IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

---o0o---

GERALDINE CVITANOVICH-DUBIE, now known as GERALDINE CVITANOVICH, Petitioner/Plaintiff-Appellant

vs.

NANCY DUBIE, Personal Representative of the Estate of George Patrick Dubie, Respondent/Defendant-Appellee

NO. 28928

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(FC-D NO. 03-1-3588)

JUNE 22, 2011

RECKTENWALD, C.J., NAKAYAMA AND DUFFY, JJ., AND CIRCUIT JUDGE PERKINS, ASSIGNED IN PLACE OF MOON, C.J., RECUSED AND RETIRED; WITH ACOBA, J., CONCURRING SEPARATELY AND DISSENTING

OPINION OF THE COURT BY RECKTENWALD, C.J.

In the instant appeal, we consider whether the family court properly denied Geraldine Cvitanovich-Dubie's (Geraldine) motion for relief from the divorce decree terminating her marriage to George Patrick Dubie (George). The motion alleged that Geraldine and George were never legally married, and that

the property settlement agreements attendant to the divorce decree were procured through fraud on the court and undue influence.

Briefly stated, the family court granted Geraldine and George's divorce in a November 28, 2003 Divorce Decree (11/28/03 Decree). George was subsequently shot and killed in Thailand on July 2, 2006. On June 28, 2007, Geraldine filed a motion to vacate the 11/28/03 Decree, or to set aside the corresponding property division, pursuant to Hawaiʻi Family Court Rules (HFCR) Rule 60(b)(4) and (6), quoted infra. Geraldine argued, inter alia, that her marriage to George was void ab initio because George's previous marriage had not ended in a valid divorce. Accordingly, Geraldine argued that she and George were not legally married at the time the family court entered the 11/28/03 Decree, and that the 11/28/03 Decree was therefore void for lack of subject matter jurisdiction.

The Family Court of the First Circuit (family court) denied Geraldine's motion,[1] and Geraldine appealed. In an April 12, 2010 published opinion, the Intermediate Court of Appeals (ICA) held that quasi-estoppel barred Geraldine's challenge to the validity of the 11/28/03 Decree. Cvitanovich-Dubie v. Dubie, 123 Hawaiʻi 266, 278-80, 231 P.3d 983, 995-97 (App. 2010). The ICA further held that Geraldine's claims of fraud and undue influence were properly considered under HFCR

[1] The Honorable R. Mark Browning presided.

Rule 60(b)(3), quoted infra, and were untimely because they were not brought within one year of the 11/28/03 Decree. Id. at 281-82, 231 P.3d at 998-99. Geraldine seeks review of the ICA's May 3, 2010 judgment, affirming the family court's order denying Geraldine's motion.

We conclude that the ICA did not err in affirming the family court's order, but that its reasoning was erroneous in part. Specifically, the ICA held that Geraldine was estopped from challenging the validity of George's prior divorce, and thereby was estopped from challenging the family court's subject matter jurisdiction to enter the 11/28/03 Decree. Id. at 278-80, 231 P.3d at 995-97. However, jurisdiction cannot be created by estoppel, cf. Williams v. Aona, 121 Hawaiʻi 1, 8, 210 P.3d 501, 508 (2009) ("The lack of jurisdiction over the subject matter cannot be waived by the parties.") (citation omitted), and it therefore follows that a party cannot be estopped from challenging the family court's subject matter jurisdiction. Accordingly, the ICA was required to address whether the 11/28/03 Decree was "void," as that term is used in HFCR Rule 60(b)(4), for lack of subject matter jurisdiction.

For the reasons set forth below, we hold that the 11/28/03 Decree is not void under HFCR Rule 60(b)(4). We further hold that Geraldine's claims of "fraud on the court" and undue influence are properly considered under HFCR Rule 60(b)(3), and are therefore untimely. Accordingly, we affirm the judgment of

the ICA.

I. Background

The following factual background is taken from the record on appeal.

A. 11/28/03 Decree

Geraldine and George's certificate of marriage indicates that they were married on May 1, 1996. Geraldine filed a Complaint for Divorce on November 6, 2003, on the ground that the marriage between Geraldine and George was irretrievably broken.

Following a hearing, the family court filed the 11/28/03 Decree, in which it found "the material allegations of the Complaint for Divorce to be true, [Geraldine] is entitled to a divorce from the bonds of matrimony . . . and the [family c]ourt has jurisdiction to enter this Divorce Decree." The 11/28/03 Decree incorporated by reference "the Marital Agreement, signed on October 20, 2003, [the] First Amendment to Marital Agreement, signed on November 3, 2003, [the] Second Amendment to Marital Agreement, signed on November 7, 2003, and [the] Third Amendment to Marital Agreement, signed on November 7, 2003" (hereinafter collectively "Property Settlement Agreements"). The 11/28/03 Decree ordered that "[t]he parties are awarded all of their separate property," and that "[a]ll joint property shall be divided equally," except as set forth in the Property Settlement Agreements.

B. Rule 60 motion

1. Geraldine's allegations and arguments

On June 28, 2007, Geraldine filed a motion to vacate the 11/28/03 Decree, or to set aside the corresponding property division, pursuant HFCR Rule 60(b)[2] (Rule 60 motion).[3]

---

[2] Unless otherwise indicated, all references herein to Rule 60(b) refer to the HFCR. HFCR Rule 60(b) provides for relief from a judgment or order as follows:

> **(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from any or all of the provisions of a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceedings was entered or taken. For reasons (1) and (3) the averments in the motion shall be made in compliance with Rule 9(b) of these rules. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.

(Emphasis added).

[3] Geraldine had previously filed a Motion for Substitution of Parties to Pursue Post Decree Relief, seeking to substitute Nancy Dubie (Nancy), as Personal Representative of George's estate, as a defendant. It appears that the family court orally granted the substitution during an October 8, 2007 hearing on Geraldine's motions, inasmuch as the family court stated that it was "inclined to grant the motion for substitution[,]" and did not comment further on that motion. Although no written order was entered on Geraldine's motion for substitution, all subsequent filings listed Nancy as the defendant, and neither party has disputed that the motion for substitution was granted.

Geraldine's Rule 60 motion sought relief pursuant to Rule 60(b)(4) and Rule 60(b)(6). With regard to Rule 60(b)(4), Geraldine argued that the 11/28/03 Decree was void on the ground that Geraldine and George were never legally married. Alternatively, Geraldine argued that the property division portion of the 11/28/03 Decree should be set aside under Rule 60(b)(6), on the ground that the property division was the result of "fraud on the court" and "undue influence."

In her Memorandum in Support of Motion, Geraldine alleged the following facts in support of her claims. Geraldine asserted that George was legally married to Sylvie Bertin (Sylvie) in Honolulu, Hawaiʻi on October 2, 1989. Geraldine asserted that Sylvie "purported to obtain a divorce decree in Santo Domingo, Dominican Republic" on February 2, 1995 (Dominican Decree).[4] Geraldine asserted that Sylvie was then a resident of Montserrat, West Indies, and that George "was not and never had been a resident and/or domiciliary of the Dominican Republic, and did not appear personally or through counsel in any divorce proceedings in the Dominican Republic."

Geraldine further asserted that she met George in March 1996, and that George "intended to obtain her money and property." Geraldine asserted that George therefore made factual

[4] The parties variously refer to the date of the Dominican Decree as February 2, 1995 or February 7, 1995. It appears that the judgment of the Dominican court was entered on February 2, 1995, and that a Notice of Judgment was issued on February 7, 1995. For purposes of this opinion, we consider the date of the Dominican Decree to be the date of the Dominican court's judgment, or February 2, 1995.

representations to her, including that (1) he was independently wealthy; (2) he had authored numerous screen plays for well-known movies; (3) he had serious and/or fatal illnesses and diseases; and (4) his uses of her money were to her benefit. Geraldine further asserted that George concealed from her "that he had a criminal conviction, that there were unsatisfied civil judgments against him for more than a million dollars for fraud and undue influence, and that he had fathered at least nine children."

Geraldine further asserted that, in 2002, George "began spending a considerable amount of time in Thailand," where he obtained "items of value and real property" using Geraldine's money. Geraldine asserted that, in 2003, George advised her that "for business and other reasons" they should divorce, but that the divorce would be temporary and they should not tell anyone of the divorce.

In support of these factual assertions, Geraldine submitted (1) a copy of George and Sylvie's marriage certificate; (2) certified copies of two separate Judgments, Guilty Convictions and Probation Sentences, sentencing "George Dubie" on charges of theft in the first degree, to which he pled no contest; (3) a copy of a civil judgment against George in the amount of $1,705,594.44 in an unrelated civil case; (4) certified copies of Geraldine and George's marriage license application and marriage certificate, indicating that Geraldine and George were

married on May 1, 1996;[5] (5) a Variation of Separation Agreement entered into by Sylvie and George in 1996;[6] (6) a Report of the Death of an American Citizen Abroad concerning George's death; (7) an Order Granting Petition for Probate of Will and Appointment of Personal Representative in P. No. 06-1-0700, naming Nancy as Personal Representative of George's estate; (8) Geraldine's declaration; (9) a declaration, "legal opinion," and supporting materials from an attorney in the Dominican Republic, concerning the validity of the Dominican Decree; and (10) a declaration of forensic psychologist Bennett Blum, opining that the Property Settlement Agreements were a result of George's undue influence on Geraldine.

In her declaration, Geraldine stated, in pertinent part, as follows:

> 3. In or about March 1996, I met GEORGE []. From the beginning of our relationship, GEORGE [] made factual representations to me regarding his financial worth, his business activities, his children and his marital status. These included, without limitation, representations that he was independently wealthy, that he was the author of numerous screen plays of well-known Hollywood movies, that he had four children, and that he was divorced from his previous wife Sylvie []. GEORGE [] concealed the facts that he had a criminal conviction, that there were civil judgments against him, and that he had fathered at least nine children.
>
> 4. On or about April 30, 1996, a purported investigator named G. Kalani Long gave me a letter in

[5] In the Marriage License Application from the Hawaiʻi State Department of Health, George indicated that his most recent marriage had ended in divorce in September 1995 in the "Dominican Rep., Carribean [sic]."

[6] The Variation of Separation Agreement, which was filed in the Supreme Court of British Columbia on October 23, 1996, amended a prior June 9, 1995 Separation Agreement and altered Sylvie and George's agreement with regard to custody of their daughter. In the Variation of Separation Agreement, Sylvie is denominated as "the Wife," and George is denominated as "the Husband."

> which he advised me that he had conducted a background check on GEORGE [] on March 27, 1996; that he had checked publicly available records in the State of Hawaii with regard to whether GEORGE [] had a criminal record and whether there had been civil judgments entered against him and that the results of the investigation were that GEORGE [] had no criminal record and that there were no civil judgments against him.
>
> 5. GEORGE [] and I went through a marriage ceremony on May 1, 1996. From and after that date, I thought and believed that GEORGE [] and I had been legally married on May 1, 1996.
>
> 6. I relied on the factual representations as set forth above. Had I known the truth, I would not have consented to marry GEORGE [].
>
> 7. Shortly after my marriage to GEORGE [], he introduced me to Sylvie [].
>
> 8. Beginning around 2002, GEORGE [] began spending a considerable amount of time in Thailand, where, on information and belief, he invested in, purchased, or otherwise obtained items of value and real property, using money obtained from me. He represented to me that each item he purchased or invested in belonged equally to both of us and that all uses of and investments of my money created an ownership interest in my favor and therefore that they were of benefit to myself and/or would be returned to me.
>
> 9. In 2003, he represented to me that for business and other reasons, we should obtain a divorce, but that the divorce would be only temporary, that we would soon remarry, and that therefore, we shouldn't tell others of the divorce and should continue to live as we had throughout our marriage. I believed him and agreed to do so. GEORGE [] caused me to agree to transfer real property, personal property and other things of value to him via contracts, some of which became incorporated in what purported to be a decree of divorce issued by the [family court] and some of which were post-divorce decree transfers.
>
> 10. Not until months after GEORGE []'s death did I become aware that GEORGE [] had not been validly divorced from Sylvie [] at the time of the May 1, 1996 ceremony.
>
> 11. It was only after GEORGE []'s death in July of 2006 that I became aware how he had manipulated me through false statements, false promises, and other devices and techniques to transfer property (real and personal) and things of value to him in the course of our divorce proceedings. But for his manipulations of me, false statements, false promises and other tactics employed by him, and my trust in him, I would not have agreed to these transfers.
>
> . . . .

In his declaration, forensic psychologist Bennett Blum declared in pertinent part as follows:

> a. It is my opinion that [Geraldine] was susceptible to manipulation and undue influence at the time she met [George] in 1996 due to certain factors in her background and certain life circumstances existing at that time.
>
> b. It is my opinion that [Geraldine] expected honesty and truthfulness from [George]; however, he engaged in manipulative, deceptive and misleading behaviors in order to benefit himself. Such behaviors included the willful presentation of false information ("lying"); and withholding relevant information, presenting partial truths, and/or taking statements out of context ("paltering"). Through his lying and paltering, [George] used several manipulative tactics and created situations commonly employed by cult leaders, scam artists, and perpetrators of undue influence.
>
> c. Because of [George's] lies and palters, [Geraldine] based decisions about him and his requests upon misleading, inadequate, and/or inaccurate information.
>
> d. . . . . [Geraldine] was made to believe that certain actions were critical to her husband's health and their happiness as a couple. This consideration overwhelmed all others, including the input from legal advisors or accountants.
>
> e. It is my opinion that [Geraldine] was subjected to the psychological and interpersonal conditions associated with undue influence.
>
> f. It is my opinion, to a reasonable degree of medical probability, that all of [Geraldine's] major transactions involving [George], including property transfers, occurred as a result of his manipulation and use of undue influence tactics. This includes the period from their wedding until his death.

With regard to Rule 60(b)(4), Geraldine argued that the Dominican Decree was invalid because the Dominican court "lacked jurisdiction." Alternatively, Geraldine argued that, even if the Dominican Decree were valid under the laws of the Dominican Republic, it would not be entitled to comity.[7] Accordingly, Geraldine argued that her purported marriage to George was void

[7] "Comity" means "[a] practice among political entities (as nations, states, or courts of different jurisdictions) involving esp. mutual recognition of legislative, executive, and judicial acts." Black's Law Dictionary 303 (9th ed. 2009).

On appeal, the ICA concluded that the Dominican Decree was not entitled to recognition on the basis of comity. Cvitanovich-Dubie, 123 Hawaiʻi at 273-75, 231 P.3d at 990-92. Because neither party has challenged that conclusion, we do not discuss Geraldine or Nancy's arguments concerning comity in further detail.

ab initio because the Dominican Decree did not terminate George and Sylvie's marriage, making George and Geraldine's marriage bigamous. Geraldine further argued that, because the family court "did not have a 'lawfully married' couple before it," it was "without power to enter a divorce decree."

Alternatively, Geraldine argued that the family court should set aside the property division portion of the 11/28/03 Decree pursuant to Rule 60(b)(6), on the ground that George "exercised undue influence in obtaining the property division," and "because the marriage was bigamous, and because [George] committed fraud on the [c]ourt." With regard to her allegations of "fraud on the court," Geraldine argued that George "conceal[ed] the fact that he had never divorced Sylvie [], thereby claiming a status and identity (i.e., a married man) to gain access to [the family court] so he could use it as a device to improperly obtain [Geraldine's] assets."

With regard to her allegations of undue influence, Geraldine asserted that George "was an exceptionally effective manipulator . . . . [and] the scale of his deception and the techniques he used were extraordinary." Geraldine asserted that the Property Settlement Agreements showed that Geraldine transferred "property, money, and other things of value to [George] for no consideration, all within an extremely short period of time." Geraldine further asserted that she "understood and believed that the divorce was only temporary[,]" and that she

"did not have her guard up because she believed the divorce was on paper only." Geraldine stated that her assertions would be supported "when testimony is taken and exhibits introduced," and that "all the particular ways in which the division was so inequitable . . . will be shown in detail at the evidentiary hearing." However, Geraldine did not specifically request an evidentiary hearing in her Rule 60 motion or her Memorandum in Support of Motion.

2. Nancy's Memorandum in Opposition

In her Memorandum in Opposition to Geraldine's Rule 60 motion, Nancy, as Personal Representative of George's estate, asserted that (1) George and Sylvie were married on October 2, 1989 in Honolulu, Hawaiʻi; (2) a Dominican Republic court granted a divorce decree terminating George and Sylvie's marriage on February 7, 1995; (3) while residing in Hawaiʻi, George introduced Geraldine to Sylvie; (4) George and Geraldine's completed Marriage License Application indicated that George's former marriage ended in 1995 in the Dominican Republic; (5) Geraldine signed the Marriage License Application and swore under oath that the information contained therein was true and correct; (6) George and Geraldine participated in a ceremonial marriage on May 1, 1996; (7) at the time of the marriage ceremony, Geraldine had actual or constructive knowledge of the Dominican Decree and that it was obtained in the Dominican Republic; (8) Geraldine and George subsequently met with Sylvie and Felicia Dubie (Felicia)

(daughter of George and Sylvie) in Ottawa in 1997 and in Disneyworld in 1998; (9) Geraldine became close with Felicia and established a QTIP trust naming the children of George and Sylvie as beneficiaries; (10) Geraldine filed for a divorce from George in November 2003; and (11) after entry of the 11/28/03 Decree, Geraldine continued to portray herself as married to George "in order to protect her image, as well as the image of her company[.]"[8]

With regard to Rule 60(b)(4), Nancy argued that Geraldine's assertions concerning the invalidity of her marriage to George were without merit. Specifically, Nancy argued that the Dominican Decree was valid and that, in any event, Geraldine did not have standing to collaterally attack the Dominican Decree. Nancy further argued that Geraldine was estopped from challenging the validity of her marriage to George.

With regard to Rule 60(b)(6), Nancy argued that Geraldine's allegations "amount[ed] to a claim for relief based on 'fraud[,]'" and therefore fell under Rule 60(b)(3), rather than Rule 60(b)(6). Nancy further argued that Geraldine's motion was untimely because it was not filed within one year of the 11/28/03 Decree, as required for motions brought pursuant to Rule

[8] In support of these assertions, Nancy relied on, inter alia, Sylvie's sworn declaration, which was included as an exhibit to Nancy's Memorandum in Opposition. Although Geraldine has presented various challenges to the family court's reliance on Sylvie's declaration in its findings of fact, we do not rely on the assertions set forth in Sylvie's declaration in reaching our decision. Accordingly, we need not address whether the family court erred in relying on facts set forth in Sylvie's declaration.

60(b)(3).

3. Subsequent proceedings

The family court held a hearing on Geraldine's Rule 60 motion on October 8, 2007.[9] No live testimony was presented. The family court directed the parties to focus their argument on Rule 60(b)(4), and the parties accordingly did not present any argument on the merits of the Rule 60(b)(6) portion of Geraldine's motion. The parties' arguments concerning Rule 60(b)(4) substantially reiterated and expanded upon the arguments presented in their briefs.

In addition, the parties presented some argument as to whether the family court was required to hold an evidentiary hearing on Geraldine's Rule 60 motion. For example, counsel for Nancy argued that, "[s]ince under Ahlo[v. Ahlo, 1 Haw. App. 324, 619 P.2d 112 (1980),] and Hayashi[v. Hayashi, 4 Haw. App. 286, 666 P.2d 171 (1983)], the [Hawaiʻi S]upreme [C]ourt has authorized the family court to have a threshold determination without an evidentiary hearing on whether [the] Rule [60(b)] motion should proceed and since we are the proponents of the essential dismissal of that, it would appear appropriate that we would argue first."

Counsel for Nancy later reiterated:

> First of all, the Hawaii Supreme Court has already spoken about the procedure that we're here on today. Hayashi . . . , essentially citing Ahlo . . . says the

[9] At the same hearing, the family court also heard Geraldine's motion to substitute Nancy as the defendant in this case.

> trial court may deny relief under Rule [60(b)] without holding a hearing, and they decide the issue on the basis of papers submitted. This went back to the Ahlo case that essentially said the family court is not required to hold a hearing in deciding whether or not to grant relief under Rule 60.[10]

Counsel for Geraldine did not move for or otherwise request an evidentiary hearing. To the contrary, counsel for Geraldine stated during his argument:

> And I think we can get rid of this whole thing when you grant summary judgment to us on [the Rule 60(b)(4)] part of it. Bifurcate the [Rule 60(b)(6)] part which is the labor intensive evidentiary part that you really would rather not have to do because it's going to take a long time and that's what we're gonna do in the circuit court is that case.[11] Bifurcate the [60(b)(4)], [60(b)(6)]. You grant summary judgment under [60(b)(4)], we're outta here.

The family court did not orally rule on Geraldine's Rule 60 motion. On December 18, 2007, the family court entered its "Order Denying Plaintiff's Motion for Post-Decree Relief to Vacate Divorce Decree or Set Aside Property Division Pursuant to Hawaii Family Court Rule 60[(b)], Filed June 28, 2007."

---

[10] These arguments were made in relation to Nancy's opposition to Geraldine's motion for substitution. Nancy argued that, because Geraldine had failed to make a threshold showing that she was entitled to relief under Rule 60(b), it was not necessary for the family court to grant the motion for substitution. Specifically, Nancy stated:

> Under the papers, our arguments flow that this is not a void judgment and that their claim for fraud is time-barred and that Rule [60(b)(6)] is not a valid option under the way they pled it. So, I don't think we need to substitute.
>
> . . . .
>
> Now, if you decide to, after the Rule [60(b)] threshold hearing if that's decided in their favor, then yeah, obviously we have to substitute and proceed (indiscernible) whatever proceedings we end up going to and possibly for the purposes of taking an appeal as well (indiscernible). . . .

[11] This appears to be a reference to either In re Estate of George Patrick Dubie, P. No. 06-1-0700, or Personal Prosperity, Inc. v. Dubie, Civil No. 07-1-2141-11 GWBC, both in the Circuit Court of the First Circuit.

Geraldine timely filed a notice of appeal and, on February 25, 2008, the family court entered its Findings of Fact and Conclusions of Law (FOF/COL) with respect to Geraldine's claims. The family court's FOFs/COLs provided, in pertinent part, as follows:

> III. FINDINGS OF FACT[]
>
> 5. George [] married Sylvie [] on October 2, 1989 in Honolulu, Hawaiʻi.
>
> 6. On February 7, [sic] 1995, the [Dominican] court granted [the Dominican] Decree, terminating the marriage between [George] and Sylvie[.]
>
> 7. Notice of the [Dominican] Decree was mailed to [George] that same day.
>
> 8. The [Dominican] Decree became a definite and final ruling on the date of pronouncement, April 24, 1995.
>
> 9. Neither [George] nor Sylvie filed an appeal to set aside the [Dominican] Decree.
>
> 10. The time-period [sic] to appeal the [Dominican] Decree elapsed on April 7, 1995, two months after the [Dominican] Decree was entered.
>
> 11. From February 2, 1995 until present, Sylvie relied upon the validity of the [Dominican] Decree entered by the [Dominican court].
>
> 12. Ever since the [Dominican] Decree was entered, Sylvie has held herself out as being divorced from [George].
>
> 13. Prior to [Geraldine's Rule 60 motion], at no time did anyone ever question the validity of the [Dominican] Decree.
>
> 14. Sylvie did not question the validity of the [Dominican] Decree because when purchasing a home in 1995, Sylvie successfully proved the validity of the [Dominican] Decree to an attorney in the province of Quebec, Canada.
>
> 15. In reliance on the [Dominican] Decree, Sylvie and [George's] daughter, Felicia ("Felicia"), had her last name changed to "Dubie" so that she would be able to live with her father.
>
> 16. In 1995, the U.S. Embassy certified and recognized the [Dominican] Decree by acknowledging the Dominican Republic divorce procedures.

17. In or around March 1996, after his divorce from Sylvie, [George] and [Geraldine] met. [Geraldine] is co-founder of the diet herbal supplement company, "Herbalife."

18. Shortly thereafter, while residing in Hawaiʻi, [George] introduced [Geraldine] to Sylvie.

19. With full knowledge of the [Dominican] Decree, on or about April 30, 1996, [Geraldine] completed and submitted a Marriage License Application to the Department of Health for the State of Hawaiʻi.

20. The application for marriage license indicated that [George's] marriage to Sylvie ended in divorce in 1995 in the Dominican Republic, Caribbean.

21. [Geraldine] signed the Marriage License Application and swore under oath that the information contained in the application was true and correct to the best of her knowledge.

22. On May 1, 1996, [George] and [Geraldine] participated in a ceremonial marriage performed by a person duly authorized to perform marriages in the State of Hawaiʻi.

23. At the time of the marriage ceremony, [Geraldine] had knowledge, or at least, had constructive knowledge of the [Dominican] Decree and that it was obtained in the Dominican Republic.

24. In the following few years, [George] and [Geraldine] met with Sylvie and Felicia in Ottawa in 1997, and in Disneyworld in 1998.

25. Based on Sylvie's meetings with [George] and [Geraldine], Sylvie had an opportunity to observe [George] and [Geraldine's] relationship. [George] relied upon the validity of the [Dominican] Decree and held himself out as being divorced. Sylvie also observed that after [George] and [Geraldine] were married, they acted like a married couple, lived together and introduced each other as husband and wife.

26. [Geraldine] established a Qualified Terminable Interest Property Trust ("QTIP Trust") and named Sylvie and [George's] children as beneficiaries of the QTIP Trust.

27. In November 2003, [Geraldine] filed a petition for divorce and the [family court] granted it on November [28], 2003.

28. After the [11/28/03 Decree] was entered, [Geraldine] continued to portray the image that she and [George] were still married in order to protect her image as well as the image of her company, "Herbalife."

29. On July 2, 2006, [George] was shot and killed in Thailand. A Report of Death of An American Citizen was filed on November 8, 2006.

[IV.] CONCLUSIONS OF LAW

30. The [family court] has subject matter jurisdiction and personal jurisdiction over the parties pursuant to HRS § 580-1.

31. [Geraldine's] claims sound in fraud or other intentional misconduct, and therefore are time-barred pursuant to [HFCR Rule] 60(b)(3).

32. Determining whether a judgment should be set aside pursuant to Rule 60(b) of the [HFCR] is not a matter of discretion.

33. In the sound interest of finality, the concept of a void judgment must be narrowly restricted.

34. [Geraldine] does not have standing to collaterally attack the validity of the [Dominican] Decree in the [family court].

35. The [Dominican] Decree is recognized by the [family court] under the principle of comity. The [11/28/03 Decree] is not void ab initio and should not be set aside.

36. The facts in this case are not enough to overcome the presumption of validity of [Geraldine's] marriage to [George].

37. [George] and [Geraldine's] marriage is not void because the purported impediment-the alleged bigamous marriage-was eliminated by [George's] death.

38. The [Dominican] Decree cannot be set aside based on the principle of res judicata.

39. [Geraldine] is estopped from asserting that [her] marriage to [George] is void based on the principle of estoppel and unclean hands.

40. Property settlement agreements between husband and wife made in contemplation of divorce or judicial separation are favored by the courts and will be strictly enforced if fair and equitable and not against public policy.

41. The property division portion of a Divorce Decree is an enforceable contract and should not be set aside.

42. [Geraldine's] assertion to set aside the property division portion of the [11/28/03 Decree] is really a creditor's claim which should be decided by the probate court.

43. [George] and [Geraldine] are at the very least,

> putative spouses for purposes of this court deciding property division issues.
>
> 44. [Geraldine's] claims to set aside the [11/28/03 Decree] and the [11/28/03 Decree's] property division portion are based on fraud and are therefore barred by the one-year statute of limitations pursuant to Rule 60(b)(3) of the [HFCR].

(Formatting altered) (citations omitted).

C. ICA Appeal

In her Opening Brief, Geraldine alleged that the family court erred in (1) refusing to vacate the 11/28/03 Decree because it was void; (2) denying relief or an evidentiary hearing pursuant to HFCR Rule 60(b)(6); (3) entering FOFs 6-8, 10-17, 19, 22-23, 25, and 27-28; and (4) entering COLs 30-32, and 34-44.

In her Answering Brief, Nancy essentially reiterated the arguments she presented in the family court. Nancy further argued that Geraldine was not entitled to an evidentiary hearing on her Rule 60(b)(6) motion, insofar as the ICA held in Hayashi that the family court may decide a Rule 60(b)(6) motion without a hearing.

Geraldine did not raise any substantively new arguments in her Reply Brief.

The ICA filed its published opinion in the instant case on April 12, 2010. Cvitanovich-Dubie, 123 Hawaiʻi at 266, 231 P.3d at 983. With regard to Geraldine's Rule 60(b)(4) claim that the family court lacked subject matter jurisdiction to enter the 11/28/03 Decree because the Dominican Decree was void, the ICA held that the Dominican Decree was not entitled to "pro forma

recognition" on the basis of comity, id. at 273-75, 231 P.3d at 990-92, but was entitled to practical recognition on the basis of quasi-estoppel, id. at 275-80, 231 P.3d at 992-97. Accordingly, the ICA held that, based on FOFs 11 through 25,[12] "the family court did not abuse its discretion in finding that Geraldine was estopped from challenging the validity of the Dominican Decree, and COL 39 is not wrong." Id. at 280, 231 P.3d at 997.

The ICA further held that Geraldine's claims of fraud and undue influence fell under Rule 60(b)(3). Id. at 281-82, 231 P.3d at 998-99. The ICA noted that:

> [Rule 60(b)(3)] does not specify upon whom the adverse party must have committed the fraud, misrepresentation, or other misconduct. Therefore, although Geraldine characterizes [George's] alleged fraud as "fraud on the court," that fraud claim nevertheless still falls under HFCR Rule 60(b)(3). Further, a plain reading of HFCR Rule 60(b) reveals that "undue influence" falls within Rule 60(b)(3) as "other misconduct."

Id. at 282, 231 P.3d at 999.

The ICA further noted that Geraldine's claims were filed more than one year after the 11/28/03 Decree was entered, and were therefore untimely under Rule 60(b)(3). Id. Accordingly, the ICA held, "the family court did not abuse its discretion by failing to provide Geraldine relief or a hearing regarding [her claims]." Id.

[12] The ICA held that FOFs 11-16, 19, and 25, and a portion of FOF 23, were not clearly erroneous. Id. at 276-78, 231 P.3d at 993-95. The ICA further held that any error in the challenged portions of FOFs 6, 7, 10, 17 and 28 was harmless. Id. at 282, 231 P.3d at 999. The ICA did not address Geraldine's remaining challenges to the FOFs, in light of its conclusion that Geraldine was estopped from challenging the Dominican Decree. Id. at 278, 283, 231 P.3d at 994, 1000.

In light of the foregoing, the ICA did not address the remaining issues raised by Geraldine in her Opening Brief. On May 3, 2010, the ICA filed its judgment affirming the family court's "Order Denying Plaintiff's Motion for Post-Decree Relief to Vacate Divorce Decree or Set Aside Property Division Pursuant to Hawaii Family Court Rule 60 [(b)], Filed on June 28, 2007."

D. Geraldine's application for a writ of certiorari

Geraldine timely filed an application for a writ of certiorari on July 29, 2010. Nancy timely filed a response on August 12, 2010.

In her application, Geraldine presents the following questions:

> A. Are estoppel or quasi estoppel available as affirmative defenses to bar relief from a clearly void ab initio Hawaii divorce decree, where allowing estoppel would vitalize that which multiple Hawaii statutes declare void, legalize what public policy and the law have forbidden, and violate this [c]ourt's holdings in Godoy v. County of Hawaii, 44 Haw. 312, 354 P.2d 78 (1960) and Alvarez Family Trust v. Ass'n of Owners, 121 Hawaiʻi 474, 221 P.3d 452 (2010)?
>
> B. Is the application of quasi estoppel in this case inconsistent with this [c]ourt's holding in Yuen Shee v. London Guaranty and Accident, 40 Haw. 213 (1953), and in facial violation of Anderson v. Anderson, 59 Haw. 575, 585 P.2d 938 (1978)?
>
> C. Did the Intermediate Court of Appeals (ICA) commit grave error when it afforded practical recognition to a void ab initio foreign divorce decree?
>
> D. Did the ICA commit grave error when it affirmed estoppel in favor of a litigant with unclean hands as a matter of law, and against one whose hands were clean as a matter of law?
>
> E. Did the ICA commit grave error when it held that the standard of review for findings of fact entered in the absence of any evidentiary hearing is clearly erroneous, rather than de novo, and refused to consider "the weight of the evidence" and the "credibility" of witnesses when there was no live testimony?
>
> F. Did the ICA commit grave error when it held that undue influence and fraud on the court fall within HFCR Rule 60(b)(3), rather than HFCR Rule

> 60(b)(6), and that the alternative relief sought - i.e., to set aside the property settlement portion of the decree - was therefore time barred?

II. Standards of Review

A. HFCR Rule 60(b)(4) motions

Under Rule 60(b)(4),

> The determination of whether a judgment is void is not a discretionary issue. It has been noted that a judgment is void only if the court that rendered it lacked jurisdiction of either the subject matter or the parties or otherwise acted in a manner inconsistent with due process of law.

In re Hana Ranch Co., 3 Haw. App. 141, 146, 642 P.2d 938, 941 (App. 1982) (citation omitted).

Accordingly, we review the family court's denial of a HFCR Rule 60(b)(4) motion de novo.

B. HFCR Rule 60(b)(6) motions

The family court's denial of a motion under HFCR Rule 60(b)(6) is reviewed for abuse of discretion. Pratt v. Pratt, 104 Hawaiʻi 37, 42, 84 P.3d 545, 550 (2004). As the ICA noted in Hayashi:

> [s]ince Rule 60(b)(6) relief is contrary to the general rule favoring finality of actions, the court must carefully weigh all of the conflicting considerations inherent in such applications. Once the court has made a determination to grant or deny relief, the exercise of its discretion will not be set aside unless the appellate court is persuaded that, under the circumstances of the case, the court abused its discretion.

4 Haw. App. at 291, 666 P.2d at 175 (citations omitted).

"[A]n abuse of discretion occurs where the trial court has clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a

party litigant." Buscher v. Boning, 114 Hawaiʻi 202, 211, 159 P.3d 814, 823 (2007) (brackets in original) (quoting Office of Hawaiian Affairs v. State, 110 Hawaiʻi 338, 351, 133 P.3d 767, 780 (2006)). In addition, "[t]he burden of establishing abuse of discretion is on appellant, and a strong showing is required to establish it." In re RGB, 123 Hawaiʻi 1, 17, 229 P.3d 1066, 1082 (2010) (brackets in original) (citation omitted).

III. Discussion

Geraldine's Rule 60 motion sought relief on alternative grounds pursuant to Rule 60(b)(4) and Rule 60(b)(6). With regard to Rule 60(b)(4), Geraldine argued in the family court that the 11/28/03 Decree was void on the ground that Geraldine and George were never legally married because the Dominican Decree was void. The family court denied Geraldine's motion in this respect on several grounds, including that the Dominican Decree was entitled to comity, and that Geraldine was estopped from challenging the validity of the Dominican Decree. On appeal, the ICA affirmed, concluding that Geraldine was estopped from challenging the validity of the Dominican Decree. Cvitanovich-Dubie, 123 Hawaiʻi at 275-80, 231 P.3d at 992-97. Geraldine argues that the ICA erred because estoppel is inapplicable to the facts of the instant case. As set forth below, although the ICA did not err in affirming the family court's order with regard to Geraldine's claims under Rule 60(b)(4), its reasoning was erroneous in part. Specifically, the ICA was not required to reach the issue of

estoppel because the 11/28/03 Decree is not void within the meaning of Rule 60(b)(4).

Alternatively, Geraldine argued in the family court that the property division portion of the 11/28/03 Decree should be set aside under Rule 60(b)(6), on the ground that the property division was the result of "fraud on the court" and "undue influence." The family court denied Geraldine's motion in this respect, finding that Geraldine's claims "sound[ed] in fraud or other intentional misconduct[,]" and were therefore barred by the one-year limitation on motions brought pursuant to Rule 60(b)(3). The ICA affirmed, concluding that Geraldine's claims of "fraud on the court" and "undue influence" fell within Rule 60(b)(3) and were accordingly untimely. Id. at 281-82, 231 P.3d at 998-99. Geraldine argues that the ICA erred because "fraud on the court" and "undue influence" are properly considered under Rule 60(b)(6). As set forth below, the ICA did not err in affirming the family court's order in this respect.

A. Geraldine could not be estopped from challenging the family court's jurisdiction to enter the 11/28/03 Decree

The ICA held that the circuit court erred in COL 35 in recognizing the Dominican Decree on the basis of comity, id. at 273-75, 231 P.3d at 990-92, but that the Dominican Decree was nonetheless entitled to practical recognition based on principles of quasi-estoppel, id. at 275-80, 231 P.3d at 992-97. Having thus concluded that Geraldine was estopped from contesting the validity of the Dominican Decree, the ICA concluded that it was

not required to address Geraldine's points concerning the adequacy of notice to her of the Dominican Decree, or whether the Dominican Decree was subject to collateral attack.[13] Id. at 280, 231 P.3d at 997. Accordingly, it appears that the ICA concluded that the family court did not reversibly err in denying the Rule 60(b)(4) portion of Geraldine's Rule 60 motion, on the ground that Geraldine was estopped from contesting the validity of the Dominican Decree. Id. at 275-80, 231 P.3d at 992-97. In essence, the ICA concluded that Geraldine was estopped from asserting that the 11/28/03 Decree was void.

However, Geraldine argued that the invalidity of the Dominican Decree deprived the family court of jurisdiction to enter the 11/28/03 Decree. "[I]t is well-settled that subject-matter jurisdiction cannot be conferred upon a court by agreement, stipulation, or consent of the parties[.]" Gilmartin v. Abastillas, 10 Haw. App. 283, 292, 869 P.2d 1346, 1351 (1994). Moreover, "[t]he lack of jurisdiction over the subject matter cannot be waived by the parties." Williams v. Aona, 121 Hawaiʻi 1, 8, 210 P.3d 501, 508 (2009) (quoting Chun v. Employees Ret.

[13] As set forth in the family court's COLs, the family court provided several additional alternative grounds that could support its decision to deny Geraldine's Rule 60(b)(4) motion, including that Geraldine did not have standing to collaterally attack the Dominican Decree in the family court. There is substantial case law dealing with each of these issues. See generally, R.F. Chase, Annotation, Domestic Recognition of Divorce Decree Obtained in Foreign Country and Attacked for Lack of Domicil or Jurisdiction of Parties, 13 A.L.R.3d 1419 (1967); Annotation, Vacating or Setting Aside Divorce Decree After Remarriage of Party, 17 A.L.R.4th 1153, 1225-32 (1982) (discussing decisions where a divorce decree is contested by a "[s]ubsequent husband of divorced wife" or "[s]ubsequent wife of divorced husband"). However, in light of the conclusion that the 11/28/03 Decree is not void within the meaning of Rule 60(b)(4), this court need not address those issues.

Sys., 73 Haw. 9, 13, 828 P.2d 260, 263 (1992)). It follows that jurisdiction similarly cannot be created by estoppel. See Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982) ("[N]o action of the parties can confer subject-matter jurisdiction upon a federal court. Thus, . . . principles of estoppel do not apply[.]") (citations omitted).

Accordingly, Geraldine could not be estopped from challenging the family court's jurisdiction to enter the 11/28/03 Decree. The ICA's determination that Geraldine was estopped from challenging the Dominican Decree thus cannot resolve whether the 11/28/03 Decree is void for lack of subject matter jurisdiction pursuant to HFCR Rule 60(b)(4), and the ICA erred in failing to address that issue.

B. The 11/28/03 Decree is not void under Rule 60(b)(4)

Geraldine argues that the family court's 11/28/03 Decree is void because, as a result of the invalid Dominican Decree, she and George were not legally married, and the family court lacked jurisdiction to enter a divorce decree involving unmarried persons. We conclude that Geraldine's arguments do not fall within the scope of Rule 60(b)(4).

"In the sound interest of finality, the concept of a void judgment must be narrowly restricted." Dillingham Inv. Corp. v. Kunio Yokoyama Trust, 8 Haw. App. 226, 233, 797 P.2d 1316, 1320 (1990) (quoting 7 James Wm. Moore et al., Moore's Federal Practice ¶ 60.25[2], at 60-225, 60-229, 60-230 (2d ed.

1990)). "The principles of judicial economy and judicial finality operate as constraining influences upon the generosity of the courts in declaring judgments void." Isemoto Contracting Co., Ltd. v. Andrade, 1 Haw. App. 202, 206, 616 P.2d 1022, 1026 (1980). The ICA has explained that:

> The determination of whether a judgment is void is not a discretionary issue. It has been noted that a judgment is void only if the court that rendered it lacked jurisdiction of either the subject matter or the parties or otherwise acted in a manner inconsistent with due process of law.[14] Wright & Miller, Federal Practice and Procedure: Civil s 2862 (1973). Other authorities, cognizant of the extraordinary remedy afforded by the rule and the need to narrowly define it, have stated:
>
> > In brief, then, except for the rare case where power is plainly usurped, if a court has the general power to adjudicate the issues in the class of suits to which the case belongs then its interim orders and final judgment, whether right or wrong, are not subject to collateral attack . . . .

In re Hana Ranch Co., 3 Haw. App. at 146, 642 P.2d at 941-42 (emphasis added) (ellipses in original) (quoting 7 James Wm. Moore et al., Moore's Federal Practice ¶ 60.25 (1980)); see also Dillingham Inv. Corp., 8 Haw. App. at 233-34, 797 P.2d at 1320 ("[I]f a court has the general power to adjudicate the issues in the class of suits to which the case belongs then its interim orders and final judgments, whether right or wrong, are not subject to collateral attack, so far as jurisdiction over the subject matter is concerned.") (quoting 7 James Wm. Moore et al., Moore's Federal Practice ¶ 60.25[2], at 60-229, 60-230 (2d ed.

[14] Geraldine has not argued that the family court lacked jurisdiction over the parties, or that the 11/28/03 Decree violated due process. Accordingly, we do not address these other two bases on which a judgment may be found void pursuant to HFCR Rule 60(b)(4).

1990)).

It should be noted that this court has concluded that a judgment was void under Rule 60(b)(4) on only one occasion. In Stafford v. Dickison, 46 Haw. 52, 63, 374 P.2d 665, 672 (1962), we held that a default judgment was void under Hawaiʻi Rules of Civil Procedure (HRCP) Rule 60(b)(4)[15] on the ground that the defendant had been denied due process. There, a default judgment was ordered against the defendant during a hearing at which defendant did not appear. Id. However, "defendant's nonappearance was due to the court's abuse of discretion in permitting the withdrawal of his counsel without notice." Id. at 63, 374 P.2d at 671. Moreover, the court "erroneously reliev[ed] plaintiff of the duty of giving notice of application for default judgment" to the defendant. Id. Accordingly, this court concluded that the defendant did not have proper notice, and held that the default judgment was void pursuant to HRCP Rule 60(b)(4). Id. at 63, 374 P.2d at 672.

In the instant case, there can be no question that Geraldine's Complaint for Divorce was "in the class of suits" that the family court "has the general power to adjudicate." See

[15] The ICA has explained that:

> Rule 60(b), HFCR, is similar to Rule 60(b), [HRCP] and Rule 60(b), Federal Rules of Civil Procedure (FRCP), except for some minor variations which do not affect the provisions concerned here. Therefore, the treatises and cases interpreting HRCP, Rule 60(b) and FRCP, Rule 60(b) provide persuasive reasoning for the interpretation of HFCR 60(b).

Hayashi, 4 Haw. App. at 290 n.6, 666 P.2d at 174 n.6.

Dillingham Inv. Corp., 8 Haw. App. at 233-34, 797 P.2d at 1320. The family court has "[e]xclusive original jurisdiction in matters of annulment, divorce, and separation, . . . subject [] to appeal according to law[.]" HRS § 580-1 (1993). "The family court shall decree a divorce from the bond of matrimony upon the application of either party when the court finds . . . [t]he marriage is irretrievably broken[.]" HRS § 580-41(1) (1993). "If after a full hearing, the court is of opinion that a divorce ought to be granted from the bonds of matrimony a decree shall be signed, filed and entered, which shall take effect from and after such time as may be fixed by the court in the decree." HRS § 580-45 (1993).

Geraldine filed her Complaint for Divorce on November 6, 2003. By signing the Complaint, Geraldine "declare[d], under penalty of perjury, that the statements made [therein were] true and correct to the best of [her] knowledge, information and belief." The Complaint read in pertinent part as follows:

> 1. **Jurisdiction.**
> I and/or my spouse, the Defendant, have lived or have been physically present in the State of Hawaiʻi for a continuous period of at least six (6) months and I have lived and/or been physically present on the Island of Oʻahu for a continuous period of at least three (3) months immediately preceding this application.
> 2. **Marriage**
> The parties (plaintiff and spouse) are lawfully married to each other.
> . . . .
> 8. **Grounds**
> Pursuant to HRS Section 580-41, I allege that the grounds for divorce are as follows . . .
> X The marriage is irretrievably broken.
> . . . .

> **It is requested of the Court:**
> That a decree be entered granting a divorce from the bonds of matrimony . . . .

On November 7, 2003, George filed an Appearance and Waiver, acknowledging receipt of a filed copy of the Complaint and Summons in the divorce action, and consenting to a hearing of the complaint without his presence.

Based on the foregoing, the family court did not "plainly usurp[]" power in granting the 11/28/03 Decree. See Dillingham Inv. Corp., 8 Haw. App. at 233-34, 797 P.2d at 1320; see also Nemaizer v. Baker, 793 F.2d 58, 65 (2d Cir. 1986) ("[A] court will be deemed to have plainly usurped jurisdiction only when there is a 'total want of jurisdiction' and no arguable basis on which it could have rested a finding that it had jurisdiction.") (citation omitted).

Nevertheless, Geraldine argues that the 11/28/03 Decree is void because "divorce presupposes and requires a valid marriage." Geraldine further argues that the 11/28/03 Decree is void pursuant to HRS § 1-6, which provides that "[w]hatever is done in contravention of a prohibitory law is void, although the nullity be not formally directed." Put another way, Geraldine argues that her marriage was bigamous and therefore violated prohibitory law, and that the marriage was therefore void ab initio pursuant to HRS § 1-6.

Assuming arguendo that the question of whether a marriage is valid goes to the family court's jurisdiction to

enter a divorce,[16] Geraldine's challenges to the family court's jurisdiction would have been relevant had she raised them in the divorce proceedings or in a direct appeal. However, on a Rule 60(b)(4) motion, the principle of finality narrows the scope of review. Dillingham Inv. Corp., 8 Haw. App. at 233-34, 797 P.2d

[16] We note that HRS § 580-1, concerning the jurisdiction of the family court, provides only that "[n]o absolute divorce from the bond of matrimony shall be granted for any cause unless either party to the marriage has been domiciled or has been physically present in the State for a continuous period of at least six months next preceding the application therefor." (Emphasis added). HRS § 580-1 does not contain a jurisdictional requirement that the parties be lawfully married in order to seek a divorce. Rather, it appears that a valid marriage is more properly considered a substantive requirement for a valid divorce. See HRS § 580-1 (setting forth when the family court "shall decree a divorce from the bond of matrimony") (emphasis added); cf. Whitehead v. Whitehead, 53 Haw. 302, 315-16, 492 P.2d 939, 947 (1972) (noting that the "jurisdictional" nature of the domicile requirement in HRS § 580-1 did not mean that the court "was without authority to hear the case in the absence of the required proof of domicile" but that the domicile provision "sets forth a substantive requirement for divorce"); Puckett v. Puckett, 94 Hawaiʻi 471, 482-83, 16 P.3d 876, 887-88 (App. 2000) (applying Whitehead, 53 Haw. at 315, 492 P.2d at 947); see also Kansas City S. Ry. Co. v. Great Lakes Carbon Corp., 624 F.2d 822, 825 (8th Cir. 1980) (rejecting an argument that a judgment was void under FRCP Rule 60(b)(4), and noting that an "error in interpreting a statutory grant of jurisdiction is not equivalent to acting with total want of jurisdiction" and that "[s]uch an erroneous interpretation does not render the judgment a complete nullity").

Tagupa v. Tagupa, 108 Hawaiʻi 459, 121 P.3d 924 (App. 2005), further supports an inference that the requirement of a valid marriage is not jurisdictional. There, Ronnie-Jean Kuulei Tagupa (Ronnie-Jean) and Vincent Peter Tagupa (Vincent) were married on September 15, 1989. Id. at 459, 461, 121 P.3d at 924, 926. In 2001, Ronnie-Jean filed a Complaint for Divorce and Vincent subsequently filed a Counter-Claim for Annulment. Id. at 461-62, 121 P.3d at 926-27. Ronnie-Jean subsequent filed a Certified Copy of the Judgment of Divorce, indicating that Thornton G. Sanders (Sanders) obtained a Judgment of Divorce terminating his marriage to Ronnie-Jean on December 21, 1989. Id. at 462, 121 P.3d at 927. Despite this undisputed evidence that Ronnie-Jean's divorce from Sanders had not been finalized at the time of her marriage to Vincent, the family court denied Vincent's claim for annulment and entered a divorce decree. Id.

On appeal, the ICA concluded that Ronnie-Jean and Vincent had not satisfied the requirements for a valid marriage contract because Ronnie-Jean still had a living lawful husband at the time of her marriage to Vincent. Id. at 465, 121 P.3d at 930. The ICA concluded that the family court abused its discretion in entering the divorce decree and denying Vincent's claim for annulment, and accordingly vacated portions of the family court's divorce decree and remanded. Id. at 465-67, 121 P.3d at 930-32 (holding that "the family court disregarded rules or principles of law or practice to the substantial detriment of a party litigant"). Although the ICA determined that the family court erred in entering the divorce decree, it did not state that the error was jurisdictional.

at 1320. Because the family court had "power to adjudicate the issues in the class of suits to which the case belongs," i.e., divorce proceedings, its judgment is not subject to collateral attack pursuant to HFCR Rule 60(b)(4). See In re Hana Ranch Co., 3 Haw. App. at 146, 642 P.2d at 941-42 (citation omitted) ("[I]f a court has the general power to adjudicate the issues in the class of suits to which the case belongs then its interim orders and final judgment, whether right or wrong, are not subject to collateral attack."); see also Dillingham Inv. Corp., 8 Haw. App. at 233-34, 797 P.2d at 1320 ("[I]f a court has the general power to adjudicate the issues in the class of suits to which the case belongs then its interim orders and final judgments, whether right or wrong, are not subject to collateral attack, so far as jurisdiction over the subject matter is concerned.").

Accordingly, although the ICA erred in its reasoning, it did not err in affirming the family court's order denying Geraldine's motion under Rule 60(b)(4).[17]

C. Geraldine's claims of "fraud on the court" and "undue influence" fall within Rule 60(b)(3) and are therefore untimely

In addition to her argument under Rule 60(b)(4),

[17] Based on the foregoing, the ICA was not required to address whether Geraldine was estopped from contesting the validity of the Dominican Decree. In addition, insofar as FOFs 11 through 16, 19, 25 and that part of FOF 23 concerning Geraldine's knowledge of the Dominican Decree, go to either the validity of the Dominican Decree or Geraldine's ability to collaterally attack the Dominican Decree, the ICA was not required to address Geraldine's challenge to those FOFs. Accordingly, we do not address Geraldine's challenges to the ICA's application of quasi-estoppel, and need not resolve whether the ICA applied the proper standard of review in considering the family court's FOFs.

Geraldine argues that the Property Settlement Agreements attendant to the 11/28/03 Decree should be set aside under Rule 60(b)(6) because they were the result of George's "fraud upon the court" and "undue influence." However, the ICA concluded that Rule 60(b)(3) applies to those claims. Cvitanovich-Dubie, 123 Hawaiʻi at 281-82, 231 P.3d at 998-99. Accordingly, the ICA concluded that Geraldine's Rule 60 motion was untimely under Rule 60(b)(3), because it was brought more than one year after the 11/28/03 Decree was entered. Id. at 282, 231 P.3d at 999. As set forth below, the ICA did not err in concluding that Geraldine's claims of "fraud upon the court" and "undue influence" were properly considered under principles applicable to Rule 60(b)(3) motions, and were accordingly untimely.

Rule 60(b)(3) provides that the court may relieve a party of a final judgment for the reasons of "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." Under Rule 60(b)(3), a motion for relief from judgment must be made "not more than one year after the judgment, order, or proceedings was entered or taken." Rule 60(b)(3).

In contrast, Rule 60(b)(6) provides that the court may relieve a party of a final judgment for "any other reason justifying relief[.]" A motion for relief under Rule 60(b)(6) must be made "within a reasonable time." Rule 60(b). The ICA has explained that, in bringing a motion under Rule 60(b)(6), a

movant must meet three threshold requirements: "the movant must show that (1) the motion is based on some reason other than those specifically stated in clauses 60(b)(1) through (5); (2) the reason urged is such as to justify the relief; and (3) the motion is made within a reasonable time." Hayashi, 4 Haw. App. at 290, 666 P.2d at 174 (emphasis added) (citation omitted).

In the instant case, Geraldine filed her Rule 60 motion on June 28, 2007, more than three years after the family court's 11/28/03 Decree. Accordingly, if her claims are construed as falling within the provisions of Rule 60(b)(3), her Rule 60 motion was untimely. See Rule 60(b). In contrast, if Geraldine's claims are construed as falling within the provisions of Rule 60(b)(6), relief is available if the court finds her motion was made "within a reasonable time," and there are "reason[s] justifying relief." See Rule 60(b); see also Hayashi, 4 Haw. App. at 290-91, 666 P.2d at 174-75.

As set forth below, Geraldine's claims of "fraud upon the court" and "undue influence" fall within the provisions of Rule 60(b)(3) and are therefore untimely.

1. Fraud on the court

This court has noted that, "[s]ince the remedy for fraud on the court is far reaching, it only applies to very unusual cases involving 'far more than an injury to a single litigant[,]' but rather, a 'corruption of the judicial process itself.'" Schefke v. Reliable Collection Agency, Ltd., 96

Hawaiʻi 408, 431 n.42, 32 P.3d 52, 75 n.42 (2001) (citation omitted) (some brackets in original); see also Matsuura v. E.I Du Pont de Nemours & Co., 102 Hawaiʻi 149, 171, 73 P.3d 687, 709 (2003) (Acoba, J., concurring and dissenting) ("fraud on the court is not fraud on a party"). It is generally accepted that fraudulent conduct such as perjury or non-disclosure by a party, standing alone, is insufficient to make out a claim for fraud on the court. See, e.g., Gleason v. Jandrucko, 860 F.2d 556, 559-60 (2d Cir. 1988) ("[N]either perjury nor nondisclosure, by itself, amounts to anything more than fraud involving a single litigant."); Lockwood v. Bowles, 46 F.R.D. 625, 632-34 (D.D.C. 1969) ("[W]here the court or its officers are not involved, there is no fraud upon the court within the meaning of [FRCP] Rule 60(b)."); see also 12 James Wm. Moore et al., Moore's Federal Practice ¶ 60.21[4][c] (3d ed. 2010) ("Fraud on the court may not be established simply by showing some misconduct by one of the parties to the suit. . . . If fraud on the court were to be given a broad interpretation that encompassed fraudulent misconduct between the parties, a judgment would always remain subject to challenge, and the one-year time limitation applicable to motions based on Rule 60(b)(3) would be meaningless.") (footnotes omitted).

This court has similarly explained that:

> Not any fraud connected with the presentation of a case amounts to fraud on the court. It must be a "direct assault on the integrity of the judicial process." Courts have required more than nondisclosure by a party or the party's attorney to find fraud on

> the court. Examples of such fraud include "bribery of a judge," and "the employment of counsel in order to bring an improper influence on the court."

Schefke, 96 Hawaiʻi at 431, 32 P.3d at 75 (citations omitted); cf. Child Support Enforcement Agency v. Doe, 98 Hawaiʻi 499, 504, 51 P.3d 366, 371 (2002) (holding that an allegation that "counsel had lied during the underlying proceedings in order to induce [a party] to agree to the judgment of paternity" was properly considered as fraud under HFCR Rule 60(b)(3)).

Here, the record does not establish that George knew the Dominican Decree was invalid, or that he deliberately misrepresented his marital status to the family court.[18] Moreover, Geraldine's allegation that George "conceal[ed] the fact that he had never divorced Sylvie" in order to "gain access

[18] We respectfully disagree with the dissent's assertion that Geraldine established George's knowledge of the invalidity of the Dominican Decree through (1) Geraldine's declaration that she realized, after George's death, that George and Sylvie were not lawfully divorced; and (2) an attorney's declaration that, in his view, the Dominican Decree was substantively invalid. Dissenting opinion at 34-35. Respectfully, these declarations do not purport to address George's knowledge as to the validity of the Dominican Decree. Further, we are reluctant to ascribe import to the fact that, subsequent to their divorce, George and Sylvie were denominated as "husband" and "wife" in a Variation of Separation Agreement that altered their agreement with regard to custody of their daughter. See dissenting opinion at 35-36. It is not uncommon for divorced parties to be referred to in this manner, see, e.g., Weinberg v. Dickson-Weinberg, 121 Hawaiʻi 401, 220 P.3d 264 (App. 2009), vacated in non-relevant part by Weinberg v. Dickson-Weinberg, 123 Hawaiʻi 68, 229 P.3d 1133 (2010), and the mere use of those terms in the agreement does not establish that George knew the Dominican Decree was invalid.

We also respectfully disagree with the dissent's suggestion that George concealed his marital status from the family court during the divorce proceedings because he filed an appearance and waiver form, and because George indicated in that form that he agreed to the matters set forth in an agreement incident to divorce. Dissenting opinion at 36-37. Although these facts indicate that George "held himself out as being married to Geraldine," id., they do not establish that he purposefully concealed information or made a fraudulent representation to the court.

We further note that it was Geraldine, rather than George, who declared, under penalty of perjury, that "[t]he parties . . . [were] lawfully married to each other." In contrast, none of George's responsive submissions to the family court aver to the legality of his marriage to Geraldine.

to [the family court]," is an allegation of nondisclosure by an adverse party, rather than an allegation amounting to a "'direct assault on the integrity of the judicial process.'"[19] See Schefke, 96 Hawaiʻi at 431, 32 P.3d at 75. Although Geraldine styles this portion of her motion as one for "fraud on the court," the substance of her allegations does not rise to the level of fraud on the court. Accordingly, this allegation is properly evaluated as "fraud . . ., misrepresentation, or other misconduct of an adverse party" under Rule 60(b)(3).[20]

---

[19] The dissent cites Kawamata Farms, Inc. v. United Agri Products, 86 Hawaiʻi 214, 948 P.2d 1055 (1997), and Southwest Slopes, Inc. v. Lum, 81 Hawaiʻi 501, 918 P.2d 1157 (App. 1996), for the proposition that "non-disclosure can amount to fraud on the court when the party and the trial court have no reason to question the representation, and the court relies on the representation when issuing its decision." Dissenting opinion at 42 (footnote omitted). However, Kawamata Farms and Southwest Slopes do not stand for this proposition and, in any event, are distinguishable.

In Kawamata Farms, the circuit court concluded that the defendants had committed "discovery fraud upon the circuit court" by, inter alia, fraudulently asserting to the Discovery Master that the work product privilege barred discovery of certain documents. 86 Hawaiʻi at 229-30, 948 P.2d at 1070-71. Thus, Kawamata Farms did not involve "non-disclosure," but rather fraudulent misrepresentations that formed the substantive basis for the circuit court's discovery orders. Moreover, this court relied on the "egregious nature of the fraud" perpetrated by defendants in allowing the plaintiffs to seek additional affirmative relief under Rule 60(b)(3), notwithstanding that Rule 60(b) can generally only be used to set aside a prior order or judgment. Id. at 256-57, 948 P.2d at 1097-98.

In Southwest Slopes, the asserted fraud involved a potentially false affidavit by a party, as well as an apparently false affidavit and letter by the party's attorney. 81 Hawaiʻi at 511, 918 P.2d at 1167. It is well-settled that fraud perpetuated by an officer of the court can constitute fraud on the court. See Schefke, 96 Hawaiʻi at 431, 32 P.3d at 75 (citations omitted) (noting that "the employment of counsel in order to bring an improper influence on the court" can constitute fraud on the court). Thus, the ICA recognized "[t]he possibility that Plaintiffs used fraud upon the court" in obtaining summary judgment. Sw. Slopes, 81 Hawaiʻi at 511, 918 P.2d at 1167 (emphasis added).

[20] Because we conclude that Geraldine's claims do not constitute fraud on the court but rather "fraud . . ., misrepresentation, or other misconduct of an adverse party" that is properly considered under Rule 60(b)(3), we do not resolve whether fraud on the court properly falls under Rule 60(b)(3) or Rule 60(b)(6). Although the dissenting opinion urges us to address this issue, dissenting opinion at 43 n.22, in light of our holding, any attempt to do so would be considered dicta.

Geraldine cites several cases which she suggests stand for the proposition that her claim is properly considered under HFCR Rule 60(b)(6). However, these cases are inapposite and accordingly do not support Geraldine's position.[21]

Accordingly, the ICA did not err in holding that the family court did not abuse its discretion in denying Geraldine relief in this respect.

2. "Undue influence"

The ICA concluded that "a plain reading of HFCR Rule

---

[21] In Kawamata Farms, this court held that a defendant's extensive discovery abuses constituted fraud on the court. 86 Hawaiʻi at 256-57, 948 P.2d at 1097-98. However, this court affirmed the grant of relief pursuant to HRCP Rule 60(b)(3), rather than Rule 60(b)(6). Id. at 257-58, 948 P.2d at 1098-99.

In Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 239 (1944), an action was brought independent of Rule 60(b), for "leave to file a bill of review . . . to set aside a judgment[,]" Id. at 239, and the only discussion of FRCP Rule 60(b) was in the dissent, id. at 255-56. Moreover, Hazel-Atlas Glass was decided in 1944, at a time when "there was considerable doubt whether fraud was a ground for a motion under [FRCP] Rule 60(b) or whether it could be attacked only by an independent action." 11 Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2860 at 310 (2d ed. 1995). In 1946, FRCP Rule 60(b) was amended to include "fraud" as an express ground for relief from judgment. FRCP Rule 60 advisory committee's notes on 1946 amdt.

In Geo. P. Reintjes Co. v. Riley Stoker Corp., 71 F.3d 44, 45 (1st Cir. 1995), Reintjes brought an independent action for fraud on the ground that an employee of Riley Stoker committed perjury during arbitration proceedings that led to a settlement agreement two years earlier. The United States Court of Appeals for the First Circuit rejected the argument that Reintjes' claim could proceed as an independent action for fraud on the court, and instead concluded that "perjury alone" was insufficient to bring a common law cause of action for fraud independent of FRCP Rule 60(b)(3). Id. at 48-49. Accordingly, the court concluded that Rientjes' claim was subject to the limitations of FRCP Rule 60(b)(3) and was untimely since it was filed "some two years" after the underlying judgment. Id. at 45, 49.

Finally, in Southwest Slopes, the ICA vacated a grant of summary judgment in defendant's favor on direct appeal. 81 Hawaiʻi at 502, 918 P.2d at 1158. The ICA noted "[t]he possibility that Plaintiffs used fraud upon the court when obtaining the summary judgment," and that "[f]raud, misrepresentation, and circumvention used to obtain a judgment are generally regarded as sufficient cause for the opening or vacating of the judgment." Id. at 511, 918 P.2d at 1167 (citation omitted). Although not directly relevant because it was decided on direct appeal, the ICA's conclusion indicates that fraud on the court is properly considered as a type of "fraud."

60(b) reveals that 'undue influence' falls within Rule 60(b)(3) as 'other misconduct.'" Cvitanovich-Dubie, 123 Hawaiʻi at 282, 231 P.3d at 999. Geraldine argues that the ICA erred because "undue influence is deemed to be a matter within Rule 60(b)(6)[.]"

Rule 60(b)(3) allows a party to move for relief from judgment on the basis of "fraud . . ., misrepresentation, or other misconduct of an adverse party[.]" Rule 60(b)(6) allows a party to move for relief for "any other reason justifying relief from the operation of the judgment." (Emphasis added). Thus, in order to take advantage of the potentially more lenient timeliness provisions in clause (6), "the motion must be based upon some reason other than those stated in clauses (1) through (5)." Child Support Enforcement Agency, 98 Hawaiʻi at 504, 51 P.3d at 371. Hawaiʻi courts have not directly addressed whether a claim of undue influence falls under clause (3) or (6) of Rule 60(b). However, the plain language of the rule indicates that clause (3) governs misconduct by the non-moving party. Compare HFCR Rule 60(b)(3) ("fraud . . ., misrepresentation, or other misconduct of an adverse party") (emphasis added) with HFCR Rule 60(b)(1) ("mistake, inadvertence, surprise, or excusable neglect"). Although undue influence is not specifically identified in clause (3), "other misconduct of an adverse party" is a catch-all provision that reasonably includes the "undue

influence" Geraldine alleges.[22] Cf. Anderson v. Cryovac, Inc., 862 F.2d 910, 923 (1st Cir. 1988) ("For the term [misconduct] to have meaning in the [FRCP] Rule 60(b)(3) context, it must differ from both 'fraud' and 'misrepresentation.' Definition of this difference requires us to take an expansive view of 'misconduct.'").

Moreover, because HFCR Rule 60(b) was patterned after FRCP Rule 60(b),[23] the history of the federal rule is highly persuasive as to the purpose of the Hawaiʻi rule, absent contrary intent in Hawaiʻi. The history of the federal rule strongly supports the conclusion that undue influence falls within clause (3), rather than clause (6). The FRCP were adopted in 1937, and

---

[22] We respectfully disagree with the dissent's assertion that we have "abandon[ed] established statutory construction rules" by relying on the plain language of Rule 60(b)(3). Dissenting opinion at 45. Moreover, our interpretation does not leave Rule 60(b)(3) "without any manageable limits," dissenting opinion at 45, inasmuch as the rule is limited to the conduct of an adverse party. See 11 Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2864 at 352-53 ("Fraud by the party's own counsel, by a codefendant, or by a third-party witness does not fit within clause (3) of the rule, which requires fraud by an adverse party, and relief has been granted under clause (6) instead.").

Further, we respectfully disagree with the dissent's assertion that undue influence does not fall under Rule 60(b)(3) because it is "based on conduct that is different from fraud and misrepresentation." Dissenting opinion at 28-29. If relief under Rule 60(b)(3) were limited to conduct involving false representations, as the dissent asserts, the phrase "other misconduct" would be rendered surplusage. Although the dissent points to other "causes of action" (such as defamation, libel and slander) that also involve false representations, dissenting opinion at 45, it does not appear that these causes of action could be grounds for setting aside a judgment pursuant to Rule 60(b)(3).

[23] The HFCR were patterned after the HRCP, which in turn were patterned after the FRCP. J. Garner Anthony, Chairman, Hawaiʻi Procedural Rules Committee, Foreword to Hawaiʻi Rules of Civil Procedure, at ii (1953); Letter from the Honorable Paul C. Kokubun & V. Thomas Rice, Co-Chairmen, Hawaiʻi Family Court Rules Drafting Committee, to committee members (June 24, 1974) (attached to June 24, 1974 draft of HFCR). As discussed supra in note 15, the relevant portions of the current text of HFCR Rule 60(b) and FRCP Rule 60(b) are virtually identical.

became effective in 1938. Order of December 20, 1937, 302 U.S. 783 (1937); 28 U.S.C.A. following § 723c. Prior to that time, the federal district courts were subject to an inflexible rule concerning relief from judgments, which generally prevented the district court from reconsidering its final judgments after the expiration of the term in which the judgment was rendered. James Wm. Moore & Elizabeth B.A. Rogers, Federal Relief from Civil Judgments, 55 Yale L.J. 623, 627 (1946). However,

> [e]xceptions to this general rule were the utilization, under certain circumstances, of the ancillary remedies of coram nobis, coram vobis, audita querela, bill of review and bill in the nature of a bill of review--remedies which had grown up to give relief after term time in certain limited situations; the occasional utilization of the doctrine of the court's inherent power over its judgments; and the independent action in equity to enjoin enforcement of a judgment.

Id. (footnote omitted).

When the FRCP were promulgated, they were "generally supposed to cover the field" concerning the practice for obtaining relief from judgments. Advisory Committee Notes to 1946 Amendment to FRCP Rule 60 (discussing the promulgation of the FRCP). However, a number of federal decisions initially concluded that efforts to obtain relief through the older ancillary and equitable remedies, such as a bill of review or coram nobis, were proper despite the adoption of the FRCP. See id.; see also Moore & Rogers, 55 Yale L.J. at 653-82. Accordingly, amendments to FRCP Rule 60(b) were promulgated in 1946 to "abolish[] the use of bills of review and the other common law writs referred to," and to permit "either by motion or

by independent action, the granting of various kinds of relief from judgments which were permitted in the federal courts prior to the adoption of these rules[.]" Advisory Committee Notes to 1946 Amendment to FRCP Rule 60. Put another way, FRCP Rule 60(b) effectively superceded the ancillary and equitable remedies with respect to the practice for obtaining relief from judgments.

Federal courts have indicated that "[FRCP] Rule 60(b)(3) is the lineal descendant of the equity rule that a court may alter or annul, because of fraud or undue influence, a written instrument (such as a contract or patent-but also a court's own judgment), only if the fraud or undue influence is proved by clear and convincing evidence."[24] Ty Inc. v. Softbelly's, Inc., 517 F.3d 494, 498 (7th Cir. 2008) (emphasis added) (citations omitted); Massi v. Walgreen Co., No. 3:05-cv-425, 2008 WL 2066453, at *3 (E.D. Tenn. May 13, 2008). In contrast, FRCP Rule 60(b)(6), which was added with the amendments promulgated in 1946, was "an unprecedented addition to

[24] The dissent asserts that this statement by the Seventh Circuit is erroneous because it cites Hazel-Atlas Glass, 322 U.S. at 244-45, for support, and the opinion in Hazel-Atlas Glass case does not contain the words "undue influence." Dissenting opinion at 49. However, it is clear that, prior to the adoption of the 1946 amendments to the FRCP, a suit in equity could be used to alter or annul a written instrument or judgment on the grounds of fraud or undue influence. See, e.g., Wagg v. Herbert, 215 U.S. 546, 551-52 (1910) ("[I]t is well established that, in a suit in equity between parties, in which fraud, oppression, and undue influence are charged, the court is not concluded by that which appears on the face of the papers, but may institute an inquiry into the real facts of the transactions. So thoroughly is this doctrine established that any discussion of the cases in this and other courts affirming it would be useless. They rest upon elementary principles of equity.") (emphasis added); cf. Griffith v. Bank of New York, 147 F.2d 899, 901 (2d. Cir. 1945) (holding that an allegation that a judgment was procured by the trustee's threat to tie up the property indefinitely unless settlement was made constituted an allegation of duress or fraud sufficient to set aside a prior judgment under a court's equity powers).

the Rules" that could be used to "grant relief in situations never covered by the old post-term remedies[.]" Note, Federal Rule 60(B): Relief From Civil Judgments, 61 Yale L.J. 76, 81 & n.25 (1952); see also 11 Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2864 at 350 (footnote omitted) (noting that FRCP Rule 60(b)(6) went "beyond the grounds for relief that would have been available under older procedures"). Thus, because a claim of undue influence was cognizable under the equity rules, it appears that it is properly cognizable under FRCP Rule 60(b)(3), rather than Rule 60(b)(6). Cf. In re Leisure Corp., No. C-03-03012 RMW, 2007 WL 607696, at *5 (N.D. Cal. Feb. 23, 2007) (holding that allegations of duress were properly considered under FRCP Rule 60(b)(3)); Interactive Edge, Inc. v. Martise, No. 97 Civ. 3354(RO), 1998 WL 35131, at *3 (S.D.N.Y. Jan. 30, 1998) ("[Defendant's] allegations of threats from plaintiff's counsel, creating a climate of extreme duress under which [defendant] signed the Settlement Agreement, raise the specter of Rule 60(b)(3)[] . . . .").

Other states also appear to treat allegations of undue influence as "other misconduct of an adverse party" under provisions similar to HFCR Rule 60(b)(3). See, e.g., Self v. Maynor, 421 So. 2d 1279, 1280-81 (Ala. Civ. App. 1982) (holding that a claim of "fraud and/or undue influence" does not fall within the purview of Alabama Rules of Civil Procedure Rule 60(b)(6) because "Rule 60(b)(6) is mutually exclusive from other

rule 60(b) motions" and "the relief sought falls clearly within the purview of either 60(b)(1) or (2) or (3)"); Rothschild v. Devos, 757 N.E.2d 219, 224 n.9 (Ind. Ct. App. 2001) ("Duress and undue influence could presumably be grounds for relief from judgment under [Indiana Rules of Trial Procedure Rule] 60(B)(3) as 'other misconduct of an adverse party.'") (citation omitted); Coppley v. Coppley, 496 S.E.2d 611, 616-18 (N.C. Ct. App. 1998) (considering allegations of "duress and/or undue influence" as "other misconduct of an adverse party" under North Carolina Rules of Civil Procedure Rule 60(b)(3)); Knutson v. Knutson, 639 N.W.2d 495, 498-500 (N.D. 2002) (considering allegations that a stipulated agreement attendant to a divorce decree was procured through undue influence under North Dakota Rules of Civil Procedure Rule 60(b)(iii)).[25]

Geraldine relies on Hayashi, 4 Haw. App. at 290, 666 P.2d at 174, for the proposition that "undue influence is deemed to be a matter within Rule 60(b)(6)[.]" However, Hayashi does not stand for that proposition. In that case, Wife moved for relief pursuant to HFCR Rule 60(b)(6), alleging, inter alia,

[25] We respectfully disagree with the dissent's conclusion that these cases are "inapposite" and have no bearing on whether a claim of undue influence can be considered under Rule 60(b)(6). Dissenting opinion at 51-52. In each case, the court determined that a claim of undue influence could be brought under provisions similar to HFCR Rule 60(b)(3). Because a motion brought pursuant to Rule 60(b)(6) must be based on "some reason other than those stated in clauses (1) through (5)[,]" a determination that a claim falls under Rule 60(b)(3) necessarily precludes consideration under Rule 60(b)(6). Child Support Enforcement Agency, 98 Hawaiʻi at 504, 51 P.3d at 371; see also Self, 421 So.2d at 1281 ("In the instant case the relief sought falls clearly within the purview of either 60(b)(1) or (2) or (3). Hence, rule 60(b)(6) would not be available to the wife.").

undue influence by Husband. Id. at 288, 666 P.2d at 173. The ICA noted that relief under Rule 60(b)(6) requires that (1) "the motion is based on some reason other than those specifically stated in clauses 60(b)(1) through (5);" (2) "there are exceptional circumstances justifying relief[;]" and (3) "the motion is made within a reasonable time." Id. at 290, 666 P.2d at 174-75. The ICA then went on to deny the relief requested because Wife's petition did not sufficiently allege "exceptional circumstances" and, therefore, her six-year delay in filing the motion was unreasonable. Id. at 291, 666 P.2d at 175. Thus, the ICA disposed of the Rule 60(b)(6) motion without addressing the requirement that "the motion [be] based on some reason other than those specifically stated in clauses 60(b)(1) through (5)[.]" Id. Accordingly, Hayashi does not answer whether "undue influence" properly falls under the provisions of Rule 60(b)(3) or 60(b)(6), and Geraldine's assertion that "[t]he ICA ignored Hayashi" is misplaced.

Finally, although Geraldine argued in the ICA that the family court erred in failing to conduct an evidentiary hearing, she did not raise this issue in her application. Moreover, this argument is without merit. "The trial court may deny relief under Rule 60(b) without holding a hearing and may decide the issue on the basis of papers submitted." Hayashi, 4 Haw. App. at 293, 666 P.2d at 177 (citing Ahlo, 1 Haw. App. 324, 619 P.2d 112). Although an evidentiary hearing may have proved useful in

developing or substantiating Geraldine's allegations, Geraldine did not move for or otherwise request an evidentiary hearing, but advised the family court that she was pursuing the "labor intensive evidentiary part" in the circuit court in a related case. Inasmuch as Geraldine did not, at any point appearing in the record, request that the family court conduct an evidentiary hearing, we cannot hold that the family court erred in failing to do so.

Accordingly, the ICA did not err in holding that the family court did not abuse its discretion in denying Geraldine relief in this respect.

IV. Conclusion

For the foregoing reasons, we hold that the 11/28/03 Decree is not void under HFCR Rule 60(b)(4). We further hold that Geraldine's claims of "fraud on the court" and "undue influence" are properly considered under HFCR Rule 60(b)(3), and are therefore untimely. In light of these holdings, we need not address Geraldine's arguments concerning estoppel or the proper standard of review for the family court's FOFs.

Accordingly, the May 3, 2010 judgment of the ICA is affirmed.

Michael Jay Green, Howard Glickstein, (Michael Jay Green & Associates) and Kimberly A. Van Horn for petitioner/plaintiff-appellant

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ James E. Duffy, Jr.

/s/ Richard K. Perkins

(cont. on next page)

Paul Tomar (Ashford & Wriston), Raymond Okada, Bruce Lamon and Kimberly Koide (Goodsill Anderson Quinn & Stifel) for respondent/defendant-appellee

---

No. 28928, Cvitanovich-Dubie v. Dubie; Opinion of the Court by Recktenwald, C.J.