finally, Liwayway asked for sole custody of the children, claiming Brian was not the biological father of the children and requesting that the court order Brian to take a paternity test.

[5] Brian counterclaimed, seeking divorce based on irreconcilable differences and extreme cruelty. Brian argued that he was entitled to parental rights. Neither party sought divorce on the ground of adultery.

[6] At trial, both parties acknowledged that they moved multiple times during the marriage because of Brian's job in the Navy. Brian testified that in June 2003, Liwayway moved to

Washington State “to set up a household, and get the kids settled” while Brian was in training. Transcript (“Tr.”) at 42 (Bench Trial, Aug. 28, 2012). Brian stated that when he moved to Washington in April 2004, he found Liwayway “living with a guy in the house that she had set up.” *Id.* at 43. Brian testified that after he arrived, Liwayway and her boyfriend moved out of the house and lived in a different residence. Brian stated that he reconciled with Liwayway, and that she moved back in with him in the summer of 2005.

[7] The trial court found that the community property included a Honda Civic; the household furnishings, appliances, personal effects, and jewelry of the parties; and Brian’s retirement benefits accruing from July 1998 through October 2008. The trial court found that the community debt was \$39,670.00. The court found that no reconciliation was possible between the parties.

[8] The court denied Brian divorce on the ground of extreme cruelty but granted him divorce on the ground of adultery. The court based its finding of adultery on its determination that Liwayway “admit[ted] adultery [by contending] that [Brian] may not be the biological father of the children,” and on Brian’s testimony that Liwayway was “living with another man” in Washington. Record on Appeal (“RA”), tab 54 at 3 (Finds. Fact & Concl. L., May 7, 2013). Based on its finding of adultery, the trial court granted “an unequal award of community property to [Brian].” *Id.* at 4-5. The trial court awarded Liwayway the Honda Civic. The trial court awarded Brian all the household goods and furnishings, and his retirement benefits. The trial court “apportion[ed] the responsibility of the community debts in the amounts of one-third to [Liwayway] and two-thirds to Brian.” *Id.* at 7. In addition, the trial court awarded joint legal and physical custody over the children. The trial court found that Brian was the father of the children and no biological testing was necessary. Finally, the trial court denied Liwayway

spousal support, but awarded her \$760.00 per month in child support. The amount of the child support was determined earlier by the child support referee. Subsequently, the trial court entered its interlocutory and final judgments of divorce, affirming its findings of facts and conclusions of law.

[9] Liwayway timely filed a notice of appeal.

II. JURISDICTION

[10] This court has jurisdiction over this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-125 (2014)) and 7 GCA §§ 3107 and 3108(a) (2005).

III. STANDARD OF REVIEW

[11] The trial court's conclusions of law are reviewed *de novo*. *Babauta v. Babauta*, 2013 Guam 17 ¶ 17; *Camacho v. Camacho*, 1997 Guam 5 ¶ 24 (citing *United States v. Michael R.*, 90 F.3d 340, 343 (9th Cir. 1996); *United States v. Sahhar*, 56 F.3d 1026, 1028 (9th Cir. 1995)). Whether the complaint is barred by the applicable statute of limitations is a question of law to be reviewed *de novo*. *Perez v. Gutierrez*, 2001 Guam 9 ¶ 5 (citing *Gayle v. Hemlani*, 2000 Guam 25 ¶ 22).

[12] “[T]he trial court’s division of property may be revised on appeal even where the trial court’s action does not amount to an abuse of discretion. This authority to revise is to be used sparingly, however, and only where the trial court’s division results in manifest unfairness.” *Sinlao v. Sinlao*, 2005 Guam 24 ¶ 10. If this court determines the distribution was manifestly unfair, it “then determine[s] whether to exercise [its] authority to revise the division pursuant to 19 GCA § 8414, or remand the matter to the trial court for redistribution of the community property.” *Id.* ¶ 11.

IV. ANALYSIS

[13] On appeal, Liwayway argues that the trial court erred in granting the divorce on the ground of adultery. In addition, Liwayway argues that the division of community property was manifestly unfair, and that the trial court erred in denying her spousal support.¹

A. Divorce on the Ground of Adultery

[14] Divorce may be granted on grounds of adultery, extreme cruelty, or irreconcilable differences. 19 GCA § 8203 (2005). Adultery is defined as the “voluntary sexual intercourse of a married person with a person other than the offender’s husband or wife.” 19 GCA § 8204 (2005). Irreconcilable differences are defined as “those grounds which are determined by the [c]ourt to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved.” 19 GCA § 8219 (2005).

[15] A dissolution of marriage must be denied “[w]hen the cause is adultery and the action is not commenced within two (2) years after the commission of the act of adultery, or after its discovery by the injured party” 19 GCA § 8314(a) (2005). Section 8314 is derived from former Guam Civil Code section 124, which in turn was derived from former section 124 of the California Civil Code. *See* 19 GCA § 8314, SOURCE; *Forward* to Guam Civ. Code (1953) (“The original codes published under the Naval Government were adopted from the California codes of the same name. . . . Consequently, there is a large body of court decisions and other legal literature available to aid in the interpretation of the various sections.”). Thus, California cases interpreting section 124 are persuasive, absent a compelling reason to deviate. *See Cruz v.*

¹ In her Opening Brief, Liwayway also argued that the trial court abused its discretion in refusing to order a biological test, and that the trial court erred in failing to revise the amount of the child support. Appellant’s Br. at 2 (Oct. 20, 2013). Prior to trial, Liwayway withdrew her appeal of these issues. Oral Argument at 35:00-36:00, 46:40-47:27 (Feb. 20, 2014). Liwayway failed to timely inform this court that these issues had been withdrawn. Pursuant to Guam Rules of Appellate Procedure Rule 13(i), “Counsel shall inform the Clerk . . . of all developments affecting appeals . . . [including] circumstances or facts that could render the matter moot.” Guam R. App. P. 13(i).

Cruz, 2005 Guam 3 ¶ 9 & n.2. California cases examining section 124 have determined that there is an absolute bar on dissolution actions on the ground of adultery when the adulterous act took place more than two years prior to the commencement of the action. *See Taylor v. Taylor*, 186 P.2d 1015, 1017 (Cal. Ct. App. 1947). We find there is no good reason to depart from California's interpretation of section 124 and hold that, pursuant to 19 GCA § 8314, there is an absolute bar on dissolution actions on the ground of adultery when the adulterous act took place more than two years prior to the commencement of the action.

[16] Here, the divorce action was not commenced within two years of Liwayway's adultery or its discovery by Brian. The trial court based its finding of adultery on Liwayway's claim that Brian was not the father of the children and Brian's testimony that Liwayway was living with another man in Washington. RA, tab 54 at 3 (Finds. Fact & Concl. L.). Liwayway's claim that Brian was not the father supports a finding of adultery prior to November 2005, when the couple's youngest child was born. In addition, Brian testified that in April 2004 he discovered Liwayway living with another man, but that the parties reconciled, and Liwayway moved back in with Brian during the summer of 2005. Tr. at 42-43 (Bench Trial, Aug. 28, 2012). There was no evidence that Liwayway committed adultery after 2005. The divorce action was filed in January 2009, more than two years after any act of adultery supported by the evidence at trial. Therefore, pursuant to 19 GCA § 8314, the trial court was barred from granting the divorce on the ground of adultery.

[17] Instead, the trial court should have granted the divorce on the ground of irreconcilable differences. The parties have been separated since October 2008, both parties filed for divorce on the ground of irreconcilable differences, and the trial court found that no reconciliation was possible between the parties. These factors are "substantial reasons for not continuing the

marriage and . . . make it appear that the marriage should be dissolved.” 19 GCA § 8219. Therefore, we reverse the trial court’s grant of divorce on the ground of adultery and instruct the trial court to grant divorce on the ground of irreconcilable differences.

B. Division of the Community Property and Denial of Spousal Support

[18] Next, we turn to Liwayway’s argument that the division of community property was manifestly unfair, and that the trial court erred in denying her spousal support. Appellant’s Br. at 2. If the trial court grants divorce on the ground of adultery, the trial court may divide the community property as it deems just, given the “facts in the case, and the condition of the parties.” 19 GCA § 8411(a) (2005). However, if the trial court grants divorce on the ground of irreconcilable differences, “the community property shall be equally divided between the parties.” *Id.* § 8411(b).

[19] When granting divorce, the trial court may “make such suitable allowance to the other spouse for that person’s support during that person’s life or for a shorter period, as the [c]ourt may deem just, having regard to the circumstances of the parties respectively.” 19 GCA § 8405 (2005).

[20] Here, the trial court based its division of community property and debts on its finding of adultery, and granted “an unequal award of community property to [Brian].” RA, tab 54 at 4-5 (Finds. Fact & Concl. L.). Because the trial court erroneously granted divorce on the ground of adultery, we find that the court erred in unevenly distributing community property and assigning debts on the basis of adultery, and remand this case to the trial court to equally divide the community property and assign the debts based on the ground of irreconcilable differences. It is unclear from the trial court’s Findings of Fact and Conclusions of Law whether the trial court’s finding of adultery also influenced its determination that Liwayway was not entitled to spousal

support; therefore, we remand for the court to determine the issue of spousal support based on a finding of irreconcilable differences.

V. CONCLUSION

[21] We find that the trial court erred in granting divorce on the ground of adultery. Furthermore, we find that the trial court improperly divided the community property and assigned the debts based on the ground of adultery. Therefore, we **REVERSE** and **REMAND** this case to the trial court to grant the parties' divorce on the ground of irreconcilable differences, and equally divide the community property and assign the debts based on the ground of irreconcilable differences. Since it is unclear in the trial court's Findings of Fact and Conclusions of Law whether the finding of adultery also influenced the determination of spousal support, we **REMAND** for the court to determine the issue of spousal support based on a finding of irreconcilable differences. In making such determination, the trial court need not reopen the record and receive new evidence nor shall it allow the parties to introduce new arguments. Instead, the trial court is to rely on the evidence and arguments presented at trial.

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

F. PHILIP CARBULLIDO
Associate Justice

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

KATHERINE A. MARAMAN
Associate Justice

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

ROBERT J. TORRES
Chief Justice