

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27765

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAIIDEREK SHERWOOD TSUJI, Plaintiff-Appellee  
v.  
ADA GERMAINE TSUJI, Defendant-AppellantK. HAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2007 APR 18 AM 10:30

FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(FC-D NO. 98-1187)MEMORANDUM OPINION

(By: Burns, C.J., Foley and Fujise, JJ.)

Defendant-Appellant Ada Germaine Tsuji (Ada) appeals from the February 2, 2006 order entered in the Family Court of the First Circuit denying her January 13, 2006 Motion to Set Aside Default Judgment Against Defendant; for Stay of Writ of Possession; for Accounting of Escrow Proceeds. We affirm.

## BACKGROUND

Ada and Plaintiff-Appellee Derek Sherwood Tsuji (Derek) were married on July 30, 1983. Their daughter (Daughter) was born on June 3, 1986.

After a trial on December 22, 1998, the Decree Granting Absolute Divorce and Awarding Child Custody (Divorce Decree) was entered on January 27, 1999, by Judge Kenneth E. Enright. It awarded Ada temporary legal and physical custody of Daughter subject to Derek's specified right of visitation. It ordered Derek to pay Ada (a) child support of \$390 per month and (b) alimony of \$1,200 per month "until the expiration of thirty-six (36) consecutive months, until [Ada's] remarriage, or until the

death of either party, whichever occurs first, subject to further order of the Court." It further ordered, in part:

J. PROPERTY:

1. Real Property. The parties own the real property located at 94-1137 Noheaiki Street, Waipahu, Hawaii 96797. The following provisions shall govern that real property:

(a) The real property shall be immediately listed for sale and shall remain listed until sold. The property shall be sold at a reasonable price, on reasonable terms, to a reasonably qualified buyer, as soon as possible. The parties shall agree as to which Broker shall be retained to market the property. In the event of a disagreement the Court may appoint a Broker and set his/her commission.

(b) The proceeds from the sale of the real property shall be used first to pay off the existing mortgage balance of approximately \$109,375.00, real estate commissions and sellers' closing costs. Any remaining proceeds from the [sale] shall be divided equally between the parties.

(c) Pending the sale of the real property, [Ada] shall have exclusive use and occupancy of the property and she shall utilize her best efforts to maintain and upkeep the real property in good condition. . . .

(d) [Ada] shall be responsible for the monthly mortgage payment, real property taxes and insurance on the residence as those expenses become due.

. . . .

(g) The Family Court shall retain jurisdiction to effectuate these orders.

. . . .

6. Retirement. Hawaiian Electric Industries 401 (k) plan. This plan is in [Derek's] name and has an approximate value of \$53,000.00. [Derek] is awarded the 401 (k) plan, subject to an award to [Ada] as follows:

a. 1/2 of the account balance on 12/31/98 less the account balance, if any, on the date of the parties' marriage on July 30, 1983, together with all accruals attributable to the portion awarded to [Ada].

b. Hawaiian Electric Industries pension plan. [Ada] is awarded an amount equal to the actuarial equivalent of Fifty percent (50%) of the Marital [sic] Porion [sic] of [Derek's] Accrued Benefit under the Plan as of [Derek's] benefit commencement date, or [Ada's] benefit commencement date, if earlier. The Marital Portion shall be determined by multiplying [Derek's] Accrued Benefit by a fraction (less than or equal to 1.0), the numerator of which is the number of months of the

Participant's participation in the Plan earned during the marriage from July 30, 1983 to December 31, 1998, and the dominator [sic] of which is that total number of months of the Participant's participation in the Plan as of the earlier of his date of cessation of benefit accruals or the date that Alternate Payee commences his or her benefits hereunder.

Qualified Domestic Relations Orders shall be submitted to the court within sixty (60) days which shall be consistent with these provisions. The Family Court shall retain jurisdiction over the retirement plans in order to effectuate the provisions herein.

On February 16, 1999, Ada filed a Motion and Affidavit for Post-Decree Relief in which she wrote, in part:

Until January of 1999, I have retained a variety of lawyers to assist me in this matter. As of January 15, 1999, I am proceeding pro-se, as my own attorney. Since my last lawyer withdrew from representing me (see Attachment A), I have immersed myself in the particulars of this case to gain a better understanding of the proceedings before the court. Prior to this self-education, I did not understand what was going on in this case as my lawyers were not providing me with up to date and thorough information about my case. At the time of the December 22, 1998 hearing before Judge KENNETH E. ENRIGHT, I was not informed about the issues of custody, alimony, property division, and in fact any of the specifics of how things [sic] were to be divided among the parties. Thus, I did not understand what was decided at that hearing. It was not until later, when I started to do my own research, and to speak with a friend who is more familiar with such proceedings that I began to understand the gravity of the issues that were decided at that hearing. Because of this, I now move the court to grant me post-decree relief, specifically in the form of setting aside the divorce decree already signed by the judge, and considering my proposed divorce decree. I feel that the judge signed the other order without hearing my side of the case.

I am filing my version of the proposed divorce decree late, as I was unfamiliar with the procedures involved.

On March 10, 1999, after a hearing, Judge Enright entered an order denying the February 16, 1999 motion.

On March 30, 1999, Ada filed a Motion and Affidavit for Post-Decree Relief requesting, among other things, a stay on the sale of the 94-1137 Noheaiki Street residence.

On April 13, 1999, Derek filed a Motion and Affidavit for Post-Decree Relief requesting legal and physical custody of

Daughter and enforcement of various provisions in the Divorce Decree.

On May 19, 1999, after a hearing, Judge Enright entered an order stating, in part:

- 1) The parties['] divorce decree filed on Jan 27, 1999 can be modified in order for it to be consistent with the transcript of proceedings held before Honorable Kenneth E. Enright on December 22, 1998. [Derek's] counsel shall obtain the transcript and provide [Ada's] counsel with a copy. If the parties are unable to agree to a modification based on the transcript and have differing interpretations, then such issue shall be heard at the hearing set for August 25, 1999 at 1:30 p.m.

On September 15, 1999, after a hearing on August 25, 1999, Judge Lillian Ramirez-Uy entered a Stipulated Order for Post Decree Relief that pertained to Derek and his rights of visitation.

On October 5, 2001, after a hearing on September 5, 2001, Judge Darryl Y.C. Choy entered a Stipulated Order for Post Decree Relief that states, in part:

Upon consideration of the record and the agreement [sic] of the parties, IT IS HEREBY ORDERED:

. . . .

3. [Ada] shall continue to have exclusive use and possession of the parties['] former marital residence located at 94-1137 Noheaiki Street, Waipahu, Hawaii 96797 until such time as [Daughter] attains the age of eighteen (18) years or graduates from high school, whichever occurs first, which is expected by the parties to occur on or about June 3, 2004. Upon [Daughter's] graduation from high school, the parties' former marital residence shall be listed for sale and shall remain listed until sold. The net proceeds derived from the sale after payment of the costs of sale and the payment of the existing first mortgage obligation shall then be divided equally between the parties. All provisions relating to [the] sale of the parties' former marital residence as set forth in paragraph J (1) of the Decree Granting Absolute Divorce and Awarding Child Custody filed on January 27, 1999 shall remain in full force and effect.

The Family Court shall also extend its jurisdiction over the sale of the former marital residence until August 31, 2004.

4. Commencing with the month of October, 2001, and subject to further order of the Court, [Derek's] obligation for alimony to [Ada] shall be the sum of \$800.00 per month and shall continue through June, 2004.

5. The parties['] Decree Granting Absolute Divorce and Awarding Child Custody filed herein on January 27, 1999 shall be amended to provide that [Derek] shall have as his sole and separate property, the following:

- . . . .
- E. Hawaiian Electric Industries Retirement Plan (HEIRS) for [Derek] (. . .) including premarital[.]

On July 11, 2002, Judge Choy entered an order that granted the June 24, 2002 Motion for Clarification and/or Correction of Stipulated Order for Post Decree Relief Filed on October 5, 2001 (July 11, 2002 Clarification Order). This order stated, in part:

[Ada] was duly served but failed to appear.

. . . .

Paragraph 5 E of the Stipulated Order for Post Decree Relief filed on October 5, 2001 is hereby clarified in that [Derek's] award of his Hawaiian Electric Industries Retirement Plan includes all of his interest in his Retirement Plan For Employees Of Hawaiian Electric Industries, Inc., And Participating Subsidiaries and his Hawaiian Electric Industries, Inc., 401 (k) plan.

The court also with the exception of child support and alimony issues, vacates its retention of jurisdiction beyond July 8, 2003.

On December 10, 2003, Judge Bode A. Uale granted an ex parte motion filed by Derek for temporary legal and physical custody of Daughter. On January 26, 2004, Judge William K. Wallace, III granted Derek's motion for sole legal and physical custody of Daughter subject to Ada's rights of reasonable visitation.

On August 18, 2004, Derek moved for an order requiring Ada to comply with the court's orders regarding the sale of the property at 94-1137 Noheaiki Street. A Proof of Service filed on September 21, 2004 and an October 6, 2004 affidavit filed by Mark A. Peacock certifies service of the motion. The affidavit stated, in part:

2. That I am a civil process server and authorized by the Department of Public Safety;

3. That I have previously served [Ada] on five previous occasions;

4. That [Ada] has constantly attempted to avoid service throughout the course of this entire case matter.

. . . . .

6. That prior to the service of the current Motion pending before this court on October 20, 2004, I had telephonic communication with [Ada], in that she relayed to me that she could not accept service because "she was in school". At that time, I attempted to coordinate a time and place that she would be available to accept service. [Ada] never called me back.

7. That on September 20, 2004 at 7:20 p.m., after 8 prior attempts, I once again went to 94-1137 Noheaiki Street Waipahu, Hawaii and verified that someone was within the confines of the garage. I called out to [Ada], and [Ada] did not respond, however, her boyfriend, RODNEY LORIS accepted service on her behalf.

A hearing on October 20, 2004, resulted in the following orders entered by Judge Christine E. Kuriyama: (1) an October 21, 2004 order stating that "[Ada] having been served on September 20, 2004 by Mark Peacock, civil process server, having failed to appear, Default is hereby entered against [Ada]"; and (2) a January 6, 2005 Order Appointing Court Commissioner and Order for Sale.

Counsel for Derek certified that a file-stamped copy of the October 21, 2004 order was mailed to Ada on October 26, 2004,

and that a certified copy of the January 6, 2005 order was mailed to Ada on January 7, 2005.

Judge Kuriyama's November 3, 2004 Order Regarding  
[Derek's] Attorney Fees and Costs stated, in part:

[Ada] is hereby ordered to pay the sum of \$818.01 as and for [Derek's] attorney's fees and costs as a result of [Ada's] actions wherein she has refused to cooperate with [Ada] [sic] pursuant [to] the Decree Granting Absolute Divorce and Awarding Child Custody filed herein on January 27, 1999 and the Stipulated Order for Post Decree Relief filed on October 5, 2001. Further, [Derek] has incurred additional attorney's fees and costs for [Ada's] willful disregard of civil process and conscious attempts to evade service. Said sum shall be paid directly to [counsel for Derek] within 30 days of the date of this Order. In the event that [Ada] fails to do so, then [Derek] is awarded the sum of \$818.01 plus statutory interest which shall be offset from the net proceeds of the sale of the former marital home located at 94-1137 Noheaiki Street, Waipahu, Hawaii 96797.

On March 29, 2005, Derek filed a Motion to Allow Commissioner to Sell the Real Property Located at 94-1137 Noheaiki Street, Waipahu, HI 96797 in an "As Is" Condition Without Any Open Houses and At Public Auction. This motion was accompanied by a copy of a February 17, 2005 letter sent by attorney Lori M. Ohinata (Ohinata) to Ada that stated, in part:

As you may already know, I have been appointed Commissioner for the sale of the property located at 94-1137 Noheaiki Street, Waipahu, Hawaii 96797 (hereinafter referred to as "Property").

I attempted to speak with you by phone on February 16, 2005. . . .

. . . .

I understand that this is a difficult time for both parties. Therefore, to the extent I can gain your cooperation and work with you and [Derek] regarding the sale of the property, whether it be to you or a third party, I believe would be in the best interests of all involved. . . .

Please contact me at 524-4501 by February 25, 2005. I will be more than willing to discuss any suggestions you may have regarding the sale of the Property.

By letter dated March 14, 2005, Ohinata advised counsel for Derek as follows:

Please be advised that I have not heard from [Ada] as requested in my letter to her dated February 17, 2005.

Enclosed, please find a copy of the envelop [sic] returned to me today, indicating that the certified letter was unclaimed. This letter was also sent by first class mail and I have not received anything indicating [Ada] did not receive my letter.

Counsel for Derek certified that Ada was mailed a copy of the March 29, 2005 motion and the attached Notice of Motion advising her that the motion would be heard on April 20, 2005, at 8:30 a.m. After the April 20, 2005 hearing, Judge Kuriyama entered a May 10, 2005 order that stated, "[Ada] is held to be in DEFAULT" and granted the motion. Counsel for Derek certified that a copy of this May 10, 2005 order was mailed to Ada on May 13, 2005.

On July 27, 2005, Ohinata filed a Commissioner's Report which states, in part:

4. Your Commissioner was unsuccessful in gaining the cooperation of [Ada] to inspect the property and conduct open houses and as a result, [Derek] filed Plaintiff's Motion To Allow Commissioner to Sell the Real Property Located at 94-1137 Noheaiki Street, Waipahu, HI 96797 In An "As Is" Condition Without Any Open Houses And At Public Auction on March 29, 2005 which was heard on April 20, 2005 and the Order Granting motion for Order To Allow Commissioner to Sell the Real Property Located at 94-1137 Noheaiki Street, Waipahu, HI 96797 In An "As Is" Condition Without Any Open Houses And At Public Auction was filed on May 10, 2005.

. . . . .

6. That your Commissioner established July 5, 2005 at 12:00 p.m. in front of the First Circuit Court Building, 777 Punchbowl Street, Honolulu, Hawaii, as the date, time and place for the public auction for the sale of the subject premises.

7. That your Commissioner informed the parties and attorneys involved in the above-entitled action as to the date for the public auction.

13. That your Commissioner ordered an appraisal of the subject property and the appraisal, done by drive by, valued the subject property at \$455,000.00 . . . .

14. [Ada] and [Ada's] counsel, Curtis Kam, were present at the auction . . . .

15. Mr. Kam was passing out a notice to the qualified bidders, a copy of which is attached hereto as Exhibit "D". This together with the fact that there were no open houses may have contributed to the highest bid being \$270,000.00[.]

Exhibit "D" states in part:

YOU ARE HEREBY ADVISED THAT 94-1137 Noheaiki St. is the current residence of one of its owners, [Ada]. She contests the Family Court's jurisdiction over the sale, and will oppose confirmation of any sale on these grounds.

YOU ARE FURTHER ADVISED that the original order to sell this property was entered by the Family Court in 1998. Pursuant to H.R.S. 580-56(d) the Family Court lost jurisdiction over the division of property issues one year later, in 1999. . . .

Furthermore, on July 8, 2002, the Family Court entered an order in this case that stated: "The court also with the exception of child support and alimony issues, **vacates its retention of jurisdiction beyond July 8, 2003.**" (emphasis supplied)

The motion to conduct this sale was not filed until August, 2004. By that time, *by statute and by its own order* the Family Court had no jurisdiction over the sale of the property. [Ada] therefore contests the Court's authority to appoint the commissioner and to order the present sale, and any and all bidders are hereby advised of her position.

On September 14, 2005, Derek filed a Motion for Confirmation of Sale and for an Award of Attorney's Fees and Costs. Counsel for Derek sent a copy of this motion to Curtis Kam. By letter dated September 20, 2005, Curtis Kam informed counsel for Derek as follows:

I am in receipt of your client's most recent motion in the above-referenced case. I had thought we had informed you of this, but if not, please be advised that this office no longer represents [Ada]. We will forward your most recent correspondence to her mailing address, however, her last instruction to us was that we do no further work on her case, and we are bound to abide by that instruction.

I regret that this has turned out as we had hoped it would not, and thank you for your cooperation and courtesy in this matter.

On November 1, 2005, attorney Gary Y. Okuda filed a declaration noting that he is "the successor Commissioner" and requesting an award of fees. On November 7, 2005, after a hearing on October 5, 2005, Judge Kuriyama entered (1) an Order Granting Successor Commissioner's Fees, and (2) an Order Granting [Derek's] Motion for Confirmation of Sale, Distribution of Proceeds, Deficiency Judgment and for Writ of Possession. The latter order states that "although properly served, [Ada] did not appear." It also states, in part: "At the hearing held on October 5, 2005 . . . there were 53 bids for the real property . . . . MARK N. CHIN and JEANIE C.H. CHIN were the successful bidders and that the bid of \$450,000.00 is fair and equitable and as high as any that can be obtained under the circumstances."

On December 15, 2005, the sale closed and Island Title Corporation mailed to Ada a Settlement Statement and a check in the amount of \$197,465.83. The Writ of Possession was filed on January 5, 2006.

On January 13, 2006, Ada filed a Motion to Set Aside Default Judgment Against [Ada]; for Stay of Writ of Possession; for Accounting of Escrow Proceeds. This motion was filed "pursuant to Rules 7(b), 60, and 62 of the Hawaii Family Court Rules to set aside the Default Judgment ordered as a result of a October 5, 2005 hearing; to stay the Writ of Possession filed on

1/5/2006; and for accounting of escrow proceeds. This Motion is based upon the Affidavit of [Ada.]" The accompanying affidavit of Ada states in part:

2. I discovered that a Writ of Possession was filed in this matter when I was doing research at family court regarding transfer of title to the real property. When I discovered this, I was in shock. I was recently contacted by an escrow company and was confused about what was going on.

3. Through the assistance of counsel, I was made aware that my home located at 94-1137 Noheaiki St., Waipahu, HI 96797 was ordered to be sold recently in October 2005. The court approved a sale by commissioner of this property at \$450,000, below fair market value, which could have been \$550,000.

4. I never received the notice for a hearing [that] occurred on October 5, 2005, when I was found in default. The court's minute order indicated that the notice for this proceeding was served upon Curtis Kam, an associate with Richard Lee, my former counsel. Mr. Lee or Mr. Kam never informed me either by phone or in writing of the hearing on October 5, 2005.

5. Since I had no effective notice, I did not appear at the October 5, 2005 hearing, at which time some prejudicial orders were entered against me and my property.

6. I retained Mr. Lee's service for him to file a motion to set aside a property settlement order filed on October 5, 2001. The 10/5/2001 order was supposed to be a settlement of all property issues. At the time, my understanding was that I will give up my entitlement to [Derek's] Hawaiian Electric 401(k) and pension, plus miscellaneous other accounts, in consideration of him waiving his entitlement to his share of the equity of the home. However, in court, when the stipulation was placed on the record, it was contrary to my understanding. After the fact, I explained to my then-attorney Ms. Parks that this order was not my agreement and was not the bargain made, as the agreement would only provide me with about \$16,800 in additional alimony, when at the time, my entitlement to [Derek's] 401(k) alone exceeded \$16,800. I was married to [Derek] for 17 years at the point of divorce in 1999. My share of his pension would have been a much more valuable asset. However, at the time, my counsel Ms. Parks did not seem to have the legal skill nor knowledge about family law matters. She often cried after a hearing, complaining to me that it was too hard to get anything accomplished. No one explained to me that I should have filed a Rule 60(b) motion to set aside the 2001 order. I did not know that a letter I wrote to the court regarding the 10/5/2001 order did not constitute modification of that order.

7. Since 2001, since no one effectively assisted me legally, I was under the impression that as part of the bargain, I gave up [Derek's] retirement and in exchange, he gave up his share of the house to me. Therefore, over the years, I have attempted to get [Derek] to sign off on the property.

8. My current counsel informed me that there were a number of other proceedings in 2004 and 2005, and I was found in default in all of these actions. However, during the pertinent period of time, I never received any notice of any court proceedings from [counsel for Derek's] office. I never received any orders regarding the disposition of these proceedings either.

9. In June 2005, I suddenly got a flux of junk mail from people buying distressed properties. That was when I became aware that there was something wrong. I therefore retained the service of Richard Lee, who promised to take care of the problems and to clear title of the property for me. By July 2005, since he was not effectively assisting me, I terminated his service.

9.[sic] Even though it appears from the court's minute [sic] that the property was sold, I have not been provided an accounting of the sales proceeds. I further object to the approval of this sale, as if I have [sic] known of this, I would have cooperated by allowing open house to fetch a better price for both me and [Derek].

10. Since I did not have effective notice, and in fact, the foreclosure proceeding in its entirety appeared to be defective, as I was never served with any Complaint for foreclosure, the current writ of possession is extremely prejudicial against me.

11. I therefore ask the court to stay the writ of possession pending further disposition of all of the issues raised in my motion.

In a memorandum accompanying the January 13, 2006 motion, counsel for Ada wrote in part:

The parties were divorced in 1999. A number of modifications were entered after the divorce concerning [the] parties' properties. Among the orders, there was an order of 10/5/2001 as a result of a hearing from September 5, 2001, which orders the sale of the residence in [Ada's] possession after June 2003. [Ada] contends that the order did not reflect her agreement and that her prior counsel might have agreed to it without her authorization. Subsequently, she wrote a letter contesting the content. In summary, since she gave up 17 years of entitlement to [Derek's] Hawaiian Electric pension and 401(K) as well as other miscellaneous accounts, her understanding was that she would be awarded [Derek's] share of the equity of the residence.

. . . .

By chance, [Ada] found out about the writ of possession and therefore retained the service of counsel.

On February 2, 2006, after a hearing on February 1, 2005, Judge Kuriyama entered an order denying the January 13, 2006 motion (February 2, 2006 Order).

On February 16, 2006, Ada filed a notice of appeal. On April 12, 2006, Judge Kuriyama entered Findings of Fact and Conclusions of Law (FsOF and CsOL).

In this appeal, although Ada challenges FsOF nos. 18, 21, 27, 30, 33, 34, 42, 49, 55, 56, 59, 60, 62, 64, 66, and 68, and CsOL nos. 1 thru 9, 11, 12, 13, 14, 16, and 17, she asserts and argues only three points on appeal.

#### DISCUSSION

##### I.

In the opening brief, Ada contends that "[t]he family court erred when it entered orders regarding property division issues after its jurisdiction was vacated by statute and order. Accordingly, without subject matter jurisdiction, **any** orders, decrees, writs, and judgments after July 8, 2003, were void." (Emphasis in the original.)

##### A.

Hawaii Revised Statutes (HRS) § 580-56 (1993) states in part:

**Property rights following dissolution of marriage.** (a) Every decree of divorce which does not specifically recite that the final division of the property of the parties is reserved for further hearing, decision, and orders shall finally divide the property of the parties to such action.

(b) Following the entry of a decree of divorce in any matrimonial action in which the final division of the property of the parties to such action is reserved for further hearings, decisions, and orders, notwithstanding the provisions of section 560:2-802, or any other provisions of the law to the contrary, each party to such action shall continue to have all of the rights to and interests in the property of the other party to such action as provided by chapter 533 and chapter 560, or as otherwise provided by law to the same extent he or she would have had such rights or interests if the decree of divorce had not been entered,

until the entry of a decree or order finally dividing the property of the parties to such matrimonial action, or as provided in subsection (d) of this section.

(d) Following the entry of a decree of divorce, or the entry of a decree or order finally dividing the property of the parties to a matrimonial action if the same is reserved in the decree of divorce, or the elapse of one year after entry of a decree or order reserving the final division of property of the party, a divorced spouse shall not be entitled to dower or curtesy in the former spouse's real estate, or any part thereof, nor to any share of the former spouse's personal estate.

It appears that Ada interprets HRS § 580-56 as saying that when the family court enters a decree ordering the sale of property and the distribution of the proceeds of the sale, the family court does not retain jurisdiction regarding the sale of the property and the distribution of the proceeds unless it specifically recites that it retains such jurisdiction. We conclude that such an interpretation of HRS § 580-56 is wrong.

The "personal estate" of either party includes personal property such as retirement benefits. See *Linson v. Linson*, 1 Haw.App. 272, 278, 618 P.2d 748, 751, *reconsideration denied*, 1 Haw.App. 665, 618 P.2d 748 (1980). Thus, the statute mandates that, when the family court issues a divorce decree, the decree is final with respect to its division of the parties' property unless the court specifically retains jurisdiction for the purpose of additional property division. If the family court retains jurisdiction for further property division, it loses such jurisdiction and may not permit either party access to the property of the other party (1) once the court subsequently divides the property, or (2) after the passage of one year, whichever occurs first. See *Boulton v. Boulton*, 69 Haw. 1, 3-4, 730 P.2d 338, 339 (1986).

Torres v. Torres, 100 Hawai'i 397, 411, 60 P.3d 798, 812 (2002, As Amended 2003).

HRS § 580-56(a), (b), and (d) must be read together. In this case, the Divorce Decree did "not specifically recite that the final division of the property of the parties is reserved for further hearing, decision, and orders[.]" Therefore, the Divorce Decree "finally divide[d] the property of the parties to such action[.]" HRS § 580-56(a) is applicable, and HRS § 580-56(b) is not applicable.

The time limit specified in HRS § 580-56(d) pertains to the family court's jurisdiction to resolve the property division issue, *Boulton v. Boulton*, 69 Haw. 1, 730 P.2d 338 (1986), and to decide how the property of the parties will be distributed. *Todd v. Todd*, 9 Haw.App. 214, 832 P.2d 280 (1992). It does not pertain to enforcement of property division orders stated in a divorce decree that "finally divide[d] the property of the parties to such action." Defendant's motion sought enforcement of the part of the Divorce Decree ordering that "Plaintiff shall transfer to Defendant stocks and funds equal to one-half of the value of the total securities as of the date of valuation." In light of HRS § 580-56(a), when the Divorce Decree ordered Plaintiff to transfer a specified value of his stocks and funds to Defendant, that specified value of his stocks and funds was, for purposes of HRS § 580-56(d), no longer a part of his personal estate.

Richter v. Richter, 108 Hawai'i 504, 506-7, 122 P.3d 284, 286-87 (2005).

B.

The family court's October 5, 2001 stipulated order states that "[t]he Family Court shall also extend its jurisdiction over the sale of the former marital residence until August 31, 2004." The family court's July 11, 2002 Clarification Order states that "[t]he court also with the exception of child support and alimony issues, vacates its retention of jurisdiction beyond July 8, 2003." No reason was given for either order and the transcripts of the hearings that lead to them are not a part of the record on appeal.

Ada contends that Derek defrauded the court when he filed the August 18, 2004 motion and attached to it the October 5, 2001 stipulated order without telling the court that the July 11, 2002 Clarification Order had advanced the date of the termination of its jurisdiction to July 8, 2003.

It appears that Ada concludes that the Family Court is authorized to limit or terminate its jurisdiction to enforce its judgments/decrees/orders. We conclude that this conclusion is wrong.

C.

In light of this court's conclusions above, the issue presented by the following argument is moot: "Thus, following the divestiture of jurisdiction in Family Court, [Derek] should have filed for relief in Land Court."

II.

Ada contends that "[t]he family court erred by entering orders to [Ada's] detriment when she had not received proper service of various post decree Motions and the Writ of Possession." Generally, she is complaining about the October 21, 2004 order, the January 6, 2005 order, the May 10, 2005 order, the November 7, 2005 order, and the January 5, 2006 Writ of Possession. Specifically, she challenges the service of the September 14, 2005 Motion for Confirmation of Sale and for an Award of Attorney's Fees and Costs on Curtis Kam of the Law Offices of Richard Lee. She asks this court to judicially notice the September 30, 2005 Order of Disbarment of Richard Y.S. Lee. She alleges that "she did not know of the October 2005 hearing or proceedings until January 2006, when she discovered that [Derek] had a Writ of Possession issued."

Upon a review of the record, we conclude that this point has no merit.

III.

Ada contends that the February 2, 2006 order denying the January 13, 2006 Motion to Set Aside Default Judgment Against [Ada]; for Stay of Writ of Possession; for Accounting of Escrow Proceeds "was an abuse of discretion as the record shows that the requirements necessary to set aside a default were met." Ada argues that she "met the requirements of Rule 60(b) when she provided facts in support of her claim that she was surprised to learn her home had been sold."

Upon a review of the record, we conclude that this point has no merit.

CONCLUSION

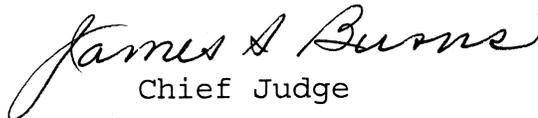
Accordingly, we affirm the February 2, 2006 order denying Defendant-Appellant Ada Germaine Tsuji's January 13, 2006, Motion to Set Aside Default Judgment Against Defendant; for Stay of Writ of Possession; for Accounting of Escrow Proceeds.

DATED: Honolulu, Hawai'i, April 18 2007.

On the briefs:

Mary L. Lucasse and  
David Y. Suzuki  
(Burke McPheeters Bordner &  
Estes)  
for Defendant-Appellant.

Blake T. Okimoto  
for Plaintiff-Appellee.

  
Chief Judge

  
Associate Judge

  
Associate Judge