

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 25768

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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MICHAEL TIMOTHY FISCHER, Plaintiff-Appellee

vs.

IRINA VICTOROVNA FISCHER, Defendant-Appellant

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APPEAL FROM THE FIRST CIRCUIT COURT  
(FC-D. NO. 02-1-1305)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the record, it appears that the Honorable Bode A. Uale's March 19, 2003 order granting in part and denying in part Defendant-Appellant Irina Victorovna Fischer's (Appellant Irina Fischer) motion to vacate the divorce decree pursuant to Rule 60(b) of the Hawai'i Family Court Rules (HFCR) is not an appealable, final post-decree order. In family court cases "[a]n interested party aggrieved by any order or decree of the court may appeal to the supreme court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court[.]" HRS § 571-54 (1993). The statute that generally authorizes appeals from circuit court cases is HRS § 641-1(a) (1993). "A post-judgment order is an appealable final order under HRS § 641-1(a) if the order finally determines the post-judgment proceeding." Hall v. Hall, 96 Hawai'i 105, 111 n.4, 26 P.3d 594, 600 n.4 (App. 2001) (citation omitted), affirmed in part, and vacated in part on other grounds, Hall v. Hall, 95 Hawai'i 318, 22 P.3d 965 (2001). Thus, for example, a post-decree order that finally determines a HFCR Rule 60(b) motion to set aside a divorce decree is an appealable, final post-decree order. Cf. First Trust Company of Hilo, Ltd. v. Reinhardt, 3 Haw. App. 589, 592, 655 P.2d 891, 893

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(1982) ("An order denying a motion under [HRCF] Rule 60(b) is final and appealable." (Citations omitted)).

Although the March 19, 2003 order denied HFCR Rule 60(b) relief as to the portion of the divorce decree that dissolved the marriage of Appellant Irina Fischer and Plaintiff-Appellee Michael Timothy Fischer, the March 19, 2003 order granted HFCR Rule 60(b) relief for the limited purpose of re-adjudicating the issues of (1) spousal support and (2) the division and distribution of debts and property. The March 19, 2003 order did not finally determine these two outstanding issues, which the family court intends to finally determine through a subsequent post-decree order. Therefore, the March 19, 2003 post-decree order is not an appealable, final post-decree order, and Appellant Irina Fischer's appeal is premature. Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, July 28, 2003.