



**Filed**

Supreme Court of Guam, Clerk of Court

**IN THE SUPREME COURT OF GUAM**

**ALLYN KELLEY,**  
Plaintiff-Appellant,

**v.**

**MARK S. KELLEY,**  
Defendant-Appellee.

Supreme Court Case No.: CVA15-019  
Superior Court Case No.: DM0488-10

**OPINION**

**Cite as: 2016 Guam 23**

Appeal from the Superior Court of Guam  
Argued and submitted on February 12, 2016  
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

**CARBULLIDO, J.:**

[1] Plaintiff-Appellant Allyn Kelley (“Allyn”) appeals from the July 2, 2015, decision and order of the trial court in the underlying divorce action, relative to the division of the military retirement benefits of herself and of Defendant-Appellee Mark S. Kelley (“Mark”). Without reaching the merits of Allyn’s arguments or the trial court’s reasoning, we affirm, but on procedural grounds as explained herein.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

[2] Allyn appeals the trial court’s July 2, 2015, decision and order in the underlying divorce action, denying her motion to amend, and effectively affirming its earlier decision to amend the final decree of divorce relative to the division of the parties’ military retirement benefits. On March 1, 2013, the trial court entered its Findings of Fact and Conclusions of Law and Final Decree of Divorce, which included an equitable distribution of each party’s military retirement accumulated during the marriage, using the “time rule” – years of work performed during the marriage divided by years of work total. Record on Appeal (“RA”), tab 56 at 4-5 (Finds. Fact & Concl. Law, Mar. 1, 2013); *see Hart v. Hart*, 2008 Guam 11 ¶¶ 38-42. On November 5, 2013, Mark filed a motion to amend the decision and order regarding the distribution of the parties’ military retirement based upon the fact that Allyn converted her retirement pay to disability benefits, which Mark could no longer garnish.

[3] Accompanying Mark’s motion was his declaration stating that when he filled out the necessary paper work to claim his interest in Allyn’s military retirement, he was informed by Defense Finance and Accounting Service (DFAS) that because Allyn was granted a disability

retirement, her pay was not subject to distribution under the Uniformed Services Former Spouses Protective Act (USFSPA). Hence, by the terms of the original divorce decree, each party was to receive a share of the other's military retirement pay, calculated pursuant to the time rule. However, due to the later grant of disability retirement to Allyn, DFAS denied Mark's application for garnishment of any portion of Allyn's retired/retainer pay.

[4] On April 25, 2014, the trial court entered a decision and order modifying its Findings of Fact and Conclusions of Law and Final Decree of Divorce to reflect that neither party shall take any interest in the other party's military retirement pay. The trial court determined that, at the time of the bench trial, neither the parties nor the trial court knew that Allyn would be receiving disability pay and would thus have no disposable pay upon her retirement. The trial court stated that "Rule 60(b)(2) allows for relief from a final judgment when there is 'newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).'" RA, tab 70 at 5 (Dec. & Order, Apr. 25, 2014) (quoting Guam R. Civ. P. 60(b)(2)). It ruled that Allyn's disability retirement was newly discovered evidence pursuant to Rule 60(b)(2) of the Guam Rules of Civil Procedure (GRCP), and that "[t]o allow the [earlier] order to remain status quo . . . would be to undermine the principles of fairness and equity woven into property division." *Id.* The trial court thereafter entered an Amended Final Decree of Divorce.

[5] On February 27, 2015, Allyn filed a motion to amend the Amended Final Decree of Divorce, asking, among other things, that the trial court reverse its modified findings regarding the parties' interests in the other's military retirement pay, arguing that the trial court's decision inequitably denied Allyn her interest in community property. On July 2, 2015, the trial court

issued its decision and order on Allyn's motion, denying her request to amend its Amended Final Decree of Divorce with respect to the parties' military retirement. Allyn timely appealed.

## II. JURISDICTION

[6] This court has jurisdiction over an appeal from a final order of the Superior Court pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-197 (2016)), and 7 GCA §§ 3107 and 3108(a) (2005).

## III. STANDARD OF REVIEW

[7] A trial court's ruling on a Rule 60(b) motion is reviewed for an abuse of discretion. *Pineda v. Pineda*, 2005 Guam 10 ¶ 7 (citation omitted).

## IV. ANALYSIS

### **Whether the Trial Court Erred in Denying Allyn's Motion to Amend.**

[8] Generally, after a final decree of divorce becomes final, a trial court may not modify the decree relative to matters concerning property. *Hart*, 2008 Guam 11 ¶ 7 (citations omitted). Further, "[t]he right to retirement benefits is a property interest . . . ." *Id.* ¶ 26 (citations omitted). Here, the Final Decree of Divorce was entered on the docket on March 5, 2013, and became final 30 days later on April 4, 2013, as a result of neither party filing an appeal. RA, tab 57 (Notice of Entry, Mar. 5, 2014). On April 25, 2014, the trial court granted Mark's motion to amend, finding cause under GRCP Rule 60(b)(2) to modify its original order. RA, tab 70 (Dec. & Order). It filed an Amended Final Decree of Divorce on August 5, 2014. RA, tab 73 (Am. Final Decree of Divorce). On July 2, 2015, the trial court again ruled on a motion to amend – this time filed by Allyn, seeking, among other things, relief from the trial court's Amended Final Decree of Divorce relative to the parties' military retirement pay. RA, tab 92 (Dec. & Order). The trial court denied Allyn's Rule 60(b)(6) motion, reiterating the reasoning expressed in its earlier

decision to amend, namely that it would be inequitable to allow Allyn to retain an interest in Mark's retirement. *Id.* at 5. The sole issue Allyn presents on appeal is whether the trial court erred in failing to equitably divide the parties' military retirement benefits.<sup>1</sup> See Appellant's Br. at 1 (Nov. 3, 2015).

**[9]** A trial court's ruling on a Rule 60(b) motion is reviewed for an abuse of discretion. *Pineda*, 2005 Guam 10 ¶ 7 (citation omitted). To be clear, it is only the July 2, 2015, decision and order that is on appeal; the April 25, 2014, decision and order, in which the trial court found cause under Rule 60(b)(2) to amend a portion of the Final Decree of Divorce, was never itself challenged on appeal, nor was the Amended Final Decree of Divorce that followed.<sup>2</sup> However, even though the April 25, 2014, decision and order is not on review, the trial court wrested its reasoning in the July 2, 2015, decision and order on the rationale expressed in its April 25, 2014, decision and order. Therefore, some discussion of that reasoning is appropriate here.

**[10]** In its April 25, 2014, decision and order, the trial court ruled that because "DFAS informed [Mark] that the entire amount of [Allyn's] retired/retainer pay is based on disability" and that there are thus "no funds available for payment under the USFSPA[.]" this constituted "new evidence which could not have been discovered in time for [Mark] to move for a new trial,

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<sup>1</sup> The July 2, 2015, decision and order made other rulings relative to findings of contempt and awarding of costs. However, Allyn does not challenge those portions of the decision and order, focusing her challenge only on the ruling relative to the parties' retirement pay.

<sup>2</sup> In its April 25, 2014, decision and order, the trial court amended a portion of its earlier judgment pursuant to Rule 60(b)(2), which states:

(b) On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

....

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)[.]

GRCP 60(b)(2).

and therefore, relief from the final judgment is justified.” RA, tab 70 at 5 (Dec. & Order) (citing GRCP 60(b)(2)). Allyn never challenged the trial court’s authority or correctness in revisiting the Final Decree of Divorce pursuant to Rule 60(b), and therefore, that decision is not under review by this court.

[11] The trial court clarified that Allyn was seeking relief pursuant to Rule 60(b)(6). RA, tab 92 at 4 n.1 (Dec. & Order). This particular subsection of the rule states that a court may relieve a party of a final judgment or order for “any other reason justifying relief from the operation of the judgment.” GRCP 60(b)(6). “Rule 60 is remedial in nature and is to be liberally construed.” *Sananap v. Cyfred, Ltd.*, 2011 Guam 21 ¶ 17 (quoting *Brown v. Eastman Kodak Co.*, 2000 Guam 30 ¶ 18). “The provisions of Rule 60(b) are mutually exclusive and relief under subsection (6) applies only in exceptional or extraordinary circumstances which are not addressed by the other subsections of the Rule.” *Mariano v. Surla*, 2010 Guam 2 ¶ 34 (citing *Brown*, 2000 Guam 30 ¶ 14).

[12] This court has previously stated that “‘Rule 60(b) is inapplicable where the appealing party . . . is not seeking complete relief’ from the judgment or order disputed and instead seeks only to amend the judgment or order.” *DFS Guam L.P. v. A.B. Won Pat Int’l Airport Auth.*, 2014 Guam 12 ¶ 20 (alteration in original) (quoting *Sananap*, 2011 Guam 21 ¶ 20). Further, the court has clarified that an *amendment* to a final judgment is governed instead by Rules 52(b) and 59(b) of the GRCP. *Sananap*, 2011 Guam 21 ¶ 20. In her February 27, 2015, motion, Allyn only sought, relative to the parties’ retirement pay, to have the trial court *amend* its earlier ruling and rectify its finding “that because [Mark] was not entitled to [Allyn’s] disability retirement, neither party should be entitled to the other’s retirement at all.” RA, tab 92 at 2 (Dec. & Order); RA, tab

90 at 1 (Reply to Opp’n, Mar. 18, 2015) (“Plaintiff brings this motion for relief from Judgment pursuant to Rule 60(b) . . .”).

[13] Rule 60(b) states that “[o]n motion and upon such terms as are just, the court may *relieve a party* or a party’s legal representative *from a final judgment, order, or proceeding* . . . .” GRCP 60(b) (emphases added).<sup>3</sup> In its July 2, 2015, decision and order, the trial court denied the motion on Rule 60(b)(6) grounds. RA, tab 92 at 5 (Dec. & Order). We hold that although the trial court’s ultimate decision to deny modification pursuant to Rule 60(b) was correct, its reasoning was erroneous. The trial court denied Allyn the relief she requested based on its reaffirmation of its previous ruling, finding no cause under Rule 60(b)(6) to upset its decision to modify the parties’ interest in the other’s military retirement pay. RA, tab 92 at 4-5 (Dec. & Order). This court may affirm a judgment of the trial court on any grounds supported by the record. *Hart*, 2008 Guam 11 ¶ 15 (citations omitted). We therefore affirm the trial court’s July 2, 2015, decision and order denying Allyn’s motion, but strictly on procedural grounds, without touching on the substance of the trial court’s reasoning. We hold that Allyn’s motion should have been denied because Rule 60(b) is a procedurally inappropriate mechanism to *amend* a final judgment, which is what Allyn was seeking to do. *See DFS Guam L.P.*, 2014 Guam 12 ¶ 20 (citation omitted).

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<sup>3</sup> Although the trial court’s April 25, 2014, decision and order is not on appeal, the court notes that Mark initially sought below only to modify that portion of the final divorce decree relative to one particular community property distribution – specifically, just as it related to the parties’ retirement pay. He did not seek complete relief from the judgment itself. Mark brought the motion under GRCP Rules 52(b), 60(b), and 62(b). The trial court granted the motion solely pursuant to Rule 60(b)(2), stating that, “[o]n that basis, the Court’s Findings of Fact and Conclusions of Law and Final Decree of Divorce *will be modified to reflect that neither party retains any interest in either party’s military retirement pay.*” RA, tab 70 at 5 (Dec. & Order) (emphasis added).

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## V. CONCLUSION

[14] Allyn appealed the portion of the July 2, 2015, decision and order in which the trial court denied her motion to amend its earlier ruling regarding the parties' respective interests in the other's military retirement pay. Without reaching the merits of Allyn's arguments or the trial court's reasoning, the court **AFFIRMS** the July 2, 2015, decision and order, but on different grounds.

[15] We hold that Allyn's Rule 60(b)(6) motion should have been denied for the reason that Rule 60(b) cannot be used to amend a final judgment, but is rather a mechanism to obtain complete relief from the operation of the judgment in its entirety, which Allyn was not seeking.

/s/

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F. PHILIP CARBULLIDO  
Associate Justice

/s/

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KATHERINE A. MARAMAN  
Associate Justice

/s/

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ROBERT J. TORRES  
Chief Justice