

NO. 28177

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DEBORAH H. BLESSMAN, Plaintiff-Appellant,
v.
STEPHEN W. BLESSMAN, Defendant-Appellee

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 JAN 30 AM 9:11

FILED

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-D NO. 94-0-0636)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Plaintiff-Appellant Deborah H. Blessman (Deborah) appeals from the August 25, 2006 order that denied the January 12, 2006 Motion for Relief From Decree Granting Divorce filed in the Family Court of the Second Circuit (family court).¹

On May 31, 1995, the family court entered a Decree Granting Divorce and Awarding Child Custody (divorce decree)² that (1) dissolved the marriage between Deborah and Defendant-Appellee Stephen W. Blessman (Stephen); (2) awarded Deborah and Stephen joint custody of their two children; (3) awarded monthly child support to Deborah; (4) awarded no alimony to either party; and (5) divided and distributed the couple's property pursuant to the Property Settlement Agreement (PSA) dated April 25, 1995.³

On January 12, 2006, Deborah moved the family court for relief from the divorce decree under Hawai'i Family Court Rules (HFCR) Rule 60(b). The motion appeared to request that the

¹ The Honorable Mary Blaine Johnston presided.

² The Honorable Rosalyn Loomis entered the divorce decree.

³ Although the PSA states that it was dated April 25, 1995, it was not filed with the court until May 2, 1995.

family court set aside the PSA that was incorporated by reference in the divorce decree. On August 25, 2006, the family court denied the motion. On October 23, 2006, the family court entered its Findings of Fact (FoF) and Conclusions of Law (CoL).

On appeal, Deborah argues that the family court abused its discretion by denying her relief from the PSA, and also challenges FoF nos. 81 and 83-91,⁴ and CoL nos. 8 and 11.

After a careful review of the record and the briefs submitted by both parties, and having given due consideration to the arguments advanced and the issues raised, we resolve Deborah's appeal as follows:

(1) The family court did not abuse its discretion in denying Deborah's motion.⁵ Hayashi v. Hayashi, 4 Haw. App. 286, 290, 666 P.2d 171, 174 (1983). Deborah brought her motion more than ten years after the execution of the PSA. While that delay itself does not disqualify her from obtaining relief, she was nevertheless required to establish that the delay was "reasonable" and that there were "exceptional circumstances" justifying it. Id. at 290-91, 666 P.2d at 174-75.

In Hayashi, a husband and wife entered into a PSA in 1974. The PSA was incorporated in a divorce decree entered in 1975. Wife filed a HFCR Rule 60(b)(6) motion six years later contending, much as Deborah does here, that both "before and

⁴ Although Deborah's second point of error only references FoF 83, the language she uses to summarize FoF 83 is broader and appears to include FoF 84 as well. Accordingly, we consider both FoFs 83 and 84.

⁵ The family court found, and Deborah does not challenge on appeal, that "[t]here is no credible evidence justifying relief" under HFCR Rules 60(b)(1)-(5).

after execution of the PSA and entry of the decree, Husband exerted extreme influence over her so that she was acting under coercion and emotional duress[.]" Id. at 291, 666 P.2d at 175. After conducting a hearing, but without taking evidence, the family court denied the motion. Id. at 288-89, 666 P.2d at 174. This court affirmed the family court's decision, and characterized Wife's contentions as "incredible." Id. at 291, 666 P.2d at 175. We noted that Wife was represented by counsel during the period leading up to the entry of the PSA and stayed in contact with her attorney and consulted with other lawyers afterward. Id.

Similarly here, Deborah was represented by counsel of her choice prior to the execution of the PSA. The PSA includes recitals which inter alia indicate that the parties were represented by counsel of their own choosing, that they understood their rights to further financial disclosures and voluntarily waived those rights, that they understood the agreement, that they were mentally competent to execute it, and that they were doing so without being subject to undue influence, duress or coercion. Deborah was also examined by a psychiatrist prior to executing the agreement, who opined that Deborah "appears fully mentally competent to handle her own finances and legal affairs at this time."

Although Deborah now claims that her counsel was incompetent and that she was denied access to information about Stephen's assets, the record establishes that Stephen made extensive disclosures of his assets to Deborah prior to the

execution of the PSA in 1995, and Stephen's counsel offered to attempt to obtain additional information for her if she requested it. Deborah's then-counsel proposed changes to the PSA and Stipulation Regarding Child Custody and Child Support, which were accepted by Stephen and incorporated into the final documents. Moreover, although Deborah claims that the psychiatrist did not do a thorough evaluation, she does not deny that the evaluation took place, and she did not include in the record any medical opinion or record establishing that she lacked mental capacity at the time of the PSA or thereafter.

In sum, Deborah came forward with insufficient evidence to establish that the PSA was the product of coercion. Rather, it appears to have been the product of an informed choice. Nakata v. Nakata, 3 Haw. App. 51, 56, 641 P.2d 333, 336 (1982) (HFCR Rule 60(b) "is not for the purpose of relieving a party from free, calculated, and deliberate choices, he, she, or it has made.").

Even assuming arguendo that there was some doubt about the circumstances surrounding the PSA, Deborah failed to establish exceptional circumstances justifying her ten-year delay in bringing her HFCR Rule 60(b)(6) motion. Most notably, the record discloses that there was further interaction between the parties in 1998, when the court approved a stipulation signed by Stephen and Deborah requiring Stephen to pay certain expenses related to a residence in Kihei. Deborah was again represented by counsel in connection with that stipulation, and objected to a provision which would have required her to refrain from

publishing negative information about Stephen. Significantly, although Deborah deleted that provision, she did not delete another provision which stated that the PSA was not modified and remained in full force and effect. The circumstances surrounding the execution of this stipulation suggest that Deborah had access to counsel and the ability to assert her own interests at that time, but that she nevertheless reaffirmed the PSA. This is contrary to her contention that she was precluded by various circumstances from bringing the motion prior to 2006.

Accordingly, we conclude that the family court did not abuse its discretion in denying the motion.

(2) We further conclude that the family court did not clearly err in FoF nos. 81 and 83-91, or if the court did err, such error was harmless with regard to the disposition of the motion.

(3) We further conclude that CoL no. 8 is not wrong since Stephen's rights would be prejudiced to the extent that he had performed his obligations under the PSA.

(4) We further conclude that CoL no. 11 is not wrong for the reasons set forth in section (1).

(5) Although not raised as a specific point of error, Deborah argues throughout her brief that the family court should have held an evidentiary hearing. This argument, however, is without merit because the family court may deny relief under HFCDR Rule 60(b) based upon the papers submitted. Ahlo v. Ahlo, 1 Haw. App. 324, 326, 619 P.2d 112, 115 (1980).

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

Accordingly, the August 25, 2006 "Order Denying (Plaintiff Deborah H. Blessman's[]) Motion for Relief From Decree Granting Divorce, Filed on 1/12/06" entered in the Family Court of the Second Circuit is hereby affirmed.⁶

DATED: Honolulu, Hawai'i, January 30, 2009.

On the briefs:

Deborah H. Blessman
Pro Se Plaintiff-Appellant.

Michael J.Y. Wong
for Defendant-Appellee.



Chief Judge



Associate Judge



Associate Judge

⁶ In the answering brief, Stephen "requests his costs and such other relief as is appropriate." This appears to be a request for an award of costs on appeal. However, Stephen does not cite any authority in support of his request, and we decline to consider it at this time without prejudice to Stephen filing a properly supported motion under Hawai'i Rules of Appellate Procedure Rule 39.