

*** NOT FOR PUBLICATION ***

NO. 24050

IN THE SUPREME COURT OF THE STATE OF HAWAII

STEVE STEVENSON, Plaintiff-Appellant

vs.

ELINOR SUGGS AND DEPARTMENT OF HUMAN SERVICES,
Defendants-Appellees

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 98-0398)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Nakayama, J., and
Circuit Judge Graulty, assigned by reason of vacancy,
and Acoba, J., dissenting, with whom Levinson, J., joins)

Plaintiff-appellant Steve Stevenson (Stevenson) appeals from the final judgment of the circuit court of the second circuit, the Honorable Shackley F. Raffetto presiding, issued on July 11, 2001, entered in favor of defendants-appellees Elinor Suggs¹ (Suggs) and the State of Hawai'i, Department of Human Services (DHS). On appeal, Stevenson argues that the circuit court erred in disregarding the merits of his case and dismissing his complaint based on formalities (i.e. ineffective service of process). Specifically, Stevenson argues that his failure to effectively serve process should be excused because: (1) as a layman, he is not familiar with legal terminology and court rules; (2) he is not fluent in English; (3) he is indigent and cannot hire an attorney; and (4) his poor vision due to the wrongdoings of Suggs and DHS make him unable to prepare documents

¹ The record reflects that Suggs' first name is "Elinor," but many of the documents in the record on appeal refer to Suggs as "Eleanor." We recognize this discrepancy and adhere to the record.

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in accordance with court rules.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that: (1) the allegations in Stevenson's complaint and the course of proceedings make it abundantly clear that he intended to sue Suggs solely in her official capacity as a DHS employee; (2) DHS is a state agency; (3) to properly serve an officer or agency of the state, Stevenson was required to comply with Hawai'i Rules of Civil Procedure (HRCPP) Rule 4(d)(5)²; (4) under the plain language of HRCPP Rule 4(d)(5), the two requirements to effect service of process are that (a) the plaintiff must serve the state, and (b) the plaintiff must deliver a copy of the summons and the complaint to the officer or agency; (5) in the instant case, it is undisputed that Stevenson failed to personally deliver a copy of the summons and the complaint to the attorney general, thereby failing to serve the state; (6) Stevenson's action of sending a copy of the complaint, via certified mail, to the attorney general did not cure this failure; (7) Stevenson's

² Hawai'i Rules of Civil Procedure (HRCPP) Rule 4(d)(5) provides in relevant part:

(d) Same: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(5) Upon an officer or agency of the State by serving the State and by delivering a copy of the summons and of the complaint to such officer or agency. . . .

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failure to comply with the first requirement renders service of process ineffective; and (8) while this court has accommodated pro se litigants, this court cannot excuse noncompliance with the basic formality of service of process pursuant to HRCF Rule 4(d)(5). Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, March 20, 2003.

On the briefs:

Steve Stevenson, pro se
for plaintiff-appellant

Mark M. Nomura,
Deputy Attorney General
for defendants-appellees