DISSENTING OPINION BY NAKAMURA, C.J.

I respectfully dissent. In my view, Defendant-Appellant D.L. (D.L.), by his post-decree actions and omissions, waived the right to challenge the family court's personal jurisdiction over him when it entered the 2009 divorce decree. In particular, D.L. filed a post-decree motion in 2010 under Hawai'i Family Court Rule (HFCR) 60(b)(6), and he personally appeared and litigated this motion, without raising a claim that the family court, in entering the divorce decree, lacked personal jurisdiction over him due to defects in the service of the divorce complaint and summons on him. D.L. only raised the claim of defective service of process and lack of personal jurisdiction four years later, in 2014, when he filed his motion under HFCR Rule 60(b)(4), which is the subject of this appeal. Under these circumstances, I agree with the family court that D.L. waived the right to challenge the divorce decree on the grounds of inadequate service of process and lack of personal jurisdiction. I therefore would affirm the family court's order denying D.L's HFCR Rule 60(b)(4) motion.

I.

There is an important distinction between subject-matter jurisdiction and personal jurisdiction. Subject-matter jurisdiction can never be waived because it defines the power of the court to decide a particular matter on the merits. Personal jurisdiction, on the other hand, can be acquired though service of process, voluntary appearance, or waiver. Thus, unlike subject-matter jurisdiction, personal jurisdiction can be waived. See Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 701-05 (1982) (discussing the difference between subject-matter jurisdiction and personal jurisdiction).

It is clear that a defendant can waive defects in the service of a complaint and summons by voluntarily submitting himself or herself to the court's jurisdiction or engaging in other acts that constitute a waiver of defects in the service of process. See HFCR Rule 12(h); Puckett v. Puckett, 94 Hawai'i

471, 477-81, 16 P.3d 876, 882-86 (2000). I agree with the reasoning of courts that have concluded that even where a court lacks personal jurisdiction over a defendant when the judgment was entered due to defective service of process, a defendant may waive the court's lack of personal jurisdiction due to defective service of process by failing to timely raise this claim post-judgment, or by his or her post-judgment conduct. State, ex rel. Athens County v. Martin, No. 07CA11, 2008 WL 1758896, at *4-8 (Ohio Ct. App. Apr. 14, 2008); Trustees of Central Laborers' Welfare Fund v. Lowery, 924 F.2d 731, 732-34 (7th Cir. 1991); Democratic Republic of Congo v. FG Hemisphere Assoc., 508 F.3d 1062, 1064-65 (D.C. Cir. 2007).

II.

Here, Plaintiff-Appellee G.L. (G.L.) filed the divorce complaint on November 7, 2008. Both parties attended Kids First on December 10, 2008. Although service of the divorce complaint and summons on D.L. in the Philippines did not comply with statutory requirements, D.L. does not dispute that he actually received the divorce complaint, summons, and proposed divorce decree on December 30, 2008. D.L. did not answer the complaint, and the family court entered the divorce decree based on D.L.'s default on April 6, 2009. The divorce decree determined that G.L. and D.L. have two children together. Pursuant to the divorce decree, G.L. was awarded sole legal and physical custody of the two children, subject to reasonable visitation by D.L., and D.L. was ordered to pay child support. D.L. apparently has paid child support post-decree.

On July 30, 2010, D.L., represented by counsel, filed a post-divorce-decree motion pursuant to HFCR Rule 60(b)(6) (HFCR Rule 60(b)(6) Motion), seeking relief from the paternity and child support provisions of the divorce decree on the ground that DNA tests showed that he was not the children's biological father. In his HFCR Rule 60(b)(6) Motion, D.L. did not challenge the sufficiency of the service of the divorce complaint and summons on him or the family court's personal jurisdiction over

him in issuing the divorce decree. In this motion, D.L. did not seek relief under HFCR Rule 60(b)(4) based on a claim that the divorce decree was void due to the family court's lack of personal jurisdiction over him. Indeed, in his pleadings in support of his HFCR Rule 60(b)(6) Motion, D.L. specifically stated that he agreed that HFCR Rule 60(b)(4) did not apply.

After substantial litigation on D.L.'s HFCR Rule 60(b)(6) Motion, the family court denied D.L.'s request for court-ordered DNA testing on August 2, 2011. D.L. appealed the family court's order denying his request for DNA testing, but we dismissed the appeal on February 14, 2012, because no final order on D.L.'s HFCR Rule 60(b)(6) Motion had been entered.

On December 19, 2014, D.L. filed a second post-divorce-decree motion, this time pursuant to HFCR Rule 60(b)(4) (HFCR Rule 60(b)(4) Motion). In his HFCR Rule 60(b)(4) Motion, D.L. for the first time challenged the sufficiency of the service of the divorce complaint and summons on him and the family court's personal jurisdiction over him in entering the divorce decree.

III.

In my view, by filing his HFCR Rule 60(b)(6) Motion without challenging the sufficiency of the service of the divorce complaint and summons on him or the family court's jurisdiction over him, by personally appearing in family court to litigate his HFCR Rule 60(b)(6) Motion and specifically disclaiming the applicability of HFCR Rule 60(b)(4) in his pleadings in support of his HFCR Rule 60(b)(6) Motion, and by waiting over five years after the entry of the divorce decree to raise his claim under HFCR Rule 60(b)(4), D.L. waived his right to challenge the sufficiency of the service of process and the family court's personal jurisdiction over him in entering the divorce decree. Under the circumstances of this case, I agree with the family court that D.L. waived the right to challenge the family court's personal jurisdiction over him when it entered the 2009 divorce decree.

IV.

In his opening brief, D.L. challenges the family court's denial of his request for DNA testing pursuant to his HFCR Rule 60(b)(6) Motion. He also contends that if he can show he is not the biological father of the children, he is entitled to prospective relief under HFCR Rule 60(b)(5) with respect to future child support payments. I agree with the majority that we lack jurisdiction over D.L.'s DNA testing claim because the family court has not entered a final order resolving D.L.'s HFCR Rule 60(b)(6) Motion. D.L. did not raise a claim before the family court based on HFCR Rule 60(b)(5), and I express no view on the merits of this claim.

Craig H. Nakamura