

NO. 24200

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

---

LLEWELLYN K. WAILEHUA, JR., Plaintiff-Appellant,

vs.

MIKE MINDORO, Case Manager at Halawa High  
Security Facility, State of Hawai'i,  
Defendant-Appellee.

---

APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 97-3476)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.,  
and Circuit Judge Pollack, Assigned by Reason of Vacancy)

Plaintiff-appellant Llewellyn K. Wailehua, Jr. appeals from the judgment of the Circuit Court of the First Circuit, the Honorable Victoria S. Marks presiding, dismissing Wailehua's complaint pursuant to the order granting defendant-appellee Mike Mindoro's motion to dismiss for failure to serve the complaint as required by Hawai'i Rules of Civil Procedure (HRCP) Rule 4 (1980).<sup>1</sup> On appeal, Wailehua, appearing pro se, argues that the judgment should be vacated and the case remanded for further

---

<sup>1</sup> HRCP Rule 4 states in relevant part:

(c) Service of all process shall be made: (1) anywhere in the State by the sheriff or the sheriff's deputy, by some other person specially appointed by the court for that purpose, or by any person who is not a party and is not less than 18 years of age . . . .

(d) Service shall be made . . . [u]pon an individual . . . by delivering a copy of the summons and of the complaint to the individual personally[.]

(Emphasis added.)

proceedings on the grounds that the circuit court: (1) erred in finding that the complaint and summons were not properly served as required by HRCF Rule 4; (2) violated HRCF Rule 77(d) (1980)<sup>2</sup> and Federal Rules of Civil Procedure (FRCP) Rule 77<sup>3</sup> because Wailehua never received a copy of the court's November 6, 1998 minute order dismissing his complaint; and (3) failed to protect Wailehua's due process rights by not serving the summons for him due to his in forma pauperis status.

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 by the parties, we hold that: (1) U.S. postal workers in their official capacities cannot be said to be authorized to serve personal process for the purposes of HRCF Rule 4 and, therefore, the circuit court did not err in dismissing Wailehua's complaint because Wailehua failed to

---

<sup>2</sup> HRCF Rule 77(d) states in relevant part:

**(d) Notice of Orders or Judgments.** Immediately upon entry of a judgment, or an order for which notice of entry is required by these rules, the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of a judgment or order is required by these rules. In addition, immediately upon entry, the party presenting the judgment or order shall serve a copy thereof in the manner provided in Rule 5. Lack of notice of the entry by the clerk or failure to make such service, does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Hawai'i Rules of Appellate Procedure.

<sup>3</sup> FRCP Rule 77(d) is virtually identical to HRCF 77(d).

properly serve Mindoro with the complaint and summons in accordance with HRCP Rule 4; (2) the circuit court did not violate HRCP Rule 77(d) in failing to immediately enter and serve a notice of the entry by mail of the minute order because HRCP Rule 77(d) applies to only final orders or judgments and is not applicable to minute orders; and (3) because HRCP Rule 4(c) does not require the circuit court to specially appoint someone to effect service of process for an in forma pauperis plaintiff, Wailehua's contention is without merit. Therefore,

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

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

On the briefs:

Llewellyn K. Wailehua, Jr.,  
plaintiff-appellant,  
appearing pro se

Lisa M. Itomura,  
Deputy Attorney General,  
by special appearance  
for defendant-appellee  
Mike Mindoro