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NOS. CAAP-13-0000034 and CAAP-13-0005803

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

NO. CAAP-13-0000034

HUI CHEN, Plaintiff-Appellant, v.
THOMAS J. HOEFLINGER, Defendant-Appellee

NO. CAAP-13-0005803

HUI Z. CHEN, Plaintiff-Appellant, v.
THOMAS J. HOEFLINGER, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(NO. FC-D 05-1-0279)

MEMORANDUM OPINION

(By: Foley, Presiding J., Reifurth and Ginoza, JJ.)

This is a consolidated appeal for case nos. CAAP-13-0000034 and CAAP-13-0005803. Plaintiff-Appellant Hui Z. Chen (**Chen**) appeals pro se from (1) the "Findings of Fact, Conclusions of Law and Order of the Court Pursuant to Order of the Intermediate Court of Appeals Filed on March 9, 2012 in S.C. No. 28808" (**FOF/COL**), entered on December 17, 2012 and (2) three post-judgment orders: (a) the "Order Denying [Chen's] Motion for Reconsideration to Reimburse Defendant for Taxes, Insurance and Road Maintenance Fees Paid on Marital Residence"; (b) the "Order Denying [Chen's] Motion for Reconsideration of Enforcing the Settlement (sic) Agreement Between the Parties"; and (c) the "Order Denying [Chen's] Motion for Granting the Extension of Time for the Appeal Period (Sep 25-Oct 25), In the Event of Above Motions Being Denied" entered on November 12, 2013 in the Family

Court of the Third Circuit¹ (**family court**).

Chen raises seven points of error² in case no. CAAP-13-

¹ The Honorable Anthony K. Bartholomew presided.

² Although Chen lists seven points of error, many of the points of error are irrelevant to the issues on remand. "[A] determination of a question of law made by an appellate court in the course of an action becomes the law of the case" Weinberg v. Mauch, 78 Hawai'i 40, 47, 890 P.2d 277, 284 (1995) (internal quotation marks omitted). Further, "the lower tribunal only has the authority to carry out the appellate court's mandate." Standard Mgmt., Inc. v. Kekona, 99 Hawai'i 125, 137, 53 P.3d 264, 276 (App. 2001) (quoting Warren v. Dep't of Admin., 590 So. 2d 514, 515 (Fla. Dist. Ct. App. 1991)). To the extent that Chen's points of error fall beyond the scope of remand, we decline to address them.

Chen lists the following seven points of error in her opening brief:

1. No evidence was found by the Court to establish the 2001 Marital Asset Value to clarify what asset values the parties had agreed upon in the Post-Nuptial Agreement, leaving the Court to purely speculate; this indicates that the agreement was unconscionable when it was executed.
2. The "agreement" did not meet the standard of care and standard of practice in Hawaii provided by the Hawaii Divorce Manual that financial disclosure should be in writing in order for a one-sided Post-Nuptial Agreement to be deemed enforceable.
3. The Court failed to analyze the marital residence as the Category 5 asset under the Marital Partnership Principle since no evidence suggested category 1 asset was used to purchase the marital residence; the Court purely speculated marital residence was category 1 after validating the agreement.
4. No evidence was found to establish the value of the parties' assets as of June, 2001, which indicates that the issue of unconscionability of the provision governing division of property in a premarital agreement was not evaluated, which should have been evaluated at the time the agreement was executed, and this demonstrated that the "agreement" was clearly unconscionable when it was signed in 2001.
5. No evidence was found to suggest either party could attain access to the other party's financial status at the time of the "agreement" was signed; the Court simply speculated that Chen had "direct knowledge of Hoeflinger's financial situation[.]"
6. The Court failed to explain how Chen's involvement in "all aspects of the activities" would provide her with direct knowledge of Hoeflinger's financial situation and failed to explain how this knowledge "equipped [her] to make [her] own informed assessment of the value of the marital residence" prior to assent[ing] to the agreement.
7. The Court speculated the amount of Hoeflinger's 2001
(continued...)

000034,³ which we construe as three points of error: (1) the family court erred in finding that the Post-Nuptial Agreement, dated June 6, 2001, was enforceable because the evidence suggests that the agreement was unconscionable; (2) the family court failed to analyze the marital residence as a Category 5 asset under the Marital Partnership Principle; and (3) Defendant-Appellee Thomas J. Hoeflinger (**Hoeflinger**) wasted marital assets.⁴ Chen also raises eleven points of error⁵ in case no.

²(...continued)

asset value when the agreement was signed. The Court's assessment supports an unconscionability and unjustly disproportionate of the parties' assets.

³ Chen's opening brief fails to comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4), which states that the brief shall have

[a] concise statement of the points of error set forth in separately numbered paragraphs. Each point shall state: (i) the alleged error committed by the court or agency; (ii) where in the record the alleged error occurred; (iii) where in the record the alleged error was objected to or the manner in which the alleged error was brought to the attention of the court or agency.

However, the Hawai'i Supreme Court has held that where possible, the court should "permit litigants to appeal and to have their cases heard on the merits, where possible." O'Connor v. Diocese of Honolulu, 77 Hawai'i 383, 386, 885 P.2d 361, 364 (1994).

⁴ We previously decided the issue of wasted marital assets in Chen v. Hoeflinger, 127 Hawai'i 346, 279 P.3d 11 (App. 2012). "Remand for a specific act does not reopen the entire case; the lower tribunal only has the authority to carry out the appellate court's mandate." Standard Mgmt., Inc., 99 Hawai'i at 137, 53 P.3d at 276 (brackets omitted) (citing Warren, 590 So. 2d at 515). This court's decision in Chen represents the law of the case on this issue. See Weinberg, 78 Hawai'i at 47, 890 P.2d at 284. Therefore, we need not address this point of error.

⁵ The points of error asserted in No. CAAP-13-0005803 are as follows:

1. The Family Court in its September 25, 2013 reimbursement decision failed to recognize that the amount of \$22,973.52 reimbursement was a result of Hoeflinger's going against previous Court's Order and transferring property Deed by using the invalidated [(sic)] Chen's pre-signed Deed to take Chen's name off of the property title. The amount of \$22,973.52 reimbursement was granted without any consideration that this amount was non-Hawaii-residential taxes and fees that Chen was absolutely NOT entitled to pay.
2. The family court failed to recognize that there was a previous Court Order on December 12, 2007, stating that "[t]he Court requires that the title to the marital residence and unimproved lot be held as tenants in common between Plaintiff and Defendant

(continued...)

⁵(...continued)

during the pending appeal. The Court further requires that neither party encumber or transfer any of their interest in the property pending appeal."

3. The Court failed to recognize that Chen had testified in Court that she objected Hoeftlinger's requests of reimbursement of his nonresidential taxes and fees during the evidentiary hearing on Aug 9, 2013.
4. The Court failed to realize that during the evidentiary hearing, Hoeftlinger had NO objection about Chen's statement that Hoeftlinger had previously used invalid deed to remove Chen's name from the property Title and that his non-residential taxes and fees resulted from his fraudulent action to take Chen's name off of the property title. Hoeftlinger did not deny that he had transferred twice.
5. The Court failed to recognize that Chen had also testified that due to his fraudulent action of taking Chen's name off of the property title, Hoeftlinger should be responsible for paying all of his non-residential property taxes and other fees.
6. There was NO termination of the January 7, 2013 Offer by Hoeftlinger prior to Chen's acceptance of his Offer. The Family Court speculated that there had been "no meeting of the minds" based on a series of events. This decision is not in accordance with the Contract Law.
7. The Court assumed the Offer was terminated by Hoeftlinger based on a list of Hoeftlinger's court conducts between the time the offer was issued and Chen's acceptance of his offer. The events have no relationship with his January 7 offer and have no indication of the termination of the Offer. The Court should not assume or infer that Hoeftlinger "did not consider" that there was a settlement with Plaintiff pending" based on these the list of events.
8. The court's statement about Hoeftlinger's Offer and Chen's Acceptance of the Offer were inaccurate. The Court in its decision #16 stated Chen "did not agree to the payment that Defendant specified. Rather, she proposed that the purchase price be the basis for an adjustment of the equivalence that she was owed by Defendant, and also proposed a 45 day time limit..." This was totally inaccurate and incorrect. Chen accepted the exact amount of the payments specified in Hoeftlinger's original Offer. First, in Chen's acceptance letter, Chen agreed to what Hoeftlinger specified he owed Chen in the amount of \$128,916.52. Secondly, Chen agreed to the total amount of "\$103,000.00 plus any amount of liens" for the total purchase price that Hoeftlinger specified in his original offer.
9. The Court's statement about 45 day time limit was inaccurate. The 45 day time limit was not a limit for the offer but a limit of time for Hoeftlinger to get extra money from Chen. In order to expedite the process, Chen was willing to forgive the difference
(continued...)

CAAP-13-0005803, which we construe as two points of error (1) the family court erred in denying Chen's motion to enforce the settlement agreement because the January 14, 2013 communication from Hoeflinger constituted an offer that Chen had accepted; and (2) the family court erred in granting Hoeflinger's motion to reimburse because Hoeflinger took Chen's name off of the marital residence against court orders and his non-resident status subsequently increased the taxes on the property.

I. BACKGROUND

This case returns to us after remand to the family court in Chen v. Hoeflinger, 127 Hawai'i 346, 279 P.3d 11 (App. 2012). In Chen, we remanded to the family court "for further findings on the issue of the unconscionability of the Post-Nuptial Agreement and for recalculation and redistribution of the assets." Id. at 352, 279 P.3d at 17. We affirmed the family court's decisions on all other issues. Id.

On remand, the parties agreed to proceed based on the existing trial record, without any additional testimony or evidence. The family court issued its FOF/COL on December 17, 2012. Chen appealed from the FOF/COL on January 17, 2013.

On February 12, 2013, Hoeflinger, pro se, filed a "Motion for [Chen] to Reimburse [Hoeflinger] for Taxes, Insurance and Road Maintenance Fees Paid on Marital Residence Located at 15307 Kiawe Street Per 'Order Partially Granting Stay of Judgement [sic] filed October 2, 2007'" (**Hoeflinger's Motion for**

⁵(...continued)

between the amount Hoeflinger owed and the purchase price of the property because there is a difference between the amounts of \$128,916.52 for Hoeflinger stated he owes Chen and \$103,000.00 for the total purchasing price. The difference between the two amounts would be forgiven by Chen if Hoeflinger complies within the 45 days of the agreement. The 45 day time limit in no way would alter the original offer proposed by Hoeflinger[.]

10. The existing order remaining in effect is a true statement, and it has no effect on the offer and the acceptance of the offer.
11. Importantly Hoeflinger did not dispute or argue any of these points that Court had brought up in its decision; instead Hoeflinger issued a brand new offer on May 9, 2013 for Chen to settle.

Reimbursement). The family court granted this motion on September 25, 2013.

On May 6, 2013, Chen filed "[Chen's] Motion to Enforce the Settlement Agreement Between the Parties." On May 29, 2013, Chen filed "[Chen's] Motion Enforcing the Settlement Agreement Between the Parties, Requesting Judgement [sic] to Order [Hoefflinger] to Convey Title of the House to [Chen]." On August 7, 2013, Chen filed "[Chen's] Additional Supporting Information (Part III) for Motion Enforcing the Settlement Agreement Between the Parties, Requesting Judgement [sic] to Order [Hoefflinger] to Convey Title of the House to [Chen]" (collectively, **Chen's Motion to Enforce the Settlement Agreement**). The family court denied Chen's Motion to Enforce the Settlement Agreement on September 25, 2013.

On October 18, 2013, Chen filed a motion titled "[Chen's] Motion for Reconsideration to Reimburse [Hoefflinger] for the Non-Resident Taxes, Insurance, and Road Maintenance Fees Paid on Marital Residence; Motion for Reconsideration of Enforcing the Settlement [sic] Agreement Between the Parties; Motion for Granting Extension for the Appeal Period (Sep 25-Oct 25, 2013) in the Event of the Above Motions Being Denied" (**Motions for Reconsideration**).⁶ The family court denied each of the motions on November 12, 2013. Chen appealed from the family court's denial of her Motions for Reconsideration on December 2, 2013.

II. STANDARD OF REVIEW

A. Family Court Decisions

Generally, the family court possesses wide discretion in making its decisions and those decisions will not be set aside unless there is a manifest abuse of discretion. Thus, [an appellate court] will not disturb the family court's decisions on appeal unless the family court disregarded rules or principles of law or practice to the substantial detriment of a party litigant and its decision clearly exceeded the bounds of reason.

Fisher v. Fisher, 111 Hawai'i 41, 46, 137 P.3d 355, 360 (2006) (quoting In re Doe, 95 Hawai'i 183, 189-90, 20 P.3d 616, 622-23

⁶ Chen appears to have filed her Motions for Reconsideration in response to the family court's order granting Hoefflinger's Motion for Reimbursement and its order denying Chen's Motion to Enforce the Settlement Agreement.

(2001)). "Furthermore, the burden of establishing abuse of discretion is on appellant, and a strong showing is required to establish it." Ek v. Boggs, 102 Hawai'i 289, 294-95, 75 P.3d 1180, 1185-86 (2003) (internal quotation marks and brackets omitted) (quoting Lepere v. United Pub. Workers, Local 646, 77 Hawai'i 471, 474 n.5, 887 P.2d 1029, 1032 n.5 (1995)).

B. Findings of Fact and Conclusions of Law

The family court's FOFs are reviewed on appeal under the "clearly erroneous" standard. A FOF is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with a definite and firm conviction that a mistake has been made. "Substantial evidence" is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.

On the other hand, the family court's [Conclusions of Law (COLs)] are reviewed on appeal de novo, under the right/wrong standard. COLs, consequently are not binding upon an appellate court and are freely reviewable for their correctness.

Kakinami v. Kakinami, 127 Hawai'i 126, 136, 276 P.3d 695, 705 (2012) (quoting Fisher, 111 Hawai'i at 46, 137 P.3d at 360) (brackets omitted).

C. Construction of Contract

"The construction and legal effect to be given a contract is a question of law freely reviewable by an appellate court." Brown v. KFC Nat'l Mgmt. Co., 82 Hawai'i 226, 239, 921 P.2d 146, 159 (1996). Unconscionability is a question of law this court reviews de novo. See, e.g., [Hawaii Revised Statutes (HRS)] § 490:2-302(1) (2008).

Balogh v. Balogh, 134 Hawai'i 29, 37-38, 332 P.3d 631, 639-640 (2014) (brackets omitted).

D. Motion for Reconsideration

A motion for reconsideration under Hawai'i Family Court Rules (HFCR) Rule 60 is reviewed for abuse of discretion. In re RBG, 123 Hawai'i 1, 16, 229 P.3d 1066, 1081 (2010) (citing Pratt v. Pratt, 104 Hawai'i 37, 42, 84 P.3d 545, 550 (2004)). "An 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." Id. at 16-17, 229 P.3d 1081-82 (internal quotation marks omitted) (quoting Buscher v. Boning, 114 Hawai'i 202, 211, 159 P.3d 814, 823 (2007)).

III. DISCUSSION

A. Enforceability of the Post-Nuptial Agreement

Chen argues that the family court erred in finding that the Post-Nuptial Agreement was enforceable because Chen's agreement was involuntary and the agreement was unconscionable.

As a preliminary matter, we observe that the family court made additional findings on the issue of voluntariness, although we did not remand on that issue in Chen. In Chen, we remanded the case "for further findings on the issue of unconscionability of the Post-Nuptial Agreement and for recalculation and redistribution of the assets." Chen, 127 Hawai'i at 352, 279 P.3d at 17. Despite our instructions, the family court appears to have issued new conclusions on voluntariness in COL 4, exceeding the scope of its powers on remand. See Standard Mgmt., Inc., 99 Hawai'i at 137, 53 P.3d at 276 ("When a reviewing court remands a matter with specific instructions, the trial court is powerless to undertake any proceedings beyond those specified therein." (quoting Foster v. Civil Serv. Comm'n, 627 N.E.2d 285, 290 (Ill. App. Ct. 1993))). Therefore, we do not address Chen's argument that she involuntarily entered into the Post-Nuptial Agreement.

Chen contends the family court erred in finding the Post-Nuptial Agreement was not unconscionable.

Unconscionability encompasses two principles: one-sidedness and unfair surprise. [Lewis v. Lewis, 69 Haw. 497, 502, 748 P.2d 1362, 1366 (1988)]. One-sidedness (i.e., substantive unconscionability) means that the agreement "leaves a post-divorce economic situation that is unjustly disproportionate." Id. Unfair surprise (i.e., procedural unconscionability) means that "one party did not have full and adequate knowledge of the other party's financial condition when the marital agreement was executed." Id. A contract that is merely "inequitable" is not unenforceable. Id. at 500, 748 P.2d at 1366. The unconscionability of an agreement regarding the division of property is evaluated at the time the agreement was executed. See id. at 507, 748 P.2d at 1369.

Balogh, 134 Hawai'i at 41, 332 P.3d at 643 (brackets and footnote omitted).

Chen makes two arguments that suggest the agreement was unconscionable. First, Chen states,

The agreement was signed in 2001 when Chen was still not conversant in English and could not read English very well (she started school in the U.S. in 2002). No translation was provided to her. . . . Chen stated that she did not

understand what a Post-Nuptial Agreement meant at the time, and she did NOT understand the communication between Hoeflinger and his attorney at the time when they were at attorney Oda's office. She was told by Hoeflinger that the Post-Nuptial Agreement was a "will."

Chen's position on appeal is that her limited English language capacity made the agreement involuntary, but the lack of translation into Chen's primary language goes to the issue of procedural unconscionability rather than voluntariness. See Restatement (Second) of Contracts § 208 cmt. d (Am. Law. Inst. 1981) ("Factors which may contribute to a finding of unconscionability in the bargaining process include . . . knowledge of the stronger party that the weaker party is unable to reasonably protect his interest by reason of . . . ignorance, illiteracy or inability to understand the language of the agreement, or similar factors."); see also Carmona v. Lincoln Millennium Car Wash, Inc., 171 Cal. Rptr. 3d 42, 50-51 (Cal. Ct. App. 2014) (holding that an agreement in which an employer excluded a key clause in the Spanish translation of the agreement to employees who spoke little to no English added to the procedural unconscionability of the agreement). The family court did not make any FOFs or COLs regarding Chen's limited English capacity. However, Chen does not provide any evidence, nor does the record demonstrate, that Hoeflinger took advantage of Chen's lack of English language skills to the point that "the transaction involved elements of deception or compulsion, or [showed] that the weaker party had no meaningful choice, no real alternative, or did not in fact assent or appear to assent to the unfair terms." Restatement (Second) of Contracts § 208 cmt. d. Therefore, Chen's argument that the family court erred in concluding that the Post-Nuptial agreement was not unconscionable is without merit.

Second, Chen argues the family court erred in concluding that it could not determine whether the Post-Nuptial Agreement would result in an unjustly disproportionate post-divorce economic situation because "there is no evidence in the record which establishes the net value of the marital residence in 2001 when the parties entered into the Post-Nuptial Agreement." Chen argues that the proper conclusion based on such

a lack of evidence should have been that the agreement was unconscionable because Chen could not have had "full and adequate knowledge" of Hoeflinger's financial condition. Chen does not point to any evidence other than the uncertainty of the value of the marital residence to support her claim that she was unaware of Hoeflinger's financial condition at the time the Post-Nuptial Agreement was signed.

Regarding Chen's awareness of the value of the marital residence, which establishes whether the Post-Nuptial Agreement led to unfair surprise and procedural unconscionability, the family court made the following FOFs:

7. Around 2000, Thomas Artworks Unlimited was liquidated, and the funds realized were eventually used by the parties to invest in real estate in Hawaii. When the parties moved to Hawaii, around 2000, the money left over from Duntip Industries (if any) and Thomas Artwork Unlimited was used to purchase residential building lots on the [Hawai'i Island] and to build houses on the lots and sell them at a profit. This was the parties' principle financial activity from the time they came to Hawaii around 2000, until [Chen] filed for divorce in 2007.

8. One such property was the residential property developed and occupied by the parties themselves. This property, subsequently known as the "marital residence" for purposes of the divorce litigation, became the subject of the Post-Nuptial Agreement entered into by the parties on June 6, 2001.

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14. As to the parties' real estate activities in Hawaii, [Chen] testified that she was directly and personally involved in those activities, from the acquisition of the residential lots through the development and eventual sale of the properties. As such, [Chen] was certainly acquainted with any of the parties' assets associated with their real estate activities at the time she signed the Post-Nuptial Agreement in June, 2001.

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17. Although the precise [net market value] of the marital residence in June, 2001 was not established at the trial, two conclusions are fairly established by the trial evidence. First, whatever the marital residence's value in 2001, because the parties were at that time actively engaged in buying and developing [Hawai'i Island] residential properties, they were each certainly capable of making their own informed assessments of the property's value at the time they entered into the Post-Nuptial Agreement. . . .

In sum, the family court found that Chen's participation in the acquisition and sale of properties on Hawai'i Island gave her constructive knowledge of the value of the marital residence. On

appeal, Chen does not contend that her involvement was insufficient to establish her knowledge of the value of the marital residence, and does not otherwise point to any evidence suggesting that the marital residence was worth more or less than she was aware of at the time she signed the Post-Nuptial Agreement. Therefore, Chen has failed to demonstrate that the family court's findings regarding her knowledge of the value of the marital residence were clearly erroneous.

Furthermore, Chen fails to meet her burden of establishing that the Post-Nuptial Agreement was unjustly disproportionate, one-sided, and substantively unconscionable. The family court found that at the date of completion of the evidentiary portion of the divorce trial (DOCOEPOT) in 2007, the net market value of the Marital Residence was approximately \$368,000. The family court noted that there was evidence in the record that suggested "the marital residence in 2001 was likely worth somewhere between 1/4 and 1/3 of its 2007 value, an amount in the range of \$92,000 to \$122,544." The family court then found that despite the uncertainty in value of the marital residence in 2001, the value "likely comprised no more than 15% of the \$890,838.41 in divisible Category 5 assets held by the parties at the time of the DOCOEPOT."

Chen's sole argument that the Post-Nuptial Agreement was one-sided is that "[a]n unjustly disproportionate result was expected by Hoeflinger when the agreement was executed." Chen does not explain this argument, other than pointing to Hoeflinger's position at trial that he expected to keep control of the \$1,150,540.70 in assets he held at the time of DOCOEPOT. This is insufficient evidence to establish that the Post-Nuptial Agreement was one-sided. Therefore, the family court did not err in concluding that the Post-Nuptial Agreement was not unjustly disproportionate.

B. Exclusion of the Marital Residence from the Marital Assets

Chen contends the family court erred in analyzing the marital residence as a Category 1 asset and should have instead analyzed it as a Category 5 asset under the Marital Partnership

Principle.⁷ Chen asserts that the marital residence is a Category 5 asset because there was no evidence to suggest that Category 1 assets were used to purchase the residence, and the residence was purchased during the marriage.

Chen appears to misunderstand the family court's treatment of the marital residence in its distribution of assets. The family court did not categorize the property as a Category 1 asset. Rather, the court concluded that "the marital residence is not to be considered part of the parties' divisible assets[.]" Therefore, Chen's argument regarding the categorization of the marital residence as a Category 5 assets lacks merit.

C. Motions for Reconsideration

On October 18, 2013, Chen submitted the Motions for Reconsideration of the family court's denial of Chen's Motion to Enforce the Settlement Agreement and the grant of Hoeflinger's

⁷ "Hawaii law follows a partnership model that governs the division and distribution of marital partnership property." Gordon v. Gordon, 135 Hawai'i 340, 352, 350 P.3d 1008, 1020 (2015) (citing Helbush v. Helbush, 108 Hawai'i 508, 513, 122 P.3d 288, 293, (App. 2005)). This court has divided property into five categories:

Category 1: The net market value (NMV), plus or minus, of all property separately owned by one spouse on the date of marriage (DOM) but excluding the NMV attributable to property that is subsequently legally gifted by the owner to the other spouse, to both spouses, or to a third party.

Category 2: The increase in the NMV of all property whose NMV on the DOM is included in category 1 and that the owner separately owns continuously from the DOM to the date of the conclusion of the evidentiary part of the trial (DOCOEPOT).

Category 3: The date-of-acquisition NMV, plus or minus, of property separately acquired by gift or inheritance during the marriage but excluding the NMV attributable to property that is subsequently legally gifted by the owner to the other spouse, to both spouses, or to a third party.

Category 4: The increase in the NMV of all property whose NMV on the date of acquisition during the marriage is included in category 3 and that the owner separately owns continuously from the date of acquisition to the DOCOEPOT.

Category 5: The difference between the NMVs, plus or minus, of all property owned by one or both of the spouses on the DOCOEPOT minus the NMVs, plus or minus, includable in categories 1, 2, 3 and 4.

Gussin v. Gussin, 73 Haw. 470, 474-475, 836 P.2d 484, 487 (1992) (quoting Malek v. Malek, 7 Haw. App. 377, 380-81 n.1, 768 P.2d 243, 246 n.1 (1989)).

Motion for Reimbursement.⁸ Although not explicitly stated, we presume these motions were made pursuant to HFCR Rule 60,⁹ because they were filed more than ten days after the orders for which they sought reconsideration.

In her opening brief in case No. CAAP-13-0005803, Chen does not identify any bases enumerated in HFCR Rule 60 under which she would be entitled to relief from the order denying

⁸ Based upon the arguments in her opening brief, Chen presumably intended to appeal directly from the order denying Chen's Motion to Enforce the Settlement Agreement and the order granting Hoeftlinger's Motion for Reimbursement rather than from the denials of her Motions for Reconsideration. The family court's orders denying Chen's Motion to Enforce the Settlement Agreement and the order granting Hoeftlinger's Motion for Reimbursement were each entered on September 25, 2013 and Chen's notice of appeal in case no. CAAP-13-0005803 was filed on November 27, 2013. Thus, even if Chen sought to appeal directly from the orders rather than the denials of her Motions for Reconsideration, the appeal would not have been timely. See HRAP Rule 4(a)(1) ("When a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order."). Therefore, we consider whether Chen might have been successful in arguing the same point with regard to the motions for reconsideration, from which the appeal would have been timely taken.

⁹ HFCR Rule 60 provides, in pertinent part:

Rule 60. RELIEF FROM JUDGMENT OR ORDER.

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(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 by which due diligence could not have been discovered in time to move for a new trial under Rule 59(b) of these rules or to reconsider, alter, or amend under Rule 59(e);

(3) fraud (whether heretofore denominated as intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) the judgment was 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.

Chen's Motion to Enforce the Settlement Agreement or Hoeflinger's Motion for Reimbursement. Therefore, Chen has failed to meet her burden of establishing that the family court abused its discretion in denying the Motions for Reconsideration. See In re RBG, 123 Hawai'i at 16-17, 229 P.3d at 1081-83 ("The burden of establishing abuse of discretion is on appellant, and a strong showing is required to establish it." (internal quotation marks and brackets omitted) (quoting State v. Hinton, 120 Hawai'i 265, 273, 204 P.3d 484, 492 (2009))).

IV. CONCLUSION

Therefore, the (1) "Findings of Fact, Conclusions of Law and Order of the Court Pursuant to the Order of the Intermediate Court of Appeals Filed on March 9, 2012 in S.C. No. 28808" entered on December 17, 2012 in the Family Court of the Third Circuit and (2) the three post-judgment orders: (a) the "Order Denying Plaintiff Motion for Reconsideration to Reimburse Defendant for Taxes, Insurance and Road Maintenance Fees Paid on Marital Residence"; (b) the "Order Denying Plaintiff's Motion for Reconsideration of Enforcing the Settlement (sic) Agreement Between the Parties"; and (c) the "Order Denying Plaintiff's Motion for Granting the Extension of Time for the Appeal Period (Sep 25-Oct 25), In the Event of Above Motions Being Denied" entered on November 12, 2013 in the Family Court of the Third Circuit are affirmed.

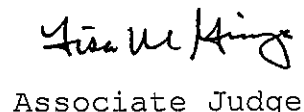
DATED: Honolulu, Hawai'i, May 5, 2016.

On the brief:

Hui Z. Chen
Plaintiff-Appellant pro se.


Presiding Judge


Associate Judge


Associate Judge