Irruul v. Gerbing, 8 ROP Intrm. 153 (2000)
In the matter of Land Title Registration for land known as Blituu, Tochi Daicho Lot 237, Cadastral Lot 1750

ELIDECHEDONG IRRUUL and JAMES MIWATA ELIDECHEDONG
Appellants,

v.

LOUISIANA E. GERBING,
Appellee.

MOSES AND MODESTA NGIRASWEI,
Intervenors.

CIVIL APPEAL NO. 98-59
Civil Action No. 13-93

Supreme Court, Appellate Division
Republic of Palau

Argued: January 27, 2000
Decided: April 11, 2000

Counsel for Appellant: Carlos H. Salii
Counsel for Appellee: Johnson Toribiong

BEFORE: JEFFREY L. BEATTIE, Associate Justice; DANIEL N. CADRA, Senior Land Court Judge; J. UDUCH SENIOR, Land Court Judge

BEATTIE, Justice:

Moses and Modesta Ngiraswei appeal the Trial Division's denial of their motion, pursuant to ROP R. Civ. Pro. 60(b), to set aside the judgment entered in this case. We affirm.

BACKGROUND

This case involves land known as Blituu, located in Ngaraard and registered in the Tochi Daicho as Lot No. 237 in the name of Irruul. In the Land Claims Hearing Office (LCHO) proceedings, Irruul's son, Elidechedong Irruul (Elidechedong), claimed the land as his individual property. The claim was actually handled by Miwata Elidechedong (Miwata), who was Elidechedong's oldest child. Gerbing, Miwata's sister, claimed the land as her individual property, and produced a deed of transfer that she had prepared and her parents had signed, transferring ownership of Blituu from Elidechedong to her. Gerbing claimed that Elidechedong used Blituu as collateral for a $7,500 debt, and when she paid the debt, her father gave her the

land. Elidechedong testified that he signed the document that Gerbing presented to him, but he was unaware it was a deed of transfer. The LCHO determined that Gerbing was the owner of the property. Elidechedong appealed to the Trial Division, which granted Elidechedong's request for a trial *de novo* due to procedural irregularities in the LCHO proceeding.

The case proceeded to trial, but Gerbing did not attend. Based on the testimony of Elidechedong's wife, Miwata, and one of Miwata's brothers, and in the absence of any contradictory evidence, the Trial Court found that the deed of transfer was invalid, and therefore it had "no choice but to reverse the determination of the LCHO." The Court directed the LCHO to issue a certificate of title in the name of Elidechedong as trustee for his nine children in accordance with Elidechedong's request.

Several months later, the Ngirasweis ⊥154 filed a motion to intervene, stating that Gerbing had sold them the land on November 30, 1992, and conveyed the property to them by warranty deed. Upon receiving permission to intervene, the Ngirasweis filed a motion to set aside the judgment entered in favor of Elidechedong under Rule 60(b). In their Rule 60(b) motion, the Ngirasweis requested relief from the judgment on the grounds that Gerbing failed to honor the warranty deed she gave them, and that, because they reasonably relied on Gerbing's representations, it would be inequitable and unjust to deprive them of the property. The Trial Court denied their motion, holding that the LCHO determination, which the Ngirasweis read before their purchase, stated on its face that an appeal could be taken, and thus they were on notice of the possibility of an appeal. The Court further found that the Ngirasweis had taken no action to protect their rights for nearly four years, and that Rule 60(b)(6) relief should only be granted in extraordinary circumstances that were not present here, where a party had simply failed to protect its interests.

DISCUSSION

This Court will uphold a denial of a Rule 60(b) motion unless the Trial Division abused its discretion in denying the relief from judgment. *Secharmidal v. Tmekei*, 6 ROP Intrm. 83, 85 (1997).

Although Appellants never expressly identified the subsection of Rule 60(b) under which they brought their motion, their motion quotes the language of Rule 60(b)(6). Rule 60(b)(6) affords relief from a final judgment only under extraordinary circumstances. *High v. Zant*, 916 F.2d 1507, 1509 (11th Cir. 1990). Circumstances where a petitioner does not "take legal steps to protect his interest" are not extraordinary. *See Ackermann v. United States*, 71 S.Ct. 209, 211 (1950). *See also United States v. Alpine Land & Reservoir, Co.*, 984 F.2d 1047, 1049 (9th Cir.) ("Relief may not be had where 'the party seeking reconsideration has ignored normal legal recourses.'"), *cert. denied*, 510 U.S. 813 (1993). Relief will not be granted unless the movant establishes both injury and that circumstances beyond its control prevented timely action to protect its interests. *Id.* "In a vast majority of cases finding that extraordinary circumstances do exist so as to justify relief, the movant is completely without fault for his or her predicament; that is, the movant was almost unable to have taken any steps that would have prevented the judgment from which relief is sought." 12 *Moore's Federal Practice* § 60.48[3][b], at 60-171

(3d ed. 1998).

The Ngirasweis admitted twice that they read the LCHO's determination before they purchased the land: in their Rule 60(b) motion, and in a hearing on their motion to dismiss. At the hearing, in response to questions about what documents were shown to him before he bought the land, Moses Ngiraswei replied: "The LCHO Determination of Ownership and the transfer of ownership from the parents to [Gerbing]." (Tr. at 64-65). He then testified as follows:

> Judge: "You see something on the bottom there it says something about forty-four [sic] days to appeal?"
>
> Ngiraswei: "Yes."
>
> Judge: "You were not aware of that part (indiscernible)?"

⊥155 Ngiraswei: "Yes, but there were some documents she brought going with this. The Transfer of Ownership from the parents. So, when I looked at it, it seems to me that there was no problem. Since the original owner transfer the ownership to the daughter, there is nobody that can challenge him from the Court because he owned the land."

(*Id*. at 68-69).

The Ngirasweis could have taken legal steps to protect their interest, by waiting until the appeal period had passed to purchase the land, or by checking to see if an appeal had been filed in the Trial Division after the appeal period passed. Instead, they chose to rely on the warranty given them by Gerbing to protect their rights. In an affidavit, Moses Ngiraswei stated: "The deed signed by Louisiana Gerbing says that she would defend the land against all claims to the land, and I believed that if there was any problems, that she would take care of the problems . . . ."

This is not a case where circumstances beyond Appellants' control prevented them from seeking earlier, more timely relief. They could have intervened in this case before judgment was entered in order to protect their interests. The trial court correctly found that the Ngirasweis could have checked to see if an appeal was brought, monitored its progress, and when it became apparent that Gerbing was not protecting their interests, stepped into the case before the judgment was rendered. The trial court did not abuse its discretion in ruling that this failure to take legal steps to protect their interest was not an extraordinary circumstance which would justify relief from judgment.[1]

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[1] On appeal, Appellants challenge the trial court's finding that Irruul and Miwata's notice of appeal from the LCHO determination was timely filed, an issue raised in their motion to dismiss but not in their Rule 60(b) motion. Despite the trial court's express permission to appeal the motion to dismiss, they did not, and thus this issue is not available for review because is not part of the Rule 60(b) motion. *See Secharmidal*, 6 ROP Intrm. at 85 (appellate court reviews only the trial court's order denying the motion to set aside the judgment, not the underlying judgment).

CONCLUSION

For the foregoing reasons, the Trial Division did not abuse its discretion in denying appellants' Rule 60(b) motion, and its ruling is therefore AFFIRMED.