IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

TIMOTHY P. VILLAGOMEZ,	)	**Civil Action No. FCD 99-0004**
	)	
Petitioner,	)	
	)	
v.	)	
	)	**ORDER DENYING MOTION FOR**
ALICE F. VILLAGOMEZ	)	**NEW TRIAL OR TO AMEND**
(nka) ALICE FLEMING	)	**FINDINGS OF FACT AND**
	)	**CONCLUSIONS OF LAW**
Respondent.	)	
	)	

This matter comes before the Court on the Motion of Respondent, Alice F. Villagomez, now known as Alice Fleming, to request a new trial or, in the alternative, to amend the findings of fact and conclusions of law entered by this court on January 19, 1999 (the "Motion"). For the following reasons, the Court DENIES the motion and declines to order the relief requested by the Respondent.

First, the court issued its written decision following trial on January 19, 2000. On January 28, 2000, Respondent filed the instant Motion pro se, at a time when she was represented by counsel. In that Mr. Arriola did not withdraw as counsel until February 15, 2000, and there is no evidence that the motion was even served upon the Respondent, the Motion is not properly before the court.

Second, and even assuming that the Motion had been filed and served as required, at the conclusion of the trial in this case, the court afforded both parties an opportunity to submit written closing arguments on or before December 29, 1999. Despite this opportunity, Respondent failed to submit a closing argument, although she did submit proposed findings on December 30, 1999. When the court, by Supplemental Order, later asked the parties to clarify facts that seemingly conflicted with the trial stipulations submitted by the parties, Respondent again failed to respond. Since Respondent either neglected or refused to bring her arguments to the court's attention during the trial, and has **[p. 2]** failed, on two separate occasions, to comment on the evidence despite the opportunity to do so, it would be inappropriate for the court to consider the arguments now, even if

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they were properly before the court. See generally, C. Wright, A. Miller, M. Kane, 11 FEDERAL PRACTICE AND PROCEDURE § 2805 (1995).

Finally, and even assuming that the Motion was properly before the court and Respondent had availed herself of the opportunities to make the arguments that she now raises, her premise is erroneous. First, the court did not use the New Mexico statute to set child support. Instead, the court calculated the amount of child support to be paid from the expenses for children testified or stipulated to by the parties.[1] The court then directed each party to bear this obligation in accordance with the ratio established by the gross income of the parties. The court is not bound to use the statutes of any foreign jurisdiction, whether it be New Mexico or Guam, to decide the child support issue in a CNMI court. The reason the court consulted the New Mexico statute at all was to demonstrate that the amount of support set by the court was reasonable based on the income of Petitioner. At trial, the Respondent's expectation of child support was inordinately high.[2] Based on Petitioner's gross salary and the number of children involved in the case, the New Mexico statute recommended a total support figure of $1,413.00. The court, however, ordered Petitioner to pay $1,608.99 monthly, or approximately $200 per month more than that recommended under the New Mexico statute. *See* Findings and Conclusions at 6, Note 6.

Second, underlying Respondent's claim for additional child support is the erroneous assumption that she is the custodial parent. The court, however, has awarded legal and physical custody of the four minor children to both parties, jointly. This means that during the time that the children are with the Petitioner, he will be paying all of their expenses including room and board. **[p. 3]** Yet notwithstanding the shared arrangement, the award actually weighs in favor of the Respondent. In its findings, the court noted, for example, that including only the Respondent's costs

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[1] As set forth in its Decision, the total monthly expenses for the children amounted to $2,145.32. Based on Petitioner's gross salary and the number of children involved in the case, the Court determined that the amount of the child support obligation would be borne in proportion to the financial capability of each parent. *See* Findings and Conclusions at 5. The court therefore determined that Petitioner should bear 75% of these expenses or $1,608.99 per month.

[2] For the first eleven months of 1999, Petitioner took the position that his gross income amounted to $70,058.71. For the calendar year, this translated to a monthly adjusted gross income of $6,412.61.

of child care was an additional way of equalizing the income disparity between the parties. *See Id.* at 6, Note 5.

Third, the suggestion of the Respondent, that the court should disregard the stipulation of the parties and the sworn testimony received during trial and instead take judicial notice of the value of marital assets from television advertisements and/or the ISLAND LOCATOR, is clearly inappropriate.

In the Motion, Petitioner does not allege that she was barred or otherwise discouraged from presenting evidence on the proper valuation of marital property or the calculation of child support. She also does not claim that any gross injustice would result unless she obtains the relief she seeks. Instead, Petitioner simply alleges that the matter should be reopened in order to afford her the opportunity to make arguments and present theories that she failed to raise at trial or in a post-trial brief. For the foregoing reasons, the Motion for New Trial, or in the Alternative, to Amend Findings of Fact and Conclusions of Law is DENIED.

SO ORDERED this 29 day of February, 2000.

BY THE COURT:

/s/ Timothy H. Bellas
TIMOTHY H. BELLAS, Associate Judge