

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28913

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

MICHAEL CHRISTOPHER MANGEL, Plaintiff-Appellant  
CHRISTINE KIM MANGEL, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT  
(FC-D NO. 04-1-299K)

KHAMMADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

MEMORANDUM OPINION

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

Plaintiff-Appellant Michael Christopher Mangel (Michael) appeals from: 1) the October 5, 2007, First Amended Divorce Decree; and 2) the November 20, 2007, Order Denying Plaintiff's Application and Motion for Reconsideration (Order Denying Motion for Reconsideration) entered by the Family Court of the Third Circuit (family court).<sup>1/</sup> Michael also challenges the October 5, 2007, First Amended Order Re: Trial Held on November 10, 2005 (First Amended Order Re: Trial) filed by the family court. In a previous appeal brought by Defendant-Appellee Christine Kim Mangel (Christine), this court vacated portions of the original January 10, 2006, Divorce Decree and the original November 23, 2005, Order Re: Trial Held on November 10, 2005 (Order Re: Trial), and we remanded the case to the family court. Mangel v. Mangel, No. 27742, 2007 WL 11477344 (Hawaii App. April 16, 2007) (hereinafter, "Mangel I"). On remand, the Family Court issued the First Amended Divorce Decree and the First Amended Order Re: Trial.

Michael's instant appeal challenges the family court's division of the parties' property. Prior to their marriage, Michael and Christine entered into a Premarital Agreement that contained provisions for the division of their property should the marriage end in divorce. The Premarital Agreement contained

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<sup>1/</sup> The Honorable Jeanne L. O'Brien presided.

provisions that departed from the Hawai'i Partnership Model<sup>2/</sup> for dividing property in a divorce action.

On appeal, Michael asserts that notwithstanding the Premarital Agreement, the family court erred when it failed to apply Hawai'i-Partnership-Model principles to award him reimbursement of \$299,000 in proceeds from the sale of separate-property stock and \$27,922 in dividends from separate-property stock that he spent for the benefit of the marriage during the marriage.<sup>3/</sup> Christine asserts that 1) this court does not have jurisdiction over this appeal because Michael failed to raise the reimbursement issue during the first appeal; and 2) if this court does have jurisdiction, Michael's claim is without merit. We conclude that we have jurisdiction over Michael's appeal, and we affirm the family court's rulings.

#### BACKGROUND

##### I.

The parties' Premarital Agreement established the parties' "separate property" and "marital and/or jointly owned property." Under the Premarital Agreement, the parties agreed that upon dissolution of the marriage, each party would be awarded that party's separate property "free and clear of any claim thereon by the other party." The Premarital Agreement further provided that assets acquired during the marriage, other than separate property,

shall be treated in all respects as assets of the marriage unless agreed in writing otherwise, except that any assets or property purchased entirely with the separate funds or assets of HUSBAND or of WIFE and which is titled solely in the name of the party who provides the funds or assets for acquisition, shall be deemed to be the separate property of the party who provided such funds or assets and took such title in their sole name.

The Premarital Agreement stated that "[t]he provisions contained in this Agreement represent the entire understanding

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<sup>2/</sup> See Helbush v. Helbush, 108 Hawai'i 508, 511-15, 122 P.3d 288, 291-95 (App. 2005).

<sup>3/</sup> Based on this same claim, Michael contends that the family court erred in denying his Application and Motion for Reconsideration.

between the parties hereto pertaining to their respective property and marital rights . . . ." It further stated that "[b]oth parties further acknowledge that they do no [sic] intend to look, nor will either look, to the other party for any compensation or support by reason of or arising out of their intended marriage, regardless of present or future circumstances, except as specifically provided in this Agreement." The Premarital Agreement divided property in ways that differ from how that property would be divided under the Hawai'i Partnership Model.

II.

In the first appeal, Christine challenged the family court's award of the land on which the parties' marital home was situated and the 25% interest in Keopu Partners, L.L.C., to Michael as his sole and separate property. Mangel I, slip op. at 8-13, 2007 WL 11477344, at \*5-\*7. The family court had ruled that "[Michael's] argument that the court should apply the usual equitable principles and categories to the property division in this case is rejected since the court is bound to enforce the [Premarital] Agreement." The family court, however, had found that the Premarital Agreement had conflicting provisions regarding the division of the two assets. Id. at 6-7, 2007 WL 11477344, at \*4. In construing the Premarital Agreement, the family court had determined that the award of these two assets to Michael as his separate property gave effect to the Premarital Agreement and the parties' intent.

In the original Divorce Decree, the family court did not award Michael reimbursement of funds from the sale of separate-property stock or dividends from separate-property stock that he spent for the benefit of the marriage during the marriage. Michael did not file a cross-appeal in Mangel I challenging the family court's failure to award reimbursement of these expenditures.

In Mangel I, we concluded that the family court had erred in construing the Premarital Agreement and in awarding the

land on which the marital home was situated and the 25% interest in Keopu Partners, L.L.C., to Michael as his sole property. We vacated portions of the original Order Re: Trial and the Divorce Decree pertaining to the award of these two assets to Michael, and we remanded the case for modification of the vacated portions in conformity with our opinion. *Id.* at 15-16, 2007 WL 11477344, at \*9.

On remand, the family court divided the value of the land on which the parties' marital home was situated and the 25% interest in Keopu Partners, L.L.C., equally between the parties. The family court issued its First Amended Order Re: Trial and First Amended Divorce Decree to reflect the change in its division of these assets.

#### DISCUSSION

##### I.

##### A.

At the outset, we address the jurisdictional question of whether Michael's notice of appeal was timely filed. The relevant sequence of events is as follows.

On October 5, 2007, the family court entered the First Amended Order Re: Trial and the First Amended Divorce Decree. Pursuant to Hawaii Family Court Rules (HFCR) Rule 97 (2000),<sup>4/</sup>

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<sup>4/</sup> HFCR Rule 97 provides:

Mailing a Copy of Judgment or Order.

Within 2 days after a judgment or order is filed in any case, the attorney preparing the same shall mail or deliver two certified copies of the judgment or order and two copies of any agreements of the parties referred to therein to the attorney for the other party in case such party is represented by an attorney, or shall mail or deliver a certified copy of the judgment or order and a copy of such agreement to the other party at the other party's last known address if the other party is not represented by an attorney. Proof of mailing or delivery of the certified copies of the judgment or order within the 2-day period to the attorney for the other party or to the party shall be made to the court forthwith. Failure to comply with this rule may be considered as grounds for relief from the judgment under Rule 60(b)(3) or 60(b)(6).

(Emphasis added.)

Christine's attorney was required to mail or deliver these documents to Michael's attorney by October 7, 2007. Christine's attorney belatedly mailed these documents to Michael's attorney on October 15, 2007.

On October 26, 2007, Michael filed an ex parte motion for an extension of time to file 1) a motion for reconsideration of the First Amended Order Re: Trial and the First Amended Divorce Decree and 2) a notice of appeal. Along with the ex parte motion for extension, Michael filed a motion for reconsideration of the First Amended Order Re: Trial and the First Amended Divorce Decree.

Michael's ex parte motion for extension was made pursuant to HFCR Rule 97, which requires the attorney preparing the judgment or order to serve it on the opposing attorney within two days of filing and provides that failure to comply with HFCR Rule 97 may be grounds for relief from the judgment under HFCR Rule 60(b)(3) or 60(b)(6) (2006).<sup>5/</sup> In support of the ex parte motion, Michael's attorney represented that he received the First Amended Order Re: Trial and the First Amended Divorce Decree on October 18, 2007, and that due to the late service of these documents, Michael was not able to file his motion for reconsideration within the ten-day period required by HFCR Rule 59 (2000). Michael requested an extension of time to file his motion for reconsideration until October 26, 2007, and alternatively, a thirty-day extension to file his notice of appeal.

On November 5, 2007, the family court filed an order granting Michael's motion for extension of time to file his motion for reconsideration (Reconsideration Extension Order). On the same date, the family court also filed a separate order

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<sup>5/</sup> HFCR Rules 60(b)(3) and 60(b)(6) authorize the family court to "relieve a party . . . from any or all of the provisions of a final judgment, order, or proceeding for the following reasons: . . . (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; . . . or (6) any other reason justifying relief from the operation of the judgment."

granting Michael's motion for an extension of time to file a notice of appeal.<sup>6/</sup> The family court issued its Order Denying Motion for Reconsideration on November 20, 2007. On December 19, 2007, Michael filed his notice of appeal from the First Amended Divorce Decree, the First Amended Order Re: Trial, and the Order Denying Motion for Reconsideration.

We construe Michael's ex parte motion to extend the time to file his motion for reconsideration as a motion brought pursuant to HFCR Rule 97 and seeking relief under HFCR Rules 60(b)(3) and 60(b)(6), in which Michael sought 1) to be relieved from the effective-date provisions of the First Amended Order Re: Trial and the First Amended Divorce Decree and 2) to change their effective date to October 17, 2007, as a remedy for Christine's attorney's violation of HFCR Rule 97. We further construe the family court's Reconsideration Extension Order as granting Michael such relief under HFCR Rule 60(b)(3) or 60(b)(6). So construed, Michael's motion for reconsideration was timely filed. Pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(3) (2006), Michael's timely-filed motion for reconsideration extended the time to file the notice of appeal from the First Amended Divorce Decree until thirty days after the Order Denying Motion for Reconsideration was filed. Michael's notice of appeal was filed twenty-nine days after the Order Denying Motion for Reconsideration was filed and thus was timely.

B.

Christine argues that Michael's notice of appeal is untimely because he "in reality" is appealing from the family court's decision rejecting his separate-property reimbursement argument that was contained in the original Order Re: Trial that was filed in 2005. Christine's argument can be summarized as

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<sup>6/</sup> The title of this order is "Order Graniting [sic] Plaintiff's Ex Parte Motion for Extension of Time to File Notice of Appeal." The body of the order, however, refers to extending the time to file Michael's "motion for reconsideration" by thirty days. We assume that the reference in the order to "motion for reconsideration" was a mistake and should have stated "notice of appeal."

follows: 1) Michael raised the issue of reimbursement during the original 2005 trial; 2) the family court implicitly rejected Michael's position in not awarding him reimbursement of the proceeds from separate property he spent during the marriage; 3) Michael failed to appeal or cross-appeal from the family court's original Order Re: Trial and the Divorce Decree issued in 2005; and 4) other than the portions of the Order Re: Trial and the Divorce Decree pertaining to the division of the land on which the marital home was situated and the 25% interest in Keopu Partners, L.L.C., this court affirmed the family court's property division in Mangel I.

Christine's arguments speak to whether we should reject Michael's reimbursement claim on the theory that he is bound by the "law of the case" or that he waived his reimbursement claim by not raising it in the first appeal. They do not support the assertion that this court lacks jurisdiction over Michael's claim. Michael timely appealed from the Amended Divorce Decree and the Order Denying Motion for Reconsideration that were issued by the family court on remand. We have jurisdiction to consider Michael's reimbursement claim.

II.

We need not decide whether Michael's reimbursement claim is barred by the doctrine of the law of the case or waiver because we conclude that his claim fails on the merits.

"Parties to a premarital agreement may contract with respect to: (1) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located; . . . [and] (3) The disposition of property upon . . . marital dissolution[.]" Hawaii Revised Statutes (HRS) § 572D-3 (2006). "A premarital agreement is enforceable and shall be binding in any action unless a party against whom enforcement is sought proves" one of the statutory grounds for unenforceability. HRS § 572D-6 (2006).

In this case, neither party contends that their Premarital Agreement is unenforceable. Michael argues that the

family court erred in failing "to award [him] reimbursement of his Category 1 separate property of \$299,000 and Category 1 separate income [of] \$27,922 that was spent for the benefit of the marriage during the marriage."<sup>2/</sup> The family court ruled in both the original Order Re: Trial and the First Amended Order Re: Trial that "[Michael's] argument that the court should apply the usual equitable principles and categories to the property division in this case is rejected since the court is bound to enforce the [Premarital] Agreement." In effect, Michael argues that this ruling of the family court is wrong and that notwithstanding the Premarital Agreement, the family court should have applied Hawai'i-Partnership-Model principles to award him reimbursement of Category 1 separate property he spent for the benefit of the marriage during the marriage.

We conclude that the family court was not wrong in declining to apply Hawai'i-Partnership-Model principles to award Michael reimbursement of amounts he claimed constituted contributions of Category 1 property. The Premarital Agreement stated that "[t]he provisions contained in this Agreement represent the entire understanding between the parties hereto pertaining to their respective property and marital rights . . . ." The Premarital Agreement also stated that "[b]oth parties further acknowledge that they do no [sic] intend to look, nor will either look, to the other party for any compensation or support by reason of or arising out of their intended marriage, regardless of present or future circumstances, except as specifically provided in this Agreement." The Premarital Agreement did not contain any provision authorizing

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<sup>2/</sup> Under the Hawai'i Partnership Model, Category 1 property is defined as follows:

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.

Malek v. Malek, 7 Haw. App. 377, 380 n.1, 768 P.2d 243, 246 n.1 (1989).

Michael to obtain reimbursement of Category 1 separate property he spent for the benefit of the marriage during the marriage. The Premarital Agreement controlled the division of the parties' property, and the family court did not err in rejecting Michael's claim for reimbursement that was based on the Hawai'i Partnership Model.<sup>8/</sup>

We also note that the Premarital Agreement contained provisions that were more advantageous to Michael than the Hawai'i Partnership Model. Thus, allowing Michael to enforce the Premarital Agreement and also to seek reimbursement of Category 1 property pursuant to the Hawai'i Partnership Model could have served to unfairly skew the results.

CONCLUSION

We affirm the family court's: 1) October 5, 2007, First Amended Divorce Decree; 2) October 5, 2007, First Amended Order Re: Trial; and 3) November 20, 2007, Order Denying Motion For Reconsideration.

DATED: Honolulu, Hawai'i, October 29, 2009.

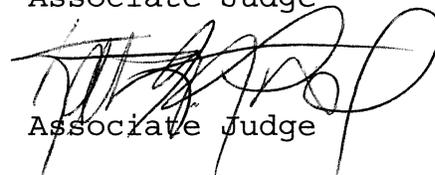
On the briefs:

James Biven  
for Plaintiff-Appellant.

Daniel S. Peters  
for Defendant-Appellee.

  
Chief Judge

  
Associate Judge

  
Associate Judge

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<sup>8/</sup> In light of our disposition, we do not address whether Michael would have been entitled to reimbursement of the amounts he claimed under the Hawai'i Partnership Model.