

NO. 24729

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

BRIAN L.S. HAMILTON and AVANELL M. HAMILTON,
Plaintiffs-Appellants,

vs.

ROGER C. LERUD, Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CIV. NO. 1RC01-3806)

SUMMARY DISPOSITION ORDER

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

Plaintiffs-Appellants Brian L.S. Hamilton and Avanel M. Hamilton [hereinafter, collectively "the Hamiltons"] appeal from the October 2, 2001 order of the District Court of the First Circuit¹ denying their motion for reconsideration of the order granting defendant-appellee Roger C. Lerud's (Lerud's) motion for summary judgment and dismissal. The Hamiltons filed an assumpsit complaint on June 7, 2001, alleging that Lerud wrongfully garnished \$764.00 from their bank account on June 7, 1994. On appeal, the Hamiltons contend that the district court erred by denying them their due process rights.

Upon carefully reviewing the record and the briefs submitted, we hold as follows: (1) the Hamiltons did not appeal the district court's order granting Lerud's motion for summary judgment and dismissal. Assuming, arguendo, that this court has

¹ The Honorable David Fong presided over the hearing on the motion for reconsideration.

jurisdiction to review the district court's grant of Lerud's motion for summary judgment and dismissal, the Hamiltons' appeal would still fail because they filed their assumpsit complaint more than six years after the alleged wrongful garnishment of funds from their account. See Hawai'i Revised Statutes (HRS) § 657-1 (1993). The Hamiltons' funds were garnished on June 7, 1994, but they did not file their assumpsit complaint until June 7, 2001, one year after the statute of limitations expired; (2) the district court did not abuse its discretion by denying the Hamiltons' motion for reconsideration because the Hamiltons failed to present new evidence or arguments in their motion for reconsideration. See Association of Apartment Owners of Wailea Elua v. Wailea Resort Co., Ltd., 100 Hawai'i 97, 110, 58 P.3d 608, 621 (2002) ("[T]he purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion."); and (3) we are unable to review the Hamiltons' contention that the district court erred by denying them their due process rights as they failed to include in the record a transcript of evidence in support of their contention. Hawai'i Rules of Appellate Procedure Rule 10(b)(3). Assuming, arguendo, that the due process violations alleged arise out of the alleged unwillingness of the district court to consider arguments beyond whether the Hamiltons filed their assumpsit complaint within six

years after the alleged wrongful garnishment of their funds, the district court did not deny the Hamiltons' due process rights as there was no dispute as to when the alleged wrongful garnishment occurred or when the Hamiltons' assumpsit complaint was filed, and determination of the applicability of the statute of limitations defense was determinative of the Hamiltons' claims. See HRS § 657-1 (1993). Therefore,

IT IS HEREBY ORDERED that the district court's denial of Hamiltons' motion for reconsideration filed October 2, 2001 is affirmed.

DATED: Honolulu, Hawai'i, August 30, 2004.

On the briefs:

Brian L.S. Hamilton
and Avanel M. Hamilton,
plaintiffs-appellants
pro se

Roger C. Lerud,
defendant-appellee
pro se