NO. 23352

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

ROBERT PARKS, Plaintiff-Appellant, v.
WARREN LOO, EUGENIE KEANU, GORDEAN AKIONA,
MARIAN SIZEMORE, ERLINDA MORALES, MICHAEL TONGG,
and RICHARD McLAUGHLIN, Defendants-Appellees,
and
STATE OF HAWAII, Defendant

APPEAL FROM THE FIRST CIRCUIT COURT
(CIVIL NO. 97-2984)

MEMORANDUM OPINION
(By: Burns, C.J., Watanabe and Foley, JJ.)

Plaintiff-Appellant Robert Parks (Parks) appeals from the March 13, 2000, Judgment of the Circuit Court of the First Circuit[1] (circuit court) in favor of Defendants-Appellees Warren Loo, Eugenie Keanu, Gordean Akiona, Marian Sizemore, Erlinda Morales, Michael Tongg and Richard McLaughlin (collectively, Individual Defendants), and the State of Hawaiʻi (State) (collectively, Defendants), granting "Defendants' Motion to Dismiss Complaint Filed July 21, 1997 or Alternatively for Summary Judgment" (Motion to Dismiss) and dismissing Parks' claims against Defendants. Parks alleged in his complaint that the Individual Defendants and the State[2] violated his civil

[1]The Honorable Kevin S.C. Chang presided.

[2]Parks does not contend that the circuit court erred in its ruling in favor of the State of Hawaiʻi.

rights by failing to notify him of juvenile proceedings against his two children. Parks filed his complaint under 42 U.S.C. § 1983,[3] seeking damages, declaratory and injunctive relief, and attorney's fees and costs.

In granting the Motion to Dismiss, the circuit court concluded that the Individual Defendants named in the complaint, acting in their official capacities, were entitled to quasi-judicial immunity, citing Moore v. Brewster, 96 F.3d 1240 (9th Cir. 1996), and Seibel v. Kembel, 63 Haw. 516, 631 P.2d 173 (1981). The circuit court concluded that the State had not waived its sovereign immunity against civil rights claims, citing Makanui v. Dep't of Education, 6 Haw. App. 397, 721 P.2d 165 (1986). In Makanui, this court held:

> Immunity in state court from § 1983 damages liability is a question of federal law, and conduct which is cognizable under that provision cannot be immunized by state law. Under § 1983, a state cannot be sued unless it has consented to be sued or has otherwise waived its sovereign immunity.

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[3]42 U.S.C. § 1983 states:

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

> Hawaii has not waived its sovereign immunity from § 1983 damages liability. HRS Chapter 662.
>
> A suit against a state's agencies or against its officers or agents in their official capacities is a suit against the state and not against its officers or agents in their individual capacities. Consequently, Hawaii, its agencies, and its officers and agents in their official capacities are immune from and cannot be held liable for claims for money damages for violations of constitutional rights under § 1983. Moreover, § 1983 does not support a claim based on a *respondeat superior* theory of liability.

6 Haw. App. at 406, 721 P.2d at 171-72 (citations and footnote omitted). See also Will v. Michigan Dep't of State Police, 491 U.S. 58, 109 S. Ct. 2304 (1989).

Parks' complaint for damages against the Individual Defendants acting in their official capacities was a suit against the State and, therefore, barred under this court's holding in Makanui.

Parks named each Individual Defendant in his or her official state capacity:

> Warren Loo as the supervisor "responsible for the operation and management of the Children and Youth Services Branch (CYSB) Leeward Section State of Hawaii";
>
> Gordean Akiona as a "Probation Officer" and "agent" of Loo;
>
> Eugenie Keanu as the supervisor "responsible for the operation and management of the Children Youth Servces [sic] Branch (CYSB) Windward Section State of Hawaii";

Marian Sizemore as a "Probation Officer" and "agent" of Keanu;

Erlinda Morales as a "Court Officer of the Special Services Section of the Family Court State of Hawaii";

Michael Tongg as "Guardian Ad Litem"; and

Richard McLaughlin as "Department of Human Services/Child Protective Services Unit-Social Worker."

Although not cited in Park's complaint, Park's opening brief cites Hawaii Revised Statutes (HRS) §§ 571-23 (1993) and 571-31 (1993) as the law that required the Individual Defendants to give notice to Parks when juvenile proceedings were brought against his children. Hawaii Revised Statutes §§ 571-23 and 571-31 read in relevant part as follows:

> **§571-23 Summons; notice; custody of minor.** After a petition under section 571-11(1) or (2) is filed in the interest of a minor, and after such investigation as the court may direct, the court shall issue a summons, unless the parties hereinafter named promise in writing to appear voluntarily, requiring the person or persons who have the custody or control of the minor to appear personally and bring the minor before the court at a time and place stated. If the person so summoned is not the parent or guardian of the minor, then the parent or guardian or both shall also be notified, by personal service before the hearing except as herein provided, of the pendency of the case and of the time and place appointed. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary. If it appears that the minor is in such condition or surroundings that the minor's welfare requires taking the minor into custody, the judge may order, by endorsement upon the summons, or otherwise, that the person serving the summons shall take the minor into custody at once. A parent or guardian is entitled to the issuance of compulsory process for the attendance of witnesses on the parent's or guardian's own behalf or on behalf of the minor.
>
> Service of summons shall be made personally by the delivery of a copy thereof, together with a copy of the petition, to the person summoned, except that if the judge

> is satisfied that personal service of the summons or the notice provided for in the preceding paragraph is impracticable, the judge may order service by certified or registered mail addressed to the last known address, or by publication, or both. Service effected not less than forty-eight hours before the time fixed in the summons for the return thereof shall be sufficient to confer jurisdiction, provided that jurisdiction shall be conferred if any person who might be so summoned appears voluntarily at the time and place appointed and waives such service and such notice.

(Emphasis added.)

> **§571-31 Taking children into custody; release; notice.**
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> . . . .
>
> (b) When an officer or other person takes a child into custody the parents, guardian, or legal custodian shall be notified immediately. The child shall be (1) released to the care of the child's parent or other responsible adult; (2) referred or delivered to the court or other designated agency with or without simultaneous release to parent or other responsible adult; or (3) taken directly to a detention facility, if the child's immediate welfare or the protection of the community requires it, or the child is subject to detention for violation of a court order of probation or protective supervision.

(Emphasis added.)

Parks' complaint alleges that Akiona and Sizemore, the two probation officers who were assigned to his two children, had a duty to notify Parks of the juvenile proceedings. Nowhere in Parks' complaint is there an allegation that (1) a petition was filed in the interest of Parks' children, or (2) an officer or other person took Parks' children into custody. Assuming, arguendo, that Akiona and Sizemore had control or custody of Parks' children pursuant to HRS § 571-31, and breached their duty under said statutes by failing to notify Parks of juvenile proceedings, Akiona and Sizemore "were arms of the court and performed a function integral to the judicial process. As arms

of the court, [they] are entitled to the absolute immunity given to judges and other judicial officials." Seibel, 63 Haw. at 525, 631 P.2d at 179; see, e.g., Burkes v. Callion, 433 F.2d 318 (9th Cir. 1970) (probation officers in criminal case); and Woolridge v. Commonwealth of Virginia, 453 F. Supp. 1333 (E.D. Va. 1978) (welfare official doing family study analogous to probation officer for purposes of immunity).

Parks' complaint against the Individual Defendants for damages was clearly against them in their official capacities and barred by sovereign immunity. Additionally, Parks' damage claims against the two probation officers, who were acting as arms of the court and performing functions integral to the judicial process, are barred by the absolute immunity of these officers. Parks' complaint does not allege any duty to Parks on the part of the Individual Defendants other than a respondeat superior theory of liability, which this court held in Makanui is not the basis of a 42 U.S.C. § 1983 claim.

As to Park's prayer for injunctive relief, Parks lacks standing. City of Los Angeles v. Lyons, 461 U.S. 95, 109-10, 103 S. Ct. 1660, 1669 (1983). Parks made no allegation or showing that the Individual Defendants or the State would fail to notify him in the future when required by law regarding any juvenile proceedings involving his two children.

The circuit court, therefore, did not err in granting the Motion to Dismiss. Accordingly, the March 13, 2000 Judgment of the circuit court is affirmed.

DATED: Honolulu, Hawai‘i, February 28, 2003.

On the briefs:

Emmett E. Lee Loy
for plaintiff-appellant.

Russell A. Suzuki,
Deputy Attorney General,
for defendants-appellees

Chief Judge

Associate Judge

Associate Judge